

# THE FUTURE OF THE WORLD TRADE ORGANIZATION

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## HEARING BEFORE THE SUBCOMMITTEE ON TRADE OF THE COMMITTEE ON WAYS AND MEANS U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED NINTH CONGRESS

FIRST SESSION

MAY 17, 2005

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# **THE FUTURE OF THE WORLD TRADE ORGANIZATION**

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**TUESDAY, MAY 17, 2005**

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

The Subcommittee met, pursuant to notice, at 10:07 a.m., in room 1100, Longworth House Office Building, Hon. E. Clay Shaw, Jr. (Chairman of the Subcommittee) presiding.  
[The advisory announcing the hearing follows:]

# ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

## SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE  
May 05, 2005  
No. TR-2

CONTACT: 202-225-1721

### **Shaw Announces Hearing on the Future of the World Trade Organization**

Congressman E. Clay Shaw, Jr. (R-FL), Chairman, Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing to review future prospects for U.S. participation in the World Trade Organization (WTO). **The hearing will take place on Tuesday, May 17, 2005, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.**

Oral testimony at this hearing will be from both invited and public witnesses. Invited witnesses will include the Honorable Peter F. Allgeier, Deputy U.S. Trade Representative. Also, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Subcommittee or for inclusion in the printed record of the hearing.

#### **BACKGROUND:**

The WTO was established in the Uruguay Round, which was the eighth round or series of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT). These negotiations to expand trade, which date back to the establishment of the GATT in 1948, were a response to the Great Depression and the political upheaval and conflicts of the 1930s, which deepened as a result of protectionist policies such as the Smoot-Hawley Tariff. Work under the GATT system aimed at raising living standards and promoting international economic growth through the opening of world markets has spanned six decades.

The trade agreements reached at the end of 1994 during the Uruguay Round were noteworthy in that they greatly expanded coverage of GATT rules beyond manufactured goods trade to include agricultural trade, services trade, trade-related investment measures, intellectual property rights, and textiles. The most visible accomplishment of this multilateral trade round was to establish the WTO to administer the GATT agreements and to settle disputes among WTO members.

World Trade Organization countries are currently participating in the ninth round of negotiations, called the Doha Development Round, which was launched in Doha, Qatar, in November 2001. The Doha agenda provides a mandate for negotiations on a range of subjects and work in on-going WTO committees. According to the U.S. Trade Representative, the main focus of the negotiations is in the following areas: agriculture, industrial market access, services, trade facilitation, WTO rules (i.e., trade remedies, regional agreements, and fish subsidies), and development. The goal of the Doha agenda is to reduce trade barriers so as to expand global economic growth, development, and opportunity.

Sections 124-125 of the Uruguay Round Agreements Act (URAA) (P.L. 103-465) require the President to submit a special report on U.S. participation in the WTO every 5 years from the date the United States first joined the WTO. Congress received the first of these 5-year reports in 2000. Congress received the second report on March 1, 2005. Included in the "2005 Trade Policy Agenda and 2004 Annual Report of the President's Trade Agreements Program" is the President's review of the

WTO, including highlights, recent accomplishments, as well as cumulative assessments of major trade topics since the WTO was established such as: (1) expanded market access in goods and services, (2) economic benefits of trade, (3) trade related aspects of intellectual property rights and investment protection, (4) customs related matters, (5) continued operation of a sound and effective system to settle disputes, and (6) launch of the Doha Development Round in 2001.

H.J. Res. 27, a joint resolution which would withdraw approval of the United States from the Agreement establishing the WTO, was introduced on March 2, 2005, by Rep. Bernard Sanders (I-VT) and Rep. Ron Paul (R-TX). Pursuant to the requirements of sections 124–125, this resolution is privileged, and the Committee on Ways and Means must consider it within 45 days or face discharge.

In announcing the hearing, Chairman Shaw stated: “The WTO has proven to be a useful forum for building trade relationships and working out disputes. I cannot imagine anyone seriously thinking that we are better off without the WTO, but it is important that Congress continually review and oversee how the system works. I look forward to hearing from government and private sector panels on their views of how the system has succeeded and what challenges remain.”

#### **FOCUS OF THE HEARING:**

The focus of the hearing will be to examine: (1) overall results of U.S. membership in the WTO and the GATT, (2) whether future participation of the United States in the WTO and the multilateral trading system can be expected to benefit Americans, and (3) prospects for increased economic opportunities for U.S. farmers, workers, and consumers in the Doha Round.

#### **DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD AT THE WTO HEARING:**

Requests to be heard at the hearing must be made by telephone to Michael Morrow or Kevin Herms at (202) 225–1721 no later than the close of business Tuesday, May 10, 2005. The telephone request should be followed by a formal written request faxed to Allison Giles, Chief of Staff, the 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 Committee 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 Committee staff at (202) 225–1721.

**In view of the limited time available to hear witnesses, the Committee 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 in lieu of a personal appearance. 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 300 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 full Committee office, 1102 Longworth House Office Building, no later than close of business on Friday, May 13, 2005.** The 300 copies can be delivered to the Committee staff in one of two ways: (1) Government agency employees can deliver their copies to 1102 Longworth House Office Building in an open and searchable box, but must carry with them their respective government issued identification to show the U.S. Capitol Police, or (2) for non-government officials, the copies must be sent to the new Congressional Courier Acceptance Site at the location of 2nd and D Streets, N.E., at

least 48 hours prior to the hearing date. Please ensure that you have the address of the Committee, 1102 Longworth House Office Building, on your package, and contact the staff of the Committee at (202) 225-1721 of its impending arrival. Due to new House mailing procedures, please avoid using mail couriers such as the U.S. Postal Service, UPS, and FedEx. When a couriered item arrives at this facility, it will be opened, screened, and then delivered to the Committee office, within one of the following two time frames: (1) expected or confirmed deliveries will be delivered in approximately 2 to 3 hours, and (2) unexpected items, or items not approved by the Committee office, will be delivered the morning of the next business day. The U.S. Capitol Police will refuse all non-governmental courier deliveries to all House Office Buildings.

**WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE AT THE WTO HEARING:**

**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 "109th Congress" from the menu entitled, "Hearing Archives" (<http://waysandmeans.house.gov/Hearings.asp?congress=17>). 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 on-line 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 Monday, May 23, 2005. **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 FOR WTO HEARING:**

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.

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Chairman SHAW. Good morning. Thank you. In today's hearing the Subcommittee will examine the overall U.S. membership in the World Trade Organization (WTO), spending, I hope, a few moments on the past and then turning toward the current negotiation and what is at stake for American firms, workers, farmers, and consumers. I expect the discussion today will include a wide array of issues, ranging from agriculture to intellectual property, and from textiles to banking. All too often we focus our attention on aspects of trade we disagree with. For example, it is inevitable that when we meet with foreign representatives we spend much of our time discussing very specific trade barriers and little time phrasing the broad range of cooperation and success we may have.

This hearing may be no different, but Members should not go away thinking that judging the WTO comes down to simply counting how many disputes were won or lost. We should examine the overall structure of the WTO as an institution, and the various trade agreements under it. How has it met our expectations in bringing a rules-based trading environment? How has real market access developed? In some cases, how have unexpected barriers developed? I would like our private sector witnesses to describe for U.S. whether the WTO has brought them benefits and discuss challenges that remain.

Regarding the current negotiations, Congress has been deeply involved with the Administration every step of the way, through the consultations and even by meeting with foreign officials ourselves. For example, the U.S. trade proposals are extensively reviewed by the Committee on Ways and Means before being tabled. Many Members of Congress routinely attend WTO ministerial meetings with foreign officials and make the case for an ambitious trade liberalizing agenda in tandem with our U.S. Trade Representative (USTR) negotiators.

I personally very much appreciated the fact that in the Cancun USTR negotiations, negotiators would pause between negotiating sessions to sit down in front of a dozen Members of Congress and explain how the negotiations were developing and answer questions.

Many of U.S. look forward to joining the U.S. delegation in Hong Kong this December. Member interest is always high because there is a great deal at stake in the Doha round, such that even very technical issues, like the various tariff cutting formulas and the method of converting specific tariffs into ad valorem tariffs capture headlines because the result could mean more market access for the United States' goods.

As we discuss these critical areas, I would like a moment to congratulate Mr. Pascal Lamy of France on his selection as the new WTO Director-General. Mr. Lamy is a skilled trade negotiator. I am hopeful his abilities will ensure the WTO balance and concerns

for its members. I look forward to working with him in the coming months.

Finally, I would—I must mention one of the reasons for the timing of this hearing. As you know, when we voted to join the WTO, we included a provision to formally review U.S. participation in the WTO and a mechanism to withdraw the congressional approval for the WTO. This year, under the mechanism, there is a resolution, H.J. Res. 27, which was introduced on March 2nd, that calls for the withdrawal of the United States from the WTO, and that resolution has been referred to the Committee on Ways and Means for consideration. According to the law, which requires expedited consideration of this resolution, the Committee must act within 45 days, and that deadline is fast approaching. I expect our witnesses will give their views of whether Congress and this Committee in particular should favorably or unfavorably act on this resolution. It is my strong view that the United States greatly benefits from our continued participation in the WTO. Mr. Cardin?

Mr. CARDIN. Thank you, Mr. Chairman, and thank you for holding this hearing. Mr. Ambassador, it is a pleasure to have you back before our Committee.

Mr. Chairman, as you pointed out, there are really two reasons for today's hearing. The immediate purpose is for this Committee to be able to act on H.J. Res. 27, which is the disapproval resolution for the WTO. The second purpose for today's hearing is for U.S. to assess where we are on the WTO, particularly as it relates to the Doha round, which was launched almost 4 years ago, which is already more than 2 years behind schedule.

First, Mr. Chairman, in regards to the disapproval resolution. It is interesting to point out that this disapproval resolution was introduced earlier in this 5-year cycle than it was 5 years ago. Five years ago we acted on it by June 21st. I hope that we can act on this disapproval resolution next week in Committee and we can dispose of it as promptly as possible, certainly before the end of June.

I stand ready to work with you to make sure that it is unfavorably reported and disposed of, and we continue in the WTO. I agree with you. It is extremely important that we continue working within the WTO. We had wide margins of both the Democrats and Republicans for rejecting the disapproval resolution, and I expect that will be the case again this go round.

With regard to the broader purpose for today's hearing, which is the status of the WTO, it is an important time for U.S. to take stock of the WTO and our participation in it. First, the Doha Development Agenda (DDA) negotiations has reached a critical phase. It is generally agreed that in order to have a successful meeting of the ministers this December in Hong Kong, the members of the WTO will have to come to significant levels of agreement by July in each of the three key areas.

First, in agriculture. I am concerned that the steps announced by the European Union (EU) on both domestic supports and market access are insufficient. I note that the announcement last week that the next Director-General of the WTO, as you pointed out, will be Pascal Lamy, the former Trade Commissioner of the EU, who comes from France. Obviously, Mr. Lamy will have a special bur-

den to demonstrate that he can oversee an agricultural agreement that includes substantial reductions in the EU's support and that significantly narrows the gap between the EU's spending on farm supports and our own, all while bringing the EU tariff levels down.

Second, in the area of manufactured goods, there are two key challenges: tariff reductions, particularly by the advanced developing countries, and the elimination or the reduction on non-tariff barriers (NTB). In both of these areas, much work remains to be done to accomplish these goals. I am particularly concerned about the negotiations of the NTB, which lag far behind at this time. The area is increasingly critical for U.S. manufacturers, particularly small manufacturers and particularly in large markets such as Japan, China, and Korea.

Mr. Chairman, finally, in the area of services, there is now widespread agreement that the negotiations are far behind in the area that remains critical to the United States. I hope that our negotiators will be able to make up for lost time in the next couple of months so that the ambitious service package can be approved in Hong Kong.

Last, but far from least, I would like to comment on one critical aspect of the WTO, and that deals with the dispute settlement system. No one doubts that the dispute settlement system of the WTO has many strong points. However, unless we address its weaknesses, we are going to be in serious trouble in support for the WTO.

In my view, none is more glaring than the overreaching that has been manifested in a large number of WTO decisions. Under the old General Agreement on Tariffs and Trade (GATT) system, silence in agreement meant that the country could do what it deemed appropriate. Under decisions of the appellate body and the panels of the WTO, silence has been altered to mean that the appellate body and panels do what they think is appropriate. The WTO agreements did not give panels this authority. The Congress in ratifying the WTO did not intend that the WTO appellate bodies and panels to have such authority.

In short, these overreaching decisions must be corrected, fully and quickly. If it is not, the risk of eroding support for the WTO will be real. In fact, we have already seen erosion in this Congress. The numbers are clear and disturbing. In 33 cases brought against the United States since 1995, panels where the appellate body have overreached in 22 of them or fully two-thirds. Even more disturbing is the 23 cases involving trade remedies brought against the United States since 1995. There has been overreaching in 20 of these cases. The consequences of these overreaching are clear. In 10 years, the WTO, without authority, has denied every single safeguard measure as applied by the United States or any other country. In trade remedy cases involving the United States, anti-dumping duties, countervailing duty measures and safeguard cases, the WTO has upheld the United States' decisions in only 2 of 17 cases.

A growing number of observers is coming to recognize that this extraordinary loss rate is because the WTO panels and appellate bodies do not respect the letter of the WTO Agreements and are filling the gaps beyond what the U.S. negotiators agreed to in the Uruguay rounds. The USTR has recognized this problem with pro-

posals it has made to the dispute settlement negotiations in the Doha round. However, these negotiations regarding dispute settlement mechanisms have now dragged on for more than 7 years past their scheduled completion date in 1998, with little sign of immediate end.

As a consequence, I intend to introduce an omnibus bill shortly that addresses these growing problems and other problems with U.S. trade laws that substantially disadvantage American manufacturers and global competition. This legislation will include a number of elements including first border adjustability. Today, the WTO allows the European countries and many others to rebate companies' value-added taxes at the border while not allowing the United States to do the same with corporate income taxes. This provides a major disadvantage to U.S. manufacturers in global competition.

Second, the creation of a special prosecutor for U.S. trade cases. I will propose the creation of a Senate confirmed position in the Office of the USTR to handle litigation in the WTO and our other trade agreements. Whatever the fault of the WTO panels in gap filling, a 15-to-17 loss record is simply unacceptable. There needs to be a higher level of accountability to Congress in this critical area.

Third, the WTO Review Commission. I will revive a proposal first made by Senator Dole in which I have introduced on a bipartisan basis for the last several Congresses for the creation of a panel of retired judges to review the decisions of the WTO and advise Congress on their review. The passage of time has only made more clear the need for an impartial review of the WTO decisions.

Fourth, I will propose various updates in the U.S. trade remedy laws, including the anti-dumping, countervailing duty of section 421 China safeguard laws.

Some of these ideas have already been introduced by our colleagues on both sides of the aisle. However, I think it is time for U.S. to consider an omnibus bill on an urgent basis.

Mr. Chairman, I hope that we can make it a top priority of the Subcommittee and Committee to mark up this critical legislation this summer, report it to the full House before we adjourn for the August recess, and enact the needed reforms prior to the Hong Kong ministerial meetings. Too many manufacturers have suffered too long for U.S. to delay any further. Mr. Chairman, I look forward to hearing from our panel of witnesses, and I look forward to working with you to strengthen our position as we look toward a successful completion of the Doha round.

Chairman SHAW. Thank you, Mr. Cardin. Now, I welcome Peter Allgeier back to this Committee. He is the Deputy of the USTR, of the Office of the USTR. Sir, we have your full testimony. As you know, it will become a part of the record, and you may proceed any way in which you see fit.

**STATEMENT OF THE HONORABLE AMBASSADOR PETER F. ALLGEIER, DEPUTY U.S. TRADE REPRESENTATIVE, OFFICE OF THE U.S. TRADE REPRESENTATIVE**

Mr. ALLGEIER. Thank you very much, Mr. Chairman, for convening this Subcommittee today. I am very pleased to be here to

discuss with you participation in the WTO-U.S. participation in the WTO and the overwhelming value of continued U.S. participation for our economic and our strategic interests.

First, I wish to recognize the leadership of Congress, and particularly, this Subcommittee and its leadership. You, Chairman Shaw, and Ranking Member Cardin, and the other Members in the establishment and operation of the global trading system and its contribution to the interests of the United States.

The creation of the WTO, of course, represented the culmination of decades-long bipartisan U.S. commitment to lead the world away from economic isolationism and toward an open rules-based global trading system. Today, the United States continues to exercise our leadership in a world that faces new challenges to promoting global security, economic growth, and the alleviation of poverty. The United States is fully engaged in the WTO's work under the DDA, and we are aggressively using the existing WTO machinery to effectively enforce our rights.

Simply put, the WTO exists as the most important vehicle to advance U.S. trade interests and is critical to promoting the prosperity of America's workers, businesses, farmers, ranchers, and families. The United States, of course, remains the world's largest exporter. During the first 10 years of the WTO, from 1994 to 2004, U.S. exports of goods and services have risen 63 percent, from \$703 billion to \$1.1 trillion. World trade during that same period has more than doubled, increasing from \$5.5 trillion to \$11.5 trillion in 2004. This would not have happened without the WTO. During this 10-year period, the market openings and the trading rules of the WTO have contributed significantly to the strong economic performance of the United States, as evidenced by real gross domestic product (GDP) growth during this period of 38 percent; growth in per capita income—real per capita income—of 25 percent; growth in manufacturing production of 43 percent, and that compares with 27 percent for the previous 10 years; and growth in manufacturing exports from the United States of 65 percent. Agricultural exports have grown 38 percent during this period; services exports have grown by 69 percent. We have experienced an average unemployment rate of 5.1 percent. There has been a net job expansion of 17.2 million workers in the United States.

This impressive economic record and the competitiveness that underlies it could not have occurred without our active participation in the WTO. By playing a strong leadership role in the WTO, the United States has been able to shape the world's trading system in ways that promote a trade environment that is most advantageous to our producers and service providers, because it rests on the same commercial principles that we have at home—non-discrimination, open markets, transparency, the rule of law, and due process. In a world where over 95 percent of the consumers live beyond our borders, the WTO is an essential tool for U.S. interests.

Falling trade barriers have helped rapidly increase the value of trade relative to the U.S. economy. United States goods and services trade, exports and imports, reached levels of 18 percent of the value of our GDP in 1984. When we started the WTO in 1994, it was 21.7 percent; now this trade represents more than 25 percent of our GDP or it is equivalent to more than 25 percent of our GDP.

Now, to ensure equal opportunities for U.S. businesses, farmers, ranchers, and other exporters, the United States has aggressively used the dispute settlement mechanisms of the WTO. In fact, the United States has brought more WTO dispute settlement cases than any other country. Since the establishment of the WTO, the United States has initiated 74 cases. Examples of these cases include dairy, apples, biotechnology, telecommunications, automobiles, apparel, customs procedures, and intellectual property rights. Of these 74 cases, we have won 23 on the core issues in the case. We have settled prior to the end of litigation another 23, and we have lost 4. Those are the cases that we have initiated.

Now, the WTO, of course, contributes more generally to development, and study after study shows that the rules-based system promotes openness and predictability, leading to increased trade and improved prospects for economic growth in all member countries. Economic research by the World Bank confirms that countries that have more open economies have higher growth rates than those with more closed economies. A number of World Bank studies in 2004 found that trade and integration into the world economy lead to faster growth and poverty reduction in poor countries.

I would like to spend just a minute or two looking ahead at the advancing the DDA. Two months after the events of September 11th, 2001, U.S. leadership played a critical role in the launch of a new round of multilateral trade negotiations, the DDA. The WTO's DDA is part of President Bush's strategy to open markets, reduce poverty, and expand freedom through increased trade among all countries in the global trading system, both developed and developing.

The U.S. role in the WTO obviously is at the core of this strategy. The main focus of U.S. participation in the Doha negotiations is in the following areas: agriculture, industrial market access, services, trade facilitation, and development. The goal of the DDA is to reduce trade barriers so as to expand economic growth, development, and opportunity. Dismantling these trade barriers multilaterally holds immense potential. From 1994 to 2003, the world economy expanded at an average rate of approximately 2.5 percent, but exports expanded at more than twice that rate, at 5.5 percent. This could not have occurred without the liberalization of trade resulting from the Uruguay round and the subsequent establishment of the WTO.

Our new USTR, Ambassador Rob Portman, an alumnus of the Committee on Ways and Means, already is doing his part to provide a new spark to these negotiations. Literally, within 24 hours of the time that he was sworn in, on April 30th, he was on an airplane to Europe to hold meetings with his ministerial colleagues to promote the DDA. His message was one of continued U.S. commitment and determination to be a driver in those negotiations and to be a problem solver in the negotiations.

Doha provides U.S. an opportunity we cannot afford to waste. By bringing the negotiations to a successful, ambitious conclusion, we can set the course for the global economy for the next decades and make a major contribution to development and to our own country's prosperity. We look forward to working with Members of this Committee and other Members of Congress to secure significant re-

sults and new opportunities for America's workers, farmers, ranchers, service providers, and consumers.

In conclusion, the first 10 years of the WTO have demonstrated why the United States must continue its active participation and leadership role. A turn away from the work of the past six decades, to bring about a rules-based, liberalized global trading system, would bring certain closure of markets to those American workers and farmers dependent on continued trade liberalization and would ignite persistent trade conflicts that would distort the global economy. A world where the United States steps away from rules-based, global trading system would be a world where international trade would be an additional source of strategic conflict rather than serving as a force for cooperation and strengthened ties among countries.

We know that the global trading system is not perfect and remains a work in progress. But through American leadership in the WTO and the support of Congress, the core U.S. trade agenda of promoting open markets and the rule of law has become the core agenda of the global trading system. The work toward these objectives is complex and often difficult, but this work is even more vital today than it was in those first decades after the catastrophic world war.

The participation and the leadership of the United States in the global trading system remains a critical element for ensuring America's continued prosperity and for meeting the challenges in seeking a more stable, secure, and prosperous world. Thank you very much, Mr. Chairman. I would be happy to respond to Members' questions or comments.

[The prepared statement of Mr. Allgeier follows:]

**Statement of The Honorable Peter F. Allgeier, Deputy U.S. Trade Representative, Office of the U.S. Trade Representative**

***Introduction***

Thank you for the opportunity to testify today. I am pleased to be here to discuss the World Trade Organization (WTO) and the WTO Agreements, the relationship to the strategic and economic interests of the United States, and the overwhelming value of continued U.S. participation in the WTO.

First, I must recognize the historic and continuing bipartisan leadership of Congress, particularly this Committee and its leadership by Chairman Thomas and Ranking Member Rangel, in the establishment and operation of the global trading system, and its function in advancing the interests of the United States. We are grateful for the longstanding close working relationship with the Committee regarding WTO matters, and we recognize the value of the five year review of U.S. participation in the WTO undertaken in accordance with Section 125 of the Uruguay Round Agreements Act.

My testimony today provides an opportunity to look back at the creation of the WTO and our participation over the last 10 years and, equally important, to focus on our agenda for the next several months leading up to the Sixth WTO Ministerial in Hong Kong this December and head toward a successful conclusion of the Doha Development Agenda negotiations in 2006.

***Historical Context for the WTO***

The creation of the WTO represented the culmination of a decades-long bipartisan U.S. commitment to lead the world away from economic isolationism and toward the imperative of an open, rules-based global trading system. The GATT had been created in 1947—drawn up in an unsteady post-war world that collectively was determined to strengthen global security and peace through economic opportunity and growth in living standards.

Today, we continue to exercise our leadership in a world that faces new challenges to maintaining global security and stability, underscoring the continuing important

strategic interest of the United States in an open global trading system governed by the rule of law. The United States is fully engaged in the WTO work under the Doha Development Agenda, and the United States aggressively uses the existing WTO machinery to effectively enforce our rights.

WTO membership now stands at 148. Accession to the WTO carries more stringent requirements than what was used in the GATT. Key entries during the past decades include not only China, but also a wide array of other countries that each carry their own strategic and economic importance, such as Jordan, Cambodia, and several former Soviet Republics. Negotiations toward entry into the WTO are ongoing at various stages for more than 25 countries, ranging from Russia and Vietnam, to Iraq, Ukraine, Saudi Arabia, and Afghanistan. Each effort underscores the importance attached to membership in the WTO, and the importance of moving forward with a member-driven, rules-based approach to the global trading system.

### ***Commercial Significance for the United States of Uruguay Round and the WTO***

During the five years since the last review under the Uruguay Round Agreements Act, unprecedented growth in trade and global economic integration has continued—led by continuing advances in technology, communications, manufacturing, and logistics. Five years ago we did not have ubiquitous cell phones that captured and transmitted photos miles away, nor was it yet routine to use the Internet to order overnight delivery of a product from thousands of miles away. Advances such as these demonstrate that the trade environment is always changing, the citizens of the United States—like the rest of the world—are being presented with new products, new services and, most important, new economic opportunities that did not exist in 1995, or 2000. At the same time, globalization also undoubtedly presents new issues, new competitive challenges and new economic pressures.

Simply put, the WTO exists as the most important vehicle to advance U.S. trade interests, and is critical to America's workers, businesses, farmers, and ranchers. Many are dependent and all are affected by a global trading system that must operate with predictability and transparency, without discrimination against American products, and providing for actions to address unfair trade practices. The United States remains the world's largest exporter. During the first 10 years of the WTO—from 1994 to 2004—U.S. exports of goods and services have risen 63 percent, from \$703 billion to over \$1.1 trillion.

To ensure equal opportunities for U.S. businesses, farmers, ranchers, and other exporters, the United States has brought more WTO dispute settlement cases than any other member. Since establishment of the WTO, the United States has initiated 74 cases. Examples of cases include those focusing on: dairy, apples, biotechnology; telecommunications, automobiles, apparel, unfair customs procedures, and protecting intellectual property rights. Of those, we have won 23 on core issues, lost four, and settled 23 before decision. The remaining 24 are "in process" (in panel, in consultations, or monitored for progress or otherwise inactive). In the last five years, our record to-date in cases—both offensive and defensive—is 16 wins and 14 losses. From 1995 to 2000, the U.S. record was 18 wins and 15 losses. The United States represents roughly 17 percent of world trade, yet has brought nearly 22 percent of the WTO disputes between January 1, 1995 and December 31, 2004.

This year marks the full implementation of many key Uruguay Round agreements, such as completion of the 10 year phased implementation of global tariff cuts on industrial and agricultural goods and reductions in trade-distorting agricultural domestic support and export subsidies; elimination of quotas and full integration of textile trade into the multilateral trading system; and improvements in patent protection in key markets such as India. The Uruguay Round was highlighted by the negotiating results being adopted in a "single undertaking" by all Members, who together rejected any notion of a two or three-tier global trading system.

The WTO also provides opportunities on a day-to-day basis for advancing U.S. interests through the more than 20 standing WTO Committees—not including numerous additional Working Groups, Working Parties, and Negotiating Bodies—which meet regularly to administer agreements, for Members to exchange views, work to resolve questions of Members' compliance with commitments, and develop initiatives aimed to improve the agreements and their operation.

The United States has advocated greater transparency and openness in WTO proceedings. The WTO has taken important steps to increase the transparency of its operation across the board, from document availability to public outreach. WTO Members continue to set the course for the organization, and the Members themselves remain responsible for compliance with rules.

Responding to U.S. leadership, during the past 10 years the WTO has shown itself to be a dynamic organization, one where our interests are advanced toward achieve-



ments with concrete positive effect. We have seen to it that the substantive agenda has provided the path for significant market-opening results over the past decade, such as concluding the Information Technology Agreement (ITA) to eliminate tariffs worldwide on IT products, and bringing the Basic Telecommunications Agreement into effect, which opened up 95 percent of the world's telecommunications markets. Both are achievements that continue to contribute to the ability of citizens around the globe to take advantage of the Information Age.

The 1997 Agreement on Trade in Financial Services has achieved fair, open and transparent practices across the global financial services industry, fostering a climate of greater global economic security. The agreement helps ensure that U.S. banking, securities insurance, and other financial services firms can compete and invest in overseas markets on clear and fair terms.

In a world where over 95 percent of consumers live beyond our borders, the WTO is an essential tool for U.S. interests. Increasingly, small businesses are important players in the global economy and an important stake holder in advancing U.S. interests in the WTO agenda. Between 1992 and 2002, U.S. exports from small and medium-sized enterprises rose 54 percent, from \$102.8 billion to \$158.5 billion—a faster pace than the rate of growth for total U.S. exports during the same time.

Falling trade barriers—many of which reflect the 10 year implementation of the results of the Uruguay Round—have helped rapidly increase the value of trade relative to the U.S. economy. U.S. goods and service trade (exports plus imports) reached the levels of 18 percent of the value of U.S. GDP in 1984, 21.7 percent in 1994 and 25.2 percent in 2004. Both U.S. manufacturing exports and U.S. agricultural exports have grown strongly during our 10 years in the WTO. Between 1994 and 2004, they were up 65 percent and 38 percent, respectively. U.S. exports of high technology products grew by 67 percent during the past 10 years and accounted for one-quarter of total goods exports.

During this time period, U.S. exports to Mexico more than doubled, while exports to Canada and the EU grew by 66 percent and 56 percent, respectively. Among major countries and regions, exports to China exhibited the fastest growth, nearly quadrupling over the past 10 years. China's entry into the WTO in December 2001 locked in improved market access opportunities, committing to reduce its tariffs on industrial products, which averaged 24.6 percent, to a level that averages 9.4 percent. The growth in services exports between 1994 and 2004 (69 percent) slightly exceeded that of goods (61 percent). Nearly all of the major services export categories have grown between 1994 and 2004.

### **Development**

The United States has been the engine of economic growth for much of the world economy. Strong growth of the U.S. economy and openness to trade assisted the recovering countries involved in the Asian financial crisis of the late 1990s and further helped pull the global economy back from the brink of severe recession in the early part of the current decade. The completion of the Uruguay Round and creation of the WTO have figured prominently in helping our nation to sustain not only our own domestic economic strength but also our leadership role within the global economy.

The United States continues to be second to none in actively working with developing countries to encourage trade liberalization that will boost economic growth and development. Trading partners with strong economies make good allies and provide important consumers for U.S. goods and services. Study after study shows that the WTO's rules-based system promotes openness and predictability leading to increased trade and improved prospects for economic growth in member countries. By promoting the rule of law, the WTO fosters a better business climate in developing country members, which helps them attract more foreign direct investment and helps to increase economic growth around the globe, while also helping to lift the least developed countries out of poverty. Economic literature confirms that countries that have more open economies engage in increased international trade and have higher growth rates than more closed economies.<sup>1</sup> Several World Bank studies in 2004<sup>2</sup> found that trade and integration into the world economy lead to faster growth

<sup>1</sup> See: World Bank, 2001, *Trade, Growth and Poverty*; Jeffrey Frankel and David Romer, 1999, "Does Trade Cause Growth?"; and Francisco Alcalá and Antonio Ciccone, 2001, *Trade and Productivity*.

<sup>2</sup> See: William R. Cline, 2004, *Trade Policy and Global Poverty*; and World Bank, 2004 *Global Economic Prospects 2004*.

and poverty-reduction in poor countries. The developing countries that were most open to trade over the past two decades also had the fastest growing wages.<sup>3</sup>

***Looking Ahead: Advancing the Doha Development Agenda***

Two months after the events of September 11th, 2001, U.S. leadership played a critical role in the launch of a new round of multilateral trade negotiations, the first to be conducted under the WTO. The negotiations under the Doha Development Agenda reflect the dynamic complexities of today's economic world, and present new opportunities to make historic advancements on the idea of open markets and a respect for the rule of law.

The main focus of the negotiations is in the following areas: agriculture; industrial market access; services; trade facilitation; WTO rules (i.e., trade remedies, regional agreements and fish subsidies); and development. In addition, the mandate gives further direction on the WTO's existing work program and implementation of the Agreement. The goal of the DDA is to reduce trade barriers so as to expand global economic growth, development and opportunity.

The market access related negotiations of the DDA offer the greatest potential to create high-quality jobs, advance economic reform and development, and reduce poverty worldwide. We recognize that the national economic strategies of our developing country partners include many important issues, but at the same time we believe that the focus of the WTO should be concentrated on reducing trade barriers and providing a stable, predictable, rules-based environment for world trade.

The DDA provides U.S. with historic opportunities to achieve agriculture reform and greatly diminish current market distortions that present barriers to American farmers and ranchers. We are also aiming to achieve significant new market access for our manufactured goods through broad tariff cuts while working to reduce non-tariff barriers. We are also pressing for ambitious global market opening for our services industries. The WTO negotiations on trade facilitation will result in less red tape and more efficiency and predictability for moving goods across borders. And less corruption in customs activities.

The WTO's Doha Development Agenda is part of President Bush's strategy to open markets, reduce poverty, and expand freedom through increased trade among all countries in the global trading system, developed and developing. The U.S. role in the WTO is at the core of this strategy.

Dismantling trade barriers multilaterally holds immense potential. From 1994 to 2003, the world economy expanded at an average rate of about 2.5 percent, but exports have grown at more than double that pace—about 5.5 percent, a harbinger of accelerating globalization.

Obstacles to the free flow of commerce undermine our ability to maximize this potential and its benefits. We need to move toward a system that provides incentives for innovation and growth in the most competitive aspects of our productive sectors. The best way to do this is successfully to complete the WTO Doha Development Agenda negotiations.

Last August, we made a crucial step forward by adopting negotiating frameworks. Much of our work this year has been on fleshing out the technical details to set the negotiating table. Looking ahead, the next major challenge for the WTO will be preparations for the 6th Ministerial Conference in Hong Kong, China, December 13–18, 2006, where Ministers will be providing direction and guidance as to how to bring the Doha negotiations to a successful conclusion. Final negotiations need to be underway, with offers on the table in the first quarter of 2006. Once we agree on modalities, we have tough bargaining ahead.

One important lesson we drew from the meetings in Seattle and Cancun is that such meetings only succeed if they are well prepared. Simply put, most of the work needs to be done before arriving at the Ministerial meeting. This gives all of U.S. the necessary time at home, and with our partners to build the needed consensus among the wider WTO Membership on any given issue.

For Hong Kong, we clearly need to have an agreement on the modalities for negotiation in agriculture and non-agricultural market access, prospects in hand for a significant result in services, directions for how to ensure that WTO rules remain effective and in some cases are strengthened (e.g., by adding new disciplines to subsidies to deal with over fishing) and the outlines of an agreement on Trade Facilitation.

If we are to secure such results in Hong Kong, we will need to be very far along in the process before the August recess in Geneva, and have an outline of the agreements to be affirmed at Hong Kong. To meet this timetable, we believe that there is an urgent need to reinvigorate the negotiations.

<sup>3</sup>World Bank, *World Development Report*, 1995, p. 55.

Ambassador Portman already is doing his part to provide a new spark to the negotiations. Appointed on Friday, April 30, he departed for Ministerial meetings focused on Doha the following day. His message was one of continued U.S. commitment and determination to be a driver and problem solver in the negotiations. Doha provides U.S. an opportunity we cannot afford to waste. We can set a vision for the global economy for the next decades and make a major contribution to development.

We will conclude in 2006 only if we achieve a balanced outcome with results that will benefit all members. That's why agriculture, non-agricultural market access (NAMA), services, rules and development are the major issues for the negotiations. We have learned that while agriculture may be the engine for negotiations, success requires U.S. to secure strong results across the broad range of issues in the Round. Working with Members of this Committee we believe we can secure results that provide new opportunities for America's workers, farmers, ranchers, service providers, and consumers. And, at the same time secure a result that strengthens the rules of the global trading system to meet America's trade interests.

On agriculture, we have work to do in all three pillars of agriculture: market access, export competition and domestic support. The 2004 Geneva framework envisions reforms in global agricultural trade: the complete elimination of export subsidies by a date to be negotiated; a framework for negotiating substantial reductions in domestic agricultural supports, including a significant down payment up front in the form of a 20 percent cut in the allowable level of domestic supports; and a commitment to making substantial improvements in agricultural market access.

