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# THE TRADE ADVISORY COMMITTEE SYSTEM

## HEARING

BEFORE THE

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

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

JULY 21, 2009

**Serial No. 111–28**

Printed for the use of the Committee on Ways and Means

U.S. GOVERNMENT PRINTING OFFICE

63–000 WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
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# HEARING ON TRADE ADVISORY COMMITTEE SYSTEM

**TUESDAY, JULY 21, 2009**

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

The subcommittee met, pursuant to call, at 10:09 a.m., in Room 1100, Longworth House Office Building, the Honorable Sander M. Levin [chairman of the subcommittee] presiding.

[The advisory of the hearing follows:]

# *HEARING ADVISORY*

FROM THE COMMITTEE ON WAYS AND MEANS

## Chairman Levin Announces Hearing on Trade Advisory Committee System

July 21, 2009

*By (202) 225–6649*

House Ways and Means Committee Trade Subcommittee Chairman Sander M. Levin today announced that the Committee on Ways and Means Subcommittee on Trade will hold a hearing on how the system of trade advisory committees is functioning, and on how to increase transparency and public participation in the development of U.S. trade policy. **The hearing will take place on Tuesday, July 21, 2009, in Room 1100, Longworth House Office Building, beginning at 10:00 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Subcommittee and for inclusion in the printed record of the hearing. A list of invited witnesses will follow.

**FOCUS OF THE HEARING:**

The hearing will examine the development of trade policy from several perspectives. The Subcommittee will ask the Administration to discuss its recently-initiated policy review and consultations concerning the trade advisory committees. The Subcommittee is interested to hear from stakeholders whether administrative or statutory changes, building on revisions implemented in recent years, might broaden the range of views represented and permit the advisory committees to provide more timely and useful recommendations. Finally, the Subcommittee is requesting testimony on steps that could be taken to encourage public outreach and promote greater public engagement in U.S. trade policy.

**BACKGROUND:**

Established under the Trade Act of 1974, the trade advisory committee system is intended to provide a formal mechanism through which U.S. trade negotiators receive information and advice from the private sector with respect to U.S. negotiating positions before and during trade negotiations. The system is arranged in three tiers: the President's Advisory Committee for Trade Policy and Negotiations (ACTPN), five policy advisory committees dealing with environment, labor, agriculture, Africa, and intergovernmental issues, and 22 technical advisory committees in the areas of industry and agriculture. The trade advisory committees have participated in the formulation of policy for all trade negotiations and provided advice to the Executive and Congress on concluded trade agreements prior to implementation.

Since 1974, the scope of U.S. trade agreements has expanded beyond tariffs and other "border" measures to encompass subjects such as intellectual property rights, food and product safety, environmental regulations and labor rights. The subcommittee will consider the extent to which environmental, labor, public health, development, and civil society stakeholder perspectives are or should be represented on the advisory committees. In the context of the Trade Act's requirement that advisory committee representation should be "balanced" or "representative," is it appropriate either to establish separate advisory committees devoted to these concerns or to ensure that existing advisory committees include such stakeholders?

In announcing the hearing, Chairman Levin said, **"The new Administration is committed, and properly so, to making sure our international trade discus-**

**sion is open to new perspectives. Now is a good time to look at how the trade advisory committees can be part of developing better trade policies**."

**DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

**Please Note:** Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, http://democrats.waysandmeans.house.gov, select "*Committee Hearings*". Select the hearing for which you would like to submit, and click on the link entitled, "*Click here to provide a submission for the record*." Once you have followed the online instructions, complete all informational forms and click "submit" on the final page. ***ATTACH*** your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by close of business **Thursday, August 4, 2009**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225–1721.

**FORMATTING REQUIREMENTS:**

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

1. All submissions and supplementary materials must be provided in Word or WordPerfect format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

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

3. All submissions must include a list of all clients, persons, and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

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.

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

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Chairman LEVIN. The subcommittee will come to order.

Welcome, everybody.

I think we all know that this morning this subcommittee is going to take a look at how the advisory committee structure relating to trade is working. This is, I think, a particularly timely effort because the new administration has started a review of the advisory system, and there is legislation that is pending on this issue.

The staffs working together have prepared a memo on the advisory structure, and as I had a chance to read this excellent memo, I was struck by a few points.

First of all, it is a rather elaborate structure. It covers so many areas. There is some thought that it needs to have a broader participation. Clearly this has been, as I said, an elaborate structure, with 28 different advisory committees, and the negotiators in the administrations in the past have had interchange with these various committees. So that is the first point, an elaborate structure that perhaps should be even expanded.

The second point that has come through in these materials as we prepare for today is how trade has changed since these structures were started. The breadth of trade issues has dramatically increased, and so, therefore, the mandates to the various advisory committees, that mandate has also changed.

But the third point, and I think we will be discussing this today, is how effective the advisory committees have been, how much meaningful interchange there has been between the committees and USTR and the rest of the administration in the past. And I do think we need to very much focus on that issue, because as trade has become more and more important in the last 35 to 40 years, as the scope of it has very much increased, I think the role of advisory committees therefore has become more salient, at least it should have become more salient.

So I hope today, Mr. Brady, that you and I and our colleagues can really hone in on the issue of the effectiveness of these committees and how we can improve their effectiveness. I think that is such an important issue. Though we may be tempted to ask witnesses about issues beyond the role of advisory committee, that structure, I do hope that we can really maintain a focus on the issue before us because it is that important.

So, Mr. Brady, if you will make your opening statement, which we are looking forward to, and then we will start the hearing with two panels.

The first will be from Lisa Garcia, who is an assistant U.S. trade rep, who I think you are heading up the review within USTR; and also from Dr. Loren Yager, who is working on this issue and has had a lot of experience.

So, Mr. Brady, if you will make your opening remarks, and then we will launch right into the testimony.

Mr. BRADY. Thank you, Chairman Levin.

I agree with you. Policymakers should have access to the views of stakeholders on all sides of trade issues. A critical question today is, how best can we allow everyone to have a voice while still maintaining the effectiveness and flexibility of the information flow? Like you, I am eager to hear testimony on this key part.

Let me put up on the screen sort of where we are today on input. Here is the Tier 1 committee, the President's Advisory Committee For Trade Policy Negotiations, the five committees that advise USTR and the President on general policy areas. Then you will see 6 agriculture technical advisory committees, and then 16 industry trade advisory committees, and each of the yellow boxes within that structure are committees that have labor, environment, public health, universities or State and local government representatives on there providing their input.

Without question, the private sector and the administration coordinate extensively on trade. The President has the Advisory

Committee on Trade Policy Negotiations, which includes representatives from labor, environment, industry, ag and small businesses.

USTR has also created policy advisory committees to provide advice on cross-cutting social and economic issues, such as labor and environment. USTR and the Departments of Commerce and Agriculture also meet with the industry and agriculture trade advisory committees which provide technical nuts and bolts advice on functional trade issues at the ground level.

But this formal structure isn't the only game in town. USTR also holds public hearings, seeks comments through Federal Register notices, and holds meetings with relevant sectors and nongovernmental organizations. The Bush administration did it, and the Obama administration is doing it.

The anti-counterfeiting trade agreement negotiation is a case in point, and USTR has been seeking comments not only from clear advisers within the industry trade advisory committees but also from other noncommercial interests and the general public. The Investment Working Group that reports to the ITAC chairs is another example of effective ad hoc information flow.

I am encouraged that more people want to be part of the advisory committee system. That tells me the system must be performing reasonably well. Folks don't typically line up to jump on a sinking ship.

But there is another side that is far less encouraging, and sadly, it hits much closer to home. We in Congress have our own housekeeping to do when it comes to providing opportunities for Americans to share their views on trade policy. I note with more than a tinge of disappointment that, on that score, we are failing.

It is all supposed to start right here in this committee, the Ways and Means Committee, which has jurisdiction over trade agreements, but we are, unfortunately, redefining the phrase "ground zero." We have convened zero hearings in the 110th and 111th Congress on our pending free trade agreements since they have been signed.

Members on our side have asked for and would warmly welcome a hearing, for example, on how to identify benchmarks in Colombia, and I think members of the public would jump at the chance to testify here on that topic and give us their very diverse views.

We have held a grand total of zero hearings on the Trade Preference Programs, a tool to promote the economies of our developing trading partners; although I should add Chairman Levin and I and staff are in discussion on how we gather input from people because there are a lot of good ideas on how to move forward on preferences.

Unfortunately, the new Democrat leadership in both Chambers have called zero meetings of the Congressional Oversight Group. This is the statutorily mandated group in which all committees with jurisdiction communicate to the administration what we are hearing from our constituents, the people that put us here. The statute requires that the Congressional Oversight Group convene within 30 days of the beginning of each Congress. We haven't done so this Congress or last.

USTR, though, needs to consult better with Congress, too, so we have the information we need to engage productively with the

American people. It may not shock you that Republicans feel shut out of the formulation of the administration's trade policy. But what may be more surprising is that the frustration appears to be bipartisan.

Max Baucus, chairman of the Senate Finance Committee, readily acknowledged at a recent hearing he was not consulted on the administration's decision to have a timeout on trade until the articulation of a new trade policy framework and the passage of health care reform in Congress. It was, in his words, "a shot out of the blue." "I read about it in a newspaper article," lamented the Montana Senator.

So while it is well and good and I think important to shine light on the advisory committee system to assess whether it is adequately performing its role, we must at the same time grade ourselves. We need to review our own performance on how well we are obtaining public input on trade.

Let me be clear, I am not talking about passing free trade agreements, although I would love to see that. I am just asking whether or not we are doing enough here in this hearing and Congress to open up the dialogue with the American people on pending and future trade initiatives.

This hearing is an excellent start, Mr. Chairman, and I appreciate your leadership on this, but I am hopeful there is much more we can do together in the future.

Thank you. I yield back.

Chairman LEVIN. All right.

We will hear the testimony. Let me just mention that a number of the trade preferences do expire at the end of the year, Mr. Brady, and we will be having meetings and hearings on these preferences well before the end of the year, as you and I have discussed.

Also, the administration has made clear that they are beginning work and I think it is increasing its activity in terms of a statement of overall trade policy of this administration. It is a new administration. It has indicated a desire to have new trade policies. I think everybody realizes that there are other issues pending before this Congress which have, I think, understandably preoccupied the attention of the administration and of the House of Representatives and of the U.S. Senate.

I believe there is no lack of inattention to trade issues. Indeed, I think it is quite the opposite. I also think, though, that it is vital that there be a basic framework for a new trade policy rather than trying to take these ad hoc. I have confidence that that process will continue in a very time-relevant fashion.

So, we will focus today on the role of the advisory committees. As I said, the structure has been there in recent years. I am not sure how effective it has been. I think one of the issues before us today is whether what is true on paper has been true these 8–10 years in terms of the real back and forth between the public and the administration and ourselves on trade policy.

Okay. We are first going to hear from Lisa Garcia of USTR; and then Dr. Yager, the director of International Affairs and Trade for GAO.

Ms. GARCIA, if you would start. Your testimony will be placed in the record. If you would, try to summarize it. Pick and choose as you would like as to what you think are the most relevant points as you have begun work within USTR and a review of these committees.

Thank you both for joining us.

**STATEMENT OF LISA A. GARCIA, ASSISTANT USTR FOR INTERGOVERNMENTAL AFFAIRS AND PUBLIC ENGAGEMENT, UNITED STATES TRADE REPRESENTATIVE**

Ms. GARCIA. Chairman Levin, Ranking Member Brady and other distinguished Members of the Subcommittee, on behalf of the United States Trade Representative, USTR, thank you for the opportunity to describe our advisory committee system and USTR's outreach activities.

Ambassador Kirk is dedicated to crafting that policy in a transparent manner by sharing with the public and seeking input from stakeholders. The Office of the United States Trade Representative considers the trade advisory committee system and our outreach activities to be critical to both the crafting and implementing of U.S. trade.

My written remarks include a brief description of the trade advisory committee system, but I would like to focus my remarks this morning on USTR's current review of the advisory committee system. That review is ongoing. However, USTR is committed to two results: first, making effective use of the committees; and second, ensuring the committees are more representative of diverse interests.

With regard to that result, USTR has already made significant use of the committees. Ambassador Ron Kirk has already met with the Advisory Committee For Trade Policy and Negotiations, ACTPN; the Trade Advisory Committee for Africa, TACA; the Trade and Environmental Policy Advisory Committee, TEPAC; and the Labor Advisory Committee, LAC, liaison.

My office has maintained the Intergovernment Policy Advisory Committee, IGPAC, and the State Point of contact, SPOC monthly calls, and we have scheduled a call next week with the Agriculture Policy Advisory Committee and the Agriculture Trade Advisory Committee, ATAC, members.

Moreover, as GAO noted in its 2007 report, in the past, some committees have not been fully utilized and have lapsed entirely. We are committed to preventing that from happening again. To that end, we have already begun work on selecting new members for the ACTPN whose charter expires March of 2010. The Department of Commerce, which jointly administers the ITACs whose charters expire in February 2010 have similarly already begun the process of rechartering and is on track to complete this process before the deadline.

We have also already taken steps to expand the range of interests to be represented on the committees. We believe that the first logical step of the review was to focus on the Tier 1 ACTPN committee. That portion of the review is well along the way. We have sent a list of potential candidates to the White House. While it is not appropriate at this time to release names or list the organiza-

tions these candidates represent, since the vetting process is ongoing, I can share that several candidates represent consumer and public health interests. Thus, such voices will be represented at the very highest level of the advisory committee system on the newly constituted ACTPN and will have access to the USTR security advisor Web site and will therefore have access to all the information that is made available to other cleared advisers.

In addition, as part of the regularly scheduled chartering effort, we seek additional opportunities for representatives of civil society, consumer groups and public health interests to serve on their Tier 2 committees. NGO representatives have already been added to some of the Tier 3 committees where appropriate. That review will include whether the current committees are the right ones, as well as whether the memberships fully represent the interests affected by the sectors covered by those committees.

If certain interests cannot be adequately represented within the existing committee structure, USTR will explore the establishment of a new committee. We would want to ensure that such a committee would be flexible enough to absorb representatives from new interest areas as needed.

The advisory committee system is only one mechanism USTR uses to outreach with the public and solicit their advice on U.S. trade policy. We have launched a new interactive Web site. The new site gives us the ability to share comments with the ambassador and the opportunity to be part of our online community.

As I have detailed, the Office of the United States Trade Representative is making every effort to ensure that USTR's work is both open and transparent and guided by the American public that we serve. Working together, we can fulfill President Obama's vision of a trade policy that works better for American workers and families.

Once again, Mr. Chairman, I appreciate the opportunity to testify before you today and before the Members of the Subcommittee of Trade. I would be happy to answer any questions that you might have.

[The prepared statement of Ms. Garcia follows:]

Hearing on Trade Advisory Committee System

Statement of Lisa Garcia

Assistant U.S. Trade Representative for Intergovernmental Affairs & Public Engagement

Before the House Ways and Means Committee

July 21, 2009

Chairman Levin, Ranking Member Brady and other distinguished members of the Sub Committee: on behalf of the Office of the United States Trade Representative (USTR), thank you for the opportunity to describe our advisory committee system and USTR's outreach activities in that regard.

The Obama Administration is committed to a trade policy that works better for hard-working American families, and that helps to restore our economy by saving and creating good-paying jobs. Ambassador Kirk is dedicated to crafting that policy in a transparent manner by sharing ideas with the public and seeking input from stakeholders. The Office of the United States Trade Representative considers the trade advisory committee system and our outreach activities to be critical to both the crafting and implementation of U.S. trade policy.

**Outline of the USTR Trade Advisory Committee System**

The Trade Advisory Committees advise on the full range of matters that may arise in connection with the development, implementation and administration of US trade policy. Committee members provide information and expert advice throughout the trade agreement process, from US bargaining positions and negotiation objectives before we enter into trade agreements, to the operation of those agreements once they enter into force.

The system consists of 28 trade advisory committees arranged in three tiers: (1) the President's Advisory Committee for Trade Policy and Negotiations (ACTPN); (2) five general policy advisory committees dealing with environment, labor, agriculture, Africa, and intergovernmental issues; and (3) 22 technical advisory committees in the areas of industry and agriculture. Advice from members of the Advisory Committee System is both a critical and integral part of the trade policy process. The trade advisory committee system is unique in that the committees meet on a regular basis, and receive sensitive information about ongoing trade negotiations and other trade policy issues and developments. Committee members are required to have a security clearance in order to access this information.

In response to GAO recommendations and advisor requests for improved access to documents, USTR introduced a significant improvement to facilitate the work of the trade advisory committees by creating a secure encrypted advisors website with password protection. Confidential draft texts of proposed trade and investment agreements are posted to the secure website on an ongoing basis to allow advisors to provide comments to U.S. officials in a timely fashion during the course of negotiations. This innovation has enhanced the quality and quantity of input from cleared advisors, especially from those advisors who reside outside Washington, D.C.

**Tier One: ACTPN**

The ACTPN, the top tier of the system, consists of not more than 45 members who broadly represent key economic sectors affected by trade. The ACTPN examines US Trade Policy and agreements from the broad context of the overall national interest. The President or the USTR can also ask the ACTPN for specific advice, as was done with the creation of the ACTPN Task Force on China in the past administration. In the past, ACTPN members have been CEOs of major companies and associations representing industry, agriculture, services, high-tech and small business, heads of major labor unions, and leaders of consumer and environmental groups. The President appoints ACTPN members for terms not to exceed the duration of the charter, up to four years.

**Tier Two: General Policy committees**

There are currently five tier-two general policy committees. These committees provide general policy advice on matters within their areas of concern. These committees include the Labor Advisory Committee administered jointly with the Department of Labor; the Trade and Environment Policy Advisory Committee (TEPAC) administered with the Environmental Protection Agency, the Agriculture Policy Advisory Committee (APAC) administered with the Department of Agriculture; a state and local advisory committee, the Intergovernmental Policy Advisory Committee (IGPAC); and a committee dealing with Africa trade issues, the Trade Advisory Committee for Africa (TACA). Some groups currently represented on these tier two committees also have interests related to public health and have used the committees to raise public health concerns – directly with USTR, and in the committee reports which that have been provided to Congress in connection with trade negotiations.

**Tier Three: Technical and Sectoral Committees**

The 22 technical and sectoral advisory committees are appointed jointly by the USTR and by the Secretary of Agriculture and Commerce. Each committee represents a specific sector or commodity group, and provides specific technical advice concerning the potential effect of trade policy decisions on its sector or issue. As provided for in the Trade Act of 1974, the

interests represented on the industry and agriculture advisory committees are more limited than those on our policy committees. These committees are designed to address the more technical questions of how trade policies or specific actions by other governments directly affect those engaged in international trade. The legislative history accompanying the Trade Act emphasized that third-tier committees are to be "representative of the producing sectors of our economy" (S. Rep. No. 93-1298 at 102 (1974)). Consequently, their membership is largely composed of representatives of industry and agriculture sectors, respectively. Nonetheless, in 2006, USTR and the Department of Commerce added representatives of public health interests to two Industry Trade Advisory Committees (ITAC) committees: ITAC 3, Chemicals and Pharmaceuticals; and ITAC 15, Intellectual Property Rights; because we believed those were the two committees where public health trade-related interests were particularly relevant. Also, USTR and the Department of Agriculture appointed a public health representative to the Agricultural Trade Advisory Committee (ATAC) in Tobacco, Cotton and Peanuts.

In response to recommendations from the US Government Accountability Office (GAO), the number of industry committees at the technical level was streamlined and consolidated in 2004 to better reflect the composition of the US economy.

Recommendations for all candidates for trade advisory committee membership are collected from a number of sources. These include Members of Congress, associations and organizations, other federal agencies, responses to Federal Register notices, and self-nomination by individuals who have demonstrated an interest in and knowledge of US trade policy. Membership selection is based on qualifications, the need for balance (such as geographic diversity), and the needs of the specific committee. Members pay their own expenses, including all travel.

**Transparency and Other Outreach efforts**

The Advisory Committee system is only one mechanism USTR uses to reach out to the public for advice on US trade policy. We also have increased outreach through a number of other efforts. For example:

We have recently launched a new, interactive website. The new site gives users the ability to share comments with Ambassador Kirk and the opportunity to be a part of our online community. The public can engage through features such as the USTR blog, Facebook, Twitter, "Ask the Ambassador," comments to the USTR team, Share your Story, Follow the Ambassador's Travels, and Vimeo – our video site.

Additionally, the new USTR website highlights the Ambassador's daily events, and includes pictures of groups and individuals he meets with on any given day. Intergovernmental Affairs and Public Engagement sends out a weekly email subscription newsletter that includes

meetings held by staff and the week's activities at USTR. Stakeholders have the ability to go to www.ustr.gov and sign up to receive our newsletter.

In the last four months the office of Intergovernmental Affairs and Public Engagement (IAPE) has attended committee meetings, spoken to associations, and met individually with members of the private sector, including both industry and nongovernmental organizations, as well as state and local government representatives. We have facilitated meetings with the Ambassador and with the senior staff of the agency.

We have maintained the practice of soliciting public comments in Federal Register announcements, and we ensure that anyone who visits ustr.gov is directed to the corresponding website.

We are holding public hearings, and will continue a series of town hall discussions to air upcoming issues.

For example, in the area of public health, we have already met with public health stakeholders and have had email exchanges, calls, and meetings. For example, the Ambassador had a face-to-face meeting on May 19, 2009 with several public health non-governmental organizations (NGOs).

All of USTR, and the Office of Intergovernmental Affairs and Public Engagement particularly, are committed to making the development and implementation of trade policy more transparent. For example, we have recently taken several steps to make the development of the Anti Counterfeiting Trade Agreement more accessible to the public by, with the agreement of our trading partners, providing a summary of the status of the negotiations, by meeting with interested parties, and by holding a public town hall meeting to discuss the negotiations.

**Review of USTR trade advisory committee system**

USTR is currently reviewing the trade advisory system, and that review is not yet complete. However, USTR is committed to two results. First, effective use of the committees and second committees are more representative of diverse interests.

**Making effective use of committees**

With regard to the first result, USTR has already made significant use of the committees. Since taking office, Ambassador Kirk has already met with Advisory Committee for Trade Policy and Negotiations (ACTPN), Trade Advisory Committee for Africa (TACA), Trade and Environment Policy Advisory Committee (TEPAC), and the Labor Advisory Committee (LAC) Liaison. My office has maintained the Intergovernmental Policy Advisory Committee (IGPAC)/State Point of Contacts (SPOC) monthly calls and we have scheduled a call next week with the Agriculture

Policy Advisory Committee (APAC)/Agriculture Technical Advisory Committee (ATAC) members. Moreover, as GAO noted in its 2007 report, in the past some committees have not been fully utilized or have lapsed entirely. We are committed to preventing that from happening again. To that end, we have already begun work on selecting new members for the ACTPN, whose charter expires in March 2010. The Department of Commerce, which jointly administers the ITACs, whose charters expire in February 2010, has similarly already begun the process of rechartering the ITACs and is on track to complete work on rechartering before the current charters expire.

For the committees whose charters expire in 2011, the rechartering process has not yet begun, but we have already established various steps in that process. The Department of Agriculture has established similar steps for their committees whose charters also expire in 2011.

**Expanding the interests Represented**

We have also already taken steps to expand the range of interests represented on the Committees. We are currently identifying candidates for membership on the tier one ACTPN committee. We have sent a list of potential candidates to the White House and continue to vet these candidates. While it is not appropriate at this time to release names or list the organizations these candidates represent, I can share that several candidates represent consumer and public health interests. Thus, the voices of representatives of public health and consumer interest will be represented at the very highest level of the advisory committee system on the newly constituted ACTPN. Members of the public heath community will have access to the USTR secured advisor website and will therefore have access to all of the information that is made available to other cleared advisors.

In addition to including representatives on the ACTPN, we will seek additional opportunities for representatives of civil society, consumer groups, and public health interests to serve on the Tier Two committees. NGO representatives have already been added to some of the Tier 3 committees where appropriate. If certain interests cannot be adequately represented within the existing committee structure, USTR will explore the establishment of a new committee. We would want to ensure that any such committee would be flexible enough to absorb representatives from new interest areas as needed. In short, although we continue to determine whether full representation can best be achieved through new committees or through an expansion of existing committee membership, USTR is committed to a conclusion that ensures a genuine and effective conduit for public interests to advise on trade and investment policy.

Once again, Mr. Chairman, I appreciate, the opportunity to testify before you today, and before the members of the Subcommittee on Trade and to affirm to all of you USTR's commitment to outreach efforts and to the trade advisory committee system.

As I have detailed, the Office of the United States Trade Representative is making every effort to ensure that USTR's work is both open and transparent, and guided by the American public that we serve working together; we can fulfill President Obama's vision of a trade policy that works better for American workers and families.

I would be happy to answer any questions that you may have.

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Chairman LEVIN. Thank you very much, Ms. Garcia.

Dr. Yager, we look forward to your testimony. Thank you for coming.

**STATEMENT OF LOREN YAGER, PH.D., DIRECTOR, INTERNATIONAL AFFAIRS AND TRADE, GOVERNMENT ACCOUNTABILITY OFFICE**

Mr. YAGER. Mr. Chairman, Ranking Member Brady, Members of the Subcommittee, thank you for the opportunity to appear today before the subcommittee to provide insight from GAO's work on the private sector trade advisory system.

Based on extensive stakeholder and advisory committee input, we provided one report in 2002 on the trade advisory system to the Congress and another on the subject of congressional and private sector consultations in 2007, and we have been working regularly with USTR and the other agencies to update the status of our recommendations since that time.

In my statement today, I will highlight our findings and recommendations in three key areas: first, in committee consultations; second, logistics of the system; and, third, the overall system structure, and I will discuss the changes that have been made by U.S. agencies to respond to our recommendations.

In terms of the committee consultations, our survey of trade advisory committee members found high levels of satisfaction with many aspects of committee operations and effectiveness, yet more than a quarter of respondents indicated that the system had not realized its potential to contribute to U.S. trade policy. In particular, we received comments about the timeliness, the quality and the accountability of consultations.

As a result, we made a series of recommendations to USTR and the other agencies to improve those aspects of the consultation process. Specifically, we recommended that the agencies adopt or amend guidelines and procedures to ensure that the advisory committee input is sought on a continual and timely basis; that consultations are meaningful; and that committees receive feedback on how agencies respond to their advice.

In response to those recommendations, USTR and the other agencies made a series of improvements. For example, USTR instituted a monthly conference call with the chairs of all committees, and the agencies created a new secure Web site to allow all cleared advisers better access to important documents.

With regard to the logistics of the system, in 2002, we found slow administrative procedures disrupted committee operations and the resources devoted to commit management were out of step with the required tasks. In several instances, for example, committees ceased to meet and thus could not provide advice in part because the agencies had not appointed members.

In our 2007 review, we still found several committees had not been able to meet for periods of time, either because agencies allowed their charters to lapse or had not started the process of soliciting and appointing members soon enough to ensure committees could meet. To address these concerns, we recommended that USTR and the other agencies start the rechartering process and the member appointment processes with sufficient time to avoid any lapse in the ability to hold committee meetings and to notify

Congress if their committee is unable to meet for more than 3 months due to an expired charter.

USTR and the other agencies have taken numerous steps to address these recommendations. For example, in a recent communication, USTR described improved timelines, which should allow the committee rechartering to take place without disrupting committee business, and we will continue to follow this issue for the Congress. However, I should point out that, based on the information in the FACA Web site, some of the committees have not been holding regular meetings in recent years.

My third issue regards representation. In addition to the need to improve certain committee logistics, we believe that stakeholder representation should be considered in any review of the system. In particular, as the U.S. economy and trade policy have shifted, the trade advisory committee system has needed adjustments to remain in alignment, including both a consideration of committee coverage as well as committee composition.

In our 2002 report, we found that the structure and composition of the committee system had not been fully updated to reflect changes in the U.S. economy and U.S. trade policy. In 2007, several committee chairs we interviewed also expressed the perception that the composition of their committees was not optimal, either favoring one type of industry or group over another or over nonbusiness interests. As a result, we made a series of representations suggesting that USTR work with the other agencies to update the system and make it more relevant to the U.S. economy and to trade policy needs. We also suggested that they seek to better incorporate new trade issues and interests.

In response, USTR and the other agencies more closely aligned the system structure and composition with the economy and increased the system's ability to meet negotiator needs more reliably. I understand the ongoing review revisits that issue.

Mr. Chairman, we appreciate the opportunity to summarize our work before the committee and will be happy to continue to provide input into the ongoing discussions regarding the system.

[The prepared statement of Mr. Yager follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Trade, Committee on Ways and Means, House of Representatives

For Release on Delivery
Expected at 10:00 a.m. EDT
Tuesday, July 21, 2009

# INTERNATIONAL TRADE

# Prior Updates of the Trade Advisory System Offer Insights for Current Review

Statement of Loren Yager, Director
International Affairs and Trade

GAO
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GAO-09-842T

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear today before the Subcommittee to provide insight from GAO's work on the issues associated with the private sector trade advisory system and public participation in the development of trade policy. In particular, we have provided one detailed report specifically on the subject of the trade advisory system[1] and another on the subject of Congressional and private sector consultations under Trade Promotion Authority[2]. The numerous negotiators, agency officials, and committee members with whom we met in the course of our work emphasized that the trade policy advisory committee system plays an important role in U.S. trade policy and has made valuable contributions to U.S. trade agreements.

In my statement today, I will provide a summary of key findings from the comprehensive report on the trade advisory system that we provided to the Congress in 2002, as well as from our more recent report in 2007 on the Congressional and private sector consultations under Trade Promotion Authority.[3] In particular, I will highlight our recommendations in three key areas—committee consultations, logistics, and overall system structure—as well as the changes that have been made by the U.S. agencies since those reports were published. I believe that this material is directly relevant to the stated focus of this hearing as the reports are based on extensive input from major stakeholder groups and provide numerous insights into the revisions to the system that have been implemented as a result of the GAO recommendations.

My remarks are based primarily on the two assignments mentioned above that GAO conducted on the trade advisory system and the consultation process. To address these issues, we surveyed 720 of the 735 committee

[1]GAO, *International Trade: Advisory System Should be Updated to Better Serve U.S. Policy Needs*, GAO-02-876, (Washington, D.C.: September 24, 2002).

[2]GAO, *International Trade: An Analysis of Free Trade Agreements and Congressional and Private Sector Consultations under Trade Promotion Authority*, GAO-08-59, (Washington, D.C.: November 7, 2007).

[3]In addition to the above reports, GAO has also done recent work on federal advisory committees in general. See GAO, *Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance*, GAO-04-328, (Washington, D.C.: April 16, 2004) and GAO, *Federal Advisory Committee Act: Issues Related to the Independence and Balance of Advisory Committees*, GAO-08-611T, (Washington, D.C.: April 2, 2008).

members in 2002 about their experiences in the system; interviewed every type of participant in the committee process, including selected committee chairs, members, relevant U.S. officials, nongovernmental interest groups, and trade experts; and analyzed USTR and committee data and documents. In addition, we collected information from USTR and other agencies on the changes that they have made in recent years in response to the recommendations in those reports. We conducted our work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provided a reasonable basis for our findings and conclusions based on our audit objectives.

## Background

Congress established the trade advisory committee system in Section 135 of the Trade Act of 1974 as a way to institutionalize domestic input into U.S. trade negotiations from interested parties outside the federal government. This system was considered necessary because of complaints from some in the business community about their limited and ad hoc role in previous negotiations. The 1974 law created a system of committees through which such advice, along with advice from labor and consumer groups, was to be sought.

The system was originally intended to provide private sector input to global trade negotiations occurring at that time (the Tokyo Round). Since then, the original legislation has been amended to expand the scope of topics on which the President is required to seek information and advice from "negotiating objectives and bargaining positions before entering into a trade agreement" to the "operation of any trade agreement, once entered into," and on other matters regarding administration of U.S. trade policy.[4] The legislation has also been amended to include additional interests within the advisory committee structure, such as those represented by the services sector and state and local governments. Finally, the amended legislation requires the executive branch to inform the committees of "significant departures" from their advice.[5] The Trade Act of 1974 required the President to seek information and advice from the trade advisory committees for trade agreements pursued and submitted for approval

[4]Trade Agreement Act of 1979, Pub. L. No. 96-39, § 1103, 93 Stat. 144, 308.

[5]19 U.S.C. § 2155(i).

under the authority granted by the Bipartisan Trade Promotion Authority Act of 2002.[6] The Trade Act of 1974 also required the trade advisory committees to provide a report on the trade agreements pursued under the Bipartisan Trade Promotion Authority Act of 2002 to the President, Congress, and USTR.[7] This requirement lapsed with TPA on June 30, 2007.

The trade advisory committees are subject to the requirements of the Federal Advisory Committee Act (FACA),[8] with limited exceptions pertaining to holding public meetings and public availability of documents.[9] One of FACA's requirements is that advisory committees be fairly balanced in terms of points of view represented and the functions the committees perform.[10] FACA covers most federal advisory committees and includes a number of administrative requirements, such as requiring rechartering of committees upon renewal of the committee.[11]

Four agencies, led by USTR, administer the three-tiered trade advisory committee system. USTR directly administers the first tier overall policy committee, the President's Advisory Committee for Trade Policy and Negotiations (ACTPN), and three of the second tier general policy committees, the Trade Advisory Committee on Africa (TACA), the Intergovernmental Policy Advisory Committee (IGPAC), and the Trade and Environment Policy Advisory Committee (TEPAC), for which the Environmental Protection Agency also plays a supporting role. The Department of Labor co-administers the second tier Labor Advisory Committee (LAC) and the Department of Agriculture co-administers the second tier Agricultural Policy Advisory Committee (APAC). The Department of Agriculture also co-administers the third tier Agricultural Technical Advisory Committees (ATACs), while the Department of Commerce co-administers the third tier Industry Trade Advisory Committees (ITACs). Ultimately, member appointments to the committees have to be cleared by both the Secretary of the managing agency and the

[6] 19 U.S.C. § 2155(a).

[7] 19 U.S.C. § 2155(e).

[8] 5 U.S.C. App. 2 §§ 1-14.

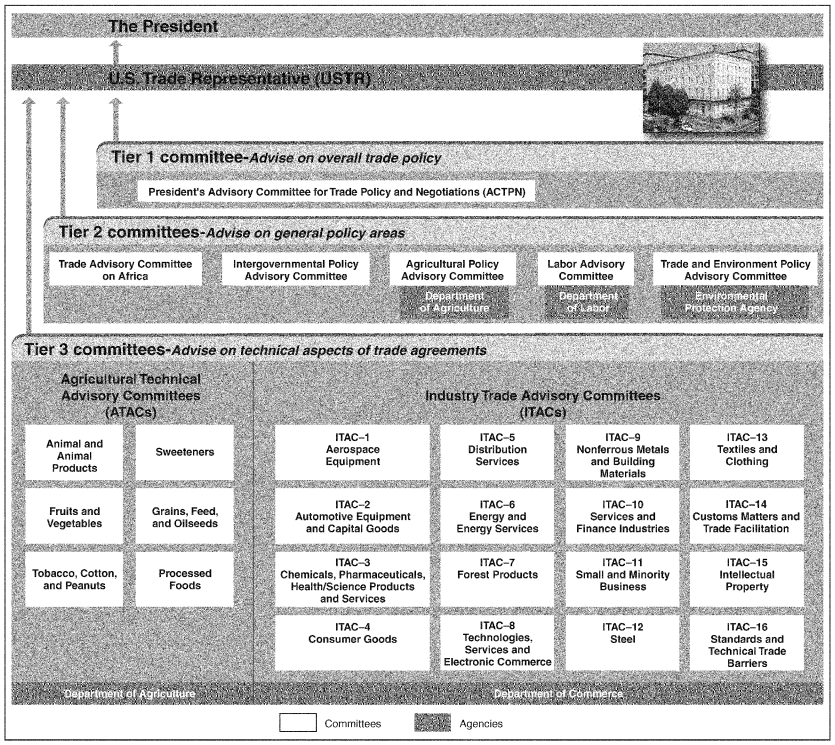
[9] 19 U.S.C. § 2155(f).

[10] 5 U.S.C. App. 2 § 5.

[11] 5 U.S.C. App. 2 § 14.

U.S. Trade Representative, as they are the appointing officials. Figure 1 illustrates the committee structure.

**Figure 1: Trade Advisory Committee Structure**




Sources: GAO and USTR.

## Consultations with Trade Advisory Committees Have Generally Improved

Our 2002 survey of trade advisory committee members found high levels of satisfaction with many aspects of committee operations and effectiveness, yet more than a quarter of respondents indicated that the system had not realized its potential to contribute to U.S. trade policy. In particular, we received comments about the timeliness, quality, and accountability of consultations. For example, the law requires the executive branch to inform committees of "significant departures" from committee advice.[12] However, many committee members reported that agency officials informed committees less than half of the time when their agencies pursued strategies that differed from committee input.

As a result, we made a series of recommendations to USTR and the other agencies to improve those aspects of the consultation process. Specifically, we recommended the agencies adopt or amend guidelines and procedures to ensure that (1) advisory committee input is sought on a continual and timely basis, (2) consultations are meaningful, and (3) committee advice is considered and committees receive substantive feedback on how agencies respond to their advice.

In response to those recommendations, USTR and the other agencies made a series of improvements. For example, to improve consultations between the committee and the agencies, including member input, USTR and TEPAC members established a communications taskforce in 2004. As a result of the taskforce, USTR and EPA changed the format of principals' meetings to allow more discussion between the members and senior U.S. government officials, and they increased the frequency of liaison meetings. In addition, USTR instituted a monthly conference call with the chairs of all committees, and now holds periodic plenary sessions for ATAC and ITAC members. Furthermore, the agencies created a new secure Web site to allow all cleared advisors better access to important trade documents.

When we interviewed private sector advisory committee chairs again in 2007, they were generally pleased with the numerous changes made to the committee system in response to our 2002 report. In particular, they found the secure Web site very useful. Reviews of the monthly chair conference call and plenary sessions were mixed, however. Chairs told us that their out-of-town members might find the plenaries a helpful way to gain an overall perspective and to hear cabinet-level speakers to whom they would

[12] 19 U.S.C. § 2155(i).

not routinely have access, whereas others found them less valuable, largely due to the perceived lack of new or detailed information. The chairs also said that USTR and the relevant executive branch agencies consulted with the committees on a fairly regular basis, although overall views on the opportunity to provide meaningful input varied. For example, we heard from committee chairs who felt the administration took consultations seriously, while other chairs felt the administration told them what had already been decided upon instead of soliciting their advice. USTR officials told us that the fact that the advice of any particular advisory committee may not be reflected in a trade agreement does not mean that the advice was not carefully considered.

## Changes Made to Improve Committee Logistics Have Not Been Fully Tested

In 2002, we found that slow administrative procedures disrupted committee operations, and the resources devoted to committee management were out of step with required tasks. In several instances, for example, committees ceased to meet and thus could not provide advice, in part because the agencies had not appointed members. However, the length of time required to obtain a security clearance contributed to delays in member appointment. To address these concerns, we recommended the agencies upgrade system management; and in response, they began to grant new advisors interim security clearances so that they could actively participate in the committee while the full clearance is conducted.

Despite these actions, however, trade advisory committee chairs we contacted in 2007 told us certain logistics such as delays in rechartering committees and appointment of members still made it difficult for some committees to function effectively. We found several committees had not been able to meet for periods of time, either because agencies allowed their charters to lapse or had not started the process of soliciting and appointing members soon enough to ensure committees could meet once they were rechartered. The Labor Advisory Committee, for example, did not meet for over 2 years from September 2003 until November 2005 due in part to delays in the member appointment process. These types of process delays further reduced a committee's ability to give timely, official advice before the committee was terminated, and the rechartering process had to begin again. This was particularly true in the case of the Labor Advisory Committee, which, at the time of our 2007 report, still had a 2-year charter.

To address these concerns, we recommended that USTR and other agencies start the rechartering and member appointment processes with sufficient time to avoid any lapse in the ability to hold committee meetings

and that they notify Congress if a committee is unable to meet for more than 3 months due to an expired charter or delay in member appointments. Furthermore, we recommended that USTR work with the Department of Labor to extend the Labor Advisory Committee's charter from 2 years to 4 years, to be in alignment with the rest of the trade advisory committee system.

