IMPLEMENTATION OF THE UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT

HEARING

BEFORE THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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IMPLEMENTATION OF THE UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT

WEDNESDAY, JUNE 16, 2004

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

The Committee met, pursuant to notice, at 10:14 a.m., in room 1100, Longworth House Office Building, Hon. Bill Thomas (Chairman of the Committee) presiding.

[The advisory and revised advisory and revised advisory #2 announcing the hearing follow:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE
June 03, 2004
FC–19

CONTACT: (202) 225–1721

Thomas Announces Hearing on Implementation of the United States-Australia Free Trade Agreement

Congressman Bill Thomas (R–CA), Chairman of the Committee on Ways and Means, today announced that the Committee will hold a hearing on Implementation of the United States-Australia Free Trade Agreement. **The hearing will take place on Wednesday, June 16, 2004, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:30 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. Witnesses will include Ambassador Josette Shiner, Deputy United States Trade Representative. 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:

Australia is the United States' 19th-largest trading partner with $19.6 billion in two-way trade in 2002, and a U.S. trade surplus of $6.6 billion. On November 13, 2002, the President formally notified Congress that he would pursue a free trade agreement (FTA) with Australia. Negotiations for the United States-Australia FTA were concluded on February 8, 2004, and the agreement was signed on May 18, 2004 by Ambassador Zoellick and Australian Trade Minister Mark Vaile.

The agreement provides significant benefits for U.S. businesses and their employees as well as U.S. consumers. More than 99 percent of industrial goods in both the United States and Australia will become duty-free immediately upon implementation. Manufactured goods currently account for 93 percent of total U.S. goods exports to Australia. The agreement includes a negative list for services with very few reservations. On agriculture, all U.S. agricultural exports to Australia will receive immediate duty-free access.

In announcing the hearing, Chairman Thomas stated, "Australia is one of the United States' strongest allies, and this agreement solidifies the economic component of that relationship. The agreement will expand trade opportunities for U.S. goods and services immediately. While I had hoped for an even more expansive agreement, I believe the overall outcome is enormously positive. I expect the FTA to receive quick and favorable congressional consideration."

FOCUS OF THE HEARING:

The hearing will focus on congressional consideration of the United States-Australia FTA and the benefits that the agreement will bring to American businesses, farmers, workers, consumers, and the U.S. economy.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee

website and complete the informational forms. From the Committee homepage, *http://waysandmeans.house.gov*, select "*108th Congress*" from the menu entitled, "*Hearing Archives*" (*http://waysandmeans.house.gov/Hearings.asp?congress=16*). Select the hearing for which you would like to submit, and click on the link entitled, "*Click here to provide a submission for the record*." Once you have followed the online instructions, completing all informational forms and clicking "submit" on the final page, an email will be sent to the address which you supply confirming your interest in providing a submission for the record. You ***MUST REPLY*** to the email and ***ATTACH*** your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by close of business Tuesday, June 22, 2004. **Finally**, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225–1721.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item 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. All submissions and supplementary materials must be provided in Word or WordPerfect format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies 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. All submissions must include a list of all clients, persons, and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone and fax numbers of each witness.

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.

*** * * CHANGE ALLOWING FOR PUBLIC WITNESSES * * ***

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE
June 04, 2004
FC–19–Revised

CONTACT: (202) 225–1721

Change Allowing for Public Witnesses for Hearing on Implementation of the United States-Australia Free Trade Agreement

Congressman Bill Thomas (R–CA), Chairman of the Committee on Ways and Means, today announced that the hearing on Implementation of the United States-Australia Free Trade Agreement, to be held Wednesday, June 16, 2004, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:30 a.m., **will now accept requests to testify from public witnesses**.

All other details for the hearing remain the same. (See full Committee Advisory No. FC–19, dated June 3, 2004.)

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Kevin Herms or Michael Morrow at (202) 225–1721 no later than 12:00 p.m. on Tuesday, June 8, 2004. The telephone request should be followed by a formal written request faxed to Allison Giles, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515, at (202) 225–2610. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee on Trade staff at (202) 225–6649.

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. **THE FIVE-MINUTE RULE WILL BE STRICTLY ENFORCED. The full written statement of each witness will be included in the printed record, in accordance with House Rules.**

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Committee are required to submit 200 copies, along with an *IBM compatible 3.5-inch diskette in WordPerfect or MS Word format*, of their prepared statement for review by Members prior to the hearing. **Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than noon on Monday, June 14, 2004**, in an open and searchable package. The U.S. Capitol Police will refuse sealed-packaged deliveries to all House Office Buildings. **Failure to do so may result in the witness being denied the opportunity to testify in person.**

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee

website and complete the informational forms. From the Committee homepage, *http://waysandmeans.house.gov*, select "*108th Congress*" from the menu entitled, "*Hearing Archives*" (*http://waysandmeans.house.gov/Hearings.asp?congress=16*). Select the hearing for which you would like to submit, and click on the link entitled, "*Click here to provide a submission for the record*." Once you have followed the online instructions, completing all informational forms and clicking "submit" on the final page, an email will be sent to the address which you supply confirming your interest in providing a submission for the record. You ***MUST REPLY*** to the email and ***ATTACH*** your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by close of business Tuesday, June 22, 2004. **Finally**, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. Those filing written statements who wish to have their statements distributed to the press and interested public at the hearing can follow the same procedure listed above for those who are testifying and making an oral presentation. For questions, or if you encounter technical problems, please call (202) 225–1721.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item 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.

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

* * * NOTICE—CHANGE IN TIME * * *

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE
June 14, 2004
FC–19–Revised #2

CONTACT: (202) 225–1721

Change in Time for Hearing on Implementation of the United States-Australia Free Trade Agreement

All other details for the hearing remain the same. (See Full Committee Advisory No. FC–19, dated June 3, 2004 and Full Committee Advisory No. FC–19–Revised dated June 4, 2004).

Chairman THOMAS. If our guests will find seats, please. First of all, welcome. The purpose of this hearing is to focus on the recently completed United States-Australia Free Trade Agreement (FTA) and the benefits this agreement will bring to American businesses, farmers, workers, consumers, and, in fact, the entire U.S. economy. The Australia FTA has been called the manufacturing FTA. We have had a number of FTAs with economies that tended to be a bit more on the agricultural side, and we're pleased to see that this particular FTA will cover nearly all duties on industrial goods, because the U.S. goods exported to Australia have about a 90 percent content of industrial goods, and they will be duty-free immediately. United States manufacturers estimate that the elimination of duties could result in as much as $2 billion per year in increased U.S. exports to Australia. Despite the fact that our two countries are literally a world apart, the history of European settlement and development show that Australia and the United States have common values and interests stemming from the same roots of free societies and democratic principles. Our two countries have cooperated for more than 50 years on security, and especially in the Pacific Theater of World War II, and literally every major conflict in the 20th and now into the 21st century—including both World Wars, Korea, Vietnam, the 1990 Gulf War, and the War on Terrorism in Afghanistan and Iraq.

Australia has been beside us in every concern. It is about time that we created a far closer economic link. Even in world trade relationships on an ad hoc, informal basis, we have worked to maintain free markets, pushing toward free markets in agricultural goods. So, this agreement is a concrete solidification of the relationship. The United States is the largest foreign investor in Australia, and Australian direct investment in the United States has increased over 50 percent in the past decade. Australian companies have direct investments of nearly $70 billion, and employ over 80,000 workers in the United States. The FTA provides excellent market access on services, most goods, and most agricultural prod-

ucts. It sets high standards on e-commerce and intellectual property rights. However, to have an accurate accounting, there are a few significant negatives, I believe, in this deal, and they ought to be pointed out with the hope that they ought not to be repeated. Sugar is entirely excluded from this agreement; dairy is partially excluded; the textiles chapter is, for want of a better term, very unambitious. There is no investor State dispute settlement mechanism. My hope is that these exclusions will not be reflected in future FTAs brought before this Committee. So, while I had hoped for an even more expansive agreement, I do believe, as I indicated, this is a win-win for both countries. I do expect the Australia FTA to be quickly approved. Broad bipartisan support has already been indicated by a number of my colleagues in this Committee and on the floor. I would like to recognize the Subcommittee on Trade Chair for a brief remark prior to recognizing my colleague, the Ranking Member.

Mr. CRANE. I thank the Chairman for yielding, and I am quite pleased that after more than 1 year of negotiations, the United States and Australia have concluded a long overdue bilateral FTA. This is an important agreement. Two-way trade in goods and services between our countries is approaching $30 billion. Australia is our ninth-largest goods export market, and the United States enjoys a $9 billion trade surplus with Australia. This agreement represents the greatest reduction of industrial tariffs ever achieved in a U.S. FTA and is particularly beneficial to our manufacturers. Over 99 percent of U.S. exports of industrial goods to Australia will become duty free immediately. In this regard, the U.S.-Australia FTA sets the gold standard, and I would like to emphasize my strong support for this agreement and my appreciation to the Administration for its efforts in completing it. I applaud the efforts of the U.S. Trade Representative (USTR) in negotiating an agreement that opens markets for U.S. exports by eliminating tariffs, reducing nontariff barriers, opening services markets, and strengthening intellectual property protections. This will provide a significant benefit to the U.S. economy. To put the economic significance of this agreement in perspective, Australia's gross domestic product (GDP) is $525 billion, nearly double that of Chile and Singapore combined. United States agricultural exports to Australia, while only a small fraction of overall exports down under, were nearly $700 million last year. This is many times greater than U.S. agricultural exports to Chile and Singapore combined.

Despite my unwavering support for this agreement, though, I must say that I share the concerns that the Chairman did about the exclusion of sugar and investor State provisions from the agreement, and I hope that both will be included in future trade agreements negotiated by the Administration. I would also like to welcome Ambassadors Josette Shiner and Allen Johnson from the Office of the USTR, as well as our second panel of representatives from the business community. I am most appreciative that you are here. Australia is one of our greatest allies, and I look forward to working with Chairman Thomas and our colleagues, Mr. Rangel and Trade Ranking Member Sandy Levin to ensure prompt passage of this important agreement. I would also like to thank our colleague, Ms. Dunn, whose tireless efforts as head of the Australia

Caucus are critical to this process. With that, I yield back the balance of my time and yield——

Mr. RANGEL. I will recognize myself.

Chairman THOMAS. Oh, all right. To the Ranking Member of the Committee.

Mr. RANGEL. Let me take advantage of this bipartisan spirit and this agreement, and before I yield to Mr. Levin, I would like to point out that at some point in time, I hope that the USTR, other than at a hearing, might share with us in more detail why they resist so much using the language of the International Labor Organization (ILO) and language that we have suggested in enforcing these basic standards. The reason why we do not find opposition on our side to this bill is because when you use the language that you use as boilerplate language in all of these trade agreements, enforce your own laws, we have a major problem with countries that do not have their own laws or do not enforce their own laws. We have met with the trade representatives and heads of State that allow us to believe that they have been willing to accept the language of the ILO, but that it has been the USTR that has resisted it. So, where we have some type of accord, I just want to take advantage of the bipartisan spirit and ask the USTR to arrange to meet with us in an informal way so that we can encourage more agreements like this with language that you would find acceptable, but in knowing that this enforce your own laws—one size does not fit all countries. I would like to yield to the Ranking Member of the Subcommittee on Trade, Mr. Levin.

Mr. LEVIN. Thank you, Mr. Rangel, Chairman Thomas, and Mr. Crane. I support this agreement. I do think we need to look at it in its specific context, as we should all other trade agreements. This agreement, by itself, is not going to have a very major impact on the U.S. economy. As the International Trade Commission (ITC) report indicates, the impact of the tariff elimination, for example, will be no more than one-tenth of 1 percent, the impact on GDP. As the ITC indicated, it would have, in quotes, "little or no impact on U.S. consumers." It is important for us to proceed here, and also, as I said, to look at the specific context as we should. I very much do not agree that trade issues should be approached, as one of my colleagues put it blindly—that you simply turn on the spigot of trade on both sides and all sides, and it does not matter what is in the flow or how much it flows one way or the other. I have some real concerns about the overall approach to trade by this Administration, but despite that, I think that this agreement is certainly worthy of congressional support, and Mr. Rangel and I and others have so indicated earlier. Our two economies have a lot of similarities. We are dealing here with two developed economies, and in some respects, that makes it easier; in other respects, it may make it more difficult. In some sectors, for example, automobile and auto parts, where there are somewhat comparable competitive conditions, clearly, this is going to be beneficial to us.

Mr. Rangel has talked about the references in the agreement to core labor standards and environmental standards. Enforce your own laws, Mr. Rangel has indicated, may work where those provisions reflect strong conditions within a country. The opposite effect would be where they are applied to where the conditions are far

from comparable, as is true in the United States-Central American FTA (CAFTA), and in other countries that would be covered by a Free Trade Area of the Americas (FTAA). Also, let me mention that because Australia and the United States have similar legal traditions and strong independent judicial systems, that it was appropriate here not to include an investor State provision. Likewise, if I might say so, on the capital controls provisions, we have raised a number of questions about these provisions in other contexts. Here, it would work, but if applied elsewhere, it would not. I want to say just a couple of words about what eventually was left out, because I think it is an important note. I had concerns, and they were shared with a lot of my colleagues, about USTR's efforts to use the Australia FTA to undermine Australia's universal pharmaceutical benefits structure for its citizens, and indirectly through this FTA to make new policy in the United States on various pharmaceutical-related issues.

The most egregious example of this was a provision that I think appeared in the FTA on the day negotiations were completed, which indirectly were directed at the reimportation debate in the United States, I think quite correctly. Under some pressure, USTR decided to strike this provision, but I want to make sure it is understood it was a major mistake to try to put it there in the first place. I do believe under the specific circumstances of our relationship, of the economic nature of the two countries, that this is an agreement that is worthy of support. I am glad we are having this hearing. I am also glad, Mr. Chairman, that we will probe into some of the issues that were raised here. Again, no one should think that you just turn on the spigot, and everything is win-win. There are some interesting exclusions in this agreement, and there are some interesting modifications without going the full way. That is true in many of the agricultural sectors. I yield back.

Mr. CRANE. [Presiding.] Now, I would like to yield to our two distinguished panelists. First, Ms. Shiner.

STATEMENT OF THE HONORABLE JOSETTE SHEERAN SHINER, DEPUTY U.S. TRADE REPRESENTATIVE, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Ms. SHINER. Mr. Chairman, Congressman Rangel, Members of the Committee, I welcome this opportunity to present the U.S.-Australia FTA and to hear the Committee's views on this agreement. I appreciate your leadership of this Committee, and I am grateful to the Members of the Committee and your staffs for the guidance and advice you provided to Ambassador Zoellick, to me, to our chief negotiator, Ralph Ives and to our chief agriculture negotiator, Ambassador Johnson, during the process of these negotiations. You are forceful advocates for America's workers, ranchers, and farmers, and our close cooperation helps ensure that the deals we strike are strong win-win agreements for the American people. As has been pointed out, the United States and Australia have a special partnership. Our nations' sons and daughters stood side-by-side against tyranny in the last century, and they do so again today. With this FTA, as Congresswoman Jennifer Dunn pointed out at the recent signing, quote, "we begin a new chapter entwining the tapestry of

our mutual history by building on our security alliance of the past with an economic alliance of the future."

This FTA is only the third FTA ever negotiated between two developed countries—the first between Australia and New Zealand, and the second, 16 years ago, between the United States and Canada. It will eliminate virtually all duties, more than 99 percent, as has been pointed out, on goods that the U.S. exports to Australia on day one. This is the most significant, immediate reduction in industrial tariffs ever achieved in a FTA and will immediately make our manufacturers, from household goods to chemicals and machine tools, better able to compete in Australia against products from European, Japanese, Korean, and Chinese traders. The ITC estimates that the tariff cuts alone will increase U.S. exports to Australia by about $1.5 billion. In fact, as has been pointed out, the United States enjoys a hefty trade surplus with Australia. We currently export twice as much to Australia as we import from Australia. Our trade surplus on industrial goods alone totaled $6 billion in 2003. American businesses, farmers, ranchers, and workers see exciting new opportunities in this agreement. When I travel around the world, I see Caterpillar's bright yellow tractors and road graders dotting the world's landscapes. Australia is already this American icon's second largest export market, but with the immediate elimination of duties from this FTA, Caterpillar expects its annual sales to Australia to increase to $1 billion annually in the next decade.

It is not just large companies that expect to benefit. You will hear testimony today about small business and how they expect to benefit. I have one example of a small company in Iowa called Vermeer Manufacturing, that makes drills like this drill that lays cable lines, and currently, they export their machinery to Australia. They expect sales to soar by 10 percent upon enactment of this agreement, and it is very critical to them and their 1,700 workers. In addition to the benefits from the manufacturing sector, duties on all U.S. farm exports to Australia, literally from soup to nuts, will be eliminated on the first day of the agreement. Ambassador Allen Johnson will address the provisions that he oversaw the negotiations of after I am finished with these remarks. Just a brief overview of some other features of this agreement: in the services area, Australia will provide substantial new market access in the telecommunications, computer services, tourism, energy, construction, education, and other sectors. The agreement ensures improved market access for the U.S. entertainment industry, including films and television, and provides new rights for life insurance and express delivery providers. Australia and the United States invest deeply in each other's economies, as has been pointed out, and the agreement fosters this partnership by virtually exempting most U.S. investments from screening by the Australian government.

This FTA is also the first to include non-tariff market access provisions to address the pharmaceutical sector, in which the United States is the leading innovator in the world. This is an agreement for the digital era, with innovative electronic commerce provisions and state-of-the-art intellectual property for protection of trademarks, copyrighted works, digital works, and patented products. It strengthens penalties for piracy and counterfeiting, providing

strong deterrents against these activities, and in the area of government procurement, one of the biggest gains that the National Association of Manufacturers (NAM) is looking toward, U.S. suppliers will be a step ahead of most other countries by obtaining through this FTA nondiscriminatory rights to bid on contracts from 80 Australian central government industries. In this agreement, once again, the United States has been able to include the world's highest standards of enforceable labor and environmental provisions in any trade agreements. We are the leaders in the nexus between trade, workers' rights, and care for the environment, and this agreement is no exception.

This is an agreement forged in close partnership with Congress and this Committee, and we are grateful for your leadership in this area. Finally, in enforcement, our FTAs are our single most effective tool in setting the world's highest standards for a level playing field in trade. Our FTAs typically contain hundreds of pages of enforceable obligations that are the bedrock of building a fair, level, and enforceable playing field in the trade between nations. The U.S.-Australia FTA is no exception to this tradition of excellence. The nearly 1,500 pages of rules and commitments that comprise this FTA will form the basis of our enforcement program. In addition to these specific benefits, it is important to keep in mind that Australia has been one of our closest and most reliable partners in pursuing global trade liberalization. Both of our countries are deeply committed to the Doha development agenda, and our alliance on this FTA will further fortify our World Trade Organization (WTO) work together. We have the success of the Doha development agenda at the top of our respective trade agendas, and will continue to pursue that. I look forward to working with you further on this agreement, and to answering any questions you may have. Thank you.

[The prepared statement of Ms. Shiner follows:]

Statement of The Honorable Josette Sheeran Shiner, Deputy United States Trade Representative

INTRODUCTION

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

Thank you for the opportunity to testify today and for the guidance and advice you have provided us. We appreciate your leadership, Mr. Chairman, and are grateful to Congressman Rangel, Congresswoman Dunn, and Members of this Committee and their staffs for the close cooperation we have enjoyed on the United States-Australia FTA and many other trade issues over the past three years.

Working together, we have reenergized the U.S. trade policy agenda and reestablished America's leadership on trade. Passage of the Trade Act of 2002, including Trade Promotion Authority (TPA) was a pivotal step in this effort. In TPA, the partnership between Congress and the Executive branch is manifest, and this partnership has given us the ability to negotiate agreements that will bring real economic benefits to Americans and our trading partners.

Today, I have the honor and privilege of featuring the significant accomplishments of the United States-Australia FTA and hearing the Committee's views on legislation required to implement this Agreement.

This FTA is an historic trade agreement with one of the United States' closest friends and allies. As Ambassador Zoellick stated at the FTA signing ceremony last month, conclusion of this Agreement "is especially fitting for our two countries, which have prized individual liberty and demonstrated the achievements that are possible when governments see their role as freeing people to strive to make their own dreams."

The United States and Australia have long had a special partnership. We have common histories and, as President Bush has put it, a "closeness based on a shared belief in the power of freedom and democracy to change lives." Our countries have common values and an unwavering belief in freedom, democracy and the rule of law. We both have offered opportunities to immigrants from around the world, thriving immensely from this diversity. Both of our countries have been willing to stand side by side to fight for what we believe in. We have done so in Europe, in the Asia-Pacific, and now in Afghanistan and Iraq, united in the fight against global terrorism.

The U.S.-Australia FTA represents an opportunity to build upon this enduring relationship and deepen our "essential partnership," as Australian Prime Minister Howard has called it. Fifty years ago, the United States and Australia signed the ANZUS Treaty, an alliance based on our mutual security needs. The FTA will further expand the alliance between our two countries, putting our trade and investment relationship on the same plane as our longstanding political and security relationship and bringing our societies and our people even closer together.

Congresswoman Jennifer Dunn expressed the Agreement's significance this way: "Today, we sign an historic trade agreement to strengthen our economic ties. We begin a new chapter entwining the tapestry of our mutual history by building on our security alliance of the past with an economic alliance of the future."

SUMMARY OF THE AGREEMENT

There is no doubt that the U.S.-Australia FTA is a landmark agreement and one that is befitting the special partnership between our two countries and our shared commitment to free trade principles. The Agreement, which some have dubbed the "Manufacturing FTA" will eliminate more than 99 percent of the tariff lines covering U.S. manufactured goods exports to Australia on the first day the Agreement goes into effect. This is the most significant immediate reduction in industrial tariffs ever achieved in a free trade agreement.

Australia already is a major trading partner of the United States. Two-way goods and services trade is nearly $29 billion. Australia purchases more goods from the United States than from any other country, and the United States enjoys a bilateral goods trade surplus of nearly $7 billion. The thousands of American jobs supported by these goods exports pay an estimated 13 to 18 percent more than the national pay average. With the further reduction in trade barriers, we expect new opportunities for America's manufacturers, farmers, and workers. The International Trade Commission estimates that the tariff cuts alone would increase U.S. exports to Australia by about $1.5 billion yearly.

In addition to the benefits the FTA will bring to the manufacturing sector, duties on all U.S. farm exports to Australia—nearly $700 million in 2003—will be eliminated on the first day that the Agreement goes into force. For this achievement, I must pay tribute to Secretary Veneman and our Chief Agriculture Negotiator, Al Johnson, who has joined me today, for working with Members of Congress and our agriculture constituencies to successfully address these particularly challenging issues. Among those agricultural interests that will benefit from these tariff cuts are those producing processed foods, fruits and vegetables, corn oil, and soybean oil and other agricultural industries. As part of the Agreement, the United States and Australia also will establish a special committee to address sanitary and phytosanitary (SPS) issues, a longstanding trade concern highlighted by Members of Congress when we announced our intention to launch these FTA negotiations in November 2002. Through close cooperation and focus on these issues over the last two years, we have seen progress on a range of SPS issues. For example, U.S. table grapes entered the Australian market in 2002 and U.S. exporters are expected to sell pork to Australia very soon.

Access for U.S. services industries will be opened as well. As in goods trade, the United States already has a significant surplus—$2.3 billion—in services trade and more than $6 billion if the surplus in sales of services by majority-owned affiliates is included. The FTA will create new opportunities that U.S. service industries, among the most competitive in the world, are well positioned to take advantage of. The Agreement ensures improved market access for the U.S. entertainment industry, including films and television; and provides new rights for life insurance and express delivery providers. Australia also made commitments in the telecommunications, computer services, tourism, energy, construction, education, and other services sectors.

Small and medium sized enterprises (SMEs) should particularly benefit from this FTA. The common language and perspective of our peoples combined with the new opportunities provided for by this Agreement should make Australia an especially attractive market for SMEs taking the first steps to join the global market.

Integration between the U.S. and Australian economies and the extraordinary benefits that have flowed from this integration has been fostered not only by goods and services trade but by the flourishing investment between our countries. Australia is the eighth largest foreign investor in this country, and its investments support U.S. jobs in many sectors, including manufacturing, real estate and finance. The FTA will further this linkage by providing a predictable framework for U.S. investors in Australia, exempting investment in new businesses from screening requirements and substantially raising the thresholds for screening of acquisitions in nearly all sectors. These changes would have exempted from screening the vast majority of U.S. investment transactions over the past three years.

The U.S.-Australia FTA is the first to include non-tariff market access provisions to address issues in the pharmaceutical sector. Recognizing the sensitivity of this issue, we drew on studies prepared by the Australian government to propose changes that would improve transparency and the regulatory procedures for listing new drugs in Australia. Under the FTA, the United States and Australia agreed to common principles on facilitating high quality health care and continued improvements in public health, including through government support for research and development in the pharmaceutical industry. We also agreed to establish a Medicines Working Group to discuss emerging health policy issues. Australia committed to specific steps to improve the transparency, accountability and promptness of the listing process, including establishment of an independent review of listing decisions.

The FTA provides for state-of-the-art intellectual property protection for U.S. trademarks, copyrighted works, including for digital works, and patented products. It also strengthens penalties for piracy and counterfeiting, providing strong deterrence against these illegal activities. With IPR piracy and counterfeiting a serious problem in many countries in the Asia-Pacific region, these provisions will serve to reflect the importance of robust intellectual property protection to the development and growth of solid, long-term trade and investment relations.

In addition, the FTA includes innovative electronic commerce provisions, reflecting both countries recognition of the importance of e-commerce in global trade. In addition to commitments to ensure that digital products will receive non-discriminatory treatment, the Agreement facilitates the ability of businesses to authenticate a business transaction in both markets and establishes a program for cooperation on other e-commerce issues.

The FTA opens up the Australia's government procurement market, which is especially significant because Australia is one of the few developed countries that is not a Party to the WTO Government Procurement Agreement. The Agreement requires the use of procedures that are transparent, predictable, and non-discriminatory. U.S. and Australian companies will be able to bid on procurements from each other's central government entities and their states that have agreed to participate. Of particular significance, Australia has agreed to remove industry development requirements that have long been part of its procurement regime.

The United States has been able to include the world's highest standard of enforceable labor and environment provisions in its recent FTAs and this Agreement is no exception. The Agreement includes labor and environment provisions, which commit each country to effectively enforce its law and environmental laws and these obligations are enforceable through the FTA's dispute settlement procedures. Under the Agreement, each government commits to promote high levels of labor and environmental laws and to not weaken or reduce labor or environmental laws to attract trade and investment. The Agreement also establishes processes for further cooperation on labor and environmental issues, supporting our long history of cooperation and coordination in these areas.

Finally, the Agreement includes strong enforcement provisions. Our FTAs raise the bar and provide the best basis for our global work of ensuring a fair and level playing field for our workers, farmers and businessmen. The nearly 1,500 pages of rules and commitments that comprise this FTA will form the basis of our enforcement program. The Agreement creates a Joint Committee to supervise implementation of these rules and commitments and assist in resolving disputes. As with each of our trade agreements, we will rely wherever possible on bilateral cooperation and consultations to resolve issues and ensure strict enforcement of trade obligations. The U.S. Government team monitors carefully the implementation of our trade agreements, meeting regularly with our foreign counterparts to review implementation of the range of commitments. We also consult closely with U.S. business and other stakeholders to ensure that we are fully apprised of any developing concerns. Our record shows that such consultations have been remarkably successful in ensuring that our trading partners follow through on their commitments and address emerging problems in a expeditious manner. While we frequently rely on the range

of other tools available to us, in this FTA as in our other agreements, we of course have ultimate recourse to formal dispute settlement to resolve trade disputes and ensure full and faithful implementation of our agreements.

BROADER BENEFITS OF THE AGREEMENT

In addition to the specific benefits that will flow from the commitments the United States and Australia have undertaken in this FTA, there are other benefits as well that I would ask you to contemplate as you consider this Agreement. Australia has been one of our closest and most reliable partners in pursuing trade liberalization around the world. Both of our countries are strongly committed to advancing the Doha Development Agenda and our alliance in the WTO has been further fortified through the FTA negotiations, which will more closely unite our trade and economic interests. This alliance will improve the prospects for a successful outcome to these global negotiations, still the highest priority on both countries' trade agendas.

The FTA also will help advance our goals in the Asia-Pacific region. Australia has been a strong partner in APEC and Australia and the United States have a mutual stake in seeing the fruits of the free market expand in this strategic region. This Agreement, which sets high standards for other free trade agreements, will certainly help to do this.

GLOBAL TRADE AGENDA

In addition to the success we have achieved in concluding the Australia FTA, the Administration has acted on the opportunity you presented us with passage of TPA to launch a number of other major new trade initiatives designed to open markets around the world for U.S. products and services. With your support, we have been pressing energetically to secure the benefits of a world trading system that is dramatically more free and open, advancing our goals globally, regionally, and bilaterally.

To reinvigorate the new round of global trade negotiations that was launched in Doha, Qatar in November 2001, the Administration presented bold new proposals to the World Trade Organization (WTO) that embody the U.S. commitment to open markets and spur growth and development. Earlier this year, Ambassador Zoellick traveled around the globe, offering creative and far-reaching plans to remove all tariffs on manufactured goods, open agriculture and services markets and deal with the special needs of developing countries. The U.S. leadership has been critical to keeping WTO members focused on the core issues of market access and optimistic that forward momentum can be maintained.

While pressing ahead on the global trade agenda, the Administration has worked with Congress to successfully conclude FTAs with Chile and Singapore, complete negotiations with Morocco, Bahrain, CAFTA and the Dominican Republic. In addition, we have launched negotiations with the five members of the Southern African Customs Union, Panama, and three Andean countries. Later this month, we will be holding the first round of FTA negotiations with Thailand. At the same time, we have worked to continue negotiations on the Free Trade Area of the Americas, and to lay the groundwork for future market-opening initiatives through the Enterprise for ASEAN Initiative and a Middle East Free Trade Area initiative, as well as through Trade and Investment Framework Agreements with selected countries from all regions, both developed and developing.

CONCLUSION

I have highlighted some of the most significant benefits of the Agreement for the United States. A more detailed summary of the main provisions of this Agreement is attached to this testimony.

While we can describe the benefits we anticipate from this FTA for our trade and economic partnership with Australia, the support this Agreement commands from stakeholders is perhaps a more persuasive indication of its potential benefits. U.S. and Australian businesses, both large and small, recognize the vast potential of this Agreement in terms of economic growth, jobs, and living standards and are actively promoting it. Businesses, farmers and workers understand that while we have a long-established and well-developed trading relationship, the framework of the FTA will allow them to use their drive, ingenuity, and vision to create even greater opportunities for themselves and their countries in the future.

Before concluding, I want to take a moment to note that there are many essential ingredients that go into negotiating an FTA of this high caliber. These include, of course, the relentless patience, hard work and negotiating skills of the large teams on both sides and especially of the lead negotiators, Ralph Ives and Steve Deady.

Tribute also must be paid to the creativity, stamina and leadership of Minister Vaile and Ambassador Thawley and, of course, Ambassador Zoellick.

Conclusion of this FTA also is the result of the hard work and dedication of many leaders from the private sector, including Anne Wexler, R.D. Folsom, and the co-chairs and nearly 300 members of the U.S.-Australia Business Coalition, representing a broad spectrum of the U.S. economy.

Finally, as was intended in the Trade Act of 2002, the quality of this FTA and its successful conclusion are due to the guidance and unflinching support of many Members. We are extremely grateful for the support of Chairman Thomas, Chairman Crane, Congressman Rangel, and Congressman Levin, and the tremendous assistance of their staffs. We also are indebted to Congresswoman Dunn and Congressman Dooley for their leadership in chairing the congressional caucus in support of the U.S.-Australia FTA.

With continued congressional guidance and support, this Administration will continue to pursue an ambitious and multifaceted trade policy. Together, we can demonstrate the power of free trade to spur economic growth, build prosperity, and promote democracy.

The Administration looks forward to working with this Committee and the full Congress in enacting the legislation necessary to implement this Agreement. Thank you Mr. Chairman, Congressman Rangel, and Members of the Committee. I would be pleased to respond to questions.

Mr. CRANE. Thank you, Ms. Shiner. Mr. Johnson?

STATEMENT OF THE HONORABLE ALLEN JOHNSON, CHIEF AGRICULTURAL NEGOTIATOR, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Mr. JOHNSON. Yes, thank you, Chairman Thomas, Congressman Rangel, Chairman Crane, and Congressman Levin—Members of the Committee. While the focus of this FTA obviously deals a lot on the industrial side, I think it is safe to say that agriculture was critical to the successful conclusion of this agreement. The challenge with any agreement is striking the best balance possible between U.S. agricultural export interests and import sensitivities. In meeting with many of you, your staffs, and the agriculture community personally over the last several months, it was essential that we work through these issues in addressing the most important issues. I think we have found the balance possible in these agreements, providing for fair and equitable treatment while at the same time creating new opportunities for our farmers, ranchers, and agricultural industries. Briefly, let me just go through some of the highlights of these agreements. First, let me point out that of course, creating good opportunities for other sectors outside of agriculture is also important to agriculture. A strong economy at home is important in maintaining and growing our domestic demand for our agricultural products, and the Australia FTA clearly does that. It also creates new export opportunities. Duties on all farm exports, nearly $700 million in 2003, will be eliminated on the first day of this agreement.

An interesting fact is that on a per capita basis, Australia's consumers purchase $4.50 of U.S. products for every dollar that we spend on their products in the United States. The United States is already the second-largest supplier to Australia's $56 billion food market, and our position will continue to improve—we will enjoy a preferential treatment in this market due to this agreement. Australia's tariffs can be between 5 percent—as high as 30 percent in some cases, and those, again, will be going to 0 on the first day.

The beneficiaries of this additional access include oil, seeds, fresh and processed fruits such as cherries, grapes, raisins, frozen strawberries, dried plums, tomatoes, fruit juices, vegetables, and nuts such as almonds, walnuts, olives, dried onions, potatoes, sweet corn, distilled spirits, soups, and the list goes on. Of course, sanitary and phytosanitary (SPS) issues have been an important concern to many in our agricultural community, and to Members of Congress. We have been working closely on these issues over the last 2 years in a whole range of areas, and the agreement itself establishes a bilateral committee on SPS matters, as well as a technical working group. Some examples of success have been the table grape market, opening for the first time in 2002, reaching $3.2 million in exports in 2003. Recently, we have seen processed pork, pork products and pork for processing SPS issues addressed, which will result in an estimated market between $30 million and $60 million.

Of course, we still need more work in areas like poultry, citrus, stone fruit, and apples. At the same time, many things have been achieved that get less notice, such as beef, sweet corn, seed, and some others. Admittedly, import sensitivities are high with Australia. Beef, as I told some Montana ranchers last week in Lewiston, Montana, was an issue that we spent a lot of time discussing with our Australian counterparts. What was a reasonable approach? We believe that the long transition of 18 years, and during that period allowing manufactured beef products that are largely complementary to our high-quality products, addresses that concern. In addition, the agreement provides 2 years for our beef industry to get back on its feet after the Bovine Spongiform Encephalopathy problems of this year, or until 2003 exports are resumed. The grace period of 9 years, and then backloading the tariff reductions and safeguards during the transition, as well as after the transition, we believe addresses a concern. Expanding tariff rate quotas that start at 0.17 percent of U.S. production, and after 18 years are still only up to 0.8 percent of U.S. production in 2003, we think largely addresses the sensitivities around the beef industry.

