

# PRESIDENT BUSH'S TRADE AGENDA

---

---

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

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

MARCH 11, 2004

**Serial No. 108-43**

Printed for the use of the Committee on Ways and Means



U.S. GOVERNMENT PRINTING OFFICE

96-126

WASHINGTON : 2004

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

## COMMITTEE ON WAYS AND MEANS

BILL THOMAS, California, *Chairman*

PHILIP M. CRANE, Illinois	CHARLES B. RANGEL, New York
E. CLAY SHAW, JR., Florida	FORTNEY PETE STARK, California
NANCY L. JOHNSON, Connecticut	ROBERT T. MATSUI, California
AMO HOUGHTON, New York	SANDER M. LEVIN, Michigan
WALLY HERGER, California	BENJAMIN L. CARDIN, Maryland
JIM MCCRERY, Louisiana	JIM MCDERMOTT, Washington
DAVE CAMP, Michigan	GERALD D. KLECZKA, Wisconsin
JIM RAMSTAD, Minnesota	JOHN LEWIS, Georgia
JIM NUSSLE, Iowa	RICHARD E. NEAL, Massachusetts
SAM JOHNSON, Texas	MICHAEL R. MCNULTY, New York
JENNIFER DUNN, Washington	WILLIAM J. JEFFERSON, Louisiana
MAC COLLINS, Georgia	JOHN S. TANNER, Tennessee
ROB PORTMAN, Ohio	XAVIER BECERRA, California
PHIL ENGLISH, Pennsylvania	LLOYD DOGGETT, Texas
J.D. HAYWORTH, Arizona	EARL POMEROY, North Dakota
JERRY WELLER, Illinois	MAX SANDLIN, Texas
KENNY C. HULSHOF, Missouri	STEPHANIE TUBBS JONES, Ohio
SCOTT MCINNIS, Colorado	
RON LEWIS, Kentucky	
MARK FOLEY, Florida	
KEVIN BRADY, Texas	
PAUL RYAN, Wisconsin	
ERIC CANTOR, Virginia	

Allison H. Giles, *Chief of Staff*

Janice Mays, *Minority Chief Counsel*

Pursuant to clause 2(e)(4) of Rule XI of the Rules of the House, public hearing records of the Committee on Ways and Means are also published in electronic form. **The printed hearing record remains the official version.** Because electronic submissions are used to prepare both printed and electronic versions of the hearing record, the process of converting between various electronic formats may introduce unintentional errors or omissions. Such occurrences are inherent in the current publication process and should diminish as the process is further refined.

# CONTENTS

---

Advisory of March 3, 2004, announcing the hearing .....	Page 2
WITNESS	
U.S. Trade Representative, Hon. Robert B. Zoellick, Ambassador .....	10
SUBMISSIONS FOR THE RECORD	
Advanced Medical Technology Association, statement .....	70
Africa Growth and Opportunity Act Civil Society Network, letter .....	74
American Cancer Society, American Heart Association, American Lung Association, Action on Smoking and Health, Campaign for Tobacco-Free Kids, and Essential Action, joint statement .....	75
Doctors Without Borders, New York, NY, Nicolas de Torrente, letter .....	78
Johnson, Diane, Tyler, TX, statement .....	82
National Electrical Manufacturers Association, Arlington, VA, statement .....	82
Student Global AIDS Campaign, statement .....	89
Tadros, Paul, Montreal, Quebec, letter .....	92



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

---

**THURSDAY, MARCH 11, 2004**

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

The Committee met, pursuant to notice, at 10:05 a.m., in room 1100, Longworth House Office Building, Hon. Bill Thomas (Chairman of the Committee) presiding.

[The advisory announcing the hearing follows:]

# ADVISORY

## FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE  
March 03, 2004  
FC-16

CONTACT: (202) 225-3625

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

Congressman Bill Thomas (R-CA), Chairman of the Committee on Ways and Means, today announced that the Committee will hold a hearing on President Bush's trade agenda. **The hearing will take place on Thursday, March 11, 2004, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.**

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

#### **BACKGROUND:**

Using the Trade Promotion Authority (TPA) granted to him by Congress in 2002, the President is pursuing multilateral negotiations in the World Trade Organization (WTO) to expand U.S. trade opportunities in agriculture, industrial goods, and services. Ambassador Zoellick has sought to revive these negotiations to show progress in 2004.

The President has also recently notified Congress of his intent to enter into free trade agreements (FTA) with Australia and the Central American countries of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. Negotiations with Morocco have just concluded, and there also are ongoing FTA negotiations with the Dominican Republic, the Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa, and Swaziland), and Bahrain. The President has notified Congress of his intent to begin FTA negotiations with Thailand, Panama, and the Andean countries of Bolivia, Colombia, Ecuador, and Peru. In addition, he is continuing negotiations to establish the Free Trade Area of the Americas.

At the same time, Congress also plans to consider enhancing and extending the African Growth and Opportunity Act (AGOA) because certain provisions are set to expire in the fall. AGOA is a trade preference program directed at sub-Saharan African countries and provides extensive duty-free access for countries that meet the eligibility criteria.

In announcing the hearing, Chairman Thomas stated, "Expanded trade means more business for America's farmers, manufacturers, and service providers, better buys for American consumers, higher living standards for American families, and good jobs for America's workers. I am committed to ensuring the Administration's adherence to the rigorous consultations and detailed negotiating objectives established in TPA. This hearing will give Ambassador Zoellick the opportunity to outline the President's trade priorities and is an important component of the Committee's oversight responsibilities."

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

The hearing is expected to examine current trade issues such as: (1) the recently concluded FTAs with Australia, the Central American countries, and Morocco; (2) other free trade agreements currently being negotiated or which have been notified

by the President; (3) prospect for trade expansion in agriculture, industrial goods, and services through multilateral negotiations in the WTO; (4) compliance with WTO dispute settlement decisions; (5) potential extension and enhancement of AGOA; and (6) other trade issues.

**DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

**Please Note:** Any person or organization wishing to submit written comments for the record must send it electronically to *hearingclerks.waysandmeans@mail.house.gov*, along with a fax copy to (202) 225-2610, by close of business Thursday, March 25, 2004. In the immediate future, the Committee website will allow for electronic submissions to be included in the printed record. Before submitting your comments, check to see if this function is available. **Finally**, due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-packaged deliveries to all House Office Buildings.

**FORMATTING REQUIREMENTS:**

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

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

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

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

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

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

Chairman THOMAS. Good morning. Today's hearing is about the U.S. trade agenda for 2004. Ambassador Zoellick, it is a pleasure to have you with us here again to discuss your efforts, especially some very positive recent efforts to expand international trade, and create job opportunities for American workers, farmers, and businesses.

Since the President signed into the law the Trade Promotion Authority (TPA) (P.L. 107-210) 2 years ago now, the United States has been engaged in multiple trade negotiations. Most importantly, the President and the U.S. Trade Representative (USTR) is pursuing multilateral negotiations in the World Trade Organization (WTO) to expand U.S. export opportunities in agriculture, industrial goods, services, while protecting international property rights. Recent efforts, which we will focus on, especially a letter sent by

the USTR to a broad number of folk at the beginning of this year to attempt to build some momentum on the reinvigoration of the Doha Round, I am anxious to hear whether or not that has borne the kind of fruit that we hoped for. Basically, I think it entails everyone reassessing pre-Cancun versus post-Cancun and whether or not positions that produced post-Cancun should be reviewed and moved forward.

At the same time, the United States is engaging its trading partners on a bilateral and a regional basis. These agreements, when negotiated in a comprehensive and ambitious manner, create an environment of competitive liberalization and lead momentum to successful WTO negotiations, in my opinion. For example, last summer Congress employed TPA and the Administration moved free trade agreements (FTAs) with Chile and Singapore. They set very high standards in goods, services, intellectual property rights, investment, labor, and the environment.

The Administration has recently concluded FTAs with Australia, Morocco, and five Central American countries. These agreements made remarkable strides in opening markets to our goods and services. However, not every FTA can achieve the highest marks. Sometimes you have to settle for what you are able to achieve and there were some sectors that were excluded from coverage and our concern is that these not become precedent-setting.

In any event, the Committee is currently examining these agreements to determine the best timing for congressional consideration. Also, the USTR's office, notwithstanding the fact that we focus primarily on the big-picture trade agreements, has been actively involved in aggressively enforcing U.S. positions. They have successfully defended against challenges from Canada on lumber, India on textile rules of origin, Japan on sunset reviews, and obviously we need to have that very close nexus between opening up trade and defending and pursuing our rights in trade. Ambassador, I look forward to your comments. Prior to that I will recognize the Chairman of the Subcommittee on Trade, the gentleman from Illinois, Mr. Crane.

[The opening statement of Chairman Thomas follows:]

**Opening Statement of The Honorable Bill Thomas, Chairman, and a Representative in Congress from the State of California**

Good Morning. Today's hearing is about the U.S. trade agenda for 2004. Ambassador Zoellick, it is a pleasure to have you here to discuss your efforts to expand international trade and create jobs and opportunities for American workers, farmers, and businesses.

Since the President signed Trade Promotion Authority (TPA) into law in 2002, the United States has been engaged in multiple trade negotiations. Most importantly, the President is pursuing multilateral negotiations in the WTO to expand U.S. export opportunities in agriculture, industrial goods, and services. Thanks to Ambassador Zoellick's efforts, I see momentum building to reinvigorate the Doha Round, and I hope we will achieve substantial progress this year. Such progress depends on the willingness of all WTO members to move off pre-Cancun positions.

At the same time, the United States is engaging its trading partners on a bilateral and regional basis. These agreements, when negotiated in a comprehensive and ambitious manner, create an environment of competitive liberalization and lend momentum to successful WTO negotiations. Last summer, Congress employed TPA to approve FTAs with Chile and Singapore that set high standards in goods, services, intellectual property rights, investment, and labor and environment. The Administration has recently concluded FTAs with Australia, Morocco, and five Central American countries. These agreements make remarkable strides in opening markets

to our goods and services. However, I am disappointed that we have begun to exclude sectors from coverage and that an investor-state dispute settlement mechanism is not included in the Australia agreement. In any event, the Committee is currently examining these agreements to determine the best timing for congressional consideration.

While opening new markets for U.S. exports is a key priority, it is equally essential that we ensure that our trading partners abide by existing trade agreements. USTR's track record in WTO dispute settlement in the past 18 months has been impressive. The United States has successfully challenged Canada on dairy and wheat, Japan on apples, and Mexico on telecommunications. The United States has successfully defended against challenges from Canada on lumber, India on textile rules of origin, and Japan on sunset reviews. We must continue to aggressively pursue our rights. We must also make sure that we are in compliance with our own WTO obligations.

Ambassador Zoellick, I look forward to hearing your comments. I now recognize the Chairman of the Trade Subcommittee, Mr. Crane.

---

Mr. CRANE. Thank you, Mr. Chairman. I join in welcoming Ambassador Zoellick here today. Ambassador, I applaud your efforts and those of all the hardworking individuals at USTR who continue to press every day for new export opportunities for U.S. businesses and workers, more choices for U.S. consumers, and better adherence by our trading partners to existing trade commitments.

Despite my unwavering support for free trade and your tireless efforts on its behalf, I do have a significant concern with one aspect of recent U.S. trade policy, and that is for sugar. United States sugar policy was bad enough before but recently sugar appears to be immune from negotiations. Some of my constituents, from candymakers to corn refiners, are particularly hard hit by this policy, which represents the indulgence of the few at the expense of the many. There are or were several candymakers in the Chicago area, as I know you are aware.

According to industry estimates, almost 10,000 jobs have been lost in the U.S. confectionery industry due to the U.S. sugar program's import restrictions. To make matters worse, sugar has recently received special treatment. It has been completely excluded in the Australia agreement and the Central American FTA (CAFTA) contains extremely limited quota concessions with no reduction in out-of-quota tariffs. In CAFTA the centrals responded to the paltry concession on sugar by granting very long duty elimination on U.S. candy exports. Thus, the confectionery industry got a double blow because on the import side it cannot get access to reasonably priced sugar and on the export side the centrals provided in most cases 10- to 15-year phase-outs on sugar, candy, and chocolate confections. Fifteen years is a long time to wait for a benefit.

Another constituent victim of U.S. sugar policy is the corn refining industry, which is a hostage in a tit-for-tat battle with Mexico over sugar and high-fructose corn syrup. The North American Free Trade Agreement (NAFTA) provides that the United States can export high-fructose corn syrup into Mexico without duty and in return, Mexico can sell its surplus sugar in the United States. In the face of U.S. insistence on limiting Mexican sugar imports, Mexico has retaliated in several ways, most recently by imposing a discriminatory tax on products containing high-fructose corn syrup. This issue has been festering for years now and I urge you, Mr.

Ambassador, not to allow the U.S. sugar industry to block resolution of this dispute.

As I said at the beginning, I applaud the overall efforts of you and your colleagues in your office in opening markets for U.S. exports by eliminating tariffs, also known as protection taxes, reducing nontariff barriers, streamlining standards, opening services markets and strengthening intellectual property protections. These efforts provide a significant benefit to the U.S. economy. It is time we include sugar in this agenda and get comprehensive free trade back on track. I yield back the balance of my time.

[The opening statement of Mr. Crane follows:]

**Opening Statement of The Honorable Philip M. Crane, a Representative in Congress from the State of Illinois**

Thank you, Mr. Chairman. I join in welcoming Ambassador Zoellick here today. Ambassador, I applaud your efforts and those of all the hardworking individuals at USTR who continue to press every day for new export opportunities for U.S. businesses and workers, more choices for U.S. consumers, and better adherence by our trading partners to existing trade commitments. Despite my unwavering support for free trade and the tireless efforts of USTR on its behalf, I do have a significant concern with one aspect of recent U.S. trade policy, and that's for sugar. U.S. sugar policy was bad enough before, but recently sugar appears to be immune from negotiation. Some of my constituents, from candymakers to corn refiners, are particularly hard hit by this policy, which represents the indulgence of the few at the expense of the many.

There are—or were—several candymakers in the Chicago area. According to industry estimates, almost 10,000 jobs have been lost in the U.S. confectionery industry due to the U.S. sugar program's import restrictions. To make matters worse, sugar has recently received special treatment: it has been completely excluded in the Australia agreement, and CAFTA contains extremely limited quota concessions with no reduction in out-of-quota tariffs. In CAFTA, the Centrals responded to the paltry concession on sugar by granting very long duty elimination on U.S. candy exports. Thus, the confectionery industry got a *double blow* because on the import side it can't get access to reasonably priced sugar and on the export side the Centrals provided in most cases 10- to 15-year phase-outs on sugar candy and chocolate confections. Fifteen years is a long time to wait for a benefit.

Another constituent victim of U.S. sugar policy is the corn refining industry, which is a "hostage" in a tit-for-tat trade battle with Mexico over sugar and high-fructose corn syrup (or HFCS). NAFTA provides that the United States can export HFCS into Mexico without duty and, in return, Mexico can sell its surplus sugar in the United States. In the face of U.S. insistence on limiting Mexican sugar exports, Mexico has retaliated in several ways, most recently by imposing a discriminatory tax on products containing HFCS. This issue has been festering for years now and I urge you, Mr. Ambassador, not to allow the U.S. sugar industry to block resolution of this dispute.

As I said in the beginning, I applaud the overall efforts of USTR in opening markets for U.S. exports by eliminating tariffs—also known as protection taxes—reducing nontariff barriers, streamlining standards, opening services markets, and strengthening intellectual property protections. These efforts provide a significant benefit to the U.S. economy. It's time we include sugar in this agenda and get comprehensive free trade back on track.

---

Chairman THOMAS. I thank the gentleman. The Chair would recognize the Ranking Member, the gentleman from New York, Mr. Rangel, for any comments he may wish to make.

Mr. RANGEL. Thank you, Mr. Chairman. Mr. Ambassador, first let me join my colleagues in congratulating you for the work that you do for our great Nation and your patience in the most difficult situations that you face. I am particularly pleased to see your willingness to pick up the pieces in Cancun and to reach out to the de-

veloping nations. It is true that unless you help these countries, democracies cannot prevail, as we have seen in Haiti.

I also want to point out that most of us in the Congress believe that these matters of international concern should not be moved forward with party labels, and increasingly Democrats are labeled as being against free trade, notwithstanding the fact that with China, the Africa Growth and Opportunity Act (AGOA) (P.L. 106-200), and the Caribbean Basin Initiative (CBI) (P.L. 98-67), we have worked together in a bipartisan way. I wish desperately hard that we could continue to do that, to give you the type of support that you need when you represent not Republicans but the United States of America.

I am very pleased to share with you that the Chairman and Mr. Crane are working with the Democrats to improve AGOA, to make certain that investments will continue to flow, that they have an opportunity to fulfill the goals that we wanted for them, but just as importantly for the United States of America. Soon we expect that we will be dealing with the European Union. I would not want to be dealing with them as a Democrat. I would want to be dealing with them as an American and a Member of Congress. I do not know whether these are hurdles that we can overcome. Maybe the Senate would have to provide the leadership, since we do not expect to get it from the President. When we come to other agreements that we would like to participate in, it seems like there is a hurdle that we cannot overcome and that is establishing some standards, some labor standards, some environment standards so that it does not appear that there is a race to the bottom in terms of just getting the lowest paid workers throughout the world.

I hope, in conclusion, that there could be some sensitivity to the questions of America that pays the price for progress. I come from a city where 50 percent of the African-American males are out of work and it is difficult to tell them the value of free trade and what is going to happen down the line, that the more that we have jobs abroad, that jobs are going to be created here. It is not your job to invest in education and high tech, to make certain all Americans feel that they are going to be the beneficiaries of this free trade, but you have to have a domestic policy that supplements it so people are not frightened to death that these agreements are going to take Americans' jobs and just transfer them abroad and that we do not have a tax policy that encourages people to have these jobs abroad. That is not your job but it is your team's job and I would like to be a part of that team. With the Chairman's permission I would like to yield to the Ranking Member of the Subcommittee on Trade, Mr. Levin.

Mr. LEVIN. Thank you, Mr. Rangel and Mr. Chairman and welcome, Mr. Ambassador. Your prepared comments lead off with this statement: "Isolating America from the world is not the answer." Yesterday the President took the same tack, stating, and I quote, "There are economic isolationists in our country who believe we should separate ourselves from the rest of the world."

Whether we should isolate America from the world is not the question. It is not the question asked by this Committee, where Democrats have taken leadership roles in trade-expanding efforts—CBI, AGOA, China, Jordan. It is not the question asked by most

in Congress and it is not the question asked by the American people, who have seen during the Bush Administration the loss of 2.8 million manufacturing jobs, record trade deficits—\$43 billion now reported for the last month—budget deficits, major increases in outsourcing and services, and continued foreign barriers to our products.

I hope we can avoid the rhetoric today about isolationism, protectionism that mischaracterizes, polarizes and demonizes and ask instead the real questions, and let me mention two of them. Question one: should we use every tool at our disposal to shape the terms of international trade and competition or simply let it flow and assume problems will work themselves out in the wash of free trade? In my judgment, the Administration's answer to question one is still too often more trade is always better, no matter its terms and contents. It is manifested in the Administration's failure to use the tools at its disposal to respond effectively to shape the rules of competition.

When it comes to China, for example, your testimony states, and I quote, "We are committed to using special safeguards, applying fair trade laws and taking action under international trade rules." President Bush has denied relief in all three special China safeguard cases. Despite findings by the independent International Trade Commission (ITC), and despite the impact of the undervalued Chinese currency on American jobs, the Administration still does not have an effective strategy. Despite a growing culture of noncompliance with WTO commitments in China, the Administration has failed to bring a single case in the WTO against China.

The Bush Administration has also failed to use FTAs to address other critical terms of competition. Your prepared statement talks in several places about, and I quote, "A world that trades in freedom." How about the freedom for workers to associate and bargain collectively, as you have steadfastly refused—this Administration has—to include enforceable core labor standards in trade agreements.

A second real question: Are the Administration's actions consistent with its rhetoric? When the Administration states, as you do in your statement, the need to help people manage change, particularly when it concerns jobs, the answer here is a huge credibility gap. Not a finger lifted, and this happened again last week when Secretary Chao sat in the chair you are in—not a single finger lifted to extend the Federal unemployment insurance program, despite 760,000 unemployed workers running out of benefits without finding work.

You talk about the tripling of Trade Adjustment Assistance (TAA) but Senator Baucus recently stated that "The Administration fought tooth and nail against every penny and every provision to expand TAA." You talk about the President proposing \$500 million in new money for worker training and education but the Congressional Research Service (CRS) indicates the President's budget would cut worker training programs by \$500 million from 2002 levels.

So, I conclude. I look forward to the views you express on these real questions, not the straw man of isolationism. The American public does not want to build walls. They do want to know that

someone is on their side, fighting to advance their interests, to open markets for U.S. goods and services, and to set rules of competition that create a more level playing field between nations, and to rebuild a strong bipartisan coalition in this Congress, which this Administration has failed to do, to bring about expanded trade with economic growth and jobs for the American people. Thank you, Mr. Chairman.

[The opening statement of Mr. Levin follows:]

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

Thank you, Mr. Chairman.

Ambassador Zoellick, your prepared comments lead off by stating “isolating America from the world is not the answer.” Yesterday, the President took the same tack, stating that “[t]here are economic isolationists in our country who believe we should separate ourselves from the rest of the world.”

But whether we should “isolate America from the world” is not the question.

It is not the question asked by this Committee—a Committee where Democrats have undertaken leadership roles in trade-expanding efforts, for example on CBI, AGOA, China, and Jordan—it is not the question asked by most in this Congress, and it is not the question asked by the American people, who have seen during the Bush Administration:

- 2.8 million manufacturing jobs lost.
- Record trade and budget deficits, so large that the IMF has warned that they could destabilize the global economy.
- Switching from a trade surplus in Advanced Technology Products to a large trade deficit, which just grew 78% between 2002 and 2003.
- Major increases in outsourcing in the services sector.
- And continued major barriers to American products in foreign markets, with little prospect for progress given the stalled WTO talks.

I hope we can avoid rhetoric today about “isolationism” and “protectionism” that mischaracterizes, polarizes, and demonizes, and instead ask and answer the real questions American workers and businesses have regarding this Administration’s trade policy. I mention two of these below.

Question #1. Should we use every tool at our disposal to shape the terms of international trade and competition or simply let it flow, and assume problems will work themselves out in the wash of free trade?

Ambassador Zoellick, the *New York Times* indicated that you “learned a lesson” from the firestorm generated by Mr. Mankiw’s comments in your handling of the issue before the Senate Finance Committee. The lesson should not be “choose your words more carefully,” but that the Administration needs to change its approach to U.S. trade policy.

In my judgment the Administration’s answer to Question 1 is still “more trade is always better, no matter its terms and contents.” It is manifested in the Administration’s failure to use the tools at its disposal to respond effectively to problems that arise and to shape the rules of competition.

- When it comes to China, your testimony claims that “We are committed to using special safeguards, applying fair trade laws, such as the antidumping provisions, and taking action under international trade rules if China falls short in its trade commitments.” But the facts speak otherwise:
- President Bush has denied relief in all three cases under the special China safeguard despite findings by the independent ITC that U.S. manufacturers had been injured by import surges from China.
- Despite the impact of the undervalued Chinese currency on American jobs, the semi-annual Treasury report on currency manipulation gave a free pass to China and the Administration does not have an effective strategy to deal with the issue.
- Despite a growing culture of noncompliance with WTO commitments in China, the Administration has failed to bring a single case in the WTO against China and has allowed the annual review of China’s WTO compliance to become a mechanical exercise rather than a meaningful review.
- The Bush Administration has failed to use tools to open other foreign markets, as well. The Clinton Administration brought on average 10 cases per year in

the WTO against foreign market access barriers; the Bush Administration has brought less than three cases per year.

- For the first time since the creation of the WTO, the EU is imposing trade sanctions against U.S. manufacturers and farmers, yet the Administration has failed to take a leadership position to forge a solution. Meanwhile, the U.S. trade deficit with the EU has skyrocketed, growing 70% since President Bush took office and now standing at \$94 billion.
- The Bush Administration has failed to use free trade agreements to address critical terms of competition. Amb. Zoellick, your prepared statement talks in several places about a "world that trades in freedom." How about the freedom for workers to associate and bargain collectively, as you have steadfastly refused to include enforceable core labor standards in trade agreements?

Question #2. Are the Administration's actions consistent with its rhetoric when the Administration states, as your statement does, that we need to "help people manage change, particularly when it concerns jobs" and to "help someone who loses a job get back on his or her feet?"

The answer here is a huge credibility gap. The Administration has not lifted a finger to extend the Federal unemployment insurance program despite the fact that since the program expired, 760,000 unemployed workers have run out of unemployment insurance benefits without finding work.

Your written statement touts the tripling of the TAA program in 2002, yet Senator Baucus recently stated that "the Administration fought tooth and nail against every penny, and against every provision" related to TAA in that bill.

Your written statement claims that the President has proposed \$500 million in "new" money for worker training and education, yet an analysis by the Congressional Research Service indicates that President Bush's FY'05 budget would result in a *net cut* to worker training programs of \$500 million from FY'02 levels.

I look forward to your views on the real questions, not the straw man of isolationism and protectionism. The American public doesn't want to build walls, Ambassador Zoellick, they want to know that someone is on their side, fighting to advance their interests, to open markets for U.S. goods and services and to set rules of competition that create a more level playing field between nations, and to rebuild a strong bipartisan coalition in the Congress, which this Administration has failed to do, to bring about expanded international trade with economic growth and jobs for the American people.

---

Chairman THOMAS. I thank the gentleman. The Ambassador is recognized. His written statement will be made a part of the record, and you can address us as you see fit in the time that you have.

**STATEMENT OF THE HONORABLE ROBERT B. ZOELLICK,  
AMBASSADOR, U.S. TRADE REPRESENTATIVE**

Mr. ZOELLICK. Thank you, Chairman and Mr. Rangel. I want to thank all the Committee for the advice and support not only over the last year but over the past 3 years. I think we have accomplished a great deal together and for those that are still doubtful in their bipartisan spirit, we will be happy to engage with them on the case.

I certainly recognize, as I know all of you do, that the benefits of trade are a contentious subject. We certainly heard a lot about that over the past couple of months as people were competing to see how far they could add to an economic isolationist agenda for this country. My written testimony covers a number of the topics that were raised but this morning I will just review the PowerPoint that I hope you all have in front of you. The strategy that we have been pursuing is one of trying to expand trade for growth, for opportunity, for development, and fairness through a series of initiatives. First on the negotiating front, we are trying to work on mul-

tiple fronts at once—globally, regionally and bilaterally—because we feel this is the best way to give America the most leverage.

In addition, as all of you mentioned in one form or another, it is vitally important we have full enforcement of the laws and agreements but also to help workers adjust to the loss of jobs. The Trade Act of 2002 (P.L. 107–210), which I actively supported, including the trade adjustment provisions, produced \$6 billion of added TAA over the course of 5 years, \$1.3 billion last year. That means about 200,000 workers are eligible for that. It also included an alternative TAA pilot that could be an important example for the future.

The President in his State of the Union address emphasized the importance of developing jobs for the 21st century and proposed a \$500 million program to deal with linking community colleges with local job needs. Now by moving on multiple fronts, we can help all of the American economy—consumers, workers, exporters. Frankly, the United States already starts with relatively low trade barriers. Our average trade-weighted tariff is a little bit under 2 percent. So, when we create these FTAs, we are bringing others a lot down further in an open and level playing field for our producers.

Also with an economic recovery—and I hesitate to differ with some of you—I think this would be a absolute worst time to move to economic isolationism—ideas like repealing NAFTA, which came up on some voices, ideas of adding barriers, adding costs, adding price increases. I do not think that is the way to go when you have 4 to 5 percent growth and you are reducing unemployment. Now the Trade Act of 2002, which I know many of you put a lot of effort in to get through after its failure to pass three times in the 1990s, is something we have tried to put to good use and here I want to particularly thank the Chairman. I know he put a lot of effort in with a lot of priorities to help us get this done.

As all of you know, we completed and, with your help, passed the Singapore FTA (P.L. 108–78) and Chile FTA (P.L. 108–77) and we were pleased with the bipartisan support we got for those. We have now launched and completed an Australia FTA (P.L. 108–286). We have launched and completed an agreement with five Central American countries and just this week we are trying to add the Dominican Republic. We have launched and completed a FTA with Morocco (P.L. 108–302).

We have launched FTAs with five countries in Southern Africa and Bahrain. We have announced our intent to try to proceed in the spring of this year with some of the countries in the Andean region of Latin America, Panama, and Thailand. In doing so, we have also tried to set out a strategy for countries to move toward free trade, with the enterprise for the Association of Southeast Asian Nations (ASEAN) Initiative in Southeast Asia. We have launched a Middle East Free Trade Initiative to try to help countries in the moderate Arab world to move toward tolerance and openness.

In Miami, where I had a chance to be with Mr. Shaw, we created a framework for the Free Trade Area of the Americas (FTAA) and tried to move it toward concrete results. As the Chairman mentioned, Doha is vitally important for our overall WTO global negotiations and while Cancun was a missed opportunity, I really be-

lieve that 2004 need not be a lost year. Now let me talk about some of these in a little bit greater depth and start with the global trade negotiations, where obviously there is the biggest benefit. The challenge is to try to bring 148 economies, from small island economies in the Caribbean to the United States of America, to an agreement on boosting markets for agriculture, for goods and for services.

On the way to Cancun we resolved something that I think is very important in building the credibility of the system was the last issue related to what is called the Trade Related Intellectual Property Rights (TRIPs) and medicines issue to make sure that developing countries could compulsory license when they needed to deal with problems like Advanced Immune Deficiency Syndrome (AIDS) and other pandemic diseases. At Cancun, and a number of you were there to help us, I think you saw that a number of countries wanted to posture and pocket proposals without opening their own markets. There was also the problem of the so-called Singapore issues—competition, investment, transparency in government procurement and trade facilitation—which, while a couple of them are important, in our view were not the core agenda. The core agenda is opening agriculture, goods and services markets, and, although these issues were pushed by the European Union, Japan and Korea, they really ran into a block with Africa and some of the Asian countries. An important message coming out of Cancun is the need to have agriculture reform for both developed and developing countries together.

Nevertheless, it is my sense that there was some good work done at Cancun. People developed some draft frameworks for work in the future. It was our sense that in the months after Cancun, and this goes to one of the points you made, Chairman, I think there was a reassessment by countries about the missed opportunity. So, in January of this year I wrote a letter to my 147 colleagues to try to set forth a common sense assessment of what we could do to move forward, and, in February, I traveled some 32,000 miles all around the world and saw some 40 ministers of different countries, to try to move this forward. In brief, here is where I think we are.

I think agriculture is absolutely fundamental and it will be important to get the last key player—this is really the European Union—to eliminate export subsidies—I think there is a chance of doing that—and also to get substantial harmonizing cuts in subsidies, trade-distorting subsidies, which the United States is willing to make if we can get Europe and Japan to move forward, but also to combine that with significant market openings. In manufactured goods we are trying a combination of formula cuts because our tariffs again are relatively low compared to others—a formula would help cut others—sectoral initiatives and nontariff barriers. In services we need to get more and better offers from a group of countries.

On the Singapore issues the key for us is not to let them be a distraction, so we suggest focusing on trade facilitation alone. I think, Mr. Chairman, there is actually a new energy and sense of possibility here. My hope is that by this summer we might be able to achieve the frameworks that we failed to achieve in Cancun. I want to hesitate to add, as all of you know who have dealt with this, this is not an easy task. Bringing around 148 economies to-

gether on a consensus requires a particular challenge. I think the key will be whether the European Union can move on this export subsidy issue and some of the trade facilitation issues and whether we can get some of the major developing countries to also recognize they are going to have to contribute. Here I am not talking about the Caribbean countries or sub-Saharan African countries but some of the major players in Latin America and Southeast Asia are also going to have to agree to open their markets.

On the FTAA, what we tried to do at the Miami meeting was to set forward a way that we could move forward with 34 very different countries. We suggested developing a common set of rights and obligations for all 34 countries—this would focus on market access barriers and would be very important for the United States—but then to agree to try to create a higher level of commitments for those willing to go further. That would provide the opportunity to integrate with a lot of our current FTA partners.

We also outlined an alternative path and it makes the point about why this competitive liberalization strategy is important. We already are in process of either having FTAs or negotiating FTAs with two-thirds of the hemisphere's gross domestic product (GDP), not counting the United States. So, there is a clear message, which is we would like to try to do this hemisphere-wide but if we cannot, we are going to work with those who do. As I think the Chairman would agree in his opening statement, these are very gold-standard agreements in terms of what we get in Intellectual Property Rights (IPR) and services and agriculture.

In terms of the other regional agenda, I think both the Chairman and Mr. Rangel mentioned the importance of AGOA's extension. There were \$14.1 billion of African exports under AGOA to the United States last year. That is about a 55-percent increase. While a lot of those are oil-based, if you look at the non oil-based numbers, they are also up very considerably.