USTR and the other agencies have taken some steps to address these recommendations. In May 2008, for example, the Labor Advisory Committee's charter was extended to 4 years. Not enough time has passed, however, to assess whether steps taken fully address the problems associated with rechartering and member appointment, since at present all committees have current charters and members appointed. Furthermore, even though committees are now chartered and populated, some of them have not met for over three years, despite ongoing negotiations of the Doha Round of the World Trade Organization (WTO), including the July 2008 ministerial meeting in Geneva. For example, although the ATAC charters were renewed in May 2007 and members appointed in January 2008, the FACA database shows that no ATAC has held a meeting since fiscal year 2006. In addition, although USTR held multiple teleconferences for all first and second tier advisors in fiscal year 2008, LAC and APAC members did not participate.[13] It is unclear, therefore, whether the administration received official advice from all trade advisory committees for the Doha negotiations.

## Representation of Key Stakeholders Remains Important for Any Review of Trade Advisory Committee System

In addition to the need to improve certain committee logistics, we also found that representation of stakeholders is a key component of the trade advisory committee system that warrants consideration in any review of the system. In particular, as the U.S. economy and trade policy have shifted, the trade advisory committee system has needed adjustments to remain in alignment with them, including both a revision of committee coverage as well as committee composition.

In our 2002 report, we found that the structure and composition of the committee system had not been fully updated to reflect changes in the U.S.

[13]A Department of Labor official told us that the call-in information for each teleconferences was passed on to the LAC liaison group. Both LAC and TEPAC, as well as ACTPN, have liaison groups that meet more often than the official committee. According to members from these committees, liaison meetings are at the staff level and are usually fairly technical, whereas the principals' meetings tend to look at broader, political issues.

economy and U.S. trade policy. For example, representation of the services sector had not kept pace with its growing importance to U.S. output and trade. Certain manufacturing sectors, such as electronics, had fewer members than their sizable trade would indicate. In general, the system's committee structure was largely the same as it was in 1980, even though the focus of U.S. trade policy had shifted from border taxes (tariffs) toward other complex trade issues, such as protection of intellectual property rights and food safety requirements. As a result, the system had gaps in its coverage of industry sectors, trade issues, and stakeholders. For example, some negotiators reported that some key issues such as investment were not adequately covered. In addition, nonbusiness stakeholders such as environment and labor reported feeling marginalized because they have been selected to relatively few committees. The chemicals committee, representing what at the time was one of the leading U.S. export sectors, had been unable to meet due to litigation over whether the apparent denial of requests by environmental representatives for membership on the committee was consistent with FACA's fair balance requirements.

In 2007, several committee chairs we interviewed also expressed the perception that the composition of their committees was not optimal, either favoring one type of industry or group over another or industry over nonbusiness interests. Furthermore, some members were the sole representative of a nonbusiness interest on their committee, and those we spoke with told us that although their interest was now represented, they still felt isolated within their own committee. The result was the perception that their minority perspective was not influential. At the same time, while Congress mandates that the advisory committee system is to involve representative segments of the private sector (e.g., industry, agriculture, and labor and environmental groups),[14] adherence to these statutory requirements has been deemed non-justiciable. For example, although the Departments of Agriculture and Commerce solicit new members for their committees through Federal Register notices which stipulate members' qualifications, including that they must have expertise and knowledge of trade issues relevant to the particular committees, neither the notices nor the committee charters explained how the agencies would or have determined which representatives they placed on committees. Without reporting such an explanation, it was not transparent

[14] 19 U.S.C. § 2155.

how agencies made decisions on member selection or met statutory representation requirements.

As a result, we made a series of recommendations suggesting that USTR work with the other agencies to update the system to make it more relevant to the current U.S. economy and trade policy needs. We also suggested that they seek to better incorporate new trade issues and interests. Furthermore, we recommended they annually report publicly on how they meet statutory representation requirements, including clarifying which interest members represent and explaining how they determined which representatives they placed on committees.

In response, USTR and the other agencies more closely aligned the system's structure and composition with the current economy and increased the system's ability to meet negotiator needs more reliably. For example, the Department of Agriculture created a new ATAC for processed foods because exports of high-value products have increased. USTR and Commerce also split the service industry into several committees to better meet negotiator needs. Furthermore, USTR and the Department of Agriculture now list which interest members represent on the public FACA database, as the Department of Commerce has been doing for years. USTR's 2009 Trade Policy Agenda and 2008 Annual Report also includes descriptions of the committees and their composition. It does not, however, explain how USTR and the agencies determined that the particular membership appointed to each committee represents a fair balance of interests in terms of the points of view represented and the committee's functions.

## Conclusion

Mr. Chairman, we appreciate the opportunity to summarize our work related to the Trade Advisory System. Based on the recommendations we have made in the areas of quality and timeliness of consultations, logistical issues, and representation of key stakeholders, we believe that USTR and other managing agencies have strengthened the Trade Advisory System. However, we support the Committee's oversight and the ongoing policy review of the system to ensure that it works smoothly and the input received from business and non-business stakeholders is sufficient, fairly considered, and representative.

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Chairman LEVIN. Thank you very much. I do think that the testimony from the two of you highlights a dynamic within the discussion of trade over the last decade.

Ms. Garcia, you indicate that the new USTR has tried to open up the channels of communication back and forth between USTR and the private sector.

Dr. Yager, though, you do so somewhat gingerly. I think your testimony indicates that, while the structure has been there, it

hasn't always been effective. Some of the groups haven't met. There has been underrepresentation in certain cases.

So, let me just say, I think what the two of you have said really characterizes the state of affairs regarding discussion of trade policy the last decade, and I think it has been true of this subcommittee and this committee as well as the public generally.

There has been such a polarization on trade issues, that I think meaningful discussion and debate has tended to be stifled. I think that has been true in the Congress, and I think it has been true generally within the public.

I must say, and I want to focus on the advisory committee, that it is hard for me to think of a very useful discussion and a discussion in any depth of trade policy on this subcommittee or the full committee the last decade. The only exception I think was when we took up the rather controversial issue of China PNTR.

The same was true of the advisory proceedings. I sat in on the COG discussions for a number of years, and they were not very meaningful. There wasn't a lot of back and forth. They tended to become automatic.

My hope is that there will be, as I said, an evolution of a new trade policy and much more effective discussion back and forth within this Congress; between the Congress and USTR; and between all of us in the public more generally.

We are going to have to consider the issue of preferences. I hope that the advisory group, Ms. Garcia, will be in active participation in the discussion of issues relating to the preferences. There are some controversial issues within that realm, and I think we are in need of having that kind of active participation.

The same I think is true of the participation by some groups that have felt uninvolved, who have felt that advisory groups really related to the interests of one sector rather than all of the sectors.

So I think we can look forward to a much more active discussion, I hope, within the public and within the Congress on trade issues, and I hope also between the House and the Senate.

So let me ask you very quickly, Ms. Garcia, as you do your work, is that kind of the aim of all of your efforts, to really take the lid off, to see what the role of the advisory committees has been, and to really try to see that there is much more meaningful back and forth so that these meetings tend not to be too automatic, and also to look at the issue of how much the work of the advisory committees can become more public? Because a lot of it I think is cloaked in secrecy, sometimes because of security issues, but I think more generally because of the fear that it would inhibit discussion to have the work of the advisory committees become more public. So, if you would, comment on what you think is the general purpose of this review.

Dr. Yager, I will be brief and ask you to be brief, too, comment on what you think is really needed to have a much more vibrant discussion within the public, a less polarized discussion, a discussion that is less about throwing labels back and forth and a more substantive discussion.

Just tell us briefly what you are really after in this review, Ms. Garcia.

And, Dr. Yager, don't be too polite. Tell us what GAO thinks could be done to make this whole process more meaningful. Just take a minute if you would, and then I will turn it over to Mr. Brady.

Thanks.

Ms. GARCIA. Yes, sir. There is no doubt Ambassador Kirk wants to engage the public when it comes to trade, and we want the advisory committee system to be effective, inclusive and transparent, while not adversely affecting our trade policy and negotiations. We want the practice to be as transparent as possible without compromising our position.

But it is my job, it is our team's job, to engage and to really touch the public and help them understand how trade affects their lives.

Chairman LEVIN. Let me just say a word then, and Dr. Yager, you take over. The WTO negotiations have been on hold, but that may change, and I have found that there isn't enough discussion as WTO negotiations evolve between the advisory committees and the administration and also between the administration and the Congress. There is a feeling that the administration, this has been true of past administrations, can't say so much because they will tip off their bargaining positions. But that has often made rather meaningless the back and forth between an administration and the Congress and I think between the administration and the advisory committees.

So as you look at the role of the advisory committees, I hope the administration will take a really hard look as to how, as the Doha round becomes more active, it can be more active back and forth with the Congress and with the advisory committees. Okay?

Dr. Yager, do you want to just say quickly——

Mr. YAGER. Chairman Levin, just a couple of quick things.

First off, of course, just to make sure the committees meet and provide advice, there were some important logistical changes that needed to be made, and I think, to a large extent, USTR has outlined some steps in order to make sure that occurs.

Of course, one of the other important things is that the committee members need to feel that their voices are heard. There have been times in the past where the different committees have come back and said they don't believe that the input that they provided was meaningful, nor did they necessarily hear from USTR that they would not be able to use that input in the negotiations. So there are a couple of things about the process which we think needed some attention, and USTR has addressed a number of those logistical issues, as outlined today, as well as in other statements.

As far as the broader question of getting the right people in the room and making sure that it happens at the right time, certainly the prior reviews that have been conducted by USTR and others provides some insight; the broadening of the economy at the very earlier stages of this system to include services; More recently, the addition of the non-business interests such as environment and others; and then, finally, some simplification of the system that occurred in 2004. We think these are guides to the current review.

But more than that, there is the shift in the trade policy needs. Obviously the complexity of the negotiations has been expanding

very rapidly and there are new issues that need to be considered, whether those are issues related to investment or public health as some of the legislation suggests. And I think USTR can also use its outreach. As Ms. Garcia noted, this isn't the only way they get input. But maybe that is an excellent way for them to understand what kind of groups can be included.

There are really only three criteria in The Federal Advisory Committee Act, and those are affected, interested and qualified persons. But by reaching out to those other groups through other mechanisms, they can learn who are those types of groups that are affected, interested and qualified to be part of the trade committee structure and possibly incorporate those. Because we do know that people who are part of the structure feel that their input is valued, and others who are not part of that structure don't realize or fully appreciate that their input is given as much weight as those in the system.

Chairman LEVIN. Mr. Brady, our ranking member.

Mr. BRADY. Thank you, Mr. Chairman.

I would respectfully disagree with the premise that trade dialogue has been stifled over the past decade. To me, it has been just the opposite. There has been aggressive hearings held in the Ways and Means Committee and Trade Subcommittee for the past decade. The informal groups and trying to put policy together has been almost a weekly occurrence when we were in the majority, in my view. Not that it can't always improve, by the way.

I do think there is a difference between input and agreement. I don't know about you, but I always think my input is better when the person across from me is agreeing with my view, and my guess is, today, I probably get less agreement looking across the aisle, or at least with USTR, but maybe not at the outset. And I do think it is important.

I look at your knowledge of trade. It is almost encyclopedic. I look at the members, whether it is the new preference programs or trying to harmonize existing ones, we have a tremendous amount of knowledge and resources on this committee and Ways and Means. I hate seeing Small Business, Energy and Commerce, Foreign Affairs, holding 12 hearings and us next to none. I just think we have a role we can play, and I am anxious. Again, I am glad to see your expertise as one that is important to bring to the table.

Another point I would like to make today, I would like to ask Ms. Garcia a question too about the whole sort of bigger picture on gathering input from these trade advisory committees.

But, Dr. Yager, just so you know what I am going to ask you in a moment, you really cited three areas from the GAO study that you want to see progress made on. One dealt with the continual timely meaningful input and feedback that these groups get. The second one is, are they meeting? Are they fully constituted, and are we staying on top of the process? The third was the composition, broadening it, making sure it is representative. In a minute, I am going to ask you, on a scale of 1 to 10 on how we are doing on those three so we can see what else we need to do?

Ms. Garcia, I think a guiding principle should be that all input is important, irrespective of where it originates. USTR should hear all sides. Transparency, where possible, is important, too. I think

another important principle is everyone should be in the room, but it is not clear to me why everyone should be in all the rooms simultaneously all the time.

Our trade advisory system is set up so that USTR receives unvarnished information from all stakeholders. It is sent up to USTR to organize and synthesize to the extent it is able all the different viewpoints it has solicited and collected. Putting everyone in the same room for all issues means the parties tend to end up debating what trade policy should be. That doesn't strike me as the best use of our resources or their resources. It seems to me like it might make more sense for everyone to submit their unvarnished views to USTR and then have the President, the U.S. Trade Representative and their staff debate what U.S. trade policy should be, given Congressional direction, and then go out and implement it.

Not everyone is going to agree on what that U.S. trade policy ends up being, but at least everyone will have the opportunity to provide undiluted views to USTR to inform the administration's thinking, analysis and decision making. In that area, I think there is agreement. I do agree with Chairman Levin on looking for ways we can better do that.

With that in mind, Ms. Garcia, I would like to hear sort of the administration's view on this dynamic. And since you have been reviewing the operation of trade committees, are there specific areas USTR is focusing on that we need to be aware of?

Ms. GARCIA. Thank you, sir.

Our outreach first began with the ambassador always telling us and reminding us that we can always improve, and we then facilitated meetings, meetings with he and different groups, different organizations. So that was first and foremost.

Then my office, Intergovernmental Affairs and Public Engagement, then set out to kind of understand and build a database that we could communicate with every day on whatever issue, alert people, ensure that they are well aware of any kind of news items, any kind of new actions made.

That has served us well. I have been on the job for 4 months, and we have gotten a great deal of calls back that actually give us confidence that we are moving in the right direction.

Mr. BRADY. Can we pull up that screen of existing ITAC structure?

At this point in the game, you have got to finish your review and sort of put your thoughts together, so I am not looking for a definitive answer, but are you looking at—let's get this up here. I apologize. I didn't give you any warning.

Is your thought to add and diversify representation on the existing ag and industry trade advisory committee? There is the flowchart up there. The ones in yellow have right now existing environment, labor, public health, universities. Is your thought that we would expand the number of advisory committees themselves or add specific groups to the existing committees or both?

Ms. GARCIA. Our review is ongoing. We began with the Tier 1, with ACTPN, so I can speak to that, in that we looked at the charter and understood the language of the sectors that were to be represented. And then we looked at the list and said, who else needs

to be a part of it? Trade policy affects many American lives and so we had to ensure that it was a diverse group.

The next natural kind of movement as we move forward with the review are the Tier 3s, the ITACs, because their charter is up early next year. So we are looking at that and working closely with Commerce in understanding. The first step we did is asked the members of the ITAC, how is it working? What can we do better? Should we change names? Should there be a combination? But we are absolutely asking those tough questions.

Mr. BRADY. So do you expect some type of reorganization of the existing 16 ITACs, or do you see the addition of more, and I am not pushing you, or is that yet to be determined?

Ms. GARCIA. Yes, sir, it is more to be determined.

Mr. BRADY. Dr. Yager, I am running out of time. But can you give us your thoughts? What progress was made?

Mr. YAGER. I would have to say that, in some ways, the grades are still incomplete, but not necessarily because USTR has not taken actions, but it takes some time for us to understand the implications. One of those, of course, is the pace of negotiations right now doesn't call for as active a set of briefings and meetings as occurred a few years ago when there were an extraordinary number ongoing, not just of the private sector, but also of congressional staff.

I think one other thing that we would note is we understand from the testimony that Ambassador Kirk has been holding meetings with a number of the different panels, but in our checking of the FACA Web site, those have not been put up on the site. So it is not easy for people to understand what kind of meetings are going on with the different advisory committees. So we think they could certainly improve on that to make sure that all meetings that are held are recorded so the transparency of the system is maintained.

Mr. BRADY. Your thought though of the three areas from meaningful, timely, to recomposition, or making sure they are running and fully implemented, and then the composition. Are any of those moving ahead better than others?

Mr. YAGER. We think the plans to ensure that the meetings are continued, the plans to make sure they are rechartered and members who are appointed appear to be very sound. They look like they have put quite a bit of effort into making sure that will happened. That was obviously a major problem and weakened the committees and the ability of the negotiators to hear from the trade advisory people. So certainly they have made great progress in that area.

They have been responsive in the structure area as well. We do believe that it would be beneficial for the public to know why they placed certain members on particular committees. They have made some changes to identify which groups those individual members are representing. We think that is very helpful because it was quite difficult for the public to understand why those representatives were chosen and who they represented. So we think they have made significant progress on that third aspect as well.

Mr. BRADY. Thank you.

Mr. Chairman, thank you for the witnesses.

Chairman LEVIN. Mr. Van Hollen will inquire.

Mr. VAN HOLLEN. Thank you, Mr. Chairman.

I want to thank Chairman Levin and Ranking Member Brady for having this hearing today, and like them, I hope that we can achieve some sort of consensus moving forward when it comes to U.S. trade policy. I look forward to that discussion and dialogue going forward.

I think it is important to look at the role of the trade advisory committees and how we can make them more useful and more effective and also provide assurances to the public that the full range of voices are at the table there. Clearly, the trade advisory committee should have a large representation from U.S. business interests. After all, we are trying to advance a trade policy and increase our exports.

I think we would also agree it is important they have representation from consumer interests and public health interests. We have seen a number of instances recently of challenges to our food safety system here in the United States, and I think if we had more voices at the table advancing public health interests, we would be well served.

I just had a couple of questions in that regard, because if you look at the overall representation on the trade advisory committees in the area of health, you have, as we should, healthy representation from the health care industry, but very little representation from public health groups. In fact, the numbers I have show that of the 65 health-related advisers throughout the tax structure, only two of them currently represent public health interests.

So, Ms. Garcia, I was pleased to hear, as part of the Presidential Advisory Committee, the top tier, you are going to have voices that represent consumer interests and the public health interests. Any idea when you are going to be making those announcements?

Ms. GARCIA. We are working with the White House. It is going through the formal vetting process. So I don't have a timeline, but you and your staff will be one of the first to know.

Mr. VAN HOLLEN. Thank you.

Mr. Doggett and I have introduced legislation to try to ensure that, going forward, we have adequate representation from public health interests, so it is not something left to the whims of any particular administration, because we think that the American public should be confident that, regardless of what administration we have, there are representatives looking out for their public health interests as part of the trade advisory committee structure, and we have proposed the creation of a Tier 2 policy committee that would advance the public health interests at the table.

I see from your testimony that you are in the process of trying to explore the best way to ensure those voices at the table, and I think we are happy to work with you in terms of structuring exactly what form that takes.

But would you agree that it is important to ensure the ongoing representation from those public interest groups, health interest groups, to have something in the legislation to ensure, whether it is a committee dedicated exclusively to that or ensuring that public health voices are there at the policy level committees in adequate

numbers, would you agree that we should do something through the legislative process?

Ms. GARCIA. We will definitely use the review process to determine what is the best way to ensure the public health community is represented in our trade policy decision. At this time, the review of the committee system, we haven't made that determination. But we are focused and looking at steps that we can take immediately.

Mr. VAN HOLLEN. Would you agree that under the current system, the decision as to whether or not you have public health representation in the structure is left entirely to the executive branch?

Ms. GARCIA. We have public health representatives presently at the Tier 2 level as well as at the Tier 3 level.

Mr. VAN HOLLEN. Right, we have them, but they can come, they can go, based on the decisions of the executive branch. Isn't that the case, depending on who is USTR or who the President may be?

Ms. GARCIA. Correct.

Mr. VAN HOLLEN. Then wouldn't you agree, if we want to ensure there are representatives looking out for the public health on an ongoing basis, we should have something that ensures that those voices are at the table?

Ms. GARCIA. I believe that, as we look to each of the different tiers of the committees, we will ask those tough questions and see which voices are not represented and ensure that there is a balance.

Mr. VAN HOLLEN. Okay. Thank you. That wasn't quite responsive, but we look forward to working with you.

Thank you, Mr. Chairman.

Chairman LEVIN. Mr. Van Hollen, since you had 25 seconds left, I think this exemplifies the need to face these issues and to really get the starch out of the discussion of trade and make it a much more vibrant, realistic back and forth.

So I think your legislation helps to illustrate the need.

I think next is our friend from Kentucky, Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

Ms. Garcia, I know the Commerce Department has taken a leading role when it comes to managing and overseeing the Tier 3 ITACs, but I would like to follow up on this issue, maintaining the integrity of the particular perspective that is being communicated to the USTR.

Sometimes when we talk about inclusion of multiple interests, we can get folks that don't even speak the same language or have different definitions for the same terms. Imagine putting engineers and production people and medical people, et cetera, in the same room that don't have common processes or procedures. There could be confusion or conflict that could ultimately hamper the way these systems work.

Many of the Tier 3 ITACs have extremely broad mandates as it is now. For example, ITAC 2 basically covers all capital goods, from ball bearings to drilling equipment and everything in between. ITAC 4 covers all consumers goods, from soap to Harley Davidsons. ITAC 13 has textile producers and apparel companies.

The point I am trying to point out is many of these committees have a membership that is already so diverse and so complicated

that it is enormously difficult as it is to provide information to USTR that both reflects a consensus and is also helpful from a technical standpoint as opposed to the political decisions that influence on a broader base that will be taken into consideration on the first two levels.

This makes me wonder if including even more representatives on these ITACs, which are designed to provide this technical nuts and bolts advice, would complicate the mission so substantially as to make the ITACs effectively useless. It is kind of a moral equivalency issue where every voice is equal, when if fact perhaps a person that has valid concerns that would be represented at a Tier 1 or Tier 2 level might in fact not be schooled in the actual technology or technical aspects of trade or the products that are in discussion in that industry specific ITAC. I think finding that right balance, as you mentioned, is a very critical part, so we have meaningful dialogue that benefits the country as a whole.

In any event, I am getting the impression that everybody thinks the committee tier that they are on is not the tier that informs key administration policy decisions. Some claim that the Tier 1 ACTPN is secret. Other say Tier 2 is where the real action is because those committee meetings are held by high-ranking administration officials. The Tier 3 technical committees have long been accused of being a black box and there is a history of litigation on this very point.

Ms. GARCIA, isn't it the case that each of these tiers plays a unique and specific role, and that together they provide a base of information and input that the administration is going to rely on in crafting trade policy?

Ms. GARCIA. Yes, sir. The committees, as they are now in the three tiers, we rely on them and we ask advice and we seek balanced advice, and we believe that membership is made up in the three tiers. But, again, we are in a review, and those are the types of questions that will we will be asking.

Mr. DAVIS. Do you have a concern that the potential with Tier 1 and Tier 2 having a political tinge to it, which is not necessarily a bad thing, based on the outcome of elections and the administration, but at the Tier 3 level, because the level of arcane technical detail that many of the products necessarily have to deal with because of Federal regulations or the unique needs of potential trading partners, are you concerned that it might not politicize the Tier 3 and reduce its effectiveness if the base is broadened out with many additional interest groups being represented to try to come to consensus?

Ms. GARCIA. I am sorry, I don't know if I understand your question.

Mr. DAVIS. By adding a lot of additional groups that aren't necessarily germane to the immediate product needs recommended, do you think that could have the impact politicizing and thus weakening the ability of the Tier 3 ITACs to do their job?

Ms. GARCIA. No, sir. Again, we depend upon the advisory committee system to be effective, and in that effectiveness, there is diversity in voices. I think that with that inclusiveness and with some transparency, I think it would take away any kind of questions or political questions that there might be.

Mr. DAVIS. The other question I have is on the competitive side when we talk about transparency; businesses that compete against each other sometimes when they are asked for their opinion at the Tier 3 level, thanks to the confidentiality, share proprietary information about their businesses that could affect thousands of employees, American citizens, who are working here in this country.

Are you committed to assuring that that confidentiality would be protected in this transparency process so that proprietary trade and pricing information that is critical to the way these businesses function and compete in both the domestic and international economy would be protected?

Ms. GARCIA. Absolutely. We want this process and this advisory committee to be open, but at the same time, we want to ensure that we are not compromising our trade negotiations or enforcement actions.

Mr. DAVIS. Thank you.

I yield back, Mr. Chairman.

Chairman LEVIN. Mr. Neal.

Mr. NEAL. Thank you very much, Mr. Chairman. There is an obvious disconnect between the perception that the American people have of the benefits of trade and the reality of what most economists will testify to regardless of their political persuasion. What kind of steps might be taken to further engage the American people in these discussions of trade and how its benefits accrue across the board?

I must tell you that trying to discuss this issue in some sectors is nearly impossible, including some parts of my own party who have a reaction that is largely based upon what their constituents witness every day as opposed to this notion that trade ought to lift everybody.

Ms. Garcia, Dr. Yager perhaps.

Ms. GARCIA. Yes, sir. With our outreach, it has been a number one priority for Ambassador Kirk to ensure that the first thing that we did was we updated the Web site and we made sure that we reached out to an on-line community, new generations that are coming of age and wanting to understand about trade and inquiring about it. And so we made sure that that was one way that we brought trade to the discussion.

The second is our outreach, is the Ambassador directly meeting with people and at all levels, from all ages. And I think with our work in my office, it is important that we keep people in touch. We have a weekly newsletter that we highlight as we grow our database.

Mr. NEAL. Dr. Yager.

Mr. YAGER. Yes, sir, Congressman Neal, I think that in some ways the struggles that occurs within the system, whether it is within a particular committee or within, for example, the second tier where there really are difficult discussions about which way a trade policy should go is, in fact, I think a good outcome of the trade advisory system, because it does reflect the debate and should reflect the debate that goes on within the United States to handle and to try to come to decisions about those very difficult issues.

So I think that to some extent a successful system will address those most difficult issues within the United States so that the United States can come to a position and then go to the negotiations with a solid position, but I think that as we have heard from others, there certainly are differences. Some very difficult types of meetings occur when you have a broad array of differences represented within the meeting. But in some ways that is the purpose to accomplish that, to hear those voices and then to come up with a single policy that can be put forward.

Mr. NEAL. I think we all would agree that the opposition to many of these bilateral agreements largely comes from manufacturing States and regions. How might you suggest that we proceed in convincing people who have either lost their jobs, watched the plant close or are in danger of losing their jobs that there are benefits to trade?

Ms. GARCIA. I think one of the first things that we will look at and that I know we have been engaged in is looking first and foremost to have town hall meetings and to go to States or cities.

Mr. NEAL. If you are going to do that in Akron, Ohio, you better bring a helmet.

Ms. GARCIA. Fair enough, fair enough. Again, it is about going and being bold enough and engaging, and that is a priority, and we are looking at doing things like that. But also, you know, it is important to be able to talk about trade and about the fact that we are also ensuring that enforcement actions are being made and jobs are—regarding areas of manufacturing as we trade those goods are being protected as well.

Mr. NEAL. I thought the President's position a week ago on community colleges offered considerable hope and opportunity along the lines that would go far beyond town hall meetings where you try to pursue an esoteric academic position. I thought that the President's effort on the role that community colleges might play in furthering this discussion made a good deal of sense. I think that is a concrete proposal, as opposed to this notion that we can have a seminar to discuss the benefits of trade. One of the difficulties between perception and reality is that when the discussions are over, trade lawyers have their jobs, editorial writers have their jobs, and trade representatives have their jobs. So oftentimes the individual who is in the plant doesn't have his or her job. I think the use of a community college system offers one real possibility as opposed to the usual suggestion that we have had just about retraining. I think that there are those opportunities for individuals.

So thank you, Mr. Chairman.

Chairman LEVIN. I thank you. By the way, Mr. Neal, I think we will hear from the second panel that, in answer to your question, there is a feeling that we need to bring within the advisory structure more vigorous, honest debate of differences on trade policy, that there has been a failure the way it has been positioned and staffed, or appointed, that there hasn't been that diversity of view within the structure to make the advisory committee structure work as effectively as it might.

Let's go on, Mr. Reichert, I think Congressman Reichert from Washington, you are next.

Mr. REICHERT. Thank you, sir. This is for Ms. Garcia. I represent a district in Washington State that is probably one of the most trade dependent States in the country. One out of every three jobs in Washington State is directly related to trade. And I first have to say I was quite disappointed in one of my first hearings here in late February when Secretary Geithner appeared and presented his summary report on the President's budget, and there was no mention of trade as a piece of economic recovery, and it should be a centerpiece, in my opinion, and a focus for our country. So I think it is sort of the forgotten economic stimulus. It is not the end-all answer to everything, but it certainly is one of the important aspects of economic recovery.

So I am glad that we are having this hearing today and glad we are investigating the effectiveness of trade advisory committees and that entire system. But I do think, too, along with all the other members here, it is important for all the voices to be heard, including those of a trade dependent, organized labor, organizations like longshoremen, for example, and the machinists. They should have opportunities for input into our Nation's trade policies.

So there has been a lot of focus on the technical sector specific advisory committees which you have sort of outlined in your testimony. But could you share with the committee what the Office of the U.S. Trade Representative does outside of the formal trade advisory process to ensure that all parties are heard from, or even informed and educated?

Ms. GARCIA. The trade community as well as other stakeholders have been an intricate part. I mean, we stay in touch with them. And what we do with the on-line community, but more than anything, I think what we have had to do is ensure that we spread the word. And Ambassador Kirk recently had a speech, and we ensured that many communities received and understood what was actually being discussed, and why, and how it affects them. So when it comes to our daily work, we touch base with our stakeholders and we touch base with different audiences, but we ensure that we stay in touch when it comes to our outreach.

Mr. REICHERT. So there is no formal process is kind of what I am hearing from you. Am I hearing correct, or is this kind of an informal process that is set up to reach out to people outside of the trade advisory groups? Is there a plan?

Ms. GARCIA. Yes, sir.

Mr. REICHERT. Can you describe the plan to me?

Ms. GARCIA. Well, it is a plan in that we actually touch base with groups when it comes to upcoming discussions. So it is us checking in with groups and with individuals. And we make sure that they are well aware of what is going on that month or that quarter.

Mr. REICHERT. Which groups and which individuals and what communities are you speaking about when you are talking about that communication process?

Ms. GARCIA. It is people that actually are interested and have touched base with us.

Mr. REICHERT. For example.

Ms. GARCIA. Well, it is different trade associations, but it is also small businesses, medium size businesses, State groups that are dependent upon their ports, and so forth.

Mr. REICHERT. Can you give me a specific business or community?

Ms. GARCIA. We have reached out to, I believe it was the National Conference of State Legislators. They have a committee and we go and we ensure that we talk about issues like "buy America" provisions or procurement questions that they might have.

Mr. REICHERT. It still seems a little bit unstructured to me. I would look forward to working with you and the Ambassador and the administration and in looking forward to making some sort of structure that lays out a plan to reach out, educate, and include everyone.

So Mr. Chairman, thank you, and I yield back.

Chairman LEVIN. Mr. Doggett will inquire.

Mr. DOGGETT. Thank you. I think there is a great bipartisan interest in engaging more Americans to support more international trade. But what we see today is that you cannot expect to engage more by excluding all but a select few commercial interests from the decision-making process that develops our trade policy.

While hardly a substitute for the first ever hearing devoted exclusively to trade and environment that I was promised last year, again this year, and which should occur as soon as possible in this subcommittee, today does focus on one important aspect of the mindset, the traditional exclusion at USTR of the broader public interest. If references to considering the environment and workers that are often made in talking about trade policy are to be anything other than just rhetorical flourishes, they must be given meaning in the daily operations of USTR.

Nine years ago I met personally with President Clinton to discuss this issue. Now Chairman Henry Waxman and George Miller joined me in meeting Ambassador Charlene Barshefsky to discuss our concern that nongovernmental, public interest representatives be added to the industry sector advisory committees as they were called then.

The Clinton administration pledged to do just that. But time has passed, and in a decade the acronym has changed but not much else. The so-called Tier 3 committees have never included outside public interests except for when a court has forced them to do so.

I am pleased to have Ms. Garcia here, until recently an Austinite, who is working with Ambassador Kirk, as she has testified, to address this.

The team at USTR that is there today, this new team, cannot be held accountable for the closed shop and the myopic trade policy of the past, but it must be held responsible for fulfilling the pledges of President Obama to change that. These advisory committees are a very good place to start.

Dr. Yager, I think the work of GAO has been important in demonstrating how totally meaningless the so-called public participation in developing trade policy has often been. If Ambassador Kirk called some of these committees recently, he had one more meeting that occurred in the space of several years during the last administration.

I would begin, Ms. Garcia, by asking you—and all my questions are very specific—when can this Congress expect to receive a complete report of the results of the review that you have been describing so that the public can understand fully how you are implementing and fulfilling the pledges of President Obama for reform?

Ms. GARCIA. The review process, as I stated earlier, is ongoing, yes.

Mr. DOGGETT. So I just want to know when it is reasonable to expect that you will report all the details of that process to this Congress.

Ms. GARCIA. As we follow along this review process, we are following along the rechartering timeline.

Mr. DOGGETT. I want to talk about rechartering next. But just the review itself that you are doing, this thorough review to reform and conform to President Obama's pledges, when will we have the report on that here in Congress so that we can begin to understand how you are fulfilling his promise?

Ms. GARCIA. Yes, sir. I don't have a timeline.

Mr. DOGGETT. Will it be this year?

Ms. GARCIA. I hope so. Well, I hope so too, because what has happened here has been going on for too long and your opportunity to change it has been brief, but it demands immediate action.

Let me ask you about something that Dr. Yager testified to a minute ago. I am pleased that on behalf of President Obama that Ambassador Kirk has visited with these various committees, but there is no good reason why that shouldn't have been posted so that we had full transparency as he noted. Let me ask you if you will commit on behalf of USTR to conduct a thorough review of all barriers to public access to trade policy, not just the classification of documents, though that is important, but anything else that keeps of sunlight out of this process, such as providing timely notices of meetings, whether they are telephone conferences or otherwise, the decision to open or close meetings. And will you provide us a report on whether these procedures are necessary, as I know they are sometimes, or whether there are opportunities to reduce or eliminate barriers to the public knowing what is going on between USTR and those representatives on advisory committees?

Ms. GARCIA. Yes, sir. We are looking at what we can publish but keeping the balance of course.

Mr. DOGGETT. When could we expect to have a report on that?

Ms. GARCIA. Again, I don't have a deadline. I don't have a timeline.

Mr. DOGGETT. And just lastly, if you are already beginning the chartering process, when I read these charters, some of them are very narrow in terms of what they include in the advisory committees. And so the advisory sommittee chartering process is itself a decision on whether or not public health representatives will be included.

Has there during the sharp periods where a court forced prior USTR to have public representatives on these ITACs, or industry sector committees, whatever they were called, do you know of any evidence whatsoever that the concerns that have been voiced here about the dangers that would result if the public were representated on these ITACs? Is there any evidence at all that

that ever occurred where somebody related competitive information or the ITAC just became such an area of political conflict it couldn't do its job?

Ms. GARCIA. I have been on the job for 4 months. I am not aware, but I can get that information.

Mr. DOGGETT. I welcome getting it, because I think these arguments are raised, they don't have validity. Members of the ITACs have one competitor revealing information to another competitor who served on the committee. And so why can't the public share in that? Why does it have to be a closed shop where the public is excluded, but a few commercial interests meet privately and share their views with USTR?

That is what we need to know. If there is in evidence there has been harm in the past, there ought to be ways through confidentiality to protect that, but please report back to us promptly on what evidence there is that this has ever been a problem during the times that the courts forced USTR to do what it should have done on its own initiative.

Thank you.

Chairman LEVIN. All right, thank you very much. Mr. Herger.

Mr. HERGER. Thank you very much, Mr. Chairman. I would like to follow up on that line of questioning actually with some concerns that I have. The Federal Advisory Committee Act, or FACA, is a broad, extremely well-intentioned statute, but it uses a one-size-fits-all approach. The strategic activities that USTR conducts often don't fit that broad, blunt approach.

So Congress wisely provided USTR with certain exemptions to FACA. One important exemption is that the trade committee meetings are not required to be open to the public when USTR staff and the ITAC representatives are exchanging sensitive information such as candid commercial information from the businesses or the business side of negotiating positions from the government side. Making these meetings public would give our trading partners access to commercially sensitive information and would also offer a clear line of sight into the U.S. negotiating position. It would seem to me that this would effectively destroy our ability to negotiate the best possible trade result for U.S. workers, farmers, as well as the public interest in these negotiations.

Another possible scenario is that the ITAC would simply cease providing useful information to USTR altogether, because they know it would be scooped up.

I was disappointed to learn that the Oversight and Government Reform Committee reported a bill that would remove some of the USTR's exemptions to FACA statute. In the past our committee has exchanged letters with Oversight on this issue, ensuring that they recognized our bipartisan jurisdictional interests and addressed our concerns. I would hope that this committee take similar action this year to ensure our prerogatives are not overrun by other committees.

Ms. Garcia, could you expand on what would happen to the role of ITACs in our trade agreement negotiations if our trading partners were allowed to monitor ITAC meetings? And would you describe if your agency is comfortable with the substance of the FACA reform bill as reported by the Oversight Committee?

Ms. GARCIA. As we look for opportunities of inclusiveness and transparency we understand that we need to maintain a balance not to compromise our trade policy, and that is absolutely at the forefront of our review and ensuring that as we work and visit with our negotiators when it comes to this review.

Mr. HERGER. And why is that so important to have this balance? Would you go into that just a little bit more?

Ms. GARCIA. I think as you are reviewing a structure you always have to ask those types of questions. If we made this choice, what then would happen. So it is absolutely something that we are always asking ourselves and ensuring that that we keep that balance.

Mr. HERGER. And do you recognize the concern that I have expressed of opening up to our trading partners what it is we are doing and the importance of keeping this within ourselves?

Ms. GARCIA. Yes, sir. Yes, sir. It is important that we have this discussion and that we as an agency are looking at this review. But there is no doubt there is a great deal at hand and we want to keep that balance.

Mr. HERGER. I appreciate that, Ms. Garcia. Thank you, and I yield back.

Chairman LEVIN. Thank you very much.

Mr. Etheridge, it is your turn.

Mr. ETHERIDGE. Thank you, Mr. Chairman. And let me thank both of you for being here. I know today Ms. Garcia is about the advisory committees, but since you are here I want to get at least one question in. I am not going to ask you to respond to it, but I will ask you to get me an answer back from somebody.

Ms. GARCIA. Yes, sir.

Mr. ETHERIDGE. And let me give it to you. Because we talk about advisory committees. They are very important because they give input. I want to talk about a real live situation, where people's lives are being turned upside down, they are losing their jobs and being displaced. And it really is about enforcing our trade agreements with other countries. So let me just share that with you, and then I will come back to a couple of questions on advisory committees. Because in my home State we are looking at 11.1 percent statewide unemployment. Our State is the 3rd worst in North Carolina in terms of a budget crisis. We are a State that is heavily dependent on exports, agricultural exports, manufacturing exports, et cetera.

And recently we were caught in a perfect storm with the outbreak of H1N1, or so-called swine flu. It had nothing to do with hogs except for the fact that it just said swine. So guess what happened to our pork producers? They not only got hit in the chin, they got hit everywhere else. And there is no scientific evidence that that had any impact other than the fact that nine countries now continue to hold restrictions on U.S. pork products as a result of that, most notably China.

And here is my question and I that I want an answer to, what is USTR and the administration doing or, better yet, what will they do to ensure that those markets are open to U.S. pork products since there is no scientific evidence that they are linked? And hopefully I can get something back in writing on that, because that is

having a significant impact on our farmers, but it is radiating all across the whole community.

And secondly, not only do our pork and poultry producers, but all of our economy in our State benefit from access to new markets. So obviously fair trade is important to our State and I know we are looking at a number of opportunities, and I look forward to talking about that in the days and weeks to come.

So my question to you on advisory committees is this, number one, will the administration be seeking legislative changes to the trade advisory system? And if so, what changes are considered desirable?

Ms. GARCIA. Yes, sir, I would be happy to get back to you with that information.

Mr. ETHERIDGE. Are you prepared to answer the last question, and that is will the administration be seeking legislative changes to the trade advisory committee system? And if so, what changes are considered desirable? Do you feel you need to get back to me in writing as well?

Ms. GARCIA. No, sir. At this time we are reviewing the committee system and have not made that determination. We are focused on looking at what we can do immediately in the short term, but——

Mr. ETHERIDGE. Any timelines?

Ms. GARCIA. No, sir.

Mr. ETHERIDGE. Any idea of a timeline?