The top priority for our dairy industry was maintaining the out-of-quota tariffs, which we did in this agreement. Again, we offered expanding tariff rate quotas, but at a manageable rate. In the first year, the tariff rate quotas are equal to 0.2 percent of the annual value of U.S. production. These will allow us to make our dairy programs operationally effective. The growth rate on the more sensitive tariff rate quota dairy products have slower growth rates than those that were less sensitive, including some that are not produced in large quantities in this country. Finally, as was pointed out by a few Members of the Committee already, we did not change the access above the WTO-allowed access for Australia as it relates to sugar. This agreement makes still closer the relationship that we have with Australia in pursuing our global objectives in the WTO. We share many common objectives, whether it is export subsidy elimination, substantially reducing domestic support, or increasing market access. Let me just conclude by saying that this agreement is solid. It achieves the agricultural objectives defined in Congress and the trade promotion authority. More impor-

tantly, it creates new opportunities for U.S. farmers and ranchers while sensibly dealing with our sensitive products. It adds to the message that the United States is moving forward in agricultural trade and strengthens an old partnership in our global agenda. With 6 billion people outside of our country, 96 percent of the global population, it is important that we meet this challenge and take advantage of this opportunity—send this message and advance our overall trade agenda. Thank you.

Mr. CRANE. Thank you. Ms. Shiner, the Australia FTA allows the Administration to provide provisional relief in a textiles and apparel safeguard if there are critical circumstances. I understand this was added at the insistence of the Australians, and it is an unfortunate provision that I hope will not be included in future agreements. Do you consider the inclusion of this provision to be a precedent for future agreements?

Ms. SHINER. Sir, the particular provision that you are referring to would allow, as you said, this safeguard to be in place in critical circumstances before an investigation. Typically, we are the more aggressive in negotiating safeguards for our industry to ensure that we can act if there are critical circumstances. We do not see this as a precedent. Again, while we have a model of what we attempt to do in these agreements, sometimes, we need to customize given the circumstances, and this is one area where there was that customization.

Mr. CRANE. Mr. Johnson, some sectors of the agriculture community are indifferent to this agreement at best. At worst, it is argued that the agreement will harm U.S. dairy and beef industries. How do you respond to that criticism?

Mr. JOHNSON. Well, again, I should point out that in both dairy and beef, we have a very close working relationship with the industry, not just as it relates to Australia, but in all of our other FTA and other negotiations—including the WTO. I think, in general, it sends the right message that we are moving forward in our agenda, which both of those industries have an interest in sending—in trying to move other FTAs and the WTO forward. I think, particularly, in this particular agreement, we dealt with their issues very sensitively. As I pointed out in my opening statement, the starting tariff rate quota for beef is 0.17 percent of U.S. beef production, and even after 18 years, it is still only about 0.8 percent of U.S. beef production. To give you some idea of the value, that is an additional value of about $167 million in an industry that is worth about $25 billion. On the dairy side, similarly, our access starts at about 0.2 percent of the value of U.S. dairy production. The growth rates for each of the commodities is moderate; showing that we are sensitive to them. Again, on a tonnage basis, that is equal to about 0.03 percent of total milk production in the United States. So, we think that we have dealt with the sensitivities while moving the agendas forward for both of these commodities.

Mr. CRANE. Thank you, Mr. Johnson. Mr. Levin?

Mr. LEVIN. You know, I smile a bit at your language, how you describe your approach in agriculture, you talk about sensitivity. You talk about customizing. I wish there was similar sensitivity in other areas. I think it does show that these trade issues have some complexity to them, and that the model that simply—as I said ear-

lier, turn on the spigot, really does not work. I support the agreement. I think the impact on dairy will be minimal. You mentioned another area, $167 million out of $20 billion, plus. It would be nice if when we looked at other areas, we would take into account impact and not simply say trade is win-win. I think we also should acknowledge where we are proceeding cautiously, like on SPS. You essentially have a working group using WTO language, or a committee, whatever you want to say. There is no guarantee of results; there is no guarantee. This is an area where we are very much shortchanged, I think, in Australia and in Europe, and it has been difficult to move ahead, or at least we have not moved very far ahead with Europe, and I think it should be acknowledged that in this agreement, we do not move ahead very clearly. On apparel and textile, where you use the word customize, Ambassador, I support this provision. I do not care who raised it, and it is not the first such provision. We were able to insert in the China agreement a safeguard provision for apparel and textile and for other areas, and without it, I think it would have been impossible, and should have been impossible, to pass China's Permanent Normal Trade Relations.

So, I do think it is useful to listen closely to the terms that you use and to acknowledge the advantages but also the limitations in this agreement, and as you say, the need to look at particular circumstances. So, I do not really have any questions. I just want to say a word about the core labor standards. I do not think we will deter you or Ambassador Zoellick from continuing to use this language about the world's highest standard and about American leadership in terms of core labor standards. For many of us, that does not hold true. There are real differences within this Committee and within this Congress in terms of the standard that you use. Enforce your own laws may be a high standard where there are high laws and enforcement, but where there are not such standards or laws and enforcement, it is not the highest standard. It is the lowest standard, and essentially, it encourages a race to lower and lower standards—and by the way, you worded this somewhat carefully, but the standard enforce your own law is weaker than our generalized system of preferences (GSP) laws, and the enforcement provisions are far weaker than under GSP. So, for the Administration to continue to say that they have a high standard in enforceable labor and environmental provisions is really untrue. The Jordan Agreement, because Jordan has them in their laws and enforces them, and that was the clear reference in that agreement, this agreement does not really meet that standard, as I see it. Anyway, we will talk about these issues some other day, but I think it is important to consider them because we are going to be taking other agreements up which involve very, very different circumstances than Australia. I am hopeful that we pass Australia because of the specific content of it, despite its limitations, and I hope, by the way, that it will stand on its own, and there will not be an effort to combine this with any other agreement. Thank you.

Mr. CRANE. Thank you. Mrs. Johnson?

Mrs. JOHNSON. Thank you and welcome to both of you. Ambassador Shiner, could you describe the, quote, "advances in this agreement in regard to pharmaceuticals," in more detail? I would

like to get a better understanding of what access it provides to advanced U.S. pharmaceuticals that will not agree to a government price being attached to them, and what advances it makes in compelling the Australian government to include greater recognition of the costs of research and development in the reference price.

Ms. SHINER. Thank you. Australia has a system of pharmaceutical purchasing that is fairly similar to a system used throughout Europe and other areas of the world, including Japan and other countries in Asia, and we have made an effort in recognition of the fact that the United States is now the leading innovator in developing life-saving medicines. We have the leading firms in America. They employ many Americans. This is one of our leading exports to the world, one we are very proud of, because it is important to the quality of life and the benefits that it brings to countries throughout the world. In that recognition, our pharmaceuticals really are the backbone of many of these health care systems around the world. What happens is when you have a government setting a price for these pharmaceuticals, typically, it may represent 90 percent of the market, as it does in Australia, and frankly, what we were looking for is to ensure that in setting those prices, the cost of innovation, not just the cost of producing the medicines, is recognized in that process, or at least that representations could be made to that. It is only our goal to be able to have the opportunity to make our case. Governments have the right, and will develop health care systems that will allow low-cost access to medicines and health care for their citizens. This is a goal, we know, of all governments—to ensure that. We want the chance to be able to ensure that the system is transparent; that we understand how the prices are being set; and we understand when we can make a case to list our new medicines. We had a situation in China recently, for example, where they had not updated their formularies since 1998. There have been no new medicines listed there for years, and there have been a number of new developments. I think in this agreement, we were able as nations to affirm our support for, and agreement, on the importance of innovation. We were able——

Mrs. JOHNSON. Excuse me; explicitly, if one of our medicines is not listed on their—as available under their government system with a reference price, under this agreement, will we have the right to sell it in their market?

Ms. SHINER. We currently have the right to sell it in their market, and we can sell any medicines there. The key is to get government reimbursement, because it helps citizens get access to the medicines; that is a key part of being able to market the medicines. Currently, we have the right on the private market there, or through private health care. It is just not a very developed private market.

Mrs. JOHNSON. There was no willingness on their part to allow whatever they would reimburse for a comparable medicine to be applied toward a different medicine, with the consumer paying the difference between what the government would pay and what the pharmaceutical of their choice would charge?

Ms. SHINER. Congresswoman, it is not so different than our private health care system, where our managed care programs will

decide priority medicines or make some decisions. The challenge we face is when there is just one system that represents all the market, it becomes difficult if a medicine is not——

Mrs. JOHNSON. Even in our managed care systems, we are really pressing them hard to say that this is their medicine of choice, and they will cover 100 percent——

Ms. SHINER. Right.

Mrs. JOHNSON. That they will let you use that same amount of money toward another medicine not on their formulary, but for the same purpose.

Ms. SHINER. Right.

Mrs. JOHNSON. I think the only hope of making much progress in these countries is to move in that direction. I am very disappointed that we have not made greater progress. I think it is wrong for Europe, Australia, and Asia, not to be willing to shoulder some of the costs of advancement from which their people benefit. Thank you. My time has expired.

Ms. SHINER. Thank you.

Mr. CRANE. Thank you. Ms. Tubbs Jones?

Ms. TUBBS JONES. Thank you, Mr. Chairman. I did not realize I was coming up so soon. Good morning, Honorable Shiner, Honorable Johnson. I come from the great State of Ohio, a great manufacturing State, though we are catching hell right now as a result of the losses we have. Domestic manufacturing is important to Ohio, and I am generally happy that immediately after the Australian FTA is signed, 99 percent of all Australian tariffs on U.S.-manufactured products will be eliminated. However, at the same time, 97 percent of all U.S. tariffs on Australian-manufactured products will also be eliminated. Are there any concerns that U.S. consumers will now buy Australian-manufactured goods instead of U.S.-manufactured goods, since almost all tariffs will be eliminated? The second follow-up is, are there any studies that have been done on this issue?

Ms. SHINER. In fact, we have an ITC study that is excellent and comprehensive and looks at the impact of this agreement, which we can get to you. It further details and looks specifically at the impact of the agreement on industries of concern to your district.

Ms. TUBBS JONES. Would you, please?

Ms. SHINER. I will say this—we have seen through recent history, Australians like American products; they buy American products. That is why we have such a trade surplus in goods. Really, the competition is, in that marketplace, between Japanese manufactured goods, Korean, Chinese, and us. So, this will really help us get a competitive edge up on this. Australia is one of the biggest investors in the United States. It is the eighth-largest investor here. Australian firms in the United States already employ more than 80,000 Americans, and our exports to Australia support about 150,000 jobs here. So, we expect that to increase. I will get back to you on whether we have specific offensive or defensive concerns, and we can discuss those further if that suits you.

Ms. TUBBS JONES. Honorable Mr. Johnson, my question with regard to the exclusion of sugar from the Australian FTA—you might have answered this already—I was kind of going back and forth. Mr. Franklin, on behalf of the Grocery Manufacturers of

America, the exclusion of sugar from the FTA may have compromised the overall benefits of the agreement to the processed food sector. However, it also concerns me that the exclusion of sugar may set a bad precedent that could weaken the objective of achieving comprehensive trade agreements in the future. Could you speak to that issue? If you have done it already, I apologize for the repetition, but maybe somebody else did not hear what you said.

Mr. JOHNSON. First of all, not to worry—I have not answered that question.

Ms. TUBBS JONES. Great.

Mr. JOHNSON. Let me just answer it in two parts. First of all, when it comes to our agricultural exports, again, they are all duty free on the first day to Australia, so that includes our processed foods. Needless to say, in this negotiation, from an agricultural perspective, this was a very sensitive negotiation. Our agricultural imports from Australia are about $2.1 billion; our exports are nearly $700 million. We had several concerns raised by the sugar industry, by the dairy industry, by the beef industries in particular, some of the horticultural industries—and we tried to deal sensitively with each one of them in their own way, in order to make sure that we were getting a high quality agreement that Ambassador Shiner had described. So, in that sense, I think that we have accomplished that objective. Now, from the precedent question that you asked, each one of these negotiations will have their own dynamics. I think it is safe to say that the dynamics that exist in Australia are somewhat unique. It is a developed country. It is one where we do not have as much agricultural export interest as we do import sensitivities in many sectors. As we look forward at these other agreements, it is clear that there is a lot of agricultural export interest, and in order to maintain an ambitious result, we are going to have everything on the table. When it comes to the WTO in a broader sense, the global agreement that we are all negotiating, the sugar industry has been supportive of trying to get a comprehensive global agreement to address the trade-distorting practices in the world. So, I think our agriculture community is largely united in that objective, including the sugar industry.

Ms. TUBBS JONES. I am smiling because I am telling him I am almost out of time. I just want to associate myself with the comments of my colleagues with regard to labor standards. It is such an important issue. I hope that as we go forward with these various trade agreements, we will pay attention to that. Our country is supposed to be the country that sets the standards, and we do not allow them to go under—that we stay at a high level in the process, and language becomes important. Mr. Chairman, I probably have 15 seconds left, and I am going to yield them back to you.

Mr. CRANE. Thank you. Our next questioner is Mr. Houghton.

Mr. HOUGHTON. Thanks very much. I would like to follow up on Mrs. Johnson's comment about pharmaceuticals. Are you saying that, in effect, the only restrictions you have or the only discipline you have in the cost of innovation being reflected in the price is wording? There is no arithmetic, there are no guidelines, there is no nothing? Because without that you can do almost anything.

Having been in the research business, I know how important this thing is.

Ms. SHINER. Sir, I now spend a tremendous amount of my time looking at how we can ensure that American innovation really has its place in the world. One of the areas that we have done a tremendous amount of work in is the life-saving medicines. So, I really agree with you. How you price that, how you communicate what goes into the next medicine that saves lives is very critical—and how we ensure that we can continue to develop that innovation. I just took a trip up to Rahway, New Jersey to meet with some of the developers and scientists at the Merck company, and it is amazing when you hear about the next generation of medicines that are being produced there. You look at the investment that has to go into that, and so, whether it is, frankly, our films, our music, or our medicines—where the cost of producing the compact disc, the digital video disc, or the actual chemical compound is not where——

Mr. HOUGHTON. Madam Ambassador, I understand that, and you have done a wonderful job on this. Specifically, if you have a State-controlled pricing system, and you do not have any sort of discipline in terms of the country that is exporting, this thing is just a matter of words. It is a concept. We ought to reflect it, but we do not know how to do it. So, I am just trying to tie it down a little bit.

Ms. SHINER. No, sir, I appreciate that, and that is why Congress has instructed us to study the pricing systems and the listing systems of all of the Organization for Economic Co-operation and Development countries, the ones that have the biggest programs, and to really develop a strategy for approaching this issue so that we can ensure that innovation is assured. So, as you know, we have appointed our first Assistant USTR for Pharmaceutical Policy. This is the first team in the world that will develop the expertise about these systems to ensure that we can make the case for innovation with our trading partners. We already are, and we plan to do so even more.

Mr. HOUGHTON. How do we get back at this? I mean, we will approve this thing; we will move along, and everybody will feel pretty good about it. How do we get back at this, because this is an absolutely quintessential issue.

Ms. SHINER. Sir, we have established a working group with Australia which we also are seeking and have done, for example, with Japan. It allows us to communicate and make some progress on some of the core issues like the ability to make our case and to be heard. So, I think that our pharmaceutical companies feel that we have been able to achieve some significant improvements here in the system, and together with you, we will continue to look at how to approach this issue so that we can ensure that innovation will be protected and that the rest of the world is contributing to that critical part of this industry.

Mr. HOUGHTON. Well, so far, innovation has not been protected, and we all know that. So, the question is how to put some sort of a bond on this thing. Let me just ask you one other question in terms of the agricultural tariffs. These are reciprocal, I assume. When 67 percent of U.S. tariffs on agricultural products are imme-

diately reduced—I assume it is the same way the other way, is that right?

Mr. JOHNSON. Well, in fact, it is 100 percent—100 percent of our agricultural products entering Australia will have zero tariffs on the first day.

Mr. HOUGHTON. Well, what are the key areas that you say will take 4, 10, or 18 years to resolve?

Mr. JOHNSON. You are talking about agricultural——

Mr. HOUGHTON. Yes.

Mr. JOHNSON. Productions? Well, in terms of products coming in our direction, as we were describing earlier, there are some high sensitivities as it relates to dairy, beef, and sugar. In addition to that, there are several horticultural products that we were sensitive on, and those, again, have taken longer.

Mr. HOUGHTON. As far as sugar is concerned, which is the big issue, would that be in one of those yearly classifications for 10 or 18 years? I mean——

Mr. JOHNSON. No, in terms of sugar, what we basically did was maintain their current access at the WTO-allowed level that they currently have, and have not expanded that.

Mr. HOUGHTON. Okay; thanks, Mr. Chairman. Thank you very much.

Chairman THOMAS. Mr. Lewis? No questions? Mr. McCrery?

Mr. MCCRERY. Thank you, Mr. Chairman. I will be brief. I just want to commend the USTR for including the question of pharmaceutical pricing in your talks with Australia. I know it is not a subject that USTR is accustomed to dealing with, and it is not something that is traditionally in the trade arena, but unfortunately, those of us who have studied health care and pharmaceuticals for some time have reached the conclusion that it is necessary for us to include this question in our trade talks, not only with Australia, but with the entire industrialized world. If we do not find some way to change the thinking of governments of industrialized countries on this question, I am afraid it will not be very long until consumers in this country demand, and perhaps rightly so, that our government take similar action with regard to pricing, and in my view, that would be a terrible development for innovation and for continuation of the development of life-saving and life-extending drugs. So, I commend you for broaching this subject, and I encourage you to continue those efforts with other nations. I want to get back for just a moment to the question of manufacturing and outsourcing of jobs. Ms. Tubbs Jones broached that question, which is somewhat sensitive these days politically. Do you think this agreement will cause more outsourcing of jobs to Australia?

Ms. SHINER. Thank you, and first, if I could thank you for your leadership on the issue of affordable access to medicines, protecting innovation; we really appreciate very much the consultations you have had and your leadership on this issue. It is very much appreciated, because we are all facing this challenge together. We pledge to work together with this Committee to ensure that we are able to address this issue in a way that benefits the American people, and an industry that we are very proud of in the world. On the issue of outsourcing, the dynamic of this agreement is one that I think is a real win for the American worker. Australia is one of the

biggest investors into the United States, and Australian-investment businesses in the United States employ almost 100,000 U.S. workers right now. We expect that with a closer partnership, that will increase. I will look further into the issue of whether or not there is a real dynamic of outsourcing there. It has not been a character, really, of the relationship, and again, it is just one where Australians have loved American products. This is going to provide us a more competitive edge there, and will allow, with customs facilitation, our goods to get in there quicker. It is worth taking a look at, and I work closely with the Congresswoman on other questions she has had on this, so we will look further to see if there are any concerns that we should be particularly aware of in that area.

Mr. MCCRERY. Well, you have mentioned a couple of times Australian investment in the United States, and that this agreement should encourage additional investment in the United States—that is really the reverse of outsourcing, is it not? It is insourcing. What happens when other countries insource to this country? We create jobs here. So, I am glad that you are mentioning that as a benefit of this agreement. Another benefit, would it not be, that American companies that purchase inputs for their manufacturing from Australia will see their costs of doing business reduced, because those input costs will be reduced when the tariffs on this country are released.

Ms. SHINER. Yes, sir, and I have been impressed. The ITC report, which are always excellent—we really have an excellent component to our trade agreements with the ITC and the reports they have done, and we have put a tremendous burden on them. Just reading through on this agreement, it is remarkable the areas of complementarity and the benefits that I believe will come in a critical area that has been a major concern for all of you, which is our manufacturing sector. We are the most innovative country in the world in manufactured goods. When they are given a level playing field, our small and medium manufacturers are able to compete. This is an agreement that they have strongly supported because they see that the nature of the relationship is one that is a win. In addition, Australia and the United States share a common cause in being able to compete in the Asia-Pacific region. So, being able to form a common alliance on the economic front where we can find mutual benefits in the Association of Southeast Asian Nations region and Northeast Asia is one that I think is another benefit that we will begin to see of this.

Mr. MCCRERY. Thank you.

Mr. CRANE. [Presiding.] Now, I would like to yield 5 minutes to our distinguished Chair of the Aussie Caucus, Ms. Dunn.

Ms. DUNN. Thank you very much, Mr. Chairman. I am sorry I was missing for my question period. Just so you all appreciate, there are problems that crop up when a Member of Congress is about 3,000 miles away from her home, and a pipe bursts underneath her garage floor, and the whole thing has to be torn up. So, I am back, and I appreciate, and I want to congratulate you for the excellent work you have done in negotiating this agreement, moving it along briskly. I also want to pay compliments to our colleague, Cal Dooley, who has been my Co-Chair of the Australian

Caucus and has consistently been there with good, correct information, and conversations with Members of Congress who need to know just a little bit more about some area; and also he has given us a particularly important view into the sense of support that exists on this agreement from both sides in the U.S. Congress. He has been invaluable. It is an important agreement from my perspective because our State of Washington is the number one trader with Australia. We sell Boeing aircraft; we sell software. Boeing aircraft comprise 95 percent of the Qantas Airline fleet, for example, and with the reduction of the tariff, we certainly look for increased value being available there. This agreement does, I think, in contrast to what one of your earlier questioners was saying, create a lot of benefits for the United States, certainly starting with the immediate $2 billion of greater sales to the manufacturing sector, and many of us are concerned about that.

It is a fact of free and global trade that manufacturing goes to the area that can produce it most efficiently, and so, we are seeing some—not as great as some people would like to think in hyperbolic statements of movement of manufacturing overseas, but certainly, this allows our manufacturing sector to benefit hugely to the tune of $2 billion. I think what should be said on behalf of Australia in addition is that this economic agreement continues our friendship and brings it in line with the security partnership that we have had and shared for many, many years with the nation of Australia. Their people were on the shores in Normandy, too, and their Prime Minister was there celebrating. Many of you saw him and heard his speeches on television. They have consistently been with us in security arrangements through the decades. They are our very good friend and ally, and we do share a common culture, a common rule of law, and a common, in many cases, approach to how we do business. I am interested in one sector, and I know that you can answer my question that was brought up by Congressman Levin on SPS—you did not get a chance to answer that. I would like you to bring us up to date on how we are resolving the issues that are so critical to our farmers, particularly those who are in the eastern side of my State who raise stone fruit and also apples. Can you tell us where that issue stands now, please?

Mr. JOHNSON. Sure, let me just go back, because I think it will make you more comfortable with the answer if I describe the process, which is, we have been working for over 2 years with Australia in trying to strengthen our relationship and dialogue on SPS issues. The government of Australia has improved the transparency of its regulatory process, and we have a better understanding of how they are addressing these issues. We have worked with them in identifying the different list of products, where they are in the regulatory process. We have some encouragement with what we have already seen happen with grapes; we have already seen happen with pork; we have already seen happen with beef; we have already seen progress on Florida citrus. When it comes to stone fruit in particular, Australia has agreed to initiate an import risk assessment process in July, next month, and we are focusing on getting an expedited risk assessment for apples when Australia completes an apple import risk assessment, final risk assessment on New Zealand, which we will be commenting on ourselves. The

idea is that as Australia opens that market for New Zealand apples, we are going to be able to take advantage of what they are already doing for New Zealand, and try to expedite that process for ourselves. I think the one point I would make to Congressman Levin was that he made the comment that there are no assured results. Well, our regulatory agencies feel similarly, as do Australian regulatory agencies, which is, decisions need to be based on science. They are not going to prejudge the outcome, but they are committed to a science-based decision process. Sometimes, we think they are too conservative in their approach, admittedly, but we now have a working group and technical groups for working through these issues as they come up, and we have some evidence of success.

Ms. DUNN. Thank you, Mr. Chairman.

Chairman THOMAS. Mr. Becerra?

Mr. BECERRA. Thank you, Mr. Chairman, and Ambassadors, thank you very much for being here. Let me see if I can get through about three questions. Let me start with a technical one, which perhaps you can answer in writing later on. It has to do with the copyright section of the FTA with Australia. By the way, first, congratulations on the work. It was done in a way that was surprisingly rapid, and sometimes, these things can get bogged down, so congratulations to you and to our Australian counterparts for being willing to negotiate in a rapid fashion. In the copyright section of the FTA, there is a section providing for the transfer of economic rights in section 17.4, and specifically paragraph 6, and you do not need to look at it right now. What I would like to do is see if you can, and maybe you already off the top of your head know this, but I would like to know if you can give me a sense of how that particular provision has been applied or interpreted by USTR. It is a provision that exists in the North American Free Trade Agreement. It was in the Chile and Singapore FTAs, and it deals again with this whole issue of transfer of economic rights. The question I would have for you is, do we have any history now that we can use based on the previous FTAs that include this, or is there a particular interpretation that USTR has with regard to this section and to the question of whether it includes the transfer of equitable remuneration, which is another way of saying royalties. That is a question which has arisen. I have been asked about it, and I would love to know what your response is—if there is a history now to it from the previous FTAs, or if you can give us an interpretation. So, Ambassador Shiner, I will leave it at that unless you have something you can say on it. If you have something you can say on it, great; otherwise, I will move on.

[The information follows:]

Washington, DC 20515
July 7, 2004

Honorable Robert B. Zoellick
U.S. Trade Representative
600 17th Street N.W.
Washington, D.C. 20508

Dear Mr. Ambassador:

We write to you with a concern related to a copyright provision in the Australia-U.S. Free Trade Agreement ("FTA"). We support strong copyright protections and measures to combat piracy; at the same time, we also believe that trade agreements

support the ability of audio and audio-visual performers to retain their intellectual property rights.

In that regard, we are concerned that one provision of the Australia-U.S. FTA could be used to undermine such rights. Accordingly, we would like to urge that USTR indicate its opposition to using the provision in that manner and that the provision not be included in future agreements. Further, we ask that USTR affirm that it does not interpret the provision to apply to the moral rights or equitable remuneration rights of performers.

The provision at issue is paragraph 6, of section 17.4 of the FTA. This provision appears to obligate both Parties to the FTA to respect transfers of rights under contracts of employment in either Party. In the United States, such contracts could result in some works being considered as "works for hire." If the language of this provision is misused to obligate the government of Australia to recognize and approve "work for hire" rules, legitimate claims by U.S. performers to royalties and other funds that may be established for their benefit in Australia would be subverted.

Such an expansion—and extraterritorial application—of the U.S. "work for hire" doctrine does not appear essential or integral to valid U.S. trade policy objectives, which include simplifying rules regarding transfers of copyright ownership in order to protect U.S. copyrights. In fact, such "work for hire" rules do not appear to have any counterpart in international copyright agreements to which the United States is a party.

Finally, we would note that the provision at issue is also contained in the recent FTAs with Singapore and Chile, as well as other recently negotiated FTAs. This fact makes the points noted above even more essential.

We look forward to your response to this issue that is so vital to U.S. performers and other copyright holders.

Sincerely,

Charles B. Rangel
M.O.C.

John Conyers, Jr.
M.O.C.

Robert T. Matsui
M.O.C.

Sander Levin
M.O.C.

Xavier Becerra
M.O.C.

Ms. SHINER. Well, I first want to thank you, because we have worked very closely in ensuring that we get increased market access for films, and you are a real advocate in that. I do want to assure you that we have worked very closely with the Motion Picture Association of America and others to be sure that we have a gold-plated intellectual property section here. We will get back to you on the details of that, but also, we were able to achieve some increased market access for our films in Australia that is significant, and especially dealing with some of the cultural restrictions that had been problematic. So, we look forward to getting back to you on that and ensuring that we are taking care of any concerns you might have.

Mr. BECERRA. Thank you, Ambassador. Let me ask you, on intellectual property rights, and again, I think that USTR has done a tremendous job of ensuring that what we produce here, the intellectual minds that have created so many different things, that those rights are protected, and we want to thank you for that work and making sure that piracy is something that we fight tooth and nail. In the provisions of the FTA with Australia, we negotiated some pretty tight provisions, extremely strong enforcement provi-

sions; there are requirements, not permissive terms, in the agreement, and I think that is all well and good. I am wondering: Australia is not one of those countries that we list on that list of countries that is a huge violator of our intellectual property laws. It is not one of the major pirates in the world that is abusing our—whether it is our software or movies or music. We went ahead, and we have an agreement here that would be as good if not better than previous FTAs. I am wondering if you can give me a comparison: Australia also has a great record when it comes to labor issues. Its workplace protections, the fact that its minimum wage is higher than the U.S. minimum wage. Yet, our provisions in this FTA continue with the old song of enforce your own laws. Well, perhaps with Australia, that is okay, but if we take a look at what we have done with Australia and compare it to what the USTR did with regard to Central America, where we know that there is not enforcement of many of their labor laws, and some of their labor laws, we know, are not good, there was nothing different done when it came to labor. When it came to intellectual property, we fought tooth and nail to get those same very vigorous protections. So, can you explain why we are not treating the various issues in similar ways, fighting hard, as we should, for intellectual property, but seemingly not fighting hard for our working men and women here to make sure that there is not a comparative advantage in these other countries based on unfair labor standards?

Ms. SHINER. Sir, thank you. Let me make an attempt at addressing those. First of all, I do believe that fighting for intellectual property protections around the world is fighting for our workers, because innovation is really at the heart and soul of what America does now.

Mr. BECERRA. I agree with you. I agree with you.

Ms. SHINER. I think just to really recognize what our country has done when, in the nineties, we were able to get global rules protecting intellectual property, and the United States was strongly supporting those in the WTO. Australia has been an important partner in that. We have similar values when it comes to this, and there is no disagreement on these issues. Now that these laws exist, the real trick is effective deterrence: how do we ensure that we can enforce those rules in a way that puts the counterfeiters and the pirates out of business around the world? So, I think that you will see that the United States and Australia have been strong partners in this. We use these FTAs as a way to upgrade and update intellectual property rules to fit the digital era. So, for example, as we know, we have a major problem, the world has a major problem with our songs and films being downloaded, and there not being in place laws from the nineties, because this did not exist as a problem from before. So, it is not so much people pirating disks, although that remains a huge problem—but we are going to move more and more to a place where, through technical means, people can get access to our innovations and not pay for them. That is not right. So, in a way, our FTAs are our way of being able to upgrade laws around the world to make the case for digital protections, and to bring, hopefully, our FTAs into compliance with our own millennium digital copyright rules. So, we feel it is important. With Australia, we are both facing similar challenges, which is more com-

puter downloads and others; it is more the new era of counterfeiting and piracy rather than the traditional means that we are seeing and fighting so much in China, and that we have worked very closely with this Committee to address.

Mr. BECERRA. I agree with everything you have said in terms of trying to upgrade the laws. I just think that we missed the boat in not trying to upgrade the labor laws in places like Central America.

Ms. SHINER. Well, I will just say that Australia is a leader in labor laws and standards and conditions around the world, and what we really found ourselves sharing about is how we could work together in the region to upgrade the laws of those in the region, how we could be partners in this cause together, because it was not our assessment that we needed them to change our labor laws, or we needed to change theirs—just as we would not want them telling us precisely how to do business in this area. It is not a permission that the Congress has given us as trade negotiators to change our laws. They also felt the same way. They have very high standards. I think we have formed a partnership that will be important in looking at labor protections, and labor safety in the region. There is a lot of work to be done, and I think we have a new partnership in that area.

Mr. CRANE. [Presiding.] Mr. Shaw?

Mr. SHAW. Thank you, Mr. Chairman. First of all, I would like to—as many other Members have pointed out, I think the United States does not have any better friend in the world than Australia, and I think that has been proven time and time again, confrontation after confrontation. I would guess that if you were to do a poll of Americans, and I think if your favorable/unfavorable rating were of Australia, that they would be number one in the world among Americans. We like the way they think; we like their friendliness; we like the way they talk. This is business, and we have got to get down to business; it is very important that we be sure that we take care of the industries that we represent. I want to address for just a moment the phytosanitary issues regarding fresh fruit and vegetables, and most specifically citrus. Ambassador Johnson hit upon, briefly, the question; he mentioned the word citrus in responding to Jennifer Dunn's question regarding other types of fruit.

The Indian River Citrus League in Florida has raised concern that they think because of the phytosanitary issues, they are being discriminated against as to the exportation of the fruit itself. As I understand it, I think that everything is all right as far as the juice is concerned. I am not positive of that, but I do not think there is any problem there; but as far as the actual exportation of the fruit itself, there is a problem. Now, phytosanitary is just regarding safety issues as to whether or not the fruit would be safe for consumption, and I have never heard of any issue being raised anywhere with regard to the safety of Florida citrus, as far as consumption is concerned. How does this trade agreement face that question? Does it give our citrus people some relief? Will there be—can they look for a better day with this agreement than they have under the restrictions under which they act now? I would address that to either one of you. I think, Ambassador Johnson, it is probably more in his line than anybody else.

Mr. JOHNSON. First of all, I have to chuckle. I agree with your assessment of U.S. citizens' opinions of Australia, and Australia's opinions of the United States. I think it is safe to say for both of us, there were several weeks where we did not like a lot of what they thought, and they did not like a lot of what we thought; but it shows how we can work together as partners through very difficult issues and come up with an agreement that is very good for both of us and reaffirms the relationship and how close it is. As it relates to Florida citrus in general, the agreement itself is not designed to decide sanitary and phytosanitary issues, but it does decide that we have duty free access into Australia. What we did do was to use the focus of the agreement to focus on several SPS issues that have been outstanding, some of which for a long, long time, in order to get them decided and determined on a science-based basis. Florida citrus, actually, we think is going to be one of those success stories in that process. We are expecting an import risk assessment that is going to allow for the importation of Florida citrus. We are expecting that soon.

Mr. SHAW. So, the answer to my question is that you think that the citrus people will be benefited by this agreement under the questions of what is, and is not, a sanitary issue.

Mr. JOHNSON. Yes, again, we have to be very careful about this, because our regulators are very jealous about that. We do not negotiate the sanitary and phytosanitary barriers. I think our focus from this negotiation has gotten them to focus and realize some of the things you just said, which is that this import risk assessment will determine and allow for the exportation of our Florida citrus—we are expecting that sometime soon.

Mr. SHAW. We will keep an eye on it. Thank you very much.

Mr. JOHNSON. Yes, so will we.

Mr. SHAW. I yield back, Mr. Chairman.

Mr. CRANE. Thank you. Mr. Foley?

Mr. FOLEY. Thank you very much, Mr. Chairman, and I, too, would like to extend my thanks and appreciation for the provisions on intellectual property in music, movies, and pharmaceuticals. I also would like to ask the question relative to homeland security, since as we embark on additional trade missions, we will see a greater influx of containers. During the negotiations, what specifically do we ask of partner nations about monitoring the things that are going in cargo holds, the security that they are providing? Are those issues as firmly negotiated as some of these other aspects of trade?

Ms. SHINER. Sir, as you know, monitoring the contents of containers is an issue that has recently come to our national focus and attention, and which we are addressing through the container security initiative. I have personally had the opportunity to meet with customs officials in the nations that we trade with to look at how this process works, because obviously, it affects, ultimately, our commercial trade also, and how easily that can be facilitated. This has not been previously a major focus of trade agreements. We launched the FTA with Thailand, and we have had a model program going with a port in Thailand for the container security initiative. We are looking at whether or not there would be a way in these agreements to help facilitate that aspect of trade, and wheth-

er there would be a way to help address our mutual concerns and interests. So, I look forward to getting your thoughts on this, because I think it might be one area that we could find a really good blend between our national interest and our commercial interest, and how we ensure that our ports not only move our goods quickly, but also safely—and how we create a safer world for the United States and our partners.

Mr. FOLEY. We just returned from a weekend in Guatemala and Colombia, meeting with the presidents of both countries, and trade, obviously, was a key part of the discussion—CAFTA specifically. When we broached the subject of the security piece, that seems to be given short shrift, like we cannot afford it; we do not have enough people. So, that is why I want to dramatically emphasize, because the United States has done a good job of securing airports: passengers boarding, frisk-searched; you almost need a robe when you get on to get through taking your shoes off, belts. When it comes to the trains and the ports, I sense there is a vulnerability. So, I hope that this becomes one of the key provisions of—if we are going to embark on this trading relationship more aggressively, we absolutely must put in place a mutual effort; our people, their people working together at ports on both ends to assure safety, contraband from drugs, human smuggling, and regrettably, a potential for dirty bombs and things of that nature.

