

UNITED STATES SENATE

COMMITTEE ON FINANCE

HEARING ON THE 2011 TRADE AGENDA

MARCH 9, 2011

QUESTIONS FOR AMBASSADOR RON KIRK

Questions from Chairman Baucus

Question 1

I support the President's budget request for FY12 that provides \$51.3 million to USTR. This represents an increase of \$3.4 million over the previous year and the largest increase for USTR's budget since FY09. This increase means USTR can focus on priorities such as helping small and medium-sized companies increase their exports, reaching a successful conclusion of the Trans-Pacific Partnership free trade agreement, and by ensuring our trading partners meet their international trade obligations. I will work with my colleagues to make sure USTR has adequate funding to do the job. **In the meantime, how will the President's FY12 budget proposal affect USTR's ability to advance these priorities?**

Answer:

In the FY 2012 budget planning process, USTR used rigorous zero-based budgeting principles. This required strategic prioritization of all mission-related activities from the "bottom-up." The result was a set of twenty (20) program initiatives, serving six major national trade goals that represent all of the key activities of USTR. These program initiatives are pursued collaboratively by USTR's component offices and cut across the full range of USTR's major areas of responsibility.

As a result, USTR's FY 2012 budget request invests in critical efforts to provide jobs here at home by increasing American exports to other countries, through market-opening initiatives, and through monitoring and enforcement of America's rights in a rules-based trading system. The

budget supports the President's goal of creating two million additional American jobs by doubling exports in five years.

This increase will fund program adjustments necessary to make trade policy a powerful contributor to the President's national economic agenda for revival of the global economy and renewal of growth that benefits all people. The \$3.4M provides for 16 more full time equivalents (FTEs) and associated increased travel. This will add capability to the Office of the General Counsel (general enforcement); Office of Southeast Asia and the Pacific (TPP); Office of Small Business, Market Access and Industrial Competitiveness (SME initiative); and the Office of Intellectual Property and Innovation (IP monitoring and enforcement), among others.

This increase follows two years of strong fiscal discipline at USTR, where personnel, travel, and office expenses were pared back to ensure that this Administration is spending every dollar wisely. The President's FY 2012 budget proposal combines this fiscal discipline with wise investments in a forward-leaning trade agenda—including efforts that will advance the National Export Initiative and strong enforcement of U.S. rights under existing trade agreements—to get American businesses growing through exports and help put American workers back on the job.

Question 2

I support the President's ambitious goal of doubling U.S. exports in five years. To measure the Administration's progress, I asked at last year's hearing for a report on USTR's efforts every six months. **As a preview to the next report, which is due this month, what progress has been made to reach the goal of the NEI? What is USTR's specific role in the NEI and how are you measuring success?**

Answer:

The Administration is on track to meet the President's NEI target. U.S. exports of goods and services in 2010 were up 17 percent compared to 2009. This is above the 15 percent annual export increase necessary to double exports by the end of 2014.

USTR's role in the NEI mirrors our core mission – to open foreign markets, reduce barriers to trade, and robustly enforce our trade agreements. To open new markets, we successfully resolved the outstanding issues with Korea so that Congress can approve this important trade agreement -- and we are continuing to work with Colombia and Panama. We also are moving expeditiously on the Trans-Pacific Partnership Agreement negotiations. And we're pressing our trading partners hard, especially China, India, and Brazil as key emerging markets for a more ambitious and balanced result, in the WTO Doha negotiation.

We are also continuing our efforts to address a broad range of barriers to U.S. exports. For example, working with the White House, [Department of Commerce](#), and others, we secured important trade commitments from China in 2010 relating to IPR enforcement, indigenous innovation and government procurement.

On the trade enforcement front, U.S. enforcement successes in 2010 include a WTO panel finding that the EU (France, Germany, Spain, and the UK) conferred approximately \$20 billion in illegal subsidies to Airbus and a successful challenge to EU duties on certain high-tech products, ensuring that U.S. producers would continue to be able to export those products to Europe duty-free under the WTO's Information Technology Agreement. In late 2010, we finalized the text of the Anti-Counterfeiting Trade Agreement (ACTA). This agreement is an important new tool to fight the global growth in counterfeiting and piracy, which threatens jobs that depend on innovation, including those in the United States.

The Trade Promotion Coordination Committee has developed metrics that will be reported in the upcoming National Export Strategy report detailing Administration progress in implementing the NEI. Where feasible, USTR quantifies the estimated value of new market opening agreements and the estimated value of markets preserved or opened by enforcement actions.

USTR is also actively participating in the Administration's NEI public outreach events with our Export Promotion Cabinet counterparts to encourage businesses, especially small businesses, to begin or expand their exports. As an agency we are also increasing outreach to businesses both small and large, state and local governments, and other stakeholders to educate them on the trade agenda and export opportunities which will support economic growth and jobs at home.

Question 3

As part of its WTO accession, China agreed to strong provisions on data protection. However, while Chinese law officially establishes a 6-year period of protection, its current regulations fail to define key concepts such as "new chemical ingredient" and "unfair commercial use." **What recent discussions has USTR had with its Chinese counterparts on this issue? What additional steps can you take to compel China to apply data protection provisions that are consistent with its WTO accession protocol?**

Answer:

USTR continues to engage with China's State Food and Drug Administration (SFDA) and other Chinese agencies on the issue of regulatory data protection in the context of the Joint Commission on Commerce and Trade (JCCT). We have urged SFDA to improve its regulatory system to ensure that the test and other data submitted for purposes of marketing approval for new pharmaceutical products is effectively protected against unfair commercial use for the full six-year period that is established in China's law. SFDA is currently conducting studies of possible amendments to its regulatory system that could, among other things, clarify concepts such as "new chemical ingredient". We also discussed this issue further in the April 11-12 meeting of the JCCT Pharmaceutical and Medical Device Sub-Group. We are also working with industry to organize a program in cooperation with SFDA, other Chinese agencies, and innovative Chinese pharmaceutical firms, to discuss these studies, which are yet to be released, in an effort to ensure that any amendments to China's regulatory system will in fact improve the predictability and consistency of China's data protection regime.

Question 4

In April 2009, Turkey implemented a requirement for inspections of pharmaceutical manufacturing facilities exporting to Turkey. U.S. pharmaceutical manufacturers are concerned that Turkey does not have the capacity to conduct these inspections in a timely manner, thus delaying the entry into market of pharmaceutical products. **What steps has USTR taken to engage with Turkey on this issue? What steps will you take to urge Turkey to ensure it has adequate capacity to conduct these inspections and avoid delays of marketing approval?**

Answer:

The Administration has brought this problem to the attention of Turkish authorities from the beginning, raising it at both working and cabinet levels on multiple occasions. Through the new Framework for Strategic Economic and Commercial Cooperation (FSECC), Ambassador Kirk and Secretary of Commerce Locke have made clear to their Turkish counterparts that Turkish government actions regarding Good Manufacturing Practices (GMPs) certificates for pharmaceuticals have created a very significant barrier to bilateral trade. The Administration has also reached out to Turkish Ministry of Health officials through expert level discussions in order to promote understanding and cooperation between regulators, with the aim of enhancing MOH capacities to carry out future inspections in an effective and above all timely manner. We have also strongly encouraged direct communication between Turkish authorities and U.S. pharmaceutical firms.

Senior officials from USTR and a number of U.S. agencies have been firm in noting to the Turks that immediate action is needed. We will continue to pursue this issue in upcoming meetings with Turkish officials, including if necessary the next meeting of the FSECC, now envisioned for the fall of 2011.

Question 5

I am concerned that despite years of promises from China, they are failing to systematically improve their protection and enforcement of U.S. intellectual property rights (IPR). Despite commitments during the U.S. – China Joint Commission on China and Trade (JCCT), China has failed to set objective, measurable benchmarks or a timeline to show success in reducing IPR infringement. **And President Hu’s visit to the United States failed to substantive progress on this issue. What is your plan to address this issue? How can we work with you to make sure China focuses on systemic IPR enforcement, both throughout the government and more broadly?**

Answer:

We will continue to engage China at all levels to address IPR protection and enforcement in China. The 2011 Special Campaign to crack down on IPR infringements has recently been extended, which Chinese officials have represented as evidence of the seriousness with which they take this problem. We are evaluating the effectiveness of the campaign and have held discussions with Chinese officials on how to translate lessons learned and effective operational mechanisms into long-term sustainable policies to have a meaningful effect on addressing rampant IPR infringement in the market.

During the recent State visit, President Hu Jintao committed to delink innovation policies from government procurement. We are closely monitoring compliance with this commitment, at both the central and sub-national levels of government, focusing on changes to existing measures and efforts to ensure new measures are consistent with President Hu’s promise.

Also during the State visit and the December 2010 meeting of the Joint Commission on Commerce and Trade (JCCT), China took new steps on software piracy by committing to allocate budget funding for legal software purchases by government agencies, as well as making a commitment to audit the use of the legal software and publish the results of those audits. Furthermore, China said it would promote the use of licensed software in private companies and in state owned enterprises through software asset management programs. We recently heard that the Copyright Protection Center, a branch of the National Copyright Administration of China, will be publishing guidelines for use by enterprises, including state owned enterprises, to

implement software legalization programs and software asset management. We are encouraging China to make additional efforts in the context of the “Special Campaign against counterfeiting and piracy” that was launched by the State Council in October.

Looking more broadly, this is a long term challenge where we must stay the course to achieve durable, systemic improvements. We believe that our approach of consistent U.S. engagement in every appropriate setting on these issues is bearing fruit, and that your efforts to date, as well as your continued close collaboration going forward, contribute importantly to the progress being made.

Question 6

The United States will host the next meeting of the Strategic and Economic Dialogue in May. I am concerned that we still do not have a comprehensive U.S. Government strategy for dealing with U.S. – China economic affairs and as a result, critical issues such as indigenous innovation and IPR do not receive the focus they deserve. **What can we do to ensure that important trade issues remain a focus of the S&ED? Should the U.S. Government set benchmarks by which to measure progress on the economic track of the S&ED?**

Answer:

The S&ED provides the US Government with an important avenue to engage with the Chinese on key economic issues needing attention in both the short and long term. Trade and investment have been and will continue to be a priority area for S&ED discussions. This year, in addition to discussions on important areas of concern for the longer term, we will seek immediate progress on key trade issues, including outcomes that build upon trade and investment commitments China made during President Hu's recent visit to Washington, like innovation and intellectual property rights protection. We will then draw on the progress in this forum to move forward further on the array of specific trade problems through the JCCT and other mechanisms. In other words: we are focused and we are persistent, assessing our work at each step to ensure that China is implementing its past commitments, and striving to ensure we make continued, concrete progress on these issues with coordinated use of all the tools we have available.

Question 7

In April 2010, Senator Grassley and I requested that the U.S. International Trade Commission conduct a study to quantify the impact of China's IPR and indigenous innovation policies on the U.S. economy and U.S. jobs. The first study made clear that China's IPR and indigenous innovation practices affect a range of U.S. industries. And the second report will provide hard

data quantifying the impact of these practices on the United States. **How will you use this report?**

Answer:

We will study the forthcoming USITC report carefully and determine the most appropriate way to use it after we see its content. The first study's documentation of China's problematic IPR and "indigenous innovation" policies, including the interrelationship between those policies and procurement, standards, antitrust, and other policies, has already been very helpful in informing our trade policy formulation and implementation work at USTR. The first study is also serving the useful purpose of better-educating U.S. stakeholders, and further strengthening the factual basis for the Administration's outreach to the Chinese government to address problematic policies. We hope to use the second study in similar ways.

Question 8

In December, Brazil issued regulations that would ban the use of affiliate reinsurance. These regulations contravene legislation passed by the Brazilian Congress in 2007, which opened the reinsurance market leading to significant investment by U.S. and other foreign insurers. **Can you tell us what the United States is doing to ensure Brazil removes these restrictions to the use of affiliate reinsurance?**

Answer:

We have engaged broadly and at high levels to express our concerns to the Brazilian government and insurance industry. Officials from State, USTR, and Treasury have reached out to their Brazilian counterparts. We also have worked to build international support for our efforts, engaging with representatives of Japan, Spain, and the EU. We will continue pressing Brazil's regulatory authorities to work with the affected companies to minimize disruption to their operations and the Brazilian insurance market.

Question 9

Mr. Ambassador, I am concerned about Japan's favorable treatment of Japan Post and the negative impact of this treatment on U.S. insurance companies operating in Japan. I appreciate your efforts to persuade the Japanese Government to discontinue this disparate treatment. **What steps are you taking to convince Japan to cease this discrimination?**

Answer:

We have serious and long-standing level playing-field concerns regarding Japan Post in the insurance, banking, and express delivery sectors. We have raised these concerns at every appropriate opportunity with the Japanese Government and believe that Japan is fully aware of our concerns. We are continuing to urge Japan to address our concerns and to abide by its WTO obligations.

Question 10

Last June, President Obama and South Korea President Lee pledged to address U.S. concerns regarding access to the Korean beef and autos markets. In December, the two governments reached a deal on autos, but not beef. When President Obama announced the autos agreement he said he would continue working to ensure "full access for U.S. beef to the Korean market". But there has been no progress. As you know, I am not asking for full access when the FTA enters into force. I am only asking Korea to consult with us on a path to full market access in the future, consistent with sound science. **Mr. Ambassador, what specific steps are you taking to secure this agreement from Korea?**

Answer:

The beef issue remains a top priority for the Administration, and we will continue to urge Korea to open its market to the full range of U.S. beef and beef products, consistent with science and international standards. At this time, the biggest barrier to U.S. beef sales in Korea is the 40% tariff levied against U.S. beef imports. The U.S.-Korea trade agreement would bring that tariff to zero over 15 years, enabling America's beef producers to build on the exponential growth of exports to Korea – which reached \$518 million in 2010, a one-year increase of 140 percent in value.

But time is of the essence. Korea is currently negotiating an FTA with Australia, our major competitor for the Korean beef market. If Australia concludes and implements an FTA with Korea before we do, the tariff cuts for Australian beef may take effect before those on U.S. beef, giving the Australian exporters a tariff advantage for at least the next 15 years.

Questions from Senator Hatch

Question 1

In the 2009 Trade Policy Agenda the President vowed to use all tools available to address this economic crisis. The Administration acknowledged that one of those tools is Trade Promotion Authority. The 2009 Agenda also said that: “We will only ask for renewed trade negotiating authority after engaging in extensive consultations with Congress to establish the proper constraints on that authority and after we have assessed our priorities and made clear to this body and the American people what we intend to do with it.” It has been two years since that statement was written. **Please explain what the Administration believes are the “proper constraints” on trade negotiating authority? Has the Administration sufficiently assessed its trade priorities to determine whether the President will seek trade negotiating authority?**

Answer:

In the past, Congress has subjected Trade Promotion Authority to a variety of conditions, such as notice, consultation, reporting requirements, limits on the time during which TPA was in effect, rules for extending those periods, requirements to make progress in meeting Congressionally-established negotiating objectives, and constraints on tariff proclamation authority. Should Congress consider legislation to renew of Trade Promotion Authority, we anticipate it will want to examine whether conditions of these kinds, or others, will help to enhance the Congressional-Executive trade partnership that TPA was designed to achieve.

We look forward to working closely with you and your colleagues over the coming weeks on securing Congressional approval of the final three pending trade agreements concluded under the last enactment of Trade Promotion Authority, as well as on other critical trade legislation such as renewal of the TAA, GSP, and ATPA programs. Once we have completed work on these matters, we would be pleased to consult with you and other Members regarding whether it would be advisable to consider other appropriate trade legislation, such as TPA renewal.

Question 2

The 2011 Trade Policy Agenda states: “We will seek appropriate Congressional approval as necessary for the authorities to move forward with new and forward-looking pacts, such as TPP.”

Can you please explain what the phrase “appropriate Congressional approval as necessary for the authorities to move forward” means? What is your timing for seeking such authorities?

Answer:

Once Congress completes its consideration of the three pending trade agreements and other priority trade legislation, and as the TPP agreement negotiations approach their conclusion, we will want to consult with you and other interested Members regarding how best to secure passage for that agreement and other major trade agreements the Administration may conclude. Among the issues we would wish to explore is whether some form of renewed Trade Promotion Authority for approving the TPP agreement and other future trade agreements may be advisable.

