

**ISSUES TO BE ADDRESSED AT THE  
HONG KONG MINISTERIAL CONFERENCE OF THE  
DOHA ROUND OF THE WORLD TRADE  
ORGANIZATION'S  
TRADE EXPANSION NEGOTIATIONS**

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**HEARING**

BEFORE THE

**U.S.-CHINA ECONOMIC AND SECURITY  
REVIEW COMMISSION**

**ONE HUNDRED NINTH CONGRESS  
FIRST SESSION**

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DECEMBER 8, 2005  
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UNITED STATES-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION  
WASHINGTON : February 2006

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**ISSUES TO BE ADDRESSED AT THE HONG KONG  
MINISTERIAL CONFERENCE OF THE DOHA ROUND  
OF THE WORLD TRADE ORGANIZATION'S  
TRADE EXPANSION NEGOTIATIONS**

**Thursday, December 8, 2005**

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION  
Washington, D.C.

The Commission met in Room 538, Dirksen Senate Office Building, Washington, D.C. at 9:00 a.m., Chairman C. Richard D'Amato and Commissioners June Teufel Dreyer and Michael R. Wessel (Hearing Cochairs), presiding.

**OPENING STATEMENT OF CHAIRMAN C. RICHARD D'AMATO**

CHAIRMAN D'AMATO: The hearing will come to order.

Good morning and welcome to the U.S.-China Economic and Security Review Commission's hearing on the issues in the Doha Round. This hearing is important and timely. As you know, the Hong Kong Ministerial Conference is set to begin next week I believe it is critical to understand the Doha agenda issues to be addressed at the meeting and more importantly to place in context China's actions with regard to multinational trade agreements.

This Commission was established at the time when China was granted permanent most favored normal trading relations in order to assess the economic and security implications to the United States of trade with China.

In past hearings, the Commission has examined China's compliance problems. In today's hearing, we would like to explore China's participation in the WTO from another angle: is it an active member in Doha Round negotiations? Where do the U.S. and Chinese Government's goals in the Doha Round converge? Where do they differ? And what is our working relationship with the Chinese in trying to build common solutions to the problems in the round?

Furthermore, we look forward to hearing from our witnesses, including members of the Commission's Trade Law Advisory Group,

including Mr. Robert Lighthizer and the group's chairman, Mr. Terry Stewart on the matter of the administration's attitude and negotiating conduct in the face of a broad attack in the negotiations on U.S. trade remedy rules against foreign dumping and subsidies.

Dumping and subsidization are forms of protectionism being used on a widespread basis and unfairly against the United States' industries, workers, and the basic health of our economy. Are we prepared to fight protectionism in the international trading arena, or will we allow attacks on these vital trade remedies, that is, antidumping and antisubsidy disciplines to erode our attempts to build a fairer trading regime, which is helpful to our economy?

As far as the upcoming Doha Round is concerned, a bad round in the form of more foreign protectionism would be worse than no round at all. We certainly encourage the administration to be tough in rejecting attempts to weaken U.S. trade remedies against foreign protectionism.

There has been a lot of discussion prior to the upcoming talks of only limited progress on agricultural subsidies and tariffs, but beyond this issue, the Hong Kong Ministerial will pose an opportunity to discuss industrial tariffs and technology piracy issues.

I look forward to today's panelists' presentations on the scope and depth of the issues that will be presented at the Ministerial and how China's interests and role within the WTO will affect the U.S. economic and security interests.

Today's cochairs of our hearing are Commissioner Mike Wessel to my right and Commissioner June Dreyer to my left. I would like to call on Commissioner Wessel now for his opening remarks.  
[The statement follows:]

### **Prepared Statement of Chairman C. Richard D'Amato**

Good morning and welcome to the U.S.-China Economic and Security Review Commission's hearing on the Issues in the Doha Round. This hearing is important and timely, as you know, the Hong Kong Ministerial Conference is set to begin next week.

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Furthermore, I look forward to hearing from our witnesses, including members of the Commission's Trade Law Advisory Group – including Mr. Robert Lighthizer, and the group's Chairman, Mr. Terry Stewart – on the matter of the Administration's attitude and negotiating conduct in the face of a broad attack in the negotiations on U.S. trade remedy rules against foreign dumping and subsidies. Dumping and subsidization are forms of protectionism being used on widespread basis and unfairly against U.S.

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I'd like to now recognize today's hearing Cochairs: Commissioners June Dreyer and Mike Wessel.

### **OPENING STATEMENT OF COMMISSIONER MICHAEL R. WESSEL, HEARING COCHAIR**

HEARING COCHAIR WESSEL: Thank you, Mr. Chairman.

Today's hearing will assess what progress has been made, what our priorities should be and what risks and opportunities the U.S. faces in these negotiations. Clearly, these negotiations affect much more than just the U.S.-China bilateral trade relationship, but in assessing the overall negotiations, we will have a particular eye on what impact there will be on our bilateral economic relationship with China, the potential impact on global sourcing patterns and most importantly the impact on U.S. jobs, our economy, and our standard of living.

As we look at this new round of negotiations, we have to assess what potential benefits we're likely to get as well as what costs we could incur. Reaching an agreement must not be our only measure of success. Success must be measured in dollars, cents, and jobs. China, as the Commission has noted, has failed to live up to many of the promises they made in their accession agreement.

While progress on many fronts can be documented and must not be discounted, there are still far too many major areas where China continues to flout the rules and welsh on its promises. Billions of dollars in lost sales rack up year after year as does the resulting catalogue of lost jobs.

China continues to engage in protectionist and predatory practices designed to advance its economic interests at the expense of our and other nations' interests. China has largely sat on the sidelines of these talks, a fact that has been noted recently, failing to accept the mantle of leadership that its economic position demands.

I particularly will be interested to learn about what steps must be taken to ensure that the basic body of our unfair trade laws are preserved and, if possible, strengthened. Congress, in passing trade promotion authority, set out as a principal negotiating objective the

preservation of our trade law, yet our negotiators have agreed to discuss potential changes in our laws, changes that our trade partners are advocating to try and gain an extra piece of our market.

In my opinion, there must not be any changes that undermine our ability to fight unfair and predatory trade practices. Our nation's trade deficit of roughly \$700 billion is testimony to the fact that the U.S. has the most open market of any nation on earth. We don't need to change our trade laws to allow more unfairly traded products to flood our market, adding further insult to injury.

Today, we will hear from a range of experts on what the state of play is and what risks and opportunities await our negotiators and ultimately our nation in Hong Kong next week. Next week is not the end of the road, but it is an important crossroad, and we will aggressively examine these issues and report to Congress on how best to evaluate the steps our negotiators and their counterparts take.

CHAIRMAN D'AMATO: Thank you, Commissioner Wessel.

We will now hear from Commissioner Dreyer, the other cochair of today's hearing who will then handle the first two panels.

Commissioner Dreyer.

#### **OPENING STATEMENT OF COMMISSIONER JUNE TEUFEL DREYER, HEARING COCHAIR**

HEARING CO-CHAIR DREYER: Good morning. I want to be the third and last to welcome you to our hearing examining the Doha agenda and China's role in the upcoming Hong King Ministerial talks. Ambassador Rob Portman, analysts, and the press, have all noted in detail the importance of these agricultural negotiations to the success of the Ministerial and the Doha Round in general, and in general terms, the nature of the agricultural proposal pits developing nations against developed ones, and perhaps certain developed ones more than others.

This does not have to be the case, and the United States Government has taken extensive strides to propose its own agricultural subsidy cuts. China, as I hardly need to remind you, plays a critical role in these negotiations. Ambassador Portman last month called on Chinese officials to play an active role in the Doha Round. Portman noted that there were very few areas of disagreement between China and the United States in the Doha Round.

This provides a great opportunity for cooperation on common goals and the ability to build a better relationship with which to work with each other on areas of disagreement, such as intellectual property theft, which is another significant interest of this Commission.

I look forward to a broad discussion of this topic, particularly on what we can expect U.S. negotiators to achieve should there be movement in the Hong Kong Ministerial Talks on industrial tariffs and IPR.

Our first panelist today is Myron Brilliant, Vice-President for East Asia for the U.S. Chamber of Commerce, where he is responsible for developing, promoting, and executing U.S. Chamber programs and policy relating to U.S. trade and investment in the Asian trade area.

In 2001, Mr. Brilliant formed the U.S. Chamber's China WTO Implementation Working Group to follow China's efforts to open its market to foreign goods and services. In addition to his role at the U.S. Chamber, he is President of the U.S.-Korea Business Council and Executive Vice President of the Hong Kong-U.S. Business Council. I thank you for taking the time to join us today, and I'm looking forward to your testimony.

Our second panel will examine the trade law concerns at hand in the Hong Kong Ministerial talks. Mr. Terence Stewart is the managing partner of Stewart and Stewart. Mr. Stewart has previously served as chair of the U.S. Court of International Trade Advisory Committee on Rules and President of the Customs and International Trade Bar Association.

In the second panel, we will also hear from Robert Lighthizer, who is a partner in the Washington office of Skadden, Arps, Slate, Meagher, and Flom, LLP, where he focuses on international trade law. Mr. Lighthizer has also served as deputy United States Trade Representative with the rank of ambassador during the Reagan administration.

We are looking forward to their comments today. Mr. Brilliant, shall we begin?

Thank you.

[The statement follows:]

### **Prepared Statement of Commissioner June Teufel Dreyer, Hearing Cochair**

I am pleased to welcome you to our hearing examining the Doha Agenda and China's role in the upcoming Hong Kong Ministerial. Ambassador Portman, analysts, and the press have all noted the importance of agricultural negotiations to the success of the Ministerial and the Doha Round in general. In general terms, the nature of the agricultural proposals pits developing nations against developed ones. This does not have to be the case and the U.S. government has taken extensive strides to propose its own agricultural subsidy cuts.

China has the ability to be a critical participant in such negotiations. Ambassador Portman, last month, called on Chinese officials to play an active role in the Doha Round. Portman noted that there were "very few areas" of disagreement between China and the U.S. in the Doha Round. This provides a great opportunity for cooperation on common goals and the ability to build a better relationship with which to work with each other on areas of disagreement, such as intellectual property theft.

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Let's begin with Mr. Brilliant.

## **PANEL I: THE DOHA AGENDA AND CHINA**

### **STATEMENT OF MYRON BRILLIANT, VICE-PRESIDENT, EAST ASIA, U.S. CHAMBER OF COMMERCE**

MR. BRILLIANT: Thank you, Mr. Chairman and other fellow Commissioners. It is indeed a pleasure and privilege for the U.S. Chamber to present our views today on the Doha Development Agenda Round.

As you have stated, I am Myron Brilliant. I have been running the U.S. Chamber's Asia Program for 10 years. Of importance today is that I have come back from China recently, where I met with Commerce Minister Bo Xilai and others. I would be happy to talk about that in the question and answer session.

I will tell you that the fact is that the U.S.-China Economic and Security Review Commission plays a very important role in talking about the U.S.-China relationship, and I look forward to your questions later this morning.

We believe that the Doha Round represents truly a unique opportunity to unlock the world's economic potential and to really inject new vibrancy into the global trading system. I'm not going to go through all the statistics and stats that are in my full testimony. I make that part of the permanent record. I also won't go through all of the statistics in our China WTO Implementation Report, but I'll make that also part of the permanent record.

What I want to talk about today, though, is the sixth Hong Kong WTO Ministerial and the important milestone that it represents; what we hope to see accomplished at Hong Kong and beyond; talk about China's role in the Hong Kong WTO Ministerial and frankly in the WTO system and then take your questions.

If you looked at a football analogy, in Cancun we're in halftime; we're in the third quarter now, and it's really critical that we see forward momentum at Hong Kong, and then, we'll get into the fourth quarter in 2006, where we need to see closure of this round. We really

have simple messages here today: first, these negotiations are just absolutely too critical and too important to fail. They must not fail. The stakes are too high.

Second, the United States has more to gain from the Doha Round than just about anyone else. Our market, as you have already noted, is open to foreign imports, but American businesses and farmers need to have better access to global markets if we're going to be able to compete effectively.

Third, the United States is doing more than just about anyone else to make the round a success, with the U.S. business community helping to lead the charge.

What are we looking for? What is the U.S. Chamber and the business community looking for in the Doha Round? Well, the first ingredient sounds simple. We want the round to be ambitious. And the second priority for success is the final deal must be comprehensive.

The round is going to look at important policies with respect to agriculture. We need to see comprehensive liberalization in trade and services in addition to seeing a reduction of barriers to trade in industrial and consumer products. We want to see progress on trade facilitation, and yes, Commissioners, we want to see progress on intellectual property rights enforcement.

That means that the round has great potential to generate increased income, drive innovation and advances in productivity and reach all corners of the globe, creating new markets for U.S. products and services. As I said already, Hong Kong is not the end of the road, but it is an important milestone. It is important that the trade ministers set their sights high and try to establish the negotiating frameworks, and, frankly the necessary steps to move these negotiations to closure in 2006.

Why is this target date so critical? It's critical, as you all know, because the United States really needs to vote on a final agreement before trade promotion authority expires in June 2007.

The U.S. Government, under the leadership of Ambassador Portman, is working hard to secure buy-in from critical trading partners for an ambitious round. The U.S. Chamber and our member companies are also committed to working with the administration, Congress, and counterpart organizations around the world to ensure that negotiations advance.

In October of this year, the Chamber, in partnership with other leading U.S. business associations and a broad range of companies and agricultural groups, launched the American Business Coalition for Doha, the ABC Doha, to ensure that the U.S. private sector is coordinated, mobilized, and focused on achieving success in Hong Kong. We've worked very hard behind the scenes in forums like APEC, which I'll talk about in the question and answer period, to encourage foreign governments and business communities to engage and participate in the process. Tom Donohue, our president and CEO, will lead a significant

U.S. Chamber delegation to Hong Kong for the WTO Ministerial, because, again, we know what the stakes are.

Let me briefly take up a few of the specific areas of negotiations and our views on them. First, with regard to agriculture: the U.S. Chamber applauds U.S. leadership in putting forth a serious and comprehensive proposal for moving the WTO agricultural negotiations forward at this critical time. The Bush administration's recent announcement that it is willing to make a 70 percent cut in the level of agricultural support allowed by the WTO in return for real gains in market access overseas was bold, courageous, and correct.

We hope that the other countries included in the EU and Japan would rise to the challenge to present equally bold and creative proposals. Global agricultural trade suffers from too much protectionism: high tariffs, quantitative restrictions, and trade distorting subsidies. At just 12 percent, the average U.S. agricultural tariff is far lower than the worldwide average of 62 percent.

Second, with respect to trade and manufacturing goods and other merchandise or the NAMA negotiations, the Doha Round must provide genuine market access by substantially reducing or eliminating tariff and nontariff barriers. With an average tariff rate of only 3 percent, our economy is largely open to imports. Yet our manufacturing industry still faces an average tariff of 30 percent across many other key export markets.

We favor a zero for zero tariff approach, but at a minimum, we need to see a substantial reduction of tariff rates, and we need to see much more done in the nontariff area. Nontariff barriers range from import licensing requirements and uneven regulations to restrictions on foreign investments, all of which raise costs, unfairly discriminate and impede market access for U.S. products. The Doha Round should focus on removing these hindrances to international trade.

We recognize that the NAMA negotiations are affected by progress in the broader negotiating environment. We continue to believe that it is important that negotiations on agriculture, services, and NAMA move forward on parallel tracks, a very important point to make to ensure that there is success in the broader Doha Round, and this is particularly important in the area of services.

