Written Responses to Senate Finance Committee Questions for the Record
The Honorable Susan Schwab
May 17, 2006

SENATOR HATCH:

1) Last week, Senator Bayh and I sent a letter to the President regarding our opposition to Russian WTO accession until the Russian Government makes tangible progress on the theft of intellectual property as well as dismantling a number of barriers with respect to imports, including tariffs and tariff rate quotas; discriminatory and prohibitive charges and fees; and discriminatory licensing registration, and certification regimes. The President received a similar letter from Chairman Grassley and Senator Baucus. What do you believe? Should the United States adopt the policy we suggested?

Answer: We believe that continuing to engage Russia on these and other issues in the WTO accession negotiations is the best means of achieving the objectives we all share. Importantly, joining the WTO will lock Russia into a rules based system where we and others can tackle trade issue more effectively, and we have made it very clear to Russia that any bilateral market access agreement that we conclude has to be on commercial terms.

We are committed to ensuring that Russia makes meaningful progress on protection and enforcement of intellectual property rights (IPR) and are closely engaged with the Russian government in the context of both WTO accession negotiations and our bilateral working group on IPR. We continually emphasize that stronger IP protection is a top priority of our economic relationship.

We have seen some progress over the last year in steps that Russia has taken to improve its intellectual property enforcement efforts, but want to see much more. For example, in recent months, we have seen an increase in the number of raids and inspections of pirate optical disc plants and seizures of pirated goods, including some unannounced inspections of optical media plants on government-controlled property. We were pleased to see President Putin's recent statements about the seriousness of counterfeiting and piracy. Notwithstanding these steps, we are pressing Russia for sustained enforcement efforts that will reduce levels of IP piracy and counterfeiting and have a real deterrent effect.

The United States is also working in the context of the bilateral WTO market access negotiations and the multilateral Working Party negotiations with other WTO Members to address a number of other issues, including those mentioned in the National Trade Estimate Report. In the agriculture sector, we are working to reduce and bind agriculture tariff rates overall and to secure favorable terms for our exporters. We are seeking commitments to ensure that Russia implements sanitary and phytosanitary (SPS) requirements of the WTO and abides by international standards in its treatment of imports of beef, pork, poultry and biotech products. We are working to secure a reduction of export duties on steel and other scrap metals. Finally, as part of the WTO

negotiations, Russia is making important changes to streamline its licensing, certification, and other procedures. We will continue to work with other WTO Members to urge Russia to make further progress on these “non-tariff barriers.”

2) I was pleased to learn about the recent tentative settlement of the long-running softwood lumber dispute with Canada. I understand that USTR is hoping to conclude the final agreement on an expedited basis. However, I am concerned about the inclusion in the agreement of an exception for Canadian re-manufactured products, which could result in a loss of jobs by U.S. re-manufacturing companies. I am certain that putting the U.S. re-manufacturing industry at a competitive disadvantage with its Canadian competitors was not the intent of the provision, although it could have that effect. May I have your commitment to do your best to ensure that this provision does not harm U.S. re-manufacturing companies and the workers that they employ?

Answer: USTR officials have met with our lumber remanufacturers on several occasions both before and after we announced the terms of an agreement with Canada. We believe the agreement treats remanufacturers fairly. The core terms provide that lumber remanufacturers on both sides of the border that buy low-quality lumber in Canada are treated the same. That is, when a border tax is being charged, a U.S. remanufacturer buying low value lumber from Canada would pay a price that includes the applicable tax (for instance, under Option A, the tax would be either 5, 10, or 15 percent). A Canadian firm which buys the same grade of lumber and remanufactures it in Canada for export would also pay a tax only on the low grade input. We need to make sure that only lumber which is in fact remanufactured is assessed the tax on the lower value. Remanufactured lumber will also be included in all volume restraints, to the extent such restraints apply. We are continuing to work actively with the U.S. industry to ensure that the final agreement has provisions that are clear to administer and straightforward to enforce.

3) I was also disappointed by the lack of progress that was made during the Chinese official visits that were made recently. I understand that the Chinese government has taken action against 14 factories producing illegal optical disks. Is this not just a small drop in a big bucket? Is this really going to help when 9 out of 10 optical discs sold in China are pirated? The Congressional Research Service estimates that counterfeits constitute between 15 to 20 percent of all products made in China and this sum amounts to 8 percent of China’s gross domestic product.” What impact will this really have?

Answer: I agree with your assessment that more needs to be done to help U.S. manufacturers and businesses fight intellectual property theft. China’s IPR enforcement regime remains inadequate, and we will continue to press China for concrete results.

Protection of intellectual property topped the list of issues that we raised with Vice Premier Wu on April 11 at the meeting of the U.S.-China Joint Commission on Commerce and Trade. The elevated JCCT has become an important platform to identify and resolve problems so that the United States and China can expand trade on a more open and fair basis. Our meeting was frank, and we made measured progress on stepping up intellectual property rights (IPR) enforcement efforts in China.

On optical disk piracy, in addition to the actions China announced it has taken against fourteen optical disk (OD) plants, China also agreed to discuss a proposal the United States made in advance of the JCCT to cooperate on specific OD enforcement steps. We are sending a joint USTR and Department of Commerce team to Beijing next week, and our proposal is among the items they will discuss with their Chinese counterparts. In addition, China committed to continue investigating and taking further actions against other OD plants as warranted under Chinese law. Ambassador Portman and Secretary Gutierrez wrote a detailed letter to Chinese Ambassador Zhou late last year emphasizing the priority we place on the issue and requesting China to take concrete actions to stop OD piracy, and, if confirmed, I will continue to press my Chinese counterparts to meet this clear objective that we have set for them.

In addition to tackling the issue of OD piracy in China, we made progress on other IPR issues at the JCCT. Key areas include new rules requiring that computers be pre-installed with legal operating system software before they are sold or imported into China and requiring that government agencies only purchase such computers; an agreement to work on cooperation to combat pirated goods displayed at trade fairs in China; a commitment to intensify efforts to eliminate infringing products at major consumer markets in China, such as Silk Alley in Beijing, and an agreement to work to address industry concerns about bulk production of active pharmaceutical ingredients. We also agreed to step up cooperation on IPR law enforcement efforts and increase customs cooperation.

USTR released its 2006 Special 301 Report on April 28. We announced that China would stay on the Priority Watch List, and that we will step up consideration of our WTO dispute settlement options. We also noted the acute need for authorities at the sub-national level in China to more effectively establish and sustain proactive, deterrent IPR enforcement. To address these challenges, USTR announced that will scrutinize IPR protection and enforcement at China's provincial level through an unprecedented special provincial review to be conducted in the coming year.

Notwithstanding all of our efforts, we have much work to do on IPR enforcement in China, and I will not waver in my determination to achieve significant reductions in IPR infringement activities in China.

4) Manufacturers in Utah continue to be concerned that the trade remedy laws they rely on to combat unfair foreign trade practices will be weakened in the current round of WTO negotiations. These trade remedies are under strong attack by many of our trading partners, who have proposed a host of changes that would largely undermine our rules against dumping and subsidies. My constituents are concerned that the United States has done little to counter these proposals, even though the Trade Promotion Authority legislation specifies that a major goal of the United States in these negotiations must be to fully preserve U.S. fair trade laws. If you are confirmed, will you put forth proposals that are in keeping with the Congressional mandate to preserve and improve these rules?

Answer: I share your concern about the need to preserve the strength and effectiveness of U.S. trade laws. I believe that strong and effective remedies against unfair trade practices, including those against dumping and unfair subsidies, are critical for maintaining support for trade liberalization, and are essential to ensure that the benefits gained from trade liberalization are not undermined. If confirmed, I will work with Congress to ensure that the TPA mandate to preserve the ability of the United States to enforce rigorously its trade laws is fulfilled.

In the WTO Rules talks, the United States has emphasized the necessity for strict adherence to the Rules negotiating mandate that U.S. negotiators insisted upon and obtained at the Doha Ministerial Conference in 2001, which requires that the effectiveness and basic principles of the WTO Antidumping and Subsidies Agreements must be preserved. Given the increasing number of WTO Members using the trade remedy rules, including many developing countries, a number of additional Members have joined us in insisting that the effectiveness of the rules must be preserved. When other Members have raised proposals with the potential to undermine our trade laws, we have put them on the defensive by vigorously attacking the technical merits of the proposals.

We have also countered those proposals with our own proposals on key U.S. priorities, including eleven new Rules proposals since March 2006. For example, we have recently tabled proposals on prohibited subsidies, circumvention, new shipper reviews, transparency and due process, WTO dispute settlement, and perishable and seasonal agriculture.

If confirmed, I look forward to working with you to advance our Rules proposals, and to ensure that U.S. trade laws remain strong and effective.

SENATOR SANTORUM:

Question 1:

The U.S. coffee industry contributes in important ways to U.S. export growth. U.S. companies and workers roast and process over 1.1 million metric tons of green coffee annually, and export more than 57,000 metric tons of green, roasted and instant coffee per year. There are more than 1,000 U.S. roasters, processors, and importers, supporting more than 150,000 jobs--including many jobs in Pennsylvania.

Unfortunately, coffee is one of the most protected commodities in the world. In light of this, I joined 29 of my colleagues from both sides of the aisle in writing to USTR last year urging that market access for U.S. coffee exports be made a priority. I know USTR heard this message and has been working hard to reduce coffee tariffs--particularly through bilateral free trade agreement negotiations.

However, high coffee tariffs also exist in countries with which the U.S. is not negotiating such agreements. For example, India's bound tariff on roasted coffee is an astonishing 150%. If the U.S. coffee industry is to remain competitive and continue to support coffee manufacturing jobs, we have to eliminate the high tariffs we are facing in India and other countries.

The U.S. and India have launched a renewed Commercial Dialogue to address bilateral trade matters and President Bush visited India in February to promote this and other trade and business initiatives. I am interested in knowing if USTR plans to use these initiatives with India to address this high tariff on coffee. More generally, please also update me on how USTR is working to eliminate high coffee tariffs in other countries and as part of the WTO Doha Round trade talks.

Answer: In addition to your co-sponsored letter, this issue was brought to USTR's attention by an American firm interested possibly in investing in India. On a bilateral basis, we intend to take this issue up in our upcoming Trade Policy Forum meetings in New Delhi in late May and follow up from there. We have also put that company in touch with the Indian embassy in Washington to sensitize the Indian government here to the potential benefits to lower coffee tariffs. We recognize, however, that with the Doha round underway, it is unlikely that India would entertain lowering coffee tariffs on the basis of a bilateral request while those same tariffs are on the table in multilateral tariff negotiations.

On the multilateral front, the United States is calling for substantial reductions in all agricultural tariffs in the Doha Development Agenda negotiations, including for coffee exported to India and all other WTO Members. We will continue to press in these negotiations for the deepest possible tariff cuts.

We are also seeking increased market access for roasted coffee in our free trade agreements (FTAs). Our Peru and Colombian FTAs will provide for duty-free access for a certain amount of roasted coffee under a tariff-rate quota and rule of origin system that confers origin on coffee that is roasted in the United States. We will also address coffee tariffs in the upcoming FTA negotiations with Korea and Malaysia.

The U.S. coffee industry is an important export-related success story. If confirmed, I look forward to working with you to support the continued success of the industry by providing additional market access opportunities abroad.

Question 2:

Criticism has been voiced by many in the U.S. manufacturing sector of the economy that USTR is not doing enough at the WTO Doha Round negotiations to maintain and defend U.S. trade remedy laws. Particular concern has been raised that the U.S. is not pushing

back on the "Friends of Antidumping" during the Rules portion of the WTO negotiations.