Ms. GARCIA. Yes, sir. We are working diligently with this review and again following the rechartering process, you know, but we are being efficient and will be timely reporting back to you all.

Mr. ETHERIDGE. Will you be kind enough to keep this committee informed and the members of this committee?

Ms. GARCIA. Absolutely.

Mr. ETHERIDGE. That would be very helpful just so we know where we are going.

Dr. Yager, are there any specific recommendations that you made either in the GAO 2002 report or the 2007 report that have not been implemented by the respective agencies that would ensure that our international trade discussion is open to new perspectives and there is transparency in them that needs to be there for the public interest?

Mr. YAGER. Yes, Mr. Etheridge, let me respond in two ways. First, there is one outstanding recommendation that we have, which is to clarify which issues the members that are appointed represent and explain how they determined, how USTR and the agency determined why they would place those particular members on the committees. We think that would be very helpful for those who would like to observe and be aware of how the trade advisory system is working.

One other thing that we have noticed as we were doing the work, and prior to this hearing, is that there does appear to be a divergence right now between the practice of meeting and what is written in the trade advisory system. So for example, there seem to be a number of liaison groups that are meeting particularly at the Tier 2 level where it is not the principals that are named within

the advisory committee structure, but it is their liaison group that is meeting.

I think one of the things that we would suggest is that when the practice that is occurring within the advisory system diverges significantly from the stated policies, that it probably warrants a review to determine whether any changes need to be made.

Mr. ETHERIDGE. Do they meet on a stated regular basis or on call?

Mr. YAGER. Well, I think what is happening is that in a number of the particularly Tier 2 committees there is a group of liaison officials who are meeting on behalf of their principals. But those are not official meetings and therefore they are not noted in the FACA Web site or in the database. So we think that when a practice like that occurs, it probably is worth looking to see whether those meetings should be happening or if those are an effective way of gathering the input, and maybe the system should be modified to be transparent about the fact that those meetings are taking place.

Mr. ETHERIDGE. Thank you. Thank you, Mr. Chairman. I yield back.

Chairman LEVIN. Mr. Nunes.

Mr. NUNES. Thank you, Mr. Chairman.

Mr. Chairman, I understand the administration is conducting a review of the trade advisory committee system. We are of course doing the same thing here by holding this hearing, and I hope what we are trying to figure out is an offensive strategic way to move forward on our trade initiatives. If that is our goal, then I am all for this hearing.

However, if what we are really talking about is how to provide groups who oppose trade with a greater ability to affect the direction of this administration's trade agenda, then I think we are wasting our time. Because as I survey the current scene it seems to me that these groups are doing a really good job at stopping our trade agenda in the existing advisory committee structure as it currently stands.

When I look around, what I see is these groups have a stranglehold on our efforts to expand exports. We are not moving forward with pending trade agreements with Colombia, Panama, South Korea, and we are not even negotiating new ones. We are not holding hearings in this committee or subcommittee on trade agreements. It appears to me that the unions and the radical environmentalists are winning and the American people are losing.

I will ask a simple question, Ms. Garcia and Mr. Yager, is trade dead in this country? Do either of you see us moving forward at all in any trade agreements?

Ms. GARCIA. The President believes that the United States needs a new framework for trade. But to accomplish this trade agreements need to include strong labor and environmental standards. And we need to do a better job enforcing our trade agreements, as well as domestic policies to help Americans succeed in an increasingly dynamic economy. The President will outline this framework in the near future.

Mr. NUNES. Well, I am waiting with bated breath to see what we are going to do. But as for now I will take it as trade is dead.

Mr. Yager, do you have a comment?

Mr. YAGER. I can make a brief comment, Representative Nunes. We have done work for the Congress in I think a number of areas which we believe would contribute to the discussion. For example, we have done significant work on the trade adjustment assistance policy, which assists dislocated workers. We have done a significant amount of work on monitoring and enforcement on existing trade agreements where we have given some suggestions to the administration on how to better ensure that the trade agreements are effectively implemented.

And finally, we made a significant investment in the system; for example, this particular trade advisory system. We stand ready to assist the Congress in any way to do additional work to help you understand or to discuss the tradeoffs and the issues raised by any of these issues.

Mr. NUNES. Now on that point, Mr. Yager, I think you guys have done several studies at GAO, and you mentioned in your testimony, I think I am quoting you exactly, but in the past 7 years you recommended changes on member appointment and committee rechartering. You also stated that not enough time has passed to assess whether the steps already taken fully address the problem.

Can you expand on that a little bit? I think you were headed there anyway.

Mr. YAGER. Yes. One of the things that Ms. Garcia mentioned is that they have started the rechartering process well in advance of the termination of those committees. And we think that is necessary in order to ensure there isn't a significant break in the process. So we will know whether that is effective as the committee charters expire and they need to be rechartered and add new members.

We do look at the plans and, if they are able to carry out those plans, then it does appear that there will be no break and this particular plan that has been put in place will be effective. But since the recharters have not been necessary yet, it is difficult to know whether the steps taken will in turn be effective.

Mr. NUNES. For both of you, so the countries that we negotiate with, are all their meetings open to the public? Like when we negotiate with South Korea are they open to the public?

Ms. GARCIA. I am not sure on that specific example.

Mr. NUNES. Okay. So do other foreign countries, whether it be Panama, Colombia, Chile, who we have negotiated trade agreements with, did they have public interest groups sitting at the table at every single committee? I think the answer is no.

Ms. GARCIA. I am not sure, sir.

Mr. NUNES. Do you know?

Mr. YAGER. I don't know specifically about those countries. I do know that when we speak to members of our countries and discuss the process for gathering input in the United States we have heard back from some countries that they appreciate the processes that the United States have put in place; for example, having to do with the rulemaking process, the public input into rulemaking and others. And so we actually see that some countries have adopted practices or at least taken some of the practices that we have and utilized those because that provides a greater degree of transparency than they had in the past.

Mr. NUNES. Well, Mr. Chairman, I know my time is up, but I would strongly encourage us here in this committee, the Ways and Means Committee has the jurisdiction over these trade agreements. And I would prefer as elected officials that we do our job similar to how elected officials in other countries do their job and not bring a lot of unelected individuals into this process. I think the process is already long enough, takes too long. At this point it seems like our trade agenda is, if not dead, at least stalled.

I yield back.

Chairman LEVIN. I don't think it is dead. I don't think you mean to say that we should shut out the public from participation in discussion of trade policies, Mr. Nunes. I don't think that is what you are saying.

Mr. NUNES. No. What I am saying, Mr. Chairman, specifically is that we are elected by the people to do our job, and I think if we begin to bring in outside interest groups into this process, whether they be various NGOs or public health organizations or that sort of thing, we are basically I think—in my opinion, we would be delegating our job and our responsibilities that we are elected on behalf of constituents that we represent to others who are unaccountable, and that is my concern.

Chairman LEVIN. We are not delegating any more than when we hold town hall meetings that we are delegating our responsibility.

Mr. Pomeroy is next.

Mr. POMEROY. Mr. Chairman, I would just say that I 100 percent disagree with the line of questioning of Mr. Nunes. And I think a hearing like this is fun to kind of bring out the varying perspectives. I tend to agree, to take the view that there has hardly been a trade deal that our Ivy league educated, silk shirted, trade negotiators couldn't lose in half an hour. We need to have broad input into the process from immediately impacted constituencies. So the advisory process is established to create exactly that.

I think sometimes this whole negotiation business gets to be a club. And they look at how many deals they can put up whether or not there is a win on the board. Good deal, it is a win, bad deal, it is a deal, it is a win. And I think that we need to change that. I don't see trade deals that don't advance U.S. interests—as far as I am concerned they are not worth doing. We need to recalibrate a little bit in how we proceed in that way.

Now one of the things that interests me is this note in the GAO report that increasingly the U.S. advisory committee information which is supposed to be considered and responded to, not necessarily accepted, it sounds like there is going to be quite explicit provisions for transparency in the dialogue with an expectation the advisory committee hears back when there is a departure from their counsel and that that is only occurring about 50 percent of the time. Is that what the study shows, Mr. Yager?

Mr. YAGER. That is correct. We did get significant feedback that certain members, and I do not have a specific percentage, but in our the survey of 2002 we asked that very question. There was a considerable number that did not feel they were being informed when the decision did not go their way and the direction of trade policy was not accepted. So we did have a recommendation that

that we done more systematically, that kind of feedback be provided more systematically.

Mr. POMEROY. Was there any trim line notice? Has that been an increasing practice or that just the professional crew takes or leaves the advice and moves forward without really complying with the expectation they are to report back and maintain a dialogue.

Mr. YAGER. Mr. Pomeroy, maybe the second panel can give you up-to-date information. Our information, we do these snapshots of the views of the committee members at certain points in time. So I cannot give you information as to whether it has improved since that time. As I mentioned earlier, I think the pace of negotiations and the meetings right now is significantly off where it was at one point. So I think there is less opportunity to observe the system and see whether that kind of feedback is being provided.

Mr. POMEROY. And there is more opportunity for our negotiators to school up. I have been amazed at the intellectual capacity of our negotiators to handle so many specifics of so many sectors all at once, but nobody is perfect and that is where this kind dialogue is so particularly important to keep us on track. We have certainly seen that in agriculture where some nuance of a particular crop versus a State trading enterprise, it may look fine in theory but look on the ground there is some application here that our professional staff at USTR needs to know about. To the extent the advisory committee broke down, there becomes a robust dialogue between USTR and the congressional community. That is a bit extraordinary. I think an ongoing, meaningful dialogue with the advisory committee would be a far better practice. It goes back to 35 years of trade policy, so it clearly has been something contemplated, and I just would hope that I think your report has value in terms of making certain we don't get a little soft in terms of the honoring the dimensions of those dialogues that are so important.

I thank the gentleman. I yield back, Mr. Chairman.

Chairman LEVIN. Thank you very much. Mr. Tanner will inquire.

Mr. TANNER. Thank you very much, Mr. Chairman. I am sorry I was delayed getting here. This is a topic of great interest to this subcommittee and very important to our country.

Ms. Garcia, I want to ask you, many of us who see the benefit of trade sometimes do not have the information disseminated to the general public that would bolster our positions, and I wonder, do you have a plan to talk about the benefits of trade in a way that is a little more forceful and a little more specific than we have seen in the past?

Ms. GARCIA. I am sorry, are you speaking—I just wanted to make sure I understood the question.

Mr. TANNER. What is it that you don't——

Ms. GARCIA. Could you repeat the question, sir? I am sorry.

Mr. TANNER. Do you have a——

Ms. GARCIA. A plan.

Mr. TANNER. In the past we have had trade bills that I thought were meritorious. From USTR we are not getting, in my view, the information disseminated to the general public that would bolster our arguments inside the Congress. I want to know if you have any plans to make a more forceful or a more widespread effort to edu-

cate people about the benefits of trade and what it means to job creation in this country. I think it has been woefully inadequate and would like to know if you have a plan to address that.

Ms. GARCIA. Yes, sir. Our Web site that we recently launched is interactive. So people can come on and blog, ask the Ambassador questions, engage the USTR team, as well as video blogs and so forth. So we are absolutely—you know, that is important to us and we are working through different mediums, but definitely our newly launched Web site.

Mr. TANNER. Thank you, Mr. Chairman. I yield back.

Chairman LEVIN. All right. I want to thank you on behalf of all of us for this testimony and for the back and forth. I think these issues are very much alive and trade is with us and expanded trade is with us, issues relate to how we shape the terms of trade, and the role of the advisory committees, I think those roles are important, and this is a hearing and is a step to try to make sure that the back and forth is real, not theoretical.

So thank you again, and we will now call the second panel.

Dan Magraw is the President of the Center for International Environmental Law and a member of the Trade and Environment Policy Advisory Committee. Welcome, Mr. Magraw. Thank you.

Mr. Hoelter is Vice President, Government Affairs of Harley-Davidson. I won't ask you how you journeyed here, whether you came on a Harley-Davidson vehicle. Congressmen sometimes ask people how they arrive here, but I won't ask you that.

Dr. Shaffer is the Co-Director of the Center for Policy Analysis on Trade and Health, and welcome to you Dr. Shaffer.

And Owen Herrnstadt is the Director of Trade and Globalization for the International Association of Machinists, the organization of which has been mentioned here briefly.

And Brian Petty is the Senior Vice President, Government Affairs International Association of Drilling Contractors, and a chairman of ITAC–2 on automotive equipment and capital goods.

Now, each of you have testimony, and thank you for providing it on time. It doesn't always happen. And it has been circulated among the members. So just proceed as you would wish, either referring specifically to the testimony, summarizing it, or highlighting what you think are the most important futures, especially perhaps in terms of what you have heard here today. Welcome to each of you, you have 5 minutes to choose as you wish to proceed. Mr. Magraw, we will start with you.

**STATEMENT OF DANIEL MAGRAW, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW**

Mr. MAGRAW. Thank you very much, Chairman Levin and Ranking Member Brady and the other distinguished members of this subcommittee, for holding this hearing on the critically important topics of transparency and public participation in U.S. trade policy. Congress wisely recognized the importance of transparency in public participation in the 1974 Trade Act, and your remarks this morning have simply reinforced that.

Thank you also for inviting me to speak regarding the environmental aspects of the process. In this respect it is important to note

that for purposes of this conversation and advice on trade policy that the term "environment" also includes protecting human health from environmental threats.

With your permission, I would like to highlight several aspects of my written testimony.

The Center for International Environmental Law, CIEL, and I have considerable experience with the trade advisory committee system. I currently serve on the Trade and Environment Policy Advisory Committee, TEPAC, which is a Tier 2 advisory committee, as did my predecessor at CIEL. I also served as a senior official in three previous administrations and, in that process, was present at the creation of TEPAC and also in its implementation. In addition, a senior attorney from CIEL served as the first public interest representative on a Tier 3 technical advisory committee for the chemical and pharmaceutical industries.

My written testimony contains many specific observations and suggestions. I would like to emphasize three points here. The current system in many respects thwarts transparency and public participation. U.S. trade policy and American interests are worse off as a result, and fixing this will require strong leadership by the administration and robust oversight from Congress.

The first major point is that in spite of the changes that were mentioned this morning by Mr. Yager, the current system thwarts transparency and public participation in important ways. A few examples include USTR often fails to inform or consult TEPAC and other advisory committees. Just an aside, we did not learn about the review that USTR is conducting until we read the announcement of this hearing. So thank you for letting us know that.

When we are informed it often occurs too late, after decisions and texts have been finalized. Tier 2 committees do not have adequate time to review and comment on free trade agreements. The committees lack sufficient diversity. For example, ITAC–3 contains 36 representatives from the chemical and pharmaceutical industries but not a single public interest representative.

Interaction between the tiers is inefficient or nonexistent.

Finally, there is an excessive secrecy and unnecessary classification of negotiating and other trade documents that interferes both with the input we can give and also the input that the public can give.

My second major point is that U.S. trade policy and American interests are harmed by the lack of transparency, consultation and public participation. Let me provide two examples.

The U.S.-Korea free trade agreement contains unprecedented appropriation provisions that radically shift power to foreign corporations at the expense of legitimate U.S. laws protecting health, safety, and the environment. USTR did not inform TEPAC about the nature of these provisions. Instead, we learned about them from another U.S. agency, which was not the Environmental Protection Agency by the way, and insisted on being briefed. By then it was too late. The text had already been finalized.

Here is another example where the absence of public participation and transparency leads to poor U.S. trade policy. USTR has been openly critical of the 2006 European regulation for the Registration, Evaluation, and Authorization of Chemicals, known as

REACH. REACH is an ambitious law that harmonizes health and safety requirements across the now 27 EU member states with important implications for U.S. companies, consumers, and citizens.

In 2009, we on TEPAC learned that some Tier 3 committees had in December of 2008 submitted written recommendations to USTR and the Commerce Department urging a formal technical barriers to trade challenge. This recommendation followed years of aggressive advocacy by ITAC–3, but USTR had failed to notify TEPAC of this. Moreover, USTR strongly resisted requests by TEPAC members to receive a copy of this recommendation, asserting that TEPAC members were legally prohibited from seeing the letter. They later shared the letter with TEPAC members, but the Bush administration's policy opposing REACH apparently remains unchanged. The result is a U.S. policy that completely ignores valuable benefits to American businesses, consumers, policymakers, and others.

My third and final major point is that this situation will not be fixed without strong leadership by the administration and robust oversight by Congress. Discrimination and corruption in institutional cultures regarding transparency and public participation will not change without the person at the top insisting that they are important and must be paid attention to so that U.S. trade policy supports sustainable development; that is, that U.S. trade policy integrates environmental and social policies with economic ones. This requires leadership from the U.S. Trade Representative, the EPA administration, and other high administration officials.

Advisory committee members also must exhibit leadership for the system to be effective and not just window dressing. One positive example is TEPAC's Subcommittee on Fishing Subsidies. There were many reasons that this was successful, but an essential element was that a TEPAC member, in this case an environmental NGO, was willing and able to step up and lead. Unfortunately, this is a rare example of the constructive engagement by USTR that Congress intended. We can do better, and I am cautiously optimistic that we will.

Thank you.

[The prepared statement of Mr. Magraw follows:]

**Prepared Statement of Daniel Magraw**

President and Chief Executive Officer, Center for International Environmental Law; Member, Trade and Environment Policy Advisory Committee

***I. Introduction***

Thank you Chairman Levin and Ranking Member Brady for the opportunity to appear before this subcommittee. I am Daniel Magraw, President and CEO of the Center for International Environmental Law (CIEL), a nonprofit organization that uses international law and institutions to protect the environment, promote human health, and ensure a just and sustainable society.

I currently serve on the Trade and Environment Policy Advisory Committee (TEPAC), a Tier 2 policy advisory committee. Previously I served as a senior official in the U.S. government with direct experience in the creation and implementation of this advisory committee. In addition, a senior attorney from CIEL served as the first public interest representative on a Tier 3 technical advisory committee for the chemical and allied industries.

In this testimony, I will offer some lessons learned from CIEL's experience with the trade advisory committee system. I will also recommend administrative and legislative improvements to enhance transparency and public participation and to en-

sure that U.S. trade policy achieves sustainable development, which necessarily involves integration of environmental, social and economic policies.

I have been asked to address the environment-and-trade aspect of that integration. I would like to stress at the outset that the term "environment" includes human health. The U.S. Environmental Protection Agency's statutes, for example, direct it to protect human health and the environment.[1] Environmental standards are set with human health as a primary consideration. Moreover, trade rules' restrictions on non-tariff barriers affect the United States' ability to protect human health just as they do our ability to protect natural resources. Thus when I use the term "environment," I am also referring to human health.

### *II. Transparency and Public Participation: Congressional Intent of the Trade Act and FACA*

Thirty-five years ago, Congress recognized the importance of transparency and public participation in developing sound U.S. trade policy. I applaud this subcommittee for its continuing oversight of this important issue. The inclusion and consideration of diverse views leads to stronger trade policy reflective of American interests. As the GAO concluded in their 2007 report, "to effectively perform the unique role in U.S. trade policy [that] Congress has given trade advisory committees, certain process issues need to be resolved."[2]

When read together, the Trade Act of 1974[3] and Federal Advisory Committee Act[4] (FACA) demonstrate Congress' commitment to the development of U.S. trade policy with public participation and transparency, subject to limited safeguards for legitimate trade secrets. The Trade Act requires that the U.S. Trade Representative (USTR) seek policy advice from trade advisory committees before entering into trade agreements.[5]

Additionally, by direct reference to FACA, the Trade Act creates a presumption of open meetings, public notice, public participation, and public availability. This mandate is only constrained when it "would seriously compromise the development by the United States government of trade policy, priorities, negotiating objectives or bargaining positions."[6]

FACA requires that the membership of these advisory committees be "fairly balanced" with regard to the viewpoints represented and the functions performed.[7] Some courts have refused to apply that standard, which has resulted in practice in a failure to achieve balance.[8] Additionally, FACA requires some degree of transparency by directing that the committees "ensure that the public [is] informed with respect to the number, purpose, membership, activities, and cost of advisory committees."[9]

### *III. CIEL's Experience with the Trade Advisory Committee System*

Let me share some of our direct experience with the trade advisory committee system and offer lessons learned and suggestions for improvement. As you know, this system includes three tiers of advisory committees.

#### Tier 1—ACTPN

I do not serve on the Advisory Committee for Trade Policy and Negotiations (ACTPN), the Tier 1 committee. However, despite my service on a Tier 2 committee, my security clearance to review trade secrets, and my professional involvement in trade issues, the workings of ACTPN are essentially hidden from view. It is nearly impossible to determine when ACTPN meets, with what agenda, what issues it addresses, or what conclusions it reaches.

#### Tier 2—TEPAC

As a member of the Trade and Environment Policy Advisory Committee (TEPAC), and having been involved in its creation and early operation, I have a much better understanding of how this Tier 2 committee functions. I have witnessed successful

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[1] *See, e.g.* 42 U.S.C. §§ 7401–7671 (1990) [Clean Air Act]; 7 U.S.C. § 136 (1996) [Federal Insecticide, Fungicide and Rodenticide Act].

[2] United States General Accounting Office, An Analysis of Free Trade Agreements and Congressional and Private Sector Consultations under Trade Promotion Authority, 66–67 (2007) [hereinafter GAO Report].

[3] 19 U.S.C. § 2155 (2006).

[4] 5 U.S.C. app. §§ 1–16 (2001).

[5] 19 U.S.C. 2155(a)(1)(A)–(C); (b), (c) (2006).

[6] 19 U.S.C. 2155(f)(2) (2006).

[7] 5 U.S.C. app. § 5(b)(2) (2001).

[8] *See* Ctr. for Policy Analysis on Trade and Health (CPATH), et. al. v. USTR, 540 F.3d 940 (9th Cir 2008).

[9] 5 U.S.C. app. § 3(2) (A)–(C) (2001).

cooperation between the USTR and TEPAC, such as when they worked together on fishing subsidies. A constructive experience was possible for several reasons.

Perhaps most importantly, the elimination of fishing subsidies presents a win-win-win situation: environmentalists want to end over-fishing in the world's oceans, which is encouraged by subsidies; U.S. industry wants to have a level playing field without being disadvantaged by the subsidies provided to foreign fleets; and trade policymakers want to eliminate subsidies as a general matter because they distort trade. In addition, a strong and effective leader (Oceana) on TEPAC put the committee into a proactive mode and headed the effort, which occurred via a subcommittee of TEPAC. In addition, non-governmental participants on the sub-committee could immediately see classified negotiating documents because they already had clearance; and the participants could rely on the familiarity and trust that had been built up through their common experiences on TEPAC.

The TEPAC subcommittee's involvement led to a balanced and more nuanced trade position. Moreover, endorsement of the U.S. negotiating position validated USTR's assertions to other countries regarding its environmental sustainability, which was reinforced by environmental NGOs' activities in Geneva during the negotiations. This experience thus helped forge, and supported, a constructive U.S. trade policy on fishing subsidies.

I have also witnessed some serious shortcomings of TEPAC as a vehicle to advise U.S. policy. I would like to draw your attention to several procedural issues that hinder effective advice by TEPAC. In my experience, TEPAC generally has very little or no access to actual U.S. negotiating positions prior to or during U.S. negotiations. Instead, TEPAC receives general, sometimes perfunctory briefings which lack confidential information and often occur only *after* USTR has completed negotiations. Negotiating texts which are put on the internal, classified website are often out-of-date or already agreed to. This situation makes it essentially impossible for TEPAC to guide or advise U.S. trade policy in a meaningful way.

The Korea-U.S. Free Trade Agreement is an example of a failure of transparency and consultation that led to deeply flawed U.S. trade policy. Without consulting TEPAC, U.S. negotiators agreed to unprecedented and damaging language in the investment chapter, in the process deviating from the corresponding language in other FTAs and the U.S. Model Bilateral Investment Treaty. The lack of involvement occurred despite the fact that USTR was aware of TEPAC's interest because of our repeated expressions of concern in reports to Congress about investment language.

TEPAC finally learned of the new language only via other parts of the U.S. government and only after we insisted on being briefed, but by that time it was too late. The result was: the creation of two new tests for expropriation that will make it easier for foreign investors to successfully challenge U.S. laws and regulations regarding the environment, health and safety;[10] the insertion of a Korean legal concept into the expropriation provision that none of the U.S. negotiators could explain;[11] and the inclusion of a factually inaccurate footnote that also could lead to easier success in challenging legitimate U.S. environmental, health and safety laws.[12]

Another example concerns implementation of the Peru-U.S. Trade Promotion Agreement. Implementation of that agreement led to dozens of deaths during violent protests against decrees (especially one regarding forests) that were promulgated with virtually no public input (under a kind of fast-track authority) and allegedly with the explanation that the U.S. government had required the Peruvian government to promulgate them in order to satisfy environmental and other provisions of the agreement. Among other things, this raises questions about the agreement's public participation provisions that TEPAC, in its February 1, 2006 report to Congress, recommended be improved as soon as possible and which TEPAC "urge[d] USTR and Congress to monitor closely."

In response to questions, USTR staff repeatedly stated that TEPAC had been "robustly" involved during the entire process involving the decrees in question. I respectfully disagree. I urge Congress to investigate this situation to better understand the role of the agreement in this tragedy and the subsequent destabilization

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[10] Korea-U.S. Free Trade Agreement, Investment chapter, Annex B, paragraph 3(b) (the new, unprecedented tests are whether a regulatory action is "extremely severe" or whether a regulatory action is "disproportionate in light of its purpose of effect.").

[11] *Id.,* para. 3(a), sub-paragraph (iii) (the Korean legal concept is "special sacrifice," which apparently is based on German law but in any event appears nowhere in other U.S. agreements or international law generally.

[12] *Id.,* n. 19 to sub-paragraph (ii) (the footnote assumes that regulatory changes are more likely to occur in heretofore heavily regulated sectors than in heretofore lightly regulated sectors, thus ignoring the situation of merging technologies such as nanotechnology, potential changes in scientific understanding of risks, and experience in regulating a sector).

of a U.S. ally. This should include whether the U.S. government insisted on the decrees in question, how it acted to counter any assertions that it had so insisted (if it had not), what positions it took vis-à-vis the transparency and public participation required by the agreement, and how it involved TEPAC throughout.

USTR is under no obligation to respond to TEPAC recommendations, either consensus opinions or dissenting views. This makes it difficult to determine whether USTR has considered or understood our advice. The 2007 GAO report and my own experience attest to the short time frame for TEPAC to formulate a position and draft a report to USTR. The short window (30 days) does not leave adequate time to craft a thorough opinion, particularly when we often do not receive trade agreement text until well after the 30-day window has begun. For example, TEPAC had eleven business days to review the U.S.-Peru Environmental Cooperation Agreement. Every TEPAC report to Congress since the passage of the Trade Act of 2002 has unanimously stressed that 30 days is insufficient.

Furthermore, TEPAC's reports on trade agreements are delivered to USTR and then relayed to the President and Congress. This effectively insulates TEPAC and other Tier 2 advisory committees from interaction with Congress. Our experience is the congressional staff are often unaware of TEPAC's views or even of its existence.

TEPAC's reports are not easily accessible to the public, a practice in direct opposition to congressional intent of the 1974 Trade Act. Stakeholders cannot expect to have meaningful engagement when they are unaware of pertinent trade policies.

Some members of TEPAC would welcome more direct relationship with congressional staff. The staff would also benefit from increased interaction and involvement with the trade advisory committees. Although USTR holds hundreds of meetings with congressional staff each year, GAO reports that many legislative staff expressed frustration with a sense that they did not have meaningful input.[13] Congressional engagement with trade advisory committees would allow both parties to share views at critical junctures during trade negotiations. This practice could enhance the transparency of the negotiating process and lead to a more robust trade policy for the United States.

**Tier 3—ITAC–3**

Let me turn to CIEL's experience with a Tier 3 Industry Trade Advisory Committee (ITAC). Following a 2001 settlement agreement of a civil suit between public interest advocates and the USTR, CIEL attorney Steve Porter was appointed to the ISAC–3 (now ITAC–3), the industry trade advisory committee on chemical and allied industries. After he stepped down the committee was slow to seek a replacement, resulting in a judgment to enforce the settlement in the original civil suit that prevented ITAC–3 from meeting pending another public interest member.[14] The seat was eventually filled by another qualified representative. After this member stepped down, ITAC–3 has continued to meet.

As members of ITACs, NGO representatives have the same obligation to maintain confidentiality of trade secrets as industry representatives. However, public interest representatives are hampered in representing diverse views of their community: on ITAC–3, multiple industry views are represented, but only one NGO was ever on the committee. Today, the membership of ITAC–3 includes thirty-five members representing the chemical and allied industries and not a single environmental representative, despite the terms of a settlement agreement.[15]

The 2007 GAO report highlighted problems that committees have recruiting representatives that are not representing for-profit industries.[16] In my experience, this is typically due to a lack of financial resources.

It is difficult to argue that the inclusion of a single public interest representative on a committee comprising dozens of industry members fulfills FACA's requirement that advisory committees be "fairly balanced." One way to address this issue would be to provide additional resources to recruit and retain public interest representatives, to ensure diverse opinions on the ITACs. In the absence of significant additional resources, increasing the number of NGO "chairs" at these ITAC tables will solve this inequity because they will not be filled.

Another possible remedy is to increase public transparency, as the Trade Act envisioned. In this way, additional perspectives could be brought to bear without the added burdens and delays of security clearances and the committee selection proc-

[13] GAO Report at 29.

[14] *See* Wash. Toxics Coalition v. Office of the United States Trade Representative, 2003 U.S. Dist. LEXIS 25869 (W.D. Wash. 2003).

[15] *See id.;* Industry Trade Advisory Committee on Chemicals, Pharmaceuticals, Health Science Products and Services (ITAC 3), http://www.trade.gov/itac/committees/chem.asp (last visited July 16, 2009).

[16] GAO Report at 67.

ess. Instead of more "chairs," the Tier 3 committees might benefits from more "windows." While others in the NGO community are aware of the opportunity for public comment, many feel it is futile to participate.[17] Opportunities for public involvement and comment should be meaningful for stakeholders at key stages of the negotiating process.

What are the practical consequences of Tier 3 committee operating with little or no participation by public interest representatives? An important and timely example is the U.S. policy on the European Union concerning their 2006 regulation on chemicals known as REACH (for the Registration, Evaluation and Authorization of Chemicals).[18] REACH is an ambitious law that harmonizes health and safety requirements across the now-27 E.U. Member States, with important implications for U.S. companies, consumers, and citizens.

Congress has already documented how U.S. chemical manufacturers and their representatives succeeded in co-opting U.S. foreign policy on REACH under the Bush administration.[19] Key U.S. government documents and communiqués were based on unsubstantiated assertions by these private interests while public interest input and Congressional inquiries were shunned. Ironically the adoption and subsequent implementation of REACH offers valuable benefits to American consumers, exporters, policymakers and others. These include: free access to health and safety information; harmonized rules across a market of nearly 500 million consumers; safer ingredients and products available to U.S. manufacturers, workers and consumers; and competitive advantages for U.S. exporters that already offer superior products.

In 2009 TEPAC members learned that ITAC members had submitted formal recommendations to USTR and the Commerce Department urging a formal Technical Barriers to Trade challenge to the E.U. REACH policy. This recommendation followed years of aggressive advocacy by ITAC–3. However, USTR had failed to notify TEPAC in a timely manner. Moreover, USTR strongly resisted requests by TEPAC members to receive a copy of this recommendation. USTR asserted that TEPAC members were legally prohibited from seeing the letter. They later shared this with TEPAC members. TEPAC has requested a legal opinion on whether there is such a prohibition. With all due respect, I doubt there is.

This example raises troubling questions about USTR's regard for advice from TEPAC. It also demonstrates that Tier 3 committees, which are charged with providing *technical* advice, also engage in broad *policy* advice. Yet the source of this advice is committees that are the antithesis of FACA's fairly balanced standard. I believe that Congress should not only call on USTR to initiate a thorough review of its ill-advised policy on REACH, but it should also give serious consideration to changes that will prevent future cases of Tier 3 committees bypassing Tier 2 committees that have responsibility to advise U.S. trade policy, such as TEPAC.

I do not suggest that the previous administration's misguided policy was solely the result of the advice provided through the trade advisory committee system. However, the failure to ensure effective, meaningful public participation led to the formulation of a U.S. policy to the detriment of clear and compelling U.S. interests.

**Transparency, Participation and Role of Classifying Documents**

It is axiomatic that in order to get public input on these documents, stakeholders need to be able to know U.S. policy and proposed policy. USTR routinely classifies trade negotiating texts and other trade policy-related documents, however. Accordingly, one of the perceived advantages of the advisory committees is that their members have security clearances and thus can view and hear the contents of classified documents. This situation has at least two important effects detrimental to public participation: advisory committee members cannot get input from experts and others who do not have clearances; and, more problematically, the public at large cannot effectively participate at all. I thus suggest that USTR's classification practices be scrutinized to determine whether they meet legal requirements and are necessary for U.S. interests considered as a whole.

**Leadership**

Aside from statutory or administrative changes, the situation described above could be greatly improved through strong leadership by Congress, the U.S. Trade

[17] GAO Report at 58

[18] **Regulation No 1907/2006**, 2006 O.J. (L396) 1 **(EC).** [Regulation on Registration, Evaluation, and Authorization of Chemicals (REACH)].

[19] U.S. House of Representatives, Committee on Government Reform, Minority Staff, Special Investigations Division. A Special Interest Case Study: The Chemical Industry, the Bush Administration, and European Efforts to Regulate Chemicals, April 1, 2004. (*available at* http://oversight.house.gov/Documents/20040817125807–75305.pdf)

Representative, EPA Administrator, and other senior officials. These attitudes are extremely influential with respect to how staffs deal with the advisory committees and how seriously non-trade considerations are taken into account. At times in the past, those attitudes have unfortunately led to the view that Tier 2 committees, at least, are primarily symbolic and that environmental and social issues are peripheral: that it might be all right to leverage them through trade policy but are not integral to it.

With the Obama administration's commitment to transparency and public participation, which they have already demonstrated, I am hopeful that congressional and agency staff can put a renewed emphasis on cooperation and open dialogue within the trade advisory committees, throughout the office of the U.S. Trade Representative and other appropriate agencies. This systemic change can be a powerful catalyst for improving the trade advisory committee system.

***IV. Reflections on H.R. 2293***

Finally, I would like to address pending legislation before the Ways and Means Committee that is relevant to the trade advisory committee system. The bill, H.R. 2293, would amend the Trade Act of 1974 to create a new Tier 2 policy advisory committee known as the Public Health Advisory Committee on Trade (PHACT).[20]

The proposed PHACT bears important similarities to TEPAC, with a primary focus on public health rather than environmental protection. Of course, there are important overlaps between protection of public health and environmental protection. In my opinion, PHACT could be a positive addition to the trade advisory committee system. But it is important that Congress avoid the problems that hamper the effectiveness of other Tier 2 committees, including procedural obstacles and a lack of timely and meaningful engagement by USTR staff and other agencies.

Importantly, provisions of H.R. 2293 would also affect the functioning of the Tier 1, other Tier 2, and Tier 3 trade advisory committees. For example, reports regarding trade agreements would address health and environmental concerns both in the United States and in affected regions. Reports would be made publicly available on the USTR website and appropriate agencies would be required to seek input from trade advisory committees throughout the trade negotiating process, including prior to negotiations. Furthermore, appropriate agencies would be required to respond in writing to the information submitted by trade advisory committees. This expands the role of the advisory committees from existing legislation.

The 1974 and 2002 Trade Acts require committees provide a report to appropriate agencies at the conclusion of trade negotiations and allows them only 30-days to submit reports. The 2007 GAO report concluded that these reporting deadlines are difficult to meet, especially as trade agreement text is often not available on a timely basis and committee members have other obligations.[21] Involving committee members earlier in the negotiating process, as H.R. 2293 would do, is a step in the right direction to ensure that advisory committees have an opportunity to engage early in the process.

H.R. 2293 addresses many shortcomings of the current system. However, the bill does not clarify the ambiguous standard of "fairly balanced" in FACA.

***V. Recommendations***

The existing trade advisory committee system, while well-intentioned, is hampered from achieving its full potential due to legislative gaps, i.e. a failure to clarify "fairly balanced," and procedural impediments. For example, TEPAC is typically unable to offer meaningful input prior and during negotiations, there is an inadequate turnaround time for comments, and TEPAC receives no response from Congress or the USTR after submitting comments. Additionally, there is a sense among some participants that consultations are more symbolic than substantive.

Tier 3 committees, such as some ITACs, appear to engage in policy as well as technical advice, but without any semblance of fair and balanced representation. This deserves serious scrutiny by Congress and by the senior leadership of the Obama administration. It may be impractical to recruit willing representatives to fill new chairs for environmental, consumer, public health and other public interest perspectives. Potential solutions may involve greater transparency, more proactive public engagement, and other means to bring broader perspectives to bear on the development of U.S. trade policy.

Although USTR is required to provide an opportunity for comment to groups or individuals outside the trade advisory committee system, the GAO Report deemed these consultations ineffective. The advisory committees should be a mechanism by

[20] H.R. 2293, 111th Cong. (2009).
[21] GAO Report at 59.

which public interest perspectives can be heard and subsequently considered in the development of U.S. trade policy. Making trade advisory committee recommendations available on the website of USTR and other agencies, as proposed in H.R. 2293, would be a step in the right direction.

Leadership from the U.S. Trade Representative, the EPA Administrator, and other senior officials can play a crucial role in inspiring these agencies to give the advisory committees their proper role in the formulation of U.S. policy. That leadership must be strengthened.

Here are several specific recommendations to improve public participation and transparency.

- The Subcommittee on Trade should exercise its oversight authority by investigating the role of the Peru-U.S. Trade Promotion Agreement and the U.S. government in the recent troubles in Peru, including the degree to which TEPAC was consulted.
- The U.S. government should review its policy on REACH, with full and meaningful involvement of all relevant advisory committees and the public.
- Any legal impediments to sharing information and documents, including reports, between Tier 1, Tier 2, and Tier 3 advisory committees should be identified and removed, by legislation if necessary.
- Trade advisory committees at all levels should have greater involvement from environmental and other public interest stakeholders, with adequate resources to enable participation.
- USTR should review its practices in classifying documents to ensure it meets legal requirements and is in the best interest of the United States.

**VI. Conclusions**

In summary, the trade advisory committee system has an important role to play in informing and improving U.S. trade policy. Greater transparency and more meaningful public participation can substantially improve this process in at least three ways. First, leadership by Congress, the U.S. Trade Representative and other senior administration officials can demonstrate the importance and value of active public engagement. Second, changes in administrative procedures, such as genuine engagement of the advisory committee prior to and during negotiations, are necessary to ensure that input from advisory committees is not too late to inform U.S. policymakers. Similarly, continued efforts are needed to broaden representation and to include more "doors and windows" to permit greater public accountability. Finally, I urge Congress and the Obama administration to revisit the congressional intent of the Trade Act of 1974 and FACA, in particular by clarifying the "fairly balanced" standard and to consider other legislative improvements. This re-commitment to core American values will ensure that the trade advisory committees contribute to the formation of a U.S. trade policy that serves broad U.S. interests.

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Chairman LEVIN. Thank you very much. Mr. Hoelter, you are next.

**STATEMENT OF TIMOTHY K. HOELTER, VICE PRESIDENT, GOVERNMENT AFFAIRS, HARLEY–DAVIDSON MOTOR COMPANY, CHAIRMAN, INDUSTRY TRADE ADVISORY COMMITTEE 04, CONSUMER GOODS**

Mr. HOELTER. Thank you, Mr. Chairman, Ranking Member Brady. I appreciate the opportunity to be here. My name is Tim Hoelter. I am Vice President for Harley-Davidson Motor Company from Milwaukee. I am also Chairman of the ITAC–4, which is the Consumer Goods Committee. I have submitted written comments for the record, so what I will do in my verbal remarks today is focus on a few key issues.

ITAC–4 perhaps has the most diverse industry membership of any of the ITACs. We have representatives representing a broad range of consumer goods, health care products. We have weed whackers, we have washing machines, we have toys, we have pots

and pans, and a number of other things. But despite the fact that our membership is diverse, we stand shoulder to shoulder when it comes to embracing the principals of free and fair trade, and all of us want to create opportunities to enhance our exports overseas. And as an employee of Harley-Davidson let me assure you that growing our own export business is one of our number one priorities, because it brings work into our U.S. factories and helps protect American jobs or in the current environment mitigate the current job losses.