The U.S. Chamber strongly believes that the Doha Round must deliver meaningful and comprehensive liberalization in services. This is by far the largest and fastest growing sector in the world economy and in the United States. In total, services represent about 2 percent of world GDP or \$35 trillion in 2004. In the United States, the service sector represents 75 percent of GDP and employs 80 percent of U.S. workers.

Service liberalization globally has been impeded by a variety of obstacles, including discriminatory licensing procedures and taxes,

limitations on ownership and foreign direct investment and restrictions on capital and profits.

These impediments fly in the face of the goals of the Doha Round. Progress has been largely unsatisfactory to date. Few offers and even fewer revised offers have been tabled, despite the fact that the May 2005 deadline has long passed. The request/offer process is clearly not delivering sufficient progress, and there is an urgent need to realign priorities and to raise the profile of the service negotiations among trade ministers.

While new methods are being explored to revitalize the process, the objective of achieving substantial new liberalization commitments must be done by spring 2006, and this should be a high priority for the U.S. Government.

Fourth, with regard to trade facilitation, we do believe that the progress in this area could lead to real nuts and bolts improvements for businesses of all sizes. It may not be sexy, but it's absolutely critical. Progress in such areas as port efficiency, customs procedures and requirements, the overall regulatory environment, and automation and e-business usage is important for all companies. Major world regions are already embracing trade facilitation. I just came back from the APEC meetings, and they are very proud to point out that in November of 2004, the APEC leaders proudly announced that they had reached their goal of reducing business transaction costs by 5 percent three years ahead of schedule.

Similar efforts are also underway in the Western Hemisphere. Collectively, these efforts are a good beginning. A global rules-based approach, however, offers the advantages of certainty, stability, and enhanced common standards to customs measures and port administration. This is the promise of the Doha Round trade facilitation agenda. This is something that we support and hope will follow through on.

Let me turn now to the China position on the Doha Development Round. Arguably, the single most important or significant change in global commerce since the completion of the Uruguay Round has been China's emergence as a global manufacturing power and accession into the World Trade Organization. The U.S. Chamber strongly supported China's WTO accession, and yet, despite China's economic growth and membership status in the WTO, it has largely remained on the sidelines in the lead up to the Hong Kong Ministerial.

President Hu supported a broadly worded Doha Round statement issued by all APEC leaders in November 2005 for countries to show the flexibility needed to advance the WTO talks in Hong Kong. Yet, China's leaders have generally been reluctant to actively lead or advocate on specific controversial issues within the Round.

An example of this would be President Hu Jintao's recent trip to Europe in November. He did not press the EU to make additional

agricultural concessions in Doha, nor did he really discuss the importance of the upcoming Ministerial talks in Hong Kong.

Since joining the WTO in 2001, China has repeatedly asserted that as a recently acceded member, it should not be expected to contribute significantly to the progress of WTO negotiations. China's disengagement from global trade talks, in our view, has not been destructive, per se, but their engagement should be encouraged and would add value to the round and the prospects for a comprehensive and bold round.

Ambassador Portman has correctly and repeatedly encouraged China, as a major player in international trade and a beneficiary of the multilateral trade system, to become more involved in the Doha negotiations, and we would encourage more approaches to the Chinese Government on this front.

The Chamber views China's WTO accession as a floor, not a ceiling, for continued progress in market liberalization. At the APEC meetings in Busan in November, I made this point directly to Chinese Minister of Commerce Bo Xilai, and we spent almost two hours talking about our trade agenda and talking about the WTO talks.

We are urging the Chinese not to utilize the Doha Round as a pretext for refusing discussions on further market access, or other rights for U.S. businesses until the round's conclusion. As for specific details on China and the Doha Round, I have more details in my written testimony.

Let me just say, though, we want China to be active in these discussions. We want to ensure that China completes its compliance with its WTO commitments and makes future improvements in market access for U.S. companies. Our copyright industry, our software companies, our retailers and direct sellers, our financial and telecommunications service companies, and our manufacturers all want the same level of market access that we provide to Chinese companies in this market.

As a matter of the level playing field, let me also say a brief word about intellectual property rights and enforcement. The scope and depth of China's IP infringement remains a major commercial concern for U.S. businesses. You may not know that I chair a coalition of associations here in Washington on this issue. There are recent modest improvements in enforcement efforts in China, but they have failed to date to demonstrate a real reduction in counterfeiting and piracy.

U.S. Government officials and some U.S. companies on the ground have noted this increased commitment to intellectual property enforcement, particularly from the central government, but we need to see that addressed at the provincial level as well. We have already started to do capacity-building programs in critical provinces like Guangdong and will continue that work in 2006.

China in the coming year will clearly have to take bolder steps to effectively enforce IPR, and the Chamber will be monitoring China's progress through tangible barometers such as a level of increase

in IP criminal cases, improved resources for IP enforcement bodies, and look at IP-sensitive language in pending competition and standards legislation.

We would hope that the Doha Round will result also, frankly, in greater commitments from governments broadly, not just China, to deter counterfeiting and piracy. The level of deterrence is not great enough worldwide.

Let me conclude my oral remarks today by clearly articulating that the U.S. Chamber believes that the Doha Round represents a vital, vital opportunity to drive global economic growth, lower costs for consumers, and help level the playing field for American manufacturers and farmers and service providers. It will allow us to compete and prosper in the international marketplace if it is bold, if it is comprehensive.

We have outlined our policy priorities in greater depth in the written testimony, but we know for sure that the United States must exercise leadership, but the success or failure of this round is a shared responsibility. Our counterparts around the world, particularly the European Union, China, Japan, and the G-20 must also aim high if the promise of the round is to be realized.

The upcoming Hong Kong Ministerial will be a critical test of the commitment of the key players to advancing the Doha development agenda. The U.S. Chamber is committed to working with its partners in the public and private sectors here in the United States and around the world to ensure the Doha Round reaches a meaningful conclusion.

Thank you for your attention this morning. I'm pleased to answer any questions you might have.  
[The statement follows:]

### **Prepared Statement of Myron Brilliant, Vice-President, East Asia, U.S. Chamber of Commerce**

On behalf of the US Chamber of Commerce, I am delighted to have this opportunity to offer our organization's views on the importance of the Doha Development Round of multilateral trade negotiations.

#### **US Chamber position on Doha Round**

The U.S. Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

The Doha Round represents a unique opportunity to unlock the world's economic potential and to inject new vibrancy into the global trading system.

The Doha Round promises not only to build on the foundation established by the Uruguay Round in the early 1990s but, more importantly, to ensure that both developed and developing nations share in the economic gains resulting from global trade liberalization, including by addressing unfinished business in the agricultural sector.

The World Bank estimates that the elimination of global trade barriers would enhance global commerce by \$290 billion by 2015. Clearly, the stakes are high for developing and developed countries.

Above all, during the upcoming Sixth WTO Ministerial Conference in Hong Kong members should establish the negotiating framework and modalities necessary for the negotiations to move to the next stage in a timely fashion.

With Trade Promotion Authority in the United States set to expire on June 30, 2007, time is short for the WTO's 148 member countries to secure an agreement.

Failure in Hong Kong is not an option; forward momentum is essential.

It is clear that the United States government and private sector must lead, and collectively we are prepared to do so. The US government under the leadership of Ambassador Portman is working hard to secure buy-in from critical trading partners for an ambitious round. Ambition is the key.

The US Chamber and its member companies are committed to continue working with the administration, Congress, and their counterparts around the world to ensure that the negotiations advance.

On October 25, 2005, the Chamber, in partnership with other leading U.S. business associations and a broad range of companies and agricultural groups, launched the American Business Coalition for Doha (ABC Doha) to ensure that the U.S. private sector is coordinated, mobilized, and focused on achieving success in Hong Kong.

The US Chamber has also worked hard behind the scenes in forums like APEC to encourage foreign governments and business communities to engage and participate in the process.

In addition, Tom Donohue, our President and CEO, will lead a significant US Chamber delegation to Hong Kong for the WTO Ministerial.

As one of the most open economies in the world, the United States must be bold in its approach to the liberalization of trade. If the US is to convince its global trading partners to compromise in order to realize free trade objectives, the United States cannot lead alone.

The European Union, Japan, China and other G20 members, in particular, need to demonstrate that they too are committed to the success of the Round and are willing to make the concessions necessary for a balanced result to win the support of all WTO member countries.

In my brief testimony here today, let me now turn to the recommendations that represent the US Chamber's priorities for the Round. As stated, the Chamber will continue to work actively with U.S. trading partners around the world to build support for these objectives.

#### **Trade in Agricultural Products:**

The agricultural objectives of the Doha Round were established in the 2001 Doha WTO Ministerial Declaration, 142 WTO member countries committed to making "substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support".

Ensuring we have substantial progress in agriculture is essential if the Doha Round is to be comprehensive and ambitious.

The U.S. Chamber applauds US leadership in putting forth a serious and comprehensive proposal for moving the WTO agriculture negotiations forward at this critical time. The Bush administration's recent announcement that it is willing to make a 70% cut in the level of agricultural support allowed by the WTO in return for commensurate gains in market access overseas was bold. This pledge builds on a commitment by the United States last year in Geneva, to eliminate export subsidies by a date still to be determined.

We would hope now that other countries would rise to the challenge and present equally bold and creative proposals.

The Chamber is encouraged that the recent proposals set forth by the G20 seem to have re-energized negotiations with respect to agricultural reforms. In addition, the Chamber hopes that these advances will stem a perceived lack of ambition on the part of some key parties to the negotiations and that U.S. and G20 efforts will yield positive results going into the Hong Kong Ministerial.

The United States is uniquely positioned to press for success. America's farmers are the most efficient in the world. We produce more than we can eat at home, and with 96% of the world's consumers living outside the United States, access to global markets is vital to the long-term growth and success of US agriculture.

Presently, global agricultural trade suffers from too much protectionism (i.e., high tariffs, quantitative restrictions, and trade-distorting subsidies). At just 12%, the average US agricultural tariff is far lower than the worldwide average of 62%.

We need to be leading advocates for more progress on agriculture. Bold positions can help break what appears to be a stalemate between developed and developing countries over who should make the first move. Here in the United States we must do our part. We cannot fail to deliver steep reductions in both trade-distorting domestic supports and tariff rates.

In the end, success will only be achieved through mutual recognition that comprehensive trade liberalization is an opportunity that will yield enormous benefits to farmers and consumers worldwide. After all, in a World Bank paper, Kym Anderson concludes that 92% of developing countries' gains in agricultural trade will come from reductions in market access barriers. Anderson finds that such tariff reductions will not only improve the trade climate between developed and developing nations, but they will yield significant gains in trade between developing countries.

We urge other countries, especially the EU and Japan, to bring forward equally strong proposals in agriculture.

As with other areas I will discuss, there is more work to be done.

### **Trade in Manufactured Goods and Other Merchandise:**

Since the founding of the General Agreement on Tariffs and Trade (GATT) in 1947, successive rounds of multilateral trade negotiations have helped spur rapid growth in world trade through significant cuts on tariffs on industrial goods. In the last decade alone, implementation of the Uruguay Round produced a 50% increase in trade in goods. Today, manufactured goods represent 75% of global merchandise trade.

More can be accomplished, however, if the Doha Round is successful.

Much is at stake for the US manufacturing industry. The manufacturing sector is a strong driver of U.S. economic growth and employment. With an average tariff rate of only 3%, our economy is largely open to imports. This is good for US consumers who benefit from a variety of goods at lower prices. Yet, our manufacturing industry still faces an average tariff of 30% across many other key export markets.

A decrease in tariffs by even one-third would yield substantial benefits in global economic welfare. Accordingly to studies cited by the American Business Coalition for Doha, elimination of all tariffs on consumer and industrial goods could increase the US national income alone by as much as \$95 billion.

In 2001, 142 WTO member countries made a commitment "to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries"



(Doha Declaration).

Not enough progress has been made toward this goal. Much work remains to be done in the nonagricultural market access (NAMA) negotiations.

To deliver on its development promises, the Doha Rounds must provide genuine new market access by substantially reducing or by eliminating tariffs through the Swiss formula.

This formula focuses on making meaningful reductions in tariffs across all product segments, particularly peak and high tariffs. Additionally, a final agreement must allow for a voluntary sector approach to tariff elimination. Above all, achieving a level playing field requires an approach that recognizes the current differences between countries' tariffs and mandates reductions in tariffs that will reduce or eliminate those differences; thereby avoiding an outcome in which countries with high average tariffs are only required to make relatively small reductions.

While tariff elimination is a critical component of the Round, non-tariff barriers are increasingly becoming as important, if not more important, than tariffs in constraining global trade. Non-tariff barriers range from import licensing requirements and uneven regulations to restrictions on foreign investments, all of which raise costs, unfairly discriminate, and impede market access for US products.

The Doha Rounds should focus on removing these hindrances to international trade, using both horizontal and sectoral approaches. Moreover, the WTO should strengthen, or create where necessary, problem-solving mechanisms specifically focused on addressing and removing non-tariff barriers.

To ensure that the NAMA negotiations lead to substantially increased opportunities for trade, growth, and development for all countries, we would support having some flexibility built into the process to provide room for less developed and small economies to take part without shouldering the same burden as their more developed counterparts.

But all countries have to contribute to lower tariff and non-tariff barriers on industrial products.

The US Chamber recognizes that the NAMA negotiations are affected by progress in the broader negotiating environment. We continue to believe that it is important that negotiations on agriculture, services, and NAMA move forward on parallel tracks to make certain that success in the broader Doha Round is achieved.

### **Trade in Services:**

The US Chamber strongly believes that the Doha Round cannot be construed as a success unless it delivers meaningful and comprehensive liberalization in services. This is the largest and fastest growing sector in the world economy.

The services sector is now a critical backbone of the economy in developed and developing countries alike. In total, services represent about two-thirds of world GDP, or \$35 trillion, in 2004. In the United States, the service sector generates 75% of the GDP and employs 80% of US workers.

Further liberalization of this critical sector will clearly help the US economy but also allow WTO member countries to attract greater foreign direct investment and to take full advantage of the growth and employment that this vital sector provides. Economic studies have concluded that reducing service barriers by one-third could improve economic welfare by \$470 billion and the United States would stand to gain \$138 billion in increased economic activity.

Service liberalization globally has been impeded by a variety of obstacles including discriminatory licensing procedures and taxes, limitations on ownership and foreign direct investment, and restrictions on repatriation of capital and profits. These impediments fly in the face of the goals of the Doha Round of opening global trade and investment.

In 2001, the services liberalization work that had been conducted under the GATS (General Agreement on Trade in Services) was incorporated into the Doha Round's mandate. WTO members endorsed the existing negotiating modalities and set a schedule for successive market access requests and offers.

Progress has been unsatisfactory to date. Few offers and even fewer revised offers have been tabled, despite the fact that the May 2005 deadline has long passed. The request/offer process is clearly not delivering sufficient progress, and there is an urgent need to realign priorities and to raise the profile of the services negotiations among trade ministers.

While new methods are being explored to revitalize the process, the objective of achieving substantial new liberalization commitments by spring 2006 should guide U.S. efforts.

**Efforts to complete a service liberalization agreement fall into four modes:**

In *mode one* (cross-border supply of services), the ability to trade across borders should be delinked from a requisite physical commercial presence in-country. In addition, the United States should seek full market access and most-favored nation treatment for all cross-border services trade.

In *mode two* (consumption of services abroad), the United States should seek to bind existing levels of market access.

In *mode three* (commercial presence), the United States should seek, at the very least, the substantial easing in equity limits for services investments.