I am hopeful that the U.S. will not weaken or trade away current trade laws that are effective tools to address unfair trade practices. Let me say that I am philosophically a supporter of free trade. However, I recognize that not all nations have the discipline and commitment to play by the rules. My constituents in Pennsylvania who work in the steel, pipe and tube fittings, and tool and die industries know this fact first hand. I believe the U.S. must have the ability to respond effectively when American industries are hurt by subsidized and/or dumped products. When participating in Doha Development negotiations, please remember that U.S. trade remedy laws are a key component of America's free trade agenda.

How do you respond to criticisms that the U.S. is not doing enough to defend our trade remedy laws at the WTO Doha Round negotiations? What specific proposals has the U.S. put forth that strengthen or re-affirm our trade remedy laws?

Answer: I share your concern about the need to preserve the strength and effectiveness of U.S. trade laws. I believe that strong and effective remedies against unfair trade practices, including those against dumping and unfair subsidies, are critical for maintaining support for trade liberalization, and are essential to ensure that the benefits gained from trade liberalization are not undermined. If confirmed, I will work with Congress to ensure that the TPA mandate to preserve the ability of the United States to enforce rigorously its trade laws is fulfilled.

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We have also countered those proposals with our own proposals on key U.S. priorities, including eleven new Rules proposals since March 2006. For example, we have recently tabled proposals on prohibited subsidies, circumvention, new shipper reviews, transparency and due process, WTO dispute settlement, and perishable and seasonal agriculture.

If confirmed, I look forward to working with you to advance our Rules proposals, and to ensure that U.S. trade laws remain strong and effective.

Question 3:

The Medicare Modernization Act calls for USTR to develop a trade strategy, including bilateral or multilateral negotiations, to address price controls and related policies on pharmaceuticals in other countries. What has USTR specifically done to implement this provision, including countries and time lines for action?

Answer: USTR has worked closely with economic and health policy agencies to address price controls and related policies in other countries. We are actively seeking to address these issues both in Free Trade Agreement (FTA) negotiations and through the establishment of dialogues with priority OECD countries.

The United States-Australia FTA, which went into effect in 2005, was the first FTA to address pricing and related issues. We are vigorously monitoring the Australian Government's implementation of the FTA, in particular this aspect of the agreement. In March, we held the first annual review of the FTA and confirmed that Australia has followed through on the pharmaceutical-related commitments it made, including establishing an appeal process to enhance accountability of its pharmaceutical reimbursement system. We also held a meeting of the Medicines Working Group, established under the FTA, to address ongoing issues of concern related to health care.

In June, we will hold the first round of FTA negotiations with Korea. Pharmaceutical issues will be a significant aspect of these negotiations as well.

In addition to FTA negotiations, USTR and the interagency team have sought to establish dialogues on pharmaceutical issues with Germany, Poland, Italy, France and Canada, all countries that U.S. industry has identified as priority markets. We have held numerous meetings with officials at all levels of government to discuss specific concerns about elements of these countries' pharmaceutical reimbursement and pricing systems, and broader health policy issues. Just in the last several months, Commerce Secretary Gutierrez, Deputy Health and Human Services Secretary Azar, and I have each traveled to Germany to meet with our counterparts, and have raised these issues. As Germany considers broader health care reform this year, we will continue to press the government to address our concerns related to regulatory, transparency, and pricing issues. In June, we will intensify our work with Poland and Italy. We plan to begin work with France and Canada later this year.

Question 4:

With regard to the WTO Doha negotiations, I am particularly interested in the Non-Agricultural Market Access (NAMA) negotiations where 75% of global trade is being addressed. Many of our trading partners are unwilling to cut the tariff rates that they apply to manufactured goods imports.

Your predecessor Ambassador Rob Portman testified before this committee that the U.S is "seeking real cuts in the tariffs that are applied in both developed and advanced developing markets."

Is it still the position of the U.S. Government that the U.S. should not accept a final Doha agreement that does not result in substantial reductions in the industrial tariffs applied to manufactured goods exports?

Answer: Absolutely. Since we developed and tabled the initial U.S. proposal on NAMA in 2002, our position in NAMA negotiations has been consistent. We must achieve a strong result for U.S. industry aimed at delivering new, real market access for our products worldwide. We continue to pursue this goal on three fronts: a robust tariff-cutting formula that cuts into applied rates, deeper liberalization on a sector-specific basis, and a pragmatic approach to removing non-tariff barriers. But we can't achieve this alone. We must have greater support for an ambitious result from advanced developing countries such as Brazil, India and others.

SENATOR SMITH:

1. Ending the Arab League Boycott of Israel is of key importance to this Committee and to the Senate as a whole. Leading up to its WTO accession, Saudi Arabia repeatedly pledged to end its boycott of Israel but so far there have conflicting reports as to whether the Saudi government is truly honoring its commitment. If you are confirmed, what specific steps will you take to ensure that Saudi Arabia meets its legal obligations? What will the USTR do if Saudi Arabia fails to meet these obligations?

Answer: The Administration and USTR have been consistently firm and aggressive in opposing the boycott in all its forms. We have used all of our trade tools, including FTA negotiations, TIFAs, WTO accessions and high level advocacy with partners around the region, including Saudi Arabia to end the boycott. I assure you that USTR considers this a top priority, and if I am confirmed, I will continue to push aggressively along these same lines.

We have seen occasional press reports quoting unnamed Saudi officials saying that WTO membership does not mean an end to the boycott of Israel. We have raised these issues directly with senior Saudi officials on several occasions, both in Riyadh and in Washington. In all cases, we have received assurances that Saudi Arabia fully understands and remains committed to its WTO obligations, including the obligation to treat all WTO Members according to WTO rules.

If I am confirmed, I will ensure that USTR continues to insist that Saudi Arabia live up to its WTO accession commitments. If we learn that U.S. firms continue to face application

of the secondary and tertiary aspects of the boycott, we will immediately bring this practice to the attention of Saudi officials and request government action to stop and reverse the illegal action, as required by their WTO commitments. If appropriate, we could raise these practices in the WTO. If the Saudi government continues to apply the primary boycott, and the Israeli government believes that Saudi Arabia is not treating goods and services of Israel according to WTO rules, it could pursue WTO dispute settlement. The United States would be in position to support Israel in such a case

2. I would like to thank you for your leadership and hard work in coming to closure with the Canadian government on the basic terms for a possible settlement in the cross-border lumber dispute. This great step forward could not have been possible without your personal involvement and the admirable efforts of the entire U.S. negotiating team. I am hopeful that Canada will use this agreement as an opportunity to move to open and competitive timber and log markets, thereby permanently solving this dispute.

   I am concerned, however, about efforts in Canada to derail the delicate balance you have achieved in these complex negotiations. Can you tell me what the timeline is for finalizing the agreement and what steps the United States is taking to ensure an expeditious process?

<u>Answer:</u> We are confident that the Canadian federal government is committed to finalizing the agreement. It is our understanding that the majority of the Canadian industry, as well as the provincial governments, also support the agreement. While there is a vocal minority within the Canadian industry that opposes the settlement, the Canadian government assures us it is working hard to ensure that the negotiations remain on track.

We are in constant contact with the Canadian negotiators as well as the U.S. industry to finalize the agreement as quickly as possible. There is, however, an enormous amount of work that needs to be done, including, for example, drafting the final text of the agreement, finalizing the details for the distribution of the cash deposits collected under the antidumping and countervailing duty orders, and obtaining approval of the agreement and implementing legislation by the Canadian Parliament. This will take some time, but we hope to complete our work in the next few weeks.

3. According to the U.S. Census Bureau, the services sector employs 74% of Oregon's workforce, accounts for 70% of the state's $40 billion payroll, and represents 68% of the $198 billion in sales from the state's business establishment. The Bureau of Labor Statistics projects that virtually all new job creation in the United States over the next several years will be in the service sector, where we clearly have a competitive advantage. How do we ensure that the Doha Round gives maximum scope to this competitive advantage? What is your assessment of the services negotiations? What stands in the way of greater progress?

Answer: I agree absolutely with your assessment of how important the WTO services negotiations are for the United States in general and Oregon in particular.

To obtain the maximum benefits for our services companies and workers we will continue to insist on the greatest possible market-opening commitments, particularly from key target countries and in important infrastructure sectors. Target markets include the large developing countries, such as Brazil, India, and ASEAN members. Key sectors include telecommunications, computers, financial, energy, express delivery, and distribution services.

To date, progress in the services negotiations has been hindered by linkage to the agriculture talks, as well as lack of demonstrated progress on services issues of importance to developing countries, such as temporary entry of service suppliers. These are real issues, but it is also possible that some WTO members have asserted these positions to justify their reluctance to make politically difficult commitments in the services sphere.

To make greater progress, we will continue to ratchet up pressure on our trading partners and will reiterate our determination to reject any deal that does not include a solid outcome for services, especially with respect to key sectors of interest to our services companies and employees.

To achieve a strong result, we also need the greatest possible degree of domestic support for our efforts. Recently Governor Kulongoski wrote to Ambassador Portman requesting to have Oregon excused from certain existing WTO services commitments and excluded entirely from the current negotiations. I hope you will work with Governor Kulongoski and other state officials to explain just how important the services negotiations are for working people and services companies in Oregon as well as the rest of the United States. Given the important benefits Oregon derives from trade in services, it would be damaging for the state to imply it is not open for international business.

4. Over the past few years, South Korea has been threatening to impose punitive and unfair taxes on foreign investment funds and their U.S. investors. For example, Lone Star Funds, which includes the Oregon Public Employees Retirement Fund, has been the focus of hostile actions by Korean government tax authorities. As the United States and South Korea begin formal negotiations on a free trade agreement next month, the transparent, fair and non-discriminatory treatment of U.S.-based investors is of paramount importance. What steps will you take to ensure that Korea respects the rights of foreign investors as a condition of the free trade agreement?

Answer: We are aware of the issues that some U.S. investors have been encountering in the Korean market. Both USTR and U.S. Embassy Seoul staff have raised concerns at high levels of the Korean government, including on the lack of due process and respect for confidentiality in its tax investigations.

In addition, we believe that a successful conclusion of an FTA with Korea will go a long way towards improving the investment climate in that market.

The U.S. proposed investment chapter will require Korea to adopt and maintain very high standards with respect to its investment regime through seven core provisions:

- First, it would require Korea to treat investors and their investments as favorably as Korea treats its own investors and investments or investors and investments from any third country.

- Second, the text would establish a "minimum standard of treatment" based on standards found in customary international law, including "fair and equitable treatment" (the obligation not to deny justice) and "full protection and security" (the obligation to provide the level of police protection required under customary international law).

- Third, consistent with customary international law, the text would require payment of prompt, adequate, and effective compensation when direct or indirect expropriation takes place.

- Fourth, the text would provide for the movement of funds and other transfers relating to investments into and out of a host country without delay and using a market rate of exchange.

- Fifth, the text would prohibit the imposition of certain performance requirements – such as local content, trade balancing, or technology transfer requirements – as a condition for the establishment or operation of an investment. Certain performance requirements would also be prohibited even if imposed in exchange for an advantage, such as a tax holiday.

- Sixth, the text would prohibit nationality-based restrictions on the hiring of senior managers.

- Finally, the text would allow U.S. investors to submit investment disputes with Korea to binding international arbitration. There would be no requirement to file a case in Korea's domestic courts before proceeding to international arbitration or to otherwise exhaust domestic legal remedies.