Until last week, the negotiations were blocked on a technical issue. It is clear that how deeply and broadly tariffs are cut will determine the level of ambition for the agriculture negotiations overall. The World Bank recently reported that the 92% of the welfare gains from liberalization in agriculture will come from improvements in market access, compared to 6% from reduction of domestic subsidies and 2% from the elimination of export subsidies. So, the stakes are high, and highest for our partners in the developing world.

On non-agricultural market access, the key standard of success will be increased market access in manufactured goods, which account for nearly 60 percent of all global trade. The mandate from Doha lays the groundwork for broad cuts in tariffs through a formula that would make deeper cuts in higher tariffs, and it provides the possibility of complete tariff elimination in key sectors.

Negotiations now are focused on the technical details of how we get a big result. We need to find common ground on the centerpiece of the proposal—the Swiss formula—combined with appropriate forms of flexibility for developing countries in order to proceed. Other issues—work on sectoral initiatives and non-tariff barriers—must also be addressed. There are concerns and sensitivities—we all have them—and we need to understand one another. We have a big opportunity to open markets for the future—particularly for developing countries—but we need to find a way to ensure that all contribute fairly to the outcome.

We cannot afford to be anything but ambitious and ensure that we are looking to markets of the future. We did so in the Uruguay Round with great success—we accomplished a number of sectoral initiatives where growth has been substantial (e.g., chemicals, medical equipment, pharmaceuticals). We want to look at the most aggressive ways to create market opportunities. As a result of the market openings in the Uruguay Round on the sectoral initiative on medical equipment, that sector grew nearly 165% in global exports (U.S. exports grew 89.2%).

On services, in July 2004 WTO Members agreed to intensify the negotiations on opening markets and made clear that services are definitely on par with agriculture and manufacturing as a “core” market access area. Services are playing an increasing role in both developed and developing economies. Indeed, the World Bank recently reported on the force multiplier effect of open services markets: developing countries with open telecommunication and financial services markets grew 1.5 percent faster than countries where those two markets remained closed. Services, investment and trade go hand-in-hand, and liberalization in services will be a powerful engine for growth and job creation—especially in higher value added and therefore higher paying jobs.

This month, Members are expected to table revised market access offers, according to the timetable established for negotiations. The process is slower than we would like, but we are encouraged that governments are beginning to see the important role that services plays in development. For developing countries, for example, over 55% of GDP comes from services trade—and much of this trade is done with other developing countries. Working with industry, we want to build out the negotiations and supplement the current process to ensure that the degree of openness and liberalization now provided by the United States is matched by others.

On rules, negotiations are underway on subsidies and antidumping. We have found convergence with our trading partners on a number of issues, notably the importance of creating greater transparency, certainty and predictability in the ways in which the rules are administered—and we have vigorously questioned any proposal that would undermine the effectiveness of our trade laws. We have also seen that there is enormous interest in building out the subsidy disciplines further to address new and emerging issues, including those that challenge the environment. The Chairman of the negotiating group, Ambassador Valles of Uruguay has an intensive consultative process underway. I recognize that this is an area of great interest to Members and we appreciate the continued close cooperation we have with you and your staff as we develop proposals and respond to issues raised by others.

WTO Members are currently negotiating clarifications and improvements to the WTO Dispute Settlement Understanding. The United States recognizes that an effective dispute settlement system advantages the United States not only through the ability to secure the benefits negotiated under the agreements, but also by encouraging the rule of law among nations. The DSU negotiations offer Members the opportunity to assess the strengths and weaknesses of the WTO dispute settlement system and to work together to improve the system.

In those negotiations, the United States has taken an active role. The United States has tabled proposals that would provide greater flexibility and Member control in the dispute settlement process, including the ability to more effectively address errant or unhelpful panel reasoning. Moreover, the United States has tabled proposals to open up the dispute settlement process to the public—there is no reason the public should not be able to see the briefs filed or the panel and Appellate Body hearings.

After substantial delay, in July last year we managed to have an agreement to launch negotiations on trade facilitation. These negotiations are aimed at updating and improving border procedures to be more transparent and fair, and to expedite the rapid release of goods. The goal will be to overhaul 50-year-old customs rules that no longer match the needs of today's economy, much less tomorrow's. This work on trade facilitation will round out the market access elements of the overall Doha negotiating agenda and present the opportunity for true win-win results for every WTO member—developed and developing country alike.

This leads me to the question of development. It is clear that the biggest gains to development will be in the core areas of goods, services and agriculture. I am pleased to report to the Committee that many of our trading partners see the issue in the same way. Liberalizing trade among developing countries is an essential part of this effort. Some 70 percent of the duties collected on developing country trade are due to tariffs imposed by developing countries. This is significant.

In addition to the negotiations, the United States will continue to contribute in various ways to development. On the technical assistance and capacity building side, I am pleased to announce that the United States will contribute an additional \$1 million this year to the WTO's DDA Trust Fund. The appropriation by Congress for this purpose is something that we appreciate, as yet another example of our working together to support our overall strategic efforts. In this regard, I would also note that our total trade capacity building activities last year were close to \$1 billion (\$903 million).

In sum, the Doha negotiations hold the potential to make an important contribution to global growth and development. The Uruguay Round was launched in 1986, finalized in 1994, and we are just now seeing the final implementation of results. With care and attention, we can use the WTO to make a further substantial contribution to global growth and development. The United States is prepared to lead by example, but we need to ensure that we secure real gains and market opportunities in the decades ahead.

### **Conclusion**

The first 10 years of the WTO have demonstrated why the United States must continue its active participation and leadership role. A turn away from the work of the past six decades to bring about a rules-based liberalized global trading system would bring certain closure of markets to those American workers and farmers dependent on continued trade liberalization and would ignite persistent trade conflicts that would distort the global economy beyond anything imaginable today. A world where the United States steps away from a rules-based global trading system would be a world where trade no longer would be a positive contribution toward solving broader international tensions; instead, trade issues would simply act as an additional dimension exacerbating larger strategic conflicts.

We know that the global trading system is not perfect, and remains—and perhaps always will remain—a work in progress. But through American leadership within

the WTO, the core U.S. trade agenda of promoting open markets and the rule of law remains the core agenda of the global trading system. The work toward these objective is complex and often difficult, especially in a dynamic global economy unfolding as never before. But this work is no less vital today than it was in those first decades after a catastrophic world war. The participation and leadership of the United States in the global trading system remains a critical element for ensuring America's continued prosperity, and for meeting the new challenges in seeking a more stable and secure world.

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Chairman SHAW. Thank you for your testimony. How long has the WTO been in existence? How long has the United States been part of it?

Mr. ALLGEIER. Well, the WTO has been in existence for 10 years, since the end of the Uruguay round. Of course, we were a founding member of its predecessor institution, the GATT, which was established in 1947.

Chairman SHAW. The GATT is gone now; right?

Mr. ALLGEIER. Yes. It was replaced by the WTO.

Chairman SHAW. All right. How many countries of the world or what percentage of the countries in the world belong to the WTO?

Mr. ALLGEIER. One hundred forty eight countries belong to the WTO.

Chairman SHAW. Yes, and so—

Mr. ALLGEIER. With a number of other important countries negotiating their accession to the WTO.

Chairman SHAW. That means about 40 or 50 don't—

Mr. ALLGEIER. Pardon me?

Chairman SHAW. That means about 40 or 50 do not I guess—somewhere right?

Mr. ALLGEIER. I think it is probably a little bit lower than that.

Chairman SHAW. What would govern trade if we didn't—if the United States were not a part of the WTO?

Mr. ALLGEIER. Well, some would say the rule of the jungle would govern trade. There would be no governing body, and it would be each country out there for itself. Pursuing its interests in whatever way that it felt.

Chairman SHAW. Trade would still exist, but without the United States being part of it, and as a larger exporter in the world—over \$1 trillion exports out of the United States. This would be almost chaotic, wouldn't it?

Mr. ALLGEIER. Yes. It is really inconceivable to imagine how it could continue effectively without the United States.

Chairman SHAW. Thank you. Mr. Cardin?

Mr. CARDIN. Thank you, Mr. Chairman. Mr. Ambassador, I once again want to thank you not only for being here, but for your service to our country. You have been one of our true leaders on trade issues and we very much appreciate that.

Mr. ALLGEIER. Thank you very much.

Mr. CARDIN. I want to concentrate on one area in regards to the Doha round and that is the service area. I am very concerned that the process that was used to try to make advancements in service basically depended on the goodwill of an individual country's submitting their proposals, and we found that many countries did not submit a proposal by the due date or submitted inadequate pro-

posals. I know there has been some recent meetings in which we are trying to establish some parameters of what should be included as far as progress in the service areas are concerned.

I am also concerned by what I have heard that particularly the developing countries are demanding that we change our immigration laws as a tradeoff to making progress in service. Now, I don't normally agree with Chairman Sensenbrenner on many of his proposals, but I do believe that immigration laws should be controlled by Congress, and that that would not be the right area to include in trade negotiations.

Then lastly, if we continue the current trend, we are going to become a net negative on service by the year 2010 if the current trends continue. So, I think this should be one of the highest priorities and yet it seems to me that we are not very far advanced in making progress on this round. So, I am hoping that your answer will reassure me that this is under close attention and we are doing better than what at least I have been led to believe.

Mr. ALLGEIER. Thank you. First of all, there should be no doubt in anyone's mind that services is one of our highest priorities in these trade negotiations. When the WTO was established that was really the first time that there were international rules governing the trade in services. That was in there because the United States pushed so hard from the early eighties up until 1994, and we continue to be a leader in advocating very ambitious market access for services and fair rules. So, that is a top priority for U.S. in these negotiations.

We share with you the concern that countries have not been as ambitious as we think they should be in the negotiations. We have pushed very hard to get a critical mass of services offers from major economies and then from those who already provided offers in an earlier phase to greatly improve those offers. We will be submitting our revised by the next deadline which is the end of this month, and we are pushing very hard for countries to do the same.

Mr. CARDIN. Well, there were some meetings that took place in Europe that suggested that we were going to change the format for service negotiation. At least that is what I was under the impression. Can you just update U.S. on that? Are we still dependent upon the offers that are being made?

Mr. ALLGEIER. Well, we are looking really to supplement the request offer approach, and we are working with a number of our colleagues, for example, the other countries in what is known as the Quad—the United States, EU, Canada, and Japan—to see if the request offer approach can be supplemented by others, for example, identifying kind of a core of critical services that everybody, both developed and developing countries should include in their offers looking to see if we can assess whether we are raising the entire level of services openness in the world economy instead of just looking at it bilaterally to say can everybody kind of level up toward where the United States is frankly in terms of the openness of our services market.

Mr. CARDIN. Well, I think we need to supplement the request offer approach. I just—looking at the type of response we received to date, if we are going to be able to make progress and have a successful Doha round, it won't happen unless we are more aggressive

than just using the current approach and I would urge you to do that.

Let me just make one other observation now that Mr. Lamy is the head of the WTO. I must tell you he was not my first choice. Now, I hope that I am going to be proven wrong and that he will be fair and objective, but in the discussions that we have had with him in the past on agriculture I found to be very unacceptable, and I hope that we can hold him accountable to an approach that will narrow the disparities on subsidies on agricultural products and not look for equal amount of relief.

Mr. ALLGEIER. I don't think that he is under any illusions as to what will be required for a satisfactory package to the United States on agriculture or on the other market access issues, such as services and the non-agricultural market access.

Mr. CARDIN. Good luck.

Mr. ALLGEIER. Thank you.

Chairman SHAW. Mr. Lewis?

Mr. LEWIS OF KENTUCKY. Thank you, Mr. Chairman. Mr. Ambassador, welcome.

Mr. MARTIN. Thank you.

Mr. LEWIS OF KENTUCKY. How have free trade negotiations helped U.S. in the WTO process and can you give examples in which our free trade area trading partners have become more allied to the U.S. trade liberalization positions as a result of opening their markets through the free trade agreement (FTA)?

Mr. ALLGEIER. Yes. First of all, let me say that one of the criteria that we have used in determining with whom to negotiate free trade areas is the behavior of that country or countries in other negotiations, and particularly in the multilateral negotiations of the WTO. So, that is a starting point.

Let me just mention three areas of the negotiations. First of all, in the non-agricultural market access (NAMA) negotiations, we work very closely with a group which we call the Friends of Ambition. These are the countries that look for very ambitious outcomes on NAMA. That group includes such free trade area partners of ours as Canada, Australia, Chile, Singapore, and Costa Rica.

Similarly, in services, we found that several of our FTA partners are strong, strong advocates for ambition. It is understandable, because when they have opened their markets for services through our FTAs, generally speaking they are opening their market broadly, not just to us. So, they have an interest in having other countries who are not part of an FTA open their services to them. So, therefore, in services, for example, we work very closely with Canada, Mexico, Chile, Singapore, and others who are our FTA partners.

The third example is what is known as trade facilitation, basically getting open and fair customs procedures. There is a group there that has worked for several years on that, the so-called Colorado Group and that includes Canada, Australia, Morocco, Chile, Colombia, Singapore, Costa Rica—all countries that either we have FTAs with or we are negotiating them with. So, we feel that there has been a very good synergy between our FTAs and the WTO negotiations.

Mr. LEWIS OF KENTUCKY. Thank you.

Chairman SHAW. Mr. Levin?

Mr. LEVIN. Thank you, Mr. Shaw. Welcome.

Mr. ALLGEIER. Thank you.

Mr. LEVIN. You have surely worked hard. You mention in your opening statement about the historic and continuing bipartisan leadership of Congress. There will be a bipartisan effort on WTO, because the alternative, withdrawal, is not wise and is not feasible. It is neither. However, I don't think anybody should mistake that vote and think that there is the strong bipartisan foundation that has existed in previous decades in this Congress on key trade issues, because it has broken down in recent years and it needs to be rebuilt, and it can't be rebuilt on a narrow basis, trying to find a few people on one side to go with a majority on another. That isn't a bipartisan foundation. In fact, it is the opposite. It is shifting sands. We aren't going to be able to tackle the tough issues in the Doha round with the present shifting sands instead of a strong foundation.

I also want to say that the Congressional Oversight Group (COG) in my experience—and I was on it for a good number of years—has not been an effective instrumentality. The meetings have been sporadic and attendance has been minimal. The meetings have usually been interrupted. That isn't anybody's fault. So, if there is going to be a meaningful effort to tackle these tough issues, there is going to have to be much more back and forth. But, if there is a strong foundation, bipartisan foundation, whether it is agriculture or services or tariffs. These are tough issues. Presently, it would be very difficult, I think, to put together a strong coalition that could tackle these tough issues from the point of view of the United States.

Let me just ask you about NTB. There has been little progress in so many areas these years since the Doha round was kicked off, and NTB were brought up. I forget if you were there at Doha? I forget.

Mr. ALLGEIER. Yes.

Mr. LEVIN. I thought you were. You know we pushed that NTB not receive second place when it came to industrial tariffs. You know the evidence is that that is kind of what is going on; that the focus in the industrial area is on tariff reduction and NTB lag behind. There isn't even a clear negotiating mechanism set up for the NTB within the regular negotiating process; right?

Mr. ALLGEIER. Well, there is within the NAMA, there is the NTB component.

Mr. LEVIN. Well, it is kind of—there is some kind of a separate mechanism that has been set up; right?

Mr. ALLGEIER. Well, the nature of NTB obviously is different than tariffs. So, whereas in the tariff approach, we are looking at a formula to cut the tariffs, in the NTB the approach we are taking is first of all to identify what are the problematic NTB. For example, the United States has put forward a proposal with respect to automobile NTB, working closely with our industry. Then, the question is what will be the discipline that should be applied to those NTB, and that is what our team is working on there.

Mr. LEVIN. Well, for example, I read from a report of just a few months ago, the U.S. Government did not include a link between



its willingness to tackle tariffs in the automotive sector and to eliminating NTB during the February 2nd meeting. The discussion of NTB is being done very separately with some kind of an informal group as I understand it rather than through the single mechanism of the group linking NTB with tariff reductions. My time is up. Well, but look for many sectors, the NTB are as important as if not more important than the tariff reductions, and there has to be—we fought this out, we talked about this at Doha, and we pushed and finally it was agreed to put them on the same plane, but there is no clear evidence that is what happening in these discussions.

All right. So, why don't you send U.S. all an update on that. Also, if I might ask, Mr. Chairman, then I will finish. If you could send U.S. the Administration's description of its approach on the Geneva discussions on China, the review mechanism, because the general feeling is and it is mine that it has failed. We put it into China permanent normal trade relations (PNTR), and I think there has been a lackadaisical approach. So, I would appreciate, especially with a new USTR, if you could give U.S. a detailed description of what you have done to carry out that provision of PNTR. Will you do that?

Mr. ALLGEIER. Yes, I will. I will be happy to do that.

Mr. LEVIN. Thank you.

Chairman SHAW. The time of the gentleman has expired. Mr. Brady?

Mr. BRADY. Thank you, Mr. Chairman. At the heart of free trade lies I think a fairly simple principle, which is if America builds a better mousetrap, we should have the freedom to sell it without discrimination throughout the world. If someone else builds a better mousetrap, we should have the freedom to buy it. The WTO plays a critical role, not in rubber stamping American trade policies, but in breaking down barriers around the world for U.S. to sell our products and a dispute resolution system for resolving the many disputes that invariably occur, just as they do in our own business climate, in the world business climate.

I want to ask you two questions. One, in your view, is the dispute resolution system used by the WTO, is it open? Is it fair? Is it enforceable? The second question has to deal with in our efforts to break down those barriers, to advance U.S. interests, how damaging would the rejection of the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA) be to our efforts? So, first, dispute resolution process—fair, open, and enforceable; second, effects of DR-CAFTA.

Mr. ALLGEIER. Thank you, Mr. Brady. First of all, let me say that whether in the WTO or anywhere else, for U.S. it is extremely important that any agreement we have be one that is enforceable. There are a number of keys to that, one of which is clarity in the agreement itself, but the other is an effective and accessible dispute settlement process. So, that is why during the Uruguay round, we spent so much U.S. effort in trying to shape this dispute settlement process. We feel that overall the process has proven to be an effective process. It is also a work in progress. It is not perfect, and we have identified areas where we feel there needs to be improvement, and one part of it is transparency. We think that it needs

to be more open so that the public generally can understand what is going on there and how cases are treated.

There are also are instances in which we believe that members of appellate bodies or panels overreached their authority in determining the outcome of those disputes, and that is why we have put forward proposals in the Doha negotiations to try to improve that so that they stick to the standard of review, for example, in anti-dumping; that they don't go off and start—pardon the expression and this is the House—legislating. That isn't the role of the panels. So, we do think that it is generally effective, but it needs improvement, and we are working to do that.

With respect to DR-CAFTA, the rejection of DR-CAFTA would send a terrible signal worldwide about U.S. leadership in opening markets and using trade as a mechanism for lifting people out of poverty. It would be even more disastrous with respect to this hemisphere. If we were to reject DR-CAFTA, Hugo Chavez would declare a holiday in Venezuela and he would use the holiday to give a 24-hour speech on feckless Americans. So, that is something that I don't think any of U.S. want to see happen, and I appreciate very much, Mr. Brady, your strong, strong support from the very beginning of DR-CAFTA.

Mr. BRADY. I thank you, Mr. Ambassador. Thank you, Chairman.

Chairman SHAW. Mr. Jefferson.

Mr. JEFFERSON. Thank you, Mr. Chairman. Mr. Levin has talked about the desire for bipartisanship in the trade arena, and I think he is dead right about that. And for many of U.S. who voted for the Trade Promotion Authority (TPA) (P.L. 107-210) legislation a few years ago, our hope was that there would be broad multilateral agreements at the conclusion of Doha, Free Trade Area of the Americas (FTAA) with Brazil, and all the rest of the South American and Latin American countries—and progress on the big issues—big trade issues of the world.

Unfortunately, we have seen a lot of small agreements here and there that have been useful but that have not been nearly as comprehensive, which I think feeds into the whole lack of an opportunity here in the Congress to have a bipartisan approach to all of these issues.

For instance, if in Doha, we had worked out the issues on sugar worldwide, we would not now be talking about sugar in a DR-CAFTA agreement or any other one coming up subsequently. I think all of U.S. agree that there is no—the subsidies aren't good for our country; aren't good for the world. They cost U.S. money needlessly. The prop up inefficiencies—all the reason that we can find to argue for them.

But we have got to have success there. We had a deadline for January 5th. I would like you to tell me if you could, since we all know that this legislation is perforce has got to pass—this is our opportunity to ask you a question about something else. We missed the January 5th, 2005 deadline. I would like to know what you think the major reasons for that were and one of the major obstacles in the Hong Kong ministerial of getting an agreement on text in four key areas: agriculture, NAMA, services, and trade facilitation.

Mr. ALLGEIER. Thank you, Mr. Jefferson. Collectively, negotiations have missed the initial target date of January of 2005 for completing the DDA. At this point, the consensus is that we should aim at completing this by the end of 2006, and that is why this Hong Kong ministerial is important because we need to be at a point at the time of the Hong Kong ministerial that we are confident that we can complete the negotiations, the very detailed negotiations in these various areas that you are talking about, of agriculture, non-agricultural market access, services, trade facilitation and so forth.

Why did we miss the deadline? First of all, it was an extremely ambitious deadline and particularly when one is dealing with 148 countries, and there has been a large expansion of the membership of the WTO over its 10 years. As you know, decisions are made by consensus. The good thing about that is once you have a consensus, everybody is on board and you have a result that is accepted and it is strong. The disadvantage is getting to consensus among 148 countries that are so diverse in economics, in political orientation, and so forth.

There are a number of issues in the negotiations. We are trying to focus as much as possible on the real market access dimensions, which we think are important to the United States, but also important to other countries. In that regard, I want to be really clear that we certainly understand that market access in manufactured goods requires not just reduction, elimination of tariffs, but the NTB. As the tariffs have come down, then the NTB loom even larger. So, that is an integral part of our approach to those negotiations.

Mr. JEFFERSON. I have a little more time. Let me ask you a follow up in that same area. What do you see the Congress as a—because there is a lot of complaint here that the Congress isn't involved enough and isn't consulted enough. What do you see the role of the Congress in this next year to help conclude this round in Doha? What can Congress do to help move this along?

Mr. ALLGEIER. Well, first of all, we are extremely cognizant of the fact that whatever we have to—whatever we negotiate we have to bring back to the Congress for your scrutiny, and the only way to be confident of what the outcome of that will be is if we are in close consultation with you and the other interests within Congress on the negotiations as they proceed.

I think that certainly the fact that our new USTR spent more than a dozen years in Congress will be very, very helpful in terms of the communication that we have back and forth. I can just tell you from his first few weeks in office, he has been very clear with U.S. about the importance of communication with Congress, two-way communication.

Chairman SHAW. Mr. Foley?

Mr. FOLEY. Thank you very much, Mr. Chairman. Following along with the inquiry of Mr. Jefferson. Many of my sugar growers do ask why can't we move it to a WTO level. What is your thought on that?

Mr. ALLGEIER. Sugar, of course, will be part of the picture of the overall agricultural negotiations in Doha. It is a part of that, and we feel frankly that that does provide a good forum for the ne-

gotiations because all of the participants in the sugar market are present in those negotiations. So, certainly we will continue to work very closely with the industry as we go forward in the three areas of the agricultural negotiations, including market access, the domestic supports, and export subsidies. However, let me just say that we are doing this with a great deal of care, and we work extremely closely with the U.S. Department of Agriculture (USDA), which understands the U.S. sugar program intimately.

Mr. FOLEY. The Administration's decision to stop imports from China—cotton-type materials—it sounds like a response to dumping. We are concerned obviously with sugar dumping into the country. So, in one case, they take a proactive approach to limit the influx of goods in order to stabilize the market. On the other side, it is kind of the concern our grower groups have of flooding. Can you give me the rationale for the recent decision on China?

Mr. ALLGEIER. Yes. First of all, the decision that was made on China the other day—we announced that we would be imposing quantity restrictions or limitation on the growth of certain textile products coming into the United States from China. When one looks at the first quarter statistics this year, compared to the first quarter last year, it is stunning the increase. Just to give you the order of magnitude, it is something on the order of a 1,500-percent increase; something under if I recall correctly a million square meter equivalent or whatever the denomination is to seven times that. So, that's in just a matter of these first 3 months. So, the—we have used the provisions of China's own accession to the WTO to limit the growth of these products into the United States that it will be limited to another 7-percent growth over last year, so we are not closing down the market.

Now, in the case of sugar, the amount of sugar that is permitted potentially under the Central American agreement is even smaller than that growth rate in the China textile quotas and there are other features, of course, that we have to protect the sugar. So, we have I think in both cases, we have acted very responsibly to balance the interests of the United States as an exporter and as an importer and as a producer in products that are getting a lot of competition from outside the United States.

Mr. FOLEY. Can you tell me the thought behind taking sugar out of Australia?

Mr. ALLGEIER. Well, that was a very difficult negotiation, as you know, and in that case, we had to balance the interests, our—shall I say—offensive interests in what we were seeking from Australia with the potential harm that Australia might do, and we decided that this balance was best served in that instance by excluding sugar from the agreement. So, it is a case by case situation, and we try to judge the balance as best we can.

Mr. FOLEY. But in order to achieve victory, you have been able to remove that in the past?

Mr. ALLGEIER. We were able to do it in the case of Australia. That doesn't mean, of course, that we can do it identically in every trade negotiation.

Mr. FOLEY. Was it because it was done pre-negotiation? Like DR-CAFTA right now is approved I guess by one side awaiting our approval.

Mr. ALLGEIER. Several of the Central American countries have already ratified that agreement. The others are in their legislative process.

Mr. FOLEY. Thank you, Mr. Chairman.

Chairman SHAW. Mr. McDermott.

Mr. MCDERMOTT. Thank you, Mr. Chairman. I recognize your expertise in economics and if I understand correctly, the primary way in which the Chinese or any other country—they peg their currency to our money; is that correct?

Mr. ALLGEIER. My understanding is that their currency is pegged to the U.S. dollar.

Mr. MCDERMOTT. Since we have the biggest deficit in the world—and our history, actually—and the primary way that we are financing that is selling bonds to the Chinese, at what point are the Chinese—I mean, how does the USTR think this is going to work when you have ultimately the Chinese beginning to say maybe we are not going to buy any more Federal securities. We will just move to the Euro—Euro denominated things, because the dollar is dropping. That will cause the dollar to drop more and our own interest rates will go up, and the domestic economy gets better. Yet today's newspaper has this story again—this one from the New York Times. Who's in charge of determining U.S. interest rates? It may be Beijing.

I have the feeling that this Administration doesn't have the domestic economy people talking to the trade people, but somehow they think they operate independently and that when the interest rates go up in this country and all those young people who have bought houses with adjustable-rate mortgage interest rates are going to get clobbered and lose their houses that the exporters will have gained something because we will have forced the yuan to sort of float a little bit. There will be a short-term gain there, but a big term loss in the domestic economy. How do you explain all that to us? What is going on with China and are we doing the right thing by telling them the answer is let the yuan float?

Mr. ALLGEIER. Okay. First of all—and I don't mean to be dodging the question—the USTR concentrates on the trade aspect of our relationship. But to get to your point about coordination, we are part of an interagency process that is coordinated in the White House that brings together all the economic agencies, both those with respect to—who have responsibility on the domestic side, including the U.S. Department of the Treasury, for example, the President's advisors—the Council of Economic Advisors—and then our organization, the U.S. Department of Commerce, and so forth.

With respect to China in particular, of course, the U.S. Department of the Treasury has the responsibility for the dialog with them and other countries with respect to exchange rates and the foreign exchange regime that they have. Certainly, I think everybody is aware that the Treasury has been working with the Chinese to help them move from the rather rigid system they have now with the peg to something that would be more responsive to market forces. That would, of course, be helpful in terms of establishing a better equilibrium there.

Mr. MCDERMOTT. But has that organization—and I would love to know who it is that coordinates it or who is the central person

in that—but have they decided they are willing to sacrifice interest rates in the United States for the trade problems with China?

Mr. ALLGEIER. I have not—

Mr. MCDERMOTT. The deficit?

Mr. ALLGEIER. I am certainly not aware that that is way that anybody is approaching it. Obviously—

Mr. MCDERMOTT. Do they think they can have—have you sat in on those meetings? I don't know if you are at the proper grade level to sit in on those combined meetings of domestic and foreign?

Mr. ALLGEIER. Well, the meetings occur at various levels, and so some of them, yes, I have sat in.

Mr. MCDERMOTT. Who is making the decision that we should keep pushing the Chinese when everybody is predicting if we do our interest rates are going to go up? Who is doing that?

Mr. ALLGEIER. Well, there is a collective determination of recommendations to be made as to what fiscal policies are followed, what monetary policies are followed, what trade policies are followed, and so it is a network of policies and responsibilities.

Mr. MCDERMOTT. Is that the Council of Economic Advisors' Chairman or is it the Secretary of the Treasury or the Secretary of Commerce? Who's the center person here? Who says to the President: this is what we are doing, Mr. President?

Mr. ALLGEIER. It is coordinated by the National Economic Council, but then that council is comprised of these different agencies and so as in any recommendation to the President, the President gets the advice from all of the departments and if the advice is different, he is informed of which agencies feel one way, which agencies feel another, and then he ultimately makes the decisions based upon the advice that he gets from his entire cabinet and the agencies.

Mr. MCDERMOTT. The reason I raised it is because in this same pile of clips for today is a story in Seattle about people losing their houses, because of the interest rates, and the adjustable rate mortgages, and what is happening with all that. It seems to me that you have two forces going on that somebody has got to start thinking about what are willing to do to the American people as a part of this trade relationship with China. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Weller.

Mr. WELLER. Thank you, Mr. Chairman. Mr. Ambassador, it is good to see you, good to have you with us. Again, I want to commend you for your effective efforts and your effective ability to speak in behalf of the President's trade agenda.

Mr. ALLGEIER. Thank you.

Mr. WELLER. As we open new markets. I also want to congratulate you on your good work.

Mr. ALLGEIER. Thank you.

Mr. WELLER. As a strong supporter of DR-CAFTA, I want to thank you for your efforts, along with Ambassador Zoellick and others, to make trade with Central America and the Dominican Republic a two-way street and right now, for Illinois manufacturers, Illinois farmers, and Illinois workers. Our products enter those markets in Central America and the Dominican Republic and facing tariffs.

Mr. ALLGEIER. Right.

Mr. WELLER. However, our policy over the last 20 years has been to allow their products to come in essentially duty free, and your efforts have produced a two-way street, and I look forward to working with you through the ratification process.

The one issue that raised its head during the DR-CAFTA process—and it appears to be a trend as we look at international trade—is the issue of intellectual rights, intellectual property rights, which are important to manufacturers and workers in my home state of Illinois, and in particular the pharmaceutical sector, which is a major employer in Illinois. It appears that there is real effort to move forward on an assault on the intellectual property rights, particularly of pharmaceutical products.

Brazil, for example—it has been brought to my attention—that they are attempting to break patents on medicines for use not only in Brazil, but to have the ability to produce for export, essentially stealing someone else's idea and then making money off it. They have been attempting to justify this by invoking the trade-related aspects of international property rights (TRIPS) agreement compulsory licensing provisions.

First I would like to hear your comment, Mr. Ambassador, on Brazil's attempt to break U.S. patents through TRIPS, even though Brazil is not a developing country, but also how widespread is this challenge as you work on trade agreements?

Mr. ALLGEIER. Thank you. Well, the area of intellectual property, as you pointed out, is extremely important to the United States. It is not just on patents, but also on copyrights and trademarks and trade secrets. This whole—the innovation that we have in our economy is one of the strongest elements in our competitiveness. So, it is a very important priority for U.S. in our trade negotiations.

That said, we also are very sensitive to the fact that all countries, and particularly developing countries, many developing countries, have enormous challenges in meeting the public health needs of their population, and with limited resources. So, that is why the United States played such an important role both at Doha and then subsequently to refine the WTO procedures and understandings on how a country can balance the protection of intellectual property with meeting its public health needs for its public. We have taken that through and incorporated in our FTAs including the DR-CAFTA

Now, with respect to the specific problem that you identified with Brazil. Brazil, of course, has a very significant acquired immune deficiency syndrome (AIDS) problem, which they have dealt with and they have had some very innovative policies for doing it. Our belief, based upon experience to date in Brazil and elsewhere, is that that is best done in a cooperative mode with the pharmaceutical companies, and not doing it a way that is very confrontational and that is threatening to break patents in order as a negotiating ploy to reduce prices.

I think that our companies have shown a sensitivity to those issues and so we have been working in this latest instance with the Brazilian authorities and with the companies urging them, the two, to get together to find out what is going to be in the best long-term

interest of Brazil in meeting its public health needs. It should be based upon that, not upon some other kind of longer-term commercial calculation on the part of industrial authorities in Brazil as to where they would like to be 10 years from now in terms of production. They will be in the best position if they work to create an environment in which our companies work together with Brazilian companies to develop the industry in Brazil.

Mr. WELLER. Is that the strategy the Administration—

Mr. ALLGEIER. Yes.

Mr. WELLER. When it comes in and selects a product; to encourage industry and the particular government of that particular country to work it out or do we have a strategy overall on protection of intellectual property rights?

Mr. ALLGEIER. Well, we certainly have a strong objective of protecting intellectual property rights within the boundaries that have been established within the WTO, which we think has struck the right balance between respect for intellectual property rights and then also ways in which companies can work with countries that have severe public health needs.

Mr. WELLER. Thank you, Mr. Chairman. I see my time has expired.

Chairman SHAW. Mr. Herger?

Mr. WELLER. Thank you, Mr. Ambassador.

Mr. ALLGEIER. Thank you.

Mr. HERGER. Thank you, Mr. Chairman. Mr. Ambassador, it is great to have you with us. I represent one of the richest agricultural producing areas in our nation, the northern Sacramento Valley of California. More than 60 percent of our California almonds are exported, about half of our dried plums, about half of our rice. For this reason, I am very interested in the ongoing WTO negotiation to bring down the worldwide agricultural tariffs and other barriers that restrict our northern California exports.

My question is this—and I know you have addressed it somewhat—but still, as we look at forward to the sixth WTO Ministerial Conference this coming December, how do you now view our U.S. negotiating position as it relates to improving market access for agricultural products among other WTO member nations?

Mr. ALLGEIER. First of all, I think that it is absolutely clear to our negotiating partners that a very strong, ambitious result in market access in agriculture is absolutely essential to a package. We have been clear. All these countries that come to U.S. and say well, we want to see reform in domestic supports or we want to see some other development aspects. We say a key element is strong market access in agriculture, so there is complete clarity in the minds of our trading partners, and obviously complete clarity in our minds, and we work very closely, as you know, with the various farm groups to make sure we understand the conditions that they need to compete in key markets overseas.

Mr. HERGER. Well, I want to thank you for that, and just reemphasize how important it is that we continue in this vein. Obviously agriculture is one of our major exports and it's key to our economy and key to helping to bring in the closer line or imbalance of trade. So, thank you very much.

Mr. ALLGEIER. Thank you.



Chairman SHAW. Thank you, Mr. Allgeier. We have now a vote, possibly two votes, on the floor. I want to thank you for your insightful testimony. It is always a great privilege to have you before the Committee. We will now stand in recess, and we will reconvene in approximately 20 minutes with the panel of four witnesses that remain as part of our hearing today.

Mr. ALLGEIER. Thank you, Mr. Chairman.

[Recess.]

Chairman SHAW. Thank you. That vote took a little longer than we expected. Thank you for your patience. The second panel is Norman Sorensen, President and Chief Executive Officer (CEO) of Principal International, Des Moines, Iowa, and Chairman, Coalition of Services Industries; Dyke Messinger, President and CEO, Power Curbers, Incorporated, Salisbury, North Carolina, on behalf of the National Association of Manufacturers (NAM); Al Christopherson, President of the Minnesota Farm Bureau Federation, Pennock, Minnesota, on behalf of the American Farm Bureau Federation; and William Klinefelter, Legislative and Political Director of the United States Steelworkers.

We have each one of you—you can start out by correcting my pronunciation if I have mispronounced your names. We have your full testimony. We ask that you try to limit your testimony to 5 minutes and your full testimony I can assure you will be part of the permanent record. Mr. Sorensen.