Ms. SHINER. Sir, I completely agree with you. Again, I think this would be an interesting conversation for us to continue. One thing we have found, to our surprise, is as we increase security, which requires a technological overhaul of our container movement around the world, we thought it would flummox trade. When we really get these systems in place, it speeds it up, because we are able to weed out the bad actors and the bad players in a much more efficient manner, and are able to inspect. So, for example, at the port in Hong Kong, which I spent a couple of days going through, they now have the technical means to scan these containers much more quickly. When we can upgrade the ports—and obviously, countries like Guatemala are going to face the biggest challenges, because they do not have the resources—but as we do it at the countries that can afford this, we are setting a model, I think, where security does not have to flummox trade but actually can facilitate it if we approach it right. So, I have worked closely with the U.S. Department of Homeland Security, with Customs, and with the U.S. Department of State on this. I know it is a key concern for Secretary Ridge, Secretary Powell, Ambassador Zoellick, and Secretary Evans.

Mr. FOLEY. Thank you.

Ms. SHINER. So, we look forward to your thoughts on it more.

Mr. FOLEY. Mr. Johnson, relative to sugar, I obviously want to thank you for excluding it in this negotiation. I would like to know your thoughts, though, at what is the determinant when you decide to leave something like that off an agreement? Because we are discussing CAFTA, sensitive to my district, Florida sugar, oranges, Brazil—you know my issues. At what point do you make the decision it is in or it is out? How do you reconcile those?

Mr. JOHNSON. Well, I think it is safe to say that—we were talking about this just a little earlier—in the Australian agree-

ment, from a U.S. agricultural perspective, there is some offensive interest, but there is far more defensive interest. So, in many ways, in order to create a balance that encouraged us to get the market access that we needed for our agricultural products, we were able to achieve that without having sugar as part of that package. I think in the other negotiation that you mentioned, and other negotiations we will face, our agricultural export interests are broad and deep. We are very sensitive about not having other countries taking products off the table, in which case, then, we included sugar as part of these other negotiations. Even then, as you know, because we have talked about this, we try to deal with this very sensitively in terms of the out of quota tariff reductions; in terms of the quantities that are allowed in; in terms of how we deal with substitution and other issues that are more technical in nature. It is not just an issue, in other words, of including it or not including it. It is also an issue of how you deal with it when it is included, and I think we have got a record of trying to deal with it very sensitively even when it is included.

Mr. FOLEY. Thank you, Mr. Chairman.

Mr. CRANE. Thank you. Mr. English?

Mr. ENGLISH. Thank you, Mr. Chairman. Ambassador Shiner, I wanted to clarify some things, because I honestly have been rather confused by some of the points being made by a number of the Members of the Committee on the whole issue of core labor standards. My understanding is that the wage scales in Australia are actually higher than those in most parts of the United States; is that not true?

Ms. SHINER. Sir, I do not know the specifics of that. I do know that they certainly lead the world in labor issues and that may be one of them.

Mr. ENGLISH. So, you are not sure, but your impression is that when it comes to the strength of their labor laws, the right to strike, the basic rights that we accord workers and the cost of doing so, Australia is at least on a par with the United States?

Ms. SHINER. Yes, sir.

Mr. ENGLISH. I wonder if the Office of the USTR could submit to the Committee for our use a specific side-by-side comparison, if you have one, of those points. I think it would be enormously useful. One of the things that I have had the difficulty understanding is the abstract argument used by some in Congress that we must have a cookie cutter approach to core labor standards that requires us to negotiate the same thing with every trade agreement that we seek. In the case of Australia, I do not understand why anyone would argue, depending on what you bring forward for us, why we would be required to have, as a part of this trade agreement, core labor standards. I certainly—to me, it smacks of a unilateralism which is not particularly useful in reaching out to other countries, but beyond that, it seems to be a distraction from some of the real objectives that we have in this agreement. Now, I want to move over and specifically talk about manufacturing. Do you have any studies that would allow us to interpret how manufacturing is likely to benefit in aggregate terms by access to the Australian market? Are there any economic projections of what the net effect would be for our manufacturing sector of this FTA?

[The information is being retained in the Committee files.]

Ms. SHINER. Sir, the ITC study deals with it sector-by-sector, and in aggregate, and does predict real benefits for our manufacturing sector, and we could certainly pull out the highlights of that for you. There are a couple of elements of that benefit. One is the immediate reduction in tariffs; which, for example, for our chemical manufacturers will mean a $41 million immediate benefit. Our auto parts and auto manufacturers will see an estimated $130 million immediate benefit. We export, as you know, four times as much in autos and auto parts to Australia as they export to us. So, that is also a real win for us. In machinery, the ITC expects a $135 million immediate benefit from the reduction of tariffs. Access to government procurement contracts is also going to be key for that sector. So, the ITC has looked at all of these factors and made an assessment of that, and it predicts real dollar benefits for Americans—and we can get you the details of that.

Mr. ENGLISH. That would be most helpful. Can you tell us, based on the most current figures, what the current balance of trade is between the United States and Australia?

[The information is being retained in the Committee files.]

Ms. SHINER. Sir, as of last year, we had a $9 billion surplus about, estimate, with Australia; $6 billion of that was in our manufactured goods, which represent 95 percent of our trade with Australia—our exports.

Mr. ENGLISH. So, in terms of an overall candidate for an FTA, and particularly a candidate for an FTA in which manufacturing would be particularly benefited, it is hard to imagine a stronger candidate than Australia; is that fair to say?

Ms. SHINER. It is fair to say, sir, and it is why the NAM had dubbed this early on the manufacturing FTA, and why many of you have advocated very much for this very FTA, because it brings such clear benefits to a sector in America that we all want to give a real boost to—which are manufacturers. So, you have been a lead in focusing our attention on that. Sir, if I could just also thank you for your focusing our attention on China's discriminatory taxation of our semiconductor industry——

Mr. ENGLISH. Yes.

Ms. SHINER. As you know, we brought the first WTO case against China on that issue with your urging, and these kinds of wins and efforts for our manufacturing community are ones that you continually focus our attention on. We appreciate it. This agreement is a real plus for them.

Mr. ENGLISH. Well, thank you, Ambassador, and thank you, Mr. Chairman, for allowing me the time to complete this line of questioning. I think the Administration deserves credit not only for negotiating this FTA in a manner, I think, very sensitive to the concerns of manufacturing, but also being willing to take on China trade in a very aggressive way; and I thank you, Ambassador, for all of your efforts, particularly in that regard. Thank you, Mr. Chairman.

Mr. CRANE. Yes. Mr. Herger?

Mr. HERGER. Thank you, Mr. Chairman. I want to join in welcoming our Ambassadors, Shiner and Johnson, here to our Committee, and really the outstanding work that you are doing. I do

not think anything is more important to the prosperity of our economy than that of trade, and certainly, that is represented in the district that I have the honor of representing in Northern California, which has heavy agriculture in it, which is so dependent on our ability to be able to trade and trade in an equitable way. So, thank you for the work you have done here on this Australian FTA, and others. I do want to emphasize, Ambassador Shiner, another point that has been made by several who have questioned before me, and that is on pharmaceuticals. One of the greatest issues we see, one of the biggest issues in our district is how our drug costs—our miracle drugs are so expensive, and to see the American consumer so paying the vast majority of the research and development costs of these miracle drugs that we have, and our trading partners paying a much lesser degree, cannot be emphasized enough how important it is on these trade agreements to ensure that the rest of the world is paying their fair share of our Americans developing these great drugs. Another area—it is clear that the Chile and Singapore agreements were used as models for this fair trade agreement, but at the same time, there are some significant differences. Are there any new provisions in the FTA which are not in the Chile and Singapore, but which you feel are beneficial and should be carried over into the future FTAs?

Ms. SHINER. Well, sir, there is an approach we try to take in the FTAs where we keep a very high standard across all sectors, and that certainly holds true here, and held true in Chile and Singapore. You do need to customize based on what the economy that you are negotiating with represents, and also, obviously, based on their interests. So, one of the areas that is key, I think, is in the area of pharmaceuticals, where we had a number of issues regarding transparency, and where we wanted to really set some common principles. So, that is one area where you will see a different approach because the systems are different than we had in those previous agreements. Another area we had was access for U.S. films and other entertainment products. We have a very close relationship with Australia culturally. We benefit from their actors and their products, and they benefit from ours, and this was an area that was not so major in our other agreements, but was really critical in this one. So, I know it is a major industry in California, and it is one that we worked very closely with to ensure that this was customized in this product to bring real benefits to that industry.

Mr. HERGER. Thank you very much, Ambassador Johnson, again, for your diligent work working with our agricultural community. We are looking forward to having you come and visit with us in the middle of August, so again, thank you for all of your work.

Mr. JOHNSON. Thank you.

Mr. HERGER. I yield back my time.

Mr. CRANE. Mr. Pomeroy?

Mr. POMEROY. I thank the Chair. I want to express at the outset my high regard for the work each of you has done as part of an extraordinary trade team of the Administration. I just really marvel at your broad grasp of so many issues. Now, to the Australian Wheat Board. There are some disturbing reports of the Australian Wheat Board selling to Saddam Hussein's Iraq—wheat

price double what ours was available for. I do not know if there has been a definitive determination of whether there were any kickbacks involved in any of these arrangements, but it really brings to the fore the whole range of issues of how do you trade against an entity that is so completely without transparency, and so unilaterally can control the dimensions of the entire wheat market for Australia. Now, I note that while the Australia Wheat Board is left intact in this agreement, there is some kind of commitment extracted that they will work within the WTO to develop export competition disciplines that eliminate restrictions on right of entities to export. Will you please tell me what that means and what kind of cooperation we can expect from Australia as we really try to deal with the unfair international competitive advantages of State trading enterprises. I know that Ambassador Zoellick feels strongly about this, so this will be something that you will have spent some time on. I just do not understand it at this point.

Mr. JOHNSON. Well, first of all, I appreciate your comments. As you might recall, when I went to North Dakota after a positive 301 determination a few years ago, we outlined a four-prong strategy for trying to deal with export State trading enterprises—basically, monopolies. In that, what we identified in the case of Canada was a negotiation which we tried to pursue, a WTO case, which we have pursued one part; we have appealed the other parts. We pursued anti-dumping and countervailing duty actions, which are currently existing with the industry. Then, the last part is this negotiation in the WTO. We put forward the exact same points you just did, which is, we want to see transparency; we want to see an end to monopoly control; and we do not want to see government underwriting of these State trading enterprises. As we went into the negotiations in Geneva, consistently what we had was us on one side with a few other countries, and on the other side, you had Australia, Canada, and a few others. As a part of this FTA negotiation, of course, we wanted to see disciplines on the Australian Wheat Board; they wanted to see disciplines on our subsidies and other practices; and we both understood that what we really need is an aggressive, comprehensive agreement in the WTO. Australia has agreed as part of a comprehensive agreement that it will address these concerns that you and I share, and that is very important, because it then basically creates a situation where Canada is more isolated, as you and I have talked about, and it increases our probability of success. Even in the last few weeks and months, we have had a very constructive working relationship with Australia in trying to move forward a comprehensive agreement in the WTO that includes disciplines on State trading enterprises.

Mr. POMEROY. Thank you. Thank you, Mr. Chairman. Yield back.

Mr. CRANE. Thank you. Mr. Weller?

Mr. WELLER. Thank you, Mr. Chairman, and let me begin by commending the Bush Administration, Ambassador Zoellick, Ambassador Shiner, and Ambassador Johnson, on the result of your good work on the U.S.-Australian FTA. You know, this is just one more example of what I believe is a positive effort as we work to compete in the world economy. I look at the work in the Special Trade Representative's office on the CAFTA, on the Dominican

trade agreement, Morocco, our efforts in Panama, as well as the startup we have now with our friends in the Andean countries. We have to recognize, of course, we are a Nation of about 200 million people, 290 million people, but there are 5.5 billion people around the globe. It is pretty obvious where the customers are and where the opportunity to grow our economy is. So, I salute you and commend you on your efforts to break down trade barriers. You know, Illinois is a manufacturing State, and Mr. English really focused on many of the questions I wanted to ask—but I always like to point out that my own family has faced some of the challenges that the manufacturing sector has experienced. Illinois is a State which has lost manufacturing jobs. My own brother, a manufacturing worker, lost his job with a manufacturer as a result of too much litigation. A frustrated employer just said the heck with it, shut down the plant, and he and several hundred other workers lost their jobs because of too much—too many lawsuits.

He became employed again and obtained a new job as a result of an export contract—another manufacturer who obtained an export contract, an opportunity to sell products abroad and have put Illinois workers to work. Unfortunately, our State Legislature and Governor have just imposed some new taxes on top of business, so it makes it even harder to employ people in my State of Illinois. I really want to note that from a manufacturing perspective, I want to congratulate you. You know, when more than 99 percent of U.S. manufacturing exports to Australia become duty free immediately upon entry into force of this agreement, this clearly is the most significant reduction in industrial tariffs ever achieved in a FTA. So, I want to salute you for that, and economic analysis suggests that means $2 billion in new demand for U.S. manufactured goods. So, I salute you for that. Mr. Chairman, I look forward to working with you for ratification of this trade agreement before the Congress. My hope is that we will move quickly in that direction, and I want to thank you for your work, and thank you for appearing before the Committee today.

Mr. CRANE. Let me express appreciation to both of you, Ms. Shiner and Mr. Johnson, for your participation today. With that, I would like to now call our second panel.

Mr. RYAN. Phil?

Mr. CRANE. Oh, wait, excuse me. I am sorry. Mr. Ryan? Hold on.

Mr. RYAN. Just one minute. Mr. Chairman, sorry. Real quickly, like Pennsylvania and Illinois, I come from Wisconsin, which is a very, very large manufacturing State. We have the second most manufacturing jobs per capita in the country. So, this is a perfect agreement for manufacturing. This is a wonderful agreement for our manufacturers. We, too, however, though, are the dairy State, and we call ourselves America's dairyland. So, Mr. Johnson, I wanted to just go over quickly with you—it is my opinion from looking at this agreement that the concerns of the dairy industry were very much taken care of and accounted for in this. That story has not been told well enough to many in the dairy industry, especially the producers. Now, what I would like to ask you is, if you could just quickly and briefly go through how the dairy industry was accommodated in this agreement and why those in the dairy

industry who had concerns prior to the finalizing of this agreement, those concerns have been allayed. That is a story that we need to tell. Other legislators are going to be voting on this in the dairy parts of our country.

Mr. JOHNSON. I personally feel a very strong working relationship with our dairy industry, and not just in this agreement but in all the other agreements that we have been working together on. So, right before the negotiations started, Ambassador Zoellick and I had a meeting with the leaders of the dairy industry, and they identified to us their important issues and priorities. The first one to us was maintaining the out of quota tariff. They did not want to see that reduced. We were able to achieve that. It was a difficult negotiation, frankly, but we were able to achieve their top priority. The second concern was that the amount of product being let in under the tariff rate quota would be manageable and not disruptive. So, again, as I have pointed out earlier, the amount of product being let in in the first year is equal to 0.2 percent of the value of U.S. dairy production. Then, we looked at the growth rates on these numbers to make sure that the more sensitive items grew at a slower rate. So, I think, again, that addresses it. As we look to the program itself, we wanted to make sure that we maintained its operational effectiveness, which we were able to do as well.

Mr. RYAN. Is it true that milk protein concentrates are not subsidized in Australia?

Mr. JOHNSON. No, I do not believe they are. At any rate, the gist of it is, even on a tonnage basis, when you look at the milk equivalent, the amount of tonnage being let in is equal to about 0.03 percent of the U.S. production of milk, so we think we are very sensitive to it. That is not to say that our dairy friends do not have some concerns about it. We addressed those as best we could, and we are going to continue to work with them hard in other agreements, including the global negotiations.

Mr. RYAN. All right; thank you very much. Thank you, Mr. Chairman.

Mr. CRANE. Thank you. With that, I will now excuse you folks and thank you for your participation today. I would like to now call before us the second panel: David Sundin, President and Chief Executive Officer of Dielectric Systems, Inc. (DSI) Fluids, on behalf of the U.S. Chamber of Commerce; Russell Shade, Chief Executive Officer, High Voltage Engineering (HVE) Corporation, on behalf of NAM; Hugh Stephens, on behalf of the American-Australian FTA Coalition; David Wagner, Vice President of Jim Beam's Brands Companies, on behalf of Distilled Spirits Council of the United States; and George Franklin, Vice President for Worldwide Government Relations with the Kellogg Company, on behalf of the Grocery Manufacturers of America. I would like to ask you, panelists, if you will, follow the light and try and keep your presentations to 2 minutes or less, and any additional statements will be made a part of the permanent record. I apologize for this, but we have votes that will be coming up, and as I understand it, there are some of you who have 1:30 p.m. flights to get out of town. So, with that, we will start with the order in which I presented you. Mr. Sundin?

STATEMENT OF DAVID SUNDIN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, DIELECTRIC SYSTEMS, INC. FLUIDS, TYLER, TEXAS, ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

Mr. SUNDIN. Thank you very much, Mr. Chairman. I thank you for the opportunity for me to come and make this presentation today on behalf of the U.S. Chamber of Commerce and of DSI Fluids, my company, on the benefits of the Australia FTA. As a U.S. Chamber member, I am proud to have my company featured in a recent publication called, "Faces of Trade with Australia," that I am sure the U.S. Chamber will be happy to distribute to you. My company, DSI Fluids, is a family-owned company in Tyler, Texas. We manufacture heat transfer fluids, electrical insulating fluids, and synthetic lubricants. We export about 50 percent of what we manufacture around the world, and about 5 percent of our manufacturing capacity goes straight to Australia. In the interests of brevity, I am going to talk about something that is very near to my heart, which is how this FTA will impact DSI Fluids. Our highly biodegradable products help our customers minimize their environmental impact. Our synthetic lubricants have been shown to maximize fuel economy and energy savings. We also sell fire-resistant transformer oils which raise the fire safety of electrical distribution networks worldwide.

In 2004, we expect that about $100,000 of our company's gross sales, or about 5 percent, will be due to exports with Australia. We compete in an international market with a handful of very specialized lubricant manufacturers. Lower tariffs will allow us to be more competitive in the Australian market. When the United States enters into a trade agreement that reduces trade barriers, it lowers the costs that our customers have to pay for our products. That money comes straight to Tyler, Texas, and pays for our employees' salaries and our raw materials. The money ripples through the economy of East Texas five times, I have been told by economists that it turns over, and it helps buy our groceries, our houses, our clothes, and our all terrain vehicles. East Texas' economy then enjoys an injection of capital that otherwise would have gone to an Asian or a European competitor. Our American technology is world class. We employ lean manufacturing methods. We have wrung the fat and the overhead out of our processes. Often, the difference in price between our products and those of our competitors is in the tariffs that are negotiated between different countries. What we are asking for is for Congress to help all of us to be as successful and as competitive as possible by lowering these trade tariffs. Thank you, and I am pleased to take questions.

[The prepared statement of Mr. Sundin follows:]

Statement of David Sundin, President and Chief Executive Officer, DSI Fluids, Tyler, Texas, on behalf of the U.S. Chamber of Commerce

Chairman Thomas, I would like to thank you for the opportunity to testify today on behalf of the U.S. Chamber of Commerce on the benefits of the U.S.-Australia free trade agreement. I am David Sundin, President and CEO of DSI Fluids, a family-owned business headquartered in Tyler, Texas, that manufactures and sells the highest-quality synthetic lubricants and electrical insulating fluids, including biodegradable turbine, gear, hydraulic, compressor, and engine oils. Manufacturers around the world use DSI's synthetic lubricants to extend the life of the equipment and to lower maintenance costs. As a U.S. Chamber member, I was proud to have

my company featured in the Chamber's recent publication called *Faces of Trade: Small Business Success Stories with Australia*.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses of every size and in every business sector. Its members have considerable interest in the development of U.S.-Australia commercial ties and efforts to further open markets in the Asia-Pacific region. I have been active with the Chamber for a number of years as the head of a company with just 11 employees. I participated as a delegate and spokesperson on a U.S. Chamber business development mission to China and was part of the Chamber's advocacy efforts in support of the U.S.-Chile and U.S.-Singapore Free Trade Agreements. It is my great pleasure to be before you this morning to discuss why the Chamber, and my company in particular, hope to see the Congress pass the U.S.-Australia FTA at the earliest possible opportunity.

The U.S. Chamber vigorously supports the U.S.-Australia FTA, which will slash trade barriers for U.S. exports, enhance protections for U.S. investment in Australia, and enhance the competitiveness of American companies in the global economy. We see this agreement as a significant step toward advancing trade and economic prosperity with one of America's most important allies in Asia. The Chamber is a steering member of the American-Australian FTA Business Coalition, and has been working to inform Congress about the merits of the accord and build bipartisan support for its approval.

Australia and the United States have a strong economic relationship that includes $26 billion of U.S. investment to Australia and $24 billion of Australian investment into the United States. Bilateral trade between the United States and Australia reached over $28 billion last year. Australia is the 13th largest export market for U.S. goods. The United States enjoys a $6 billion trade surplus in goods and services with Australia, the largest surplus that the United States has with any country in the world. U.S. manufactured goods exports to Australia support more than 160,000 jobs in America.

Australia shares many of America's views on global trade liberalization. The U.S.-Australia FTA will contribute to our shared global and regional trade liberalization objectives and serve as a barometer for other countries in Asia that are interested in completing an FTA with the United States.

The FTA with Australia will further anchor U.S. competitiveness in the Asia-Pacific region, where Australia is already actively engaged in negotiating trade agreements. Australia has implemented a free trade agreement with Singapore and New Zealand and is negotiating with Thailand. Both the U.S. and Australia are active members of the Asia-Pacific Economic Cooperation (APEC), an organization of 21 economies that is pursuing trade and investment liberalization in the Asia-Pacific region.

In short, once implemented, the FTA with Australia will bring tangible commercial benefits to American companies, workers and consumers. It will offer American companies greater access to Australia's market and increase our competitive position in the region. Below are some details of the specific benefits for U.S. companies as a result of the U.S.-Australia FTA.

Benefits to DSI Fluids

My company, DSI Fluids, has exported our specialty industrial oils to Australia for over six years. DSI's highly biodegradable products help our customers minimize their environmental impact. Synthetic lubricants have been proven to maximize fuel economy and energy savings. Our fire resistant transformer oils raise the safety level of Australian electrical distribution networks. Each year, we at DSI export about 50% of our production. In 2004, we expect that approximately 5% of our company's gross sales will be due to exports with Australia, and we believe that percentage will grow if existing tariffs are reduced or eliminated.

DSI competes in an international market with a handful of specialized lubricant manufacturers. Lower tariffs will allow us to be more competitive in the Australian market. When the United States enters into agreements that reduce trade barriers, it lowers our customers' costs for our products, meaning greater sales for DSI. That money comes straight to Tyler, Texas, and pays for our employees' salaries and our materials. This money ripples through Tyler's economy, buying our groceries and clothes, our cars and ATVs. East Texas' economy enjoys an injection of capital that otherwise would have gone to our European or Asian competitors.

American technology is world class. We employ lean manufacturing practices. Often the difference in price between our products and those of our competitors comes down to the rates of duties and tariffs negotiated between different countries. I'm asking Congress to help us to be as competitive as we can be by negotiating a reduction in tariffs with Australia.

Broad Benefits of the FTA to U.S. Companies

Throughout the negotiation process, the U.S. Chamber remained in close communication with the Administration and it is pleased that many of its priorities have been addressed in the final FTA package. Below I summarize on behalf of the Chamber how the final FTA package compared with the Chamber's negotiating objectives.

I. General Provisions

- **Trade in Goods.** The FTA will immediately eliminate tariffs on over 99 percent of U.S. exports of consumer and industrial goods to Australia. This is a significant achievement as manufactured goods, like those produced by my company, comprise over 90 percent of U.S. merchandise exports to Australia. The U.S. Chamber is pleased that the provisions on trade in goods are consistent with its objectives and the Trade Promotion Authority Act (TPA). Once the agreement goes into effect, tariff elimination will bring tangible benefits to U.S. exporters.
- **Investment.** The provisions in the Investment Chapter include high standard protections for U.S. investment in Australia. Once the FTA is implemented, Australia will be required to provide increased protection for all forms of investment under the "negative list" approach (full market access for all service providers unless specified in the negative list). The U.S. Chamber is also pleased that Australia agreed to raise the threshold for screening acquisitions by U.S. investors to A$800 million. We note the absence of the investor-state dispute settlement provisions. In the view of the Chamber, the investment provisions are important to U.S. companies. The Chamber urges that future FTAs have even stronger protection and benefits for U.S. investors.
- **Government Procurement.** Under the agreement, Australia agreed to allow U.S. firms to bid for Australian central government contracts. As Australia is not a signatory to the WTO Government Procurement Agreement, this will give U.S. firms a significant advantage over competitors who are not afforded similar treatments. Australia also agreed to no longer subject U.S. firms to local manufacturing and local content requirements. The Chamber looks upon these steps as favorable as they should lead to more business opportunities for U.S. companies.
- **Customs Procedures and Rules of Origin.** The FTA contains specific obligations on transparent and fair procedures in customs administration, and sets forth commitments for Australia to improve its customs clearance process for express delivery shipments. The Chamber sought these commitments and endorses these provisions as a means to help eliminate cumbersome customs procedures and expedite the entry of U.S. products into Australia.
- **Intellectual Property Rights (IPR).** The IPR chapter in the FTA represents an improvement on the already state-of-the-art Singapore FTA, by including, for example, stronger protection for registered trademarks. It should serve as a benchmark for future FTAs with other countries in the Asia-Pacific region. Once put into practice, the FTA will require a higher degree of protection of patents, trademarks, copyrights, and Internet domain names. The U.S. Chamber endorses the IPR chapter as a significant step forward in protecting U.S. IPR rights in Australia.

II. Trade in Services

According to the U.S. Bureau of Labor Statistics, the U.S. services industry accounts for over 80% of Gross Domestic Product (GDP) and employment in the United States, and contributes significantly to the U.S. economy. The U.S. Chamber is generally satisfied with the negotiated provisions of the chapters pertaining to services (Chapter 10 on Cross Border Trade in Services, Chapter 12 on Telecommunications, Chapter 13 on Financial Services and Chapter 16 on Electronic Commerce) as they advance the market access goals of U.S. services industries under the "negative list" approach. Services sectors that will benefit from the FTA with Australia include advertising, architecture, asset management services, audiovisual services, computer and related services, education services, electronic commerce, express delivery services, financial services and vessel repair.

The U.S. Chamber and DSI Fluids hope the Congress will not delay in passing this important agreement. We oppose efforts to combine congressional consideration of the U.S.-Australia FTA with other FTAs in ways that would slow down this agreement's passage and delay the benefits that companies like mine are counting on to further our business in Australia.

Thank you and I am pleased to take your questions.

Mr. CRANE. Mr. Shade?

STATEMENT OF RUSSELL SHADE, CHIEF EXECUTIVE OFFICER, HIGH VOLTAGE ENGINEERING CORPORATION, WAKEFIELD, MASSACHUSETTS, ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. SHADE. Thank you, Mr. Chairman, Members of the Committee. Good morning. My name is Russ Shade. I am the Chief Executive Officer of the HVE Corporation, and I also currently serve as the chairman of the Technology Policy Committee for NAM. My company, HVE, sells its high tech goods and services to a broad range of foreign and domestic original equipment manufacturers and end users. These include industries and process automation, steel and water, water, wastewater treatment, petrochemical, pulp and paper, marine cable, oil and gas extraction, and transportation. We are headquartered in Wakefield, Massachusetts. We employ over 1,800 people, and our major operating and manufacturing facilities are in California, Massachusetts, Minnesota, Pennsylvania, Italy, the Netherlands, the United Kingdom, and elsewhere. Over the past 10 years, HVE has been able to carve out a small but important portion of the Australian market for industrial power controls, water pumps, cement plants, mining, pulp and paper, and conveyors and the like. For the past 6 years, our sales to Australia have averaged about $2 million a year. Our business activity over the years has closely tracked capital investments, and has been very sensitive to the overall state of the Australian economy. Australia is a great market for small and medium-sized U.S. firms, and this trade agreement is only going to make it better.

The NAM, which represents some 14,000 U.S. manufacturers, includes about 10,000 small and medium manufacturing companies like mine, and we have taken to calling this, as you know, the manufacturers' agreement for Australia. Most of HVE's exports already enter Australia duty free under the WTO's information technology agreement, which Australia has signed. More important for us will be the agreement's government procurement provisions, which allow us to compete more actively and directly for new business with Australia's various government entities. In this key area, the FTA provides U.S. firms competitive entry into the Australian central government entities, as well as its states and territories. In HVE's industry, competition is extremely intense with European and Japanese suppliers, and this accord will tilt the government procurement playing field toward our direction. Another reason this agreement is so commercially meaningful for American manufacturing is the fact that it builds on an extremely solid trade base that we have already discussed this morning. The agreement contains provisions for reinforcing the WTO Technical Barriers to Trade Agreement, and for promoting improvements in bilateral implementation. Manufacturers in the United States have a strong interest in ensuring that technical standards and regulations governing manufacturing products do not constitute barriers to market access. Bilateral trade will also be greatly facilitated by the agree-

ment's customs chapter. The specificity of obligations with regard to customs procedures, coupled with the commitments to information sharing to combat illegal transshipment of goods and facilitate express shipment maintain a high standard. Steps to ensure transparency and efficiency are also included. Thank you very much.

[The prepared statement of Mr. Shade follows:]

Statement of Russell Shade, Chief Executive Officer, High Voltage Engineering, Wakefield, Massachusetts, on behalf of the National Association of Manufacturers

Mr. Chairman and Members of the Committee:

Good morning. My name is Russell Shade. I am the Chief Executive Officer of the High Voltage Engineering Corporation, or HVE. I also currently serve as the Chairman of the Technology Policy Committee of the National Association of Manufacturers (NAM). I am pleased to be here to testify on behalf of my company and the NAM about the benefits of the U.S.-Australia Free Trade Agreement (FTA) for American manufacturers.

My company, HVE, sells its high-tech goods and services to a broad range of domestic and foreign original equipment manufacturers and end-users in a variety of industries. These include the process automation, metal and steel, water and wastewater treatment, petrochemical, pulp and paper, marine and cable, power generation, oil and gas extraction and transportation, semiconductor fabrication, chemical, and construction industries, and for scientific and educational research. We are headquartered in Wakefield, Massachusetts, and employ over 1,800 people in our major operating and manufacturing facilities in California, Massachusetts, Minnesota, Pennsylvania, Italy, The Netherlands, the United Kingdom and elsewhere.

HVE is one of the more than 19,000 U.S. companies that already export to Australia today. With the passage of the U.S.-Australia FTA, that number can be expected to increase substantially, and those of us already in the market can expect our business to pick up, bolstering our bottom lines and our ability to employ American workers in high-skill, good quality jobs.

Over the past ten years, HVE has been able to carve out a small but important portion of the Australian market for industrial power controls applied to water pumps, kiln fans and drives, SAG mills, pulpers, conveyors, and the like. For the past six years, our sales to Australia have averaged $2 million a year, ranging from a low of $160,000 to a high of $5.6 million in annual sales. Our business activity over the years has closely tracked capital investment flows, and has been very sensitive to the overall state of the Australian economy. To the extent that the FTA helps facilitate the expansion of Australia's economy, we expect our sales will similarly expand. Moreover, as the agreement increases demand in Australia for the goods and services of our U.S.-based customers, such as OEM's, engineering contractors, and large multinationals, our sales to those entities should also multiply.

Australia is already a great market for small and medium-sized U.S. firms, and this trade agreement is only going to make it better. The NAM, which represents 14,000 U.S. manufacturers, including four thousand large firms and 10,000 small and medium-sized companies like ours, has taken to calling the deal with Australia "The Manufacturers Agreement."

The U.S.-Australia FTA deserves that label because 95 percent of all U.S. exports to Australia are manufactured goods, and over 99 percent of Australia's duties on U.S. manufactured goods will be eliminated the moment the agreement goes into effect. That is an unparalleled achievement. In previous trade agreements, many industrial tariffs were phased out over five or ten years, delaying the benefits available to competitive American companies like mine. But the Australia agreement is unprecedented in the extent to which it provides immediate, cost-saving benefits to U.S. manufacturers. With Australia's average industrial tariff hovering around five percent, compared to the average U.S. industrial tariff of two percent, the NAM estimates the accord could result in an additional $1.8 billion in annual sales of U.S. manufactured exports to Australia.

Most of HVE's exports already enter Australia duty free under the World Trade Organization's Information Technology Agreement (ITA), which Australia has signed. More important for us will be the agreement's government procurement provisions, which will allow us to compete more actively and directly for new business with Australia's various government entities. In this key area, the FTA provides U.S. firms competitive entry to Australia central government entities, as well as all of its states and territories. Australia is not a signatory to the WTO Government

Procurement Agreement, meaning these advantages are not available to competitors in the Australian market.

In our business, for instance, competition is extremely intense with European and Japanese suppliers, and this accord will tilt the government-procurement playing field in our favor. Importantly, Australia will no longer apply to U.S. firms provisions for local manufacturing or local content requirements. Australia will also restrict its use of selective tendering provisions, which will improve U.S. suppliers' ability to compete fairly for government contracts. This will allow American companies to sell U.S.-made products to Australian government entities which previously were virtually off-limits to them.

Another reason this agreement is so commercially meaningful for American manufacturing is the fact that it builds on an extremely solid trade and investment relationship that is already in place. The United States sold more than $12 billion in manufactured products to the Aussies last year, and we had our largest bilateral industrial trade surplus in the world—nearly $7 billion in the U.S. favor—with Australia. Building from this strong foundation, the FTA should allow us to further integrate the two economies and expand the U.S. share of the Australian market.

Non-Tariff Barriers

In addition, the agreement contains provisions for reinforcing the World Trade Organization (WTO) Technical Barriers to Trade (TBT) agreement and for promoting improvements in bilateral implementation of the TBT agreement. U.S. manufacturers have a strong interest in ensuring that technical standards and regulations governing manufactured products do not constitute barriers to market access. Products with U.S., European and international standards are widely used in Australia.

The Agreement provides the opportunity to go beyond the basic WTO requirements and to find ways to streamline the use of standards conformity assessment requirements in a manner that would lower the cost of bilateral trade and would facilitate trade expansion. This is yet to be built on, but the agreement contains a mechanism that could allow for very important reductions in the effect that standards and conformity assessment can have as trade barriers.

Customs Procedures and Rules of Origin

Bilateral trade will also be greatly facilitated by the agreement's customs chapter. The specificity of obligations with regard to customs procedures, coupled with the commitments to information sharing to combat illegal trans-shipment of goods and facilitate express shipment, maintain a high standard. Steps to ensure transparency and efficiency are also included. The agreement also provides that the release of goods should be accomplished quickly—and within 48 hours to the extent possible. This is of particular importance for express delivery services that increasingly handle the transport of products exported by smaller and medium-sized U.S. companies.

Conclusion

In conclusion, I'd like to thank you, Mr. Chairman, and the Members of the Committee, for listening to the views of HVE and the National Association of Manufacturers on this important agreement. We strongly urge that your Committee and the Congress approve the agreement as soon as you can, so that the benefits can begin to flow.

I am pleased to try to answer any questions you might have.

Mr. CRANE. Thank you. Mr. Stephens?