Obviously, the proposed investment chapter is subject to FTA negotiating outcomes, but given the importance of this issue, we have very little room to be flexible.

SENATOR BUNNING:

1. Regarding the softwood lumber dispute, how will the settlement with Canada ensure that there are meaningful and workable policy exits that allow Canadian

provinces to eliminate taxes and quotas by removing trade distortions from their forestry policies?

Answer: The United States and U.S. industry remain deeply concerned about Canada's subsidization of its lumber industry. The basic difficulty arises from the fact that most timber in Canada is harvested from public lands at artificially low prices. This contrasts with the situation in the United States, where most timber is harvested off of private lands at market prices. The result is that U.S. producers are placed at a competitive disadvantage.

Over the past several years, the Administration has urged Canada to reform its federal and provincial systems to allow market forces to set timber prices in Canada. Once adopted, these reforms or "policy exits" would *potentially* eliminate the need for further trade action to level the playing field for U.S. producers. The details of such policy exits have been the subject of intense discussions with Canada over the past several years. While the two sides were not able to reach agreement, much constructive work has been done.

The settlement terms call for the establishment of a binational committee to discuss and agree upon policy exits within 18 months is a critical part of the agreement. This is a critical part of the agreement, and necessary if we are going to put this dispute behind us once and for all. We would hope that this work will become easier once it is removed from the contentious environment created by the litigation surrounding the antidumping and countervailing duty measures.

2. A great many of us recognize that the Doha negotiations involve a single undertaking. That being said, we are also concerned that in the promising area of services negotiations, where there has been much progress to date, there is now virtual stalemate due to negotiating difficulties in other areas. How do you ensure that all sectors get equal attention, effort and produce commercially meaningful results in this round?

Answer: Each of the negotiating groups has its own pace and set of issues. We have maintained momentum in the services negotiations in recent months and there is still sufficient time to achieve a meaningful result.

We have always placed a high priority on services, and have steadfastly reminded our trading partners that we will not be able to accept an agreement that does not reflect significant progress in services market access.

3. Several months ago, the EC installed a banana regime that reintroduces the same violations that the United States already successfully challenged before the WTO. Could you share with us what the USTR is currently doing to encourage EU compliance on the banana issue?

Answer: We have been closely monitoring the banana import regime that the EU implemented on January 1. We have some serious concerns about it and, together with Latin American bananas exporting countries, have expressed these concerns at the Hong Kong WTO Ministerial in December, as well as at the numerous meetings in recent months of the WTO Dispute Settlement Body and WTO Council for Trade in Goods in which the bananas issue was raised.

We find particularly troubling the fact that the EU has retained a special zero-duty TRQ for bananas that it allocates to some, but not all, suppliers – this despite the EU's commitments in 2001 to move to a tariff-only regime. A number of Latin American banana exporting countries believe that the new regime also does not live up to the EU's commitment to maintain market access for countries supplying bananas on a most-favored-nation basis. We have strongly urged the EU to work with interested WTO Members to reach an expeditious and mutually satisfactory resolution of the dispute. At the same time, we have been in close contact with U.S. companies and interested Latin American countries affected by the new regime to try to identify all existing options to address the concerns about the regime and to develop the most appropriate approach.

SENATOR CRAPO:

1. Will USTR require Russia to implement data exclusivity legislation prior to its accession to the World Trade Organization that is at least as strong as the data exclusivity legislation that Ukraine enacted prior to its accession?

Answer: As part of the bilateral WTO market access agreement that the United States concluded with Ukraine on March 6th, the United States secured a commitment that the Government of Ukraine would amend its Law on Medicines to provide for the protection of confidential test data (data exclusivity) in compliance with TRIPs 39.3. Under the terms of the bilateral agreement, Ukraine committed to work with its parliament to enact these changes from the date of its accession to the WTO. Ukraine is still working on that legislation.

As with Ukraine, we are working with the Russian Federation to ensure that Russia provides strong data protection by amending its Law on Medicines to provide for the protection of confidential test and other data in accordance with TRIPs 39.3. We are seeking a similar commitment from Russia and work on legislation and implementing regulations is ongoing. Russia has agreed that it will fully implement the TRIPs Agreement upon accession to the WTO.

2. As USTR moves forward with new FTAs in Korea, Malaysia and other countries, a look at the implementation of recently negotiated FTAs is critical. A FTA is only as good as the partner's adherence to its obligations. I understand that both Chile and Australia have a negative track record with respect to pharmaceutical intellectual property (IP) protection -- despite strong FTA commitments. I am concerned with reports that Chile has not only failed to adequately implement its intellectual property obligations, it has approved copies of patented pharmaceutical products. Australia has enacted legislation that restricts companies' ability to enforce patent rights through the legal system. Is it USTR's position to strongly enforce the correct implementation and application of FTAs, and in this case take the necessary steps to ensure that no copies of patented medicines are approved by the government of Chile?

Answer: USTR is committed to ensuring proper implementation of the FTA provisions. We remain very concerned about implementation of the intellectual property chapter of the FTA with Chile. In this year's Special 301 Report, we announced that we will conduct an out-of-cycle review of Chile's intellectual property rights (IPR) regime, including the drug approval process for patented medicines, as a result of increased concern over Chile's protection of IPR. Additionally, over the last several months, I have personally raised this issue with high level officials of the Chilean government, including in recent discussions with the Bachellet Administration. In fact, USTR has a meeting scheduled to discuss IPR implementation issues with senior officials in the Bachellet Administration in early June. We will consider all appropriate options to ensure that the obligations in our FTA with Chile are respected.

With respect to Australia, we continue to urge Australia -- most recently in a meeting between Ambassador Portman and Deputy Prime Minister and Trade Minister Vaile -- to repeal the so-called Labor Amendment, which discriminates against pharmaceutical patent holders and raises concerns with respect to Australia's WTO TRIPS commitments. Australia has indicated its intention to wait for evidence of the Amendment's detrimental impact on industry before making its decision. We continue to press Australia on this issue.

3. Ending the Arab League Boycott of Israel is of key importance. Eliminating this harmful trade practice is an imperative, and the United States must take every opportunity, whether in free trade or bilateral negotiations, to end the boycott.

   I am concerned by reports that Saudi Arabia has failed to follow through on its commitments despite repeatedly pledging to end its boycott and recent press reports that quote Bahrain's Foreign Minister saying that the boycott of Israel would remain in place despite the terms of the recent U.S.—Bahrain Free Trade Agreement.

What is the USTR doing to ensure that Saudi Arabia and Bahrain meet their obligations to end the boycott?

Answer: The Administration and USTR have been consistently firm and aggressive in opposing the boycott in all its forms. We have used all of our trade tools, including FTA negotiations, TIFAs, WTO accessions and high level advocacy with partners around the region, including Bahrain and Saudi Arabia to end the boycott. I assure you that USTR considers this a top priority, and if I am confirmed we will continue to push aggressively along these same lines.

We have seen occasional press reports quoting unnamed Saudi officials saying that WTO membership does not mean an end to the boycott of Israel. We have raised these issues directly with senior Saudi officials on several occasions, both in Riyadh and in Washington. In all cases, we have received assurances that that Saudi Arabia fully understands and remains committed to its WTO obligations, including the obligation to treat all WTO Members according to WTO rules.

We have every indication that Bahrain is living up to its commitment to cease application of the Arab League boycott of Israel. Comments attributed to Bahrain's Foreign Minister suggesting that Bahrain would still adhere to the boycott were recently erroneously reported in an English language newspaper in Bahrain. When advised of the misquote, the Foreign Minister immediately issued a correction to the Bahraini press, reaffirming that the boycott office in Bahrain is closed – this statement was published in all Bahraini newspapers, and confirmed by the U.S. Embassy on the ground.

SENATOR BAUCUS:

Question 1

The WTO dispute settlement system was one of the hallmarks of the Uruguay Round. The U.S. wins many of these cases, like beef hormones, but years later, we're still arguing about whether or not we have a right to sell our beef in the EU. It's hard to convince our constituents that they should support new Trade Rounds when it's not clear we're getting the benefits of the old ones. The U.S. has now won a case against the EU because of their ban on agricultural biotechnology. What is USTR going to do to ensure that the EU abides by this decision and allows us to sell our corn and soybeans and other GMO crops into that market without restriction?

Answer: When the United States prevails in WTO disputes, the overall record of compliance by our trading partners has been very good. To date, the United States has prevailed on the core issues in 26 completed WTO disputes. Of those disputes, in only two has the United States had to resort to the suspension of trade concessions in order to

encourage compliance by the defending party. The EU *Beef Hormones* dispute (cited in the question) is the only case in which we are currently maintaining trade sanctions.

As you know, in the EC Biotech dispute the United States has argued that the EC's moratorium on biotech approvals, as well as nine product bans adopted by six EC member States, are inconsistent with the EC's WTO obligations. The confidential final report was issued to the disputing parties on May 10. The report will be distributed to all WTO Members and publicly released after it is translated into all official WTO languages. The public release is currently scheduled for September 2006. After the public release, there will be the possibility for an appeal. In the event that the dispute results in a final finding that the EC is out of compliance with its WTO obligations, we would expect the EC to proceed to comply with those obligations. If confirmed, I assure you that the United States will consider all available tools to encourage the EC to comply.

Question 2

I have read reports that Airbus is considering a redesign of the A350 that would cost somewhere in excess of $10 billion and that they intend to seek some $3-4 billion in launch aid to develop that plane. As you know, the Senate last year passed a Resolution 96-0 calling for an end to launch aid, and I know you have been working hard on this issue. I am very serious about ensuring that no launch aid is provided ever again. I also understand that Mr. Mandelson commented that the repeal of the FSC/ETI create a "warm atmosphere".

What are you doing to ensure this does not occur and do we need to consider additional tools to impress upon Europe how serious we are about this?

Answer: The Administration has made it clear to the EC and the Airbus Member States that launch aid for the A350 would be unacceptable and that it is time for the practice to end. We would prefer to eliminate launch aid through negotiations, but we will pursue our WTO case through to completion if negotiations are unavailing.

Question 3

The Medicare Modernization Act calls for USTR to develop a trade strategy, including bilateral or multilateral negotiations, to address price controls and related policies on pharmaceuticals in other countries. Please tell us what USTR has done to implement this provision, including countries and timelines for action.

Answer: USTR has worked closely with economic and health policy agencies to address price controls and related policies in other countries. We are actively seeking to address these issues both in Free Trade Agreement (FTA) negotiations and through the establishment of dialogues with priority OECD countries.

The United States-Australia FTA, which went into effect in 2005, was the first FTA to address pricing and related issues. We are vigorously monitoring the Australian Government's implementation of the FTA, in particular this aspect of the agreement. In March, we held the first annual review of the FTA and confirmed that Australia has followed through on the pharmaceutical-related commitments it made, including establishing an appeal process to enhance accountability of its pharmaceutical reimbursement system. We also held a meeting of the Medicines Working Group, established under the FTA, to address ongoing issues of concern related to health care.

In addition to the Australia FTA, in June, we will hold the first round of FTA negotiations with Korea. Pharmaceutical issues will be a significant aspect of these negotiations as well.

In addition to FTA negotiations, USTR and the interagency team have sought to establish dialogues on pharmaceutical issues with Germany, Poland, Italy, France and Canada, countries the U.S. industry has identified as priority markets. We have held numerous meetings with officials at all levels of government to discuss specific concerns about elements of these countries' pharmaceutical reimbursement and pricing systems, and broader health policy issues. Just in the last several months, Commerce Secretary Gutierrez, Deputy Health and Human Services Secretary Azar, and I have each traveled to Germany to meet with our counterparts and raised these issues. As Germany considers broader health care reform this year, we will continue to press the government to address our concerns related to regulatory, transparency, and pricing issues. In June, we will intensify our work with Poland and Italy. We plan to begin work with France and Canada later this year.