ITAC–4 regularly holds three to four meetings per year. Our agendas include a half dozen or more trade matters on the topic. We receive reports and updates from representatives of the Department of Commerce or USTR staff. The reports vary of course from meeting to meeting. They may concern things like REACH, as we mentioned, import safety, Doha, China, India, you name it. These are all important issues.

One thing I would like to emphasize is that our meetings are typically closed to the public. Because we are all cleared advisers this is invaluable as speakers are able to talk candidly and directly on what the current U.S. Government position is and what factors are driving the decision-making process. The closed meetings also let us as members give advice that is honest, focused, and we hope meaningful policymakers. On occasion some of our members have served as treaty watchdogs by alerting staff to specific instances where trading partners were not living up to their obligations.

As a participant in the ITAC system for the past decade, I appreciate the need to maintain transparency and to ensure that all citizens have the ability to express their views on trade issues. Providing channels of communication and an appropriate forum for engagement for both industry and non-industry groups alike leads to better decision making and more informed decisions by those charged with establishing trade policy.

By the same token, advice and recommendations flowing to policymakers from any one source needs to be clear and focused. The advice needs to be actionable. Having multiple sources, each providing ungarnished advice, is really good, even when it differs, because it gives policymakers more options. On the other hand, advice that is processed down to the lowest common denominator to achieve consensus within a group whose members reflect opposing interests is worthless to senior officials charged with developing coherent trade policy. Advice that goes through a strainer does our trade policymakers a profound disservice.

Chairman Levin, Ranking Member Brady, I also want to thank you for this opportunity, and I also want to share with you how privileged I feel to serve our government in the trade advisory system.

Thank you.

[The prepared statement of Mr. Hoelter follows:]

Testimony of Timothy K. Hoelter
Vice President, Government Affairs, Harley-Davidson Motor Company

Before the Subcommittee on Trade
of the Committee on Ways & Means
of the U.S. House of Representatives
Hearing on
The Trade Advisory Committee System

July 21, 2009

Mr. Chairman, Ranking Member Brady, thank you for the opportunity to appear today before the Subcommittee to testify on the subject of the Trade Advisory Committee system. My name is Tim Hoelter and I am Vice President, Government Affairs for Harley-Davidson Motor Company. I am also Chairman of the Industry Trade Advisory Committee for Consumer Goods (ITAC-4).

Harley-Davidson Motor Company, headquartered in Milwaukee, Wisconsin, manufactures and sells motorcycles, parts and accessories and a wide range of general merchandise including functional riding gear, clothing and gift items. As the leading U.S. manufacturer of heavyweight motorcycles and a world famous brand, last year we sold more than 300,000 premium heavyweight motorcycles in the U.S. and in over 70 foreign countries. Today, exports account for more than 30% of our total motorcycle sales, and

that figure is growing. Consequently, expansion in overseas markets is vital to Harley-Davidson's business strategy and is critical to the well being of the Company and its employees, particularly in these extremely challenging economic times where we have been forced to take difficult actions to manage through the current environment.

I have been employed by Harley-Davidson for twenty eight years, and my involvement in the Advisory Committee system dates back a decade, when I began serving as a member of ITAC-4 (Consumer Goods) and, more recently, as staff liaison to ACTPN. Today, I will focus my remarks on my experience as a member and now Chair of ITAC-4.

ITAC-4 perhaps has the most diverse membership of all the Industry Trade Advisory Committees. Presently, we have 16 members representing a broad range of consumer goods including processed foods, toys, furniture, fine china, glassware, weed whackers and other outdoor power equipment, tobacco products, distilled spirits, video and other amusement games, pots and pans, branded household, beauty and health care products, washing machines and appliances and, of course, motorcycles.

While ITAC-4's membership is quite diverse, we are as one when it comes to embracing the principle of free and fair trade and the need to level the proverbial playing field in order to create sales opportunities for our members overseas. And as an employee of an American manufacturer, I can assure you that growing our export business today is a top priority, because it brings work into our U.S. factories and thus helps protect jobs or at least mitigate job losses in the current economic environment.

All members of ITAC-4 are cleared advisors and all have in depth knowledge of their businesses. They understand the importance and dynamics of trade and how it impacts their industry. ITAC-4 typically conducts 3 to 4 regular meetings per year where we all meet in person. We also can and do call special meetings when the need arises to provide statutory and other advice when requested. Our meeting agendas typically include a half dozen or more trade matters where we receive reports and updates from Department of Commerce or U.S.T.R. staff. Rarely do senior officials present to us, as in most cases we hear from very capable staff professionals with direct knowledge about the matters being discussed. These reports vary from meeting-to-meeting and may concern Doha, China trade compliance, import safety, the EU's REACH Directive,

WTO accessions, the status of certain FTAs and also India, just to name a few. It is important to note that our meetings are typically closed to the public. Because we are all cleared advisors, this is invaluable as speakers are able to talk candidly and directly on what the current U.S. Government position is and what factors are driving the decision making process. The closed meetings also let us give advice that is honest, focused, and meaningful to policymakers. On occasion during these meetings our members have served as treaty watchdogs by alerting staff to specific instances where our trading partners were not living up to their obligations.

Of course, the Industry Trade Advisory Committee system is not the only channel by which our member companies or any interest group for that matter can engage policymakers on matters relating to trade. In my experience, both the Department of Commerce and USTR maintain an open door policy and eagerness to listen to concerns regarding non-tariff market access barriers such as foreign standards and regulations, licensing issues and the like. These agencies and the ITAC process are also very useful to U.S. industry when it comes to the crafting of trade policy and the development of U.S. trade negotiating strategies. As an ITAC member, I and my fellow industry representatives are afforded the opportunity to

convey to U.S. negotiators critical industry recommendations on issues such as import sensitivity, market access priorities, intellectual property protection, foreign taxation, investment restrictions or mandates, regulation (such as forced metric labeling), standards harmonization, and other non-tariff issues that have a significant impact on overall U.S. export opportunity and success. ITAC participation also affords U.S. industry with useful information beyond pure trade policy. For example we often receive at our meetings country briefings that provide insights into the political forces at work within our trading partners' governments and societies that help us to understand the factors that drive their specific trade policies. Having this context helps U.S. industry to craft country-specific business and export plans for key markets that will have a higher likelihood of success.

As a participant in the ITAC system for the past decade, I appreciate the need to maintain transparency and to ensure that citizens have the ability to express their views on trade issues. Providing channels of communication and an appropriate forum for engagement to both industry and non-industry groups alike frankly leads to better and more informed decisions by those charged with establishing trade policy.

By the same token, advice and recommendations flowing to policymakers from any one source needs to be clear, focused and unvarnished. In short, the advice needs to be actionable. And having multiple sources, each providing unvarnished advice is fine, even when it differs, because it gives policymakers more options. On the other hand, advice that is processed down to the lowest common denominator to achieve consensus within a group whose members reflect opposing interests is utterly worthless to senior officials charged with developing coherent trade policy. You can't build a coherent trade policy out of Pablum. Watered down advice, advice that goes through a strainer or does not express clear views or unequivocal recommendations, does our trade policymakers a profound disservice.

Chairman Levin and Ranking Member Brady, this concludes my remarks. I appreciate the opportunity to discuss these issues with you today and I want you to know how privileged I feel to serve my government in the Trade Advisory Committee system. I would be happy to work with the Subcommittee in the future on other trade related issues and I would be happy to answer any questions you may have.

Chairman LEVIN. Well, thank you very much.

Dr. Shaffer, you are next.

**STATEMENT OF ELLEN R. SHAFFER, PH.D., MPH, CO–DIRECTOR, CENTER FOR POLICY ANALYSIS ON TRADE AND HEALTH**

Ms. SHAFFER. Thank you very much, Mr. Chairman, Ranking Member Brady, Members of the Committee.

The global economy has transformed the way we conduct trade and our ability to protect and improve the public's health. Thank you for the opportunity to discuss how the U.S. trade advisory committee system can produce healthy public policy on trade.

I am the Co-Director of CPATH with Joseph Brenner. In 2004, many Members of Congress were surprised to hear their constituents echo our finding that the Australia free trade agreement could interfere with reimportation of drugs into the U.S. Both then Representative Rahm Emanuel and Senator John McCain called for expanding public health representation on trade advisory committees.

I would like to focus on three points mentioned in our written testimony. First, the public health views are essential to assure that the rapidly transforming global economy improves people's lives.

Second, health related industries are robustly represented on the trade advisory committees while public health is virtually invisible.

Finally, both the law and sound policy require that Federal advisory committees represent a fair balance of views and interests. They should also be transparent and accountable.

Trade agreements can foster sustainable economic development, democracy, and peace consistent with public health principles. They can also delay access to affordable prescription drugs and conflict with or subordinate policies that protect people's health.

Recognizing these conflicts, this subcommittee in May 2007, for example, initiated action to limit the impact to so called TRIPS–Plus rules on intellectual property on access to medicines in lower income countries. Further work remains on this issue.

There is a range of vital human services such as water supply, health care, and education, as well as financial and commercial services that have been included in trade negotiations and in trade disputes.

These issues call for public health leadership.

On other issues, like tobacco trade, the 1997 Doggett amendment has banned using government funds to promote tobacco products abroad, but this amendment must be renewed by the new administration.

Thanks to a campaign by CPATH and our allies, there are now technically two public health or three public health representatives assigned to certain Trade Advisory Committees. But since 2005, the number of representatives from health-related industries, including pharmaceuticals, tobacco, alcohol, processed foods and health insurance companies, has grown from 42 to 65. They now sit on 31 committees instead of 25. The pharmaceutical industry alone increased their representatives from 20 to 27. The scales must be balanced.

The GAO and others have recognized public health's legitimate interest in trade policy. CPATH and, again, our allies took the USTR to court in 2005 to compel increasing public health representatives from zero to something. The court said, surprisingly, that even in this stark case, the Trade Act as written is too broad for courts to interpret and enforce. Congress must establish in the law the need for public health representation at all three levels of Trade Advisory Committees.

Together with public health organizations around the Nation, we strongly support H.R. 2293 which, among the other things, would establish a new Tier 2 Public Health Advisory Committee on Trade. As we have discussed, the members of a Tier 2 committee can receive confidential information and analyze it with other cleared advisers who have a similar viewpoint. This allows committee members to gain insight into new policies and helps shape them, while the U.S. Trade Representative would receive a range of views that reflect the public health community.

It clarifies that members representing public health should be nominated and represent organizations in the U.S. with an interest in improving and protecting the public's health.

It calls for regularly scheduled communication among the committees, policymakers and the public, and it calls for the publication of minority views. There has to be a presumption that reports are transparent and open to the public unless there is a compelling interest to the contrary.

Finally, there should be USTR staff that is adequate to support advisory committee members from NGOs that may be more sparsely endowed than corporate representatives.

I want to echo what members have said, that at this moment in history national economies are at a crossroads and the questions of global trade policy are vital ones. It is important to incorporate a meaningful public health perspective. This is the time to set this enterprise on the right course.

Thank you.

Chairman LEVIN. Thank you very much.

[The prepared statement of Ms. Shaffer follows:]

**Insert Graphics 63000.025–035**

CPATH • Center for Policy Analysis on Trade and Health

*Bringing a Public Health Voice to Trade and Sustainable Development*

# Congress Must Act to Add Public Health Representation on Trade Advisory Committees

**Testimony to the Trade Subcommittee**
**Committee on Ways and Means**
**U.S. House of Representatives**

**Hearing on the**
**Trade Advisory Committee System**

**July 21, 2009**

**Ellen R. Shaffer PhD MPH, and Joseph Brenner MA**
**Co-Directors, Center for Policy Analysis on Trade and Health (CPATH)**

| Industry Represented | 2005 | 2005 | 2009 | 2009 |
|---|---|---|---|---|
| | No. of Advisory Committees | No. of Industry Representatives | No. of Advisory Committees | No. of Industry Representatives |
| **Pharmaceuticals** | 6 | 20 | 7 | 27 |
| **Tobacco** | 2 | 7 | 3 | 6 |
| **Alcohol** | 4 | 6 | 5 | 8 |
| **Food** | 11 | 4 | 11 | 7 |
| **Health Services, Products, Insurance** | 2 | 5 | 5 | 17 |
| **TOTAL:** | **25** | **42** | **31** | **65** |

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**Congress Must Act to Add Public Health Representation on Trade Advisory Committees**
**Testimony to the Trade Subcommittee - Hearing on the Trade Advisory Committee System**
**Ellen R. Shaffer PhD MPH, July 21, 2009**

Mr. Chairman and Members of the Committee, the forces that shape our modern world have transformed both the way we conduct trade, and our ability to protect and improve the public's health: dramatic changes in financial markets, communications technology and transportation affect the prosperity and well-being of individuals and nations. Thank you for the opportunity to talk with you today about the critical importance of assuring that the U.S. trade advisory committee system keeps pace with these developments, and provides for effective and timely communication between trade policy-makers, and public health advocates and professionals.

I am the Co-Director, with Joseph Brenner, of the Center for Policy Analysis on Trade and Health, CPATH, an independent research organization that aims to bring a public health voice to issues of trade and sustainable development. We became familiar with the trade advisory committee system during our research on the U.S.-Australia Free Trade Agreement in 2004. We found the advisory committee reports illuminating but one-sided, and noted that the members of the relevant committees represented industry exclusively. This quickly came to the attention of many members of Congress, who were surprised to hear their constituents echo our conclusions, that this apparently uncontroversial agreement had implications for access to affordable prescription drugs in the U.S., including the right to re-import medicines.[1] Many members, who nevertheless voted for the agreement, called for including public health voices on trade advisory committees, to assure that Congress and the public are fully informed. Public health remains virtually absent from the committees, while representation by health-related industries has increased.

The law requires that federal advisory committees represent a fair balance of views and interests. We believe that such a balance best serves the interests of the nation and the economy. Both Congress and the new Administration should take action to improve our policy-making process by balancing the perspective of health-related industries with the views of those concerned about the public's health. HR 2293 recommends steps Congress should take now to redress the present imbalance. We fully support the proposal in HR 2293 for a Tier 2 public health advisory committee, in addition to appointing public health representatives to the ACTPN and relevant Tier 3 Committees.

We would like to discuss three main themes today:

**1. Public health views are essential to assure that the rapidly transforming global economy improves people's lives.**

**2. A public health presence on all three tiers of trade advisory committees is required for legitimate balance of interests. Health-related industries are robustly represented on the trade advisory committees, including pharmaceuticals, tobacco, health insurance, processed foods, and alcohol beverages.**

**3. Congress must act to add public health voices to trade advisory committees. Enacting HR 2293 would establish a Public Health Advisory Committee on Trade (PHACT), a Tier 2 committee essential for the trade advisory committee system to achieve balance, transparency and accountability.**

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[1] U.S.-Australia Free Trade Agreement, Pharmaceutical Annex 2-C; Chapter 15 Government Procurement, Art.15.11.; CPATH, The U.S.-Australia Free Trade Agreement Can Preempt Drug Reimportation Bills, Challenge VA and Medicaid Drug Price Controls, July 9, 2004
http://www.cpath.org/sitebuildercontent/sitebuilderfiles/cpathanalysis7-9-048.pdf

## 1. Public health views are essential to assure that the rapidly transforming global economy improves people's lives.

As the Committee has noted, the trade landscape has changed dramatically since the 1980s. The pace and number of cross-border transactions have accelerated, though moderated by the current financial slowdown. The chain of production and consumption of goods frequently crosses borders. Services from finance to health care are major economic drivers in developed countries. Transnational corporations have become more concentrated. Millions in poor countries have emerged from poverty, at the same time that economic inequality is increasing among and within nations.

Trade agreements establish countries' mutual rights and obligations with regard to trade. Once focused on setting tariffs on goods, they now address rules that govern critical areas that are a matter of public debate at the national and international levels: intellectual property rules on access to medicines and to information; services ranging from banking to health care and water supply; government procurement for grants and contracts; and agriculture. They can provide a basis for altering domestic U.S. laws and policies, as well as those of our trading partners. Trade rules must balance between protecting corporations' ability to operate within uniform and predictable rules, and the obligations of governments to protect the public's safety and wellbeing.

Trade agreements can foster sustainable economic development, democracy, and peace, consistent with public health principles that prioritize achieving and protecting the health and wellbeing of individuals, communities and populations.[2,3] They can also conflict with or subordinate policies that prioritize people's health, and equitable access to health-related services.[4]

Enforcement of a number of common trade rules requires balancing commercial and health concerns. For example, trade rules that allow nations to adopt and enforce measures necessary to protect human, animal, or plant life or health, also require that such measures cannot arbitrarily or unjustifiably discriminate between countries or be a disguised restriction on international trade. Domestic regulation rules regarding services similarly require that rules for licensing and qualifications, and technical standards, must be no more burdensome than necessary to ensure the quality of a service. Challenges before trade tribunals claiming that public health measures violate trade rules have been successful in almost all cases. Investor-state provisions that allow corporations to file charges against governments have enabled frivolous and damaging disputes. The Metalclad toxic waste site case against Mexico, and the Methanex/MTBE case against the U.S., are classic examples of charges that exposed populations to unjustifiable harm.

We discuss below issues of particular recent concern for both trade and health: access to affordable medicines, tobacco control, and services. Other public health concerns at issue, which we do not discuss here in detail, include the ability of local, state and national governments to regulate clean and safe air, water, food, consumer products; workplace environments, transportation systems; whether government procurement contracts can specify standards for medical and financial privacy, quality and performance, local economic development, and environmental protection; and the distribution of alcohol beverages.

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[2] Institute of Medicine. The future of public health in the 21st century. National Academies Press, Washington, DC. November, 2002. http://www.iom.edu/Object.File/Master/4/165/0.pdf

[3] World Health Organization. Constitution of the World Health Organization. http://www.who.int/rarebooks/official_records/constitution.pdf.

[4] United States Department of State. Metalclad Corporation v. United Mexican States. http://www.state.gov/s/l/c3752.htm.

- **Intellectual Property Rules and Pharmaceuticals**

High prices restrict access to prescription drugs in lower income countries and also in developed countries which lack regulatory mechanisms to address drug pricing, such as the United States. Few useful innovative drugs are being developed, despite substantial revenue from drug sales. There is insufficient research into therapies for conditions prevalent in low-income countries.

Trade agreements enforce, extend, and progressively strengthen intellectual property (IP) rules internationally, such as patents, data exclusivity and linkage, that offer monopoly marketing rights to pharmaceutical companies which therefore exert tremendous influence over prices. The World Trade Organization's (WTO) Doha Declaration on Public Health notes that intellectual property protection is important for the development of new medicines. But it also states that IP rules "should not prevent [countries] from taking measures to protect public health." It reaffirms the right of WTO countries to use the flexibilities in TRIPS (Agreement on Trade Related Aspects of Intellectual Property Rights), including their right to issue compulsory licenses to produce brand name or generic equivalents of originator companies' drugs, and parallel importation. Respect for the Doha Declaration, and a fair balance of rights, was also stated as a Congressional objective in the Trade Act of 2002.

These rights were eroded in a number of U.S. bilateral and regional agreements with Jordan, Chile, Singapore, Morocco, Australia and Central America. Civil society organizations in the U.S. and in partner nations raised concerns, which frequently delayed negotiations. In May, 2007, with leadership by the Trade Subcommittee, Congress took action to limit negotiations with lower-income countries on "TRIPS-Plus" IP rules.

**There are 27 pharmaceutical industry representatives on 7 different trade advisory committees.** Public health advocates have developed important proposals, ranging from easing the application of TRIPS-Plus rules to reformulating patent rules to incentivize innovation. These views should be included and incorporated in the trade advisory committee system.

- **Tobacco Control and Protection of Public Health**

Globally, tobacco use is expected to kill over 10 million people by 2030. Seventy per cent of the deaths are expected to occur in low and middle income nations. Worldwide, tobacco use is more prevalent among the poor, the uneducated, and those least informed about the effects of tobacco use. [5]

According to the Pan American Health Organization: "Transnational tobacco companies…have been among the strongest proponents of tariff reduction and open markets. Trade openness is linked to tobacco consumption."[6] Liberalization of trade in tobacco opens countries to competition from lower priced foreign tobacco products, leading to lower prices in the importing country. Liberalization, and lower prices, are therefore associated with greater tobacco use.

A nation that imposes restrictions on tobacco imports, or on the distribution, labeling or advertising of cigarettes, may be challenged to prove that these restrictions are "necessary" for tobacco control, and are less restrictive on trade than alternative health protections—for example,

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[5] E R Shaffer, JE Brenner, and T P Houston. Research Paper: International trade agreements: a threat to tobacco control policy. Tobacco Control 2005;14(Supplement 2.

[6] D. Woodward, N. Drager, R. Beaglehole, D. Lipson. Globalization, global public goods, and health. In: Trade in Health Services: Global, Regional and Country Perspectives. N. Drager and C. Vieira, Eds. Washington, DC: PAHO, 2002. pp 6-7.

consumer health warnings. The health protective alternatives can be hypothetical, and need not be demonstrably effective or politically feasible.

The Doggett Amendment to the Foreign Service Act, passed by Congress in 1997, banned the use of government monies from the Commerce, Justice, and State Departments to promote the sale or export of tobacco overseas or to seek the removal of any nondiscriminatory foreign-country restrictions on tobacco marketing. However, it is subject to annual renewal, and compliance is up to the USTR and other Agencies. Unfortunately, the Doggett Amendment has not been honored for the last 8 years. The U.S. has negotiated eliminating tariffs on tobacco products as well as leaf in bilateral and regional agreements, including the U.S. Singapore Agreement and CAFTA. It is time for a change. There is a single public health representative on one of the committees concerned with tobacco leaf, compared with **6 tobacco industry representatives on 3 different trade advisory committees.** A new Tier 2 public health advisory committee on trade as described in HR 2293, would offer the opportunity for critical public health analysis and advice on the range of trade provisions at issue.

- **Trade in Services and the Nation's Health**

A range of vital human services such as water supply, health care, and education, as well as financial and commercial services, have been the included in trade negotiations, and in some disputes. These issues call for public health leadership. Antigua's trade dispute challenging the U.S. regulations on internet gambling came as a surprise to some U.S. negotiators, who stated they had not intended to include this activity in the commitment on recreation. A similar misunderstanding contributed to invalidating a Mexican surcharge on telecommunications under the WTO's General Agreement on Trade in Services.

In this case, again, it is imperative not only to include public health voices on individual Tier 3 committees, but also to comprise a Tier 2 committee composed of public health representatives. There are inevitably complex issues regarding the relationship of important public health protections, the concerns of domestic and foreign service suppliers, and the appropriate national and international locus for decision-making on a number of issues. A well-informed public health advisory committee would provide a valuable forum for analysis and consultation with other interests.

## 2. A public health presence on all three tiers of trade advisory committees is required for a legitimate balance of interests. Health-related industries are robustly represented on the trade advisory committees, including pharmaceuticals, tobacco, health insurance, processed foods, and alcohol beverages.

Five years ago this month, during debate in the U.S. Senate on the US-Australia Free Trade Agreement, Congress expressed concerns about the extreme imbalance of the trade advisory committees. Senator John McCain said:

> …I am astonished that [the US Trade Representative] would include language [in the US-Australia FTA] which would impair our ability to pass and implement drug importation legislation…When Americans wonder how this continues to happen, maybe they should take a glance at the list of intellectual property "advisors" who worked with the negotiators. These advisors include representatives from--guess who--the pharmaceutical industry as a whole, and

other lobbyists with a direct interest in blocking drug importation. How many public health and consumer advocacy groups were included on this committee? Zero.[7]

**Legal Framework For Trade Advisory Process**

The trade advisory committee system was established by Congress in Section 135 of the Trade Act of 1974 to institutionalize domestic input into trade negotiations from interested parties outside the federal government.[8] As the Subcommittee has noted, through the trade advisory committee system, "…U.S. trade negotiators receive information and advice…with respect to U.S. negotiating positions before and during trade negotiations." Trade advisory committees are subject to the requirements of the **Federal Advisory Committee Act (FACA)[9] which requires that each advisory committee covered by the Act be fairly balanced in terms of points of view represented and committee functions performed.**[10] One of the primary purposes of FACA was to end industry domination of advisory bodies.[11] Today, the structure of the US Trade Advisory Committees is extremely imbalanced, with domination by industries whose activities have an impact on public health, and notable and problematic absence of representation from the public health community.

Over the years, Section 135 was amended several times to broaden the purposes for which trade advisory committees provide advice to executive branch officials. For example, the law expanded the scope of topics on which the President was required to seek information and advice, from "negotiating objectives and bargaining positions before entering into a trade agreement," to the "operation of any trade agreements, once entered into," and on other matters regarding the administration of U.S. trade policy.[12] The law was also amended to include additional interests within the advisory committee structure, such as the services sector and state and local governments. Amended legislation also requires the executive branch to inform the advisory committees of "significant departures from their advice."[13]

In regard to FACA's requirement that each advisory committee covered by the Act be fairly balanced in terms of points of view represented and committee functions performed,[14] the legislative history of FACA "shows that the fair balance requirement was intended to ensure that persons or groups directly affected by the work of a particular advisory committee would have some representation on the committee."[15] The FACA fair balance requirement applies to the trade advisory committees established under Section 135 of the Trade Act.[16]

**Structure Of Trade Advisory Committees**

As the Trade Subcommittee noted in the call for this hearing: "The system is arranged in three tiers: the President's Advisory Committee for Trade Policy and Negotiations (ACTPN), five policy advisory committees dealing with environment, labor, agriculture, Africa, and

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[7] Congressional Record: July 15, 2004 (Senate) Page S8178-S8217] From the Congressional Record Online via GPO Access [wais.access.gpo.gov] [DOCID:cr15jy04-147] H.R. 4759, the Australia Free Trade Agreement.
[8] GAO-02-876 International Trade p.4. P.L. No. 93-618, 88 Stat. 1996, codified at 19 U.S.C. § 2155
[9] Ibid; 5 U.S.C. App. §§ 1-14.
[10] Ibid. § 5(b)(2).
[11] *Northwest Ecosystem Alliance v. USTR*, No. C99-1165R (W.D. Wash. Nov. 8, 1999); GAO-02-876, op.cit., p.62.
[12] GAO-02-876 International Trade p.7; Pub. L. 96-39, 93 Stat. 308.
[13] Ibid; 19 U.S.C. 2155(i).
[14] Ibid. § 5(b)(2).
[15] Ibid., p.57.
[16] GAO-02-876, p. 58; *Northwest Ecosystem Alliance v. USTR,* No. C99-1165R (W.D. Wash. 1999).

intergovernmental issues, and 22 technical advisory committees in the areas of industry and agriculture. The trade advisory committees have participated in the formulation of policy for all trade negotiations and provided advice to the Executive and Congress on concluded trade agreements prior to implementation."

There is no formal relationship among the three tiers. The USTR assumes a leadership role, administering the advisory committees, along with the departments of Agriculture, Commerce, and Labor.

Working jointly with other relevant executive departments, USTR has the discretion to create, change, and terminate committees in tier 2 and tier 3. Legislative history of the 1979 amendments to section 135 of the Trade Act[17] indicates congressional interest in broadening representation of the tier-2 and tier-3 committees to include other interests.

An extensive group of advisory committees now provide formal recommendations to the official U.S. trade negotiating agency, the Office of the U.S. Trade Representative (USTR). In 2002, the United States Government Accountability Office (then the General Accounting Office) examined the role, structure, and system of the trade advisory committee system. **The GAO Report found that "new stake holders in the trade process, such as public health…have limited or no participation in the formal committee system**, even though topics such as intellectual property are of interest to them."[18]

**Lack of Public Health Representation on Trade Advisory Committees Is Endemic**

In November, 2003, U.S. health leaders called for caution in negotiating international trade agreements. Former U.S. Surgeon General Dr. David Satcher, joining representatives from the American Medical Association, American Nurses Association, the American Public Health Association, and the Center for Policy Analysis on Trade and Health (CPATH), to issue an historic "Call for Public Health Accountability in International Trade Agreements."

During the 2004 Congressional deliberations on the US-Australia Free Trade Agreement (FTA), members of the House and Senate expressed concerns about the extreme imbalance on trade advisory committees and lack of representation from public health. Congress raised objections to provisions in the agreement related to pharmaceuticals and intellectual property that they had been unaware of that could have an impact on Congressional efforts to authorize re-importation of drugs. They also expressed concern about the potential impact on current U.S. health care programs, including on Veterans Affairs, Medicare and Medicaid, and urged that such provisions should not serve as precedent for future trade agreements.

On the effect of the imbalance on the trade advisory committees on the American people, Rep Rahm Emanuel expressed his disappointment that:

> …an otherwise strong Free Trade Agreement has been tainted by provisions designed to protect a captive market for the prescription drug industry in this country…Eli Lilly, Schering-Plough, PhRMA were all on the advisory board to the USTR when it came to negotiating this trade deal, and we are setting a precedent, forcing Americans again to continue to pay the highest pharmaceutical prices than anywhere in the world when we could have provided

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[17] GAO-02-876, p. 60; P.L. No. 96-39, 93 Stat. 308-10.
[18] Ibid, p. 40.

> Americans the chance of a free trade agreement where we reopen markets, bring in competition, lower the prices around the world.[19]

Restructuring of the trade advisory committees in August, 2004, did not address this problem. There continued to be strong representation in the advisory committee structure from the industries with a direct financial stake in trade, including pharmaceuticals and tobacco..

An analysis by the CPATH in 2005 found that the number of representatives from the health-related pharmaceutical, tobacco, alcohol, processed food, and health services and products industries totaled 42 representatives on 25 committees. The pharmaceutical industry had 20 representatives, and the tobacco industry had 7. The Chair of the Advisory Committee on Consumer Goods (ITAC 4) was from the corporate tobacco giant Altria. The Chair of the Services and Finance Industry advisory committee (ITAC 10) was and today still is the president of the U.S. Coalition of Service Industries, the largest lobbying group in the U.S. of services companies, including health services.[20]

The extent of the representation from the public health community in 2005 persisted: Zero.

**Requests for Public Health Representation on U.S. Trade Advisory Committees**

In May, 2005, public health organizations, including the Center for Policy Analysis on Trade and Health, American College of Preventive Medicine, the American Nurses Association, the American Public Health Association, the California Conference of Local Health Officers, The National Association of Community Health Centers, Physicians for Human Rights, and Physicians for Social Responsibility, sent a letter to USTR Rob Portman requesting the Administration to ensure that the concerns of the health of individuals, communities, and populations be taken into account in developing U.S. trade policy, and strongly encouraged appointment of public health representation on 7 relevant existing Tier 3 advisory committees, and the creation of a new Tier 2 public health advisory committee, to provide information, reports, and advice to and consult with the President, Congress, and the US Trade Representative.[21] Public health organizations cited issues considered by US trade advisory committees and provided analysis of the public health and health care interests and work affected. Issues considered by advisory committees which were cited in a report to the USTR as being of relevance and importance to public health included: agriculture; government procurement; health-related services; insurance; investment; intellectual property rights and pharmaceuticals; movement of personnel; regulations regarding hazardous substances including alcohol and tobacco; and transparency.[22]

A concurrent letter was sent to the Ambassador Portman from seven tobacco control organizations urging advisory committee appointment of organizations working to ensure the ability of governments to regulate or control trade in, access to, and marketing of tobacco and tobacco, citing the imbalance in the advice provided by advisory committees to the USTR.

In December, 2005, CPATH and others filed a lawsuit seeking representation on trade advisory committees. In decisions in 2006 and 2008, both District and appellate courts found that although CPATH and public health have standing to claim injury due to lack of representation on trade

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[19] Congressional Record, July 14, 2004 House of Representatives debate on the U.S.-Australia Free Trade Agreement, H.R. 4759. http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi, H5708.
[20] ITAC 10 Membership, http://www.ita.doc.gov/itac/committees/services.asp, accessed 7-15-09.
[21] Letter to USTR Robert Portman, May 2, 2005, http://www.cpath.org/sitebuildercontent/sitebuilderfiles/healthrequestustrdoc5-2-05.pdf.
[22] http://www.cpath.org/sitebuildercontent/sitebuilderfiles/ustrcommitteeswarrantinghealthrep5-05.pdf.

advisory committees, the Trade Act's standards are insufficient for courts to determine a proper balance of membership.[23] In contrast, the court cited comparable statutes that designated at least broad groups of constituents to be included.[24] **The courts suggested that Congress and/or the Administration act to clarify further their intentions to address the obvious imbalance.**

In June of 2006, 6 key Senators and 9 Congressional Representatives, including Senator Kennedy, and Representatives Stark, McDermott, and Emanuel, urged the USTR to appoint a public health representative to the top Advisory Committee for Trade Policy and Negotiations, and to create a new Tier 2 advisory committee, specifically addressing public health, to provide advice, technical information, and guidance on policies affecting health care, global health, environmental health, and other important issues.[25]

The absence of and continued need for public health representatives were chronicled in the September 2007 GAO Report entitled, "Intellectual Property – U.S. Trade Policy Guidance on WTO Declaration on Access to Medicines May Need Clarification."[26] The report found that input related to public health into U.S. trade negotiations had remained limited since Congress enacted the Trade Promotion Authority (TPA) in 2002. Two individuals associated with public health were appointed to two advisory committees that address pharmaceuticals, otherwise composed of 20 and 33 private sector representatives from the pharmaceutical and other industries. Eric Lindblom, representing the Campaign for Tobacco Free Kids was appointed to an agricultural trade advisory committee on tobacco, cotton and peanuts. .The report found little evidence that "USTR discussed the concerns submitted about the public health impact of FTAs with U.S. health agencies or other members of the public health community,"(p.55) and that there was little evidence that HHS or other U.S. agencies have determined whether FTAs affect public health, either positively or negatively.(p.52) As a possible explanation for the lack of consideration of public health concerns, the report notes that input USTR receives through informal channels (outside the trade advisory system) "may lack the weight of formal private sector input on public health issues in trade agreements."(p.57) The report proposes that if Congress is concerned over USTR's approach to date, it may wish to specify more clearly its intentions related to balancing public health concerns and the negotiation of IP protections in trade agreements.(p.6)

**U.S. Trade Advisory Committees in 2009 - Increased Domination by Corporate Health Interests**

In May, 2009, CPATH's updated analysis of the composition of U.S. trade advisory committees found that over the past five years, health-related industries have significantly increased their representation on advisory committees. The only decline is in tobacco industry representation.

The number of representatives from health-related industries increased to 65, from 42 in 2005, and the breadth of representation from health-related industry representatives increased from a presence on 25 committees to presence on 31 committees. The pharmaceutical industry increased their representatives to 27. The change is illustrated in the table below.

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[23] CPATH V OFFICE OF US TRADE (9th Cir. 2008), Federal Circuits, 9th Cir. (August 22, 2008), Docket number: 06-16682, Permanent Link: http://vlex.com/vid/cpath-v-office-of-us-trade-41960551

[24] U.S. District Court, No. C05-05177 MJJ, Order Granting Motion To Dismiss, Case 3:05-cv-05177-MJJ Document 28 Filed 06/29/2006

[25] Letter to USTR Susan Schwab, June 14, 2006, from U.S. Congress, http://www.cpath.org/sitebuildercontent/sitebuilderfiles/letter_ustrschwab_14june06.pdf.

[26] GAO-07-1198, Intellectual Property, http://www.gao.gov/new.items/d071198.pdf, p. 5.

| Industry Represented | 2005 | 2005 | 2009 | 2009 |
|---|---|---|---|---|
| | **No. of Advisory Committees** | **No. of Industry Representatives** | **No. of Advisory Committees** | **No. of Industry Representatives** |
| **Pharmaceuticals** | 6 | 20 | 7 | 27 |
| **Tobacco** | 2 | 7 | 3 | 6 |
| **Alcohol** | 4 | 6 | 5 | 8 |
| **Food** | 11 | 4* | 11 | 7* |
| **Health Services, Products, Insurance** | 2 | 5 | 5 | 17 |
| **TOTAL:** | **25** | **42** | **31** | **65** |

* Does not include the industry-dominated APAC and 6 Agricultural Technical Advisory Committees

- 4 representatives from the pharmaceutical industry or representing pharmaceutical interests sat on the Advisory Committee for Trade Policy and Negotiations (ACTPN), the top advisory committee providing general advice to the President;
- 11 out of 35 members of the Industry Trade Advisory Committee on Chemicals, Pharmaceuticals, Health Science Products and Services (ITAC 3) were from the pharmaceutical industry or representing pharmaceutical interests;
- The tobacco industry had 6 representatives on advisory committees including the advisory committee on Consumer Goods (ITAC 4);
- The alcohol industry had 8 representatives spread across 5 advisory committees.
- Representatives from the health services, health products, and health insurance industries totaled 17, serving on 5 committees, including 2 on the ACTPN.

## 3. Congress must act to add public health voices to trade advisory committees. Enacting HR 2293 would establish a Public Health Advisory Committee on Trade (PHACT) and would help reform the trade advisory committee system to achieve balance, transparency and accountability.

**It is imperative that Congress establish in law the need for public health representation at all three levels of trade advisory committees.**

**We strongly support HR 2293, which:**

**Requires public health organizations to be included on the Advisory Committee for Trade Policy and Negotiations**.

**Establishes a new Tier 2 Public Health Advisory Committee on Trade (PHACT)**. The advantage to the USTR and to the members of a Tier 2 committee is that they can receive confidential information, and analyze it with other "cleared" advisors with a similar viewpoint. In this way, committee members gain insight into new policies and help shape them, while the USTR would receive a range of views that reflect the public health community.

We also call for additional public health representatives on Tier 3 committees, including Chemicals and Pharmaceuticals (ITAC 3), Consumer Goods (4), Distribution Services (5), Information and Communications Technologies, Services, and Electronic Commerce (8), Services and Finance Industries (10), Customs Matters and Trade Facilitation (14), Intellectual Property Rights (15), Intellectual Property Rights (15), and Standards and Technical Trade Barriers (16).

**Specifies that members of the Tier 2 PHACT are to be appointed from among individuals who are nominated by and represent organizations in the United States with an interest in improving and protecting the public health.** These public health advisors will be required to have expertise in one or more of 5 areas: 1. trade and sustainable development; 2. public health regulations and the authority of the Government to regulate in areas including tobacco control, alcohol control, and standards to ensure safe food, air and water; 3. vital human services and systems, including health care and public health services and systems and water supply and sanitation services and systems, and licensing and cross-border movement of persons employed in these health-related services; 4. occupational safety and health; or 5. access to affordable prescription drugs. Members cannot represent for-profit entities, or receive significant financial support from a for-profit entity represented on any other trade advisory committee.

Importantly, the selection of public health advisers on the basis of their expertise who are from organizations in the United States which focus on improving and protecting public health, will ensure that the best technical advice available will provided from advisers who possess a broad range of experts in the field of public health.

**Improves Transparency and Accountability:**
**Requires Consultations with Advisory Committee During Trade Negotiations**
Critical to the committees' effectiveness in improving U.S. trade policy decision-making will be the provision of timely advice throughout the trade negotiating process on the potential impact of proposed trade policy and trade agreement rules on protecting and promoting public health in the U.S. and with our trading partners.

The USTR and Secretaries of Agriculture, Commerce, Health and Human Services, Labor and Defense, will consult and receive information from Public Health advisors concerning U.S. trade negotiating objectives, and on terms of trade agreements being negotiated by the United States and the impact of those terms on the U.S. Public health advice will be sought and provided before the commencement of negotiations, throughout the negotiating process, and before a final agreement is reached.

**PHACT Reports** – The PHACT will issue written advisory opinions before final agreement is reached on the terms of a trade agreement to the President, Congress, and the USTR. Written reports will include the extent to which a trade agreement promotes: the economic interests of the U.S.; and public health and the environment in the United States, and in any other country affected by the agreement.

**Requires Committees to report minority views** – Committees now vary in their practices. Such reports are particularly critical on committees where public health representatives are a minority. In the longer term, it may be necessary to revisit more thoroughly how Tier 3 committees are composed so that the number of members reflects various interests.

**Publicly Available** – Committee reports will be published on the USTR website, unless the President determines a particular report should not, according to specified criteria.

**In addition, Tier 2 committees should be adequately staffed.**

In conclusion, we thank the Chair and the Trade Subcommittee for your careful attention to this critical issue. We offer our cooperation as Congress and the Administration proceed to improve the effectiveness of the trade advisory committee system.