Question 3

The President’s Trade Agenda provides that expanded trade with Colombia and Panama hinges upon those two countries reforming their labor regimes. It states no such requirement for Russia, a country to which the Administration would like to extend normal trade relations this year. **Has the Administration undertaken a review of Russia’s labor policies? Will the Administration require changes to Russia’s labor laws before pressing for a Congressional vote on permanent normal trade relations with Russia?**

Answer:

Standards for a Free Trade Agreement are different than they are for joining the World Trade Organization. FTA obligations are comprehensive, and include labor rights, environmental standards and investment. That is why the Administration has worked with Colombia and Panama to address outstanding labor concerns. Nonetheless, the Administration regularly reviews Russia’s labor policies and practices in numerous Congressionally-mandated reports, including the annual Human Rights Report and Trafficking in Persons Report, which the State Department produces, and the Department of Labor’s annual Findings on the Worst Forms of Child Labor, as well as its List of Goods Produced by Child Labor or Forced Labor and List of Products Produced by Forced or Indentured Child Labor. In addition, representatives of the Administration regularly engage on labor-related issues with representatives of the Russian

government and civil society, and share best practices, including through such mechanisms as the International Visitor Leadership Program.

The Administration raises its concerns about Russia's business law at appropriate opportunities, and will continue to do so. However, the vote on terminating Jackson-Vanik and extending PNTR to Russia is necessary to ensure that American workers can benefit fully from the market access commitments Russia will undertake when it accedes to the WTO.

Question 4

Last Friday, the Congressional International Anti-Piracy Caucus, on which I serve as a co-chair with Senator Sheldon Whitehouse and Representatives Bob Goodlatte, and Adam Schiff, sent a letter to Vice President Joe Biden in advance of his trip to Russia. The letter encouraged the Vice President to make infringement of American content and software a priority in his discussions with Russian officials. **Considering Russia's blatant disregard for intellectual property rights and your efforts to bring them into the World Trade Organization, can you give us an update on where things stand regarding this matter?**

Answer:

It is my understanding that the Vice-President raised intellectual property rights (IPR) issues with President Medvedev directly, including piracy on the Internet. The Vice-President emphasized the need for Russia to improve its protection of IPR; President Medvedev acknowledged that IPR protection and enforcement is a priority, and confirmed that his Government is working on this issue. In fact, the Russian Federation has taken important steps to improve the protection and enforcement of IPR as part of its process to implement the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) through adopting four important pieces of legislation as agreed at the June 2010 Obama-Medvedev summit: 1) legislation granting *ex officio* authority to Russia's customs officials, 2) amendments to Part IV of the Civil Code (governing intellectual property rights); 3) amendments to the Law on Licensing to prevent infringers from renewing their licenses, and 4) amendments to the Law on the Circulation of Medicines to protect undisclosed test and other data.

Through the United States-Russia Bilateral IP Working Group, USTR continues to press the Russian Government to take further action to protect IPR. For example, in the next meeting of the IP Working Group, scheduled for the middle of April, we will discuss Russia's effort to combat piracy on the Internet, including Russia's legislation on liability for Internet Service

Providers as well as investigations/prosecutions of companies that illegally distribute copyrighted material on the Internet.

Question 5

In today's global economy, IP protection and enforcement are indispensable components of U.S. trade policy. That is why I continue to support a framework that would provide additional tools to the U.S. Trade Representative to spur countries to take specific steps to stop these violations. Take Russia for example, they continue to remain on the USTR's Priority Watch List year after year, and Russia fails to make significant progress with respect to its commitments to the 2006 Bilateral Agreement on Protection and Enforcement of Intellectual Property Rights. **Do you believe that USTR needs additional tools to reign in the rampant IP theft occurring overseas?**

Answer:

The protection and enforcement of intellectual property rights (IPRs) is fundamental to American competitiveness, job creation and manufacturing strength. As President Obama confirmed in this year's State of the Union address, "The first step in winning the future is encouraging American innovation....In America, innovation doesn't just change our lives. It's how we make a living."

Taking up this charge, the President's 2011 Trade Policy Agenda articulated an IPR trade policy strategy emphasizing the protection of American innovation and jobs, and stressing the importance of intellectual property protection to the U.S. economy. The Agenda noted in particular that "the competitive advantage of American workers is eroded when piracy, counterfeiting, and other intellectual property theft threaten American brand-name products, copyrighted content, and patented inventions....Providing more certainty in this regard can embolden these American job-creators to export, and can help to create a global environment that encourages creative, innovative solutions to the world's most pressing problems."

USTR works to protect American IPRs and to promote U.S. competitiveness and jobs through a variety of mechanisms – including negotiating international IPR agreements, including state-of-the-art IPR provisions in U.S. free trade agreements (FTAs), monitoring IPR protection and enforcement by our trading partners, including through the annual Special 301 Report, and enforcing international rules to protect American innovators' IPRs, including in the World Trade Organization. USTR undertakes this strategy in close coordination with other relevant U.S. agencies, stakeholders, trading partners and Congress. For example, this year USTR and partner countries representing more than half of global trade finalized the text of the Anti-Counterfeiting Trade Agreement (ACTA). The agreement is an important new tool to fight the global scourge of counterfeiting and piracy, which threatens jobs that depend on innovation – including those here in the United States.

Likewise, USTR engages in intensive bilateral negotiations with our trading partners that have achieved tangible results. For instance, The United States won wide-ranging commitments from China including to eliminate discriminatory “indigenous innovation” criteria used to select industrial equipment for preferential treatment, ensuring access to China’s market for American machinery manufacturers, as well as commit to open and neutral standards for 3G and future technologies in one of the world’s largest telecommunications markets. Similarly, with respect to Russia, following direction from Presidents Obama and Medvedev, respectively, USTR and Russian government officials worked to resolve key bilateral issues related to the WTO accession process, including encouraging Russia to enact certain legislation critical to protecting intellectual property. These efforts have added significant momentum to Russia’s effort to join the WTO, which will create new market opportunities for U.S. exports of goods and services.

As the foregoing discussion illustrates, USTR is making robust use of existing trade policy tools to spur progress in this area. I look forward to working with you and other Members of Congress to explore options for further enhancing our efforts to ensure adequate and effective protection of the intellectual property rights of America’s artists, creators and producers around the world.

Question 6

On December 10, 2010, in Brazil the National Private Insurance Council (CNSP) promulgated two regulations that unexpectedly and substantially reversed the market opening of the Brazilian reinsurance market as called for by legislation passed by the Brazilian Congress in 2006 (Supplementary Law 126/2007). We understand these regulations were issued without any notice or opportunity for industry to comment on the regulations before they were promulgated. This action causes great concern because many local and global reinsurers have invested significant capital and human resources in Brazil as a result of Supplemental Law 126/2007, which liberalized the Brazilian market. **How will USTR ensure that these rollback regulations are addressed and reformed to ensure that the insurance industry can serve the rapidly growing Brazilian market on a level playing field? Will the President and the team travelling with him to Brazil raise these concerns during his visit?**

Answer:

We have engaged broadly and at high levels to express our concerns to the Brazilian government and insurance industry. Officials from State, USTR, and Treasury have reached out to their Brazilian counterparts. We also have worked to build international support for our efforts, engaging with representatives of Japan, Spain, and the EU. We will continue pressing Brazil’s regulatory authorities to work with the affected companies to minimize disruption to their operations and the Brazilian insurance market.

Question 7

As Japan continues to seek to join the Trans-Pacific Partnership negotiations, it is critically important to ensure that that state-owned entity, Japan Post, competes on a level playing field with the private sector, before any decision is made to invite Japan to join the negotiations. USTR, at all levels, continues to raise U.S. concerns with preferential treatment for Japan Post during bilateral consultations and in Geneva. Japan, however, has introduced legislation under consideration by Japan's parliament that would expand Japan Post's ability to compete with the private sector participants – without first establishing a level playing field. **Will you and your team ensure establishment of a level playing field for U.S. businesses competing with Japan Post before considering Japan for admission to the TPP negotiations?**

Answer:

Japan Post is an area of strong concern that we are urging Japan to address in the near term. We continue to raise these serious level playing field concerns at every appropriate opportunity with the Japanese Government. Japan's Government has not yet made a decision on whether it will seek to join the Trans-Pacific Partnership negotiations. The Administration will continue to call for Japan to address our concerns in the near term and to abide by its WTO obligations.

Question 8

The Codex Alimentarius Commission is an international organization that establishes international standards in the area of food safety. Codex designations are also benchmark standards for food safety measures adopted by Members of the World Trade Organization. Under the principles of the Codex, the food safety standards of this organization shall be based on "sound scientific analysis." I am concerned, however, that some of our trading partners are seeking to thwart the adoption of science-based standards at the Codex. In doing so, these countries are threatening to impede imports of U.S. food and agricultural products, including products produced in Utah. Moreover, if the Codex does not base its standards on science, the very credibility of this organization will be at stake, an outcome that will have major repercussions for the international trading system. The 34th Session of the Codex will be held in July 2011. **What steps is the Office of the U.S. Trade Representative taking, in conjunction with the U.S. Department of Agriculture, to see that the Codex indeed adopts science-based standards at its upcoming conference?**

Answer:

USTR and USDA are working closely on an outreach plan to contact every CODEX Member and to ask for their support for the adoption of science based measures, such as the adoption of the eight pending MRLs for ractopamine, at the July CODEX Commission meeting in Geneva.

Question 9

We continue to face challenges overseas that threaten the value of U.S. intellectual property at the expense of U.S. innovation and jobs. This situation undermines the President's call in the State of the Union address to grow innovation here at home. At this time of great economic instability, it is imperative that strong IP standards be a part of any future trade agreement. **What is USTR doing to ensure that the TPP builds off the KORUS Agreement to provide the highest IP standards and prevents the erosion of IP rights in the region?**

Answer:

Let me assure you that achieving strong standards of intellectual property protection and enforcement and creating a climate for enhancing innovation, is a top priority for the Administration in our TPP negotiations. In that connection, our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region, including KORUS.

To date, the United States has put forward proposed text covering many aspects of copyrights, trademarks, patents, and enforcement that would achieve this goal. We have not yet tabled text on some IP issues where we are still developing positions, such as provisions relating to pharmaceutical IP protection. We have, and continue to, work on our proposals in consultation with the Congress and all relevant stakeholders.

Question 10

Brazil is the eighth largest global economy and has a large and growing market for information technology products. Yet, Brazil is not a member of the Information Technology Agreement. As a result, U.S. exports face import taxes of 16% as well as many internal taxes in Brazil. **Given the importance of the market to U.S. exporters, will the President press the Brazilian government to join the Information Technology Agreement when he meets Brazilian President Rousseff?**

Answer:

USTR, together with the U.S. IT industry, has long been pressing Brazil to join the Information Technology Agreement (ITA). Of the top 10 largest economies in the world, Brazil is the only country that has not agreed to join the ITA and eliminate its tariffs on key information technology products. We have explicitly requested that Brazil join the ITA as part of the overall market access package in the Doha negotiations, and we will continue to press Brazil, bilaterally and multilaterally, at every level and at every opportunity.

Question 11

The Information Technology Agreement (ITA) has lowered consumer prices while increasing product trade and employment. Since the ITA came into force in 1996, however, the product scope of the agreement has not been expanded to include new innovations and improved technologies. On March 7th, 40 trade associations representing the global high-tech industry rallied in support of launching a new tariff-reduction initiative that would significantly expand product coverage of the ITA by removing tariffs on tech products currently not covered. Such a new agreement would generate significant and immediate benefits. **Do you believe in order to promote trade in high-tech products and enhance American innovation that the ITA needs to be significantly expanded as proposed by the industry associations? How will USTR move ahead with such and expansion?**

Answer:

The Information Technology Agreement (ITA) is a great example of a win-win trade agreement that can benefit everyone by promoting U.S. trade, jobs, and economic growth while lowering prices for global consumers. The agreement has been extremely successful, with global trade in IT products more than tripling from \$1.2 trillion in 1996 to \$4 trillion in 2008.

I am pleased that global industry supports a new initiative. Over the past month, we have been exploring the best way to move such an initiative forward. I have instructed my staff work with interagency colleagues and stakeholders to develop a proposal to expand both the product scope of the ITA to provide duty-free treatment for more information and communications technology (ICT) goods, and to expand the geographic scope of the agreement to bring in major IT producing countries that are not yet participants, such as Brazil.

Question 12

Thank you for your response to my question regarding the TPP at the hearing. **As a follow up, have you communicated to TPP trading partners that you will require them to change their domestic labor laws prior to sending the TPP to Congress for a vote, as you have insisted with Colombia and Panama?**

Answer:

We have begun engagement with TPP partners on their labor laws and practices and intend to address concerns about TPP partners' labor laws and their consistency with the labor obligations that result from the negotiations. In doing so, we will work with Congress and stakeholders.

Question 13

When will the Model Bilateral Investment Treaty review conclude? Can the Administration proceed with BIT negotiations with China, India, and Vietnam without the new Model BIT? Please provide a list of BITs in force and being negotiated by China, India, and Vietnam and with which countries. **Without investor-state protections, how will American businesses and their investments be protected in foreign markets where they operate? How many BITs have been signed and implemented around the world since the Model BIT review was launched in 2009? Please provide a list of the top ten trading partners with the United States and the BITs that each of the ten countries has with other countries.**

Answer:

The Administration has received a large amount of input from the full range of stakeholders regarding many important issues in the model BIT. We want to ensure that we have a full

opportunity to carefully consider all such input before completing the review. We recognize the importance of moving forward with the model BIT review and the BIT program.

Since the beginning of the BIT review, the Administration has continued to hold technical-level discussions with our negotiating partners, including China, India, Vietnam, Mauritius, Pakistan, and Georgia. Where possible, we have continued discussions with these countries as our internal deliberation process on the model BIT moves forward. In addition, we have continued to explore the possibility of future BIT negotiations with other key countries, such as Russia, Indonesia, and certain sub-Saharan African countries. USTR and the State Department co-lead these negotiations and discussions, with participation of other agencies.

As stated in the President's Trade Agenda, in 2011 the Administration will build on the substantial progress made in 2009-2010 in the model BIT review. Our objective is to produce an updated model that preserves core investor protections without compromising governments' ability to regulate in the public interest, fosters competitive neutrality in foreign markets dominated by state-owned enterprises and other mechanisms of state influence and control, and enhances transparency and labor and environmental protection.

Successfully completing the model BIT review will permit the intensification of key BIT negotiations, will provide significant benefits for U.S. investors abroad, and, in turn, will benefit the U.S. economy and workers. For instance, a BIT with China would open many of China's strategically closed markets, and improve competitiveness of U.S. firms. Ensuring a level playing field with respect to third country investors is even more important today given the European Union's newly assertive role in international investment negotiations. Under the Lisbon Treaty, the European Union now has authority to negotiate investment agreements on behalf of its member states; China, India, Russia, and Mercosur top the EU negotiating agenda.

Please provide a list of BITs in force and being negotiated by China, India, and Vietnam and with which countries.

BITs In Force

China, India, and Vietnam have BITs in force with the following economies:

China: Albania, Argentina, Australia, Austria, Bahrain, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Cambodia, Cameroon, Chile, Colombia, Costa Rica, Cote D'Ivoire, Croatia, Cuba, Czech Republic, Denmark, Djibouti, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Ghana, Greece, Guyana, Hungary, Iceland, Indonesia, Iran, Italy, Jamaica, Japan, Jordan, Korea, Kuwait, Laos, Latvia, Lebanon, Lithuania, Luxembourg, Madagascar, Mexico, Mongolia, Morocco, Myanmar, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Singapore, Slovakia, Slovenia, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Kingdom, Uruguay, Vietnam

(In recent years, China has also concluded trade agreements containing investment chapters with New Zealand and Peru (which entered into force in 2008 and 2010, respectively).)

India: Australia, Austria, Belgium, Bosnia and Herzegovina, Colombia, Croatia, Czech Republic, Denmark, Egypt, France, Germany, Ghana, Greece, Hungary, Indonesia, Italy, Kazakhstan, Korea, Mauritius, Mexico, Morocco, Mozambique, Netherlands, Oman, Portugal, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Turkey, United Kingdom

(In recent years, India has also concluded economic agreements containing investment chapters with Singapore and Korea (which entered into force in 2005 and 2010, respectively). In February of this year, India signed such an agreement with Japan.)