Question 4

Reimbursement and related market access issues in the pharmaceutical industry have been a long-standing bilateral trade irritants the U.S.-Korean trade relationship. Does USTR plan to resolve these issues in the Korean FTA?

Answer: U.S. pharmaceutical companies continue to face a number of impediments in the Korean market, including those related to reimbursement, transparency, and enforcement. Addressing these issues is a high priority for the U.S.-Korea FTA negotiations, and we have established a pharmaceutical/medical device working group in the FTA negotiations for this purpose. We look forward to continuing to work with you and U.S. industry and other stakeholders to develop an appropriate strategy to achieve improved market access for U.S. pharmaceutical manufacturers operating in Korea.

Question 5

I am concerned that WTO trade facilitation talks do not necessarily take into account the new burden that customs administrations the world over must now face- how to ensure

the efficient *and* safe flow of international commerce. The intersection of trade and security is a critical challenge of our time. How can trading nations today apply reliable security strategies, like non-intrusive inspection equipment, that won't hamper the flow of trade?

APEC has done a lot of work, as has the World Customs Organization, trying to build consensus on trade security in Customs. The United States should actively engage in these fora. But the WTO has binding, authority among nations. Are we discussing these issues in the WTO? If not, why not?

Answer: As you note, there is a great deal of work being done internationally pertaining to customs and border regimes across a broad array of international fora, including with regard to security measures. Wherever such work is taking place the United States is active and playing a leadership role. In the context of the WTO negotiations on Trade Facilitation, many of the measures being considered as potential new multilateral commitments because they improve transparency and efficiency (e.g., measures that allow greater processing of goods before they arrive at the border) also serve as important tools for ensuring a more secure border environment.

Question 6

As part of its Container Security Initiative, Customs has worked with the State Department to negotiate bilateral agreements with more than 40 foreign Customs administrations. Has USTR been involved in these negotiations? Do such agreements—or any Customs commitments that affect the flow of trade—have a place in future FTAs?

Answer: While not directly involved in negotiations pertaining to the CSI, USTR is kept apprised by CBP as the work on CSI advances. Each of our recent FTAs have included a specific chapter on Customs commitments aimed at ensuring that rules-based border regimes are transparent and efficient. The Customs chapters in the FTAs have also included provisions that enhance customs cooperation and coordination.

Question 7

The President has promised to level the playing field with our trading partners, but provides no specific action as to how he plans to do that for our manufacturers, in particular our domestic automotive manufacturers. Michigan Governor Jennifer Granholm and others have expressed to Ambassador Portman their desire to see the President make good on his promise by negotiating FTAs, and specifically the Korea FTA, that advance and defend U.S. manufacturing interests. How will the Administration stand up for U.S. manufacturers during upcoming negotiations with Korea, and what, specifically can our auto sector expect to get out of an agreement with Korea?

Answer: Achieving increased market access for U.S. manufacturers in the Korean market is a priority for the Administration. The upcoming FTA negotiations present an opportunity to address a range of tariff and non-tariff measures impeding access to Korea's market. We will seek to eliminate Korea's industrial tariffs on U.S. products which are currently about two times higher than equivalent U.S. rates. Further, we will seek to increase transparency in the development and application of standards and regulations, and eliminate non-tariff barriers that U.S. manufacturers have identified in the Korean market.

Regarding the U.S. automotive sector, we are working closely with the U.S. automotive industry to address its concerns in Korea. To this end, we have established a separate automotive working group with Korea. In particular, we will seek to eliminate Korea's tariffs on automotive products, eliminate its discriminatory taxes on engine displacement, and improve transparency and ensure greater accountability in the development and application of standards and regulations in the automotive sector.

Question 8

Government policy-makers and businesses at all levels require accurate information about the nature and quality of U.S. trade with specific nations and regions to make informed decisions about where to commit their resources and to take advantage of foreign market opportunities.

While the federal government has developed the means to track federal and state merchandise exports, significant gaps remain. Little progress has been made in collecting state-level import data. More importantly, almost no data exists that tracks America's services exports or imports at the state level. This is quite problematic, given that services are an increasing portion of the U.S. economy.

Would you support proposals to devote additional funds to develop more accurate state-level services export data, and more accurate state-level import data for both goods and services?

Answer: We agree that having more and better data on the over $3 trillion in U.S. goods and services trade would be desirable for government and private sector use. The collection of these data, however, is primarily a function of the U.S. Department of Commerce. We would therefore recommend consulting with Commerce on the feasibility, cost, and likely reliability of estimates of state exports of services and state imports of goods and services. Such expert information from those with the responsibility for statistics on U.S. international transactions would likely be of value to Congress in considering the matter of committing additional resources to these currently uncovered areas of state-level involvement in international trade. If confirmed, my staff and I would be happy to work with you to coordinate these consultations with Commerce.

Question 9

I understand that a bloc of about 15 large developing countries led by India are unwilling to make better offers to liberalize financial and other services in the Doha Round, unless the United States is willing to discuss the temporary entry of business travelers. How do you intend to find a solution to this problem, if we are to realize our goals for the Doha Round?

Answer: A number of large and small developing countries have indicated that they see new commitments by the United States for the temporary entry of service suppliers as the principal trade-off to be made in exchange for granting market access for key sectors of U.S. interest (*e.g.,* financial, telecommunications, computer, express delivery, energy, distribution, audiovisual services).

We continue to point out that existing U.S. commitments in this area equal or exceed those of many other WTO members and that meaningful gains could be achieved if more WTO members would simply match the commitments we already have in place. We also point out that these negotiations are multidimensional, covering all services as well as goods and agriculture. So reaching a successful outcome does not necessarily depend upon one specific issue.

Despite these factors, temporary entry is one of a relatively few services areas where the United States has received a significant number of requests from other countries. So rejecting this request will undoubtedly have some impact on the willingness of our trading partners to accept our own requests.

Question 10

Over the years, the U.S. government has worked hard to improve competitiveness and fairness in the Japanese life insurance market as that country moves to privatize Japan Post's KAMPO, the world's largest, but government-sponsored, life insurance company. U.S. life insurers operating in Japan face massive unfair competition from this entity that may still be quite favored with advantages even after privatization legislation passes. While the Japanese Diet has passed legislation affirming that privatization is going ahead, the question now is how that privatization will be orchestrated and what devils lie in the details.

What will USTR do to ensure that there is an actual level playing field as we go forward?

How will you ensure that that U.S. and other private life insurers have the opportunity to participate meaningfully in this process?

Answer: The Administration has carefully followed developments in Japan's effort to reform and privatize Japan Post, and has consistently called on Japan to create a fully level playing field in Japan's insurance market. While Japan appears on track to

eliminate some of the key tax and regulatory advantages that Japan Post has enjoyed over private companies, it remains unclear that all advantages will ultimately be eliminated. I therefore recognize that a sustained effort is necessary to address remaining concerns, and if confirmed I will ensure that we will continue to work with Japan until we see a level playing field in this important market for U.S. insurance companies.

I also recognize that decisions and recommendations made to implement these reforms will have a profound impact on this market, and so if confirmed I will continue to urge Japan to take into account the views of interested parties as it proceeds. While progress has been made with Japan on these issues, continued vigilance will remain necessary.

Question 11

Over the last several years, many members from farm states have noticed an increasing level of skepticism from their farmer constituents about the value of free trade agreements. Much of this skepticism stems from what farmers perceive as a dearth of benefits delivered from past agreements, in part because of unfair sanitary and phytosanitary barriers these trading partners have erected against U.S. agricultural products. As U.S. Trade Representative, what steps do you plan to take to address both the perception in the countryside that FTAs are not helpful to U.S. agriculture and the actual proliferation of SPS barriers faced by U.S. agricultural products?

Answer: It is clear that the prosperity of American farmers, ranchers and agricultural businesses is tied to trade. One out of three acres in the United States is planted for export. Our producers sent roughly $62 billion worth of agricultural goods overseas last year. And 27 percent of U.S. agricultural cash receipts are generated from exports every year. With 95 percent of the world's population living outside our borders, our challenge is to seek new opportunities to open markets and reduce and eliminate barriers. FTAs only help to reduce barriers and create new export opportunities. Many of our trade agreements are still young and not fully implemented, so in some cases the rewards are not yet realized.

We are also mindful that as tariffs come down, countries may use SPS and other measures to try to protect their domestic industries. If confirmed, I will place a high priority on the elimination of unfair and unjustified barriers to U.S. food and agriculture exports and will work with USDA in this regard. The USTR team will continue to be particularly aggressive in negotiating strong SPS provisions in our FTAs to ensure the benefits of these negotiations are not at risk. Enforcement of these provisions will be extremely important in ensuring the success of these FTAs. Moreover, we will continue to press our trading partners to fulfill their obligations as signatories to the WTO SPS Agreement. When those barriers are potential violations of the WTO or other trade agreements, we will vigorously exercise our rights under dispute settlement procedures. To this end, the United States prevailed in the EC - Beef Hormones and Japan - Apples disputes.

Question 12

In the last few years, many of the countries with whom we have negotiated free trade agreements have not been particularly large markets for U.S. agricultural products. As a result, there has been some frustration in Congress and among U.S. farm groups about not being given a chance to provide input into the decision-making process the Administration uses to select future FTA partners. In the future, will you pledge to consult with farm groups through the APAC/ATAC process, and with Congressional committees of jurisdiction (House Ways and Means Committee, Senate Finance Committee, and House and Senate Agriculture Committee) in advance of making decisions about which countries are appropriate FTA partners?

Answer: Close consultation with the Congress is not only good policy; it is a fundamental element of the partnership that the Congress established when it passed the bipartisan Trade Promotion Authority Act of 2002.

The statutory provisions of TPA provide for extensive consultations with Congressional committees of jurisdiction before and during multilateral and bilateral trade agreement negotiations. If confirmed, I will consult closely with Congressional committees of jurisdiction when identifying appropriate FTA partners, and through every step of FTA negotiations.

The Agricultural Policy Advisory Committee (APAC) for Trade and the Agricultural Technical Advisory Committees (ATACs) are key advisors and we welcome their input on all aspects of the agenda regarding agriculture trade, including WTO negotiations and identifying potential FTA partners.

The cleared agricultural advisors have access to FTA negotiating texts and provide input to USTR on an ongoing basis – through our regularly scheduled meetings, like the upcoming meetings on May 18-19, and in ad-hoc consultations throughout our negotiations.

Since 2001, the Administration has launched FTA negotiations with both large and small trading partners. Each of these FTAs should be judged on its own merits. Although the markets in some FTA partner countries may not be as large as others, cumulatively, they are substantial, and we realize significant gains when we can achieve market access precedents that later serve as models for FTAs in other countries that have greater market potential.

Agricultural groups have broadly supported the CAFTA-DR, Peru, and Colombia trade agreements, and they are excited about our upcoming negotiations with Korea. Korea is our 6th largest agricultural export market ($2.2 billion in 2005), and it has significant growth potential for a broad range of agricultural products.

Seeking meaningful market access for agriculture in our FTAs is a top priority for the Administration and, if confirmed, I look forward to working closely with the APAC and ATAC advisors to create new export opportunities for American farmers and ranchers.