STATEMENT OF HUGH STEPHENS, SENIOR VICE PRESIDENT FOR PUBLIC POLICY, ASIA-PACIFIC, TIME WARNER, INC., HONG KONG, CHINA, ON BEHALF OF THE ENTERTAINMENT INDUSTRY COALITION FOR FREE TRADE, AND THE AMERICAN-AUSTRALIAN FREE TRADE AGREEMENT COALITION

Mr. STEPHENS. Thank you, Mr. Chairman, and Members of the Committee. My name is Hugh Stephens. I am Senior Vice President for public policy in Asia-Pacific for Time Warner, and thus, Australia is one of the countries over which I have policy responsibilities for my company. I am appearing before you today in Time

Warner's capacity as a Co-Chair of the American-Australian Free Trade Coalition (AFTAC), and as a member of the Entertainment Industry Coalition for Free Trade. The AFTAC is a coalition of 272 companies and organizations representing every sector of the U.S. economy. As a member of AFTAC, the Entertainment Industry Coalition represents the men and women who produce, distribute, and exhibit films, videos, TV programming, music, and video games. The Entertainment Industry Coalition members are multichannel programmers and cinema owners, producers and distributors, guilds and unions, trade associations and individual companies. Both AFTAC and the Entertainment Industry Coalition strongly support the U.S.-Australia FTA and urge Congress to act quickly to ratify it. We have already spoken this morning of the importance of manufacturing and tariff reduction for this agreement. From the perspective of Time Warner and the entertainment industry, eliminating the tariffs on film projectors, state-of-the-art seating for cinemas, and the promotional materials and equipment used in the production of films and music, just to name a few, means lower costs for our businesses and better prices for consumers.

We have also noted that services are important in this agreement, and I would note that this agreement marks the first ever commitments by Australia in the area of audiovisual services. Most important for our industry are the intellectual property rights provisions. The agreement's high standard of protection for intellectual property rights is a very important benefit for every U.S. company that depends on the protection of patents, trademarks, and copyrights for its business—such as Time Warner and other companies in the media and entertainment business. With respect to copyright in particular, the agreement achieves a number of important objectives. It includes provisions that go beyond the trade-related aspects of intellectual property rights (TRIPS) provisions in the WTO by providing world-class intellectual property protections for the digital age. It ensures that copyright owners have the exclusive right to make their works available online, and it provides an expeditious process for copyright owners to get Internet service providers to deal with infringing material. It establishes anticircumvention provisions to prohibit tampering with technologies that are designed to prevent piracy and unauthorized Internet distribution. It protects copyrighted works for extended terms, in line with emerging international trends that allow companies like ours to reinvest in the United States to restore older works and to take significant risks in creating new ones. Finally, it strengthens intellectual property enforcement. In sum, this is an outstanding agreement for almost every sector of the U.S. economy. Its intellectual property rights provisions are particularly exemplary. That is why Time Warner, the entertainment industry, and the entire AFTAC coalition gives such strong support to the U.S.-Australia FTA and urges Congress to act quickly to approve it. Thank you, Mr. Chairman.

[The prepared statement of Mr. Stephens follows:]

Statement of Hugh Stephens, Senior Vice President for Public Policy, Asia-Pacific, Time Warner, Hong Kong, China, on behalf of the American-Australian Free Trade Agreement Coalition

Mr. Chairman and Congressman Rangel, thank you for the opportunity to appear before you today to discuss the U.S.-Australia Free Trade Agreement. My name is Hugh Stephens and I am Senior Vice President of Public Policy in Asia for Time Warner; Australia is one of the countries over which I have policy responsibility in Asia. I am appearing before you today in Time Warner's capacity as a co-chair of the American-Australian Free Trade Coalition (AAFTAC) and as a member of the Entertainment Industry Coalition for Free Trade (EIC). The AAFTAC is a coalition of 272 companies and organizations representing every sector of the U.S. economy, including agriculture, food, beverage, banking, insurance, services (including express delivery services), automotive, oil, chemicals, mining, transportation, computer/high tech, telecommunications, fashion, retail, pharmaceuticals, aerospace, defense and manufacturing. As a member of AAFTAC, the EIC represents the men and women who produce, distribute, and exhibit many forms of creative expression, including theatrical motion pictures, television programming, home video entertainment, recorded music, and video games. Our members are multi-channel programmers and cinema owners, producers and distributors, guilds and unions, trade associations, and individual companies. Both AAFTAC and the EIC strongly support the U.S.-Australia Free Trade Agreement and urge Congress to act quickly on the agreement.

Australia and the United States have a strong economic relationship. American companies have over $100 billion invested in total assets in Australia and Australians have nearly $60 billion invested in total assets in the U.S. Two-way trade between our two countries is over $28 billion and growing. With the FTA in force, this economic relationship will only grow stronger. The U.S. has a trade surplus with Australia of approximately $6 billion. U.S. exports to Australia include agriculture, services, aviation, audiovisual products, automotive, telecommunications, computers/high tech, manufactured goods and defense products. Projections are that a free trade agreement between the U.S. and Australia could yield up to a $2.1 billion increase in the GDP by 2006.

In addition to the economic benefits that the FTA will have for both the U.S. and the Australian economies, it is important that we remember the long-standing relationship between our two countries as allies in the world. Some have said that the FTA stands as the most significant development in U.S.-Australian relations since the signing of the ANZUS Treaty in 1951, which joined our nations in a defense pact for the Pacific Region. The United States and Australia have remained close allies and friends over many years. Given that our two nations already enjoy a strong economic relationship, the U.S.-Australia FTA will provide the means for further developing this close alliance.

U.S. exporters currently face much higher tariffs in Australia than Australian exporters face in the United States. These tariffs result in Americans paying 10 times as much in total annual import tariffs to Australia as the U.S. collects from Australian importers. The FTA addresses this issue directly to the benefit of the U.S. manufacturing sector—which is why so many of us in the coalition call this agreement "The Manufacturing Agreement." Immediately upon enactment, more than 99 percent of U.S. exports of manufacturing goods will enter Australia duty free. Currently, manufactured goods account for 93 percent of all exports to Australia. Key manufacturing sectors will realize these benefits immediately, including: autos and auto parts; chemicals, plastics and soda ash; construction equipment; electrical equipment and appliances; fabricated metal products; furniture and fixtures; information technology products; medical and scientific equipment; non-electrical machinery; paper and wood products. From Time Warner and the entertainment industry, eliminating the tariffs on sound and projection equipment and state of the art seating for cinemas, and the promotional materials and the equipment used in the production of films and music means lower costs for our business and better prices for consumers.

In agriculture, all exports will receive immediate duty free treatment under the agreement. The U.S. currently exports more than $400 million in agricultural products to Australia. Australia and the United States have also been working cooperatively on a range of sanitary and phytosanitary barriers and progress has been made in several key areas. This work will continue and resolution of these issues will lead to an increase in U.S. agricultural exports in several commodities including pork, apples and stone fruit. This agreement also recognizes the sensitive nature of some agricultural products and provides for tariff-rate quotas and safeguard provi-

sions for sensitive crops in the United States. Tariffs on other agricultural products will be eliminated under the agreement as well.

The U.S. currently exports over $5 billion worth of services to Australia. In addition to the tariff reductions that are included in the agreement, the FTA includes important provisions to provide access to Australia's services markets across all sectors, including telecommunications, financial services, express delivery and professional service providers. Especially important to my company, the agreement has first time ever commitments by Australia in the area of audiovisual services. This is particularly significant because around the world few countries have made commitments that cover trade in our products and services under the guise of cultural protection.

With this free trade agreement, though, the United States and Australia demonstrated that Australia's long-standing commitment to promoting local cultural expression could be balanced with U.S. industry's desire to secure predictable and continued access to the important Australian market. Australia now will provide improved access for U.S. films and television programs over a variety of media including cable, satellite and the Internet. In addition, the agreement includes provisions to strengthen intellectual property rights laws and enforcement of these laws ensuring the highest level of protection for U.S. products. And finally, the agreement also includes new commitments on e-commerce providing non-discriminatory treatment for digital products. All of these provisions will allow U.S. service providers to continue to build on their successful export programs and further develop this important market.

The agreement also includes a host of other provisions that will create a more favorable market for U.S. exporters. Specifically, Australia will accord national treatment for U.S. investors and exempt most screening for U.S. investments in new businesses under Australia's Foreign Investment Promotion Board. The agreement also includes provisions aimed at increasing access to the Australia pharmaceutical market and creating a more transparent system. Provisions on government procurement will allow U.S. access to approximately 80% of government contracts in Australia.

In sum, this is an outstanding agreement for almost every sector in the U.S. economy which is why Time Warner and the entire AAFTAC coalition give such strong support to the U.S.-Australia Free Trade Agreement. The agreement is an opportunity to expand our already robust economic relationship, as well as further our long-standing friendship and cooperative partnership in the world. We urge Congress to act quickly to approve this agreement.

Thank you for the opportunity to appear before you today. I am happy to answer any of your questions.

Mr. CRANE. Thank you, Mr. Stephens. Mr. Wagner?

STATEMENT OF DAVID WAGNER, VICE PRESIDENT, EXTERNAL AFFAIRS, JIM BEAM BRANDS COMPANY, DEERFIELD, ILLINOIS, ON BEHALF OF THE DISTILLED SPIRITS COUNCIL OF THE UNITED STATES, INC.

Mr. WAGNER. Thank you, Mr. Chairman, Members of the Committee. My name is David Wagner, and I am Vice President, External Affairs, for Jim Beam Brands Company. I am pleased to be here with you today on behalf of Jim Beam Brands and the Distilled Spirits Council of the United States, our national trade association, to discuss the importance of the FTA to our industry. Distillers such as Jim Beam are significant purchasers of agricultural raw materials. Last year, Jim Beam Brands alone bought more than 3.4 million bushels of corn and over 650,000 bushels of rye and malt. Beam's raw material purchases sourced here in the United States total more than $130 million each year and include Florida oranges, California grapes, grain from the Midwest, sweeteners, and bulk spirits, glass, plastic, and aluminum containers, flavors and blending ingredients, labels, closures, folding cartons,

corrugated shipping containers, and much more. To put this into some perspective, we calculate that the economic impact of even our smallest facility in Cincinnati exceeds $20 million for the State of Ohio alone. My personal experience with the Australian market dates back to 1991, when I was sent to Australia to start up Beam's sales and marketing company there. I can tell you that Australia is an extremely important market for the U.S. spirits industry. While worldwide exports of U.S. distilled spirits totaled $587 million in 2003, U.S. exports to Australia alone were valued at $60 million, ranking Australia as America's fourth-largest export market.

For Jim Beam Brands, Australia is our largest and most important export market. In fact, it accounted for 13 percent of our total profits last year. We sold nearly 600,000 cases of Jim Beam bourbon, and more than 4.6 million cases of premixed Jim Beam and cola and similar products. The U.S. spirits industry strongly supports prompt congressional approval of the FTA because it will bring about significant and immediate benefits for U.S. exporters to Australia. Under the FTA, Australia has agreed to eliminate its 5 percent ad valorem import duty, and this will make U.S. spirits even more competitive in the Australian market. The elimination of Australia's spirits tariff will also level the playing field, and U.S. domestic producers will not face added competition in the U.S. market as a result of this agreement, since U.S. tariffs on nearly all imported spirits categories are already zero. The agreement also includes certain protections for the use of the terms "bourbon" and "Tennessee whiskey," which will ensure both U.S. producers and Australian consumers that only spirits produced in the United States in accordance with our laws and regulations may be sold in Australia as bourbon or Tennessee whiskey. These distinctive products are, by far, the United States' leading spirits exports. In summary, the U.S. spirits industry enthusiastically supports the FTA.

[The prepared statement of Mr. Wagner follows:]

Statement of David Wagner, Vice President, External Affairs, Jim Beam Brands Company, Deerfield, Illinois, on behalf of the Distilled Spirits Council of the United States

My name is David Wagner, Vice President, External Affairs, Jim Beam Brands Co. I am very pleased to be with you here today on behalf of Jim Beam Brands and the Distilled Spirits Council of the United States, Inc., (Distilled Spirits Council) to discuss the importance of the U.S.-Australia Free Trade Agreement (FTA) to our company in particular, as well as to the U.S. distilled spirits industry as a whole. Jim Beam Brands is an active member of the Distilled Spirits Council, a national trade association representing U.S. producers, marketers and exporters of distilled spirits products. Jim Beam's corporate headquarters are located in Deerfield, Illinois. We own and operate distilleries in Clermont, Kentucky, where we produce our famous Jim Beam Bourbon. We also have manufacturing and bottling facilities in Frankfort, Kentucky, and Cincinnati, Ohio, and wineries in California. We manufacture and market more than 80 brands in 160 countries. In addition to Jim Beam® Bourbon, the #1 selling Bourbon worldwide and the #1 selling spirit of any kind in Australia, we also produce Knob Creek® Bourbon, the Small Batch Bourbon Collection®, DeKuyper® cordials, the #1 selling cordial line in the U.S., and Geyser Peak® and Canyon Road® wines.

Distilled spirits are highly processed agricultural products, which are classified under Harmonized Tariff System headings 2208 and 2207.10.30. Distilled spirits are produced exclusively from agricultural raw materials and water. Distilled spirits producers are significant consumers of corn, wheat, molasses, rye, barley, and other agricultural raw materials. In 2003, for example, Jim Beam Brands alone consumed more than 3.4 million bushels of corn (valued at approximately $10.3 million), and

more than 650,000 bushels each of rye and malt valued at more than $6 million. My company's U.S.-sourced raw materials total more than $130 million each year and include Florida oranges, California grapes, grain from the Midwest, sweeteners and bulk spirits, glass, plastic and aluminum containers, flavors and blending ingredients, labels, closures, folding cartons, corrugated shipping containers and much more. As my testimony will show, the U.S.-Australia FTA will expand U.S. distilled spirits exports to Australia, which will, in turn, increase the demand for U.S. agricultural raw materials, packaging materials and numerous other products.

Australia is an extremely important market for the U.S. distilled spirits industry. U.S. distilled exports to Australia alone were valued at almost $60 million, representing over 10 percent of global U.S. spirits exports and ranking Australia as the fourth largest export market for U.S. spirits products in 2003. Bourbon accounted for almost 83 percent, by value, of total U.S. spirits exports to Australia in 2003. According to data from the U.S. International Trade Commission, Australia ranked as the third largest market in the world for U.S. direct exports of Bourbon, the quintessential and totally unique American spirit, produced exclusively in the United States.

For Jim Beam Brands in particular, Australia is our largest and most important export market. In 2003, for example, sales of Jim Beam Bourbon in Australia accounted for $50 million or 13 percent of our company's total brand contribution. We sold nearly 600,000 cases of Jim Beam Bourbon and more than 4.6 million cases of pre-mixed Jim Beam & Cola or similar products. Our earnings in Australia have been growing at a rate of 8 percent per year, and volume has doubled in just the past five years.

The U.S. spirits industry strongly supports swift congressional approval of the U.S.-Australia FTA because it will secure immediate duty-free access to one of the most important export markets for U.S. spirits products. Australia has agreed to eliminate its import duty (five percent *ad valorem*) on spirits products imported from the United States immediately upon the agreement's entry-into-force. The elimination of this duty is estimated to save U.S. spirits companies approximately $3 million annually (based on 2003 data) in duties paid and, as a result, will make U.S. spirits products more competitive in the Australian market. A five percentage point advantage is significant in the Australian market across the full range of spirits categories. However, it will have a particularly pronounced effect in the category of pre-mixed spirits products, also called ready-to-drink products or RTDs, such as whisky-and-cola, where Jim Beam is the category leader. The RTD category is a product segment that competes principally on price and accounts for a significant volume of U.S. whisky exports to Australia, reflecting the tremendous—and growing—popularity of these products. In 1991, for example, total Australian consumption of RTDs was 3.3 million 9-liter cases. In 2003, estimated total consumption of RTDs was 30 million 9-liter cases, of which approximately 60% were imported.

Attached to my testimony is our quantitative analysis of the impact that the elimination of Australia's tariff will have on U.S. spirits exports. As our data show, we believe that the immediate elimination of Australia's tariff on U.S.-origin spirits would lead to an immediate 4.76% reduction in the price of U.S. spirits exports, which will lead to a 3.76% increase in volumes shipped, assuming (as is reasonable) that the price elasticity of demand in the Australian market is similar to that in the U.S. market. The incremental impact will be an increase in U.S. exports of 1.8 million proof liters—a growth that will continue over time. Over the 10-year period 2005–2014, we project that the elimination of Australia's spirits tariff will increase U.S. spirits exports to Australia by a cumulative total of almost $56 million.

The elimination of Australia's spirits tariff also will level the playing field, since the United States has already eliminated its tariffs on nearly all distilled spirits products from all sources, including Australia. As a consequence, U.S. domestic producers will not face added competition in the U.S. market as a result of the agreement, since U.S. tariffs on nearly all spirits categories are already zero.

In addition to eliminating Australia's tariffs, the Agreement includes certain protections for the use of the terms Bourbon and Tennessee Whiskey. This recognition will ensure U.S. producers of genuine Bourbon and Tennessee Whiskey, as well as Australian consumers, that only spirits produced in the United States, in accordance with the laws and regulations of the United States, may be sold in Australia as Bourbon or Tennessee Whiskey. These are, by far, the United States' leading spirits exports.

In summary, Jim Beam Brands Co. and the entire U.S. distilled spirits industry enthusiastically support the U.S.-Australia FTA because it will secure immediate duty-free access to one of the most important export markets for U.S. spirits products. Exports will continue to fuel this industry's growth: since 1990, U.S. direct exports of distilled spirits worldwide have more than doubled. Total exports of U.S.

spirits in 2003, in dollar terms, were 6.7% higher than in 2002. Between 1991 and 2003, U.S. spirits exports to Australia have grown by approximately 161 percent.

Jim Beam Brands and the Distilled Spirits Council appreciate this opportunity to testify. We hope the Congress will approve the Agreement at the earliest possible date.

ATTACHMENT

U.S. Distilled Spirits Exports to Australia: Impact of Tariff Elimination

The elimination of Australia's five percent *ad valorem* tariff on spirits products imported from the United States, which will occur immediately upon the agreement's entry-into-force, will undoubtedly make U.S.-produced spirits more competitive in the Australian market. A five percentage point advantage is significant in the Australian market across the full range of spirits categories, and is expected to have a significant positive impact on U.S. spirits exports to Australia. U.S.-produced spirits compete head-to-head with spirits imported into Australia from other major spirits exporters, including, but not limited to, the United Kingdom, France, Italy, Canada, and Mexico, among others. U.S. spirits exports worldwide are dominated by Bourbon whiskey and Tennessee Whiskey, which compete directly with Scotch whisky and Irish whiskey, as well as with *all other* spirits categories. Indeed, market research conducted in the United States has shown that, for example, nearly half (48%) of all Scotch Whisky drinkers also drink Bourbon; 35% of all Cognac drinkers also drink Bourbon; and 30% of all vodka drinkers also drink Bourbon, demonstrating a high degree of substitutability (Simmons Market Research, Spring 2003).

a) Australian Export Market for U.S. Distilled Spirits

U.S exports to Australia of distilled spirits products have been increasing steadily in recent years, growing to nearly $60 million in 2003.[1] In fact, the compound annual growth rate (CAGR) between 1996 and 2003, based on export value, was 6.5%. The more recent 2000–2003 period has shown an even more impressive 7.9% CAGR.

Table 1

U.S. Distilled Spirits Exports to Australia - FAS Value

Year	Bulk Bourbon	Bottled Bourbon	Total Bourbon	Liqueurs & Cordials	Other	Total All Spirits
1996	$ 18,502,576	$ 16,976,397	$ 35,478,973	$ 243,765	$ 2,766,464	$ 38,489,202
1997	$ 22,124,684	$ 18,579,463	$ 40,704,147	$ 834,098	$ 1,834,762	$ 43,373,007
1998	$ 17,875,502	$ 22,323,897	$ 40,199,399	$ 832,031	$ 1,811,282	$ 42,842,712
1999	$ 19,469,968	$ 21,739,542	$ 41,209,510	$ 210,689	$ 4,071,822	$ 45,492,021
2000	$ 21,752,019	$ 19,318,295	$ 41,070,314	$ 3,374,709	$ 3,242,853	$ 47,687,876
2001	$ 25,845,495	$ 19,045,290	$ 44,890,785	$ 5,749,578	$ 4,171,922	$ 54,812,285
2002	$ 24,807,449	$ 18,105,733	$ 42,913,182	$ 9,812,380	$ 3,120,744	$ 55,846,306
2003	$ 28,307,300	$ 21,140,432	$ 49,447,732	$ 7,176,816	$ 3,217,023	$ 59,841,571
CAGR 96 - 03	6.3%	3.2%	4.9%	62.1%	2.2%	6.5%
CAGR 00 - 03	9.2%	3.0%	6.4%	28.6%	-0.3%	7.9%

Distilled spirits exports are dominated by Bourbon, which accounts for nearly 83% of total spirits exports to Australia by value, or approximately $49.4 million. In recent years, liqueurs and cordials have also grown in importance.

In volume terms, the U.S. exported 23.5 million proof liters[2] of distilled spirits products to Australia in 2003, 20.3 million of which was Bourbon.

[1] All export figures were taken from U.S. Customs Service data prepared by the Census Bureau.

[2] A proof liter is defined as 1 liter containing 50% by volume of ethyl alcohol.

Table 2

U.S. Distilled Spirits to Australia - Proof Liters

Year	Bulk Bourbon	Bottled Bourbon	Total Bourbon	Liqueurs & Cordials	Other	Total All Spirits
1996	7,798,633	2,906,940	10,705,573	19,437	1,165,805	11,890,815
1997	9,801,622	3,206,451	13,008,073	109,482	2,019,893	15,137,448
1998	7,926,350	3,418,410	11,344,760	412,099	694,330	12,451,189
1999	9,089,911	4,155,495	13,245,406	63,393	1,889,950	15,198,749
2000	11,029,909	3,311,612	14,341,521	911,257	3,529,987	18,782,765
2001	14,758,592	4,012,155	18,770,747	1,117,611	4,072,876	23,961,234
2002	14,525,940	4,731,930	19,257,870	851,994	2,196,868	22,306,732
2003	16,167,230	4,140,588	20,307,818	518,611	2,674,207	23,500,636
CAGR 96 - 03	11.0%	5.2%	9.6%	59.9%	12.6%	10.2%
CAGR 00 - 03	13.6%	7.7%	12.3%	-17.1%	-8.8%	7.8%

b) 2004 Projections

According to Distilled Spirits Council projections, total U.S. spirits exports to Australia are projected to grow to 25.5 million proof liters in 2004 (*see* Table 3). The Bourbon projections were made by assuming the CAGR over the 1996–2003 period, as shown in Table 2, would continue in 2004. The respective growth rates for both bulk Bourbon and bottled Bourbon (11.0% and 5.2%) appear reasonable when compared to the higher growth rates experienced over the more recent 2000–2003 period (13.6% and 7.7%).

Exports of liqueurs and cordials and "other spirits" to Australia, however, have been much more volatile. Given this volatility, we assumed no change in export volume for liqueurs and cordials and the "other spirits" category.

Table 3

U.S. Exports to Australia - 2004 Projected Proof Liters

	Bulk Bourbon	Bottled Bourbon	Total Bourbon	Liqueurs & Cordials	Other	Total
2004 Projected Volume	17,942,386	4,355,271	22,297,657	518,611	2,674,207	25,490,475

For 2004, then, bulk Bourbon exports are projected at 17.9 million proof liters, bottled Bourbon 4.4 million proof liters and total spirits exports to Australia at 25.5 million proof liters.

c) Value of Exports per Liter

After several years of decline, the value per liter of both bulk and bottled Bourbon exports increased in 2003, with bulk exports rising to $1.75/proof liter and bottled Bourbon to $5.11. The value of liqueurs and cordials continued to increase.

Table 4

Value of U.S. Distilled Spirits Exports to Australia - Per Proof Liter

Year	Bulk Bourbon	Bottled Bourbon	Total Bourbon	Liqueurs & Cordials	Other	Total All Spirits
1996	$ 2.37	$ 5.84	$ 3.31	$ 12.54	$ 2.37	$ 3.24
1997	$ 2.26	$ 5.79	$ 3.13	$ 7.62	$ 0.91	$ 2.87
1998	$ 2.26	$ 6.53	$ 3.54	$ 2.02	$ 2.61	$ 3.44
1999	$ 2.14	$ 5.23	$ 3.11	$ 3.32	$ 2.15	$ 2.99
2000	$ 1.97	$ 5.83	$ 2.86	$ 3.70	$ 0.92	$ 2.54
2001	$ 1.75	$ 4.75	$ 2.39	$ 5.14	$ 1.02	$ 2.29
2002	$ 1.71	$ 3.83	$ 2.23	$ 11.52	$ 1.42	$ 2.50
2003	$ 1.75	$ 5.11	$ 2.43	$ 13.84	$ 1.20	$ 2.55
Avg. 96 - 03	$ 2.03	$ 5.36	$ 2.88	$ 7.46	$ 1.58	$ 2.80
Avg. 00 - 03	$ 1.80	$ 4.88	$ 2.48	$ 8.55	$ 1.14	$ 2.47

d) Incremental Impact of Tariff Elimination

Eliminating the Australian import tariff would lead to an immediate 4.76% reduction in the price of U.S. spirits exports to Australia. Assuming that the price elas-

ticity of demand in the Australian market is similar to the U.S. market, the 4.76% reduction in price will lead to a 3.76% increase in volume.[3]

Table 5

Incremental Impact of Tariff Elimination - 2005

	Bulk Bourbon	Bottled Bourbon	Total Bourbon	Liqueurs & Cordials	Other	Total All Spirits
Volume (Proof Liters)	674,705	163,776	838,481	19,502	100,561	1,797,025
Revenue	$ 1,181,346	$ 836,182	$ 2,041,627	$ 269,877	$ 120,973	$ 4,450,005

Applying the 3.76% volume increase to the projected 2004 export volumes shows that the incremental impact on U.S. spirits exports to Australia will be nearly 1.8 million proof liters.

To estimate the value of these incremental exports, the 2003 value per proof liter was multiplied by the incremental volume. The incremental value of the exports is projected to be nearly $4.5 million in 2005.

Table 6

10 Year Incremental Impact of Tariff Elimination

Year	Volume (Proof Liters)	FAS Value
2005	1,797,025	$ 4,450,005
2006	1,886,876	$ 4,672,506
2007	1,981,220	$ 4,906,131
2008	2,080,281	$ 5,151,437
2009	2,184,295	$ 5,409,009
2010	2,293,510	$ 5,679,460
2011	2,408,185	$ 5,963,433
2012	2,528,595	$ 6,261,604
2013	2,655,024	$ 6,574,684
2014	2,787,775	$ 6,903,419
Total	22,602,786	$ 55,971,688

Naturally, tariff elimination will impact U.S. exports on an on-going basis. Since volume is expected to continue to grow, Table 6 shows the projected impact of tariff elimination over the next 10 years.[4] Over the 10 year period 2005–2014, tariff elimination is projected to increase U.S. spirits exports to Australia by a cumulative total of nearly $56 million. Some of this gain will be reflected as an increase in market share for distilled spirits vis-à-vis beer, a trend that began in 2000 when Australia began to harmonize the excise tax for ready-to-drink products (RTDs) and certain categories of beer. Currently, the excise tax for RTDs is the same as the rate that is assessed on packaged beer in excess of 3% alcohol by volume.

e) Ready-to-Drink Products

The category of pre-mixed spirits, also called ready-to-drink products (RTDs), is a major and rapidly growing segment of the Australian distilled spirits market. According to the Liquor Merchants of Australia (LMA), for the period February 2003 through February 2004, the RTD category totaled over 28.9 million 9-liter cases, representing approximately 82.3%, in volume terms, of the total spirits market in Australia.

As stated above, the RTD category is a category that competes principally on price and accounts for a significant volume of U.S. distilled spirits exports to Australia. By volume, U.S. exports of bulk Bourbon in 2003 totaled 16.2 million proof liters, accounting for 69% by volume of total U.S. distilled spirits exports to Australia, and

[3] The U.S. Joint Committee on Taxation uses a price elasticity of −0.79. We believe that this is a conservative figure. A more recent analysis by HSBC Securities estimated the figure at −1.24. See "U.S. Alcohol Taxes: Gone But Not Forgotten," HSBC, June 1, 2003.

[4] A conservative growth rate of 5% was used for both value and volume.

nearly 80% of total exports in the Bourbon and Tennessee Whiskey category. Some of the bulk Bourbon is bottled in Australia and sold as Bourbon. But the majority is used to produce RTDs. According to LMA, Bourbon-based RTDs accounted for approximately 43.6% (12.6 million 9-liter cases) of the total RTD market in Australia, representing, by far, the largest segment within the RTD category. The elimination of the five percent tariff will help ensure that Bourbon-based RTDs will retain a strong and growing position in this important market segment.

Mr. CRANE. Thank you, Mr. Wagner. Mr. Franklin?

STATEMENT OF GEORGE FRANKLIN, VICE PRESIDENT FOR WORLDWIDE GOVERNMENT RELATIONS, KELLOGG COMPANY, BATTLE CREEK, MICHIGAN, ON BEHALF OF THE GROCERY MANUFACTURERS OF AMERICA

Mr. FRANKLIN. Thank you, Mr. Chairman. My name is George Franklin. I am Vice President of Kellogg Company, and I am here on behalf of the Grocery Manufacturers of America. Pursuant to your instructions, I am going to make this short and sweet. I wish to clarify at the outset that we are not opposed to the U.S.-Australia FTA. We believe that the agreement can generate increased sales for the processed food industry and will strengthen bilateral relations with an important economic and political ally. We were deeply disappointed, however, by the exclusion of sugar from the agreement. We believe that this exclusion not only compromised the overall benefits of the agreement to the processed food sector, but set a terrible precedent that could diminish the level of ambition of any future trade agreements. For this reason, we are not actively supporting this agreement. Kellogg Company has a long history in Australia. We have been there for over 80 years. You would think, given that relationship, that the Grocery Manufacturers of America and the Kellogg Company would be natural choices to lead the charge for swift passage of the agreement. Unfortunately, we are not actively supporting the agreement because of the glaring exclusion of sugar. We did not arrive at this position lightly. For U.S. food manufacturers, particularly confectionery manufacturers, access to high quality sugar at a fair market value is a key factor for continued growth in the United States. United States food companies pay two to three times the world price of sugar, including hundreds of millions of dollars of extra costs each year.

The industry has lost thousands of domestic jobs as companies are forced to leave the United States to manufacture sugar-containing products in countries where there is access to low price sugar. Chicago has been particularly hard hit, losing almost 8,000 to 9,000 jobs over the past few decades. A recent study by Promar International indicates that in the last 6 years, up to 10,000 confectionery jobs have been lost in the United States because of the high price of sugar. The exclusion of sugar in the U.S.-Australia agreement could also have extremely damaging consequences for future trade agreements. As Chairman Thomas correctly noted in his January 28 letter of 2004 to President Bush, quote, "any exclusions at all jeopardize our ability to conclude and implement agreements which will benefit U.S. employers, workers, farmers, and consumers. If we exclude one industry, we will be under enormous pressure to exclude others. We will be paralyzed by our own sen-

sitivities because we will have no consistent rationale to resist the demands of any sector," unquote. Once again, Mr. Chairman, we appreciate the opportunity to appear before the Committee, and look forward to answering any questions you might have.

[The prepared statement of Mr. Franklin follows:]

Statement of George Franklin, Vice President for Worldwide Government Relations, Kellogg Company, Battle Creek, Michigan, on behalf of the Grocery Manufacturers of America

Good morning, Mr. Chairman and Members of the Committee. My name is George Franklin and I am the Vice President for Worldwide Government Relations at the Kellogg Company. It is a pleasure to be here today on behalf of the Grocery Manufacturers of America (GMA) to offer our views on the U.S.-Australia Free Trade Agreement (FTA).

With projected annual sales of more than $9 billion, Kellogg is the world's leading producer of cereal and a leading producer of convenience foods, including cookies, crackers, toaster pastries, cereal bars, frozen waffles, meat alternatives, pie crusts and cones. The company's brands include *Kellogg's, Keebler, Pop-Tarts, Eggo, Cheez-It, Nutri-Grain, Rice Krispies, Murray, Austin, Morningstar Farms, Famous Amos, Carr's, Plantation, Ready Crust*, and *Kashi*. Kellogg products are manufactured in 17 countries and marketed in more than 180 countries around the world.

Kellogg is a leading member of GMA, which is the world's largest association of food, beverage and consumer product companies. With U.S. sales of more than $500 billion, GMA members employ more than 2.5 million workers in all 50 States. I serve as the Chair of GMA's International Affairs Group and it is in that capacity that I address you today.

GMA and Kellogg Views on the U.S.-Australia FTA

I wish to clarify that my company and GMA are not opposed to the U.S.-Australia FTA. We believe that the agreement could generate increased sales for the processed food industry and will strengthen bilateral relations with an important economic and political ally. We were deeply disappointed, however, by the exclusion of sugar from the agreement. We believe that this exclusion not only compromised the overall benefits of the agreement to the processed food sector, but set a terrible precedent that could diminish the level of ambition of future trade agreements. For these reasons, we are not actively supporting this agreement. Let me elaborate on these points.

Benefits of the U.S.-Australia FTA

The Kellogg Company has a long history in Australia. In fact, our Australian operation was the first Kellogg facility to be established outside of North America. We have now been operating in Australia for nearly eighty years and our facility in Botany continues to expand. Kellogg Australia is the largest single purchaser of rice in Australia for food manufacturing. In addition, the facility purchases more than 30,000 tons of whole corn and 20,000 tons of wheat materials each year.

Given our deep historical ties to Australia, we are pleased that the new free trade agreement will strengthen the existing economic and political relationship between the two countries. Perhaps the most significant benefit for our industry will be the enhanced investment climate in Australia as a result of new commitments on the liberalization of investment rules. We also expect to see tangible benefits from immediate duty free treatment for all processed food exports to Australia. According to the U.S. International Trade Commission, the exports of processed food products will increase by 62 percent as a result of the agreement.

We also believe that the free trade agreement will lead to enhanced cooperation in the WTO, where the U.S. and Australia share many similar goals. For example, the U.S. and Australia are unified in their call for the elimination of export subsidies, meaningful reductions in trade distorting domestic support and substantial increases in market access in the WTO agriculture negotiations. Some have argued that access to the U.S. market will undermine Australia's enthusiasm for the WTO negotiations. We disagree, since it is widely recognized that the most significant tariff barriers for agricultural products lie outside the United States, and that the WTO is the only forum where export subsidies and domestic supports can realistically be addressed. A FTA with Australia will further solidify the synergies between the U.S. and Australia and could act as a catalyst for reform.

Our industry also benefits from the close collaboration between the U.S. and Australia on the issue of geographical indications or GIs. GIs are intellectual property

protections that are based on unique characteristics of products derived from a region or place. In the WTO and elsewhere, the European Union (EU) is engaged in a vigorous campaign to promote a system whereby GIs may trump trademarks and where European producers will gain exclusive rights to many generic product names such as parmesan, feta, chablis etc. The U.S. and Australia have been closely allied in the WTO in the fight against this initiative. The U.S.-Australia FTA includes language on GIs that clarifies the principle of "first in time-first in right" or exclusivity of trademarks. This new language could be used as a model for other agreements and would be an integral part of any WTO strategy. Success in the area of GIs could prevent significant losses due to repackaging and marketing should the EU regime prevail.

The Sugar Exclusion

For all these reasons, GMA and the Kellogg Company would have been natural choices to lead the charge for swift passage of the U.S.-Australia FTA. Unfortunately, we are not actively supporting the agreement because of the glaring exclusion of sugar. We did not arrive at this position lightly, especially since we have worked so hard for the passage of trade promotion authority and every other free trade agreement in the past. Our decision is also not one of simply adhering to "lofty principles," but is one based on the impact of this exclusion on American manufacturing competitiveness and on the shape of future trade agreements.

Sugar and U.S. Manufacturing

Those who seek to minimize the exclusion of sugar claim that it is inappropriate to discount the broader significance of the agreement because of a product that today accounts for less than one percent of two-way trade. This small amount, however, only captures existing sugar trade and not the potential benefits for Australian producers and U.S. manufacturers under the agreement. For example, economic analysis prior to the conclusion of the negotiations had predicted a nearly $4 billion annual gain to the Australian economy as a result of full liberalization of all commodities. Yet, *nearly one quarter* of this gain would have come from increased sugar access. Clearly, the exclusion of sugar is a major flaw in an otherwise good agreement.