Vietnam: Australia, Austria, Belarus, Belgium, Bulgaria, Cambodia, Chile, China, Cuba, Czech Republic, Denmark, Egypt, Finland, France, Germany, Hungary, Indonesia, Italy, Japan, Korea, Latvia, Malaysia, Netherlands, Poland, Romania, Singapore, Sweden, Switzerland, Tajikistan, Thailand, United Kingdom

BITs Under Negotiation

We are unable to identify with certainty with which countries China, India, and Vietnam are currently negotiating BITs, as that information is not always disclosed publicly. However, we are aware from publicly available information of the following BIT negotiations involving each country:

China: Canada; Japan and Korea (trilateral negotiation)

(China is also negotiating investment issues as part of its FTA negotiation with Australia.)

India: Algeria, Azerbaijan, Brazil, Canada, Cuba, El Salvador, Georgia, Ghana, Guyana, Iraq, Kenya, Lebanon, Lithuania, Malta, Nepal, Nigeria, Norway, Peru, Seychelles, Slovenia, South Africa, Tanzania, Tunisia, UAE, Venezuela

Vietnam: Canada, Estonia, Israel, Morocco, Saudi Arabia, Tanzania, Tunisia

Without investor-state protections, how will American businesses and their investments be protected in foreign markets where they operate?

In the absence of a BIT (or free trade agreement investment chapter), including investor-State arbitration provisions and other legal protections, U.S. investors must generally rely on the legal

remedies provided by the domestic laws of the countries in which they operate (or seek to operate).

How many BITs have been signed and implemented around the world since the Model BIT review was launched in 2009?

The current model BIT review was launched in February 2009. From the beginning of 2009 through mid-2010, more than 100 BITs concluded worldwide (according to UNCTAD). (We are seeking to obtain updated information for the period since then.)

Please provide a list of the top ten trading partners with the United States and the BITs that each of the ten countries has with other countries.

No.	Trading Partner	BIT Partners
1	Canada	Argentina, Armenia, Barbados, Costa Rica, Croatia, Czech Republic, Ecuador, Egypt, El Salvador, Hungary, Jordan, Latvia, Lebanon, Panama, Peru, Philippines, Poland, Romania, Russia, Slovakia, South Africa, Thailand, Trinidad and Tobago, Ukraine, Uruguay, Venezuela
2	China	Albania, Argentina, Australia, Austria, Bahrain, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Cambodia, Cameroon, Chile, Colombia, Costa Rica, Cote D'Ivoire, Croatia, Cuba, Czech Republic, Denmark, Djibouti, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Ghana, Greece, Guyana, Hungary, Iceland, Indonesia, Iran, Italy, Jamaica, Japan, Jordan, Korea, Kuwait, Laos, Latvia, Lebanon, Lithuania, Luxembourg, Madagascar, Mexico, Mongolia, Morocco, Myanmar, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Singapore, Slovakia, Slovenia, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Kingdom, Uruguay, Vietnam
3	Mexico	Argentina, Australia, Austria, Belarus, Belgium, China, Cuba, Czech Republic, Denmark, Finland, France, Germany, Iceland, India, Italy, Korea, Netherland, Panama, Portugal, Slovakia, Spain, Sweden, Switzerland, Trinidad and Tobago, United Kingdom, Uruguay

4	Japan	Bangladesh, China, Egypt, Hong Kong, Korea, Laos, Mongolia, Pakistan, Peru, Russia, Sri Lanka, Turkey, Uzbekistan, Vietnam
5	Germany	Afghanistan, Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China, Costa Rica, Cote D'Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Dominica, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Gabon, Georgia, Ghana, Greece, Guinea, Guyana, Haiti, Honduras, Hong Kong, Hungary, India, Indonesia, Iran, Israel, Jamaica, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Laos, Latvia, Lebanon, Lesotho, Liberia, Lithuania, Macedonia, Madagascar, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Morocco, Moldova, Mongolia, Namibia, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saudi Arabia, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Serbia, Sierra Leone, Singapore, Slovenia, Somalia, South Africa, Sri Lanka, Sudan, Swaziland, Syria, Tanzania, Thailand, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, United Arab Emirates, Uganda, Ukraine, Uruguay, Venezuela, Vietnam, Yemen, Zambia, Zimbabwe
6	United Kingdom	Albania, Angola, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bolivia, Bosnia and Herzegovina, Bulgaria, Burundi, Cameroon, Chile, China, Colombia, Costa Rica, Cote D'Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Dominica, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Georgia, Ghana, Grenada, Guyana, Haiti, Honduras, Hong Kong, Hungary, India, Indonesia, Jamaica, Jordan, Kazakhstan, Kenya, Korea, Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Lithuania, Malaysia, Malta, Mauritius, Mexico, Moldova, Mongolia, Morocco, Nepal, Nicaragua, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Romania, Russia, Saint Lucia, Senegal, Singapore, Sierra Leone, Slovenia,

		South Africa, Sri Lanka, Swaziland, Tanzania, Thailand, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, Uruguay, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen
7	Korea	Albania, Algeria, Argentina, Austria, Bangladesh, Belarus, Belgium, Bolivia, Brazil, Brunei Darussalam, Burkina Faso, Cambodia, Chile, China, Costa Rica, Croatia, Czech Republic, Democratic Republic of the Congo, Denmark, Egypt, El Salvador, Finland, France, Germany, Guatemala, Honduras, Hong Kong, Hungary, India, Indonesia, Iran, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kuwait, Laos, Latvia, Lebanon, Lithuania, Malaysia, Mauritania, Mexico, Mongolia, Morocco, Netherlands, Nicaragua, Nigeria, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Senegal, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, Uzbekistan, Vietnam
8	Taiwan	Belize, Costa Rica, Guatemala, Macedonia, Marshall Islands, Saint Vincent and the Grenadines, Swaziland, Thailand
9	Brazil	Chile, Cuba, Denmark, Finland, Korea, Netherlands, Portugal, Venezuela
10	France	Albania, Algeria, Argentina, Armenia, Azerbaijan, Bahrain, Bangladesh, Belarus, Bolivia, Bosnia and Herzegovina, Bulgaria, Cambodia, Chile, China, Costa Rica, Croatia, Czech Republic, Democratic Republic of the Congo, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Georgia, Ghana, Guatemala, Haiti, Honduras, Hong Kong, Hungary, India, Indonesia, Iran, Israel, Jamaica, Jordan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Liberia, Lithuania, Macedonia, Madagascar, Malaysia, Malta, Mauritius, Mexico, Moldova, Mongolia, Morocco, Namibia, Nepal, Nicaragua, Nigeria, Oman, Panama, Pakistan, Paraguay, Peru, Philippines, Poland, Qatar, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, South Africa, Sudan, Sri Lanka, Syria, Tajikistan, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, Ukraine, United

		Arab Emirates, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Zimbabwe
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Questions from Senator Rockefeller

Question 1

I understand that USTR has been a fervent advocate on behalf of U.S. companies in Japan on the Japan Post issue, specifically the lack of a level playing field for U.S. companies in competition with Japan Post's businesses.

The Japan Post issue has been a bipartisan and bicameral concern for a number of years. We want to make sure that Japan will live up to its General Agreement on Trade in Services and World Trade Organization commitments to provide a level playing field for all participants in the Japanese marketplace. I and other members are also very concerned about possible legislation that would expand the operations of Japan Post.

Given serious Congressional concerns please tell me how we are moving to get Japan to deal with its current violations of General Agreement on Trade in Services with regard to the Japan Post entities and its World Trade Organization obligation to provide national treatment of all market participants?

What is USTR's plan to get the Japanese government to set aside its announced legislation designed to expand Japan Post in violation of its World Trade Organization commitments?

Perhaps most important, how can we support your efforts?

Answer:

We have serious and long-standing level playing field concerns regarding Japan Post in the insurance, banking, and express delivery sectors. We have raised these concerns at every

appropriate opportunity with the Japanese Government and believe that Japan is fully aware of our concerns. We are continuing to urge Japan to address our concerns and to abide by its WTO obligations.

We are monitoring the situation carefully with respect to any legislation related to Japan Post. The Japanese government has proposed legislation that would open the door for the Japan Post insurance and banking companies to expand the scope of their business before a level playing field is established. We continue to call on Japan to ensure that it achieves a level playing field before allowing any changes in the scope of Japan Post Insurance's business operations.

Questions from Senator Conrad

Question 1

Mr. Ambassador, as you know, North Dakota is a major producer of high quality beef. Expanding export markets is critical to North Dakota ranchers.

Several years ago, South Korea made a commitment to fully re-open open its market to U.S. beef, consistent with international scientific standards. But Korea is not doing so. It continues to impose unjustified restrictions on our beef.

Now, I am realistic. I understand that Korea is supremely sensitive on the issue of exports from older cattle and certain product lines where the Korean public believes, incorrectly, that there is a BSE risk. Despite the scientific consensus that these products are safe, Korea is unlikely to change its position on these points, much as I would like for them to do so.

At the same time, I agree with the President, who said during the campaign that we cannot just let our trading partners walk away from their commitments on international trade. So I believe we must insist that South Korea provide compensation in the form of increased access to other areas of its beef market in return for its failure to keep its original commitment. For example, Korea could choose, without re-opening the FTA, to provide accelerated reductions in the tariffs on US beef until it agrees to accept the full range of US beef exports, thereby making our exports more competitive than those of our trading partners.

Without some agreement along those lines, it will be very difficult for me to support this FTA. To me, this is a very reasonable request that recognizes political reality in South Korea while demonstrating that we will stand up for the rights of American beef producers.

What will you do to ensure our beef producers are fully compensated for Korea denying us the full access to its beef market that it had previously agreed to?

Answer:

The beef issue remains a top priority for the Administration, and we will continue to urge Korea to open its market to the full range of U.S. beef and beef products, consistent with science and international standards. At this time, the biggest barrier to U.S. beef sales in Korea is the 40% tariff levied against U.S. beef imports. The U.S.-Korea trade agreement would bring that tariff to zero over 15 years, enabling America's beef producers to build on the exponential growth of exports to Korea – which reached \$518 million in 2010, a one-year increase of 140 percent in value.

Questions from Senator Wyden

Question 1

Russia, a major world economy, may become of a Member of the WTO this year. **Given the challenges we've had holding China accountable to its WTO commitments, is it reasonable to believe that USTR would need significant new resources, particularly within the office of the General Council, to monitor and enforce Russia's WTO promises?**

Answer:

The Administration looks forward to welcoming the Russian Federation into the World Trade Organization (WTO) and is working to support Russia in reaching that goal. Although Russia is the seventh largest economy in the world, it is only our 24th largest trading partner; China is our second largest trading partner. The President has expressly noted that the United States-Russia economic relationship is well below its potential and USTR is working to expand trade and investment with Russia. As part of that effort, USTR works diligently to monitor and enforce Russia's existing international commitments, and will do the same with respect to Russia's WTO obligations following its accession. Pursuant to USTR's monitoring and enforcement mission, I look forward to the opportunity to work with your office, and the relevant committees, to ensure

that USTR has the resources necessary to ensure that American workers, farmers, ranchers and companies enjoy the full benefits of Russia's WTO obligations.

Question 2

The U.S. government recently initiated an arbitration process to address the latest violation of the U.S. – Canada Softwood Lumber Agreement by Canada. This latest trade agreement violation by Canada, which deals with a massive subsidy to British Columbia's softwood lumber industry, has been particularly harmful to Oregon's forestry industry companies, workers, and communities. British Columbia's violation first became known to U.S. industry and the U.S. government in 2007, yet the enforcement step of initiating arbitration did not happen until 2011.

What will the USTR do differently in the future to ensure that violations of any U.S.-Canada lumber agreement are promptly addressed?

Answer:

This Administration has made enforcement of the Softwood Lumber Agreement (SLA) a top priority and is fully committed to its swift enforcement and requires. USTR actively manages the SLA and will continue to evaluate and act on any evidence of non-compliance to ensure that the Agreement is enforced.

Undertaking an arbitration against Canada under the SLA is a serious step. It would not be prudent for the U.S. Government to launch an arbitration before completing an analysis of the situation and without trying to resolve the issue outside of litigation. Each arbitration USTR has pursued against Canada has involved unique fact patterns. The Grade 4 issue is the most complex of the three cases the United States has brought against Canada under the SLA. Once we determined that Canada was not prepared to address the apparent violations we identified, and that we were in a position to most effectively advocate our position before a tribunal, the United States took timely action to hold Canada accountable for circumventing the Softwood Lumber Agreement.

Question 3

I am concerned about the increase in export fees on small businesses, including hardwood lumber manufacturers. USDA approved an APHIS phytosanitary fee increase from \$50.00 to \$99.00 during 2007, and then to \$106.00 effective October 2011 for the export of hardwood lumber products; a 100% increase in fees which cannot be passed through to foreign customers. American companies are absorbing these cost increases which causes additional reduction in jobs and threat of plant closings.

I understand that on March 4, 2011 Edward M. Avalos, Undersecretary of Marketing and Regulatory Programs, sent the USTR a letter about USDA's efforts to work with the hardwood industry to encourage the acceptance of a kiln dried program which would allow private agencies to administer the equivalent phytosanitary certificate and thereby reduce the costs to users while protecting the integrity of the program. The primary focus to gain acceptance is on China and Europe. **Because of the importance this program would have to provide the industry significant savings, would the office of the USTR be willing to work with USDA/APHIS to encourage EU and China to accept this alternative approach?**

Answer:

USTR is committed to working with USDA and all interested stakeholders to identify creative mechanisms to address the economic concerns of our industry.

On the Anti-Counterfeit Trade Agreement (ACTA):

Question 4

Is it correct that the Administration believes that ACTA is an Executive Agreement that articulates a common understanding about how intellectual property rights will be enforced and that it does not impact the scope of those rights?

Answer:

Yes, ACTA is an Executive Agreement that does not affect the scope of intellectual property rights. ACTA Article 3(1) provides that ACTA “shall be without prejudice to provisions in a Party’s law governing the availability, acquisition, scope and maintenance of intellectual property rights.”

Question 5

Does the Administration believe that no changes in U.S. law, or the application of U.S. law, are required for the U.S. to be consistent with the understandings articulated in ACTA?

Answer:

Yes. ACTA can be implemented without new legislation.

Question 6

Does the Administration believe that the provisions of the Digital Millennium Copyright Act found in 17 U.S.C. sec. 512, and as interpreted by the courts, are consistent with ACTA, and ACTA in no way impacts U.S. law with respect to third-party liability?

Answer:

The ACTA is consistent with United States law, including with the Digital Millennium Copyright Act.

Question 7

If the Administration signs ACTA, doing so will not prevent the U.S. from changing its law, including in a number of specific areas like injunctive relief, damages for patent infringement, access to orphaned copyrighted works, and statutory damages, correct?

Answer:

The ACTA was drafted to reflect both the general principles and specific provisions of U.S. law in the areas the agreement covers. That said, the agreement does not constrain Congress' authority to change U.S. law.

Question 8

Does the Administration believe that the Congress and the courts are not bound by ACTA? If they are not bound by ACTA, they are therefore not constrained from developing guidelines that pertain to the issuance of injunctions against third parties, providing statutory licenses as an appropriate remedy, awarding continuing royalties in lieu of injunctions, or to implement reasonable exceptions to remedies in order to advance the public interest or to combat anti-competitive practices, correct?

Answer:

The ACTA was drafted to reflect both the general principles and specific provisions of U.S. law in the areas the agreement covers. As a result, U.S. courts can continue to apply U.S. law and remain in conformity with the agreement. As noted above, ACTA does not constrain Congress' authority to change U.S. law.

Question 9

Does the Administration believe that ACTA is to be interpreted and implemented in a manner that recognizes the importance of balancing the interests of right holders and intermediaries and users, and that it ensures that measures and procedures to enforce intellectual property rights are fair and equitable?