Question 13

Ambassador Schwab, without question, an ambitious agreement on agriculture is a critical step to securing a comprehensive and successful outcome of the Doha Round. However, I would like to raise another important area of the talks, the so-called Non-Agricultural Market Access (NAMA) negotiations. My colleague from the State of Indiana, Senator Even Bayh, recently introduced a Sense of the Senate resolution calling for the World Trade Organization (WTO) to lower trade barriers on manufactured goods. This resolution essentially states that the U.S. should not be a signatory to a final Doha agreement that does not yield significant cuts in the applied tariff rates facing U.S. manufactured goods exports. Is this consistent with the position of USTR and the U.S. Government?

Answer: Absolutely. Since we developed and tabled the initial U.S. proposal on NAMA in 2002, our position in NAMA negotiations has been consistent. We must achieve a strong result for U.S. industry aimed at delivering new, real market access for our products worldwide. We continue to pursue this goal on three fronts: a robust tariff-cutting formula that cuts into applied rates, deeper liberalization on a sector-specific basis, and a pragmatic approach to removing non-tariff barriers. But we can't achieve this alone. We must have greater support for an ambitious result from advanced developing countries such as Brazil, India and others.

SENATOR ROCKEFELLER:

1) I would like to turn to the WTO Rules negotiations, and to once again express my dismay at the Administration's handling of this issue. I believe it is fair to say that Congress has made its views crystal clear on this issue. *Any* weakening of U.S. or international disciplines on dumping or subsidies will not be acceptable as part of a new WTO agreement. Given the other challenges facing trade agreements in this country, it seems quite possible that the mishandling of the Rules talks could put the entire Round at risk in terms of acceptance in this country.

The Administration continues to claim that it is committed to preserving the trade laws. All the available evidence, however, suggests that opponents of trade remedy disciplines have hijacked the negotiations and have managed to position their proposals as the focus of the talks – including the so-called "lesser duty rule" proposal, the public interest test, and a whole host of methodological changes that would severely weaken our laws. To be clear, these proposals are not acceptable

individually or in any combination. Each one of them is flatly inconsistent with the TPA mandate and the overall Doha mandate as well.

The Administration has touted the list of proposals it has put forward, but under scrutiny, these dissolve into mere efforts to codify U.S. law or to require greater transparency in foreign AD/CVD systems. In general, they would not strengthen the laws or provide any counterbalance to the harmful proposals asserted by trade law opponents. Given the late hour of the talks, the United States appears to have boxed itself into a no win situation.

Given what is on the table, I would like to ask how you intend to manage the Rules talks to reach an acceptable conclusion. Do you think a substantive result can be reached in this area that would not weaken the trade laws? Do you intend to adjust the U.S. negotiating strategy in any way going forward?

Answer: I share your concern about the need to preserve the strength and effectiveness of U.S. trade laws. I believe that strong and effective remedies against unfair trade practices, including those against dumping and unfair subsidies, are critical for maintaining support for trade liberalization, and are essential to ensure that the benefits gained from trade liberalization are not undermined. If confirmed, I will work with Congress to ensure that the TPA mandate to preserve the ability of the United States to enforce rigorously its trade laws is fulfilled.

In the WTO Rules talks, the United States has emphasized the necessity for strict adherence to the Rules negotiating mandate that U.S. negotiators insisted upon and obtained at the Doha Ministerial Conference in 2001, which requires that the effectiveness and basic principles of the WTO Antidumping and Subsidies Agreements must be preserved. Given the increasing number of WTO Members using the trade remedy rules, including many developing countries, a number of additional Members have joined us in insisting that the effectiveness of the rules must be preserved. When other Members have raised proposals with the potential to undermine our trade laws, we have put them on the defensive by vigorously attacking the technical merits of the proposals.

We have also countered those proposals with our own proposals on key U.S. priorities, including eleven new Rules proposals since March 2006. For example, we have recently tabled proposals on prohibited subsides, circumvention, new shipper reviews, transparency and due process, WTO dispute settlement, and perishable and seasonal agriculture.

I would add that our proposals on transparency and due process will not only benefit U.S. exporters, but are also important, in conjunction with our other proposals, to push back against the proposals made by other WTO Members that could affect U.S trade laws. Our proposals have put critics of U.S. practice on the defensive for the major problems we have identified with respect to their own practices. Moreover, transparency and due

process are essential in ensuring that other WTO Members can be held accountable for their own compliance with the rules.

Thus, while there are still a number of difficult issues in the Rules negotiations that we will need to address, the many proposals we have put on the table leave us well-positioned to achieve a positive result in the negotiations, both in terms of preserving our ability to enforce rigorously our trade laws, and in terms of addressing our priority issues.

If confirmed, I look forward to working with you to advance our Rules proposals, and to ensure that U.S. trade laws remain strong and effective.

2. As you know, one of the principal negotiating objectives set out in the TPA legislation is to obtain a "revision of the WTO rules with respect to the treatment of border adjustments to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes." This is one of the truly "big ticket" competitive disadvantages faced by American producers in international trade – and existing WTO rules have absolutely no legitimate economic basis or rationale.

   Please provide a detailed description of the proposals the United States has made to date to advance this negotiating objective, and the other steps our negotiators have taken to pursue the issue. Please describe the strategy you intend to follow to ensure that this longstanding disparity in the treatment of direct and indirect taxes – one of great disadvantage to the United States – is finally ended.

Answer: Pursuant to the Trade Promotion Authority negotiating objective to address this issue, in March 2003, the United States submitted a paper to the Rules Negotiating Group identifying the differing treatment of direct and indirect taxes under the WTO Subsidies Agreement rules. While recognizing that this distinction has existed in the GATT/WTO subsidy rules for some time, the United States stated its position that an essential part of the work of the Rules Group should be to work toward greater equalization in the treatment of various tax systems and noted that the current distinction risks ignoring the potential trade-distorting effect that certain practices involving indirect taxes may have on trade, and may unfairly disadvantage competitors operating under a direct taxation system. This proposal received no support. Nonetheless, we have continued to examine the issue within the government and have continued to consult with U.S. industry and staff of the relevant Congressional committees.

In this regard, while it is often asserted that the current rules favor countries with VAT regimes, economists seem to be of differing opinions. One study, for example, concluded that there was a negative relationship between VAT systems and exports (see, M.A. Desai, and J.R. Hines, *Value-Added Taxes and International Trade: The Evidence*, November 2002, University of Michigan).

3. As you know, the WTO Appellate Body has recently issued decisions finding that the practice of "zeroing" in antidumping investigations and reviews is incompatible with the WTO agreements. These decisions reflect only a few recent examples of a major ongoing problem with the WTO dispute settlement system – namely, that WTO panelists are simply making up new rules that have no basis in the agreements, and that were never accepted by the United States or others in past negotiations.

   Given the critical importance of zeroing to ensure that our trade remedy laws function effectively, I would like to ask what you intend to do to ensure that these wholly unjustified decisions do not stand. Do you intend to continue to vigorously litigate ongoing cases that involve zeroing? Has the Administration made proposals in the WTO Rules talks to explicitly allow the practice of zeroing? Please describe any such proposals in detail, and the status of U.S. efforts on this issue in the Rules talks.

Answer: Let me assure you that we have identified zeroing as an important issue in the Rules negotiations of the Doha Round, and that we intend to pursue it further in the negotiations. Early in the Rules negotiations, the United States submitted a proposal identifying zeroing as a key issue for which clearer rules are needed. Together with a number of proposals dealing with zeroing that have been submitted by other countries, it is clear that this issue will be a subject of the negotiations.

As for ongoing disputes, we will continue to be aggressive in pointing out the flaws in the arguments of those Members that attack zeroing. In this regard, as you no doubt know, on April 18, the WTO Appellate Body issued its report in a challenge to the use of zeroing brought by the European Communities ("EC"). Reversing the panel, the Appellate Body found that zeroing is prohibited in assessment proceedings. In response to this report, we took the unusual step of submitting a written communication to the WTO Dispute Settlement Body in which we identified critical errors in the Appellate Body's reasoning.

In addition, in the ongoing panel proceeding involving Japan's challenge to the use of zeroing, we have continued to maintain that zeroing is permitted and have provided the panel with our critique of the Appellate Body's reasoning. It is our hope that the panel will decline to follow the Appellate Body report in the EC case.

Finally, on May 17, in the so-called *Lumber 21.5* dispute, Canada appealed the finding of the panel that zeroing is permitted in an antidumping investigation where the so-called transaction-to-transaction method is used. We intend vigorously to defend against Canada's appeal.

In summary, we are pursuing the issue of zeroing on both the negotiation and litigation fronts. Several WTO Members have indicated that zeroing is an issue that ultimately will have to be resolved through negotiation, and we believe that this is a sign of progress.

4. Can you please tell me what we should take from our experience with the China bilateral and PNTR agreement, especially regarding intellectual property and piracy violations, as we consider a bilateral agreement with Russia? Shouldn't we require Russia to take some concrete steps to demonstrate that it has both the will and the ability to effectively protect intellectual property?

Answer: We have made clear to Russia that demonstrated improvement to its laws and enforcement of intellectual property rights is critical to its WTO accession.

As you know, WTO accession is a two-step process: bilateral negotiations on market access, followed by multilateral negotiations on WTO rules, such as implementation of the TRIPS Agreement.

For Russia, because of the significant concerns we have with Russia's enforcement of intellectual property rights, we have made this issue part of our bilateral negotiations. We have proposed to Russia several concrete steps that will demonstrate the will and ability to provide effective protection of intellectual property. We believe that Russia understands the importance of improving its laws and enforcement efforts. President Putin recently made public statements on the seriousness of the piracy and counterfeiting in Russia. Russian enforcement agencies have increased enforcement actions against optical disk plants in recent months. However, we have made clear to Russia that we need to see continued concrete action on enforcement.

After bilateral negotiations are completed, we will work in the multilateral negotiations with other WTO members, such as the EU, Canada, Switzerland and others, who have voiced concerns about Russia's protection and enforcement of intellectual property, to ensure that Russia undertakes necessary commitments and understands that this is a global concern.

SENATOR BINGAMAN:

1. At the Finance Committee hearing with Ambassador Portman on February 16, 2006, I asked:

"Back in 2003, Mexico closed its border to the importation of live cattle from the United States, and I've got ranchers in New Mexico who would like to sell live cattle into Mexico. About every week, we buy about 20,000 live cattle from Mexico, and that's been going on for a very long period now, but we are barred from sending any to them. I've spoken to Secretary Johanns about this. I've spoken to Secretary Mayorga in Mexico City about this, and I was assured by Secretary Mayorga that this is something the Mexicans were going to fix. I think he told me in early January that within a couple of weeks they would open their border to imports of live cattle from the U.S., and that hasn't happened. Why can't we just give them a date and say, 'O.K., on the 1st of March, if your border is not open to our exports to you, then our border is no longer open

to your exports to us in this field'? Is there something wrong with us using a little bit of leverage to get this issue fixed? Again, I feel very much as though we are being played for a sucker here. Week after week, month after month, year after year, our ranchers are being denied the right to sell to them. They are selling to us in very large quantities."

Now here it is May, and since the first of the year over 500,000 live Mexican cattle have been exported to the U.S. but not one live animal has been imported from the U.S. I know of no internationally recognized scientific guideline for Mexico to continue to bar imports of live U.S. cattle.

Can you assure me that reopening the border with Mexico to exports of live cattle will be a priority for you as USTR? Can you please tell me what positive actions you will take to assure the Mexican border is promptly reopened?