**STATEMENT OF NORMAN R. SORENSEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, PRINCIPAL INTERNATIONAL, DES MOINES, IOWA, AND CHAIRMAN, COALITION OF SERVICES INDUSTRIES**

Mr. SORENSEN. Well, thank you, Mr. Chairman, Ranking Member, Mr. Cardin. Thank you for the opportunity to testify today. My name is Norman Sorensen. I am the Chairman of the U.S. Coalition of Service Industries. I am also the President of Principal International, an international arm of Principal Financial Group, a large pension and asset management company based in Des Moines, Iowa, and a member of the Fortune 500.

Mr. Chairman, the message is very basic. We believe the WTO is the foundation of the world trading system and that continued active U.S. engagement in it is essential. The WTO has been effective in removing trade barriers that had long restricted international trade. United States companies, workers, consumers, and families have benefited, in our opinion, tremendously as a result. It is the broadest form within which liberalization is negotiated, rules are set, and disputes are adjudicated.

Without the WTO, there would be no vehicle for global trade liberalization. We support efforts to liberalize bilaterally and in that regard strongly support ratification of DR-CAFTA. But we believe that the WTO must now take center stage, both because it is the only means of achieving liberalization globally, and because the Doha round has reached a critical stage. We, therefore, hope that Congress will ensure that the United States remains committed to involvement and engagement in the WTO.

The issue at hand today—and some of these argument have been expressed throughout the hearings earlier—is not whether to main-

tain a membership in the WTO, but that should be a given. Rather, we ask that policy makers now focus hard on ensuring that the Doha round concludes successfully.

Since the adoption of the agreement establishing the WTO in 1994, U.S. cross-border services exports have grown from \$186 billion in 1994 to \$338 billion in last year. The United States is, by far, as has been said, the largest services exporter and enjoys about a \$50 billion surplus in services trade.

Potential benefits to the United States from a successful Doha round are tremendous, especially for services. According to one University of Michigan study, if all barriers to worldwide trade in goods, agricultural products, and services were dismantled and dismantled, the United States would enjoy a welfare benefit of an astonishing \$542 billion, and the bulk of this, \$466 billion would result from the elimination of services barriers. We must, therefore, in the Doha round move to the next phase, in which we negotiate deeper, more liberalizing commitments.

However, Mr. Chairman, we are of the opinion that the services negotiations are at a point of crisis. They are at a crisis because many countries have not tabled offers, and those offers that have been tabled provide for little new liberalization. Not only are offers weak, the hard work of country by country, sector by sector bargaining is also not taking place.

In our discussions with U.S. trade officials, WTO officials, and our trading partners, we have explored ways to get the services talks back on track. In my visits last month to four major capitals—New Delhi, Beijing, Brasilia, and Kuala Lumpur—I met with trade officials to stress these very arguments and encouraged them to submit revised offers to WTO this month, which is, as you know the first deadline on May 31st.

The Coalition of Service Industries proposes that all WTO members undertake to make commitments in all services sectors in the GATT. If WTO members can accept that as a starting point, it will improve the negotiating environment significantly, allowing negotiators to focus on the depth, scope, and quality of commitments. Those commitments should at least capture their current levels of liberalization.

In further negotiations, the United States could then request that our trading partners bring their schedules of services commitments at least up to the quality of liberalization reflected in the schedules of countries that have done the most to liberalize their services sectors, like the United States and some of our trading partners in the industrialized countries.

The importance of the Doha round services talks demand that the United States dedicate the resources and focused energy, as has been said before, to succeed in the services negotiations. All members of the global trading system have a stake in the future of the WTO and the Doha round, but it is the United States that stands to gain the most. We must, therefore, continue to participate actively and vigorously in the WTO.

In conclusion, services are central to our economic interest. Worldwide liberalization of services means more American jobs, expanded U.S. trade, and a stronger American economy. Thank you, Mr. Chairman.

[The prepared statement of Mr. Sorensen follows:] Chairman SHAW. Thank you, sir. Mr. Messinger, please.

**Statement of Norman Sorensen, President and Chief Executive Officer, Principal International, Des Moines, Iowa, and Chairman, Coalition of Services Industries**

**INTRODUCTION**

Thank you, Mr. Chairman, for the opportunity to testify today on the future of U.S. participation in the World Trade Organization. The Coalition of Service Industries (CSI) is the leading business organization dedicated to the reduction of barriers to U.S. services exports. CSI was formed in 1982 to ensure that U.S. trade in services, once considered outside the scope of U.S. trade negotiations, would become a central goal of future trade liberalization initiatives.

Today's hearing is timely, as we are entering a crucial phase in the Doha Round, which is the 9th Round of multilateral trade negotiations since the formation of the GATT, the predecessor to the WTO, in 1948.

The WTO is the foundation of the world trading system. The WTO has been effective in removing trade barriers that had long restricted international trade, and U.S. companies, workers, consumers, and families have benefited tremendously as a result. With a membership that includes 148 nations and nearly all the world's significant economies, it is the broadest forum within which liberalization is negotiated, rules are set, and disputes are adjudicated. Without the WTO, there would be no vehicle for global services liberalization, and until its establishment ten years ago, there wasn't. The institution is crucial for maximizing the advantages from, and managing our interests in, the global economy. The continued focused and determined engagement of the United States in the WTO is critical to the interests of the U.S. service industry.

We support efforts to liberalize bilaterally and in that regard strongly support ratification of CAFTA. But we believe the WTO must now take center stage, both because it is a means of achieving liberalization globally, and because the Doha Round has reached a critical stage. Unlike FTAs, which are negotiated bilaterally or with a small number of trading partners, WTO negotiations lead to liberalization by all WTO members.

We therefore hope that Congress will ensure that the United States remains committed to the WTO, especially at such an important juncture in the Doha Round.

Many challenges stand in the way of a successful completion of the Round, not least in the service sector. In our view, the issue at hand today is not whether to maintain our membership in the WTO. That, we believe, should be a given. Rather, we hope that policymakers will focus on ensuring that the Doha Round concludes successfully, which means comprehensive new liberalization across the range of service sectors, as well as in other areas under negotiation.

**BENEFITS: HOW HAVE WE GAINED FROM PARTICIPATION IN THE WTO?**

Services are still a relatively new item on the multilateral trade agenda. Only during the 1980s did serious work begin to define and quantify services trade, and only during the Uruguay Round did services negotiations commence. The end of the Uruguay Round resulted in the adoption, by all GATT/WTO members, of the General Agreement on Trade in Services or GATS, which spelled out the terms under which liberalization of trade and investment in services would be pursued.

Accompanying the GATS were schedules of commitments that identified the service sectors in which members were willing to offer market access and national treatment. Those schedules of commitments, combined with separate agreements on financial services and basic telecommunications, concluded in 1997, formed the basis for further negotiation when broad-based services negotiations were launched in 2000 as required by the agenda built into the Uruguay Round. That negotiation was subsequently subsumed into the Doha Round.

The inclusion of services in the Uruguay Round was a groundbreaking achievement. It opened up services markets and for the first time provided a means by which WTO members could make commitments to liberalize international trade and investment in a wide array of service sectors.

The WTO has produced successes for services. The 1997 Financial Services Agreement and the Agreement on Basic Telecommunications are examples of WTO agreements which provided market access and national treatment, and established important disciplines in two vital service sectors.

The numbers illustrate the benefits even more vividly. Since the adoption of the agreement establishing the World Trade Organization, U.S. crossborder services ex-

ports have grown steadily, from \$186 billion in 1994 to \$338 billion last year. The U.S. is by far the world's largest service exporter, and enjoys about a \$50 billion *surplus* in services trade.

Sales of services by U.S. affiliates in foreign markets is even larger, rising from \$190 billion in 1995 to over \$400 billion in 2002. The operations of these affiliates are vital to U.S. companies' global competitiveness, and thus to American jobs.

By establishing a framework for services liberalization, the WTO has significantly advanced U.S. economic interests. Now is the time to build on that work.

While the U.S., Europe, and a handful of other countries made good services commitments coming out of the Uruguay Round, most countries' commitments were limited, both in scope and depth. Many schedules did not even reflect existing levels of openness, and many excluded coverage of key service sectors.

We must therefore move to the next phase, in which we negotiate deeper, more liberalizing commitments that provide new commercial opportunities across the breadth of the service sector.

### **THE IMPORTANCE OF SERVICES TO THE U.S. ECONOMY**

Mr. Chairman, as you and your fellow Congressmen well know, the service sector is vital to U.S. economic growth and vitality. To quote directly from a bipartisan Dear Colleague letter circulated in the House of Representatives a few weeks ago, "Many of U.S. may not fully appreciate that services represent the overwhelming share of our country's employment, economic output, a large and growing share of our foreign trade, and are key to the future growth of the American economy."<sup>1</sup>

We could not agree more. Services account for nearly four-fifths of U.S. economic output, and 87 million Americans are employed in the service sector—80% of the private sector workforce. By Labor Department reckoning, 90% of all the new jobs created in the U.S. between now and 2012 will be in the service sector.

Viewed against that backdrop, the importance of securing meaningful services liberalization in the Doha Round is self-evident.

However, developing countries too have a big stake in services liberalization. Even in lower income developing countries, services account for an average of nearly 50% of GDP. This was a point that my CSI colleagues and I made during a series of business missions I led last month to Beijing, Brasilia, Kuala Lumpur, and New Delhi, specifically for the purpose of advocating greater progress in the services component of the Round.

In our conversations with trade and finance ministers, central bank, foreign ministry, and other senior officials, as well as private sector leaders in all four countries, the level of interest in and understanding of services varied markedly. I was encouraged that all four countries are committed to tabling revised services offers. Some countries see services as an important future growth sector and are developing their negotiating positions accordingly. However, too many other countries are not.

### **SERVICES NEGOTIATIONS ARE AT A CRISIS POINT**

Mr. Chairman, we are of the opinion that the services negotiations are in crisis. This view is widely shared among trade officials and observers in Washington, in Geneva, and in many capitals, and was echoed during a series of meetings that CSI organized with WTO officials and Ambassadors in Geneva earlier this year.

Services negotiations are complex and time-consuming. They are based on a request-offer process, requiring multiple intensive negotiating sessions in which initial offers are followed by further negotiations and improved offers. Effective services negotiations take, at a minimum, many months. They are at a crisis because too few services offers have been tabled, and those offers that have been tabled provide for little new liberalization. The real work has yet to begin.

Without a decisive push by the U.S. and other key WTO members, the Doha Round will reach a point where, having finally achieved agreement on agricultural liberalization, for example, there simply will not be sufficient time left to adequately address services before the Round's conclusion.

The sense of pessimism was underscored last week in a poll of trade policy officials and specialists in Geneva and in key capitals.<sup>2</sup> The poll, conducted by former WTO Deputy Director General Andrew Stoler, revealed that 77% of respondents doubt that there will be a critical mass of services offers on the table by the end

<sup>1</sup>"The Importance of Services to the U.S. Economy." Dear Colleague letter, signed by Congressmen Ben Cardin and Jim Kolbe, March 18, 2005.

<sup>2</sup>University of Adelaide, Institute for International Business, Economics & Law (IIBE&L), Global Trade Opinion Poll Survey No. 10, April-May 2005.

of this month, which is the deadline by which WTO members are to submit revised services offers.

#### **A POSSIBLE WAY FORWARD**

In our discussions with U.S. trade officials, WTO officials, and our trading partners, we have explored several options for getting the services talks back on track.

We propose that WTO Members make commitments in all services sectors in the GATS. If WTO members can accept that as a starting point, it will improve the negotiating environment significantly, allowing negotiators to focus on the depth, scope, and quality of commitments. Those commitments should at least capture current levels of liberalization.

In further negotiations, the U.S. could then request that our trading partners bring their schedules of services commitments at least up to the quality of liberalization reflected in the schedules of countries that have done the most to liberalize their services sectors, like the United States.

This approach would be helpful because the U.S. (and a handful of industrialized countries) has already taken on the most commitments, while many other countries have made relatively few commitments. Analyses of existing services schedules show, for example, that most Latin American countries, with the exceptions of Argentina and Mexico, have made full or partial commitments in only 20% of the possible service sectors.<sup>3</sup> Asian countries such as Thailand and Malaysia have made commitments in less than 40% of the possible sectors, while the figure is under 30% for the Philippines and under 20% for Indonesia.<sup>4</sup> The U.S., Canada, and others, by contrast, have made full and partial commitments in a significantly higher number of the possible sectors.

#### **THE POTENTIAL GAINS FROM A SUCCESSFUL DOHA ROUND**

In 2004, global services trade was only about 24% of the value of global goods trade.<sup>5</sup> The figure is low in part because of the prevalence of barriers to services trade. While tariff and non-tariff barriers to goods and agricultural products have been reduced significantly over the course of successive multilateral trade Rounds, this process is only beginning in services. Thus, the marginal gains to be had from further services liberalization are much greater than in other sectors.

The potential benefits to the United States (and to all our trading partners) from a successful Doha Round are tremendous. Moreover, a variety of studies have demonstrated that the greatest gains for the U.S. are to be had in the services sector, which is not surprising in light of its prominent role in our economy. According to one University of Michigan study, if all barriers to worldwide trade in goods, agricultural products, and services were dismantled, the U.S. would enjoy a welfare benefit of an astonishing \$542 billion, and the bulk of this—\$466 billion—would result from the elimination of services barriers.<sup>6</sup>

#### **CONCLUSION**

Services are a frontier area of WTO negotiations, and it is here that the WTO's work overlaps most directly with American economic interests. Commensurate with its importance, resources and energy must be directed toward a successful conclusion to the services negotiations. All members of the global trading system have a stake in the future of the WTO and the Doha Round, but it is the U.S. that stands to gain the most, and we must therefore continue to participate actively and vigorously in the WTO. In this regard, it is especially important to help our trade negotiators bring other key countries to the negotiating table by engaging senior officials at the Treasury and State Departments in this effort.

In conclusion, I refer again to the recent Dear Colleague letter, which aptly summarizes my message today: "Services are central to our economic interests. Worldwide liberalization of services, as is being pursued in the Doha Round, means more American jobs, expanded U.S. trade, and stronger growth for the American economy."

I thank you for your time, and would be glad to answer any questions you might have.

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<sup>3</sup>International Trade Commission. General Agreement on Trade in Services: Examination of South American Trading Partners' Schedules of Commitments (Investigation 332-367) Publication 3007 Published December 1996.

<sup>4</sup>International Trade Commission. General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by Asia/Pacific Trading Partners Investigation No. 332-374 Publication 3053 August 1997.

<sup>5</sup>World Trade Organization: "World Trade 2004, Prospects for 2005," April 14, 2005.

<sup>6</sup>Brown, Drusilla K., Kozo Kiyota, and Robert M. Stern, "Computational Analysis of the U.S. FTA with the Southern African Customs Union (SACU)," University of Michigan, July 6, 2004.

**STATEMENT OF DYKE MESSINGER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, POWER CURBERS, INC., SALISBURY, NORTH CAROLINA, ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS**

Mr. MESSINGER. Mr. Chairman, Members of the Subcommittee, my name is Dyke Messinger. I am President and CEO of Power Curbers, Incorporated, of Salisbury, North Carolina, and I am pleased today to testify on behalf of the (NAM).

Power Curbers sells globally. We export to over 70 countries around the world, including places as far away as Australia, China, Japan, Malaysia and places as close to home as Canada, Mexico, and other countries in Central America. More than one-fifth of our production was exported in 2004, and our exports have doubled in the last 3 years.

Trade is very important to manufacturers like me. One out of every five manufacturing jobs in the United States is directly related to exports, and manufactured goods account for fully 87 percent of total U.S. exports of goods. Small and medium sized firms comprise 97 percent of all exporters. Only 3 percent of exporters are large firms, and small and medium sized firms account for 30 percent of U.S. exports. That is a considerable amount. In many ways, smaller firms probably need the WTO system more than larger ones. The cost of compliance with discriminatory foreign standards, the difficulties of dealing with counterfeiting and intellectual property, the cost of customs clearance and delays—all these are proportionately larger for smaller firms.

Mr. Chairman, I am not a trade lawyer. I am a businessman. However, I can tell that because of the rules-based trading system, barriers have been coming down over the years, and firms like Power Curbers have benefited, as well as my competitors. However, my company faces still trade barriers that are much too high. We could sell more to our existing customers if the costs of trade were cheaper, and if other countries did not throw up one barrier after another. We could find new customers and markets if those barriers came down. The Doha round of the WTO negotiations offers the next opportunity to bring these barriers down.

Trade liberalization over the years has been a boon to the U.S. manufacturing base as more markets are open to U.S. than ever before. The global trading system has also brought about improving the protection of intellectual property and transparency in government procurement. The more the U.S. Government can open up foreign markets and assure that trade is fair, the more we are going to sell and the more people we will have on our payroll.

The NAM believes strongly that the successful completion of the Doha round of the WTO negotiations is of critical importance to the U.S. and world economies. A deal that cuts deeply into agricultural barriers and distortions is of critical importance to the success of the round, but so are deep cuts in industrial trade barriers.

Last month, the NAM led a global manufacturers' fly in to the WTO in Geneva to stress manufacturing priorities in the Doha round of trade negotiations. More than 30 individuals from manufacturing organizations around the world participated, including

Australia, Brazil, Canada, Europe, Japan, and Korea. After decades of multilateral negotiating rounds, industrial nation tariffs have fallen to very low levels for the most part, but developing nation tariffs have not. For example, my equipment faces duties of 14 percent in Brazil, 15 percent in India, and 8 percent in China. We could sell a lot more if we could see these barriers eliminated or substantially reduced.

The NAM also believes that negotiation on NTB must continue to be addressed in the negotiations. The NTB are a concern because they can become just as great an impediment to trade as tariffs. The NTB are a particular disadvantage for small companies like mine. Trade facilitation improves basically improvements in custom procedures are another way in which the Doha round can benefit U.S. companies. A number of companies have speculated that these costs may add as much as 5 to 8 percent to the cost of importing into many developing countries.

The WTO's procedure for resolving trade issues under the dispute settlement understanding is another important aspect. It is vital for enforcing the rules. Before the WTO, dispute settlement had no teeth, and cases could go on for years because the process was totally voluntary. Having a rules-based system that is enforceable is critical. The system is certainly not perfect, and NAM endorses efforts to make WTO dispute settlement process more open and transparent.

Power Curbers has benefited directly from recent FTAs. Previously, we faced duties of 6 percent in Chile and 5 percent in Australia. As a result of our FTAs with those countries, we can now export to both countries duty free, while our competitors still have to pay these duties.

Mr. Chairman, let me conclude by saying that the United States must continue to lead the WTO and that the resolution to withdraw from the WTO must be vigorously opposed by the Administration and Congress. Thank you so much.

[The prepared statement of Mr. Messinger follows:]

**Statement of Dyke Messinger, President and Chief Executive Officer, Power Curbers, Inc., Salisbury, North Carolina, on behalf of the National Association of Manufacturers**

Good morning Chairman Shaw, Ranking Member Cardin, and members of the Subcommittee. Thank you for giving me the opportunity to participate in this panel.

My name is Dyke Messinger and I am President and CEO of PowerCurbers, Inc. a small manufacturer located Salisbury, North Carolina. We manufacture machinery for slipforming concrete curb-and-gutter, highway safety barrier, bridge parapet, monolithic curb, gutter and sidewalk, irrigation ditches and roller compacted concrete dams. I am pleased to testify today on behalf of the National Association of Manufacturers (NAM) at this hearing to review future prospects for U.S. participation in the World Trade Organization (WTO).

The National Association of Manufacturers is the nation's largest industry trade association, representing small and large manufacturers in every industrial sector and in all 50 states. The large majority of NAM members are SMMs like my company who are affected directly or indirectly by trade and have a keen interest in the factors affecting our trade and international economic relations.

PowerCurbers, Inc. sells globally. We export to over 70 countries around the world including places as far away as Australia, China, Japan and Malaysia and places as close to home as Canada, Mexico and the countries in Central America. More than one-fifth of our production was exported in 2004 and our exports have doubled in the last three years. We have hired more employees over the years to keep up with the increased exports.

Trade is very important to manufacturers like me. In fact, Commerce Department data show that one out of every five manufacturing jobs in the United States is directly related to exports. And manufactured goods are also the most important part of our overall trade, accounting for fully 87 percent of total U.S. exports of goods. Even when services are included, manufactured goods exports comprise two-thirds of total U.S. exports of goods and services.

It is frequently assumed that world trade is a big company game, and that exporting is too difficult and costly for smaller firms. That is just not so. It certainly is not true for my firm; but it isn't true for others either.

I think the Subcommittee will be very interested to learn that in fact small and medium-sized firms comprise 97 percent of all U.S. exporters. Only 3 percent of exporters are large firms. It is true that large firms account for the lion's share of exports, but small and medium-sized firms typically account for about 30 percent of U.S. exports. That is a considerable amount.

Smaller firms benefit from the WTO rules-based trading system just like larger firms. In fact, in many ways smaller firms probably need the WTO system even more than large firms. The cost of compliance with discriminatory foreign standards, the difficulties of dealing with counterfeiting and intellectual property piracy, the cost of customs clearance and delays—all these are proportionately larger costs for smaller firms, because we have to spread these costs across fewer units of exports than larger firms.

Mr. Chairman, I am not a trade lawyer. I am a businessman. I can tell you that because of the rules-based trading system, barriers have been coming down over the years and firms like PowerCurbers, Inc. have benefited. However, my company still faces tariffs and trade barriers that are much too high in too many countries. We could sell more to our existing customers if the costs of trade were cheaper, and if other countries did not throw up one barrier after another. And we could find new customers in more markets if barriers came down. The Doha Round of World Trade Organization (WTO) negotiations offers the next opportunity bring those barriers down.

Since its original founding in 1948 as the General Agreement of Tariffs and Trade, the GATT/WTO system has seen global tariffs on manufactured goods fall dramatically and global trade volumes grow exponentially, resulting in more freedom and prosperity for hundreds of millions of people. Trade liberalization over the years has been a boon to the U.S. manufacturing base as more markets are open to U.S. than ever before. Access to a greater supply of raw materials at lower prices enables U.S. manufacturers to reduce costs and become competitive in markets around the world. The global trading system has also brought about improving the protection of intellectual property (IP) and transparency in government procurement.

Ten years have elapsed since the last multilateral Round was completed. The more the U.S. Government can open up foreign markets and assure that trade is fair, the more we are going to sell—and the more people we will have on our payroll. The United States is the world's leader for trade expansion and must continue its determined, aggressive leadership to complete the Doha Round.

#### ***Doha Round Negotiations***

The NAM believes strongly that the successful completion of the Doha Round of World Trade Organization (WTO) negotiations is of critical importance to the U.S. and world economies. The framework agreement reached last summer in Geneva shows that a successful Doha Round is now a real possibility.

The negotiations are called the "Doha Development Agenda" (DDA) for good reason—it is time that the developing countries, particularly the least developed, become more integrated into the global trading system and obtain more of the gains from trade.

The NAM fully endorses this, but we want to stress that many of the gains to developing countries will come from reducing their trade barriers and opening their own markets—just as we have gained from our own market openness. We agree that special consideration must be made for the least developed nations. However, we also believe that no country should be a "free rider" in the Round.

A deal that cuts deeply into agricultural barriers and distortions is of critical importance to the success of the round, but so are deep cuts in industrial trade barriers. American manufacturers need to see substantial cuts to industrial trade barriers, including substantial reductions in the actual tariff rates developing countries apply to imports.

The NAM created a special *WTO Action Group* to promote, advocate and achieve manufacturers' ambitious trade liberalization goals as the Doha Round of trade negotiations continues. The NAM's Action Group is being chaired by Steve Biegun,



Ford Motor Company's Vice President of International Governmental Affairs. The principal aim of this Group is to elevate the importance of industrial trade in the Doha Round.

Last month, the NAM led an unprecedented Global Manufacturers Fly-In to the WTO in Geneva, Switzerland, to make certain manufacturing priorities are addressed in the Doha Round of trade negotiations. More than 30 individuals from manufacturing organizations around the world participated, including Australia, Brazil, Canada, Europe, Japan and Korea. The principal objective of the fly-in was to demonstrate that manufacturing organizations from around the world are determined that the Doha Round should result in truly ambitious cuts in industrial tariff barriers. After all, manufactured goods account for over 75% of world merchandise trade!

#### ***Non-Agricultural Market Access (NAMA) Negotiations***

After decades of multilateral negotiating rounds, industrial nation tariffs have fallen to very low levels for the most part, but developing nation tariffs have not. Developing nations were not expected to make proportional cuts in their tariffs, and in many cases were not asked to make reductions at all.

The resulting imbalance in tariff rates is huge: U.S. and other industrial country bound tariff rates on imports of manufactured goods now are down to an average of about 3 percent, but the average bound industrial duties in the developing countries is over 17 percent—nearly six times as high. For example, my equipment faces duties of 14 percent in Brazil, 15 percent in India and 8 percent in China. We could sell a lot more if we could see these barriers eliminated or reduced substantially.

The NAM believes the task of obtaining substantial cuts in foreign tariffs on U.S. manufactured goods, while difficult, is achievable by focusing on 23 trading partners—three industrial partners and 20 developing partners. Together, these 23 account for 96 percent of the global duties assessed on U.S. exports of manufactured goods.

We recommend selecting the EU, Japan, and New Zealand as top industrial country priorities. Together they account for 99 percent of industrial nation duties charged on U.S. manufactured goods exports.

Twenty developing countries account for a startling 95 percent of all duties assessed by developing countries on our exports. The twenty developing countries, in order of the estimated amount of duties U.S. manufacturers now pay are: China, Brazil, Korea, India, Thailand, Taiwan, Malaysia, Colombia, Egypt, Argentina, Venezuela, the Philippines, Peru, the United Arab Emirates, Pakistan, Nigeria, South Africa, Indonesia, Ecuador, and Panama.

#### ***Non-Tariff Barriers***

While much of my focus thus far has been on tariffs, the NAM also believes that negotiations on non-tariff barriers (NTBs) should continue to be addressed as an important feature of the non-agricultural market access negotiations. Non-tariff barriers are a concern because they can become just as great an impediment to trade as tariffs. Moreover, non-tariff barriers tend to raise the fixed costs of trading. This is a particular disadvantage for small and medium-size enterprises (SMEs), like mine, which have to spread those fixed costs over fewer dollars of sales.

NTBs have been rising in importance as trade-distorting factors, including such measures as discriminatory standards, conformity assessment requirements, pre-shipment inspections, custom valuation practices, regulatory requirements, port procedures, and security procedures. Product requirements, including environmental and other regulations, should be nondiscriminatory and based on sound and widely accepted scientific principles and available technical information. For example, my products face very rigorous NTBs in the European Union to meet safety and health requirements.

#### ***Trade Facilitation***

Trade facilitation improvements, basically in customs procedures, are another way in which the Doha Round can benefit U.S. companies. While we have seen no specific estimates of the overall costs of these trade complications, a number of companies have speculated that they may add as much as 5–8 percent to the cost of importing into many developing countries.

SME's can be particularly hard-hit by border barriers, since both buyers and sellers in international SME transactions often operate on thin margins. Strong disciplines on trade facilitation offer certainty to businesses and investors. That certainty benefits all countries, as business and new ideas and technology move into the market. It benefits American companies, as they are more certain of international sales.

Customs delays are one of the major trade facilitation issues experienced by industry. The causes of delays are many. In general, however, the absence of clear global guidelines on how to deal with new products, a lack of resources at the border, corruption, absence of computerization, and lack of a clear mechanism for pre-clearance or streamlined procedures for entry, among other issues, contribute to delays. A good example is the case of India. The typical ship waiting time across the globe is less than 6 hours. In India, the average ship waiting time is 3–5 days. For air freight imports, the average dwell time is less than 12 hours. In India, the average dwell time is 8 days.

#### ***Dispute Settlement Understanding***

The WTO's procedure for resolving trade issues under the Dispute Settlement Understanding (DSU) is another important aspect. It is vital for enforcing the rules and therefore for ensuring that trade flows smoothly. Before the WTO, dispute settlement had no teeth and cases could go on for years because the process was voluntary. It is good to know that we can go to a fair and impartial dispute settlement body to have these cases settled. Having a rules-based system that is enforceable is critical. However, the system is certainly not perfect and the NAM endorses efforts to make the WTO dispute settlement process more open and transparent.

We urge that safeguards be discussed that would discourage or prevent WTO dispute settlement bodies from creating obligations that were not agreed to in negotiating the text of the various documents comprising countries' obligations under the WTO.

#### ***Bilateral Agreements***

The NAM strongly supports the on-going negotiations at the World Trade Organization, but also believes that the U.S. Government should continue to negotiate new bi-lateral and regional free trade agreements (FTAs) that would level the playing field for U.S. manufacturers. The expansion of comprehensive U.S. free trade agreements (FTAs) among countries and regions contributes substantially to the overall goal of opening world markets to U.S. manufactured goods. The NAM supports FTAs because U.S. manufacturers face much higher barriers in foreign markets than foreign producers face here.

I think the Subcommittee should focus on the fact that our bi-lateral FTAs account for 40 percent of U.S. manufactured goods exports, but only 10 percent of the manufactured goods trade deficit. Fully 90% of the U.S. trade deficit in manufactured goods is with countries with which the U.S. does **not** have FTAs.

For example, PowerCubers, Inc. has benefited directly from recent FTAs negotiated and signed by the United States. Previously, we faced duties of 6 percent in Chile and 5 percent in Australia. As a result of our FTAs with those countries, we can now export to both countries *duty free* while our competitors still have to pay these duties.

Mr. Chairman, I know that this hearing is about the WTO, but as someone who does business in Central America and the Dominican Republic, I would like to say something about the U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR), which is pending before Congress. American manufacturing strongly believes that passage of this agreement is in the best interest of the United States. The agreement will benefit a lot of companies and it will be good for the region. Their economies will be better off so we can sell them more of our products. The agreement also offers customs facilitation and state of the art intellectual property protection for American manufacturers.

#### ***Conclusion***

Finally, it is self-evident that the Doha Round of WTO negotiations cannot proceed without Trade Promotion Authority (TPA) or without U.S. membership in the WTO. Therefore, the NAM strongly recommends that TPA be continued, as provided for in law; and the resolution to withdraw from the WTO be opposed vigorously by the Administration and Congress. The United States is the world's leader for trade expansion and must continue its determined, aggressive leadership to complete the Doha Round.

Thank you, Mr. Chairman.

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Chairman SHAW. Thank you, sir. Mr. Christopherson. I bet you were the last one in your first grade class that learned to write your name?

Mr. CHRISTOPHERSON. Certainly. About eighth grade I mastered it.

**STATEMENT OF AL CHRISTOPHERSON, PRESIDENT, MINNESOTA FARM BUREAU FEDERATION, PENNOCK, MINNESOTA, ON BEHALF OF THE AMERICAN FARM BUREAU FEDERATION**

Mr. CHRISTOPHERSON. Thank you. Good afternoon, Mr. Chairman and Members of the Subcommittee on Trade. My name is Al Christopherson, and I am a corn and soybean and hog producer in Minnesota. I also serve as President of the Minnesota Farm Bureau. I am on the Board of Directors and the Executive Committee of the American Farm Bureau, and I am here representing the views of the American Farm Bureau Federation here today. I certainly appreciate the opportunity to share those thoughts on the future of the WTO and the importance of the Doha round of the multilateral trade and negotiations.

Our organization strongly supports the membership of the United States in the WTO. The trade negotiation standard setting and dispute settlement functions of the WTO operate to provide a stable and predictable world trading environment for U.S. agriculture. With the production of one-third of our acres destined for foreign markets, U.S. agriculture is strongly export dependent. The 148-member WTO operates to provide a stable environment for continued growth in markets for America's farmers and ranchers.

A review of the issues involved in the current round of agricultural trade talks highlights the vital role that the WTO plays in the economic development of agriculture. The framework agreement of July 2004 set the guidelines for future negotiation in the areas of market access, domestic support, and export competition.

In market access, the world average tariff on agricultural products is 62 percent, while the U.S. average agricultural tariff is only 12 percent. The framework agreement supports the use of a formula for reducing all agricultural tariffs so that high tariffs would be reduced more than low tariffs. A final agreement on tariffs must result in significant percentage reductions that result in commercially meaningful access.

Domestic support. United States agriculture is prepared to negotiate reductions in trade distorting domestic supports as part of an overall agreement that increases market access—and that is the key—in both developed and developing countries. Under the Framework Agreement, countries must commit to substantive reductions in domestic support levels. Countries support their agriculture in different ways. The United States, the EU, and Japan use domestic support programs. Most other nations use tariffs only to control or stop imports from competing with their own farmers. There must be improvement in market opportunities for U.S. farmers and ranchers through lowered world agricultural tariffs in order for the United States to be able to lower trade distorting domestic support.

Export competition. We support the complete elimination of export subsidies as contained in the framework agreement. Export subsidies are recognized as the most trade distorting measures.

We talked about dispute settlement. One of the major accomplishments of the Uruguay round was a strengthening of the dispute settlement system. A rules-based trading regime requires an enforcement mechanism so that nations can be assured that following the rules will not place them at a competitive disadvantage. With the reduction of trade barriers and the increase in trade and agricultural products, the opportunity for disputes are ever increasing. What farmers get out of U.S. membership in the WTO is a trade system based on rules that helps maintain stable markets for one-third of the U.S. farm production that is needed to be exported.

The Farm Bureau believes that the WTO agricultural negotiation is the best forum in which to achieve progress on a wide variety of international agricultural trade concerns, and we believe agriculture's future continues to lie in expanding foreign markets and eliminating barriers to our exports. Continued U.S. membership will help assure that the WTO has an important and effective future for the United States and the other member nations. As long as exports are important to U.S. agriculture, WTO membership will be important as well. Thank you for the opportunity to share our views and look forward to continuing to work with the Ways and Means Committee on these and other trade issues.

[The prepared statement of Mr. Christopherson follows:]

**Statement of Al Christopherson, President, Minnesota Farm Bureau Federation, Pennock, Minnesota, on behalf of the American Farm Bureau Federation**

Good morning, Mr. Chairman and members of the subcommittee. I am Al Christopherson, President of the Minnesota Farm Bureau Federation. I am here today on behalf of the American Farm Bureau Federation.

I appreciate the opportunity to testify on the future of the World Trade Organization and the Doha Round of multilateral trade negotiations.

The American Farm Bureau Federation strongly supports the membership of the U.S. in the WTO. The trade negotiation, standard setting and dispute settlement functions of the WTO operate to provide a stable and predictable world trading environment for U.S. agriculture. With the production of one-third of U.S. cropland destined for foreign markets, U.S. agriculture is strongly export-dependent. The 148 member World Trade Organization operates to provide a stable environment for continued growth in markets for America's farmers and ranchers.

***DOHA ROUND OF THE WORLD TRADE ORGANIZATION NEGOTIATIONS***

Farm Bureau policy, as adopted by the delegate body at our 86th annual convention, makes clear that our highest trade priority remains a successful conclusion to the multilateral Doha Round of the WTO trade negotiations.

Our delegates approved a thorough and well-thought-out position to guide AFBF in the trade arena. Farm Bureau policy affirms that all commodity sectors should be on the table during trade negotiations. Our delegates believe U.S. agriculture's best opportunity to address critical trade issues, such as market access and domestic subsidies, is through the multilateral process.

A review of the issues involved in the current round of agricultural trade talks highlights the vital role that the WTO plays in the economic development of agriculture. The Framework Agreement of July 2004 set the guidelines for further negotiations in the areas of market access, domestic support and export competition.

The future of the WTO depends upon the success of the current negotiations as a vehicle to advance trade liberalization.

***Market Access***

The world average tariff on agricultural imports is 62 percent, while the U.S. average agricultural tariff is 12 percent. The Framework Agreement supports the use of a formula for reducing all agricultural tariffs so that high tariffs would be reduced more than low tariffs, thus reducing the gap between high-tariff and low-tar-

iff products. A final agreement on tariffs must result in significant percentage reductions that result in commercially meaningful access.