Chairman LEVIN. Owen Herrnstadt, it is now your turn.

**STATEMENT OF OWEN E. HERRNSTADT, DIRECTOR OF TRADE AND GLOBALIZATION, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS; LIAISON, LABOR ADVISORY COMMITTEE**

Mr. HERRNSTADT. Thank you, Mr. Chairman, Ranking Member Brady and distinguished colleagues of the subcommittee.

The International Association of Machinists and Aerospace Workers represent workers in a variety of industries—aerospace manufacturing, electronics, defense, transportation, shipbuilding, woodworking and motorcycles, to name a few. Much of what our members produce and service depends upon international trade.

Like other unions, we have developed significant trade-related expertise in many of the industries in which our members work, and we recognize the importance of a Trade Advisory Committee System that provides a mechanism for creating a strong and unified national trade policy. The Trade Act seeks to achieve this goal, as has been mentioned by others on this panel and by the previous panel. It seeks to do this by setting up the Trade Advisory Committee System that is based on a three-tiered approach.

The tiers are all supposed to be well balanced, to bring in diverse views. The first advisory committee, the ACTPN committee, constitutes really the first tier; and despite a clear statutory mandate to be broadly representative of the key sectors and groups of the economy, ACTPN's composition has been overwhelmingly weighted towards industry interests. Only one of the over 30 ACTPN members represents labor.

The second tier of the advisory committee system consists of five committees, one of which is the Labor Advisory Committee for trade negotiations and trade policies. Although the LAC's charter allows for up to 30 members, the previous administration named only 13 members of that committee, in contrast to other second tier committees, which had several more members on that committee.

The third tier involves over 22 trade industry committees and agricultural committees which look specifically at technical areas. There are—and this was my cursory count and also comes a little bit from the USTR Web site—over 300 industry executives represented on those various ITACs; and from a quick review of the USTR Web site, there don't appear to be any labor representatives on the third tier group.

In all there appear, from my quick count, over 400 industry and trade association representatives on the entire three-tier advisory committee system. Only 14 labor representatives were included; and of these, 13 of them serve on the second tier, the LAC.

The failure to include more diverse numbers on all three tiers of the committee system impedes the advisory committee system from achieving its goal to provide the administration with information and advice from adverse groups.

In addition to the need for balanced composition, committees also need to meet in a regular and timely fashion. The GAO report well documents that the LAC did not meet for more than a 2-year period. When meetings eventually resumed, many members of the LAC did not pass the vetting process which, according to the GAO

report, in many cases took over a year to complete. As a result of these delays, the administration lost a valuable opportunity to gain much-needed insight from labor.

In addition, the consultation process can't work if the exchange of information between the administration and the advisory committee members is inadequate. During meetings, little or no information that wasn't already available to the public was exchanged. There were also sincere concerns over the consideration that was given by that advice and information.

In order to improve the system, I have listed a variety of recommendations in my written testimony. Some of them include providing greater balance by increasing the number of labor, environmental, consumer and other nongovernmental organizations on the ACTPN; increasing the number of labor representatives on the Labor Advisory Committee; including labor and other noncorporate representatives on appropriate ITAC and ATAC committees; expediting the vetting process; improving the entire consultation process by engaging committees at the earliest possible point of trade activities; and ensuring the transparency of the entire Trade Advisory Committee System by, among other things, requiring USTR, the Labor Department and Commerce to report on an annual basis to Congress the number of meetings held, as well as the agenda items discussed at each meeting.

The Federal Trade Advisory Committee System is instrumental in providing a mechanism for developing and implementing a national trade policy that benefits all stakeholders and, of course, the public. We are hopeful that the Congress and the current administration will move swiftly to correct the deficiencies that we have elaborated on.

Thank you.

Chairman LEVIN. Thank you very much.

[The prepared statement of Mr. Herrnstadt follows:]

**Testimony of**
**Owen E. Herrnstadt**
**Director of Trade and Globalization**
**International Association of Machinists and Aerospace Workers**
**Before The House Ways and Means Subcommittee on Trade**
**"The Trade Advisory Committee System"**

**July 21, 2009**

## I. INTRODUCTION

The International Association of Machinists and Aerospace Workers, (IAM) AFL-CIO, represents several hundred thousand active and retired members throughout North America. Our members work in a variety of industries including aerospace, manufacturing, electronics, defense, transportation, shipbuilding, and woodworking to name a few. Much of what our members produce and service depends upon international trade. We firmly believe that U.S. trade policy must work for U.S. workers and have adopted strong positions on trade policy. Like other unions, we have also developed significant trade-related technical expertise in many of the industries in which our members work.

Given our vested interest in trade matters, we recognize the importance of a trade advisory committee system that provides a mechanism for creating a strong and unified national trade policy. The Trade Act of 1974, as amended (the "Trade Act" or the "Act") sought to achieve this goal, by creating an advisory committee structure to provide opportunities for diverse trade-impacted groups to engage in meaningful and effective consultations with government officials. Unfortunately, the trade advisory committee system has yet to satisfy this goal, particularly when it comes to labor.

Groups like labor have either been underrepresented or not represented at all in the advisory committee system. Moreover, the consultation process itself has been far from effective. While these concerns were expressed to past administrations, things got much worse during the previous administration. Given our experience with the trade advisory committee system, we welcome the opportunity to offer our views on the deficiencies of the system and to submit suggestions for improving it.

## II. ADVISORY COMMITTEES' COMPOSITION IS IMBALANCED

The trade advisory committee system is authorized under the Trade Act which provides that the President, "shall seek information and advice from representative elements of the private sector…."[1] The advisory system provides groups that are impacted by trade with an opportunity to offer comments and recommendations to the administration on a variety of trade related matters, including policy, negotiations, implementation, and enforcement. In creating this system, "[T]he hope was that such

[1] 19 U.S.C. § 2155.

involvement would result in trade agreements that Congress could approve with confidence."[2]

In order to achieve this goal, Congress created three tiers of advisory committees to provide "overall policy advice, general policy advice, and technical advice" on trade matters.[3] The tiers were to be well-balanced with representation among different groups. Under the Trade Act, the President was to seek information and advice from representative elements of the private sector with respect to negotiating objectives and bargaining positions before entering into a trade agreement, the operation of trade agreements, and other matters of trade policy.[4]

The first tier of the trade advisory committee system is comprised solely of the Advisory Committee for Trade Policy and Negotiations (ACTPN). According to the Trade Act, ACTPN was to broadly represent key sectors of the economy, particularly with respect to those affected by trade.[5] The Act further states that ACTPN shall consist of a maximum of 45 individuals including representatives of non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, nongovernmental environmental and conservation organizations, and consumer interests.[6]

Despite a clear statutory mandate to "be broadly representative of the key sectors and groups of the economy," ACTPN's composition has been overwhelmingly weighted toward industry interests.[7] Of the 34 members of the committee, at least 24 of the representatives come from corporate or business association interests, such as Goldman Sachs Group, Inc., UBS Investment Bank, Caterpillar, the U.S. Chamber of Commerce, and the National Association of Manufacturers. Only one of the ACTPN's 34 members represents labor.[8]

ACTPN's unbalanced composition has been the source of complaints over the past several years. In a letter to then United States Trade Representative, Charlene Barshefsky, labor representatives reminded her that,

> [T]he Trade Act of 1974, as amended, calls for the ACTPN to be 'broadly representative of the key sectors and groups of the economy, particularly with respect to those sectors and groups which are affected by trade.' The current makeup of ACTPN—27 corporate representatives, three labor union representatives, one environmental representative, and one consumer representative—does not proportionally represent those groups that are affected by trade.[9]

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[2] U.S. General Accountability Office, *Advisory Committee System Should Be Updated to Better Serve U.S. Policy Needs,* September 2002 (GAO-02-876), p. 1.
[3] 19 U.S.C. § 2155(a), (b), (c).
[4] 19 U.S.C. § 2155(a).
[5] 19 U.S.C. § 2155(b).
[6] Id.
[7] Id.
[8] The General President of United Association of Plumbers and Pipefitters.
[9] Letter to The Honorable Charlene Barshefsky, from John, Sweeney, Jay Mazur, and Lenore Miller, 2/24/2000.

Matters became demonstrably worse during the Bush Administration. In December 2002, thirty-two appointments to the ACTPN were announced – none represented labor or environmental activists.[10] AFL-CIO President John Sweeney and other trade union presidents protested to President Bush:

> Corporate executives cannot adequately represent the concerns of working families, consumers, or the environment, and should not be expected to. As Congress recognized when it made these requirements mandatory, trade policies have an impact on workers, wages, labor market conditions and regulations, consumer standards, and the environment. Thus, it is not only appropriate, but essential, that people with relevant expertise and representing a diverse range of affected constituencies be involved at every stage of policy formation.[11]

A sole labor representative was named to ACTPN in 2003, but then resigned in 2004, citing the "failure to make ACTPN broadly representative of labor, environmental, and consumer interests."[12] He was succeeded on the committee by the treasurer of a local lodge of the engineers union who also resigned. In September 2007, the General President of the United Association of Plumbers and Pipefitters became the new and sole ACTPN labor representative.[13]

The second tier of the advisory committee system consists of five committees: the Labor Advisory Committee, Trade Advisory Committee on Africa, Agricultural Policy Advisory Committee, Trade and Environment Policy Advisory Committee, and the Intergovernmental Policy Advisory Committee. Labor's representation on the second tier is confined to the Labor Advisory Committee (LAC). Although the LAC's charter allows for up to 30 members, the previous Administration named only 13 members to the committee.[14] Despite repeated requests, key trade union leaders representing workers in some of the most active trade sectors were not included on the LAC.[15]

In contrast to the LAC, the other second tier advisory committees were composed of significantly more members. For example, the Agricultural Policy Advisory

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[10] Inside U.S. Trade, December 19, 2002, *White House Rewards Donors With Slots on Key Advisory Committee.*

[11] Letter to President Bush from AFL-CIO President John Sweeney and other labor leaders, December, 2002.

[12] U.S. Government Accountability Office, *An Analysis of Free Trade Agreements and Congressional and Private Sector Consultations under Trade Promotion* Authority, November 2007 (GAO-08-59), p. 62, fn. 84.

[13] Id.

[14] Charter of the Labor Advisory Committee for Trade Negotiations and Trade Policy, May 16, 2008.

[15] We understand that the current administration is considering limiting membership of all advisory committees, including the LAC and its staff oriented liaison committee, to representatives who are not registered lobbyists. If implemented, the membership rule would further restrict the functionality of the LAC. Unlike their corporate counterparts, that can afford to maintain separate staff to handle technical matters and government affairs, union staff must often assume both responsibilities. Consequently, some unions would be effectively barred from participating in LAC activities, or potentially any other committee, if the proposed rule were applied.

Committee consisted of over 35 members (many representing industry). All of the other second tier committees (with the exception of the LAC), consisted of 23 or more members (including industry representatives).[16]

The third tier of the trade advisory committee system consists of 6 agricultural technical advisory committees (ATACS), and 16 individual Industry Trade Advisory Committees (ITACs). These committees are, "insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned."[17] Labor is not represented on any of them, despite the fact that the 16 ITACs represent several industrial sectors where unions represent workers, including aerospace, automotive equipment, chemicals, energy, steel, textiles, and others.[18] In contrast over 375 industry executives are represented on the various ITACs.[19] Many of the additional 170 members of the ATACS also represent industry. [20]

In all, under the previous administration, well-over 400 industry and trade association representatives were included in the three-tier advisory committee system. Only 14 labor representatives were included and, of these, 13 of them serve on the second tier, the LAC. Given the composition of these committees, it is no wonder that the U. S. Government Accountability Office reported in November 2007 that:

> [J]ust under half of the committee members which whom we spoke expressed frustration with the composition of their committees. Members who were dissatisfied with representation told us either that they felt that certain relevant viewpoints were not adequately represented or that the composition favored representation of one industry or group at the expense of another.[21]

USTR explains that, "trade advisors…provide advice on key objectives and bargaining positions…As a result of these efforts, the United States is able to display a united front when it negotiates trade agreements with other nations. The United States' negotiating position is strengthened because its objectives are developed with bipartisan, private-sector input throughout the negotiations."[22] The failure to include labor representatives from the entire third tier of the committee system impedes the advisory committee system from achieving its goal to provide the Administration with information and advice from diverse groups.[23]

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[16] See, http://www.ustr.gov/about-us/intergovernmental-affairs/advisory-committees, extracted on July 7, 2009.
[17] 19 USC § 2155(c) (2).
[18] http://www.ustr.gov/about-us/advisory-committees/industry-trade-advisory-committees-itac, extracted June, 18, 2009.
[19] Id.
[20] More than 100 industry representatives serve on the ATACS.
[21] GAO-08-59, p. 62.
[22] Industry Trade Advisory Committees: http://www.ustr.gov/about-us/advisory-committees/industry-trade-advisory-committees-itac, extracted July, 7, 2009.
[23] Exclusion of some private sector groups from advisory committees has resulted in legal challenges.

Concerns that labor representatives should not serve on the ITACs because they do not have technical expertise on sectoral trade issues are without merit.[24] Unions have long been recognized for their specific expertise in various industries. Among other things, they have been involved in numerous trade complaints and other trade matters requiring technical expertise. Their expertise has even been relied on by some of the sectoral advisory committees themselves. For example, under the previous administration, the IAM's International President, R. Thomas Buffenbarger was named to the Presidential Commission on the Future of the Aerospace Industry. The Industry Sector Advisory Committee (ISAC) responsible for aerospace noted its close work with the Commission.[25]

Arguments that labor representatives on ITACS are not necessary because of labor's representation on the LAC also are without merit. The purpose of the LAC, a second tier committee, is to provide *general policy* advice. As a practical matter, labor representatives on that committee represent workers from across industry sectors. As a consequence, it is simply not always practical to engage in detailed discussions regarding technical industry matters.

**III. CONSULTATION HAS NOT BEEN EFFECTIVE**

The Act directs the President to seek information and advice from the committees with respect to:

(A) negotiating objectives and bargaining positions before entering into a trade agreement;

(B) the operation of any trade agreement once entered into, including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States.[26]

Information and advice is also sought regarding the following.

(A) The principal multilateral and bilateral trade negotiating objectives and the progress being made toward their achievement.
(B) The implementation, operation, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

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[24] See, GAO-02-876, p.43.
[25] Industry Sector Advisory Committees preceeded ITACs. See, http://www.ita.foc.tob/td/itp/FactSheets?Isac.01html, extracted June 19, 2009.
[26] 19 USC § 2155.

(C) The actions taken under the trade laws of the United States and the effectiveness of such actions in achieving trade policy objectives.
(D) Important developments in other areas of trade for which there must be developed a proper policy response.[27]

The consultation process cannot work if the committees do not meet regularly or in a timely fashion. Notably, the LAC did not meet during the more than two year period beginning in September 2003 and ending in November of 2005. During that period, numerous trade agreements were considered and negotiated and numerous trade matters were discussed and implemented. When meetings eventually resumed, many members of the LAC had not passed the vetting process, which in many cases took over a year to complete.[28] As a result of these delays, the administration lost a valuable opportunity to gain much needed insight from labor.

In addition, the consultation process cannot be effective if the exchange of information between the administration and the advisory committee members is inadequate. Labor representatives previously expressed their dissatisfaction with the quality of the meetings that took place during previous administrations. AFL-CIO President John Sweeney stated:

> [T]he ACTPN has tended to offer reflexive support to current trade policy, while minimizing and marginalizing dissent. ACTPN should be a forum that fosters vigorous and substantive debate, not simply a body that provides a rubber stamp to a pre-determined policy. ACTPN reports must reflect the full spectrum of debate, rather than just the majority view.[29]

Again, instead of improvement under the Bush years, the consultative process became much worse. Upon his resignation from ACTPN in 2004, the sole labor representative protested the Bush Administration's continued disregard of advice and dissenting views.[30]

Members of the LAC were particularly frustrated with the consultation process under the previous administration. While the USTR participated in meetings, the Secretary of Labor never attended them. During the meetings, little or no information that wasn't already available to the public was exchanged. Moreover, there were sincere concerns that the advice offered by committee members was not given any meaningful consideration.

Members of other committees also expressed their dissatisfaction with the consultation process. As the GAO noted, "[M]ost of the second tier policy committee…were not satisfied with the quality of information presented during consultations and felt that it was no better than information available to the general

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[27] 19 USC § 2155.
[28] GAO-08-59, p. 64, fn. 90.
[29] AFL-CIO President John Sweeney letter to USTR Barshefsky, August 1, 2000.
[30] GAO-08-59, p. 62, fn. 84.

public."[31] Committee members were also troubled by government officials' responsiveness to the information and advice that was offered during committee meetings. This frustration is also noted by the GAO which summarized:

> Most of the second tier and a few of the third tier committee chairs, however, expressed dissatisfaction with the feedback from USTR. They expressed their perception that USTR is either biased against their committee or that by being asked to comment on completed deals, their opinions are not truly valued or taken into consideration. Two chairs said USTR wants them to "rubber-stamp" decisions or to be "cheerleaders" for the administration. Other chairs said their committees rarely or never get feedback.[32]

The advisory committees are given 30 days after the President notifies Congress of the intent to sign a trade agreement to submit reports detailing their committee's advisory opinion on whether the agreement promotes the economic interest of the United States and achieves the applicable overall and principle negotiation efforts. The 30-day deadline puts undue pressure on committee members to file thorough reports, especially when the text of an agreement is not available immediately.[33]

## IV. RECOMMENDATIONS FOR STRENGTHENING THE TRADE ADVISORY COMMITTEE SYSTEM

The trade advisory committee system, as implemented under previous administrations, and particularly under the Bush Administration, has failed to provide much needed balance and meaningful consultation. In order to improve the system, we recommend the following with respect to the three tier system:

1. Provide greater balance by increasing the number of labor, environmental, consumer, and other non-governmental organizations on the ACTPN.

2. Ensure that ACTPN corporate representatives represent a diversity of viewpoints with respect to trade policy.

3. Increase the number of labor representatives on the LAC.

4. Include labor (and other non-corporate) representatives on appropriate ITAC and ATAC committees.

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[31] Id., p. 56.
[32] GAO Report, p. 57.
[33] For example, the LAC was notified of the President's intent to sign the KORUS FTA on April 2 and was only given until April 27 to submit the report. The various chapters of the agreement, many in partial form, were released piecemeal over the first two weeks of April. The entire text of the agreement was not released until April 16th. The agricultural and manufacturing tariff schedules were not released until over half of the time allotted to write the report had expired.

5. Expedite the vetting process for new committee members. (Delays of one year or more are simply unacceptable.)

6. Provide increased information that is not generally available to the public and that is commensurate with committee members' level of security clearance.

7. Increase the period for filing reports on trade agreements to 60 days.

8. Improve the entire consultation process by engaging committees at the earliest possible point of trade activities. In many cases, the LAC has been merely informed of the government's decisions with regard to critical issues long after they are made. Committees must have a role in the decision making process, through meaningful and timely consultation *before* decisions are made.

9. Ensure transparency of the entire advisory committee system by among other things, requiring USTR, DOL, and Commerce to report on an annual basis to Congress the number of meetings held as well as the agenda items discussed at each meeting. In addition, include in the report summaries of information that were exchanged, as well as advice that was offered during the meetings.

The federal trade advisory committee system is instrumental in providing a mechanism for developing and implementing a national trade policy that benefits all stakeholders. Unfortunately, in the past, the essential elements of balanced composition of the committees and an effective consultation process for the most part have not been met.

We are hopeful that the Congress and the current administration will move swiftly to correct these deficiencies.



Chairman LEVIN. Mr. Petty.

**STATEMENT OF BRIAN T. PETTY, SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS; CHAIRMAN, INDUSTRY TRADE ADVISORY COMMITTEE 02, AUTOMOTIVE EQUIPMENT AND CAPITAL GOODS**

Mr. PETTY. Mr. Chairman, Ranking Member Brady and Members of the Subcommittee, I am Brian T. Petty, Senior Vice-President of Government Affairs of the International Association of Drilling Contractors and Chairman of the Industry Trade Advisory Committee for Automotive Equipment and Capital Goods, ITAC 2.

ITAC 2 is comprised of 27 members representing a wide gambit of U.S. manufacturing interests, including automotive manufacturers, auto parts makers and industries that sell to them. In addition, our membership includes trade groups representing the largest manufacturers of goods and equipment and those companies supplying goods and services to them. We also include significant construction, farm equipment, energy, precision tools and packaging entities.

I formally served as Vice Chairman of the Industry Sector Advisory Committee for Capital Goods, ISAC 2, which in 2004 which was consolidated into ITAC 2.

Accounting for a quarter of global manufacturing output, the U.S. is still the world's largest manufacturer. If the U.S. manufacturing sector stood by itself, it would be the eighth largest economy in the world. Japan, Germany and China are the next largest economies, but their GDP is significantly smaller than that of the United States.

In 2008, U.S. manufacturing output was $5.18 trillion. More goods are made in the United States today than at any time in American history. The significance of manufacturing in the economy is even greater than the macroeconomic data indicate, for the manufacturing sector is what has enabled other sectors of the economy to grow.

The industries represented by ITAC 2 represent close to one-third of U.S. manufacturing output. In 2008, U.S. capital goods production was $907 billion and auto industry production was $479 billion. These industries account for 56 percent of U.S. domestic exports of manufactured goods.

Capital goods are the largest single category of exports, at $469 billion, while automotive exports were $121 billion in 2008. Automotive products are the single largest U.S. export, followed by aerospace and semiconductors.

More than one in six U.S. private sector jobs depends on U.S. manufacturing. Specifically, the manufacturing sector supports more than 20 million jobs in the United States, 14 million jobs directly within manufacturing and 6 million others in sectors such as commodities, wholesaling, transportation, and finance and insurance dependent on the manufacturing sector.

I also serve on the ITAC Committee of Chairs Investment Working Group. The IWG was formed in 2003 and reauthorized in 2006. The IWG's purpose is to provide advice to the U.S. Government on legislation, policies and issues concerning both in-bound and outbound investment, as well as investment treaties and agreements. The group was formed at a time when the administration was en-

gaged in an extensive review of investment policy as required by the Trade Act of 2002.

Officials at USTR and the Departments of Commerce, State and Treasury recognizes that need for private sector consultation, but also realized that no single advisory committee focused on investment matters. Rather, investment experts were dispersed among various ITACs. The working group was formed in response though this problem.

The IWG draws its membership from the roster of cleared ITAC advisers. The main criterion for membership is that the adviser has depth, knowledge and expertise in investment policy and practice.

USTR and the Department of Commerce seek a diversity of views by encouraging membership from all ITACs and limiting the number of members from any single ITAC. The IWG meets and deliberates independently, but reports its findings and recommendations to the ITAC Committee of Chairs.

The IWG's most recent work product was entitled Investment Policy Outlook for 2009, submitted by the ITAC Committee of Chairs to Secretary Locke and Ambassador Kirk on April 23, 2009. Membership has ranged from 12 to 15. Currently there are 13 IWG members from eight different ITACs.

For the first 5 years of operation, 2003 to 2007, the IWG included cleared advisers from nonbusiness NGOs, specifically Friends of the Earth, the Mercatus Center at George Mason University, and the Pacific Environmental Resources Center. But only Friends of the Earth briefly participated, and after that, none of them participated.

My history with the industry Federal advisory system goes back to 1997 and has given me some substantial insight into its efficacy in advising the USTR and Department of Commerce on trade policy. As security advisers, we have common sectoral interests in promoting exports and creating jobs and market value in the U.S.

Some are counseling adding NGOs and representatives of organized labor to the individual ITACs, notwithstanding the fact there are advisory committees created precisely to provide them the same or even better access to administration trade policymakers. For example, the Trade Environment Policy Advisory Committee meets routinely with the USTR to express the environment community's views about emerging trade issues, and organized labor has its own Labor Advisory Committee for Trade Negotiations and Trade Policy. Just so, U.S. industry under the ITAC system has the opportunity to speak clearly and with an unvarnished opinion about what is in U.S. business's interests and where U.S. economic interests lie.

The ITAC system was reorganized in 2004 after a thorough-going study by the GAO proposed rationalizing the sectoral system first established in the 1970s to reflect the 21st century American economy. From where I sit and in this, I am supported by the 26 other members of ITAC 2. This system has worked very well.

Adding adverse or potentially contentious elements to the individual ITACs would certainly chill free and frank discussion and would be a major disincentive to recruit members to the ITACs. We all give time and sacrifice something of our day jobs in participating. I hope the subcommittee treads lightly in promoting some-

thing which could discourage the critical input of U.S. employers and, in particular, the manufacturing sector substantially represented by ITAC 2.

Thank you for the opportunity to testify.

Chairman LEVIN. Well, thank you very much.

[The prepared statement of Mr. Petty follows:]

Testimony of Brian T. Petty
Chairman, ITAC 2 (Automotive Equipment and Capital Goods)
Before the Subcommittee on Trade
of the Committee on Ways and Means
of the US House of Representatives
Hearing on
The Trade Advisory Committee System

July 21, 2009

Mr. Chairman, Ranking Member Brady and Members of the Subcommittee, I am Brian T. Petty, Senior Vice President – Government Affairs of the International Association of Drilling Contractors and chairman of the Industry Trade Advisory Committee for Automotive Equipment and Capital Goods, ITAC 2. ITAC 2 is comprised of 27 members representing a wide gamut of US manufacturing interests, including automotive manufacturers, auto parts makers and industries that sell to them. In addition, our membership includes trade groups representing the largest manufacturers of goods and equipment, and those companies supplying goods and services to them. We also include significant construction, farm equipment, energy, precision tools and packaging entities.

I formerly served as vice-chairman of the Industry Sector Advisory Committee for Capital Goods (ISAC 2), which in 2004 was consolidated into ITAC 2.

Accounting for a quarter of global manufacturing output, the US is still the world's largest manufacturer. If the US manufacturing sector stood by itself, it would be the eighth largest economy in the world. Japan, Germany and China are the next largest economies, but their GDP is significantly smaller than that the United States.

In 2008, US manufacturing output was $5.18 trillion. More goods are made in the United States today than at any time in US history. The significance of manufacturing in the economy is even greater than the macroeconomic data indicate, for the manufacturing sector is what has enabled other sectors of the economy to grow.

The industries represented by ITAC 2 represent close to one-third of US manufacturing output. In 2008, US capital goods production was $907 billion and auto industry production was $479 billion. These industries account for 56% of US domestic exports of manufactured goods. Capital goods are the largest single category of exports, at $469 billion in 2008, while automotive exports were $121 billion. Automotive products are the single largest US export, followed by aerospace and semiconductors.

More than one in six US private sector jobs depend on US manufacturing. Specifically, the manufacturing sector supports more than 20 million jobs in the United States: 14 million jobs directly within manufacturing and 6 million other jobs in sectors such as commodities, wholesaling, transportation, and finance and insurance dependent on the manufacturing sector.

I also serve on the ITAC Committee of Chairs Investment Working Group. The IWG was formed in 2003 and reauthorized in 2006. The IWG's purpose is to provide advice to the US government on legislation, policies, and issues concerning both inbound and outbound investment, as well as investment treaties and agreements. The group was formed at a time when the Administration was engaged in an extensive review of investment policy as required by the Trade Act of 2002.

Officials at USTR and the Departments of Commerce, State, and Treasury recognized that need for private sector consultation, but also realized that no single advisory committee focused on investment matters, rather, investment experts were dispersed among various ITACs. The working group was formed in response to this problem. The IWG draws its membership from the roster of cleared ITAC advisors. The main criterion for membership is that the advisor has depth knowledge and expertise in investment policy and practice. USTR and Department of Commerce seek a diversity of views by encouraging membership from all ITACs and limiting the number of members from any single ITAC.

The IWG meets and deliberates independently, but reports its findings and recommendations to the ITAC Committee of Chairs. The IWG's most recent work product was entitled "Investment Policy Outlook for 2009," submitted by the Committee of Chairs to Secretary Locke and Ambassador Kirk on April 23, 2009. Membership has ranged from 12-15; currently, there are 13 IWG members from 8 different ITACs. For the first five years of operation (2003-2007), the IWG included cleared advisors from non-business NGOs: specifically Friends of the Earth, The Mercatus Center at George Mason University, and The Pacific Environmental Resources Center. But only Friends of the Earth briefly participated. After that, none of them participated.

My history with the industry federal advisory system going back to 1997 has given me some substantial insight into its efficacy in advising the USTR and Department of Commerce on trade policy. As secured advisors, we have common sectoral interests in promoting exports and creating jobs and market value in the US.

Some are counseling adding NGOs and representatives of organized labor to the individual ITACs, notwithstanding the fact there are advisory committees created precisely to provide them the same – or even better –

access to Administration trade policymakers. For example, the Trade and Environment Policy Advisory Committee meets routinely with the USTR to express the environmental community's views about emerging trade issues. And organized labor has its own Labor Advisory Committee for Trade Negotiations and Trade Policy. Just so, US industry under the ITAC system has the opportunity to speak clearly and with an unvarnished opinion about what's in US businesses' interests, and where US economic interests lie.

The ITAC system was reorganized in 2004 after a thoroughgoing study by the GAO proposed rationalizing the sectoral system, first established in the 1970's, to reflect the 21st centuryAmerican economy. From where I sit, and in this I am supported by the 26 other members of ITAC 2, this system has worked very well. Adding adverse or potentially contentious elements to the individual ITACs would certainly chill free and frank discussion, and would be a major disincentive to recruit members to the ITACs. We all give time and sacrifice something of our "day jobs" in participating. I hope the subcommittee treads lightly in promoting something which could discourage the critical input of US employers, and in particular the manufacturing sector substantially represented by ITAC 2.

Thank you for the opportunity to testify today.

Chairman LEVIN. So let's have a discussion, Mr. Petty. I think your testimony and that of your colleagues, the four others, now helps us shift into kind of the dynamics of the advisory system. I think we need to spend a few minutes about that.

You know, we have this chart that lays out Tier 1, Tier 2, Tier 3, and let's take manufacturing. All of us care a lot about that. There are manufacturing issues in a lot of the negotiations, and that is surely true of the WTO negotiations. We have the NAMA, we have the tariff issues, et cetera, et cetera.

You seem to be saying—take us to manufacturing—that we don't want a very diverse representation within that ITAC group, and that it is better that there be within that ITAC group business interests and not the involvement of diverse points of view.

And the same might be true, for example, of the Health—I guess that would be ITAC 3; it is not always clear—in that I think you are saying that other points of view can be expressed through, for example, the Tier 2 committee, say it is Labor, say it is Environmental Issues.

But if there isn't a lot of back and forth of diverse points of view within an advisory committee. Doesn't that prevent the kind of enrichment of the dialogue with USTR? For example, on Health, we have had a lot of discussion about the health provisions within FTAs. And I don't want to go into any one in particular, but we became in the Congress quite involved in that in recent years.

So are you saying that within, say, the ITACs there should be essentially representation from the business sector? And, by the way, the business sector itself may have different points of view, right?

Mr. PETTY. Yes.

Chairman LEVIN. So I don't quite understand how this system works, if the advice comes from particular points of view without meaningful back and forth among those points of view being fed into USTR.

Mr. PETTY. I would respond that Tier 2 provides the mechanism that may be failing now, for providing that access by TEPAC, by the Labor analog. But I can tell you that I have known people who have been on the TEPAC in years past, and they enjoyed ready access to the USTR Ambassador himself or herself and to top officials of the Department of Commerce that we, at the ITAC level, don't see.

Chairman LEVIN. I understand that. That may be true.

But essentially—I will just take a couple of minutes and then pass it over to Mr. Brady and the others. Apparently, you seem to be saying that the advisory model should be more or less this: that each of the entities would represent a particular slice of interest—and I don't mean self-interest—and that that should be fed in kind of on a parallel basis without there having been within the advisory group what you call an adverse or potentially contentious element.

Take the NAMA negotiations within the WTO and the whole industrial sector set of issues. Are you saying that there ought to be within the advisory structure the feed-in of particular points of view that have talked to each other, but not the benefit of the back

and forth between what you call contentious or adverse points of view?

Mr. PETTY. What I am saying is those other interests have a place in the system already. The industrial interest and the manufacturing interest cannot be represented on the labor Tier 2 committee, nor can it be represented on the TPAC committee. And I would point out that the pending or proposed H.R. 2293 would set up a Tier 2 public health committee that would exclude specifically commercial interests. So there is an avenue for those voices to advise our trade policymakers.

I can tell you as a practical matter, it is difficult enough to manage an agenda, to get a coherent view, consensus view, from the manufacturing industry, which represents a wide spectrum of employers in this country and a big chunk of the economy, to give coherent advice without distractions or confusion that might be created by people who don't really have a stake in it, a direct stake in the technical advice being provided on NAMA, on nontariff barriers on the Doha Round.

And I can tell you with absolute confidence that if that element was introduced into our system, into my ITAC, people would not re-up and a lot of people would not join. So it would just wither away. The voice of business would be severely diminished.

Chairman LEVIN. So essentially you see the advisory structure having again the interests, though there may be some differences within that group, working on parallel tracks instead of their having meaningful back and forth that can then be fed into USTR?

Where do the people with very diverse points of view meet—and I will finish.

Take antidumping issues for a moment. Don't you need to have a clash, if you want to put it that way, within the advisory structure?

Mr. PETTY. I would say the Tier 2 and the ACTPN are part of the advisory structure, and they have the opportunity to express those views. I can tell you, on antidumping in particular, within our own ITAC we have a wide diversion.

Chairman LEVIN. I know that. But don't you want to have—take steel, and I will finish. Don't you want an advisory structure that has the business and labor interests having some opportunity to, in quotes, "clash and feed" that into the advisory structure; or do you want each of these to be fed in without the benefit of that difference of opinion into the USTR?

Mr. PETTY. Mr. Chairman, I can't speak for steel, but I can speak for the group that I represent, which I chair; and most of those or a great many of them are not represented by organized labor. Organized labor represents a distinct minority of the U.S. workforce, so I am not sure having organized labor at the table adds anything to the give-and-take.

Chairman LEVIN. You represent the construction industry?

Mr. PETTY. My paid job is the International Association of Drilling Contractors.

Chairman LEVIN. No, but the construction industry is involved in your ITAC?

Mr. PETTY. They are indeed, yes. They are elements of the construction industry.

Chairman LEVIN. And within the construction industry, whether it is organized labor or otherwise—okay, look, I am not 100 percent sure of the answer, but I do think the question needs to be asked.

Mr. Brady, you are next.

Mr. BRADY. Let me follow up on that questioning.

I think the key question today is not how can we design a system to ensure that USTR does exactly what all facets of the private sector or the people on the advisory committees tell it to do, but how do we design a system so that USTR effectively hears from all facets of the private sector so they can take this oftentimes contradicting information and formulate trade policy that makes sense for America.

My question to you: It seems to me each of the advisory committees from Tier 1 to Tier 2 to Tier 3 get increasingly deeper into the weeds on trade agreements, in a good way, as—the overall strategy and policy of Tier 1, a little more broken out in the sectors on Tier 2, and then in Tier 3 that technical expertise so we can tell what the specific language of trade agreements that are being proposed, how they would affect American workers and our industry. It seems to me a pretty good approach on this.

I will ask Mr. Petty and Mr. Hoelter, what is the impact if, in effect, the advisory committees at the technical level presynthesize—package, sort of, the consensus—rather than creating an arena for vigorous airing of different views?

My thought is, I am not interested in dumbing down the advisory committees at the technical level or creating a mini-United Nations where debate goes on endlessly. It seems to me the technical advisory committees are just that, technical. The goal is to provide that information, that insight, into USTR as they deal with specific issues.

Mr. Petty and Mr. Hoelter, following what Chairman Levin had to say and given the role of the ITACs, what is the optimal role for them to play?

Mr. HOELTER. Thank you. Let me take a crack at that.

Based on our own ITAC, the consumer goods ITAC, which I mentioned has very diverse membership, diverse industry membership, we do get into very technical details, and—primarily concentrating on some of the more invidious barriers to our export opportunities overseas, and those are the technical barriers to trade.

For example, in my own company, we welcomed the accession of China, because it is the largest motorcycle market in the world. So now we can sell our product in China. The problem is the Chinese can't use them. They are prohibited in many cities from operating motorcycles in those cities.

We get into a great level of detail and have quite a lot of discussion that I think opens the eyes of the staff members who participate from both the Department of Commerce and U.S. Trade Representative's Office.

So I do think we have enriching, robust dialogue among our committee members and the industry expertise that they bring to bear.

Mr. BRADY. Does USTR always agree with your views?

Mr. HOELTER. I don't think they will ever say, we accept and agree and are going to carry your water for you. They are diplo-

matic and thank us and take them back. I would also say, too, I think there are other opportunities for all members of our society and interest groups to take advantage of, I think, the fairly open-door attitude I have seen with the U.S. Trade Representative's Office and Department of Commerce in this administration and past administrations. If meetings need to be held or particular matters are outside the trade advisory system and are not on our agendas, we can still have those opportunities to raise them and have an audience.

Mr. BRADY. Thank you.

Mr. Petty.

Mr. PETTY. I would agree with Tim. Absolutely. I think that we have enough of a heavy agenda when we meet, and we meet as routinely as his does, and we have many telecoms to provide specific advice. But the level of detail and the heavy agenda that is provided at each meeting is all consuming. It is sufficiently difficult to come to some kind of resolution and give adequate advice and consensus views to our trade policymakers in this current context.

Mr. BRADY. Is there a role for public health or labor, for example, to be expanded on the Tier 1, the advisory ACTPN, or Tier 2, where you are dealing with sort of a larger general policy dialogue?

Mr. PETTY. That is someone else's call to make. It is certainly something we would not resist, of course. But if it is inadequate, I think it should be expanded.

But as I said, my conversation with people on TPAC in particular over the decades, let's say, has been they have enjoyed meetings with the very top people at USTR and the Commerce Department; they have had ready access, and they get closer to actually the people that make the decision than we do. Ours is funneled up a long, long tree.

Mr. BRADY. Great. Thank you. My point is I want to make sure the technical committees are doing their job, are providing in a very complex world the knowledge and information USTR needs to be able to create win situations for the United States and our workers. So thank you all for your input.

Mr. Chairman.

Chairman LEVIN. Thank you for following up on that question.

Mr. Doggett, you are next.

Mr. DOGGETT. Thank you, Mr. Chairman, and thank you to each of you for your testimony.

The caricature of radical environmentalists and inept labor union representatives running rampantly through these committees and disclosing all the secrets to the Chinese and the Germans and the Indians is not only silly, but I think it is dangerous, the caricature we have heard from some this morning.

Mr. BRADY. Mr. Chairman, look, I don't want to interrupt, but——

Mr. DOGGETT. You are interrupting and I don't yield to you. You can make your comments further. I didn't refer to you specifically.

But "radical environmentalist" is a term used by one of our colleagues. And it is caricature and it is silly and it is dangerous mainly to our trade policy, because we will not build broader sup-

port for more trade in this country until we deal with some of the issues that are referred to.

And I also have to disagree with some of the testimony that we just heard, because I have a great deal more confidence in American business than some of the testimony suggests. I don't believe that American business is so weak that it will wither away if somebody files a minority report or that it cannot withstand some serious professional discussion behind closed doors about how best to shape our trade objectives and how to respond to the negotiating positions of other countries.

No one is suggesting that we put it on the front page or invite the Chinese to have a representative within these committees if we are deciding on what our objectives are going to be. But there are times in the process, as Mr. Magraw pointed out in his testimony, that our foreign trading partner knows exactly what our position is. The commercial interests that have met behind closed doors in a private way know exactly what our position is. The only people that don't know what our position is are the American people. And it is that lack of transparency at key points in the process that this hearing really needs to focus on. And USTR needs to do more than a superficial review but a real review.

Mr. Herrnstadt, let me ask you, if you had representatives of steelworkers on steel or autoworkers on this auto committee or machinists dealing with aircraft parts, do your members have any interest in disclosing to our foreign trading partners trade secrets of the industries that you work for?

Mr. HERRNSTADT. Well, we absolutely don't—do not. In terms of the proprietary nature, let me also remind everyone that, at least on the Tier 2 committee, we all do have security clearances on that.

Mr. DOGGETT. You are actually subject to—you not only have been vetted, but there are laws that because you are dealing with secret information, you could be subject to some action if you disclosed it, right?

Mr. HERRNSTADT. That is correct.