Answer: USTR spends a great deal of time on cattle and beef issues with Mexico, and this will certainly continue should I be confirmed. Regarding sanitary approvals for the export of U.S. cattle, I understand that Secretary of Agriculture Johanns is close to reaching an agreement with his Mexican counterpart that would allow entry into Mexico of dairy heifers from the United States. At a meeting in late April between agricultural regulators (USDA/APHIS for the U.S. and SENASICA for Mexico), both sides agreed to terms for a protocol for trade in live dairy replacement heifers. APHIS on May 8 confirmed that it approved of SENASICA's latest text. The final step is for SENASICA to respond. APHIS proposed that fourteen days after SENASICA confirms the agreement, it will start issuing certificates for live cattle. USDA hopes this will occur by the end of May/early June. USTR raised this issue with Mexican trade officials this week and made clear the importance of accepting U.S. live cattle.

2. There is growing concern about illegal and unsustainable logging of South American mahogany in Peru and the affects that harvesting has on native peoples. Will the Peru FTA restrict the ability of the United States to carry out the goals of the President's Initiative Against Illegal Logging or to enforce the provisions of CITES? Would the Peru FTA in any way restrict the United States' ability to prevent the importation of illegally and unsustainably harvested mahogany from Peru?

Answer: No. In fact, since the PIAIL was launched, we have used our bilateral and regional FTAs to support the objectives of the initiative and we have done that in the U.S.-Peru Trade Promotion Agreement (TPA). In addition, the TPA will support CITES implementation and the Environmental Cooperation Agreement (ECA) will provide a means of enhancing our existing efforts to assist Peru in meeting their obligations under CITES. The TPA will not in any way alter or restrict the ability of the United States to implement CITES with respect to trade with Peru, including in CITES-listed mahogany.

The United States has been a leader in drawing international attention to the economic and environmental consequences of illegal logging. During the course of the

negotiations for the TPA, illegal logging was one of a number of issues we raised with Peru. We discussed ways to address it in a constructive and collaborative manner.

The trade agreement's commitments on transparency, rule of law, customs cooperation, and rules of origin should also contribute to efforts to combat illegal logging. In addition, the TPA Environment Chapter obligations to "effectively enforce environmental laws" include effective enforcement of Peru's laws that implement CITES.

The ECA with Peru has been concluded and we will soon negotiate a work plan to implement that agreement. Improved CITES compliance will be an important element of that work plan. Therefore, the TPA and the ECA provide both incentives as well as support for Peru to find long-term solutions to this very important issue.

We have long-standing efforts to assist Peru in combating illegal logging. These efforts have included USAID-funded work as well as capacity building projects that the United States has funded through the International Tropical Timber Organization (ITTO). These efforts will continue under the framework of the President's Initiative to Address Illegal Logging (PIAIL).

SENATOR KERRY:

WTO and Dispute Settlement

1. Over the years, our trading partners have used the WTO dispute settlement system to progressively erode the effectiveness of our trade remedy laws. The United States has been on the receiving end of more GATT and WTO challenges than any other Member. Since 2004, roughly half of all WTO decisions issued involved challenges of U.S. measures, and over three-quarters of those decisions addressed the administration of our trade remedy laws. How do you intend to combat what some observers call a blatant prejudice against the United States? How are you planning to reverse this pattern of WTO decisions that are adverse to our trade remedy laws? What is your strategy to prevent overreach by WTO panel and appellate bodies?

Answer: Given the size and importance of the U.S. economy, it is not surprising that the United States is a frequent participant in WTO dispute settlement. This is true both with respect to the cases we bring and the cases we defend; in both situations, the United States is involved in more cases than any other Member, with the European Union not far behind.

I have not always agreed with WTO dispute settlement findings. On the whole, however, the process has been working well and to the benefit of the United States, as demonstrated by recent findings supporting the United States against Mexico on its rice antidumping duties and its tax on soft drinks containing high fructose corn syrup. It has also been widely reported that the United States prevailed against the European Union on

its moratorium on approvals of biotechnology products. These findings will be of enormous importance to U.S. companies, farmers and workers seeking to export U.S. goods and services. Likewise, the United States is now pursuing cases against the European Union on its aircraft subsidies and against China on its auto parts tax.

Regarding trade remedy disputes, our involvement in the WTO has not prevented us, nor will it prevent us, from vigorously enforcing our trade remedy laws. While it is disappointing any time we lose an issue, it is important to evaluate the U.S. record not simply based on whether we lost on minor issues in a dispute, but on how we fared on the core issues. Our defensive record is better than that of most countries at the WTO, since complaining parties tend not to take bad cases. While some of the losses involved significant changes to U.S. laws, many others did not. The United States often was able to implement without affecting the underlying law, regulation or order.

For example, we won a major victory in the DRAMS dispute with Korea; the Appellate Body rejected Korea's challenge to Commerce's CVD investigation, and also emphasized that panels must apply the correct standard of review in trade remedy disputes. Likewise, in the Lumber cases with Canada, the WTO concluded in all three cases that we had not breached WTO rules. In the CVD case, we won big victories on the main issues involving whether Canada was providing subsidies and how Commerce should calculate the subsidies. We also won across the board in Japan's challenge to Commerce's antidumping sunset rules. In the EC's challenge to our countervailing duty sunset review on German steel, we won every issue but one – and we had already lost that issue in domestic courts.

At the same time, I recognize that WTO dispute results have not been perfect. I believe we should work both within the current dispute settlement system and through the dispute settlement negotiations to improve the process and ensure that panels and the Appellate Body stick to the deal agreed to by WTO Members.

For example, at WTO meetings at which reports have been adopted, the United States should continue to criticize aspects of those reports with which we disagree. Past criticisms have been accepted by later panels. In addition, the United States should continue to pursue its proposals in the Special Session of the Dispute Settlement Body that would modify dispute settlement rules to improve Member control over the dispute settlement process and provide Members with greater flexibility to settle disputes.

Likewise, in the WTO Rules negotiations, the United States has tabled a series of proposals to address issues arising out of adverse WTO Dispute settlement findings, including recent proposals to address issues such as the injury causation standard applied by investigating authorities, and authorities' use of facts available.

We will continue to pursue proposals in the negotiations.

WTO and Effective Trade Remedies

2. Over the years, Congress has repeatedly stressed the need to ensure any further trade liberalization is accompanied by the availability of strong trade remedies. It is clear that U.S. trade laws are under attack in the Doha Round. Well over 180 submissions have been made by foreign negotiators at the WTO to undermine U.S. trade remedy laws. If confirmed, what specific actions would you take to ensure that U.S. trade remedy laws are preserved and enhanced in the Doha Round? What proposals in what timeline do you plan to put on the table to strengthen these laws to combat the scores of proposals from other nations to weaken these laws? What steps will you take to show the American people that our companies and workers will continue to have full recourse against unfair foreign trade practices?

Answer: I share your concern about the need to preserve the strength and effectiveness of U.S. trade laws. I believe that strong and effective remedies against unfair trade practices, including those against dumping and unfair subsidies, are critical for maintaining support for trade liberalization, and are essential to ensure that the benefits gained from trade liberalization are not undermined. If confirmed, I will work with Congress to ensure that the TPA mandate to preserve the ability of the United States to enforce rigorously its trade laws is fulfilled.

In the WTO Rules talks, the United States has emphasized the necessity for strict adherence to the Rules negotiating mandate that U.S. negotiators insisted upon and obtained at the Doha Ministerial Conference in 2001, which requires that the effectiveness and basic principles of the WTO Antidumping and Subsidies Agreements must be preserved. Given the increasing number of WTO Members using the trade remedy rules, including many developing countries, a number of additional Members have joined us in insisting that the effectiveness of the rules must be preserved. When other Members have raised proposals with the potential to undermine our trade laws, we have put them on the defensive by vigorously attacking the technical merits of the proposals.

We have also countered those proposals with our own proposals on key U.S. priorities, including eleven new Rules proposals since March 2006. For example, we have recently tabled proposals on prohibited subsidies, circumvention, new shipper reviews, transparency and due process, WTO dispute settlement, and perishable and seasonal agriculture.

If confirmed, I look forward to working with you to advance our Rules proposals, and to ensure that U.S. trade laws remain strong and effective.

WTO and NAMA

3. I remain concerned about progress in the Doha Round generally, but in the Non-Agricultural Market Access (NAMA) talks specifically. It seems that delays in Doha

discussions have allowed NAMA sectoral initiatives to languish. Yet, NAMA sectors such as IT and electronics offer some of the greatest opportunities for giving developing countries the tools needed to advance economically. Do you support an electronics sectoral initiative and what do you think needs to be done in order to get other countries to support such an effort? Do you support efforts outside of the Doha Round to advance trade liberalization in certain sectors where there is international industry support?

Answer: The Non-Agricultural Market Access (NAMA) sectoral initiatives are important to the United States because they guarantee real market access improvements and will provide important stimulus to global economic growth and development.

The United States strongly supports sectoral initiatives as part of our broader effort to increase real market access for U.S. industry, whether through the Doha Round or in other fora. The United States has led the effort on a wide range of sectorals of interest to U.S. industry, including IT/electronics and electrical equipment.

These and other sectoral initiatives have generated greater interest over the last several months. Increasing numbers of developing countries have been participating in discussions, although only a few have formally supported sectoral initiatives to date. This is a result, in part, of strong U.S.-led outreach and educational efforts.

We do have challenges, however. Key traders such as China, India and Brazil have not committed to support initiatives in any particular sector at this juncture and the EU has not assumed a leadership role in the sectoral initiatives. We need these Members to step forward to make the contribution necessary to further advance the sector-specific liberalization initiative.

Thailand

4. Under current trade agreements, imports of pouch tuna from Thailand are at a competitive disadvantage compared to tuna from other nations that enjoy duty free treatment. If the FTA negotiations resume with Thailand, will you work to level the playing field and seek to reduce tariffs on tuna imported from Thailand? If the FTA is delayed, will you ensure that the USTR seeks parity between tuna imported from Thailand and tuna imported from ANDEAN countries – which currently enjoy a zero duty on imports of pouch tuna?

Answer: Currently our FTA negotiations with Thailand are on hold, pending new elections and the formation of a new Thai government, that we understand may not occur until late fall. Once a new government is in place, the United States and Thailand will jointly determine how best to proceed. When our negotiations resume, our goal will be to address the full range of commercial opportunities resulting from a U.S.-Thailand FTA, including in the tuna sector.

Foreign Investment -- Dispute Settlement

5. State officials have been required to spend considerable funds helping USTR to defend various WTO and investment cases, and there is a likelihood that additional cases may be brought in the future. Can you summarize applicable rules and regulations that govern how these cases are to be litigated, and who is to finance them? Given that state governments have incurred significant costs helping USTR to defend WTO and investor-state disputes – and in some instances, I understand, have not been reimbursed for their costs -- will you commit to seek appropriate reimbursement to state and local entities when they expend resources in defending claims against the U.S.?

Answer: The U.S. Government is the sole respondent in any WTO dispute or NAFTA chapter 11 investment dispute involving a challenge to a measure taken by a sub-federal government in the United States. The U.S. Government is responsible for vigorously defending any state laws – USTR is the lead in WTO cases, and the State Department is the lead in investor-state cases arising under bilateral investment treaties and investment chapters of our FTAs. In keeping with longstanding USTR policy, reflected in the Uruguay Round Agreements Act and the NAFTA Implementation Act, the U.S. Government works closely with a state to defend its laws. The U.S. Government provides all necessary legal services and pays the litigation fees and related costs. It is up to the state if it wishes to incur additional costs to hire legal consultants, for example. In our view, however, where a state considers it necessary to incur additional costs, those costs generally represent a very small portion of the total costs of the defense because the U.S. Government is responsible for all aspects of defending the actions of a state under an international agreement.