In *mode four* (business travel facilitation), Congress, U.S. trade negotiators, and the business community need to work together to shape a joint initiative. To move forward, the business community has fashioned a proposal to facilitate the temporary entry of key business personnel—professionals, managers, consultants, and highly skilled experts and technicians.

Gaining congressional support and attention could help improve the position of U.S. trade negotiators on services.

Services are a vital part of the US economy and we need to ensure that substantial progress is made in the Doha Round towards comprehensive liberalization.

**Trade Facilitation:**

The Doha declaration recognizes the case for “further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area”.

Trade facilitation initiatives provide significant opportunities to achieve real, nuts-and-bolts improvements for businesses of all sizes. Progress in such areas as port efficiency, customs procedures and requirements, the overall regulatory environment, automation, and e-business usage is important for all companies; but such progress is especially valuable to smaller and medium-size enterprises.

Major world regions are already embracing trade facilitation. In 2002, the 21 member economies of the Asia-Pacific Economic Cooperation (APEC) forum launched a Trade Facilitation Action Plan that included a commitment to reduce business transaction costs by 5% within six years. In November 2004, the APEC leaders proudly announced that they had reached their goal three years ahead of schedule.

Moreover, in the Western Hemisphere, the countries negotiating the Free Trade Area of the Americas committed in 1999 to implement a package of nine customs-related business facilitation measures that covered much of the same ground as the APEC action plan. In November, a group of nearly 100 of the

Western Hemisphere's leading business organizations released a declaration favoring an ambitious stance in the trade facilitation negotiating group of the DDA.

These efforts are a good beginning; however, much more can be done. Trade facilitation can bring great benefits if adopted unilaterally, but a global rules-based approach also offers the greater advantages of certainty, stability, and enhanced commonality to customs measures and port administration. This is the promise of the Doha Round trade facilitation negotiations.

### **China's Position on the Doha Development Round**

Given the mandate of this Congressional Commission and interest in China, I thought I would discuss China's role in the Doha Round Development. Arguably, the single most significant change in global commerce since the completion of the Uruguay Round has been China's emergence as a global manufacturing power and accession into the World Trade Organization. Yet, despite China's enormous economic growth and membership status in the WTO, it has largely remained on the sidelines in the preparatory negotiations for the Ministerial Conference in Hong Kong.

During Bush's visit to China, President Bush and President Hu stressed the importance of building consensus on market access issues in the Doha Round. President Hu supported a broadly worded statement, issued by all APEC leaders, for countries to show "the flexibilities necessary" to advance the WTO talks in Hong Kong. While the Chinese leadership has articulated their desire for the Doha Round to succeed, they have been reluctant to actively lead or advocate on specific controversial issues. During President Hu Jintao's multi-nation European tour in the middle of November, for instance, he did not press the EU to make agriculture concessions in Doha nor really even discuss the importance of the upcoming Ministerial talks in Hong Kong.

Why has China not been more active in these global negotiations? It remains largely focused on internal market reforms. Since joining the WTO in 2001, China has repeatedly asserted that as a "recently acceded member" it should not be expected to contribute significantly to the progress of WTO negotiations. China is now in the late stages of phasing in its WTO commitments, most of which are scheduled to be fully implemented by the end of 2006.

China's disengagement from global trade talks has not been destructive per se to the Doha Round, but given China's role as an increasingly large stakeholder in the global economy, the US Chamber hopes that China will assume a leadership role in moving the talks forward in 2006. Ambassador Portman has correctly and repeatedly carried this message to the Chinese leadership. As a major beneficiary of the multilateral trading system, China needs to become more involved in leading the Doha negotiations to a successful conclusion.

As for specific issues in the Doha Development Round, we offer the following insights and views on Chinese policy.

#### **On Agriculture:**

Since joining the WTO, China has reduced tariffs on agricultural products from 31 percent to 14 percent and improved its tariff-rate quota administration and the genetically modified organism (GMO) certification program. China still maintains some barriers to agricultural trade, predominantly through market price supports as well as some non-tariff barriers to trade such as unscientific sanitary and phytosanitary requirements and a value-added tax on agricultural imports.

However, given the market liberalization China has already realized under WTO, we believe multilateral agricultural liberalization would offer substantial economic benefits to Chinese farmers and rural households--a primary objective of the central government as articulated in the Central Committee's Eleventh Five-year Plan. Therefore, we find China's reluctance to advocate more forcefully on behalf of

agricultural concessions in the Doha Round striking given China's sweeping agricultural commitments upon WTO accession and the benefits it would stand to gain from a successful Doha Round.

**On Services:**

While China has met or is on schedule to meet many of its WTO obligations to relax restrictions on services, there remain outstanding issues of concern to U.S. companies, most notably in the areas of telecommunications, express delivery, direct selling, and insurance branching services. China's difficulty in implementing its services commitments indicates a significant level of apprehension among the Chinese government regarding the ability of domestic firms to compete with multinational companies in services. Despite the economic gains realized from such liberalization, there remains a strong inclination within certain government ministries to protect the nascent development of domestic service companies from further international competition.

China's refusal to make additional commitments to liberalize services is defended by the Chinese government on the basis that China is in the final year of implementing its WTO services commitments. We understand that China has declined to submit substantive proposals for services liberalization. We believe that China and other major trading partners need to lead by example and offer substantive service liberalization proposals.

**On Non Agriculture Market Access (NAMA):**

Under its WTO accession commitments, China lowered its average import tariffs for industrial products from 25 percent to 8.9 percent. In comparison the current average industrial tariff rate is 27.9 percent for India, 12.9 percent for Brazil, and 4.0 percent for the United States.

China has generally refrained from publicly pressuring for the advancement of negotiations on NAMA. China opposes sectoral zero-for-zero initiatives, which the USG is advocating. While China has agreed to the Swiss formula for tariff reduction, favored by the USG, we understand it has proposed unrealistic coefficients that would result in drastically steeper tariff cuts for developed countries.

In short, China's has not played a critical role in the lead up to the Hong Kong WTO Ministerial. Going forward, with China's emergence on the global economic stage, we should expect and encourage China to play a more constructive role in securing and supporting global economic growth through multilateral trade negotiations.

Let me also emphasize that the US Chamber views China's WTO accession commitments as a floor, not a ceiling, for continued progress in market liberalization. And we believe China can play a vital role in supporting global trade negotiations. At the APEC meetings in Busan in November, we made this point directly to the Chinese Minister of Commerce Bo Xilai. And we urged the Chinese not to utilize the Doha Round as a pretext for refusing to provide additional market access for U.S. businesses until the Round's conclusion. The Chamber believes that the way forward in this critical relationship is not for the US to close its market to Chinese exports, but with a trade deficit that will hit \$200 billion, China must open its markets further to US exporters and investors if we are to maintain a strong commercial relationship.

The US Chamber was a strong proponent of China's accession to the WTO. Although China has implemented most of its WTO obligations, there is more work to be done. The Chamber will continue working to monitor China's progress towards complete compliance with its WTO commitments, and to ensure continued improvements in market access for US companies.

President Hu will travel to the United States next spring, and our hope is that he will come prepared to talk seriously about enhancing opportunities for US businesses in the China market. Our copyright industry, our software companies, our retailers and direct sellers, our financial and telecommunications services companies, and our manufacturers all want the same level of access that we provide to Chinese companies in this market. In short, our Chamber and our members want to see a level playing field.

And on the matter of a level playing field, let me say also say a brief word about IPR. The scope and depth of China's IP infringement remains a major commercial concern for U.S. businesses. Recent modest improvements in enforcement efforts have failed to yield demonstrable results. However, US government officials and some U.S. companies on the ground have noted an increased commitment among various levels of Chinese government to address IP issues. In the upcoming year, China will need to take bolder steps to effectively enforce IPR, and the Chamber will be monitoring China's progress through tangible barometers such as the level of increase in IP criminal cases, improved resources for IP enforcement bodies, and IP sensitive language in pending competition and standards legislation.

### **Conclusion**

Let me conclude my remarks today by clearly articulating that the US Chamber believes that the economic prosperity of the United States is integrally linked to the vibrancy of the world economy and to the global trading system.

The Doha Round represents a vital opportunity to drive global economic growth, lower costs for consumers, and help level the playing field so that American manufacturers, farmers, and service providers can continue to compete and win in international markets.

The policy priorities outlined in this document set the parameters for an ambitious outcome from a U.S. business perspective. The United States must continue to exercise leadership, but the success or failure of the Round is a shared responsibility.

Our counterparts around the world, particularly the European Union, Japan, China, and other members of the G20, must also aim high if the promise of the Round is to be realized. The upcoming WTO Ministerial will be a critical test of the commitment of the key players to advancing the Doha Development Agenda. The U.S. Chamber is committed to working with its partners in the public and private sectors here in the United States and around the world to ensure that the Doha Round reaches a meaningful conclusion.

Thank you for your attention this morning. I would be pleased to answer any questions you might have.

### **Panel I: Discussion, Questions and Answers**

HEARING COCHAIR DREYER: Thank you very much, Mr. Brilliant. I am going to exercise the Chair's prerogative and ask you the first question.

You mentioned that you had meetings with Chinese officials, including, I believe you said, Bo Xilai. I wonder if you could summarize those and tell us, frankly, if you considered them productive. Many of us have had the experience of having a session which is, let's say, an hour long, with one of these officials. You get 55 minutes of my-eye-glaze-over statistics followed by nonanswers to your questions. I'm hoping you all have more meaningful things to tell us.

MR. BRILLIANT: Well, it's actually interesting. I was in China, then Hong Kong and then Busan for the APEC meetings, because I chaired the U.S. APEC Coalition this year, and I will tell you that you can have the kind of meeting that you described. I met with a very senior official in the Ministry of Information and Industry, which is responsible for technology standards, and that meeting had a little bit of the flavor that you're talking about.

In contrast, in Busan, we spent two hours with Minister Bo Xilai and senior staff at the Ministry of Commerce. That meeting was one of the more substantive, in-depth conversations on trade issues that we've had in some time with a senior Chinese official. Now, this person is well versed in U.S.-China affairs. He is a rising star within the Chinese Government. He was engaging on a range of issues in our relationship.

I spent some time talking about intellectual property rights and enforcement. We talked a lot about standards. We talked a lot about market access and unfinished business in the Doha Round as well as their unfinished business with respect to WTO compliance.

The meeting, by all accounts, and there were 25 to 30 U.S. companies present in that meeting, was one of the best meetings we had in some time with a senior Chinese official. Very substantive, very informative, and I think very positive.

HEARING COCHAIR DREYER: Any other meetings with any other officials?

MR. BRILLIANT: We met with Foreign Minister Li Zhao Xing, as you know, who was formerly ambassador here to the United States. We met with other senior Chinese officials as well, and I would characterize those visits as important and constructive, but in particular, with respect to our trade agenda and our commercial agenda, the meeting with Bo Xilai was the most significant.

HEARING COCHAIR DREYER: Thank you.

Commissioner Wessel.

HEARING COCHAIR WESSEL: Thank you, Commissioner Dreyer, and thank you, Mr. Brilliant, for being here. We appreciate your participation, and we're all seeking the same end result on this. Whenever the Commission has traveled, it has made sure that American Chamber, AmCham members overseas are included in the discussions, because they're on the front lines and have not only some of the best interests but are trying to advance U.S. exports and interests in those markets. So we appreciate it. The Chamber is an important voice in all of this.

You are well aware, as we look at what happened in Seattle, what happened in Cancun, what happened in Miami, what has happened with CAFTA that public concern about our trade negotiating agenda has declined [sic] over time as our deficit has increased.

Clearly, if you look, as we all have noted, that our average tariff rate is somewhere in the range of 3 percent, we've gone through a number of rounds of negotiations, that the public does not see that they have a lot more to give but expect to get a lot more out of these negotiations.

When you look at China, the accession agreement was a broad agreement, yet there are still a lot of areas of noncompliance. Their participation in the Transitional Review Mechanism has been less than stellar. I would like your views on that. But we're now about to go into another round of concessions, and the question is what do we do about the

concessions that were made by China that have yet to be lived up to? How do we build public support for this next round while there are so many unmet promises left on the shelf?

It's hard to build public confidence about that, and I would assume you raised the IPR issue; we have currency; we have many other major irritants in the relationship. How do we address those? How do we address them either in the context of the Doha Round or some of them, of course, have to be done outside since there are no commitments within that area?

How do we deal with that frustration, which is not just political but is economic, and your testimony, your work over time and clearly, states the concerns of some of your members about what they are getting in the China market?

MR. BRILLIANT: Commissioner, you have raised several related issues.

First of all, you are right to point out that the American Chamber, which are part of our membership, are absolutely critical. I am pleased that the Commissioners engage our chambers overseas on a regular basis. Their on the ground intelligence about developments in the regulatory and trade field is absolutely critical and valuable to the Commission as well as to the U.S. Chamber here in Washington, and we work very closely with them on a range of issues, including on the matter of intellectual property rights and unfinished business with China's accession to the WTO.

There are still issues that we want to see China move forward on, unfinished business. I would note, however, that they have made significant progress in the area of tariff reductions. They have made significant progress with respect to transparency. The Ministry of Commerce has been particularly helpful in that regard but other ministries as well.

They are making some progress, not enough, and in the area of intellectual property rights. Certainly, the government is more engaged; certainly, they have launched public awareness campaigns. You may be familiar with some of their enforcement campaigns, including the Mountain Eagle campaign, their efforts on landlord liability.

There are some efforts underway worth noting. It is not enough. The reduction rates in counterfeiting and piracy are not there yet. We're still talking about 90 percent rates. It's not adequate. The manufacturing capacity as well as export to third markets is problematic to U.S. manufacturers of all sizes. I have had a chance to testify before House and Senate committees in which this issue has come up and in which I have shared the table with small and medium-sized manufacturers, so I know the pain that U.S. companies face from intellectual property theft.

There are areas that are critical over the last year, year and a half to see how they are going to be implemented, distribution and trading

rights, for example. They have made some progress in that area, but we'll see how the regulations, the implementing regulations actually take effect.

In the area of service liberalization, 2006 is the critical milestone; in fact, that is their deadline. So there is some unfinished business that they in fact haven't had to meet yet.

I don't want to give the Chinese an excuse. As a matter of fact, if anything, the reason they need to contribute to the WTO system is because they have as much at stake as we do in a global trading system. Having said that, they use the excuse that we have unfinished business in the WTO round; therefore, we're not engaged in the global trading negotiations as much as we are in domestic market reform. They need to do both. We can walk and gum at the same time; the Chinese need to be able to do that, as well.

I think they need to be engaged in the global round. I think they can be an important bridge. They certainly would welcome agricultural liberalization globally, and they will stand to benefit from other initiatives undertaken. I think at the same time, we should expect them to be a responsible player in the trading system. That's why they're a member of the WTO club.

With respect to currency, that is really not an issue in the WTO, as you know well. We do believe that there should be forward movement in that respect. We believe that there should be a market-based currency regime in China. But we're more concerned, frankly, about financial service reform, which will create the environment in which market currency regimes can take place. They need to move really rapidly on financial services reform, and they are taking steps in that direction, but we'd like to see more progress.

Hopefully, I answered many of your questions.

HEARING COCHAIR WESSEL: Yes, all of which could be, as you know, hours and hours of discussion.

I want to understand a point you made earlier. I believe you talked about zero for zero as it relates to NAMA; is that correct?

MR. BRILLIANT: Correct.

HEARING COCHAIR WESSEL: Is zero for zero the approach the Chamber would prefer rather than the Swiss formula approach that is being taken now, as I understand it?