For U.S. food manufacturers, particularly confectionary manufacturers, access to high quality sugar at a fair market value is a key factor for continued growth in the United States. The food industry pays two to three times the world price for sugar, incurring hundreds of millions of dollars in additional costs each year. The industry has lost thousands of domestic jobs as companies are forced to leave the United States to manufacture sugar containing products in countries where there is access to lower priced sugar. Chicago has been particularly hard hit. In 1970, employment by the city's candy manufacturers was 15,000. Today it is under 8,000 and falling. A recent study by Promar International suggest that in just the last six years up to 10,000 confectionary jobs have been lost in the United States because of the high price of sugar. In effect, manufacturers are left with few options but to move abroad, since other countries can export lower-cost finished confectionery products to the U.S. at zero or a minimal duty.

The sugar program is truly one of the worst forms of protectionism and is unlike any of our other farm programs. In the simplest terms, the U.S. sugar program operates by shorting the market to keep prices high. The U.S. Government restricts imports through a series of tariff quotas and also restricts the amount of sugar allowed in the domestic market through production controls, called marketing allotments. On top of these restrictions, sugar producers are offered a guaranteed loan of 18 cents per pound for raw cane sugar and 22 cents for refined beet sugar. As of the last farm bill, these loans are non-recourse, meaning if the price falls below these targets, the growers can forfeit the sugar to the government as a form of repayment.

It is clear that a domestic program that operates to guarantee inflated prices to producers by shorting the market is sorely out of step with a global economy and will always be in conflict with international trade commitments. As noted above, the sugar program is also the only U.S. farm program that functions in this manner. It is the structure of the program, not trade agreements, which must be changed in the future.

The Sugar Exclusion and Future Trade Agreements

The exclusion of sugar in the U.S.-Australia agreement could have extremely damaging consequences for future trade agreements. As Chairman Thomas correctly noted in his January 28, 2004 letter to President Bush, "... any exclusions at all jeopardize our ability to conclude and implement agreements which will benefit U.S. employers, workers, farmers and consumers. If we exclude one industry, we will be

under enormous pressure to exclude others. We will become paralyzed by our own sensitivities because we will have no consistent rationale to resist the demands by any sector."

In addition, by insisting on the exclusion of one product in the U.S.-Australia FTA, U.S. negotiators risk that our trading partners will demand similar concessions in future negotiations. U.S. export oriented agriculture such as rice, beef, corn, pork and dairy are sensitive to many of our prospective trading partners. If countries like Panama, Colombia and Thailand decide to exclude their sensitive products, U.S. agriculture will be effectively shut out of these agreements. This is why nearly every food and agriculture association, including the American Farm Bureau Federation, supports the concept of "no exclusions" in trade agreements.

Finally, since many of our future trading partners, especially Brazil, have clearly identified increased sugar access as a primary goal, the exclusion of sugar could seriously undermine the overall ambition of negotiations like the Free Trade Area of the Americas (FTAA). Excluding a key commodity like sugar from the FTAA will undoubtedly result in reduced commitments for U.S. industries in the areas of intellectual property protections and market access for goods and services. In short, the exclusion of sugar benefits a very few but hurts nearly every U.S. export industry.

Conclusion

For all the aforementioned reasons, we sincerely hope that the exclusion of sugar in the U.S.-Australia FTA is the exception and not the rule in future trade negotiations. The agreement as it stands is a good agreement, but it could have been a perfect, platinum standard agreement, were sugar to have been included. I look forward to working with the Committee and U.S. negotiators to secure comprehensive, high-standard agreements in the future. I would be happy to answer any questions you may have.

Mr. CRANE. Thank you, Mr. Franklin. That was short but not as sweet as I thought it might be. I guess it is the sugar component. I would like to now yield to Ms. Tubbs Jones.

Ms. TUBBS JONES. Mr. Chairman, like you, I also have a luncheon, so I am going to try and keep my comments very brief. I want to go back to Mr. Franklin, because I am interested, not to the exclusion of the rest of you guys, but I have to keep mine short, too. What would you have wanted the agreement to say with regard to sugar, Mr. Franklin?

Mr. FRANKLIN. We would have liked to have the Australian sugar industry have greater access to the U.S. sugar market. We support the U.S. sugar market. We want it to be competitive; we want it to be vibrant. However, we also have to be realistic about the competitive food processing world, and I think if I could, Congresswoman, I brought an article from the Chicago Tribune, and I brought an article from the Detroit News. The headline from the Chicago Tribune says, "Chicago Candy Makers are Bitter on High Cost of Sugar." It talks about Mayor Daley strenuously opposing the existing U.S. sugar program. The other thing, just an hour from where I live in Western Michigan, the Life Saver plant announced they were closing about a year and a half ago. The 600 high-paid jobs went to Canada. They did not go to some other country where you would think you would be looking for low-cost labor. They went to Canada because of the high cost of sugar. It is just a situation that just cannot continue. I heard a lot of Members here talking about manufacturing. Well, food processing, we are manufacturers. This has a significant impact on our ability to compete.

Ms. TUBBS JONES. Thank you, Mr. Franklin. Mr. Chairman, I would seek unanimous consent to have the two articles that Mr. Franklin—Jorge, will you get those articles for me?

Mr. CRANE. Without objection, so ordered.
Ms. TUBBS JONES. Submitted into the record.
[The information follows:]

Chicago Tribune
January 30, 2002 Wednesday

Life Savers takes business to Canada over sugar costs
By Tim Jones, Tribune staff reporter

HOLLAND, Mich.

Showtime begins at sundown when the giant metal roll of Life Savers lights up. Then, atop the sole plant producing Life Savers in the United States, the 25-foot revolving replica of the popular hard candy flashes the fluorescent colors of its fruit flavors. This goes on all night, every night.

But not much longer. Kraft Foods is shutting the 35-year-old factory in this prosperous western Michigan city and shifting production of the American candy icon to Canada. Kraft rejected a last-ditch $38 million incentive package from Michigan last week and said its decision "is based on factors over which the State has no control." This is death by sugar. Although Kraft officials cited several reasons for the decision to shutter the 600-employee plant, the high cost of sugar that has led to the closure of candy producers in Chicago in the last several years was a major factor.

The exit of Life Savers could loom larger as an issue as the U.S. Senate revisits the farm bill, the jealously guarded larder of agriculture tariffs and subsidies that, in the case of sugar, are directly responsible for sugar costing roughly twice as much in the U.S. as it does in Canada and Mexico. Through import quotas, the $1.8 billion sugar program is designed to shield sugar growers from lower-priced imports, but the economic law of unintended consequences and the complicated politics of sugar are driving some American candy manufacturers out of business or out of the country.

"If we believe it is in America's national interest to have a sugar industry, there are better ways to help it than this," said Rep. Peter Hoekstra (R–Mich.), who lives in Holland. "This sugar program is tampering with the market."

The mathematics of candy production—a Life Saver is about 99 percent sugar—provides no comfort to those who worry about the future. Candy, wafer and cereal makers are heavy consumers of sugar. Chicago-based Brach's candy company is in the process of closing its West Side factory. Kraft shut down one of the candy lines last week at the Holland plant and will close the facility and move the production equipment to Quebec by summer 2003. "I think this is just the tip of the iceberg," said Holland's Mayor, Albert McGeehan, who is far more accustomed to welcoming new businesses than saying goodbye to a plant that last year produced 70 million pounds of the colorful little candy. "We're just one of the early casualties."

"We've been on the receiving end of companies for 35 years, and little thought did we give to the impact it would have on the communities where these plants came from. I guess it proves that what goes around comes around," McGeehan said, shrugging.

City's 3rd-largest taxpayer, Holland, near the scenic eastern shore of Lake Michigan, is an unlikely victim. A national hub of the office furniture business, this well-tended city of 35,000 people has thrived in the last 30 years as a diversified home of manufacturing, food processing and tourism, anchored by its annual tulip festival. Life Savers, created in 1912 in Cleveland, moved its operation to Holland in 1967 and became the city's third-largest taxpayer. Life Savers became a vanity plate for Holland, home of "the candy with a hole in it."

"It was kind of like a reference point for the city," said John Drueke, president of the Retail, Wholesale and Department Store Union Local 822, which represents Life Saver employees. When Kraft broke the news of the plant's closing early this month, Drueke said his "heart just dropped."

James Donaldson, vice president of business development for the Michigan Economic Development Corp., patched together the incentive package that Kraft rejected. He is concerned about the future of other heavy sugar users in Michigan, such as the Post and Kellogg cereal operations in Battle Creek.

"Both of them have expressed their concerns about sugar price supports, but neither has said anything about leaving," Donaldson said. "I'm not going to forecast their demise, but this kind of issue is one that has long-term consequences that no one can foresee. We don't know where they will grow. "

For people like Donaldson, that could mean that economic development is just a holding action, with the growth going to other countries where the cost of production is substantially lower.

Congress has repeatedly rejected efforts to kill the Sugar Program, as recently as last month. The Sugar Program is one of the more contentious parts of the farm bill, which has ballooned to $172 billion from the current level of $98.5 billion, with payments going to support corn, wheat, cotton, rice and soybeans. Luther Markwart, executive vice president of the American Sugarbeet Growers Association, argues that American sugar growers need to be protected against lower-priced imports. Michigan has about 180,000 acres devoted to the production of sugar beets.

Sugar prices change often. The price of sugar constantly changes, but in recent years the U.S. price has been about double, and sometimes triple, the world price. The lower cost of labor also contributes to the price advantage of imported sugar.

"There has to be a level playing field and right now there's not," Markwart said. "That's the reality of the world we live in and it's an ugly one."

It's also an old one. U.S. sugar support programs date back to the 1930s and have long been the object of political manipulation. The practical effect of U.S. sugar policy has been to protect sugar farmers, drive up the value of sugar-producing farms and force many food manufacturers to turn to sugar substitutes, like fructose corn syrup.

Hoekstra said the danger for companies that buy large amounts of sugar is that they will be forced to move their operations across the border or overseas. "People are no longer looking to save nickels and quarters. In a global market they are looking for pennies, and their shareholders are demanding it," the lawmaker said.

Despite the public embrace of free trade politics, the politics of agriculture argues against any reversal of the historic trend of strong government support of subsidies and, in the case of sugar, tariff protection. And the message to many sugar buyers is don't expect any relief.

"Congress won't do anything. They're spinning their wheels," said Salvatore Ferrara, president of the Ferrara Pan Candy Co., based in west suburban Forest Park.

The Ferrara company's growth is outside the United States. It has opened one plant in Mexico and two in Canada, the most recent two months ago. "This is going to continue. There comes a point where you can't fight city hall. You just pick up and move on," Ferrara said.

"I wouldn't think of opening anything up on this side of the border," he added. Hoekstra said he's not hopeful that Washington will provide relief. "I can't think of a subsidy that Congress has ever eliminated," he said.

GRAPHIC: PHOTOS 2 GRAPHIC PHOTO (color): Kraft Foods is shutting its 35-year-old Life Savers plant in Holland, Mich., and shifting production to Quebec by summer 2003. Officials cited high sugar prices as the major factor for their decision. Tribune photo by John Kringas. PHOTO (color): Union official John Drueke said his "heart just dropped" after learning about the closing of Life Savers' Holland, Mich., plant. Tribune photo by John Kringas. GRAPHIC (color): Life Savers closing last U.S. plant. High sugar prices in the U.S. are being cited by Kraft Foods as a reason to move its Life Savers plant in Holland, Mich., to Canada. Source: U.S. Department of Agriculture.

Daley Wants Sugar Subsidy Reform
DAVE CARPENTER
CHICAGO

The candy capital of the world is sour about high U.S. sugar prices.

Concerned that local candy manufacturers are cutting back and taking jobs abroad, Mayor Richard M. Daley showed up at North America's largest candy trade show Tuesday with some not-so-sweet words for Congress about the need for sugar subsidy reform.

Firing the latest salvo of a fast-intensifying lobbying campaign, he and executives of Chicago's candy industry said Federal price supports are dealing a serious blow to businesses that are heavily dependent on sugar.

The Chicago area, which accounts for roughly 15 percent of the country's candy work force, has seen its candy-related jobs decline to about 9,000 from 17,000 a decade ago, with Brach's Confections recently announcing the loss of 1,100 local jobs. While sugar growers dispute the reasons, the Mayor largely blames a price-support program that has made American sugar twice as expensive as world prices.

"We need to remove these obstacles as soon as possible and allow our companies to compete on a level playing field," Daley said at the opening of the All Candy Expo, flanked by about 20 candy officials at the McCormick Place convention center.

The Chicago group urged the passage of legislation being introduced Wednesday by Rep. Dan Miller, R–Fla., that would phase out sugar price supports by the end of 2004, imposing import quotas on foreign sugar until then.

"They should be able to pass this," Daley said. "This is a no-brainer."

Opponents, who also are gearing up for a sugar showdown as part of Congress' review of farm laws, say Daley is misinformed.

The American Sugar Alliance contends that sugar accounts for only a small percentage of the cost of most candy products and that candy makers are fudging their facts.

The industry group, comprised of sugar growers, accuses the manufacturers of using the subsidies issue to deflect attention from the real reasons for their moves out of the United States: to find cheaper labor and lower environmental costs.

"Their effort to try to knock prices down further is an unabashed effort to improve their profits," said Jack Roney, director of economics and policy analysis for the growers' group.

Salvatore Ferrara II, president of Chicago-based Ferrara Pan Candy Co. and chairman of the National Confectioners Association, which sponsors the candy show, disputed that notion.

While his company has opened factories in Canada and Mexico, reducing its Chicago work force to 450 from 800, he said: "It's not something we wanted to do. It's something we were forced to do. . . . It's just not fair that our sugar prices are two to three times what our competitors pay."

How consumers are affected depends who's talking.

The candy makers say the price supports cost taxpayers $495 million last year and added another $2 billion a year to the price they pay for sugar and sweetened foods.

The sugar growers say candy companies haven't passed their savings on to consumers even when the producer price for refined sugar fell 29 percent from 1996–2000. No sugar subsidies, they say, would doom troubled beet sugar factories and the many local economies where they are located.

"U.S. sugar policy is crucial to maintaining reliable supplies of sugar to food manufacturers" and for keeping consumer prices "reasonable, fair and competitive," the American Sugarbeet Growers Association wrote in a letter to Daley this week. "Comparing U.S. sugar prices with foreign subsidized surplus sugar dumped on a distressed world market is not a legitimate comparison."

Ms. TUBBS JONES. Very briefly, I want to go back to Mr. Sundin.

Mr. SUNDIN. Sundin.

Ms. TUBBS JONES. Sundin.

Mr. SUNDIN. Sundin, actually.

Ms. TUBBS JONES. Okay.

Mr. SUNDIN. I will come to anything——

Ms. TUBBS JONES. I apologize, Mr. Sundin. I am curious about NAM and your position. You support this Australian FTA. Would your support be as strong if Australia was not as advanced a community with labor standards, or would it be different?

Mr. SUNDIN. Actually, I am here on behalf of the U.S. Chamber of Commerce.

Ms. TUBBS JONES. You are the wrong one; okay. Go ahead, but anyway, go ahead.

Mr. SUNDIN. Well, the answer to your question is yes, because we export about half of what we make—well, the other 45 percent—the majority goes into China. In China, we are doing a lot of educational programs to help people there understand the benefits——

Ms. TUBBS JONES. How many jobs have you lost since you started doing all this work in China?

Mr. SUNDIN. How many jobs have we lost?

Ms. TUBBS JONES. Yes.

Mr. SUNDIN. No, none.

Ms. TUBBS JONES. None at all?

Mr. SUNDIN. We have picked about 5 or 6 up, out of our 11 total.

Ms. TUBBS JONES. Five or six?

Mr. SUNDIN. Out of our 11 total.

Ms. TUBBS JONES. Okay.

Mr. SUNDIN. Which means a significant benefit to me.

Ms. TUBBS JONES. Mr. Shade, on behalf of the association—my last question, Mr. Chairman, I promise.

Mr. SHADE. The same question?

Ms. TUBBS JONES. Yes.

Mr. SHADE. I would support this agreement even if Australia were not as advanced a country. The products that we build and make in America, which are high-tech products, and which are exported into countries like Australia, will continue to be built in the United States.

Ms. TUBBS JONES. You represent on behalf of NAM many more organizations that do not have high tech jobs. Is that a fair statement?

Mr. SHADE. That is correct.

Ms. TUBBS JONES. For those folks, it could, in fact, signify a loss of jobs for their companies, fair? Yes or no?

Mr. SHADE. The analysis that we have done in NAM suggests that most of what we call outsourcing is, in fact, not movement of U.S. manufacturing jobs to other countries, but, in fact, the creation of domestic facilities in those foreign countries to serve those local markets. So, in the case of many of my colleagues in NAM and our Technology Policy Committee, we have not lost manufacturing jobs through outsourcing. We have, in fact, started local companies and subsidiaries in order to improve the export situation from——

Ms. TUBBS JONES. I am not going to get an answer to this question, but the fact of the matter is that in the State of Ohio, we have lost close to 200,000 manufacturing jobs, and nationally, we have lost them. So, that is my concern. Mr. Chairman, thank you very much.

Chairman THOMAS. [Presiding.] Thank you. Mr. Levin?

Mr. LEVIN. Mr. Chairman, I do not have any questions. I came back; I had to go to a meeting. I had no choice. I just wanted to indicate I will read with interest your testimony, and the staff will tell me about the questions that were thrown at you and your brilliant answers. So, thank you, Mr. Chairman.

Chairman THOMAS. Thank you. Mr. Lewis, do you have a question?

Mr. LEWIS OF KENTUCKY. I do not have a question but I would just like, after the fact, to welcome one of our guests today, if that would be all right.

Chairman THOMAS. Oh, yes.

Mr. LEWIS OF KENTUCKY. Of course, I would like to welcome David Wagner of Jim Beam. Jim Beam is an important part of Kentucky, and it has its roots in Kentucky over the last 200 years. In 1795, a farmer and grain operator named Jacob Beam sold his first barrel of sour mash. His son and grandson continued to carry on that tradition, and I have been told Jim Beam produces some of the finest spirits products in the world. Is that true? That is my question.

[Laughter.]

Under the leadership of their late master distiller, Booker Noe, the Jim Beam Company launched the small batch bourbon trend through their brands: Booker's, Baker's, Knob Creek, and Basil Hayden's. These superpremium products have reignited worldwide interest in the cultural heritage and traditions of bourbon whiskey distilling in the great Commonwealth of Kentucky, and Jim Beam employs 550 Kentuckians statewide, including 356 within my Congressional District. So, after the fact, I welcome you, and we certainly are privileged and proud that you have your great company in the Second District of Kentucky.

Mr. LEVIN. Mr. Chairman?

Mr. CRANE. [Presiding.] Yes?

Mr. LEVIN. Kellogg's does not go back in Michigan to 1795, but it goes back a long ways, and Mr. Franklin and I have known each other a number of years, so I already earlier welcomed him. How far back does Kellogg go in Michigan?

Mr. FRANKLIN. We will be 100 in 2006.

Mr. LEVIN. That is a good number of years, so a special welcome.

Mr. FRANKLIN. Thank you.

Mr. CRANE. Well, let me express appreciation to all of you for your participation. I am sorry for the time constraints that we got under here, and I trust everyone will still be able to make his flight, and we will make our votes. Thank you all, and with that, the hearing stands adjourned.

[Whereupon, at 12:17 p.m., the hearing was adjourned.]

[Questions submitted from Representative Hulshof to Ambassador Johnson, and his responses follow:]

Question: Because of the capital intensive nature of the commodity, the dairy industry remains extremely sensitive to fluctuations in price and supply. What steps is USTR taking to safeguard American producers from extreme market shocks in the Australia FTA, as well as in other pending FTA's?

Answer: In any of the Free Trade Agreements (FTA) negotiated, the United States uses a number of tools to address the import sensitivities of a variety of products, including dairy. By using extended tariff phase outs, tariff rate quotas (TRQs) and other mechanisms, we are able to minimize and moderate the impact of any tariff phase outs.

In the case of dairy in the Australia FTA, the Administration worked closely with the U.S. dairy industry achieving the industry's priority negotiating objective by retaining the over-quota tariff. In addition, the amount of Australian dairy products that enter duty free under the tariff rate quota will increase only marginally further limiting imports. The additional quantities provided for under the TRQs amount to 0.2 percent of the value of U.S. dairy production in 2003 and about 2.3 percent of the nearly $2 billion in total U.S. dairy imports. On a tonnage basis, the additional access is about 0.03 percent of total milk production in 2003.

Other countries with which we have or are negotiating FTAs are not major exporters of dairy products. Nevertheless, FTA provisions for dairy utilize various

tools to address its import sensitivity. For example, in the Central American FTA, the United States would establish TRQs for dairy products and would eliminate tariffs in a back-loaded manner over a 20 year period, with a quantity-based safeguard to protect from import surges during the transition period. In the Morocco FTA, the United States will create preferential TRQs with limited quota amounts. The within-quota quantities will grow by only 4 percent a year. Over-quota tariffs will be phased-out over 15 years in equal annual installments.

In any of these FTAS, the United States also has export interests in dairy products. As part of the FTA, Australia will be eliminating its tariffs on U.S. dairy products, which reached $11 million in 2003. Central American countries are establishing tariff rate quotas for nearly 5,000 mt of U.S. dairy products as part of the Central American FTA. Morocco will immediately eliminate its tariffs on pizza cheese and whey products, and tariffs on cheese will be eliminated in 5 to 10 years, on butter in 8 years, and on milk powders in 15 years.

Question: What impact would this agreement have on milk prices nationwide, as well as on the CCC's dairy price support program?

Answer: The U.S. Department of Agriculture projects that farm milk prices will probably reach record levels in 2004, up by as much as $4 per hundredweight (cwt) from levels in 2003. Current estimates predict that the all milk price will exceed $16 per cwt; in 2003, the price was $12.52 per cwt. Irrespective of the Australia FTA, dairy prices are expected to moderate in 2005. Current estimates are for milk prices in 2005 to average $13–$14 per cwt. USDA has not done a separate analysis on the impact of the Australia FTA on milk prices.

The U.S. International Trade Commission concludes that the FTA will likely have a small effect on U.S. milk production and employment in the dairy industry. The ITC cites testimony by the National Milk Producers Federation that by the 10th year of the FTA, dairy income loss from the FTA will be "about 0.25 percent of cumulated farm receipts from sales of milk over a 10-year period based on annual receipts of $23 billion." (Source: *U.S.-Australia Free Trade Agreement: Potential Economywide and Selected Sectoral Effects*. *USITC* Publication 3697; May 2004).

According to the U.S. Department of Agriculture, due to the carefully crafted provisions on TRQ dairy products, the Australia FTA will not affect the operation of the Commodity Credit Corporations's dairy support program.

Question: The tariff treatment of Milk Protein Concentrates (MPC) and caseinates remains a highly contentious issue among many dairy producers in my district.

a. While many varieties of MPC and caseinates are excluded from current dairy TRQ's, they are being used with increasing frequency in food production. Does this agreement take any steps to resolve the inconsistent tariff treatment of MPC versus other dairy products, including cheeses and butters?

b. How would Congressional approval of a measure such as H.R. 1160, the Milk Import Tariff Equity Act, impact our trade relationship with Australia, as well as with the rest of the world?

Answer: The FTA does not address what some view as different tariff treatment of MPCs versus other dairy products, because U.S. tariffs on MPCs are bound commitments under the Uruguay Round Agreements and apply to all trading partners, not just Australia.

Official U.S. trade statistics show that imports of milk protein concentrates (MPCs) reached a high in 2000 at 64,598 metric tons. Since then, imports dropped to 35,383 metric tons in 2001, and then increased to 48,538 metric tons in 2003. U.S. bound tariffs on milk protein concentrates are nominal, at 0.37 cents per kilogram, equating to an ad valorem equivalent of 0.1 percent. New Zealand is the largest supplier of MPCs with approximately 65 percent of the U.S. import market share. The European Union is the second largest supplier of MPCs with 17 percent of the U.S. import market share, and Australia is the third largest supplier with 11 percent of the U.S. import market share. New Zealand and Australia do not provide subsidies or commodity-specific domestic support for the production of MPCs or any other dairy product.

At the request of Congress, the U.S. International Trade Commission recently completed a study on MPC reports. The report suggests that MPC imports have not yet caused significant economic injury to U.S. dairy producers because any displaced dairy production was largely absorbed by USDA's sustained purchases of surplus skim milk powder. The report also states that domestic dairy price support programs have been a disincentive to the manufacture of MPCs in the United States

because it is more profitable to produce skim milk powder for sale into a market supported by USDA's commodity purchasing program.

The Administration has not taken a position on H.R. 1160, which would create tariff rate quotas on certain milk protein concentrates (MPCs) and casein. Imposing tariff rate quotas on these products would mean having to negotiate with our trading partners to cut U.S. tariffs on other products to provide compensation to our trading partners as required by the WTO. Countries that export MPCs and casein products to us would want to see cuts in dairy product tariffs.

In addition, we would be concerned about the possible negative impact such legislation could have on the Doha negotiations, in which the U.S. is a leading force supporting trade liberalization. Reforming world dairy markets and eliminating export subsidies through WTO negotiations, as supported by the U.S. dairy industry, is a preferred outcome to benefit all of U.S. agriculture.

[Submissions for the record follow:]

Statement of Advanced Medical Technology Association

AdvaMed represents over 1,100 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 $75 billion in life-enhancing health care technology products purchased annually in the United States, and nearly 50 percent of the $175 billion in medical technology products purchased globally. Exports in medical devices and diagnostics totaled $22.4 billion in 2003, but imports have increased to $22 billion—indicating a new trend towards a negative trade balance for the first time in over 15 years.

The medical technology industry is fueled by intensive competition and the innovative energy of small companies—firms that drive very rapid innovation cycles among products, in many cases leading new product iterations every 18 months. Accordingly, our U.S. industry succeeds most in fair, transparent global markets where products can be adopted on their merits.

Global Challenges

Innovative medical technologies offer an important solution for industrialized nations, including Australia, 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.

To deliver this value to patients, our industry invests heavily in research and development (R&D), and U.S. industry is a global leader in medical technology R&D. The level of R&D spending in the medical device and diagnostics industry, as a percentage of its sales, more than doubled during the 1990s, increasing from 5.4% in 1990, to 8.4% in 1995, to 12.9% in 1998. In absolute terms, R&D spending has increased 20% on a cumulative annual basis since 1990. This level of spending is on par with spending by the pharmaceutical industry and more than three times the overall U.S. average.

However, patients benefit little from this R&D investment when regulatory policies and payment systems for medical technology are complex, non-transparent, or overly burdensome, causing significantly delays in patient access. They can also serve as non-tariff barriers, preventing U.S. products from reaching patients in need of innovative health care treatments.

AdvaMed applauds continued progress on international trade initiatives, including bilateral, regional and global trade negotiations, such as the Free Trade Area of the Americas (FTAA) and the Doha Development Agenda in the World Trade Organization (WTO). We support new efforts like the Central American Free Trade Agreement (CAFTA), under which the Central American partners to the agreement will grant U.S. exports of medical devices duty-free treatment. We are hopeful that future bilateral agreements can also include directives to knock down tariff and non-tariff barriers for medical technologies. In addition, the President and U.S. Trade Representative (USTR) should continue to pursue trade liberalization 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.

U.S.-Australia Free Trade Agreement

As you know, the United States and Australia signed the U.S.-Australia Free Trade Agreement (FTA) on May 18, 2004—the first FTA the U.S. has negotiated with a developed country since the U.S.-Canada FTA in 1988. Australia is a major trade and investment partner for the U.S. medical technology industry, which exported $661 million in medical devices and IVDs to Australia in 2003, and maintains a trade balance with Australia of $470 million.

The FTA will bring significant benefits to the medical technology industry. Most importantly, it will eliminate tariffs on medical devices immediately upon the agreement's entry into force, which could save the industry over $30 million a year. Australia made significant reductions on medical device tariffs during the Uruguay trade round, but was not a full participant in the medical device zero-for-zero agreement. The FTA will eliminate all remaining import tariffs on medical technology exported to Australia, with the potential to increase U.S. exports of medical devices to Australia, and in turn lead to greater U.S. medical device manufacturing output and the creation of new jobs.

In addition, the FTA reaffirms both countries' rights and obligations under the Technical Barriers to Trade (TBT) agreement, encourages the use of international standards as a basis for technical regulations, recognizes conformity assessment mechanisms for accepting conformity assessment results, and authorizes transparency in the development of standards, technical regulations and conformity assessment procedures through the opportunity to provide meaningful comment in the decision-making process. These requirements will help to ensure global regulatory consistency for medical devices, encourage the use of conformity assessment procedures, and ensure industry has input in the regulatory decision-making process.

The FTA also will make trade with Australia more predictable and transparent for U.S. medical technology manufacturers through key provisions on investor protections, government procurement, patent protections, anti-counterfeiting protections, customs and rules of origin, workers rights, the environment, and dispute settlement procedures.

Finally, the FTA includes for the first time a separate chapter on pharmaceuticals which provides transparency for pharmaceutical pricing with an independent review process, establishes a medicines working group to promote discussion and mutual understanding of pharmaceutical issues, and includes a side letter establishing consultations on the selecting, listing and pricing of pharmaceuticals under the Australian Pharmaceutical Benefit Scheme (PBS). We are encouraged by the open dialogue on pharmaceuticals formalized in the FTA and we look to USTR for continued leadership in their efforts to ensure liberalized trade for all health care products, including medical devices.

Conclusion

AdvaMed appreciates all the hard work that has been done by the Administration in crafting the U.S.-Australia Free Trade Agreement and support its endorsement by Congress. We look to the President and Congress to continue 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.

Statement of Stephen J. Collins, Automotive Trade Policy Council, Inc.

The Automotive Trade Policy Council (ATPC) strongly supports prompt approval by the House and Senate of the recently signed U.S.-Australia Free Trade Agreement (FTA). The Agreement will provide concrete market-opening benefits for U.S. automotive manufacturers and boost momentum for further progress in other bilateral, regional and multilateral trade negotiations. ATPC is a Washington D.C.-based non-profit organization that represents the common international economic, trade and investment interests of its member companies: DaimlerChrysler Corporation, Ford Motor Company and General Motors Corporation. ATPC is the only industry association in Washington that is devoted exclusively to the promotion of U.S. international trade and economic policy issues.

General Motors, Ford, and DaimlerChrysler are the first, second and fifth-largest automotive companies in the world. Together they directly employ nearly 400,000 workers in their U.S. automotive operations, nearly 90 percent of all Americans employed by vehicle manufacturers. ATPC member companies spent over $11 billion last year providing pension and other retirement benefits to over 800,000 retired workers and dependent spouses in the United States. In addition, the three companies provide health care benefits to over 1.8 million current and retired employees and their dependents at a cost of over $8.5 billion in 2003.

The overall average domestic content of the cars and trucks sold in the United States by ATPC member companies is 80 percent, far higher than our Japanese (31 percent average), Korean (2.1 percent average) and other competitors. Last year, ATPC's member companies purchased $160 billion worth of automotive parts and components from tens of thousands of automotive suppliers in the United States. These companies employ millions of additional U.S. workers. Total direct and indirect employment in the U.S. automotive sector is more than 7 million American workers. Materials used in the manufacturing of motor vehicles come from nearly every sector of the U.S. economy, including raw materials (steel, iron, aluminum, lead, rubber), manufactured goods (textiles, glass, plastics) and high-tech components (semiconductors, computers, advanced systems, engineering products).

ATPC member companies produced nearly 9 million vehicles in the U.S. last year in 53 assembly plants located in 21 States—over 75% of total passenger vehicle production in the United States. Since 1980, DaimlerChrysler, Ford and General Motors have spent over $176 billion in direct investment in U.S. facilities and operations, compared with only $27 billion by our competitors from around the world. ATPC member companies also maintain manufacturing facilities in over 50 countries and sell vehicles in over 150 countries around the world. Collectively, ATPC member companies annually produce over 11.5 million vehicles in the NAFTA region and nearly 20 million vehicles worldwide, accounting for 35% of total global vehicle production and sales.

The Impact of the U.S.-Australia FTA on the U.S. Automotive Sector

ATPC companies strongly support the proposed U.S.-Australia Free Trade Agreement. A U.S.-Australia FTA will strengthen an already close relationship between the two countries and will serve to increase economic growth in both markets. The agreement will allow greater trade opportunities in automotive products between our two countries and facilitate further integration of our companies' manufacturing, distribution, financing, service, and related automotive operations.

Over the past 15 years, Australia's motor vehicle market has gradually become more open and globally competitive. Australia has committed itself over the past decade to removing high tariffs on motor vehicles and has made progress in removing other impediments to free trade in the automotive sector as well. As a result, Australia is an important export market for the U.S. automotive industry. U.S. automotive exports to Australia totaled over $1 billion in 2003. Automotive imports from Australia came to $336 million last year, resulting in an automotive trade surplus of over $650 million. Overall, U.S. auto sector exports to Australia represent almost 10% of total U.S. merchandise exports to Australia.

The three ATPC companies compete in the Australian market and Ford and General Motors, with their local manufacturing operations, produce 70% of the vehicles produced there. ATPC member companies produce over 70% of all passenger vehicles made in Australia, and sold nearly half of the cars and light trucks in the Australian market last year.

To appreciate the size and importance of this market and the impact of a U.S.-Australia FTA, consider that Australia's total annual new passenger vehicle sales of 700,000 is greater than all vehicles sold in *every single country* that the United States has *signed, negotiated and proposed* bilateral free trade agreements with since NAFTA was enacted. Total U.S.-Australia trade in automotive goods mirrors that of global automotive trade, which comprises ten percent of total global trade annually, more than the total of agriculture (9.3 percent).

Tariffs

One of the primary benefits of a U.S.-Australia FTA to the U.S. automotive industry would be elimination or substantial reduction of tariffs on motor vehicles and associated components. Australia currently maintains a tariff of 15% on imported motor vehicles. Motor vehicle imports from some developing nations enjoy a preferential tariff of 10%, and as a result of being members of the Commonwealth Market imports from Canada have an applied tariff of 7.5%. Australia also maintains a 15% tariff on motor vehicle components and a 5% tariff on commercial vehicles.

Upon ratification of the U.S.-Australia FTA, tariffs go to zero on all vehicles, parts, and components in both countries with the exception of Australia's tariff on U.S. car imports, which will drop from 15% to 5% on implementation and phase down on a linear basis to 0% by 2010.

Conclusion

General Motors, Ford, and DaimlerChrysler are enthusiastic in their support of congressional approval of the U.S.-Australia Free Trade Agreement this year. Passage of this agreement will be a solid accomplishment for the U.S. Government, with substantial benefits for the U.S. manufacturing sector. The U.S.-Australia agreement also adds momentum to the renewed efforts to expand global trade through the Doha Round of the World Trade Organization, which we strongly support.

California Chamber of Commerce
Sacramento, California 95812
June 8, 2004

The Honorable Bill Thomas
Chairman
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Thomas:

I am writing on behalf of the California Chamber of Commerce in support of the recently negotiated U.S.-Australia Free Trade Agreement. As you are aware, the United States and Australia have concluded a comprehensive Free Trade Agreement (FTA) that will give a strong boost to the substantial trade and investment links between California and Australia.

Australia is the 13th largest market for California goods, with total exports valued at almost $2 billion in 2003. California exports high-value products to Australia such as aircraft parts, computers and computer parts, pharmaceuticals and printed media. If the FTA had been in place in 2003, almost 99 percent of California's exports would have entered Australia duty-free. Australia is also a strong customer in California's services sector—most notably in tourism and film/TV. It is the eighth largest market worldwide for the United States motion picture industry.

California's exports to Australia directly support approximately 9,000 jobs. Additionally, there are 50 Australian-owned companies in California employing 13,600 people, with 4,700 of these positions in manufacturing. Trade with Australia supports numerous other high-paying jobs in areas such as transportation, finance and advertising.

Further, Australian investment in California is valued around $4 billion, placing Australia as the eighth largest foreign investor in the State.

The California Chamber of Commerce, in keeping with long-standing policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business. New multilateral, sectoral and regional trade agreements ensure that the United States may continue to gain access to world markets, resulting in an improved economy and additional employment of Americans.