So, we believe AGOA has been an outstanding success and I know that the Chair and Mr. Rangel have frankly taken it upon themselves to try to see what extension can be done and we certainly want to work with you as we try to do that. I know Mr. Thomas and I were in Mauritius together where we learned about this fine balance about how, in dealing with the fabric provisions, we do not want to undermine the fabric creation in Africa because for their long-term ability to compete with China, they are going to need to be able to be fabric-producers as well as apparel-producers. So, I know that will be a challenge one has to try to deal with here.

In terms of the Middle East Free Trade Area, we now have FTAs with Israel and Jordan, one with Morocco that we look forward to taking up with the Congress, and one we are making good progress with Bahrain. This is part of a strategy that recognizes you have major development challenges all across the Arab world but we want to try to create models of success. If you look at these agreements, having Jordan and Israel in the heart of the Middle East, Morocco in the Magreb, Bahrain in the Gulf, these are becoming models for countries. They are starting to draw people toward a series of reforms.

Now some countries, like Saudi Arabia, are not even members of the WTO yet, so the challenge is to get them part of the WTO. Then the next stage we use is these trade investment framework agreements (TIFAs), which we use to kind of build countries' trading relationship with us, solve problems, whether they be customs or IPR. We now have these with Algeria, Egypt, Saudi Arabia, Tunisia, Yemen, Kuwait, and in the next couple of weeks we expect to sign them with Qatar and United Arab Emirates.

Similarly, we have tried to put out a map for moving toward more open markets with Southeast Asia, the Enterprise for ASEAN Initiative. We now have a FTA with Singapore. We will be beginning one with Thailand, a very important market, and we have now had TIFAs with Indonesia, Philippines, Brunei, Malaysia is interested in signing, and these will be the way in which we can create the foundation toward possible FTAs.

Now on the bilateral side we are very pleased with the support for the Singapore and Chile FTAs. We hope these will be models but recognize that each agreement has to be customized. The Australia FTA we launched in March of last year, completed in February of this year. The Central American FTA with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, completed that in January. As I mentioned, we are moving ahead with the Dominican Republic negotiations, and here I want to thank Congressman Weller, who made a special effort to come with me to the Dominican Republic, trying to move this forward. It was very helpful there to have a Member of Congress talk about the context of what we need to do to be successful.

Morocco, we were again pleased that we completed that agreement. Southern African Customs Union, this is one I know that both Mr. Portman and Mr. Rangel have worked with us on, we launched in January. This will take a little longer. It is very complex, with these five countries, but I think it will be very important to have a FTA in Africa.

For Bahrain, Mr. Ryan was at an event with me last week where we announced the business coalition to help move this FTA forward. Also, then the Andeans, Panama, and Thailand, which we hope to launch in April or May of this year. Now, a lot of people ask me questions about these and say, well, these are individual countries, but what do they add up to? Let me offer you a sense. These FTAs together amount to America's third-largest export market, and that would be the sixth-largest economy in the world.

Now, people often say well, what about others, and they compare different numbers. To do an accounting of this, you start with NAFTA because NAFTA covers about 35 percent of our exports. Now the next biggest players are the European Union, which does not want to do a FTA, Japan and Korea, which I would love to have a shot at a FTA with but they are not going to open their agriculture markets and we do not do trade agreements if we cannot open up agriculture. Then, of course, we have China, which I think we need to have some implementation issues ahead of moving toward anything in that nature.

So, if you take those countries out, of the remaining part of the world economy, not counting our current free trade partners with NAFTA or these economies, of the remaining set, the ones that we

are working on cover 35 percent of U.S. exports. If you add in the full FTAA, it is 50 percent. So, you can see these numbers do have a way of adding up.

Now, let me just touch briefly on the particular agreements. The Australia FTA, and I want to thank Mrs. Dunn, who has been helpful in a leadership role on this, is our first FTA with a developed country since Canada. The National Association of Manufacturers, the U.S. Chamber of Commerce and others have dubbed this a manufacturing FTA because it creates immediate duty-free treatment on 99 percent of U.S. manufactured exports. That is 150,000 jobs already supported with our trade with Australia and the manufacturing community estimates this would create an extra \$2 billion of exports, an extra \$2 billion of income for the United States. It also expands markets for U.S. service providers and farmers. All U.S. farm exports are duty-free from day one.

The main problem we have had with Australia and one the Chairman has had a keen interest in, given particularly some of the California products, is dealing with the sanitary and phytosanitary standards. So, we have worked simultaneously to try to make sure we deal with those in a scientific way, dealing with grapes and pork and stone fruit and citrus. At the same time, we have tried to deal with U.S. agricultural products with some sensitivity. Mr. Herger has talked to us because he has been very supportive of our trade agenda, but we had some sensitive items to deal with. I was very pleased, as I mentioned to some of you, that yesterday the Farm Bureau came out and said they would support this agreement if there is follow-through on the sanitary and phytosanitary standards.

On the pharmaceutical benefits scheme improvement, this is, I know, a very sensitive area but a very important area for a key part of the U.S. economy, and we think we handled this in a way that deals with transparency and benefits of innovation and research and development. Mr. McCreery and Ms. Dunn and I talked about this and I think we managed to get some very significant improvements there. Even though this was a developed economy, we have environmental and labor provisions in this accord, as we do in all our FTAs, and I must emphasize for those who raised questions about this, we are the only country that has enforceable environmental and labor provisions in our FTAs, so we have played a leadership role.

On CAFTA, I see Mr. Brady in front of me and I want to thank him because he has been very helpful in organizing support for this. Mr. Jefferson also had me in New Orleans and was kind enough to focus on the benefit of the Port of New Orleans in this. Here is an important part about some of these FTAs. If you look at the CBI arrangements, the preferential arrangements, tariffs on Central American goods are already low. Seventy-seven percent of regional imports enter the United States duty-free, but we do not get any reciprocal trade access. With CAFTA, more than 80 percent of U.S. manufactured goods would be duty-free immediately and more than half of the current U.S. farm exports are duty-free immediately. That means beef, cotton, wheat, soybeans, fresh vegetables, processed foods, wine, and we get some very important gains on pork and poultry, rice, corn, dairy, dried beans, vegetable oil.

Again yesterday the Farm Bureau came out in support of this agreement.

Now, the sensitive topic, as a number of you mentioned, with sugar. This is a subject where there is very strong feelings, given the sugar program that is in place for the United States. What we did is not touch the tariff on sugar but we did increase the quota, but the increase of the quota amounts to 1.2-percent of U.S. production. After 15 years that rises itself to the huge number of 1.7-percent. That 1.2-percent is one day's worth of production and this was an important balance. So, I appreciate your comments, Mr. Crane. We have some others here who are a little bit more sensitive on the sugar topic and at the end of the day I have to try to bring you agreements that I think we can get passed, with the support that we can get. So, I think we got very good success in terms of America's agricultural interests and we dealt with this most sensitive product very sensitively.

There is also important textile and apparel provisions here and I want to just take a moment to stress something. We included some cumulation provisions that will encourage integration of the North and Central American market and the reason why I think these are absolutely critical is that quotas on textile and apparel that were put in place by the Congress and President Clinton in 1994, are coming off at the end of this year. So, the real challenge would be how do you compete with China? These provisions really try to create an integrated market by drawing some of the fiber and textile production from the United States but also the apparel production in the region. We included only for Nicaragua what we call Trade Preference Levels (TPLs), some ability to bring in third-party fabrics. We really tried to design this as a comprehensive system. I am pleased that some of the people that have moved into this industry, like Wilbur Ross, have been very supportive of this agreement because I think they see this is the best way that we will be able to be more competitive in a global context.

We have very good IPR standards and protections, openings all across the service sectors, including telecommunications and insurance, very strong transparency, anti-corruption, good governance rules, and labor and environmental protections that go beyond Chile and Singapore. Mr. Levin mentioned Senator Baucus. We were very pleased to work with Senator Baucus on upgrading the environmental provisions in this. We included some special citizen petitions, some benchmarks and monitoring for our environmental agreement, appellate agreement for investor state, so we were delighted to work with him in a bipartisan fashion to come up with environmental provisions we can all be proud of.

I want to make one other point about these countries. In the 1980s I worked with Secretary Baker at the U.S. Department of State and I remember coming into office actually in 1989 and dealing with one of the toughest legislative issues that we ever encountered. It was dealing with Contra funding. At that time I remember the challenge with this Congress was not people trading across borders but people killing across borders. You had problems in these countries of whether they would be run by communist dictatorships, whether they would be run by para-militaries or whether they would be run by democracies.

You now have five democracies in these countries. Some of them, to be frank with you, are fragile. It is not an easy task. What they see this FTA about is reaching out to the United States to try to have a chance to sell here, to build growth, to create market openings. I have to say when I look at the history of the United States and Central America, we follow a very sad pattern. We get drawn into a problem, we get our hands burnt, we somehow figure out how to deal with it, and then we ignore it. I hope this is a way that economically we can support very important political and human rights developments in that region.

In Morocco, again I see Phil English here, who has been very helpful with us, with Chris John and John Tanner. This is the best ever package we have had with a developing country in terms of goods. Ninety-five percent of the goods are duty-free on day one. It expands export opportunities for U.S. agriculture, very broad support of the services markets, new protections for U.S. investors, strong IPR and anti-corruption rules. They are already changing some of their labor and environmental laws in a beneficial fashion, working with the International Labor Organization (ILO).

The other point again I want to emphasize here is trade is part of our economic interests but it is part of America's face with the world. When you read the papers and you see what happens in the Muslim world and you see those that are trying to fight toward openness, this is a country that is moving toward an open parliamentary system, better treatment of women, openness, and I think this allows us to frankly pursue our economic and political interests together.

Trade with China is, I know, a very, very sensitive topic, one I have gone over with many of you as to particular items. I just want to set the context. The agreement that Mr. Levin mentioned that many of you fought to pass created the rules. We now have U.S. exports to China growing 75 percent over the past 3 years at a time that American exports to the rest of the world have fallen. So, there is opportunity in this market. It is our sixth-largest export market. I know we all agree that their implementation cannot slacken. The message that we drive home is that if we are going to keep America's market open to China, we are going to need to be able to have them follow through on your obligations, whether it be agriculture, whether it be intellectual property, whether it be standards issues, or others.

Now, China has responded to some of these problems. For example, we worked very closely on agriculture issues because that was a very important market for us. We have record gains in soybeans. We had \$2.9 billion sales of soybeans this year. Cotton exports are up almost 500 percent, about \$800 million. In addition to those sales, they have now worked through their biotech approval process for soybeans, cotton, corn, and others who are on the way. They are opening up financial services market, motor vehicle financing. They have added various purchasing missions.

I know I have worked with Nancy Johnson on a lot of this. I was pleased to see also Mr. Houghton out there. I'm not sure if General Electric and Pratt & Whitney are exactly in your districts, but I think they are very close. These are some of the beneficiaries of these.

The message, however, that we emphasized to the Chinese is one-off purchases are not enough. We have to have a systemic opening of the system. In April I will be meeting, with Don Evans, with the Vice Premier Wu Yi of China to try to elevate the dialogue to work on these issues and would be pleased to respond to some questions on this, and the use of safeguards for textiles. On the particular Section 421 provisions, Mr. Levin, we can go through some of the specifics. We are open to those but we have to look at the overall net gain and loss on some of those; and I will take you through each one if you would like, on where there is net gain and loss and why some of these companies—frankly the real problem would be the competition they face from elsewhere or some of their own practices, but I would be happy to go through them one by one if you would like.

Monitoring and enforcement. As we have mentioned, while we focus a lot on trade agreements in this Committee, our day-to-day is frankly trying to make sure that we deal with the problems of keeping markets open. So, I just listed some of the examples here—with agriculture, a case against dairy with Canada, pork with Mexico, apples with Japan, IPR patents Argentina, autos, the Philippines.

Some pending cases, you see one listed there with telecommunications in Mexico. That is estimated to be worth \$500 million to our telecommunications people. I worked with a number of you with our cases we have against the European Union on biotech and geographic indicators. We also wanted to emphasize for the textile industry, that I know has had a difficult adjustment, that others have to play fair, too. So, we took a case against Egypt that I believe they are actually going to settle with us because they know they are out of compliance.

I see Mr. Pomeroy here. You know about our actions with Canada on wheat. What I also want to emphasize is that this is just one piece of the effort. For example, as I mentioned to some of you, I was very delighted that Secretary Veneman and I last week were able to reopen the beef market in Mexico, a \$589 million market dealing with the Bovine Spongiform Encephalopathy problem. Frankly, Mr. Tanner is not here now but in their run-up to the Colombia FTA, we just got a commitment by the Colombians to follow through on an investment dispute, about \$800 million with Nortel. Mr. Camp and I worked on dried beans with Mexico.

There is a whole host of these. Many of you know about them in particular, but I think a lot of people that listen do not realize the day-to-day work that goes on on these. The other side of the coin is the United States also has to be in compliance and I compliment the Chairman and others for trying to help finally solve this Foreign Sales Corporation (FSC) problem. As many of you know, we are now facing retaliation. That retaliation is going to get higher. It covers \$3 billion of U.S. exports. As Mr. Rangel mentioned, there is a bill moving in the Senate. One way or another we have to be able to get this legislation through so that we can end this retaliation against American exports.

There are others coming down the road. There is something called the Byrd Amendment that was put on an appropriations bill that we tried to resist but frankly, we have lost the WTO case.

Right now we are fighting the retaliation amount, but this could be \$150 to \$200 million of different retaliation. Some of the ones here that are smaller may not get your attention but I will tell you this. When we go around the world and try to tell other people they should follow the rules, when the United States is a scofflaw it makes it a little harder, and we need your help on these because they require congressional action.

Looking ahead, I think at least our perspective is the critical point is not to frighten Americans about change. We know there is anxiety out there. It is to help them deal with change and recognize that some of this is due to technology, some of it is due to competition around the country, some of it is due to global competition. That means economic isolationism will not work, so ideas to try to kill jobs, shut off opportunities, we tried that in the 1930s and it did not work and I do not think we want to go back on that path.

Americans can be big beneficiaries of openness in trade. Americans compete with anybody in the world, if given a fair shot. Right now we are in a position where the United States economy is growing. You had 8.2-percent growth in the third quarter, 4.1-percent growth in the fourth quarter. Private estimates are 4- to 5-percent growth. Yes, we have not added as many jobs as we would like but we have added 364,000. One thing I know is if we turn at this point to start to block our markets, it is the absolute worst thing that we could do for America's return to creating good-paying jobs.

Indeed, as I mentioned, U.S. trade barriers are already relatively low. If we get others to lower their barriers it is a win-win proposition. As I have also discussed with you and for a larger message here, the U.S. business community is going to also have to stand up to this a little bit more. I talk to a lot of chief executive officers (CEOs) and they say, "Yeah, we hear a lot about all these terrible issues and we are not sure we should speak up for them." I talked with Mr. Weller when we were down in the Dominican Republic. American business executives have got to defend those who defend openness and free trade. They have to come and show some plants and show the benefits for workers that are creating jobs because of trade, and there are a lot of jobs out there, about 20 million jobs. It is about 6.5 million jobs created because of foreign investment. Businesses have to help you and me to keep the market open.

It has to be combined with monitoring and enforcement of agreements, whether it be targeted use of safeguards, as we did in steel or we did with textiles, reliance on unfair trade laws, and, of course, following the rules to help ourselves but also helping Americans adjust to change. This is partly a question of education. If American students cannot read and write and do arithmetic, they are not going to be able to deal with the 21st-century economy, so that is where the President's program to set standards, while some people do not like the follow-through on standards, you have to have high standards if you are going to have people be able to compete.

The same with worker training. I mentioned to Mr. Cardin before we began that I really appreciate the leadership that he and Mr. Portman have shown dealing with issues like portable pensions, because frankly, we are going to need that flexibility for a modern economy. Then also to help people be able to keep and save some

of their own hard-earned dollars, because that helps people be able to adjust to change, as well.

In addition to our side, I also want to make a point about the larger global community in which we live. Over the past decade, trade has lifted some 140 million people around the world out of poverty. I probably travel the world more than any other Cabinet officer, even more than Secretary Powell, and one thing that I am absolutely convinced of is, the United States will not prosper in a world where lives of destitution lead to societies without hope. So, this can be a win-win proposition and we appreciate the help of this Committee in helping us move this agenda ahead, Mr. Chairman.

[The prepared statement of Mr. Zoellick follows:]

**Statement of The Honorable Robert B. Zoellick, United States Trade Representative**

Chairman Thomas, Congressman Rangel, Members of the Ways and Means Committee:

**Introduction: The Challenge Ahead of Us**

It is a pleasure to be with you again. I want to start by thanking all of you—from both parties—for the support and advice you have provided us, not only over the last year, but for the past three years.

Together we are accomplishing some important results for America.

Yet I know the benefits of trade are a subject of debate.

Consider this statement:

“With America’s high standard of living, we cannot successfully compete against foreign producers because of lower foreign wages and a lower cost of production.” Perhaps this pessimism sounds familiar. It could very well have come from one of today’s opponents of trade, arguing against a modern-day free trade agreement. But in fact these words were written by President Herbert Hoover in 1929, as he successfully urged Congress to pass the disastrous Smoot-Hawley Tariff Act that raised trade barriers, destroyed jobs, and deepened the Great Depression.

Today, as in the 1930s, trade can be a contentious subject. But as we learned 75 years ago, isolating America from the world is not the answer. We need to open markets for American companies to compete in the world economy, so we can create new jobs and build economic strength at home. When we work with the world effectively, America is economically stronger. Ninety-five percent of the world’s customers live outside our borders, and we need to open those markets for our manufacturers, our farmers and ranchers, and our service companies. Americans can compete with anybody—and succeed—when we have a fair chance to compete. Our goal is to open new markets and enforce existing agreements so that businesses, workers, and farmers can sell their goods and services around the world and consumers have good choices at lower prices.

Opening foreign markets to U.S. products and services is vital to economic growth, and an expanding economy is the key to better-paying jobs. U.S. exports accounted for about 25 percent of U.S. economic growth during the last decade and supported an estimated 12 million American jobs.

When the world’s consumers fly in an airplane, boot up a computer or watch a movie, they are helping to employ Americans. And 6.4 million Americans have jobs working for foreign companies, building cars in Ohio, Kentucky, Tennessee, Alabama and South Carolina—or processing mortgages in Minnesota or engineering software in California.

Although we have opened many markets, too many foreign countries still will not let us compete on an equal footing. They keep our products out, they illegally copy our technology, and they block us from providing services. We want to make sure our products and services get a fair chance to compete, and to be vigilant and active in enforcing our trade agreements so that American workers have a level playing field.

Recent U.S. trade agreements have cut hidden import taxes and saved every working family in America as much as \$2,000 a year, and our newest agreements could add more to these savings. Arguing for trade barriers is like arguing for a tax on single working moms, because that’s who pays the most in import taxes as a per-

centage of household income. Our goal is to cut those hidden import taxes—while other countries cut theirs too—to give working families a boost.

At the same time, we need to help people manage change—particularly when it concerns jobs. Jobs not only provide for our families, they give us hope for a better tomorrow. Losing a job is hard, whether it is because of a recession, changing technology, or competition from another State or overseas. No matter the cause, it is important to help someone who loses a job to get back on his or her feet.

That's why Congress and the President tripled Trade Adjustment Assistance in the Trade Act of 2002. In 2003, this program provided some \$1.3 billion in support and retraining, with nearly 200,000 workers eligible for assistance.

That's why the President is focused on helping workers to learn new skills for the jobs of the future. His Jobs for the 21st Century initiative provides over \$500 million in new funding for education and job training, including \$250 for community colleges to provide workers job training and skill development.

And that's why the private sector has an important role too: Today American companies spend \$70 billion a year on worker education and training, and they will need to expand this investment in people for the future.

Some of today's opponents of trade, like those of yesteryear, want to retreat, to cut America off from the world. But we need to remember that what goes around, comes around: If we close America's markets, others will close their markets to America. And the price of closing markets is larger than economic isolationists recognize. Over the last decade, trade helped to raise 140 million people out of poverty, spreading prosperity and peace to parts of the world that have seen too little of both. Americans will not prosper in a world where lives of destitution lead to societies without hope.

That's why President Bush's vision is of "a world that trades in freedom."

### **Strategic Overview**

Three years ago, to support economic growth, an innovative America, development, and fair and open engagement with the world, the Bush Administration outlined a trade strategy for America. At the heart of our effort has been a plan to pursue reinforcing trade initiatives globally, regionally, and bilaterally. Through an ambitious trade agenda, the United States is working to secure the benefits of open markets for American families, farmers, workers, consumers and businesses. By pursuing multiple free trade initiatives, we are creating a "competition for liberalization" that provides leverage for openness in all negotiations, establishes models of success that can be used on many fronts, and develops a fresh dynamic that puts America in a leadership role.

This strategy is producing results.

With the leadership of Chairman Thomas and other Members of this Committee of both parties, the President secured congressional approval of the Trade Act of 2002.

The United States was instrumental in defining and launching a new round of global trade talks at the World Trade Organization (WTO) at Doha in late 2001. That same year we completed the unfinished business of China and Taiwan's entry into the WTO, working from the bilateral trade terms established by President Clinton, so as to establish a legal framework for expanding U.S. exports and integrating China's economy into a system of global rules. Also in 2001, the Administration worked with Congress to pass a Free Trade Agreement (FTA) with Jordan and a basic trade accord with Vietnam. After the 2000 election, President Clinton had announced an interest in FTAs with Singapore and Chile, and this Administration negotiated state-of-the-art accords in 2001–02 and gained congressional approval in 2003.

A critical aspect of the Trade Act of 2002 was the renewal of the President's trade negotiating authority. In 2003 and early 2004, the Administration put that authority to good use, promoting global negotiations in the WTO, working toward a Free Trade Area of the Americas (FTAA), completing and winning congressional approval of free trade agreements with Chile and Singapore, launching bilateral free trade negotiations with 14 more nations (concluding talks with seven of them), announcing its intention to begin free trade negotiations with six additional countries, and putting forward regional trade strategies to deepen U.S. trade and economic relationships in Southeast Asia and the Middle East.

The Trade Act of 2002 also renewed and improved trade preferences covering an estimated \$20 billion of business with developing countries in Africa, Latin America, and Asia through the renewal and improvement of the Andean Trade Preference Act, the African Growth and Opportunity Act, and the renewal of benefits under the U.S. Generalized System of Preferences. In addition, the Trade Act of 2002 tripled

the level of trade adjustment assistance available to U.S. workers to nearly \$6 billion over five years.

USTR, working closely with other Federal agencies, works to make sure that our trading partners live up to their commitments. A significant amount of the day-to-day work of USTR is spent pressing foreign officials to abide by their trade obligations.

Just to give an example, successes over just the past few months include pushing China to certify biotech imports of U.S. soybeans, cotton, corn, and other products, getting China to open up its car financing market, urging the Philippines to permit direct access for U.S. telephone calls, pressing investment disputes with the Andean countries close to resolution, and reopening the Mexican market to U.S. beef.

We resolve most problems without resorting to formal dispute proceedings, which take additional time and involve uncertain outcomes. Most U.S. companies suggest formal dispute proceedings only as a last resort. When we determine it will be the most effective way to settle disputes, we pursue cases under the WTO, NAFTA, or our new FTAs.

In particular, we are devoting more enforcement resources to China. While U.S. exports to China support more jobs for American workers, we face a number of persistent problems that must be resolved. I spend a significant amount of my time addressing matters such as Chinese tax policies that disadvantage American exports of products as diverse as semiconductors and fertilizer; rampant piracy of intellectual property rights; technical commercial standards that are drafted to exclude foreign economic participation—such as on wireless encryption; among other concerns. Ensuring that these trade barriers do not stand is important to achieving the long-term benefits of China's WTO accession package: greater openness, adherence to the rule of law, and the institutionalization of market principles.

We recognize that enforcement of China's commitments requires sticks as well as carrots, and we are certainly willing to utilize the tools Congress has made available to us. These include the careful use of the China textile safeguard (which the Administration invoked for three product categories last December); anti-dumping laws; the product-specific safeguards; and WTO dispute settlement, an option that we may need to deploy very soon.

### **Pressing Forward in the WTO**

At key points, the United States has offered crucial leadership to launch, prod, advance and reenergize the Doha Development Agenda, the global trade negotiations at the WTO. At the same time, we have emphasized that in a negotiation with 148 economies seeking consensus, others must also work constructively with us.

After the Doha launch, the United States proposed the elimination of all global tariffs on consumer and industrial goods by 2015, substantial cuts in farm tariffs and trade-distorting subsidies, and broad opening of services markets. We are the only major country to put forward ambitious proposals in all three core areas. These proposals reflect extensive consultations with Congress and the private sector.

In addition to laying the groundwork for bold market opening, the United States took the lead in resolving the contentious access-to-medicines issue in August 2003.

At the Cancun WTO meeting in September, however, some wanted to pocket our offers on agriculture, goods and services without opening their own markets, a position we will not accept. Since Cancun, I believe many countries have concluded the breakdown was a missed opportunity that serves none of our interests. That recognition is a useful starting point for getting the negotiations on track.

Only a few weeks after Cancun, more than twenty diverse APEC economies—encouraged by the United States and joined by some of our free trade partners—called for a resumption of WTO negotiations, using the draft Cancun text as a point of departure. In December, the WTO General Council completed its work for the year with an important report by its Chairman on the key issues that need to be addressed if the Doha Development Agenda is to move forward.

By late December, we sensed many WTO members were interested in getting back to the table, probably working from the draft text developed at Cancun. So in January I wrote a letter to all my WTO colleagues putting forward a number of "common sense" suggestions to move the Doha negotiations forward in 2004. I emphasized that the United States did not want 2004 to be a lost year. The letter suggested that progress this year will depend on the willingness of members to focus on the core agenda of market access for agriculture, manufactured goods, and services.

In agriculture, we believe that WTO members need to agree to eliminate agricultural export subsidies by a date certain, substantially decrease and harmonize levels of trade-distorting domestic support, and seek a substantial increase in real market access opportunities both in developed and major developing economies. The United

States continues to stand by its 2002 proposal to set a goal of total elimination of trade-distorting agricultural subsidies and barriers to market access.

For manufactured goods, we are proposing that WTO members pursue an ambitious tariff-cutting formula that includes sufficient flexibility so that the methodology will work for all economies. In addition to the tariff-cutting formula, sectoral zero-tariff initiatives need to be an integral part of the negotiations, perhaps using a “critical mass” approach to define participation—as in the successful Information Technology Agreement. We also underscored the need to develop specific plans to address nontariff trade barriers effectively in the Doha negotiations.

In the important area of services, the United States suggested that Ministers press for meaningful services offers from a majority of WTO members, as well as make available technical assistance to help developing countries present offers. The services sector is an increasingly important part of economic development. More open services markets help provide the infrastructure for development. The sector also offers increasing opportunities for developed and developing countries to work together for mutual benefit.

Finally, we are asking that countries not permit the so-called “Singapore Issues” to be a distraction from our critical work on market access. We need to clear the decks. Based on extensive consultations in Africa and Asia, I believe we can move forward together on trade facilitation, which cuts needless delays and bureaucracy at borders and ports. I have urged my colleagues to drop the other topics.

The initial response to this initiative has been encouraging both from overseas and among domestic constituencies. To follow up the January letter, in February I traveled some 32,000 miles—around and up and down the world—to meet with representatives of over 40 countries to hear their ideas and encourage their commitment.

I believe we are regaining some momentum, although the road ahead is marked by risks. Our ability to make notable progress by this summer depends principally, in my view, on two steps: one, reconciling the conundrum of the “Singapore Issues” by agreeing to focus solely on trade facilitation; and two, by concentrating on the draft agriculture text to see if we can agree on specific frameworks for reform. To secure movement on agriculture, all countries will need to agree to eliminate export subsidies, including the subsidy element of credit, to end State Trading Enterprise monopolies, and discipline food aid in a way that still permits countries to meet vital humanitarian needs.

#### **Advancing Negotiations in the Free Trade Area of the Americas**

Since taking office, the Administration has been working to transform years of general talks about a Free Trade Area of the Americas (FTAA) into a real initiative to open markets in the hemisphere, with a focus on first removing the barriers that most affect trade. The FTAA would be the largest free trade zone in the world, covering 800 million people with a combined gross domestic product of over \$13 trillion. It would expand U.S. access to Western Hemisphere markets, where tariff barriers are currently much higher than the trade-weighted U.S. average of 2 percent, and where nontariff barriers are abundant. Studies report that an average family of four would see an income gain, through greater purchasing power and higher income, of more than \$800 per year from goods and services liberalization in the FTAA.

At the Summit of the Americas in Quebec City in 2001, the United States started to lead the FTAA into a period of concrete market access negotiations. In February 2003, the Administration put forward—on schedule—its comprehensive and significant market access offers to FTAA partners in the areas of agriculture, industrial goods, services, investment, and government procurement. But others hesitated.

Therefore, in November 2003, at the FTAA Ministerial in Miami co-chaired by the United States and Brazil, we developed a pragmatic approach to match the different circumstances of the 34 nations of the hemisphere—ranging from small Caribbean island states to the United States. We agreed to establish a common set of rights and obligations covering all nine areas under negotiation and that benefits would be commensurate with obligations undertaken. In addition, we agreed that nations that are prepared to go further could do so through plurilateral arrangements in some areas. This higher level of commitment—and benefit—creates incentives for countries to do more, without leaving others behind. The countries most likely to be ambitious are the ones that work with us on our gold-standard bilateral FTAs.

The FTAA will not be an easy negotiation, as this Committee knows. Yet we are committed to working creatively and flexibly with our hemispheric partners to achieve a long-held dream: the free flow of commerce throughout the Americas.

### **Spanning the Globe With Bilateral Free Trade Agreements**

Miami also provided the venue for the announcement of several new U.S. bilateral free trade initiatives, demonstrating how our movement on multiple fronts can support our larger trade goals.

In 2003, the United States signed free trade agreements with Chile and Singapore, and those agreements won strong bipartisan majorities in Congress. These comprehensive, state-of-the-art FTAs set modern rules for 21st century commerce and broke new ground in areas such as services, e-commerce, intellectual property protection, transparency and anti-corruption measures, and enforcement of environmental and labor laws to help ensure a level playing field for American workers. They also built on the experience of prior free trade agreements and will serve as useful models to advance other U.S. bilateral free trade initiatives in 2004.

In Latin America, for example, the long-sought FTA with Chile took effect on the tenth anniversary of NAFTA, and only two weeks after the Administration concluded a U.S.-Central America Free Trade Agreement (CAFTA) with El Salvador, Guatemala, Honduras, and Nicaragua. In January, we finalized CAFTA by resolving a few remaining issues with Costa Rica, and on February 20, the President notified Congress of his intent to enter into that agreement. Meanwhile, we continue to work to integrate the Dominican Republic into CAFTA, and indeed this week we are conducting the third and, we hope, final round of negotiations with the Dominicans. CAFTA plus the Dominican Republic would create the second-largest U.S. export market in Latin America, behind only Mexico.

This spring the United States intends to launch new FTA negotiations with Panama, Colombia, and possibly Peru and Ecuador, while continuing preparatory work with Bolivia. Added together, the United States is on track to gain the benefits of free trade with more than two-thirds of the Western Hemisphere through state-of-the-art, comprehensive sub-regional and bilateral FTAs.

Just last month, we concluded a landmark free trade agreement between the United States and Australia. On February 13, President Bush notified Congress of his intent to enter into this "Manufacturing FTA." Our terms with Australia will eliminate tariffs on more than 99 percent of U.S. manufactured goods exports to Australia on day one. Those exports account for 93 percent of total U.S. sales to Australia's large market, and support 150,000 good-paying American jobs. In creating new export opportunities for America's manufacturers, this deal will help a recovering sector of our economy while also expanding markets for America's services firms, creative artists, and farmers.

With virtually all U.S. manufactured exports going duty-free immediately under this agreement, America's manufacturers estimate they could sell \$2 billion more per year to Australia. They predict that U.S. national income would grow by nearly that much as well. Markets for services such as life insurance and express delivery will be opened, too; intellectual property will be better protected; U.S. investments will be facilitated; and American firms will be allowed to compete for Australia's government purchases on a nondiscriminatory basis for the first time. All U.S. farm exports—more than \$400 million per year—will go duty-free to Australia, benefiting many sectors such as processed foods, fruits and vegetables, corn oil, and soybean oil.

In Southeast Asia and the Middle East, the President has announced initiatives to offer countries a step-by-step pathway to deeper trade and economic relationships with the United States. The Enterprise for ASEAN Initiative (EAI) and the blueprint for a Middle East Free Trade Area (MEFTA) both start by helping non-member countries to join the WTO, strengthening the global rules-based system. For some countries further along the path toward an open economy, the United States will negotiate Trade and Investment Framework Agreements (TIFAs) and Bilateral Investment Treaties (BITs). These customized arrangements can be employed to resolve trade and investment issues, to improve performance in areas such as intellectual property rights and customs enforcement, and to lay the groundwork for a possible FTA.