MR. BRILLIANT: No, we have been supportive of the Swiss formula approach. There are some challenges there, but of course, we would hope that countries would follow that approach.

HEARING COCHAIR WESSEL: So within the context of the--

MR. BRILLIANT: I'm just saying if all countries came to the table and said zero for zero tariffs, we would probably be behind it.

HEARING COCHAIR WESSEL: I understand, but as it relates to the Swiss formula, would the potential for exclusion of very sensitive products that quite frankly, undermine political support here or



in other nations, the ability to take account of that, or are you looking for supportive of Swiss formula with no exclusions of any kind?

MR. BRILLIANT: Well, we certainly, if you're talking about geographical indicators and things like that, we would not support that. I know that has been a challenge with the European Union in particular. We have some concerns about approaches in that regard.

HEARING COCHAIR WESSEL: What about in not relation to the nongeographic but the question of import-sensitive industries under our own law that have been designated as such for decades?

MR. BRILLIANT: I think the premise is bold and comprehensive, and I think that means the United States has to make concessions as we seek more market access in foreign markets, and I think there has to be a give and take. Part of the round is to be--I think the U.S. Government and the U.S. private sector needs to be bold and ambitious in our thinking, but we recognize there have to be compromises made in this round.

HEARING COCHAIR WESSEL: Thank you.

HEARING COCHAIR DREYER: Commissioner Reinsch.

COMMISSIONER REINSCH: Thanks. I had a bunch of questions, Myron, but you've answered most of them preemptively, so I'm down to one or two. One is that you talked a little bit about Hu Jintao's visit to Europe and the fact that some of the issues you're discussing didn't come up.

Can you say a few words, if you have some thoughts, about China's relationship with developing countries and what role China is trying to play in the round largely as a leader of developing countries?

MR. BRILLIANT: Well, interestingly, Commissioner, when we were in APEC, I found it interesting that President Hu Jintao spoke at the APEC CEO Summit yet again, and President Bush did not. President Hu Jintao has been very strategic, as has Premier Wen Jiabao, in reaching out not just to the developing countries but developed world: trips to Latin America, trips to Europe, have all been with a common theme, trips to ASEAN, the ASEAN plus three initiative that China has really launched forward with are all part of a strategic plan, I believe, on the part of China to engage the global community in, one, trying to expand its own trading relationships, two, looking at investment and strategic partnerships, and three, I think you see an emergence of China's foreign policy that looks to step beyond its own borders and its own region, and I think its outreach to developing countries is part of that grand scheme.

I think it is very direct. I think it makes a lot of sense. China has a lot of economic clout now, and it's looking to exert itself more forcefully globally and play a leadership role. It is in contrast somewhat with my statement with respect to the Doha Round, but I think as you see China's emergence on the global scene, you see the themes that they espouse in public speeches by their leaders. You're starting to see a more aggressive, forceful policy around the globe.

I think that can be a good thing. I think the United States needs to engage China strategically around the globe, but we also need to be aware of China's strategic commercial interests.

COMMISSIONER REINSCH: That's very helpful. Maybe you can relate that to the round for a minute. Do you see them playing a leadership role like the Brazilians and the Indians, or do you see them playing a different kind of role in the round, or do you see them playing no role at all and just being passive?

MR. BRILLIANT: Well, Brazil and India have changed. I hope we all take note of that. In Cancun, they were quite difficult partners in the global trading system. In fact, we would argue they were largely responsible for the Cancun debacle.

Leading up to the Hong Kong Ministerial, India and Brazil have tried to be much more constructive in their dialogue in my view and in the Chamber's view. China clearly is growing in the way that they play in multilateral and regional fora. They have not yet established the foothold in the Doha Round that I expect they will play in future multilateral negotiations, but they are behind the scenes maneuvering in many significant ways, and we need to take note of that.

The ASEAN plus three initiative is a good example of the way that they have reached out to the ASEAN block of countries. Similarly, I think their trip to Europe, while it didn't focus on the Doha Round certainly focused on closer economic cooperation with the European Community as a whole, not lost on many of us.

I already mentioned the fact that Hu Jintao has taken many opportunities to meet with the business community in all these countries, whether it was at APEC, where he spoke before the APEC CEO Summit or Europe, where he spoke before German and other business communities; very, very purposeful, and I just would say that we should recognize that China is going to grow in significance, not yet within the context of the multilateral round or the Doha Development Agenda Round like Brazil or India but nevertheless very significant.

COMMISSIONER REINSCH: Thank you.

HEARING COCHAIR DREYER: Commissioner D'Amato.

CHAIRMAN D'AMATO: Thank you, Madam Commissioner.

Thank you, Mr. Brilliant, for coming, for your testimony and for your comments here. I noticed in your testimony some comments in your oral remarks about IPR. You have been involved in the WTO implementation process since at least 2001, as I understand it, even before that in terms of China.

You indicated that China is making insufficient progress in terms of implementing some regime of IPR enforcement that is acceptable. But the question I have is how do we move the Chinese to a sufficient level of effort on IPR? And has the Chamber considered what kind of an appropriate role the WTO might play here in terms of bringing dispute settlement cases on IPR vis-à-vis China to the WTO?

In other words, what's going to move them forward on IPR that isn't moving them forward now? Is bringing a case or cases in the WTO something that the Chamber thinks might be advisable to make real progress in IPR? I understand that the American businesses' main problem in China has to do with IPR questions, and that is a huge loss every year. So that is number one on the business agenda: how do we move them forward?

MR. BRILLIANT: Well, it's clearly a high priority for the American business community, and it has been for the U.S. Chamber. Last year, I opened up an office in China. For the first time, the U.S. Chamber has an office, a representative office, in Mainland China, focused just around the issue of intellectual property enforcement. That's when we began launching capacity-building programs in Southern China. We are going to expand that to two additional provinces in the coming year.

I would just answer your important question in a couple of ways: first of all, China is going to move because it's in their own self-interest to move. China is already beginning to move on the intellectual property front. Now, I would have liked to have seen the move 10 years ago when the problems really started to emerge. The rates were very high then. The dollar volume wasn't as high, but the rates were very high in terms of counterfeiting and piracy.

The last year, they have moved. Now, I think the JCCT dialogue has been helpful in that regard between the United States and China; certainly, we've created some milestones in those JCCT talks that are important. But China is moving also because it's in their self-interest. As they move up the food chain in manufacturing, they see it in their own self-interest to protect and, frankly, nurture enterprise and innovation in their own marketplace.

Certainly, you see an increase in not only patent applications by Chinese enterprises within China but you also see an increase in patent litigation and trademark litigation by Chinese enterprises. That by itself will encourage change in China. I think you have seen this with Madam Wu Yi, Vice Premier Wu Yi's declaration. Now, you see Premier Wen and President Hu Jintao talking about intellectual property rights in their public comments.

Clearly, the central government has taken a new approach to this. Now, that has not yet translated to reductions. That's what we want to see at the bottom line. We are business people. The Commission wants to see it; frankly, U.S. business wants to see the reduction in counterfeiting and piracy.

But it has begun, this process of mobilization, central government coordination, increased pressure on provinces to take actions; frankly, when we put these provincial programs together, we brought FBI and Customs officials from the United States into these programs with the notion of trying to work with customs officials there.

There needs to be more of that. Capacity building needs to be increased. Resources are still a problem in China at the provincial level. Judicial training remains a huge problem. Let me tell you what is the priority, though, in the area of intellectual property rights for American business: very technical but very important. Right now, we want to see case transfer guidelines put in place that will shift from the administrative system, because they have a dual system in China, shift from the administrative system to judicial courts more cases. That's a top priority of American business. They have promised case transfer guidelines in December. We are looking hard to see how those guidelines come out and see how they're implemented.

Second, we need to see the police have more authority in China, the Ministry of Public Security, have more authority to come into cases earlier. That's very critical to American business that they investigate so they can get not just the street vendors but the real landlords and owners.

And third, we want to see, frankly, more resources.

Now, with respect to whether we would support a WTO case, which is another component, we have already been on record that when USTR sought WTO consultations, we were supportive. There are industries that are looking at potentially bringing cases. I won't talk about that publicly today, except to say that if the facts are there, we are going to support our government taking more forceful actions as necessary.

CHAIRMAN D'AMATO: Thank you. That's very helpful.

Thank you very much.

HEARING COCHAIR DREYER: Commissioner Bartholomew.

COMMISSIONER BARTHOLOMEW: Thank you very much, and thank you, Mr. Brilliant, for your interesting testimony. My question shifted as you were answering the last question.

I think that intellectual property rights, obviously, is not the only trade issue we have going on, but it's got reverberations throughout our economy that go well beyond lost sales, and it's got competitive consequences, and I think we really do need to be focusing on it, and I always think it's important to point out that Beijing can act when it chooses do so. If you look at the counterfeiting rates of Beijing Olympic logo material, they are virtually nonexistent. So it is clear that when they want to crack down, they can and can make sure that the counterfeiting doesn't take place, and I think it behooves us all to remember that.

One of the challenges for the U.S. government, of course, is getting factual information from our companies who may feel that they are at a competitive disadvantage if they speak out publicly on IPR violations, and you essentially answered that question, but I guess I would like to know more of will your companies be willing to provide the kind

of information that's needed, the evidence, in order for the U.S. Government to move forward?

MR. BRILLIANT: Well, I think there are industries, and there are companies within these industries, that are already working with the U.S. Government closely on providing facts on the issue you're talking about, the counterfeiting and piracy in the market. They will have to speak for themselves. We are aware of many of those companies and industries that are providing such information, and it's more challenging than you realize for a company to produce the kind of data that's needed to bring a case.

The worst thing that we could do would be to ask our government to bring a case before the WTO system and then lose. Frankly, the Chinese will tell you, and I have heard senior Chinese officials tell me, if you bring a case, you better win it. And that's not a threat to us. They're just telling us that it would hurt them in their efforts to improve the intellectual property regime. Many of these are people that are working with us closely on capacity programs and telling us don't bring a case unless you've got the facts, because if you do, and you lose, it undermines our ability to convince key parts of the Chinese Government to mobilize on this front.

It is an interesting way of looking at it, but it's very accurate, and it's a perspective that we don't often have here sitting in Washington. And I just wanted to share that with you, because it does tell you that we do have friends in China trying to work with us in ways that perhaps a couple of years ago we didn't, and they want to make sure that we see progress, and we just need to recognize that as well.

COMMISSIONER BARTHOLOMEW: And these capacity-building programs that you're mentioning, I presume this is just being paid for by your members, the capacity building?

MR. BRILLIANT: Yes, and we're not alone. We have a membership that is supporting us because it is such a critical issue. But there are a lot of capacity programs that are going forward that are being put on by the U.S. Government, the PTO office, the Patent and Trademark Office, the Department of Commerce broadly, the Justice Department and others are looking at things as well. So there's a lot of action here in the United States to support capacity building.

But you're right: the Chinese need to put their resources to it. It's not as simple as you think. Again, if our government says something, that doesn't mean all the states listen.

COMMISSIONER BARTHOLOMEW: I recognize that again but--

MR. BRILLIANT: They have that same challenge there in China as well.

COMMISSIONER BARTHOLOMEW: When we look at counterfeiting rates of Chinese-produced movies, and again, the Beijing Olympics, it does demonstrate that they can make sure that the

counterfeiting doesn't happen when they have issues at stake that they are particularly interested in.

MR. BRILLIANT: Again, I would just caution against an overgeneralization, because Beijing, they are making some headway. I mentioned the landlord liability issues briefly. That is an issue that is being addressed in Beijing. There are some raids that are being done. The collaboration between critical ministries like SAIC and the Beijing Government has been great. That collaboration could be more comprehensive in Beijing, but taking that to the provincial level has been a challenge in China.

There are challenges at the local level not just in terms of resources and a lack of training but, also, frankly some corruption and other elements. So, I would caution the Commission to think about the fact that Beijing doesn't always have control of policy implementation at the local level. It requires a collaboration that is stronger today but needs to be strengthened.

COMMISSIONER BARTHOLOMEW: You mentioned the interest in moving, shifting things into a judicial system. Two things: do you have confidence in the Chinese judicial system, and also, do you believe that American companies, if they win in the Chinese judicial system, will actually be able to collect?

MR. BRILLIANT: Well, I have a belief that the rule of law in China is improving. It's clearly not the same depth of rule of law formation as we have here in the United States, but it is improving, and I think that these case transfer guidelines are critical.

We'll see how they are implemented at the local level. There needs to be more judicial training. Again, the ABA, the American Bar Association, and others are involved in training programs. A lot of universities in the United States are extending a hand to Chinese scholars as well as judicial authorities, so there is some good collaboration there. We are looking at some programs that Berkeley and others are doing, for example.

I think there could be more done there, but the rule of law needs to be grounded in China. It's not there yet, but it's developing. There are some areas, like Shanghai, where there is more sophisticated judicial training in the area of intellectual property rights, but as these case transfer guidelines get implemented, and the judicial authorities have more control over criminal enforcement and sentencing, we'll have to see how they implement those new obligations.

COMMISSIONER BARTHOLOMEW: And then, on collection on judgments?

MR. BRILLIANT: On judgments, it's a mixed record. I think you'll find that it's still a bureaucratic process, length of time to get judicial enforcements are still too long, and the penalties are not severe enough. And so, the use of the judicial system is still a mixed bag for U.S. companies.

On the other hand, you'll find that a lot of U.S. companies would testify that they are getting great collaboration from the Ministry of Public Security, basically the police, in raids, in investigations. There are a lot of examples of companies that are working closely with MPS in conducting investigations. And that is proving to be very effective. So that gets you whether you need to be before you bring a case.

HEARING COCHAIR DREYER: Last but not least, Commissioner Mulloy?

COMMISSIONER MULLOY: Mr. Brilliant, I want to thank you very much for being here. You've been a great help to this Commission over many years, and we appreciate that.

This is the hearing room of the Banking Committee where they developed the legislation dealing with exchange rate manipulation. But since you indicated that that's not on the agenda for the WTO, we'll save that for another hearing when we want to go after that issue. Although the WTO, we could bring a case there, and then, they would look to the IMF for advice.

Commissioner Wessel mentioned the Doha Round and the falling off of public support for trade liberalization. In your testimony, you talk about the average tariff for goods coming into this country is about 3 percent, and the average tariff on our manufacturing going abroad is 30 percent.

When people out in the country say how did that happen, you can see why they begin to think where is this taking us when they see the current account deficits. I think that is some reason why you are having a falling off for trade liberalization.

That comes back to your statement of about a year ago. You said China was public enemy number one on IPR; you talked about that this morning. My understanding is the TRIPS agreement, which is part of their WTO obligation, when they got in the WTO, and they got permanent MFN, their average tariff on goods coming into this country is about 3 percent, and without MFN, their average tariff would probably be about 40 percent.

So we're giving them 3 percent. They're collecting that. They're taking that every day. We bargained for IPR enforcement on their part, and we're not getting that, and we're losing billions and billions of dollars every day because of that. So you support an IPR case in the WTO, as this Commission has very strongly recommended that our government pursue that urgently.

The other issue that comes up, though, is we not only have our companies losing for their operations in China with the IPR violations, but we have more and more counterfeit goods coming out of China into our own market. So we're losing two ways: we're losing the sales we could be making in China. They're getting a subsidy on the R&D by stealing all this, and they don't have to do the R&D to develop it. We're getting counterfeit drugs coming into our market, which are a

health hazard to our own citizens, and we're getting auto parts, even airplane parts, I understand, coming in counterfeit into this country which are a safety hazard.