Answer:

Yes. In the preamble, the Parties note their desire to address the problem of infringement of intellectual property rights "in a manner that balances the rights of relevant right holders, service providers, and users. In addition, Article 6.2 of ACTA provides that "[p]rocedures adopted, maintained, or applied to implement the provisions of [Chapter II] shall be fair and equitable, and shall provide for the rights of all participants subject to such procedures to be appropriately protected."

Question 10

Will the Administration oppose any efforts to use ACTA to develop barriers to legitimate commercial activity or to undermine fundamental principles such as freedom of expression, fair process, and privacy?

Answer:

Yes. The Administration would oppose such efforts.

Question 11

Does the Administration intend to encourage overseas enforcement of intellectual property rights, including in the digital environment, in a manner consistent with the balanced way these rights are enforced in the U.S.?

Answer:

Yes. We believe that appropriately balanced enforcement systems are critical to protecting U.S. right holders and fostering e-commerce.

Question 12

Does the Administration intend to promote an open and transparent process in the way ACTA is implemented and shaped in the future, including in the ACTA committee? Will the Administration's views on intellectual property rights enforcement be informed by seeking the points of view by a wide variety of interested parties, including consumers?

Answer:

Yes, as stated in the President's Trade Policy Agenda, the Administration is committed to conducting its trade policy efforts based on high standards that reflect American values on public engagement and transparency. USTR will continue to consult with stakeholders, both formally, through our ITAC advisory system, and informally. This will help ensure that we receive appropriate input, including with respect to matters addressed in the ACTA committee.

Question 13

Will the U.S. apply the civil enforcement section of ACTA to patents and the protection of undisclosed information?

Answer:

ACTA permits a Party to exclude patents and the protection of undisclosed information from the obligations set out in the agreement's civil enforcement section. The United States will not apply the provisions of that section with respect to patents and the protection of undisclosed information to the extent of any inconsistency with U.S. law.

Question 14

Does the Administration intend to implement ACTA, including enforcement activities against third parties, in a way that does not to hinder the access and movement of legitimate generic medicines and will be consistent with the TRIPS Agreement, the WTO Declaration on TRIPS and Public Health and the WHO Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property?

Answer:

ACTA is not intended to hinder the movement of legitimate generic medicines. In the preamble to the agreement, the Parties recognize the principles set forth in the *Doha Declaration on the TRIPS Agreement and Public Health*. Moreover, patents and protection of undisclosed information fall outside the scope of ACTA's provisions on border measures. (See Section 3, footnote 6.)

On the Trans-Pacific Partnership Agreement (TPP):

Question 15

Because the Internet represents the shipping lane of the 21st Century, do you agree that obtaining from our trade partners binding trade commitments on cross-border data transfers should be an economic and trade priority of the United States?

Answer:

We are working hard to develop TPP commitments that enhance the ability of our companies to operate effectively on a cross-border basis. Moving data may be critical to such trade, particularly for companies seeking to take advantage of the Internet, an area U.S. companies have pioneered and which is a great source of our companies' competitiveness. We are looking very closely at how we could accomplish this goal. Given the number of stakeholders involved, this is a complex undertaking, but we are committed to trying to address this issue in a way that supports our interests.

Question 16

Will the Administration seek to incorporate a substantive right on cross-border data transfers in the TPP?

Answer:

Yes, if possible.

Question 17

With respect to enforcement of intellectual property in the digital environment:

Will the Administration seek to ensure that intermediaries face no liabilities in TPP countries that they would not face in the U.S.?

Answer:

Our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region, including with current TPP partners Australia, Chile, Peru, and Singapore. To date, the United States has put forward proposed text covering many aspects of copyrights, trademarks, patents, and enforcement that would achieve this goal.

We note that those past FTAs contain provisions modeled on the U.S. Digital Millennium Copyright Act, which addresses limitations on liability for ISPs. We are seeking commitments that would be similar to, and consistent with, provisions found in U.S. law.

A. Will the Administration seek to ensure that any enforcement actions taken against websites in TPP countries are done in a transparent way and will include meaningful due process?

Answer:

Transparency and due process are important aspects of the U.S. IP enforcement regime. We are seeking commitments in the TPP that are fully consistent with these principles; in this regard, if there are any concerns with particular TPP partners, we would appreciate any suggestions that you or other members of Congress might have.

B. What is the U.S. proposing in the TPP talks to ensure that the integrity of the Internet and fundamental principles of free speech are protected during any efforts to combat copyright infringement?

Answer:

The TPP offers an important opportunity to incentivize innovation and creativity throughout the region. Our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region, including KORUS, and FTAs with current TPP partners Australia, Chile, Peru, and Singapore. In that connection, we note that these past FTAs contain copyright and enforcement provisions that are modeled on U.S. law, and therefore fully consonant with ensuring the integrity of the Internet as well as the fundamental principle of free speech.

Question 18

Will the Administration seek to obtain strong, binding commitments to combat trade in illegal timber and wood products?

Answer:

The Administration proposed at Round 6 in Singapore provisions that would commit TPP countries to have measures that would make it unlawful to, among other things, import or export wildlife and wild plant products, which include “timber and wood products,” that are taken in violation of conservation laws of other countries. We also proposed provisions relating to regional cooperation, information sharing and law enforcement cooperation to enhance efforts of TPP countries to combat illegal logging and associated trade.

Question 19

Will the Administration seek binding commitments to eliminate illegal, unreported, and unregulated fishing and to establish disciplines on fish subsidies?

Answer:

The Administration also proposed at Round 6 a variety of commitments to enhance measures in place in regional fisheries management organizations (RFMOs) that seek to eliminate illegal, unreported, and unregulated (IUU) fishing, as well as commitments on fisheries subsidies, including those that contribute to overfishing and overcapacity.

Question 20

The Intellectual Property Rights Chapter of the TPP negotiating text was recently leaked and posted onto the Internet. The document is classified as “TPP Confidential.” **To what extent, if any, does this classification differ from the standard “Confidential” classification established by Executive Order 12958 and its successors?**

Answer:

Answer: The “TPP Confidential” marking denotes TPP-related materials classified at the confidential level as provided in Executive Order 13526 (successor to EO 12958) on the basis that they pertain to foreign government information, consistent with Sections 1.2(3), 1.4(b), and 6.1(s) of the Order.

Can anyone with a Confidential security clearance view a document classified “TTP Confidential”? If not, what additional access restrictions apply, and what is the basis for these restrictions?

Answer: As is the case with other “confidential” materials, a person with a valid “Confidential”-level security clearance would have to have a “need to know” in order to have access to “TPP Confidential” materials.

Question 21

How does the Executive branch determine when the negotiating texts of free trade agreements should be classified “Secret?” Which negotiating texts are classified at this level? The relevant Executive Orders state that information shall be classified “Secret” if the unauthorized disclosure of that information could reasonably be expected to cause serious damage to US national security, in a way that the classifying authority is able to identify or describe. **Please describe how the disclosure of the negotiating texts of trade agreements could cause serious damage to US national security.**

Answer:

TPP negotiating texts have been classified exclusively at the “Confidential” level. There are no other free trade agreement negotiations currently underway.

Question 22

There are discussions about whether Japan may be in a position to join the TPP talks. As you know, the Japan Post presents a major, unfair challenge to many American service providers. **Will USTR insist that Japan come into compliance with its WTO services obligations prior to joining the TPP talks?**

Answer:

Japan Post is an area of strong concern that we are urging Japan to address in the near term. We continue to raise these serious level playing field concerns at every appropriate opportunity with the Japanese Government. Japan's Government has not yet made a decision on whether it will seek to join the Trans-Pacific Partnership negotiations. The Administration will continue to call for Japan to address our concerns in the near term and to abide by its WTO obligations.

Questions from Senator Stabenow

Question 1

As Chairwoman of the Senate Committee on Agriculture, Nutrition and Forestry, and a member of the President's Export Council, I have been closely watching the ongoing Trans-Pacific Partnership negotiations. While I share your strong desire to open up new markets, I hope that USTR will address the concerns of our nation's dairy farmers, who worry that the current concentration of the dairy industry in New Zealand could adversely affect them. **Can you give me an update on the Administration's efforts to address these concerns?**

Answer:

We view the TPP negotiations as an important element in our efforts to expand our trade in the Asia-Pacific region, including export opportunities for U.S. dairy products. We recognize the import sensitivities on dairy products from New Zealand, and are working very closely with U.S. industry to develop our approach to dairy in the TPP negotiations.

Question 2

Earlier this year the United States requested that an independent arbitration panel look into violations by Canada of the terms of the Softwood Lumber Agreement (SLA)—specifically, government timber pricing practices in British Columbia that appear to circumvent the terms of the trade agreement. I applaud your continued efforts to enforce this Agreement. However, this is the third time the United States has had to request arbitration due to Canada’s non-compliance, and I am deeply troubled that Canada continues to fail to uphold its end of the Agreement. These issues go to the very core and purpose of the SLA, which is to ensure fair competition between U.S. and Canadian lumber producers, which in turn allows our landowners to get a fair price for their timber. I believe that the SLA can work as intended as long as both sides fully adhere to the carefully negotiated terms. **But if Canada does not live up to its obligations, can I get your assurances that the United States is fully committed to swift enforcement action to rectify the harm inflicted on American lumber manufacturers, millworkers, and private forestland owners?**

Answer:

This Administration has made enforcement of the Softwood Lumber Agreement (SLA) a top priority and is fully committed to its swift enforcement. USTR actively manages the SLA and will continue to evaluate and act on any evidence of non-compliance to ensure that the Agreement provides the level playing field it was designed to create for U.S. producers.

Undertaking an arbitration against Canada under the SLA is a serious step. It would not be prudent for the U.S. Government to launch an arbitration before completing an analysis of the situation and without trying to resolve the issue outside of litigation. Each arbitration USTR has pursued against Canada has involved unique fact patterns. The Grade 4 issue is the most complex of the three cases the United States has brought against Canada under the SLA. Once we determined that Canada was not prepared to address the apparent violations we identified, and we were in a position to most effectively advocate our position before a tribunal, the United States took timely action to hold Canada accountable for circumventing the Softwood Lumber Agreement.

Question 3

Intellectual property is a competitiveness and jobs issue for America. I believe there is a strong connection between protecting intellectual property and having a strong manufacturing sector. **How can we develop a more comprehensive and results-oriented trade strategy that combats other countries' intellectual property theft rather than a strategy that focuses on individual meetings?**

Answer:

The protection and enforcement of intellectual property rights (IPRs) is fundamental to American competitiveness, job creation and manufacturing strength. As President Obama confirmed in this year's State of the Union address, "The first step in winning the future is encouraging American innovation....In America, innovation doesn't just change our lives. It's how we make a living."

Taking up this charge, the President's 2011 Trade Policy Agenda articulated an IPR trade policy strategy emphasizing the protection of American innovation and jobs, and stressing the importance of intellectual property protection to the U.S. economy. The Agenda noted in particular that "the competitive advantage of American workers is eroded when piracy, counterfeiting, and other intellectual property theft threaten American brand-name products, copyrighted content, and patented inventions....Providing more certainty in this regard can embolden these American job-creators to export, and can help to create a global environment that encourages creative, innovative solutions to the world's most pressing problems."

USTR works to protect American IPRs and to promote U.S. competitiveness and jobs through a variety of mechanisms – including negotiating international IPR agreements, including state-of-the-art IPR provisions in U.S. free trade agreements (FTAs), monitoring IPR protection and enforcement by our trading partners, including through the annual Special 301 Report, and enforcing international rules to protect American innovators' IPRs, including in the World Trade Organization. USTR undertakes this strategy in close coordination with other relevant U.S. agencies, stakeholders, trading partners and Congress. For example, this year USTR and partner countries representing more than half of global trade finalized the text of the Anti-Counterfeiting Trade Agreement (ACTA). The agreement is an important new tool to fight the global scourge of counterfeiting and piracy, which threatens jobs that depend on innovation – including those here in the United States.

Likewise, USTR engages in intensive bilateral negotiations with our trading partners that have achieved tangible results. For instance, The United States won wide-ranging commitments from China including to eliminate discriminatory "indigenous innovation" criteria used to select industrial equipment for preferential treatment, ensuring access to China's market for American machinery manufacturers, as well as commit to open and neutral standards for 3G and future technologies in one of the world's largest telecommunications markets. Similarly, with respect to Russia, following direction from Presidents Obama and Medvedev, respectively, USTR and Russian government officials worked to resolve key bilateral issues related to the WTO accession process, including encouraging Russia to enact certain legislation critical to protecting

intellectual property. These efforts have added significant momentum to Russia's effort to join the WTO, which will create new market opportunities for U.S. exports of goods and services.

I look forward to working with you and other Members of Congress to ensure adequate and effective protection of the intellectual property rights of America's artists, creators and producers around the world.

Questions from Senator Cantwell

Question 1

Protecting intellectual property rights, which are the underpinning of so much of our economy in Washington State, is of great interest to me. US industry continues to face real threats to the value of intellectual property that endanger US innovation and jobs. This is true for a number of industries in the state of Washington, including our bio-medical, pharmaceutical, and bio-tech industries.

The KORUS agreement does a good job of imposing very high standards on intellectual property rights to protect US innovators and jobs. But I am hearing concerns that other agreements the US is currently in the process of negotiating entry to, specifically the Trans Pacific Partnership, have a lower standard for IP protection. **Given that the Trans Pacific Partnership is viewed by some as a trade platform that could eventually expanded to include China and India - two countries with which the US has had IP enforcement issues with - what are we doing extend the protections that we fought so hard for in KORUS into other agreements that we may be contemplating? And specifically, what are we doing to protect our country's bio-medical, pharmaceutical, and bio-tech industries in this regard?**

Answer:

Let me assure you that achieving strong standards of intellectual property protection and enforcement and creating a climate for enhancing innovation is a top priority for the Administration in our TPP negotiations. In that connection, our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region, including KORUS.

To date, the United States has put forward proposed text covering many aspects of copyrights, trademarks, patents, and enforcement that would achieve this goal. We have not yet tabled text

on some IP issues where we are still developing positions, such as provisions relating to pharmaceutical IP protection. We have, and continue to, work on our proposals in consultation with the Congress and all relevant stakeholders.

Question 2

Ambassador Kirk, in his joint press conference with President Hu, President Obama noted that high rate of software piracy in China means fewer jobs and less economic growth both in the United States and China. At the JCCT, China agreed to do several things as part of its software legalization program.

How are the Chinese following through on their JCCT commitments regarding software legalization?

More broadly, how does USTR ensure that the software the Chinese government is buying is actually legitimate?

Overall, what is USTR's strategy to keep the Chinese focused on making sure the software purchased by its government, enterprises, and state-owned enterprises is legally licensed?

Answer:

We continue to engage China at all levels to address software piracy. I agree that this is a major problem; in fact, it was raised by the President during the recent State visit by President Hu Jintao. During that visit and the preceding meetings of the Joint Commission on Commerce and Trade (JCCT), China took new steps on software piracy by committing to allocate budget funding for legal software purchases by government agencies, as well as making a commitment to audit the use of the legal software and publish the results of those audits. Furthermore, China said it would promote the use of licensed software in private companies and in state owned enterprises through software asset management programs. We are encouraging China to make additional efforts in the context of the "Special Campaign against counterfeiting and piracy" that was launched by the State Council in October.

While we must see how these steps work out in practice, and much more work remains to be done, China's recent commitments mark a significant opportunity for genuine progress on this difficult issue. As always, we will monitor progress on these issues to make sure that China is

following through on its commitments, using such tools at the JCCT IPR working group, and other opportunities. We expect to see concrete and measurable results, including indications of a more robust market for legal software. We also look forward to studying the results of the forthcoming ITC study on the quantitative effects of IPR infringement and “indigenous innovation” policies in China.