President Bush announced the Enterprise for ASEAN Initiative in October 2002. Significant progress was made in 2003, and the stage has been set for further achievements in 2004. With the newly enacted Singapore FTA to serve as a guidepost for free trade with ASEAN nations, the President announced that he would begin negotiations for a comprehensive free trade agreement with Thailand in the second quarter of 2004, and on February 12th, we formally notified Congress of our intent to launch FTA negotiations with Thailand. At the Cancun WTO Ministerial last September, Cambodia was offered accession to the World Trade Organization, so it could take another step toward active participation in the global rules-based economy. Spurred by the progress of its neighbors, Vietnam is also working toward

WTO membership, building on the foundation of a basic bilateral trade agreement with the United States that was enacted by Congress in 2001. The United States signed a bilateral trade agreement with Laos in 2003, and the Administration continues to support granting Normal Trade Relations (NTR) to Laos. The United States is using TIFAs with the Philippines, Indonesia, and Brunei to solve practical trade problems, build closer bilateral trade ties, and work toward possible FTAs.

The Middle East Free Trade Area initiative, announced by the President in May 2003, offers a similar pathway for the Maghreb, the Gulf states, and the Levant. In addition to helping reforming countries become WTO members, the initiative will build on the FTAs with Jordan, Israel, and now Morocco; provide assistance to build trade capacity and expand trade so countries can benefit from integration into the global trading system; and will launch, in consultation with Congress, new bilateral free trade agreements with governments committed to high standards and comprehensive trade liberalization.

The U.S.-Jordan FTA entered into force in December 2001 after close bipartisan cooperation between the Administration and Congress. As a result, trade between the United States and Jordan has nearly tripled in only three years.

In 2003, the Administration launched free trade negotiations with Morocco, which we are pleased we completed just last week. Immediately upon the agreements entry into force, 95 percent of bilateral trade in industrial and consumer goods will become duty free, the best day-one tariff elimination in a U.S. free trade agreement with a developing country. Our terms with Morocco provide immediate cuts in Moroccan trade barriers to wheat, corn and soybeans, and new access for U.S. beef and poultry; openings for service providers like audiovisual, telecommunications, distribution, and engineering firms; and new opportunities for manufacturers of construction equipment, chemicals and information technology.

In January 2004, the United States began free trade negotiations with Bahrain. Last week Representatives Paul Ryan, a Member of this Committee, and Jim Turner launched a Congressional Bahrain Caucus backed by more than 20 other Members of the House and Senate. The caucus will work with a Bahrain FTA business coalition representing firms ranging from heavy manufacturers and leading-edge technology companies to small businesses.

Morocco and Bahrain have been leaders in reforming their economies and political systems. Our market opening efforts with these two Arab states are part of the opening act in President Bush's Middle East Initiative, which is aimed at fostering prosperity, encouraging openness, and deepening economic and political reforms throughout the region.

In 2004, the United States will continue its efforts to bring Saudi Arabia into the WTO and will expand its network of TIFAs and BITs throughout the region. The United States now has ten TIFAs in the region, most recently signing agreements with Saudi Arabia, Kuwait, and Yemen. We plan to sign TIFAs with Qatar and the United Arab Emirates soon. As additional countries in the Middle East pursue free trade initiatives with the United States, the Administration will work to integrate these arrangements with the goal of creating a region-wide free trade area by 2013.

In Africa, the African Growth and Opportunity Act (AGOA)—enacted in 2000 and expanded in 2002—has created tangible incentives for commercial and economic reform by providing enhanced access to the U.S. market for products from 37 eligible sub-Saharan nations. Enhancements made in 2002 to the African Growth and Opportunity Act improved access for imports from beneficiary sub-Saharan African countries. We look forward to working with Congress on legislation on AGOA that will accelerate its gains, including by extending provisions and enabling countries to take full advantage of AGOA through enhanced technical assistance.

To build on this success, as called for in the AGOA legislation, the United States launched FTA negotiations with the five countries of the Southern African Customs Union (SACU): Botswana, Lesotho, Namibia, South Africa, and Swaziland. The U.S.-SACU FTA will be a first-of-its-kind agreement with sub-Saharan Africa, building U.S. ties with the region even as it strengthens regional integration among the SACU nations.

The bilateral FTAs we have concluded or are pursuing constitute significant markets for the United States. U.S. goods exports to these countries were \$66.6 billion in 2003. This would have made them the third-largest U.S. export market behind only Canada and Mexico, and ahead of Japan. The economies of these countries totaled \$2.5 trillion in 2002 at purchasing power parity exchange rates, which would rank them as the world's sixth-largest economy. And most are developing countries that offer significant growth opportunities in years to come. We are laying free trade foundations for win-win economic ties between America and these partners.

### **Ensuring a Level Playing Field with China**

Since China joined the WTO, it has become America's sixth-largest export market. U.S. exports to China grew 75 percent over the last three years, even as U.S. exports to the rest of the world declined because of slow global growth. China has become a major consumer of U.S. manufactured exports, such as electrical machinery, transportation and telecommunications equipment, numerous components, and chemicals. The market share of U.S. service providers in China has also been increasing rapidly in many sectors. Meanwhile, growth in exports to China of agricultural products has been robust; for example, U.S. exports of soybeans reached an all-time high in 2003 of \$2.9 billion and cotton exports were \$733 million, up 431 percent over 2002.

In 2003, senior Administration officials met frequently with Chinese counterparts to address shortcomings in China's WTO compliance. We delivered a clear message: China must increase the openness of its market and treat U.S. goods and services fairly if support in the United States for an open market with China is to be sustained.

As a result, China has taken steps to correct systemic problems in its administration of the tariff-rate quota (TRQ) system for bulk agricultural commodities, and relaxed certain market constraints in soybeans and cotton trade, enabling U.S. exporters to achieve record prices and sales. Recent approval of biotech soybeans, cotton and corn—and promised additional approvals—has created greater certainty for U.S. exporters. China has also reduced capitalization requirements for financial services, including opening the motor vehicle financing sector.

China's large installment purchases of billions of dollars of U.S. products—including Boeing 777s and 747s, GE and Pratt & Whitney aircraft engines, Ford and General Motors cars, as well as agricultural products—during recent purchasing missions bode well for 2004. However, we continue to stress the need for structural change that ensures ongoing, open, and fair access—not reliance on one-off sales.

In 2004, the Administration will concentrate on ensuring that: American intellectual property rights are protected; U.S. firms are not subject to discriminatory taxation; market access commitments in areas such as agriculture and financial services are fully met; standards are not used—whether for technology or farm products—to unfairly impede U.S. exports; China's trading regime operates transparently; and promises to grant trading and distribution rights are implemented fully and on time. The Administration will consult closely with Congress and interested U.S. stakeholders in continuing to press China for full WTO compliance, and will not hesitate to take action to enforce trade rules.

China's lax enforcement of intellectual property rights, including counterfeiting, is a fundamental issue. Piracy of movies, music and software is so rampant in China that the practices could subvert the development of knowledge industries and stifle innovation around the world. The scope and magnitude of the problem does not just threaten outsiders, but China's own citizens as well. Counterfeit automobile brakes, electrical switches, medicines and processed foods with pilfered brand names and poor quality control present health and safety risks throughout China. Premier Wen Jiabao has spoken of the importance of IPR and has assigned Vice Premier Wu Yi, a former trade minister who helped defuse the SARS crisis, to chair a working group on IPR enforcement. She will meet with Secretary Evans and me next month as part of our Joint Commission on Commerce and Trade.

In addition, China has adopted discriminatory tax policies—most blatantly on semiconductors—and new wireless encryption standards intended to block U.S. market access. We are pressing China to resolve these disputes promptly.

At the end of this year China and the United States face another challenge. Our Uruguay Round commitments, ratified by Congress, required us to begin phasing out our textile and apparel quotas in 1995. That process will be completed at year's end. We have urged the Chinese to recognize concerns raised by this important transition. We are committed to using special safeguards, applying unfair trade laws, such as the anti-dumping provisions, and taking action under international trade rules if China falls short in its trade commitments.

### **Promoting a Cleaner Environment and Better Working Conditions**

No country is doing more than the United States to push for strong labor and environmental provisions in international trade agreements. While some other countries talk about labor and the environment in the context of trade, only the United States is actually doing something to integrate these topics as an active part of its trade agenda.

Following the negotiating objectives set forth by Congress in TPA, we are focused on combining effective enforcement with practical cooperation to improve labor and

environmental conditions overseas. Our strategy varies depending on the countries we are negotiating with, because conditions vary and one size does not fit all. But in general, we have a ground-breaking, three-part approach:

- First, we often find that the issue with working or environmental conditions is not the laws on the books in developing countries, it is with the enforcement of those laws. So our FTAs require that countries effectively enforce their own labor and environmental laws, backed up by enforceable dispute settlement procedures.
- Second, we need to understand and address the reasons that laws are not being enforced. Often in poor countries, it is a resource question. Labor Ministries are often poorly funded, and there is a lack of money devoted to enforcement, inspections, and awareness of worker rights. To address this issue, we are pursuing a cooperative approach, working with USAID, the Department of Labor, EPA, the State Department and others to focus on real-world problems, such as a lack of trained inspectors at Labor Ministries, the lack of awareness of employees of their rights under existing laws, and the need for education about child labor. We seek the help of American companies and NGOs, too. We work with the Multinational Development Banks to coordinate projects with them. The provisions in our trade agreements also encourage the development of local civil society, through public participation and transparency so that reforms can be sustained by homegrown efforts.
- Third, we want to cooperate with countries to improve their laws where there are gaps. Chile, for example, repealed its Pinochet-era labor laws during the course of negotiating the FTA with the United States because we took a firm but cooperative approach. Just recently, one of my staff returned from Guatemala with news that the government is working hard to reduce its backlog of worker-rights cases in its courts, because they know CAFTA is coming and they want to improve the climate for investment and trade. El Salvador has significantly expanded funding for its Labor Ministry, with monies targeted especially on inspection and enforcement. Morocco enacted a new Labor code that will take effect this year. These are just a few of the many examples where our combination of enforcement standards and cooperation is helping reform these societies.

Of course, free trade also helps developing countries grow, generating the resources for greater protection of workers' rights and the environment. Growing developing countries build a middle class that calls for better environmental and working conditions. Poor people also want better lives for their families. We will not improve their working conditions or environment by making it harder for them to sell the fruit of their labor.

We are putting this multi-faceted approach to trade and development into practice. The Chile and Singapore FTAs create the basis for cooperative projects to promote respect for international core labor standards and to support environmental protection and sound management of natural resources. Both agreements also require that parties effectively enforce their own environmental and labor laws.

The dispute settlement procedures of the new FTAs apply to all obligations of the agreements and set high standards for openness and transparency, such as open public hearings, public release of legal submissions by parties, and the opportunity for interested third parties to submit views. In all cases, the emphasis is on promoting compliance through consultation, joint action plans, and trade-enhancing remedies.

The FTAs with the Central American countries, Morocco, and Australia adopt similar approaches to labor and environmental provisions, but are each tailored to fit individual circumstances. In Central America, for example, the Administration has emphasized trade capacity building projects to enhance the awareness and enforcement of labor laws. We encouraged countries to work with the International Labor Organization (ILO) to identify areas for improvement in labor laws and enforcement. The ILO study found that while the labor laws on the books were generally good, there were some gaps that needed to be addressed, and enforcement needed to be improved. The CAFTA partners are already responding to a number of these recommendations. We are assisting with trade-capacity building and cooperation to help. The fragile democracies of Central America are now looking to the Congress to see whether you will back their drive for self-improvement and reform.

### **Building New Bridges: Trade Capacity Building**

The United States is the largest single-country donor of trade-related technical assistance in the world, reflecting its commitment to fostering developing countries

full participation in the global trading system. As much as capacity building helps developing countries, it directly advances U.S. interests as well. Capacity building assistance both improves the quality of trade agreements, increases the ability of our trade partners to fulfill their commitments, and creates the conditions for expanding trade and development.

The U.S. resources from USAID and a dozen other agencies totaled more than \$2.5 billion in funding for trade capacity building activities (FY2000 through FY2003). The United States provided \$752 million in trade capacity building activities in FY2003, up 18 percent from FY2002.

In the CAFTA, FTAA, Morocco and SACU FTA negotiations, the United States has established separate cooperative groups on trade capacity building to define and identify priority needs for trade-related development assistance. The United States also seeks to give eligible countries the capacity to take advantage of preference programs such as AGOA. For example, U.S. technical assistance linked to AGOA assists eligible countries to develop AGOA export strategies, establish linkages with American businesses, and meet U.S. food safety and other standards.

Looking ahead, the Administration will continue to assist the developing world in integrating trade into development strategies. This will include working with multilateral institutions and private sector donors to promote initiatives such as the FTAA's Hemispheric Cooperation Program, and the WTO Technical Assistance Plan and the Integrated Framework. In our efforts in this hemisphere, the Inter-American Development Bank has done excellent work helping us to break new ground meshing trade and development policy by creating new mechanisms to meet the needs of developing countries. We hope to encourage the World Bank to demonstrate similar flexibility and responsiveness.

Helping developing countries understand the importance of trade in services is another role for capacity building. International Monetary Fund and World Bank reports show that efficiency in the production of services is a force multiplier in helping developing economies grow. Studies demonstrate that openness in financial services and telecommunications alone has boosted economic growth rates in developing countries by 1.5 percent. Additional services like transportation, distribution, education, and health are of critical importance in developing countries, both for the emergence of a competitive businesses and, more broadly, for social development and poverty reduction. When developing countries open their services markets, the United States benefits, too.

As bilateral trade negotiations are concluded, the United States will continue to assist trading partners in implementing their commitments and managing their transition to free trade. The Administration will also continue to work with countries to maximize the benefits of preference programs such as AGOA, the Andean Trade Preference Act, the Caribbean Basin Partnership Act, and the Generalized System of Preferences.

In addition, the Bush Administration is emphasizing the important contributions that small businesses make to the U.S. and global economies. Small businesses are a powerful source of jobs and innovation at home and an engine of economic development abroad. By helping to build bridges between American small businesses and potential new trading partners, these enterprises can become an integral part of our larger trade capacity building strategy. In our continuing work with the U.S. Small Business Administration, our Office of Small Business Affairs at the Office of the United States Trade Representative has: increased small business representation in its advisory committee system; included previously excluded small business industry sectors in new trade agreements, such as the inclusion of recycled clothing in CAFTA; and focused on issues of special concern to small businesses, such as trade facilitation, e-commerce, and intellectual property rights protection. Ensuring that American small business concerns are addressed in our trade policy results in stronger agreements that help to create jobs at home and abroad.

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

We take pride in the progress we are making to negotiate new commitments to open markets for American products and workers, but the bulk of the work done day-in and day-out at USTR is to ensure that countries live up to their current commitments or to solve problems for American businesses and workers.

Congress created USTR to assure that trade policy—including enforcement—was centrally located within the Executive Branch. We take USTR's enforcement mandate seriously.

The scope of enforcement extends well beyond the number of cases brought before WTO or NAFTA tribunals. On any given day, there is a steady stream of U.S. companies in the Winder Building working with us to figure out how best to press for-

eign governments to live up to their commitments to open up their markets to U.S. goods and services.

The vast majority of enforcement efforts by USTR are brought to successful resolution without the need to resort to formal litigation. Most U.S. companies urge us to do everything that we can to resolve a problem without bringing a WTO or NAFTA case, given the amount of time such cases take.

In recent years, informal means of resolving trade issues have enabled biotech farm exports and key U.S. financial services to expand their access to the Chinese market. Japan has agreed to lower customs fees by 50 percent as well as increase intellectual property protections. Mexico has implemented rules for pharmaceuticals that respect U.S. patents, and Canada has dropped copyright legislation opposed by U.S. firms that use the Internet. We solved pork, poultry, dry bean, and beef issues with Mexico. We increased access for poultry, pork, and beef in Russia. We addressed rice and motorcycle export problems and are improving IPR protection in Taiwan. We headed off Korea's attempt to close the market to Dodge Dakotas based on questionable tax classifications. We encouraged Hong Kong to clean up illegal production of optical discs. The list goes on and on.

But sometimes enforcement can only be achieved through litigation, and we stand prepared to bring WTO and NAFTA cases to secure compliance.

Some of our recent WTO victories include:

- An important case against Mexico on telecommunications worth \$500 million, according to industry. Under current law, Mexico allows its dominant company, Telmex, the exclusive authority to negotiate, on behalf of all carriers, the rate that U.S. telecom companies must pay to complete their calls in Mexico. These exorbitant rates penalize American and Mexican families seeking to maintain cross-border ties, raise the price of doing business across the border, and burden U.S. telecom firms with unnecessary costs.
- In December 2003, the United States won a major case before the WTO holding that Japan's import restrictions on U.S. apples are a violation of Japan's WTO obligations. Japan had argued that the restrictions were needed to protect Japanese plants from disease, but U.S. scientific evidence showed the apples could not transmit the disease. This is a valuable precedent against others that might use Sanitary/Phytosanitary Standards (SPS) to block farm products unfairly.
- The United States won an important victory in June 2003 when the WTO rejected India's challenge to U.S. laws on determining the country of origin of textile and apparel products.

We have pending cases against: the European Union's ban on new imports of genetically-modified foods and against the EU's over-reaching on Geographic Indicators; Mexico's questionable anti-dumping duties on beef and rice; Canada's discriminatory practices affecting wheat; and against Egypt's textile tariffs.

As noted earlier in my testimony, we are focusing more of our enforcement resources on China. While some of China's compliance problems were initially viewed as growing pains as it brought laws and regulations into line with new WTO obligations, China must do more to ensure that it is living up to obligations. Without more progress on matters we have been pressing with China, we will certainly need to avail ourselves of our rights under the WTO.

Of course, our ability to demand that others follow the trade rules is strengthened when we address cases we lose. We very much appreciate the Committee's efforts to repeal the FSC law to end retaliation against U.S. exporters. We also look to work with Congress to remedy other U.S. violations, including the Continued Dumping and Subsidy Offset Act of 2000, the 1916 Act (reflecting early antitrust practice), Section 211 of the Omnibus Appropriations Act of 1998 concerning conditions that permit the banning of trademark enforcement, and the ruling on hot-rolled steel. America should not be a scofflaw of international trade rules.

### **Conclusion**

I want to close by again thanking the Committee for its support and guidance.

During 2004, we hope to continue to push forward step-by-step toward the vision set out by President Bush of "a world that trades in freedom." It is a vision of a world in which a working family can save money on everyday household items because trade agreements have cut hidden import taxes. It is a vision of a world in which a Central Valley farmer, a New York financial planner, a Michigan auto worker, a New Orleans longshoreman, an Illinois manufacturer of excavators, or an Iowa pork producer can sell his or her products or services in Costa Rica or Australia or Thailand or Morocco as well as across America. It is a vision of a world in which free trade opens minds as it opens markets, supporting democracy and en-

couraging tolerance. And it is a vision of a world in which hundreds of millions of people are lifted from poverty through economic growth fueled by trade.

---

## The U.S. Trade Agenda

### Overview

- Expanding trade for growth, opportunity, development, and fairness through multiple initiatives:
  - Global
  - Regional
  - Bilateral
  - Enforcement of laws and agreements
  - Worker adjustment and education for the future
- Moving on multiple fronts empowers the United States to:
  - Support U.S. workers, exporters, consumers
  - Exert leverage for openness and a level playing field
  - Strengthens America's hand today and for the future

### Putting TPA to Good Use *Highlights of 2003–2004 to date*

- Completed and passed Singapore and Chile FTAs
- Launched and completed Australia FTA
- Launched and completed CAFTA; working on DR
- Launched and completed Morocco FTA
- Launched Southern Africa & Bahrain FTAs
- Announced intent for Andeans, Panama, & Thailand FTAs
- Advanced Enterprise for ASEAN Initiative (EAI)
- Launched Middle East Free Trade Initiative (MEFTA)
- Miami framework to move FTAA toward concrete results, creating incentives for progress
- Doha WTO: Cancun was a missed opportunity, but 2004 need not be a lost year

### WTO *Global Trade Opportunities*

- Need to bring 148 economies to an agreement on opening markets for agriculture, goods, and services—to boost growth & development—in stages
- Cancun:
  - Solved “TRIPs & Access to Medicines” for developing countries
  - Some wanted to posture, others to pocket U.S. proposals without opening their own markets
  - “Singapore Issues” distracted from core agenda
  - Need agriculture reforms for developed and developing countries
  - Nevertheless, draft frameworks create basis for work

### WTO in 2004 *Global Trade Opportunities*

- Proposals for progress in 2004:
  - Agriculture: eliminate export subsidies; substantial, harmonizing cuts in trade-distorting domestic subsidies; significant market opening
  - Manufactured goods: combination of formula cuts, sectoral initiatives, and non-tariff barriers
  - Services: get more (and better) offers from others on the table
  - Focus on trade facilitation, not other “Singapore Issues”
  - U.S. leadership: January letter and February strategic dialogue with over 40 countries

### FTAA *Regional Initiatives*

- At Miami, U.S. laid out paths for trade opening, development, and hope in Latin America
  - A *common set of rights and obligations* for all 34 FTAA countries. Significant market access benefits.

- A *higher level of commitments* among those willing to go further. Provides opportunity to integrate U.S. FTA partners.
- *Gold-standard U.S. bilateral FTAs* to cover  $\frac{2}{3}$  of Hemisphere's population and non-U.S. GDP.
- Benefits commensurate with obligations
- Creates incentives for countries to do more, without completely leaving behind those who can't or won't move

#### Building Trade Areas *Regional Initiatives*

- AGOA Extension
  - AGOA has been an outstanding success
  - Work with Congress to pass legislation to extend AGOA
- Middle East Free Trade Area (MEFTA)
  - Build on our FTAs with Israel, Jordan, Morocco, and, in the future, Bahrain
  - Offer graduated steps to encourage reforms
  - Tailor steps to different levels of development
  - Now have Trade and Investment Framework Agreements (TIFAs) with Algeria, Egypt, Saudi Arabia, Tunisia, Yemen, and Kuwait
- Enterprise for ASEAN Initiative (EAI)
  - Network of FTAs in ASEAN: first Singapore, now Thailand
  - TIFAs with Indonesia, Philippines, and Brunei; Malaysia interested in signing

#### Free Trade Agreements *Bilateral Initiatives*

- *Singapore & Chile FTAs*
  - Models for more to come—each customized
- *Australia FTA*
  - Launched March 2003; completed February 2004
- *Central America FTA (CAFTA)*
  - Costa Rica, El Salvador, Guatemala, Honduras, & Nicaragua
  - Launched January 2003; completed January 2004
  - Dominican Republic negotiations proceeding
- *Morocco FTA*
  - Launched January 2003; completed March 2004
- *Southern Africa FTA (Southern African Customs Union)*
  - Botswana, Lesotho, Namibia, South Africa, & Swaziland
  - Launched January 2003
- *Bahrain FTA*
  - Launched January 2004
- *Andeans, Panama, Thailand*
  - To launch in 2004

#### Australia FTA *Highlights*

- “A Manufacturing FTA”: Immediate duty-free on 99% of U.S. manufactured exports
- Expands markets for services and farmers
- All U.S. farm exports duty-free from day one
- Sensitive U.S. agriculture handled with care
- Pharmaceutical Benefits Scheme improvements
- Environment/Labor protections

#### CAFTA *Highlights*

- Today, under the CBI, U.S. tariffs on Central American goods are low. 77% of regional imports enter the U.S. duty-free . . . without reciprocal U.S. access
- With CAFTA, more than 80% of U.S. manufactured goods duty-free immediately
- More than half of current U.S. farm exports duty-free immediately
- Sugar: Increased access = 1.2% of U.S. production; no change in above-quota tariffs
- Textiles and apparel: Important “cumulation” provisions will encourage integration of market to prepare for competition from China
- Strong IPR standards and protections
- Openings across all services sectors, including telecommunications and insurance

- Strong transparency, anti-corruption, and good governance rules
- Labor and environment protections that go beyond Chile and Singapore

Morocco FTA  
*Highlights*

- Over 95% of goods duty-free on day one—best market access package ever with a developing country
- Expands export opportunities for U.S. agriculture
- Broad opening of services markets complemented by strong transparency provisions
- New protections for U.S. investors
- Strong IPR and anti-corruption rules
- Commitment to enforce labor and environment laws, working with ILO
- Key step in building MEFTA

Trade with China

- U.S. exports to China grew 75% as exports to rest of world declined from 2000 to 2003
- Now America's sixth-largest export market
- China's WTO implementation cannot slacken
- Clear message:
  - China must open its market if U.S. support for trade with China is to be maintained
  - Must comply with WTO obligations
    - Ag, IPR, taxes, standards, others
- China's response: some systemic problems addressed
  - Record gains in soybean, cotton exports; biotech approvals
  - More open financial services, motor vehicle financing
  - Purchasing missions useful, but not enough
- JCCT: Elevated dialogue to ensure level playing field
- Will use safeguards to ease U.S. transition and enforcement rules to insist on compliance

Monitoring and Enforcement

- Successfully used dispute settlement to benefit American exporters, consumers and producers:
  - Agriculture: Dairy (Canada), pork (Mexico), apples (Japan)
  - IPR/patents (Argentina)
  - Goods: Autos (Philippines)
- Pending U.S. cases:
  - Rice, telecom (Mexico)
  - Biotech, GI (EU)
  - Textiles (Egypt)
  - Wheat (Canada)
- U.S. compliance issues:
  - FSC, Byrd Amendment, 1916 Act, Section 211, Hot-rolled steel

Looking Ahead

- Americans' need to manage global economic and technological changes
- Economic isolationism won't work: will kill jobs and opportunities
- Americans can be big beneficiaries of trade, openness, global growth, development: more choices, lower prices, higher-paying jobs
- Use WTO negotiations, FTAs, and other trade initiatives to lower barriers abroad, level the playing field, spur growth and development: win-win opportunities
  - U.S. trade barriers already relatively low
  - U.S. businesses need to discuss with employees
- Combine with monitoring and enforcement of agreements, targeted use of safeguards, reliance on unfair trade laws—and following the rules ourselves
- Help Americans to adjust to change (education, worker training, portable pensions, ability to keep and save own hard-earned dollars)
- World where poor people around the world lose opportunity to improve lives for themselves and their children is not good for America's future

Chairman THOMAS. Thank you, Mr. Ambassador. As usual, a very comprehensive review of activities around the world. It seems that although trade is important and growing, we sometimes fail to look in the mirror and toward the latter part of your presentation you talked about our responsibilities toward the world trading order. One of the things I think we fail to do often is realize how much we get out of the world trading order, especially the improved but can still be more improved dispute resolution mechanisms. We win far more than we lose but if we do not, where we have lost, accept the responsibility to change, we put at risk the structure that we have, especially when the contest is between the world's two largest trading blocs. I am very concerned about our unwillingness or inability to resolve what in my memory I think is the largest formal retaliation structure that we have been confronted with.

What happens—I hate to say crystal ball because I hope the future changes significantly very quickly—if in the month of March alone it is more than \$16 million and by the time we go through this ease-up process, which the Europeans have been very kind to put us in a tub of cold water and then gradually increase the temperature rather than dumping us into boiling water where we might react, at the end of the year close to \$500 million worth of lost opportunity through retaliation and the potential for getting into a desire not to change our laws but to strike back because of the pain created by our unwillingness or inability to make change over the FSC income question. I would like a brief response in that area.

Then second, there is some legislation that suggests we partially reinvent our administrative trade structure; i.e., take some portions of the current USTR activities and place them in the U.S Department of Commerce. You mentioned in your presentation how although we focus primarily on the larger big-picture trade questions, enforcement of the law is probably on a day-to-day basis as important and perhaps sometimes more important in laying the groundwork for an understanding that through the FTAs we can remove some of the tension that is present by virtue of the grinding enforcement activities.

In your opinion, does this help diminish, significantly negatively affect the operation of the USTR, understanding you have obviously a very direct interest in USTR. Frankly, I think most of us are less concerned about the particular structure that our government might take toward dealing with trade internationally than what would be most effective in getting the job done. Those are two areas I wish you would talk about for just a minute.

Mr. ZOELLICK. Well, on the first one dealing with the FSC, I certainly recognize that this has been an extremely difficult and contentious issue up here and as I have before, Chairman, I want to compliment you for your leadership. You were the first or certainly one of the first, I think the first to try to start to move this process forward.

I know it has caught up into a lot of debates here about the appropriateness of different types of tax policies and my key message is that I just hope that the House and Senate can pass bills and reconcile and get them done as soon as possible because right now

the European Union has the authority to retaliate on about \$3 billion of U.S. exports. It started at 5 percent. It could have started at 100 percent but it started at 5 percent and each month that increases by another percent.

So, for those of you that are worried about added costs for American exports, that is a 5 percent added tax for about \$3 billion of our products covering a wide range of activities in a number of different States. I have looked here at some of the States, particularly New York, New Jersey, Utah, California, Texas, Ohio, Wisconsin, Minnesota, Georgia, Pennsylvania, Louisiana—it goes on and on here, so your constituents are the ones being hurt. So, I know that there are different views of this. I saw, Chairman, I read that you now have a revenue-neutral bill, which I hope will bring more support as we go forward. So, as the President sent a note up on this, I believe recently, there are different ways that one can do this. We are not going to tell the Congress that there is one way or the only way. At this point we just urge it to get done.

On your second question, Chairman, as I think many on the Committee know, the Congress created the USTR office in 1961 with a particular point in mind, and that is to try to centralize coordination of all these activities in the Executive Office of the President. What it really does is it allows us to draw on the resources of many offices. So, the bill you mentioned that Mr. Wolf has put forward would shift the enforcement responsibility to Commerce but frankly, as I mentioned here, we deal with agricultural issues as well as industrial issues. We deal with financial issues. So, what would be lost under that is the need to be able to draw together the best resources across the government, whatever the topic.

Equally important, as even our earlier discussion here suggested, in some ways the enforcement action is kind of the artillery that is part of a larger effort that involves reconnaissance, it involves intelligence efforts. So, enforcement is not separate from persuasion, explanation, trying to—sometimes the problems arise—we have a problem now with India with almonds and it involves the Agriculture Ministry; the Commerce Ministry was frankly unaware of it. Sometimes we use disincentives. Sometimes we use the incentives of moving toward our FTAs. So, there is a continuum of actions here and even after you have an enforcement action, you do not just want to block trade; you want to move forward. So, as we resolved the bananas issue, that involved negotiation based on litigation; dairy with Canada. So, I am afraid what it would start to do is balkanize the overall operations.

There is one other key point. Trade agreements are not separate from the enforcement agreements. The knowledge you have in terms of what you learn in litigation is critical to your ability to what you put in the next agreement and vice versa. Obviously I have some bias in this but I think the lawyers and the technical people we have are the best in the government and here I can say with some fairness. As many of you know, I worked at the Department of State, U.S. Department of the Treasury, the White House, U.S. Department of Justice. I have a pretty good sense of comparison and it is a top-flight group of people. So, I think it would be a mistake to start to dismember these functions.

Chairman THOMAS. Thank you, Mr. Ambassador. Gentleman from New York wish to inquire?

Mr. RANGEL. Mr. Ambassador, you are good at what you do but I do not think that free trade is win-win. When you make these types of adjustments; when certain jobs no longer make sense to our businessmen and it makes more sense for them to go abroad; when you have 9 million people that are out of work; when you find 3 million people have lost manufacturing jobs; when you find that you have a tax policy where we just do not have the revenues to support Federal programs and that we are asking the States to assume more and more of the education and training responsibilities; when you find people that have been out of work and they do not have unemployment benefits and they have given up on jobs and their families are broken; and when you find out of these groups where the military looks like a fairer option in terms of economic opportunity and you take a look at those people that are being sacrificed in Iraq and find out that they come mainly from families in rural areas, inner cities where unemployment is extremely high—it is really not win-win.

If we did have a program that understood that yes, progress is going to cause displacements and we are going to be there and not be insensitive, but you are not the Secretary of Labor; you are not the Secretary of Education; you are not the Treasury Secretary, so you do what you have to do but when the pain has to be felt, it does not fall on the affluent. It does not fall on those that clip coupons. It falls on those that have the very, very least. That is why if you had to find out one thing that separates the parties philosophically is that we say that when you do have trade agreements you should have minimum standards, world labor standards that are included in these agreements and that they be enforceable.

You, in negotiating these agreements, even if some of these standards make sense, you have to look at the committees in the Congress to see where you are going to get the votes from. Well, with some of these things we need some leadership to find out whether you can bring the parties together so that you can share with us why Republicans think that it is wrong to have basic labor standards in international trade agreements that protect the workers over there so that we are not dealing with those people that abuse the human rights and the labor rights of the people that are there.

You mentioned and I have mentioned that now the European Union has seen fit to provide sanctions against our exporters. They are not doing it against Democrats or Republicans; they are doing it against the United States of America. Certainly in my State of New York where we have agricultural products and other products, they are going to escalate the tariffs. I guess we are going to reciprocate against them and then it is going to be a lose/lose.