For example, in the *Methanex* case, a NAFTA investor-state dispute in which a Canadian investor challenged California's ban on the sale and use of a gasoline additive, the U.S. Government paid for all out-of-pocket expenses, including arbitrator fees, fees paid to experts, travel costs for fact witnesses, and administrative costs, which were incurred in the defense. To my knowledge, California did not incur any costs in that dispute other than the time California government employees spent assisting in the dispute. U.S. Government lawyers drafted all of the submissions and defended California's actions during the hearings. The U.S. Government successfully defended California's actions in that dispute.

Foreign Investment – No Greater Rights

6. The takings clause of the Fifth Amendment to the Constitution protects private property from being taken by the government without just compensation. It is my understanding that U.S. courts have been reluctant to expand this principle to "regulatory takings" or "indirect expropriations." These concepts would require compensation to be paid if government regulations have an adverse economic effect on the value of property or an investment. Despite this, the investment provisions in recent FTAs give foreign investors expanded opportunities to challenge government regulatory action by claiming

that the government action is "tantamount to expropriation," thereby giving foreign investors greater rights than Americans are due under U.S. law.

Amb. Schwab, given that the Trade Act of 2002 makes "ensuring that foreign investors . . . are not accorded greater substantive rights" than U.S. citizens a principle trade policy negotiating objective, would you be willing to direct USTR's negotiators to incorporate language in future FTAs that clarifies that foreign investors will only have the same rights as U.S. citizens when lodging takings challenges against governmental regulations?

Answer: After Congress passed TPA, we consulted extensively with Congress, our statutory advisory committees, and domestic stakeholders, including the business and NGO communities and state and local governments, to develop new investment provisions and to ensure that those provisions fully satisfied TPA's guidance.

These provisions ultimately were incorporated into the FTAs with Chile, Singapore, Australia, Morocco, and Central America that Congress recently approved and have also been incorporated into the text that we have tabled in all of our pending negotiations. These provisions fully ensure that foreign investors are not accorded greater substantive rights than U.S. investors.

With respect to the expropriation obligation in particular, our investment text now includes an expropriation annex that draws heavily from principles developed under U.S. takings law. Among other things, the annex:

- directly incorporates tests used in U.S. Supreme Court rulings to determine whether a regulatory taking has occurred;

- clarifies, consistent with U.S. law, that there are only two types of expropriation – direct and indirect. None of our post-TPA FTAs includes the "tantamount to expropriation" language referenced in your question;

- states that, except in rare circumstances, non-discriminatory regulatory actions designed and applied to protect the public welfare are not indirect expropriations. The same is true under U.S. law; and

- clarifies, consistent with U.S. takings and due process jurisprudence, that only property rights or property interests in an investment are entitled to expropriation protection.

We believe that these provisions improve the implementation of investment provisions while supplying critical protections for U.S. investors abroad.

Security

7. It has been brought to my attention that current law does not require a systematic review of the homeland security implications raised by free trade agreements. Could you give USTR's impression of legislation introduced by Congressman Brown that would require homeland security concerns to be a part of the negotiating and congressional implementation processes for new FTAs? Does it make sense to require trade agreements to undergo a systematic homeland security review?

Answer: We take great care to ensure our free trade agreements fully comport with U.S. national security interests. First, the trade and investment obligations we include in our FTAs are based on longstanding U.S. trade policies and practice. So our agreements do not require us to take actions, or refrain from taking actions, that are likely to raise significant national security concerns.

Just to be safe, however, we invariably include an exception in our FTAs that allows us (and our FTA partners) to set aside our obligations in any instance in which we decide we need to do so to protect our essential security interests. This exception is entirely self-judging. This means we decide when to invoke it and on the action we need to take to satisfy our security concerns. An FTA trade or investment panel cannot second-guess our decision or the reasons for it.

In this light, I do not believe we would enhance our security interests by requiring our FTAs to undergo reviews of the kind you mention. Moreover, any use of the essential security exclusion should be undertaken only when legitimate security concerns are involved because to do otherwise would be to encourage other countries to use their exclusion as a smokescreen for protectionism.

SENATOR LINCOLN:

1) Amb. Schwab, farmers in my state are concerned that the gains in market access in a potential Doha agreement will not be enough to offset the loss in domestic support. What does the Administration's analysis indicate are the gains in market access if the U.S. proposal were adopted? Which commodities stand to see the largest increases? Will the U.S. reduce its offer to cut domestic supports in response to a less than acceptable market access offer?

Answer: American farmers and ranchers are among the most competitive producers in the world. When WTO members reduce tariffs, trade-distorting domestic support, and eliminate export subsidies, U.S. agriculture will have new opportunities. In particular, products where the United States is already export-dependent, such as wheat, corn, soybeans, rice, cotton, and certain specialty crops, stand to gain from reduced market access barriers. Importantly, these sectors will also benefit from expanded growth spurred by foreign reforms and increased trade, a critical need for U.S. producers given

the fact that our production already exceeds domestic demand. In addition, the U.S. livestock sector, including beef, pork, poultry and dairy producers, is globally competitive and increasing exports every year. Access to new markets will provide more customers for U.S. livestock producers and more demand for livestock feed producers. Similarly, U.S. food processors are world leaders and in many cases face market access barriers; tariff reductions will open markets for U.S. exporters of these products as well. If the U.S. proposal were adopted, gains would accrue to each of these sectors as U.S. tariffs are generally relatively lower than tariffs imposed by other countries. While the U.S. proposal also calls for reforms in domestic support programs, including our own, there would still be ample room for U.S. farm programs to channel support to producers through non-trade-distorting means, should that be necessary.

The U.S. proposal last October was explicitly conditioned on all three pillars moving together. We will continue to press for ambitious results on market access because WTO members have committed to an ambitious reform result in all areas. The United States will not agree to a deal with deep cuts in domestic support that are not reciprocated with meaningful market access and reforms abroad. If necessary, that may require recalibrating the domestic support element of our proposal.

2) As you know, the so-called Peace Clause, included in the Uruguay Round agreement, has expired. I'd like to commend the Administration for including the concept of litigation protection in our Doha proposal. What type of feedback have we had from other countries on this aspect of the U.S. proposal? Is the Administration committed to insist on the inclusion of a "compliance assurance" provision in the final agreement?

Answer: The United States has made a proposal that would help to clarify the relationship between the WTO *Agreement on Agriculture* and the *Agreement on Subsidies and Countervailing Measures* ("*SCM Agreement*"); in particular, it would continue the approach that a Member's compliance with the commitments under the WTO *Agreement on Agriculture* would suffice for *SCM Agreement* purposes. We believe that such a provision would be of great value because it would provide greater clarity and certainty to WTO Members. No Member has yet indicated its support for the U.S. proposal. However, the United States will continue to push for its October proposal in the negotiations.

3) The U.S. has consistently called for a single undertaking approach to the Doha negotiations and no "early harvest." I strongly support this position, and I will have strong reservations for any agreement that unfairly targets individual commodities. I understand that the Hong Kong Ministerial included language specific to cotton, specifically commitments to provide duty free, quota free access to cotton from least developed countries and more ambitious and expeditious reductions in cotton supports than for other commodities. Are you still committed to a single undertaking approach and are you prepared to resist further separate concessions on cotton?

Answer: The United States is firmly committed to a single undertaking: unless a complete package is agreed there will be no new commitments on particular sectors or elements. The United States will resist unreasonable commitments on cotton.

4) Your skills as a negotiator and the dedication of your negotiating team proved essential in bringing about a set of terms for a possible Lumber Agreement with Canada. Finalizing this important Agreement will benefit companies, their workers and thousands of communities on both sides of the border. However, much work remains before this Agreement can be finalized, and many obstacles must be overcome.

Can you provide me with a status of, and timeframe for, finalizing this Agreement? What are some of the biggest obstacles? Do you agree that the terms of a possible Agreement announced by the governments of the United States and Canada on April 27th must be honored in order to finalize this Agreement?

Answer: We are in constant contact with the Canadian negotiators as well as the U.S. industry to finalize the agreement as quickly as possible. There is, however, an enormous amount of work that needs to be done, including, for example, drafting the final text of the agreement, finalizing the details for the distribution of the cash deposits collected under the antidumping and countervailing duty orders, and obtaining approval of the agreement and implementing legislation by the Canadian Parliament. This will take some time, but we hope to complete our work in the coming weeks.

The settlement terms announced on April 27 must be honored to finalize the agreement. Re-opening these terms risks a collapse of the process and a return to the contentious litigation that has plagued this dispute over the past several years and failed to produce a viable long term outcome.

We are confident that the Canadian federal government is committed to finalizing the agreement. It is our understanding that the majority of the Canadian industry, as well as the provincial governments, also support the agreement. While there is a vocal minority within the Canadian industry that opposes the settlement, the Canadian government is working hard to ensure that the negotiations remain on track.

5) Amb Schwab, manufacturers in my state continue to be concerned that the trade remedy laws they rely on to combat unfair foreign trade practices will be weakened in the current round of WTO negotiations. These trade remedies are under strong attack by many of our trading partners, who have proposed a host of changes that would largely gut the rules against dumping and subsidies. My constituents are concerned that the United States has done little to counter these proposals, even though TPA specifies that a major goal of the United States in these negotiations must be to fully preserve U.S. fair trade laws. If you are confirmed, will you put forth proposals that are in keeping with the Congressional mandate to preserve and improve these rules?

Answer: I share your concern about the need to preserve the strength and effectiveness of U.S. trade laws. I believe that strong and effective remedies against unfair trade practices, including those against dumping and unfair subsidies, are critical for maintaining support for trade liberalization, and are essential to ensure that the benefits gained from trade liberalization are not undermined. If confirmed, I will work with Congress to ensure that the TPA mandate to preserve the ability of the United States to enforce rigorously its trade laws is fulfilled.

In the WTO Rules talks, the United States has emphasized the necessity for strict adherence to the Rules negotiating mandate that U.S. negotiators insisted upon and obtained at the Doha Ministerial Conference in 2001, which requires that the effectiveness and basic principles of the WTO Antidumping and Subsidies Agreements must be preserved. Given the increasing number of WTO Members using the trade remedy rules, including many developing countries, a number of additional Members have joined us in insisting that the effectiveness of the rules must be preserved. When other Members have raised proposals with the potential to undermine our trade laws, we have put them on the defensive by vigorously attacking the technical merits of the proposals.

We have also countered those proposals with our own proposals on key U.S. priorities, including eleven new Rules proposals since March 2006. For example, we have recently tabled proposals on prohibited subsides, circumvention, new shipper reviews, transparency and due process, WTO dispute settlement, and perishable and seasonal agriculture.

If confirmed, I look forward to working with you to advance our Rules proposals, and to ensure that U.S. trade laws remain strong and effective.

6) Amb Schwab, ending the Arab League Boycott of Israel is of key importance to this Committee and to the Senate as a whole. Saudi Arabia has repeatedly pledged to end its boycott of Israel, though has failed to follow through on its commitments.

During accession negotiations to the World Trade Organization, Saudi Foreign Minister Saud al-Faisal assured Secretary of State Condoleezza Rice that it would apply Most-Favored-Nation status to all WTO members, including Israel. When Saudi Arabia formally joined the WTO it did not invoke the non-application provision with respect to any country. USTR then issued a statement, highlighting that “Saudi Arabia is legally obligated to provide most-favored-nation treatment to all WTO Members, including Israel. Any government sanctioned activity on the Boycott would be a violation of Saudi Arabia’s obligations and subject to dispute settlement. This legal obligation cannot be changed.”