Question 3

There is only one Bahrain producer of the subject cotton shells produced from high quality cotton yarns, and that producer is related to the sole U.S. comforter producer that supports the rule change. We are aware of numerous other US producers of bedding products. **How many of these US producers has the ITC, USTR or Commerce contacted to determine whether these other US producers would be harmed by the proposed rule change, and what have these US producers told the ITC, USTR or Commerce?**

Answer:

- In July, 2009, the Committee for the Implementation of Textile Agreements (CITA), which is chaired by the Commerce Department, of which USTR is a member, requested public comment on the proposal by the Government of Bahrain for a rule of origin change for certain bedding products. CITA received one comment in support of the proposal from Sandler, Travis and Rosenberg on behalf of West Point Home.
- In March, 2010, the U.S. International Trade Commission (USITC) requested public comment on the probable effects of the proposed rule of origin change. USITC received two comments, one from West Point Home, Inc in support of the change, and one from the National Council of Textile Organizations, opposing the change based on a concern over substitutable products.
- In August, 2010, USTR was contacted by representatives of an additional U.S. company with objections to the proposed rule change. This company is concerned that imports from Bahrain of certain comforter shells made from certain combed compacted cotton yarns on a duty free basis would be harmful to the part of their business which imports similar goods from China.

The proposed rule covers certain high quality cotton yarns (over 102 metric) and shells produced from these yarns. These high quality yarns and shells are significantly more expensive than

other cotton yarns and fabric commonly imported from China. In the July 2010 ITC report, the ITC stated that no separate import data was available for these high quality yarns and shells. In reaching its conclusion that US bedding producers would not be adversely affected by the proposed rule change, however, the ITC relied upon general import data that covered both shells consisting of high quality cotton yarns and shells consisting of other low cost cotton yarns.. Has the ITC requested information from US producers and importers on the volume and cost of shells produced from high quality cotton yarns imported from China? If not, how can the ITC and USTR conclude that these US comforter producers will not be harmed by a proposed Bahrain FTA rule change applicable to high priced shells produced from the subject cotton yarns? In other words, it seems that the comparison that was done to arrive at a conclusion of no harm to U.S. industry was not an “apples-to-apples” comparison. On the one hand, the ITC appears to have considered imports from Bahrain of comforter shells made with high quality yarns and fabric. On the other hand, the ITC appears to have considered imports from other sources (primarily China) of comforter shells regardless of the quality of yarn and fabric used to make them. Since the latter category includes shells made from lower quality yarn and fabric, average unit values of the shells in that category are lower than what they would be if the ITC had taken into account only shells made using high quality yarn and fabric, which is the Bahraini object of comparison. By not doing an apples-to-apples comparison, the ITC may have skewed its results in a way that would minimize, and perhaps eliminate, any adverse impact of the proposed rule change on U.S. producers of bedding that rely on shells made with high quality yarn and fabric imported from China and elsewhere in the world.

If that is not the case, please explain why it is not the case.

Answer:

- In March, 2010, the U.S. International Trade Commission (USITC) requested public comment on the probable effects of the proposed rule of origin change. USITC received two comments, one from West Point Home, Inc in support of the change, and one from the National Council of Textile Organizations, opposing the change based on a concern over substitutable products.
- The full text of the USITC report may be found at:
<http://www.usitc.gov/publications/332/pub4173.pdf>.

In 2007 and 2008 the average unit values of cotton comforter shells from Bahrain were significantly less than the average unit values of cotton comforter shells from China, and the average unit values of cotton comforter shells from Bahrain have significantly increase only

recently. Since the only exporter of the subject products from Bahrain is related to the only US comforter producer supporting the rule change, how has the ITC verified the data on the cost of subject imported cotton shells from Bahrain? For example, a related party importer of a duty free cotton shell has an incentive to declare a high value on imports to avoid US tax obligations.

Has the ITC confirmed the cost of production or other market data to support the cost of the subject imported cotton shells from Bahrain?

Answer:

- In its report, the USITC explains that, in addition to the solicitation of public comments in March, 2010, “Commission staff obtained U.S. government production and trade data, and contacted domestic firms and U.S. importers to collect the necessary information to develop the probable effects advice.” (page iii).
- The USITC report may be found at: <http://www.usitc.gov/publications/332/pub4173.pdf>.

The US producers of finished comforters are in an extremely precarious competitive position. The comforter market is dominated by imports, predominately from China. This is confirmed by ITC data that show imports of finished comforters are more than six times greater than imports of cotton shell components. The subject high priced compacted yarns and shells are not produced in the US. Thus, the problem for US comforter producers is that they must import cotton shell components, and pay a seven percent duty, and at the same time compete against finished comforter imports. According to ITC statistics, certain finished comforters may be imported into the US at a price that is as little as \$2 per unit more than the price that US comforter producers must pay for imported cotton shell components used to produce finished comforters in the US. Competition to make major sales in the US market is very price sensitive. As a result, US producers of comforters are forced into a “buy versus make” decision. In short, US comforter producers are in a very import sensitive industry, and could easily be forced to simply import finished products rather than make the products in the US – costing US jobs and US exports. **Based on this import sensitivity, how will the proposed rule change, which will give only one US comforter producer a seven percent cost advantage, impact the entire US industry? How will the rule change impact overall US exports, US jobs, US production and capacity utilization if only one US comforter producer receives duty free treatment on its inputs and other US comforter producers are faced to compete with lower cost finished comforter imports and pay a seven percent duty on their input materials? Will other US producers lose sales or be forced to import finished comforters as a result of only one US producer receiving a seven percent cost advantage?**

Answer:

- USTR staff conducted additional consultations the staff of the USITC on cotton comforter shells, the product that is the subject of the proposed change in the FTA and also on finished comforters. USITC staff agreed to provide technical assistance to USTR on these products reflecting the most recent trade data available.
- This data shows that there is a large and growing volume of imports of comforter shells from China, at average prices considerably below products of Bahrain and an absence of imports of finished comforters from Bahrain (even with the availability of duty-free treatment for imports of finished comforters). In addition, given China's position in the finished comforter market, this data indicates that eliminating a 7 percent duty on imports of a subset of comforters shells from Bahrain would be unlikely to have a significant adverse effect on the U.S. industry importing shells from China and finishing them in the United States.
- Specifically, data provided by the staff of the USITC indicates that, with respect to comforter shells, including but not limited to those of certain compacted ring spun cotton yarn, imports from China represent approximately 84 percent of total U.S. imports of these products. Imports of these products from China have increased 51 percent in the first 11 months of 2010 compared to the same period in 2009. At the same time, imports of comforter shells from Bahrain declined 36 percent, and Bahrain's share of total U.S. imports of these products declined from 17 percent to 9 percent.
- The USITC staff also provided data on the average unit value of U.S. imports of comforter shells from Bahrain and China. This data shows that the value of imports of these products from Bahrain is approximately 20 percent, or 60 percent higher than the corresponding imports from China, depending on the specific 10-digit Harmonized Tariff System classification that applies to the relevant imports.
- The staff of the USITC also provided USTR with information reflecting the most recent trade data for imports of finished comforters from China and Bahrain. That data indicates that U.S. imports of finished comforters has generally declined, while imports of comforter shells has increased. The information provided by the USITC staff also indicates that under the rules of origin of the United States– Bahrain FTA, finished comforters made in Bahrain from non-originating yarns, including compacted, ring spun cotton yarn, are already eligible for duty free treatment. Trade data also indicates that notwithstanding the availability of duty-free treatment for finished comforters from Bahrain, for the years 2006 through the first 11 months of 2010, there were no imports of finished comforters from Bahrain. In fact, imports of finished comforters from China accounted for approximately 75 percent of total U.S. imports in 2009 and the first 11 months of 2010. Thus, with respect to finished comforters, it does not appear that Bahrain's products compete in the U.S. market with imports from China.

Question from Senator Nelson

Question 1

During the President's upcoming trip to South America, do you expect him to discuss the Administration's plans for travel exports - particularly the Visa Waiver Program with Brazil and Chile? Additionally, as the Administration looks to double exports through its National Export Initiative, can you please comment on your office's efforts to advocate for travel-related exports?

Answer:

The Administration recognizes the enormous value of the U.S. tourism industry, and the billions of dollars of export revenue that it generates for U.S. companies and workers. The Visa Waiver Program (VWP) is administered by the Department of Homeland Security (DHS) in consultation with the Department of State. In the last two years, nine countries have been added to the VWP, bringing the current number of participating countries to 36. Today approximately half of the total overseas visitors to the United States enter through the VWP. Information regarding the eligibility of particular countries for the VWP can be provided by DHS and the Consular Affairs Bureau of the Department of State.

USTR works closely with other agencies to advocate on behalf of U.S. tourism exporters, and in particular to address impediments to U.S. trade. For example, in December 2010, under the auspices of the U.S.-China Joint Commission on Commerce and Trade, the United States and China agreed to implement Phase 3 of the Memorandum of Understanding (MOU) opening the market for the sale of packaged leisure travel from China to the United States to three additional provinces in China. Since the initiation of travel under the Memorandum of Understanding in 2008, total passenger travel from China to the United States has increased by 23 percent, a total export value of \$5.5 billion (as of July 2010). China is our fastest growing market and by 2015 it is projected to become the 6th largest arrival market for the United States (up from 16th before the MOU in 2008). We will continue to press China to broaden the scope of access to include additional provinces.

Questions from Senator Menendez

Question 1

I would like to thank you for your efforts, as well as those of your staff, to advance progress on online piracy issues harming non-profit and commercial journal publishers. Combating on-line piracy is critical to ensuring that the U.S. remains a leader in science and innovation and to retaining good jobs in the United States. The publishers impacted by IPR violations directly and indirectly employ over 50,000 workers nationally and more than 3,000 jobs in my home state of New Jersey.

During the 2009 meeting of the U.S.-China Joint Committee on Commerce and Trade (JCCT), your Chinese counterparts pledged to strengthen domestic library efforts to protect copyright. In particular, Chinese copyright authorities agreed to conduct random inspections of libraries.

Enforcement is the key to resolving IP problems in China in the long-term. In the past two years, however, online journal piracy conditions on the ground have not improved. Chinese inspections of libraries have not been thorough. Libraries can easily hide infringement if they are notified of inspections beforehand. We need to work with the Chinese to develop specific guidelines for inspections and audits to reduce the upstream part of the piracy supply chain.

What progress can be expected on this issue under the JCCT this year?

Answer:

We continue to work on this issue to ensure that U.S. journals are protected in China. In 2009 we made progress on this issue at the JCCT meeting when China announced the issuance of a notice to state-run libraries instructing them to strengthen protection of copyright-protected academic and medical journals. In 2010, we pressed them again during the December JCCT Plenary to ensure that China's National Copyright Administration (NCA) investigated complaints by our right holders and China agreed to take prompt action at the conclusion of their investigations into web-based enterprises' piracy of electronic academic journals. We are hopeful that in 2011 NCA will take the appropriate steps to shut down the websites that sell the infringing copies of the journal articles, and that the Chinese Government will conduct more vigorous inspections of the State-run libraries to ensure these practices do not keep flourishing. USTR officials raised our concerns about this issue in March 2011 meetings in Beijing.

Question 2

We all know that free trade policies have opened up the doors of opportunities in our global market and have created jobs in areas that never before existed. However, our main concern should be whether or not these jobs are going to the American people. I voted against the North American Free Trade Agreement in 1993 not because I didn't think it would increase the fluidity of our international trade market, as it certainly has. I voted against it because I believe we should support policies that bolster the American economy first and foremost. I will remain just as vigilant as we continue to see an increase in outsourced American jobs. Just recently, L'Oreal factory in Clark New Jersey, a major manufacturing plant, has announced plans to close its facility and move 300 jobs to Mexico.

How can I tell just one of those 300 honest and loyal factory workers, who had invested twenty or more years in the factory, that his job has been sent to Mexico? Can I tell him to uproot his family and try his luck elsewhere without any guarantee of success?

Answer:

First, it is unfortunate that the factory closed and jobs were lost. Changes in the relative competitiveness of a firm or a factory are usually the result of several factors, and trade can be one of the contributors. As a society we have an obligation to assist those who bear the brunt of that change. To limit the impact of dislocations and to support new jobs for workers in transition, this Administration supports renewal of Trade Adjustment Assistance. We hope that Congress will secure long-term reauthorization of this key program.

Second, we believe that trade is essential to American economic growth and success. To reach our full potential for innovation, economic growth and sustained employment, America must engage globally to sell more goods and services abroad.

With the goal of better jobs for more Americans, we will craft new trade initiatives to increase our country's and our citizens' ability to compete in the global marketplace. Policies that support education, infrastructure, innovation, and investment here at home will also support our export strategy and its expected dividend of better job growth here at home.

Question 3:

As you know, Ambassador Kirk, the Colombian Free Trade Agreement was not brought to the Senate for ratification due to concerns about violence and human rights violations directed at union members in Colombia. According to the State Department's Human Rights Report on Colombia for 2009, violence and discrimination against union members discouraged some workers from joining and engaging in union activities. The Ministry of Social Protection reported that 28 trade unionists were killed during 2009, compared with 38 in 2008, while the National Union School (ENS), a labor rights NGO, reported that 39 trade unionists were killed, compared with 49 in 2008. The National Union School and government figures differed because of different methodological conceptions of trade union membership. According to data provided by the government and ENS, during the year the homicide rate per 100,000 was five for unionists and 35 for the general population. Nevertheless, any homicide associated with one's association, such as trade union membership, is unacceptable in a free and democratic society.

What is USTR doing to ensure that the treatment of labor unions and their members are properly addressed and resolved so that the Colombia Fair Trade Agreements can have a chance of passage in the Senate?

Answer:

On April 7, 2011, the United States and Colombia announced an agreement on an "Action Plan Related to Labor Rights" that significantly expands the protection of labor leaders and organizers, bolsters efforts to punish those who perpetrate violence against such persons, and strengthens labor laws and their enforcement. The Action Plan was developed as a result of the President's insistence that a number of serious labor concerns be addressed before the agreement could be moved to Congress. The Action Plan includes major, swift and concrete steps the Colombian Government has agreed to take to address outstanding labor concerns. For instance, the Colombian Government committed to amend the Criminal Code to criminalize anti-union threats and certain discriminatory practices; to increase resources, expand training, and improve procedures to secure more effective prosecution of labor violence cases; and to broaden access to protection programs for labor leaders and organizers under threat of violence. Colombian Government implementation of this Action Plan should clear a path forward for Congressional consideration of the Colombia FTA.

Question 4:

With respect to Panama, is it not the expectation that Panama would adopt the five core ILO labor principles: freedom of association; the effective recognition of the right to collective bargaining; the elimination of all forms of compulsory or forced labor; the effective abolition of child labor and, for purposes of this Agreement, a prohibition on the worst forms of child labor;

and, the elimination of discrimination in respect of employment and occupation. **Is it your understanding that Panama has accepted these principles and is ready to implement them?**

Answer:

Panama accepted International Labor Organization (ILO) labor principles as part of the trade agreement, and recently took concrete steps to strengthen the protection of labor rights in Panama. As part of the United States – Panama Trade Promotion Agreement, both Parties commit to adopt and maintain in their laws and practice the five fundamental labor rights as stated in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. These rights are related to forming and joining unions, collective bargaining, elimination of forced labor and child labor, and employment discrimination based on gender, race or other factors. Both Parties are also required to effectively enforce – and may not waive – labor laws related to the fundamental labor rights. Additionally, Panama has taken several steps to address outstanding labor concerns we have raised with them over the past two years. With respect to enforcement of its labor laws, Panama has issued executive decrees to address the misuse of subcontracting and temporary work contracts, to strengthen collective bargaining and the right to strike, and to prevent employer interference in union activities. Panama’s Labor Ministry has issued a resolution to increase labor inspections in the maritime sector, and to ensure that maritime workers are aware of their rights. To address concerns related to labor laws, Panama’s legislature recently passed labor reforms to ensure that companies in the Barú special economic zone are not exempt from key labor rights provisions, as well as legislation to ensure labor rights are respected in export processing zones and to eliminate restrictions on collective bargaining in companies less than two years old. President Martinelli signed these bills into law on April 5, 2011.