What makes the Administration so unreceptive of trying to provide some leadership so that we can look like we are a country of citizens and not of parties? You have Mr. Thomas's bill. He has taken a \$4 billion trade initiative and made a \$128 billion problem out of it with a big deficit. You have the Crane-Rangel bill that does not cost anything and, at the same time, does not put all the

money overseas to attract investment. You have the Grassley bill over there that seems to be a compromise of all of these bills.

If you are just waiting for Republicans and Democrats—and we do not even talk to each other here. So, does it not appear to you as an American that the President of the United States should be able to say hey, we are all Americans; let us get on with it; let us solve this problem? There is enough to fight about but this should not be one of the issues and yet the very issues, the labor and environment issues in trade, how you treat the unemployed, how the lack of sensitivity to those who are displaced, these are American issues and yet I do not hear anything from the Administration. I am not saying that you should be dealing with it but it is not win-win when factories close and people are unemployed and the dignity of having a job is lost, including health insurance. It is mean, it is painful, and it is costly.

Mr. ZOELLICK. Well, I am glad you start out by saying that I do my job well. Well, Mr. Rangel, you have a tall order there.

Chairman THOMAS. The gentleman's time has expired but if you can provide a succinct comment, and perhaps some of it could be responded to in writing.

Mr. ZOELLICK. Well, with your indulgence, Mr. Chairman, I will just touch on a couple of points.

Chairman THOMAS. Certainly.

Mr. ZOELLICK. One, as you focused on the FSC bill, Mr. Rangel, the President has done exactly what you said. He said whether it be Democrat or Republican, House or Senate, come together and pass a bill. So, there are different bills, as you and I discussed, and frankly there are different approaches to try to deal with this problem and it is the prerogative of the Congress under the Constitution to determine that and we would be pleased if Congress can move on those items. I know the Chairman has pushed this. I know you have pushed this. I know both of your intentions are to try to get it done and that is what the President has asked, is would the Congress please get this done so we do not have the retaliation against American exports.

Now, on environment and labor issues, again we may in the hearing be able to go through this in greater detail but actually, this Administration built off the Jordan agreement negotiated by the Clinton Administration, in view added to it and we now have environment and labor provisions in trade agreements. Other countries do not enforce them and we do.

Now, the core aspect of those agreements is to require countries to enforce their own environmental and labor laws and then, along with that, we work with countries to try to make sure, whether it be environment or labor, that they have good laws. So, if you look at most of the countries that we have dealt with, Chile, for example, the agreement that I know both of you supported, in the process of doing the FTA they totally overhauled the Pinochet-era labor code. In the case of some of the countries we are dealing with right now, Morocco added a whole new set of labor laws that will go into effect in June. El Salvador recognizes that it is not just a question of labor laws and this will be the big challenge; it is a question of getting resources devoted. So, they have added 20 percent to their

enforcement resources and they have cut down the time in terms of hearing a complaint to 1 or 2 weeks.

There is a new government in Guatemala. The President has a very strong human rights background. He has appointed people to the key positions that have already threatened that countries in the economic processing zones that do not allow workers to organize will not be able to have their licenses. So, now for the first time they are bringing forward collective bargaining agreements. In Morocco what we tried to do is to supplement it with support by the U.S. Department of Labor of about \$5 million to try to deal with child labor and enforcement and also with the ILO about another \$3 million.

In CAFTA, I was down in Costa Rica when we announced a grant of almost \$7 million to try to deal—to help people understand the labor laws better, help with better enforcement, develop systems like mediation. I have gone over to other places, like the Inter-American Development Bank and the World Bank, to see what financial support we can get from them. We have about a \$25 million effort, public and private, to deal with child labor issues in Central America.

So, these are frankly far better than the situation that we inherited, Mr. Rangel, and I hope that they would give those who I know would like to support trade but want to be able to show the improvements in terms of labor and environment a very strong case to make because at the end of the day it really is going to require three things, Mr. Rangel. It is going to require good laws in these countries; it is going to require enforceable obligations, which we have in our agreements; and it is going to require the resources to move forward. You and I both know because we worked with both the Caribbean and sub-Saharan Africa and others, that at the end of the day it is best if it is a cooperative effort. You have to develop the sense in these countries themselves to develop the civil society and to have an ongoing effort. So, the one thing I can assure you, Mr. Rangel, as we go forward, and I think you know this, is that we are committed to trying to use the trade agenda to not only open markets but open societies and do it in a way that improves environment and labor conditions and deals with anti-corruption and a whole series of other issues. I think we have a good record. I would be pleased to, as you know, talk about it with you at greater length.

Chairman THOMAS. I thank the gentleman. The Chair is more than willing to allow for an expansive response to the Ranking Member but the Chair would appreciate it if Members would show a degree of self-discipline, operating under the 5-minute rule. The Chair recognizes the gentleman from Illinois if he wishes to inquire.

Mr. CRANE. Thank you, Mr. Chairman. Our colleague, Mr. Levin, raised the point that since President Bush took office we have lost about 2.3 million jobs in manufacturing here and since President Hu Jintao took office in China they have lost about 3 times that many manufacturing jobs. The loss of manufacturing jobs in countries around the world has been overwhelming, and what is the explanation behind all that loss of manufacturing jobs worldwide?

Mr. ZOELLICK. Well, it really goes to the point, Mr. Crane, that in all countries as you increase the productivity, you need fewer workers to create the overall product that you used to do. So, let me just give you a context. In the 1991 to 2000 period our manufacturing trade deficit rose from \$48 billion to \$328 billion. That is before we took office. At the same time, manufacturing output rose 64 percent and actually the jobs increased by a little bit, not by much but a little bit.

Now, why is that? It really goes to the point Mr. Rangel and I were talking about about win-win. The real challenge here is if we can open everyone's markets—and our markets are relatively open—and we get others to grow, they are going to buy more. So, the fallacy of some of the win/loss notions of trade is the idea that if the other person opens their markets or we open our markets, that you do not both benefit. If you look at the history of the world economy, particularly after the 1930s where people tried the other approach of blocking trade, what you can see is the world can grow together.

Now, there are serious problems, as Mr. Rangel mentioned. We have legitimate differences about how to try to deal with these, whether it be taxes or education or worker adjustment and training. I think we probably all agree, though, that the challenge is if we are going to open markets, we need to help people adjust. We may have a different view of how to do that in terms of educational policy, we may have a different view in terms of tax policy, but we all want to try to help people be able to make that adjustment. That is why I have always been a strong supporter of TAA and trying to think of new ways to try to use that because I think if you are going to have an open trading system, whether it be manufacturing or services or others, you have to help people get back on their feet.

Mr. CRANE. As I am sure you are aware as a former history student, historically the Republican Party was the party of protectionism and isolationism. I grew up before World War II and listening to the debates amongst relatives in those days and my family were all Republicans from the beginning; I think they would all be voting Democratic today based on their views on trade.

It was something that caused the Republicans controlling Congress to pass in 1890 the McKinley Tariff Act, which was the most protectionist tariff measure in our history up to that point. Grover Cleveland, Democrat, had been in for 4 years, out for 4 years, when that act was passed. Then he got reelected again and he worked to dismantle it and restore the economy because it caused an economic downturn that was very substantial and hurt everybody. Grover Cleveland made the observation at the time when you put those walls around your country, you impose the greatest injury on that man who earns his daily bread with the sweat of his brow, to which I say amen. It took Republicans until after World War II to finally become free-traders and unfortunately, many of our colleagues on the other side shifted gears and went the other way. Let us hope that we still have the opportunity to get the case out there and present it in a way that will guarantee that we will make the kind of progress we need.

One last quickie question with you. Few industries are as dependent on intellectual property protection, specifically patent protection, as the pharmaceutical industry and will you include in this year's review and report market access barriers faced by U.S. pharmaceutical manufacturers in foreign markets?

Mr. ZOELLICK. I am sorry; I did not hear the last part, Mr. Crane. You said will we include—

Mr. CRANE. Tariff barriers, market access barriers faced by U.S. pharmaceutical manufacturers in foreign markets.

Mr. ZOELLICK. I believe we are required to do that already but I will double-check to make sure.

Mr. CRANE. Thank you very much.

Chairman THOMAS. I thank the gentleman. Does the gentleman from Michigan, Ranking Member on the Subcommittee on Trade, wish to inquire?

Mr. LEVIN. Thank you. I do. I do not want to talk about 50 to 60 years ago. I just want to say, Mr. Ambassador, you can continue to say that those who raise these issues are proposing economic isolationism but those of us on this Committee who raise these issues and those in the Senate, including Senator Kerry, who raise these issues, if you try to pin the label of economic isolationism on us and on them it just will not work. It is a dog that will not hunt. You can keep on saying it but I think the trouble with it is it masks the issues and it tends to diminish a discussion of the key issues.

Let me just say about FSC, you say it is the prerogative of this Congress, but so is tax policy and other policies and I just want to give you my view as someone who sponsored, with Mr. Crane and Mr. Rangel and Mr. Manzullo a bill many, many months ago. If the Administration does not do more than simply say Congress should get it done, I do not think it is likely it will get done. The Administration must take a leadership position and say what it wants. It does not mean we will give it exactly what it wants but on other issues the Administration has taken a distinct position. We do not know what your position is on any of these FSC replacement bills.

On CAFTA, enforce your own laws? You do not say that about intellectual property or about subsidies or about other things. Tariffs? You say change your laws. While enforcement of your own laws may work with Singapore and Chile and I voted for it because they have the five standards in their laws and they enforce them, that is not true in the Central American setting. You talk about the need to open up societies. One good way to help do that in Central America is for them to give their workers the freedom of association and it will also help us sell products to them.

I want to just ask you quickly, though, about China. I know, as always, you are prepared and sometimes we work together, as we did on that medicine issue at Doha and I congratulate you on the breakthrough there. Look, we worked hard to get a special safeguard provision, a specific one, in China Permanent Normal Trade Relations (PNTR), and it was worded differently than others, as you know. In essence, there is a presumption in favor of providing relief, an effort to somewhat restrict the discretion of the President. So, we wrote in there that the adverse impact on the U.S. economy must be clearly greater than the benefits of such action.

So far there have been, as you know, three petitions filed. The ITC in every case suggested action. In every case—and the last one—I forget the first two, the exact votes—the last one was unanimous and the others, I think, were close to that. Yet the President decided to do nothing. So, I would like to know and there may not be time here, I would like to have a specific indication from you as to what was the rationale, because I know you were involved in this, for a decision to turn down this third in a row safeguard action. As far as I am concerned, the feeling is three strikes and you are out in terms of stepping up to the plate and using a critical part of PNTR. I see the yellow light. I read the President's decision. It did not spell out how he met the standard and I would appreciate it if in the next few days or whatever is reasonably convenient but expeditious if you could spell out the exact reasoning in each of these three cases.

Mr. ZOELLICK. I am going to seek the Chairman's indulgence because I think those are two important points. It is frankly very important for the Committee to hear as a whole. On the CAFTA issue, let me just note what the ILO, the—

Mr. LEVIN. Mr. Zoellick, let me just interject.

Mr. ZOELLICK. May I answer the question?

Mr. LEVIN. I then want a chance to respond if you are going to go into—

Mr. ZOELLICK. I am sorry. Do I get a chance?

Chairman THOMAS. The Chair understands that the question was asked by the gentleman from Michigan with then a stipulation that he wanted you to answer him in writing. You wanted to offer some answer to the question for the full Committee. The gentleman wants to respond to whatever it is that you are going to say, assuming he is not going to agree with whatever you are going to say.

Mr. LEVIN. This was on CAFTA.

Chairman THOMAS. So, the Chair is willing again to allow for an exchange based upon the way the question was asked and the desire to respond. My assumption is that notwithstanding your verbal response, the gentleman from Michigan's request for a written response would still be in order.

Mr. LEVIN. On the China—

Chairman THOMAS. The three-segment question. So, the Chair is more than willing to go forward as long as the questions are asked and the responses that are provided are illuminative of the concerns that the Committee has.

Mr. ZOELLICK. Well, I will try to illuminate. You made a point about the ILO standards and I just want to take a moment to tell you what the ILO has said about the six Central American countries, including the Dominican Republic. First, the right of workers to freely exercise their right to form trade unions is recognized by the respective constitutions of these countries. So, you have an interest in the ability to freely exercise the right to form trade unions. Two, national legislation recognizes the right to voluntary collective bargaining. Three, the right to strike is recognized under national legislation. These are the ILO's words, not mine. Four, the principle of equality and the prohibition against discrimination are enshrined in the constitutions of all the countries covered by this

survey. Five, the constitutions of the five countries include special provisions concerning the employment of minors. Six, constitutional law in these countries recognizes the right of any citizen to choose his or her work freely, to obtain decent employment, recognizes that it is the right of workers to terminate their contracts of employment at any time.

The laws are pretty good. Where I hope we can work together, Mr. Levin, is on the enforcement of those laws and the resources. That is where we really need to make the effort. Now as for your second question—

Mr. LEVIN. Let me just respond and then go on, just so the issue is joined here. I urge everybody to read the ILO report. It indicates 20 or more significant problems in the CAFTA countries with the right to associate and the right to bargain collectively and others. I urge anyone to go down to Central America. It is not just that the laws are okay, they are not enforced. There are deep holes in the law of these countries. Workers who try to associate can be fired and simply paid severance.

Your failure, your insistence on using “enforce your own laws,” no matter how they are, is one of the reasons why CAFTA cannot pass this Congress, Mr. Zoellick.

Mr. ZOELLICK. The reason that CAFTA has trouble is because we have a bunch of economic isolationists using labor as an excuse—

Mr. LEVIN. No.

Mr. ZOELLICK. If I could answer your second question—

Mr. LEVIN. Mr. Zoellick, if you want to call Mr. Rangel and me an economic isolationist—

Mr. ZOELLICK. I will be happy to talk about it.

Mr. LEVIN. You can do it. I just want to tell you to sit here and to call Mr. Rangel, myself, Mr. Cardin, as I go down the line, and Senators on the other side who have disagreement with you on this economic isolationists—

Mr. ZOELLICK. I did not say that.

Mr. LEVIN. Yes, you did.

Mr. ZOELLICK. Find it in the record.

Mr. LEVIN. I did. I will.

Mr. ZOELLICK. There was certainly a lot of debate over the past couple of months in this country—

Mr. LEVIN. I am talking about us and the Senate.

Mr. ZOELLICK. I am trying to work with you, Mr. Levin.

Chairman THOMAS. The Chair is willing to allow for continued questions beyond the 5-minute rule, now 4 minutes beyond the 5 minutes, if there are questions asked and answers provided. If we continue exchanges in which there is a give and take over points that turn it into a debating society, the Chair will stringently enforce the 5-minute rule. Was there one additional response to the questions asked by the gentleman from Michigan?

Mr. ZOELLICK. Yes, Mr. Chairman. I think this is one where Mr. Levin and I can come closer. What I want to assure you, Mr. Levin, is that—

Chairman THOMAS. There is plenty of room for that.

Mr. ZOELLICK. Is that we welcome effective Section 421 provisions and the key here, I think you alluded to. There is language

that says that after the ITC does a market disruption standard, which is why you get the votes that you do—it is a relatively modest standard—then it is the job of the President to make an assessment of national interest, including the adverse impact of the U.S. economy being clearly greater than the benefit.

So, you asked about the most recent case. The ITC itself found that the costs of this action, of any protective action, would be greater than the benefit, and they gave numbers. In addition, what they pointed out is that they expected that if we put up any sort of barriers, that actually the benefits would just go to other countries abroad, so the United States would not get a benefit. Now in this case, this particular country, and this is some of the challenge we have when we look at these, part of its problem is it has had 400 environmental violations and Occupational Safety and Health Organization (OSHA) violations in recent years.

Mr. LEVIN. That is not mentioned in the decision.

Mr. ZOELLICK. The decision did not have to be based on that because of the economic interests, but I am explaining the context that we have to deal with. They have had felony violations for both labor and environmental, and a misdemeanor on the labor one. They have had fines. They are now under public indictment for trying to stop their workers from talking about these violations. My point, Mr. Levin, is just this company has other problems than China. Now, I would be happy to go through the other ones and talk through each one. We will give it to you in writing.

Mr. LEVIN. Good.

Mr. ZOELLICK. The key point where I hope we can get some point here is we are not averse to using the Section 421. We used it in terms of the textile safeguards, as you know, but we have to make an evaluation of does it hurt the Americans that would use the product more than it would help that beneficiary and, if we create a barrier would the business just go somewhere else in the world? So, I would be happy to go through the logic with you.

Mr. LEVIN. Thank you.

[The information follows:]

Executive Office of the President  
The United States Trade Representative  
Washington, D.C. 20508  
*April 2, 2004*

The Honorable Sander M. Levin  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Levin:

The President has asked me to reply to your letter regarding the China-specific safeguard mechanism set forth in Section 421 of the Trade Act of 1974, as amended, and the recent investigation of imports of certain ductile iron waterworks fittings from China. I would also like to take the opportunity to respond to your question at the March 11 Ways and Means Committee hearing regarding the President's decision in the two earlier Section 421 cases involving pedestal actuators and wire hangers.

First, in all three cases the President has accepted the U.S. International Trade Commission's (ITC) factual determination that the domestic industry had suffered market disruption. However, the President's role under Section 421 is to consider the broader question of how import restrictions would affect the national economic interest and, specifically, whether the adverse impact on the U.S. economy would be clearly greater than the benefits. In these three cases, the President determined

that import restrictions would have an adverse impact on the U.S. economy clearly greater than the benefits of such action based on the particular circumstances of each.

In the pedestal actuators case, the proposed import restrictions—quotas—were unlikely to provide any benefit to the one U.S. producer of pedestal actuators. Indeed, the U.S. producer's major U.S. customer testified that it had been sourcing pedestal actuators from a Chinese company because of dissatisfaction with the U.S. producer. It testified that, if quotas were imposed, it would source its over-quota pedestal actuator needs from another foreign company, most likely one from Taiwan. At the same time, higher input costs due to the import restrictions would likely have harmed the downstream U.S. industry that incorporates pedestal actuators into mobility scooters, particularly with regard to its ability to compete with foreign producers of imported mobility scooters. Furthermore, the increased costs resulting from the import restrictions had the potential to harm the aged and disabled consumers of mobility scooters. This set of circumstances, combined with the fact that the import restrictions also would have hurt some of the many U.S. workers employed by the U.S. consuming industry, meant that the import 85 percent of the U.S. wire hanger market. In the President's view, with this dominant share of the market, domestic producers had the opportunity to adjust to competition from Chinese imports without import relief. At the same time, the President noted the strong possibility that import relief would actually provide little or no benefit to any of the domestic producers, given evidence indicating that wire hanger production would simply shift from China to third countries not subject to Section 421's China-specific restrictions. The President also cited other considerations in support of his decision, including the uneven impact of import relief on domestic distributors of wire hangers as well as the additional costs that would be incurred by downstream consumers of wire hangers, and in particular dry cleaning companies, which are in many cases small, family-owned businesses.

In the fittings case, the President's decision was based on two fundamental considerations. First, he found that imposing the import relief available under Section 421 would be ineffective because imports from third countries would likely replace curtailed Chinese imports. He noted that the switch to third country imports could occur quickly because the major U.S. importers already import substantial quantities from countries such as India, Brazil, Korea and Mexico. He also noted that any lag time in switching from China to alternative import sources would not likely lead to significant additional demand for domestically produced fittings, given that importers' current inventory supplies can last 6–12 months. Second, as confirmed by data analysis conducted by the ITC, the President found that import relief would cost U.S. consumers substantially more than the increased income that could be realized by domestic producers. These costs would be borne largely by local governments (and taxpayers) seeking to build, expand or upgrade municipal water systems.

While not necessary to the President's decision, the public record makes clear that other serious factors have contributed to petitioner's problems. The public record reveals that, since 1995, the petitioner has been cited for over 400 workplace safety violations and 450 environmental violations. The public record also shows that petitioner has a State misdemeanor conviction for willfully violating workplace safety rules and causing a worker's death, as well as a State felony conviction for an environmental violation. In addition, in December 2003, five, current or former managers of one of petitioner's subsidiaries were the subject of a 35 count Federal criminal indictment alleging they conspired for years to violate workplace safety and environmental laws and obstructed repeated Federal Government inquiries by lying, intimidating workers into silence imports. In fact, in 2003, more than 50 percent of the anti-dumping orders put in place by the Commerce Department involved Chinese imports, up significantly from the historical average of just under 20 percent.

At the same time, the Administration is actively working to open markets for U.S. manufactured and other goods in China, and these efforts have met with some success. U.S. exports to China increased by 28 percent in 2003. Indeed, over the last 3 years, while U.S. exports to the rest of the world have decreased by 9 percent, U.S. exports to China have increased by 76 percent. China has become a major consumer of U.S. manufactured and agricultural exports, while U.S. service providers' share of China's market has also been increasing rapidly in many sectors. Nevertheless, as you are aware, our firms continue to face significant trade barriers that China should have eliminated or reduced when it joined the World Trade Organization. As you can see from our 2003 Report to Congress on China's WTO Compliance, issued in December, we are working hard, and will continue to work hard, to address these matters on a number of fronts.

In addition, we just filed the first case against China at the WTO on March 18. We are challenging China's discriminatory tax rebate policy for integrated circuits, which adversely affects more than \$2 billion of U.S. exports annually.

Thank you for bringing your concerns to my attention, and please do not hesitate to contact one should you or your staff have further questions.

Sincerely,

Robert B. Zoellick

---

Chairman THOMAS. The gentleman's time has expired and in both the Ranking Member of the full Committee and the Ranking Member of the Subcommittee on Trade's position's stature, the Chair was willing to more than double the 5 minutes. The Chair is constrained to say that in looking over both sides of the dais he sees no one else that meets that same standard of indulgence, so the 5-minute rule will be more rigorously enforced. Does the gentleman from Florida wish to inquire?

Mr. SHAW. Yes, Mr. Chairman, and I will abide by the 5-minute rule and not in any way test your patience this morning. Mr. Ambassador, you and I have talked at length about the Secretariat of the Americas and the placement of it and the importance of having it in this country. There is no question in my mind but that Miami, Florida would be the best location because of air transportation, because of the diversity of language, and I think also that they have made a very substantial bid for this. I have a full statement regarding that that I would like to ask unanimous consent to be placed into the record.

Chairman THOMAS. Without objection.

[The opening statement of Mr. Shaw follows:]

**Opening Statement of The Honorable E. Clay Shaw, a Representative in Congress from the State of Florida**

Mr. Ambassador, welcome back.

I have a few areas of the Administration's trade agenda to discuss this morning. I would like to begin with an issue that is tremendously important to the State of Florida. As you well know, the United States is in the process of ongoing negotiations of the Free Trade Area of the Americas. When completed, this agreement will include 34 democracies in this hemisphere and will be the largest free trade area in the world.

An important component of the FTAA negotiations is the issue of housing the FTAA permanent Secretariat.

Earlier this month, Miami officially submitted its proposal to be the permanent home of the Secretariat. Included in their proposal was a rationale detailing the numerous reasons why Miami is the ideal choice for the permanent Secretariat. I would like to highlight some of these attributes to you now.

To begin with, Florida is the largest trading partner with most all Latin American and Caribbean nations. With respect to Miami, it is the undisputed leader in international business for the Western Hemisphere, housing 300 regional and world headquarters of Fortune 500 companies, more than 100 foreign consular offices and foreign business organizations and more than 100 international banking institutions. Miami also has the largest number of custom brokers and freight forwarders in the United States and because of its geographical location and IT infrastructure, it has become the high-tech link between the United States, Central and South America, the Caribbean and Europe.

Of certain concern to FTAA Secretariat consideration is the flow of travel in and out of the future headquarters. Miami answers that call with the Miami International Airport, the top U.S. airport for international travelers to and from Latin America, offering more direct flights to Latin America and the Caribbean than any other airport in the world. But if you prefer to arrive by sea, Miami is well equipped to handle that request as the undisputed "cruise capital of the world," not to men-

tion that the Port of Miami is also one of Florida's top container ports. And finally, let us not discount the natural beauty of this city by the sea with beautiful year round temperatures and cultural and entertainment options to satisfy most any taste. For all these reasons and more, I urge your and the Administration's support of Miami as the permanent home for the FTAA Secretariat.

Now let me turn to another area of international concern, the ongoing situation in Haiti, an island nation less than 700 miles off the coast of the United States. What we have seen in the last few weeks is the culmination of years of frustration and struggle on the part of the Haitian people, eager to provide for a better life for themselves and their families. As I have said in the past, I believe strongly that there can be no democracy until there is an economy. The people of Haiti have suffered too long, remaining to this day, the least developed nation in the Western Hemisphere. Haiti is a country drowning in over 70% unemployment and over 80% poverty rate for it's population of 7 million. One out of 12 Haitians suffer from HIV/AIDS, and an estimated 250,000 Haitian children are orphaned.

As we sit here today, our trade policy with Haiti is at a critical juncture and the United States stands poised to make a substantial contribution to this struggling nation. While I applaud the Administration and our international partners for the handling of this crisis, we can not drop the ball and allow Haiti to slip back into lawlessness and despair. Our economic policy will largely determine how the scale will tip in regards to Haiti and I encourage the Administration to embrace a policy that encourages economic stability and growth; as well as improved quality of life in Haiti.

One such measure is a bill I introduced along with my friend Senator Mike DeWine and others on this Committee, The Haitian Economic Recovery Opportunity Act, H.R. 1031. Specifically, our bill amends the "Trade and Development Act of 2000" by granting duty-free status on Haitian apparel articles assembled from fabrics and yarns from countries in which the U.S. has a free trade agreement. This bill, in my view, is an economic lifeline Haiti desperately needs.

The time is now to assist Haiti. As our trade agenda moves forward, it's vitally important we remember the Haitian people.

Mr. Ambassador, I thank you for your work in this area and your efforts to improve trade relations between our two counties. As we work together to make economic, social and political stability in Haiti a reality, we will mark our progress not only in jobs created, but in families who no longer have to say goodbye on one shore in search of a better life on another.

If you would please comment on these two areas.

---

Mr. SHAW. I also want to comment or associate myself with the comments of Mr. Crane with regard to the sugar industry. We are losing a lot of jobs. There is no reason for the candy industry to stay here in the United States when the main ingredient into the product on the world market is substantially lower. I think the concessions that are given to sugar are a mistake and I would hope that in further negotiations, particularly as we go into Central America, that we open up our sugar market to the world trade. That is not a question. That is just expressing my opinion with regard to that.

There is a bill that is out there—I know Mr. Crane is a cosponsor and I think Mr. Rangel may be a cosponsor, too, and that I am certainly supporting as a sponsor of, and that is the setting up of knit-to-fit shops down in Haiti, the sewing shops, and making it free of tariffs on imports coming to the United States, provided the textiles used come from a country with which we do have a FTA with regard to those textiles. These people down in Haiti are desperate. We are wasting our time trying to grow a democracy where there is no economy. We have to go along a parallel course and grow the economy at the same time. Without that, any advances that we make with placing a democratically elected government in Haiti

that can sustain itself and take care of the people and be popular to the people would be lost.

My question to you is has the Administration or you taken a position with regard to the bill? I think you are probably familiar with it. Or is there anything else you would like to tell us about how we might be able to energize the economy in Haiti?

Mr. ZOELLICK. I am not familiar with that particular bill, Mr. Shaw, but I will check into it. I do not know if this is similar to the one that Senator DeWine has talked about on the Senate side?

Mr. SHAW. Yes, it is.

Mr. ZOELLICK. What I also mentioned to Mr. Rangel is I think we all share an interest in helping Haiti and frankly, the best thing that I can think of in the near term is to try to complete this FTA with the Dominican Republic and get that through the Congress because when I was down there recently I learned there are about a million Haitians working in the Dominican Republic. Someone mentioned to me this morning there may be now 2 million. There are some coproduction-sharing operations that were developed under the CBI that was passed by the Congress and we are trying to be very careful in this FTA that we actually do something that might encourage those and certainly not do anything to discourage those.

So, I wish I had a better idea to deal with Haiti's economy but I think the best thing right now I could think of to do is to make sure that the economy of its neighbor is growing and dynamic. As many of you know, the Dominican Republic has had its own financial problems this year, so it is even more important to try to move that forward.

I will say again, when I was down there with Mr. Weller, we also met with the lead opposition candidates, and I think they have been supportive of this effort, too. So, even though President Mejia's term is coming to an end, he is running for reelection, we want to try to make sure that there is broad support in the Dominican Republic to make this go forward, but I will be pleased, Mr. Shaw, to look at the other bill, too.

Mr. SHAW. Thank you and I yield back, Mr. Chairman.

Chairman THOMAS. I thank the gentleman. The Chair, in an attempt to even up the sides in terms of inquiries, would now wonder if the gentlewoman from Connecticut wishes to inquire.

Mrs. JOHNSON. Thank you, Mr. Chairman. Welcome, Mr. Zoellick. First of all, I want to congratulate you on building labor and environmental provisions into all of our trade agreements, and I did not know that we were the only country to do this and to try to do it in a way that those provisions will be enforceable and result in other countries making some real progress on the quality of their domestic labor and environmental laws.

I also want to congratulate you on the impact on manufacturing of so many of the agreements that you have worked out and are working on, and I am going to eliminate all the preambles to my questions and just lay out my three questions. If you prefer to answer any of them in writing, you may do so. I would also like a copy of the letter you are going to do for Mr. Levin on those three cases that were brought in regard to China.

So, first of all, I would like an update on how the USTR's office is increasing pressure on the Chinese to prevent counterfeiting. It is just a huge problem, all kinds of evidence of their marketing other people's goods, and I want to know what you are doing to increase enforcement of the intellectual property provisions of the agreement to which they are a signatory.

I also want to know what you are doing to reduce direct state subsidies that Europe provides to its big multinational companies. I know over the years we have made some progress on all of that, but there is much more progress to be made and as we are faced with repeal of the Extraterritorial Income (ETI), I would like to know what progress we are making in regard to backing down the direct subsidies that Europe provides to its multinationals.

Last, I hope as you review the ETI proposals with us that you, with all your experience in the global economy, can assure that we do give our businesses a more competitive position in the global economy than they will enjoy if we simply repeal the one thing that has been really helpful to at least our multinationals. So, it is not just repeal. We have to replace with something of quality that assures that we will not lose jobs in America because of this change in our tax law. So, I look to you for help on that. Those are the three things I would like your attention to.

Mr. ZOELLICK. Well, let me deal with the third one last because I can be briefest on it. That is I am not a tax expert but I, of course, would always be pleased to work with Members of the Committee, both sides of the aisle, and give whatever advice I could and I know that the Treasury team that is tax experts I know is also willing to do the same. I have been in a number of meetings where they have offered their suggestions and ideas.

On the China IPR issue, you are exactly right, Mrs. Johnson. This is a huge issue and I am glad you focused on the counterfeiting part because there are problems with basic intellectual property but the counterfeiting is one that also runs real dangers for the people of China and the world because it is a question, for example, of producing windshields that might not meet the shatterproof standards but yet that may be sort of mislabeled in terms of the brands. It is a question of pharmaceuticals that do not work. It is a question of foods that may not be safe for people.

We have tried to work on this on a couple of different fronts. One is we are trying to get forces within China to recognize the danger of this and this goes to the point that some of the best ways to get these things done is to recognize the dangers for the Chinese, including trying to get some in China who now respect the role of brands and who are starting to build brands to recognize the benefit of protecting them.

Second, we emphasize—the President has emphasized this, Secretary Evans and I—the Chinese put Madam Wu Yi in charge of intellectual property. She is the Vice Premier, so it is above the trade minister. Just to give you a sense of the seriousness with which I hope they are looking at this, she is the woman they put in charge of the Severe Acute Respiratory Syndrome (SARS) crisis when it broke out. She has started, with our encouragement, to hold some sessions with the American business community, the Chinese business community, the government in China, and she

will be here in April and this will be one of the key items on our agenda.

Third, in the counterfeiting area, one idea that I would like to look at more with the Customs Department, and I will share this because it is something that we may need congressional help on, is there is authority now for the Customs people to stop people from bringing in products. It is the Section 337 authority that has misused trademarks, but I do not know the full broad reach of that authority and frankly, if the Chinese do not start to solve this problem I would suggest that Customs has the authority that says if a Chinese company is counterfeiting and causing huge problems in terms of whether it is the goods that are coming in or not, maybe we should block those goods to try to get some pressure on it. So, that is an idea that I would like to try to work on further.

On the state subsidies in Europe, our best shot at trying to deal with that, Mrs. Johnson, is that in the WTO negotiations there is a section dealing with subsidies codes, so the Doha negotiations the Chairman talked about is where we are putting forward proposals on that. I will hesitate to mention that is the rules negotiation that many Members also get very sensitive about because of anti-dumping and countervailing duty, but our view has been if people want to discuss those laws that we use to prevent subsidies, then it is fair game to try to work at some of those subsidies, as well.

Chairman THOMAS. I thank the gentlewoman. Does the gentleman from Maryland, Mr. Cardin, wish to inquire?