The California Chamber of Commerce urges your support of the U.S.-Australian Free Trade Agreement. A U.S.-Australia Free Trade Agreement will create a seamless business environment between the two economies, thereby bringing measurable business benefits in all sectors. Further, a FTA will strengthen the linkages between the United States and Australia, the United States' oldest and closest ally in the strategic Asia-Pacific region.

Thank you for your consideration of this important issue.

Sincerely,

Allan Zaremberg

Statement of Joseph E. Brenner and Ellen R. Shaffer, Center for Policy Analysis on Trade and Health, San Francisco, California

EXECUTIVE SUMMARY

Provisions of the U.S.-Australia Free Trade Agreement (FTA) could result in higher prescription drug prices for U.S. and Australian consumers. The Agreement could block legislation authorizing reimportation of less expensive drugs into the U.S. New requirements for independent review of Federal agency decisions about listing and pricing for drugs could lead to higher drug prices for the Medicaid program and for Veterans Administration health services, and necessitate changes to U.S. law and current practices. The vagueness of key provisions places these important programs at risk. These concerns should be addressed, and Congress should ensure that U.S. consumers, including veterans and Medicaid beneficiaries, are adequately protected, in these areas:

1. ***The Agreement could block reimportation of less expensive drugs from other countries, including future legislation that would authorize such "parallel importation,"*** preempting congressional debate.
2. ***Vulnerable populations served by Medicaid and Medicare could face higher drug prices.*** These programs would have to establish an **undefined "independent review process"** for any recommendations or determinations regarding "listing new pharmaceuticals or indications for reimbursement purposes, or for setting the amount of reimbursement for pharmaceuticals." This **could delay or alter decisions about providing drugs and establishing affordable prices**. It could require changes to current U.S. law. It is unclear how this requirement would apply to private companies that administer the new Medicare Part D.
3. ***Veterans could face higher drug prices.*** Federal programs such as the Veterans Administration, and possibly State programs, would also have to provide new review processes for drug listing and pricing decisions. Technical standards that guide drug purchasing decisions could not be "unnecessary obstacles to trade," but these terms are not defined. These provisions are different from current practice. **They can delay procurement decisions, and allow companies to pressure agencies for higher prices.**
4. ***The many vague provisions of the Agreement will be interpreted and enforced by international dispute panels, which are not guided by or subject to U.S. law.*** Government agencies that appeal the many unclear provisions of the Agreement after it is enacted have no guarantee of prevailing. Trade panels can impose financial sanctions to achieve compliance.
5. ***Many Australian health professional associations oppose the FTA, and have stated that it will raise drug prices in Australia, which are currently closely controlled.*** The U.S. pharmaceutical industry claims that it is necessary to raise drug prices in Australia and other developed countries, to fund innovation in research, and eventually lower drug prices in the U.S. Public funding for research and development in the U.S. reflects concern for innovation, and **patent laws that protect products from competition for 20 years permit drug companies to recoup their investments**. But the 15% of revenues the industry spends on research increasingly focuses on copycat drugs that present little if any additional therapeutic value, while treatments for important health conditions are not explored. Prices are unaffordable for many. Companies are obliged to respond to shareholder expectations for the highest possible profits, and the industry's return on revenue is already among the highest in the U.S. **It is unclear how higher profit levels could lead the industry to offer more affordable prices. The crisis in the industry's complex business model will not be successfully resolved by undermining price controls abroad.**

U.S.–AUSTRALIA FREE TRADE AGREEMENT: IMPLICATIONS FOR PRESCRIPTION DRUG PRICES IN THE U.S. AND AUSTRALIA

Provisions Related To Setting Prices For Drugs

Paragraph 17.9.4 of the Agreement could block reimportation of less expensive medicines from other countries, termed "parallel importation." Additional rules that extend the terms of patents are included in *Chapter 17 on Intellectual Property*. The Agreement grants additional rights to drug patent holders that are likely to delay the entry into market of competitive generic drugs, and delay the resulting reduction in drug prices. These include "data exclusivity," the right not to release drug trial data to generic companies.

Annex 2–C, Pharmaceuticals, establishes rules for transparency and for independent review of decisions for government agencies that create lists of drugs and set prices for drugs, but do not directly procure them, such as Medicaid and Medicare.

Agencies that procure drugs directly, including the Veterans Administration, the Department of Defense, and the Indian Health Service, are covered by *Chapter 15, Government Procurement*.

1. ***The Agreement would block reimportation of less expensive drugs from other countries.***

Chapter 17.9.4 on parallel importation could be used to block reimportation of lower priced drugs into the U.S from any country. Reportedly other language in the Agreement prohibiting reimportation was removed earlier. However, this provision in the current the version of the Agreement posted on the U.S. Trade Representative website would have the same effect:

> Each Party shall provide that the exclusive right of the patent owner to prevent importation of a patented product, or a product that results from a patented process, without the consent of the patent owner shall not be limited by the sale or distribution of that product outside its territory, at least where the patentee has placed restrictions on importation by contract or other means.

Many Members of Congress and the public have expressed interest in reimportation; this Agreement would preempt a debate on the subject. There is no provision that allows future laws passed by the U.S. Congress to supersede this Agreement. Under Chapter 13, each country is allowed to identify current laws that do not conform with the Agreement and will remain exempt, and also areas where future domestic legislation can differ from the Agreement. There is no reference in this chapter or its related schedules and annexes to parallel importation of drugs, or to pharmaceuticals.

2. ***Transparency and independent review requirements for Medicare, Medicaid, and perhaps others.***

Annex 2–C, Pharmaceuticals, applies transparency requirements to "Federal healthcare authorities [that] operate or maintain procedures for listing new pharmaceuticals or indications for reimbursement purposes, or for setting the amount of reimbursement for pharmaceuticals, under its Federal healthcare programs." In the case of the U.S. this would apply to Medicare and Medicaid, which are both Federal programs. (A claim that Medicaid is not a Federal program because it is administered by States would likely be referred to an international trade dispute panel if challenged.) It would also apply to Australia's Pharmaceutical Benefits Scheme, which determines the list of available drugs and negotiates prices.

The independent review process is not defined. It suggests a decision-making process "independent" of government authorities, that will allow the industry (referred to as "applicants") to go beyond current adequate negotiation processes, and appeal for higher prices for more products.

The requirements are stated in Paragraph 2(a)–(f), Transparency, listed below.

a. ensure that consideration of all formal proposals for listing are completed within a specified time;
b. disclose procedural rules, methodologies, principles, and guidelines used to assess a proposal;
c. afford applicants timely opportunities to provide comments at relevant points in the process;
d. provide applicants with detailed written information regarding the basis for recommendations or determinations regarding the listing of new pharmaceuticals or for setting the amount of reimbursement by Federal healthcare authorities;
e. provide written information to the public regarding its recommendations or determinations, while protecting information considered to be confidential under the Party's law; and
f. **make available an independent review process that may be invoked at the request of an applicant directly affected by a recommendation or determination.**

Questions:

- Since international trade law and trade panels govern this Agreement, and since the independent review process is not clearly defined, how can agencies

assure that they will retain the final authority to assure appropriate lists and affordable prices for their vulnerable populations?
- For U.S. Federal health care authorities that do not currently comply with paragraphs (a)–(f) above, what legislative or regulatory change would be required for compliance?
- Since international trade law and trade panels govern this Agreement, how can agencies be certain regarding whether they are covered by this provision?

3. ***Technical specifications and independent review requirements for Federal and State health care agencies that establish formularies and engage in procurement of pharmaceuticals: VA, DoD, IHS***

Government programs that directly procure drugs, including the Veterans Administration and Department of Defense, are covered by requirements to establish **technical standards and independent review** for drug purchases in Chapter 15 on Government Procurement. **Specifically, Article 15.6 states that technical specifications cannot have the "purpose or effect of creating unnecessary obstacles to trade."** (See relevant provisions in **Attachment #1**.)

Article 15.11 describes the two levels of independent review that government procurement bodies must make available in the case of challenges to their decisions. This goes beyond the requirements of the World Trade Organization's Government Procurement Agreement, to which the U.S. is a party. The differences are detailed in **Attachment #2** below.

A footnote in Annex 2–C states: "Pharmaceutical formulary development and management shall be considered to be an aspect of government procurement of pharmaceutical products for Federal healthcare agencies that engage in government procurement. Government procurement of pharmaceutical products shall be governed by Chapter 15 (Government Procurement) and not the provisions of this Annex."

The second sentence of the footnote refers broadly to "Government procurement of pharmaceutical products," and does not limit the application merely to Federal agency activity. This suggests that **State drug formulary programs could be subject to the Agreement**.

Question 3a. Since international trade law and trade panels govern this Agreement, how can the VA and other agencies be assured that technical standards for setting formularies and prices will be considered acceptable, and do not constitute unnecessary obstacles to trade?

Question 3b. How can the VA and other agencies assure that they will retain the final authority to determine lists and prices of drugs, in the interest of assuring appropriate lists and affordable prices, and that "independent" review panels will not assume this authority?

Question 3c. What is the complete list of Federal and State health care agencies in the U.S. that engage in pharmaceutical formulary development and management?

Question 3d. Of these government health care agencies, to what degree do current procurement methods differ from the provisions of Chapter 15 of the U.S.-Australia FTA? (See Attachment #1.) What legislative and/or regulatory change(s) would be required to ensure compliance with the provisions of Chapter 15?

4. ***Trade agreements are interpreted by international panels which are not guided by or subject to U.S. law.***

Several provisions of the Agreement are ambiguous, including the definitions of the kinds of agencies covered, technical specifications, and independent review. The Government Procurement section (see above), for example, requires countries to prove that technical specifications on which they base their decisions do not have the "purpose or effect of creating unnecessary obstacles to trade." Countries involved in trade disputes have frequently been surprised at the types of technical standards that trade dispute panels find acceptable. Government agencies that appeal these provisions in the event of a challenge, including by asserting that they are exempt, have no guarantee of prevailing.

5. ***The FTA is intended to lead to higher drug prices in Australia. It is not clear that this will be likely to lower drug prices in the U.S.***

The Agreement applies the same requirements for transparency and independent review, described above, to Australia's Pharmaceutical Benefits Scheme, including consulting with applicants (which would include pharmaceutical companies), and providing independent avenues for appealing decisions about listing and pricing drugs. It also establishes a Medicines Working Group, intended to "promote discussion and mutual understanding of issues relating to this Annex (except those issues

covered in paragraph 4, including the importance of pharmaceutical research and development to continued improvement of healthcare outcomes,)" consisting of "officials of Federal Government agencies responsible for Federal healthcare programs and other appropriate Federal Government officials."

Several U.S. policymakers have stated that it is the explicit intention for this Agreement to raise drug prices in Australia. A recent submission to the Australian Senate Select Committee on the U.S.-Australia Free Trade Agreement presented concerns that these provisions will indeed raise drug prices there. Relevant sections of this report are reproduced below in **Attachment #3**.

Assuring the development of beneficial new drugs, and making them available at an affordable price, are essential concerns. In the U.S., these concerns have led to substantial public contributions, in funding and other resources, for research and development, and to patent laws that protect products from competition for 20 years to allow drug companies to recoup their investments. Nevertheless, innovation increasingly focuses on copycat drugs of uncertain therapeutic value, while treatments for important health conditions are not explored. Prices are unaffordable for many. It is among the most profitable industries in the U.S., earning a 19% return on revenue, or $72.6 billion in profits in 2002. **It is unclear how higher profit levels could lead the industry to offer more affordable prices in the U.S.** The industry has no track record of voluntarily reducing prices, without competition following expiration of patents, and is obliged to respond to shareholder expectations for the highest possible profits. **The current complex business model for the U.S. pharmaceutical industry appears to be at a crossroads, one that will not likely be successfully navigated or credibly addressed by undermining price control systems abroad.**

SUMMARY

The U.S.-Australia Free Trade Agreement contains a number of provisions related to pharmaceutical products that are likely to interfere with current efforts to achieve or maintain affordable prescription drug prices in the U.S. and in Australia. The Agreement preempts important rights of governments. Resolving international concerns about drug prices and availability will involve careful consideration of complex issues by a range of stakeholders. To the extent that these issues can be usefully addressed in trade agreements, multilateral settings are likely to be more productive than bilateral agreements. The provisions noted should be reconsidered, and should not serve as a precedent for future agreements.

ATTACHMENT #1: PROVISIONS ON TECHNICAL SPECIFICATIONS AND INDEPENDENT REVIEW FOR GOVERNMENT PROCUREMENT

ARTICLE 15.6: INFORMATION ON INTENDED PROCUREMENTS

Technical Specifications

A procuring entity may not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.

3. In prescribing the technical specifications for the good or service being procured, a procuring entity shall:
4. (a) specify the technical specifications, wherever appropriate, in terms of performance and functional requirements, rather than design or descriptive characteristics; and
   (b) base the technical specifications on international standards, where such exist and are applicable to the procuring entity, except where the use of an international standard would fail to meet the procuring entity's program requirements or would impose greater burdens than the use of a recognized national standard.
5. A procuring entity may not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.
6. A procuring entity may not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or

adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

7. Notwithstanding paragraph 6, a procuring entity may:
   (a) conduct market research in developing specifications for a particular procurement; or
   (b) allow a supplier that has been engaged to provide design or consulting services to participate in procurements related to such services, provided it would not give the supplier an unfair advantage over other suppliers.

ARTICLE 15.11: DOMESTIC REVIEW OF SUPPLIER CHALLENGES

1. In the event of a complaint by a supplier of a Party that there has been a breach of the other Party's measures implementing this Chapter in the context of a covered procurement in which the supplier has or had an interest, the Party of the procuring entity shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord timely and impartial consideration to any such complaint.
2. **Each Party shall maintain at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review challenges that suppliers submit, in accordance with the Party's law, relating to a covered procurement.** Each Party shall ensure that any such challenge not prejudice the supplier's participation in ongoing or future procurement activities.
3. Where a body other than an authority referred to in paragraph 2 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to **an impartial administrative or judicial authority that is independent of the procuring entity** that is the subject of the challenge.
4. Each Party shall ensure that the authorities referred to in paragraph 2 have the power to take prompt interim measures, pending the resolution of a challenge, to preserve the supplier's opportunity to participate in the procurement and to ensure that the procuring entities of the Party comply with its measures implementing this Chapter. Such interim measures may include, where appropriate, suspending the contract award or the performance of a contract that has already been awarded.
5. Each Party shall ensure that its review procedures are conducted in accordance with the following:
   (a) a supplier shall be allowed sufficient time to prepare and submit a written challenge, which in no case shall be less than ten days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;
   (b) a procuring entity shall respond in writing to a supplier's complaint and provide all relevant documents to the review authority;
   (c) a supplier that initiates a complaint shall be provided an opportunity to reply to the procuring entity's response before the review authority takes a decision on the complaint; and
   (d) the review authority shall provide its decision on a supplier's challenge in a timely fashion, in writing, with an explanation of the basis for the decision.

ATTACHMENT #2: DIFFERENCES BETWEEN WTO GOVERNMENT PROCUREMENT AGREEMENT AND U.S.–AUSTRALIA FTA ON INDEPENDENT REVIEW

Issue	*WTO Government Procurement Agreement*	*U.S.-Australia Free Trade Agreement*	*Difference*
Levels of review.	*Article XX* *Challenge Procedures* 1. In the event of a complaint by a supplier that there has been a breach of this Agreement in the context of a procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.	ARTICLE 15.11: DOMESTIC REVIEW OF SUPPLIER CHALLENGES 1. In the event of a complaint by a supplier of a Party that there has been a breach of the other Party's measures implementing this Chapter in the context of a covered procurement in which the supplier has or had an interest, the Party of the procuring entity shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord timely and impartial consideration to any such complaint. **2. Each Party shall maintain at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review challenges that suppliers submit,** in accordance with the Party's law, relating to a covered procurement.	WTO requires impartial review by the procuring entity. Australia requires a second level of review, and empowers an independent authority to review the procuring entity's decision. This provides opportunities to delay procurement decisions.
Challenge of procurement decision.	7. Challenge procedures shall provide for: (a) rapid interim measures to correct breaches of the Agreement and **to preserve** action may result in suspension of the procurement process. However, **procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied**. In such circumstances, just cause for not acting shall be provided in writing; (b) an assessment and a possibility for a decision on the justification of the challenge;	4. Each Party shall ensure that the authorities referred to in paragraph 2 have the power to take prompt interim measures, pending the resolution of a challenge, to **preserve the supplier's opportunity to participate in the procurement** and to ensure that the procuring entities of the Party comply with its measures implementing this Chapter. **Such interim measures may include, where appropriate, suspending the contract award or the performance of a contract that has already been awarded.**	1. The WTO requires only that interim corrective measures preserve commercial opportunities generally; U.S.-Australia gives specific rights to the complaining supplier for interim measures. 2. The WTO calls for procedures that can provide for interim measures (such as delaying a procurement decision). U.S.-Australia gives that power to the independent review authority, which is separate from the procuring entity. 3. The WTO has an exception for

Issue	*WTO Government Procurement Agreement*	*U.S.-Australia Free Trade Agreement*	*Difference*
	(c) correction of the breach of the Agreement or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.		the public interest; U.S.-Australia has no such exception.

ATTACHMENT #3: AUSTRALIAN SUBMISSION ON THE FTA AND DRUG PRICES

The FTA and the PBS

A Submission to the Australia Senate Select Committee on the U.S.-Australia Free Trade Agreement

Professor Peter Drahos, Professor of Law, Australian National University, *peter.drahos@anu.edu.au*.

Dr. Thomas Faunce, Senior Lecturer, Medical School, Lecturer, Law Faculty, Australian National University, *fauncet@law.anu.edu.au*.

Martyn Goddard, Former consumer member, Pharmaceutical Benefits Advisory Committee (PBAC), *martyng@netspace.net.au*.

Professor David Henry, Professor of Clinical Pharmacology, University of Newcastle, Former member, PBAC, Former chair, PBAC Economic Sub-Committee, *mddah@mail.newcastle.edu.au*.

THE PBAC APPEALS PROCEDURE

Under the FTA, Australia has undertaken to "make available an independent review process" by which a manufacturer can challenge PBS listing decisions made by the key committee, the Pharmaceutical Benefits Pricing Authority.

The government has repeatedly promised that this would not be able to set aside or overturn PBAC decisions. However, the realities of the FTA are that Australia is likely to face very large sanctions under the dispute resolution and enforcement sections of the FTA if it does not provide an appeals process that the U.S. and its drug makers find acceptable. Any process that does not have the power to reverse decisions, and which merely returns a submission to the committee for further consideration, will not represent any advance for the American side or the U.S. companies. According to several statements from the industry and the American side, an appeals process without power is not what they think they have secured.

Such a process will seriously compromise the negotiating position of the PBAC. At present, the committee commissions sophisticated economic evaluations of each new drug and decides whether the price requested by the company represents fair value in terms of the health benefits the drug is likely to provide. If the answer is no, companies must reduce their price or find new data to justify the price they want. Often, the price comes down.

If, rather than re-submitting to the PBAC, sponsor companies could go to an alternative forum to have the PBAC's decision overturned or changed, the committee would find it far more difficult to enforce price discipline on major drug makers.

DISPUTE RESOLUTION AND ENFORCEMENT

Often, when trade negotiators cannot finalise contentious points of detail, they produce a text that is deliberately unclear on these matters and that can be sorted out later. These "constructive ambiguities" abound in those elements of the FTA that affect the pharmaceutical market and the PBS. These ambiguous clauses allow each side to claim a "win" and to secure endorsement from each nation's legislatures. But further consultation and dispute resolution processes will be put in place to sort these matters out later, outside of public and parliamentary scrutiny.

Two such processes are included in this FTA: a consultative Medicines Working Group, and the overall disputes resolution processes.

The **Medicines Working Group** will comprise Federal officials from each country. Decisions will effectively be binding on Australia unless the draconian provisions of the FTA's enforcement processes are to be risked. The Australian parliament is being asked to endorse an agreement that does not specify what will happen to key elements of one of its central national health programs, the PBS; and

that gives immense power to a non-Australian group meeting behind closed doors, with no published agenda and no accountability to the Australian people, parliament or press.

Matters likely to be discussed by the Medicines Working Group include the PBAC appeals procedure, crucial technical aspects of PBAC economic evaluations, involvement of companies in PBAC decision-making, whether the Australian government will still be able to remove drugs from the PBS and demands about speed of listing. Most of these matters would potentially diminish the negotiating position of the PBS in dealing with overseas drug companies and would lead to higher drug prices.

If Australia does not comply with U.S. demands, or does not change its laws, regulations and processes to put into effect the FTA and the judgments of the Medicines Working Group, the **disputes resolution and enforcement** processes will come into force. These involve the establishment of committees and working groups that "seek the advice of non-governmental persons or groups"—a measure that brings the industry and its lobbyists directly into the processes of administering and enforcing the FTA.

If Australia is found to be in breach, a fine can be set of up to 50 percent of the value of the benefit Australia is calculated to have gained by its breach. As some single drugs cost the PBS more than $100 million a year, these fines are likely to be very large indeed. Ongoing penalties of up to $US15 million may also be imposed for each instance of each breach.

And "benefits under the agreement" may be suspended. This means the U.S. could deny Australia any or all of the access achieved under the FTA to its market for any Australian product, including primary products such as beef and lamb.

PRESSURES ON THE PBAC

As discussed above, the PBS listing process is a combination of valuation followed by negotiation, built on objective economic and clinical evaluation of their products. The PBS does not attempt to gain the lowest possible price: rather, it attempts to pay what it believes, based on the evidence of clinical safety and efficacy, is fair and consistent with what is paid for other medicines. It is a sophisticated and very successful program that has been copied by other countries. The PBS has provided Australia with very competitive drug prices. Local branch offices of global drug companies are under immense power from their overseas head offices to achieve prices closer to those ruling in the U.S.; therefore, anything that weakens the power of the PBAC to reject unsatisfactory prices, and to hold out for better value, will inevitably cause costs to rise and add to the long-term problems of financial sustainability facing the PBS.

Australia's ban on direct-to-consumer advertising of prescription medicines will become easier for companies to circumvent. This will add to the pressure on the PBAC to make new drugs available whatever the cost. It will also increase total cost as patients are induced to switch to new, expensive drugs from older, cheaper ones or from no drug at all.

Company representatives will become involved in the actual meetings of the PBAC and its technical sub-committees, and will be able to make personal sales pitches to the meetings deciding on the value of their products. The FTA will reinforce companies' ability to seek higher prices for already-listed drugs, but there will be no capacity for the PBS to review prices downwards if (as often happens) drugs perform less well in the "real world" of actual clinical use than they did in the original clinical trials.

The combined pressures of all these measures on the PBAC and its members will be enormous and extraordinarily difficult to resist. The committee will effectively be under siege: the number of interests attacking any negative decision will have multiplied both in number and in strength. Despite its present powers under the *National Health Act*, it is difficult to see how the committee will be able to continue serving the public's interest properly under such conditions.

Statement of ChevronTexaco, San Ramon, California

ChevronTexaco Corp. ranks among the world's largest and most competitive global energy companies. Headquartered in San Ramon, California, it is engaged in every aspect of the oil and gas industry, including exploration and production; refining, marketing and transportation; chemicals manufacturing and sales; and power generation. With businesses in 180 countries, ChevronTexaco is the second largest U.S. company in the petroleum sector.

ChevronTexaco has had a long history in the Australian market. Its Australian downstream activities began in New South Wales shortly after World War I. Presently ChevronTexaco, through its subsidiary, owns 50% of Caltex Australia Ltd., an Australian publicly listed company. Most of the other 28,000 shareholders are Australians. Caltex Australia is among the country's leading oil refining and marketing companies and is involved in the refining, distribution and marketing of fuels and lubricants including petrol, jet and diesel fuel, liquefied petroleum gas, and industrial and aviation lubricants.

Today, Caltex Australia maintains wholesale, commercial and retail operations in all states and territories in Australia. In addition, the company owns and operates two fuel refineries with a capacity of 220,000 barrels per day.

Upstream activities began for both Chevron and Texaco in 1951 when the companies (under the Caltex banner) joined Australian company Ampol to explore leases in Western Australia. These companies were part of a venture that made Australian history through its discovery of the country's first flowing oil at Rough Range in 1953. More successes for Chevron and Texaco followed, including the 1981 discovery of the Gorgon gas field and the joint venture to begin liquefied natural gas (LNG) production in 1989 from the North West Shelf Venture (NWSV).

Today, ChevronTexaco continues to produce oil from Barrow Island (over 300 million barrels produced since commercial discovery in 1964) and nearby oil fields safely, effectively and economically. The NWSV produces about 1.5 billion cubic feet of gas per day. The gas is sold as LNG for export and also provides the bulk of gas supply for Western Australia's domestic market. The project facilities include two of the world's largest gas production platforms. The NWSV has established, for Australia, a reputation as a safe, reliable and secure supplier of LNG.

ChevronTexaco is operator of the Gorgon development, and is leading the marketing and development of the Gorgon area gas fields. Gorgon is a world class resource being developed to supply natural gas to markets in Asia-Pacific, including China and North America, and the Australian domestic market.

With this long-standing and successful history, ChevronTexaco is well-placed to comment on the impact of the recently concluded Free Trade Agreement between the United States and Australia from the perspective of a U.S. company with strong, enduring and expanding interests in Australia. This FTA is a commercially meaningful agreement that will provide significant new opportunities for farmers, companies and workers in both countries.

Trade liberalization is a critical factor to promoting economic growth and we anticipate that this agreement will facilitate such growth in our two countries and globally.

And from the energy sector perspective, we know that energy consumption tracks economic development both as a fuel to growing businesses and to households as the general standard of living increases. With this, yet another benefit of free trade to ChevronTexaco is the opportunity created to produce and sell more energy to fuel the resultant growing economy and its beneficiaries. Further to this end, we are more closely recognizing energy as a catalyst to, and not just a beneficiary of, the opportunity created by free and open trade.

In addition, other FTA provisions such as those related to domestic regulation, transparency, local presence, and procurement reinforce existing practices and are all positive for energy services providers.

It is important to note, for ChevronTexaco and other companies involved in energy security, one of the most critical elements of the United States' international trade agenda is to promote strong investment disciplines. Clear, consistent protection of U.S. private investment is especially critical in the area of energy security. ChevronTexaco operates in over 180 countries worldwide, with over 60% of its total assets overseas. These overseas assets total over 50 billion dollars, including investments in physical assets totaling over 27 billion. Nearly 70% of its production and exploration assets are overseas, and protection of these non-domestic sources of oil and gas has never been more vital to our country.

Studies have demonstrated that U.S. foreign investment actually spurs productivity at home by promoting research and development, investment in physical capital, and new technology. This results in higher-paying jobs and a commensurate rise in the standard of living. There are also longer-term benefits to the national interests of the U.S. including a stable energy supply, promoting the rule of law regionally and multinationally, and developing stronger financial systems around the world.

We believe that the U.S. Government can and must continue to play a leading role in establishing high standards of protection for all U.S. private investments abroad. Specifically, the government should work to promote investment agreements worldwide that create consistent standards for existing and future contracts; ad-

vance fair and equitable treatment in resolving disputes; contain strong safeguards against regulatory takings; and provide for international arbitration for investor-state disputes. These high standards will not only spur growth globally and here at home, but will ensure a more level playing field for U.S investors vis-à-vis international competitors.

Experience has demonstrated that trade liberalization can create both additional wealth and opportunity for all participating economies. Those gains transfer to political, economic, and general security, and in this case serve to further cement an already strong alliance between our two nations.

Statement of Timothy J. McBride, DaimlerChrysler Corporation, Auburn Hills, Michigan

DaimlerChrysler Corporation is pleased to present this statement in support of the U.S.-Australia Free Trade Agreement. DaimlerChrysler business units and affiliates of DaimlerChrysler Corporation (a.k.a. the Chrysler Group), Mercedes-Benz, Freightliner and Detroit Diesel employ more than 100,000 Americans and supports an additional 160,000 retirees and dependents. DaimlerChrysler has facilities in fifteen States, and as a leading motor vehicle exporter from the U.S., the Chrysler Group, Freightliner and Mercedes-Benz will directly benefit from the U.S.-Australia Free Trade Agreement.

The recently published U.S. International Trade Commission ("USITC") report on the impact of the U.S.-Australia Free Trade Agreement on the U.S. economy highlights the fact that the U.S. runs a trade surplus with Australia in the motor vehicle sector. According to the USITC report, in 2003, the U.S. exported $387 million to Australia while importing $140 million from Australia in the motor vehicle goods sector. The report noted that GM and Ford were the largest producers in both markets, and that both companies should benefit from the agreement.

What the ITC report neglected to mention was that DaimlerChrysler produced a significant portion of the U.S. exports to Australia in the motor vehicle category in 2003. DaimlerChrysler entities exported $200 million, or over half of total motor vehicle exports to Australia in 2003. This included the following:

- 2,479 Jeep vehicles produced in Toledo, Ohio valued at $40.6 million;
- 3,250 M-Class Mercedes vehicles produced in Alabama valued at $58.7 million;
- 674 Freightliner trucks produced in North Carolina valued at $55.7 million; and,
- 480 Western Star trucks produced in Portland, Oregon valued at $44.9 million. Both of the latter volumes and revenues will be higher this year.

DaimlerChrysler will see immediate benefits from the free trade agreement with Australia. Australia was the Chrysler Group's 5th largest export destination outside of NAFTA and Freightliner's top export destination outside of NAFTA in 2003. The current 5% duty on commercial and all-wheel drive vehicles will be eliminated immediately upon implementation. This will produce a cost saving of $10 million in duties for DaimlerChrysler based on 2003 figures, or an average of $800 per Jeep and M-Class vehicle and $4,000 per Freightliner or Western Star truck.

The U.S.-Australia Free Trade Agreement will make DaimlerChrysler U.S. exports more competitive in Australia, benefiting the company, its workers and the U.S. economy. We urge Congress to act expeditiously and vote favorably on this beneficial agreement.

Dakota Rural Action
Brookings, SD 57767
June 16, 2004

Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

On behalf of Dakota Rural Action (DRA), we are submitting comments to the House Ways and Means Committee regarding the U.S.-Australia Free Trade Agreement.

DRA is a non-profit, grassroots, family agriculture organization that builds leadership and takes action to preserve our rural quality of life. DRA is an affiliate of

WORC—the Western Organization of Resource Councils. WORC is a regional network of seven grassroots community organizations. Those groups include 8,750 members and 49 local chapters.

There are at least three serious flaws in the Australia trade agreement. First, this agreement threatens family agriculture, businesses dependent on agriculture, and rural communities. Next, it gives too much economic power to multi-national corporations. Finally, the negotiation and ratification process is unfair and undemocratic. If passed, this agreement will have disastrous consequences for many farmers, ranchers, small businesses, and rural communities.

This trade agreement would immediately end or phase out tariffs for many agricultural products, including beef, lamb, sheep, wool, wheat, and dairy products. This would clear the way for Australia to flood U.S. markets with these products, undercutting the viability of U.S. farmers and ranchers. Australia is already accelerating agricultural trade with the U.S. and currently exports beef, lamb and sheep at rates above its quota, despite tariffs. Reducing and dropping tariffs through a trade agreement with Australia is not necessary to ensure trade between the two countries.

In the case of beef, the 18-year phase out of beef and cattle tariffs will steadily increase imports of beef to the detriment of the U.S. cattle production industry. Under the agreement, Australian beef imported below the Tariff Rate Quotas (TRQ) would not be tariffed, and that TRQ will increase steadily for 18 years. Beef exceeding the TRQ would continue to be tariffed until year 18 when all tariffs and quotas will expire. The result will be the slow demise of the U.S. cattle producer.

Australia has continued to build its beef herds and is a net exporter of beef. Because Australia now produces more beef than it consumes, there is no opportunity for U.S. producers to develop an export market to Australia. The loss of U.S. domestic markets due to increased beef imports will result in lost jobs for ranchers. This trade agreement in short will outsource ranchers to Australia, eliminating jobs for others who rely on the American rancher for their livelihoods.

Other sectors of rural economies will also be hurt under this agreement. Most lamb and sheep meat tariffs will end immediately. The remaining lamb and sheep meat tariffs will phase out over four years. This creates even easier access for an Australian product, which has already devastated the U.S. sheep rancher.

Although there will be no changes in the tariff on Australian dairy products that are above the TRQ, there will be an increase in the quota allowed into the U.S. The agreement allows access to dairy products previously excluded from the U.S. market, such as certain cheese, butter, milk, cream, and ice cream products. Furthermore, tariffs on wheat and cereal flour mixes will end. Although not currently a large wheat exporter to the U.S., Australia is developing its durum market. In addition, all Australian wheat is bought, sold, and controlled through the Australian Wheat Board. This structure does not allow for an open, competitive and transparent market system.

This agreement would also intensify the existing problems of concentration within both American and Australian multi-national food suppliers. Many multi-national agri-conglomerates have investments in both countries. For example, Swift and Co. owns Australia's largest meat processor, Australian Meat Holdings. Swift and Co. is also the second largest meat packer and procurer of beef in the U.S.

Negotiating trade agreements, like the U.S.-Australia Trade Agreement, largely happens behind closed doors. Very few people participate, but the chosen few essentially lock in entire business sectors. The very people these agreements impact the most, for all practical purposes, have no voice in this process.

In addition, Congress gave away, through the Trade Promotion Authority Act (Fast Track), its constitutional responsibility to advise and consent on all treaties with foreign governments. The result is that our organizations and members have very limited opportunities to influence this harmful treaty and its impacts on our livelihoods and communities.

We believe that American trade policy should strengthen, not weaken, the public health, environment, food sovereignty, working conditions, labor rights, and transparent, competitive market principles of this country and all countries. This trade agreement violates these principles. Furthermore, this trade agreement with Australia will result in lost jobs for Americans. Imports of Australian agricultural products will drive family farmers and ranchers out of business, forcing them to look for jobs outside of agriculture. The rural communities that rely on these farmers and ranchers for their economy will also lose the jobs that are maintained by agriculture.

For all of these reasons, we respectfully request that you reject the Australian Free Trade Agreement.

Sincerely,

Margaret Nachtigall

Statement of Elizabeth Frazee, Entertainment Industry Coalition for Free Trade

The Entertainment Industry Coalition for Free Trade is pleased to offer written testimony about the benefits of the U.S.-Australia Free Trade Agreement to America's entertainment industries. The Entertainment Industry Coalition for Free Trade represents the interests of Americans who create, produce, distribute and exhibit creative expressions, including theatrical motion pictures, television programming, home video entertainment, recorded music, and video games. Our members include multi-channel programmers and cinema owners, producers and distributors, entertainment guilds and unions, trade associations and individual companies: AFMA; BMG Music; Directors Guild of America; Discovery Communications, EMI Recorded Music; Interactive Digital Software Association; The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, AFL–CIO, CLC (IATSE); Metro-Goldwyn-Mayer Studios Inc.; Motion Picture Association of America; National Association of Theatre Owners; New Line Cinema; the News Corporation Limited; Paramount Pictures; Producers Guild of America; Recording Industry Association of America; Sony Music Entertainment Inc.; Sony Pictures Entertainment Inc.; Television Association of Programmers (TAP) Latin America; Time Warner; Twentieth Century Fox Film Corporation; Universal Music Group; Viacom; Universal Studios; the Walt Disney Company; Warner Bros.; and Warner Music Group; and The Writers Guild of America, west (WGAw). Additional information regarding our membership can be found in the attached document: ***"The Entertainment Industry Coalition for Free Trade: WHO WE ARE."***

International markets are vital to our companies and our creative talent. Exports are an essential component of all our industries, accounting for forty to sixty percent of recorded music and motion picture revenues. This strong export base helps sustain American jobs. Australia is a particularly significant market for our industries. For example, Australia is the eighth-largest market for the filmed entertainment industry.