*Sensitive Products*—The Framework Agreement allows all countries, developed and developing, to negotiate some number of “sensitive” products that will be subject to smaller tariff cuts. Our goal is to make sure that this number is limited so that meaningful market access is achievable as a result of these negotiations.

*Tariff-Rate Quotas*—A method to expand market access is to have a nation agree to a tariff-rate quota (TRQ) for a specific product. A TRQ is a reduced tariff on a specified amount of imported product. The U.S. would gain increased exports if countries actually “filled” their TRQ’s. Farm Bureau wants the negotiations to result in higher TRQs and improved fill rates.

*Special and Differential (S&D) Treatment*—Developing countries, and in particular least developed countries (LDCs), have received S&D treatment to give them more time to adjust to competition. While the LDCs clearly require greater protection, some “developing” countries are actually highly developed and competitive in certain sectors. It is unreasonable to provide those countries special treatment for those commodities. Those countries must assume greater obligations.

#### *Domestic Support*

U.S. agriculture has clearly indicated its willingness to negotiate reductions in trade-distorting domestic supports as part of an overall agreement that increases market access in both developed and developing countries. Under the Framework Agreement countries must commit to “substantive reduction” in domestic support levels. The WTO categorizes domestic support into the amber, blue and green boxes.

*Amber Box*—The amber box is composed of domestic support programs that are used to support prices or are directly related to production and are viewed as “trade-distorting.” An example is the U.S. marketing loan program. The Framework Agreement calls for “substantive reduction” in trade-distorting domestic support. Any reductions must be balanced against improvements in the area of market access in order to advance export prospects for our farmers and ranchers.

*Blue Box*—The blue box includes agricultural support programs that are not related to production and are considered less trade-distorting.

*Green Box*—No caps should be placed on non-trade-distorting support. U.S. green box programs include research, extension, conservation and part of the crop insurance programs.

The negotiations over market access and domestic support must be directly linked for any substantive agricultural trade liberalization. While the U.S. is able to use domestic programs to assist producers and keep import tariffs at a low level (average 12 percent) most nations use high tariffs (average 62 percent, with many tariff lines over 100 percent) to provide complete import protection in order to assist their agricultural producers. Both mechanisms of support—tariffs and domestic programs—need to be addressed together to achieve a successful negotiation.

#### *Export Competition*

We support the complete elimination of export subsidies as contained in the Framework Agreement. Export subsidies are recognized as the most trade-distorting measure in trade. The European Union (EU) spends from \$3 billion to \$5 billion a year on export subsidies and is allowed to spend as much as \$8 billion under the current WTO agreement. The EU accounts for about 88 percent of the world’s export subsidies and uses them to market products of export interest to the United States. Farm Bureau also supports the phase-out and elimination of the trade-distorting practices of State Trading Enterprises, which is also included in the Framework.

*Sanitary and Phytosanitary (SPS) Agreement*—We adamantly oppose any changes to the SPS agreement. We urge strong resistance to any attempts by the EU or others to allow social or economic considerations to form any basis for applying SPS measures in exchange for reduction in subsidies, tariffs or any other negotiating issue.

### **DISPUTE SETTLEMENT IN THE WTO**

One of the major accomplishments of the Uruguay Round was the strengthening of the dispute settlement system. A rules-based trading regime requires a mechanism for holding nations to their commitments so that following the rules will not be seen as a competitive disadvantage. With the reduction of trade barriers and the increase in trade in agricultural products, the opportunities for disputes are ever increasing.

The U.S. has both won and lost WTO trade cases. The U.S. has prevailed in cases against Japan on apple exports, Canada on grains and the EU on hormones in beef.

The U.S. lost the case brought by Brazil on cotton. Current disputes involving agriculture include softwood lumber with Canada and rice with Mexico.

While we disagree with the Appellate Body's ruling in the "cotton case," we have urged the administration to comply with the ruling. U.S. membership in the WTO provides a trading system based on rules that helps maintain stable markets for our exports. A fair and effective dispute settlement system is an important component of the WTO's future leadership role in world trade.

In conclusion, Farm Bureau believes that the completion of a successful WTO Doha agriculture negotiation is the best way to achieve progress in a wide variety of international agricultural trade concerns. We believe agriculture's future continues to lie in expanding foreign markets and eliminating barriers to our exports.

Continued U.S. membership will help ensure that the WTO has an important and effective future for the United States and the other member nations. As long as exports are important to U.S. agriculture, WTO membership will be important as well.

We look forward to continuing to work with the Ways and Means Committee on these and other important trade issues.

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Chairman SHAW. Thank you, sir, for your testimony. Mr. Klinefelter?

**STATEMENT OF WILLIAM J. KLINEFELTER, LEGISLATIVE AND POLITICAL DIRECTOR, UNITED STEELWORKERS**

Mr. KLINEFELTER. Mr. Chairman, Ranking Member, Members of the Committee, my name is—

Chairman SHAW. I do not believe your microphone is on.

Mr. KLINEFELTER. Mr. Chairman, Mr. Ranking Member, Members of the Committee, my name is William Klinefelter. I am the Legislative and Political Director of the United Steelworkers Union. As you may know, we just merged with the Paper, Allied-Industrial, Chemical & Energy Workers International Union (PACE), which now makes U.S. the largest industrial union in North America, with 850,000 members. We now cover almost every single jurisdiction you can imagine, from pulp and paper to chemical to pharmaceuticals to steel to copper. You name it, the United Steelworkers Union has it.

We welcome this opportunity to come today and talk about the future of the WTO. We believe that this operates on two different levels. We believe it operates on a macro level, what the future will be, and it also operates on a level of what we are doing in terms of the current negotiations that need to be done to reform the WTO, because the WTO is in serious need of reform. We have looked at what the WTO has done since its foundation in terms of well how it deals with American trade laws, and we are saying to the Committee that we must put real pressure on our trade negotiators as they go forward this year in the Doha round to make certain that our trade laws are not weakened in this round. They must also concentrate on going back and talking to our trading partners about what WTO panels have done when they have rendered decisions, because it is our belief that when they have been rendering these decisions, they have been changing our trade laws without negotiating about them. That is not, I don't believe, what the Congress of the United States believes the WTO should be doing. So, we ask you to focus on that with our negotiators at the WTO.

A second thing that needs to be focused on is what are we going to do about China in this round of the WTO. Is China going to be

allowed to sit on the sidelines and gain the benefits of WTO membership without adhering to what they've already agreed to adhere to when they got into the WTO? There is a process, a consultation process, which we set up when they got into the WTO to advise China without taking them all the way on what they were doing wrong and what they weren't living up to. Unfortunately, they have not been living up to that. They have been walking away from that. They say it doesn't apply to them. So, what we are saying is look what we should do in this round of the WTO: negotiate. Negotiate all the things that need to be negotiated in this round of the WTO.

But for those countries who don't comply with what they have already agreed to comply to put any benefits that would be gained by this new round of the WTO to one side until those nations actually do comply. So, those are two major things that the union would like to talk about today. The other is a more macro setting. I think that we believe that there are a couple of things that the WTO future depends on.

Number one is a consensus in the U.S. Congress over American trade policy. As you know, right now, there is no consensus in this Congress. If there had been a consensus, DR-CAFTA would have gone through here very, very quickly and with no debate. There is no consensus on DR-CAFTA. There is no consensus on trade policy. There will not be until we deal with labor rights and trade agreements and until we deal with environmental rights and trade agreements. So, the future of the WTO is really dependent upon American consensus on American trade policy which can only be done here in the Congress.

Number two, the WTO is dependent upon those developing countries in the world having the faith in what the WTO does. Right now, that faith has been shaken in this round of the negotiations, and it does continue to erode. You know it is all well and good to say, come up here and say that 95 percent of the people of the world are—95 percent of the people outside the world are America's customers. Well, there are 6 billion in the world, about a billion-and-a-half of those people make less than one dollar a day. Those are not very good customers. So, what the developing world is looking at are tremendous pressures in their internal workings. Right now, in Bolivia they are pressuring the government to nationalize the gas industry as a source of revenue for that country. In Brazil, there is a march on the capitol in Brazil because the current government, although he is a good steelworker, has not been able to make good on the promise of giving land to the peasants. What we are saying there are other pressures on trade that need to be dealt with and there are other pressures in the world that need to be dealt with that are outside of trade. Thank you very much.

[The prepared statement of Mr. Klinefelter follows:]

**Statement of William J. Klinefelter, Legislative and Political Director,  
United Steelworkers**

Mr. Chairman. Members of the Committee. It is a pleasure to appear before you today on the question of the role of the World Trade Organization and the United States' participation in that body.

My name is William J. Klinefelter and I am the Legislative and Political Director for the United Steelworkers Union. Today, as a result of the merger last month of

the United Steelworkers of America and the Paper, Allied-Industrial, Chemical and Energy International Union, the Steelworkers are now the largest industrial union in North America. We are the most diverse union in the country, representing workers in manufacturing sectors ranging from steel to rubber to glass—to lumber and paper—to chemicals and energy; and also non-manufacturing sectors such as health care, services and education.

In short, we represent a substantial cross section of this country and the diverse interests of our nation.

Mr. Chairman, I will outline the broad concerns of my union and which I believe are shared by organized labor and working people all across the country.

The World Trade Organization is in serious need of reform. A broad and comprehensive reform agenda must be immediately implemented. Without this reform, the U.S. should terminate its membership in the WTO.

The union urges the Committee to continue a broad oversight of the WTO and to hold more hearings in the near future.

It has always been the view of the Steelworkers—and I think it's simple common sense—that the success of a nation's trade policy should be judged not by the number of trade agreements that are negotiated, but by the results they achieve. Our nation's trade deficit is skyrocketing. Wages are basically stagnant. The gap between the haves and the have-nots continues to plague the U.S., and far too many nations. This, in our opinion, is not a sign of success.

The WTO is supposed to oversee the system and ensure that rules are fairly negotiated and fairly applied. The Steelworkers have always believed that international trade must be governed by a strong rules-based system. Yet, to the Steelworkers and most Americans, the WTO appears to be asleep at the switch when it comes to supporting our interests. In fact, they seem to constantly rule against our laws and skew the negotiating agenda against our interests.

Let's be clear: the U.S. has the most open market in the world. Our tariffs, on a trade-weighted basis, are among the lowest of any nation. We simply don't have much more to give.

But, that's exactly what other nations want U.S. to do. They attack our trade laws which are designed to simply ensure fair play. They constantly seek to impose new obligations on the U.S. which were never negotiated. They often block our efforts when we strive to ensure that the rights of working people around the world are given a higher priority.

And it's especially troubling that the record on reviewing our unfair trade laws clearly indicates that the WTO has an agenda—and that is to attack and dismantle the basic framework of laws we have on our books that are designed to ensure that predatory trade practices can be confronted.

This is a recurring problem—yet hard to understand. Injurious dumping, for example, is the only activity that is “condemned” in the original GATT drafted in 1947. The WTO, the successor organization to the GATT, seems to have turned this legal text on its head to the extent that *measures to combat* injurious dumping are continually being “condemned.”

And, the Bush Administration is not standing up for these laws: we have a win/loss record of 2 out of 17 cases brought against the U.S. Day-by-day the Administration allows our laws and our regulatory framework to be whittled away in a process known as “gap filling.”

This is a very esoteric area of law—but one that has real repercussions to our jobs and standard of living.

And, all too often, the WTO stands idly by when other nations refuse to live up to the commitments they have made.

China became a member of the WTO four years ago. Their record of compliance with their WTO commitments is seriously deficient. Time and time again, they have failed to fully implement the promises they made and, in fact, have erected new barriers to our exports.

They've done everything they can to throw sand in the wheels of the Transitional Review Mechanism that they agreed to which was designed to foster a forum at the WTO for review and implementation of their commitments.

And, our Administration has failed to use the system effectively. It's become virtually useless.

China deserves to be criticized. But, let's recognize an important fact: More than one-third of China's exports come to the U.S. while only about four percent of our exports go there. Wal-Mart welcomed roughly \$18 billion of China's exports. We have leverage to force their compliance. Yet, we refuse to use it.

How does this Administration expect to get public support to continue our participation in the WTO, much less deepen it through the Doha Round, if it allows for our laws to be attacked without providing an effective and aggressive defense?



How does it expect to gain public support when it allows China and other nations to welch on their promises, while we provide an open door?

How does the Administration expect to increase support for trade liberalization when it turns its back on efforts by the private sector to use the trade laws that exist—such as Section 421?

How does the Administration expect people to believe that they are negotiating in America's interests when they allow China to manipulate its currency but the President's Secretary of the Treasury refuses to say they are manipulating the value of the yuan?

How does the Administration expect U.S. to gain from trade when our intellectual property is being pirated and counterfeited to a point in excess of 90% in China, yet our former U.S. Trade Representative, Bob Zoellick, says we don't have enough information to bring a case?

Mr. Chairman, a broad reform agenda must be developed and quickly adopted by the WTO if it is to survive, and if the U.S. is going to benefit from continued participation. I've outlined just some of the areas for reform. There are many, many more.

One important area needs to be discussed as part of this agenda: the need to ensure that benefits that are negotiated are actually received. China has failed to implement the commitments they've made. Yet, they are sitting on the sidelines at the Doha Round waiting to reap its benefits. Apart from the other questions I have raised, we should recognize that an effective negotiating approach would be to have our negotiators do their work, but put the benefits on the shelf and not provide them to the Chinese unless and until they live up to the promises they have already made. We should be using a carrot *and* a stick with China.

Mr. Chairman. Clearly, you hear our frustration. But, the questions I've asked, and the concerns I've outlined, are not just those of the Steelworkers. They are the concerns of a broad cross section of America's farmers, workers and businesses.

I thank you for the opportunity to testify and welcome the opportunity to answer questions.

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Chairman SHAW. Thank you, and I thank all the witnesses for preserving our 5-minute rule. As I read the panel, even though, Mr. Klinefelter, I think you have been somewhat critical of the enforcement, I assume from your testimony that you want to continue with WTO, but you wanted stricter compliance requirements and you want our negotiators to work for that. Am I correct?

Mr. KLINEFELTER. Mr. Chairman, the Union's position has always been that the WTO needs to be reformed. At some point in time, if those reforms are not forthcoming—and we cannot make the WTO reform in terms of our trade laws and reform in terms of transparency—then I believe that the Steelworkers Union would say that it is time for U.S. to get out of the WTO.

Chairman SHAW. But you are not there yet?

Mr. KLINEFELTER. We are not there yet.

Chairman SHAW. Fine. Mr. Cardin?

Mr. CARDIN. Thank you, Mr. Chairman. I am pleased that we had H.J. Res. 27 introduced so we could have this panel before us. This has been I think a very helpful panel on—and I agree with Mr. Klinefelter that it is time to reform the WTO. Mr. Sorensen, I also agree with your point that the focus needs to be on the WTO. We can all argue what happened with DR-CAFTA, but we got to keep our eye on the ball. This Doha round is just so important to the future of trade that that needs to be our priority, and I also agree with you, as you know, the request offer approach on services is not giving the type of results and I like the way that you used the current liberalization to be a standard to be met on the service industry, and I want to congratulate you on your testimony.

Mr. Klinefelter, I want to ask you a question, though. I agree with your statement. When we went into the Doha round, many of U.S. were concerned with the inclusion of our anti-dumping provisions on the table. We thought it shouldn't be on the table. Now I am thinking that maybe it is a good idea because we have seen such an erosion, let U.S. take the affirmative. I agree with you that there has been this use of the dispute settlement process within the WTO to erode our laws that we legitimately have a right to enforce. So, it seems to me the Doha round might give U.S. an opportunity to aggressively advance the rightful rights that we have in regards to dumping. My question to you is that we have a situation. In your statement, you say the Bush Administration is not standing up for these laws. We have a win-loss record of 2-out-of-17 cases brought against the United States. Day-by-day the Administration allows laws in our regulatory framework to be whittled away in a process known as gap filling.

I agree with that statement. I guess my question to you: what should we be trying to do in this round in regards to dispute settlement resolution process and the effectiveness of our anti-dumping laws? Is it more aggressiveness in enforcing our laws or is it fundamental changes we need in the dispute settlement process within the WTO?

Mr. KLINEFELTER. Mr. Cardin, I would answer that in this way. First of all, we fought very hard not to get our trade laws on the table for these negotiations. The former president of the Union and myself were in Qatar at those negotiations when they kicked off this round.

We fought very hard for Mr. Zoellick not to put them on the table because we believed then as we do now that once something is on the table for negotiation that there is no place else for U.S. to go but downhill; that a weakening will take place as the trade laws become part of the mix of a drive to get a complete agreement on other areas. As labor people we are very used to negotiations and we know how negotiations operate and how people trade one thing for another as they go down the road.

We believe that we actually need to strengthen these laws from what we've seen since 1998. As you know, being a member who has been involved with steel that without the trade laws of this country, the basic steel industry would not exist in the United States today. It would have been divided up piecemeal and it would have been devastating to these communities. Because we had trade laws—first the dumping laws, which gave U.S. a brief respite in the 1998 to 2000 period and then because this Administration implemented the 201 on the recommendation of the International Trade Commission and the support of this body, we were able to have a consolidation in basic steel.

If anything, if we are going to support American industry, if we are going to support their modernization, if we are going to support the transition of those employees in those jobs that we need to do, we have to strengthen the trade laws in these negotiations, not weaken them.

Mr. CARDIN. Well, I agree with you. It is—you are absolutely correct in your observations. Without the trade laws and the enforcement of the trade laws, we wouldn't have a basic steel indus-

try in this country today, not because we can't be competitive, but because of the subsidized dump steel into the U.S. market, which really raises the issue of where do we go from where. I sent a letter also urging this not be on the agenda, because I am worried that it becomes an issue that gets tied into other matters where we are trying to make advancement. I would just urge U.S. all to put a spotlight on how important our trade laws have been and that we need to make progress in more effectively having a dispute settlement resolution that respects what we have previously negotiated and stop these appellate panels from legislating and weakening our laws. Thank you, Mr. Chairman.

Chairman SHAW. Thank you, Mr. Cardin. Mr. Lewis.

Mr. LEWIS OF KENTUCKY. Thank you, Mr. Chairman. Mr. Messinger, I am interested in your product and how you manage to export to so many countries. I am a former equipment salesman so that certainly interested me. Can you describe your experiences and what advice can you give to other U.S. small-medium firms that consider exporting to be too complicated or something that only big firms can manage? Also, do you trade now in Central America and how important is the DR-CAFTA agreement to your particular concerns?

Mr. MESSINGER. Well, it is always good to see a fellow salesman. Mr. Lewis, we have been in the international market for 40 years, yet we're only a small manufacturer. I think we got into it because we needed to grow our product base. The United States, while it is the largest market in the world today, is not a place that we can grow forever. There is a limited amount of equipment that we can sell. We manufacture road construction equipment, concrete paving equipment that makes roads, curb and gutter, sidewalk—that sort of thing. My advice to smaller companies is be creative. It is not nearly as difficult to open those doors as some might think. For example, we are going to use this summer an intern, a college student, who happens to be fairly fluent in Spanish to go to Central America to look for distributors and talk to road building contractors.

Mr. LEWIS OF KENTUCKY. Great.

Mr. MESSINGER. It doesn't take—it is not going to cost U.S. very much. He doesn't need to be paid that much. He is going to get the experience of a lifetime. His Spanish will be improved and our market knowledge will be improved. So, we, our company, and the NAM support DR-CAFTA tremendously because this is going to do things for our business and all members that manufacture.

Mr. LEWIS OF KENTUCKY. Yes. Thank you.

Chairman SHAW. Mr. Brady.

Mr. BRADY. Thank you, Mr. Chairman. First, I want to congratulate you on a great panel. This has been very interesting and it spawns about a thousand questions, and even with Mr. Klinefelter, while I disagree with some conclusions, makes a key point about aggressively pursuing enforcement of trade laws. It cuts across parties and areas in a big way.

It is the message I heard you say, each of you say, is that the world is changing; that it is not enough to buy American anymore. We have to sell American. We have to sell our products and services around the world without discrimination and that to do that,

like any successful business, you can't put all your eggs in one basket. Our trade policy has to negotiate nation-to-nation agreements that lower those barriers. We have to pursue regional agreements that lower those barriers, allow U.S. new customers, and through the WTO, through these rounds, we have to find a worldwide agreement and progress in a number of different areas.

I talk about that diversification because Central America and the Dominican Republic is admittedly not a large market. But tell that to the Farm Bureau who will sell a billion-and-a-half dollars more agricultural product each year to Central America at a time when more and more countries are closing off that market. Tell it to our manufacturers who will sell an estimated \$1 billion of widgets to Central America and should we reject it, which we won't, but what we have at risk \$4 billion of widgets we would lose selling, which supports a lot of workers. You look at the services area, where through this agreement, we have opened up some areas in financial and insurance and telecom services that support a whole lot of American workers. We know, given a fair shot, that we are going to sell those products and services. Central America, as we all know, already sells almost all their products into America. Almost all their agricultural products, certainly. Our opportunity here is to create two-way trade so we get a shot at opening into that market.

A critical part of why we have to have a diversified trade policy, which brings me to the question. Each of you raised it in one way or the other. People don't pay as much attention to it as they should. What are examples of NTB that our services companies, our manufacturing companies, and our farm producers are experiencing when we try to sell our markets overseas, and maybe, Mr. Christopherson, we could start with you and work our way down?

Mr. CHRISTOPHERSON. Well, perhaps the issue that comes to mind right up front is those issues—we call them phytosanitary—those issues that somebody has decided that for perhaps political reasons and for trade reasons they do not meet the expectations of what they want. So, that has been probably our biggest frustration is those issues that deal with where we can't agree on quality and that type of thing.

Mr. BRADY. You see any progress in that area?

Mr. CHRISTOPHERSON. I guess it all depends on how you measure progress. It is very slow. As you are well aware, the beef issue with the Europeans kind of came to a resolution here I don't know how many years ago now, and we still haven't really resumed that level of activity.

Mr. BRADY. In the absence of a world agreement, I think these bilateral agreements where we reach I think more saner, logical processes for this I think have been helpful. But you are right. We got a lot of progress to go. Mr. Messinger?

Mr. MESSINGER. You know I think Europe is the biggest challenge for us. They have some NTB in the form of the CE Mark and things associated with that that make it very difficult for small manufacturers to comply with the boatload of regulations that they put out front. While I am sure some would say that the regulations are intended for the benefit of the citizens of Europe, which I don't doubt, and I think it has a secondary effect of limiting imports of products from other countries, particularly the United States.

Mr. BRADY. Yes, I think that you share that with the agricultural community in Europe, where under the guise of an informed consumer what you are really doing is keeping products out of the marketplace so they can't consume them at all. Mr. Sorensen?

Mr. SORENSEN. I would say in the area of services, the most important ones are in Asia and Latin America—limitations on ownership. In India, for example, an asset management company cannot own more than 49 percent. It must have a partner. China, 26 percent. In Brazil, there is a monopoly on reinsurance. The government is working on that within the scope of the WTO because reinsurance is a global market. In the area of express services, for example, I know for some of our members, Federal Express and United Parcel Service are having issues with setting up airport and land facilities in China as freely as domestic companies can. So, these are, although not necessarily in the framework of the WTO, they can enter and should enter, for example, the scope of the WTO.

The DR-CAFTA did away or will do away, once the agreement is put forth and ratified by Congress, that the Costa Rican insurance monopoly will be dismantled, and that is a major entry for a market that is not large, but it is meaningful for American insurance companies. So, ownership restrictions I think are one area that needs to be worked on, both bilaterally and in the WTO area, as well as the monopolies that some of these countries have in their nationalized systems.

Mr. BRADY. Great. Mr. Chairman, thank you. This is a great panel.

Chairman SHAW. Thank you. Mr. Herger?

Mr. HERGER. Thank you, Mr. Chairman, and this is a great panel, and I appreciate, Mr. Brady, your comments and your line of questioning. For our—we have our Farm Bureau, Mr. Christopherson, what new markets accessed do you expect to receive out of the Doha round and do you have a dollar estimate of the value associated with what we can gain from an ambitious agricultural deal?

Mr. CHRISTOPHERSON. I don't know that we have ever assigned any dollar value to it, but if you look at the level of tariffs now with regard to an average 62 percent as opposed to our 12, even a slight reduction is certainly an improvement, and we recognize that this is a work in progress, and it is going to take a while. We have to understand that. But at the same time, we need to start. We need to get at it, and we need to recognize that if others are going to have access to our markets, we need to have access to their markets and for U.S. to become protectionist in this whole process that will be, indeed, a folly from the standpoint that the consuming public is not going to stand for that; much less, we are producers. We want to have access to all of the goods of other countries as well as our own.

So, that is part of what trade is all about, and that is going to be the ultimate goal that we do have. We are not—as U.S. farmers, we are not afraid of competing with other countries as long as the playingfield is level, and as long as we deal with the same regulatory structure as they do and those types of things, and all of

those we recognize. They are not going to happen overnight. Yet, that is our goal.

Mr. HERGER. Just the fact, as you have mentioned, our average tariff on agricultural goods is only 12 percent. Yet trying to get into these other markets are 62 percent. It shows what we are up against as far as leveling the playingfield just in that area. Do you have any complaints regarding the manner that USTR has conducted consultations with you and the negotiations of the Doha Agricultural talks and are there any improvements you can suggest?

Mr. CHRISTOPHERSON. I guess it is easy to reflect on past negotiations and we should have been more firm. We should have done this. We should have done that, and unless you are sitting at that table, I guess it is very difficult. I am not so sure that we have any great advice that hasn't already been given, but obviously, we would hope that our negotiators would first of all recognize that this is important to agriculture and that we need to recognize that for the health of our industry, of agriculture, as well as for our share of that portion of the economy which accrues to agriculture that is, indeed, in our best interest to continue this process of increasing the market access to allow further trade exports.

Mr. HERGER. Certainly the fact that where agriculture is keeping the spotlight on this, keeping the pressure up, if you will, certainly helps our cause very much. How has the Sanitary and Phytosanitary Measures Agreement worked in your view? We have been successful in pushing countries toward eliminating unreasonable barriers, and we have won a few WTO cases: Japan, apples; and EU, beef hormones. Yet there are still many instances in which U.S. exporters cannot bring their agricultural goods to foreign markets, particularly in the horticulture area. What can be done to improve our market access and what does the Farm Bureau do to cooperate with the USDA and USTR in such matters?

Mr. CHRISTOPHERSON. I guess quite simply it is the continuation and the further strengthening of the WTO process. That is, in our estimation at least—and I thought it was said very well this morning by the deputy who spoke here saying that without it, it would be the rule of the jungle. This process is not perfect, but it is at least, as I have got it figured out right now, it is the only one we have. So, we need to strengthen that and to continue to give it the respect that it needs and the try to assess the respect from the other countries also in this whole process, because it is that that is going to make this whole thing work.

Mr. HERGER. Thank you very much, Mr. Christopherson, and each of our panelists, and, Mr. Chairman, thank you for this very important hearing.

Chairman SHAW. Thank you very much, and I want to add my appreciation, along with Mr. Cardin to this panel. It has been very insightful. We very much appreciate your staying with U.S. this morning, and with that the hearing is adjourned.

[Whereupon, at 12:35 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

**Joint Statement of Susan Ariel Aaronson and Jamie Zimmerman, Kenan  
Institute of Private Enterprise**

As the World Trade Organization (WTO) prepares to mark its 10th anniversary this year, few citizens or policymakers are breaking out the champagne to celebrate.

The global governance institution has much responsibility, little authority, and few admirers. Moreover, its performance over the ten year period is mixed. The WTO has made great progress as a global governance institution, but as a vehicle for trade negotiations, it has been stuck in idle. WTO members have struggled since November 2001 to focus these talks on the needs of developing countries. Their failure to narrow their negotiations to development issues is hurting the world's poor and undermining the WTO's legitimacy. The Ways and Means Committee should pay close attention to this as it weighs the WTO's record.

As a global governance institution, the WTO provides a venue for nations to handle trade disputes, monitors national trade policies and provides technical assistance to developing country policymakers. When the WTO replaced the GATT on January 1, 1995, it had 132 members, a staff of some 500, and a budget of approximately 100 million Swiss Francs. Today it has 149 members, including China, a staff of 630, and a budget of 169 million Swiss Francs. Its dispute settlement body has resolved over 300 trade disputes. Clearly, the WTO does a lot, cheaply.

WTO decisions are made by members for members. Because it moves by consensus, decision making is slow and deliberate. Yet its members have successfully accommodated the addition of new countries with divergent economic, social and political cultures. Moreover, the WTO has learned from critics who don't want trade objectives to undermine the achievement of other important policy goals. Increasingly, dispute settlement panelists are illuminating ways that member states can protect the environment without distorting trade. The appellate body of the WTO is beginning to understand and illuminate ways that nations can achieve other policy objectives (such as maintaining cultural norms) without distorting trade. Moreover, the WTO is beginning to find ways to ensure that trade does not undermine human rights. For example, some 47 nations currently ban trade in diamonds that are not certified under the Kimberley Process (a certification that the diamonds were not produced in situations where human rights were abused.) This is the first time the WTO (or the GATT) has allowed a trade waiver based on a human rights rationale.

But the WTO staff and leadership can only lead by exhortation. Members hold the cards and develop the rules, and these same members seem unable to narrow their negotiations to complete a new round. But in November 2001, when members agreed to launch a new round they promised to focus on development. The bulk of the WTO's membership are developing countries. Many such countries felt their needs had been ignored or undermined in the previous rounds. Thus, in 2001 members agreed to "commit ourselves to the objective of duty-free, quota-free market access for products originating from LDC's." Yet in the three and a half years since the Round was launched, these commitments have not been met. To get the negotiations back on track, in July 2004, WTO members agreed to limit the purview of the negotiations to five key areas—agriculture, industrial tariffs, trade facilitation, development issues and services. But as of today, these are talks about talks, and not commitments.

Why have WTO members been unable to move beyond pretty words to complete the round? There is an inherent contradiction between the overarching objective expressed at Doha and the objectives and strategies of industrialized country WTO members as they negotiate. In general, industrialized country governments determine their negotiating positions at the national level through a broad debate influenced by parliamentarians, business, labor, and civil society interests. (The EU has a more indirect route. Trade policy is directed by a committee composed of representatives from the 25 Member States and the European Commission. The EU Parliament is only indirectly involved.) When policymakers determine negotiating priorities, they focus first on expanding markets for key export sectors, rather than on meeting the market access needs of their developing country trade partners. This is not to say these needs are ignored, but they are further down on the list of negotiating priorities.

But the conflict between the overarching objectives of the Round and national negotiating objectives could be met by further limiting the parameters of the new round to true development concerns. WTO members should reduce the purview of the negotiations to two topics: agriculture and market access. This will not be easy to do. After all the key advocates of trade liberalization tend to be multinational corporations and many really want new negotiations on services and industrial tariffs. Policymakers might find it difficult to "sell" the results of such a round to national legislatures, who generally must pit the economic benefits of greater exports against the costs of greater imports. But policymakers from many WTO members recognize their economies will prosper only if they can tap new growing markets in the developing world. They understand that poverty can breed conditions where terrorism can grow. Thus, they should make every effort to reduce poverty. And as UN mem-

bers, they have already made a commitment to halve poverty under the Millennium Development Goals.

A key beneficiary of a successful development round would be the WTO. If the WTO fails at meeting the needs of developing countries to trade, it will also lose much of its legitimacy as a global governance institution. The U.S. would of course gain too.

The American people have benefited significantly from the WTO warts and all. Yet the U.S. has not always been supportive of its work. The U.S. has not implemented many of the decisions of the WTO's dispute settlement body. Moreover, the U.S. has focused more of its negotiators efforts on bilateral and regional agreements. At a time when the U.S. commitment to internationalism is already suspect, this strategy tells our trade partners that the U.S. is more interested in cutting bilateral or regional deals that it can dominate than committing to the more difficult multilateral negotiations.

Leadership entails making hard choices, helping and inspiring other countries to make hard choices, and taking risks in the broader interest of global stability. As the world's largest trading nation, and the world's biggest debtor, the U.S. must be actively involved and supportive of this multilateral institution. While far from perfect, the WTO deserves greater American support to make this institution successful as a venue for negotiations.

*Susan Ariel Aaronson is the Director and Jamie Zimmerman the Associate Director of globalization studies at the Kenan Institute, Washington, part of the University of North Carolina's Kenan Flagler Business School. This written testimony reflects their views and not that of the University.*

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#### **Statement of Alliance of American Consumers for Affordable Homes, Alexandria, Virginia**

On behalf of the Alliance of American Consumers for Affordable Homes (ACAH), we wish to thank Chairman Shaw for allowing U.S. to make a written submission to the May 17 hearing record on issues related to the World Trade Organization (WTO).

American Consumers for Affordable Homes ("ACAH") represents at least 95% of soft wood lumber consumption in the United States. About 70% of that consumption is for building or remodeling American homes—soft wood lumber is by far the largest physical input in a typical American house. Thus, buyers, home builders, and lumber dealers and retailers have been the primary victims of the ongoing trade wars involving the import of softwood lumber into the United States.

In this connection, we wish to call the Committee's attention to a severe imbalance in WTO and U.S. trade remedy law.

We as American consumers, are treated considerably worse in trade remedy proceedings in the United States than U.S. producers. It is important to note that the housing construction industry employs more than 6.5 million workers, 25 to one when compared with those in the U.S. forestry industry. In legal terms, this means that we do not have "standing" in the cases, and that we can submit confidential information, but never see the replies of the other parties.

The Congress could remedy this by legislation, but realistically, the U.S. would make no changes in its legislation unless other WTO members change theirs. Consequently, we request the Committee to urge USTR to include in the WTO Anti-dumping Agreement, Agreement on Subsidies and Countervailing Measures, and Safeguard Agreement, the following items:

- Equal standing for consumers (including distributors, retailers and end-users of the imported product, and possibly downstream industries as well) with at least foreign producers, and logically with U.S. producers. Why should the U.S. Government express a preference for U.S. producers over U.S. consumers, especially as "consumers" are frequently themselves U.S. producers?
- An absolute rule that duties, quotas, or other measures taken under trade remedy laws (including antidumping and countervailing duties, and safeguards) never exceed the injury caused by the dumping, subsidies, or increase in imports. Before the imposition of any trade distorting measure, a determination be made that the measure, including its amount and duration, be found to be in the "public interest", including specifically a determination of the impact on consumers, and that the impact is less than the benefit to local producers.
- A requirement that no duties be charged on imports destined for customers whose orders for the domestic like product have been refused by domestic pro-



ducers (for example, after the damaging hurricanes in Florida in 2004, rebuilding was severely hindered by shortages of cement and softwood lumber caused by existing antidumping and existing trade remedy measures, in circumstances where domestic producers could not supply the demand). We note that the European Union has such a provision in its trade remedy laws.

- In any case which is resolved through negotiation rather than the imposition of measures, U.S. consumers be given identical rights of consultation as producers and, that no settlement be made which does not give equal weight to the interests of local consumers and producers.

We urgently request the Committee to instruct the Department of Commerce to undertake no settlement of the softwood lumber cases without first preparing and making public for public comment a neutral analysis by the General Accounting Office of the costs to U.S. consumers and benefits to U.S. producers of any proposal under consideration.

Finally, we urge the Committee to undertake an in-depth evaluation of the functioning of antidumping laws. We note that the U.S. Department of Commerce in the softwood lumber case found an average antidumping margin of 8% for a period of investigation during which the average price in Canada of softwood lumber was 18% *lower* than the average price of Canadian softwood lumber sold in the United States. The Committee should request Commerce to identify the source of this 26% divergence.

Please feel free to contact Susan Petniunas with any questions. Thank you for the opportunity to comment.