Mr. CARDIN. Thank you very much, Mr. Chairman. Mr. Zoellick, it is always a pleasure to have you before the Committee. I want to weigh in on the sugar issue if I might because I disagree with Congressman Crane. I agree with your assessment that this is an issue that has to be handled carefully in any type of a regional or bilateral agreement but let me just raise the issue.

You obviously have not satisfied the individuals who would like to have a more open amount of sugar coming into the United States. My concern is why you have any provision in this agreement, in CAFTA, regarding sugar. When you try to deal with it from a regional point of view or deal with it bilaterally, it really raises the issue whether it can be done in that regard, whether it should not be done on a global issue. The sugar policy, you might be surprised to learn that in Maryland and Baltimore we have more than steel; we have a sugar refinery.

Mr. ZOELLICK. I know.

Mr. CARDIN. Domino. It is the last remaining one on the East Coast of the United States and the sugar policies of this country have had a mixed impact on the growth and success of sugar refinery in the United States. So, I am not here promoting that everything is right in our sugar policy but I am here to say that I think it needs to be dealt with on a global basis rather than on regional or bilateral agreements. There is the issue of whether there should be some differential between raw sugar cane and refined sugar coming into the United States. So, I just wanted to raise that issue because I know you are getting it from both sides in regard to the CAFTA agreement and I, for one, would have preferred to see nothing in this agreement, rather than the way that it proceeded.

I do have one specific question on CAFTA and that is there may be different views here as to whether we should have been more aggressive in regard to labor enforcement and labor standards but I have a concern as to whether the CAFTA agreement affects current rights within the countries that are involved in regards to the CBI or in regards to the Generalized System of Preferences (GSP) or other agreements that may impact labor enforcement. Have they been impacted at all by what is in CAFTA?

Mr. ZOELLICK. Let me start briefly with your sugar one and then try to get onto the second one. On the sugar one you had asked why we had to include it at all. Each of these agreements are case by case. You obviously have to customize. There are a lot of sensitive agricultural commodities that the Central Americans had that we wanted to open up for American agriculture and the only way that we could get those benefits for beef, poultry, dairy, a whole bunch of others was by saying we are willing to try to open up, too.

So, then what we tried to do is within the limitations of the sugar program that Congress has created, we tried to make sure that we could create some modest opening but not undermine the sugar program. So, the key, for those of you that do have sugar interests, is to recognize that the way the sugar program works, it limits the overall amount coming into the country so as to maintain the price at a certain level. There are basically about 300,000 tons that could still come in beyond the current quotas that have been granted.

The Central American agreement only allowed in about 100,000 tons—99, actually—and it grows to about 140,000 over 15 years, and that is why it is well within those overall limits. We did not touch the tariff, which is the real concern about sugar coming in over that amount. So, it is a sensitive balance but it is one of the reasons why again yesterday the American Farm Bureau, including the sugar industry, said they manage the sugar industry very carefully but they expanded the market for a whole bunch of other things that America wants to try to sell. Frankly, in Australia it is a developed country, as opposed to a developing country. While sugar is important, it was not as important, it was not as important as a lot of the other benefits and it was my hope that we could be able to keep it out and still get the things we needed and that is what we did.

On the question about the GSP, the GSP and the CBI, first off, does not have any environmental requirements. So, one very important aspect about CAFTA is that we now have the enforcement of the environmental laws, as well as trying to promote the standards and higher standards of environmental laws.

The preferential agreements, whether CBI or GSP, have various standards that we have used with these countries along the way. What we are now doing in place of that is to have the requirement about enforcing their own laws, and this is where Mr. Levin and I have a disagreement, I think, is that we believe that the quality of the laws is pretty good and where there are gaps, we are working with those countries to upgrade it. The real challenge is getting the resources to enforce those laws and that is partly something we can do, it is partly something we are getting the private sector to

do. I am getting non-governmental organizations (NGOs) to try to help in this process. So, we look at this as a three-part: enforce your laws, increase the quality of the laws, provide the resources.

Mr. CARDIN. Thank you.

Chairman THOMAS. I thank the gentleman. Does the gentleman from New York, Mr. Houghton, wish to inquire?

Mr. HOUGHTON. Yes. Thank you very much, Mr. Chairman. Mr. Zoellick, great to see you again and I appreciate your being here. The President gave a speech yesterday in Cleveland and he talked about many things and he talked about the completion of the negotiations with Australia and he talked about manufactured products and also touched on the agricultural products. Can you break that down a little bit? What does it mean for the United States completing this agreement?

Mr. ZOELLICK. Well, as I mentioned, this is our first FTA with a developed country since Canada and our manufacturing sector is extremely excited about it because we eliminate 99 percent of the tariffs on day one, so we often have phase-ins of sensitive items.

We currently have about \$28 billion of trade with Australia, including services and goods. We actually have about, I think, an \$8 or 9 billion surplus. It is one of the few countries we have a surplus with, so there are good opportunities. The manufacturing community has estimated that on the manufacturing side alone you could boost exports by about \$2 billion a year and they estimate that would increase national income by about \$2 billion.

On the agriculture side I think we export about \$400 million to Australia and one of the analyses that the Farm Bureau made yesterday was that net-net, they think this will be about a wash. In other words, we will be exporting more and they will be also exporting more to us in certain areas.

Where we had sensitive items, and they were primarily sugar and beef and dairy, we tried to deal with those effectively. Another thing that is often hard to calculate, Mr. Houghton, is the services business. This is now 80 percent of the employees in America and 66 percent and we have expanded the services provisions, as well as frankly upgraded a whole series of intellectual property issues. So, one of the things that is always hard to calculate about these agreements is the dynamic effect as they start to add more economic opportunity for both sides, but we are very proud of this agreement and under the TPA rules, the earliest that the President could sign it is about early May, but we hope actually, although the calendar is not long, that we could get that agreement through the Congress this year.

Mr. HOUGHTON. Thanks very much.

Chairman THOMAS. Does the gentleman from California, Mr. Herger, wish to inquire?

Mr. HERGER. Thank you very much. Ambassador Zoellick, I want to thank you for your very strong efforts in bringing down the overwhelmingly high tariffs that so many of our other countries, our trading partners, have that would allow us, particularly the agricultural products that are grown in my Northern California district, of which we export approaching 50 percent of, allowing us to open up those markets. As you know, there has been interest from the agricultural community in negotiating trade deals with nations

that are viewed as large export markets. Some have mentioned South Korea, Taiwan, for example.

Could you tell me what countries come to mind as promising export markets for our agricultural products and particularly some of the specialty crops that are grown in my area—rice, peaches, walnuts, almonds, to name a few? Is the U.S. considering trade talks with any of these nations?

Mr. ZOELLICK. Well, I want to start by thanking you, Mr. Herger. I think when I made my opening statement I was not sure if you were here. I know we have worked with some sensitive items for you and I appreciate your support for openness with those sensitivities. With the Chairman's leadership, we have obviously put some real attention on some of the crops in California that do not get subsidized, do not have any particular benefits, and I am pleased there are some benefits for walnuts and nuts in the Australia agreement, too. It is sort of a soup-to-nuts agreement because we have processed soups there, as well.

I think the two biggest ones on the agenda that have good potential are Colombia and Thailand, where there is strong interest in the agricultural community. Their barriers are relatively high. Thailand has been buying a lot of agricultural products but we think we can improve that a lot. With Korea, the challenge is I do not think they are willing to negotiate a FTA with us. Part of our problem, as people mentioned, some economies that I would love to have a shot at—Japan, Korea—they will not open up their ag markets and frankly we do not feel it is appropriate to just do an agreement that does manufacturing or services and does not include agriculture. In Taiwan we have been trying to work with them on their WTO implementation, and this is another item I know we have worked together because we have had some problems on some of the rice issues, as well as telecommunications and IPR issues. So, we want to frankly get them to follow through on their WTO obligations before considering a set of additional steps.

What I want to emphasize again is that if you look across some of these potential markets in Latin America and Asia, you are also talking about rising incomes. So, some of these, I think particularly for some of the crops from your district, offer some good opportunities but we not only have to open the markets; we have to deal with the sanitary and phytosanitary issues that sometimes arise, too.

Mr. HERGER. Thank you. While in India recently you expressed your concern to the Indian government regarding new regulations requiring that California almond exports to India be fumigated with methylbromide, a chemical being phased out in California. I want to thank you for taking this necessary step. As you know, more than 60 percent of California almonds are exported and India is a major market. What is the status of this issue and are you optimistic that the Indian government will change these misguided regulations?

Mr. ZOELLICK. I want to start by making a point that you hear a lot of complaints from India these days about actions in the United States. The point that I have tried to emphasize to the Indians is that if they want to be able to keep our markets open, for

example, in some of the services connections, they cannot play these sorts of games on almonds.

I learned about this right before I was in India. I was there as part of the WTO negotiations and as I mentioned I think a little earlier, I think the Agriculture Ministry took this action without even informing the Commerce Ministry. They are supposed to notify people because we believe, as you know, that there are alternative methods to be able to deal with fumigation and we now have a United States Department of Agriculture (USDA) team that is on the way to India to try to see if we can resolve this issue.

I also made a point before leaving. We have a new ambassador, David Mulford, who has been in the economic and treasury world and emphasized that how together, we need to keep following up on this issue because almonds are our second largest agricultural export to India, about \$70 million a year. Now that tells me two things, Mr. Herger. One is they should be opening up a lot of other agricultural products and then in addition, they should not be playing games with one of the few things they are buying.

Mr. HERGER. Thank you very much, Mr. Chairman.

Chairman THOMAS. I thank the gentleman. Does the gentleman from Washington, Mr. McDermott, wish to inquire?

Mr. MCDERMOTT. Thank you, Mr. Chairman. Mr. Ambassador, I eagerly grabbed your new President's Trade Policy Agenda to read through what you had in mind for Africa. As you may know, there are a number of African ambassadors sitting out in the audience today and we welcome them to come and hear this meeting and would love to hear what you have to say.

I find nothing in here about an extension of AGOA. Now I do not know why that is except I have the sneaky feeling that maybe South African Customs Union (SACU) is what you are really moving toward, rather than extending AGOA to the entire continent. You are really looking at those countries in Southern Africa where, in fact, there has been quite a bit of investment—Lesotho, Namibia, South Africa, and so forth—but I do not see anything that would suppose to be directed at the whole continent. It is not a continent-wide thing you are talking about. You are really talking about SACU on page 5.

I was in Mauritius with you and I heard all the comments about how we were going to extend AGOA, and so forth, but I have also heard and seen that a lot of these countries are not yet self-sufficient and the ITC report that you requested says 75 percent of AGOA apparel imports in 2002 were made from third-country fabric. This reflects the limited availability and relatively high cost of sub-Saharan African yarns and fabrics. So, it is pretty clear that they still need some help if we are going to deal with them.

Now I heard you talk about the fragility of certain Caribbean groups, that we had to be careful because they were very fragile. I think the same is true in Africa and I would like to hear you talk about what kind of an extension you want for AGOA. Is a year a reasonable extension or do you need 2 years? I mean if you are a clothing buyer you are planning right now for what you are going to sell at Christmas time. That is almost a year out. No African country can give a guarantee at this point of what they can deliver in December because AGOA may be done on the first of October.

Certainly if they are going to plan for the spring, they are not going to give African companies a contract because they just cannot give them a guaranteed price, and so forth. So, knowing the business cycle and all, how long do you think the extension for Africa should be and do you think it should be continent-wide or just for SACU?

Chairman THOMAS. If the Ambassador would suspend, I know we talk in acronyms around here but because we do have cameras here, there may be people who have no idea what SACU is. It is the SACU and I just thought we should put that on the record so that someone who does not follow this to the level of acronyms would have some understanding of the discussion.

Mr. MCDERMOTT. I think, Mr. Chairman, I mentioned Lesotho and Namibia and South Africa but I left out Swaziland and Botswana. Those are the five countries in SACU.

Chairman THOMAS. That covers the SACU.

Mr. MCDERMOTT. Yes, thank you for that clarification. Everyone on the dias would know what it was but since this is for television, I guess you are right.

Chairman THOMAS. I will tell the gentleman that this is for all Americans, not just the people on the dias and it is hard to follow sometimes the discussions in this Committee because we are all very knowledgeable and we get down to the level of short-handling—

Mr. MCDERMOTT. You are using my time, Mr. Chairman.

Chairman THOMAS. No, I tell the gentleman this is not coming out of his time.

Mr. MCDERMOTT. Ah, thank you.

Mr. ZOELLICK. This is actually a polite reminder for me, Mr. McDermott. I often use these terms and he is trying to let me know to speak English.

Mr. MCDERMOTT. It is so nice of you to take the brunt of it.

Mr. ZOELLICK. I bet I could find it for you in our trade report but on page 10 of my testimony, third full paragraph, I spared you from reading all this but let me just read you the essence of it. "In Africa, the African Growth and Opportunity Act, AGOA, enacted in 2000 . . . has created tangible incentives for commercial and economic reform by providing enhanced access to 37 eligible sub-Saharan nations. Enhancements made in 2002 to the African Growth and Opportunity Act improved access for imports from beneficiary sub-Saharan countries. We look forward to working with Congress on legislation on AGOA that will accelerate its gains, including by extending provisions and enabling countries to take full advantage of AGOA through enhanced technical assistance."

Now let me get slightly more specific. The AGOA itself, as you probably know, actually expires in 2008 but the President called for a longer extension of that. The provisions that I think we talked about together in Mauritius, and I know the Chairman has been focused on and so has Mr. Rangel, is the third-party fabric provisions.

Mr. MCDERMOTT. Those go out in 2004.

Mr. ZOELLICK. September, and that is one reason why as I have talked about it, my real concern about this one is the window. This year it is going to be hard to get things done, so what we have

tried to pledge, as I mentioned in the opening point, I know that the Chairman and Mr. Rangel and others are talking about kind of the solution to this—it includes some technical assistance things, by the way, to make sure that countries can use these provisions.

On the third-party fabric, here is the balance that you may recall we discussed in Mauritius. All the quotas, all our quotas for textile imports come off in 2004. That means that in particular the competition from China, India, a couple of other countries is going to be very vigorous. What the report, the ITC report showed us and my other discussions is that for Africa to really be competitive, it is going to need not only to have the apparel, the sewing; it is going to need to have the fabric investment, and you are starting to see that fabric investment in places like Lesotho, South Africa, and Kenya.

You are correct, Mr. McDermott. It is not fully there yet. So, the question is how long do you extend it? Might you want to try to use a phase-down? For example, the minister from Lesotho, and Lesotho has done an excellent job of creating a large number of jobs from this and sort of moving the international trade economy, had suggested that if we do not use a phase-down, it might signal to people that this will just continue to be extended. So, he kind of encouraged a phase-down. Now people have talked about 2 years. People have talked about 3 years. To be honest, I do not think this is—

Mr. MCDERMOTT. Is 1 year enough?

Mr. ZOELLICK. I would be reluctant, I think, on that personally, and for the reasons you said. You need some business planning on this. So, this is something where I think you will get slightly different views from different African countries because the ones that are now getting the fabric production would like it to end earlier so they could create the integrated market. They are really right because, for example, there is a denim plant I think now being put in Lesotho and for them really to be able to compete with China, they need to be able to do the fabric through the sewing. So, the sooner they get that, the better, but they are not quite ready now. So, that is the issues that the Chairman and Mr. Rangel and I and others have been trying to talk about but the key thing, and I want to endorse your words, the worst thing to have happen would be to let this not get done.

Mr. MCDERMOTT. Thank you. I hope that we can actually get this done. It would be a real shame to go into an election year having done nothing and leaving Africa hanging out there. After all we have talked about putting in AIDS and we are going to put in all this money for treatment of AIDS but not give them the economic development tools—

Mr. ZOELLICK. Just a word on the SACU because I want to make it 100 percent clear. We see these, the FTAs, as complements to AGOA and indeed, the original AGOA bill encourages us to do this. Our progress with these five countries in Southern Africa has already generated interest in other countries in terms of trying to open markets more and build in a reciprocal relationship. So, frankly, we see it as a stepping stone process, Mr. McDermott, but I assure you our interest in negotiating with the SACU is not to the exclusion of AGOA. We want both.

Chairman THOMAS. I will tell the gentleman just very briefly that I think AGOA would fall far short if what we really wound up doing was strengthening and increasing just the concept of cut and sew in Southern Africa, that an integrated textile industry in the long run makes them most competitive. If that is our shared goal, how we get there, there may be some slight disagreement over it but surely our goal would be to provide them an integrated structure with which to compete, rather than simply utilize the lower-cost labor on a cut-and-sew operation with fabric coming from outside the area. That is what we need to work on.

Mr. MCDERMOTT. May I just respond briefly?

Chairman THOMAS. Certainly.

Mr. MCDERMOTT. It is textiles that bring—or it is the apparel industry that brings the demand that develops the textile industry, and that is why I do not want to lose any of the impetus of the apparel industry. I understand the whole integration question and all the rest but if you take away the demand that the apparel industry has right now, then you stop everything that is coming behind it, that we hope will come behind it. It is really why I want there to be some apparel protection for at least some period of time.

Chairman THOMAS. I tell the gentleman I think we are in complete agreement. The response of the Ambassador of one year, that it was probably too short, I think is entirely accurate. When you go into multiple years you then begin to emphasize more the low-cost labor than the integrated textile industry and that is an area that I believe we need to resolve very quickly so that no one thinks that AGOA, as a concept and as a particular trade instrument, would be jeopardized by the political season.

I appreciate the gentleman's initial positions on moving into Southern Africa aggressively. We have worked together on this and the Chair looks forward to continuing to work together with the gentleman from Washington. Does the gentleman from Louisiana wish to inquire?

Mr. MCCRERY. Briefly, Mr. Chairman. My voice is just about gone. Mr. Ambassador, when you hear people say American jobs are moving to Mexico because of NAFTA and American jobs are moving overseas because of fast track authority, does that just drive you nuts?

Mr. ZOELLICK. Well honestly, yes.

Mr. MCCRERY. Why?

Mr. ZOELLICK. Because what you actually see are people that are taking advantage of the economic anxiety that is associated with an economic cycle and with change and they are leading people in the wrong direction because building walls will not create jobs. Helping people with education so they can compete, helping them with trade adjustment assistance so they can get back on their feet, and opening markets around the world is what helps us proceed.

Look, I was part of the effort to negotiate NAFTA. President Clinton, with a Republican Congress, helped get it through. There were a lot of forecasts about all the devastating effects. Well, in the years that followed we created 20 million jobs in this country. Manufacturing expanded on a real basis by about 45 percent.

Now there is no doubt, and looking at Mr. Camp, I know he faces this challenge, that there will be companies that move and this creates anxiety for communities, but I will tell you the other side of it. I checked the numbers in Michigan because I know this is a topic that he has had to deal with recently. There are about 250,000 people employed in Michigan because of foreign investment. So, the other side of it is that by having an open and competitive economy, we draw people. The formula that has helped this economy grow is not by adding to prices or adding to barriers but helping people compete.

The other side of it, Mr. McCrery, that is always lost is the benefits of lower taxes by cutting import taxes. The work that came out of the Clinton Administration showed that the benefits of NAFTA and the Uruguay Round together for the average American family of four is \$1,300 to \$2,000 a year, and who do you think gets helped the most on that? The people that frankly spend a higher portion of their paycheck for clothes or food or other things. So, as I noted, I think, in my testimony, it is the single family or working mother that gets hurt most by trade barriers.

So, people often do not know the benefits of that because when they just have lower prices, they do not know what it is caused by. So, what we need to try to do, whether it be NAFTA or Australia or CAFTA or others, is make sure we deal sensitively with the adjustments that we need, try to deal with the environment and labor issues as we have talked about in a way that is not the United States trying to sort of be heavy-handed with developing countries but do try to encourage them and try to help support their process, and that is the way that I think is going to become a win-win venture for the United States going forward. When you last think about it, Mr. McCrery, some people look at markets like Japan and think that this is the model. Well, it does not look like the model to me. They have been having a hard time growing for 10 years.

I do not underestimate the challenge of adjustment and you have to help people with that because whether you lose your job to new technology or you lose it to trade and competition, that is a very difficult time for people. You have to help them. The solution is not to try to create added barriers and costs and try what people tried in the 1930s. I remind people often we had a trade surplus in the 1930s; it did not really work.

Mr. MCCRERY. Thank you.

Chairman THOMAS. Does the gentleman from Michigan, Mr. Camp, wish to inquire?

Mr. CAMP. I do. Thank you, Mr. Chairman. Mr. Ambassador, I want to thank you for your effort on the dry bean issue, which you mentioned earlier. It did take several years to resolve but I do not think it would have been resolved without your personal involvement and commitment there, and that has opened up a new market for our agricultural producers. Just recently for the first time Michigan has been able to get an agreement to export apples to Mexico, which is going to be an important thing for us and our agricultural exports to Mexico since NAFTA have grown significantly from just under a million to 15 million now in 2003.

With regard to the sugar commodity, I would agree with the comments some others have made in that a WTO solution is one that

would be better for us and I agree with the comments of others who question why it was even included in the CAFTA agreement for that reason and want to say, for one, I want to thank you for your efforts in terms of the Australian agreement. As we look at these bilateral agreements, it makes it much more difficult to track all of these complex impacts throughout our society and make sure that we have a fair trade agreement with the countries that we are dealing with. So, I just want to make that comment.

I do have legislation that would create a special Section 301 procedure at USTR for agriculture much like what we already have existing for intellectual property and it has bipartisan support and I know Congressman Pomeroy of this Committee and both the Chairman and Ranking Members of the Senate Finance Committee have introduced similar legislation in the Senate. This legislation would designate priority countries whose barriers to U.S. agricultural exports because enforcing these agreements—getting them is one thing; enforcing them is another—would designate those countries that are not living up to international trade agreements and I would appreciate your support in moving this bill forward and just want to ask if you have any comment particularly on that bill.

Mr. ZOELLICK. I will be pleased to examine the bill, Mr. Camp. I think the key thing is that starting from the beginning of when the President interviewed me for this job, he asked me to emphasize American agriculture and trade, and so we have tried to do that and I am delighted that I think our agricultural exports may be close to a record level now, about \$59 billion. So, we frankly put a strong list of priorities on opening these markets anyway, so I will be pleased to look at your bill.

Just a word on Michigan in terms of agriculture, and I know the sensitivity with some of the sugar products. The balance we had to strike, Mr. Camp, with Central America is could we get open goods for other products if we are going to open up sugar just a little bit? It is interesting. You look at the State of Michigan and the numbers I have, there are about 46,000 farms in Michigan. There are about 1,100 that produce sugar, 2.6 percent. Of the total cash receipts for agriculture in Michigan—people do not realize what a big agricultural State it is; it is about \$3.4 billion and there is \$100 million in sugar. So, when we are able to sell corn and cattle and soybeans and wheat and some of the other products and beans, people in Michigan benefit from it. So, what we try to do, and this is always the balance, is to try to deal sensitively with a product like sugar, but make sure the rest of American agriculture gets an opportunity.

Mr. CAMP. Actually, the impact on the State, when you look at the refinery side, as well, the ripple effect is more like \$300 million to the State. So, it is a much bigger commodity, but I appreciate that.

The other thing is we just passed the 10-year anniversary of NAFTA and I look at Michigan and our unemployment rate in our State is about the same as it was when NAFTA was passed, after having had 10 years of historically low unemployment in our State. My question to you is what are your thoughts on the overall impact of NAFTA on the U.S. economy and particularly how many jobs have been created in the United States? I am not sure you have

specific State data there but in Michigan particularly. Who are the big winners and losers in the NAFTA agreement?

Mr. ZOELLICK. Part of the challenge that you have now in Michigan and around the country is we are coming out of a tough part of an economic cycle, and this is something that is important for people to recognize. I am not putting blame on it but you had a pretty big bubble in terms of high-tech and in terms of the stock market. You ended up having a recession start about the year 2000 and you have frankly 9/11. A lot of people forget we are a country at war. We are fighting a campaign in Afghanistan and Iraq. So, again I hope that as you start to see this growth, which we are having some pretty good numbers but not enough yet on the job side, that that creates additional opportunities in Michigan and elsewhere.

Now in the case of NAFTA, I could try to get some of the statistics more for the State. My overall statistics, our exports have increased about 88 percent to both Canada and Mexico, about \$267 billion. One of the other benefits of this that again people often do not look at is you get some lower-cost production because you also get some of the inputs being lower that help our manufacturers be more competitive and it is important then for people to keep in mind we are competing globally. So, part of this is how we compete as North America against a global market.

As I mentioned to Mr. McCrery, in the years that followed you had 20 million extra jobs. The manufacturing output increased 44 percent. Going to this point about more efficient production, manufacturing wages actually increased about 14.4 percent in the 10 years since NAFTA on a real hourly basis and that is more than double in the prior 10 years. So, that is part of the challenge, is how do we become more competitive, better paying jobs, but keep adding them with frankly a low tax, low interest rate, low inflation economy, as we have now.

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

Chairman THOMAS. I thank the gentleman. Does the gentleman from Massachusetts, Mr. Neal, wish to inquire?

Mr. NEAL. Thank you very much, Mr. Chairman. Mr. Ambassador, I think the inference has been drawn a couple of times during the question and answer period that somehow there is an effort being made to take advantage of the dislocations that have occurred because of trade policies and anxiety is a very powerful current, as you know, in public life and speaking to those issues is one of the obligations that House Members have. So, I guess I would reject the idea that we ought not to ask these questions in an effort to education the citizenry as to the pros and cons of free trade.

I think you can say with some certainty that one of the difficulties with the free trade debate, Mr. Ambassador, is that when the debate ends and the agreements are signed that the trade lawyers have their jobs, college professors have their jobs, and the editorial writers have their jobs, but there are an awful lot of fine people who do not have their jobs anymore and speaking to that anxiety is a very, very important consideration.

Now specifically let me ask you what are the barriers and why are they so significant in terms of us penetrating the Indian middle

class and Indian markets? What is the difficulty with that issue as you see it?

Mr. ZOELLICK. First, Mr. Neal, I just want you to know I do not disagree with that. I mean it is an anxiety that we have to be able to debate and argue about. I think some of your colleagues took my comments that related to a more general debate, which certainly we all know is being done over the past couple of months, for their positions, and it is not the same.

Mr. NEAL. Right.

Mr. ZOELLICK. In the case of India, the problem here, Mr. Neal, is that India was one of the charter members in the General Agreement on Tariffs and Trade (GATT), which is now the WTO. In over 50 years, frankly, most of the cuts were made by developed countries, not by developing countries. So, India more than almost any other developing country I know has what they call very high bound tariffs. So, in other words, their agriculture tariff could be up to 110 percent. It is not; it is lower than that, but they could go up to that level. Similarly in the manufacturing area. So, their manufacturing tariff—our average is about 3 percent; theirs is about 30 percent. It has been traditionally a very closed economy.

Starting in 1991 after a balance of payments crisis they started to change and there has been a reform process going on in India and as we all know, there are some parts of India—in the high-tech and software sector—that are globally competitive. There are other parts, frankly, that they have 650 million subsistence farmers that they are very worried about its effect on their democracy. So, it is an economy that is at the point of change and frankly, what I think we have to try to do, in part through the WTO negotiations, in part bilaterally, is try to get them to recognize there are benefits, there are win-win benefits from doing business with us, but they are also going to have to be open to our products along the way. Whether it be sanitary and phytosanitary standards, like dealing with almonds, or whether it be tariffs, we need to get those lowered.

Now the Indians themselves have often found it easier to lower their tariffs unilaterally. They do it through their budget and they have been bringing down tariffs in some goods categories. One of the things that when I took this job that I thought this was going to be a very important market, I created an assistant U.S. Trade Representative for South Asia because I felt this was going to be an area we are going to have to try to work with more.

One of the things we need to do, Mr. Neal, is kind of actually not only deal with the government but the business community. Next week I am going to be meeting with a member of the Confederation of Indian Business because they see the larger interest. Try to build political support in their country to try to support liberalization because they have some of the same challenges we have in anxiety and with a billion-person democracy, you can see the sensitivities. So, I do not mean to be letting anybody off the hook but if we are going to try to open this up, we need to get forces within India to help us support liberalization and change and frankly, tell them, like I told them in India a couple of weeks ago, look, I want to keep our markets open but it is going to be darn hard to do so if they do not open theirs.

Mr. NEAL. Specifically I have been on the Subcommittee on Trade, as you know, for a long period of time and from the day that I went on that Subcommittee, the issue of intellectual property rights in India was very divisive. Could you speak to the changes or the proposed changes that you are suggesting?

Mr. ZOELLICK. It is actually getting better and it is getting better for the reasons that I mentioned. The Indians are starting to recognize the importance of protecting intellectual property as they start to develop a knowledge industry. The current commerce minister, my counterpart, actually was an intellectual property rights lawyer. So, their laws are starting to get better and their enforcement of the laws is starting to get better. Now there is still a long way to go but this is one area where frankly, the challenge is more with China than it is with India, not to underestimate it with India, but they are seeing the benefits in this area and that is the type of thing I would like to build more broadly.

The other point frankly, and here I want to compliment both our ambassador, the prior ambassador, Bob Blackwell, who came back to Washington, and David Mulford are people that have really spoken out about the importance of the economic change and reform. As you know, it is good to have somebody on the scene constantly hitting the point.

Mr. NEAL. Thank you very much. Thanks, Mr. Chairman.

Chairman THOMAS. Does the gentleman from Minnesota wish to inquire?

Mr. RAMSTAD. Thank you, Mr. Chairman. Thank you, Mr. Ambassador, for your strong and effective leadership as our USTR. It is good to see you again. As you said in your prepared statement, Mr. Ambassador, the WTO recently ruled that the Continued Dumping and Subsidy Offset Act, commonly known as the Byrd Amendment, was found inconsistent with WTO obligations because it provides remedies for dumping and subsidies beyond those permitted by the agreements; in other words, found it to be an illegal subsidy.

In addition, the Congressional Budget Office just recently released a report—in fact, just last week—that was highly critical of the Byrd Amendment not only for its WTO noncompliance but also because it creates inefficiencies in our economy. For these two reasons, Mr. Ambassador, just yesterday I introduced legislation, along with my good friend and our Subcommittee on Trade Chairman Mr. Crane, to repeal the Byrd Amendment. Now the President's budget for the past 2 years has called for outright repeal of the Byrd Amendment. However, the Omnibus Appropriations Bill (P.L. 107-38), as you know, last year included a provision that the USTR, that you should negotiate an allowance for the Byrd Amendment within the WTO; in other words, negotiate a carve-out. So, my question is this. Today does the Administration still support outright repeal of the Byrd Amendment?

Mr. ZOELLICK. The answer is yes, Mr. Ramstad. As I mentioned, I am glad you are drawing this to people's attention because there is going to be a hearing to arbitrate the amount that will be completed by about June and shortly after that about nine countries will be able to start to retaliate against American exports. I do not want to say the precise sum because we are trying to debate

it and have a lower sum, but the numbers they are seeking would be about \$150 million now, plus there could be an additional \$90 million.

I would say one other thing, Mr. Ramstad, that may also help you and Mr. Crane and others on this. Mrs. Snowe on the Senate side also talked about perhaps having the revenue go to some of the issues related to worker issues and that is an issue that if the Congress find it easier to pass, that if that is something that we could work with you on, I would certainly be willing to try to talk to my colleagues about that, as well.

Mr. RAMSTAD. Thank you, Mr. Ambassador. I am familiar with Senator Snowe's work and have discussed it with her, and I look forward to working with you to that end.

I certainly—in looking at the Byrd Amendment, how anybody could argue that it is anything but a waste of time, effort and capital, it is time, effort and capital that we are spending chasing court cases rather than growing our economy and creating jobs, so I certainly appreciate your position, the Administration's position in supporting the legislation that I have introduced for outright repeal and would yield back the remainder of my time. Thank you again, Mr. Ambassador.

Chairman THOMAS. I thank the gentleman. Does the gentleman from Georgia, Mr. Collins, wish to inquire?

Mr. COLLINS. Yes, sir, Mr. Chairman. Mr. Ambassador, in your opening statement you have a quote here that relates back to 1929. "With America's high standard of living we cannot successfully compete against foreign producers because of lower foreign wages and the lower cost of production." One thing for sure we do not want to do is lower our standard of living here in this country. Our workers work hard and our businesses do their best to compete. I think you could actually say that American workers/businesses are having a difficult time competing against foreign producers because of lower foreign wages and lower costs of production, could you not?

Mr. ZOELLICK. Actually, Mr. Collins, wages do not determine where people invest. I often point out if wages were the determinant of investment, Haiti would be the manufacturing capital of the universe.

Now why is that not the case? It is because people's wages reflect what they produce, their productivity. That is a combination of their education. It is a combination of the capital that has been invested. It is a combination of the infrastructure of the country. It is a combination of the tax policies, the financial system.

So, the heart of keeping America competitive is integrating those policies effectively so that our productivity remains very high and it is, I might add, higher than it is in Germany or Japan or others, so that workers get paid more. That is one of the reasons why workers that are in export industries get paid, on average, 13 to 18 percent higher, because they are competitive globally. So, I do not believe that it is driven by wage rates alone. I think, on the other hand, as we have talked about on both sides of the aisle, people have a sense that they want to use trade to try to increase the enforcement of—

Mr. COLLINS. I do not want to cut you off, Bob, but I just ask you simply is it not true that that does create an unlevel playing

field with competition if they are able to pay and have cheaper wages and lower production costs? That is just a yes or no without going all through Haiti and all those other countries.