America's creative industries, the men and women who work in those industries, as well as the cinemas and cable and satellite channels that exhibit and help distribute our entertainment products are all under attack from those who would steal our creative output. The impact of piracy has grown in recent years with the advance of digital technology. Organized criminal organizations control much of the international trade in pirated optical discs containing recorded music, films and games, as well as game cartridges. While the Internet offers great opportunities for reaching new generations, it also provides an opportunity for the free, unauthorized downloading of protected works through Internet peer-to-peer systems.

Creative industries in Australia, like those in the United States, face serious threats from both hard goods and Internet piracy. Piracy rates in Australia are relatively low, only about 8% for home video entertainment, but are clearly on the increase. Australia's proximity to large illegal manufacturers and exports of pirate CDs, DVDs, and video games has made it vulnerable to illegal imports of pirated works from major producers and exporters of pirated works, such as Malaysia. Local replication through the unauthorized commercial copying of content onto recordable optical discs has also been growing in Australia. Internet piracy is also a large and growing threat to the creative industries.

These U.S.-Australia FTA includes commitments vital to our Coalition, including strong standards of copyright protections that address some shortcomings in Australia's current legal regime for enforcing intellectual property in the digital age. Australia is also an influential player in global copyright policy fora. Its intellectual property laws and policies are often regarded as models by other countries, especially in its region. This Free Trade Agreement creates a positive model that embodies world-class levels of protection of copyright and concrete commitments regarding enforcement. Finally, this agreement provides commitments on market access for the goods and services we produce and distribute that both provide increased predictability while also respecting legitimate cultural concerns for ensuring that local voices will be heard and local stories told long into the future.

The agreements create clear and binding rules for the protection of intellectual property in the digital economy. The agreement extends the term of protection for copyrighted works in Australia in line with international trends. Australia had not ratified the 1996 WIPO Internet Treaties, but is doing so now as a result of the FTA commitments. The FTA will require Australia to revise and strengthen its prohibitions against the provision of goods and services that circumvent technological measures used to protect copyrighted works from unauthorized access and copying, a critical issue for our industries not currently addressed by Australian law. Australia will adopt new protections against the theft of encrypted satellite signals, including the manufacture and trafficking in tools to steal those signals.

The Coalition regrets that the Agreement failed to change certain existing practices in Australia that permit radio stations and analog broadcasters to deny payment to U.S. performers and record producers. In an era in which the communication of signals is quickly developing as one of the principal means of delivering content to consumers, this lack of protection and permitted discriminatory treatment of U.S. nationals is indeed regrettable and ill-advised.

Strong enforcement provisions are essential to intellectual property protection. The new agreement makes important advances in addressing some impediments that the entertainment industries had experienced in Australia. For example, the FTA will ease the costly and cumbersome procedural burdens of proving ownership and subsistence of copyright in criminal cases by strengthening applicable resumptions. It will ensure that adequate legal incentives are in place to encourage cooperation by Internet Service Providers in dealing with online piracy. To ensure criminal remedies against Internet piracy, the Agreement requires that infringing acts without a profit motive or commercial purpose but which case damage "on a commercial scale" are subject to criminal penalties.

Second, the FTA balances Australia's long-standing commitment to promoting local cultural expression with the U.S. industry's desire to secure predictable and continued access to the important Australian market. Australia will maintain its current cultural promotion measures, including a local content quotas on broadcast television and an investment requirement on subscription television, measures which are not unduly burdensome to U.S. companies. Australia also presumed some flexibility to adopt new measures to assure that Australian content continues to be available to Australian consumers as technology changes, but Australia will also have to take U.S. trade interests into consideration in designing such new measures.

Third, the agreement requires non-discriminatory treatment of digital products, and prohibits the imposition of customs duties on such products.

Fourth, the agreements require that valuation for content-based products like films, videos or music CDs be based on the value of the carrier media—not on an artificial projection of revenues.

Finally, we sought and the Agreement achieves tariff reductions on the physical products created by our industry and zero duties for the inputs used by industries. These range from sound and projection equipment and state of the art seating for cinemas, to promotional materials and the equipment used in the production of films and music.

We praise the work of Ambassador Zoellick and his staff in concluding this historic Agreement.

The Entertainment Industry Coalition calls for congressional approval of the U.S.-Australia Free Trade Agreement. Congressional approval of this Agreement would help promote one of our economy's most vital sectors.

Statement of General Motors Corporation, Detroit, Michigan

Implementation of the U.S.-Australia Free Trade Agreement

The General Motors Corporation strongly supports the U.S.-Australia Free Trade Agreement and urges the U.S. Congress to approve the implementing language that will enable this agreement to become a reality. As one of the largest American companies exporting goods to Australia as well as one of the largest investors in Australia, GM will enjoy immediate benefits from this agreement, which will encourage a closer economic relationship between the two countries.

Australia, a passenger vehicle market of 910,000 units in 2003, is an important export market for U.S. automotive products. U.S. automotive sector exports to Australia totaled over $1 billion in 2003, representing about 8% of total U.S. automotive exports. The United States, the largest passenger vehicle market in the world with

sales of 17 million units in 2003, imported only $336 million in automotive products from Australia last year, resulting in an automotive trade sector surplus of over $650 million. In GM's case, a substantial amount of components and other automotive parts exported from the United States support our vehicle and engine production in Australia.

General Motors has substantial business interests in the Australian automotive market. Holden Ltd., GM's wholly owned subsidiary in Australia, manufactures, sells, and exports passenger vehicles, light commercial vehicles, recreational vehicles, and engines. In 2003, Holden sold 175,412 vehicles in the Australian market, of which 112,155 were domestically manufactured. Also last year, Holden produced 249,854 four and six-cylinder engines. Holden's Engineering Services division also provides engineering support to GM product programs throughout the Asia Pacific region and in Europe.

As negotiated, the U.S.-Australia FTA will remove duties on most automotive products upon accession, with the remaining tariff on passenger cars imported into Australia phasing out by 2010. This will benefit General Motors not only because the cost of vehicles and their associated components traded between the two countries will be reduced, but also because the trade agreement creates new opportunities for closer integration of our U.S. and Australian operations. Some of the benefits of the FTA are described below:

Stimulate Demand for Automotive Products

Experience indicates that market liberalization and the removal of trade barriers stimulates economic growth, which increases demand for motor vehicles. Given the large differences in size between the U.S. and Australian markets, we expect that these impacts will be relatively larger in Australia than in the United States. However, given the significant degree of U.S. content in the products produced at Holden, we expect U.S. suppliers to share in the benefits of a larger Australian automotive market.

Impact of Duty Reductions on Component Trade

General Motors currently exports significant volumes of automotive components, primarily engines and transmission, from the U.S. to Australia and the level of our exports continues to increase. Given the current Australian duty rate of 15% on these parts, eliminating the duty will make U.S.-sourced components more competitive and will provide significant savings to GM.

Impact of Duty Reductions on Passenger Vehicle Trade

The agreement eliminates the current 2.5% duty on passenger cars imported into the United States. GM will benefit immediately as the duty would be eliminated on the Pontiac GTO, which is currently produced in Australia for sale in the United States. This FTA also provides for a phase out by 2010 of the 10% duty on passenger car imports to Australia. These duty reductions will provide GM greater flexibility in managing our product portfolios in future years.

Opportunities to Integrate GM Operations

Key to GM's success in an increasingly competitive automotive industry is executing a coordinated, global approach. Accordingly, we support policies and practices that make it easier for GM to share resources, products, and technologies among our operations around the world. We believe this FTA will enhance our ability to effectively deploy our corporate resources.

In conclusion, General Motors believes that the U.S.-Australia FTA offers significant benefits to our operations in the United States and to our American supplier base. We urge the U.S. Congress to expedite its approval of this important agreement.

Statement of Kathleen Jaeger, Generic Pharmaceutical Association, Arlington, Virginia

The Generic Pharmaceutical Association (GPhA) appreciates the opportunity to comment on the U.S.-Australia Free Trade Agreement before the Committee on Ways and Means of the U.S. House of Representatives. GPhA represents manufacturers and distributors of finished generic pharmaceutical products, manufacturers and distributors of bulk active pharmaceutical chemicals, and suppliers of other goods and services to the generic pharmaceutical industry. More than half of all prescriptions dispensed in the United States last year were filled with generics, yet generic drugs represent less than 8 percent of total pharmaceutical expenditures. No

other industry has made, nor continues to make, a greater contribution to affordable health care in this country than the generic pharmaceutical industry.

U.S.-Australia Free Trade Agreement

Introduction

GPhA is committed to a balance between innovation and access. To that end, we also are committed to innovation in medicines and the preservation of intellectual property protections both in the United States and abroad. With this fragile balance as our main concern, we believe it is essential that new trade agreements maintain parity between existing U.S. standards and requirements, and those included in new trade agreements. Selecting certain provisions, while ignoring others, could destroy the balance between access and innovation, which could adversely impact American consumers' access to affordable pharmaceuticals.

The generic pharmaceutical sector is uniquely impacted by the harmonization of agreements on intellectual property protections for pharmaceuticals—particularly insofar as they increase market exclusivity periods or remove necessary access provisions (e.g., the Declaratory Judgment actions). New trade agreements could potentially affect American consumers' access to affordable drugs as well as the business interests of the U.S. generic pharmaceutical industry. The important role that generic drugs play in providing American consumers with affordable medicines can be expanded into other nations, but only if parity exists to maintain the integrity of U.S. standards and requirements.

Unfortunately, we find that the recently concluded U.S.-Australia Free Trade Agreement, fails to achieve this parity because it:

- Fails to require the Bolar provision—which ensures that generic medicines enter the market immediately after patent expiry to improve access and encourage competition; and
- Provides for market exclusivity that extends slightly beyond the U.S. provisions of 5 years of market exclusivity for new chemical moieties and 3 years of market exclusivity for new products. (See Article 17.10(1)(c) "at least five years").

At a minimum, GPhA believes that the concept of five-year market exclusivity within trade agreements be accompanied by the Bolar Provision, without accruing any additional market exclusivity or patent extension benefits. GPhA accordingly supports a balanced trade approach. One that includes the following key access issues:

1. **Market Exclusivity**

U.S. law establishes that a generic applicant cannot submit an abbreviated new drug application for a product that contains the same active moiety as in the new chemical entity for a period of 5 years from the date of the approval of the first approved new drug application. Art. 39.3 of TRIPS establishes that "Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products, which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves considerable effort, shall protect such data against unfair commercial use." However, it does not establish any specific period for such market exclusivity.

Access to such data is necessary for generic companies to be able to submit early applications for the marketing approval of much needed generic drugs. Market exclusivity extensions could result in unnecessary delays of the application for marketing approval of generic companies. Such delays result in increased pharmaceutical costs for consumers.

GPhA strongly opposes any extension to market exclusivity concepts beyond what it is currently in the U.S. law. Last November, we also expressed our opposition to the language that was proposed in the draft of the Free Trade Area of the Americas (FTAA) (Section 10, Article [1.2], [1.4], to establish "at least" five years of data protection). We have seen with great concern that the text of the U.S.-Australia FTA states "at least 5 years." GPhA strongly opposes inclusion of similar language for all future agreements as such language can potentially delay consumer access to more affordable medicines both in the United States as well as in its trading partners. It is essential that consumers have access to affordable drugs immediately after the expiration of a patent.

2. **Bolar Provision**

The "Bolar" provision is a critical U.S. provision that allows for the development, testing and experimental work required for the registration of a generic medicine during the patent period of the original product. The purpose of this provision is to ensure that generic medicines enter the market immediately after patent expiry

to improve access and encourage competition. This provision has been upheld by the World Trade Organization (WTO) in a dispute ruling as conforming to the Agreement on Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS). In its report adopted on April 7, 2000, a WTO dispute settlement panel said Canadian law conforms to the TRIPS Agreement in allowing manufacturers to develop the necessary registration information and test data. (The case was titled "Canada—Patent Protection for Pharmaceutical Products").

As noted above, the U.S.-Australia FTA does not specifically state that the Bolar Provision should be included in the legislation or regulations of the Parties, but only includes a weak reference stating that "if a Party permits the use by a third party of the subject matter of a subsisting patent to generate information necessary to support an application for marketing approval of a pharmaceutical product, that Party shall provide that any product produced under such authority shall not be made, used or sold in the territory of that Party other than for purposes related to generating information to meet requirements for marketing approval for the product, and if the Party permits exportation, the product shall only be exported outside the territory of that Party for purposes of meeting marketing approval requirements of that Party."

Clearly, the omission of the specific requirement of the Bolar Provision is of grave concern to GPhA. This provision is essential to ensure that consumers have access to more affordable drugs as soon as a patent expires and has proven to be an effective measure in the United States that could also be of benefit to other nations. We believe that it is essential that future trade agreements include specific language to ensure its inclusion in the laws of the Parties.

3. **Patent Harmonization Efforts**

We are concerned with Art. 17.9.14, which establishes that "[. . .] each Party shall endeavor to participate in international patent harmonization efforts, including the WIPO fora dealing with reform and development of the international patent system."

As stated above, we believe it is essential that new trade agreements maintain parity between existing U.S. standards and requirements, and those included in new trade agreements. Language regarding "international patent harmonization" may include provisions that may restrict access to affordable medicines in the United States. The approval of the TRIPS Agreement provides an example of this. Until then the U.S. had 17 years of patent protection from the date of granting of a patent, but then had to change it to 20 years from the date of filing of a patent in order to be in conformity with the new international treaty. A study conducted by University of Minnesota Professor Stephen Schondelmeyer concluded that the cost of this extension would "exceed six billion over the next two decades." The report also predicted that "[t]he annual generic savings lost by American consumers due to delayed generic entry will range from $200 million in some years to over $500 million in other years."[1]

Furthermore, such type of language may not fully respect the mandate given by the U.S. Congress to USTR negotiators in the Trade Promotion Authority section of the Trade Act of 2002 which specifically includes the following among its trade negotiating objectives-intellectual property section:

4. INTELLECTUAL PROPERTY—The principal negotiating objectives of the United States regarding trade-related intellectual property are—

   A. to further promote adequate and effective protection of intellectual property rights, including through—

      I. . . .

      II. ensuring that the provisions of any multilateral or bilateral trade agreement governing intellectual property rights that is entered into by the United States *reflect a standard of protection similar to that found in United States law*;

Therefore, we oppose such language for the U.S.-Australian FTA and for future trade agreements and we hope that the U.S. Congress addresses this issue with USTR trade negotiators.

Conclusion

As the trade association representing a major industry in a key industrial sector, GPhA supports efforts to negotiate trade agreements with other nations that help

[1] S. Schondelmeyer, "Economic Impact of GATT Patent Extension on Currently Marketed Drugs," PRIME Institute, University of Minnesota, March 1995.

to encourage innovation and access to affordable medicines. Nevertheless, we are concerned about the lack of specific language in the U.S.-Australia FTA to support important provisions for consumers and for the generic industry such as the implementation of the Bolar Provision that may unfairly delay generic competition.

GPhA thanks the Committee for considering its comments, and we are committed to continuing to work with Congress and the Committee with respect to the U.S.-Australia Free Trade Agreement.

Statement of David G. Rietow, Hawaii Macadamia Nut Association, Keaau, Hawaii

The impact of the U.S.-Australia Free Trade Agreement on Hawaii's Macadamia Nut Industry is viewed by the Industry as severely negative. The removal of all of the tariffs on the importation of macadamia and macadamia products from Australia is expected to lower the average macadamia kernel price in the U.S. This will result in a reduced price paid to Hawaii's growers. The long-term impact could be the economic failure of many growers and some of the smaller processors and manufacturers in Hawaii.

Hawaii's economic base is tourist driven. The State depends upon the growth of the agricultural sector to help balance its economy. Agriculture also provides the open space and agro-tourism opportunities that a growing number of younger visitors are looking for. It is, therefore, crucial to the economy of Hawaii to maintain the viability of its agricultural sector. Hawaii's Macadamia Industry believes that the removal of the import tariffs imposed on Australia will severely weaken the industry and its economic contribution to the State.

The Hawaii Macadamia Industry is comprised of 650 growers farming approximately 18,000 acres, producing 57 million pounds (in-shell basis), with a farm gate value of $30 million. This does not take into account the value of the industry at the manufacturing and retail sales level estimated to be in excess of $150 million annually. Macadamia ranks fourth in agricultural commodities in Hawaii. Most of Hawaii's macadamia acreage is mature, thus future production is not expected to increase significantly. Hawaii's primary markets are the U.S. and the local Hawaii market aimed at the tourist trade. Secondary markets are Europe and Asia.

Australia exceeds Hawaii in annual production with a significant amount of its planted acreage in the pre-bearing stage. Planting of new acreage continues. Australia's high margin markets are Europe and Asia. The U.S. market is viewed as a high volume market with sales generally to larger importers at lower prices. The Australian Industry is primarily a marketer of bulk kernel. Retail products are sold within the country, but are not the primary mode of export. As Australia's producing acreage continues to grow, the production resulting from this growth is expected to be channeled into the U.S. market, primarily to the low-end retail business.

Hawaii's macadamia producers and manufacturers have spent millions of dollars to develop the U.S. market and spend in excess of $20 million annually to provide the continued market development that is crucial to health and welfare of the industry in Hawaii. The industry has also been responsible for research on the health aspects of macadamia nuts that have had a positive influence on the consuming public, thus increasing the demand. The influx of Australian macadamia kernel and manufactured products will increase the pressure on Hawaii's producers and manufactures to increase their market development efforts at an increase in the average cost of production for Hawaiian kernel and retail products.

The import tariffs on Australian kernel and manufactured products increases the sales price of the imports thus providing somewhat of a balance in the cost of kernel and manufactured products offered into the U.S. market by both Hawaii and Australia. The elimination of the import tariffs will provide Australia with an unfair economic advantage in the U.S. market.

The Hawaii Macadamia Nut Association (HMNA) requests that the House of Representatives' Committee on Ways and Means consider the severe negative impact of this trade agreement on Hawaii's Macadamia Industry and the HMNA would hope the Committee takes a position against the approval of the U.S.-Australia Free Trade Agreement.

The HMNA, representing Hawaii's Macadamia Industry, appreciates the opportunity to present this testimony before the Committee.

Statement of National Council of Textile Organizations

The National Council of Textile Organizations (NCTO) appreciates this opportunity to share our views regarding the free trade agreement (FTA) that has been negotiated between the United States and Australia.

NCTO was recently established to represent the entire unified spectrum of the U.S. textile sector, from fibers to finished products, including yarn, fabric, man-made fibers, cotton, textile machinery and chemicals and others concerned with the prosperity and survival of the U.S. textile industry. NCTO is more broadly based than any previous domestic textile organization and we are very interested in the details of all potential and proposed FTAs, including the one recently negotiated between the U.S. and Australia.

The United States textile industry has experienced a wave of plant closings and job losses in recent years unlike any comparable period of time in our history. In the last six years—a mere seventy-two months—we have lost nearly 230,000 U.S. textile jobs, over 35 percent of our entire workforce. These job losses have accelerated in the past three years, with 50,000 jobs having disappeared in 2003 alone. It is against this backdrop of plant closings and mass layoffs, due mainly to an unrelenting wave of unfairly traded imports from China and other Asian countries, that we have viewed each new proposed FTA with a critical eye.

Our industry has vigorously sought to develop trading partnerships with apparel producers in Caribbean and other nations with which we have a preferential trading arrangement. Such arrangements which promote the use of U.S. yarn and fabric present tremendous export opportunities for U.S. textile manufacturers. For example, as a result of the Caribbean Basin Trade Partnership Act (CBTPA), which grants duty-free treatment to garments made in the region of U.S. yarns and fabrics, our industry has been able to significantly expand our exports to CBTPA countries.

But such export opportunities can only materialize in an FTA if a strict, yarn-forward rule of origin without any exceptions is included. The United States textile industry has strongly and consistently urged the United States Government to insist that the benefits of any free trade agreement must be limited to the participating countries, and that textile manufacturers in China, India and other third party countries should not be allowed to reap the benefits of the agreement at the expense of U.S. textile producers.

Further, last fall, over 170 Members of Congress wrote to the President urging him to maintain the yarn-forward position that the U.S. had taken earlier that year in the Central America Free Trade Agreement (CAFTA) negotiations, with no tariff preference levels (TPLs) or other exceptions. Regrettably, this position was not maintained, and massive loopholes to the rule of origin were included in the final agreement. The same is true with respect to the recently negotiated FTAs with Morocco and Bahrain, both of which contain enormous and unwarranted exceptions to the rule of origin. As a result, NCTO will be opposing all three of these agreements and urging their rejection by Congress.

However, we were pleased to see that the final U.S.-Australia FTA includes a strict yarn-forward rule of origin with no (zero) exceptions. No tariff preference levels, no cumulation provisions, no loopholes of any kind to the yarn-forward rule of origin. We further applaud the U.S. negotiators for rejecting Australia's original effort to include a rule of origin that would have required only 55 percent of the declared value of an export to be accomplished in the exporting country. This would have created huge opportunities for "free riders"—i.e., textile producers in China, Vietnam, India and other non-participating, third party countries—to ship fabric to Australia at the expense of fabric and yarn manufacturers in the United States and Australia.

The U.S.-Australia FTA is the first such agreement to contain a strict, yarn-forward rule of origin with no exceptions, carve-outs or loopholes of any kind. Accordingly, NCTO supports the agreement and urges Congress to adopt legislation to implement the agreement so long as such language of the legislation adheres to the provisions negotiated between the two countries.

Further, NCTO urges that the U.S.-Australia FTA serve as a template for any future free trade agreements that the United States might negotiate, including any agreements currently being negotiated. If future FTAs do not adhere to this strict yarn-forward rule of origin requirement, NCTO and very likely many of our allies in the textile and fiber sector will be forced to oppose such agreements, and we will urge their defeat in Congress.

Statement of National Electrical Manufacturers Association, Arlington, Virginia

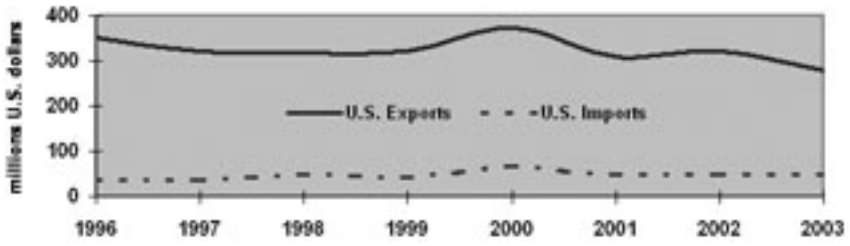
Thank you for the opportunity to submit the attached statement for the record of your hearing on the implementation of the United States-Australia Free Trade Agreement. The National Electrical Manufacturers Association (NEMA) strongly supports the Agreement and urges Congress to approve implementing legislation as soon as possible.

NEMA is the largest trade association representing the interests of U.S. electrical industry manufacturers, whose worldwide annual sales of electrical products exceed $120 billion. Our more than 400 member companies manufacture products used in the generation, transmission, distribution, control, and use of electricity. These products are used in utility, industrial, commercial, institutional and residential installations. The Association's Medical Products Division represents manufacturers of medical diagnostic imaging equipment including MRI, CT, x-ray, ultrasound and nuclear products.

NEMA Calls for Ratification of the U.S.-Australia Free Trade Agreement

A great deal that makes an excellent trade relationship even better

Electrical Goods Tariff Elimination: Australia will immediately eliminate all its tariffs, saving our industry approximately $15 million in duties annually. (Current tariffs average 5%.) **Our sector already enjoys a large trade *surplus* with Australia (see graph).**



- **Government Procurement:** U.S. suppliers will now be able to compete for a broad range of Australian public contracts.
- **Technical Barriers to Trade:** The FTA reaffirms the notice, comment and transparency provisions of the WTO TBT Agreement.
- **Intellectual Property Rights Protection:** The Agreement sets out high standards for the protection and enforcement of intellectual property, including trademarks, patents and industrial designs. It also ensures judicial authority to seize and destroy pirated and counterfeit products.
- **Energy Services Liberalization:** While U.S. energy services providers encounter no significant barriers to Australian markets, the FTA establishes an important precedent by adopting a comprehensive "negative list" approach (where exceptions to liberalization must be specified).
- **Market Driven Standards and Conformity Assessment:** The FTA recognizes "that a broad range of mechanisms exists to facilitate the acceptance of conformity assessment results" and permits U.S. entities to participate in the development of standards, technical regulations, and conformity assessment procedures.

NEMA is the largest trade association representing the interests of U.S. electrical industry manufacturers, whose worldwide annual sales of electrical products exceed $120 billion. Our more than 400 member companies manufacture products used in the generation, transmission, distribution, control, and use of electricity. These products are used in utility, industrial, commercial, institutional and residential installations. The Association's Medical Products Division represents manufacturers of medical diagnostic imaging equipment including MRI, CT, x-ray, ultrasound and nuclear products.

Statement of John Lincoln, New York Farm Bureau, Glenmont, New York

New York Farm Bureau submits the following letter to the House Ways and Means Committee for consideration regarding the United States-Australia Free Trade Agreement.

I am commenting as president of New York Farm Bureau and representing our more than 35,000 members to provide information regarding New York Farm Bureau's position on agricultural provisions of the proposed Australia-United States Free Trade Agreement (AUSFTA). New York farmers and producers have a vested interest in Federal trade agreements because of the effect of such negotiations and agreements on NY's agricultural economic viability. NY farms produce a wide variety of agriculture products, and maintaining a profitable and viable agriculture industry is a key not only to the health of the States rural economy but also to each individual farmers ability to remain in agriculture production.

The importance of agriculture in New York can be demonstrated by data regarding the States prominence nationwide in many agricultural products. New York's dairy industry (2003 data) produced 12.0 billion pounds of milk, with a value of $1.56 billion, ranking 3rd in the nation in milk production. Other New York produce ranking in the top five of States nationally include apple production (2nd), tart cherries, pears, grapes, cabbage, cauliflower, as well other fruits and vegetables.

A number of these agriculture products will be affected negatively by the proposed AUSFTA. In addition, NY farmers and producers do not see opportunities for potential market access for their products in the proposed AUSFTA.

New York's dairy industry—our largest agriculture sector—will see only negative results from the proposed AUSFTA. Although TRQ's remain on certain dairy products, quotas for Australian imports of other key dairy items including butter, certain cheeses, and other dairy products are increased throughout the phase-in period of the agreement. Nationally, the dairy industry will loose initially approximately $40 million, which increases to $80 million per year by the end of the implementation period (2022). Although Australia received less than their negotiators had worked for, the end result remains a negative for New York dairy producers.

An additional area of concern is the potential harm to New York's wine and grape industries. Increased imports from Australia's low cost wine and grape industry may cause harm to our almost 200 wineries, and over 1,000 NY grape growers. This industry has developed significantly recently, and does not need an increase in low cost Australian products without any opportunities to offset these imports with increased market access elsewhere. We fail to see market access potential in Australia for other NY non-processed fruits and vegetables.

We are also extremely concerned that Australia's lack of settlement of certain Sanitary and Phytosanitary (SPS) issues will continue to limit market access for our producers in the Australian marketplace. For instance, Australian SPS regulations on apple fire-blight blocks entry of New York apples to their market even though our apples are fire-blight free. Other SPS areas needing resolution include stone fruits, poultry, and citrus products. New York Farm Bureau cannot even consider support of the agreement while these SPS issues remain unresolved. With only limited access to the Australian market, these SPS issues effectively block out any potential gains for our agriculture producers. Resolution of the SPS issues by Australia is necessary before any benefit to our farmers and producers potentially can occur, but even with SPS resolution, the AUSFTA will not benefit our dairy producers and other agriculture commodity producers.

New York Farm Bureau appreciates the opportunity provided to submit written comments to the House Committee on Ways and Means regarding the implementation of the Australia-United States Free Trade Agreement. I encourage the Committee to carefully evaluate our concerns on behalf of New York's farmers and producers. New York farmers are concerned that agriculture is being used as a bargaining tool in securing favorable trading opportunities for United States manufacturing and service industries in Australia. New York Farm Bureau withholds support of the Australia-United States Free Trade Agreement, and remains committed to furthering WTO negotiations which offer needed market access for our wide variety of agricultural produce.

Thank you for your consideration of these comments, and please feel free to contact me should you have questions.

Statement of Kevin Outterson*, Morgantown, West Virginia

The U.S.-Australia Free Trade Agreement's Unfortunate Attack on Good Healthcare Policy

1. **The Australian Pharmaceutical Benefits Scheme**

Americans are increasingly looking to "pay for value" in health care. The Australian experience with the economic evaluation of drugs in the Pharmaceutical Benefits Scheme (PBS) is the gold standard of such programs worldwide. The PBS is not government price controls, but allows pharmaceutical companies to request higher reimbursement levels if data establishes the greater cost-effectiveness of the drug. It does not appear that Australia is "free riding" on American-funded innovation, since companies are given ample opportunity to seek higher reimbursement for truly innovative drugs.

The PBS has generated unwelcome attention from PhRMA and its Australian counterpart, Medicines Australia. This is unsurprising, since the PBS economic evaluations have resulted in some of the lowest patented drug prices in the OECD, much lower than even Canadian prices.[1] After years of unsuccessful domestic attempts to derail PBAC in Australia, PhRMA and Medicines Australia turned to international trade law, namely the Australian-U.S. Free Trade Agreement (FTA). The primary talking point on this issue is to increase transparency in the PBS (see section 5 below), but the actual goal is to increase Australian drug prices.

2. **The FTA is Likely To Raise Australian Drug Prices**

A debate is underway in Australia as to whether the FTA will force significant changes in PBS.[2] While scaled back from early proposals, the FTA nonetheless requires subtle modifications to the PBS which will lead to higher prices in Australia, as detailed by a recent editorial in the British Medical Journal[3] and recent testimony in the Australian Parliament.[4]

Against this evidence, the Australian government claims that the FTA provisions won't raise drug prices at all in Australia.[5] If that is so, then why did PhRMA and Medicines Australia fight for the provision? If there is truly no impact on drug prices, then it should be removed immediately by a side letter.

A similar non-sequitur arose under the "non-interference" provision PhRMA added to the Medicare Modernization Act of 2003.[6] This law commits the U.S. Federal Government to purchase U.S.$600 billion in pharmaceuticals over the next decade,[7] but prohibits the government from using its purchasing power to negotiate

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*Associate Professor of Law, West Virginia University College of Law, Kevin.Outterson@mail.wvu.edu.

[1] The data on lower prices in Australia was collected by the Productivity Commission, International Pharmaceutical Price Differences (July 2001). The Productivity Commission did not reach a definitive conclusion on causation.

[2] Over the past year, hundreds of articles on the FTA's impact on the PBS have appeared in the Australian press. In the U.S., the issue barely rates a whisper. Most U.S. coverage of the FTA concerns agriculture such as sugar and beef. Prior to May 2004, very few serious discussions of the PBS issue have appeared in the U.S. national press. But see E. Becker, Overseas Drug Prices Targeted By Industry; U.S. Officials Pressure Australia On Controls, N.Y. Times A1 (Nov. 27, 2003); M.W. Serafini, Drug Prices: A New Tack, 36:16 National Journal (Apr. 17, 2004); M.W. Serafini, The Other Drug War, 36:12 National Journal (Mar. 20, 2004).

[3] P. Drahos & D. Henry [Editorial] The free trade agreement between Australia and the United States: Undermines Australian public health and protects U.S. interests in pharmaceuticals. BMJ 2004; 328:1271–1272 (29 May), http://bmj.bmjjournals.com/cgi/content/full/328/7451/1271?etoc.

[4] See the submissions by the Generic Medicines Industry Association Pty Ltd., the Doctors Reform Society, the Public Health Association of Australia, Inc., the Australian Nursing Federation, Catholic Health Australia, the National Center for Epidemiology and Population Health, the Australian Consumers' Association, and Dr. Ken Harvey, all available at: http://www.aph.gov.au/Senate/committee/freetrade_ctte/index.htm.

[5] L. Tingle, New Analysis Backs Benefits of Trade Deal, Australian Financial Review 7 (May 1, 2004) ("The report says there will be no material impact on the price of drugs from a clause in the pact which gives U.S. drug companies the right to challenge decisions of the Pharmaceutical Benefits Advisory Committee.").

[6] Medicare Prescription Drug Improvement and Modernization Act of 2003, Pub. L. No. 108–173, § 301 (codified at § 1808(c)(1)(C) of the Social Security Act).

[7] CBO, *Estimate on H.R. 1* (Congressional Budget Office, Nov. 20, 2003). R. Foster, Office of the Actuary, CMS, *Rough Estimates of Increase in Net Medicare and Other Federal Costs Under Selected Draft Senate Finance Proposals* (June 11, 2003); see also D. Rogers, "Fever Is Rising in Drug-Bill Imbroglio," *Wall Street Journal* (May 4, 2004): A2; S.G. Stolberg & R. Pear, "Mysterious Fax Adds to Intrigue Over the Medicare Bill's Cost," *New York Times* (Mar. 18, 2004).

better prices. The Bush Administration insists that this provision won't affect the price at all.[8]

The U.S. negotiated the FTA under the assumption that drug prices in Australia are too low and must be increased.[9] Other observers might reach the opposite conclusion: that Australian prices are economically efficient and the appropriate targets of reform are excessive U.S. prices.

3. **This FTA Will Be Used As A Model To Increase Drug Prices Worldwide**

Ralph Ives was the chief U.S. negotiator of the FTA. After his success in Australia, he was promoted in April 2004 to the newly-created post of Assistant United States Trade Representative for Pharmaceutical Policy. In his new post, he will attempt to raise patented drug prices throughout the OECD through trade agreements,[10] even though it is not clear that higher prices are necessary to pharmaceutical innovation.[11]

4. **U.S. Consumers Will Not Benefit From Higher Australian Drug Prices and Blocked Drug Exports**

There is no guarantee that U.S. consumers will benefit from higher drug prices in Australia. Drug companies are under no obligation to lower U.S. prices as Australian prices increase.

Press reports indicate that under the FTA, Australian negotiators "gave assurances" that low-cost drug exports to the U.S. would be blocked, despite legislation in Congress to specifically permit importation from Australia.[12] The FTA is being used to block Congressional attempts to give Americans access to low-cost drugs.

5. **Transparency**

We are told that the FTA is needed to promote "transparency" in the PBS process.[13]

If transparency is the goal, let me suggest the first place to start: publicly release all of the submissions to the relevant PBS committee, the PBAC. Policymakers worldwide would benefit from seeing all of the data previously collected. If drug companies think they've been unfairly treated, then the debate can proceed publicly. Today, PBAC data is secret ("commercial in-confidence") because the drug companies demand secrecy. Release the data publicly and allow the world to see the economic evaluations. Let the world see all of the clinical data on which drugs are truly innovative, and which ones offer modest or no improvements.

Second, transparency should require drug companies to disclose all financial relationships with researchers and policymakers. The U.S. National Institutes of Health is currently embroiled in a major controversy as we are just beginning to under-

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[8] On January 23, 2004, the Congressional Budget Office wrote to the Senate Majority Leader Frist to say that removing the "noninterference" provision would "have a negligible effect on Federal spending." D. Holtz-Eakin, Director of the Congressional Budget Office, Letter to the Honorable Ron Wyden (Mar. 3, 2004).

[9] M.B. McClellan, Speech Before the First International Colloquium on Generic Medicine (Sept. 25, 2003) www.fda.gov/oc/speeches/2003/genericdrug0925.html. The speech was widely reported. See, e.g., C. Bowe & G. Dyer, Americans Lured By Lower Prices, Financial Times 17 (May 5, 2004) ("The rhetoric intensified in September when Mark McClellan, then head of the FDA, attacked European drug price controls and said other rich nations should pay more of the development cost for drugs."). See also M.W. Serafini, Drug Prices: A New Tack, 36:16 National Journal (Apr. 17, 2004) ("So [House Speaker] Hastert and [Senator] Kyl championed the novel idea that the key to lowering U.S. prescription drug prices is to persuade foreign governments to raise their prices. . . . The idea of trying to level the international playing field on prescription drug pricing originated with the U.S. pharmaceutical industry. But Hastert and Kyl played significant roles last fall in persuading the Bush Administration to embrace this strategy. . . . The result was the United States' first free-trade agreement that included modest concessions on pharmaceutical price controls.").