In addition to that, I would remind everyone just to take a look at the statute when it comes to the ITAC. "Such committee shall insofar as practical be representative of all industry, labor, agricultural or service interests in the sector or functional areas concerned."

Certainly the machinists union is well versed in issues like nontariff issues. Certainly we have worked with Harley-Davidson in the past, and that is one of the reasons that has led to our historic labor relations that has brought that company such great success.

In addition, if I could also add, the topics that are covered in the two-tier system are, by statute, to be generally policy oriented. They are cross-industrial because they do represent—we do have labor representatives from a variety of other industries.

The ITACs cover specific issues. I have never been to one, but I understand it is things like export controls, maybe bits, maybe other things like tariffs and so forth that we do have expertise on.

Lastly, we really do need to get away from this old mind-set that everything is so adversarial. I do believe that particularly labor has a great deal of expertise in the technical areas of these trade-re-

lated issues that we can add to the function of such a committee, and in doing so add to the information and advice the administration is seeking.

Mr. DOGGETT. Thank you. I think it is very clear from the studies that the General Accountability Office has done that any attention to the views of employee organizations, whether they were union or nonunion, in the last decade, has been negligible to nonexistent.

Mr. Magraw, let me ask you specifically about what impediments there are presently to sharing documents and information between advisory committees?

Mr. MAGRAW. Thank you, Congressman.

The main experience we had recently had to do with the ITAC's recommendation regarding reach that I mentioned. What initially happened is that we were told we couldn't share those documents because of a legal impediment. I think the genesis of that is that the ITAC 3, the ITACs report both to USTR and to the Department of Commerce.

Several of us wondered if in fact there was any legal impediment. There might be a politeness impediment to telling the ITACs in question that their advice, which was, after all, to the U.S. Government, was being shared with other people who had clearances.

But that is not a legal impediment. We have asked for a legal opinion and so far have not gotten one.

I think the main impediment actually, though, is practice. I have never been involved in the Tier 1 ACTPN. No representative of that or member of that has ever asked my opinion of anything or informed me about it. I think I am able to be asked because I have a clearance. There is no practice of USTR that I know of at all that would bring an ITAC recommendation to the attention of any of the Tier 2 committees.

I might point out, if I could take one second to say, this technical advice is extremely important. I can see why labor would have a tremendous amount to add to it. But, of course, the ITACs are going far beyond technical advice; they are also providing policy advice.

I completely agree with what I think was the gist of the chairman's questions, that it is very important to have a give-and-take and a dialogue. What the USTR gets now is narrow, self-interested advice that isn't informed by a give-and-take and, I think, is poor.

And I think it was Mr. Davis who pointed out earlier that it is USTR's job to synthesize this result, the different advice. But you want to get good advice, and if that involves a minority opinion off of an ITAC, I think that would be fine.

Mr. DOGGETT. Thank you.

Thank you, Mr. Chairman.

Chairman LEVIN. Mr. Davis, I think you have the last series of questions.

Mr. DAVIS. Thank you. I appreciate Mr. Magraw's point about the give-and-take on an ITAC.

My concern in including everybody under the sun is, many of the staffers that I have met in the organized labor movement have never walked a factory floor like I have, and I would be very concerned that somebody who doesn't know what a bill of materials is,

doesn't understand the difficulties and the mathematical complexities in distribution requirements planning might in fact take an ideological or emotional position over the actual facts and jobs that are being affected, particularly considering the minority of manufacturing employees being represented nationally.

I also appreciate Mr. Herrnstadt's statement. I am not a politician by background. I am just a guy that kind of grew up around manufacturing, couldn't even get elected to the student council. I am not a silver-tongued orator like the gentleman from Texas.

But the one thing that I would say, from your comments, is I appreciate your saying that we need to get away from this mind-set that everything is adversarial. I think there are so many issues related to process that are very, very critical that we understand that are not partisan issues, they are not emotional issues, they are technical issues. They are cause and effect. We often miss that.

I think most folks should be able to have input at the table, but at the same point having people who actually understand fully the impact of this and are not pursuing political agendas, I think, is very important from a technical side.

It brings me to a question.

Mr. Hoelter, you noted in your testimony that the ITAC advice needs to be clear, focused and unvarnished. You also expressed concern about watering down advice to the lowest common denominator to achieve group consensus. In a group whose members might reflect opposing interests, it is effectively worthless to USTR. You also say that such a result would do our trade policymakers a profound disservice.

I understand there are political issues afoot, particularly in the first two tiers, because of the importance of elections, the outcomes of that, the will of the people ultimately. But could you elaborate on your comment about this statement regarding a profound disservice? What do you see to be the issue here?

Mr. HOELTER. Well, maybe this is the wrong analogy, but let's take bills just in the United States Congress. You have a House bill, you have got a Senate bill. Both may be very, very different and provide clear choices, but in our system, you have to sit down at a conference committee and you hammer things out and you dilute it, and there is a give-and-take that goes on, and the bill then goes up to the executive.

What we are suggesting here and what I think really goes on that I think would be more effective and has been working within the ITAC process is to provide a variety of options that then the policymaker, the executive in my example, can choose or pick on almost a smorgasbord approach.

Mr. DAVIS. So you are suggesting, not unlike an executive brief in a business or an operations brief, that there would be a chart of possible courses of action that that decision-maker or policymaker would be able to choose from?

Mr. HOELTER. Something like that.

I think what we should do is look at the entire system as opposed to each—or look at the forest as opposed to each individual tree, and do we have a rich forest with great diversity of foliage and things that one can draw upon to come up with what I said earlier is a coherent trade policy.

If I might comment on one other thing, I also believe that it is the responsibility of industry to do a better job than we have been on educating our own constituencies, our employees and our stakeholders, about trade and about the benefits and what it means on the shop floor to the ordinary worker or someone who is a pencil-neck like myself. I think that is very important.

Mr. DAVIS. I appreciate that. Our workers in the largest machine tool manufacturer in North America in my district would be sensitive to that.

Mr. Petty, GM, Chrysler and Ford all sit on the same ITAC that you chair. Could you describe what this new dynamic would be on your ITAC if labor unions, for example, were to participate in all of your meetings and were to participate in the drafting of your reports to the administration, particularly if you had to arrive at a consensus report?

Mr. PETTY. It is hard to say. Again, I leave it to those companies to answer that question on their own.

I just see the potential in not involving the Big Three, if you will, but there are other members of my ITAC who may be uncomfortable by having labor represented at the table. It could be that the Big Three are very comfortable or basically indifferent, but we haven't sensed that out.

I am just speaking of the view of the whole ITAC, and I have polled them, that generally they think it would be a disruptive intrusion into the process and would dilute the quality of the advice given ultimately to the USTR and the Department of Commerce.

Mr. DAVIS. Thank you. I see my time has expired.

Chairman LEVIN. Mr. Reichert.

Mr. REICHERT. Thank you, Mr. Chairman. I am going to address my question to Mr. Herrnstadt.

As you probably know, I come from the Pacific Northwest. I may have mentioned that in my earlier question. But running between assignments from here to there, I have forgotten exactly what I said the first questions.

So a lot of your members, as well as Longshoremen and Teamsters, live and work in my district, and as I mentioned in my remarks in the first panel, I am looking for ways to increase the participation of your association and others when it comes to providing input on trade.

These workers' livelihoods depend on international trade, and they have so much to gain from trade, especially in Washington State. Airplane parts, the parts that your members manufacture, are key exports for my State and our country.

I just want to mention, I was really disappointed to see opposition to the Colombian FTA. I traveled to Colombia, visited with the President and union members on both sides of the issue in Colombia. I understand there was a great impact on the Caterpillar Company whose tariffs were about $200,000 to $250,000 per piece of machinery as they were exported from the U.S. and imported into Colombia.

If that trade agreement would have been in place, those tariffs would have disappeared, and it certainly would have been, I think, welcome to the workers at Caterpillar. That in mind, I would like

to work with you to achieve this goal, to get people engaged in this. So my comments are to you.

I would like to ask Mr. Hoelter, you mentioned in your testimony that in your experience the Commerce Department and the USTR have maintained an open-door policy and an eagerness to listen. In other channels, beyond the formal Trade Advisory Committee System, those things work inside the system, but outside the system.

Could you elaborate on that statement that you made, and do you think that labor groups that oppose trade agreements so beneficial to their members have adequate avenues for input now, and do you think their perspectives would change if they had other channels to communicate with the administration or Congress on trade?

Mr. HOELTER. Thank you.

I cannot speak on behalf of the labor groups, but I can say that, as to many of the challenges that my company faces overseas, most of them being in the form of nontariff technical trade barriers, it would be inappropriate for me as chairman of ITAC 4 consumer goods to monopolize the dialogue when we have our ITAC meetings with Commerce and USTR representatives there with the issues that pertain only to my company.

We do have a full agenda. But from experience, there have been many opportunities where we have been able to hold meetings within the Department of Commerce and also at U.S. Trade Representative's Office to get into the particulars of particular issues that create great problems for us and restrain our opportunities.

So, again, it is inappropriate to do that I think within a committee, because I have to also defer to others who have strong points of view and want to participate in the dialogue.

Mr. REICHERT. Mr. Herrnstadt, could you answer the last question for me? Do you think that the perspectives of union workers could be changed if they had other channels to communicate with and learn more about trade and how it impacts their jobs?

Mr. HERRNSTADT. Well, let me answer the first part of your question.

I think that there needs to be a great deal more forum for labor and the public at large to participate in the trade policy. The Trade Advisory Committee System that we are talking about is one of those, although it is inadequate; in the way it is currently being run, it is completely deficient on that.

We have got 6.5 million jobs that have been lost since December 2007. Two million of those were manufacturing jobs. We have got to do things differently. We can't just sit back at the status quo and say, if we include labor expertise in ITACs, it will be the end of the system.

Mr. REICHERT. Sir, my time is about to expire. Could you address the last question for me, please, before the red light comes on?

Mr. HERRNSTADT. Sure. I believe that we need to do so much more to make sure that the worker perspective is given towards creating trade policy in this country, and we haven't given adequate attention to that at this point.

Mr. REICHERT. Okay. My time has expired.

My question wasn't answered, but thank you, Mr. Chairman.

Chairman LEVIN. Well, you didn't hear an answer on the first comment you made, but that is for another time I think.

I just want to say, Mr. Hoelter, before Mr. Herger finishes our part of this, I thought your answer was admirably discreet because your company has faced nontariff barriers in a number of countries, and I think trade policy needs to worry about being able to ship our goods to other countries as well as the openness of our market.

And if I might say so, your discreet answer I think somewhat underestimates—on purpose, in your case—the problems that your company has faced exporting a product that is made in the United States of America.

Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman.

Mr. Petty and Mr. Hoelter, given the proprietary nature of your information exchanged with the government, what are your thoughts on opening ITAC meetings to the public? What could happen to U.S. negotiating interests if our trading partners had access to that information exchange? And would that be helpful or hurtful to all U.S. interests?

Mr. PETTY. Well, I will take it for starters.

It would certainly diminish the quality of the advice being given by the current advisers. So if you open it to the public, people are going to be much more hidebound in giving good advice because they are going to be always watching their back. They are worrying about implications about their own competitive situation, they are worrying implications with their workforce, they are worrying about implications for a variety of lawyers that are on the periphery circling like sharks. They wouldn't feel comfortable.

Frankly, from—again polling my ITAC, which is one of the largest and most robust, they just wouldn't continue to participate. Many of them would just fall away. It is just not worth the time and trouble.

As far as advising or influencing U.S. trade policy and our trade policymakers abroad, I think it clearly would take an arrow out of their quiver. They wouldn't be as effective as they could be in promoting American jobs. That is what it is all about, and American exports.

Mr. HERGER. Thank you, Mr. Petty.

Mr. Hoelter.

Mr. HOELTER. Thank you. I would say that on our own ITAC, since it does not represent really a sector of competing interests, commercially competing interests, but rather a broad range of companies that are involved in manufacturing consumer goods, we don't have really the issue so much among ourselves of disclosing trade secrets, if you will; but we do have the interest of disclosing negotiating positions and suggestions, I guess, to our government policymakers.

I think that we have to be very careful about opening up our meetings to the public at large. Certainly perhaps some agenda items can be disclosed. Meeting frequency can be disclosed.

But even as the chairman just mentioned with my prior remarks—I don't know if it was a compliment, but he did describe them as being very discreet. I was trying to be measured in what

I felt about some of the trade barriers we face in China and elsewhere. If I really told you how I felt, I don't think that would be appropriate for this particular forum, but that is because it is public. When we are behind closed doors, I think we can sort of take the gloves off, if you will, and be frank, honest, and have a really good, dynamic exchange.

Mr. HERGER. That is very helpful, Mr. Hoelter and Mr. Petty. Thank you very much.

I believe the whole purpose of this ITAC is to be able to help our negotiators, be able to help our trade team. And it sounds to me like this would be very detrimental, and individuals participating would be holding back what otherwise they would be much more forthcoming of.

I think what is important is that we have the best product available. So I thank you very much for your testimony.

Thank you, Mr. Chairman. And with that, I yield back.

Chairman LEVIN. All right. I think we are finished. Thank you very much to all five of you. It has been a most interesting and, I think, important hearing.

We stand adjourned.

[Whereupon, at 12:57 p.m., the subcommittee was adjourned.]

[Submissions for the Record follow:]

**Testimony By American Association of Exporters and Importers, Statement**
**Statement of the American Association of Exporters and Importers**

**1. *Introduction and Overview***

AAEI appreciates the opportunity to offer these comments on the Trade Advisory Committee System, which is currently being reviewed by the House Ways and Means Committee—Subcommittee on Trade in the U.S. House of Representatives.

AAEI has been a national voice for the international trade community in the United States since 1921. Our unique role in representing the trade community is driven by our broad base of members, including manufacturers, importers, exporters, wholesalers, retailers and service providers, including brokers, freight forwarders, trade advisors, insurers, security providers, transportation interests and ports. Many of these enterprises are small businesses seeking to export to foreign markets. With promotion of fair and open trade policy and practice at its core, AAEI speaks to international trade, supply chain security, export controls, non-tariff barriers, import safety and customs and border protection issues covering the expanse of legal, technical and policy-driven concerns.

As a trade organization representing those immediately engaged in and directly impacted by developments pertaining to international trade, trade facilitation and supply chain security, we are very familiar with the operational impact of U.S. trade policies and programs. Many AAEI members serve on the Commercial Operations Advisory Committee and the International Trade Advisory Committees to various federal agencies. Therefore, AAEI is deeply interested in the Trade Advisory Committee System designed to assist U.S. officials concerning implementation of international trade policy.

**2. *Commercial Operations Advisory Committee***

The Commercial Operations Advisory Committee ("COAC") was established in the 1980's to assist the U.S. Department of Treasury oversee the U.S. Customs Service. Specifically, Section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 authorized the Secretary of Treasury to establish COAC as follows:

(1) The Secretary of the Treasury shall establish an advisory committee which shall be known as the 'Advisory Committee on Commercial Operations of the United States Customs Service' (hereafter in this subsection referred to as the 'Advisory Committee').

(2) (A) The Advisory Committee shall consist of 20 members appointed by the Secretary of the Treasury.

(B) In making appointments under subparagraph (A), the Secretary of the Treasury shall ensure that—

(i) the membership of the Advisory Committee is representative of the individuals and firms affected by the commercial operations of the United States Customs Service; and

(ii) a majority of the members of the Advisory Committee do not belong to the same political party.

(3) The Advisory Committee shall—

(A) provide advice to the Secretary of the Treasury on all matters involving the commercial operations of the United States Customs Service; and

(B) submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that shall—

(i) describe the operations of the Advisory Committee during the preceding year, and

(ii) set forth any recommendations of the Advisory Committee regarding the commercial operations of the United States Customs Service.

(4) The Assistant Secretary of the Treasury for Enforcement shall preside over meetings of the Advisory Committee.

19 U.S.C. § 2071. At that time, COAC's focus was on customs procedures which had an impact on the trade community's commercial operations.

Over the last several years, particularly since 2002, the COAC has shifted its focus more to trade security issues to reflect the transfer of the U.S. Customs Service to the U.S. Department of Homeland Security ("DHS"), which now functions as U.S. Customs and Border Protection ("CBP"). COAC's charter was revised in 2004 to reflect its new focus on homeland security issues, particularly maritime cargo. The membership of COAC reflected this change with more representatives with supply chain security expertise, which previously were not involved in import and export regulatory procedures.

In addition to the change in focus, COAC's government chairman was relegated to the Commissioner of CBP instead of senior management of DHS, who did not express interest in attending COAC meetings let alone hearing COAC's views on significant policy issues, such as:

- Customs-Trade Partnership Against Terrorism
- "First Sale" Rule
- Uniform Rules of Origin
- Importer Security Filing ("10+2")

AAEI recommends a number of changes to COAC, which we believe will return COAC to its traditional role in assisting the Departments (both DHS and Treasury) properly provide advice to and report to the Secretaries and the Congress concerning the operations of CBP. Specifically, AAEI recommends the following changes:

- Remove COAC from the Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. 2 §§ 1—14. Specifically, we suggest that Congress enact legislation adding a section to 19 U.S.C. § 2071, stating:

Nonapplicability of FACA. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commercial Operations Advisory Committee under this section.

- For COAC to fulfill its statutory obligation to Congress in assisting both Departments, DHS and Treasury, COAC and CBP must collaborate on the development of agendas and issues which are timely and relevant to the international trade community. The statute states that COAC "*shall* provide advice to the Secretary of Treasury [and DHS] on *all matters* involving the commercial operations of [CBP]." The statute is expansive in the scope of issues that COAC can advise on and report to Congress with recommendations. Nowhere in the statute does it state that advice and recommendations are limited only to those issues deemed appropriate by CBP. COAC shall make the final determination on all subject matters covered by its meeting agendas.
- COAC members shall choose their own Chairman, who will recommend the establishment of sub-committees, create and manage the agenda and prepare the annual reporting to Congress and the Secretaries.
- COAC should be free to establish subcommittees as needed "on all matters" involving commercial operations of CBP. The membership of such subcommittees should not be limited to members of COAC or FACA appointments as

such issues may require either specific expertise not represented within the current membership of COAC, or may require a wider segment of the trade community who should be consulted on such issues before COAC can render advice to CBP and recommendations to Congress.

- In order to avoid conflicts of interest, industry members selected for COAC should not derive *any* income, directly or indirectly, from CBP. COAC members who are employed with firms who are contractors or consultants to CBP have a direct conflict of interest with the mission of COAC since the Committee's work often reviews, assesses and critiques the very projects which a member's firm has developed for CBP.
- COAC members should be selected based on well-established criteria which are transparent and published well in advance of the solicitation for applicants. Moreover, COAC members should be chosen through a selection committee comprised of both government and industry representatives to ensure that the membership as a whole is balanced among the broad spectrum of interests of the international trade community. The current system whereby the agency forwards names to Congress for comments or vetting is too opaque, and may not necessarily produce the best mix of COAC members based on professional experience.
- If changes are made to trade advisory committees through legislation, we recommend that any such changes grandfather existing 11th term COAC members to ensure they complete their 2nd year term with the 12th term COAC, if they elect to do so.
- In order to fulfill its statutory obligation to provide timely and relevant recommendations to Congress regarding commercial operations of CBP, COAC must be free to submit comments to Congress on the impact on commercial operations of any existing or pending statutory or regulatory matters.
- To fulfill the spirit of the transfer of functions from the Secretary of Treasury to the Secretary of Homeland Security, COAC meetings must presided over by *both* the Assistant Secretary of Treasury for Trade and Assistant Secretary for Policy of the U.S. Department of Homeland Security under 6 U.S.C., Section 203, and the Department of Homeland Security Reorganization Plan of November 25, 2002 as modified by a note in Section 542 of Title 6. CBP should not preside over COAC meetings which reviews the agency's performance relating to commercial operations.

**3. *International Trade Advisory Committees***

Because of the importance of product safety, AAEI recommends the establishment of a trade advisory committee for the U.S. Consumer Product Safety Commission ("CPSC"). The CPSC ITAC shall be comprised of representatives from industry, including quality assurance professionals, international trade compliance professionals, certification companies and laboratories, and other commercial stakeholders affected by the laws and regulations of CPSC.

The CPSC ITAC should also be permitted to interact with COAC to provide additional commercial operations expertise where appropriate. Again, we recommend that CPSC ITAC members be chosen through a selection committee comprised of both government and industry representatives to ensure that the membership as a whole is balanced among the broad spectrum of interests of the international trade community with a financial stake in product safety regulations and programs.

The Committee's desire to add more diverse representation to the ITACs is may not produce better results since trade policy is rarely decided at the Tier 3 ITAC level. Rather, the ITACs are designed to include the commercial stakeholders impacted by and responsible for implementing established trade policy.

Stakeholders representing broader segments of the public should be limited to Tier 2 advisory committees rather than be involved at the Tier 3 level ITAC. ITACs generally require technical and function knowledge of commercial operations in order to advise agencies on implementation of the trade policy established by Tier 1 and Tier 2 advisory committees.

The U.S. regulatory regime, like the World Trade Organization framework, regulates trade based on physical products with certain exceptions under U.S. law (*e.g.,* deemed export rule) and certain U.S. export controls on information technology (*e.g.,* release of information). Only recently has "trade in services" become part of the trading regime, but it does not generally involve the work of Tier 3 ITACs. Other non-commercial interests should be handled by the U.S. Congress and the President in establishing U.S. trade policy. The health and safety impact resulting from global trade cannot be adequately addressed at the Tier 3 ITAC level since it requires a broader political consensus at a higher level of government.

**4. *Conclusion***

In conclusion, AAEI believes that Congress should exercise more oversight over federal agencies' interaction with Trade Advisory Committees to ensure that the system is functioning the way Congress intended it to. AAEI thanks the House Ways and Means Committee Subcommittee on Trade for holding this timely hearing

## Testimony By Michael J. Stanton, Statement

## Statement of Michael J. Stanton

The Association of International Automobile Manufacturers (AIAM) appreciates this opportunity to comment on the advisory committee system and ways to increase transparency and participation in the development of U.S. trade policy. For reasons summarized below, we believe the time has come to open the federal advisory committee process to individuals associated with U.S. subsidiaries of international companies, particularly with respect to the automobile industry.

We take this position for three principal reasons:

1. Neither the Federal Advisory Committee Act (FACA) nor the Trade Act of 1974 explicitly or implicitly requires that federal advisory committee members be employees of U.S.-owned corporations.
2. The U.S. auto industry has changed dramatically. Aside from the large and growing level of U.S automotive production by U.S. subsidiaries of foreign-owned corporations, there may shortly be only two U.S.-owned major motor vehicle manufacturers, with the "new" Chrysler now under the operational control of Fiat SpA, Italy's largest automaker.[1] We do not believe U.S. government trade negotiators can secure the best possible advice on trade negotiating positions from only two of the eleven (soon to be thirteen with the addition of Kia and VW) U.S vehicle manufacturers.
3. The confidentiality requirements of the FACA prevent the disclosure of advice sought or given as part of the advisory committee process to those without the requisite security clearance. Accordingly, the issue of corporate ownership is moot.

* * *

AIAM is a trade association representing the interests of the U.S. subsidiaries of international automobile manufacturers, including many of the largest automotive companies in America[2] Collectively, AIAM companies are responsible for billions of dollars annually in cross-border trade, involving all aspects of manufacturing and distribution of passenger cars, light trucks and multipurpose vehicles.

Both individually and as a group, AIAM companies have a substantial interest in trade policy matters and, we believe, much useful information and guidance to offer through the federal advisory committee process. As detailed in these comments, at the end of 2008, AIAM-member companies accounted for about one-third of all manufacturing plant employment in the U.S. automobile and light truck manufacturing industry.[3] We are increasingly being recognized as the positive side of the "globalization" coin for many Americans employed in manufacturing. In the automotive sector, U.S. subsidiaries have invested more than $40 billion in new production and distribution capacity over the last 25 years, creating more than 90,000 high-skill, high-wage jobs across the country.

Despite the substantial and growing role of AIAM companies in the U.S. economy and the contributions such companies could make to the federal international trade policy development process, under current agency practice no one associated with AIAM—or any other U.S. subsidiary—may sit on a federal advisory committee for

[1] Although Chrysler is not yet "owned" by Fiat, it is effectively controlled by Fiat management and thus raises the question of whether it is a foreign-owned corporation in the spirit of the Commerce Department's rules.

[2] AIAM members include American Honda Motor Co. Inc., American Suzuki Motor Corporation., Aston Martin Lagonda of North America, Inc., Ferrari North America, Inc., Hyundai Motor America, Isuzu Motors America, LLP, Inc., Kia Motors America, Maserati North America, Inc., Mitsubishi Motors North America, Inc., Nissan North America, Inc., Peugeot Motors of America, Inc., Subaru of America, Inc., and Toyota Motor North America, Inc. The Association also represents original equipment suppliers, other automotive-related trade associations, and motor vehicle manufacturers not currently engaged in the sale of motor vehicles in the United States.

[3] AIAM 2009 Member Economic Impact Survey and the Bureau of Labor Statistics.

trade policy matters. While no formal rule has ever been promulgated, the Office of the U.S. Trade Representative (USTR) and the Commerce Department have for many years applied a blanket prohibition on advisory committee membership to individuals employed by U.S. subsidiaries or otherwise representing their interests.

This policy was most recently reaffirmed and restated in April 2006 when the Commerce Department published a *Notice* on the *Charter Renewal of the Industry Trade Advisory Committees (ITACs); Request for Nominations.* [4] As stated in the *Notice,* current policy requires that an advisory committee member "must represent a U.S. entity" which is defined as "an organization incorporated in the United States (or if unincorporated, having its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity." The policy further states that "[a]n entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities." In addition, a nominee to advisory committee membership who represents an entity or corporation with ten percent or more non-U.S. ownership "must demonstrate at the time of nomination that this ownership interest does not constitute control and will not adversely affect his or her ability to serve as a trade advisor to the United States." [5]

We do not believe this policy is consistent with the Federal Advisory Committee Act (FACA) requirement that membership on advisory committees be "fairly balanced." Nor do we believe this discriminatory rule can be justified on public policy grounds. In fact, the real question is "can, or even should, the Commerce Department determine the nationality of the stockholders of major international corporations?" Whatever restrictions may have been warranted in the past, U.S. subsidiaries and their American employees unquestionably have a stake and interest in U.S. trade policy matters and important information and guidance to contribute to the policymaking process.

The Subcommittee's hearing offers a timely opportunity to reassess the rules governing U.S. subsidiary participation in the federal advisory committee process and, through more rigorous application of FACA's "fair balance" requirement, better ensure that U.S. policymakers receive "timely, relevant trade policy advice" on a representative basis. The automotive sector provides a particularly good window on the changes taking place in the national and global economy, but the issue raised by the blanket U.S. subsidiary prohibition is much broader. The ultimate question for USTR and the Commerce Department is whether trade policy can or should be driven solely by narrow questions of capital affiliation (i.e., nationality of ownership) or also, as we believe, must take into account the interests and issues of U.S.-based workers and manufacturing. The U.S. subsidiary prohibition puts front and center the question of what is meant, or should be meant when we refer to "American" companies in the context of the emerging global economy.

* * *

***U.S. Subsidiary Prohibition Contravenes Statutory "Fair Balance" Requirement***

Neither FACA nor the Trade Act of 1974 authorizes the U.S. subsidiary prohibition. To the contrary, they appear to mandate participation where U.S. subsidiaries represent a significant part of the domestic industry.

***The Federal Advisory Committee Act***

The starting point for analyzing agency authority and responsibilities on matters involving federal advisory committees is the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2. Its provisions apply to all federal advisory committees, including those established by USTR and the Commerce Department to advise on trade policy matters. *See, e.g., Northwest Ecosystem Alliance* v. *USTR,* C99–1165R at 7 (W.D. Wash. Nov. 9, 1999) (rejecting a blanket prohibition on ISAC participation by non-business interests).

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[4] U.S. Dep't of Commerce, Internat'l Trade Admin., *Notice of Renewal of the Charters and Request for Nominations,* 71 Fed. Reg. 18720 (Apr. 12, 2006).

[5] *Id.* at 18721. These criteria are also published at the International Trade Administration's ITAC website at http://www.ita.doc.gov/itac/become_an_advisor/index.asp. This policy was relied upon in the past to reject on eligibility grounds an application for membership on ISACs (the acronym for an element of the pre-2003 trade advisory committee structure that was replaced by ITACs) by then-AIAM President Philip Hutchison. We also understand that it was applied to applicants associated with Volkswagen of America and to Chrysler when it was affiliated with DaimlerBenz.

Congress' paramount objective when it passed FACA in 1972 was to reform an out-of-control advisory committee system. The numerous committees in existence at the time had no clearly-defined role or responsibilities and, in the absence of enforceable membership guidelines, too often functioned as closed conduits for special interests. Reform was to be accomplished by making the process more transparent and representative. To this end, Congress reclaimed sole authority to authorize advisory committees and prescribed operational guidelines to ensure that advisory committees have "a clearly defined mission, balanced representation, assurance of autonomy, legislation authorization for funds [and] a time certain for termination." H.R. Rep. 92–1017 at 6 (1972).

The "balanced representation" requirement at the heart of this reform was codified in a provision of FACA mandating that membership on advisory committees be "fairly balanced in terms of point of view represented and the functions to be performed by the advisory committee." 5 U.S.C. app. 2 § 5(b)(2). Its purpose was not simply fairness, but to prevent "special interests" from capturing the process. As the House Committee on Government Operations explained in accompanying report language,

Particularly important among the guidelines are [1] the requirement . . . that 'the membership of an advisory committee be fairly balanced in terms of point of view represented and the functions to be performed' and [2] the requirement . . . that in creating an advisory committee the creating authority should include 'appropriate provisions to ensure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or any special interests.'

**One of the great dangers in the unregulated use of advisory committees is that special interest groups may use their membership on such bodies to promote their private concerns.** Testimony received at hearings . . . pointed out the danger of allowing special interest groups to exercise undue influence upon the Government through the dominance of advisory committees which deal with matters in which they have vested interests.

H.R. Rep. 92–1017 at 6 (emphasis added).

After describing a specific instance where outside interests had not been reflected on an advisory committee, the Committee went on to observe that "[t]his lack of balanced representation of different points of view and the heavy representation of parties whose private interests could influence their recommendations would be prohibited by the provisions contained in [FACA]." *Id.* [6]

As the court in the *Northwest Ecosystem Alliance* case observed, "[t]he 'fairly balanced' requirement was designed to ensure that persons or groups directly affected by the work of a particular advisory committee would have some representation on the committee." C99–1165R at 7.[7] This applies with full force to U.S. subsidiaries, whose interests and perspectives on some trade-related policy matters can differ significantly from other U.S. companies.

Nowhere in FACA is there any suggestion that the "fair balance" requirement does not apply to U.S. subsidiaries and their American workers or that they (or any other discrete interest) can be excluded from the committee process. While federal agencies have wide latitude to weigh individual membership applications, FACA does not permit blanket exclusion of persons associated with a particular interest or point of view.

***Trade Act of 1974***

Two years after passing FACA, Congress included provisions in the Trade Act of 1974 authorizing creation of advisory committees on trade matters. 19 U.S.C. § 2155. With certain limited exceptions (unrelated to committee membership), these trade committees were to be administered in full compliance with FACA provisions, including the "fair balance" requirement. *Id.* § 2155(f).

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[6] The companion Senate report likewise notes that FACA would "require that membership of the advisory committee shall be representative of those who have a direct interest in the purpose of such committee." S. Rep. No. 92–1098 at 9 (1972).

[7] In a subsequent case, the *Northwest Ecosystem Alliance* court enforced a Settlement Agreement between the USTR and a coalition of environmental groups that had filed a lawsuit challenging the lack of a health or environmental representative on a particular ISAC. The Agreement obligated the USTR to appoint a "properly qualified environmental representative" to the ISAC. *See Washington Toxics Coalition* v. *USTR,* 2003 U.S. Dist. Lexis 25869 (W.D. Wash. Jan. 15, 2003). *See also Public Citizen* v. *National Advisory Committee on Microbiology Criteria for Foods,* 886 F.2d 419, 433 (D.C. Cir. 1989) (concurring opinion, Edwards J.), noting that a primary purpose of the "fair balance" requirement is "to constrain executive discretion and to establish a measurable standard against which to judge executive action."

Section 135 of the Trade Act directs the President to "seek information and advice from representative elements of the private sector and the non-Federal Governmental sector" with respect to a broad range of trade policy matters. 19 U.S.C. § 2155(a)(1). These expressly include "(A) negotiating objectives and bargaining positions . . . ; (B) the operation of any trade agreement once entered into . . . ; and (C) other matters arising in connection with the development, implementation and administration of [U.S. trade policy]." *Id.* A second provision further requires that the President "consult with representative elements of the private sector and non-Federal Governmental sector on overall current trade policy of the United States." *Id.* § 2155(a)(2).

To facilitate this information-gathering function, the 1974 Trade Act required creation of an Advisory Committee for Trade Policy and Negotiations (ACTPN) to provide "overall policy advice" and authorized the President to establish two additional types of committees—individual general policy advisory committees to obtain advice from particular interest groups and "such sectoral or functional advisory committees as may be appropriate." *Id.* § 2155(b), (c). One set of these committees is now organized as Industry Trade Advisory Committees (ITACs).[8]

For all three types of advisory committees, the importance of balanced representation was reiterated. For ACTPN, the President was directed to seek information and advice from "representative elements of the private sector." *Id.* § 2155(a)(1). Balanced representation was similarly required for general policy committees, while the Trade Act mandated that sectoral and functional committees (now the ITACs), "insofar as is practicable, be representative of *all* industry, labor, agriculture and service interests . . . in the sector or functional interests concerned." *Id.* § 2155(c)(2) (emphasis added).

Further guidance on this point was provided in report language accompanying the House version of the bill, in which the House Ways and Means Committee observed that with multilateral trade negotiations on the horizon "the need for the Government to seek information and advice from the private sector [was] more important than ever before" and that "[t]he *broad range of interests* to be represented on this committee [was] intended to provide U.S. negotiators with a balanced view of what objectives U.S. negotiators should pursue in the multilateral trade negotiations." H.R. Rep. No. 93–571 at 38 (1973) (emphasis added).

As with FACA, nothing in the statute itself or accompanying legislative history would appear to suggest or otherwise support excluding "U.S. subsidiary" interests from the advisory committee process.[9]

***Non-Statutory Justifications***

Over the years, several "justifications" for the blanket U.S. subsidiary prohibition have been alluded to, informally, but none hold up under scrutiny.

The most common argument made is that the advisory committees established by USTR and the Commerce Department are narrowly focused and do not implicate U.S. subsidiary interests. We contend that this view is wrong on two counts. First, as has been noted, the 1974 Trade Act mandates advisory committee involvement not only on export-related issues but a wide spectrum of matters involving U.S. trade policy. Advisory committees provide agency officials with information and recommendations on matters ranging from trade and investment policy to services, intellectual property rights and import rules, not just exports.

Whether focused on exports or a wider range of trade matters, U.S. subsidiaries can make a valuable contribution to the advisory committee process by, among other things, helping to identify and rank agenda priorities and advising on the implications of particular events or proposals for U.S.-based manufacturing. AIAM members invested in U.S. production facilities for a variety of reasons and can provide unique advice on how U.S. trade policy can be improved to increase the attractiveness of the United States to automotive investors. U.S. subsidiaries also have a unique contribution to make on international trade issues involving environ-

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[8] A reorganization in 2003 resulted in 16 new Industry Trade Advisory Committees (ITACs) that replaced the previous structure of "sectoral or functional advisory committees." See the joint Department of Commerce and USTR press release, U.S. Department of Commerce and the U.S. Trade Representatives Announce New Industry Trade Advisory Committee Structure," (Nov. 25, 2003) available at http://www.commerce.gov/opa/press/Secretary_Evans/2003_Releases/November/25_evans_itac_release.htm.

[9] Nor can such authority be found elsewhere. The 1994 Executive Order establishing a trade and environment policy committee, for example, states only with respect to membership that "[t]he Committee should be broadly representative of the key sectors and groups of the economy with an interest in trade and environmental policy issues." Exec. Ord. No. 12905 (Mar. 25, 1994).

mental technologies, customs clearance, technical standards and other product design issues with trade policy implications.

A central argument made by those opposing ITAC membership for U.S. subsidiaries is that individuals employed by these U.S. companies cannot be trusted with classified information. This is simply not defensible. Everyone who serves on an advisory committee must have a confidential security clearance and commit in writing to non-disclosure conditions. Eliminating the U.S. subsidiary prohibition would in no way affect these requirements. Trade advisory committee members cannot legally disclose advice sought and given as part of the advisory process. This requirement holds regardless of the employer. There is no reason to expect lesser compliance from U.S. citizens associated with U.S. subsidiaries.

In fact, were there evidence to suggest a more serious security concern for committee members with ties to U.S. subsidiaries (and we do not believe there is any), this presumably would also be an issue for advisory committee members employed by "U.S. entities" whose professional responsibilities extend to other entities. This would include, for example, committee members working for trade associations that have U.S. subsidiary as well as "U.S. entity" members (i.e., most Washington-based business groups), as well as members employed by accounting and other consulting firms that provide service (and may have fiduciary responsibilities) to U.S. subsidiary clients. The security of confidential information also presumably would be an issue for U.S.-owned companies with foreign subsidiaries, affiliates or joint ventures.

In a 2002 report on international trade advisory committees, the Government Accountability Office (GAO) described the policy of excluding representatives of U.S. subsidiaries from the committees as a "gap in industry representation on committees."[10] GAO reported the Commerce Department's "rationale for this long-standing policy . . . [as] the sensitivity of the subject matter considered by the committees and possible conflicts that might be experienced by U.S. firms that have foreign owners."[11] Yet GAO went on to observe that "[t]hese gaps in industry representation have encouraged negotiators to seek advice outside the advisory committee system, including from foreign-owned firms or trade associations that include such firms."[12] It seems clear that FACA's purposes would be better served if such advice were rendered in the established advisory committee forum, rather than in off-the-record meetings.

> Whether intended or otherwise, the practical effect of the blanket prohibition on U.S. subsidiary advisory committee membership in many areas has been to foster the very "danger" FACA was designed to prevent—"that special interest groups may use their membership on such bodies to promote their private concerns." H.R. Rep. No. 92–1017 at 6.

ITAC 2, the Industry Trade Advisory Committee on Automotive Equipment and Capital Goods, is a case in point. Under current rules, only three automakers (General Motors, Ford, and Chrysler) are currently eligible to participate. While the ITAC 2 charter contemplates a membership of "not more than 50 members," the committee currently has only 27. Only three are from auto manufacturing, one each from General Motors, Ford, and Chrysler. There is no representation, direct or otherwise, of any of the eight other companies manufacturing automobiles in this country.[13]

It is difficult to imagine a clearer contravention of the FACA "balanced representation" requirement. Three multinational companies, General Motors, Ford, and Chrysler have been given a monopoly on access—in effect, a proprietary forum for advancing their private corporate perspectives and agendas.

Beyond locking out the rest of the companies that make up the U.S. automotive industry, information and advice from so limited a source has other policy-distorting implications. Like AIAM members, GM, Ford, and Chrysler are international companies with mixed global interests. Even as international automakers have been expanding in the United States, these "U.S." multinationals—despite their current difficulties—have been shifting production offshore and taking ownership of or controlling interests in offshore automakers. There certainly is nothing wrong with this as a business strategy, but these companies can no longer claim to be the sole reposi-

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[10] U.S. Gov't Accountability Office, *International Trade: Advisory Committee System Should Be Updated to Better Serve U.S. Policy Needs,* GAO–02–876, at 34 (Sept. 2002).

[11] *Id.* at 35.

[12] *Id.*

[13] The following companies currently operate vehicle manufacturing facilities in the United States: BMW, Honda, Hyundai, Mercedes, Mitsubishi, Nissan, Subaru, and Toyota. In addition, Mazda and Ford have a joint-venture operation and additional vehicle plants are under construction by Kia and Volkswagen.

tories of "domestic" interests. On many issues—for example, rules affecting imports—their strategic interests are as likely to reflect foreign-based manufacturing as they are the interests of their U.S. workforce. In such circumstances, U.S. subsidiaries can more fully represent American workforce and manufacturing base interests.

Globalization has made it much harder for policymakers to discern the national interest in any given matter. In true American fashion, FACA rests on the notion that such interests are best divined through full and open debate—in an advisory committee context, by requiring policymakers to seek out information and advice from affected interests on a broadly representative basis.