Mr. ZOELLICK. If you want an answer yes or no, the answer is no, it is not alone. It depends on the productivity.

Mr. COLLINS. Well, that is your opinion.

Mr. ZOELLICK. It is going to be the opinion of a lot of people who study commerce and business, which I used to be in, Mr. Collins.

Mr. COLLINS. I will be respectful. I had a CEO in my office—it was not too long ago—and we were talking about a particular trade agreement and I asked him why he did certain parts production in Georgia and finished the production in Central America. After asking that twice, he said because of cheap labor. Now if it is not true that we are not having difficulty competing, explain the largest trade deficit in history and an increase in retail sales.

Mr. ZOELLICK. Well first, Mr. Collins, if you look at Georgia today, one of the reasons why it draws so much foreign investment, and there is about 225,000 jobs created in Georgia because of foreign investment, is because it is a good place to do business.

I want to be careful, Mr. Collins, that I not be misunderstood on this. Wages are related to productivity, so it is the combination of the two that you need to have. So, wages are certainly a determinant but it has to be related to overall productivity. The trade deficit of this country is determined by relative growth in various countries and it is also determined by exchange rates in various countries. So, for example, one of the things that you see is that when this Administration came into office the trade deficit was about \$378 billion. It has gone up by an extra hundred billion dollars. I went back and looked to try to get the derivation, just as the most recent monthly numbers showed, and you see that 82 percent of that in the manufacturing area is because we are not selling as much, not because we are importing more. Now why are we not selling as much? We are not selling as much because other people are not growing as much.

So, the heart of this policy has got to be to get other people to grow and—this is a key point, Mr. Collins, I think we can probably agree on, is that you have to lower barriers at the same time because our barriers are relatively higher. So, if we get them to grow and we lower their barriers, that is the best chance we have to be able to compete globally.

Mr. COLLINS. I just marked my 42nd year in small business and labor and other costs always enter into the equation of production or performance. You can try to convince others and I think that is what is wrong, Bob. People understand much more about what is going on in the marketplace and the job market and the trade deficit than we really sometimes give them credit for, and we are trying to debate them on the issues. You do not do that. You respond.

The response is yes, it costs more to produce in this country than it does in others where you have cheap labor, different regulatory costs, different taxation structure than what we have, different tort reforms, different tort initiatives. Yes, it does cost more here often-times than it does in many other parts of the world, and people un-

derstand that. To continue to try to debate them on that issue, you will come up a loser every time.

Mr. ZOELLICK. Well, I agree with you about those points but if you add costs, whether you add costs because you do it in terms of additional tariffs or if you do it in terms of litigation costs or you do it in terms of taxes, it makes you less competitive.

Mr. COLLINS. You do not do it with additional tariffs.

Chairman THOMAS. The gentleman's time has expired.

Mr. COLLINS. You do not do it by isolation and you do not do it by protectionism. You look at costs and if you are a part of the cost, which the government is, then you address your part of the cost.

Mr. ZOELLICK. You and I agree, Mr. Collins.

Chairman THOMAS. The gentleman's time has expired. Does the gentleman from Georgia, Mr. Lewis, wish to inquire?

Mr. LEWIS. Thank you very much, Mr. Chairman. Mr. Ambassador, welcome. I want you to know that this Member from Georgia, from the other side of the aisle, is going to be a little more friendly to you and you are welcome to come to Georgia any time. You can fly into the Atlanta airport and you will be right in my district.

I read your testimony; I read it well. I noticed we have a lot of concerns, a lot of problems, a lot of issues about China. I noticed yourself from time to time, you must use both the sticks and the carrots. What are you using with China right now? Are you using both sticks and carrots? Are you very hopeful and optimistic that we are going to solve and resolve some of these problems we have with China?

Mr. ZOELLICK. We are making progress, Mr. Lewis, but there is a lot more work to be done. Our agricultural exports were up 124 percent last year to China and it goes to the point I am making about growth. In some areas, like soybeans and cotton, you had tremendous increases. Cotton was almost a 500-percent increase last year. To combine those two, one of the reasons we were able to get those increases is that we were having some problems with soybeans and cotton and others related to the tariff rate quotas that they put in. So, we hope we have been able to remedy those problems, and also in the biotech area so we can use biotech cotton, biotech soybeans, biotech corn, but after that we then need to turn to the next areas.

I talked a little bit about intellectual property before but one of the areas that is most troublesome to me, Mr. Lewis, is that the Chinese have some tax policies that we consider discriminatory, just as we are trying to deal with the FSC issue in ours. One of them deals with semiconductors in particular. I think it is more important than just the semiconductors, although that is important, because I think it is important to show the Chinese that they cannot use those discriminatory policies, whether it be for fertilizer or for semiconductors or for others.

To use your point about the stick, if the Chinese do not resolve this very shortly, we could very well be the first country that brings a WTO case against them. I would like to try to get others to be part of it and that is one of the things that we have been trying to work on. We do have manufacturing interests—Mr. Collins

and I, I am sure, agree very much on this in terms of trying to move things forward—and we have had some success at that. Last year we sold almost \$5 billion of electrical machinery covering things from integrated circuits to telecom parts and equipment.

I talked to the CEO of General Motors (GM) because, you know, GM has been doing a lot of business there. I said what can you tell me that helps explain how this helps American producers and workers? He pointed out in the last few years they actually have been selling about \$1.4 billion worth of machinery, products, components as part of their development in China. Now at the Lansing River plant 15 percent of the production actually goes to either Cadillacs or Buick Regal kits. So, this kind of shows some of the interconnection.

The situation with China is such that we cannot let them slow down in terms of the implementation of these issues, so whether it be taxes, whether it be standards for agriculture or others, IPR. The most important one, Mr. Lewis, that I am looking down toward is that by the end of the year the Chinese have an obligation to open up what they call the trading and distribution rights system, which means that today if you wanted to sell into China you would have to work through somebody. Well, one of their obligations by the end of 2004 is to open that up, so you can go directly to put American goods on Chinese store shelves. So, we are putting a lot of pressure on the Chinese to make sure that they follow through on that element.

Mr. LEWIS. Well, thank you very much, Mr. Ambassador. Mr. Chairman, I yield back the balance of my time.

Chairman THOMAS. I thank the gentleman. Does the gentleman from Missouri, Mr. Hulshof, wish to inquire?

Mr. HULSHOF. Thank you, Mr. Chairman. May I have permission to revise and extend my remarks?

Chairman THOMAS. Certainly, without objection.

Mr. HULSHOF. Thank you. Mr. Ambassador, welcome. Last week a former colleague, former Member of this Committee, Mr. Watkins of Oklahoma, came back, so we had a chance to talk and it was great to see Wes. He and I introduced the measure a couple of years back to actually create the position of a permanent ag ambassador within your office and I wanted to commend—I know Mr. Johnson was here earlier—how impressed that I am with the job that Ambassador Johnson has done on a myriad number of issues, really tough issues affecting agriculture and I wanted to put that in the record.

What I would like to do in the short time that I have is to raise an issue regarding, as I term it, soybean piracy in South America. As you know, both Argentina and Brazil are expanding their acreage that they are putting into production agriculture, specifically soybeans, and what is compounding a problem is that they are not abiding by provisions that they have agreed on on protecting our American intellectual property as it relates to genetically enhanced varieties of soybeans, specifically as we have come to know it, Monsanto's Roundup-Ready soybeans.

The USDA's Foreign Agriculture Service (FAS) says that it is probably going to be about 5 years or less when Brazil is going to exceed American agriculture. What is more, FAS estimates that ge-

netically enhanced soybean varieties constitutes between 10 and 20 percent of Brazil's 2003 crop, even though these varieties are not available for sale. In fact, at Cancun when Members of this Committee met with the trade representative, Mr. Ameran from Brazil, the fact is that their government did not even acknowledge that Brazilian farmers were using Roundup-Ready technology.

So, my question is actually twofold on this specific issue. How can American farmers and U.S. farms, just like the one our family operates back in Missouri, how can we remain competitive with this other production in other countries when our chief advantage, access to improved technology, is constantly being eroded by countries that ignore American IPRs and I would say even commitments under existing trade agreements? That is question number one.

Question number two is what action is your office or that you or Ambassador Johnson is taking to combat patent infringements of agricultural products in South America and across the globe?

Mr. ZOELLICK. Well first, let me thank you, Mr. Hulshof, for your compliments for Al Johnson and his team. They do excellent work and they are a small group but they spend a lot of time talking to the community to make sure we know their priorities and we try to deliver for them. So, I will relay that; thank you.

I think the two questions in my mind are integrated in that there is a lot we can do on soybeans separately. As I mentioned before, we have now boosted our soybean sales to China, for example, to \$2.9 billion and, as you and I know, that is one of the reasons soybean prices have been relatively healthy.

In the case of the intellectual property, we have a high priority in terms of all American intellectual property rights. It turns out that the global international property agreement, the TRIP Accord, the Trade and Intellectual Property, has some limits and one of the things is it does not require countries to have patents available for plants. So, that is one of the reasons—it is a good example of how our FTAs complement what we try to do in the WTO by setting higher models. We push for this. So, for example, we have that in our Chile agreement; we have it in CAFTA. We will seek it with the Andean countries in Latin America.

Now as you point out, Brazil is a particularly difficult case because, as you know, on the one hand they have not officially approved biotech soybeans, even though everyone knows they are growing them. Now that has been working its way through the Brazilian court process but we have been working with Monsanto and others. As you know, there is an interim measure; there is a technical fee that I think is about two-thirds of the fee that our farmers pay, and that fee, in reality, what I learned is that Monsanto actually does not have a patent on the plant. They have it on the gene, so that is another slight complication in this issue. What we try to do through the individual agreements and working with companies is to make sure that their intellectual property is protected as best we can and they get paid for it. It obviously creates a level playing field for your soybean farmers.

Mr. HULSHOF. I appreciate that and I know my time has expired. May I submit another question to you in writing?

Mr. ZOELLICK. Certainly.

Mr. HULSHOF. As far as sanitary and phytosanitary concerns. Thank you.

Mr. ZOELLICK. I would be pleased.

Mr. HULSHOF. Thank you, Chairman.

Chairman THOMAS. The Chair would wish to indicate that we have not yet had second bills on a series of at least three votes and possibly four votes that will take more than one-half hour to resolve. So, unless there is strenuous objection, the Chair would indicate that the gentleman from Texas has won the lottery based upon arrival in the Committee because we have room for one more questioner if the full 5 minutes is used. If that is not the case, we may be able to work another one in. Does the gentleman from Texas wish to inquire?

Mr. SANDLIN. Yes, Mr. Chairman. I will try to be brief. Thank you, Mr. Ambassador, for being with us today and I wanted to ask you a few questions about China, specifically as it affects my district. Now as I understand it, the ITC under the law, and not the Administration, initially is charged with investigating market disruptions from China. Is that correct?

Mr. ZOELLICK. Under the Section 421 petition.

Mr. SANDLIN. The ITC unanimously determined in December that import relief should be granted in the U.S. ductile iron waterworks fitting industry. Do you remember that?

Mr. ZOELLICK. I do.

Mr. SANDLIN. Now in spite of that unanimous decision by the ITC, the President rejected that relief and he said this. "Providing import relief for the U.S. pipefittings industry is not in the national economic interest of the United States." Is that right?

Mr. ZOELLICK. That is correct.

Mr. SANDLIN. Now the law passed by Congress, the Section 421 you are referring to, specifically says that there is a presumption in favor of relief when the ITC makes an affirmative determination, correct?

Mr. ZOELLICK. I am not 100 percent sure but I will take your word for it.

Mr. SANDLIN. Okay. That legal standard can only be overcome by the President finding that the adverse effect on the U.S. economy clearly is greater than the benefits. Is that correct?

Mr. ZOELLICK. That is correct.

Mr. SANDLIN. Clearly is a fairly high legal standard. Now the Administration does not conduct its own hearings and take evidence and testimony and things like that, correct?

Mr. ZOELLICK. I think we do have a hearing process, as well.

Mr. SANDLIN. Do you? That is initially the obligation of the ITC; is that right?

Mr. ZOELLICK. The ITC's obligation, Mr. Sandlin, is to determine the market disruption standard, a relatively low standard, not the final standard in terms of national interest and the balance of economic—

Mr. SANDLIN. Did you know, though, that even though the ITC unanimously decided there should be protection and the President rejected that, that by denying that relief, Tyler Pipe in Tyler, Texas is going to lose 500 jobs?

Mr. ZOELLICK. I did not know that but here is what I know about the case. What I know about the case—

Mr. SANDLIN. Well, I want you to explain but we are going to lose 500 jobs and then Alabama and Ohio are going to lose 600 to 700 jobs. So, it seems to me it is clearly difficult to say that it is good for the U.S. economy because clearly it is not good for the Tyler, Texas economy, is it?

Mr. ZOELLICK. Well, I do not think Tyler, Texas would be the sole definition of the U.S. economy.

Mr. SANDLIN. That is a very good point. Of course, the ITC took all that into consideration and they said, "Because U.S. producers currently have a substantially larger market share than nonsubject imports, the relief we propose will primarily benefit U.S. producers." Another commissioner said, "While it is true that imports from nonsubject countries would likely increase in the event of a remedy, the increase would be far from one-on-one replacement." So, not only does it benefit the U.S. economy as a whole to get the relief that the ITC recommended; it benefits Tyler, Texas in not losing 500 jobs and Alabama and Ohio in not losing 600 to 700 jobs. Is that correct?

Mr. ZOELLICK. Would you like me to talk about this case more?

Mr. SANDLIN. Yes, sir, if you would like to. I would just like for you to explain how it is better for the U.S. economy to ship jobs from Texas and Alabama and Ohio and create jobs in China. It seems like the Chinese have a position of we are going to comply when it is convenient for us and then our policy of just working with them is allowing them to take advantage of us.

Mr. ZOELLICK. First, the ITC data also showed that the cost to consumers would be higher than the benefit to producers by a significant amount.

Mr. SANDLIN. So, are you saying—

Mr. ZOELLICK. Could I—

Mr. SANDLIN. I am just asking you to clear up—

Mr. ZOELLICK. No, I would like to just answer.

Mr. SANDLIN. I know you would like that but I want to ask you—

Mr. ZOELLICK. I would like to answer the question.

Mr. SANDLIN. I have another question for you.

Mr. ZOELLICK. Would you like me to answer your question?

Mr. SANDLIN. No, sir. I would like you to answer the questions I ask you. You have an opportunity to talk. I ask the questions; you answer them. That is kind of the way it works. I am asking you if this goes in the flow of what the President's chief economic adviser said when he said well, it is better to ship jobs overseas. Are you telling me it is better to ship the jobs overseas to make a cheaper product so that American workers who do not even have a job cannot afford to buy them?

Mr. ZOELLICK. No.

Mr. SANDLIN. Okay, what are you saying?

Mr. ZOELLICK. What I am saying is that the ITC first determined that the cost of this to the American consumer would exceed the benefits to the producer by a significant amount. Second, what their research showed and others showed is that if we put in the safeguard, the beneficiary would primarily be Taiwan.

Now separate from the decision, as I pointed out to Mr. Levin, there is some evidence that this company may have some—

Mr. SANDLIN. Let me interrupt you.

Mr. ZOELLICK. For example, the company now has—

Mr. SANDLIN. Mr. Chairman, I would ask that he be directed to answer my question.

Mr. ZOELLICK. Did you say that I could answer your question? I would like to finish answering the question.

Mr. SANDLIN. I have a question for you.

Mr. ZOELLICK. I am going to answer your question.

Mr. SANDLIN. I know you want to argue.

Mr. ZOELLICK. This company has 400 OSHA violations.

Chairman THOMAS. The gentleman's time has expired. There are less than 5 minutes left on a series of votes on the floor.

The Chair wishes to thank the Ambassador. I apologize to those Members who have waited patiently for their turn but it does seem unreasonable to ask the Ambassador to wait for one-half hour to 40 minutes, besides the fact that he is always very generous with his time and comes to Capitol Hill probably more frequently than any other Member of the Cabinet to engage with Members. The Chair does feel a little chagrin that this hearing, which has been excellent for the virtually 3 hours that we have engaged in it, ends on this note.

The Committee stands adjourned.

[Whereupon, at 12:50 p.m., the hearing was adjourned.]

[Questions submitted from Representatives Hulshof and Doggett to Mr. Zoellick, and his responses follow:]

#### **Questions Submitted by Representative Hulshof**

##### **Question: Beef-Sanitary and Phytosanitary Issues**

First and foremost, while several of your commodity groups are still slightly skeptical of the benefits of a FTA with Australia, all of these are extremely impressed with the ability of Ambassador Allen Johnson to negotiate such a tough agreement. In many cases, groups that were preparing to oppose the measure are now, at the least, holding their fire through a congressional vote. The "Ag Ambassador" deserves some credit from you on the Australia FTA.

That said, Australia might soon join the growing list of countries that use artificial sanitary and phytosanitary (SPS) rules to protect their domestic industries from increased imports of American beef, pork, poultry, citrus, stone fruits and apples. While these trade agreements carefully negotiate market access provisions, many believe that not enough attention is given to the harmonization of national food safety standards to truly allow American beef access to our trading partners. The agreement clearly calls for "working groups" to be established to clear these issues, and, to some, it would appear that the U.S. is making some of the same mistakes all over again.

As many know, the U.S. and Canada are still struggling to reach agreement on harmonization some 12 years after the dispute began. Now that Canadian beef has access to the American market (almost 800,000 cattle annually), there is little incentive for them to move quickly on harmonization. As a result, only 250,000 American cattle move to Canada, when industry estimates that some 750,000 could move.

The same issues are likely to arise with CAFTA and Australia, especially in the wake of an isolated discovery of BSE in Washington. This is an emerging concern with your cattlemen back in the district, especially with 43 export markets closed, and 10% of all beef harvested headed for overseas markets (worth \$2.7 billion annually).

What is USTR doing to incorporate air-tight harmonization regimes into the actual agreements being currently negotiated?

Answer: Many of our trade concerns develop from the sanitary and phytosanitary (SPS) measures of other parties, which are often based on non-scientific factors (e.g., political concerns, protectionism). WTO members have the right to maintain and establish their own specific SPS measures as long as these measures are consistent with WTO trade rules. The U.S. negotiating objective for SPS measures in FTAs is to ensure that SPS measures are consistent with WTO disciplines, are based on scientific evidence, and are supported by science-based risk assessment.

**Question: What is the current status of U.S. efforts to harmonize SPS issues with the Australia, the CAFTA countries and others?**

Answer: Harmonizing SPS measures with other countries is not necessarily in our interest. Negotiation of harmonized regimes may result in the lowering of existing U.S. SPS measures. Rather, our approach during FTA negotiations has been to identify specific access problems and work with the countries to resolve the issues using science. We do seek to harmonize related SPS measures where we can get others to accept U.S. measures (e.g., meat inspection and beef grading in Chile).

**Question: How can Congress help these negotiations along—is there some improvement to the U.S. food safety regime needed to move these negotiations along? Is there a button we can push?**

Answer: Harmonization of SPS regimes is not necessarily in the interest of the United States, since U.S. regulators need to maintain their authority to make decisions to ensure the safety of the American public and American agriculture.

Using this approach, we have been successful in resolving several issues with our FTA partners, e.g., meat inspection issues with CAFTA countries; apple and pear phytosanitary issues with Chile; and beef, grape, and pork SPS issues with Australia.

The United States has one of the best food safety systems in the world. Members of Congress can help U.S. negotiating objectives by highlighting in meetings with our trading partners the importance of resolving SPS issues utilizing science and with a view to facilitating trade.

---

**Questions Submitted by Representative Doggett**

**Question: The Federal Government frequently excludes specific products from trade agreements for economic reasons. By extension, the Federal Government should also exclude products like tobacco for health and humanitarian reasons. Tobacco kills more people than AIDS, legal drugs, illegal drugs, road accidents, murder, and suicide combined. No nation that cares about the health of its people would actually want to increase tobacco consumption, yet the inclusion of tobacco in FTAs appears to do just that.**

**Please explain why the Federal Government has taken actions that promote the use of this toxic, addictive product.**

**Question: As you know, there is an Executive Order in place that requires your office to consult with U.S. health officials before taking any action related to trade in tobacco products. The purpose of this requirement is to make sure that our trade policy does not exacerbate the global epidemic of tobacco use, which already is expected to claim the lives of 500 million people alive in the world today.**

- 1. On the basis of this Executive Order, is there a joint responsibility and obligation on the part of the United States Trade Representative (USTR) and Health and Human Services (HHS) to make sure the Administration has complete health information before it acts?**
- 2. For the inclusion of tobacco products in U.S.-Central American FTA, would you please describe the specific steps your office took**
  - i) to ensure that HHS had an adequate opportunity to provide advice in a timely fashion; and**
  - ii) to ensure that HHS actually provided the health information necessary for the USTR to make an informed decision.**
- 3. Your office has included tobacco products in the trade agreements you have negotiated despite studies that suggest that such inclusion is likely to raise smoking rates and seriously damage public health internationally.**

- A. Has your office performed any assessments regarding the likely impact on public health of this Administration's tobacco trade policy decisions?
  - B. If these assessments are not being done, can you please explain why not?
  - C. If these assessments are being done, will you share them with Congress and the public?
4. I would like more information on how tobacco products came to be included in the U.S.-Chile FTA. Several legislators and public health groups were tracking this issue, and tobacco products were excluded until the last minute. This eleventh hour change gives the appearance that sound health policy was overcome by tobacco industry influence.
- A. Would you detail the steps the tobacco industry took to ensure the inclusion of tobacco in the agreement?
  - B. If it was not this lobbying effort that made the difference, please explain what caused the change in policy.

Answer: I am responding to your questions for Ambassador Zoellick regarding tobacco trade policy. First, as a general matter, our trade agreements respect the non-discriminatory health policy decisions of other countries toward tobacco or tobacco products. Where a country permits the production, sale, or consumption of these products, we generally seek improved access to that market so as not to disadvantage American farmers, workers, and business whose jobs depend on exports. We do this as part of a broader effort to conclude comprehensive trade agreements that cover substantially all trade in goods and services between the United States and our trading partners.

To that end, we work closely with other agencies, including the Department of Health and Human Services (HHS), to ensure that U.S. trade policy is conducted in a manner consistent with the Executive Order concerning Federal Leadership on Global Tobacco Control and Prevention.

With regard to your questions concerning the U.S.-Chile FTA, please refer to my June 2, 2003 letter in which I respond to earlier, similar questions on this topic.

---

[Submissions for the record follow:]

#### **Statement of Advanced Medical Technology**

AdvaMed represents over 1,100 of the world's leading medical technology innovators and manufacturers of medical devices, diagnostic products and medical information systems. Our members are devoted to the development of new technologies that allow patients to lead longer, healthier, and more productive lives. Together, our members manufacture nearly 90 percent of the \$75 billion in life-enhancing health care technology products purchased annually in the United States, and nearly 50 percent of the \$175 billion in medical technology products purchased globally. Exports in medical devices and diagnostics totaled \$22.4 billion in 2003, but imports have increased to \$22 billion—indicating a new trend towards a negative trade balance for the first time in over 15 years.

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

#### **Global Challenges**

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

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

par with spending by the pharmaceutical industry and more than three times the overall U.S. average.

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

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

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

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

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

After the U.S., Japan is the largest global market for medical technologies at \$25 billion. U.S. manufacturers annually export over \$2.5 billion to Japan. These statistics are good indicators of our industry's global competitiveness in the field of medical technology and it strongly underscores the importance of critical ongoing efforts with the U.S. Government to open the Japanese market further to cost-saving and life-enhancing medical technologies.

In 1986, U.S. Government leadership began to help open Japan's marketplace for medical devices under the Market Oriented Sector Specific (MOSS) trade agreements. These efforts have helped to grow and sustain a favorable U.S. trade balance for medical devices in the range of \$1.1 billion in recent years.

In late 2001, however, the Japanese Ministry of Health, Labor and Welfare (MHLW) took steps that constituted a significant setback in the progress that had been made over the last 15 years in the medical device sector by adopting a new pricing policy that includes "foreign average pricing" (FAP). The U.S. Government and Congress have long opposed FAP schemes, which discriminate against the U.S. industry and fail to recognize the significantly higher costs of doing business in Japan. Combined with very slow processes for the introduction of new product reimbursement prices, industry supports the following targeted proposals for reform of Japan's reimbursement system:

- Transparent, public processes and predictable rules in setting product reimbursement levels and related adjustments;
- When FAP is applied, the use of reasonable comparator U.S. list prices;
- Measures to expedite the coverage, payment and access to brand-new-to-Japan medical technologies (category C2), as per earlier trade agreement commitments; and
- Creation of payment categories that better reflect the differences in technologies.

In addition to these reimbursement concerns, industry also has pressing issues in the realm of regulatory product approvals, as Japan works to implement the 2002 Pharmaceutical Affairs Law by April 2005. A number of provisions of this law are essential to medical device products, as industry seeks to achieve a streamlined and transparent product approval process. Key issues in the PAL and other areas include (but are not limited to):

- Improved "pre-consultations" process and use of a standardized "checklist" of submission contents to clearly identify requirements prior to application submission, as well as better documentation practices within MHLW on discussions with industry (to avoid misunderstandings and to create binding decisions);

- Clearly defined review performance goals as part of the newly established user fee program. Performance goals should represent improvement over current performance and provide predictability in the review process with clearly defined procedures for stopping and restarting the review clock;
- Establishment of an appeals mechanism to resolve scientific disputes in a timely and efficient manner; and
- Better harmonization with international standards and with Global Harmonization Task Force recommendations in areas such as “adverse event reporting” and “quality systems programs” where Japan is implementing unique and burdensome requirements on manufacturers.

Going forward, industry seeks U.S. Government and congressional support to help ensure open dialogue with Japan. We also seek assistance in securing and enforcing Japanese commitments so that restrictions in both the regulatory and reimbursement areas do not disproportionately and unfairly impact U.S. medical technology manufacturers.

In addition, the Bush Administration’s efforts with Japan under the U.S.-Japan Partnership for Economic Growth are critical for achieving further market-opening measures in Japan’s health care market.

#### **Regulatory and Reimbursement Obstacles Impede Market Access in Asia-Pacific**

AdvaMed looks to the U.S. Government to pursue trade liberalization throughout the Asia-Pacific region, including in China, Taiwan and Korea. AdvaMed and its member companies have identified a number of real and potential barriers to doing business in these countries. While most of the barriers pertain to unnecessary or redundant regulatory requirements, there are increasing concerns in the areas of reimbursement and intellectual property. AdvaMed looks forward to working with Congress and the Administration to address the following barriers:

- A Lengthy and Costly Product Registration Process
- Redundancy in the Registration Process
- Antiquated Type-Testing Requirements
- Lack of Transparency in Decision-Making
- Inappropriate Price Controls
- Counterfeiting of Medical Technology
- Parallel Trade of Medical Technology

For the medical technology industry, the Bush Administration’s efforts with China under the U.S.-China Joint Commission on Commerce and Trade are critical for allowing U.S. medical technology firms broader access to the burgeoning Chinese health care market. The nascent U.S.-China Health Care Forum initiative, led by the U.S. Department of Commerce and supported by AdvaMed and other health care partners, holds great promise as another vehicle for addressing many of the trade-related and health policy-related barriers confronting U.S. medical technology firms in China.

China has quickly become an important market for the U.S. medical technology sector. While solid statistics are not widely available yet, AdvaMed estimates that the Chinese market for medical technology is \$3 billion and growing rapidly. It is on pace to surpass some of the key European markets for medical technology in a few short years. As global leaders, U.S. medical technology firms already account for a significant portion of sales in China and the position of these firms underscores the importance of ongoing efforts with the U.S. Government to open the Chinese market further.

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

Efforts to oversee foreign policies impacting the export and sale of U.S. medical technologies abroad should also focus on the European Union (EU). U.S. manufacturers of medical devices export nearly \$8.8 billion annually to the EU and maintain a \$1.2 billion trade surplus with the EU. Within the EU, Germany (\$20 billion) and France (\$8 billion) are the largest markets for medical devices. The industry will monitor the accession of ten new member states on May 1, 2004 to determine the impact on exports of medical devices to the European Union.

We appreciate congressional and Administration efforts on behalf of the industry in opposition to a European Commission draft directive that would up-classify all shoulder, hip and knee joint implants from Class IIB to Class III. This directive, which is guided by 1980s data and application of the precautionary principle, could affect thousands of devices, many of which are made by U.S. manufacturers, and would cost the average orthopedic company approximately 500,000 in fees alone for

the Notified Body reviews necessary to comply with the directive. Importantly, the decisionmaking process on this issue has been opaque, and has offered little opportunity for stakeholder input.

In addition, the industry looks forward to the implementation of the medical device annex of the U.S.-EU Mutual Recognition Agreement (MRA). Bringing health care products to the market faster is an important priority consistent with the protection of public health and the reduction of regulatory costs and redundancy. The medical device industry was disappointed that the MRA transition was not completed by the original December 2001 deadline, but we anticipate that the European Commission and the FDA will complete transition activities in the near future. We ask Congress to push for the full implementation of the medical device annex of the MRA.

Finally, as the health technology assessment (HTA) trend spreads throughout Europe, EU member states should be encouraged to adopt policies for their health technology assessment systems that are transparent, timely, and adequately account for the benefits of innovative technology. Industry should be allowed to participate in the HTA process.

**Utilize Multilateral, Regional, and Bilateral Forums to Eliminate Tariff and Nontariff Barriers to Trade that Unnecessarily Increase the Cost of Health Care**

We encourage congressional and Administration efforts to eliminate significant tariff and nontariff barriers to trade for medical technology maintained by many countries, particularly developing countries. Such barriers represent a self-imposed and unnecessary tax that substantially increases the cost of health care to their own citizens and delays the introduction of new, cost-effective, medically beneficial treatments. For example, the medical technology sector continues to face tariffs of 15–20% in Mercosur countries, 9–12% in Chile, Peru, and Colombia, and 6–15% in China.

The Doha Development Agenda offers an important opportunity for the United States to ensure global access to medical technology by securing global commitments on lowering tariff and nontariff barriers for the medical technology sector. We encourage the U.S. Government to build upon the zero-for-zero tariff agreement on medical technology achieved in the Uruguay round by expanding the product coverage and adding countries throughout Latin America and Asia as well. Moreover, elimination of nontariff barriers such as burdensome import licensing regulations and non-transparent government procurement policies will help developing countries ensure patient access to lifesaving medical technologies.

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

We commend the WTO's recent efforts to ensure global access to medicines and medical products. While all economies seek to provide high quality, cost effective health care products and services to their citizens, they should also ensure timely access to state-of-the-art, life-saving equipment and implement compliance procedures that are efficient and effective. To further expand patient access to safe and effective medical devices and ensure cost effective regulatory compliance, USTR should seek to ensure that economies around the world make their policies and practices conform to the relevant and appropriate international trading rules established by the World Trade Organization (WTO).

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

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

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

- Establish clear and transparent rules for decisionmaking;

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

The medical technology industry is committed to working with Congress and the Administration on upcoming trade policies and agreements to ensure patients throughout the world have access to medical products.

### Conclusion

AdvaMed appreciates the shared commitment by the President and the Congress to expand international trade opportunities and encourage global trade liberalization. We look to the President and his Administration to aggressively combat barriers to trade throughout the globe, especially in Japan. AdvaMed is fully prepared to work with the President, USTR Ambassador Zoellick, the Department of Commerce, and the Congress to monitor, enforce and advance multilateral, regional and bilateral trade agreements, particularly with our key trading partners.

---

Africa Growth and Opportunity Act Civil Society Network  
Washington, D.C. 20006  
*August 12, 2004*

Honorable William Thomas  
Chairman, Ways and Means Committee  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Thomas,

The AGOA Civil Society Network—a nonpartisan collective of civil society groups including NGOs, trade unions and private sector representatives from the U.S. and Africa, would like to extend our full support of the AGOA III bills (S. 1900 and H.R. 3572) currently under review in the House and Senate. Many amendments in the bill will afford Africa with an opportunity to participate in fruitful trade initiatives with the U.S. and is a healthy counterpart to effectively sustaining human rights initiatives that are guided by the U.S. and other friends of Africa.

We believe that both versions of the bill under review in Congress include a number of key amendments that are to the benefit of African and U.S. businesses wishing to participate in free and transparent trade. As we will describe below, there are also a number of amendments that the AGOA Civil Society Network believes should be included in future formulations of the bill.

As the bills currently under review in the House indicate, the extension of third country fabric provisions is crucial to the sustenance of AGOA. To allow this provision to expire or to leave the decision of whether it will expire or not waning a suspended amount of time is poisonous to the lifeblood of the successful investments that have been made on the ground in Africa. Many investors are ready to pack up and leave the thousands of Africans that have been able to secure jobs, and an extension is vital to helping them keep those jobs so that African economies are able to compete with other world economies successfully.