So I think there is a two-pronged approach: one, the WTO case on IPR; two, much more resources and strengthened laws, maybe even criminal offenses, for companies that aid and abet bringing those counterfeit goods into this country.

Now, in my understanding, the Justice Department has developed a bill to strengthen our ability to police our own borders of those counterfeit goods and is out shopping now for Congressional sponsors. Will the Chamber be strongly supportive of developing that kind of legislation so that we can keep those kinds of goods out of our country?

MR. BRILLIANT: Commissioner, you raised, again, a number of issues. Let me try to tick them off. First of all, just a point of clarification: I said we would support a WTO case if the facts are there. Again, it's very important that I emphasize that point.

COMMISSIONER MULLOY: Yes.

MR. BRILLIANT: We do believe there may be merit in bringing a WTO case if industry supports the case with a strong factual record, a winnable case. We don't want to see us bring a WTO case that we would lose. It's not the only course of action that we think is in our arsenal. We think these capacity-building programs are very important as well.

Second point I would make, you're right to point out that exports are a real problem, exports of counterfeiting and piracy from China and frankly other markets as well and how it competes and undermines U.S. competitiveness domestically as well as in third markets where we have to compete against these counterfeit pirate products. We think it's a critical problem that we have to confront. We think the STOP initiative that you alluded to by the U.S. Government is an important effort. We would hope that other countries, developed and developing countries, would participate more forcefully and engage in that.

I think we have to look at our own borders. I think our customs officials have to be more sensitized to this issue. They need to work on it more closely. There is merit at the Congress looking closely at this issue, and we would be supportive generally of us having more adequate resources at our borders to stem the flow of counterfeiting and piracy.

Frankly, we would also like to see throw the keys away for repeat offenders, whether it's here or elsewhere, and there needs to be more done to stiffen sanctions on repeat offenders in this area.

I think the other point I would make which I have not clarified is it's really important to bring other communities into this issue. When it becomes just a United States-China issue, it becomes just a trade issue. Counterfeiting and piracy is not just a trade issue. It's an



innovation; it's a public health safety issue, it's a lot of things. It's not a trade issue. We've got to be careful that we don't make it a bilateral issue, but we make it a global issue, and we put pressure on the Chinese and other countries to do more; frankly, we need to do more here domestically.

COMMISSIONER MULLOY: Yes. Thank you very much. That's very helpful.

HEARING COCHAIR DREYER: I would like to declare this panel over. Mr. Brilliant, as always, you are very helpful, and we appreciate your support of the Commission.

Five minute break, please.

[Recess.]

## **PANEL II: WTO INTERNATIONAL TRADE LAW ISSUES**

HEARING COCHAIR DREYER: Gentlemen, I'd like to call this meeting back to order.

First on our agenda is Mr. Terence Stewart, whose bio sketch has already been introduced to you. He is managing partner of Stewart & Stewart Law Offices, Washington, D.C.

Welcome, Mr. Stewart.

### **STATEMENT OF TERENCE STEWART, ESQ., MANAGING PARTNER, STEWART & STEWART, WASHINGTON, D.C.**

MR. STEWART: Thank you, Commissioner Dreyer.

On this panel today, I'm accompanied by Bob Lighthizer. He and I have the privilege of being members of the Commission's Trade Lawyers' Advisory Group. One of our colleagues is in the audience, Linda Andros, and so, you have three, I think, of the five members of TLAG here either at the podium or in the audience.

The topic today of the status of the Doha negotiations is important for the United States. It is important in the bilateral U.S.-China relationship, and I have prepared two papers on the topic. There is a scorecard<sup>1</sup> that you may have gotten, and my prepared testimony.<sup>2</sup>

The scorecard is not an indication of our evaluation of what the U.S. negotiators are or aren't doing. It's rather an effort to reflect where we think the negotiations are against the range of U.S. negotiating objectives that were contained in the Trade Act of 2002.

You will see from that that overall, we give an overall grade of C, which is probably generous in terms of the actual likely outcome, which is unfortunate for many companies and communities in the United States, and you will see that there are some categories such as rules where

<sup>1</sup> [Blue Book: U.S. Trade Negotiating Objectives in the Doha Negotiations: A Pre-Hong Kong WTO Scorecard. December 8, 2005, STEWART & STEWART](#)

<sup>2</sup> [Prepared Testimony of Terence Stewart, Esq.](#)

generously, a grade of D has been given, and in fact, the situation could be closer to an F in terms of the status of those negotiations. Bob is going to be addressing rules, and so, I will only briefly reference it in my comments.

This is probably the first negotiation at least in my lifetime where one can say that there is not a significant number of countries, major countries in the negotiations that actually want a success, at least a big success. The parlance of negotiations is that everybody talks a good game, but the reality is that the U.S. and a few ag exporting countries are interested in a big package, and the historic other major players in the round, including the European Union and Japan, but including many others, in fact, do not want and to date at least have been unwilling to accept an approach that would lead to a large package.

If you take a look at sensitivities and where trade negotiations have gone, part of that is due to our own success in the past, where industrial tariffs have largely been negotiated away amongst ourselves, amongst the developed world, and the structure of the Doha negotiations, which started off with the premise that it was a development round and started off with the premise that developing countries would do less, and that means that those who have the largest remaining tariffs start off with the assumption that there will be lower cuts than that which will happen for the developed world.

So the areas where the U.S. needs major pickup is not there. Support that we would need, in fact, to obtain a big package would have to come from countries who have given a lot to get into the WTO, countries like China, and yet, they have to date taken positions that are largely supportive of the right of the advanced developing world to remain undifferentiated and to give less at the door than the developed world, even though they start off with much greater barriers.

So you have a process where it is unlikely that there can be a big result at the end. Hopefully, I will be wrong in that evaluation, but that certainly appears to be the case. Realize that we have spent the last 27 months, 27 months, in search of a deal on the size of the package, the modalities. It was originally supposed to be done in Cancun. There then was an effort to make it happen by the summer of 2004, and most recently, it was supposed to happen by Hong Kong.

Each of those things has fallen down in large part because there are a handful of countries wishing a very large package, the United States being amongst them, with most other countries hiding behind the problems the European Union has had as they have tried to raise what they are trying to do. It is not easy to see how we get out of that particular bind other than to say that at some point, if there is to be a deal, it is likely expectations will come down. If that happens, what is in the deal for the United States will be substantially less than what has been hoped for, what has been promised.

Beyond that, you have the situation in the round that some of the key issues that we need to address to get at some of the underlying trade imbalances we have with major trading partners are not being addressed even though they are part of the Trade Act of 2002 negotiating mandate. For example, for the last two rounds, an important objective identified by Congress has been to eliminate the discrimination in the treatment of taxes between the United States and the rest of the world.

There are two ways we could do that: we could change our tax system, or we could change the discriminatory treatment that the WTO affords to tax rebates on export by our trading partners and the imposition of indirect taxes when our exports land in those countries.

That is a major disadvantage that seriously hinders U.S. exports, creates disadvantages, and although it has been on the negotiating table twice, it has never been seriously pursued, not by this administration, not by prior administrations.

Similarly, when Myron Brilliant was up here, Commissioner Mulloy referenced the currency issue, and it is true that it is not currently part of the Doha Declaration. It is not the case that it is not one of the U.S. negotiating mandates contained in the Trade Act of 2002. It is obviously an important issue, not simply with regard to China but with regard to other countries, and it affects the competitiveness that we have.

Intellectual property, where a lot of discussion happened earlier today, there is a TRIPS agreement, but the problems that exist in global trade that could and should be being addressed as part of the WTO are not being addressed separately. So there is an agreement. The agreement technically should get us where we need to be; isn't getting us where we need to be, not only with China but with a lot of other countries, and yet, there is nothing on the table that looks at what the failings are, what the global community needs to do to make those things happen.

Unmentioned in Washington in most hearings in the pursuit of liberalized agricultural trade is the fact that over the last 10 years since the creation of the WTO and the first major liberalization of agricultural trade, the United States has gone from a major net exporter of agriculture to an even deal, if you will, where we've lost our entire surplus in agriculture.

Nobody is asking the questions why, what is it, what in this round will address those problems, underlying problems. Many, many instances of SPS problems, sanitary, phytosanitary barriers have been identified. A few of them have been pursued in WTO disputes. But again, there is an agreement. The agreement should help us. But the underlying problems are not part of the process.

So we have a negotiation that is ongoing that is unlikely to lead to a big result. Key issues that should be part of the process that would make a difference to American businesses, make a difference to American workers, make a difference to American communities have

either been teed up but not pursued or not teed up at all in the process, and we haven't had the leadership that it would have been nice to have from a major trading partner like China to help bring other developing countries to the table to make major offers, major cuts reflective of their role in the international trade community. All of those things are missed opportunities.

With that, I will stop and let Bob deal with rules.

HEARING COCHAIR DREYER: Thank you very much. Dr. Lighthizer.

**STATEMENT OF ROBERT LIGHTHIZER, PARTNER, SKADDEN, ARPS, SLATE, MEAGHER, AND FLOM, WASHINGTON, D.C.<sup>3</sup>**

MR. LIGHTHIZER: I am not quite sure, Madam Chairman, why I'm a doctor. Humility requires that I point that out.

HEARING COCHAIR DREYER: Mr. Lighthizer, Esquire.

MR. LIGHTHIZER: Yes, it's a testament to the fact that I'm so much younger than Terry that when I went to school, they changed the degrees, but that may be true of someone else on the Commission also.

In any event, thank you very much for giving me this opportunity to appear here today. I view this, as do all of you, as does Terry, as a very important issue. Indeed, I cannot think of a more important issue in terms of our economic security in this country, and I also want to thank you for all the work that you all do on a daily basis. It's very important work.

I'm going to summarize my remarks very briefly. I have a statement that I have offered for the record.

I would like to make four points: first of all, I think it's important to remind ourselves when we address this issue, that we have a manufacturing crisis in this country and that it is a crisis characterized by unbelievable deficits and losses of millions of jobs.

Second, I think it's important to remember that as I think Terry said, there is nothing in this round that is in any fundamental way going to address that problem at all. So in the best-case scenario, this round is a lost opportunity. That is not to say that I believe that there aren't some people that will find some benefit in it. Obviously, they will. But there's nothing in it that's going to address the fundamental crisis that's going on in this country.

Thirdly, I would say that the state of the rules negotiation, which I am specifically addressing, is very unfavorable to the United States. Finally, if the situation continues, I think almost certainly, we will have an agreement that will provoke a number of American

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<sup>3</sup> [Slides to Accompany Statement of Robert E. Lighthizer Before the U.S.-China Economic and Security Review Commission, December 8, 2005.](#)

companies that manufacture in America (as opposed to American companies that manufacture in other places) to oppose the round.

So I guess what I am saying is in the rules area, which I think from the point of view of people who manufacture in America and certainly people who work in manufacturing in America is the most important single part of the round. In that area, the negotiation is set up in such a way that it is extremely likely that we are going to have a real split in business, and we are going to have serious U.S. companies opposing this round, because they think that what it will do will hurt U.S. manufacturing.

Now, with that as preliminary, let me ask you to take the slides that I have, hopefully all of which are duplicative of everything that Terry said, because if Terry and I are disagreeing, I want the right to amend my statement.

Let me just ask you to take a copy of that, and I just want to page through these and make a few brief comments as I do.

First of all, while it may not be directly pertinent to what we are talking about, I think you have to remind yourself that we have this crisis before you do any analysis of the current trade round. A trade round should be designed to address the principal economic crisis that we face in this country. In my opinion, that economic crisis is manufacturing.

What we have here in chart number one is the manufacturing jobs. Something very different has happened in the last four or five years than has happened in the previous 40 or 50 years. I'm sure you've all seen this before; it's quite scary. I'll give you a data point: In September of this year, in terms of absolute numbers of jobs in manufacturing, it was the lowest it has been since the Truman administration, July of 1950.

That was the last time we have had as few jobs. Now, there has been a very, very tiny recovery, and it is still true to say that we are lower than at any time since July 1950, but September was actually the low point. We have come up a few jobs in manufacturing since then. Now, people on the other side might say oh, but there's a lot of output. That is true, and some of this drop is undoubtedly the result of productivity gains. But the fact is, that was true for the whole recent decades, and what is happening now is something different and something more fundamental and is something, I think, far scarier.

The next one: once again, this is a number that you all see. It is the balance on current account. I think it is important to look at it and say to yourself, something is different now than it has been in recent years. We have gone from substantial deficits on current accounts to ones that are just unbelievable. Even the people who even three or four years ago said none of this mattered now are afraid.

I would point out briefly that when Bill Reinsch and I were on the Hill originally, we used to complain about the Carter balance on

current account, and, it was something like, \$40 billion. We would write speeches about how could anybody -- what an incompetent person we had.

The next one, I think, is important to look at. It is something you don't see all the time. The only area in the world, this is number three, where there is a substantial deficit is the United States. So this idea that people stand up here from trade associations and give you the idea that, well, there are gives and takes and this and that, that's just not true. It's just not a true statement. There are no gives and takes. The U.S. is the only giver, and everyone else is a taker. That's just the way it is.

We don't have a trade surplus with any developed countries except for Australia. That's tiny, and we're going to get rid of that, because we have a free trade agreement with them. So if you look at the blocs that matter, they're on three; you can see what is going on. We are the only country in crisis.

Number four, once again, you know these numbers better than I do. You study them. You wrote a great report on it. I would just point out that when Bill Clinton was elected President, what was then the yearly bilateral trade deficit is surpassed now in a month.

Now, I get to the point that I was making which is that these negotiations are in a crisis situation. Number five is a summary of the developed proposals in the rules negotiation that would weaken U.S. trade laws. Now, I've got 39 of them here. These are things you can dice 1,000 different ways and make more or less, but I told my people, "Give me a fair analysis of the 25 or 30, 20 maybe, serious papers that are out there by the Friends group or the Chinese or whoever, and let's make a list of these." And this is the list that they came up with. When I say "developed proposal," where they actually put in a proposal and have had serious discussion on it, there are 39.

Chart number six tells you exactly what the state of the negotiation is. If you look at that negotiation and think you're going to get a favorable response from the point of view of the United States, you just have never negotiated anything, not even a car lease. Thirty-nine, 40, you decide whatever the number, of serious, serious weakeners and the U.S. Government has essentially done nothing. They put a little new shipper thing on there. They put a couple of things that you could say are maintaining the trade laws. There are some things -- they want to codify stuff that we're already doing. But essentially, they have put nothing on the table.

If you asked Ambassador Portman, he would say, well, we're talking about transparency. I want to say two things. Number one, we have not put a paper in on transparency, and number two, transparency has nothing to do with strengthening the U.S. trade laws. Transparency might be helpful to someone who wants to get around a dumping case in Europe, but it's irrelevant to the United States. We are transparent, so it's a nonanswer.

Number six is something that I want you to keep in mind as you follow the rest of this negotiation, and when you wake up and say oh, my gosh, the U.S. has got a bad deal. How did that happen?

Seven is something that Terry alluded to, a triangle chart that you all have seen. It's a fundamental issue. It's this inequity in border adjustability of tax systems. It's something that this administration and the Clinton administration and all the previous ones that have operated on the basis of Fast Track have chosen to ignore. The fact is it is seriously hurting every single U.S. manufacturer. It is a huge benefit to China as well as the rest of the world that has a value added tax.

I'd be happy to talk through it again. I think, Mr. Mulloy, you've gone through this. I'll be happy to spend a minute on this if somebody wants me to talk about it. Other than currency manipulation, this is the single most important thing that is going to affect manufacturing. Once again, as Terry said, they haven't had five seconds of discussion in any negotiation.