Saudi officials, however, have stated that the Kingdom intends to maintain the boycott despite WTO membership. Just this week, Saudi Arabia is participating in the Arab

League Boycott meeting in Damascus, designed to find new ways to tighten the boycott against Israel.

If you are confirmed, what specific steps will you take to ensure that Saudi Arabia meets its legal obligations?

What will the USTR do if Saudi Arabia fails to meet these obligations?

Answer: The Administration and USTR have been consistently firm and aggressive in opposing the boycott in all its forms. We have used all of our trade tools, including FTA negotiations, TIFAs, WTO accessions and high level advocacy with partners around the region, including Bahrain and Saudi Arabia to end the boycott. I assure you that USTR considers this a top priority and if I am confirmed we will continue to push aggressively along these same lines.

We have seen occasional press reports quoting unnamed Saudi officials saying that WTO membership does not mean an end to the boycott of Israel. We have raised these issues directly with senior Saudi officials on several occasions, both in Riyadh and in Washington. In all cases, we have received assurances that Saudi Arabia fully understands and remains committed to its WTO obligations, including the obligation to treat all WTO Members according to WTO rules.

At our request, the U.S. Embassy in Riyadh contacted senior Saudi officials to inquire about Saudi Arabia's attendance at the recent Arab League meeting in Damascus and to emphasize that attending such a meeting does not seem consistent with Saudi Arabia's WTO obligations. The Saudi government replied that Saudi Arabia routinely attends Arab League meetings and simple attendance at a meeting related to the boycott was not a violation of the Kingdom's WTO commitments; rather, the Saudi representative would take the opportunity to explain the Kingdom's WTO commitments to other members. We will take every opportunity to stress to Saudi officials -- as did the Embassy -- that attendance at these kinds of meetings reflects poorly on their obligations to WTO members.

If I am confirmed, I will ensure that USTR continues to insist that Saudi Arabia live up to its WTO commitments. Saudi Arabia confirmed explicitly in its Working Party Report that it did not apply the secondary and tertiary aspects of the boycott. This commitment is subject to WTO dispute settlement. If we learn that U.S. firms face application of the secondary and tertiary aspects of the boycott, we will immediately bring this practice to the attention of Saudi officials and request government action to stop and reverse the illegal requirement, as required by their WTO commitments. If appropriate, we could raise these practices in the WTO. If the Saudi government continues to apply the primary boycott, and the Israeli government believes that Saudi Arabia is not treating goods and services of Israel according to WTO rules, it could pursue WTO dispute settlement. The United States could support Israel in such a case.

SENATOR SCHUMER:

1. As I mentioned during the hearing, on May 15th, for the first time, China "fixed" the value of the yuan below 8 yuan to the dollar. By "fixing," I mean the value at which the Chinese central bank sets the yuan before the start of the day's trading. This was an important move, a largely symbolic move, but still an important move if it portends more movement to come. Though the yuan was"fixed" above 8 again this morning, a step backwards.

I understand that it is not the job of the USTR to negotiate currencies, though in responding to a question asked by Senator Baucus on the issue of China you said you "call things as you see them." Are China's actions an example of currency manipulation in your opinion? How does USTR intend to monitor the currency issue and enforce WTO commitments?

Answer: USTR does not have the mandate or the technical expertise to make judgments on exchange rate issues and we will leave that to the Treasury Department. That said, Secretary Snow has said that he is extremely dissatisfied with the slow and disappointing pace of reform of the Chinese exchange rate regime. The United States, along with the G-7, the IMF, and the Asian Development Bank, have all called on China to implement greater exchange rate flexibility. The Treasury Department examined China's currency policies in its Foreign Exchange Report that was released on May 10. In the final analysis, the Treasury Department was unable to conclude that China's intent has been to manage its exchange rate regime for the purposes of preventing effective balance of payments adjustment or gaining unfair competitive advantage in international trade. The Treasury Department can give you a detailed explanation of their reasons for drawing this conclusion. The Treasury Department remains intensively engaged, both bilaterally and multilaterally, in getting China to move quickly to a more market-determined flexible exchange rate.

As for enforcement in the WTO, in our view initiating a WTO case on this matter would place China in the position of defending, rather than reforming, its currency regime. In addition, a currency dispute would be a first at the WTO and would therefore have an unpredictable outcome and take a relatively long time to reach completion. We believe it is more constructive to work with China towards reforming its regime, and in particular that we should allow for Treasury to continue its intensive program of engagement with China.

2. Earlier this year the office of the USTR released a comprehensive top-to-bottom report focusing specifically on trade with China. I was displeased to see that the most egregious violation of free trade practices, China's currency manipulation, was only mentioned in a mere foot note.

I would like to know two things concerning this report. First, do you think that the issue of Chinese currency should be given a more prominent section of USTR's next review of trade policy towards China? How large of a problem do you see China's currency practices when placed in the larger context of trade with China? Is it the most serious problem, in your view? Second? Third?

Answer: The Top to Bottom Review was focused on issues relating to trade policy. Exchange rate policies, together with other macroeconomic factors including savings and investment rates, do have an impact on trade and on current account balances, and greater exchange rate flexibility in China and East Asia is a key component of addressing global imbalances. However, engagement on currency issues is the responsibility of the Treasury Department. USTR is focused on addressing our very serious trade policy issues with China, including: continued Chinese barriers to some U.S. goods and services; failure to adequately protect intellectual property rights; unreported and extensive government subsidies and preferences for its own industries; and insufficient transparency.

Given the range of factors involved, it is difficult to assess the relative importance of China's exchange rate policies in effecting trends in the U.S.-China trade relationship. However, I would note that while the bilateral deficit with China has increased significantly, the share of the U.S. global trade deficit represented by the Asia Pacific Rim as a whole (including China) has actually fallen from 57% in 1999 to 43% in 2005. This is because China has become the preferred location for final assembly for goods previously assembled in other Asian economies, and China's share of the total value-added in a product exported to the United States is often small. As a result, the major effect of an appreciation of China's exchange rate relative to the dollar would likely be a shift of the final assembly of these exports back to other Asian economies.

3. I understand that China's banking and financial services sectors are currently undergoing some changes to prepare for the phasing-out of certain limitations on December 11, 2006. I also understand that China is not always the fastest mover when it comes to implementing change, and I am greatly concerned that the Chinese government may not be ready to allow foreign majority shareholder stakes when these restrictive barriers are phased out at the end of this year.

Could you please explain specifically what steps are being taken to ensure that China will comply with the phasing-out of the barriers to ownership and operations in financial services?

Answer: The USTR and the Department of Treasury, along with other United States government agencies, have been reaching out aggressively to remind China that we expect their full compliance with the phase-out of financial services restrictions that they agreed to as part of their WTO commitments.

First, at the WTO, the United States continues to meet with China as part of the ongoing Doha GATS negotiations, in both bilateral and plurilateral (collective) negotiations, to discuss various issues connected with China's commitments. Our most recent negotiations took place in April of 2006.

The United States has also been an active participant in the WTO Transitional Review Mechanism for China, which has met each year since China's accession to the WTO (most recently in the Fall of 2005). We have stressed that China must fully implement all of its WTO accession commitments, including the phase-outs.

Moreover, in April of this year, the United States took part in China's first WTO Trade Policy Review, which was yet another opportunity for the United States and other exporting countries to emphasize the importance of China's compliance with all of its financial services commitments.

We recognize you have a particular interest in banking. Regarding that sector, we are closely monitoring China's commitment to phase-out all restrictions by December 2006. We have expressed concern to the Chinese regarding the ability of foreign financial institutions to establish Chinese-foreign joint banks (joint ventures), specifically in the case in which the foreign financial institution seeks to buy shares in a state-owned bank that is being privatized. The United States and other WTO Members have urged China to relax any limitations on the amount of shares that a foreign institution could buy in a state-owned bank under privatization.

The U.S. Government also has held several regulatory dialogues with China to discuss a range of issues that are designed to promote good regulatory practices in China and further support China's effective implementation of its GATS commitments. These dialogues have taken place within various fora, including the Treasury-led Joint Economic Committee (JEC) and its technical level Financial Sector Working Group. In addition, the USTR-led JCCT Insurance dialogue, which is a critical venue to address China's commitments in the insurance sector, met in May and December of 2005. We are working to set up the next meeting

4. As you know, I am concerned about reciprocity. The U.S. financial services sector is internationally competitive, employs about 6 million Americans, boasts a trade surplus, and would benefit enormously from a commercially meaningful WTO financial services agreement. For these reasons, many believe it ought to be a priority for the Doha negotiation to secure commitments from key emerging-market economies, such as Brazil, India, and Indonesia that would give U.S. firms access to those markets that is comparable to what foreign firms currently enjoy in the U.S. market.

Do you agree that this should be a priority, and if so, can you please bring me up to date on the progress that the USTR and Treasury team have made in achieving this objective?

Answer: Significant improvements in financial services market access, particularly in Brazil, India, Indonesia and other key emerging markets, is a top U.S. priority in the WTO Doha services negotiations. USTR and Treasury are engaged at all levels to convince WTO members that they must improve their financial services offers, including through bilateral and plurilateral (collective) negotiations taking place in Geneva and through outreach to capitals.

Although many emerging markets continue to link their willingness to make improvements in their offers on financial services and other key service sectors to progress in agriculture and other areas of the Doha agenda, since the Hong Kong Ministerial last December we have seen a greater level of engagement in the negotiations among many of the emerging markets, including the WTO members you have highlighted. Greater numbers of emerging markets have begun to send their financial services experts to the WTO negotiations and some of these countries have indicated their willingness to remove certain other restrictions in the next iteration of the offers which are due by July 31, 2006. The United States will continue to press our trading partners to make all necessary further improvements to their offers to reach the high standards of access -- both for investors and cross-border suppliers -- expected by the U.S. financial services industry.

5. Under current WTO rules, rebates of value-added taxes on exports are not considered export subsidies, but rebates of income taxes are. The disparity in treatment between the direct taxes in the U.S. system and the indirect taxes of many of our trading partners is an important factor in the huge and growing U.S. trade deficit. Congress long ago recognized the inequity of this situation, and wants to try to fix it through trade negotiations.

   What is the status of this issue, and what do you intend to do to address this disparity in the Doha Round negotiations?

Answer: Pursuant to the Trade Promotion Authority negotiating objective to address this issue, in March 2003, the United States submitted a paper to the Rules Negotiating Group identifying the differing treatment of direct and indirect taxes under the WTO Subsidies Agreement rules. While recognizing that this distinction has existed in the GATT/WTO subsidy rules for some time, the United States stated its position that an essential part of the work of the Rules Group should be to work toward greater equalization in the treatment of various tax systems and noted that the current distinction risks ignoring the potential trade-distorting effect that certain practices involving indirect taxes may have on trade, and may unfairly disadvantage competitors operating under a direct taxation system. This proposal received no support. Nonetheless, we have continued to examine the issue within the government and have continued to consult with U.S. industry and staff of the relevant Congressional committees.

In this regard, while it is often asserted that the current rules favor countries with VAT regimes, economists seem to be of differing opinions. One study, for example, concluded

that there was a negative relationship between VAT systems and exports (see, M.A. Desai, and J.R. Hines, *Value-Added Taxes and International Trade: The Evidence*, November 2002, University of Michigan).