We also believe that mechanisms should be put in place under the bill to ensure market access and competitiveness of AGOA-eligible countries beyond the phasing out of the country quota under the World Trade Organization agreement on textiles and apparel. The United States, EU and Japan should also collectively eliminate subsidies, quotas and all forms of trade protection, and allow the laws of comparative advantage in a free market system to create a level playing field that can allow for African participation.

AGOA should also be expanded to encourage African countries to diversify and look beyond petroleum and other goods that dominate AGOA export. There is a need for expansion particularly in the areas of agriculture, light industry, information technology, tourism, the service and technology sectors and logistics. Any expertise and technological skills that might enable AGOA-eligible countries (as well as other African countries with an interest in AGOA) to meet value-added requirements for agricultural products should be provided.

Along with the removal of restrictions on the Overseas Private Investment Corporation (OPIC) and EXIM Bank on funding textile/apparel and agricultural projects in Africa that is present in both versions of the AGOA bill, the AGOA Civil Society

Network believes that SME development should be addressed and encouraged. AGOA must address the lack of access to credit suffered by supporting institutions that create internationally recognized banking and crediting opportunities to small- and medium-sized enterprises in sub-Saharan Africa and the U.S. Such a focus would not only encourage business development and capacity building efforts on the ground, but would allow for a greater amount of tangible impact.

Though many of us are not U.S. voters, we would like you to keep us in mind in your formulation of the bill and during the deliberations on AGOA III that take place in Congress at both the Committee level and in the House Chambers with your fellow congressmen. AGOA III's encouragement of diverse private sector activity on the continent will greatly influence the creation of an environment that is conducive to free, transparent global trade with Africa. A successful AGOA will not only help to include Africa into the global economy, but will help to increase the standard of living of millions of Africans throughout the continent.

Sincerely,

The AGOA Civil Society Network

---

**Statement of American Cancer Society, American Heart Association, American Lung Association, Action on Smoking and Health, Campaign for Tobacco-Free Kids, and Essential Action**

This statement represents the views of the American Cancer Society, American Lung Association, Action on Smoking and Health, Campaign for Tobacco-Free Kids and Essential Action. We will focus our comments on the important relationship between U.S. tobacco trade policy and global public health.

For reasons detailed in these comments, we are deeply troubled by this Administration's policy of including tobacco products within the scope of free trade agreements despite strong evidence that this policy threatens sound tobacco control policies in the U.S. and abroad, stimulates higher smoking rates in low and middle income nations, and contributes to a major cause of preventable death in the world today. We believe there is an important oversight role for Congress to play to ensure that public health concerns take precedence over commercial interests in setting tobacco trade policy, and in ensuring that public health input is provided into the policymaking process through the Department of Health and Human Services and the public health community.

**Tobacco Products Are Uniquely Addictive and Lethal**

Tobacco use causes an estimated 4.9 million deaths per year worldwide.<sup>1</sup> While most preventable causes of death are expected to decline over time, tobacco-caused mortality is projected to double to 10 million deaths per year by 2025.<sup>2</sup> In all, tobacco is expected to claim about *one billion lives* during this century, a ten-fold increase over the last century.<sup>3</sup> This will constitute the largest avoidable loss of life in recorded history. The surging death toll is due to the powerfully addictive nature of tobacco products combined with the rapid and virtually unchecked spread of tobacco use to those nations least able to bear the staggering health care costs and lost productivity. By the 2020s, 70 percent of all deaths caused by tobacco will occur in developing nations.<sup>4</sup>

**The Role of International Trade Policy in the Global Epidemic of Tobacco Use**

Lower prices and increased availability and consumption of beneficial products—"goods" in a literal sense—are major goals of free trade and provide important justifications for free trade policies. The problem with tobacco products is that they are far from beneficial. Each additional increment of consumption causes additional suffering and death, as well as a net economic loss to the economy of the nation in

<sup>1</sup> Ezzati M, Lopez AD. Estimates of global mortality attributable to smoking in 2000. *Lancet*, 2003, 362:847–852.

<sup>2</sup> World Health Organization, Tobacco Free Initiative, "Why is tobacco a public health priority?" <http://www.who.int/entity/tobacco/resources/publications>.

<sup>3</sup> Peto R, Lopez A. *The Future Worldwide Effects of Current Smoking Patterns*, Imperial Cancer Research Fund, 2000, <http://www.ctsu.ox.ac.uk/pressreleases/50thAnniv/article.cfm>.

<sup>4</sup> World Health Organization, *World Health Report 1999* (Geneva: WHO, 1999).

which it is consumed and to the global economy.<sup>5</sup> This distinction between a beneficial product and a harmful one essentially turns the traditional presumption in favor of trade liberalization on its head with respect to tobacco products. Logically the presumption should be *against* actions that stimulate consumption of harmful products.<sup>6</sup>

Tobacco products are no exception to fundamental economic principles. Liberalization of trade in tobacco products does, in fact, stimulate higher levels of tobacco use in most nations. Econometric studies show that liberalization of trade in tobacco products has a significant stimulative effect on tobacco use in low income nations, a modest effect in middle income economies, and little effect in high income nations.<sup>7</sup> In large populations, even a modest impact of trade policies on smoking prevalence rates translates into entirely avoidable suffering and death on a massive scale. Given the projection that tobacco use will kill approximately one billion people over the course of this century, it is easy to see that any policies that raise global smoking prevalence rates by even a fraction of a percent will translate over time into millions of additional preventable deaths.

In addition to the impact of tariff reductions, which stimulate marketing and price competition and transform tobacco markets in other ways associated with higher smoking rates, the decision to include tobacco products in free trade agreements can result in unreasonable constraints on sound tobacco control policies. We are especially concerned about three areas:

**Intellectual property provisions.** U.S. tobacco companies have invoked intellectual property protections in trade agreements to oppose bans on the use of the misleading terms “mild” and “light,” in Europe and Canada, alleging that such prohibitions interfere with trademark-protected names that include such terms. They have also used trade agreements to challenge proposed health warning labels and ingredient disclosure laws in Thailand.

**Technical barriers to trade.** Tobacco companies have invoked technical barriers to trade provisions in trade agreements to protest bans on the use of the terms “mild” and “light,” arguing that they are not the least trade restrictive means to pursue the objective of ensuring that consumers are not misled into believing there is a health benefit to “mild” or “light” cigarettes. Technical barriers to trade provisions also could be used to challenge tobacco product content regulations and other tobacco control measures.

**Foreign investment protections.** Investment protections of the type included in the proposed Central America Free Trade Agreement (CAFTA) would give companies such as Philip Morris, BAT and Japan Tobacco standing to challenge directly national laws that they claim would result in an “indirect” expropriation of their property. Under similar provisions of NAFTA, Philip Morris already has suggested that a Canadian ban on “light” and “mild” would amount to an expropriation of its trademark on products such as Benson & Hedges Lights and Rothmans Extra Light. We believe it would be disastrous to provide tobacco companies with the ability to directly challenge national or subnational tobacco control laws in an investment agreement.

#### **U.S. Law Recognizes Unique Health Concerns Raised by Tobacco Trade Policies**

As the conflict between the goals of promoting trade in tobacco products and reducing tobacco use has become clear, consensus has grown that concern for human health should take precedence over commercial interests in policy decisions. This is

<sup>5</sup>Barnum, H. “The Economic Burden of the Global Trade in Tobacco,” *Tobacco Control*, 1994, 3:358–361.

<sup>6</sup>The practical effect of reversing the presumption in favor of free trade in tobacco products would not be to condone unjustified discrimination in tobacco product trade, but to make clear that, with respect to trade in tobacco products, protecting public health is of paramount importance. Nations would remain free to attack discriminatory tobacco trade practices provided that they could demonstrate that doing so would not stimulate higher rates of tobacco use.

<sup>7</sup>See, e.g., Taylor A, Chaloupka FJ, Guindon E, Corbett M. “The impact of trade liberalization on tobacco consumption,” Chapter 14 in: Jha P, Chaloupka FJ, editors. *Tobacco Control in Developing Countries*. Oxford: Oxford University Press, 2000; Chaloupka FJ, Laixuthai A. “U.S. Trade Policy and Cigarette Smoking in Asia.” National Bureau of Economic Research Working Paper No. 5543, 1996; Hsieh, CR, Hu, TW, Lin, CFJ. “The Demand for Cigarettes in Taiwan: Domestic Versus Imported Cigarettes,” *Contemporary Economic Policy*, 1999, 17(2):223–234; Bettcher, DW et al., “Confronting the Tobacco Epidemic in an Era of Trade Liberalization,” World Health Organization 2001, WHO/NMH/TFI/01.4, pp. 48–53. Review; Bettcher, DW, Yach, D, Guindon, E. “Global trade and health: key linkages and future challenges.” *Bulletin of the World Health Organ.* 2000, 78(4):521–34. Review.

reflected in the Doggett Amendment, an amendment to the Appropriations Act for the Departments of Commerce, State and Justice, the Judiciary and Related Agencies, originally passed in 1997 and renewed in similar form annually since then. The Doggett Amendment forbids the use of appropriated funds “to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.”<sup>8</sup>

The policy embodied in the Doggett Amendment was adopted and expanded upon by an Executive Order that applies to all government agencies. Significantly, the Executive Order also requires that the Department of Health and Human Services “advise the USTR, and other interested Federal agencies, of the potential public health impact of any tobacco-related trade action that is under consideration.”<sup>9</sup>

### **Recent Tobacco Trade Policy Decisions Do Not Reflect Public Health Input**

Despite the Executive Order requiring advice by HHS regarding the potential health impact of any tobacco trade-related policy decisions, tobacco products have been routinely included in free trade agreements negotiated by this Administration. There has been no public discussion or disclosure of the public health implications of this policy. It is not clear what advice, if any, HHS has provided to USTR, or whether HHS has been provided with a meaningful opportunity to provide public health input into the policymaking process. We are not aware of any assessments or reviews by HHS of the potential health impact of recent tobacco trade policy decisions. Such assessments would be an essential step in providing meaningful input to the policymaking process.

### **Recommendations**

1. The U.S. Government should adopt the position that tobacco products should be excluded from the scope of tariff and nontariff provisions of free trade agreements in order to protect public health. This position will protect U.S. and global public health, since trade agreements could be used to undermine U.S. tobacco control policies as well as policies in other nations. The United States regularly excludes products from the scope of trade agreements for economic policy reasons. The case for excluding tobacco products for health and humanitarian reasons is much more compelling and would be readily agreed to by most trading partners.
2. Due to the vital public health issues involved, tobacco trade policy decisions should be made transparently and with full involvement by HHS and the public health community. No action in this area should be taken without thorough assessment and consideration of the potential public health impact.
3. Congressional involvement and oversight in this area is critically important. We urge the Committee and others in Congress to exercise careful oversight to ensure that global health concerns are given priority over commercial interests in U.S. tobacco trade policy.

### **Conclusion**

At the May 2003 World Health Assembly the United States joined all other member nations in supporting adoption of the Framework Convention on Tobacco Control, which recognizes “that the spread of the tobacco epidemic is a global problem with serious consequences for public health that calls for the widest possible international cooperation and the participation of all countries in an effective, appropriate and comprehensive international response.” We believe that future trade policy should be crafted consistent with the letter and spirit of the FCTC and should ensure that trade agreements do not undermine life-saving tobacco control measures.

We would like to thank the Committee for holding this hearing and for the opportunity to present the views of the public health community on this important topic.

---

<sup>8</sup>Pub. L. 105–119, Section 618.

Doctors Without Borders  
 333 Seventh Avenue, 2nd Floor  
 New York, New York 10001-5004  
*March 24, 2004*

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

Dear Members of the House Committee on Ways and Means,

I am pleased to submit these comments to the Senate Finance Committee on behalf of Doctors Without Borders/Médecins Sans Frontières (MSF) in response to the Committee's hearing regarding the Administration's trade agenda held on March 9, 2004. These comments focus entirely on the potential negative consequences of the Administration's trade agenda on access to essential medicines. MSF is deeply concerned that provision sought by the Office of the United States Trade Representative (USTR) will undermine the historic World Trade Organization (WTO) Ministerial Declaration on the TRIPS Agreement and Public Health, resulting in devastating consequences in terms of access to medicines for millions of people in the Andean region with HIV/AIDS and other communicable diseases throughout the developing world.

We call upon USTR to abandon immediately "TRIPS-plus" negotiating objectives and negotiate regional and bilateral free trade agreements in keeping with the spirit and letter of the Doha Declaration, which the U.S. adopted along with all other WTO members in November 2001. In order to ensure that countries, including the U.S., uphold that commitment in good faith, we must recommend that intellectual property provisions be excluded from these agreements altogether.

Background: MSF

MSF is an independent, international medical humanitarian organization that delivers emergency aid to victims of armed conflict, epidemics, natural and man-made disasters, and to others who lack health care due to social or geographic marginalization. We operate over 400 medical relief projects in over 75 countries throughout the world. The organization was awarded the 1999 Nobel Peace Prize. MSF currently has a field presence in numerous countries included in regional or bilateral agreements with the U.S., including Bolivia, Brazil, Colombia, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Morocco, Nicaragua, Peru, South Africa, and Thailand. Teams provide medical care for people with HIV/AIDS, malaria, tuberculosis, Chagas' diseases, and other diseases, as well as primary care, maternal/child health care, and other services for displaced, homeless, and vulnerable people.

Patents, Prices and Patients: The Example of HIV/AIDS

According to UNAIDS, there are currently over 40 million people living with HIV/AIDS in the world; six million of whom clinically require antiretroviral therapy now.<sup>1</sup> The AIDS epidemic is having major consequences for infectious diseases in the region, such as tuberculosis. It is estimated that 95% of the people who require immediate treatment for HIV/AIDS do not have access to antiretroviral therapy—which, in wealthy countries such as the U.S., has dramatically extended and improved the lives of people living with HIV/AIDS, reducing AIDS-related deaths by over 70%<sup>2</sup>—simply because they, and the health systems that serve them, cannot afford it.

Just three years ago, the average cost of a triple combination of antiretrovirals was between \$10,000–\$15,000 per patient per year, and today it is available for as little as \$140 per patient per year under certain circumstances. These price reductions were the direct result of international public pressure and generic competition, particularly from Indian and Brazilian manufacturers. Generic competition was possible as a result of the lack of patent protection for pharmaceutical products in those countries. In the coming years, with the full implementation of the TRIPS Agreement, such competition will not be possible due to the granting of patents on phar-

<sup>1</sup> [http://www.unaids.org/wad/2003/Epiupdate2003\\_en/Epi03\\_07\\_en.htm#P180\\_52121](http://www.unaids.org/wad/2003/Epiupdate2003_en/Epi03_07_en.htm#P180_52121)—Accessed March 18, 2004

<sup>2</sup> According to the U.S. National Institute of Allergies and Infectious Diseases (at the National Institutes of Health) and the Centers for Disease Control and Prevention, the estimated annual number of AIDS-related deaths in the United States fell approximately 70 percent from 1995 to 1999, from 51,117 deaths in 1995 to 15,245 deaths in 2000. This drop is attributed primarily to the introduction of highly active antiretroviral therapy (HAART). Centers for Disease Control and Prevention (CDC). HIV/AIDS Surveillance Report 2001; 13 (no. 1):1–41.

maceuticals in key developing countries with manufacturing capacity, unless flexible conditions for granting compulsory licenses are available, as per the Doha Declaration, and compulsory licenses are routinely issued to address public health concerns. Compulsory licensing of pharmaceuticals is one of the most important policy tools for ensuring generic competition.

The case of AIDS drug prices helps illustrate what is to come when all new pharmaceutical products will be patent protected beginning in 2005, when most WTO members with pharmaceutical capacity will implement the TRIPS Agreement.<sup>3</sup> For all these new medicines, generic competition will be stamped out. As a consequence, prices of new medicines will inevitably shoot up, far beyond the means of patients in need in poor countries. The lever that has brought the price of AIDS drugs down will be lost. If the U.S. regional and bilateral agreements create a system that blocks use of equivalent but cheaper drugs, it will be a catastrophe for our patients and for all people in the region, because the difference in price can be the difference between life and death.

#### MSF Comments to USTR on TRIPS-Plus Provisions

On numerous occasions, MSF has raised concerns publicly about the U.S. insistence on including IP provisions that far exceed requirements set forth in the TRIPS Agreement, and directly undermine the Doha Declaration, which clearly recognized concerns about the effects of patents on prices and stated unambiguously that TRIPS should be interpreted and implemented in a manner “supportive of WTO members’ right to protect public health and, in particular, to promote access to medicines for all.”<sup>4</sup> MSF has called repeatedly on USTR to ensure that the Doha Declaration remains a ceiling for trade negotiations on IP as they relate to public health technologies, and, as a logical consequence, to exclude IP from bilateral and regional trade agreements altogether.

The U.S. objective of restricting generic competition and undermining the Doha Declaration is evident in U.S. negotiating objectives for the Free Trade Area of the Americas,<sup>5</sup> USTR’s fact sheet on CAFTA,<sup>6</sup> and the testimony submitted to the Senate Finance Committee<sup>7</sup> regarding the Administration’s Trade Agenda. MSF submitted official comments regarding the Second Draft Consolidated Texts of the FTAA (Chapter on Intellectual Property Rights)<sup>8</sup> to USTR on February 28, 2003, in accordance with the official procedures.<sup>9</sup> We also submitted an open letter to USTR concerning the IP provisions contained in CAFTA.<sup>10</sup> Specifically, we have raised concerns about past U.S. proposals that would:

1. Restrict the use of compulsory licenses to overcome barriers to access created by patents;
2. Confer abusive powers to regulatory authorities to enforce patents; and
3. Grant exclusive rights over pharmaceutical test data
4. Extend patent terms on pharmaceuticals beyond the 20 years required in TRIPS;

We have elaborated below upon provisions commonly included in U.S. free trade agreements and their potentially harmful impact on access to essential medicines.

But first, it is important to point out that the text of many regional and bilateral agreements pursued by the U.S., including CAFTA, U.S.-Morocco FTA, and U.S.-Thailand FTA, were not made available during, and sometimes after, negotiations. In the case of the FTAA, despite numerous statements by negotiators indicating the importance of carrying out negotiations in a transparent manner, the text of the third draft is still almost entirely in brackets, and all footnotes have been omitted from the draft text, making it impossible to know which proposals are attributed to which governments. We therefore urge USTR to make the text of U.S. regional and bilateral free trade agreements available to the public throughout negotiations

<sup>3</sup>Note that least-developed countries (LDCs) do not have to grant or enforce patents on pharmaceutical products before 2016, as per paragraph 7 of the WTO Declaration on the TRIPS Agreement and Public Health, available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_trips\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm)

<sup>4</sup>To view the full Declaration, see [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_trips\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm)

<sup>5</sup><http://www.ustr.gov/regions/whemisphere/intel.pdf>—Accessed March 18, 2004

<sup>6</sup><http://www.ustr.gov/new/fta/Cafta/2003-12-17-factsheet.pdf>—Accessed March 18, 2004

<sup>7</sup><http://finance.senate.gov/hearings/testimony/2004test/030904rzttest.pdf>—Accessed on March 18, 2004

<sup>8</sup>Available at [http://www.ftaa-alca.org/ftaadraft/eng/ngip\\_e.doc](http://www.ftaa-alca.org/ftaadraft/eng/ngip_e.doc)

<sup>9</sup>Available at <http://www.accessmed-msf.org/prod/publications.asp?scntid=4320031157162&contenttype=PARA&>

<sup>10</sup><http://www.cptech.org/ip/health/trade/cafta/msf10152003.html>—Accessed on March 18, 2004

in order to increase the level of transparency and greatly enhance efforts to engage in an informed public debate about crucial issues in the Agreement.

## Comments on Common Intellectual Property Provisions Included in U.S. Free Trade Agreements

### 1. Restrictions on the use of compulsory licenses

Compulsory licenses for pharmaceuticals are one of the most important tools for ensuring generic competition and are commonly used by industrialized countries such as the U.S. They will be especially important after 2005, when all WTO countries with pharmaceutical manufacturing capacity, except for least developed countries, will provide patents for pharmaceutical products and processes. After this date, generic production will be almost entirely dependant upon compulsory licensing, meaning that flexible conditions for granting compulsory licenses must be in place in order to ensure the continued supply of affordable generic medicines.

A compulsory license is a public authorization, consistent with TRIPS, to ignore a patent that is in force in a country. However, it is of no use if the drug regulatory authority cannot register any generic drug during the life of the patent. This is what USTR has managed to negotiate in almost all previously signed FTAs (such with Australia, CAFTA, Chile, Morocco and Singapore).<sup>11</sup> By barring drug regulatory authorities from registering generic versions of drugs under patent, the U.S. is blocking the ability of countries to make use of compulsory licenses to ensure access to medicines for their people.

We urge USTR to refrain from including provisions that will restrict the use of compulsory licenses in future regional and bilateral free trade agreements, in order to preserve the full use of this important safeguard for low- and middle-income countries.

### 2. Abusive powers to drug regulatory authorities (DRAs) to enforce patents

As explained above, provisions in numerous free trade agreements negotiated by the U.S. use drug regulatory authorities to help enforce patents and prevent generic competition. This is clearly going beyond the traditional role and functions of drug regulatory authorities, which are limited to checking the safety, efficacy and quality of medicines authorized for use in human beings. In a number of U.S. FTAs, DRAs are requested to refuse the marketing of quality generic medicines if the original medicine is patented in a given country.<sup>12</sup> This effectively means that drug regulatory authorities will function as patent enforcement agencies and will potentially result in the enforcement of “bad quality” patents, which would be revoked if challenged before courts.

We urge USTR not to include a similar provision in other U.S. FTAs, as it can only serve to protect invalid patent claims, since valid claims receive adequate protection through normal judicial processes.<sup>13</sup>

### 3. Exclusive rights over pharmaceutical test data

The TRIPS Agreement only requires WTO members to *protect* clinical information that is generally required by drug regulatory authorities to approve/register the marketing of a new medicine (“undisclosed test or other data”) against “unfair commercial use” and “disclosure” in the framework of unfair competition law. However, many U.S. FTAs<sup>14</sup> clearly go beyond this minimum requirement and confer exclusive rights on these pharmaceutical test data for a period of five years, from the date of approval of the original medicine in the developing country. Some agreements go even further by conferring data exclusivity also in cases where the original

<sup>11</sup> Article 15.10 CAFTA—*Measures Related to Certain Regulated Products*, paragraph 3.a; Article 16.8 U.S.-Singapore FTA—*Certain Regulated Products*, paragraph 4.(a)(b); Article 17.10 U.S.-Chile FTA—*Measures Related to Certain Regulated Products*, paragraph 2.(b)(c); USTR fact sheet on U.S.-Morocco FTA available at [www.ustr.gov/new/fta/Morocco/2004-03-02-factsheet.pdf](http://www.ustr.gov/new/fta/Morocco/2004-03-02-factsheet.pdf); U.S.-Australia FTA *Chapter 17* available at [www.ustr.gov/new/fta/Australia/text/text17.pdf](http://www.ustr.gov/new/fta/Australia/text/text17.pdf).

<sup>12</sup> Article 15.10 CAFTA—*Measures Related to Certain Regulated Products*, paragraph 3.a; Article 16.8 U.S.-Singapore FTA—*Certain Regulated Products*, paragraph 4.(a)(b); Article 17.10 U.S.-Chile FTA—*Measures Related to Certain Regulated Products*, paragraph 2.(b)(c).

<sup>13</sup> See also Essential Action comments in response to USTR request for public comment on FTAA draft text, August 22, 2001, Rob Weissman—available at <http://lists.essential.org/pipermail/pharm-policy/2001-August/001422.html>

<sup>14</sup> Article 15.10 CAFTA—*Measures Related to Certain Regulated Products*, paragraph 1.(a); Article 16.8 U.S.-Singapore FTA—*Certain Regulated Products*, paragraph 1; Article 17.10 of U.S.-Chile FTA—*Measures Related to Certain Regulated Products*, paragraph 1.

medicine is not registered in the developing country.<sup>15</sup> Under these conditions, market exclusivity could last for up to ten years.

Such proposals are clearly aimed at preventing generic competition of medicines, which are not patented in some countries as a result of pre-TRIPS legislation, and result in a de facto market monopoly. In cases where the original medicine is not registered in the developing country, which may be the case for countries that do not constitute an attractive market for the original manufacturer, the prevention of generic competition will lead to a complete lack of access to medicines, at any cost, for up to ten years.

We therefore urge USTR not to pursue these unacceptable provisions that contradict the letter and spirit of the Doha Declaration.

#### 4. Extensions of patent terms beyond the 20-year minimum in TRIPS

The TRIPS Agreement obligates WTO members to provide patent protection on medicines for 20 years. However, the U.S. has been pushing for patent extension to “compensate” for delays either in drug registration or in patent granting. These are unjustifiable extensions of patent terms. Extensive literature<sup>16</sup> has shown that twenty-year patents are more than enough—indeed they may be considered excessive—to allow the pharmaceutical industry to recoup investments made in research and development, if such investments were made.

Patent extensions are not required by the TRIPS Agreement and a WTO panel expressly stated that extensions to compensate for drug registration delays do not constitute a “legitimate interest” of patent owners.<sup>17</sup> From a public health perspective, it is critically important that the terms of pharmaceutical patents not exceed what is required in TRIPS and not allow for possible extensions. Extending patent terms on pharmaceuticals beyond the 20 years required in TRIPS would be detrimental to the health of people in developing countries, including those in the Andean region, as it would unnecessarily delay generic competition.

It is well known that patent offices worldwide, especially small ones with limited resources, are overwhelmed with an increasing number of patent applications. Patent extension to compensate for delays in the granting of patents will therefore essentially penalize small patent offices, and may result in the granting of invalid patents for lack of necessary time and expertise for examination.

We therefore urge USTR to refrain from seeking such measures in upcoming regional and bilateral agreements.

#### Conclusion

Recently negotiated trade agreements by the U.S., including CAFTA, U.S.-Chile, and U.S. Singapore, as well as the U.S. negotiating objectives for FTAA demonstrate its intent to strengthen intellectual property regulations beyond what is required in TRIPS, and reduce the extent of TRIPS safeguards to the detriment of public health. If the free trade agreements create a system that undermines and contradicts the Doha Declaration, blocking use of affordable generic medicines, it will be a catastrophe for our patients and millions of others in the developing world with HIV/AIDS and other diseases.

One hundred and forty two countries, including the U.S., negotiated and adopted the Doha Declaration, firmly placing public health needs above commercial interests and offering much needed clarifications about key flexibilities in the TRIPS Agreement related to public health. We have repeatedly stated that the Doha Declaration must remain a ceiling for international trade negotiations on intellectual property as they relate to public health technologies and called upon the U.S. Government to ensure that its regional and bilateral free trade agreements do not renege on the historic agreement reached in Doha.

The TRIPS Agreement already establishes comprehensive standards for IP protection in WTO members, which protect sufficiently the interests of IP holders. The promise of Doha is that the TRIPS Agreement can and should be interpreted and

<sup>15</sup>The original manufacturer is given five years, from the date of approval in the original country, to apply for registration in the developing country and get a new five-year period of data exclusivity, resulting in a possible total of 10 years of data exclusivity in the developing country. See Article 15.10 CAFTA—*Measures Related to Certain Regulated Products*, paragraph 1.(b)

<sup>16</sup>MSF and Drugs for Neglected Diseases Working Group (now Neglected Diseases Working Group), *Fatal Imbalance*, September 2001 available at [www.accessmed-msf.org/documents/fatal\\_imbalance\\_2001.pdf](http://www.accessmed-msf.org/documents/fatal_imbalance_2001.pdf) and The Report of Commission on Intellectual Property Rights, September 2002, available at [http://www.iprcommission.org/papers/text/final\\_report/reportweb\\_final.htm](http://www.iprcommission.org/papers/text/final_report/reportweb_final.htm)

<sup>17</sup>Canada—Patent protection of pharmaceutical products—Complaint by the European Communities and their member states (WT/DS114/R).

implemented in a manner “supportive of WTO members’ right to protect public health and, in particular, to promote access to medicines for all.”<sup>18</sup> Regional and bilateral U.S. free trade agreements threaten to make it impossible for countries to exercise the rights re-confirmed in Doha.

As a medical humanitarian organization, we cannot accept the subordination of the health needs of our patients and millions of others to U.S. trade interests. In order to ensure the protection of public health and the promotion of access to medicines for all, we therefore must recommend that intellectual property provisions be excluded from U.S. regional and bilateral free trade agreements altogether.

Sincerely,

Nicolas de Torrente  
*Executive Director*

---

### Statement of Diane Johnson, Tyler, Texas

The classical free trade model shows how high-wage nations and low-wage nations can trade with each other for mutual benefit through the principal of comparative advantage. [Voluntary trade *should* be mutually beneficial because it’s voluntary.] But the basic model does not account for government policies that encourage major movements of labor (immigration) and investment. We should never underestimate the power of misapplied government to create a ghost town or impoverish its people.

The question is: If hi-tech jobs, manufacturing jobs, service jobs, and resource industry jobs are shifted abroad, what will be left for Americans to produce so that they can purchase in the world economy and enjoy a rising standard of living (or even maintain where they are)? When the plans of the globalists [link] are understood, the answer is grim. They have targeted the American middle class [link] for extinction.

The promised help for the less fortunate throughout Latin America is also a fraud.

The Mexicans would rather be in their country but due to the failure of NAFTA they are pouring over the border to drain our system of its resources of social services, medical, and law enforcement.

Do the people of this nation no longer have a voice in the trade policies with the fact we have become the victims of a trade deficit of over 7 trillion? With this comes the destruction of the middle class.

---

### Statement of National Electrical Manufacturers Association, Arlington, Virginia

#### Highlights

Worldwide **tariff elimination** for all NEMA products

Negotiate and ratify **free trade agreements** (bilateral, regional and multilateral) that further open commerce in electrical goods while upholding **NEMA principles** (*see below right*)

Help member companies benefit from the emergence of **China** as a WTO member

Help member companies benefit from emerging commercial opportunities in **Iraq**

Minimize European Union penalties on electrical goods stemming from the **FSC/ETI** dispute and other issues

Build on 2002 U.S.-EU Principles of Regulatory Cooperation to address various **European regulatory proposals** such as those relating to Chemicals and Energy-Using-Products (“EuP”)

Ensure that **prospective WTO members** such as **Russia** and **Saudi Arabia** comply with existing international agreements relating to technical barriers

Recognize that **Supplier’s Declaration of Conformity** and **Third-Party Certification** are separate, valid solutions for market conformity assessment needs

Ensure that all parties to the **NAFTA** comply with their **commitments**

---

<sup>18</sup>To view the full Declaration, see [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_trips\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm)

Continue technical exchanges with **APEC** standards officials

Revise **“Buy America”** procurement regulations in line with international commercial realities

Secure **adequate USG resources** for negotiations, monitoring, enforcement and overseas presence

Reform **economic sanctions**

### **2003 Success Stories**

- Won three-year Commerce Dept. award of \$387,000 to assist establishment of NEMA presence in China
- Successfully lobbied Administration and Congress for withdrawal of foreign steel tariff program, emphasizing damage done to the U.S. electro-industry
- Worked with European industry counterparts to greatly reduce number of NEMA member products targeted by EU penalties stemming from the FSC dispute
- Testified before the House Ways and Means Committee on U.S.-China economic relations
- Supported congressional approval of U.S.-Chile and U.S.-Singapore FTAs, after ensuring that both involve tariff elimination for NEMA products while not featuring Mutual Recognition Agreements (MRAs) for unregulated electrical products
- Succeeded in getting electrical and energy sector tariff elimination to the forefront of Washington’s WTO and FTAA planks

### **NEMA Principles for FTAs**

- Immediate Tariff Elimination
- No Mutual Recognition Agreements (MRAs) For Non-Federally-Regulated Products
- Energy Services Liberalization
- Openness and Transparency in Government Procurement
- Protection of Intellectual Property Rights
- Reduction in Technical Barriers to Trade (TBTs) and Compliance with all World Trade Organization (WTO) TBT Agreement Requirements
- Inclusive Definition of “International Standards”
- Market-Driven Standards and Conformity Assessment
- Effective Monitoring and Enforcement Mechanisms
- Free Trade Benefits Not Unnecessarily Encumbered By Labor Or Environmental Provisions
- As Many Market Opening Measures As Possible

---

### Worldwide Tariff Elimination for All NEMA Products

**Objectives:** The worldwide elimination of tariffs on electrical products is a basic NEMA goal. We are founding members of the Zero Tariff Coalition, and earlier played active roles in pushing for the APEC EVSL and ATL initiatives. We therefore urge the U.S. to pursue tariff elimination for electrical products in all fora, including through sectoral talks under the World Trade Organization “Doha Development Agenda” (DDA) round of negotiations, and through regional and bilateral negotiations. WTO members should agree to implement so-called “zero-for-zero” agreements to eliminate tariffs on electrical products as soon as possible, preferably on an early provisional basis with immediate effect until these “Free” tariff rates are bound into the DDA round’s final concluding agreement.