Number eight is a list of the kinds of things that should be addressed, in our judgment. Papers have been produced on these by people from CSUSTL. We've given them to the administration. We've pursued it; none of them, absolutely none of them have had anything. We're told now that the second from the bottom on the right, that somewhere out there, there's a paper on expanding the list of prohibited subsidies, but we haven't seen it yet.

Finally, you ask yourself the obvious question: why would anybody want to destroy U.S. trade laws? Just look at old page number 9: these are the cumulative bilateral deficits with the United States of the Friends Group, China, and the EU.

I would sum up by saying there is a train wreck that we are going to have, and it is going to be a very bad trade agreement, I fear, and a split in U.S. manufacturing between those who manufacture here primarily and those who manufacture overseas, be it U.S. companies or not. I don't think it's too late to do something about it, but I see absolutely no evidence anywhere on the horizon that anyone realizes what's going on.

Thank you.

[The statement follows:]

**Prepared statement of Robert Lighthizer, Partner, Skadden, Arps,  
Slate, Meagher, and Flom, Washington, D.C.**

Good morning. It is a pleasure to be here today and have a chance to address this distinguished Commission. In my view, there are few if any issues of more importance to our nation and its long-term economic and national security than those being examined by this body. I congratulate you on the work you are doing and appreciate the opportunity to share my perspective on the matter before you today, namely the upcoming Hong Kong ministerial meeting.

My comments this morning will focus on what I believe is the single most important aspect of the ongoing WTO Doha Round trade talks -- and the single greatest threat to our economy and our producers.

I am speaking about the negotiations on trade remedy rules -- i.e., anti-dumping and anti-subsidy disciplines -- and the prospect that our basic laws to defend against egregiously damaging forms of unfair trade will be rendered a dead letter.

These laws are absolutely critical in attempting to deter and redress the unfair practices routinely engaged in by countries like China, Japan, Korea, Brazil and other perennial violators of our laws. These and other countries have one goal in the ongoing talks at the WTO, and that is to once and for all eliminate these laws as an effective discipline against unfair trade. And if I had one message for you today, it would be that they are on the verge of succeeding -- and we are on the verge of witnessing an unparalleled disaster from the standpoint of U.S. manufacturers and other producers.

## **I. Background and Importance of Our Trade Remedy Laws**

When you stop to think about it, it is simply amazing that we are even engaged in these negotiations. We are in the midst of an unparalleled crisis impacting our nation's manufacturers and other producers. Unfair trade is one of the principal causes of that crisis and our basic trade remedy laws constitute our one meaningful defense against such market-distorting practices. That we are even considering weakening those laws at this time is a testament to just how far off track our trade policy has gotten, and how far removed from reality is the day-to-day debate on trade issues in this town.

Since June 2000, we have lost 17.5 percent of all U.S. manufacturing jobs -- for a total of over 3 million lost jobs. (Slide 1) At the same time, our current account deficit is approaching \$800 billion this year -- a level that is simply unsustainable (Slide 2) and threatens the stability of the American and global economies. Indeed, the United States is the only major economy with a large current account deficit, a sign that the rest of the world is dangerously dependent on exports to this country (Slide 3). *None* of these trends is getting better. Indeed, given recent reports regarding the problems facing the U.S. auto industry, the situation appears to be getting worse.

Last year, our trade deficit with China was almost \$162 billion (Slide 4). Looking at data for the first nine months of this year, our trade deficit with China is on pace to reach almost \$200 billion. In other words, our trade deficit with China *alone* will account for approximately *one-fourth* of our entire current account deficit. It is not surprising, therefore, that many U.S. industries are extremely concerned about our relationship with China.

I have worked with and am particularly familiar with the steel industry, which serves as a good illustration of the types of problems we face with China and unfair trade. To give you some feel for the situation, in 2000, China was already the largest steel producer in the world, with total production of 127 million MT. By 2004, however, Chinese production had soared to 272 million MT -- 60 million MT more than Japan and the United States *combined*. Now we are seeing reports that China has approximately 100 million MT of excess capacity, and that steel prices in China are collapsing. As a result, there are serious concerns that China could soon flood the world with exports.

China's impact in the steel sector is not the result of free-market forces of supply and demand. Instead, it reflects consistent, long-standing, and continuing intervention by the state in the marketplace. It is estimated that over 80 percent of the Chinese steel industry is state-owned or controlled. Just this year, China made a major announcement with regard to its "steel policy" going forward. That policy reflects significant evidence of state control and influence in virtually every aspect of the industry's operations -- ranging from subsidies, determinations of where and how new mills will be built, access to and pricing of raw materials, ownership of companies, and so forth.

In general, those countries advocating to weaken fair trade disciplines are not seeking market outcomes, but are trying to immunize the range of conduct and market-distorting practices that lead to unfair and injurious trade in this and other import markets -- including subsidies, closed markets, state-sponsored capacity, currency manipulation, cartel behavior, unfair tax rules, and other activities and policies that are negatively impacting American producers in international trade. These practices and policies are precisely what necessitate strong anti-dumping and anti-subsidy laws. American companies and



workers can compete effectively with anyone in the world on a level playing field, but no company can or should be asked to compete with foreign governments and treasuries.

## II. The Mandate for the Doha Round Trade Talks

As many of you will recall, the original mandate for the current negotiations on Rules was *not* to make major changes to these disciplines or to weaken them. Indeed, these talks come on the heels of a very harmful renegotiation of unfair trade disciplines in the Uruguay Round talks, as well as a decade of activist and unjustified WTO dispute settlement decisions further weakening trade remedies. Accordingly, our negotiators went to great pains to characterize the mandate on Rules as dealing largely with process, transparency and clarification of existing disciplines.

The text from Doha reinforces this view, and clearly does not support the across-the-board, destructive negotiation that is currently underway. Indeed, that text specifically talks about "preserving . . . the effectiveness" of existing disciplines, stating:

*"{W}e agree to negotiations aimed at **clarifying and improving** disciplines under the {Antidumping Agreement and the Agreement on Subsidies and Countervailing Measures}, **while preserving the basic concepts, principles, and effectiveness of those Agreements and their instruments and objectives.**"*

-- *Ministerial Declaration Launching the Doha Round, WTO Doc. No. WT/MIN(01)/DEC/1 (Nov. 14, 2001).*

Congress has also been consistent in its view that the United States should not agree to any changes that would weaken our fair trade laws, making this point abundantly clear in the negotiating objectives that it adopted when it provided the President with Trade Promotion Authority. Congress described those objectives as follows:

*"The principal negotiating objectives of the United States with respect to trade remedy laws are –*  
*(A) to **preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws, and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies . . . to ensure that United States workers, agricultural producers, and firms can compete fully on fair terms and enjoy the benefits of reciprocal trade concessions; and***  
*(B) to **address and remedy market distortions that lead to dumping and subsidization, including overcapacity, cartelization, and market-access barriers.**"*

-- *Section 2102(b)(14), Bipartisan Trade Promotion Authority Act of 2002*

Just last month, the Senate adopted a resolution that offered yet another unambiguous expression of congressional intent that our trade laws not be weakened. That resolution (adopted as an amendment to the tax reconciliation bill) specifically referenced many of the exact proposals that are being most actively considered in the Rules talks, and made clear that they would unacceptably weaken U.S. laws and should not be accepted. The resolution stated that the United States should not be a signatory to any international agreement that "adopts any proposal to lessen the effectiveness of domestic and international disciplines on unfair trade . . ." Congressional Record at S13135 (Nov. 17, 2005).

One of the most important messages I want to leave with you today is that United States negotiators are *not* abiding by the WTO mandate or the express instructions of Congress. As I will discuss, and as is obvious to any observer of these talks, the current track of these negotiations is geared not only to weaken U.S. laws, but to completely eviscerate them.

### III. State of Play in the Negotiations

The state of the talks is quite simple. Foreign countries trying to dismantle the laws have put literally dozens of harmful proposals on the table. Individually, these proposals would hamstring serious trade law enforcement; collectively, they would make our laws a total dead letter.

The United States has put virtually nothing on the table in response. Some negotiators will say that they have raised many issues to potentially strengthen disciplines, but that is nonsense. In terms of actual, detailed proposals that are ripe for serious consideration in the talks, there is nothing there at all that would strengthen our law or counterbalance the weakening proposals.

When you have a stack of very bad proposals and no good proposals, it doesn't take a rocket scientist to see where this will come out. At this point, it is hard to see any agreement that will not decimate our laws and force many U.S. industries to actively oppose this trade round.

It is truly a sad situation. We are in a war in terms of our manufacturing base and our economic security. We are losing that war. And we are unilaterally disarming.

#### A. Proposals from Trade Law Opponents Would Gut U.S. Fair Trade Laws

As you can imagine, the actual proposals and negotiations on rules are quite technical. But this complexity should not and must not obscure just how destructive these initiatives would be. In the talks, weakening efforts have been led by the so-called "Friends of Antidumping Negotiations" group (actually enemies of the laws like Japan, Brazil, Korea and others that have historically been the most egregious fair trade violators), along with other countries like China -- which have put forward dozens and dozens of detailed and extremely harmful proposals to weaken anti-dumping and anti-subsidy laws (Slide 5). Among the proposals of greatest concern:

- Lesser Duty Rule. This proposal would prevent countries from putting in place antidumping duties reflecting the full margin of dumping – and instead require them to adopt a "lesser" amount of duties (tied in some way to the margin of price undercutting by a foreign producer). This would allow unfair traders to maintain a full presence in the U.S. market *while still dumping*, taking sales and key customers from injured U.S. industries.
- Public Interest Test. This proposal would require administrators to consider, in determining whether to impose relief, the short-term windfalls to consumers from purchasing dumped goods – potentially tipping the balance in key cases. It would allow, indeed require, administrators to second-guess the underlying policy reflected in the anti-dumping law, namely that temporary benefits from buying dumped goods do not outweigh the long-term harm to U.S. producers and the economy from market-distorting practices.
- Mandatory Sunset of Trade Orders. The "Friends" and other countries have submitted numerous proposals to make it more difficult to retain unfair trade orders – including a requirement that all orders end after five years even if unfair trade and injury are likely to continue. This would obviously reduce the value of relief tremendously and invite foreign unfair traders to "game" the system and play out the clock until relief was lifted.
- Undermining Incentives for Cooperation. The "Friends" have made detailed proposals to restrict the use of so-called "facts available" in trade cases – i.e. the alternative information used when foreign producers fail to cooperate in an investigation. Given that the trade law provides no subpoena power, undermining the use of facts available would remove the one tool we have to ensure that foreign producers provide information and cooperate in investigations.

- Making it More Difficult to Prove Injury. Numerous proposals would increase the already high hurdle to show "injury" to a domestic industry – a prerequisite to relief in unfair trade cases. The result would be to deny trade relief until an industry was irreparably damaged.

This list is just a sampling and could easily be multiplied. Discussions of these and similarly devastating proposals have been and continue to be at the heart and center of the negotiations.

### **B. The U.S. Has Not Pursued an Aggressive Agenda to Counterbalance Weakening Proposals**

Despite a clear mandate from Congress, the Administration has to date failed to aggressively respond to such weakening proposals, or to put forward trade law strengthening proposals to counter them.

Remarkably, U.S. inaction has been most noteworthy in areas where Congress *explicitly* mandated an aggressive negotiating stance. In this regard, for example, Congress expressly directed that U.S. negotiators should seek to redress the existing disparity in the treatment of direct and indirect tax systems -- something that constitutes an enormous disadvantage to the United States and its producers. *See* Section 2102(b)(15) of the Bipartisan Trade Promotion Authority Act of 2002. As discussed below, the Administration has done virtually nothing to advance this issue. Similarly, Congress has instructed the Administration to seek a negotiated solution of the WTO dispute over the Byrd Amendment (see, e.g., Consolidated Appropriations Act, 2004, P.L. 108-199, H.R. 2673 at 62-63), and once again, nothing is happening.

It is not as though we lack leverage in the talks, given the enormous trade deficit we are running or the legions of harmful proposals being sought by trade law opponents. And yet we continue to sit on our hands. The result is an almost entirely one-sided negotiation (Slide 6)

In terms of the specific areas where the United States should be making proposals, several are worth emphasis:

- Tax Subsidies and Advantages to Foreign Producers. For decades, U.S. producers have been grossly disadvantaged by economically irrational international rules that favor foreign value-added tax ("VAT") systems over the income tax system used in the U.S. (Slide 7). Essentially, U.S. producers are double-taxed on export sales (bearing both domestic income taxes and foreign VATs), while foreign producers sell here tax free (after VAT rebates/subsidies). Congress has specifically made elimination of this disparity a principal negotiating objective for Doha (and past trade rounds), but the Administration has done virtually nothing to advance this enormously important issue.
- Recognition of the Byrd Amendment. As discussed above, Congress has similarly mandated that the U.S. seek a negotiated solution to the dispute over the Byrd Amendment (formally known as the "Continued Dumping and Subsidy Offset Act"), which provides for distribution of unfair trade duties to U.S. industries that continue to be injured by market-distorting practices. The Administration has apparently done nothing more than "flag" the issue in an early paper and made no effort to advance it.
- Other Trade Law Strengthening Proposals. There are innumerable other areas (Slide 8) where the U.S. could easily push to strengthen international disciplines (and deter foreign countries from such an aggressive stance in the rules talks). These proposals (some of which would simply involve codifying current U.S. practice) include: specifically recognizing the critical practice of "zeroing" in anti-dumping proceedings; adopting stronger rules to address repeat or persistent dumping; allowing a presumption of injury in cases of particularly high dumping or subsidy margins, etc. To date, the United States has done virtually nothing in these areas, but has stood by while harmful proposals have piled up on the other side -- from countries that make up the vast bulk of the trade deficit we currently suffer (Slide 9).

#### IV. The Hong Kong Ministerial

The upcoming Hong Kong ministerial meeting offers an opportunity to demand changes in the dynamic we are seeing in Rules, but we have yet to see any sign that the Administration intends to insist on a fundamental reorientation of the negotiations. We continue to hear talk from the Administration that it intends to aggressively push "transparency" issues in the talks -- something that may be of interest to exporters facing less transparent trade remedy regimes abroad but which does absolutely *nothing* to counterbalance the vast array of proposals that would weaken U.S. law. Without a radical change in strategy, we are headed for a train wreck in these talks -- with a Rules agreement that is unacceptable to Congress and many core U.S. industries.

The Hong Kong meeting will stake out the path for the remainder of the Doha Round talks. We have already seen a draft ministerial declaration in the Rules area, and while it may accurately reflect the state of the talks, it is wholly unacceptable as a basis to reach an agreement that will comport with U.S. law and be in the interest of American companies and workers. *See* Draft Ministerial Declaration on Rules, WTO Doc. No. TN/RL/W/195 (Nov. 22, 2005). Among other flaws in the document:

- The draft declaration references and highlights the purported "need to avoid the improper use of antidumping measures." To begin with, there has been no showing that trade measures are used improperly. Furthermore, this statement constitutes a significant change from the letter and the spirit of the original Doha mandate. The objective of these talks was supposed to be preserving the concepts, principles, and effectiveness of the disciplines -- not undermining them.
- The draft declaration endorses the goal of clarifying and improving provisions covering virtually every element of the existing WTO trade remedy agreements -- something that goes far beyond the limited mandate for the talks.
- The draft declaration congratulates participants on the constructive and fruitful engagement in the talks -- whereas the talks are in fact badly off track and out of balance.
- The draft declaration lists proposals that have been the subject of detailed analysis and discussion in the talks, a list that underscores the one-sided and unacceptable nature of the negotiations. Highlighted are issues like the "lesser duty rule" and the so-called "public interest test" that are wholly incompatible with the mandate of the talks and would single-handedly undermine effective trade law enforcement.