***U.S. Subsidiaries Are "American" Companies***

The U.S. subsidiary prohibition rests on a fundamentally flawed premise—that U.S. subsidiaries are foreign rather than American. As former Labor Secretary Reich, among others, has observed, in today's global economy "domestic" and "foreign" labels are no longer meaningful.

**1. *Overall U.S. Subsidiary Contributions***

U.S. subsidiaries are American companies in every sense of the word, especially in the contribution they make to the U.S. economy and their local communities. *According to a recent Congressional Research Service study (which is based on the* Commerce Department's own data quantifying U.S. subsidiary contributions to the U.S. economy),[14] by the end of 2005, all U.S. subsidiaries of international corporations:

- Employed 5.5 million people—about 4% of the U.S. workforce;
- Owned over 30,000 U.S. business establishments and with a direct presence in every state; and
- Maintained forty percent of their employment in the hard hit U.S. manufacturing sector, "more than twice the share of manufacturing employment in the U.S. economy as a whole, with average annual compensation (wages and benefits) per worker of about $63,000.

In addition, the study said that "foreign-owned establishments, on average, are far outperforming their U.S.-owned counterparts. Although foreign-owned firms account for less than 4% of all U.S. manufacturing establishments, they have 14% more value-added on average and 15% higher value of shipments than other manufacturers." Further, ". . . foreign-owned firms paid wages on average that were 14% higher than all U.S. manufacturing firms, had 40% higher productivity per worker, and 50% greater output per worker than the average of comparable U.S.-owned manufacturing plants."

**2. *Automotive Sector Contributions***

The contribution to the U.S. economy made by U.S. subsidiaries of international motor vehicle corporations in the automotive sector is even more dramatic.

**Changing Nature of the U.S. Auto Industry.** At the time the ISAC process was formally established in 1974, there were no automobiles and light trucks produced in the United States by U.S. subsidiaries of international companies. According to *Automotive News* data, in 2008, AIAM member companies produced 3.1 million vehicles or 36% of all U.S. light duty vehicle production. All international companies manufacturing in the United States produced 3.5 million vehicles or 40% of all U.S. production. These percentages have grown dramatically this year with all international companies producing 51% of all U.S. production and AIAM members producing 48%. These numbers will grow even larger when the Fiat acquisition of Chrysler is completed and the new Kia and Volkswagen plants begin production.

According to a 2009 AIAM Member Economic Impact Survey, in 2008 AIAM members:

- Employed 90,100 Americans
- Supported a total payroll of $6.62 billion
- Purchased $65.59 billion from U.S. suppliers
- Purchased $54.5 billion in U.S. parts and materials from U.S. suppliers; and
- Invested $41 billion in 325 U.S. facilities, including 109 high value U.S. manufacturing and R&D facilities, 15 vehicle manufacturing facilities and 54 component manufacturing plants. International vehicle manufacturing plants are the only such plants located in California, Mississippi, Alabama, and South Carolina.

[14] The Congressional Research Service, "Foreign Direct Investment in the United States: An Economic Analysis," August 15, 2008.

**Innovation and Competitiveness.** Substantial as these figures are, the overall U.S. subsidiary contribution in the auto sector has been even greater. U.S. subsidiaries consistently earn the industry's top marks for manufacturing efficiency, setting a standard that has helped to make Detroit-based production better and more efficient. Advanced technologies developed by U.S. subsidiaries at their U.S.-based research and design facilities have resulted in greater fuel efficiency, improved safety, and better overall vehicle performance. AIAM members are the leaders in putting the most advanced and fuel efficient vehicles on America's roads.

AIAM appreciates the opportunity to comment on this important issue. We believe the time has come to open the advisory committee process to all affected U.S. industry and look forward to working with you to this end.

## Testimony By Coalition for a Prosperous America, Letter Coalition for a Prosperous America's Letter

Thank you Chairman Levin, and members of the House Subcommittee on Trade, for allowing the Coalition for a Prosperous America (CPA) to submit this written testimony for the record. CPA works for trade policy reform that benefits U.S. farmers, ranchers, workers and manufacturers. We are a unique coalition of agriculture, manufacturing and organized labor representing the interests of over 2.6 million people through our association and company members.

We submit this testimony to encourage the ITAC inclusion of more domestic producers, i.e. those who produce primarily for the domestic market and are sensitive to unfair imports through foreign government mercantilism.

America's trade policy has been too focused upon opening export markets and innovation without sufficient consideration of either reciprocity, or trading partner protectionism and mercantilism. The past "open-export-markets" and "innovate-our-way-to-prosperity" approaches to trade have proven insufficient and often harmful. We do not oppose those approaches, but oppose relying upon them exclusively.

Our massive trade deficit subtracts directly from gross domestic product. The deficit is disruptive, provides massive economic harm, and handicaps our ability to recover from a recession. Jobs, investment, companies and agricultural production have moved offshore as a result. Fixing America's economy requires a changed trade policy. More balanced membership in, and input from, the Trade Advisory Committee System is necessary to help the U.S. Trade Representative receive better input and advice than in the past.

### The Role of the ITACs

The USTR website states specifically how ITACs are used as resources.

U.S. Government policy makers rely on our trade advisors to identify barriers and to provide advice on key objectives and bargaining positions for multilateral, bilateral, and regional trade negotiations, as well as other trade-related policy matters. As a result of these efforts, the United States is able to display a united front when it negotiates trade agreements with other nations. The United States' negotiating position is strengthened because its objectives are developed with bipartisan, private-sector input throughout the negotiations.

. . . The sixteen ITACs were created to reflect the manufacturing and services sectors of the U.S. economy, as well as issue-oriented matters that cut across all sectors. . . . [1]

This is a worthy use of the ITACs. However, the membership of the ITACs, with the exceptions of Textiles and Steel ITACs, has been skewed towards offshoring interests. The lack of balance and diversity has harmed trade policy efforts.

### The ITAC Problem—Insufficient Domestic Producer Representation

The sixteen Trade Advisory Committees largely, though not exclusively, represent multinationals. Insufficiently represented are companies producing primarily for the domestic market. The advice currently given to USTR from the ITACs tends to promote offshoring, ease of importation and selective market access.

Exports and innovation have been the mantra of the last two administrations. Those are worthy, but insufficient, goals that fail to respond to current problems. Import volume resulting from unanswered foreign interference in our market and in world markets has given rise to crippling deficits and offshoring. Foreign reciprocity has been absent. National security and food safety have been ignored or

[1] Http://www.ustr.gov/about-us/advisory-committees/industry-trade-advisory-committees-itac

criticized as "protectionist." The ITACs thus fail to represent the diversity of the economy, but rather narrow special interests.

**The ITAC Solution: More Domestic Producer Representation**

*CPA requests that domestic producers be given increased representation in the ITACs to provide balance and additional insight on the modern trade problems*. By "domestic producers," we specifically mean those that produce primarily for the domestic U.S. market.

Because the current ITAC representation is skewed towards multinational corporations, a disproportionate amount of time and effort is spent opening relatively small markets which are of keen interest to a few, and not enough time opening larger markets that would be of interest to a larger set of potential exporters.

Unfair import competition/foreign mercantilism is another topic that has been neglected. Some ITACs and USTR have given too little attention to trade strategies ensuring that competitive American producers are not placed at a crippling disadvantage by mercantilist foreign government policies. Many trading partners misalign their currencies to enable massive sales to the U.S.

Virtually all trading partners rebate value added taxes (VAT) when their companies export to us, a massive global export subsidy. China, for example, adjusts their VAT rebates monthly depending upon market conditions to support a trade strategy that is not based upon their domestic tax policy. Massive and fundamentally trade distorting foreign subsidies which result in artificially cheap imports at the same time as those same countries place our exporters at a disadvantage in all world markets. State owned government enterprises in Asia and elsewhere are ignored as substantial sources of unfair and subsidized international competition.

The multinationals represented within most ITACs have no interest in curtailing these trade distorting policies. Due to their offshoring, many are interested in continuing those foreign policies and programs for their own benefit, which conflicts with the interests of U.S. workers, farmers and manufacturers.

Additionally, the unbalanced ITACs tend to offer advice to limit the effect of U.S. trade laws, rather than strengthen the effect. U.S. trade laws are a vital tool to prevent foreign government cheating, but are not used.

Furthermore, the lack of balance results in too much focus upon trade facilitation and not enough action on product safety; too much discussion of future trade agreements in tiny markets and not enough enforcement of the agreements we have; and too much discussion on opening new markets and not enough on reciprocal and real market access.

Domestic producers are fundamentally reliant on the good performance of the U.S. economy. Multinational companies spread their risk across the globe and are thus not reliant on the U.S. economy.

**Conclusion**

A country cannot prosper with a persistent trade deficit. The U.S. cannot recover from the recession without trade balance improvement. More domestic producer input into trade policy is necessary, via the ITACs, to bring new insights into problems long ignored.

We hope your Subcommittee shows support for more domestic producer balance on the ITACs as you consider how to make the Trade Advisory Committee System work better. This diversity will help address the specific shortcomings that persist in U.S. trade policy.

## Testimony By V.M. (Jim) DeLisi, Letter
## V.M. (Jim) DeLisi's Letter

Dear Chairman Levin & Ranking Member Brady:

I am the President of Fanwood Chemical, Inc., a small chemical sales, marketing and consulting company located in Fanwood, NJ. I have personally been involved in the Advisory Committee process for more than 20 years as a member of ITAC 3 the Industry Trade Advisory Committee for Chemicals, Pharmaceuticals, Health/Science Products and Services, as well as its predecessor ISAC 3, the Industry Sector Advisory Committee for Chemicals and Allied Products. I currently serve as the Chairman of ITAC 3, and am proud to be the first small company Chair of this group in its 35-year history. I also have attended WTO Ministerial Meetings as an Advisor in Seattle, Cancun, and Hong Kong. I can personally attest to how important the existing system is to creating jobs and investment in the USA. Records

would show that our Committee has met regularly for 35 years. We are also very proud of the fact that members of ITAC 3 always represent the largest contingent of any sector at the various WTO Ministerials that have occurred in this time period, including four of our members who accompanied you, Mr. Chairman, to Doha. Our sector accounts for approximately $500 billion in trade during 2008.

First, a point of clarification, I am submitting comments as an individual, not as a representative of ITAC 3, the Department of Commerce (DOC) or the Office of the United States Trade Representative (USTR).

Everyone that I've ever met in the Advisory process believes as I do that every interested citizen of the U.S. deserves to have input into U.S. trade policy. We are very fortunate to have an enormously talented group of individuals, both career and appointed, in both the Office of the USTR and the Department of Commerce, dedicated to expanded trade in goods and services. It has been shown that this is the way towards prosperity. Perhaps the only place where we differ with many in the NGO community is that we also believe that USTR and DOC officials are capable of gathering input from a variety of sources and then distilling from this input the proper trade policy for our nation. Such advice does not need to be contained in a single document, nor does it need to come from a single committee. In fact, we strongly advocate that the best advice is gleaned from committees that can function in a clear and open manner with the ability to reach consensus. This can only be accomplished when there is mutual trust among committee participants. The necessary level of trust is very difficult to achieve if all views are required to be heard and discussed in the same forum.

The existing ITAC system has served the U.S. very well, being especially beneficial to small business. Large companies will always be able to get the ear of government officials. This is a natural outgrowth of their importance to our overall economic well-being. However, the ITAC process allows small companies, such as mine, to also have input into the decision-making process.

As you know, the Advisory System administered by USTR and DOC was specifically created to ensure that our negotiators had as much knowledge of what's happening in the real world sectors of industry as possible so that they could best represent our real needs, not our perceived needs.

At its core are a group of highly motivated industry experts that must undergo a rigorous security clearance. This allows the USG to have confidence that negotiating positions can be discussed without fear of leaks. In fact, during my 20-year tenor only a couple individuals have been removed from the system for breaching this trust. We all take this responsibility very seriously!

I truly believe that the Advisory System has played an important role, not in setting U.S. trade policy, but in helping mold the policy, once it has been set by our political leaders, into a form that assures us that the policy goals, once achieved, will truly be beneficial for our economy as a whole.

As a "Tier 3" committee, we are charged to advise the USTR and DOC on highly technical issues impacting our industry, such as rules of origin, tariffs, and non-tariff barriers to improved global market access for U.S. goods and services.

We have had a great deal of experience with environmental NGO's on ITAC 3 and ISAC 3. Frankly, this experience shows that we "bore them to death" discussing in detail the technical aspects of trade and they rarely show up. When we occasionally do discuss an issue of interest, NGO participation in an ITAC's activities can be highly disruptive and counterproductive. Moreover, most of their expressed concerns have not been sectoral in nature, but more cross cutting (global warming, investment, IPR, labor, environmental, etc.), and therefore do not belong in the "sectoral setting".

ISAC 3 learned first hand what could happen when the Advisory System is not allowed to function. We where shut down by court decree for about 18 months specifically during the time that both the Singapore and Chile Free Trade Agreements were under negotiation. The case was settled just in time for ISAC 3 to meet our statuary deadline to present to Congress our report on these two agreements. While we supported both deals in principle, some of the details that are important to our sector, specifically regarding rules of origin, were not properly reflected in the agreements. This would not have occurred had ISAC 3 been allowed to meet during the period that these agreements were being drafted.

I'd like to address two pieces of legislation that are currently in this Congress, HR 1320 and HR 2293.

A few ITAC members have carefully reviewed both of these bills after consultation with your staffs.

We enthusiastically support HR 2293 which creates a Public Health Advisory committee at the "Tier 2" level at USTR. One of the reasons we support this legislation is that it agrees with our contention that USTR is capable of receiving advice

from a multitude of sources in different venues. It specifically bans the inclusion of representatives of "commercial interests" on the new committee being proposed.

We could also support HR 1320, except for Section 11 which radically alters the existing practices for disclosing information. All of our members have to undergo a government security clearance prior to joining the committee, which includes the signing of a confidentiality agreement. This is then re-enforced with routine ethics briefings. Therefore, our meetings can be closed to the public, allowing representatives from DOC, USTR and other agencies to discuss negotiating positions and tactics. Section 11 of HR 1320 requires that a transcript, audio or video recording of each meeting be posted on a pubic website within 30 days of a meeting. This requirement will kill the system since neither USTR, nor DOC would be able to discuss anything of substance in confidence with ITAC–3, as well as every other Advisory Committee, including the Health Care NGO Committee to be established by HR 1320, if they knew it would be made public within 30 days.

I recently had an interesting experience whereby I reviewed my notes of ISAC 3 meetings from the mid 90's. Some of the information in these notes would still be considered trade sensitive today. This is especially true for negotiations that drag on for years, such as has been the case with the Doha Round, but also in cases where negotiations are suspended for several years such as the Free Trade Area of the Americas (FTAA) and the Free Trade negotiations that where begun with the South Africa Customs Union.

If the provisions of Section 11 were removed, we would then also be able to enthusiastically support the passage of HR 1320.

In conclusion, the existing system works well. Mend it—don't end it—by adding appropriately targeted committees to the existing system. Frankly, it is likely that many of the agencies involved already have sufficient authority to make many of these changes themselves, so all that may be needed is a slight "nudge" from Congress.

Thank you for taking the time to review this important subject.

Respectfully submitted,

V.M. (Jim) DeLisi, President

Fanwood Chemical, Inc.

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**Testimony By Humane Society International, Statement**

**Statement of Humane Society International**

On behalf of Humane Society International (HSI), we hereby submit the following written comments for the hearing record in connection with the July 21, 2009 Hearing on the Trade Advisory Committee System before the Trade Subcommittee of the U.S. House of Representative's Committee on Ways and Means. Our organization appreciates the opportunity to submit our views and share our experiences on this topic.

HSI is the international arm of The Humane Society of the United States (HSUS). Together, HSUS and HSI represent one of the largest animal protection organizations in the world with a constituency of over 11 million people and a significant global presence. HSI actively participates in discussions of international trade policy at the World Trade Organization (WTO) addressing such issues as equitable development, humane and sustainable agriculture, environmental conservation, and wildlife and habitat protection. HSI also implements a number of trade capacity building and technical assistance programs in developing WTO Member countries to support sustainable economic development, including humane agricultural practices and habitat and wildlife protection policies.

HSI is also a long-standing Member of the Trade and Environment Policy Advisory Committee (TEPAC). HSI has been a Member of TEPAC since 1998, and is one of the most active participants on the committee, attending meetings, providing comments, and participating in TEPAC subcommittees. Over the years, HSI has found membership on TEPAC to be a valuable way of assisting the Office of the United States Trade Representative (USTR) and the United States Environmental Protection Agency (EPA) with formulation and implementation of trade policies that impact environmental and animal protection at home and abroad. As with any system, there are positive aspects and areas for improvement. This is explained in further detail below.

Overall, in HSI's experience,[1] USTR has been transparent and collaborative on trade and environment issues. Although TEPAC Members only meet several times a year, there are regular liaisons meetings and conference calls, with the opportunity for Members and/or liaisons to raise questions or concerns on trade and environment issues, even if they are not on the agenda. During certain meetings, such as the World Trade Organization Doha Round negotiations, USTR set up times to discuss developments with TEPAC while U.S. negotiators were in Geneva so as to provide real-time updates. USTR also invites TEPAC Members/liaisons to assist U.S. trading partners with establishment of their own advisory committees, which allows TEPAC Members to encourage strong levels of public participation outside of the U.S.

One example of HSI's experience in particular involves the U.S.-Peru Trade Promotion Agreement (TPA). HSI has been actively working with USTR through TEPAC and its individual capacity on negotiation and implementation of the U.S.-Peru TPA for the last several years. USTR has regularly updated TEPAC about developments in Peru, and has held numerous meetings to gather input that have included TEPAC plus additional interested civil society stakeholders, Congressional staff, and inter-agency representatives. USTR has also invited TEPAC (and additional groups) to Peru for civil society outreach meetings. HSI recently traveled to Lima for one such meeting and was grateful for the opportunity to talk about issues associated with implementation of the trade agreement, including public participation, with Peruvian government officials and non-government organization (NGOs). HSI looks forward to continuing this constructive relationship.

While as a general matter, we have a voice on trade and environment issues through TEPAC, as well as our individual role as HSI, we believe there are ways the trade advisory system can be strengthened. Areas for improvement that complement culture of transparency embraced by Obama Administration include:

- First, one of our main concerns serving on TEPAC over the years involves insufficient time to provide comments on negotiating texts and other issues. It is important to our organization to play a proactive role to the extent possible in influencing trade policy. When negotiating texts (or other issues that arise) are presented to advisors with short turnaround time for comments, the value of our role as advisors is diminished. We recognize that negotiations can be fluid, and developments can arise in short timeframes that do not always allow for robust consultation with advisors. However, we believe institution of a mandatory comment timeframe for advisors would be helpful in this regard. We would be glad to discuss this further with TEPAC and USTR.
- Second, in a similar regard, HSI believes that the 30 day timeframe for TEPAC Members to thoroughly review, analyze and provide opinions of Free Trade Agreements is insufficient. HSI believes Congress should increase this review period to at least 45 days.
- Third, we support creation of a formal policy that would allow for the exchange of information between advisory committees on issues of mutual interest.

HSI looks forward to continuing to work with USTR and EPA through the advisory system, and to continuously finding ways to strengthen the system.

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**Testimony By Maine Citizens' Trade Policy Commission, New Hampshire Citizens' Trade Policy Commission, and Vermont Commission on International Trade and State Sovereignty, Statement**

**Statement of Maine Citizens' Trade Policy Commission, New Hampshire Citizens' Trade Policy Commission, and Vermont Commission on International Trade and State Sovereignty**

Thank you for the opportunity to submit testimony to the Subcommittee on Trade on how to increase transparency and public participation in the development of U.S trade policy. The trade policy oversight commissions of Maine, New Hampshire, and Vermont have been working cooperatively for several years to communicate shared concerns about federal-state consultation, transparency, and the federalism implications to the U.S. Trade Representative, the U.S. Secretary of Commerce, and our congressional delegations.

Through annual regional meetings and frequent conference calls, the trade policy commissions and other interested parties from neighboring states have discussed

[1] These comments solely reflect the views of HSI, not TEPAC as a whole.

how to more effectively communicate issues and concerns to the United States Trade Representative (USTR), implications of new trade developments for states, and principles necessary for ensuring that essential trade promotion activities reflect state priorities.

We all agree that states have a common interest in improved transparency and in a more accessible and vigorous federal-state consultation mechanism with USTR. Increasing information available will allow states to better assess the impact of trade agreements on state export promotion *and* state regulation. Creating an improved process for communication of state issues and concerns will provide both states and USTR with the opportunity to share information to assist USTR in creating new vibrant trade relationships and create opportunities for U.S. businesses.

We look forward to building a more collaborative relationship between the Federal Government and the states on trade to preserve our federal system and reach out for new trade relationships around the world.

**Testimony By Maine Citizen Trade Policy Commission, Statement**
**Statement of the Maine Citizen Trade Policy Commission**

We, the members of the Maine Citizen Trade Policy Commission, appreciate this opportunity to submit our comments regarding the system of trade advisory committees and how to increase transparency and public participation in the development of U.S. trade policy. We believe in the power of trade as a tool for promoting economic growth and enhancing relationships between the United States and its trading partners.

The Citizen Trade Policy Commission was established by the Maine Legislature in 2004 to monitor the impact of international trade policy on our state. We have members representing the House of Representatives, the State Senate, the Maine International Trade Center, various state agencies, and members affiliated with citizen constituencies including small businesses, manufacturers, labor, environmental organizations, and small farmers.

States and local governments are important partners with private business in the design and implementation of our nation's economic development strategies. States and cities have traditionally acted as the 'laboratories of democracy' where different economic policies can be pioneered. Because trade is a critical part of any successful economic development strategy, and because different states, cities and towns have needs related to trade and trade policy that are as different from one another as are the mix of products and services that we export, we seek to add our voices and expertise to this policy arena.

Since the conclusion of NAFTA and the WTO Uruguay Round, states have been allowed to play only a limited role in the policy-making process. The United States Trade Representative (USTR) has expected our support in all matters pertaining to trade but too often has been unwilling to engage in dialogue with state actors on critical issues of trade and investment. With your assistance, we intend to build a more collaborative relationship between the Federal Government and the states on trade to preserve our federal system and reach out for new trade relationships around the world.

In meetings convened with the support of national associations such as the National Governors Association, the National Association of Attorneys General, and the National Conference of State Legislatures, officials from the different branches of state and local governments have been meeting in order to articulate a set of approaches that could assist in the development of a better federal-state consultative process on trade. As a result of these discussions, in which Maine has played an essential part, we request your consideration of the following:

The establishment of a **Federal-State International Trade Policy Commission,** and/or the creation of a **Center on Trade & Federalism**, supported by both the Federal Government and the states, with adequate personnel and resources to ensure that the major provisions of trade agreements and disputes that impact on states can be analyzed, and their findings communicated to and discussed with key state actors on trade.

**Changes in the structure and role of USTR trade advisory committees**. All state and local government input has been limited to a single committee, the Inter-Governmental Policy Advisory Committee (IGPAC); the membership of that committee was determined exclusively by USTR and not by the states themselves. IGPAC was designated few resources and a time line for input that resulted in no meaningful consultation for states. More than half of all states lack any representation on IGPAC.

We look forward to discussing with you opportunities for building a collaborative approach to trade that will strengthen the system of federalism that was part of the genius of our nation's founders.

**Testimony By Susan Kohn Ross, Letter**
**Susan Kohn Ross' Letter**

Dear Mr. Chairman,

This submission is made on behalf of Mitchell Silberberg & Knupp LLP (MS&K), a 100+ year old full service business law firm headquartered in Los Angeles, with offices in New York and Washington, D.C. MS&K's Homeland Security Regulatory Practice features extensive expertise with security, immigration and international trade issues. In addition to our International Trade, Corporate & Business Transactions and Immigration Practices, MS&K also practices in other areas of law including Labor & Employment, Real Estate, Tax and Litigation, as well as Intellectual Property, Entertainment & New Media and Bankruptcy & Reorganization. As such, our attorneys have broad experience and a wealth of knowledge about the issues companies must deal with daily in seeking to be compliant, good corporate citizens while engaging in the movement of legitimate goods and people across our borders.

In response to the Committee's invitation for comments about the current trade advisory committee structure, we take the liberty of making the following comments and recommendations. There is no question that providing a structure whereby the private sector is empowered to give organized input to Congress and government officials, especially those negotiating on behalf of American businesses, is an invaluable resource for all sides. At the same time, we think the process can be further enhanced to the benefit of all parties.

Our comments will be limited to the Tier Three: Technical and Sectoral Committees. The current structure for the United States Trade Representative's Tier Three advisory committees is division by industry. There is little doubt this is the proper structure to rely on in many instances. For example, the challenges faced in gaining market access while broadly similar across industries, are generally distinguishable for different industries. However, the issues now facing the American trading community have become less industry functional. They are significantly more broad-based. Put another way, concerns such as product and food safety, security, government procurement, export licensing and anti-bribery have become much more complex and so, we conclude they are best addressed across industry sectors.

A recent example in the legislative context is the Food Safety Enhancement Act of 2009 (the Act). Well before Congress took its recent vote, the Produce Marketing Association joined the United Fresh Produce Association to partner with their affiliate the Canadian Produce Marketing Association and develop the trend setting Produce Traceability Initiative (PTI). PTI relies on broad general standards which, when implemented, greatly assist companies to deal with traceability for a variety of reasons, including damage, loss, outbreak and recall. Those broad principles were blended into the Act when it was presented to the House for the recent floor vote. Similarly, the toy industry (among others) has worked actively with the Consumer Product Safety Commission to quickly and fully implement the Consumer Product Safety Improvement Act. The toy lead safety standard, ASTM F963–07, is now being reviewed to determine whether it needs to be further enhanced following its recent improvement.

In both cases, industry was at the forefront in recognizing the need to enhance consumer confidence, and protect brands, products and company reputations, and so took prompt and meaningful action. This enabled the U.S. to take a leadership role in enacting and implementing standards on crucial questions of international trade. It is timely to institutionalize the key role of the private sector through recognition of formal issue-focused advisory committees. Moreover, in an increasingly globalized economy, chartering such committees will help to reduce the risk of unilateral actions that may be disruptive of international trade, as we have recently seen with the REACH standards enacted in the European Union for chemical and similar products with the registration and labeling requirements. Instead, industry leaders should be encouraged to collaborate to create those cross-industry standards which can then be adopted by countries and companies as are best suited to their local needs.

In seeking to arrive at any broad standards to propose for international adoption, we contend the model of the Investment Working Group is more likely to succeed

than the current industry specific committees. As such, we urge the Committee to consider changing the current advisory committee structure to include issue focused committees which address product safety (including food safety), security and anti-bribery/corporate governance.

We recognize that some of the consolidation work could be and currently is performed at the Committee of Chairs. However, from experience, it appears to us the structure should invite as much input as possible so that by the time a proposal reaches the recommended for approval stage, it is as complete as possible. Therefore, the cross-industry structure seems preferable. As you know, H.R. 2293 is currently pending and could be a likely vehicle to accomplish such a goal. H.R. 2293, of course, addresses the creation of a Public Health Advisory Committee on Trade. We propose it be amended it include the creation of one or more of the issue specific committees we have proposed.

We look forward to being of further assistance to the Committee and so are prepared to answer any questions or provide further clarification or additional information regarding these recommendations in person or through other means at the convenience of the Members and staff. In the interim, we remain,

Very truly yours,

Susan Kohn Ross
International Trade Counsel for
Mitchell Silberberg & Knupp LLP
SKR/vlp

**Testimony By Raymond C. Offenheiser, Statement**
**Statement of Raymond C. Offenheiser**

Oxfam believes that trade can be an engine for development and poverty reduction as long as the rules of trade work to benefit poor people and developing countries. Well-managed trade has the potential to lift millions of people out of poverty. To achieve such a goal, trade agreements, which set the rules for ongoing trade relations, need to work to improve livelihoods and reduce poverty in developing countries. To that end, it is important that the U.S. take into account economic disparities with our trading partners in the formulation and implementation of trade policy.

We have one fundamental message: sustainable economic development must be a core objective of U.S. trade policy. That has not been the case in practice. It is vital that this change. We will discuss here why development should be at the core of U.S. trade policy, and how Congress and the administration can work more effectively toward that end.

In particular, we recommend establishment of a separate Tier 2 trade advisory committee on development and appointment of development experts to the existing Tier 1 and relevant Tier 3 committees. Furthermore, we support H.R. 2293, introduced by Mr. Van Hollen and Mr. Doggett, which would similarly establish a public health advisory committee and public health representation on existing advisory committees. And we suggest ways to improve the effectiveness of the process of consultation on U.S. trade policy so as to improve accountability in outcomes.

**Why development matters**

Poverty, disease and lack of economic opportunity in developing countries are a human tragedy that is now being magnified by the global economic crisis. Yet these conditions also have implications for the long-term security and prosperity of the United States. In fact, the Director of National Intelligence testified earlier this year that the global economic crisis is now the top threat to our national security. However, our trade policy has often worked at cross purposes with other policies to address these conditions.

The global economy is more interconnected than ever, and the economic welfare of U.S. citizens is inextricably linked with the well-being of people across the globe. In President Obama's own words, "the world depends on us to have a strong economy, just as our economy depends on the strength of the world's." In order to expand markets abroad for U.S. goods and services there must be healthy economies and growing middle classes, particularly in developing countries where the majority of the world's population lives.

If trade is to be an engine for growth and poverty reduction in the developing world as well as an avenue for our own export growth, U.S. trade policy would do best to take into account existing disparities in development with our trading partners. It should be one of our own core objectives to ensure developing country needs

and interests are addressed in the formulation and implementation of U.S. trade policy. With greater flexibility to foster the development of their industries, poor countries can build up their middle class and provide new consumers for our products. In this way, U.S. trade policy can facilitate economic recovery and promote more just and equitable economic development worldwide.

It's generally accepted that more open trade creates winners and losers, both at home and in our trading partners. The distribution of the benefits from trade can be quite skewed demographically and geographically within a country. To address the problems of those who stand to lose, governments need policies that enable some form of support or compensation to help losers re-adjust and to take advantage of new opportunities from trade. Here in the U.S., new trade adjustment assistance legislation passed this year is key in this regard.

But in developing countries with high levels of poverty and inequality, benefits from more open trade tend to be very concentrated among those who already have economic and social advantages. It is therefore essential that developing countries maintain adequate policy space in trade agreements to foster their domestic agriculture and manufacturing industries in ways that can reduce poverty and inequality and strengthen their middle class. Furthermore, the timing and pace of market openings is critically important and should be matched to specific conditions in each country. Reducing rather than exacerbating economic and social exclusion in developing countries is vital from the perspective of foreign policy and national security; it should also be a priority for trade policy. From a development perspective, fair trade does not mean equal treatment for all, but rather greater advantages for those left behind in order to help them get a leg up the development ladder.

Assessment of U.S. trade policy looks different when using as a lens the promotion of sustainable economic development rather than just the promotion of U.S. exports. The need for a development lens is warranted for moral reasons, as well as for the purposes of our own longer-term economic prosperity and national security. U.S. foreign policy and development policy acknowledge this reality. More effective coordination and coherence between our trade and aid policies are essential.

**Trade policy should be an integrated part of a national strategy for global development**

US efforts to promote sustainable economic growth and poverty reduction abroad often face a key obstacle—our own U.S. government. The way our government is organized, both in the Executive Branch and on Capitol Hill, means that trade policy and development policy are segregated. Coordinating the two effectively can be exceptionally difficult.

In practice, this divide means we often shoot ourselves in the foot. For example:

- We collect more in tariffs from MCC countries than we give them in assistance;
- Bangladesh and Cambodia are two of the poorest countries in the world, yet we collect about six times as much in tariffs than we give them in foreign assistance;
- Indonesia is the world's largest Muslim country, a place that is critical to us in fighting Al Qaeda, yet we take in more than five times as much in tariffs than we give in aid.
- Our major aid program to treat HIV and AIDS worldwide, PEPFAR, relies on the use of generic medicines, yet intellectual property protections in our trade policy can choke off supply or curtail production of much needed generics.
- The environmental impact assessment for the MCC compact that is providing nearly half a billion dollars in aid to El Salvador warned of significant harmful impacts of mining in the affected region, yet Salvadoran government action to prevent such mining activities is being challenged in an investor-state suit filed by a US-based Canadian company under CAFTA.

In order to be most effective in combating global poverty—which is in our economic and national security interest—more needs to be done to make sure all elements of our Federal Government work together effectively. To this end, one key reform that Oxfam supports is a National Strategy for Global Development. This strategy would define the mission of the U.S. government as a whole in fighting global poverty and clarify how various agencies would work together. It would provide a more effective inter-agency mechanism for preventing USTR and USAID from working at cross purposes. It would help ensure that our trade policy is effectively complementing our aid policy, and vice versa.

**Formulation and implementation of U.S. trade policy currently lacks a development lens**

The Office of the U.S. Trade Representative (USTR) was wisely situated under the Executive Office of the President in order to take into account the broadest interests of the United States and achieve an effective balance among competing interests. Yet in practice the USTR has tended to respond foremost to the export interests of U.S. businesses and to facilitate foreign investment without considering effects on sustainable development or public health.

Trade negotiations have expanded in ways not considered just a couple of decades ago when tariffs were the primary concern. Today, trade negotiations have entered a range of areas that can force changes in a country's economic policy framework, with serious implications for public health and poverty reduction in developing countries. In today's increasingly globalized economy, only when U.S. trade policy also meets the development needs of poorer countries will it be of greatest benefit to our own economy and well-being. It is therefore essential that the Office of the USTR take steps to effectively ensure that development concerns are adequately addressed in the formulation and implementation of U.S. trade policy.

The structure and functioning of the trade advisory committees and the USTR's public hearing process have not adequately addressed these concerns, as noted by several GAO reports over the last few years (GAO–02–876, GAO–07–1198, GAO–08–59). Representation of development proponents and public health interests on advisory committees still remains insignificant. Where there is or has been participation on committees, those involved have felt marginalized. Similarly, the public hearing process has not led to non-business concerns being taken into account in trade policymaking. In essence, input to USTR from public interest groups, which often represent alternative views to export interests, has not resulted in substantive changes in U.S. trade policy to address concerns raised.

Until recently there was no public health representation on trade advisory committees. Now, after more than four years of public requests and extensive efforts by the public health community, led by the Center for Policy Analysis on Trade and Health (CPATH) and others, only three public health representatives have been named to Tier 3 committees. In addition, two representatives of the generic pharmaceuticals industry have finally been named to one Tier 3 committee (ITAC–3), only one-tenth the representation of the brand-name pharmaceutical industry on trade advisory committees. Yet it's worth noting that nearly two-thirds of all prescriptions filled in the U.S. are now generic medicines.

Limitations of public participation in trade policy making are not confined to the Trade Advisory Committee system. By its very nature, this system cannot be a full mechanism for participation as members are sworn to secrecy and even if expanded will not represent the full range of views and interests affected by trade policy. In important areas where USTR makes policy or adjudicates interests, it follows the most restrictive possible participation mechanisms.

For example, in the "Special 301" review USTR adjudicates complaints against other countries to determine listing on punitive "watch lists" that can lead to investigations and sanctions for intellectual property policies that do not violate any trade agreement. The most full and fair process for such an adjudication of rights under general administrative law norms would be to hold an open hearing on the record before any decision is made, with full rights to reply to complaints in writing and orally. Instead, USTR adjudicates these matters through a notice and comment process. Other policy issues are determined without public consultation, or after meetings where the public can present their views but have no rights to a decision based on an evidentiary record, as is the norm for other agencies. Such consultation processes have been structured so that they are easily captured by industry interests. While the new USTR has undertaken important outreach efforts to public interest groups, the underlying structural problem remains.

We do not question the importance of enabling U.S. business and industry interests to contribute to trade policy. However, the USTR was established to balance competing interests, and Congress mandated that advisory committees include a "fair balance" of perspectives. Instead, particular industry interests dominate, such as the brand-name pharmaceutical industry, at the expense of vital public interests. It is quite clear that the public health community and proponents of sustainable economic development have been excluded from effective engagement in the formulation and implementation of trade policy. This does not best serve the overall interests of the United States.

It's important to recognize that consultation cannot be an end in itself, but should be understood as a means towards improving decision-making and affecting an outcome. Without clear mechanisms of accountability and transparency, consultations may not be meaningful. This has generally been the case with USTR and the trade

advisory committee system from the perspective of those of us in the non-business and public interest community, particularly public health and development advocates.

**Without a development lens, trade policies can undermine sustainable development goals in poorer countries**

Trade negotiations at the multilateral, regional and bilateral levels should take into account disparities in development and poverty levels with our trading partners. They should seek to expand opportunities for working people to gain a greater share in the benefits of trade.

Instead, negotiations led by the USTR over the past decade have locked in rules and policy prescriptions that facilitate further concentration of wealth and limit the policy options governments need to address poverty and inequality and to foment broad-based sustainable development. Following are three examples of this concern, involving the areas of intellectual property, investment and agriculture. We will suggest how greater representation and effective engagement of public health groups and development advocates could lead to a trade policy that better serves the broadest interests of the United States.

*Intellectual property and access to affordable medicines*

Ensuring access to affordable medicines is a core element of the human right to health. Yet over two billion people still lack regular access to affordable medicines, due in part to the high price of existing medicines and the lack of new medicines needed to treat diseases that disproportionately affect poor people in developing countries.

Strict intellectual property (IP) protection strengthens monopolies and restricts generic competition, which leads to higher medicine prices that are unaffordable for most people in developing countries. Although justified in the name of innovation, strict IP rules fail to stimulate medical innovation to address diseases that disproportionately affect people living in poverty.

All World Trade Organization member countries have adopted IP protections in line with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), although least-developed countries have until 2016 to comply with TRIPS provisions. These protections are considered by independent analysts to be more than adequate to balance the need to provide incentives for innovation with the obligation to the public of ensuring access to the benefits of the invention (in this case, medicines).

In 2001, all WTO members adopted the Doha Declaration on TRIPS and Public Health, which reaffirmed the primacy of public health over the protection of intellectual property for medicines. This Declaration rested upon global acknowledgement that high medicine prices charged by brand-name pharmaceutical companies through IP-based monopolies exact a serious and unacceptable toll upon the world's poor. As such, the Doha Declaration empowers developing countries to employ public health safeguards and flexibilities to foster generic competition as a means to ensure affordable medicine prices.

Yet with the strong influence of the pharmaceutical industry, U.S. trade policy has instead been used to extend monopolies for brand name medicines and disable the right of developing countries to use public health safeguards, thereby limiting generic competition and worsening the developing world's public health crisis. A succession of free trade agreements (FTAs) has imposed increasingly strict levels of IP protection in developing countries. When the ink was barely dry on the Doha Declaration, the U.S. entered an FTA with Jordan that introduced stricter IP rules than required by TRIPS.

These rules have had real public health consequences in Jordan and subsequently in other countries that have concluded similar agreements. An Oxfam study conducted in Jordan and published in 2007 concluded that stricter IP rules led to dramatic increases in the price of key medicines to treat cancer and heart disease, which are the main causes of death in the country. Higher medicine prices, due in part to these stricter IP rules, are now undermining Jordan's public health system. Effects are similar in other countries, but are only manifested over time because it takes several years for newer medicines to go through the pipeline.

USTR has pursued stricter IP rules as a cornerstone of U.S. trade policy through other means too. The Special 301 report, issued annually to review the IP policies of other countries, labels countries as violators of U.S. intellectual property rights for using legitimate measures to protect public health. Placement on the Special 301 List puts enormous pressure on developing countries that take steps to provide affordable health care. Thailand, which has used a key public health safeguard—compulsory licensing—to extend medical treatment to thousands of poor people suffering

from HIV and AIDS, cancer and heart disease, has been repeatedly castigated under the Special 301 report, including by the new USTR, for its laudable actions.

These policies are incoherent with U.S. foreign policy objectives. The United States sponsors one of the world's pre-eminent programs to treat HIV and AIDS—over two million people are on treatment due in part to the generosity of the U.S. government and taxpayers. To treat HIV and AIDS, this program relies almost entirely on the use of generic medicines produced by manufacturers in India—the same manufacturers that export over 70 percent of all generic medicines used in developing countries. Yet U.S. trade policy has sought to choke off the supply of these generic medicines to many developing countries and even to curtail their production in India, although to do so would directly undermine U.S. foreign assistance programs to treat HIV and AIDS.