Question 5:

This issue has been a long-standing area of dispute between Mexico and the United States. In fact, the cross-border trucking agreement as part of the North American Free Trade Agreement has not been implemented since the agreement took effect in 1995. The United States decided to

bar Mexican trucks on U.S. roadways due to safety and security concerns. Mexico's response was to retaliate with \$2.5 billion worth of tariffs on U.S. exports. I understand the pilot program the Department of Transportation implemented in 2007 was stopped due to its inability to gather a statistically valid sample to validate the safety and security standards were being met. In the recent agreement that President Obama and President Calderon signed, another pilot program will be implemented. **Do you have confidence that this time we will get it right – that Mexican trucking companies will be able to comply with our standards and regulations and that Mexico will lift the tariffs it has imposed on U.S. products?**

Answer:

On March 3, President Obama and Mexican President Calderón announced that the United States and Mexico have found a clear path to resolving the cross-border long-haul trucking dispute. This path will allow for the establishment of a reciprocal, phased-in program built on the highest safety standards that will authorize both Mexican and United States long-haul carriers to engage in cross-border operations. Once a final agreement is reached, Mexico will suspend its retaliatory tariffs in stages beginning with reducing tariffs by 50 percent at the signing of an agreement and will suspend the remaining 50 percent when the first Mexican carrier is granted operating authority under the program. Mexico will terminate all current tariffs once the program is normalized. USTR will continue to work with the Department of Transportation to ensure that the new program emphasizes safety, security, and efficiency, and is consistent with our NAFTA obligations.

Questions from Senator Carper

Question 1

As you know, Brazil issued regulations in December that would ban the use of affiliate reinsurance. USTR was helpful in getting Brazil to delay implementation of the regulations and in facilitating dialogue with industry. These regulations contravene legislation passed by the Brazilian Congress in 2007, which opened the reinsurance market and led to significant investment by U.S. and other foreign insurers. It is a perplexing action by the government, given the capacity the country needs as it prepares for the 2014 World Cup, 2016 Rio de Janeiro Olympics and other major infrastructure projects. **Can you tell us what the United States is doing to ensure that U.S. insurance companies have fair access to Brazil's insurance market by removing unfair restrictions to the use of affiliate reinsurance?**

Answer:

We have engaged broadly and at high levels to express our concerns to the Brazilian government and insurance industry. Officials from State, USTR, and Treasury have reached out to their Brazilian counterparts. We also have worked to build international support for our efforts, engaging with representatives of Japan, Spain, and the EU. We will continue pressing Brazil's regulatory authorities to work with the affected companies to minimize disruption to their operations and the Brazilian insurance market.

Question 2

In 2007, the Bush administration reached an agreement with Congress on environmental and worker protections that increased standards for these protections above current Free Trade Agreement standards. However, this agreement lowered Intellectual Property protections for pharmaceutical companies below U.S. standards and standards contained in previous Free Trade Agreements. In my home state of Delaware, the innovative biopharmaceutical industry is responsible for more than 11,000 direct jobs, and at this time of economic malaise, it is imperative that strong Intellectual Property standards be part of any future trade agreements. **Can you please comment on how you and your team plan to ensure that U.S. innovative industries, including pharmaceutical companies, which represent engines of America's future growth and our competitive advantage, will receive the highest levels of protection in the Trans-Pacific Partnership?**

Answer:

The TPP offers an important opportunity to incentivize innovation and creativity throughout the region. I agree that effective IPR protection and enforcement is an important element in encouraging innovation in new technologies, including medical technologies such as biopharmaceutical products, and will stimulate investment in research and development, facilitate exports of U.S. products and contribute to the creation of American jobs. Let me assure you that achieving strong standards of intellectual property protection and enforcement and creating a climate for enhancing innovation, is a top priority for the Administration in our TPP negotiations. In that connection, our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region, including KORUS, and FTAs with current TPP partners Australia, Chile, Peru, and Singapore.

To date, the United States has put forward proposed text covering many aspects of copyrights, trademarks, patents, and enforcement that would achieve this goal. We have not yet tabled text on some IP issues where we are still developing positions, such as provisions relating to pharmaceutical IP protection. We have, and continue to, work on our proposals in consultation with the Congress and all relevant stakeholders.

Questions from Senator Grassley

Question 1

Last week President Obama and President Calderon announced an agreement in principle that will hopefully lead to a resolution of the trucking dispute. The proposal will remove the tariffs currently applied to 99 U.S. products, including those from my home state of Iowa. However, this is only the suspension of tariffs, not the elimination. If the U.S. fails to comply with the terms of the agreement Mexico can, and I assume will, reinstate tariffs to current levels, which have cost the U.S. millions of dollars in exports and hurt industries vital to the U.S. economy.

What can we do to assure the permanent removal of the tariffs on U.S. products so we can begin to gain back the jobs and export losses from the last two years?

Answer:

Now that we have reached an agreement with Mexico on a path forward, the proposed agreement between the Department of Transportation and Mexico has been published for public comment in the *Federal Register*. We expect the final agreement to be signed in late May or early June.

Once a final agreement is reached, Mexico will suspend its retaliatory tariffs in stages beginning with reducing tariffs by 50 percent at the signing of an agreement and will suspend the remaining 50 percent when the first Mexican carrier is granted operating authority under the program. Mexico will terminate all current tariffs once the program is normalized. USTR will continue to work with the Department of Transportation to ensure that the new program emphasizes safety, security, and efficiency, and is consistent with our NAFTA obligations.

Question 2

Iowa is by far the largest gelatin producing state in the country. Japan and other countries continue to keep out U.S. gelatin of bovine origin, citing BSE risk, even though our gelatin meets

all OIE standards and should be allowed in under Japan's WTO obligations. Overcoming barriers to U.S. beef is a very high priority, but it is a different issue than the one presented by gelatin. **Please explain what the administration is doing to gain market access for U.S. gelatin in Japan.**

Answer:

USTR and FDA have raised this issue at senior levels on numerous occasions with the Japanese government. We will continue to press Japan to open its market to US gelatin based on science, consistent with international standards, and in a commercially viable manner.

Questions from Senator Snowe

Question 1

The U.S. – Canada Softwood Lumber Agreement has been plagued with Canadian non-compliance issues. As you know, the U.S. has initiated three arbitration proceedings in an attempt to address the most egregious violations – winning two, while the third proceeding is still ongoing. Unfortunately, our government at times is slow to initiate enforcement steps called for under the agreement. We must understand that delayed enforcement action in response to oftentimes blatant SLA violations results in jobs saved in Canada at the expense of U.S. jobs. **What obstacles do you face when it comes to initiating dispute resolution under this Agreement? What steps will USTR take to streamline the Administration’s process for making these decisions and take action to protect American jobs? What additional authorities do you need to better enforce the SLA?**

Answer:

This Administration has made enforcement of the Softwood Lumber Agreement (SLA) a top priority and is fully committed to its swift enforcement and requires no additional authorities to do so. USTR actively manages the SLA and will continue to evaluate and act on any evidence of non-compliance to ensure that the Agreement provides the level playing field it was designed to create for U.S. producers.

Undertaking an arbitration against Canada under the SLA is a serious step. It would not be prudent for the U.S. Government to launch an arbitration before completing an analysis of the situation and without trying to resolve the issue diplomatically. Every arbitration USTR has pursued against Canada has involved unique fact patterns. The Grade 4 issue is the most complex of the three cases the United States has brought against Canada under the SLA. Once we determined that Canada was not prepared to address the apparent violations we identified, and that we were in a position to most effectively advocate our position before a tribunal, the United States took timely action to hold Canada accountable for circumventing the Softwood Lumber Agreement.

USTR has promptly addressed any apparent violations of the SLA and will continue to do so. In addition to the current arbitration, the U.S. Government has a successful track record of prevailing in two arbitrations under the SLA – in no small part due to our careful due diligence before launching an arbitration. We also imposed import charges on certain softwood lumber products in April 2009 when Canada did not comply with the first arbitral decision. In March 2011, Canada took measures to comply with the second arbitral decision by putting in place additional export charges.

Question 2

What assurances can you give this Committee that the Administration is committed to ensuring the strongest possible protections overseas for the intellectual property of all U.S. innovative sectors? Can you assure us that the Administration will seek the inclusion of the highest of IP standards in the Trans-Pacific Partnership Free Trade Agreement, which is currently in negotiation?

Answer:

The TPP offers an important opportunity to incentivize innovation and creativity throughout the region. I can assure you that achieving strong standards of intellectual property protection and enforcement and creating a climate for enhancing innovation, is a top priority for the Administration in our TPP negotiations. In that connection, our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region, including KORUS, and FTAs with current TPP partners Australia, Chile, Peru, and Singapore.

Question 3

I have heard concerns from constituents and local officials in Maine about the investor-state dispute resolution process in the investment chapter of the U.S-South Korea Free Trade Agreement. **How do you respond to concerns of some state and local officials that the investment chapter could subject laws in Maine and other states to challenge in foreign tribunals?**

Answer:

Investor-State arbitration provides foreign investors with the option to pursue binding international arbitration if they believe the host government has violated the investment rules of a trade agreement (for example, if a government illegally seized a foreign investor's factory). Investor-State arbitration provides critical protections to U.S. investors overseas, especially in countries that do not have fair or independent court systems. U.S. companies have used investor-State arbitration to win or settle over 30 disputes and recover hundreds of millions of dollars in damages. These results benefit not just the investors themselves, but also the many other U.S. companies that export to, or are affiliated with, these investors, allowing our companies and workers to enjoy even more of the growth and employment benefits that international trade and investment offer.

At the same time, investor-State arbitration does not prevent the U.S. government or state and local governments from regulating in the public interest, for example to protect public health, safety, or the environment. A few points are notable:

We could never be required to change our laws. Nothing in our investor-State arbitration provisions, including those in the U.S. – Korea trade agreement, prevents the U.S. government or a foreign government from protecting health, safety, the environment, or other public interests. If we were ever to lose an investor-State case, we could only be required to pay compensation – we could not be required to change any of our laws or regulations.

We have never lost a case. The United States has never lost an investor-State case or paid a penny to settle an investment dispute. At the same time, foreign investors rarely pursue investor-State arbitration against the United States, opting instead to use the independent, fair, and high-quality U.S. court system when they are concerned about government treatment here.

We include safeguards to prevent abuses. Our investor-State arbitration provisions include safeguards to penalize investors who bring frivolous suits, ensure transparency and public participation, and provide opportunities to challenge awards. Many of these safeguards were

developed in response to Congressional direction in the Trade Act of 2002 to ensure that we maintain the ability to protect the public interest.

Question 4

It has been one year since the Assistant USTR for Small Business position was created. Please address the obstacles that challenge American small businesses as they seek to export, solutions you envision to circumvent those barriers, and explain how you propose to measure the success of the Assistant USTR for Small Business, Market Access and Industrial Competitiveness in advancing trade opportunities for small business. **What results can small businesses expect from the successful implementation of your initiatives in the next year? Five years?**

Answer:

USTR is focused on making trade work for small businesses, helping them increase their sales to customers abroad and thus create jobs at home. We do this by negotiating with foreign governments to open their markets and reduce trade barriers, and enforcing our existing trade agreements to ensure a level playing field for American workers and businesses of all sizes. Agency-wide, we are working to better integrate SME issues and priorities into our trade policy, and increase our outreach to small businesses.

In 2010, three new reports requested from the U.S. International Trade Commission by the USTR offered critical insights into key trade barriers affecting these businesses. We will continue to seek to reduce these barriers through negotiation and cooperation with our trading partners and through enforcement action when necessary.

Under the SME initiative, USTR's small business office, working closely with USTR's geographic and functional offices, is developing ideas and advancing efforts to enhance activities that could benefit SMEs. These include efforts to address tariff barriers, burdensome customs procedures, discriminatory or arbitrary standards, and lack of transparency relating to relevant regulations in foreign markets which present particular challenges for our SMEs in selling abroad.

The ability for USTR to address SME concerns through the fact finding and consultation mechanisms built into our bilateral and regional trade agreements and dialogues is an important asset for USTR now and in the coming years. For example:

- As USTR moves forward with negotiations through the Trans-Pacific Partnership, USTR has designated a point person for SME issues, and is consistently emphasizing the needs of smaller businesses in order to help them participate more actively in Asia-Pacific trade and address trade barriers that affect SME access to these foreign markets.
- Under APEC's core agenda of trade and investment liberalization and facilitation, USTR is continuing to focus on concrete actions to make it cheaper, easier, and faster for U.S. businesses, and in particular for SMEs, to trade in the region.
- USTR is seeking to establish, where appropriate, working groups on small and medium-sized enterprises to facilitate expanded SME trade opportunities under our FTAs and develop SME-related activities with our FTA partners.
- USTR is also utilizing other trade fora such as the U.S.-India Trade Policy Forum and the Transatlantic Economic Council, to address SME opportunities and challenges on a regional basis with our trading partners.

This range of activities will yield new market access opportunities for American SMEs in coming years. If approved, the trade agreements with Korea, Colombia, and Panama will also yield important new export opportunities for small businesses each year. In 2008, U.S. SMEs exported \$11.2 billion in merchandise to Korea, representing 35 percent of total U.S. exports to Korea – and above the 31 percent of SME share of U.S. exports to the world.

We are also working with partner TPCC agencies to improve the availability of online resources for SMEs within the next year, such as a new FTA tariff web-based tool to help SMEs take better advantage of existing FTAs. Additionally, we are working with SBA and FTA partners to encourage the establishment of Small Business Development Centers (SBDCs) which can serve as counterparts to U.S. SBDCs.

Question 5

I strongly disagree with the World Trade Organization Appellate Body's decisions on the practice of "zeroing," the antidumping methodology used to capture the full margin of dumping in unfair trade cases. On February 18th I sent a letter to Commerce and USTR urging that you do everything possible to address the concerns of the American manufacturing industry by preserving maximum flexibility for our government in implementing these provisions. **What is the current status of the Administration's rule-making on zeroing? Do you plan to ask Congress to seek changes to enforce our trade rules and make U.S. trade remedy laws more effective in achieving their stated goals of offsetting foreign subsidies and unfair pricing practices that injure American industries?**

Answer:

I share your concerns with regard to the WTO decisions on zeroing, and I agree on the importance of maintaining the effectiveness of U.S. trade remedy laws. The Administration is currently working to implement the WTO decisions in a way that maintains our ability to effectively enforce U.S. trade laws. At this time, it appears that implementation pursuant to the Department of Commerce's proposal can be achieved without seeking statutory amendments.

The current status of the Administration's rule-making is as follows. In December, the Department of Commerce published a notice in the Federal Register proposing to change the methodology for calculating weighted average dumping margins and assessment rates in certain antidumping proceedings, including administrative reviews. The notice provided an opportunity for public comments. The Department is currently in the process of reviewing the substantial number of comments received in response to the notice. The Administration will also continue to consult with Congress as it considers how to proceed on this matter.

Questions from Senator Crapo

Question 1

It is good to hear President Obama's emphasis on exports and support for doubling exports by 2015. I understand that, through the National Export Initiative, the Administration is seeking funding for a number of export promotion programs. **Can you please explain how this funding is expected to result in additional exports and U.S. jobs?**

Answer:

Additional resources for export promotion activities will help more U.S. firms, especially small- and medium-sized businesses, which may lack the resources and training to begin or expand their exports, take better advantage of the expanded export opportunities overseas that USTR obtains through its negotiation and enforcement of trade agreements. The Department of Commerce estimates that every billion dollars in U.S. goods exports supports approximately 6,000 jobs.

Question 2

I strongly agree that expanding market opportunities for U.S. goods and services around the world must be part of the effort to improve our nation's economy, and advancing the pending free trade agreements with Colombia, Panama and South Korea must be part of this effort. The President's 2011 Trade Policy Agenda, like the one before it, provides very little detail on the advancement of the pending free trade agreements.

Farm families need more export opportunities. More than 50 percent of Idaho wheat depends on export markets, and Colombia is the U.S. wheat industry's largest South American market, with a market share of nearly 70 percent. U.S. growers are understandably worried that they are going to lose as much as 40 percent of this essential market share to Canada, threatening U.S. jobs, if Canada approves an FTA with Colombia ahead of the U.S. **It is frustrating to have to tell U.S. farm families that, after years of waiting for more market access through trade agreements, there is still more waiting needed. Can you please respond to this concern?**

Answer:

Our goal is to have all three pending agreements, once their outstanding issues have been addressed, approved by Congress as early as possible this year. Earlier this month we notified the full Committee that we are ready to begin work on the text of the implementing bill for the Korea FTA as soon as you are able to schedule those sessions. We are working to advance the Colombia and Panama agreements too, with the broadest possible bipartisan and stakeholder support, because of their importance to the United States.

Once these the outstanding issues are addressed, the Administration will be ready to prepare the Agreements for Congressional consideration.