U.S. negotiators should use the Hong Kong ministerial as a venue to articulate how the Rules talks have departed from their original purpose, and how the current path cannot possibly result in an agreement that will be acceptable in the United States. Congressional intent could not be any more clearly stated, and has been recently reinforced. The Administration needs to heed the dictates of U.S. law and take the opportunity to fundamentally alter its negotiating stance -- something that is critical if this Round is to have any chance of success.

#### V. Conclusion

The stakes of this negotiation could not be any higher. Our manufacturing sector and other core producers simply cannot afford *any* further weakening of trade remedy laws. It is truly outrageous that we are even talking about this.

The truth is, we should be looking for ways to dramatically strengthen our trade remedies -- starting with those applicable to China. This Commission has made a great start in identifying and elaborating on potential reforms -- including the need to apply the anti-subsidy law to China, addressing currency manipulation in a meaningful way, continuing non-market economy treatment for China in dumping cases, and addressing problems with collecting unfair trade duties from China. We should expand on this effort and extend it to deal with the epidemic of unfair trade practices we are seeing globally, and to create a truly level playing field for U.S. producers.

The current direction of the Doha Rules talks runs diametrically against this desperately needed effort and would effectively kill it. Time is running short. If we do not act soon, we could soon face a WTO agreement that would render almost all of your recommendations with respect to enforcement of our trade laws totally moot. Accordingly, changing the current direction of the Doha Rules talks should be the top priority for anyone concerned about our relationship with China.

[The views expressed in this statement and in Mr. Lighthizer's testimony are solely his own, and do not necessarily reflect the views of his firm or its clients.]

## **Panel II: Discussion, Questions and Answers**

HEARING COCHAIR DREYER: Wow.  
Commissioner Wessel.

HEARING COCHAIR WESSEL: A breathless introduction, because I think both of you have left us, unfortunately, somewhat breathless. I look at the combination of your two testimonies, B-minus being the best grade to a D, and as you indicated that you were somewhat generous against pretty much a sea of red ink and a sea of lost jobs and flood of imports. If this were my kids, I would expect that they would be staying back several years in the same grade and have some very angry parents.

I think, in fact, that's what we're seeing in the American people that they are just beside themselves and trying to understand what our trade negotiators are trying to achieve when they see a sea of lost jobs, a sea of red ink, \$700 billion trade deficits, virtually stagnating incomes, offshoring GM, Delphi, you go down the road and look at industry after industry.

You talked about manufacturing and a split in U.S. industry, whether they manufacture here or not. As was noted earlier, we're basically in balance, I guess, in our agricultural trade with other nations and with some of the changes that are made or could be potentially made in the Doha Round, we could see, in fact, that going into a deficit.

What do we do about this? Bob, you point to 39 proposals, if, you categorized them, and I believe there are over 200 trading proposals from our trading partners seeking to essentially undermine our trade laws, and our own administration has tabled virtually nothing.

In what areas, if we were to achieve everything that our own administration has put on the table, would it make a real difference? Or are we seeing such a lopsided agenda, again, primarily looking at the prism of China that there is not a lot we are going to achieve, and the costs that we could incur could be devastating to our market?

I give that question to both of you.

MR. STEWART: Let's take them in pieces. If you take a look at agricultural trade, it is the case that the U.S. has probably the lowest tariffs overall for any major trading nation, certainly far below Europe, far below Japan, far below Korea, far below many other countries.

The reason we will not achieve a big round is because there are lots of political sensitivities everywhere else that other countries are unwilling for what is left on the table in industrial good to pay the price to achieve. And so, our farmers will continue to face dramatically higher subsidies out of Europe, dramatically closed markets in many other parts of the world.

So in fairness, while we have import-sensitive sectors and agriculture here in the United States, the administration's effort to get a very big package was an effort to try to deal with some of the cumulative distortions out there that exist out there. But that is not going to happen, in my view, based on the lack of critical mass, if you will, to get a big package. It may be somewhat reduced, but it will be a somewhat substantial imbalance that exists.

Because the tariffs that exist on industrial goods are largely in the developing world, the U.S. and Europe and Japan accepted a framework in Doha that started with the premise that the developing world would do less. That means other than potential sectoral deals that may be of interest to certain parts of the economy that you are ensuring that there will be a larger bias, not a smaller bias, at the end of the process, and that is problematic in terms of our nonagricultural market access.

Services: nobody actually believes that you can force liberalization. It is a question of whether or not you can even get countries to commit to the liberalization that they have undertaken in terms of binding those obligations. So it is hard to see how you get out of that box.

In the rules area, Bob has laid out the problems that we have in the round. The reality is that we have been losing the U.S. trade remedy laws over the last 10 years without there being any negotiations because we have a lack of clarity in the agreement over whether it is the role of the appellate body to fill gaps and answer questions that are not identified in the text. Historically, that was not their function under the GATT days. The appellate body has decided it is their function here, and we have had a long series of losses in the WTO that is basically changing the structure of the law.

So unfortunately, we are in a situation where we actually need a big round in rules to get back to where we were. And where the--

HEARING COCHAIR WESSEL: But we are not tabling anything--that if we had a big round, we have yet to table something that would achieve that, is that correct?

MR. STEWART: That's right, and Bob's visual image of the seesaw with nothing on our side is a pretty accurate representation. Now, some of us are helpful that with the new Under Secretary having been confirmed and with a new Assistant Secretary having been nominated, that we may actually get people who start to push an agenda. But if this round ends at the end of 2006, we're obviously very late in the process, and the U.S. is way, way, way behind, so it takes some political determination.

MR. LIGHTHIZER: Well, I will just briefly say first of all, there has to be recognition that there's a crisis. That's really where I started, and I think that this administration doesn't really recognize that. As a Republican, I would say neither did the Clinton administration, although we had a crisis there, and neither did the Democratic nominee for President. We had a crisis then, too.

So the fact is that the first thing you've got to do is open your eyes and realize that you have a crisis. The second thing you have to say to yourself is do we have any leverage? Well, we have an \$800 billion trade deficit. We have that chart that I showed you that shows that we are the only people supporting the rest of the world. If that's not leverage, then, there just isn't any.

So we have huge leverage if you identify the crisis, you realize you have huge leverage. What you do is you table things like penalizing people for currency manipulation. You get rid of this border adjustability advantage, and you strengthen the U.S. trade laws, as Terry said. You do those things, and you say, "Guys, if you want the game to go on the way it is, and we're going to be basically running the engine for the whole world, we're going to have to have some changes, because I can't go back and face the people that vote for me without saying you get a square deal."

So could it be done? Yes, it could be done. All it requires is a recognition and not even political will, just will.

HEARING COCHAIR DREYER: Could you help us to understand how this happened? Was it inattention on the part of our negotiators or legislators? Were they inadequately trained to do the job? Is it excellent lobbying by the Chinese and their surrogates in the United States, people with vested interests in having things happen that caused this trade deficit? I'm thinking of companies like Wal-Mart. How did this come about, and are there any lessons in the future in it?

MR. LIGHTHIZER: Well, that is a huge question, and I've decided to let Terry Stewart answer all the really big questions.

HEARING COCHAIR DREYER: By the way, Mr. Stewart, since in my day job I am a professor, I enjoyed your technique of putting comments in a blue book. I must say you seemed to indicate that you, too, have indulged in grade inflation here.

MR. STEWART: I am an adjunct professor at Georgetown, and unfortunately, it is hard to give grades that you think people actually deserve in the real world anymore. Started to happen back when I was in school, I guess, and has continued.

I think if you look at the negotiating process over time, historically, negotiations were basically an OECD club exercise, and as a result, there are low tariffs in Europe on industrial goods; there are low tariffs in Japan on industrial goods, and the world has changed in terms of what are the engines of economic growth to developing countries who

historically were able to participate with relatively low costs of admission.

Way back in the sixties, because there was significant concern that the developing world was not participating in global economic growth, I think the GATT was probably one of the largest fundamental blunders, which was to create the concept that developing countries needed a special deal, and so, the concept of special and differential treatment was put in back in the sixties.

It makes sense for countries that are really struggling, but obviously, the developing world can be fragmented into lots of segments, including those that are world-beaters in lots of products.

That concept of special and differential treatment has been built on until it has become a crutch, which prevents those of us who have been carrying the freight for a half-century to get meaningful proposals for liberalization from other participants. So I think that we have a historic problem, and with a membership of what is now 148 countries, probably more than 100 of which would classify themselves as developing, the concept that you're going to get them to give up special and differential treatment is not realistic, but that is part of the problem.

It is also a problem when you do a negotiation, and there isn't an obvious tradeoff between the major players. Major players continue to be the U.S., Europe, and Japan, with India, Brazil, and China being kind of new kids on the block. India cares about a subset of services. Brazil cares about agriculture. The reality is India cannot have a big deal in agriculture where India isn't largely excused from the obligations, because they have 750 million people who live on the land, and there is no way that the government could withstand major liberalization forced on it by a trade agreement in that area.

So there aren't the tradeoffs. There aren't the deals out there, and we have let, over time, the system has resulted in it being adverse to us either on policy grounds like the indirect tax issue, which we accepted at the beginning of the GATT and has become kind of an enshrined policy, and we haven't been able politically to change our tax system for a variety of reasons.

So we're the odd man out, and it places our manufacturers at a huge disadvantage, and the world has been unable to address things like currency. Whether it's manipulation or not, when you have a currency that changes 30, 40 percent against other currencies, you're going to have massive dislocations occurring both to and from, and we have seen a lot of those kinds of swings in the last decade or two decades.

We tend to play by the rules. Other cultures' rules may be guideposts but aren't necessarily the structure by which things occur. So all of those things contribute to us being in a bad situation, but a recognition of the crisis, a recognition of what causes the imbalance is critical if you're going to move forward, and largely, there hasn't been that discussion; there hasn't been that recognition.



MR. LIGHTHIZER: I would just very briefly add, number one, it would be great to sit down and talk about this in a more casual environment and give you some of the benefit of our background or at least our opinion, Commissioner Dreyer. I find that it's probably easier to do that with alcohol, because sad events are -- it's just easier to get through. That's the reason that the Irish drink at wakes.

Having said that, let me just make three or four very quick points that are on the huge mega-level. Number one, how did we get to this state? It really didn't matter that we were getting to this state. We had prior rounds; it didn't matter. We were the big guy. We were so big it didn't matter. Trade was such a small part of our economy it didn't matter. You could give things away; it didn't really matter. In any event, our real objective was foreign policy.

So it didn't really matter what happened on economics, and that was something that was just ingrained; indeed, it's one of the reasons that John Kennedy started USTR in 1962 was to get away from that, but it didn't work.

The second thing is that there is kind of a theology that some people have that opening up markets, opening up your own markets are good no matter what happens anywhere else in the world, that it's fundamentally a good thing, and there are a lot of economists who believe that. It doesn't matter; if the rest of the world's closed, and you're still open, you're still better off, because your t-shirt is going to be, you know, half a cent less, and, your people will figure out some way to work. So that is kind of a philosophy is the second thing I would say.

The third thing is that there are a lot of U.S. companies that we have got more and more down the line that are representing their stockholders who say I'm going to get on the other side, because I have an obligation to my stockholders to maximize my profit, and therefore, you end up with a bigger and bigger group on the other side.

I would point out, finally, that the only trade accord that we've had that has actually changed the flow of trade if you look at it, and I've got a chart; I'd be happy to show it to you at some point is the Plaza Accord, right? When Jim Baker sat down in September of 1985 and said boys, we're changing the value of our currency. And within about a year and a half, the trade deficit stopped going up, so it underlines Terry's point about currency and currency manipulation.

HEARING COCHAIR DREYER: Thank you; so, if I could summarize and at the risk of oversimplifying what you have said, first of all, the problem arose because of initial inattention. And now, we have a second factor, which is inability to recognize the crisis. Is that essentially accurate? And that's the reason it came about?

MR. STEWART: Any two.

HEARING COCHAIR DREYER: And I like your suggestion that we do this over alcohol sometime, but it's just a tad too early to hit the Dubliner.

Commissioner D'Amato has a question.

CHAIRMAN D'AMATO: Thank you, Madam Chairman.

Listening to this conversation, I get the sense of the ground opening up in front of me. This is very, very disturbing testimony on the part of people who we think are two of the best trade analysts and lawyers in this city.

Terry, I would say that you are subject to criticism on the subject of grade inflation here. Let me just make a comment and then ask a couple of questions. It seems to me that we are at a state now, given this testimony, that we're on a track that is not advancing American interests, to put it mildly, and that the time for a comprehensive assessment and review of where we stand really is imperative.

Everybody seems to think we have to have a round because the trade authority is running out. Trade authority won't run out if Congress passes additional trade authority, so that's kind of a false imperative.

In 1988, most of the Commission here today on this panel participated in creating the Omnibus Trade Act, which was a comprehensive attempt by the leaders of both Chambers involving many committees in both Chambers and not just the tariff-writing committees, the traditional trade committees, creating a comprehensive assessment. It took about a year to do that.

Does it make sense that this is something that is ripe again in the next Session for the Congress to take a comprehensive view of where we are before we go any further in agreements which you talk about as lost opportunities, that there is not a thorough process underlying them, that we don't understand the implications of many of the aspects of them, so much so that we ought to stop, look, and listen in a comprehensive sense?

That's what I take from your testimony. Does that make sense, that it's time now for Congress to look at this again in a much more comprehensive way, take some time and have all the major committees that have jurisdiction over these many pieces of this trade agreement and trade situation to again take a look and see where we stand in terms of our national interests?

MR. LIGHTHIZER: Well, I certainly think it is. There's kind of a continuous process in place. The problem you have with the Congress is they have about 15 crises that they're facing at any one time, and the truth is they're all really pretty important. None of them are small crises, and it's hard to get people's attention, and they end up looking at things for very short periods of time, and trade is no different, or economic policies any different from any other. There will be another crisis, and, if you had a son in Iraq, you would certainly think that was a heck of a lot more important than this, and so, there's a lot of other things that take their attention.

But it certainly is a good idea for someone to sit down in front of some of these Members in an environment, where you can actually have some give and take and make one presentation versus the other and let them decide whether we're on the right course or whether we ought to have a reassessment.

I sit down with them and go through some of these charts with Members, and to be honest, even some people in the administration, and they're quite surprised by the state of the crisis, and they're quite surprised by the--I don't mean this as a criticism--but they're quite surprised by the whole border adjustability issue. I have yet to find anyone who--I'm talking to the people who I think are in fact brilliant, and they don't really understand that issue, it's so complicated and so important.

So, the answer is yes. I don't know how you get them to focus on it, but that's what ought to happen.

CHAIRMAN D'AMATO: Terry.

MR. STEWART: I certainly think that Congress has an ongoing obligation to be sure that the policies in this area reflect the changing landscape and the changing set of underlying pressure points and needs, and they have attempted to do that several times.

That is not to say that there are not a lot of American businesses that perceive even a modest package coming out of Doha as being a plus for them. If there's a sectoral deal in medical equipment, obviously, U.S. medical equipment manufacturers who believe that they can export would find that to be a positive development. So the grades that I gave in the scorecard reflect where we are versus what U.S. negotiating objectives are.