**Participants of Alliance of American Consumers for Affordable Homes:**

**American Homeowners Grassroots Alliance**

**Catamount Pellet Fuel Corporation**

**CHEP**

**Consumers for World Trade**

**Free Trade Lumber Council**

**Furniture Retailers of America**

**Home Depot**

**International Sleep Products Association**

**Manufactured Housing Association for Regulatory Reform**

**Manufactured Housing Institute**

**National Association of Home Builders**

**National Black Chamber of Commerce**

**National Lumber and Building Material Dealers Association**

**National Retail Federation**

**Retail Industry Leaders Association**

**United States Hispanic Contractors Association**

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#### **Statement Of Cold Finished Steel Bar Institute**

The Cold Finished Steel Bar Institute (CFSBI) appreciates the opportunity to provide this statement for inclusion in the written record and for consideration by the Subcommittee on Trade of the Committee on Ways and Means pursuant to the public hearing held May 17, 2005, to review future prospects for U.S. participation in the World Trade Organization (WTO). In particular, the CFSBI appreciates Chairman E. Clay Shaw for convening this hearing and permitting the CFSBI and other interested parties to present their views on this important and timely topic.

The CFSBI is a trade association representing approximately 60 percent of the North American cold finished steel bar industry. The CFSBI's overall mission is to promote and encourage beneficial and useful growth and development of the cold finished steel bar industry and to foster, among the public, the government, and major user groups, an awareness and recognition of matters and conditions of importance to or affecting the industry.

The focus of the Subcommittee's hearing is to examine: (1) overall results of U.S. membership in the WTO and the GATT, (2) whether future participation of the United States in the WTO and the multilateral trading system can be expected to benefit Americans, and (3) prospects for increased economic opportunities for U.S. farmers, workers, and consumers in the Doha Round of multilateral trade negotiations. In announcing the hearing, Chairman Shaw stated, in part: "The WTO has proven to be a useful forum for building trade relationships and working out disputes. I cannot imagine anyone seriously thinking that we are better off without the

WTO, but it is important that Congress continually review and oversee how the system works.”

The CFSBI does not advocate withdrawal of the United States from the WTO. The CFSBI does not dispute that the WTO agreements have been useful for building trade relationships and opening up markets to certain U.S. goods and services. The WTO has also further strengthened the existing platform for building on positive developments in the future.

However, as the Subcommittee is aware, a primary focus of certain U.S. trading partners has long been to undermine U.S. trade remedy laws through whatever means possible. Unfortunately, from the CFSBI's perspective, creation of the WTO was itself a movement in that direction. These WTO members are continuing their efforts now by seeking ruinous amendments to the trade remedy provisions of the WTO agreements in the context of the ongoing Doha Round negotiations.

The CFSBI urges the Subcommittee to actively monitor these negotiations and resist any attempt by the Administration to consider further weakening U.S. trade remedy laws. At the same time, the Subcommittee should press the Administration to clarify and improve the current trade remedy provisions in key respects so as to effectuate the intent originally underlying the agreements. A particular area of concern is the WTO Dispute Settlement Understanding (DSU). The DSU's deficiencies have become apparent over time. The plain facts demonstrate, and the Administration has confirmed, that WTO panels and the Appellate Body regularly exceed their authority and misinterpret the applicable agreements. Therefore, consistent with the Administration's stated objectives, a U.S. negotiating priority should be to amend the DSU and ensure that WTO panels and the Appellate Body respect proper limitations on their adjudicative role.

#### **TOP PRIORITY MUST BE GIVEN TO PRESERVING U.S. TRADE REMEDY LAWS**

Preserving U.S. trade remedy laws is the CFSBI's highest priority. The CFSBI urges the Subcommittee and Congress as a whole to adopt a similar view. U.S. support for the WTO, and before that the GATT, has always hinged on the agreements condemning unfair trade practices and ensuring the ability of governments to defend against unfair and otherwise injurious trade. This remained a strongly voiced U.S. priority at the time the current round of trade negotiations was launched in Doha in 2001.

The Doha Ministerial declaration called for “clarifying and improving” the rules under the Antidumping Agreement and Subsidies and Countervailing Measures (SCM) Agreement, with the goal of “preserving the basic concepts, principles and effectiveness of these Agreements.” This language should not be interpreted now as signaling an intention to weaken the agreements or the corresponding provisions of the U.S. antidumping (AD) and countervailing duty (CVD) laws. Congress set out its view of this mandate and of U.S. negotiating objectives in the Trade Act of 2002:

to preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws, and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies, or that lessen the effectiveness of domestic and international safeguard provisions, in order to ensure that United States workers, agricultural producers, and firms can compete fully on fair terms and enjoy the benefits of reciprocal trade concessions...

The need for strong and effective trade remedy laws is at least as strong today as it was in 2001. Following the steel crisis in 1997–1998, and the much-deserved safeguard assistance provided by the Administration with Congress' support in 2002, the surge of low-priced imports temporarily receded. The U.S. steel industry, including manufacturers of cold finished steel bar, embarked on a dynamic transformation through modernization, consolidation, and restructuring. According to the American Iron and Steel Institute, the industry as a whole has invested \$4 billion to date in this process, resulting in more consolidation in the past two years than in the previous two decades.

However, imports have again begun increasing. Looking just at cold finished steel bar, imports in 2004 increased to 268,897 tons, 25 percent higher than 2003. The 2004 import level exceeded that of 2001, the year before the Administration imposed safeguard tariffs. Imports during January and February 2005 were higher than in over a decade for either of these two months. Imports increased their percentage of apparent domestic consumption, as well, to 16.5 percent in 2004, from a little less than 14 percent in 2003. Moreover, at the current pace, imports in 2005 will exceed 2004 levels by over 50 percent.

The WTO members now anticipate concluding the Doha Round negotiations by the end of 2006, in time to take advantage of U.S. trade promotion authority (TPA)

procedures, which likely will expire by mid-2007. Therefore, much of the substance of a final negotiated package will presumably have to be in place by the time of the Hong Kong ministerial conference in December of this year.

It is against this backdrop that certain WTO members—all perennial unfair traders—have made numerous negotiating proposals seeking not to clarify or improve the agreements, as called for by the Doha Ministerial, but rather to transform their substance, making unfair trade relief more difficult to obtain, more limited in scope, and shorter in duration. Even more significantly, we sense that the Administration may be willing to agree on behalf of the United States to do just that—substantially weaken the trade remedy laws in order to advance the negotiating process and obtain concessions in other issues such as agriculture and services. It is essential that Congress exercise its oversight authority, consistent with previous pronouncements, to resist such efforts and fully preserve the integrity of U.S. trade laws.

The CFSBI urges Members of the Subcommittee to play an integral role in this regard. Please reaffirm that backtracking will not be tolerated on previous U.S. pledges to the steel industry and other vital domestic industries to maintain strong and effective trade remedy laws. Engage members of the steel and other caucuses to organize broader efforts within Congress. Voice a strong, persuasive, and consistent message to the Administration that any weakening of the trade laws is not acceptable and will not be approved by Congress. Raise these issues at every opportunity, including through letters to the President and direct representations to key Administration officials.

Active participation by this Subcommittee and Congress in past negotiations has been instrumental to obtaining as favorable an outcome as possible. Thus, the Subcommittee should also coordinate the formation of a delegation from Congress to attend key events concerning the Doha negotiations. This should include, in particular, the Hong Kong ministerial in December. Demonstrating that weakening the trade laws during the present negotiations will not be approved in Congress is a substantial incentive for the Administration and our trading partners to avoid putting such changes into the WTO agreements.

#### **THE WTO ADJUDICATIVE PROCESS MUST BE REFORMED**

The WTO authorizes binding dispute settlement through the DSU, which the United States supported during the Uruguay Round negotiations creating the WTO. Since entering into force, however, the flaws in the DSU have become all too apparent. The WTO tribunals have misused their authority and misinterpreted the relevant agreements to rewrite the rules governing trade remedy investigations to a significant extent, thus thwarting the intent of the United States and other WTO Members in negotiating the relevant WTO agreements. The CFSBI urges the Subcommittee to ensure that the Administration makes this issue another U.S. trade negotiating priority.

Specifically, WTO panels and the Appellate Body regularly (1) disregard specific limitations in the DSU on their exercise of discretion, (2) exploit ambiguities wherever possible to the benefit of complainants, and (3) go out of their way to interpret “silent” provisions or gaps in the relevant agreements as imposing obligations on, or limiting the discretion of, national investigating authorities. In Section 2101(b)(3) of the Trade Act of 2002, Congress recognized the seriousness of this issue: “Support for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements.” However, Congress found that:

(A) the recent pattern of decisions by dispute settlement panels of the WTO and the Appellate Body to impose obligations and restrictions on the use of antidumping, countervailing, and safeguard measures by WTO members under the Antidumping Agreement, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards has raised concerns; and

(B) the Congress is concerned that dispute settlement panels of the WTO and the Appellate Body appropriately apply the standard of review contained in Article 17.6 of the Antidumping Agreement, to provide deference to a permissible interpretation by a WTO member of provisions of that Agreement, and to the evaluation by a WTO member of the facts where that evaluation is unbiased and objective and the establishment of the facts is proper.

There are many well-documented examples of this growing problem. Most apparent is a general tendency on the part of panels and the Appellate Body to ignore the appropriate standard of review in AD/CVD cases. The tribunals persistently impose obligations and restrictions on the use of trade remedies that are not found in the agreements and were never intended or negotiated by the WTO members. Likewise, the tribunals substitute their judgment improperly for that of the investigating authorities. In the case of the Antidumping Agreement, in particular, as re-

ferred to by Congress in the quote above, the United States demanded inclusion of a specific standard of review provision, Article 17.6, to ensure deference by WTO panels and the Appellate Body to findings of fact and law by investigating authorities. However, even many opponents of trade remedies agree that such deference is often completely lacking.

The result of panels and the Appellate Body overreaching their authority is, for one, to offset the balance of rights and obligations that the United States negotiated in the Uruguay Round, which must be restored in the current negotiations. Only in this manner can Congress and domestic industries regain faith in the effectiveness and sustainability of the WTO and the U.S. commitment to the international trading system as it currently stands. To accomplish these goals, specific revisions are required in the text of the DSU.

To begin, the CFSBI supports the joint Chile-U.S. proposal to the WTO to provide “additional guidance to WTO adjudicative bodies” regarding (1) the nature and scope of the task presented to them (*e.g.*, when the exercise of judicial economy is most useful), and (2) rules of interpretation of the WTO agreements. Consistent with this proposal, the DSU should emphasize that the role of adjudicative bodies is only to clarify the existing provisions of covered agreements, which requires restraint in considering issues on which findings are not necessary to resolve the matter. Specifically, DSU Article 11 should be amended to eliminate the ability of panels to make “such other findings as will assist the [WTO Dispute Settlement Body] in making recommendations or in giving the rulings provided for in the covered agreements.”

In addition, the rules of interpretation should emphasize that panels and the Appellate Body are to defer to WTO Members’ reasonable interpretations of existing agreement provisions and to refrain from filling any apparent gaps in the text of agreement provisions. In this regard, DSU Article 3.2 should be amended to clarify that (1) Members are presumed to have acted in conformity with their WTO obligations, (2) words or concepts cannot be imputed into agreements, (3) reasonable interpretations of covered agreements by Members should be permitted, and (4) gaps in the text of agreements reflect the absence of an agreement and must be respected as such.

Furthermore, Article 17.6 of the AD Agreement (and a corresponding provision of the SCM Agreement) should be amended to clarify that the standard of review contained in those agreements supplants any other standard of review. Article 11 of the DSU should also be amended to refer to those provisions of the AD and SCM Agreements and to the inapplicability of the DSU standard of review to disputes under those agreements.

The CFSBI also supports including a provision in the DSU that adapts Articles 31 and 32 of the Vienna Convention on the Law of Treaties to accommodate the needs of WTO dispute settlement. Such WTO-appropriate rules of interpretation could include, among other things, requiring consideration of “any” subsequent practice; permitting reliance on formal proposals and meeting minutes otherwise publicly available and posted on the WTO website in conjunction with the DSU and Doha negotiations as a contemporaneous record of the negotiations; and clarifying the use of external aids to inform the interpretation of any term with a “special meaning” that is otherwise defined by the agreement.

## CONCLUSION

The CFSBI supports U.S. membership in the WTO. The CFSBI also embraces greater trade liberalization and recognizes the need for the WTO to evolve accordingly. However, increasing trade liberalization does not equate to sanctioning unfair or otherwise injurious trade; and winning concessions on other issues should not come at the expense of essential U.S. manufacturing industries, such as steel.

The U.S. steel industry has made a dramatic turnaround in recent years—with the assistance of the Administration and Congress and the trade remedy laws currently in place. However, imports are already on the rise again, a trend that will only continue, in large measure from the very countries that advocate weakening the WTO trade remedy provisions. The United States has consistently pressed the view that strong and effective trade remedy laws are an essential and positive component of a sound trade policy, both in the short and long term. The CFSBI urges that the Subcommittee both demand and help organize a sustained Congressional effort to ensure that the United States maintains this position in the current WTO negotiations.

Again, the CFSBI is grateful for this opportunity to provide its views and can address any questions or provide any additional information that might be considered helpful.

Respectfully submitted,

Alton Steel, Inc.  
Banner Service Corp  
Charter Steel, A Division of Charter Manufacturing Company  
Charter Wire, A Division of Charter Manufacturing Company  
Corey Steel Company  
Ispat Inland Bar Products  
Kentucky Electric Steel, Inc.  
Krueger and Company, Inc.  
Laurel Steel  
LMP Steel & Wire Company  
Nelson Steel & Wire  
Niagara LaSalle Company  
Sheffield Steel Corporation  
Taubensee Steel Corporation  
Vulcan Threaded Products, Inc.  
Wilton Precision Steel

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**Statement of Jonathan Gold, The Retail Industry Leaders Association,  
Arlington, Virginia**

The Retail Industry Leaders Association (RILA) welcomes the opportunity to submit written comments for the record of this hearing on the Future of the World Trade Organization. RILA strongly supports continued U.S. membership in the WTO and participation in WTO-based trade liberalization.

**RILA and the Retail Sector**

The Retail Industry Leaders Association (RILA) is an alliance of the world's most successful and innovative retailer and supplier companies—the leaders of the retail industry. RILA members represent almost \$1.4 trillion in sales annually and operate more than 100,000 stores, manufacturing facilities and distribution centers nationwide. Its member retailers and suppliers have facilities in all 50 states, as well as internationally, and employ millions of workers domestically and worldwide. Through RILA, leaders in the critical disciplines of the retail industry work together to improve their businesses and the industry as a whole.

The retail sector, along with the suppliers and customers that it serves, is an essential part of the U.S. economy. Retailers provide good jobs with good benefits, creating opportunities at every level of employment ranging from entry-level employment, part-time work, and jobs for non-skilled workers, to technology professionals, logistics experts and market analysts. Retailers serve the consumer goods market, an essential driver of the U.S. economy; they also serve the global market for consumer goods and bring U.S. products to the foreign markets where they operate.

Virtually all of RILA's members, both retailers and suppliers, rely on international trade to conduct their businesses. Our members depend on imports of both finished consumer products and production inputs for merchandise that will eventually be sold at retail. They also seek opportunities to expand retail outlets in countries that are open to U.S. investment and expand market access for American products.

**Importance of Continued Participation in the WTO**

A liberalized, rules-based trading system is essential to U.S. economic success and serves other important U.S. foreign policy objectives as well. The WTO agreements help sustain an open trading regime for goods and services, and the WTO itself provides an essential institutional forum for further rules-based liberalization of international commerce. The WTO's rules and institutional arrangements, which reflect intensive U.S. negotiating efforts over several decades, help ensure that the United States succeeds economically in the many areas where it has a comparative advantage.

Participation in the WTO (and its predecessor, the General Agreement on Tariffs and Trade) has enabled U.S. to marry liberalization of the U.S. trade regime—a beneficial step in its own right—to increased access around the world for U.S. pro-

ducers, farmers and service suppliers. And there are many more benefits which participation in the WTO can yet deliver—notably including further opening of the retail and distribution sectors in key emerging markets around the world.

RILA accordingly urges the defeat of H.J. Res. 27, introduced March 2, 2005, which would rescind Congressional approval of the WTO agreements. Passage of this Resolution would harm the United States economically and undermine hard-won U.S. accomplishments over the last half-century in liberalizing trade and advancing the rule of law. Rather than repudiating the WTO agreements, the United States should rededicate itself to the success of the current negotiating round—the Doha Development Agenda—as the surest path toward advancing efficient resource allocation, consumer welfare, and market access for U.S. products, sustainable development, and general economic prosperity.

### Conclusion

RILA congratulates the Committee for its attention to and oversight of U.S. participation in the WTO. WTO-based trade liberalization has been, and remains, an essential element of America's economic success story. Passage of H.J. Res. 27 would impair our access to the trading system's benefits at a time when we need those benefits more than ever before. If RILA can be of any assistance in ensuring a decisive vote against this damaging resolution, please contact Lori Denham, Senior Vice President—Policy and Planning or Jonathan Gold, Vice President—Global Supply Chain Policy.

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### Statement of John E. Howard, U.S. Chamber of Commerce

The U.S. Chamber is pleased to comment on the future of the World Trade Organization (WTO). Nearly sixty years ago, after the twin disasters of world depression and world war, the United States led the fight for a global rules-based trading system that would create new markets for U.S. businesses and new jobs for U.S. workers. We have also led by example by maintaining low trade and investment restrictions that are often not reciprocated by our trading partners.

However, notwithstanding the GATT/WTO system's contributions to economic growth worldwide, the uneven distribution of that growth and attendant benefits continues to threaten already tenuous public support here and abroad for continued trade liberalization. This ambivalence is partly reflected in the scaling back of what was a truly ambitious Doha Development Agenda (DDA) work program adopted in November 2001.

Absent a clear and unmistakable demonstration of commitment by the U.S. and other leading nations to the viability of the WTO—as an organization, a set of rules and a process for achieving more trade and investment liberalization—we are deeply concerned at the very real prospect that continued progress in international trade and investment liberalization may wither on the vine, to the detriment of U.S. and global interests.

We recognize the benefits that “competitive liberalization” as practiced by this administration has had for U.S. businesses and workers. If one bilateral negotiation does not present a viable framework for achieving results, we should find another one. The truly impressive list of recently-concluded bilateral free trade agreements shows progress can be made. However, U.S. global economic interests require that, at some core level, we continue to insist on the application of comprehensive, modern trade rules on a multilateral basis.

Therefore, the U.S. and other nations must do their best to ensure that the Doha Development Round yields additional progress. We envision a continuing core agenda for progress as necessarily including the following:

- *Agriculture.* This trilogy of issues—market access restrictions, export subsidies and domestic supports—has represented in many ways a “clash of the Titans” in that so much of the world trading system's potential rests on an ability and willingness of the world economy's major players to agree to impose significant new discipline on these costly and contentious practices.
- *“Non-agricultural market access.”* Tariff and NTB reduction and elimination not only means improved access to foreign markets for a wide variety of U.S. exporters. But it has also been estimated that U.S. tariff elimination could save American families an estimated \$18 billion a year in import taxes collected on everyday household items.

- *Trade in Services.* Service industries account for roughly eighty percent of U.S. employment. International trade in some services (for example, banking, insurance, the legal profession, accounting, and telecommunications) was first subject to multilateral trade negotiations in the 1994 Uruguay Round. However, it soon became clear that negotiating a comprehensive approach to trade in services would need to be much more ambitious and cover far more ground.
- In addition, *trade facilitation* initiatives provide significant opportunities to achieve real, nuts-and-bolts improvements for businesses of all sizes. Progress in such areas as port efficiency, customs procedures and requirements, the overall regulatory environment, and automation and e-business usage will prove especially valuable to smaller and medium-sized enterprises.

There are many other issues—notably including the need for improved transparency in dispute settlement as well as resolution of such outstanding issues as investment, government procurement, and intellectual property—that must be addressed, whether in a WTO context or otherwise. Additionally, an emerging divergence in regulatory rulemaking poses potentially costly new obstacles to open commerce; future negotiations must strive for regulatory compatibility among the world's key economies. Finally, a negotiated agreement must prove acceptable to the U.S. public, and by extension the U.S. Congress. This means care must be taken not to negotiate premature and unwarranted concessions in U.S. unfair trade laws or their enforcement.

The U.S. Chamber intends to participate very closely in all relevant fora leading up to a successful conclusion of the Doha Development Round, and will have more to say on all of these issues in the weeks and months ahead. We look forward to working with this and other Committees as they continue to conduct their constitutionally-mandated oversight of these and all trade negotiations.

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#### **Statement of Mary Irace, The National Foreign Trade Council, Inc.**

The National Foreign Trade Council (NFTC) appreciates the opportunity to provide its views on the World Trade Organization (WTO) as part of the five-year congressional review of the WTO, as provided under Sections 124–125 of the Uruguay Round Agreements Act of 1994. The NFTC is an organization of 300 American companies which supports the advancement of open and rules-based trade. We strongly support the WTO for several fundamental reasons and urge Congress to resoundingly defeat H.J. Res. 27 which would withdraw U.S. approval of continued participation in the WTO.

##### *The WTO/GATT Serve as the Bedrock Foundation of the Global Trading System*

The WTO and its predecessor the General Agreement on Tariffs and Trade (GATT) have served as the foundation of an open and rules-based multilateral trading system since the GATT's founding in 1948. Its original purpose of raising standards of living by eliminating barriers to trade and expanding peaceful trade among nations is as important today as it was in 1948. As the largest single trader worldwide, the United States has an enormous stake in ensuring that the WTO remains a vital institution in removing barriers to trade and ensuring that trade is based on the rule of law rather than the rule of the jungle.

Since the GATT was first established, the United States has been as a leading voice and proponent of eight “rounds” of trade negotiations. Each negotiation has aimed to remove a wider range of barriers. Concluded in 1994, the last round of multilateral trade liberalization negotiations—the Uruguay Round—expanded market access and trading rules to cover major new areas of critical importance to American business, workers and farmers by including for the first time agriculture, services and intellectual property rights. It also formally created the WTO as a stand alone institution and established effective dispute settlement rules for the first time, which was a primary objective of the United States during the Uruguay Round. As the recent USTR report highlights, the benefits to the United States from its participation in the WTO have been wide-ranging and of enormous impact to the average working family, and American exporters, workers and farmers.

##### *A Successful Doha Development Agenda is of Vital Importance to the United States*

The United States is in the midst of another major new round of trade liberalization negotiations—the Doha Development Agenda (the “Doha Round”)—launched in November 2001. The Doha Round is perhaps more important than any previous round because of the active participation of developing countries and the prolifera-

tion of regional trade agreements, many of which exclude the United States. This year is critical to the ultimate success of the round with the upcoming Hong Kong Ministerial meeting in December and the general consensus that the round must conclude in 2006 at the latest. Time is running short.

In early 2002, the NFTC issued a comprehensive set of bold proposals and recommendations for the Doha Round centered on achieving high levels of market access in industrial goods, services and agriculture, as well as new rules on trade facilitation. The NFTC and its members continue to believe that the only outcome worth aiming for in the Doha negotiations is an ambitious one. This means the active participation of all WTO Members, especially middle income developing countries, in addition to the United States, the European Union and other advanced industrialized countries.

With respect to the spread of bilateral and regional trade agreements, the NFTC supports high quality and commercially meaningful Free Trade Agreements between the United States and its trading partners. However, an ambitious outcome to the Doha Round has the potential to liberalize trade among a much larger number of U.S. trading partners—close to 150 nations which belong to the WTO. Importantly, new access to major emerging and middle income markets such as Brazil, China, India, Malaysia, Turkey and other countries will likely **only** be achieved in the near term through the WTO. Tariff and non-tariff barriers remain high in many of these countries and the Doha Round offers a unique opportunity to reduce and eliminate them. If there are no substantial market access outcomes in these and other developing countries, it will be difficult to generate enthusiasm in the American business community for the final agreement.

*U.S. Leadership Must Focus on Achieving A High Level of Ambition and Win-Win Outcomes*

The NFTC has focused on ambitious outcomes across the range of issues in the Doha Round for two reasons. First is that the United States has major market access negotiating objectives in all major areas of the negotiation. Second, and just as important, is that achieving a high level of ambition across all areas will enable all WTO members to secure “win-win” outcomes through major new market access. This in turn will create positive momentum for the final agreement and will allow every WTO member to make the necessary tradeoffs or overcome politically sensitive issues. Major new multilateral trade liberalization and improved trade rules will grow the global economy, strengthen national economies, raise living standards and alleviate poverty.

The recent “Mini-Ministerial” meeting in Paris on May 4 was a positive indication that ministers are focusing on getting the job done and leading the negotiations in an ambitious direction. We strongly support this outcome, as highlighted in the range of positions we have issued. Most recently we issued a position paper on GATS Mode 4 addressing the temporary movement of business personnel in the delivery of services. We believe the United States has pro-active and strategic interests on GATS Mode 4, and we also recognize that it is an essential component of an overall ambitious agreement on broader services, industrial goods and agriculture. We urge Congress to maintain a commonsense approach on this issue that focuses on enhancing U.S. global competitiveness.

The United States, under the able leadership of former USTR Ambassador Zoellick, Ambassadors Deily and Allgeier, and the entire team at the USTR and other agencies such as the Commerce Department, have done a remarkable job in achieving solid progress in the Doha negotiations and leading the trade talks in a direction of “can do” rather than “won’t do”. We have full confidence that Ambassador Portman will continue to lead U.S. in the direction of achieving an ambitious and meaningful conclusion to the Doha Round.

The stakes in this ninth round of multilateral trade negotiations are high. The outcome will, we believe, determine the future credibility and relevance of the WTO to the realities of the global marketplace. If not, then we miss a critical opportunity to make major advancements, rather than piecemeal, in the breaking down of trade barriers. This round is a test of political leadership and commitment to multilateralism as a main vehicle for stimulating trade and improving trade governance. A modest outcome will not in our view be sufficient to ensuring that multilateralism keeps pace with growing regionalism, which is counter to the most basic WTO principle of non-discriminatory trade treatment.

We urge Congress to support an ambitious outcome to the Doha Round and continued U.S. participation in the WTO by voting against H.J. Res. 27.

The NFTC appreciates the opportunity to submit this statement.



North Dakota Wheat Commission  
Bismarck, North Dakota 58503  
May 20, 2005

The Honorable E. Clay Shaw, Jr.  
Chairman  
Subcommittee on Trade  
House Committee on Ways and Means  
1104 Longworth House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

We thank you for holding the hearing on May 17, 2005 to review the future prospects for U.S. participation in the World Trade Organization (WTO). We concur with your comments supporting U.S. membership in the WTO and that the organization is a useful forum for building trade relationships. We also agree that Congress should review and oversee how this multilateral trade system works. For, while the system has succeeded in many cases, challenges and obstacles do remain. The North Dakota Wheat Commission (NDWC) submits this written statement to your Committee and respectfully requests that it be made a part of the hearing record.

The WTO provides an international means by which its Member countries can address critical issues facing the short and long-term export competitiveness of many U.S. agriculture products, including wheat produced in North Dakota. These issues range from freer market access in customer countries to disciplines on export subsidies and State Trading Enterprises (STEs) in competitor countries. As world trade expands, the NDWC believes that the United States must continue to play an active role in establishing the rules for international trade if our wheat producers hope to have a profitable and competitive future.

Addressing the unfair trade practices and subsidies of competing wheat exporters can be achieved to a certain degree through U.S. laws and bilateral trade agreements, but it is also clear that an international body like the WTO is needed to complement limitations in those national or bilateral trade regimes. One example of this is the ongoing trade distortions caused by the Canadian Wheat Board (CWB), a Government of Canada STE, which engages in unfair wheat pricing and unfairly competes for market share because of its vast array of government protections and subsidies. The CWB has a longstanding history of questionable practices aimed at systematically creating and developing a competitive advantage on a non-commercial basis in wheat markets around the world. It is the largest exporter of wheat in the world and its protected and subsidized monopoly status (which grants it exclusive rights, provides government financial guarantees, and protects its domestic market) allows it to distort world wheat trade and critically reduce market share and market value for competing wheat exports from the United States.

Notably, progress and reform of the international wheat market was steady throughout the 1990s, with the exception of the CWB. In 1990, 90 percent of all international wheat purchases were made by governments. That number is now closer to 40 percent and continues to fall. Ironically, China entered into WTO membership having agreed to more disciplines on its STEs, including the introduction of private-sector imports, than Canada—the United States major trading partner—has ever entertained. Clearly, with regard to the status and functioning of STEs, the WTO and its Agreements have failed.

U.S. trade laws have provided some relief for North Dakota's wheat producers in our own domestic market, but further work is needed in international markets if we are to have a viable future in export markets for our wheat. It is critical that U.S. wheat producers have access to foreign markets and a fair chance to compete for the highest valued sales possible in the world market. Undisciplined, government-subsidized STEs are a real threat to that future.

The U.S. Trade Representative (USTR) has been a key supporter in our efforts to bring a more focused and global attention to the problems that STEs create in the international wheat market. At the urging of North Dakota wheat producers, and with support from all three national wheat organizations, the USTR launched a Section 301 investigation into the wheat trading practices of Canada and the CWB in October 2000. As a result, the USTR found that the acts, policies and practices of the Government of Canada and the CWB are unreasonable and burden or restrict U.S. commerce. It found the CWB to have numerous government protections, privileges and subsidies which enabled it to unfairly erode both market share and market value for U.S. wheat producers and which infringe on and undermine the integrity of a competitive trading system. The investigation also concluded that the CWB is in all significant respects an arm of the Government of Canada. See USTR Affirmative Finding in Response to NDWC Section 301 Petition, Investigation No.

301–120, February 15, 2002; see also *Wheat Trading Practices: Competitive Conditions Between U.S. and Canadian Wheat*, U.S. International Trade Commission, Investigation No. 332–429, December 2001.

The USTR's investigation led to further action in the form of successful industry-brought countervailing duty and dumping investigations (14.15 percent duties on certain Canadian wheat imported into the United States), and USTR-initiated WTO Dispute Settlement proceedings. More significant progress needs to be made however, and active participation and involvement of the United States in drafting WTO language specific to disciplines on STE's is needed in the ongoing WTO agriculture negotiations.

With regard to the USTR-initiated WTO Dispute Settlement proceeding, then-Ambassador Zoellick filed a WTO complaint on Canada's violation of its WTO obligations under Article XVII and Article III of the Agreement. The WTO Dispute Settlement Panel ruled in favor of the United States with regard to Article III, holding that Canada discriminates against imported wheat by discriminating against U.S.; and, that Canadian rail transportation provides a preference for domestic over U.S. wheat. See *Final Report of the Panel, Canada—Measures Relating to Exports of Wheat and treatment of Imported Grain*, WTO, WT/DS276/R (2004).

Unfortunately, the WTO Dispute Settlement Panel held that Canada was not in violation of its Article XVII obligations which requires that STEs make "purchases or sales solely in accordance with commercial considerations." The panel's simplistic view of commercial considerations gives STEs a green light to engage in harmful market-distorting behavior. The panel, on one hand, suggested that sales based on nationality, government policies, or the "national (economic or political) interest of the STE" are not in accordance with commercial considerations, and thus would be impermissible. On the other hand, the panel indicated that STEs may be used to carry out governmental policies that diverge from profit-maximizing commercial behavior. In a complete affront to the WTO's goals, the panel's report stated, "We note, however, that an export STE might, for instance, want to charge a lower price than the market would bear in order to deter competitors from entering the market. In our view, such sales might be considered to be based on commercial considerations."

Such inconsistencies in the panel report on Article XVII has robbed this clause in the WTO Agreement of any meaning and precludes Member countries from having any viable manner of ensuring that STEs operate in a non-discriminatory manner. As a result of this ruling, then-Ambassador Zoellick said, "The finding regarding the Canadian Wheat Board demonstrates the need to strengthen rules on state trading enterprises in the WTO. The United States will continue through the WTO negotiations to aggressively pursue reform of the WTO rules in an effort to create an effective regime to address the unfair monopolistic practices of state trading enterprises like the Canadian Wheat Board."

In July 2004, a significant achievement was reached when WTO negotiations lead to a framework agreement for the ongoing agriculture negotiations. The current working language adopted by the WTO General Council last July, under Paragraph 18, specifically lists trade distorting practices of STEs including the elimination of export subsidies provided to or by them, government financing and the underwriting of losses. This portion of paragraph 18 is key to any effort to meaningfully discipline STEs, and it must remain in the text of any final agreement. If this language remains, it will be an important accomplishment for U.S. wheat producers in moving the CWB into a more market oriented and commercial disciplined entity.

The text of Paragraph 18 of the July 2004 WTO framework agreement also indicates that the future use of monopoly powers will be subject to further negotiations. With regard to the overall operations of STEs, both monopoly and monopsony powers granted to these entities must be disciplined in order to restrain and check the trade distorting practices of STEs. As a monopsonist (single buyer) and monopolist (single seller), the CWB is inherently a trade distorting entity. The CWB's control of its domestic wheat supply allows cross-subsidization between domestic and foreign markets or across foreign markets. Thus, it can engage in price discrimination across all of its markets, and the subsidies and protection it receives from the Government of Canada enhance its ability to engage in such discriminatory activities in a way that no commercial entity could undertake. As a monopsonist buyer, the CWB can also force Canadian producers to adopt lower prices than might otherwise be acceptable under competitive conditions. The CWB's activities distort international markets for wheat by reducing the price and increasing the volume of Canadian exports to both U.S. and third-country wheat markets compared to levels that would exist in an undistorted market.

At the conclusion of the USTR's Section 301 investigation, the USTR stated that it shared the NDWC's goal to end the CWB's monopoly status and enhance the transparency of this government-backed entity. See USTR Affirmative Finding, In-

vestigation No. 301–120, February 15, 2002. The United States also agreed that in the ongoing Doha Round of negotiations that it would aggressively seek:

- To end exclusive export rights to ensure private sector competition in markets controlled by “single desk,” monopoly exporters;
- To eliminate the use of government funds or guarantees to support or ensure the financial viability of single desk exporters; and,
- To establish WTO requirements for notifying acquisition costs, export pricing, and other sales information for single desk exporters.

Mr. Chairman, despite the United State’s leadership in the WTO negotiations, not all of these STE-related goals have been achieved, and there is always the possibility that Canada could attempt to alter provisions already settled under the July 2004 WTO framework agreement. The United States must continue to take a leading and active role in the agricultural negotiations in the current Doha Round. The challenges to the CWB in recent years have exposed the unfair structure and government-guaranteed powers of STEs, and the negative impact they have on other competing export countries. The United States’ resolve in this matter has helped to solidify allies in efforts to bring discipline to STEs through the WTO. Canada now stands alone as the only WTO-member from a developed country which continues to resist changes to the current WTO framework language and disciplines on STEs.

North Dakota’s wheat producers need continued assistance from all available U.S. trade remedies in the interim; however, we most certainly need the United States to continue to press forward in this important fora to set the stage for free and fair international wheat trade in the future. Success in the WTO negotiations on these issues is a critical component in the WTO’s relevance to the future of commercial markets for global wheat trade.

Thank you for your attention to this important matter.

Sincerely,

Harlan Klein  
*Chairman*  
 Neal Fisher  
*Administrator*

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### Statement of Elizabeth A. Male, Export, Pennsylvania

I take extreme exception to the opening statement of U.S. Trade Representative, The Honorable Peter F. Allgeier, wherein he said: “Simply put, the WTO exists as the most important vehicle to advance U.S. trade interests, and is critical to America’s workers, businesses, farmers, and ranchers.” *Nonsense!*

The World Trade Organization has consistently demonstrated a bias AGAINST United States interests. One needs look no further than the recent trade dispute involving the Foreign Sales Corporation and the Extraterritorial Income Exclusion for an example of egregious meddling and frank bias against U.S. interests. The origins of the dispute are more than 30 years old and perhaps a brief history is in order.

#### **A Brief History:**

In response to a growing international trade imbalance, Congress in 1971 enacted legislation to encourage formation and operations of Domestic International Sales Corporations (DISCs). Three years later, the European Community challenged the DISC regime, alleging that it violated the General Agreement on Trade and Tariffs (GATT). A dispute panel subsequently concluded that the DISC regime did indeed violate GATT, and in 1981, a mere decade after its enactment, Congress repealed the DISC legislation. After reaching a consensus with our GATT trading partners in 1984 on international tax issues, the Foreign Sales Corporation (FSC) law was enacted to take the place of the repealed DISC regime.