Question 3

Please elaborate on what additional measures you will implement to ensure that Canada lives up to its Softwood Lumber Agreement obligations and fully comply with all aspects of the agreement? Can you share with us the steps the USTR is taking in preparation for the expiration of the current agreement, both with respect to responses to potential new Canadian violations, as well as an extension and/or renegotiation of the current agreement?

I am also interested in receiving feedback from the USTR as to its plan to ensure compliance of the SLA during the final two years of the agreement. **With the current pending arbitration case almost four years old, is the USTR exploring ways to expedite the review and arbitration process?**

Answer:

This Administration has made enforcement of the Softwood Lumber Agreement a top priority and is fully committed to its swift enforcement. With respect to our plans to ensure compliance in the final two years of the Agreement, USTR actively manages the SLA and will continue to evaluate and act on any evidence of non-compliance to ensure that the Agreement provides the level playing field it was designed to create for U.S. producers.

With respect to the expiration of the SLA which is set to occur in October 2013, USTR will engage in an interagency, as well as public process, to solicit the views of Congress and interested stakeholders on extension of the Agreement.

Regarding the current arbitration over timber pricing practices in British Columbia, we launched an arbitration in January 2011 and are working with the Department of Justice to ensure timely proceedings and issuance of a decision.

Question 4

How do we move forward on IPR protection in China now that President Hu's visit is over? There were big announcements during the Hu visit, but it does not appear we are back to the same old set of problems with China. **What are the objective, measurable benchmarks**

and timelines for Chinese compliance and success in the recently-announced delinking of indigenous innovation and government procurement rules? What steps are the Chinese taking to address reports of widespread piracy in their enterprises, including the State-Owned Enterprises?

Answer:

We will continue to engage China at all levels to address IPR protection and enforcement in China. The 2011 Special Campaign to crack down on IPR infringements has recently been extended, which Chinese officials have represented as evidence of the seriousness with which they take this problem. We are evaluating the effectiveness of the campaign and have held discussions with Chinese officials on how to translate lessons learned and effective operational mechanisms into long-term sustainable policies to have a meaningful effect on addressing rampant IPR infringement in the market.

During the recent State visit, President Hu Jintao committed to delink innovation policies from government procurement. We are closely monitoring compliance with this commitment, at both the central and sub-national levels of government, focusing on changes to existing measures and efforts to ensure new measures are consistent with President Hu's promise.

Also, during the State visit and the December 2010 meeting of the Joint Commission on Commerce and Trade (JCCT), China took new steps on software piracy by committing to allocate budget funding for legal software purchases by government agencies, as well as making a commitment to audit the use of the legal software and publish the results of those audits. Furthermore, China said it would promote the use of licensed software in private companies and in state owned enterprises through software asset management programs. We recently heard that the Copyright Protection Center, a branch of the National Copyright Administration of China, will be publishing guidelines for use by enterprises, including state owned enterprises, to implement software legalization programs and software asset management. We are encouraging China to make additional efforts in the context of the "Special Campaign against counterfeiting and piracy" that was launched by the State Council in October.

Question 5

The piracy rate for software in China remains alarming. The National Export Initiative presents one opportunity to put some focus on this problem. To be effective, there must be a strategy around how we solve specific problems in specific countries and metrics around success. Too often, success is defined as more people working on the issue or more resources spent. **It seems**

that there needs to be a metric that ensures a substantial increase in software sales over the next three years, and that needs to be a goal of NEI, what is your plan for this?

Answer:

We continue to engage China at all levels to address software piracy. I agree that this is a major problem; in fact, it was raised by the President during the recent State visit by President Hu Jintao. During that visit and the preceding meetings of the Joint Commission on Commerce and Trade (JCCT), China took new steps on software piracy by committing to allocate budget funding for legal software purchases by government agencies, as well as making a commitment to audit the use of the legal software and publish the results of those audits. Furthermore, China said it would promote the use of licensed software in private companies and in state owned enterprises through software asset management programs. We are encouraging China to make additional efforts in the context of the “Special Campaign against counterfeiting and piracy” that was launched by the State Council in October.

While we must see how these steps work out in practice, and much more work remains to be done, China’s recent commitments mark a significant opportunity for genuine progress on this difficult issue. As always, we will monitor progress on these issues to make sure that China is following through on its commitments, using such tools at the JCCT IPR working group, and other opportunities. We expect to see concrete and measurable results, including indications of a more robust market for legal software. We also look forward to studying the results of the forthcoming ITC study on the quantitative effects of IPR infringement and “indigenous innovation” policies in China.

Question 6

China remains closed to U.S. beef imports. China is potentially a \$200 million market for US beef. In January 2011, a high-level U.S. negotiating team spent more than 10 days in China trying to reopen the only country still completely closed to U.S. beef. **What is the USTR doing to re-open this market to US beef and when should we expect more progress with China?**

Answer:

USDA and USTR officials met several times in 2010 with counterparts in China to resume U.S. beef access negotiations. These efforts culminated in a delegation to Beijing in January 2011 led by USTR's Chief Agricultural Negotiator and USDA's Farm and Foreign Agricultural Services (FAS) Under Secretary and including technical experts from APHIS, FDA, FSIS, FAS, AND USTR. While an agreement has not yet been achieved, the January meetings were important in establishing clarity on conditions needed by both countries for trade to resume, after a stall in negotiations dating back to 2007. USDA and USTR will attempt to build on these extensive discussions with China throughout 2011 in an effort to reach an agreement that would allow trade to resume based on science, consistent with international standards, and in a commercially viable manner.

Question 7

Historically, Japan was the top market for U.S. beef exports, with approximately \$1.4 billion in sales. In 2010, we exported \$640 million in US beef in Japan, below the pre-BSE levels due to Japan's 20-month age restriction. **After seven years of little progress on this issue, what is the U.S. government doing to address this non-science based discrimination against U.S. beef exports?**

Answer:

USTR, in close collaboration with USDA, continues to urge the Japanese Government to resolve this issue so that we can normalize beef trade in this key Asian market based on science, consistent with international standards, and in a manner that is commercially viable. USTR and USDA continue to engage with Japan's Government on this important issue at multiple levels and at every opportunity.

Question 8

Recent reports have suggested that Japan may also join the Trans-Pacific Partnership. **Will resolving Japan's 20-month age restriction be a central part of Japan's entry into TPP negotiations with the United States?**

Answer:

As I conveyed during the Committee's March 9 hearing, Japan's restrictions on the imports of U.S. beef remain a major concern for the Administration. We have been urging Japan to resolve this issue based on science, consistent with international standards, and in a commercially viable manner. Japan's Government has not yet made a decision on whether it will seek to join the Trans-Pacific Partnership negotiations. The Administration will continue to call for a resolution in the near term to this priority market access concern.

Question 9

I was pleased to hear that President Obama will soon send implementing legislation for the Korea-U.S. FTA to Congress. The United States is not the only country negotiating a free trade agreement with Korea. South Korea reached an agreement with the European Union that goes into effect July 2011. Beef's biggest competitor is Australia, a country who is very close to finalizing a free trade agreement. If Australia reaches an agreement before the U.S., its beef producers will have a competitive advantage over our exporters, being able to sell more of their product at a cheaper price. **Do you agree that we cannot afford to jeopardize South Korean market share any longer?**

Answer:

We agree that time is of essence. Australia is our major competitor for the Korean beef market, and in 2010, Australia had 53% of the market share while the United States had 32%. If Australia concludes and implements an FTA with Korea before we do, the tariff cuts for Australian beef may take effect before those on U.S. beef, giving the Australian exporters a tariff advantage for at least the next 15 years. Timely approval and implementation of the U.S.- Korea trade agreement will ensure that we receive full benefits of the agreement's tariff reductions on beef – elimination of Korea's 40% tariff on beef over 15 years – boosting our exports which have already reached \$518 million in 2010, an increase of 140 percent in value over 2009.

Question 10

Taiwan's non-science based reasons for restricting beef imports are crippling U.S. beef sales in Taiwan. **What is the U.S. government doing to address this issue?**

Answer:

Taiwan continues to maintain barriers that limit access of U.S. producers to the Taiwan market. Some of these barriers are inconsistent with our bilateral protocol with Taiwan on beef and beef products that was agreed to in November 2009, and others, such as Taiwan's ban of beef containing trace amounts of ractopamine, are inconsistent with recommendations of recognized international scientific bodies as well as Taiwan's own risk assessment in 2007. USTR, in close collaboration with USDA, continues to urge Taiwan at every opportunity to resolve this issue so that we can normalize beef trade based on science, consistent with international standards, and in a manner that is commercially viable.

Question 11

When should Congress expect the U.S. government and the Mexican government to sign the final agreement on the cross-border trucking pilot program? When the agreement is signed, will the first half of the tariffs be temporarily suspended or eliminated? At what point will the retaliatory tariffs be eliminated?

Answer:

Now that we have reached an agreement with Mexico on a path forward, the proposed agreement between the Department of Transportation and Mexico has been published for public comment in the *Federal Register*. We expect the final agreement to be signed in late May or early June.

Once a final agreement is reached, Mexico will suspend its retaliatory tariffs in stages beginning with reducing tariffs by 50 percent at the signing of an agreement and will suspend the remaining 50 percent when the first Mexican carrier is granted operating authority under the program. Mexico will terminate all current tariffs once the program is normalized. USTR will continue to work with the Department of Transportation to ensure that the new program emphasizes safety, security, and efficiency, and is consistent with our NAFTA obligations.

Question 12

There are many overseas challenges that undermine the value of U.S. intellectual property at the expense of U.S. innovation and jobs. **Given the TPP is being billed as a “model 21st Century trade agreement” and regional platform that could potentially expand exports to a growing**

region, is it consistent for the U.S. to sign an agreement that could might lower IPR standards for industries that are at the core of our economy? What is the USTR doing to ensure that the TPP builds off the Korea-U.S. FTA Agreement to provide the highest IPR protections?

Answer:

Let me assure you that achieving strong standards of intellectual property protection and enforcement and creating a climate for enhancing innovation, is a top priority for the Administration in our TPP negotiations. In that connection, our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region, including KORUS.

To date, the United States has put forward proposed text covering many aspects of copyrights, trademarks, patents, and enforcement that would achieve this goal. We have not yet tabled text on some IP issues where we are still developing positions, such as provisions relating to pharmaceutical IP protection. We have, and continue to, work on our proposals in consultation with the Congress and all relevant stakeholders.

Question 13

In 2007, the Bush administration reached agreement with the Congress on environmental and worker protections that increased standards above current FTA standards. However, one criticism raised by stakeholders is that it also lowered IPR protections for pharmaceuticals below U.S. standards and those found in previous FTAs. How is the USTR working to ensure the highest IPR standards are included in the TPP for all our industries, including pharmaceuticals?

Answer:

The TPP offers an important opportunity to incentivize innovation and creativity throughout the region. Let me assure you that achieving strong standards of intellectual property protection and enforcement and creating a climate for enhancing innovation, is a top priority for the Administration in our TPP negotiations. In that connection, our goal in TPP is to achieve high standards of IP protection and enforcement in the Asia Pacific region that will stand alongside previous U.S. FTAs in the Asia-Pacific region.

To date, the United States has put forward proposed text covering many aspects of copyrights, trademarks, patents, and enforcement that would achieve this goal. We have not yet tabled text on some IP issues where we are still developing positions, such as provisions relating to pharmaceutical IP protection. We have, and will continue to work on our proposals in consultation with Congress and all relevant stakeholders.

Question 14

U.S. leadership in intellectual property innovation warrants efforts to ensure all trade tools are used to support innovation and high-value domestic jobs. **How can the U.S. develop a more comprehensive and results-oriented trade strategy? Should we be looking at areas where the U.S. can initiate its own trade violation investigations or do we need new legislation in the customs arena to combat IPR infringement?**

Answer:

The protection and enforcement of intellectual property rights (IPRs) is fundamental to American competitiveness and job creation. As President Obama confirmed in this year's State of the Union address, "The first step in winning the future is encouraging American innovation....In America, innovation doesn't just change our lives. It's how we make a living."

Taking up this charge, the President's 2011 Trade Policy Agenda set out a comprehensive IPR strategy regarding the protection of American innovation and jobs, which stresses the importance of intellectual property protection to the U.S. economy. The Agenda noted in particular, "the competitive advantage of American workers is eroded when piracy, counterfeiting, and other intellectual property theft threaten American brand-name products, copyrighted content, and patented inventions....Providing more certainty in this regard can embolden these American job-creators to export, and can help to create a global environment that encourages creative, innovative solutions to the world's most pressing problems."

USTR works to protect American IPRs and to promote U.S. competitiveness and jobs through a variety of mechanisms – including negotiating international IPR agreements, including state-of-the-art IPR provisions in U.S. free trade Agreements (FTAs), monitoring IPR protection by our trading partners, including through the annual Special 301 Report, and enforcing international rules to protect American innovators' IPRs, including in the World Trade Organization. USTR undertakes this strategy in close coordination with other relevant U.S. agencies, stakeholders, trading partners and Congress. For example, this year USTR and partner countries representing more than half of global trade finalized the text of the Anti-Counterfeiting Trade Agreement (ACTA). The agreement is an important new tool to fight the global scourge of counterfeiting

and piracy, which threatens jobs that depend on innovation – including those here in the United States.

Likewise, USTR engages in intensive bilateral negotiations with our trading partners that have achieved tangible results. For instance, The United States won wide-ranging commitments from China including to eliminate discriminatory “indigenous innovation” criteria used to select industrial equipment for preferential treatment, ensuring access to China’s market for American machinery manufacturers, as well as commit to open and neutral standards for 3G and future technologies in one of the world’s largest telecommunications markets. USTR also initiated a Section 301 investigation under existing legislative authority with respect to China’s green technology policy, which resulted in a U.S. challenge filed before the World Trade Organization.

Similarly, with respect to Russia, following direction from Presidents Obama and Medvedev, respectively, USTR and Russian government officials worked to resolve key bilateral issues related to the WTO accession process, including encouraging Russia to enact certain legislation critical to protecting intellectual property. These efforts have added significant momentum to Russia’s effort to join the WTO, which will create new market opportunities for U.S. exports of goods and services.

I look forward to working with you and other Members of Congress to ensure adequate and effective protection of the intellectual property rights of America’s artists, creators and producers around the world.

Question 15

The USITC is conducting a Section 332 Investigation on the effects of China’s IPR infringement and its indigenous innovation policies on U.S. competitiveness. The first study shows that IPR theft is widespread across a range of industries, and a forthcoming second report will focus on the domestic jobs impact. **What options does the U.S. have to use this data to secure change from China? Are there cases that the Administration or the USITC can initiate to address these problems?**

Answer:

We will study the forthcoming USITC report carefully and determine the most appropriate ways to use it after we see its content. The first study’s documentation of China’s problematic IPR and “indigenous innovation” policies, including the interrelationship between those policies and procurement, standards, antitrust, and other policies, has already been very helpful in informing our trade policy formulation and implementation work at USTR. The first study is also serving

the useful purpose of better educating U.S. stakeholders, and further strengthening the factual basis for the Administration's outreach to the Chinese government to address problematic policies. We hope to use the second study in similar ways.

Questions from Senator Roberts

Question 1

Ag had a record setting year in 2010 in terms of exports. However, we sit by and watch other countries which have trade agreements with Colombia and Panama eat up our market share with better access to their markets. Argentina is a perfect example of this. Between 2008 and 2010, U.S. market share for corn, wheat, and soybeans in Colombia dropped from 71% to approximately 27%. Interestingly, Argentina's market share for those same commodities rocketed up about the same amount as our loss. **If we continue to put off the Colombia trade agreement, do you see a scenario in which U.S. exporters will be able to regain lost market share? Along that same line, there was a recent trip down to both Colombia and Panama related to the trade agreements. What were the results of that trip and do we have a clear path forward?**

Answer:

At the President's direction, in early 2011 the Administration intensified its engagement with both Colombia and Panama to resolve the outstanding issues related to those trade agreements.