Such formulation and implementation of U.S. trade policy is enabled by the entire lack of balance in the trade advisory committees, which facilitates the domination of influence by the brand-name pharmaceutical industry on trade policy. The GAO (Report 07–1198) came to the same conclusion and added that the Office of the USTR made little or no effort to advance the goals of the Doha Declaration to promote public health. This imbalance and the undue influence of the pharmaceutical industry translate into trade policies that undermine public health and broader U.S. policy objectives in developing countries.

This must change, and we have seen that it can. Under the leadership of Chairmen Rangel and Levin, IP rules included in FTAs already signed but yet to be considered by Congress were modified in order to address public health concerns as part of the May 10th (2007) Agreement. Their staff engaged a broad range of public interest groups and representatives of the pharmaceutical industry and worked to take into account public health and development concerns. The Agreement achieved an unprecedented reversal in the decade-long trend of increasingly stricter IP provisions. Oxfam applauded this important initiative, even if it fell short of addressing all our concerns, as it clearly illustrates how trade policymaking can be improved.

The key point here is that Congress should not need to intervene to create balance in the day-to-day process of trade policymaking. That should be the role of the USTR working with its advisory committees. Inclusion of public health representatives and development advocates on trade advisory committees and improvements in their functioning will help to make the formulation and implementation of trade policy more accountable to broader U.S. interests.

Improved public health representation can also improve transparency in U.S. trade policy making. The USTR recently re-started negotiations of an Anti-Counterfeiting Trade Agreement. Despite numerous concerned expressions by public health advocates that such an agreement could undermine access to medicines, the text remains a secret even as various industry representatives have full access through the trade advisory committees. Adequate public health representation on advisory committees as proposed in H.R. 2293 would ensure that at least some public health input can warn, and hopefully forestall, any negative consequences of this Agreement on public health and access to affordable medicines in developing countries.

*Investment provisions from a development perspective*

This subcommittee held a hearing in May on investment protections in U.S. trade and investment agreements. The testimonies provided by Thea Lee of the AFL–CIO and Robert Stumberg of Georgetown University Law Center raise important points that echo key concerns Oxfam has raised for a number of years with regard to investment provisions in trade agreements. These concerns are illustrated by a very recent example that could have serious implications for sustainable development in El Salvador.

Pacific Rim, a Canadian mining company, has filed a case against the Salvadoran government that will go to international arbitration under CAFTA's investor-state dispute settlement provision because the company has a subsidiary in Nevada. The company claims it has incurred hundreds of millions of dollars in damages for which it must be compensated because it has been unable to obtain a permit for extraction of gold found through initial exploration. The Salvadoran government determined it could not issue such a permit based on results of environmental impact studies that show significant harmful effects would occur from extraction, particularly on the country's already scarce water resources.

At the same time, the Millennium Challenge Corporation's compact in El Salvador, signed in 2006, is providing nearly half a billion dollars for a sustainable development program in the same region where Pacific Rim wants to extract gold. An environmental impact assessment required by the MCC similarly warned against the anticipated adverse effects that mining activities would have in the region, which already suffers from highly vulnerable water resources, soil problems and en-

vironmental degradation. It is clear that if mining activities were to proceed, they would undermine the sustainable development initiative supported by the MCC. And if Pacific Rim wins its case, the Salvadoran government could be forced to pay the company an amount similar to what it is receiving from MCC.

This is a 'no win' situation for both El Salvador and the United States. If the Salvadoran government feels forced to cede to the company's pressure to issue a mining permit despite the harmful effects on the environment as well as on the health of the local population, or ultimately loses the case and has to pay hundreds of millions in compensation to the company, the result would not only be a blow to El Salvador's efforts at development and poverty reduction. It would also undermine U.S. foreign and development policy.

The investor-state dispute settlement mechanism, which has been a part of U.S. trade policy, elevates investor rights in ways that can threaten legitimate environmental protections and undermine sustainable development efforts. Even if the government were to win the case, it does not mean there would be no costs, as legal fees alone can go into the millions. And many developing countries that can hardly afford such fees, much less a potential settlement payment, may be more likely to sacrifice protections of the environment and other public interests rather than risk a challenge from a U.S.-based company. With no check to avoid frivolous lawsuits, investors can use the threat of filing a case to force governments to forgo measures that protect the public interest.

In general, developing country governments need the policy space to regulate investment so that it furthers their national development goals. Yet the investment provisions included in U.S. trade agreements seek to deregulate investment in developing companies, thereby limiting the use of policy tools, such as performance requirements and capital controls, that can help ensure investment will spur sustainable development and help reduce poverty and inequality.

As discussed in the hearing of this subcommittee last month, the State Department has recently created a panel to conduct a formal review of investment provisions in FTAs and the U.S. model bilateral investment treaty, whose recommendations are to feed into an interagency review of investment issues. This is an important initiative that we understand will include development experts. We hope the recommendations of this panel will address the concerns raised here.

However, it will also be important to have development experts on trade advisory committees in order for USTR to receive ongoing advice on investment provisions from a development perspective. There is no advisory committee on investment, but the recent GAO report (08–59) mentions an Investment Working Group that draws from across the ITAC committees. This indicates the importance of development experts and public health representatives being included in these Tier 3 committees.

*Agriculture from a development perspective*

Some 70 percent of the world's poor depend on agriculture for their livelihoods. Half of the world's undernourished people and those living in absolute poverty reside on small farms. Sales and exports from agriculture constitute the main source of revenue for many poor countries, in some cases upwards of 40 percent of GDP. Here in the United States, agriculture accounts for barely more than 1 percent of output and its share of exports is only about twice that amount.

From a development perspective, it seems obvious that it is indispensable to ensure that trade rules in agriculture work to promote development and poverty reduction. Yet agriculture has no competitors for the title of most distorted sector of the global economy. And the U.S. continues to maintain, and in last year's Farm Bill even expand the scope for, trade-distorting agricultural subsidies. Negotiations on agriculture have been the Gordian Knot of the WTO Doha negotiations, as one of developing countries' greatest needs in the global trading system is to right the wrongs of decades of rigged rules in agriculture.

At the same time, our bilateral and regional FTAs do not take into consideration this reality and instead limit the ability of our developing country trading partners to foster their own agricultural production. This is one of Oxfam's principal concerns with regard to the FTA with Colombia, where rural poverty is a cause of and further fuels the armed conflict and the illegal economy.

The agricultural provisions in the FTA would undermine small farmers in Colombia, who produce 40 percent of the country's basic food basket but would be unable to compete with subsidized U.S. exports. Colombia's rural population is the most vulnerable to being recruited to supply manpower for illicit crops and armed groups. If more agricultural imports from the U.S. threaten small farmer livelihoods, the FTA would increase the pressure on rural populations to engage in the cultivation of illegal crops and to take part in the dynamics of the war.

This is one more example where U.S. trade policy is working at cross purposes with U.S. foreign and development policy. Since 2000, the U.S. has provided $5 billion in military aid to the Colombian government's war effort and to reduce coca cultivation. It is not in the best interests of the U.S. or Colombia for a trade agreement to undermine the livelihoods of Colombia's small farmers. From a development perspective, this problem should have been understood and taken into account when the USTR first considered negotiating an FTA with Colombia.

**Recommendations for improvement in the trade advisory committee system**

Having made a case for including development and public health interests in the formulation and implementation of U.S. trade policy, we make the following concrete recommendations to improve the trade advisory committee system in that regard.

1. Congress should pass H.R. 2293, which would establish a Tier 2 public health advisory committee, include public health organizations on the Tier 1 committee, and improve the process of consultation and reporting on all advisory committees.
2. A separate Tier 2 trade advisory committee on development should be established, in a similar way to the public health advisory committee that would be established under H.R. 2293, and development organizations and experts should be included on the Tier 1 committee. In order for this to be most effective, we also recommend that a position of Assistant U.S. Trade Representative for Development be created to enable development interests and concerns to be effectively coordinated in all aspects of the formulation and implementation of U.S. trade policy undertaken by the Office of the USTR.
3. Congress should clarify, through legislative action, the intent of the 'fair balance' requirement that applies to each advisory committee so as to ensure a clear mandate for adequate representation of non-business interests, including public health and development organizations, on all relevant Tier 2 and Tier 3 committees. It should neither be considered fair nor legitimate to limit Tier 3 committee membership to industry representatives when the focus of the committee is of broader public interest. Diversity of stakeholder representation to include a wide range of interests at all levels of the advisory committee system should be clearly established as a norm. To date, the only non-business representatives on Tier 3 committees have been named following lawsuits brought against the government.
4. Measures should be taken to improve and make more consistent the process of consultation and functioning of the trade advisory committee system in order to increase accountability to stakeholders in the formulation and implementation of trade policy. The following suggestions would contribute toward that end, and some of them are addressed in H.R. 2293:

a. There should be a requirement for advisory committees to meet regularly, with a minimum number of annual meetings—possibly quarterly.
b. Advisory committees should be consulted before entering into negotiations, throughout the negotiating process and prior to final agreement—including seeing and commenting on text before it is tabled or finalized.
c. Advisory committees should regularly submit written reports on their advice provided, including any divergence of opinion in the committee. All efforts should be made to respect diversity of opinions on committees by clearly presenting minority as well as majority advice.
d. The Office of the USTR and relevant agencies that co-administer advisory committees should provide written responses to committee advice received through these reports.
e. USTR should increase the staff resources allocated to advisory committees, which may require Congress appropriating additional funds for this purpose. Effective consultation costs staff time and resources, but it will result in better outcomes. Without adequate staff resources for USTR to adequately administer, engage, use input from and respond to advisory committees, the system will not be fully effective.

5. The process of consultation with the public on trade policy should be improved and the USTR should be held more accountable to input received. To this end, we recommend the following:

a. Consultations with the public should follow the most participatory models available under the Administrative Procedures Act, including rulemaking after a public hearing on the record with written decisions responding to submissions, as is the norm for rulemaking in other agencies.

i. All public comments solicited by USTR should be organized as 'open hearings on the record' and, as such, follow procedures established by the Administrative Procedure Act (Title 5 of the U.S. Code, Chapter 5, section 556). This involves having an open comment period, providing an opportunity for others to respond to comments, and then holding an open public hearing.
ii. Upon completion of the particular consultation process, the USTR should provide a written response explaining whether the input received was used or not and why.
iii. Where data is being used by USTR (such as when it relies on industry estimations of the costs of IP policies in other countries), the methodologies for its generation should themselves be subject to notice and comment, as is required under the currently binding case law under the Administrative Procedures Act.

b. Adjudications of interests, such as development of the Special 301 watch lists, should take place after an administrative process with the full range of protective procedural rights, including an opportunity to reply to industry charges, an open hearing with a written record and opportunity to appeal findings and interpretations of law. To this end:

i. Reform the notice and comment process to permit countries and civil society groups adequate time to reply to pharmaceutical industry Special 301 submissions;
ii. Allow public notice and comment on any data derived from submissions in the comment process that is used as the basis for policy or decision making;
iii. Provide, upon completion of the particular consultation process, a written response explaining whether the input received was used or not and why; and
iv. Regarding the Special 301 Report, publish objective standards for listing decisions, require listing decisions to be preceded by a public (in-person) hearing on the record, and offer opportunities to appeal adverse decisions.

6. There should be greater transparency in the formulation and implementation of U.S. trade policy. Non-business and public interest organizations are often at a disadvantage in providing input to influence policy because negotiating text is generally classified. Even as participants on advisory committees, non-profit organizations may have difficulty in providing timely quality input on the range of technical issues they care about if they are unable to consult with external experts because they cannot share information with anyone who lacks security clearance. A better solution should be found to allow for more effective consultation of the wide range of stakeholders in U.S. trade policy.

**Conclusion**

- Getting U.S. trade policy right means helping to foster sustainable development in our trading partners while also strengthening our own economy. If we are only looking at one side of that equation, we may be going down the wrong path. To put us on the correct path, Congress and the administration should work to ensure:
- Effective coordination and coherence of our trade policy, foreign policy and aid policy;
- Effective engagement of stakeholders that bring a development perspective and a public health perspective into trade advisory committees and the overall USTR public consultation process;
- Improvement in the functioning of the trade advisory committee system to increase accountability to the broad range of stakeholders in the formulation and implementation of trade policy.

**Testimony By Susanna Rankin Bohme, Letter**
**Susanna Rankin Bohme, letter**

Dear Members of Congress:

I am writing to ask you to vote in support of the Public Health Trade Advisory Committee Act (HR2293) introduced by Reps. Chris Van Hollen (D–MD) and Lloyd Doggett (D–TX). Although the Federal Advisory Committee Act requires that federal advisory committees be fairly balanced in terms of points of view represented and

committee functions performed, public health advocates are underrepresented at all levels of the USTR advisory committees. The creation of a Tier 2 Public Health Advisory Committee on Trade as well as the inclusion of knowledgeable public health advisors in other parts of the advisory system are essential to establishing a fair balance of public representation at the USTR.

As an American Studies scholar whose work focuses on trade and health, and as a member and chair of the American Public Health Association's Forum on Trade and Health, I know that U.S. trade practices and policies often harm rather than improve the health of people worldwide—especially people in poorer nations. The Public Health Trade Advisory Committee Act offers an opportunity to reverse that trend and allow the United States to take global leadership in establishing healthy and truly fair trade policy.

To date, trade agreements negotiated by the USTR have disregarded several important public health priorities. Trade agreements that prioritize health have the potential to improve the daily lives and health of people worldwide in a number of ways.

**Affordable Medicines**

Public health representation can help ensure the availability of safe, effective medicines in poor nations facing extreme public health emergencies.

**Environmental, Occupational, and Consumer Regulation**

Public health representation can help ensure that nations worldwide are empowered to regulate environmental and occupational health risks in a democratic, transparent, and pro-health manner.

**Basic Human Services**

Public health representation can help ensure that health care, water, sanitation, energy, education, and other basic services are managed and distributed in a manner that maximizes human health and well being.

**Impact on traditional means of livelihood**

Public health representation can help ensure that trade agreements are implemented in such a way as to maximize stability rather than dramatically reshaping a nation's industrial and agricultural production, causing unemployment and instability that impact mortality and morbidity.

To improve global health in these areas and more, I urge you to support the passage of Public Health Trade Advisory Committee Act (HR2293). Thank you for your leadership and your consideration.

Sincerely,

Susanna Rankin Bohme, PhD
*Chair, American Public Health Association Forum on Trade and Health*

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**Testimony By Edward J. Black, Letter**
**Edward J. Black, Letter**

Dear Chairman Levin and Ranking Member Brady:

The Computer & Communications Industry Association (CCIA) appreciates the opportunity to submit comments for the record for the Trade Subcommittee's hearing on the trade advisory committee system. CCIA wholeheartedly supports the Subcommittee's efforts to examine whether "administrative or statutory changes, building on revisions implemented in recent years, might broaden the range of views represented and permit the advisory committees to provide more timely and useful recommendations." The hearing on July 21st focusing on environmental, labor, public health, development, and civil society perspectives was an excellent start. However, these are not the only perspectives that deserve to be reflected in the trade advisory committee system.

In its testimony before the Subcommittee at last week's hearing, the Government Accountability Office stated "that representation of stakeholders is a key component of the trade advisory committee system that warrants consideration in any review of the system. In particular, as the U.S. economy and trade policy have shifted, the trade advisory committee system has needed adjustments to remain in alignment with them, including both a revision of committee coverage as well as committee

composition." One of the most significant advances in the U.S. and global economy in the past decade has been the development of the Internet as a tool and stage for commerce in products and services. The Internet has enabled truly global access to products, services and information in a way previously unimagined. This has in turn led to conflicts and issues that are equally new, and for which the traditional trade advisory committee system is not well equipped.

For example, foreign legal regimes contribute to a hostile business environment for U.S. Internet companies. Foreign courts are increasingly imposing sweeping civil—and sometimes criminal—liability on U.S. companies simply for providing innovative online services entirely consistent with U.S. law. Indeed, in some countries, this anti-Internet bias may be viewed as a form of de facto protectionism due to the Internet being identified as a predominantly American phenomenon. Please see the attached analysis on Internet Protectionism for further information and examples.

The advent of a new, networked world has given rise to innovative types of trade barriers. There must be a framework to address this changed landscape, and rules of the road for this new world need to be established. In order for our government to represent our industry's interests, and those of the consumers and users of the Internet, in this process, CCIA strongly urges the creation of an Industry Trade Advisory Committee (ITAC) on Internet issues. The issues that confront our industry are substantially unique from those facing other industry sectors, and cleared advisers with expertise in the Internet industry would be able to provide USTR with information and a perspective that it is not presently receiving.

We greatly appreciate your attention to the issue of trade advisory committee system reform, and your consideration of our views. We would be pleased to discuss these issues with you and your staff, and to assist in any way we can.

Sincerely,

Edward J. Black
*President & CEO*

**Testimony By The Council of State Governments Eastern Regional Conference, Statement**

**Statement of The Council of State Governments Eastern Regional Conference**

**Whereas,** The economic prosperity of the United States is best served by embracing free and fair trade in global markets, investing in innovative research and technologies, and providing assistance to workers impacted by technology and trade trends; and

**Whereas,** Expanding trade opportunities for American workers and businesses depends on cooperation between the Federal Government and the states; and

**Whereas,** The trade liberalization efforts of the early 1990s and trade agreements such as the North American Free Trade Agreement and the World Trade Organization (WTO) Uruguay Round agreements have increased the role of state policymakers in international trade decisions; and

**Whereas,** WTO, FTA and other recent trade and investment agreements have proceeded beyond discussion of basic tariffs and quotas and now address government regulation, taxation, procurement, services, investment, subsidies, not-tariff trade barriers, and economic development policies that are implemented at state and local levels;

**Whereas,** Recent trade agreements that proceed beyond tariffs and quotas also intersect with traditional areas of state authority under the 10th Amendment, such as regulating the environment, health, and safety and, thus, may impact the states' continuing authority to effectively legislate and regulate in these areas; and

**Whereas,** Trade liberalization has transformed both global markets and the historical state-federal division of power, thereby offering new economic development horizons for state programs, presenting market opportunities to some firms, creating significant competitive challenges for other firms, increasing the need for training and assistance to firms and works having to adjust, and imposing a burden on state agency resources having to determine the impact of new trade agreement provisions on state laws, practices and regulations; and

**Whereas,** States should be supported by the Federal Government in trade development activities and trade policy analysis; and

**Whereas,** States often lack a clearly defined institutional trade policy structure and resources, making it difficult to handle requests from trading partners and federal agencies and to articulate an informed state stance on trade issues; and

**Whereas,** International lawsuits may be brought against the U.S. that challenge state-level laws, practices or regulations alleged to be in violation of trade agreements and, therefore, the U.S. government should ensure that international trade agreements covering the U.S. would accord presumptive validity and not preempt or undercut those non-discriminatory state laws, practices and regulations adopted for a public purpose and with due process; and

**Whereas,** There is a need for a stronger federal-state trade policy consultation mechanism so that states are more comprehensively consulted during the negotiation, implementation and dispute resolution of international trade agreements and; and

**Whereas,** the Intergovernmental Policy Advisory Committee, an advisory committee of the United States Trade Representative, plays an important role in providing state and local government perspectives and input to the United States Trade Representative, but is limited in scope by statute, including prohibitions on sharing classified information with relevant state officials and members of the public, membership determination by the USTR, lack of sufficient resources, etc.; and

**Whereas,** In August 2004 the Intergovernmental Policy Advisory Committee recommended that a Federal-State International Trade Policy Commission would be an ideal structure for objective trade policy analysis and would foster communication among federal and state trade policy officials; and

**Whereas,** The creation of a federal-state trade policy infrastructure would assist states in understanding the scope of federal trade efforts, would assist federal agencies in understanding the various state trade processes, and would give states meaningful input in the United States Trade Representative's activities; and

**Whereas,** Federal-state consultation should include the timely and comprehensive sharing of information on the substance of trade and investment agreement provisions and federal trade and investment programs, including analysis on their potential impacts, benefits and costs related to state laws, practices, programs, and regulations; appropriate use of the state single points of contact (SPOCs); improved trade data to assess the impact of proposed and existing agreements; and a reasonable opportunity for meaningful input by the states; and

**Whereas,** the Eastern Trade Council has fostered regional cooperation among states and business by jointly promoting trade shows, organizing joint trade missions, sharing trade research data and other resources, and increasing access to business programs through the U.S. Department of Commerce; and

**Whereas,** the Eastern Trade Council has facilitated regional cooperation to advocate for improving trade data in order to provide sufficient and detailed information to support sub-federal trade development and international investment attraction strategies, and to measure the economic impacts of trade agreements at the state level; and

**Whereas,** the Eastern Trade Council has participated in regional meetings and calls with states in developing an improved federal-state consultation mechanism;

**NOW, THEREFORE, BE IT RESOLVED** that the Council of State Governments' Eastern Regional Conference urge Congress to create dedicated capacity to improve federal-state consultation on international trade and investment policy and programs, including improving data available to states and increasing transparency of documents necessary to analyze the impacts of trade and investment agreements on states; and

**BE IT FURTHER RESOLVED**, that the Council of State Governments' Eastern Regional Conference, including the Eastern Trade Council, renew its efforts to educate and engage states on the importance of international trade development and policy and to understand impacts on states, and create a recommendation on improving federal-state consultation.

## Testimony By The Society of Chemical Manufacturers and Affiliates, Letter The Society of Chemical Manufacturers and Affiliates, letter

Dear Chairman Levin & Ranking Member Brady:

The Society of Chemical Manufacturers and Affiliates (SOCMA) is a trade association comprised of custom, batch, and specialty chemical manufacturers. Founded in 1921, SOCMA has over 300 members, the majority of which are small and medium sized businesses. Currently a SOCMA member, V.M. "Jim" DeLisi of Fanwood Chemical serves as the Chairman of ITAC 3, the Advisory Committee for Chemicals,

Pharmaceuticals, Health/Science Products and Services. As a "Tier 3" committee, ITAC–3 is charged to advise the USTR and DOC on highly technical issues impacting the chemical manufacturing industry, such as rules of origin and tariffs. Our sector generated about 500 billion dollars in trade during 2008. Fanwood Chemical is the first small company Chair of this group in its 45-year history. Mr. DeLisi has attended WTO Ministerial Meetings as an Advisor in Seattle, Cancun, and Hong Kong. Records would show that his Committee has met regularly for 45 years. The Committee is also very proud of the fact that members of ITAC 3 always represent the largest contingent of any sector at the various WTO Ministerials that have occurred in this time period, including four ITAC 3 members who accompanied you, Mr. Chairman, to Doha.

SOCMA believes that every interested citizen of the U.S. deserves to have input into U.S. trade policy. We are very fortunate to have an enormously talented group of individuals, both career and appointed, in both the Office of the USTR and the Department of Commerce, dedicated to expanded trade in goods and services. It has been repeatedly shown that increased trade is vital to increasing the prosperity of the United States.

We also believe that these officials are capable of gathering input from a variety of sources and then distilling from this input the proper trade policy for our nation. Such advice does not need to be contained in a single document, nor does it need to come from a single committee. In fact, we strongly advocate that the best advice is gleaned from committees that can function in a clear and open manner. This can only be accomplished when mutual trust exists among committee members. This trust is very difficult to achieve if all views need to be expressed in the same forum. Therefore, committees that support manufacturing and services in the USA, such as the existing ITACs, should remain "pure" and not be saddled with members that have different agendas.

The ITAC is a place where various companies and representatives from the same or similar sectors can come together, discuss common challenges, and dialogue with government officials. The relationship established between government and industry has been mutually beneficial. Government and industry both benefit from educating each other on issues and exchanging ideas and information. The experienced professionals sitting on the ITACs are a valuable resource to government and their expertise should be utilized.

The existing ITAC system has served the country well, being especially beneficial to small business. Most large companies have sufficient resources to present their trade issue interests effectively before government entities. There is nothing wrong with this fact; it is a natural result of their importance to our overall economic well-being. However, the ITAC process is neither exclusive to size nor inherently drawn to only one size of company. Therefore, it appropriately allows smaller companies to also have input into our officials.

The Advisory System at USTR and DOC was specifically created to ensure that U.S. negotiators had as much knowledge as possible of real world situations, so that they could best represent the real needs of American manufacturers, not just their perceived needs. In fact, the advisory system was created in the mid-1970's as U.S. Government officials tried to understand why the USA did not prevail in the Tokyo Round of the GATT negotiations. At the time, it was determined that the significant difference between perception and reality could only be remedied by constructing a system that would allow U.S. negotiators direct access to the best experts in industry, those who truly understood what was required to gain access to foreign markets, based on their real world experience. The only way for this interchange to work was to be sure that the "industry advisors" were granted a level of security clearance sufficient for discussions to be held free from fear of disclosure to the public or to our trading partners. This was the genesis of the existing trade advisory system which has served both Government and Industry very well for over 40 years.

In addition to attendance at the Ministerials described above, SOCMA has specifically partnered with USTR to support efforts in identifying technical barriers to trade within the Asia-Pacific Economic Cooperation Forum.

The U.S. advisory system is unique in the world. Our foreign competitors recognize it as one of our strengths as they have witnessed the outstanding results of this partnership.

The Advisory System has played an important role, not in setting U.S. trade policy, but in helping to mold the policy, once it has been set by our political leaders. In this manner, political leaders can be assured that the policy goals, once achieved, will truly be beneficial for our economy.

In conclusion, the existing ITAC system works well. It serves a noble purpose—to help the government protect the interests of American industry—and is inclusive of those within industry who are permitted to participate.

Respectfully submitted,

Bill Allmond, Vice President of Government Relations and ChemStewards
Justine Freisleben, Assistant Manager, Government Relations

**Testimony by Vermont Commission on International Trade and State Sovereignty, letter**

Dear Chairman Levin:

We are writing in response to the request by the Subcommittee on Trade for input on how to increase transparency and public participation in the development of U.S trade policy. The Vermont Commission on International Trade and State Sovereignty (Vermont Commission) was established by the Vermont General Assembly in 2006 to assess the legal and economic impacts of international trade agreements on state and local laws, state sovereignty, and the business environment. As part of this charge, the Vermont Commission closely examined the transparency offered and public participation process utilized by the U.S. Trade Representative (USTR) in the negotiation of trade agreements.

Over the past three years, the Vermont Commission held multiple meetings on the need to increase transparency and public participation in the development of U.S. trade policy. The Commission solicited and received testimony from members of USTR, members of the business community, members of the intergovernmental policy advisory committee (IGPAC), trade officials from Canada, representatives of national trade organizations, and other interested parties. The Vermont Commission, its members, and its staff also met with other state trade commissions and representatives to discuss and develop a regional policy regarding transparency and public participation. In addition, due to the work of Deputy Assistant U.S. Trade Representative Myesha Ward, the Vermont Commission spoke with USTR representatives about the steps taken or considered by the current administration to increase transparency and public participation.

The extraordinary amount of information and input gathered by the Vermont Commission led in January of 2009 to the Vermont Commission approving a Statement of Principles on International Trade which noted recommended changes to USTR trade policy. A copy of the Statement of Principles is attached for your review. As part of these principles, the Vermont Commission asserted that the USTR should improve transparency in its trade negotiations and sharing of data and that the process for consultation with states should be improved. Specifically, the Vermont Commission noted that:

- States should be consulted during the negotiation of international trade agreements. Federal-state consultation should include the timely and comprehensive sharing of information on the substance and likely impact of trade agreements on state laws and regulations; appropriate use of the state single points of contact (SPOCs); and a reasonable opportunity for meaningful input by the states; and
- State legislatures and governors should be consulted or have a voice in determining whether their state procurement policies are covered by international trade agreements, and they should be afforded notice and an opportunity to comment and the authority to decline or limit state participation.

In May of 2009, the Vermont Commission met to review and discuss potential methods for improving USTR transparency and consultation. Generally, the Commission members agreed that if changes are made to the USTR consultation process, the new process should be simple in format and structure, acknowledge and respect principles of state sovereignty, and allow additional state access to trade data and texts. In preliminary discussion on how to achieve this goal, the Vermont Commission focused on the need for a new consultative body and two possible models for such a body as a starting point for wider discussion and consideration.

The first model would be a new, federally funded organization or structure established at the national level to allow for consultation between the USTR and the states. This new national consultation organization would replace the existing IGPAC and would be designed to inform states of trade policy and ongoing trade negotiations and their potential impacts on states. The new consultation organization would serve as the mechanism by which state and local representatives would

provide comment or requests to USTR. It also could aid USTR in the distribution of trade data and other materials. Membership of the organization would include representatives of all states, but membership could be expanded to include representatives of local governments. In addition, this new organization would need to stand apart from and independent of the USTR and the administration in general in order to ensure non-partisanship.

A second model considered by the Vermont Commission would be the creation of several new regional trade commissions that would represent the varied geographic and economic interests of the states. Regional trade commissions would provide input to IGPAC or a national consultation organization and its members. The regional trade commissions could also serve as interfaces with the states by providing state and local government information and data regarding trade and trade agreements. Federal funding would be necessary to fully staff and successfully implement regional trade commissions.

Establishing and appropriately funding and staffing a new national consultation organization or several regional commissions will significantly increase transparency if USTR cooperates with such a national organization or regional commissions by providing relevant and timely information regarding trade policy, ongoing trade negotiations, the impact on states, and trade information and data. Such information sharing will help states analyze the impact of trade and agreements while also optimizing trade promotion in order to afford businesses increased trade opportunities. Moreover, a national consultation organization or a regional commission will provide USTR with valuable input regarding the impact of trade agreements on state sovereignty and state legislation.

Thank you for requesting input on how to increase transparency and public participation in the development of U.S. trade policy. The Vermont Commission is dedicated to working with Congress and the USTR to develop a trade policy that improves transparency and consultation with the states while continuing to further the trade interests of the United States and its individual states. If you need additional information, please contact the commission staff, Robin Lunge or Michael O'Grady.

Sincerely,

Ginny Lyons
*Co-Chair*
Kathleen Keenan
*Co-Chair*

**Testimony By William A. Gillon, Statement**
**Statement of William A. Gillon**

I appreciate the opportunity to provide written testimony to the Trade Subcommittee of the House Committee on Ways and Means. My name is William Gillon. I am an attorney from the Memphis, Tennessee, area. The Trade Policy Advisory Committee system has been a valuable tool for agriculture to convey its concerns and needs regarding trade negotiations. I am happy to present this testimony in support of that system.

My work experience includes the Office of the General Counsel at the U.S. Department of Agriculture, Senior Counsel to the Senate Committee on Agriculture, Nutrition and Forestry, General Counsel and Director of International Trade Policy for the National Cotton Council, and the private practice of law since 2005. My practice focuses mainly on agriculture and international trade policy. My professional responsibilities at each position I have held since graduating from law school have involved a mix of domestic and international agricultural policy.

I have watched trade negotiations from within USDA, from Congress, from a large commodity trade association, and now as a private attorney for interested parties. The only thing I have not done is directly negotiate for the United States. I have served within the Agricultural Trade Advisory Committee (ATAC) system for a number of years, under several different Presidents. Before becoming a member myself, I worked with industry representatives who served as Members of the Committees.

As I stated above, I believe the ATAC system helps create a dialogue between an Administration's agricultural trade negotiators and the private sector. The system as it has evolved is one that has enabled industry representatives to become familiar with the trade policy positions of the United States and our trading partners.

It has enabled private sector participants to become somewhat familiar with the ever-evolving "language of trade," that special dialogue that occurs within international trade negotiations that has brought words like "modalities" into our standard nomenclature.

Mr. Chairman, it is my hope that the basic structure and representation on the advisory committees be maintained in the future. It should not be the case that individuals are automatically disqualified from membership on a trade advisory committee because they are registered as a lobbyist.

I am a registered lobbyist. When Congress expanded the definition of lobbyist in the Lobby Disclosure Act, I immediately registered and began an extensive review of my clients to ensure that everyone who should register under the Act did so. I have taken a cautious approach to the Act and a broad approach to registration. If an individual or a company comes close under the lobbyist definitions, I encourage them to register and I help them comply with the statute. I reject, however, the notion that because I am registered and because my activities are reported and public I am nonetheless automatically disqualified from providing sound advice through the ATAC system.

The experience that qualifies me to be a member of an ATAC is the same experience that led some persons to hire me to represent their interests to elected officials or to help them understand the position of elected officials. When an Administration automatically disqualifies persons with significant experience from positions of advice or counsel, it deprives itself of the high level of professional advice and insight they can render and it deprives private citizens of their right to monitor the Administration's activities. This is particularly the case in the area of international trade negotiations where it takes many years of experience just to understand the lingo. Individuals who do not follow trade negotiations every day may know that a certain outcome will or will not be beneficial, but they may not be able to discern whether the language in front of them or the speech just delivered to them contains that detrimental outcome.

Congress may often find itself having to jump the same hurdles. Trade negotiations tend to continue from one Administration to the next with points of reference often shifting significantly from January to December. It is difficult even for Congressional staff to consistently be aware of those shifts and the ultimate impact they may have on citizens in the United States.

The ATAC system itself has been developed to ensure that an Administration hears from affected parties. The commodity representatives on the Tobacco, Cotton, Peanuts and Planting Seeds ATAC are supposed to provide their opinion regarding trade affecting their specific commodity. It is wholly necessary to that role that the individuals on the ATAC be interested in that commodity and, indeed, have a stake in it and deep knowledge of it. For the purposes of representing the interests of a specific commodity, it shouldn't matter whether an individual is a registered lobbyist. First, with respect to the lobbyist, the public is notified as to the lobbyist's clients and political activity, but they are not so well-informed with respect to private citizens.

Second, Mr. Chairman, farmers farm. If they are not putting all of their focus and effort into their farming operations, they increase their already ridiculously high chances of failure. Most farmers I know are not fully aware there is a difference between "special" products and "sensitive" products within the Doha negotiations, nor can they be expected to stop and research the exact scope and impact of those differences. Generally, those farmers associate together and hire experienced professionals to help them understand these and similarly involved policy issues. The ban on lobbyists should not be extended to representation on the ATACs as it would deprive these farmers of voices they consider to be valuable and necessary to help them protect their interests.

Third, trade negotiations are directed by the Administration that is in office. It is generally understood that all other interested parties, farmers and Congress alike, must find a way to understand what is going on within those negotiations. If ATACs are reformed in such a way as to ban lobbyists from participating, those ATACs will be far less prepared to take on the task of ombudsman. They will not be able to provide the kind of advice that comes from experience and daily immersion. Such a step will not improve the system, it will make it superfluous.

Mr. Chairman, I would like to make one point about diversity on committees. Representation on the committees I have been involved with has been minimally diverse, but knowledgeable. Because of the knowledge and because of even the minimal diversity, ATAC meetings have tended to enhance our understanding of the negotiations and the members of the various ATACs have, by and large, been able to convey to the Administration their needs and concerns with trade discussions. However, as these are committees designed to advise the Administration on agricultural

trade policy, they have been committees with membership from the agricultural trade community—individuals who generally have a mindset and a position that trade is good and beneficial. Membership has evolved and different points of view have populated the committee I have participated in.

While it welcomes diversity, the Tobacco, Cotton, Peanuts and Planting Seeds committee I have been a member of for several years has struggled to reconcile the positions of Members of the Committee who are opposed to the export of specific products. As the Committee was asked to review free trade agreements and render its advice, it was difficult to obtain consensus when a committee member is opposed to trade in a product. Advisory Committee members generally do not address the larger questions of whether trade is or is not good or advisable. Instead, the Committee reviews the technical terms of proposals, the draft negotiating documents, to determine if they are fair and reasonable. Diversity of opinion is helpful, but I question whether members of agricultural trade advisory committees shouldn't, at the least, be committed to agricultural trade.

Mr. Chairman, thank you again for holding this hearing and for allowing me to submit testimony.

## Testimony By Maralyn Chase, Peggy Pierce, Jill Cohenour, Steven D'Amico, and Susi Nord, Statement

### Statement of Maralyn Chase, Peggy Pierce, Jill Cohenour, Steven D'Amico, and Susi Nord

Thank you very much for convening a hearing on the future of the U.S. Trade Advisory Committee system, and for taking written comments from interested parties. As state legislators concerned with how international trade rules affects our states, we are grateful for the opportunity to provide our perspectives.

In the last several years states have observed first-hand some of the impacts of international trade agreements, and aggressive actions by trading partners:

- **NAFTA Chapter 11 claims** brought against California's regulatory ability to protect public health and the environment. We appreciate the vigorous defense mounted by the U.S. State Department in arguing against those claims. But we also note that despite a favorable outcome in the *Methanex* and *Glamis* cases, the California Department of Justice was not compensated for the considerable time and expense that they had to devote to defending themselves. We view this as an unfunded mandate—something states can ill afford in the present budget climate.
- **Threatening letters sent by the People's Republic of China** to state legislators in Vermont and Maryland regarding bills introduced in those states dealing with lead content in toys, and electronic waste. China claimed that the bills would violate the World Trade Organization's Technical Barriers to Trade agreement. We dispute the validity of the claim; but equally important, we think it's totally inappropriate that the Department of Commerce would notify China about pending state legislation.
- The **WTO case** brought by Antigua against the United States **on internet gambling**. The WTO found that the U.S. had made such a commitment binding gambling under the services agreement. We appreciate that the U.S. withdrew its WTO commitment, largely as a result of pressure from states that ban all forms of gambling (Utah and Hawaii), but the case has led to a messy and still-unresolved dispute with a number of countries regarding the withdrawal of the commitment that could negatively affect businesses through the U.S. Legislators from coastal states are concerned that USTR has offered to commit services pertaining to liquefied natural gas under WTO rules as compensation for withdrawing 'other recreational services-gambling.'
- **Threatened challenges to California's Low Carbon Fuel Standard** and to greenhouse gas reduction strategies in the 10 Regional Greenhouse Gas Initiative states in the northeast. The Federal Government of Canada and the Province of Alberta are trying to block the leadership of the states in grappling with these urgent climate change issues by citing WTO and NAFTA rules.
- **Retaliatory tariffs taken by Mexico** as a result of a NAFTA trucking case is causing severe hardship to many of our agricultural producers and manufacturers.

We support efforts made by the Office of the United States Trade Representative to open up new markets for American goods and services. We believe that this can

be done in a way that safeguards U.S. federalism, and doesn't put state laws or regulatory authority at risk, or that causes unexpected shocks to our businesses because of retaliatory actions.

To avoid such shocks, and to safeguard U.S. federalism, there needs to be better communication between U.S. trade negotiators and state leaders. There should be regular and open communication between the Office of the United States Trade Representative (USTR) and ALL the states.

Right now, fewer than half the states are represented on InterGovernmental Policy Advisory Committee (IGPAC). It is hard to feel that USTR takes IGPAC seriously when there have been so few face-to-face meetings between state leaders and our trade negotiators, and also when USTR posts on its new website a roster of IGPAC members that is several years out of date.

It cannot be expected that states will support existing trade policy when there is so little consultation. States will seek to opt out of agreements about which they are not consulted.

We urge Congress to mandate a regular schedule of face-to-face meetings between the states and USTR, and a review of transparency policies regarding trade so that the states can have a clearer idea of what trade and investment issues are on the table and for negotiators to understand states' positions prior to the start of negotiations. This can be done as part of the formal trade advisory committee system, but the commitment to consultation should go beyond that. We also urge Congress to develop a process that allows states to decide whether to *opt in* to certain non-tariff aspects of trade agreements like procurement, services and investment provisions.

We note that several state trade commissions, as well as IGPAC, have put forward concrete proposals for how to reform some aspects of federal-state consultation on trade. We urge you to give serious consideration to these ideas.

To summarize:

- State legislators supporting this letter appreciate the Trade Subcommittee's consideration of this important issue of the formal trade advisory committee system.
- IGPAC and state commissions have made specific recommendations for improving USTR's consultation with states that have implications for the future of the trade advisory committee system.
- Consultation with the states must go beyond the formal advisory system and include a regular schedule of meetings with state leaders and with the national associations such as NCSL that support our interests.
- Congress should include an "opt-in" mechanism to allow U.S. states to decide whether to be bound to trade pacts' non-tariff regulatory constraints regarding services, procurement and investment in future trade negotiations.
- If states are to be supportive of U.S. trade policy, they must be consulted regarding the content of that policy.

Thank you very much for the opportunity to comment.