*After a hiatus of nearly 17 years,*<sup>1</sup> the European Union (EU) challenged the validity of the FSC and, in 1999, the World Trade Organization (WTO) found the

<sup>1</sup>“I would like to spend a moment recalling how we got to where we are today. To be perfectly blunt, the EU’s challenge to the FSC is a case that never should have been brought. Back in 1981, we reached an agreement with the European community to resolve challenges to each others’ tax laws. That agreement provided the foundation for adoption of the FSC. Recognizing the validity of the FSC, the EU refrained from challenging it for over 15 years. Then, only after

Continued

FSC regime to be an impermissible export subsidy. In response, we repealed the FSC legislation while simultaneously enacting the Extraterritorial Income Exclusion Act (ETI). The ETI exclusion provided broadly preferential treatment not only to income earned from exports, but also to foreign source income. It was thought that this broadening effort would cure the EU objections, thereby allowing the ETI regime to survive WTO scrutiny.

However, in 2001 the EU lodged a complaint alleging that the ETI provisions amounted to an impermissible export subsidy. The Dispute Settlement Body of the WTO reviewed the complaint, held the ETI to be an impermissible export subsidy, and authorized the imposition of over \$4 Billion annually in retaliatory tariffs. The tariffs were directed at a very broad range of products, including agriculture, textiles, metals, jewelry, and many others.

When Congress failed to act or demonstrate meaningful progress, the tariffs took effect at a rate of 5% in March of 2004. They increased at a rate of 1% per month and were scheduled to reach a maximum of 17% in March of 2005. By October of 2004, when the tariffs were at 12%, Congress passed HR 4520, The American Jobs Creation Act of 2004, and President Bush signed the legislation into law on October 22, 2004.

In fact, “. . . **Few things are as central to a country’s sovereignty as how it raises revenue,**”<sup>2</sup> Yet the majority of Americans appear content to allow the WTO to exert significant influence over U.S. tax policy with not so much as a whimper in protest. If the American people understood this dispute, and the effect on jobs, there would be rioting in the streets.

#### **Some Basics: The Arcane Distinction**

*The difference between a direct tax and an indirect tax is a legal distinction with little or no economic difference,* but this distinction is pivotal to this long-running international dispute. Per WTO regulations, an indirect tax such as the Value Added Tax (VAT) of Europe is *border adjustable* without consequence. In contrast, a direct tax such as the Corporate Net Income Tax (CNI) is not eligible for border adjustment. This disparate treatment of the two taxes which are economically indistinguishable serves to disadvantage U.S. goods in the global marketplace.

Our corporate income tax and associated compliance costs are reflected in the price of goods produced by U.S. companies; raising the relative price of those goods in the world market. Because of the global nature of the U.S. CNI, this burden attaches to not only domestically produced goods, but to goods produced offshore as well. The DISC, FSC, and ETI regimes each sought to unburden our export products without violating the spirit or the letter of existing trade agreements. These legislative “attempts to level the global playing field,” were all seen as attempts to tilt the field in favor of the United States.

#### **Incidence of a Corporate Income Tax vs. Value Added Tax**

Economists have struggled for decades to determine who actually bears the incidence of the corporate-level income tax. In the final analysis it appears that the ultimate incidence is not only impossible to predict or measure, but shifts over time in response to infinitely complex changing market conditions. The indeterminate nature of this tax burden supports the WTO prohibition of blanket border adjustment of the CNI; blanket border adjustment may result in subsidy rather than mere removal of an embedded tax component. Distasteful as it may be, this argument has merit.

Like the CNI, initial incidence of the VAT is easily determined; it falls on the consumer. Although they are often thought of as powerless, consumers can collectively and unconsciously reallocate a VAT burden to the entity’s investors and employees by decreasing their consumption of the firm’s products. To the extent that a VAT reduces consumption and adversely impacts sales volume and profits, at least a por-

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losing the Beef and the Bananas cases in the WTO, the EU cast aside our 1981 agreement and launched the FSC dispute. In short, this was a case brought by bureaucrats eager to even the dispute settlement score. The WTO appellate body has made clear that a benefit such as is provided through the ETI provisions that is tied to export activity is not permitted. Therefore, it will not be fruitful to pursue another, similar replacement of the ETI provisions. Rather, addressing the WTO decision through our tax law will require real and meaningful changes to our current international tax legislation.”—Senator Max Baucus, Opening Statement of the Senate Finance Committee hearing held July 30, 2002. This refreshingly frank declaration makes it clear that this dispute is not rationally based and further efforts to duplicate the DISC, FSC or ETI regimes will be futile.

<sup>2</sup> Kenneth Dam, Deputy Treasury Secretary, testimony before the Senate Finance Committee July 30, 2002

tion of the total VAT burden is shifted to the investors and employees of manufacturing companies.

Because the VAT is imposed at each level of production, similar to the CNI in a non-vertically integrated production process, market forces act in the same manner to allocate the burden of the VAT. This fundamental economic truth is often overlooked. It renders the legal distinction between the indirect VAT and the direct CNI functionally and economically meaningless. As U.S. Trade Representative, Robert Zoellick testified before the Senate Finance Committee: “—the economic theory— says that the distinction between direct and indirect taxes that lead them to use a different treatment for the VAT as an indirect tax and allow a rebate versus a direct tax, say a corporate income tax suggests that the logic no longer holds, that basically over time all those taxes are passed through.”<sup>3</sup>

As a regrettable result of this oversight or conscious disregard of economic fact, the VAT is border adjusted without penalty while the CNI burden is potentially fully extant on the consumer. To the extent that European investors and employees bear any of the VAT burden, permissive border adjustment rules serve to subsidize or artificially reduce the price of European products in the world market. **This disadvantages U.S. businesses not only in European markets, but in the global marketplace as a whole; including within the borders of the United States.**

#### Stated Objectives of the WTO:

According to the WTO website: “The World Trade Organization is the only international organization dealing with the global rules of trade between nations.” Flowery platitudes continue: “*Its main function is to ensure that trade flows as smoothly, predictably and freely as possible.* The result is assurance.”<sup>4</sup> “*The multilateral trading system is an attempt by governments to make the business environment stable and predictable.*”<sup>5</sup> “*Non-discrimination is just one of the key principles of the WTO’s trading system. Others include: transparency (clear information about policies, rules and regulations); increased certainty about trading conditions (commitments to lower trade barriers and to increase other countries’ access to one’s markets are legally binding).* . . .”<sup>6</sup>

Those are all lofty goals, but does the WTO really accomplish those goals? The irreverent and contrarian Andrew K. Rose, in a series of papers published by the National Bureau of Economic research, “Does the WTO Really Increase Trade?”, “Does the WTO Liberalize Trade?”, “Does the WTO Stabilize Trade?”, suggests that the answers to those questions are **No, No, and No!**

His empirical strategy involved controlling for as many natural causes of trade as possible (multicollinearity), while searching for the effects of multilateral agreements in the residual. Once other factors such as common language or heritage have been taken into account, Rose compared trade patterns for countries in the GATT/WTO with those outside of the system. The key result with respect to whether the WTO increases trade: “that membership in the GATT/WTO is associated with an economically and statistically insignificant increase in trade—seems robust.”<sup>7</sup> With respect to whether the WTO stabilizes trade: “There is little evidence that membership in the GATT/WTO has a significant dampening effect on trade volatility.”<sup>8</sup> With respect to trade liberalization: “Almost no measures of trade policy are significantly correlated with GATT/WTO membership. Trade liberalizations, when they occur, usually lag GATT entry by many years, and the GATT/WTO often admits countries that are closed and remain closed for years. The exception to the negative rule is that WTO members tend to have slightly more freedom as judged by the Heritage Foundation’s index of economic freedom.”<sup>9</sup>

Not all agree with Rose’s findings. Authors Subraminian and Wei, in a paper written for the National Bureau of Economic Research, “The WTO Promotes Trade, Strongly But Unevenly,” are somewhat critical of Rose’s work. They argue that after refining his econometric methods, correcting for differences between developed and

<sup>3</sup> July 30, 2002

<sup>4</sup> At: [http://www.wto.org/english/thewto\\_e/whatis\\_e/inbrief\\_e/inbr00\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr00_e.htm)

<sup>5</sup> *Id.*

<sup>6</sup> At: [http://www.wto.org/english/thewto\\_e/whatis\\_e/10ben\\_e/10b08\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/10ben_e/10b08_e.htm)

<sup>7</sup> Andrew K. Rose, National Bureau of Economic Research, Working Paper Number 9273, *Do we Really Know That the WTO Increases Trade?* (October 2002) Available at: <http://www.nber.org/papers/w9273>

<sup>8</sup> Andrew K. Rose, National Bureau of Economic Research, Working Paper Number 10207, *Does the WTO Make Trade More Stable?* (January 2004) Available at: <http://www.nber.org/papers/w10207>

<sup>9</sup> Andrew K. Rose, National Bureau of Economic Research, Working Paper Number 9347, *Do WTO Members have More Liberal Trade Policy?* (November 2002) Available at: <http://www.nber.org/papers/w9347>

developing countries, and differences between countries that joined the WTO before the Uruguay Round (members of GATT), and those who joined after the Uruguay round: They claim to have found robust evidence that the WTO promoted world trade.<sup>10</sup> However, a closer examination of their work indicates, by their own admission: “The basic Rose result about the ineffectiveness of the WTO in increasing trade is illustrated in column 1. Indeed, if membership in the WTO is undifferentiated, with all countries treated alike, our result is a more damning indictment of the WTO than even that in Rose (2002a). He found that membership in the WTO had no significant effect on trade. **We find that membership has a significantly negative effect on trade: the average WTO member trades about 11 percent [ $\exp(-0.113)-1$ ] less than the average in the sample (column 1).**”<sup>11</sup> Subramanian and Wei continue in their analysis, engaging in nothing more than pretzel logic, to conclude that the WTO is an effective promoter of trade. **Nonsense!**

Truly free and fair trade proceeds from individual rational self-interest, and there is no need for an unelected, international bureaucracy to oversee or promote it. Economist Murray Rothbard said it best: “You don’t need a treaty to have free trade. Governments and quasi-government bodies like the WTO can only politicize and interfere with the natural flow of goods and services across borders. When we cede even a fraction of our sovereignty to an organization like the WTO, we can hardly hope to become more prosperous or more free.”

#### **Conclusion**

The United States must extricate itself from the artificially imposed stupidity of the corporate net income tax and the ineffective World Trade Organization. Neither serves the interests of the United States. Only when we have freed ourselves from the self-imposed impediments will trade flow unconstrained by unelected and unresponsive international bureaucrats and only then will the productivity of the American worker shine like a beacon for the rest of the world to emulate.

**Please de-fund the World Trade Organization and remove U.S. from participation therein.**

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#### **Joint Statement of Dr. Peter T. Nelson and Jennifer Lambert-O’Keefe, International Trade Council, Alexandria, Virginia**

Mr. Chairman and members of the committee, thank you for the opportunity for the International Trade Council (ITC), and the International Development Institute to present testimony on the “Future of the World Trade Organization (WTO), as well as testimony on the General Agreement of Tariffs and Trade (GATT).

I am Dr. Peter T. Nelsen, President of the ITC and Chairman of the IDI. We have since 1975, for 30 years represented a broad cross section of the U.S. producers of commodities, good and services relating to exports and imports. We have conducted Trade Development Seminars, Congressional Liaison Sessions and Overseas Trade Development Missions.

The GATT and the WTO are the systems that have developed the ground rules and relating laws by which international trade has developed since the dismal failure of the Smoot-Hawley Tariff Act of the early 1930’s. The World living standards of the U.S. including health systems, education, communications and most other aspects of civilized life on earth have evolved and improved the quality of life dramatically in each country to the extent that each population has participated.

The overall results of the U.S. membership on the WTO and the GATT are difficult to ascertain because there is no “scientific date on a “controlled population” with which to compare changes.

The average U.S. growth of exports and imports during the last five decades is 7% on a cumulative basis or twice the 3% average U.S. domestic growths, although starting at a much lower base.

The performance of the trading counties have greatly benefited from the trade laws and regulations that have been established by the WTO, GATT, The United Nations and by the other intergovernmental organizations.

<sup>10</sup> Arvind Subramanian and Shang-Jin Wei, National Bureau of Economic Research, Working Paper Number 10024, *The WTO Promotes Trade, Strongly But Unevenly* (October 2003) Available at: <http://www.nber.org/papers/w10024>

<sup>11</sup> *Id.* At 9

The basis question—Do we need the WTO and GATT is as profound a question as “Do we need the United States Constitution?” There is no “substitute,” nor alternative.

The WTO and GATT have substantially expanded the trade categories they now include trade in services, i.e. banking, consulting, accounting and information dissemination, as a result of the DOHA Round.

Further participation in the multinational trading systems is of essential benefit to Americans. There are numerous aspects to trade that have not yet been agreed upon such as:

- Intellectual Property Protection
- Tariffs used as trade Barriers
- Uniformity Standards on Property Rights

There are substantial increased opportunities for U.S. farmers, workers and consumers inherent within the DOHA Round of negotiations.

The U.S. will benefit for the increases in trade. It was 5% of the U.S. Gross Domestic Product in the 1940's; it was 20% by the end of the 20th Century. The projections of the International Development Institute, (IDI) is that by the year 2010, U.S. Gross Domestic Product will be 25%, our projections further indicate that by the year 2020 the U.S. GDP will be 31% and by the years 2025, we project the annual U.S. Gross Domestic Product to be at 35%, given a 2% margin of error.

These figures assume that Congress will eventually pass the bilateral and multi-lateral trade legislation that the previous 4 United States Presidents have proposed, including DR–CAFTA Trade Agreement and the “Trade Agreement of the Americas,” which would encompass all the countries from Canada down to Argentina.

ITC testified in the early 1980's before both the Senate Finance Committee and the House Ways and Means Committee on the subject of negotiations of Free Trade Agreements with any country independently. Since it seemed very difficult to get 98 countries of the WTO, which was the membership number at that time, to agree in concert.

If any country would agree, the other non participating countries would be obliged to follow, given that they would see other member counties increase their competitiveness in the world to the benefit of all farmers, manufacturers, service industry related workers and consumers from the increase of the “Economies of Scale,” that will obviously ensue.

Market-driven globalization is a “positive-sum” system whereby all participants benefit, i.e. all company's workers and consumers by enlightened self-interest.

By elimination trade barriers and tariffs, producers can produce products and services at a more competitive price. Thus benefiting consumers both here and overseas with “Freedom of Choice,” in the world market place.

Mr. Chairman, and Members of the Committee, I thank you for your attention to my testimony provided you today. It is my honor that you have the benefits to consider its statistical and academic merits to the benefit of all Americans.

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#### **Statement of Joe E. Sheldon, Huntington Beach, California**

For the past several years as a matter of personal interest I have been researching and investigating different types of possible tax systems this country might benefit from.

In the course of this work I have naturally encountered the World Trade Organization and other non-U.S. governmental bodies purporting to improve and control trade between countries. As a country we seem to blow hot and cold with an on-again off-again love affair with such bodies depending, perhaps, upon the direction of the political winds at the particular moment.

In looking at such involvement over time, it really appears to be almost unremittingly a case of shooting ourselves in both feet and putting organizations and individuals from our country at a great disadvantage with respect to such trade. It is perplexing to me as to why we are in such a quandary as we now exhibit by these hearings.

I have never been able to satisfactorily answer in my own mind why we allow ourselves to have our trade so greatly controlled or influenced by these offshore bodies who after all have other interests at heart than our own. There seems to be some mis-guided belief that we must be “Mr. Nice Guy” and align our own trade affairs with the desires of others so as to not trigger all-out trade wars.

Certainly such economic no-win situations as trade wars or trade retaliation are laudable goals, but this can surely be accomplished by noting the border-adjustability of the European Value Added Tax or VAT. These VAT countries enjoy a great advantage over U.S. since their things sold to others are freely border adjustable under the WTO regulations as I understand them.

The VAT form of taxation is certainly not a good choice for a people as free we are. With all of its attendant problems in logistic and administrative complexity (which are extensive) in addition to the cascading of taxes despite extensive artificial attempts to do otherwise, any form of the VAT—simply put—works poorly and has the additional downside of actually encouraging truly a blizzard of evasion and non-compliance. In short, in the over 100 countries instituting a VAT (with most having the mistaken belief that it will eliminate tax cascading and tax consumption), the actual real life experience has been different—quite different. Almost all of these countries end up with huge numbers of exemptions and exceptions and other types of income taxes (personal and/or corporate) as well truly making taxes into a hybrid tax system—a nightmare if ever there was one.

If one looks at the VAT experience it is not difficult to see swelling compliance and seemingly never ending bureaucratic levels of regulation and paperwork with a great amount of non-compliance and evasion. That is the tradeoff for the VAT countries—compliance with the WTO mandates to free up their foreign trade but with a nightmare internally. We do not need to go this route; indeed it would be foolish to do so.

There is a mechanism for this country that offers the border-adjustability of taxes—an indirect tax in WTO parlance. This system is presently in the form of bills before Congress—HR25/S25 which are originated as non-partisan efforts to solve, among other things, the border adjustability of taxation thereby aiding our exporters in other markets and taxing incoming products equally as our own when sold. These bills, known as the FairTax bills, have many economic and internal political benefits and—being fairly small—can be easily digested from the Internet. There has been more economic research into these bills than any other tax measure in American history and they are worthy of serious study by the Subcommittee and full Committee especially from the standpoint of easing our trade deficits and deficiencies.

I shall not repeat the extensive research done on the bills but it is readily available on the Internet also and many private citizens have obviously look into the matter as can be seen from the large number of comments from Individuals on the 2nd Request for Comments by the President's Tax Reform Panel. It is clear that some of these looking at the FairTax recognize its benefits from the standpoint of easing the deleterious effects of WTO regulations on our foreign trade.

I would urge the Subcommittee and, in turn, the full Committee to seriously investigate the FairTax as it relates to the WTO with an eye to becoming as knowledgeable as some of the citizens are becoming. The AFFT (Americans for Fair Taxation) organization, a non-partisan group, already has about 600,000 members and is growing. Please consider the highly-researched material offered relating to the FairTax. I believe it is a better solution—FAR better—than any tax system such as any form of VAT (or flat tax for that matter). It will greatly aid our overseas trade situation.

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## Statement of Barry Solarz, American Iron and Steel Institute

### I. Introduction

In response to the request of the Subcommittee on Trade of the U.S. House of Representatives Committee on Ways and Means (the "Subcommittee"), the American Iron and Steel Institute ("AISI"), on behalf of its U.S. member companies who together account for approximately three-fourths of the raw steel produced annually in the United States, is pleased to provide the following submission regarding future prospects for U.S. participation in the World Trade Organization ("WTO").

The Subcommittee's solicitation of submissions relates to its May 17, 2005 hearing on the future of the World Trade Organization, focusing on (1) overall results of U.S. membership in the WTO and General Agreement on Tariffs and Trade, (2) whether future participation of the United States in the WTO and the multilateral trading system can be expected to benefit Americans and (3) prospects for increased economic opportunities for U.S. farmers, workers and consumers in the current round of WTO negotiations, called the Doha Development Round ("Doha Round"). The following comments do not attempt to address all of the myriad potential issues pre-



mented by these topics, but instead focus on areas of core concern in terms of the operation of the WTO, as well as prospects for continued U.S. participation.

In particular, and as discussed in more detail below, a number of very serious issues confront the WTO and the United States as it contemplates the future of this organization—including the fact that the dispute settlement system is clearly broken (and not acting in the best interests of the United States), critical disciplines against dumping, subsidies and other forms of unfair trade are under attack and in danger of being made ineffective (both by rogue dispute settlement decisions and by Doha Round negotiations) and the WTO system embodies a number of other basic inequities that are harming fundamentally American workers and businesses. These issues will need to be dealt with and meaningfully addressed if support for the WTO system is to be maintained in the United States.

## II. The Manufacturing Crisis and Unsustainable Trade Deficits Demand That Problems with the International System Be Rectified

Despite concerns—particularly with regard to the effect on trade remedy laws and the operation of international dispute settlement mechanisms—American steel producers have supported past trade agreements and market-opening initiatives, including the Uruguay Round Agreements creating the WTO. Indeed, domestic steel producers have long believed in and promoted a strong and vibrant multilateral trading system. AISI believes, as it has for many years, that U.S. workers and businesses can thrive in a global economy that rewards innovation, hard work and market outcomes. Unfortunately, such outcomes are too often defeated by unfair trade and market distortions that rob the international system of its promise and deny critical benefits to American workers and companies. The fact is that the WTO has not been successful in addressing these problems and, in fact, has often exacerbated them through indefensible dispute settlement decisions and inequitable global rules.

In 1994, the last full year before the WTO came into existence, the United States had a trade deficit of \$150.6 billion.<sup>1</sup> At the time, it was widely hoped that the WTO would level the playing field for U.S. companies, leading to a reduction in the trade deficit. This hope has not been fulfilled. During 2004, the U.S. trade deficit hit an all-time high of \$650.8 billion. Indeed, the U.S. trade deficit last year with China alone was \$162.0 billion—a figure greater than our trade deficit with the *entire world* just a decade ago. Furthermore, the data for the first quarter of 2005 indicate that the United States is currently on pace for a *\$730 billion* trade deficit.<sup>2</sup> These astronomical deficits are not due merely to the explosion of imports, but to relatively poor export performance. Indeed, U.S. exports have lagged since the creation of the WTO, growing only 4.7 percent in the last five years—as compared to a growth rate of more than 30 percent in the five years before the WTO was created. These enormous and unprecedented trade deficits represent a severe imbalance in the global economy that could ultimately have disastrous consequences—including undermining the position of the dollar, destabilizing world economies, destroying the U.S. manufacturing base and damaging the national economic security of the United States.

In fact, exploding trade deficits have coincided with a time of crisis for American manufacturing—which has seen devastating losses in employment and entire industries pick up and move overseas. U.S. manufacturing employment today is down almost *3 million jobs* since the summer of 2000.<sup>3</sup> Even as the U.S. economy has expanded in recent years, these lost jobs have not been replaced.<sup>4</sup>

Unbelievably, at a time when the United States is running the largest trade deficits in the history of the world, it has also become the top target of litigation at the WTO.<sup>5</sup> In decision after decision, often based on ridiculous legal reasoning and the invention of new requirements out of whole cloth,<sup>6</sup> WTO dispute settlement panels have struck down U.S. laws and practices—including in areas relating to taxation, appropriations, agricultural support and, perhaps most important, trade rem-

<sup>1</sup>U.S. trade balance data in this submission are taken from the U.S. Census Bureau's web page, available at <http://www.census.gov/foreign-trade/balance> (last visited May 17, 2005).

<sup>2</sup>For the first three months of 2005, the United States had a trade deficit of \$183.115 billion. On an annualized basis, this would be a trade deficit of \$732.46 billion. ( $183.115 \times 4 = 732.46$ ).

<sup>3</sup>U.S. manufacturing employment fell from 17.325 million jobs in July 2000 to only 14.308 million jobs in April 2005. U.S. Bureau of Labor Statistics, Series ID CES3000000001 (Manufacturing), available at <http://www.bls.gov> (last visited May 17, 2005).

<sup>4</sup>In the last two years, the number of U.S. manufacturing jobs has actually declined, from 14.615 million jobs in April 2003 to 14.308 million jobs in April 2005. *Id.*

<sup>5</sup>Eighty-nine disputes have been filed against the United States at the WTO, far more than any other member. The European Union is second with 53 disputes, while no other member has faced more than 17 disputes.

<sup>6</sup>Specific examples of such decisions can be found in Section III.A.1 of this submission.

edy laws. So as the United States continues to soak up more and more of the world's exports, our trading partners have seen fit to exploit a blatantly unfair and inept dispute settlement system to extort even more concessions out of the United States—gaining through litigation what they could not secure through negotiation. Americans will not long support a system that operates this way.

There can be no doubt that these developments have already significantly undermined U.S. support for the multilateral trading system. If the fundamental problems facing the system are not rectified, such support will quite possibly disappear altogether.

### III. Fundamental Problems With the WTO System

#### A. The WTO Dispute Settlement System Is Broken

Binding dispute settlement was hailed as one of the central accomplishments of the negotiations that led to the WTO. U.S. workers and businesses were promised that a binding settlement process would force foreign countries to fulfill their commitments to open their markets to U.S. goods—while respecting U.S. laws and practices in critical areas such as the trade remedy statutes. Unfortunately, this system is not working as advertised. Both dispute settlement panels and the WTO Appellate Body (“AB”) have issued numerous rogue decisions that have no basis in the WTO agreements. These bodies have also disregarded the proper standard of review in disputes involving trade laws. Finally, these problems are exacerbated by the almost complete lack of transparency in the dispute settlement process. Each of these problems is discussed in more detail below.

#### 1. WTO Dispute Settlement Panels and the Appellate Body Have Issued Numerous Rogue Decisions

Despite having the most open market in the world and running staggering trade deficits, the United States has found itself the primary target of challenges in the WTO dispute settlement system. Since the beginning of 2001, the United States has been the defendant in 19 of the 36 cases decided by the AB—i.e., in more cases than the rest of the world combined.

These challenges relate to U.S. law and practice in a vast array of economic and policy areas—including tax rules (as reflected in the Foreign Sales Corporation tax case); agriculture (as seen in the cotton decision); appropriations (the so-called “Byrd Amendment” case); foreign policy (as shown in the Helms-Burton/Cuba litigation); the environment and conservation (shrimp/turtles); and morals/decency (internet gambling). In case after case, panels of international bureaucrats have twisted the meaning of international rules, and invented new obligations, in the course of striking down U.S. laws and practices. These foreign bureaucrats apparently view it as their province to second guess the sovereign decisions of the U.S. Congress and Executive Branch, and are all too willing to go well beyond the text of WTO agreements to, in effect, make policy for the United States.

In no area have these decisions been more harmful to Americans—and in particular to our manufacturing base—than those relating to trade remedy laws. The one common thread in all of these cases is that the United States never agreed to the restrictions that have been found on the use of basic fair trade disciplines. Indeed, in many instances, Congress was specifically told (at the time it approved the WTO agreements) that U.S. practice *was* consistent with the relevant international agreements. These cases have already significantly impacted the effectiveness of U.S. trade remedy laws, and threaten far greater damage if this system is not reformed. Here are a few examples of such decisions:

- *Disbursement of Antidumping(AD) and Countervailing Duties (CVDs)*. The AB found that the Continued Dumping and Subsidy Offset Act of 2000 (i.e., the Byrd Amendment) is a “specific action against dumping and subsidization” in violation of the Antidumping Agreement and the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”). The AB reached this decision despite the fact that the Byrd Amendment simply governs how the United States spends the duties that it lawfully collects and does not provide for any action to be taken against dumping or subsidization or against imports that are dumped and subsidized.
- *Zeroing*. The AB has ruled against the United States use of “zeroing” in a recent AD investigation. The decades-old practice of “zeroing” merely ensures that so-called “negative margins” on fairly trade merchandise in the United States are not improperly used to offset a foreign producer’s dumping margins on merchandise sold at less than fair value. To the extent fairly-traded sales were allowed to offset the margins on unfairly-traded merchandise, foreign producers

could sell massive quantities of dumped products in the U.S. market to the extreme detriment of U.S. workers and businesses.

- *Standard for Causing Injury.* In several cases, WTO panels and the AB have created a completely new obligation in AD cases pursuant to which injury determinations must “separate and distinguish” the effect of dumped imports from that of every other possible cause of injury. This causation standard—which was simply invented by WTO panels and the AB—is unduly burdensome and likely unattainable.
- *Facts Available.* Several WTO decisions have undermined the ability of investigating authorities to use “facts available” and adverse inferences when foreign producers or exporters fail to cooperate in AD and CVD proceedings, including the five-year “sunset” reviews.<sup>7</sup> These tools are essential to enable such authorities to obtain the information they need to make their determinations.
- *Safeguards.* The AB has struck down every safeguard decision that has ever come before it, and has created such unworkable requirements in this area as to make the Safeguards Agreement essentially a dead letter. The undermining of this remedy makes it all the more critical that antidumping and anti-subsidy provisions see no more weakening whatsoever.

These rogue decisions are without basis in the WTO agreements and should be overturned. Such aggressive judicial activism is causing untold damage to the reputation of the world body and, if unchecked, could entirely undermine support for the WTO in this country.

## **2. WTO Dispute Panels and the AB Have Disregarded the Proper Standard of Review**

The repeated abuses at the WTO—and the refusal of dispute settlement panels and the AB to respect the discretion and authority of the U.S. government—are particularly outrageous given that negotiation of a deferential standard of review in trade remedy cases was one of the key U.S. objectives and achievements in the negotiations that created the WTO.

Indeed, the WTO Antidumping Agreement contains specific language stating that when a relevant provision of the Agreement admits to more than one permissible interpretation, WTO dispute settlement panels and the AB shall uphold a member’s antidumping measure if it rests upon any of those permissible interpretations. This common-sense provision was designed to ensure that international bureaucrats defer to reasonable agency interpretations and applications of the rules—rather than substituting their own judgment and creating new obligations to which the United States and other Members never agreed.

Unfortunately, the dispute settlement panels and the AB have all but ignored this standard of review. In case after case, they have concluded that there is only one acceptable interpretation of the Antidumping Agreement—that imposed by the AB or the panel. This blatant attempt to undermine the ability of U.S. agencies to interpret and apply our laws has further eroded the WTO’s credibility, and significantly damaged U.S. interests.

## **3. The WTO Dispute Settlement Process Suffers from a Lack of Transparency**

The defects in the WTO dispute settlement system are only further magnified by its remarkably secretive and non-transparent method of resolving disputes. Among the obvious shortcomings in this system:

- Members of WTO dispute settlement panels are often obscure bureaucrats chosen by the WTO Secretariat—with questionable expertise and without sufficient guarantees of their objectivity.
- All hearings conducted by WTO dispute settlement panels and the AB are closed to the public, which may not even obtain transcripts of such hearings.
- The public has no right of access to the briefs and filings submitted by other countries in WTO dispute settlement proceedings.
- Private parties (including those who originally filed and successfully prosecuted a particular case at the national level, who intimately know the record, and whose interests are directly affected by the outcome of that case) have no right to submit briefs, appear at WTO hearings or participate in WTO proceedings.

<sup>7</sup>See, e.g., *United States—Antidumping and Countervailing Measures on Steel Plate from India*, WT/DS206/R (June 28, 2002) (finding that the Commerce Department’s rejection of information submitted by the Steel Authority of India Ltd. (“SAIL”) in an antidumping investigation and its reliance on facts available was improper, even though substantially all the information needed for the calculation of SAIL’s dumping margin was untimely submitted and was completely unusable.)

No court in America would allow even the most minor legal dispute to be decided by such patently flawed procedures. But the WTO uses them to make critical decisions affecting our sovereignty, decisions that can be worth billions of dollars to U.S. workers and businesses. It is simply unrealistic to expect that Americans—who have long recognized that transparency is absolutely essential to good government—could ever respect or support a body that operates in such a manner.

#### **B. Global Rules and Practices under the WTO System Are Unfairly Harming U.S. Workers and Businesses**

At the same time that Americans are being harmed by a broken WTO dispute settlement system, they are also laboring under international rules that are often inexplicable and patently unfair. Two areas that deserve priority consideration in the context of future U.S. participation in the WTO are (1) unfair international tax rules and (2) international currency manipulation.

- **Border Adjustability of Taxes.** WTO rules allow so-called “indirect” taxes, such as the value-added tax (“VAT”) principally relied upon by many U.S. trading partners, to be refunded when a product is exported without being considered an illegal subsidy. However, direct taxes, such as the income taxes used in the United States, may not be refunded. To make matters worse, U.S. products sold in foreign markets are subject to the VAT, whereas foreign companies bear no U.S. income tax in selling in the United States. The result is that nations using the VAT have received an artificial and unfair advantage in international trade, whereas U.S. companies selling abroad are essentially double-taxed. There is no legitimate economic justification for the disparity, which serves as an enormous competitive handicap to U.S. businesses and manufacturers. Congress has for years demanded that this disparity be fixed, and has included it as a principal negotiating objective in legislation granting the President trade promotion authority. And yet nothing ever seems to be done about it.
- **Currency Manipulation.** Another critical area in terms of global trading rules—and the unfairness to U.S. businesses and workers—relates to the blatant currency manipulation engaged in by China and other foreign nations. These efforts to keep the dollar artificially high (while depressing the value of foreign currencies) act to encourage imports into the United States and to discourage U.S. exports—directly contributing to the trade deficit and serving as a major impediment to U.S. manufacturing and other businesses. By playing the currency markets in this manner, such countries effectively subsidize their exports to the United States, and place a tariff on U.S. shipments to them. Just last week, the Secretary of the Treasury stated with respect to China that “[t]he current system poses a risk to [its] economy, its trading partners, and global economic growth.”<sup>8</sup>
- **Export Restrictions on Raw Materials.** Foreign government interventions, restrictions and distortions in the coke, iron ore, scrap and other key raw material markets are on the rise. It is important not only to eliminate tariff and non-tariff barriers (NTBs) to imports, but also to end taxes and restrictions on exports. In the WTO Non-Agricultural Market Access (NAMA) negotiation, AISI supports vigorous U.S. government efforts to end foreign government export taxes and other export restrictions on raw materials.

While attempts have been made to challenge these practices under WTO rules, thus far there has been no effective resolution. To the extent current global rules are not sufficient to discourage and remedy such blatantly market-distorting behavior, changes are clearly needed.

#### **IV. Needed Reforms and Actions to Address Problems with the WTO**

For all of the reasons given above, U.S. support for the multilateral trading system is at risk. Unless these problems are addressed, the legitimacy of the entire system could be undermined and calls for the United States to withdraw from the body will only increase. Efforts to redress the problems that exist should focus initially on three vital tasks: (1) preserving and enhancing trade remedy laws in the Doha Round, (2) reforming the WTO dispute settlement system and (3) correcting the fundamental disparities in global rules that continue to distort global markets. Each of these tasks is discussed in more detail below.

<sup>8</sup> Press Release from the Department of Treasury Office of Public Affairs, “Statement of Secretary John W. Snow on the FOREX Report (May 17, 2005).

## A. Preserve and Enhance Trade Remedy Laws in the Doha Round

U.S. trade remedy laws—particularly the AD and CVD laws—play a vital role in assuring U.S. workers and businesses that free trade constitutes fair trade. With the most open market in the world, American producers and workers expect and deserve that those trading in this market will do so in accordance with decades-old rules requiring fair trade. At a time of growing challenges to our manufacturing sector, fair trade disciplines are more important than ever—both to ensure the survival of core U.S. industries, and to preserve support in this country for open trade and the international system. Accordingly, it is imperative that the United States seek to overturn the WTO’s rogue decisions regarding trade remedy laws, resist efforts to use the Doha Round to undermine these laws and push for changes to strengthen such laws.

### 1. Overturn the WTO’s Rogue Decisions on Trade Remedy Laws

As discussed above, WTO dispute settlement panels and the AB have issued numerous decisions significantly weakening U.S. trade remedy laws—and going well beyond the obligations to which the United States agreed in the Uruguay Round.<sup>9</sup> The *first* thing that should be done in the new Round of trade talks is to restore the balance of rights and concessions that was agreed to in creating the WTO, and that means reversing the flawed decisions undermining fair trade disciplines. Among other things, U.S. negotiators must seek explicit recognition of the right to distribute unfair trade duties to injured industries, and must reverse the overreaching of WTO panels and the AB with respect to zeroing, the injury causation standard, the use of facts available and other key trade remedy provisions.

### 2. Resist Any Weakening of Trade Remedy Laws

A number of U.S. trading partners—including the most consistent and egregious offenders of international disciplines against unfair trade (such as Japan, Korea, and Brazil)—have made the weakening of U.S. trade laws their top priority for the Doha Round. U.S. negotiators must avoid *any* negotiation or agreement that would result in a weakening of U.S. trade laws. A weakening change would include any measure that would make relief more difficult or costly to obtain, would delay or preclude effective relief or would make relief more difficult to maintain over time. The proposals that have already been made in the negotiations by parties such as the so-called “Friends of Antidumping” clearly constitute weakening changes. These include, for example, proposals for:

- A so-called “lesser duty” rule (which would require inherently speculative and political judgments as to the amount of duty required to remedy any injury caused by unfair trade);
- A requirement that national administrators consider factors in addition to the existence of unfair trade (e.g., amorphous concepts of “public interest”) in determining whether relief can be imposed;
- Raising so-called *de minimis* levels of dumping or subsidization to, in effect, immunize greater amounts of unfair trade;
- Mandatory revocation of AD and CVD orders after five years.