[10] A clear outline of the Bush Administration's pharmaceutical trade agenda can be found in the testimony of Grant D. Aldonas, Under Secretary of Commerce for International Trade, to the U.S. Senate Finance Committee on April 27, 2004.

[11] K. Outterson, Pharmaceutical Arbitrage, 6 Yale Journal of Health Policy, Law & Ethics (pending, Dec. 2004) (discussing the concept of *globally optimal patent rents* in the context of pharmaceutical innovation).

[12] Bill Condie, *Glaxo Dismisses Free Trade Concerns*, Evening Standard (London), June 14, 2004 ("Australian negotiators have also given assurances that re-importation of drugs to the U.S. would be banned.").

[13] Office of the United States Trade Representative, Free Trade "Down Under": Summary of the U.S.-Australia Free Trade Agreement (Feb. 8, 2004): 3 ("In implementing these principles, Australia will make a number of improvements in its Pharmaceuticals Benefits Scheme (PBS) procedures—including establishment of an independent process to review determinations of product listings—that will enhance transparency and accountability in the operation of the PBS.").

stand how profoundly PhRMA influences research.[14] We need to see if the researchers touting drugs are truly independent. All of this is absent from the FTA.

Third, if transparency is needed, then why were health care NGOs excluded from the Advisory Committees to the FTA? The key committee on this issue, ISAC–3, included representatives of the pharmaceutical industry, but not groups critical of extending TRIPS Plus rules to drugs. On this issue, Australian and American representatives of drug companies negotiated with themselves, while NGOs were shut out.

Fourth, will transparency apply to the new Medicines Working Group under the FTA? Who will be appointed? Will those meetings be open to the public? Will NGOs be permitted to participate? Will past and present conflicts of interest be disclosed?

Fifth, the very concept of "transparency" is laughable in a Free Trade Agreement exceeding a thousand pages in length. This is a frightfully complex agreement, with minutely negotiated provisions that are very difficult for even trade lawyers to understand.

For example, when the U.S. stood against the world to attack unlicensed generic anti-retroviral drugs for AIDS, it was the "public health" language of the WTO TRIPS agreement which rallied the world against the U.S. and eventually led to the concessions at Doha and Cancun.[15] In the FTA, the "public health" language is missing, replaced by other language supporting "pharmaceutical innovation." In the future, when the U.S. invokes the FTA dispute resolution mechanism, a panel of highly specialized trade experts will decide whether Australia's efforts to reform the PBS satisfy the FTA. To these experts (several of whom may have participated in the negotiations), the absence of the TRIPS public health language and the additional provision on pharmaceutical innovation will be viewed as very significant. Australia could well lose a panel decision on such a basis, allowing a government to plead years from now that its hands are tied by the FTA. I suspect that the FTA includes many other subtleties. It will take some time to find them all.

Finally, a call for transparency should be received with a little skepticism from an industry with incredibly complex and opaque pricing and business practices, including the practice of blocking publication of clinical studies which demonstrate problems with their products.[16]

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In my home State of West Virginia, we are exploring a drug reimbursement system which includes economic evaluation. We will ask the drug companies for copies of the work already completed for the PBAC. Other States are exploring similar programs. If Australia can maintain the PBS for a few more years, it will be hailed as a model in the United States. This is both my hope and PhRMA's fear. Undermining Australia's PBS is an inappropriate topic for a free trade agreement.

Statement of Leo McDonnell, Ranchers-Cattlemen Action Legal Fund—United Stockgrowers of America

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

The Ranchers-Cattlemen Action Legal Fund—United Stockgrowers of America (R–CALF USA) is pleased to have the opportunity to submit posthearing comments to this Committee regarding the U.S.-Australia Free Trade Agreement.

R–CALF USA is a non-profit association that represents tens of thousands of U.S. cattle producers on issues concerning national and international trade and marketing. R–CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders, and feedlot owners. Its members are located in 46 States, and the organization has over 50 local and State cattle association affiliates. Various main street businesses are also associate members of R–CALF USA. R–CALF USA is dedicated to ensuring the continued profitability and viability of the U.S. cattle industry, and it is from that perspective that we provide these comments.

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[14] National Institutes of Health, Report of the National Institutes of Health Blue Ribbon Panel on Conflict of Interest Policies (Draft, May 5, 2004): 1–5.

[15] See, e.g., Ellen T. Hoen, TRIPS, Pharmaceutical Patents, and Access to Essential Medicines: A Long Way from Seattle to Doha, 3 Chicago Journal of International Law 27 (2002).

[16] See, e.g., Barry Meier, A.M.A. Urges Disclosure on Drug Trials, New York Times, June 16, 2004. Two days later, Merck announced plans to voluntarily disclose data. Barry Meier, Merck Backs U.S. Database to Track Drug Trials, New York Times, June 18, 2004.

I. **Global Trading Environment**

R–CALF USA believes that many of this Administration's trade policies with respect to agriculture are sound. First, we could not agree more with the Administration that the United States' number 1 trade priority should be to restart and successfully conclude the Doha Round of WTO negotiations.[1] R–CALF USA has long advocated, and continues to support, efforts to open up U.S. cattle and beef export markets by reducing global tariffs to U.S. levels. The U.S. Department of Agriculture (USDA) reports that the average allowed tariff on beef around the world is 85%, while the U.S. in-quota tariff rate is near 0% and out-of-quota tariff rate is 26.4%. This wide disparity in tariff treatment must be addressed because it severely limits market access for U.S. beef abroad.[2] R–CALF USA supports the recently concluded U.S.-Morocco Agreement as an effort to open up a potential beef consuming market to additional U.S. beef exports.

Second, R–CALF USA supports the attempts of USTR to reform agricultural subsidies around the world that artificially distort market conditions, especially since U.S. producers receive no support outside of disaster assistance. For example, the world's third largest beef producer[3]—the European Union—provides both export and domestic subsidies to their producers. The European Union provided their beef producers export subsidies worth approximately $376 million on approximately 360,000 MT in 2004, or an export subsidy of $.56 per pound of EU beef.[4] Domestic subsidies to the cattle/beef sector in the EU are projected in excess of $9.5 billion in FY2005 for approximately 105 million head of cattle.[5] Brazil, projected to have 170 million head of cattle and be the world's largest exporter in 2004,[6] also provides significant subsidies to its producers. The 2004 Commerce Department and USTR Subsidy study found that Brazil is providing hundreds of millions of dollars in funding to programs that boost cattle and beef production, as well as export sales.[7]

Third, while the United States imposes scientifically supported measures to ensure the safety of the food supply, many other nations use sanitary and phytosanitary measures in the cattle and beef sector to unjustifiably restrict trade. The United States' National Trade Estimates report has identified a number of countries that use non-tariff trade barriers to limit or prevent U.S. beef exports. Most notably, of course, is the EU's longstanding non-tariff trade barrier against U.S. beef related to the use of beef hormones.[8] This ban effectively cuts U.S. beef exports off from one of the largest potential markets in the world. Recent reports from U.S. embassies around the world indicate that use of these non-tariff trade barriers has spread to an ever-increasing number of countries. As an example, USDA counselors in Thailand report that officials there have begun to place more stringent standards on imported products than domestic products.[9] Further, beginning in December of last year, U.S. beef has been banned in a number of countries on the basis of BSE without adequate scientific justification or WTO notification. Such restrictive actions have significantly hampered the export market opportunities for U.S. beef. R–CALF USA supports and urges the Administration in its efforts to aggressively remove these barriers to trade.

While the above distortions are not the result of any FTA, it is important to note that they create the operating background against which the effects of U.S. bilateral trade agreements must be examined to understand the consequences of bilateral liberalization where there is limited or no export opportunities for an import sensitive sector like cattle and beef. R–CALF USA believes that the WTO is the only forum in which all of these issues can be effectively addressed. Unfortunately, as Ambassador Zoellick himself noted in April, the Doha Round of trade negotiations have

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[1] Statement of Amb. Zoellick, the USTR, Before the House Committee on Agriculture, Washington, D.C., April 28, 2004.

[2] The disparity in tariff treatment is further exacerbated by the failure of countries outside of North America to sign and implement free trade agreements that comply with the terms of Article XXIV of the GATT.

[3] USDA, Foreign Agriculture Service, *World Beef Trade Overview, Livestock and Poultry: World Markets and Trade*, March 2004.

[4] Preliminary Draft General Budget of the Commission, SEC (2004) 456, at 18–19 (April 28, 2004); USDA, FAS, *EU—Livestock and Poultry SemiAnnual*, GAIN Report E24018 (Feb. 2004).

[5] Preliminary Draft General Budget of the Commission, SEC (2004) 456, at 18–19 (April 28, 2004); USDA, FAS, *EU—Livestock and Poultry Annual*, GAIN #E24018 (Feb. 2004).

[6] USDA, FAS, *Brazil—Livestock and Poultry SemiAnnual*, GAIN #BR4605 (Feb. 2004).

[7] Joint Report of the USTR and Dept. of Commerce, *Subsidies Enforcement Annual Report to Congress*, Feb. 2004.

[8] USTR, *Dispute Settlement Update*, March 9, 2004 at 1.

[9] USDA, FAS, *Thailand: Trade Policy Monitoring 2004*, GAIN Report TH4033 at 8 (3/16/2004).

broken down and talks are only slowly restarting.[10] R–CALF USA believes that before the United States enters into bilateral or regional FTAs with major agricultural producing countries with small internal markets, the major global distortions caused by tariffs, non-tariff barriers and subsidies must be eliminated. Furthermore, any FTA must address and eliminate internal distortions within the proposed trading partner that impede trade in cattle and beef.

The liberalization of agricultural markets on a bilateral basis is a delicate balance. If USTR liberalizes markets where the U.S. cattle industry is likely going to fare poorly and it is unable to simultaneously open the major consuming markets where the U.S. cattle industry will do reasonably well, then USTR will put the U.S. cattle industry in the position to lose market share globally, not because we are uncompetitive, but because we expand market access in the U.S. far ahead of equitable access abroad. FTAs that do not address these distortions will result in worsened long- and short-term outcomes for U.S. cattle producers. Rather than unilaterally removing existing restrictions, the United States should be exploring ways in which to best address the problems of perishable and cyclical agricultural producers. If we cannot achieve agreement on special measures to address perishable and cyclical agricultural products, then USTR should seek parity of tariffs among our trading partners and ourselves on beef, eliminate all subsidy and non-tariff barrier distortions to trade in beef between ourselves and our trading partners, and, in the interim, maintain current existing TRQs and Special Safeguards on beef imports.

Despite significant efforts by the Administration, such a situation does not exist with the U.S.-Australia FTA as it does not address internal distortions within Australia that artificially lower production costs for beef in that country. As described below, the Australian Wheat Board (AWB) provides Australian producers artificial production advantages. In conjunction with the massive distortions generated by actions of other major trading partners and the lack of market access in other overseas markets, the U.S.-Australia FTA will exacerbate an existing unacceptable market situation for U.S. cattle producers and, thus, R–CALF USA can not support the U.S.-Australia FTA.

II. **State of the U.S. Industry**

Cattle and beef production comprises the single largest sector of U.S. agriculture. Cattle are raised in all fifty States. Half of all U.S. farms have beef cattle as part of their operations.[11] These businesses form the backbone of rural America and are vital in maintaining and supporting local schools, hospitals, nursing homes, and communities. Collectively, these businesses are one of the most significant segments of the U.S. gross national product.

U.S. cattle producers, and by extension America's rural communities, are experiencing a historically difficult period. The USDA reported that the U.S. cattle herd underwent its eighth consecutive year of contraction in 2003,[12] and the U.S. cattle population is now at historically low levels.[13] Unsustainable prices over the last fifteen years have resulted in ranching families going bankrupt by the thousands and being forced off their land. In 1993, there were nearly 900,000 beef operations in the United States. By 2003, this number declined to 792,100 operations.[14]

The average returns to U.S. cow/calf producers during the 1992–2001 decade had fallen to an alarming level. Returns for cow/calf producers were actually a *negative* $30.40 per bred cow per year during 1992–2001.[15] While the partial closure of the Canadian border in 2003 because of the BSE outbreak in that country has provided a temporary respite for U.S. producers in terms of pricing levels, only correction of the global distortions can restore pricing equilibrium. Further, the cattle industry faces another significant challenge as virtually all export markets have been closed to U.S. beef exports due to the discovery of BSE in an imported Holstein cow in Washington State. Thus far, consumer confidence in the safety of the beef supply

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[10] Statement of Amb. Zoellick, the USTR, Before the House Committee on Agriculture, Washington, D.C., April 28, 2004.

[11] U.S. Department of Agriculture, *Where's the Beef? Small Farms Produce Majority of Cattle*, Agricultural Outlook, December 2002, at 21.

[12] U.S. Department of Agriculture, *U.S. Cattle Inventory*, at 3 (Jan. 2003), available at http://usda.mannlib.cornell.edu/reports/nassr/livestock/pct-bb/catl0103.pdfretrieved January 23, 2004.

[13] *Id*. at 2.

[14] USDA—National Agricultural Statistics Service, Number of All and Beef Cow Operations, 1988–2003 found at http://www.usda.gov/nass/aggraphs/acbc_ops.htm.

[15] U.S. Cow-Calf Production Cash Costs and Returns, 1990–95; 1996–99; 2000–2001, Economic Research Service/USDA, available at http://www.ers.usda.gov/data/farmincome/CAR/DATA/Appendix/Cowcalf/US9095.xls; http://www.ers.usda.gov/data/farmincome/CAR/DATA/History/CowCalf/US9699.xls; and http://www.ers.usda.gov/data/CostsAndReturns/data/current/C-Cowc.xls, retrieved from the Internet on October 18, 2002.

coupled with the historically low cattle inventories detailed above have kept domestic prices for cattle and beef high relative to the USDA baseline average, although not as high as they were before the closure of U.S. export markets.[16]

These facts illustrate that the U.S. cattle and beef industry is in a vulnerable and tenuous position. As such, R–CALF USA believes it is even more important for multilateral reform to be undertaken before engaging in bilateral liberalization with major beef producing countries.

III. **U.S.-Australia FTA in Detail**

A. ***Analysis of the Agreement***

R–CALF USA recognizes that the eighteen-year phase-out of tariffs on cattle and beef and expansion of the TRQ on beef included in the U.S.-Australia Agreement reflect the import sensitivity of the sector. However, in light of the crisis in our sector as reflected by the depressed prices to cattle producers over most of the last twelve years, even small changes in volumes of product available in the U.S. market can have significant adverse effects. Because of the massive distortions that exist around the world, including in Australia, that have not been addressed to date under the bilateral FTA or within the WTO, R–CALF USA believes that the U.S.-Australia agreement will inevitably lead to a further erosion of profitability in the domestic cattle industry. For the following reasons, the Agreement effectively mortgages the future of the American cattle industry and makes the prospects bleak for our children and young farmers and ranchers to continue to produce the best cattle and beef in the world.

1. **Australian Government Subsidies That Distort Trade Flows**

In examining the economic effects of an U.S.-Australia FTA, the Committee and Congress as a whole should keep in mind the economic effects of removing tariffs combined with the artificial advantages provided to Australian cattle producers. In any proposed FTA between the United States and one of its trading partners, the simple removal of U.S. tariffs could be expected to lead to increased imports into the United States. In the case of the U.S.-Australia FTA, the removal of tariffs—compounded with artificial advantages provided to Australian producers—could be expected to lead to higher imports than would be the case for FTAs with countries that provide less support, direct or indirect, to their producers.

A. ***State Trading Enterprises***

1. **Australian Wheat Board**

a. **Wheat, Including Wheat as Feed**

The Australian Wheat Board (AWB) is one of the world's only two known single-desk marketers of wheat, the other being the Canadian Wheat Board.[17] AWB (International) Ltd. is the only entity in Australia permitted to export Australia's bulk wheat,[18] and the AWB describes itself as "a government backed export monopoly."[19] Australia's domestic wheat market was deregulated in 1989.[20] So while the AWB sells grains in the domestic market, it does not have the ability to set prices for sales within Australia, and it competes with other traders in the domestic market.[21]

Australia's feedlot sector has expanded markedly in recent years, and this growth is predicted to continue.[22] Rations for Australian grain-fed cattle include wheat.[23]

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[16] Economic Research Service, USDA, *Livestock, Dairy, & Poultry Outlook*/LDP–M–119/May 18, 2004, at 8, *available at* www.ers.usda.gov.

[17] Australian Wheat Board Ltd., *Industry Overview*, 2003, *available at* http://www.awb.com.au/AWB/user/about/about_industry_overview.asp, *retrieved on* January 13, 2003.

[18] Australian Wheat Board Ltd., *AWB Ltd Investor Fact Book 2002* at 37, *available at* http://www.awb.com.au/AWB/user/investor/docs/AWB%20Investor%20Fact%20Book.pdf, retrieved on January 13, 2003.

[19] *Id*. at 32.

[20] *Id*. at 13.

[21] Australian Wheat Board Ltd., *AWB confident that domestic grain demand can be met* (press release), October 18, 2002, *available at* http://www.awb.com.au/AWB/user/news/news_item.asp?NewsID=211, *retrieved on* January 13, 2003.

[22] Mr. Peter Milne, President, Cattle Council of Australia, *Opening Remarks of Cattle Council of Australia at Five Nations Beef Conference 2000*, *available at* http://www.farmwide.com.au/cca/images/FNBC/FNBC%202000%20–%20Country%20Overview%20–%20Australia.pdf, retrieved on January 13, 2003; see also Response to Hillman Question #1.

[23] Meat and Livestock Australia, *Feedlots*, *available at* http://www.mla.com.au/content.cfm?sid=103, retrieved on January 14, 2003. *See also* Australian Agricultural Company,

Continued

In fact, of the approximately 5.5 million tons of wheat that enters the Australian market annually, approximately half (2–3 million tons) is used as stockfeed.[24] Australian feed wheat is noted for its high protein and gluten content.[25]

b. **Other Feedgrains**

The AWB also trades and manages non-wheat grains, including barley and sorghum.[26] These grains compete with wheat in the production of compound feeds in Australia.[27] Domestic consumption of barley and sorghum has grown in recent years due to the expansion of Australia's intensive livestock sector.[28] Due to its scale and risk management abilities, the AWB's Trading Division has the largest market share of any entity in the Australian grain market, including the market share of non-wheat grains.[29]

2. **State-Based Barley and Sorghum STEs**

While the AWB does not have a monopoly on the export of barley and sorghum, STEs operated by Australian states do. The Grain Pool of Western Australia is the single desk exporter of that state's barley.[30] Barley produced in South Australia is exported through the single desk operation of ABB Grain Ltd.[31] GrainCo Australia is the single desk exporter of sorghum and barley for New South Wales.[32]

3. **STEs Provide Australian Producers with Unfair Market Advantages**

All in all, due to the AWB and state STEs, some 80 to 90 percent of all grains exported from Australia are regulated through single desk exporters or equivalent arrangements.[33] By controlling the export of grains used as feeds—wheat, barley, and sorghum—these entities are able to influence the domestic prices of feed and, thus, benefit Australian cattle producers. In fact, it appears that the AWB takes specific decisions with regard to exports with the intent of lowering prices for Australian users of feedgrains. *For example, in October 2002, in response to concerns expressed by livestock producers about the high costs of feedgrains due to low supplies caused by drought, the AWB stated that "the AWB National Pool is currently tailoring its current wheat export program in order to preserve vital grain stocks in drought-affected regions of Australia."*[34] While the AWB has "no legislated market power" to set grain prices in the domestic market,[35] such action as described above would lead to lower feed prices in the Australian market, thus benefiting cattle producers there.

It should be noted too that the AWB actively discourages the importation of grain by Australian livestock producers and warns that "AWB is cautious of consumers importing grain, as it can be a costly exercise fraught with quality issues."[36] This view is likely shared by Australia's state-based barley and sorghum STEs. By ensuring low cost feedgrains in the Australian market, and thus obviating the need for imports, Australian STEs can protect their primary constituencies of grain producers from foreign competition. At the same time, these STEs provide artificial cost advantages for Australian cattle producers. This is made possible by the ability of

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Goonoo Feedlot, 2002, *available at* http://www.aaco.com.au/html/goonoofeedlot.htm, *retrieved on* January 13, 2003.

[24] Australian Wheat Board Ltd., *AWB Ltd Investor Fact Book 2002* at 36, *available at* http://www.awb.com.au/AWB/user/investor/docs/AWB%20Investor%20Fact%20Book.pdf, retrieved on January 13, 2003.

[25] Australian Wheat Board Ltd., *AWB Wheat*, *available at* http://www.awb.com.au/AWB/user/grainProducts/wheat__products.asp, *retrieved on* January 14, 2003.

[26] Australian Wheat Board, *Summary*, *available at* http://www.awb.com.au/AWB/user/about/about__summary.asp, *retrieved on* January 13, 2003.

[27] Australian Wheat Board Ltd., *Industry Overview*, *available at* http://www.awb.com.au/AWB/user/about/about__industry__overview.asp, *retrieved on* January 14, 2003.

[28] *Id.*

[29] Australian Wheat Board Ltd., *AWB Ltd Investor Fact Book 2002* at 14, *available at* http://www.awb.com.au/AWB/user/investor/docs/AWB%20Investor%20Fact%20Book.pdf, *retrieved on* January 13, 2003.

[30] *Id.* at 41.

[31] *Id.*

[32] *Id.*

[33] Australian Wheat Board Ltd., *AWB Ltd Investor Fact Book 2002* at 37, *available at* http://www.awb.com.au/AWB/user/investor/docs/AWB%20Investor%20Fact%20Book.pdf, retrieved on January 13, 2003.

[34] Australian Wheat Board Ltd., *AWB confident that domestic grain demand can be met* (press release), October 18, 2002, *available at* http://www.awb.com.au/AWB/user/news/news__item.asp?NewsID=211, *retrieved on* January 15, 2003.

[35] *Id.*

[36] *Id.*

the AWB, the Grain Pool of Western Australia, GrainCo Australia, and ABB Grain Ltd. to control exports of feedgrains from Australia.

Moreover, the AWB plays an active role in setting rail freight charges in Australia.[37] While R–CALF USA is unaware as to whether such rail charges apply only to grains for export or also to grains sold in the domestic market, the ability of a monopoly exporter to establish freight charges gives it the power to influence, at least indirectly, prices in the domestic market.

None of the aforementioned distortions in the Australian market were addressed in the FTA, yet all of them encourage more production of cattle and beef in Australia than would otherwise occur and hence artificially expand the volume of cattle and beef available for export.

2. **Direct Subsidies Provided to Australian Producers**

In addition to receiving support from the AWB, Australian cattle producers appear to receive a number of subsidies that put them at an unfair advantage in the international market. Australian cattle producers are also able to benefit from numerous subsidies provided by state and federal governments. In 2002 alone, Australia's budget included roughly US$152 million in funding for seven subsidy programs benefiting the beef and cattle industry. Especially problematic are the Australian government grants or cash reimbursements for the purpose of increasing Australian beef exports that are prohibited export subsidies under the WTO Agriculture and Subsidies Agreements. The Commerce Department reports that the state programs include the Business Incentive Scheme of the Australian Capital Territory, the Regional Business Development Scheme of New South Wales, the Industry and Business Assistance Scheme of the Northern Territory, and Queensland's *Industry Incentives Scheme* and *Industry Development Scheme*.[38]

3. **Direct Impact of Increased Australian Trade Flows**

Evidence indicates that even small increases in import volume can have significant adverse effects on the prices received by ranchers at the farm gate. According to Chuck Lambert, formerly chief economist for the National Cattlemen's Beef Association (NCBA) and currently Deputy Under Secretary for USDA's Marketing and Regulatory Programs, "[t]he rule of thumb is that a 10% increase in beef supply results in a 15% to 20% decrease in price."[39] Even small increases in supply—as little as 2 to 3 percent—can have significant downward effects on price.[40] This basic conclusion is affirmed by economic analysis described by the International Trade Commission.[41] Further, empirical evidence from the market last year indicates that changes in supply can have dramatic impact on prices. After the Canadian border was closed due to the identification of a native born case of BSE, U.S. imports of Canadian beef and cattle were prohibited. In 2002 the United States produced over 27 billion pounds of beef and imported over 3 billion pounds. Canadian beef imports accounted for more than 1 billion pounds of those imports. After deducting U.S. exports and converting Canadian live cattle into beef equivalents, Canadian beef accounted for roughly 8% of apparent domestic beef consumption in 2002.[42] As noted above, the closing of the border resulted in a *substantial* restoration of U.S. live cattle prices—from levels in the low $70s/100 lbs. to the low $90s/100 lbs.

It is expected that much of the expanded imports from Australia into the U.S. will be concentrated in a subset of the U.S. market. Specifically, the primary end-use for its 86–88% lean Australian beef is as a ground product for hamburger.[43] Ap-

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[37] Australian Wheat Board Ltd., *Changes to WA rail freight calculations* (press release), November 11, 2002, *available at* http://www.awb.com.au/AWB/user/news/news_item.asp?NewsID=231, *retrieved on* January 15, 2003.

[38] U.S. Department of Commerce and U.S. Trade Representative, *Subsidies Enforcement Annual Report to the Congress*, February 2002, at 24. U.S. Department of Commerce and U.S. Trade Representative, *Subsidies Enforcement Annual Report to the Congress*, February 2001, at 36.

[39] Chuck Lambert, Chief Economist, NCBA, *Beef Today*, (Sept. 1997).

[40] *See* Sparks Companies Inc., "Potential Impacts of the Proposed Ban on Packer Ownership and Feeding of Livestock," A Special Study, (March 18, 2002) at 37 ("In general, prices decrease 1% for each 0.6% increase in beef production (consumption = production for beef))."

[41] U.S.-AUSTRALIA FREE TRADE AGREEMENT: POTENTIAL ECONOMYWIDE AND SELECTED SECTORAL EFFECTS (Publication 3697; May 2004) at 44.

[42] Economic Research Service, Livestock, Dairy and Poultry Outlook, July 17, 2003 at 10 and 19. Live cattle converted to carcass weight equivalent (avg. yield around 700 lbs. per slaughter animal).

[43] Agricultural Technical Advisory Committee Report to the President, the Congress, and the United States Trade Representative on the U.S.-Australia Free Trade Agreement, page 5 (March 12, 2004).

proximately 47% of the beef consumed in the U.S. today is ground product. The source of the raw product is cull cows and bulls which compose 15% to 20% of ranch family's income. The Australian agreement therefore will likely see most increased imports focused on the ground product segment that will *magnify* its effect on a significant portion of U.S. animals with limited alternative use.

4. **Discussion of the Safeguards Within the Agreement**

Chapter Three of the Agreement establishes the right to resort to an agricultural safeguard for beef.[44] R–CALF USA strongly supports the use of agricultural safeguards in free trade agreements that deal with perishable, seasonal and cyclical products. Indeed, under the Trade Act of 2002, Congress mandated that the special needs of perishable and cyclical agriculture be taken into account and that special rules be negotiated.[45] Hence, we are appreciative of USTR's efforts to include a beef safeguard in this agreement. R–CALF USA believes however that any safeguard measure must be imposed automatically and not be subject to discretion on whether safeguard relief will be available.

Discretionary action suffers from both uncertainty over whether relief will be provided and how long it will take to determine that relief is appropriate. As Congress has recognized that there are special needs for perishable agricultural products, including cattle and beef,[46] an effective safeguard provision must be automatic and prompt.[47] Indeed, as every cattle producer knows, live cattle when ready for slaughter have a very limited period to be sold for slaughter to receive the maximum value. Relief that takes months to obtain will fail to stop the hemorrhaging when prices fall and may result in action being taken when conditions have restabilized.

As currently written, the beef safeguard provisions within the agreement are discretionary,[48] not automatic. While the U.S.-Australia FTA allows this safeguard to be implemented on a discretionary basis, we would ask that the Committee tighten the implementing legislation for the U.S.-Australia agreement to reflect the needs of our industry and ensure that the beef safeguard provisions be automatic in fact. R–CALF USA believes that the implementing legislation can be written in such a way to make these discretionary safeguards automatic in operation.

IV. **Conclusion**

In conclusion, the United States currently faces a large and growing trade deficit in terms of our total imports of beef/veal and cattle versus our total exports of beef/veal and cattle. Before the discovery of BSE in 2003, the United States had been running a trade deficit in cattle and beef:

United States Beef and Cattle Trade Flows, 1999–2003

($000)[49]

	1999	2000	2001	2002	2003
Cattle Imports	1,006,991	1,157,494	1,464,000	1,448,205	867,155
Cattle Exports	174,008	271,607	270,134	131,433	64,271
Total, Cattle	*−832,983*	*−885,887*	*−1,193,866*	*−1,316,772*	*−802,884*
Beef, Imports	1,904,273	2,204,828	2,514,360	2,513,065	2,363,667
Beef, Exports	2,655,105	2,908,633	2,548,499	2,488,583	3,036,104
Total, Beef	*750,832*	*703,805*	*34,139*	*−24,482*	*672,437*
Total, Cattle and Beef Trade	**−82,151**	**−182,082**	**−1,159,727**	**−1,341,254**	**−130,447**

[44] *See* Article 3.4.
[45] 19 U.S.C. §§ 3802(10)(A)(ix), (x), 3802(10)(B)(i).
[46] *See* 19 U.S.C. §§ 3802(10)(A)(ix), (x), 3802(10)(B)(i); 148 Cong. Rec. S4800 (daily ed. May 23, 2002).
[47] Para. B4, Annex 3 of the U.S.-Australia FTA (allows the President discretion not to impose a safeguard); Para. C5, Annex 3 (allows the President discretion not to impose a safeguard).
[48] Para. B4, Annex 3 (allows the President discretion not to impose a safeguard); Para. C5, Annex 3 (allows the President discretion not to impose a safeguard).
[49] Data Source: Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics, HS 0102 (cattle), 0201 (fresh beef), and 0202 (frozen beef).

We believe that this deficit illustrates the need to develop comprehensive solutions to the problems faced by the cattle industry that can only be accomplished at the WTO, and in the Doha Round.

In absence of such comprehensive solutions, we believe the United States should not agree to a series of FTAs with major agricultural producing countries with small internal markets that will result in the erosion of the American cattle industry with no appreciable benefits. We urge this Committee, and all of Congress, to see that, as a general matter, liberalization does not occur in a lopsided fashion going forward where the U.S. agrees to free trade agreements that will hurt the cattle industry via increased liberalization while we are unable to open large consuming markets abroad. To that end, R–CALF USA supported the U.S.-Chile and U.S.-Singapore FTAs last year as opportunities to expand U.S. exports into consuming countries, and we support for the same reasons the U.S.-Morocco FTA this year.

Further, if we must enter into an FTA with a major beef producing country, then it must address and eliminate any internal distortions within the proposed trading partner that impede trade in cattle and beef while also recognizing the special needs of perishable producers. The 800,000 ranching and farming families across the United States have been the backbone of rural America and have been suffering depressed pricing levels for more than a decade with more than 100,000 ranching families having lost the struggle in the last decade by selling their ranches and homes. Coupled with the massive distortions generated by actions of other major trading partners and the lack of equivalence of market access in other markets, the U.S.-Australia FTA will only exacerbate an existing unacceptable market situation for U.S. cattle producers, while not addressing major internal distortions within Australia. R–CALF USA opposes the agreement and urges the Members of the Committee and all of Congress to likewise oppose it.

South Dakota Stockgrowers Association
Rapid City, South Dakota 57701
June 10, 2004

Chairman Bill Thomas
Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Honorable Thomas:

Background

The South Dakota Stockgrowers Association appreciates the opportunity to provide meaningful input regarding the proposed United States-Australia Free Trade Agreement.

The South Dakota Stockgrowers Association is an organization of 1,486 members, primarily cow-calf producers operating family ranches.

The South Dakota Stockgrowers Association is committed to representing the needs of individual cattle producers in regard to property rights, animal health, trade, marketing and environmental issues. Our focus is profitability for the individual rancher.

Comments

The South Dakota Stockgrowers Association adamantly opposes the proposed United States-Australia Free Trade Agreement.

Currently, U.S. cattle producers operate under much more stringent rules and regulations than do Australian cattle producers. The cost of production for Australian cattle producers is about half the cost of production for U.S. cattle producers. This immediately places U.S. producers at a severe economic disadvantage when competing with Australian producers.

Until Australia's animal health, food safety, pesticide, fertilizer, and labor policies match those that we abide by in the United States, we will never compete fairly with Australian producers.

The largest customer of U.S. raised cattle is U.S. consumers. The United States is the most sought-after market for beef in the entire world. Australian producers currently produce more beef than their consumers purchase, putting them at an export advantage over the United States cattle industry, which is not export-dependent, but domestically dependent. Multi-national corporations will benefit by selling

lower quality, cheaper Australian beef to U.S. consumers, while forcing U.S. ranchers out of business.

In addition, without mandatory Country of Origin Labeling, the multi-national processing companies who benefit from importing beef from Australia are not required to inform consumers of the country from whence it came causing U.S. consumers to assume they are buying a U.S. product because it is marked "USDA inspected." This inadequacy magnifies the discrepancies between U.S. and Australian currency exchange, cost of production and domestic regulations.

In just 18 short years, according to the proposed agreements, all tariffs and quotas on beef will expire. Some might call this the slow demise of the U.S. cattle producer. The South Dakota Stockgrowers Association considers it a relatively quick death. In 18 years, we hope for our sons and daughters to have the opportunity to contribute to their communities economically and socially by operating family ranches. If they are forced to compete on a cost basis with Australian ranchers, they will more than likely lose their margin of profit and be forced out of business.

Losing cattle producers here in the U.S. does not just affect the 2% of the United States population involved in agriculture. It affects our entire economy. Small towns will not survive without the producers who support them. Larger towns will feel the economic strain as well.

Additionally, in a time of such uncertainty in the world, massive exporting of our ag production is unwise. It is prudent to maintain our ability here in the United States to feed ourselves. Food is the most basic of human needs, and to become dependent on another country for food is a terrifying thought.

The Australian agreement would concentrate more economic power within both the American and Australian multi-national food suppliers. This will give those ag businesses market power over consumers, producers, and our elected officials to the detriment of both countries. The agreement would amplify the ability of these multinational companies to drive down prices to producers in both countries.

Beef was recognized as a "perishable and cyclical" product, which makes it eligible for special rules in international trade agreements. This designation has been improperly ignored by the authors of this treaty, and must be addressed.

Because of the Trade Promotion Authority that Congress granted the President, individuals and organizations have limited opportunity to provide input on free trade agreements. It is imperative that this Committee consider the voices of producers and grassroots organizations as you review this agreement. Keep in mind that, while the multi-national food suppliers will call this agreement "good for agriculture," it is good for only a small segment of agriculture—the processer/retailer. It will be detrimental to many in agriculture including producers, not to mention the final consumer.

The South Dakota Stockgrowers Association asks you to reflect on NAFTA. Although some ag producers supported NAFTA at its inception, believing that it would open up positive opportunities for trade, we can now see the devastating effects of the treaty. Just looking at beef alone, U.S. producers are at an obvious disadvantage because both Canadian and Mexican ranchers can produce cattle far below our cost of production. The playing field is unfair, and while multi-national corporations benefit by importing beef at relatively "low" cost, consumers pay the price when they purchase beef that was raised and processed under far less stringent rules than U.S. beef. When U.S. producers become disadvantaged, we lose our opportunity to make a profit, which risks the entire economic structure of the State of South Dakota, and the nation. NAFTA has punished U.S. producers who, under U.S. rules and regulations raise the safest, healthiest beef product in the world. NAFTA has rewarded multi-national conglomerate food companies who purchase the cheapest food, often ignoring safety and health standards as well as labor laws. The Australian Agreement looks to be structured as unfairly as NAFTA for U.S. beef producers.

The South Dakota Stockgrowers Association urges you to oppose the Australian Free Trade Agreement unless beef and cattle are removed from the negotiations.

Sincerely,

Ken Knuppe
President

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