In the case of Colombia, As a result of these intensified efforts, the Administration secured commitments from the Government of Colombia that address these concerns. On April 7, President Obama and President Santos announced an agreement on an "Action Plan Related to Labor Rights" that significantly expands the protection of labor leaders and organizers, bolsters efforts to punish those who perpetrate violence against such persons, and strengthens labor laws and their enforcement. The Action Plan contains specific, detailed actions that, when taken by Colombia, will allow the Administration to move the trade agreement forward for Congressional consideration.

In the case of Panama, the Administration has been working closely with the government to resolve outstanding issues related to labor and tax transparency. Once Panama completes action

on the outstanding issues, we will be prepared to move the agreement to Congress. Panama has made good progress on the outstanding labor concerns. We understand that President Martinelli has signed the last changes into law. Panama also signed a Tax Information Exchange Agreement in November, consistent with internationally agreed standards as established by the OECD. We expect that Panama will ratify the TIEA in the near future.

American businesses, workers, farmers and ranchers are highly competitive, but they do risk being left at a disadvantage as Colombia and Panama enter into trade agreements with third countries. Advancing these free trade agreements to Congress with the outstanding concerns addressed will contribute to President Obama's goal of not just remaining competitive in global markets but doubling U.S. exports by the end of 2014.

Question 2

China is potentially a \$200 million market for US beef. However, China is currently closed to US beef imports. In January 2011, a high level U.S. negotiating team spent more than 10 days in China trying to reopen the only country still completely closed to U.S. beef. **What is USTR doing to re-open this market to US beef and when should we expect more progress with China?**

Answer:

USDA and USTR officials met several times in 2010 with counterparts in China to resume U.S. beef access negotiations. These efforts culminated in a delegation to Beijing in January 2011 led by USTR's Chief Agricultural Negotiator and USDA's Farm and Foreign Agricultural Services (FAS) Under Secretary and including technical experts from APHIS, FDA, FSIS, FAS, AND USTR. While an agreement has not yet been achieved, the January meetings were important in establishing clarity on conditions needed by both countries for trade to resume, after a stall in negotiations dating back to 2007. USDA and USTR will attempt to build on these extensive discussions with China throughout 2011 in an effort to reach an agreement that would allow trade to resume based on science, consistent with international standards, and in a commercially viable manner.

Question 3

Historically, Japan was the top market for U.S. beef exports at \$1.4 billion. In 2010, we exported \$640 million in US beef in Japan which is far short of pre-BSE levels due to Japan's 20 month age restriction. **After seven years of limited progress on this issue, what is the U.S. government doing to address this non-science based discrimination against US beef?**

Answer:

USTR, in close collaboration with USDA, continues to urge the Japanese Government to resolve this issue so that we can normalize beef trade in this key Asian market based on science, consistent with international standards, and in a manner that is commercially viable. USTR and USDA continue to engage with Japan's Government on this important issue at multiple levels and at every opportunity.

Question 4

Recent reports have suggested that Japan may also join the Trans-Pacific Partnership (TPP). Recently, I joined my colleagues, lead by former Ag Secretary now Senator Mike Johanns, in signing a letter requesting a resolution of the current 20 month age restriction before Japan joins the TPP. **Will resolving Japan's 20 month age restriction be insisted upon before Japan enters into TPP negotiations with the United States?**

Answer:

As I conveyed during the Committee's March 9 hearing, Japan's restrictions on the imports of U.S. beef remain a major concern for the Administration. We have been urging Japan to resolve this issue based on science, consistent with international standards, and in a commercially viable manner. Japan's Government has not yet made a decision on whether it will seek to join the Trans-Pacific Partnership negotiations. The Administration will continue to call for a resolution in the near term to this priority market access concern.

Question 5

Taiwan's recent actions to enforce a zero-tolerance policy in regard to ractopamine are crippling US beef sales in Taiwan. Taiwan's actions are inconsistent with international scientific guidelines and its own risk assessment findings from 2007. **What is the US government doing to address this issue? Is the US Government working with Taiwan to establish a temporary maximum residue level (MRL) for ractopamine, to be used until Codex issues an MRL in July 2011? Will you commit to keeping me informed on any and all developments concerning this unscientific barrier to beef exports?**

Answer:

Taiwan continues to maintain barriers that limit access of U.S. producers to the Taiwan market. Some of these barriers are inconsistent with our bilateral protocol with Taiwan on beef and beef products that was agreed to in November 2009, and others, such as Taiwan's ban of beef containing trace amounts of ractopamine, are inconsistent with recommendations of recognized international scientific bodies as well as Taiwan's own risk assessment in 2007. USTR, in close collaboration with USDA, continues to urge Taiwan at every opportunity to resolve this issue so that we can normalize beef trade based on science, consistent with international standards, and in a manner that is commercially viable. I and my staff will certainly keep you informed as we continue our efforts to resolve this issue.

Question 6

Taiwan has suggested they would like the US beef industry to provide Taiwan with a similar export program they have with the European Union. According to industry representatives, an EU style (non-hormone) program is roughly less than 2-3% of US grain fed production. **Is it reasonable for the US beef industry to invest all the effort to overhaul their production systems to conform with non-science based standards in Taiwan? What assurances do we have that Taiwan won't find something else (non-science based standard) to limit/ban beef imports from the US?**

Answer:

As stated above, it is our position that the appropriate way to resolve this issue is for Taiwan to ensure that it makes the necessary changes to its measures such that beef trade can be normalized based on science, consistent with international standards, and in a manner that is commercially viable.

Question 7

Codex Alimentarius Commission (i.e. CODEX) is the United Nations international commission responsible for setting science-based standards for food safety. USDA-Food Safety Inspection Service is responsible for the United States Government participation in CODEX.

Unfortunately, the increasing "politicization" of international standards organizations CODEX represents a major threat to U.S. agriculture. Legitimate international standards prevent US agricultural commodities from being the victim of non-science based rules that countries use to ban imports from the US without being subject to retaliatory tariffs. In short, it does not matter how many tariffs our trade agreements eliminate or reduce, non-tariff barriers like this prevent free and fair international trade. **Given CODEX's vital importance to U.S. agriculture, is USTR working with USDA to increase its focus on CODEX activities? In preparation for the July CODEX meeting, what is the US Government doing to promote inter-agency coordination, including US Trade Representative, the State Department, and USDA-Foreign Agricultural Service participation, to continue to promote CODEX's science-based standards and not allow CODEX to become "politicized"? Is USTR working with other US Government agencies to conduct timely outreach to foreign governments (e.g. Australia, NZ, and Brazil) to build support for our CODEX positions?**

Answer:

USTR and USDA are leading an interagency outreach effort to contact every CODEX Member and to ask for their support for the adoption of science based measures such as the adoption of the eight pending MRLs for ractopamine at the July CODEX Commission meeting in Geneva.

Question 8

Could you provide an update on the status of the WTO case against the EU which found that Airbus benefitted from illegal subsidies? What steps you plan to take to ensure compliance with the ruling, which, if upheld on appeal, found roughly \$20 billion in illegal European subsidies?

Answer:

The Panel decision against the EU is currently on appeal. The WTO Appellate Body is scheduled to issue its report at the end of April or beginning of May. If the Appellate Body upholds the Panel's findings, the EU, France, Germany, Spain, and the UK will have 90 days

from the date of adoption of that report to withdraw export subsidies, and six months to withdraw any other subsidies or remove their adverse effects. At the end of this period, WTO rules provide a procedure to assess whether the EU has complied with its obligations. If necessary, we will invoke those procedures, and take every other step needed to ensure that the EU and its member States withdraw their subsidies or eliminate their adverse effects.

Questions from Senator Enzi

Question 1 Engaging China on Removing VAT Rebate

I appreciate USTR's commitment to continue to press the issue of China's manipulation of its VAT rebate. **Could you please provide an update on what the U.S. Government is doing in the context of the JCCT and other arenas to achieve the elimination of China's VAT rebate on soda ash?**

Answer:

We have been using a variety of venues, including the U.S. China Joint Commission on Commerce and Trade (JCCT), to press China to eliminate its distortive VAT practices that harm our industries, like our soda ash industry. Exporters of U.S. soda ash, which is produced in a more environmentally friendly way than Chinese soda ash, compete directly with Chinese exporters in many Asian markets and are particularly concerned about China's current VAT rebate practices. China is encouraging exports of soda ash by providing for a high VAT rebate for those exports. This practice gives China's soda ash exports – as well as soda ash producers – a clear advantage over the more environmentally friendly U.S. soda ash exports and producers in third country markets.

Question 2 Engaging China on Removing VAT Rebate

What coordination is happening with the Department of Commerce and Department of Treasury in engaging China on its VAT rebate on soda ash?

Answer:

The JCCT is co-chaired on the US side by USTR Ambassador Kirk and Commerce Secretary Locke, so we coordinate closely on issues we raise to the Chinese side through the JCCT, including the VAT rebates issues.

The Obama Administration is also raising concerns about China's VAT system in the Strategic and Economic Dialogue (S&ED). In this effort, USTR and Commerce have been working closely with the Department of Treasury to press China to take steps to move toward a VAT system that operates consistent with international norms and has a neutral impact on international trade.

Question 3 Soda Ash in Morocco and Enforcing Existing Free Trade Agreements

The Government of Morocco denies the preferential treatment afforded transshipped U.S. soda ash exports in violation of the 2006 U.S.-Morocco Free Trade Agreement. This is the case even though U.S. soda ash exporters have clearly documented that the soda ash is of U.S. origin and has not been transformed in any way from the time it leaves the United States to the time it arrives in Morocco. USTR has repeatedly underscored the priority of enforcing this country's trade agreements. **Please summarize what steps are being taken to resolve this issue with Morocco.**

Answer:

USTR has been in close touch with the U.S. soda ash producers who have alleged that treatment by Moroccan customs authorities of their exports violates the Free Trade Agreement's requirements related to preferential treatment of goods under the Agreement. Along with our colleagues in other agencies and the U.S. Embassy in Rabat, we are investigating the facts of this case and will use upcoming meetings with the Moroccan government, as appropriate, to highlight any concerns we have.

Question 4 Increasing Market Access for U.S. Lamb Overseas

Members have rightly raised the need to increase market share for U.S. beef overseas. I agree that this needs to be done, particularly when it comes to exporting to Asian markets.

However, in addition to beef, Wyoming also produces some of the world's finest lamb. **Although we face tough competition from exporters like New Zealand in the area, I would**

like to know what USTR is doing to promote market access for U.S. lamb, specifically in the context of the Trans-Pacific Partnership talks.

Answer:

In the TPP market access negotiations, the United States is negotiating bilaterally with those countries with which we do not have existing free trade agreements—Brunei, Malaysia, New Zealand and Vietnam. The United States seeks immediate elimination of tariffs on U.S. lamb in order to gain improved market access opportunities for U.S. lamb producers.

Questions from Senator Thune

Question 1 Intellectual Property

In the context of trade with China, how does the Administration plan to move forward and strengthen the security of our intellectual property in China now that the Hu visit is over?

I understand the ITC is conducting a Section 332 Investigation on the effects of China's IP infringement on US competitiveness. **What options do you have to use this data to secure change from China? Are there cases that the Administration or the ITC can initiate to address these problems?**

Answer:

We will continue to engage China at all levels to address IPR protection and enforcement in China. The 2011 Special Campaign to crack down on IPR infringements has recently been extended, which Chinese officials have represented as evidence of the seriousness with which they take this problem. We are evaluating the effectiveness of the campaign and have held discussions with Chinese officials on how to translate lessons learned and effective operational mechanisms into long-term sustainable policies to have a meaningful effect on addressing rampant IPR infringement in the market.

Regarding the ITC investigation, we will study the forthcoming USITC report carefully and determine the most appropriate ways to use it after we know its content. The first study's documentation of China's problematic IPR and "indigenous innovation" policies, and the interrelationship between those policies and procurement, standards, antitrust, and other policies, has already been very helpful in informing our trade policy formulation and implementation

work at USTR. The first study is also serving the useful purpose of better educating domestic US stakeholders, and further strengthening the factual basis for the Administration's outreach to the Chinese government to address problematic policies. We hope to use the second study in similar ways.

Question 2 Intellectual Property

It seems that there needs to be a metric that measures improvements in IP security over the next few years. **How do you plan to measure and report to Congress on the effectiveness of IP security efforts in overseas markets?**

Answer:

The protection and enforcement of intellectual property rights (IPRs) is fundamental to American competitiveness and job creation. As President Obama confirmed in this year's State of the Union address, "The first step in winning the future is encouraging American innovation....In America, innovation doesn't just change our lives. It's how we make a living."

Taking up this charge, the President's 2011 Trade Policy Agenda set out a comprehensive IPR strategy regarding the protection of American innovation and jobs, which stresses the importance of intellectual property protection to the U.S. economy. The Agenda noted in particular, "the competitive advantage of American workers is eroded when piracy, counterfeiting, and other intellectual property theft threaten American brand-name products, copyrighted content, and patented inventions....Providing more certainty in this regard can embolden these American job-creators to export, and can help to create a global environment that encourages creative, innovative solutions to the world's most pressing problems."

USTR works to protect American IPRs and to promote U.S. competitiveness and jobs through a variety of mechanism, and measures the adequacy and effectiveness of intellectual property protection and enforcement by our trading partners, including through the annual Special 301 Report.

The Special 301 Report review process examines IPR protection and enforcement in U.S. trading partners. The Special 301 designations and actions announced in the Special 301 Report are the result of close consultations with affected stakeholders, interested parties, foreign governments, the U.S. Congress, and of interagency discussions within the U.S. Government. USTR, together with the interagency Special 301 subcommittee, works to make a well-balanced assessment of intellectual property protection and enforcement, as well as related market access issues, in accordance with the statutory criteria set out by Congress in the Special 301 statute.

This assessment is necessarily conducted on a case-by-case basis using detailed metrics, taking into account diverse factors such as a trading partner's level of development, its international obligations and commitments, the concerns of rights holders and other interested parties, and the trade and investment policies of the United States.

I look forward to working with you and other Members of Congress to ensure adequate and effective protection of the IPRs of America's artists, creators and producers around the world and to measure and report to Congress on the effectiveness of IPR security efforts in overseas markets.

Question 3 Ethanol

If Congress were to allow the tariff on imported ethanol expire at the end of this year and replace the existing Volumetric Ethanol Excise Tax blender's credit with an ethanol producer tax credit, would that comply with WTO trade obligations? What other trade implications are associated with such a change?

Answer:

There would be no legal impediment under the WTO if Congress chose to allow the surcharge to expire and to repeal the blender's credit. However, it is important to note that the blender's credit does not fall within the scope of the WTO Agreement on Agriculture. That means the credit is not counted against the annual "Aggregate Measurement of Support" (AMS) that the agreement allows the United States to provide U.S. agricultural producers. Our annual AMS ceiling is currently \$19.1 billion.

If Congress were to shift the credit from blenders to ethanol producers, however, the support provided by the new credit program would be counted against our annual AMS. Thus, the level of support provided by the ethanol producer tax credit, together with the level of support provided by other U.S. farm programs, would have to fit within our current \$19.1 billion allowance.

Question 4 Agriculture Trade

With regards to the Panama and Colombia Free Trade Agreements, are there any U.S. agriculture related issues that have yet to be resolved before these agreements are submitted to Congress?

Answer:

No, there are no outstanding agriculture-related issues that need to be resolved prior to submission to Congress.

Question 5 Agriculture Trade

Recently, a bipartisan group of Senators led by Senator Johanns, wrote to you to express our position that Japan should further open its market to U.S. beef exports as a condition to participating in the Trans Pacific Partnership negotiations. **Would you agree with that position? Do you believe that Japan is any closer to accepting U.S. cuts of beef based on O.I.E World Organization for Animal Health guidelines?**

If not, what are their reasons?

Answer:

As I conveyed during the Committee's March 9 hearing, Japan's restrictions on the imports of U.S. beef remain a major concern for the Administration. We have been urging Japan to resolve this issue based on science, consistent with international standards, and in a commercially viable manner. Japan's Government has not yet made a decision on whether it will seek to join the Trans-Pacific Partnership negotiations. The Administration will continue to call for a resolution in the near term to this priority market access concern.

I understand there is a growing recognition within Japan on the need to move on this issue, in light of the fact that numerous other markets are already open to U.S. beef on the basis of science and international standards. We will continue to engage with Japan on this issue at multiple levels.