There should be one and only one response by U.S. negotiators to these and other weakening proposals—each one should be *flatly rejected*. Congress should make clear that it will reject any new trade agreement that contains such provisions, or that would weaken U.S. trade remedy laws, either with respect to individual provisions or in their overall effect.

### 3. Push for Changes to Strengthen Trade Remedy Laws

Indeed, U.S. negotiators should look beyond existing disciplines on unfair trade to seek ways to strengthen and close any loopholes in those disciplines. For example, the United States should press for changes such as the following:

- Establish a presumption of injury and causation in cases involving repeat offenders of the laws against unfair trade. (Such provisions would alleviate the need for domestic industries already injured by unfairly traded imports to endure successive, and highly costly, investigations against the same companies—where those companies simply shift their sources of supply, or the product that they ship to the United States, after the entry of an AD or CVD order.);
- Strengthen provisions to deter circumvention (e.g., through alteration of merchandise subject to order, transshipment through third countries, etc.) of existing AD and CVD orders.

<sup>9</sup>For examples of such decisions, see Section III.A.1 of this submission.

- Lower *de minimis* thresholds in AD/CVD cases to ensure that such provisions do not immunize injurious unfair trade;
- Include a presumption that injury will recur in five-year reviews, or consider eliminating such reviews altogether;
- Allow parties with access to confidential materials under administrative protective order to attend verification of foreign producer questionnaire information.

These and similar provisions would make critical improvements to ensure strong and effective enforcement of fair trade disciplines, and to deter market-distorting behavior.

### **B. Reform the WTO Dispute Settlement System**

As discussed above, the WTO dispute settlement system is broken and must be reformed. Several actions are critical. To begin with, Congress should finally act on longstanding, bipartisan proposals to establish a WTO Dispute Settlement Review Commission. Such a commission would be composed of distinguished U.S. jurists (e.g., retired federal judges) and charged with reviewing WTO decisions adverse to the United States to determine whether the relevant decision makers failed to follow the applicable standard of review or otherwise abused their mandate. Such a system would enhance confidence in the WTO system domestically (by ensuring that panel and AB decisions affecting this country were subject to rigorous review) and provide a strong incentive for WTO panels to hew closely to their legal mandate.

Other actions are equally vital.

- First, the United States must make clear that it will no longer tolerate judicial overreaching at the WTO or the creation by judicial fiat of obligations to which it never agreed. Activism at the WTO is threatening the credibility of the entire system and must be dealt with through a fundamental change in the approach and culture of panels and the AB.
- Second, Congress must refuse to implement WTO decisions that are not solidly grounded in the WTO agreements. The time has come for the United States to demonstrate once and for all that we will not allow the WTO to rewrite our treaty obligations. We should start by refusing to implement decisions—such as the AB's decision on the Byrd Amendment—that clearly rest on an unjustified invention of obligations to which Parties never agreed. This would protect legitimate U.S. interests and send a message that we will not tolerate rogue WTO decisions.
- Third, given the enormous problem with decisions in the trade remedy area, the United States should seek to eliminate coverage of trade remedy actions from the WTO dispute settlement system altogether. At a minimum, the United States must insist that the WTO Dispute Settlement Understanding be amended to make clear that the creation of new obligations and the re-weighting of the evidence in dispute settlement cases are impermissible. While the standard of review contained in the Antidumping Agreement<sup>10</sup> should have been sufficient to prevent such *ultra vires* actions from occurring in trade remedy cases, it is apparent that WTO panels and the AB are simply ignoring that standard of review. More stringent and explicit restrictions must be placed on the authority of WTO panels and the AB.
- Fourth, the United States must also seek to open up the WTO dispute settlement process to private parties with a direct and substantial interest in a proceeding. Such parties should be able to participate fully in dispute settlement proceedings through the filing of briefs and attending and participating in hearings before WTO panels and the AB. Once again, this step would enhance confidence in and support for the WTO system, while holding WTO panels and the AB more accountable. It would also ensure that the expertise and resources of the parties most affected by a given dispute could be fully brought to bear in the dispute settlement process. There simply is no valid basis for denying such parties access to and involvement in the process.
- Finally, the U.S. government should take the steps that it can under the current system to improve the way it litigates WTO cases. Among the changes that should be made are to (1) deputize private parties with a direct and substantial interest in a case (and whose interests are aligned with the government) to appear and participate in WTO proceedings; (2) devote greater resources to litigation at key agencies involved in WTO disputes; and (3) create a new Deputy at the Office of the U.S. Trade Representative to deal solely with litigation.

<sup>10</sup>This standard of review was also supposed to be applicable to the WTO Agreement on Subsidies and Countervailing Measures, but has not been used in that context.

### C. Correct Fundamental Inequities in the Multilateral Trading System

As described above, there are a number of areas where international rules currently act to disadvantage U.S. businesses and workers, and where changes are warranted. For example, there is no legitimate economic justification for the current disparity in treatment between countries using VAT systems and those that rely on an income tax. Congress has consistently identified the elimination of this disparity as a principal U.S. negotiating objective. The United States should demand that this inequity be rectified before agreeing to *any* new multilateral trade agreement.

Similarly, the United States should act aggressively to prevent countries like China from using currency manipulation as a tool for protectionism. The U.S. government must do more than simply “jawbone” about the effects of currency manipulation. It should demand that this practice be stopped, cut off market access for those who engage in it and aggressively pursue legal action (such as a Section 301 case) against market-distorting behavior in this area. To the extent stronger rules are needed internationally to address this problem, the United States should demand them in ongoing trade talks.

In addition, the time has come to do more than just talk and threaten WTO action to address foreign government efforts to manipulate raw material markets. We need to end export taxes and other export restrictions on raw materials and, if current WTO rules are inadequate, they must be strengthened.

### V. Conclusion

A strong and vibrant international trading regime requires that the governing rules be equitable and that they be fairly applied and enforced. The current WTO system has major problems, particularly in the manner in which disputes are resolved—a process that has all too often resulted in the creation of new obligations that were never agreed by the United States or other WTO Members. This process has acted to harm and undermine fundamental U.S. policies in a wide range of areas, including the enforcement of our trade remedy laws. At the same time, Americans continue to be disadvantaged by blatantly unfair international rules and practices—such as inequitable tax rules and foreign currency manipulation.

Resolution of these issues should be a prerequisite for future U.S. participation in the WTO. These issues are central to the overall fairness of the system and to the assurance that winners and losers will be determined by market outcomes—rather than government actions or foreign market-distorting practices. These issues are also critical in determining whether Americans will continue to support the WTO and the multilateral trading system.

AISI appreciates the opportunity to comment on this vital topic, and urges the Subcommittee to examine vigorously the issues we have raised.

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## Statement of Terence P. Stewart, Esq., Stewart and Stewart

### EXECUTIVE SUMMARY

The United States, a leader in global trade liberalization, has actively promoted and supported the World Trade Organization (WTO) throughout the course of its ten and a half years of existence. Although the WTO Agreement offers unprecedented opportunities for companies in the U.S. to access new markets, in the U.S.’ ten years of experience, many of those opportunities have been diminished by various trade-related problems that have gone unresolved since the Uruguay Round of Multilateral Trade Negotiations. Despite overall increases in U.S. trade, four major trade-related problems have caused a significant imbalance in global trade and have effectively reduced the benefits of U.S. participation in the WTO.

First, on the issue of different treatment of tax systems, the U.S. is seriously disadvantaged by the application of WTO rules on taxes. With 136 countries applying a VAT tax and a worldwide VAT tax average of 15%, the U.S. faces up to a \$450 billion total disadvantage to U.S. exports (\$180 billion) and export subsidies to import competition (\$270 billion).

Second, innovative U.S. industries are being denied the full value of their products due to the “global scourge” of counterfeiting and piracy. In the absence of full implementation of the TRIPs Agreement and adequate border enforcement, U.S. industries are being denied an estimated \$200 to 250 billion per year from counterfeiting alone.

Third, currency manipulation or misalignment is causing serious market distortions because it acts as both a *de facto* export subsidy for the foreign products and a hidden import duty. Without action by the international institutions established

to govern trade and monetary systems, the U.S. trade deficit is estimated to have been worsened by \$100 billion annually.

Finally, the U.S. is also now faced with responding to WTO dispute settlement decisions that impose obligations that the U.S. did not agree to and would not have agreed to had they been included in the agreements at the end of the Uruguay Round. By engaging in "gap-filling," not adhering to the appropriate standards of review, and applying inconsistent interpretive approaches, WTO panels and the Appellate Body have acted inconsistently with prior practice under the GATT and principles of treaty interpretation. Such "overreaching" is a significant detriment to U.S. industries.

For the U.S. to take full advantage of the benefits offered by the WTO membership over the next decade, however, it must urgently address those trade-related problems that have effectively reduced the benefits of U.S. participation in the WTO.

#### I. Focusing on the Future of the WTO

The World Trade Organization (WTO), created as a result of the Uruguay Round of trade negotiations and launched on January 1, 1995, has been in existence for roughly ten and a half years. The WTO agreements expanded the coverage of the multilateral trading system to include services and trade related intellectual property rights, brought all goods trade under WTO rules and disciplines, established agreements in areas dealing with certain non-tariff measures such as technical barriers to trade (TBT) and sanitary and phytosanitary measures, called for expanded liberalization in goods and services and created a dispute settlement system that results in adopted decisions unless all parties (including the winning party) agree otherwise. Interest in the WTO's predecessor, the GATT, increased during the Uruguay Round, and other nations that were not members at the beginning of the organization have lined up in large number to receive the benefits of membership. At the present time, there are 148 members to the WTO, with 20 of these members (including China and Taiwan) having joined since the launch of the organization in 1995. Twenty-seven additional applicants (including the Russian Federation, Saudi Arabia, Vietnam and Ukraine) are in the queue awaiting membership.

The United States has been a champion of a rules-based system for international trade and has been, for the past decade and most of the period since the original GATT, one of the leading voices for expanded trade. While there have been many positive developments from the creation of the WTO, ten years of experience have also seen an exploding trade deficit in the United States and developments that are not necessarily understandable in light of the openness of the U.S. market and the benefits that should flow from expanded liberalization abroad.

There are a number of problems with the current system that need to be addressed to improve the WTO and to obtain for the United States the benefits that should flow from a well-functioning rules based trading system. The issues that urgently need to be addressed range in type and in what type of solution is needed/possible. Some issues have existed for decades and not been addressed. Others may be viewed as outside the competence of the WTO. Others may need to be addressed in domestic law versus changes to the trading system. All, however, directly affect the competitiveness of U.S. agricultural producers, U.S. manufacturers and U.S. service providers.

As the Ways and Means Committee considers progress in the WTO, I urge it to work with the Bush Administration to see that the following issues are addressed on a timely basis so that the trading system provides the benefits to our companies, workers and communities that American entrepreneurship, creativity and hard work justify.

#### II. The state of the U.S. economy today

The Uruguay Round created the WTO and introduced predictable, transparent and binding rules to the world trading system. In its first ten years of existence, the WTO has resulted in an exponential growth in global trade. As former U.S. Trade Representative, Mickey Kantor, observed at the conclusion of the Uruguay Round, expanded trade opportunities have a profound impact on the domestic economy, which consists not only of consumers, but also of producers, workers, employers, employees and services suppliers:

The benefits of trade ripple through our economy. Trade benefits not only the company that exports, but also the company which produces parts incorporated in exported products, the insurance agency which insures exporters, and the grocery store near the exporter's factory.



U.S. workers and companies are poised to take advantage of the dynamics of the global economy, if they have access to foreign markets and can be ensured they are competing on fair terms with their foreign counterparts.<sup>1</sup>

Former U.S. Trade Representative Robert Zoellick likewise emphasized that opening new markets would benefit each segment of the economy:

When we work with the world effectively, America is economically stronger. Ninety-five percent of the world's customers live outside our borders, and we need to open those markets for our manufacturers, our farmers and ranchers, and our service companies. Americans can compete with anybody—and succeed—when we have a fair chance to compete. Our goal is to open new markets and enforce existing agreements so that businesses, workers, and farmers can sell their goods and services around the world and consumers have good choices at lower prices.<sup>2</sup>

Similarly, at his recent confirmation hearing, Ambassador Portman considered the most important trade negotiation underway to be the WTO's Doha Development Agenda because it has the "potential to substantially reduce tariff and non-tariff barriers, begin to level the playing field for our agriculture producers, open new markets for services, and facilitate the more efficient movement of goods across borders."<sup>3</sup>

Since the WTO was created, the U.S. economy has expanded from \$7.4 trillion in 1995 to \$11.7 trillion in 2004. U.S. GDP is larger now than at any time in the nation's history. U.S. exports have also increased significantly, growing from \$812.2 billion to \$1.2 trillion. Imports, however, have grown at an even faster pace, rising from \$904 billion to \$1.8 trillion, and the trade deficit has consequently ballooned from \$91 billion in 1995 to more than \$600 billion in 2004:

The trade deficit as a percentage of GDP also more than quadrupled during the period, increasing from 1.2% of GDP to 5.2% of GDP. In agricultural trade, the U.S. has seen a trade surplus of \$26 billion in 1995 steadily decline to a surplus of just over \$7 billion in 2004 and only \$1 billion for the first quarter of 2005. The manufacturing sector has lost over 3 million jobs since 2000. There is also widespread and growing concern, recognized by the Administration and Congress, that U.S. companies can no longer afford to support traditional retirement systems, pensions, and health care for U.S. workers. Thus, the undeniable import trend over the past decade is not only a reflection of voracious American consumerism but an important bellwether of our future if the United States does not call for an improved and re-balanced WTO.

III. A series of Trade-related problems reduce the benefits of U.S. participation in the WTO

The WTO international trading system is an important vehicle for the United States and its trading partners to develop rational trade. The opportunities afforded by stimulating international trade through increased market access, however, are limited by a series of trade-related problems which WTO Members have not addressed within that framework. As explained below, serious discrepancies in the application or coverage of current WTO rules have jeopardized U.S. economic interests. The following problems have resulted in an escalating U.S. trade imbalance that requires urgent attention if the trading system is to deliver the benefits promised.

#### A. Different Treatment of Tax Systems

The United States is singularly prejudiced by the application of WTO rules to its tax system. As they currently exist, WTO rules discipline direct and indirect taxes differently. Under Articles VI and XVI of the GATT 1994, border adjustments are permitted for indirect taxes but not for direct taxes. Such border tax adjustments may exist in the form of refunds or remissions of internal taxes paid on products that are destined for export rather than domestic consumption. Typically, such refunded internal taxes are indirect taxes (*e.g.*, sales taxes and value-added taxes (VAT)) and do not include direct taxes (*e.g.*, income taxes paid by a company). At present, 136 countries have a VAT tax, and the worldwide VAT tax average is ap-

<sup>1</sup>Results of the Uruguay Round Trade Negotiations: Hearings Before the Committee on Finance, 103rd Cong. 211 (1994) (prepared statement of Ambassador Michael Kantor).

<sup>2</sup>Statement of Robert B. Zoellick, U.S. Trade Representative before the Committee on Finance of the U.S. Senate (March 9, 2004).

<sup>3</sup>Statement of Robert J. Portman, U.S. Trade Representative-designate before the Committee on Finance of the U.S. Senate (April 21, 2005).

proximately 15%.<sup>4</sup> In the EU countries alone, the VAT tax can range between 15%–25%.

In countries such as the U.S., that rely primarily on direct taxes, the price of the product reflects taxes paid to produce it, regardless of whether the product is destined for export or domestic sale. Consequently, U.S. producers and farmers that export do not receive the benefit of border tax adjustments that exporters from other countries that use an indirect tax system receive. This detrimentally affects U.S. exporters in two ways: (1) refunds of indirect taxes result in an export subsidy that causes unfair competitive advantage; and (2) in addition to paying direct taxes on the products in the U.S., if the U.S. producers and farmers export products to a VAT tax country, those products are also subject to VAT tax, resulting in double taxation.<sup>5</sup> Moreover, these VAT taxes on U.S. exports are essentially a non-negotiable duty that is never subject to reduction through rounds of trade negotiations. A worldwide VAT tax average of approximately 15%<sup>6</sup> translates to U.S. exports facing \$180 billion in additional competitive disadvantage on our exports. At the same time, the remission of VAT taxes could be a \$270 billion export subsidy to our trading partners with VAT tax systems. This results in a \$450 billion total disadvantage to U.S. exports. While the U.S. permits rebate of sales taxes that have been paid, as a general matter, these rebates are much smaller than the VAT taxes imposed by our trading partners with VAT tax systems.

Congress has continuously recognized the prejudicial effect of disparate treatment of border taxes and has identified as a principal negotiating objective in the Trade Act of 2002 the task of obtaining “a revision of the WTO rules with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes.”<sup>7</sup> In the context of the Doha Rules negotiations, the U.S. has only expressed general concerns regarding disparities in the treatment of different taxation systems and has suggested that the goal of negotiations “should be to work toward greater equalization in the treatment of various tax systems—” thereby addressing the prejudicial effect that current practices have on trade.<sup>8</sup> To date, the U.S. has not aggressively pursued this issue by offering specific proposals to satisfy the negotiating mandate.

The problems and disadvantages caused by the differences in treatment of border taxes remain one of the primary obstacles to more balanced trade relations between the U.S. and its major trading partners. In order to correct these disparities and to preserve the nation’s sovereign right of taxation, the U.S. must either submit further proposals in the Rules negotiations and must actively pursue modifications to the GATT 1994 and the SCM Agreement so as to equalize the treatment of direct and indirect tax systems or it must pursue neutralization of the disadvantage through a modification of the existing U.S. tax system.

## **B. Inadequate Intellectual Property Enforcement**

As a leading exporter of products protected by copyrights or patents, the United States was an advocate of strong intellectual property provisions in the TRIPs Agreement. Yet, full implementation of TRIPs obligations, particularly the enforcement provisions, has not yet been achieved in certain countries and has led to “unacceptably high” levels of piracy and counterfeiting of U.S. intellectual property. For example, just hours after the first showing of *Star Wars: Episode III—Revenge of the Sith*, a pirated copy was available on the Internet.<sup>9</sup> The World Customs Organization has estimated that global counterfeiting amounted to more than \$500 billion in lost sales last year with the majority of that originating in China.<sup>10</sup> Thus, despite U.S. innovation and competitiveness, U.S. industries are being denied the full value of their products, in both domestic and export markets. As a result, the USTR esti-

<sup>4</sup>The Value Added Tax—Experiences and Issues, Background Paper prepared for the International Tax Dialogue Conference on the VAT, Rome, March 15–16, 2005, available at [www.itdweb.org](http://www.itdweb.org).

<sup>5</sup>The discrepancies between the direct and indirect tax systems also undermine the benefits of tariff concessions granted by Members.

<sup>6</sup>The Value Added Tax—Experiences and Issues, Background Paper prepared for the International Tax Dialogue Conference on the VAT, Rome, March 15–16, 2005, available at [www.itdweb.org](http://www.itdweb.org).

<sup>7</sup>19 U.S.C. § 3802(b)(15). A nearly identical principal negotiating objective was also identified in the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. § 2901(b)(16).

<sup>8</sup>Communication from the U.S. of March 19, 2003, TN/RL/W/78, p. 4 (March 19, 2003).

<sup>9</sup>USTR, 2005 Special 301 Report, at 2 (Executive Summary) (April 29, 2005); Adam Pasick, *Final ‘Star Wars’ film leaked to the Internet*, Reuters, May 20, 2005, available at <http://today.reuters.co.uk>.

<sup>10</sup>*See Fakes!*, Business Week, February 7, 2005.

mates that losses to U.S. industries alone from counterfeiting amount to between \$200 to 250 billion per year.<sup>11</sup>

The USTR has acknowledged the rapid explosion of counterfeit and pirated goods around the world and identified significant concerns with respect to Argentina, Brazil, China, Egypt, India, Indonesia, Israel, Kuwait, Lebanon, Pakistan, Paraguay, the Philippines, Russia, Turkey, Ukraine, and Venezuela. Counterfeiting and digital piracy have developed into a “global scourge” harming companies, consumers, government revenue, and workers. According to USTR, stronger and more effective border enforcement is necessary to stop the import, export, and transit of pirated and counterfeit goods.<sup>12</sup>

In granting trade promotion authority in 2002, Congress identified as a principal negotiating objective the promotion of adequate and effective protection of intellectual property rights through, *inter alia*, ensuring the accelerated and full implementation of the TRIPs Agreement particularly with respect to meeting enforcement obligations under that agreement. WTO Members should address this abuse of the global trading system in the Doha Round or otherwise adopt additional measures to ensure that intellectual property rights remain in the hands of innovators.

### C. Foreign Currency Manipulation or Misalignment

Currency manipulation or misalignment causes serious market distortions that have been identified as a problem by U.S. manufacturers and members of Congress.<sup>13</sup> Concern in Congress has led to a number of proposals to address the issue, including, for example, a bill introduced by Senators Charles Schumer (D–NY) and Lindsey Graham (R–SC) that would impose a 27.5% additional duty on Chinese imports, and a separate bill introduced by Representatives Duncan Hunter (R–CA) and Tim Ryan (D–OH) that would treat currency manipulation as a countervailable export subsidy or a market disruption.

Currency manipulation or misalignment occurs when foreign governments set exchange rates by pegging their currencies to the U.S. dollar and intervening in the currency market to maintain their exchange rates at that set level. This acts as a *de facto* export subsidy for the countries manipulating their currencies. It simultaneously acts as a hidden duty on imports, which is not reachable in market access negotiations. The result is a serious misallocation of economic resources, which creates trade distortions and undermines stability. Undervalued currencies, in particular, produce false market signals—making it appear that industries in the country with an undervalued currency are more competitive than they actually are, leading to overexpansion of production and export flooding in particular products. For instance, since 1994, China has pegged its currency exchange rate at 8.28 yuan to the dollar. As has been detailed by various economists and other groups, such as the Fair Currency Alliance and the China Currency Coalition, the yuan is currently significantly undervalued. As a result, Chinese goods compete domestically and internationally at prices that are artificially low hurting U.S. producers in the U.S. market, in the Chinese market and in third country markets.

While, at present, China has been particularly singled out as a country with an undervalued currency that has had substantial negative effects on trade, other countries have also engaged in similar unwarranted interference in the value of their currencies. For example, Japan, South Korea and Taiwan have made frequent interventions to purchase U.S. dollars to maintain their exchange rates or minimize the appreciation of their currencies.<sup>14</sup> Together, these three countries plus China hold \$1.9 trillion of official reserves, which reflects an increase of more than \$600 billion since 2003.<sup>15</sup> They also account for over 40% of the U.S. trade deficit.

The effects of currency manipulation on the U.S. economy have been staggering. Economists have estimated that the Chinese currency is undervalued by as much as 40% or more and that the effect of undervaluation by the four countries is that the U.S. trade deficit is about \$100 billion larger than it would otherwise be.<sup>16</sup>

<sup>11</sup> USTR, 2005 Special 301 Report, at 3 (Executive Summary) (April 29, 2005).

<sup>12</sup> USTR, 2005 Special 301 Report, at 2–3 (Executive Summary) (April 29, 2005); USTR, 2004 Special 301 Report, at 2 (Executive Summary) (May 1, 2003).

<sup>13</sup> See U.S. Dept. of Commerce, *Manufacturing in America: A Comprehensive Strategy to Address the Challenges to U.S. Manufacturers* (January 2004) at 52.

<sup>14</sup> See “Monthly Currency Manipulation Monitor,” Coalition for a Sound Dollar, [www.sounddollar.org](http://www.sounddollar.org) (accessed May 23, 2005).

<sup>15</sup> *Compare* Report to Congress on International Exchange Rate and Economic Policies (October 2003) with Report to Congress on International Exchange Rate and Economic Policies (May 2005).

<sup>16</sup> See Testimony of Franklin J. Vargo, National Association of Manufacturers, before the House Committee on International Relations, Hearing on U.S.-China Ties: Reassessing the Eco-

The International Monetary Fund (IMF) has responsibility to “exercise firm surveillance over the exchange rate policies” of member countries.<sup>17</sup> However, the IMF has not acted to curb market distortions caused by currency manipulation or misalignment. Currency manipulation is not defined in the IMF Agreement and, in 2003, the IMF found “no clear evidence that [China’s] renminbi is substantially undervalued.” In 2004, the IMF noted that “greater exchange rate flexibility remains in China’s best interest,” but the Fund took no action to bring about such flexibility.<sup>18</sup> The IMF has abandoned its responsibility in this area of international monetary regulation and the U.S. economy has suffered greatly because of this inaction.

The focus of the WTO is trade liberalization. However, the current rules have proven ineffective at reaching the *de facto* subsidies and hidden import duties that result from currency manipulation or misalignment. WTO Members are not supposed to use exchange action to frustrate the intent of the trade agreements and are prohibited from providing export subsidies on manufactured goods, but these agreed principles have not been enforced to address currency manipulation or misalignment and ensure a level playing field. The U.S. is engaged bilaterally with China to obtain a fair exchange rate, but this issue is not a subject of multilateral negotiations in the WTO Doha Round, and China has moved very slowly in correcting the bias they have created. The needs of many sectors of the U.S. economy for a restoration of economic rationality in the value of the Chinese currency cannot await the likely years of internal reforms needed for to achieve a real float. A substantial upward revaluation of the yuan (e.g., by 40%) is needed now and it is also important that the U.S. work with other trading partners, including Japan, Korea, and Taiwan to ensure a restoration of exchange rate equilibrium for their currencies vis-a-vis the U.S. dollar. The concern is that the international institutions established to govern the trade and monetary systems are failing or abdicating their responsibility to address this issue and the result is significant damage to the U.S. economy. The international institutions established to govern trade and monetary systems must address this issue to avoid significant additional damage to the U.S. economy.

#### **D. WTO Dispute Settlement Decisions That Rewrite Agreements**

The United States is also now faced with responding to WTO dispute settlement decisions that impose obligations that the United States did not agree to and would not have agreed to had they been included in the agreements at the end of the Uruguay Round. In 1995, the Dispute Settlement Understanding (DSU) put into place an experimental dispute settlement system that allowed for automatic adoption of decisions in international trade disputes. Moreover, the DSU created a system of accountability for Members’ compliance with the covered agreements. In the DSU, the U.S. (and other countries) conditioned its acceptance of binding dispute settlement on the basis of its understanding that obligations not otherwise agreed to would not be created by the dispute settlement process. Indeed, DSU Articles 3.2 and 19.2 explicitly prohibit panels, the Appellate Body, and the Dispute Settlement Body (DSB) from making findings or recommendations that “add to or diminish the rights and obligations provided in the covered agreements.”<sup>19</sup> Instead, WTO Members have the exclusive authority to amend or adopt interpretations of the WTO Agreement pursuant to Article IX and X of the Marrakesh Agreement Establishing the WTO.

While most countries are generally pleased with the functioning of the WTO dispute settlement system, some systemic issues have arisen that involve the proper functioning of the DSU. Following the Uruguay Round, the U.S. amended its trade remedy laws to be fully consistent with WTO obligations. Moreover, the U.S. believed that the Antidumping Agreement’s “special standard of review to be applied by WTO panels in resolving antidumping disputes” would “preclude panels from second-guessing U.S. antidumping determinations and from rewriting the terms of the

conomic Relationship at 2, 4 (October 21, 2003); Chinese Currency Manipulation and the U.S. Trade Deficit, Statement Before the U.S.-China Economic and Security Review Commission by Ernest H. Preeg, Senior Fellow in Trade and Productivity, Manufacturers Alliance/MAPI (September 25, 2003).

<sup>17</sup> Articles of Agreement of the International Monetary Fund, Article VI, Section 3.

<sup>18</sup> “IMF Concludes 2003 Article IV Consultation with the People’s Republic of China,” Public Information Notice (PIN) No. 03/136 (November 18, 2003); “IMF Concludes 2004 Article IV Consultation with the People’s Republic of China,” Public Information Notice (PIN) No. 04/99 (August 25, 2004).

<sup>19</sup> Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, arts. 3.2 & 19.2, in World Trade Organization, The Results of the Uruguay Round of Multilateral Trade Negotiations 354 (2001).

Antidumping Agreement under the guise of legal interpretation.”<sup>20</sup> Despite this understanding, over the last ten years there have been a host of losses in WTO dispute settlement cases in which covered agreements have been interpreted in a manner that, in the view of many, has created new obligations for the U.S. and other WTO Members.

The conflict regarding the creation of new rights and obligations flows from three systemic problems. First, WTO panels and the Appellate Body have adopted the approach of taking unto themselves the right to fill “gaps” or “silences” in agreements and to increasingly disregard negotiating history when language in an agreement is deemed ambiguous. This approach is inconsistent with practice under the GATT and principles of treaty interpretation and effectively encourages Members to seek to achieve through dispute settlement what they were unable to achieve in negotiation. Second, in their efforts to clarify covered agreements, panels and the Appellate Body, when faced with multiple possible definitions, will not generally approach their task asking whether or not the Member’s choice is reasonable, possible, or permissible. In so doing, panels and the Appellate Body have failed to honor the standard of review provisions contained in the covered agreements (DSU Arts. 3.2 and 19.2; ADA Art. 17.6) by ignoring that Members are presumed to be in conformity with their WTO obligations. Finally, the interpretative approaches taken by panels and the Appellate Body are inconsistently applied from case to case and agreement to agreement. For example, the Appellate Body has read GATT Article XIX and the Safeguards Agreement provisions together, but has not generally read GATT Article VI and the Antidumping Agreement provisions together.

As a result of these systemic problems and in conflict with the principles of sovereignty, the WTO Agreements are being modified in ways the U.S. neither accepted, nor would have accepted, during negotiations. It is implausible that a major user who actively participated in the negotiations on the Antidumping, SCM, and Safeguards Agreements in the Uruguay Round to ensure general conformity of the agreements with its existing practices would be subject to roughly 40% of requests for consultations citing violations of those agreements even though accounting for only an estimated 15% of the cases initiated. This disparity and the failure of panels and the Appellate Body to follow prior rules of construction and the special dispute settlement provisions in the Antidumping Agreement have undermined the perception of objectivity and fairness of the WTO dispute settlement process.

The problem of the creation of rights or obligations, or “overreaching,” by WTO dispute settlement panels and the Appellate Body has been recognized and criticized by the U.S. Congress and the Administration. In fact, the Trade Act of 2002 reflects Congress’ concern with the “pattern of decisions by dispute settlement panels of the WTO and the Appellate Body to impose obligations and restrictions” on the use of trade remedies and the appropriate application of the standard of review contained in the Antidumping Agreement.<sup>21</sup> The Trade Act of 2002 includes the “overall” negotiating objective of “further strengthen[ing] the system of international trading disciplines and procedures, including dispute settlement. . . .”<sup>22</sup> The Administration has also recognized that “aspects of several recent reports by WTO panels and the Appellate Body have departed from” the clear requirements to “ground their analyses firmly in the agreement text and accept reasonable, permissible interpretations of the WTO agreements by the Members.”<sup>23</sup> In DSB meetings, the U.S., in addition to many other WTO Members, has objected to the problem of “overreaching” by WTO dispute settlement bodies with respect to a wide range of WTO agreements. Despite these objections by WTO Members, the U.S. Congress and the U.S. Administration, the problem of “overreaching” has continued to date.

During the course of the Doha negotiations, the U.S. has made proposals aimed both at reforming the DSU and modifying specific WTO agreements (*e.g.*, Antidumping Agreement and Agreement on Subsidies and Countervailing Measures) in order to address aspects of adverse WTO panel or Appellate Body decisions. While the initial U.S. DSU proposals have raised important systemic issues, and the Rules proposals have addressed specific problems created by WTO panel or Appellate Body decisions, a comprehensive solution to this problem should be formulated. To many industries, achievement of the correction of this issue is critical to a successful outcome to the Doha negotiations.

<sup>20</sup> Statement of Administrative Action to the Uruguay Round Agreements Act, H. Doc. 103–316, Vol. 1, 103d Cong., 2d Sess. 807 (1994).

<sup>21</sup> 19 U.S.C. § 3801(b)(3)(A) & (B).

<sup>22</sup> 19 U.S.C. § 3802(a)(3). Congress also identified seven “principal trade negotiating objectives” regarding dispute settlement and the enforcement of trade agreements. 19 U.S.C. § 3802(b)(12).

<sup>23</sup> Executive Branch Strategy Regarding WTO Dispute Settlement Panels and the Appellate Body—Report to the Congress Transmitted by the Secretary of Commerce, 8 (Dec. 30, 2002).

### E. Loss of U.S. Agricultural Trade Surplus

The Uruguay Round produced the first multilateral trade agreement covering agriculture which was expected to reduce barriers to export markets and trade-distortive subsidies. As a leading exporter of agricultural products, the United States anticipated that the WTO Agreement on Agriculture would significantly expand markets for U.S. agricultural products.

According to WTO trade statistics, however, the U.S. share of agricultural exports has dropped from over 14% of total world exports, by value, in 1990 to over 11% of total world exports, by value, in 2003 while the export shares of other major agricultural exporters, such as Brazil, China, and Thailand, have increased.<sup>24</sup> Indeed, the U.S. trade balance in agriculture products dwindled from a high of \$26.7 billion in 1996 to \$7.2 billion in 2004.<sup>25</sup>

The U.S. Department of Agriculture predicts that the U.S. agricultural trade balance will reach 0 in fiscal year 2005.<sup>26</sup>

The agricultural trade balance figures are disturbing and reflect a fundamental imbalance in global agricultural trade disadvantaging the U.S., as a highly competitive agriculture producer. There may be many potential causes of what appears to be an undeniable trend. For example, U.S. agricultural trade has been affected by the role of state trading enterprises and agricultural conglomerates and their impact on prices and the ability of fragmented producers to cover their costs. A host of restrictive sanitary and phytosanitary measures have also been identified as limiting agricultural trade flows.<sup>27</sup> Given that U.S. agricultural exports are estimated to provide over 900,000 jobs to U.S. workers, it is critical that the United States identify those causes and address them in the short term. Yet, while the Doha Round negotiations on agriculture will address market access and subsidies, it should also evaluate whether special rules are needed for all or some parts of agricultural trade to account for the special characteristics of such trade (e.g., perishability) and should evaluate whether the SPS Agreement is achieving its objective, whether increased harmonization is needed or desirable and what abuses may be occurring.<sup>28</sup>

#### IV. U.S. interests call for an improved and rebalanced wto

Over the last ten years, the WTO has extended trade rules beyond GATT's coverage of goods to cover sectors such as services and trade related intellectual property rights and has brought certain parts of good trade fully under WTO rules (agriculture and textiles). The WTO has provided a general framework for the application of uniform standards and an important forum for Members to address measures that do or can restrict international trade. At the same time, however, there has been a serious erosion in the U.S. balance of trade which flows from many factors, including gaps in the WTO agreements, an imbalance in rights and obligations of the U.S. and other Members in the tax arena, and a systemic failure to adhere to restrictions protecting those rights and obligations. While the Doha Round will offer another opportunity for Members to improve disciplines on a host of issues ranging from agricultural subsidies to regional trade agreements, most of the issues raised in this statement are not being pursued in those negotiations. For the U.S. to take full advantage of the benefits offered by the WTO membership over the next decade, however, they must be addressed on a fairly urgent basis. The U.S. must demand more comprehensive agreements, greater institutional accountability in WTO dispute settlement, and a better balance for our national interests.

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### Statement of Lori Wallach, Public Citizen's Global Trade Watch

On behalf of Public Citizen's 200,000 members, I thank the Committee for the opportunity to share my organization's views on the record of the World Trade Organization (WTO). Public Citizen is a nonprofit citizen research, lobbying and litigation group based in Washington, D.C. with offices in Austin, TX and Oakland, CA. Public Citizen, founded in 1971, accepts neither government nor corporate funds. Global

<sup>24</sup> WTO International Trade Statistics 2004, at Table IV.9, available at <http://www.wto.org/english/res-e/statis-e/its2004-e/its04-bysector-e.htm>.