We thank the U.S. Government for stressing electrical and energy sector tariff elimination in the WTO negotiations and applaud WTO Non-Agricultural Market Access negotiations Chairman Girard for making tariff elimination in these sectors a top priority in his May 2003 negotiating draft.

NEMA also urges the U.S. to push for completion of the second phase of the Information Technology Agreement (known as “ITA-2”), which would eliminate tariffs on a wide range of IT items, including some NEMA products. NEMA also supports continued efforts by U.S. officials to expand the membership of the existing ITA.

**Benefits:** While U.S. electrical exports have been generally growing around the world over the last ten years, they have increased most dramatically in two instances where tariffs were eliminated: (1) to Mexico since the NAFTA agreement came into being; and (2) for medical devices worldwide following the WTO Uruguay

Round medical devices sectoral zero-for-zero tariff elimination agreement. We would like to see these stories emulated elsewhere; they don't just benefit our companies, they serve to make the best, most price efficient products available to consumers and companies in other countries.

Negotiate and Ratify Free Trade Agreements (Bilateral, Regional and Multilateral)  
that Further Open Commerce in Electrical Goods  
While Upholding NEMA Principles

**Free Trade Agreements:** NEMA lobbied long and hard for Trade Promotion Authority, as well as the Chile and Singapore free trade agreements, and we now urge Congress to quickly ratify new bilateral FTAs as they are completed.

Specifically, NEMA urges Congress to move quickly to approve the free trade agreements with Australia, Morocco and Central America (CAFTA) this year. The 90-day review period required under the Trade Act of 2002 and the realities of this year's political calendar provide a small window for Congress to act favorably on these FTAs, which feature immediate tariff elimination for most NEMA products and other beneficial provisions for our industry. NEMA will be an active member of the U.S. business coalitions supporting congressional passage of these valuable agreements.

We also encourage the Administration to pursue NEMA priorities such as the following in the many other multilateral (as in the WTO Doha Development Agenda), regional (as in the Free Trade Area of the Americas), and "bilateral" (e.g., Southern Africa, Thailand, Bahrain, Panama, Colombia) negotiations it is pursuing:

- Tariff Elimination
- No Mutual Recognition Agreements (MRAs) For Non-Federally-Regulated Products
- Energy Services Liberalization
- Openness and Transparency in Government Procurement
- Protection of Intellectual Property Rights
- Reduction in Technical Barriers to Trade (TBTs) and Compliance with all World Trade Organization (WTO) TBT Agreement Requirements
- Inclusive Definition of "International Standards"
- Voluntary, Market-Driven Standards and Conformity Assessment
- Effective Monitoring and Enforcement Mechanisms
- Free Trade Benefits Not Unnecessarily Encumbered By Labor Or Environmental Provisions
- As Many Market Opening Measures As Possible

**Free Trade Area of the Americas (FTAA) Talks, Particularly the Negotiating Group on Market Access (NGMA):** NEMA applauds the U.S. Government for placing tariff elimination for electrical goods at the forefront of its 2003 initial FTAA negotiating offer and looks forward to continued leadership from the Administration and Congress. NEMA also encourages all FTAA countries to implement customs facilitation measures to which they have already agreed. Moreover, NEMA urges the U.S. to convince the Hemisphere that any standards and conformity assessment provisions included in an FTAA must mirror the WTO TBT Agreement. NEMA will continue to be engaged in the process, and exchange views with its industry counterpart associations throughout the Americas.

**Opposition to Mutual Recognition Agreements (MRAs):** In NEMA's view, the use of MRAs should be limited and considered only as an alternative for conformity assessment needs when applicable to federally regulated products such as medical devices. MRAs are not the answer to conformity assessment needs in non-regulated areas; if anything, they serve to encourage the creation of unnecessary product-related regulation. In this regard, while we strongly objected to the inclusion of an electrical safety annex in the U.S. MRA with the European Union a few years ago, we are pleased that the Administration has either excluded electrical products from subsequently negotiated MRAs or refused to sign on to any such accords that include them. We look forward to a continuation of that stance, and trust that the Administration will not entertain intergovernmental MRAs as a part of current free trade negotiations.

**"International" Standards:** In addition, the U.S. Government must continue working to dispel the misinterpretation that the use of the term "international standards" in the WTO TBT Agreement applies only to International Electrotechnical Commission (IEC), International Standards Organization (ISO) and International Telecommunications Union (ITU) standards. An interpretation should also

include widely-used norms such as some North American standards and safety installation practices that meet TBT guidelines. Misinterpretation can be disadvantageous to U.S. businesses' efforts to sell in global markets. Moreover, the importance of openness and transparency are lost when focus is placed only on those three standards bodies.

**Energy Services Liberalization:** NEMA supports liberalization of trade in energy services, in order to allow more people worldwide to enjoy high quality, affordable energy, and also to provide new opportunities to those energy service and electricity providers who use the equipment made and services provided by NEMA's members. Thus, NEMA is an active member of the industry coalition campaigning for the inclusion of commitments on energy services in the WTO's ongoing negotiations on services under the DDA. NEMA's primary perspective is that of the industry that provides the equipment and products used to build and maintain electrical energy systems, but many NEMA members are active providers of energy services as well. The liberalization that is good for utilities is also good for our manufacturers, service suppliers, and for the users of electricity. USTR has included energy services in its proposals for the WTO services negotiations and we look forward to continued efforts from the Bush Administration and support from Congress to secure commitments from our trading partners in this crucial area.

**Transparency in Government Procurement:** Around the world a lack of transparency in awarding contracts has served to unfairly exclude U.S. companies on countless occasions. It is time for U.S. entities to be able to compete on equal footing with other suppliers.

While the U.S. has been a leader of efforts to achieve a WTO agreement to make government procurement more open and transparent, WTO negotiations on this topic continue to be put off. We look forward to even more leadership from USTR and Congress in pursuing a WTO agreement.

NEMA also urges the Bush Administration to increase efforts to obtain full implementation and enforcement of all signatories to the 1999 OECD Anti-Bribery Convention and the 1997 OAS Convention on Corruption.

#### Help Member Companies Benefit From the Emergence of China as a WTO Member

In 2003, NEMA won a Commerce Department Market Development Cooperator Program award of \$387,000 in matching funds to support NEMA's China Initiative and the establishment of a Beijing presence to assist members and engage Chinese counterparts on matters of common interest.

**China:** NEMA members continue to be intensely interested in selling to, sourcing from and competing with China, having lobbied hard in recent years for Beijing's entry into the WTO. China (when combined with Hong Kong) is now our industry's 3rd largest trading partner after Mexico and Canada, and our number 3 export market as well. Our industry's sales to China have been growing rapidly over the last decade, now exceeding exports to all but a handful of countries. We are excited about future possibilities as the Middle Kingdom's economy continues to expand impressively—though our members' products continue to face a variety of tariff and non-tariff barriers.

In this respect, while Beijing committed upon entering the WTO to change its conformity assessment procedures so as to accord non-Chinese product "national treatment," for many electrical products it has also recently made erroneous moves to only accept goods built according to either Chinese national standards or those "international" standards developed and published by the International Electrotechnical Commission (IEC) and International Standards Organization (ISO). (ISO and IEC standards still frequently do not include products built to North America-based international requirements.) Up to now, the Chinese have also frequently accepted "North American" items that are compliant with the National Electrical Code (NEC).

Like many other sectors, the U.S. electrical industry also continues to have fundamental, ongoing concerns about intellectual property protection in the People's Republic. Our members continue to be victimized by vast and repeated trademark infringement. NEMA seeks continued strengthening of China's anti-counterfeiting measures and enforcement.

Minimize European Union Penalties on Electrical Goods  
Stemming From the FSC/ETI Dispute and Other Issues

**Foreign Sales Corporation/Extraterritorial Income (FSC/ETI) Dispute:** Working with European industry counterparts, in 2003 NEMA was able to greatly reduce the number of U.S. electrical goods that would be subject to European Union reprisals. Now the Association strongly encourages Congress to enact an appropriate WTO-compliant reform to the FSC/ETI program. NEMA does not take a position on the form this revision should take, except that the revised law should not undermine the financial position of the U.S. electrical sector.

**Suspension of the Electrical Safety Annex of the U.S.-EU MRA:** NEMA is pleased that the EU Commission has suspended implementation of the Annex, since our feeling is that it adds no value to the existing electrical safety systems in the U.S. and EU. The historical record of electrical safety, based on a private-sector-provulgated standards and conformity assessment system, is a good indicator that private-sector approaches are successful. The U.S. Occupational Safety and Health Administration (OSHA) NRTL (Nationally Recognized Testing Lab) Regulations call for OSHA accreditation of conformity assessment bodies (CABs). EU CABs can be accredited by OSHA for testing and certifying EU products to U.S. voluntary standards for OSHA recognition in the workplace. In 2001, OSHA granted NRTL-status to a German lab and thereby demonstrated the integrity of its approach, in which EU applicant CABs are given the same consideration as U.S. CABs. The Bush Administration should continue to maintain this OSHA NRTL independence while working with the EU to achieve better understanding of the U.S. position.

Rehabilitation and Reconstruction of Iraq's Electrical Infrastructure

**Iraq:** The U.S. electrical industry is very interested in providing products and services toward the reconstruction of Iraq in particular. The Association is pleased that Congress appropriated \$5.56 billion in 2003 for the reconstruction of electrical infrastructure and is working to help member companies here benefit from the attendant and emerging opportunities.

Build on 2002 U.S.-EU Principles of Regulatory Cooperation to Address Various  
European Regulatory Proposals such as Those Relating to  
Chemicals and End-use-Products (EuP)

**Regulatory Cooperation:** NEMA applauds the Bush Administration and the European Union for their 2002 agreement on Guidelines on Regulatory Cooperation and Transparency. We ask that pilot projects adopted for implementation of the Guidelines include the current EU regulatory initiatives relating to Chemicals and Energy-Using-Products. For reasons elaborated above, we do not think that electrical safety is an appropriate pilot project.

As we and other industry associations noted in a June 2001 paper for U.S. Trade Representative Robert Zoellick, and as noted in greater detail below, the EU is increasingly establishing regulations that are not justified by available technical evidence and by sound science and whose cost is not proportionate to intended consumer or environmental benefits. Typically, these regulations are developed with procedures that are not transparent to all stakeholders, including the U.S. electrical manufacturing industry and other trading partners. Further, stakeholders find they have no way to hold EU authorities accountable for the regulations produced.

Our industry is committed to working with the Administration, through engagement with the EU on questions of governance and regulatory disciplines, to find solutions to its systemic regulatory problems, ensuring justification, transparency and openness in development of directives, decisions and regulations, as well as "national treatment" and accountability in their application.

**Proposed EU Regulations Relating to Chemicals and Energy-Using-Products ("EuP"):** The European Union will continue work on these two proposals in 2004 despite serious opposition to the Chemicals proposal in particular from governments such as those of Germany, France and the United Kingdom. Despite some revisions, the Chemicals proposal as envisioned, known as REACH, would still have wide-ranging reporting implications for downstream users such as the electrical industry. The Energy-Using-Products directive, an earlier version of which was known as the Electrical and Electronic Equipment (EEE) proposal, would mandate eco-friendly design and require manufacturers to comply with a series of requirements throughout the life-cycle of a product. The planned EuP and its envisioned imple-

menting measures would feature product energy efficiency requirements, a concept NEMA has supported in proposed U.S. energy legislation.

We very much would like to avoid a repeat of 2002, during which the EU completed two new directives that create difficulties for U.S. electrical and electronics products by raising costs and allowing differing standards and procedures among the 15 member states. The first directive addresses take-back and recycling of Waste Electrical and Electronic Equipment (WEEE) while the second, known as the ROHS (Restriction on the Use of Hazardous Substances) directive, imposes bans on the use of certain substances currently used in manufacturing without providing sufficient basis for processes to identify any needed substitutes.

NEMA urges the Bush Administration and Congress to clearly identify these four measures as serious potential trade barriers and to seek an accommodation that would emphasize rational, cooperative and science-based measures as alternatives to broad-brush regulatory mandates.

**EU Initiatives Regarding Electromagnetic Fields (EMF):** In 1999, the EU Council issued a Recommendation that set EMF exposure limits for the general public over a range of frequencies. Although it has been acknowledged by some supporters that the limits include an excessive safety factor, EU member states may provide for a “higher level of protection” than in the Recommendations, and thus can adopt more strict exposure limits. Extensive U.S. Government research on extra low frequencies (ELF) has concluded that “the scientific evidence suggesting that ELF/EMF exposures poses any health risk is weak.” Similar conclusions have been reached by health risk studies in other countries.

A series of emerging EU initiatives also lacking sufficient justification pose additional EMF-related challenges to our industry: the aforementioned EuP proposal, a new proposal to regulate EMF exposure in the workplace only, and the revision of a safety directive for low voltage equipment (known as the LVD). Each of these will draw on the same excessive limits used in the Recommendation.

Manufacturers on both sides of the Atlantic have warned their authorities through the TABD process that EMF could become a major point of contention between the U.S. and Europe. NEMA has notified the Commerce Department that EU member state implementation of the EU Council EMF recommendations would create a substantial barrier to trade by restricting the free movement of goods, which would severely affect U.S. electrical manufacturing interests. In the face of political pressures to adopt EMF regulations, NEMA believes that standards for human exposure to ELF-EMF are only warranted if a credible scientific basis can be established for adverse effects. On that basis, NEMA supports the TABD position that EMF exposure standards must be harmonized globally. The U.S. Government must continue its efforts to work with the leaders in the EU Commission and in the member states to avoid another trans-Atlantic trade dispute over a sensitive issue.

#### Ensure that Prospective and Current WTO Members Comply with International Agreements Relating to Technical Barriers

**WTO Accessions:** NEMA also hopes for greater progress in bilateral negotiations with WTO accession candidates. Particularly with regards to **Russia**, NEMA hopes that standards and TBT fundamentals are not sacrificed for the sake of geopolitical expediency. In the case of **Saudi Arabia**, NEMA appreciates and urges continuing emphasis on standards and TBT issues in the ongoing negotiations. NEMA representatives have traveled to Riyadh and established an effective cooperative relationship with Saudi Arabian Standards Organization (SASO) officials. A former NEMA employee now serves in place as the U.S. standards attaché in Riyadh.

**WTO Technical Barriers to Trade (TBT) Agreement:** NEMA supports the concepts outlined in the WTO TBT Agreement and believes that all countries should implement, to the fullest extent, the obligations outlined there. These obligations include: standards development processes that are transparent and include participants from all interested parties; a conformity assessment system that upholds the principles of most-favored nation treatment (meaning equal treatment in all countries); and national treatment (meaning equal treatment of domestic and foreign products, as well as test laboratories conducting conformity assessment services) in the application of testing and certification procedures.

Recognize that Supplier's Declaration of Conformity and Third-Party Certification  
are Separate, Valid Solutions for Market Conformity Assessment Needs

**Let The Market Decide:** NEMA strongly believes that market conditions should determine the appropriate means of certifying that a product conforms to safety requirements, be it Third-Party Certification or Supplier's Declaration of Conformity (SDOC). In this respect, efforts to give SDOC legal standing should be resisted and kept in perspective, since such moves could have significant repercussions for the existing, successful U.S. electrical safety system—the latter being largely set up along Third Party lines.

Ensure that NAFTA Parties Comply with Their Commitments

**NAFTA Implementation Issues:** NEMA member sales to Mexico have boomed since the inception of the NAFTA, and most remaining Mexican tariffs on U.S. electrical products have reached zero in 2003. Also, with an office in Mexico City, NEMA is well positioned to work with U.S. authorities to monitor and influence the Mexican standards development process for electrical products, ensuring that Mexican norms do not act as barriers to U.S. products.

In this respect, NEMA is becoming very involved in the standards and conformity assessment processes in Mexico. The country is developing 20 to 30 new national electrical product standards (known as NOMs) each year and is moving in the direction of making all of its standards mandatory. The authorities do accept and take into account public comments on proposed standards; however, a document that has been substantially revised based on public comments may not be circulated for final public review prior to publication as a mandatory standard. Moreover, a standard adopted as mandatory can incorporate by reference another voluntary standard without any public review or comment opportunity. NEMA would welcome the Mexican standards authority's application of consistent and transparent procedures in the consideration and adoption of NOM standards, which directly affect market access for many proven commercial products.

Mexico was required under its NAFTA obligations starting January 1, 1998, to recognize conformity assessment bodies in the U.S. and Canada under terms no less favorable than those applied to Mexican conformity assessment bodies. However, so far no U.S. or Canadian conformity assessment bodies have been recognized by Mexico for conducting conformity assessment on most products that are exported from the U.S. and Canada to Mexico. Mexico has indicated that it is willing to conform to these obligations only when the Government of Mexico determines that there is additional capacity needed in conformity assessment services. This procedure does not meet the intent of Mexico's NAFTA obligations, serving to protect their conformity assessment bodies and Mexican manufacturers from fair competition from U.S. and Canadian exports into Mexico.

Continue Technical Exchanges with APEC Standards Officials

**APEC Standards:** NEMA is actively involved in bringing a greater understanding of conformity assessment alternative processes to the Asia-Pacific region. We have been presenters at two meetings of APEC's Sub-Committee on Standards and Conformity Assessment, and we have so far collaborated with the National Institute of Standards and Technology on two workshops for APEC member country representatives.

Revise "Buy America" Procurement Regulations in Line with  
International Commercial Realities

**"Buy America" Procurement Regulations:** U.S. Government "Buy America" restrictions on non-sensitive electrical products should be re-evaluated in the context of both the increasingly global economy and potential savings. By restricting access to the U.S. market, these restrictions also have the reciprocal effect of disadvantaging U.S. companies seeking to sell into foreign markets. The United States should consider entering into bilateral and regional agreements providing reciprocal access to government procurement in countries that are not members of the WTO Government Procurement Agreement.

Secure Adequate USG Resources for Negotiations, Monitoring, Enforcement and  
Overseas Presence

**Monitoring, Enforcement and Overseas Presence:** NEMA applauds the Administration and Congress for their successful efforts to bring **China** and **Taiwan** into the WTO. NEMA welcomes the opportunity to help our member companies take advantage of the market-opening entry of China and Taiwan into the rules-based international trading system and is working with USTR, the Commerce Department, and Congress to monitor and ensure compliance.

The U.S. Government needs to do more than simply reach favorable trade accords; it also needs to be vigilant in making sure that other countries live up to their commitments to foster openness, transparency and competition. In this regard, our view is that the Commerce Department's Standards Attache program should be expanded and fully funded. Likewise, we greatly appreciate the assistance provided by Foreign Commercial Service (FCS) offices abroad, and hope that FCS activities will receive ample support in FY 2004 and the years ahead.

With the support of a Market Development Cooperator Program (MDCP) grant from the Commerce Department, NEMA opened offices in Sao Paulo, Brazil and Mexico City, Mexico in 2000. The MDCP is an innovative public/private partnership whose grant budget should be expanded so that more organizations can enjoy its benefits. In 2003 NEMA won a second MDCP award in support of the Association's China initiative and to help support the establishment of a Beijing presence. NEMA looks forward to continuing its close cooperation with the Commerce Department on this new project.

NEMA applauds Congress' approval of a funding and manpower increase for the U.S. Trade Representative's Office and the International Trade Administration for FY 2004. Similarly, the Bush Administration and second session of the 108th Congress should maintain and enhance this generous increase in resources for the trade agencies, allowing them to even more effectively negotiate, monitor and enforce trade agreements.

Economic Sanctions

**Reform:** NEMA supports passage of legislation that would establish a more deliberative and disciplined framework for consideration and imposition of economic sanctions by Congress and the Executive Branch. In addition, existing economic sanctions should be reviewed to determine if their effectiveness justifies the costs to U.S. jobs and industries.

**About NEMA:**

The National Electrical Manufacturers Association is the largest trade association representing the interests of U.S. electrical industry manufacturers, whose worldwide annual sales of electrical products exceed \$120 billion. Its mission is to improve the competitiveness of member companies by providing high quality services that impact positively on standards, government regulation and market economics. Founded in 1926 and headquartered in Rosslyn, Virginia, its more than 400 member companies manufacture products used in the generation, transmission, distribution, control, and use of electricity. These products, by and large unregulated, are used in utility, industrial, commercial, institutional and residential installations. Through the years, electrical products built to standards that both have and continue to achieve international acceptance have effectively served the U.S. electrical infrastructure and maintained domestic electrical safety. The Association's Medical Products Division represents manufacturers of medical diagnostic imaging equipment including MRT, C-T, x-ray, ultrasound and nuclear products. NEMA members' annual shipments exceed \$100 billion in value.

**Statement of Student Global AIDS Campaign**

The Student Global AIDS Campaign (SGAC) is a national student-led organization dedicated to ending the global AIDS pandemic. We have chapters at over 65 colleges, high-schools and universities, across the U.S., and individual members at over 100 other schools.

SGAC was founded on the belief that AIDS is the crisis of our generation and that we will be judged by our response to it. We believe that AIDS is a political crisis and that students can fight effectively for solutions to the AIDS pandemic. Addition-

ally, we believe that we should stand in solidarity with young people abroad by supporting the work they do to fight AIDS on the ground.

The Student Global AIDS Campaign believes that people living with HIV/AIDS should not be denied treatment—especially because of artificially high patented prices. As such we denounce the current U.S. position of racking up intellectual property protection in developing nations.

There are serious doubts as to the appropriateness of high levels of intellectual property protection for developing nations. The United Kingdom Commission on Intellectual Property Rights, which was an unbiased assessment of the appropriate level of intellectual property in developing nations and included members of both civil society as well as the pharmaceutical industry, has clearly noted negative impact of high levels of protection.

It is important to consider the purpose behind patents. Patents are not a god-given right, but rather an attempt to bridge the societal trade-off between the desire for new inventions and the desire to make these inventions available to the public. The United States realized this during its own development. As the United States was industrializing, it made it nearly impossible for foreign firms or persons to obtain patents. Americans blatantly copied and sold European inventions. This copying process certainly was not appreciated by the European inventors, but the learning process from reverse engineering and imitation played an important role in ensuring that America industrialized quickly and efficiently.

Despite the argument advanced by some that patents are a necessary precursor to development, it seems that for countries that are still developing, a lack of IP may be more helpful to ensuring they reach the technology frontier and can more quickly contribute to the scientific community in the future. Therefore from such a view, IP protection does not contribute to development but is an indicator of it. Indeed, the United States as the most technologically advanced nation in the world now, finds it advantageous to erect high standards of protection, but this followed its.

It is therefore hypocritical of the United States to pressure developing nations to adopt higher standards of IP when historically while in the same position it blatantly disregarded such rights. In the long run both developing nations themselves and the United States would benefit from their development and stability. The harm of unnecessarily high patent protections may prevent developing nations from reaching this goal.

The introduction of the IPR chapter to trade agreements is a relatively new innovation. It was only under heavy pharmaceutical and movie industry lobbying that the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement was inserted into the WTO in 1994. Such an agreement does not belong in an organization that is dedicated to promoting the concept of free trade. By definition patents confer a temporary monopoly which is anti-competitive and raises prices for consumers.

Luckily the TRIPS agreement included flexibilities for members to protect their national health interests. TRIPS allows compulsory licensing which grants nations the right to break a patent under certain conditions. This is a right the United States Government has used liberally for many things that we believe are in our national interest. Unfortunately, even with the built in flexibilities of the TRIPS agreement developing nations are under a lot of pressure not to exercise these rights to treat their public health epidemics. In South Africa's instance, just the attempt to insert language that would have allowed for compulsory licensing brought a large amount of pressure from the pharmaceutical companies and the U.S. Government. There are 5 million people infected with HIV in South Africa—a staggering statistic by any standards. In order to provide treatment for all these people the government cannot afford to pay the brand name cost of \$15,000 per person per year for ARV therapy. Generic competition is the only reasonable option under such circumstances.

Ultimately it took activist pressure and the anthrax attacks before the U.S. allowed developing nations to put their public health before the rights of the IP protection granted to private pharmaceutical corporations. When the U.S. Government threatened to compulsory license Cipro, the treatment to anthrax, the developing nations forced her to sign onto the Doha Declaration on the TRIPS Agreement and Public Health. This Declaration which was unanimously agreed to by all WTO members stated among other clauses that:

- We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO

members' right to protect public health and, in particular, to promote access to medicines for all.

Furthermore, the U.S. Trade Act of 2002 directed the USTR to negotiate trade agreements consistent with the Doha Declaration on the TRIPS Agreement and Public Health and its mandate for countries to use flexibilities in patent rules to "protect public health and, in particular, to promote access to medicines for all."

But the intellectual property provisions of the U.S.-Central America Free Trade Agreement (CAFTA) contravene the directive of the Trade Act of 2002. CAFTA provisions require countries to adopt patent and related rules far more stringent than the requirements of the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). These provisions will delay the start of price-lowering generic competition in Central American countries, instead keeping drug prices high and out of reach for large numbers in Central America. If CAFTA is adopted, thousands of sick people will be forced to go without essential medicines that could significantly improve their quality of life or even save their lives.

Among the most troubling provisions of CAFTA are provisions that:

- Extend pharmaceutical patents beyond the 20 years required by the WTO (Articles 15.9.6 and 15.10.2).
- Establish special 5–10 year monopoly protections for pharmaceutical marketing approval data (Article 15.10.1). These monopolistic rules prevent generic firms from showing that their product is equivalent to already approved medicines and then relying on the safety and efficacy data submitted by the product's originator. Instead, the generic firms must either duplicate the costly and time-consuming tests—which no generic will be willing to do for the small Central American markets—or wait until the marketing monopoly protections expire. The result will be delays in generic competition for at least five years in the absence of patent barriers.
- Potentially work as effective prohibitions on compulsory licensing (Article 15.10.3). By its plain terms, CAFTA Article 15.10.3 appears to make the period of exclusivity for marketing approval co-extensive with the life of a patent. Thus, even if a country issued a compulsory license—authorizing generic competition for a product that remained on patent—generic firms would effectively be barred from the market, because they could not rely on the originator company's marketing approval data.
- Inhibit compulsory licensing through investment rules that threaten huge penalties if compulsory licensing is carried out in a way not compliant with CAFTA's intellectual property provisions (Articles 10.7, 10.16 and 10.26).
- The impact of these measures will be dire.
- There are more than 200,000 people with HIV/AIDS living in Central America. Four of the six countries in Latin America with the highest HIV/AIDS prevalence rates are in Central America, according to the World Bank.
- Generic competition can help these people stay alive, by lowering the cost of lifesaving medicines, and enabling them to get treatment, either in the public or private sector.
- But CAFTA rules will delay generic entry, for AIDS medicines as well as drugs to treat other serious illnesses, leaving the vast majority who are unable to afford high drug prices to suffer or die needlessly.
- CAFTA's Article 15.10.3, appears to prohibit any generic firm from relying on the data submitted by a patent holder *at any point during the term of the patent* unless the generic firm has the permission of the patent holder.
- This addresses the fact that there are two aspects to bringing a product to market, especially in pharmaceuticals. First the companies take out patents on their new drugs in order to prevent others from copying and underselling them at a lower price. However, while the patent creates a monopoly, approval by a regulatory agency (such as the Food and Drug Administration in this nation) is needed before the drug can be sold on the market. In order for the regulatory agency to allow the drug to be sold on the market there must be test data demonstrating safety and efficacy. Normally generic drugs do not to rerun these clinical trials to demonstrate safety and efficacy but rather show that their product is biomedically equivalent to the brand name drug and therefore the same data applies.
- The CAFTA agreement essentially prevents the use of a compulsory license under any circumstance—even one of national emergency through Article 15.10.3. This prohibition on this test data during the term of the patent means that governments will be unable to break a patent under any circumstances. This has important implications for the United States as well as devastating impacts in the developing world. If countries lose the flexibility of compulsory

licensing, if another anthrax threat were to occur the government would be unable to protect its citizens by issuing mass quantities of the antidote. As we deal with terrorism, it is essential that we do not lose some of our most important tools in protecting our citizens by signing them away in these free trade agreements.

- For all these reasons the Student Global AIDS Campaign urges you to remove the IPR chapter from existing bilateral and regional trade agreements, and preclude their inclusion in future agreements. IPR does not belong in bilateral and regional trade agreements since the WTO has already guaranteed patent protection. The impact of stricter patent laws on the public health of developing countries would be enormously negative as might its impact here in the United States as well.

---

**[BY PERMISSION OF THE CHAIRMAN:]**

Paul Tadros  
2068 Sherbrooke St. West, Suite 32  
Montreal, Quebec, H3H 1G5  
August 12, 2004

The Honorable Bill Thomas  
Chairman of the Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC

Dear Sir:

**Re: The Administration's Fiscal Year 2005 Revenue Proposals ("Proposals")**

Thank you for the opportunity to comment on the Proposals and hope they would be viewed in the constructive light in which they are intended.

**Introduction**

The comments/observations herein will be limited to: (1) the earnings stripping rules [section 163(j)]; (2) subpart F and, (3) ETL.

We are in difficult times with increased competition around the globe. After reading the Proposals, I could not help but come to one conclusion: the Proposals are regressive due to the misconceptions on which they are based.

**Section 163(j)**

The reasons for change, which read in part: "*Tightening the rules of section 163(j) is necessary to eliminate these inappropriate income-reduction opportunities*" seem not to be based on reality. However, when one looks at the subpart F provisions, perhaps one understands why that "reality" is tainted. In order to understand the comments herein on section 163(j), I will use certain aspects of subpart F as an illustration. The comments in the section titled "*Subpart F*" vis-à-vis capital export neutrality and capital import neutrality equally apply herein.

Under subpart F, where a CFC requires funding for its operations and such funding (in the form of debt) is received from another related CFC, the interest (ignoring the same country exception) paid by the borrower is treated as subpart F income in the U.S.' parent's hands. The message this, basically, sends to the U.S.-based multinational is: "*do not utilize sound cash management principles. If your affiliate needs funds, borrow externally so that we can reduce your competitiveness.*"

Therefore, a similar principle is being applied in the in-bound context. If there is a job creation "killer" in these Proposals, this is it. If a foreign corporation has a choice of opening a manufacturing plant in Tennessee to employ 1,500 Americans or opening a plant in Windsor, Ontario, with all other factors equal, to which location does one think the investor leans? U.S.-based companies and foreign corporations should have freedom to allocate their resources in the most efficient manner.

Currently, Treasury and the IRS have at their disposal existing section 163(j), a body of case law as to whether an instrument is debt or equity and section 482. These are more than adequate.

In many cases, the economic benefits to the U.S. from job creation are far greater than the "tax cost" to the Government. To date, there is no clear compelling evidence submitted to substantiate the "*Reasons for Change.*"

**Subpart F**

The principles under which subpart F was created some 42 years ago do not apply today. In other words, it still amazes many of us how Treasury is still sticking to the concepts of capital export neutrality ("CEN") and capital import neutrality ("CIN"). Perhaps, when there were "borders" and the gold standard was the norm, CEN and CIN were valid concepts. We all know that is not the case anymore. In fact, with each passing day, "borders" are disappearing and the gold standard went the way of the dinosaur.

However, one cannot close this topic without extending congratulations to you, Mr. Chairman, for the provisions proposed in the "Thomas" Bill. At the same time, one has to express disappointment in that the Proposals did not seek to address this critical issue.

**ETI**

Why a logical well-thought out solution has not been formulated seems inexplicable. Other countries, to a large extent, have been able to find ways to assist the competitiveness of the enterprises in their countries.

Any solution has to be tailor-made to the U.S. but, under one condition. The Administration and Congress have to understand that "you cannot please everyone." Some companies may like the solution, some would not. The key factor, at the end of the day, is the country better off?

As a start, I would urge you to look no further than "your backyard" to the North. From discussions with the professionals in Canada, one key element which affects the effective tax rate in the manufacturing sector, is labor. In other words, the greater the investment in labor, the lower the effective rate. Of course, this is enhanced with R&D credits which are more effective than the U.S. system.

Mr. Chairman, I must, respectfully, say that the proposals in your Bill or the Crane-Rangle Bill are ineffective.

**Conclusion**

The U.S. has been a leader and an innovator over the decades. Let us, now, not have it fall to second grade through illogical and ill conceived tax policies. If these policies are allowed to continue, the results, invariably, would be continuing to make U.S. enterprises uncompetitive and curtailing investment into the U.S. for job creation.

In summary:

1. Any proposal to make section 163(j) worse than it is currently, should be eliminated;
2. The original proposals in H.R. 2896 vis-à-vis subpart F should be acted upon this year. However, make the effective dates sooner, not later. There are too many good provisions which have effective dates 3 or 4 years hence. If these proposals had been in place 5-10 years ago, the chances of the inversions occurring would have been significantly diminished; and,
3. The solution to ETI is simple, just do it.

From my experience, too many times countries have used tax policy to curtail any benefits from trade agreements. If free/fair trade is the policy, tax policy should not act as a contradiction thereto. Unfortunately, this seems the road the U.S. is heading.

Sincerely,

Paul Tadros  
CPA