<sup>25</sup> ERS/USDA (updated February 11, 2005).

<sup>26</sup> USDA Agricultural Baseline Projections to 2014, February 2005, at 67.

<sup>27</sup> See, e.g., National Foreign Trade Council, Inc., *Looking Behind the Curtain: The Growth of Trade Barriers that Ignore Sound Science* at 10 (May 2003).

<sup>28</sup> USTR, 2005 Trade Policy Agenda and 2004 Annual Report, Section II, at 8 (March 2005).

Trade Watch is the division of Public Citizen founded in 1995 that focuses on government and corporate accountability in the globalization and trade arena.

On the basis of the ten-year record of the WTO in operation, Public Citizen urges Congress to demand a transformation of the current global 'trade' rules which have not only failed to achieved the economic gains we were promised when Congress debated the establishment of the WTO in 1994, but have resulted in unacceptable reversals in an array of non-trade, non-economic policies and goals which promote the public interest in the United States and abroad. While this hearing is focused on the WTO's record, I urge the committee to hold a future hearing about ideas for transforming the current system to one that is more economically and environmentally sustainable and democratically accountable. Unfortunately the Bush Administration's March annual trade report to Congress, which was also to be understood as fulfilling its statutorily required five-year report on the WTO, did not satisfy the statutory language by answering the specific questions set forth there which were designed to measure both the positive and negative results of the WTO on the United States. Rather, the March 1 report only touted the Administration's view of the WTO's benefits for the United States.

We have spent the last ten years closely monitoring and documenting the outcomes of numerous trade agreements. Beginning in 2001, we compiled these findings for a book released in 2003, entitled *Whose Trade Organization? A Comprehensive Guide to the WTO*. This book is unique in its examination of the effect of WTO rules on economic well-being and development, agriculture and food safety, the environment, public health, and democratic policy-making. This testimony summarizes and updates the major findings of the book, but I encourage any interested member of this committee to read the entire book, and we will gladly furnish a complementary copy to your office.

During the Uruguay Round negotiations of the General Agreement on Tariffs and Trade (GATT) which established the WTO and over a dozen new substantive agreements it would enforce, Public Citizen raised concerns about the implications of establishing such broad global rules on non-trade matters in the context of an international regime whose goal was expanding trade. While expanded trade has the ability to bring benefits to consumers, workers, and farmers, setting broad non-trade rules in a body whose aim was trade expansion, threatened to undermine an array of consumer, environmental and human rights goals, the implementation of which, sometimes limits trade, such as in food containing banned pesticides. Effectively our concern was that the WTO did not mainly cover 'trade,' but rather served to implement a much more expansive corporate globalization agenda that required countries to change their domestic policies worldwide to meet the needs and goals of the world's largest multinational business interests.

We also raised deep concerns about the WTO's threat to citizen-accountable, democratic policy-making processes—in which the people who would live with the results participate in making decisions and are able to alter policies that do not meet their needs. While some problems require a global approach—such as transboundary environmental problems or weapons proliferation—others, such as setting domestic food or product safety standards or developing policies to ensure a countries' inhabitants have access to affordable medicine or basic services such as healthcare, education, transportation, water or other utilities do not require global redress and moreover, setting global rules on these matters can undermine democratic policy making that reflects the needs and desires of different countries' inhabitants at different times.

We sought to alert Congress as to what a dramatic shift WTO would affect in how and where non-trade policy would be set. Yet even in this hearing, much of the focus remains on the important, but not singular implications of the WTO on trade flows. While the GATT covered only traditional trade matters, such as tariffs and quotas, with respect only to trade in goods, the WTO included agreements setting terms on the service sector; food, environmental and product safety standards; patents and copyrights; investment policy; and even the terms by which countries could make procurement decisions regarding their domestic tax dollars. The operative term of the WTO requires that "all countries shall ensure conformity of their domestic laws, regulations and administrative procedures" to all of these broad WTO requirements. As well, the WTO's Dispute Settlement Understanding (DSU) provided for a stringent enforcement mechanism, subjecting countries who fail to conform their domestic policies to the WTO dictates to trade sanctions after a tribunal process that does not guarantee the basic due process protections afforded by U.S. law, such as open hearings, access to documents, conflict of interest rules for tribunalists, or outside appeals.

In 1990 when Public Citizen began working on the Uruguay Round, we were not particularly focused on the potential implications for poor country development or

on U.S. wages, income inequality or jobs. However, over 15 years of working on the GATT and then WTO, our relationships with developing country economists and policy experts, as well as our tracking of economic trends, has expanded the scope of our focus.

Now, after a decade of tracking the WTO's actual outcomes, Public Citizen's concerns about the WTO have grown dramatically. We have worked internationally with civil society and governments to promote a transformation of the existing global "trade" rules contained in the WTO and oppose the expansion of the scope of the WTO. Yet, even as the negative consequences of the current rules and the model they represent increase, the current Doha Round WTO negotiations fail to address the existing problems and instead are designed to expand the WTO's jurisdiction into yet greater non-trade matters.

*The WTO's Controversial Dispute Settlement Procedure*

Unlike the GATT, which required consensus to bind any country to an obligation, the WTO is unique among international agreements in that its panel rulings are automatically binding and only the unanimous consent of all WTO nations can halt their implementation. These rulings are backed up by trade sanctions which remain in place until a WTO-illegal domestic policy is changed. Among our analysis of WTO decisions between 1995 and 2003 are the following findings:

- **U.S. Domestic policies from gambling regulations to tax policies have been repeatedly ruled against by run-away WTO panels.** The recent WTO gambling case is the most recent demonstration that when expansive 'trade' rules come up against public interest laws before WTO tribunals, nondiscriminatory, democratically-created domestic policies can be undercut. Among the WTO panel's outlandish decisions in that case, where the Caribbean nation of Antigua challenged various U.S. state and federal anti-gambling laws, were the following: The *entire* U.S. gambling sector is covered by provisions within the WTO's General Agreement on Trade in Services (GATS) irrespective of the intention of U.S. trade negotiators. As such, the ability of the U.S. government to regulate not only Internet but ALL forms of gambling at the federal, state and local level is limited by the rules of GATS. The panel also announced that GATS rules forbidding numerical restrictions on covered services means that a *ban* on an activity in a GATS-covered sector, even if applied to domestic and foreign service providers alike, is a "zero quota" and thus a violation of GATS rules—with broad implications for bans on an expansive range of pernicious activity. These two elements of the ruling mean that the U.S. is exposed to future WTO challenges in light of limits on gambling common in many states, as well as assorted exclusive supplier arrangements, such as with Indian tribes, and state monopoly gaming, such as the 43 U.S. states and territories which use lotteries to raise revenues. Thus, the WTO panel, in this case, interpreted that a GATS exception for "laws necessary to protect public morals," could be applied if the U.S. eliminates discrepancies between the way in which it regulates domestic and foreign providers, including through the U.S. Interstate Horseracing Act, which waives the three laws challenged by Antigua for certain domestic firms. A week later, a WTO tribunal issued a ruling on the same necessity text within the GATS exceptions clause in a case having to do with the Dominican Republic's alcohol distribution system which explicitly contradicted the inclusive reading in the gambling case. At a minimum this conflict in rulings shows that the lenient decision in the gambling case with regards to the necessity test is not a settled WTO standard. Some WTO observers wonder if the sudden switch back to the past, narrow ruling on the necessary test points to the political nature of the WTO dispute process and an attempt to avoid an explosive WTO ruling just before the U.S. Congress takes up the WTO ten year review.
- **With only two exceptions, every health, food safety or environmental law challenged at the WTO has been declared a barrier to trade.** The exceptions have been the highly-politicized challenge to France's ban on asbestos and a WTO compliance panel's determination that after losing a WTO case on the Endangered Species Act turtle protection regulations, the U.S. had weakened the law to sufficiently comply with the WTO's orders.
- **In most WTO cases, the country that launches the challenge wins.** As a result, mere threats of WTO action now cause many nations to change their policies. The challenging country at least partially prevailed in an astonishing 102 out of 118 completed WTO cases—a success rate of 86.4 percent.
- **Important U.S laws ruled illegal at the WTO.** In 42 out of 48 cases brought against the United States in which a WTO panel has made a ruling, or 85.7 percent of the time, the WTO has labeled as illegal policies ranging from sea



turtle protections and clean air regulations to tax and antidumping policies. The United States also lost two high-profile cases that it brought against EU computer tariff classifications and Japan's film policies.

- **U.S. trade safeguard laws have been successfully challenged numerous times in the WTO.** One of the most politically sensitive aspects of Congress' 1994 consideration of the WTO was the degree to which U.S. trade safeguard law would have to be changed to conform to the related WTO agreements. Congress was promised that our laws would remain effective, yet, a decade later, the United States has not been able to successfully defend any of our safeguard laws in 14 out of 14 completed cases brought by other countries against our safeguards on products ranging from steel to lamb to wool shirts. Furthermore, the United States has lost 11 out of 15 anti-dumping or countervailing duties cases. Additionally, Doha Round "Rules" negotiations are poised to translate these WTO cases against the U.S. into new, more expansive limits on U.S. domestic trade safeguard laws. Meanwhile despite promises that other U.S. trade laws, such as Section 301, would remain operational under a WTO regime, the U.S. withdrew a case against Japan regarding anticompetitive practices in film trade after it became clear that use of Section 301 sanctions would be prohibited under WTO rules.
- **The process is closed, narrow and unbalanced.** Our concerns about the WTO dispute resolution process have born out. Complaints are typically filed at the request of business interests with no opportunity for input from other interested parties. The WTO Secretariat selects panel members from a roster formed using qualifications that ensure a bias towards the WTO's primacy. Panelists' identities are not disclosed and there is no requirement that they disclose conflicts of interest they might have in deciding cases. Tribunals meet in closed sessions and proceedings are confidential unless a government voluntarily makes its submissions public. Far from being a neutral arbiter, the singular and explicit goal of the dispute settlement process is to expand trade in goods and services. Increasingly, WTO panels have rewritten WTO provisions with their broad interpretations, a situation that can find no remedy as there is no outside appeal.

#### **The WTO Decade and the U.S. Economy: Exploding U.S. Trade Deficits, Increased Income Inequality, Stagnant Real Wages, and the Loss of 1 in 6 U.S. Manufacturing Jobs**

In the early 1990s, many economists argued that the opening of foreign markets for U.S. exports under WTO (and NAFTA) would create U.S. jobs and increase income for U.S. workers and farmers. When Congress was preparing to vote on WTO in 1994, the President's Council of Economic Advisers informed Congress that approval of the package would increase annual U.S. GDP by \$100–200 billion over the next decade. Others claimed that the WTO's adoption would lead to a decline in the U.S. trade deficit. President Clinton even went so far as to promise that that the average American family would gain \$1,700 in income annually from the WTO's adoption, which would have meant that the U.S. real median family income would have been upwards of \$65,000 in 2005, or a nearly 35 percent increase since 1995. These growth projections have been shown to be wildly off the mark.

- **U.S. Median Income Growth Meager:** U.S. median income grew only 8 percent to \$52,680 in 2003—the latest numbers available. There is little reason to think that this has improved in 2004–05, since median real wages have not grown since that time. In fact, the U.S. real median wage has scarcely risen above its 1970 level (only 9 percent), while productivity has soared 82 percent over the same period, resulting in declining or stagnant standards of living for the nearly 70 percent of the U.S. population that does not have a college degree.
- **Trade Deficit Soars as Imports Boom:** During the WTO era, the U.S. trade deficit has risen to historic levels, and approaches six percent of national income—a figure widely agreed to be unsustainable, putting the U.S. economy at risk of lowered income growth in the future. Soaring imports during the WTO decade have contributed to the loss of nearly one in six U.S. manufacturing jobs.
- **U.S. Has Suffered a Good—Job Export Crisis:** Another factor contributing to this job loss is the shift in investment trends, with China overtaking the United States in 2003 as the leading target for FDI. WTO Trade Related Investment Rules, (TRIMs), limit the ability of countries to set conditions on how foreign investors operate in other countries, making it more appealing for manufacturers to seek lower wages by relocating. Meanwhile, WTO terms guaranteed low tariff access for products made in low wage countries back into wealthy markets while forbidding rich countries from setting labor or other standards

such products must meet. The type and quality of jobs available for workers in the U.S. economy has dramatically shifted during the WTO decade, with workers losing to imports or offshoring their higher wage manufacturing jobs (which often also provided health care and other benefits) and finding reemployment in lower wage jobs. Labor Department data shows that such workers lose up to 27 percent of their earnings in such shifts.

- **U.S. Income and Wage Inequality Have Jumped:** During the WTO decade these trends have resulted in U.S. income and wage inequality increasing markedly. In 1995, the top five percent of U.S. households by income made 6.5 times what the poorest 20 percent of households made, while this gap grew by nearly 10 percent by 2003. In wages, the situation was comparable. In 1995, a male worker that ranked at the 95th percentile in wages earned 2.68 times what a worker at the 20th percentile earned. By 2003, that gap had widened nearly 8 percent. Nearly all economists agree that increased trade has partially driven this widening inequality. One study by the non-partisan Center for Economic and Policy Research found that trade liberalization has cost U.S. workers without college degrees an amount equal to 12.2% of their current wages. For a worker earning \$25,000 a year, this loss would be slightly more than \$3,000 per year. William Cline, at the pro-WTO Institute for International Economics, estimates that about 39 percent of the actually observed increase in wage inequality is attributable to trade trends.
- **Job Export Crisis Is Expanding from Manufacturing to High Tech and Services:** While some commentators, such as Nike CEO Phil Knight, have famously argued that this decline in assembly-line U.S. manufacturing is a result of “Americans simply not wanting to make shoes for a living,” job loss and wage stagnation is increasingly affecting workers in those sectors where the United States is understood to have a comparative advantage, such as professional services and high technology. Studies commissioned by the U.S. government have shown that as many as 48,417 U.S. jobs—including many in high-tech sectors—were offshored to other countries in the first three months of 2004 alone. This trend does not appear to be slowing down, as 3.3 million high-end service sector jobs—including physicians, computer programmers, engineers, accountants and architects—are all forecast to be outsourced overseas in the next decade. Another study by the Progressive Policy Institute, a think-tank associated with the pro-WTO faction of the Democratic Party, found that 12 million information-based U.S. jobs—54 percent paying better than the median wage—are highly susceptible to such offshoring.

This manufacturing and high-tech job loss has had direct impact on workers’ ability to bargain for higher real wages. Studies commissioned by the U.S. government show that as many as 62 percent of U.S. union drives face employer threats to relocate abroad, with the factory shut-down rate following successful union certifications tripling in the years after WTO relative to the years before.

In short, few of the claims made about the U.S. economic benefits that would flow from greater trade liberalization can be shown to have been close to accurate. This, however, has not stopped another round of WTO expansion from being launched, accompanied by a new set of promises.

*The WTO and the Developing World: Do As We Say, Not As We Did*

The WTO’s failure to deliver the promised economic gains in the United States has also been mirrored abroad. Despite a paucity of evidence, think tanks, public opinion-makers and newspapers editorials have continued to relentlessly promote the notion that developing countries are the primary beneficiaries of WTO globalization. After a decade of the WTO, few if any of the promised economic benefits have materialized for developing countries. For many, poverty and inequality have worsened, while nearly all countries have experienced a sharp slowdown in their rates of economic growth.

- **Poverty on the Rise.** The number and percentage of people living on less than \$1 a day (the World Bank’s definition of extreme poverty) in the regions with some of the worst forms of poverty—Sub-Saharan Africa and the Middle East—have increased since the WTO went into effect, while the number and percentage of people living on less than \$2 a day has gone up in the same time for these regions, as well as for Latin America and the Caribbean. The number of people living in poverty has gone up for South Asia, while the rate of reduction in poverty has slowed nearly worldwide—especially when one excludes China, where huge reductions in poverty have been accomplished, but not by following WTO-approved policies given China only became a WTO member in 2001.

- **Slowdown in global growth rates under WTO model.** The per-capita income growth rates of developing regions before the period of structural adjustment and WTO liberalization are higher than the growth rates after the countries implemented the WTO—International Monetary Fund (IMF) model, many aspects of which are locked in through the WTO's services, investment, intellectual property and other agreements. For low and middle-income countries, per capita growth between 1980 and 2000 fell to half of that experienced between 1960 and 1980. Latin America's per-capita GDP grew by 75% between 1960–1980; however, between 1980–2000—the period during which these countries adopted the package of economic policies required by the WTO and IMF—it grew by only six percent. Even when one takes into account the longer 1980–2005 period, there is no single 25-year window in the history of the continent that was worse in terms of rate of income gains. Sub-Saharan Africa's per-capita GDP grew by 36% between 1960–1980 but declined by 15% between 1980–2000. Arab states' per-capita GDP declined between 1980–2000, after it grew 175% between 1960–1980. South Asia, South East Asia and the Pacific all had lower per-capita GDP growth, subsequent to 1980 than in the previous 20 years. (Only in East Asia was this trend not sustained, but only because China's per-capita GDP quadrupled during this period prior to China joining the WTO).
- **Developing countries that did not adopt the package fared better:** In sharp contrast, nations like China, India, Malaysia and Vietnam, that chose their own economic mechanisms and policies through which to integrate into the world economy had more economic success. These countries had among the highest growth rates in the developing world over the past two decades—despite ignoring the directives of the WTO, IMF or World Bank.
- **Gap between rich and poor widens.** Instead of generating income convergence between rich and poor countries, as WTO proponents predicted, the corporate globalization era of the 1990s exacerbated the income inequality between industrial and developing countries, as well as between rich and poor within many countries. According to one United Nations study, “in almost all developing countries that have undertaken rapid trade liberalization, wage inequality has increased, most often in the context of declining industrial employment of unskilled workers and large absolute falls in their real wages, on the order of 20–30% in Latin American countries.” According to another, the richest 5 percent of the world's people receive 114 times the income of the poorest 5 percent, and the richest one percent receives as much as the poorest 57 percent. This trend is widening over time, not closing, with the 20 richest countries earning per-capita incomes 16 times greater than non-oil producing, less developed countries in 1960, and by 1999 the richest countries earning incomes 35 times higher, signifying a doubling of the income inequality.

The track record of the IMF and WTO—condoned policies—which have failed to reduce poverty and inequality or increase growth—are falling into greater ignominy. A recent study by the Inter-American Development Bank found that, of a total of 66 presidential and 81 legislative elections in 17 Latin American countries during the 1985–2002 period, incumbent parties that pursued trade liberalization and privatizations while in office lost between 25 to 50 percent of their previous votes when pursuing reelection. If anything, voter discontent in Latin America, a region widely seen as having most fully implemented the standard “neo-liberal” policies, has increased since 2002.

Even policy-makers who once pursued such liberalization policies, such as former Venezuelan economic minister Ricardo Hausmann and SAIS economist Riordan Roett, have now advocated a move away from the Washington Consensus policies, due to their utter failure to generate growth and rising living standards. Such a reversal is not surprising, given that no developed country, including the United States, England, or even Korea developed on the basis of “free trade,” without managing foreign investment or without government intervention in providing basic services and infrastructure. Indeed, many commentators have observed that developed country's advocacy of WTO liberalization policies is akin to “kicking away the ladder” to development for the poor countries, once the rich countries have already climbed up.

*U.S. Becomes Net Food Importer Under WTO, While Poor Countries Face Increased Food Insecurity*

The WTO's approach to agriculture is to treat food as if it were any other commodity, like steel or rubber, not something on which every person's life depends. WTO rules on agriculture, both under the Agreement on Agriculture (AoA) and the Trade Related Aspects of Intellectual Property (TRIPS), have led to devastating out-

comes for developing countries, while farm income in the wealthy countries has declined as food trade volumes have risen. These WTO rules have forced the elimination of domestic policies aimed at ensuring food sovereignty and security in developing countries, and of policies aimed at balancing power between producers and grain traders and food processors in rich countries. These changes have greatly benefited multinational commodity trading and food processing companies who, in the absence of government price and supply management programs, have been able to manipulate the markets to keep prices paid to farmers low, while at the same time keeping the prices paid by consumers steady or rising. Farmers in rich and poor countries have only seen their incomes decline, with many losing farms and livelihoods under the decade of the WTO regime. In the developing world, the combination of sharply lower prices and the effects of WTO rules regarding the patenting of seeds and plants under TRIPS have led to increased hunger.

- **United States to become net food importer.** According to a U.S. Department of Agriculture (USDA) write-up of the topic, 2005 may be the first time since 1959 that the United States will be a net food importer, thanks to a flood of imports and declining export growth. That the report blames the increased appetite of U.S. consumers for foreign products for this projected deficit is nonsensical given that much of the flood of imports is in the products in which the United States was once considered the leading exporter, such as beef and poultry, while U.S. exports of cotton, soy, red meat have declined dramatically in recent years.
- **Under the AoA, export prices for key U.S. crops have fallen to levels substantially below the cost of production, while consumer prices increased.** Since 1996, U.S. crop prices have generally declined about 40 percent, while the cost of running a farm has risen by as much. The overall tilt of U.S. government farm policy, in line with the WTO's AoA, has been to remove the last vestiges of production management and price support, while topping off the dips in gross farm income through government payments. According to government data, however, real prices for food eaten at home in the U.S. rose by 30% during the WTO era (1994 and 2004), even as prices paid to farmers plummeted.
- **A similar long-term trend holds in the developing world,** where falling real prices for the agricultural commodity exports on which poor countries depend have fallen 50 percent relative to the 1960s, while wild price swings of up to 25 percent off of price trends make planning and subsistence difficult. At the same time, many of the very poorest countries are increasingly reliant on grain imports to meet their food needs, with the share of food imports in national income tripling since the 1960s. This trend has been particularly felt in Mexico, where the consumer price of the staple food corn tortillas has only risen since NAFTA, despite a flood of cheap corn imports into Mexico that have collapsed much of Mexico's domestic small-scale corn production.
- **A dramatic loss of U.S. family farms accompanies sharp falls in income for the poorest farmers under the WTO.** The United States lost 226,695 small and family farms between 1994 and 2003, while average net cash farm income for the very poorest farmers dropped to an astounding-\$5,228.90 in 2003—a colossal 200 percent drop since the WTO went into effect.
- **Displacement and hunger the norm in developing countries.** Following the decade of the WTO and NAFTA, over 1.5 million Mexican campesino farmers were thrown from their land. The agricultural sector, traditionally a major source of employment in Mexico, was devastated by the dumping of U.S. and foreign agricultural products into their markets. Likewise, the Chinese government projects that as many as 500 million of China's peasants will be made surplus, as the country continues the rapid acceleration of industrial development of its agriculture sector under WTO rules. In country after country, displaced farmers have had little choice but to join swelling urban workforces where the oversupply of labor suppresses wages and exacerbates the politically and socially destabilizing crisis of chronic under—and unemployment in the cities of the developing world.
- **By dramatically expanding legal definitions of what can be patented under the TRIPS Agreement, the WTO has endangered food sovereignty and security in poor countries.** In most developing countries, the majority of the population lives on the land and feeds itself by replanting saved seeds. Yet over 150 cases have already been documented of research institutions or businesses applying for patents on naturally-occurring plants, some of which have been farmed for generations. After the WTO TRIPS Agreement becomes fully binding for developing countries in 2006, governments that fail to enforce

patents on seeds—by pulling up crops or by forcing subsistence farmers who can not afford to do so to pay royalties—will face trade sanctions.

These trends and the policies underpinning them are not expected to be improved upon in the current WTO Doha Round negotiations. Increasingly, even pro-trade academics such as Jagdish Bhagwati are arguing that the proposed agricultural reforms will not benefit most poor countries, characterizing claims to the contrary as “dangerous nonsense” and a “pernicious fallacy.” The liberalization-led fall in prices has had a negative effect on producers in rich and poor countries alike, as a recent National Bureau of Economic Research study concluded when it found that middle income corn farmers in Mexico saw their incomes fall by more than 50 percent after NAFTA/WTO implementation. After a decade of failed policies, it is clear that the WTO’s “one size fits all” approach to agriculture and food security issues has failed at delivering its promised results.

#### **The WTO’s Coming to Dinner and Food Safety is Not on the Menu**

The WTO’s relentless drive toward the “harmonization” of food, animal and plant regulations based on low, industry-preferred international standards, endangers human health and sharply curtails the ability of elected governments to protect the health of their citizens in this critically important area. WTO-approved standards are generally set in private-sector bodies which do not permit consumer or health interests to participate and which make decisions without complying with domestic regulatory procedures for openness, participation or balance. Even if a country’s domestic food safety laws treat domestic and foreign products identically, if the policy provides greater consumer protection than the WTO-named international standard, it is presumed to be a WTO violation and must pass a series of WTO test established in the Sanitary and Phytosanitary Agreement that have proved impossible to meet. Some of our key findings include:

- **As required under WTO “equivalency determination” rules, the U.S. declared that dozens of countries ensure their meat inspection systems are “equivalent” to that of the U.S. even though the countries’ standards and performance violated U.S. law and regulation.** Many nations maintain their equivalency status and this right to ship meat to the U.S. despite documented violations of U.S. policy. For instance, Argentina’s meat inspection system maintains its U.S. equivalency status despite well-documented problems that include contamination of meat with oil, hair and feces. Similarly, the Brazilian system, which allowed companies to pay meat inspectors in violation of U.S. law requiring independent government inspection, was declared “equivalent.” USDA labeling of imported products makes them indistinguishable to the consumer.
- **Time and time again, WTO tribunals have refused to permit any regulatory action based on the “Precautionary Principle.”** Governments have long relied on this principle to shield their populations from uncertain risks from new or emerging products. Previous “precautionary” actions by the U.S. government to ban the morning sickness drug Thalidomide in the 1960s and to prevent the outbreak of Mad Cow disease in the 1980s and 90s helped avert the substantial human and agricultural devastation that occurred in other countries due to these and other policies. Yet the U.S. has used the WTO to systematically attack other countries’ precautionary regulations such as those dealing with beef hormones, genetically modified organisms (GMOs), invasive species and agricultural pests.
- **Any domestic standard that provides more health protection than a WTO-approved standard, is presumed to be a trade barrier,** unless the higher standard is supported by extensive scientific data and analysis that clearly shows a specific and significant risk associated with the lower standard. No nation has yet been able to demonstrate the need for higher standards, much to the WTO’s satisfaction, despite several lengthy and costly attempts by developed countries to perform WTO-required risk assessments on the dangers posed by artificial hormones in beef, invasive species, pest contamination of native salmon populations, and more.

#### *The WTO’s Environmental Impact: First, Gattzilla Ate Flipper*

Public Citizen has documented a systematic pattern of WTO attacks on member nations’ vital environmental concerns and policy priorities, as well as a series of biases built into WTO rules that promote unsustainable uses of natural resources. Over its over ten years of operation, the WTO’s anti-environmental rhetoric has been replaced by more political pronouncements, even as WTO tribunals have systematically ruled against every domestic environmental policy challenge that has

come before it, and eviscerated whatever GATT Article XX exceptions that might have been used to safeguard such laws. Instead of seeking to resolve conflicts between commercial and environmental goals, the WTO's largely ineffectual Committee on Trade and the Environment has become a venue mainly for identifying green policies that violate WTO rules. Key findings include:

- **To date, all GATT/WTO dispute panel decisions on environmental laws have required that the challenged domestic laws and measures be weakened**—even when the challenged policy treats domestic and foreign goods the same, or when it implements a country's obligations under a Multilateral Environmental Agreement (e.g. the U.S. Endangered Species Act regulations implementing the Convention on International Trade in Endangered Species (CITES)). When the WTO ruled against U.S. Endangered Species Act rules protecting CITES-listed sea turtles from shrimpers' nets, the U.S. complied with the WTO order by replacing the requirement that all countries seeking to sell shrimp in the United States had to ensure that their shrimpers used turtle exclusion devices. The new U.S. regulations were approved several years later, but Thailand and other shrimp exporting countries continue to put pressure on the United States to weaken the rule's enforceability.
- **WTO rules have consistently been interpreted to mean that products cannot be treated differently according to how they were produced or harvested.** This interpretation, for which there is no legal basis in the actual rules, requires, for example, that clear-cut tropical timber cannot be treated differently from sustainably-harvested timber, that fish caught with damaging drift nets cannot be distinguished from sustainably-caught fish, and that products made using child labor or extreme cruelty toward animals must be given the same trade treatment as products made under more humane and ethical conditions.
- **Because WTO panels have systematically ruled against challenged environmental policies, now mere threats of challenges often suffice.** For example, after years of sustained trade law challenges, the Bush administration decided to quietly implement a change to a "dolphin safe" labeling policy which Mexico had demanded as necessary for implementation of a GATT ruling. (Mexico had threatened a new WTO case if their demands were not met). On New Years Eve 2002, when few U.S. citizens were focused on policy matters, the Bush administration announced that it would change the "Flipper-friendly" tuna policy and allow the "dolphin-safe" label to be used on tuna caught using deadly purse seine nets and dolphin encirclement. While this policy was eventually overturned in a challenge brought by environmentalists to federal court, Mexico and other countries continue to make noises about a possible WTO challenge. Another case involved Hong Kong's WTO complaint about U.S. anti-invasive species laws. In this case, U.S. regulatory efforts to fight the costly infestation of the Asian Longhorned Beetle (which is devastating maple and other trees throughout the United States) are being classified as violating WTO rules. The mere threat of a challenge in this regard has provoked the USDA to considering watering down regulations requiring treatment of raw wood packing material to comply with a weaker, WTO-sanctioned "international" standard.

#### **Warning: The WTO Can be Hazardous to Public Health**

The WTO's wide-ranging rules have consistently troubled public health advocates, who have found that many policies which have little to do with trade, are being threatened by WTO mandates. The following are some examples:

- **Access to and safety of medicines.** The creation of a worldwide pharmaceutical patenting system under the WTO's TRIPS agreement has raised pharmaceutical costs in the U.S. and further restricted the availability of lifesaving drugs in developing countries. A 1995 study on the overall impact of the TRIPS agreement on U.S. consumers "conservatively estimated" \$6 billion in higher U.S. drug prices due to windfall patent extensions under the WTO. Why a business protection scheme guaranteeing monopoly markets would be inserted into a trade 'liberalization' agreement has outraged consumer groups worldwide. Poor country governments and health officials note with fury that even though the current patent and licensing regime has only recently been accepted in developed countries (Switzerland for example, did not recognize drug patents until the 1960s), under WTO rules developing nations around the world are required to adopt monopoly patents on medicines. Concern about public health has grown around the world, with many Members of Congress taking a lead in opposing trade agreements that restrict access to essential medicines. Unfortunately, the U.S. government has often been on the wrong side of this issue,

WTO—challenging Brazilian and threatening Thai and South African laws on compulsory licensing of pharmaceutical products and pushing to undermine in its new Free Trade Agreements a 2001 WTO Declaration reiterating countries' ability to issue compulsory licenses for medicines. Yet the U.S. itself used the power it seeks to deny other nations in WTO when it threatened a compulsory license after the 2001 anthrax scare.

- **Downward harmonization for drug testing.** In order to fulfill its harmonization obligations under the WTO, the Food and Drug Administration (FDA) in 1996 proposed changes to its guidelines for testing the potential carcinogenicity of medicines being approved for U.S. use. The FDA had previously required companies to test drugs on two species (typically mice and rats) because tests on rats alone often failed to produce evidence of carcinogenicity where it was subsequently found in mice. The new WTO—"harmonized" testing standard approved by the FDA, however, allows drug companies to drop long-term mice tests and substitute them with less reliable short-term second species tests.
- **Threatening developing countries with WTO challenges to pressure them into reducing public health protections.** American Gerber Products Company refused to comply with Guatemalan infant formula labeling laws that implemented the WHO/UNICEF "Nestle's Code" on the grounds that the laws violated trademark protections provided in the WTO's TRIPS agreement. The Guatemalan law forbid pictorial depictions of healthy babies aimed at inducing illiterate people to replace breast feeding with formula which, when mixed with unsanitary water, was causing an epidemic of avoidable infant deaths. Gerber refused to remove its trademark "Gerber Baby" from its labels. The law might have withstood the threatened WTO challenge. However, to avoid the prohibitive cost of mounting an uncertain defense, Guatemalan authorities instead exempted imported formula from this important public health law, whose success in saving babies' lives had led to Guatemala previously being held up as an example by UNICEF.

**Conclusion: The WTO Must Shrink or Sink in Order for the Public Interest to be Served**

The WTO, far from being a win-win proposition, has been a lose-lose affair for most people in the United States and abroad, threatening people's livelihoods, the environment, public health, and the right of people around the world to enjoy democratic policy-making processes that allow them to decide what is best for themselves.

The recent WTO gambling ruling and other controversial rulings are widening the coalition of groups questioning U.S. trade policy. Groups such as the Association of State Supreme Court Justices, U.S. League of Cities, National Conference of State Legislatures, National Association of Counties, and National Association of Towns and Townships all have expressed concerns that current and proposed trade rules may undermine our nation's system of federalism and the integrity of our domestic courts. Groups typically considered bedrocks of the "pro-trade" alliance, such as the National Association of State Departments of Agriculture and other agricultural groups, are expressing concerns about depressed commodity prices, lowered farm income, and the United States' "net food importer" status. Associations of immigrant-descended groups such as the League of United Latin American Citizens are expressing concerns that Hispanics and people of color are not sharing in the gains from trade. And high-tech workers and inventors are arguing that the drive to make ever-more protectionist trade law favoring the largest high-tech corporations like Pfizer and Microsoft is cheating workers whose jobs are being offshored, inventors who are seeing few gains for their innovations, and consumers in rich and poor countries alike, who face lessened access to essential medicine and restrictions on legitimate uses of copyrighted items.

Opposition to the WTO's rules is increasingly coming from governments themselves, as the organization's ever-growing crisis of legitimacy bursts into public view again with the collapse of the WTO's Cancun Ministerial. In particular, these countries—led by Brazil, India, South Africa and other nations—demanded that the WTO should not establish one-size-fits all, anti-democratic rules over investment, government procurement, and competition policy, proposed rules that were subsequently dropped from WTO discussion. It is extremely ironic that while the Bush Administration argues that one of its top priorities is promoting democracy worldwide, the status quo WTO and U.S. positions regarding the WTO's future course push in the opposite direction.

We no longer have to guess what might happen under the WTO: we now know. A decade of WTO policy has led to stagnant real national and family incomes around the world, increased poverty in the poorest regions, and undemocratic WTO attacks on national sovereignty and public policy. Based on this evidence, Public

Citizen finds it highly unlikely that continuation or expansion of this model will reverse these failures.

Thus, Public Citizen works with a global movement calling for transformation of the current WTO system. While we believe that a system of global trade rules is vital, the current rules are not serving U.S. well. We propose that certain non-trade aspects be eliminated from the WTO. We also propose that the trade rules that would remain be altered so as to better meet the goals of providing sustainable livelihoods to people in rich and poor countries alike, fighting for the elimination of poverty, ensuring sustainable use of natural resources and providing food sovereignty, the essential tool in fighting hunger. For details on these proposals, we you to review their summary at “WTO—Shrink or Sink! The Turnaround Agenda International Civil Society Sign-On Letter,” or for a more through review, please allow U.S. to provide you with a complimentary copy of *Alternatives to Economic Globalization: A Better World is Possible*, an edited anthology with contributions from Public Citizen.

To maintain, much less expand, a global ‘trade’ regime that to date has worsened the economic situation in rich and poor countries alike, threatened food sovereignty and access to essential medicines, and that undermined democratic governance is a recipe for growing economic, social and political instability. At a minimum, the real life outcomes of a continuation of the expansive status quo corporate globalization agenda as implemented by the WTO poses an enormous risk to the legitimacy of trade itself.

*NOTE: Sources and further information are available upon request by contacting Public Citizen’s Global Trade Watch at 202-454-5105 and [www.tradewatch.org](http://www.tradewatch.org).*