Whether those negotiating objectives are the right ones or need to be modified I think is long overdue to be examined by Congress, and I do believe that the current administration will try to get something out of the process that's underfoot, and that process won't be without some value to some parts of the society. It simply won't address the underlying crisis or the needs that we have and that could effectively be done by Congress taking another look and an effective, broad-based look.

CHAIRMAN D'AMATO: It would seem to me that after this round is over, you should sharpen your pencil and redo these grades as to how it worked out in Hong Kong and see what the grading pattern looks like. Mr. Stewart, it seems to me that you are also saying that we have reached agreements in the past here that are pretty important but have not been implemented. It seems to me we ought to try and implement those agreements before we go further, one being TRIPS.

We haven't implemented TRIPS. The global community needs to do something to make TRIPS work. What would be your formula for what the global community should do to make TRIPS work?

MR. STEWART: I had the chance to catch part of Mr. Brilliant's testimony here, and TRIPS is a complex set of issues that

involve issues of loss of property value in the pirating country in some cases, exporting opportunities in third countries, loss of market in your home country.

They have different solutions and I think that the issue isn't that TRIPS hasn't been implemented in a lot of countries, it's that the scope of the problem is so much larger than was widely perceived to be the case at the time the TRIPS agreement was negotiated. You need a global solution, as I think Mr. Brilliant said, that what you really need to do is to--the problem of counterfeiting, the problem of intellectual property theft needs to be discussed at a global level, and at the moment, that is happening in bits and pieces, but it isn't part of the negotiations.

So if you were redoing the Doha negotiation, it would seem to me that the U.S. should have pushed to get better enforcement as a topic in the negotiations.

CHAIRMAN D'AMATO: Thank you very much. Thank you both.

HEARING COCHAIR DREYER: Commissioner Reinsch.

COMMISSIONER REINSCH: This brings back all kinds of memories. I'm not sure where to begin. A couple of comments. First, I think this is cute and interesting.

Well, that too, I suppose, but I think we ought to all take a close look as we go through it. I think you made the right point, Terry, that it is a reflection of the extent to which our negotiating objectives have been achieved or are on the way to being achieved without really an analysis of whether they were any good to begin with or worth achieving.

I noticed, for one, you gave the government an F on the investment goal, which is true, because since they dropped it, obviously, it's not going to be achieved. On the other hand, I really don't know anybody who was unhappy when that one was dropped, and I don't know anybody who thought that we were going to get anything good out of an investment negotiation in the WTO, and I would think from your point of view, you would be happy that it got dropped, too.

Nevertheless, you've given it an F. So, I think some microanalysis would be useful here. Bob, on the rules issue, I confess to being slightly more optimistic than you, probably naively so, but I'm just reflecting what I hear from my members, which are big companies. And what I have discovered in the last four or five years is a lot more of them are both petitioners here and respondents somewhere else, and in fact, I've got one company that was simultaneously a petitioner and a respondent and a purchaser of items that were subject to dumping duties.

The result of that has been that a lot of American companies have a much more complicated position on this issue than they used to, because they find themselves in more than one position simultaneously. That moves them, I think, a little bit more to the middle. At the same time, what I also see is the countries that have complained vociferously about our law and have led the attack on it, as you've noted in your chart,

in your testimony, some of those countries have begun to use those laws to their advantage and our disadvantage India and China, Mexico, to name three examples.

You have a growing number of colleagues in this town who are making lots of money by defending American companies who are respondents somewhere else, and you've got a growing number of countries, I think, who are deciding that maybe these laws aren't as bad as they thought they were, because they can use them to their advantage.

I'm not sure any of those things are good things, okay? That's an observation that I think may produce a negotiation, which is a bit different on rules than the last negotiation. I also think that it's not too late to weigh in, and I'm glad you have, because as you well know, historically, this is virtually the last thing that's dealt with, and I think that will be true this time around, which means it will be dealt with, if the round continues, with a year from now and not now.

So, raising a flag at this point is, I think, entirely timely. I've got another point, but do you want to comment on that first?

MR. LIDTHIZER: However you want to proceed.

COMMISSIONER REINSCH: Go ahead.

MR. LIDTHIZER: I would say first of all, I realize that there are a lot of big companies on both sides of the issues and big companies that are U.S. companies, and I tried to allude to that in my comments. There are two reasons for that. One, as you say, is that in some cases, because I think it's vastly overblown by people who actually are against the trade laws because they want to import into the U.S.

But in any event, there are some cases where people are, in fact, respondents overseas. I have represented U.S. companies in several of those and indeed in several of the earlier ones. But it is also true, I think, that when people come in and make that claim, it's worthwhile to look at where their actual manufacturing is, because a lot of these big companies make that claim, and in fact, they're actually shifting to 60 or 65 percent manufacturing overseas for sales into the U.S.

So while they say that, somewhere in their mind, this is a mixed bag, because I'm actually more likely to be a respondent in the U.S. than a petitioner in the U.S.; it is complicated, and that is one of the things that complicates it. I think you have to look at who makes the comment.

The second thing is the idea of cases coming up overseas against U.S. companies is in my judgment a good thing, assuming that they're fair and applied properly. I think the dumping laws are the right thing. I think they're good; I think they're economically necessary. I don't think you should get good margins against the United States because we, in fact, are an open market. I think we have dumping laws that because they reflect a distortion in the market, and I think that some of these countries, once again, the numbers are overblown, but some of them are bringing these cases because they are opening up, and it's a reflection

of the fact that they've gotten ride of nontariff barriers and other things that kept people out of their economy, and now, they're down to this legal stuff.

So it's a little bit like saying that a country that has gone from criminal, and I'm not attacking any particular country, but a country that has gone from criminal to legal is going to have a lot more people in jail than they had before. That's going to happen, and I think that's what happens with the dumping laws.

To some extent, they reflect that these countries are open and otherwise defenseless, and if they're applied properly and legally and the way that we apply them in the United States, I don't think that's a bad thing at all. And, if a U.S. company gets caught dumping, well, then, they ought to pay the penalty just like anybody else.

I'm not a believer that we should somehow be excluded because we're Americans. We ought to have the same thing.

COMMISSIONER REINSCH: I agree with that last point. I guess my point was not to get into the merits of it, although it's fine that you did, but more to simply suggest that the negotiation may play out differently than it did the last time, and you may find some countries trimming their sails a little bit.

Let me close with a question for Terry, if I may, because I've been unkind and taken up the time with Bob: I guess on the question, the larger question of manufacturing and jobs, that's a very long story, and whole books have been written about it; in fact, Ernie Preeg, who is right behind you, has just written one, and it's not the only one.

We've been losing manufacturing jobs in this country for 40 years, twice as long as the chart in Bob's diagram, not all to China in that period.

I guess where I come out increasingly as I think about this is that this probably has an awful lot more to do with domestic economic policies and domestic competitiveness policies than it does with trade policy, and my question is do you agree with that? I'm concerned that you're trying to put on the back of a trade negotiation--trying to expect a trade negotiation to solve a whole bunch of problems that have to do with stupid things we've done here rather than things that have happened globally, that other people have done to us.

MR. STEWART: Well, I think, Commissioner Reinsch, that there are major drivers in the structure of our trade policies that can encourage businesses to relocate away. I think the indirect tax issues--

COMMISSIONER REINSCH: Well, I agree with you about that.

MR. STEWART: --is a classic example.

COMMISSIONER REINSCH: I think you're right.

MR. STEWART: I think that those issues are big issues. Trade remedies are important to various sectors of the economy at different times, but in the larger scheme of things, rules effects around

the world typically less than a half of one percent of trade, so the rules are important because they give industries the belief that if there is a problem, they will have a remedy that they can turn to and use and gives politicians the ability to sell economic liberalization.

So there are undoubtedly economic issues that are not trade related that affect manufacturing, but there are major issues in the trade arena that address manufacturing that are not being addressed. I think that Bob's point that being the only major country with a serious trade deficit and having major trade policy issues not being addressed exacerbates that situation, and at least that part can be addressed through trade negotiations.

COMMISSIONER REINSCH: Thank you.

HEARING COCHAIR DREYER: We have one more minute and two more commissioners with queries --can you keep the questions brief.

Commissioner Mulloy?

COMMISSIONER MULLOY: Thank you, Madam Chairman.

I want to thank you both for being here. Let me direct this question to Mr. Lighthizer, and then, if you want to comment, Mr. Stewart, that would be great.

Mr. Lighthizer, I remember you worked on the Republican staff of the Senate Finance Committee, I think as Chairman Dole's chief of staff. Then, you were in the Republican Reagan White House as the deputy U.S. Trade Representative. So my sense is that these issues that we're talking about are bipartisan and not just one party or another understanding this.

Now, Bill raised the issue: is it us, or is it our trade laws? I think this Commission, if you look at our report, did it in two ways: we said the other guys are doing some bad things -- currency manipulation, IPR, subsidies, all these things -- and then, we said we need a competitiveness vision at home.

We found ourselves, inadvertently, I think, in a globalized economy, and we're not doing so well. Warren Buffet says we're moving toward being a sharecropper economy, where other people own our economy, and we work for them, because we sell off assets to run these current account deficits.

When you look at the round, and Terry said there's no major issues being addressed in this round that are important to the United States in dealing with this crisis, as you referred to, Mr. Lighthizer. I'm trying to understand: the people who want to manufacture abroad, they favor this round, because they can maybe get some of these impediments to shipping goods back here taken care of. Two, the U.S. financial firms who want to expand abroad, they want this round, and so, although I saw in an article in the Financial Times just two days ago that Morgan Bank is letting a lot of people go in our own domestic market and taking jobs abroad, so it isn't going to be that the individuals who are working in

those firms are going to benefit, but that comes to the whole point of shareholder equity.

I used to be on the Senate Banking Committee. We used to study those issues. That has really gone off the charts in the last 20 years. It wasn't such an important issue. There were other communities involved in running corporations other than shareholder rights being driven. So I think when we talk about these issues, you've got to deal with the domestic part of it, and then, you've got to deal with the international part of it.

Finally, there's something I keep reading about in Inside U.S.-China Trade. There's a tax issue that the President's Commission on Taxes, and Senator Breaux and others have identified, a provision that we're actually giving a tax break for people who import foreign goods and that the retail community is surrounding that, because that commission recommended getting rid of it, and the retailers want to keep it, NAM and some others.

Could you help us shed some light on this? One, am I on the right track in thinking we've got to do two things at the same time, domestically and internationally, and two, that there's a tax issue that really needs to be addressed in terms of how to deal with this problem? I would ask Mr. Lighthizer, and Mr. Stewart.

MR. LIGHTHIZER: To me, the tax issue that has to be addressed, and it was talked about in the report, although and they said, well, we've got a couple of ways we can deal with this, and one of them might involve this broader adjustability issue. To me, the significant issue is to get rid of, as Terry initially said, and I have on chart seven, the broader adjustability of value added tax, so that when somebody buys a product from China or you fill in the country, it doesn't even matter, they're buying that product tax-free in the United States, so it pays neither the tax of the country that made it, because that value added tax is rebated, nor does it pay the tax in the United States.

COMMISSIONER MULLOY: Okay.

MR. LIGHTHIZER: Consequently, when we sell something overseas, we're fully U.S.-taxed, and we, in addition, pick up the tax overseas. So in a sense, we're double-taxed by U.S. products, though you have to drop a footnote down saying there is some adjustment for state sales tax that you have to figure into the calculation. But the basic calculation is that we have a lot of situations develop wherein U.S. exports are double-taxed, and competing in the United States against a product made in another country. It's more expensive to sell in the United States a product made in the United States than it is to sell, all of the things being even, the product made in China in the United States, because they don't pay any tax, and you're paying U.S. tax if you're selling in your own country.

So it's a system that when you sit there and describe it to an intelligent Member of Congress, they'll just say nobody is as dumb as



you're saying the United States is, but in fact, we are as dumb as we say we are. I'm not saying if you got rid of it, the trade deficit would disappear, but I will say that there are thousands and thousands of people who aren't working in the United States because of it and who are more productive and have smarter bosses and have better resource allocation than the equivalent manufacturer in, once again, you just fill in the country. It doesn't make any difference.

Now, if you were, in fact, just an importer, let's say, Wal-Mart, you would just as soon not get rid of this.

COMMISSIONER MULLOY: Yes.

MR. LIGHTHIZER: Because the way I would get rid of this is I would say they can't rebate their taxes when they export, and if that's the case, then, he's going to be paying more, if you're a Wal-Mart person. There really is a difference. By the way, if you're a U.S. manufacturer who brings in 80 percent of your subparts from overseas, you'd just as soon not see this change, because you're really an importer yourself, because you've got to pay tax on the things you bring in.

So it is something that's peculiar to the United States, peculiar to people who manufacture in the United States, peculiar to workers in the United States, fundamentally unfair, and if you need somebody to talk to Gary Hufbauer, who is not exactly in lockstep with me on many issues relating to trade, and feels very strongly about this. He's done the analysis and--

COMMISSIONER MULLOY: He testified before this Commission in May in New York on this issue.

MR. STEWART: Commissioner, I saw the same article that you were referring to, and it deals with a different matter. I didn't go back and look at the underlying provisions, so I can't shed any light for you.

But certainly, we have to deal with both domestic and trade issues, to follow up on Commissioner Reinsch's question. It's not all trade, but certainly, when one is looking at trade, you should be addressing the issues that are important in trade.

COMMISSIONER MULLOY: Thank you both.

HEARING COCHAIR DREYER: Commissioner Bartholomew.

COMMISSIONER BARTHOLOMEW: Thank you. Rather than a question, given the time, I'll just note a couple of issues that we can transfer over to a more casual discussion. First, I want to thank both of the witnesses for their testimony today and the guidance that they give us all along, and their really outstanding ability to take these very technical issues and make them understandable to those of us who were not trained as trade lawyers.

I remember in a trade law class I took many years ago in law school and being struck by this problem of a disconnect between the widgets and the people who were producing the widgets. It seems to me

that is one of the fundamental problems. You talk about movement of goods and services when you talk about trade laws, but nobody seems to focus on the underlying conditions of the people who are producing the goods and services and the consequences for them.

A second observation is that we lack in this country a comprehensive vision or strategy for what our economy should be, and we are up against a country like China that has a strategic vision of what it's trying to accomplish. I think that our trade people often react to whatever sector or companies have put together yet another coalition. The people who scream loudest are the people whose interests are being served, but it's not within a bigger context of where we are trying to go economically and what we should be.

Finally, and Terry, I know this is triggered by some of the comments you made the other day, it also strikes me that we are really being driven by a trade policy, people who are trained in a theory of comparative advantage that may be just completely outmoded. I'm not sure that there is anything there that yet replaces it, but that if you have everybody making trade decisions based on this idea that somehow, it will all work out, because competitive advantage means that our brilliance will move us to the forefront, it just doesn't look like it's working that way, and what are we going to do, and how do we replace that?

If anybody has comments, that's great; otherwise, we'll note those as issues that we should talk about further. Thank you.

HEARING COCHAIR DREYER: In that case, I close this very interesting panel on WTO international trade law issues, and we thank both of you very much again for your time and your interest.

MR. LIGHTHIZER: It's our pleasure.

MR. STEWART: Thank you.

HEARING COCHAIR DREYER: Five-minute break.

[Recess.]

### **PANEL III: IMPACT OF THE DOHA ROUND ON U.S. INDUSTRY AND LABOR**

CHAIRMAN D'AMATO: The Commission will come to order, and Commissioner Wessel will officiate the proceedings of our third panel.

Commissioner Wessel.

HEARING COCHAIR WESSEL: Thank you, Mr. Chairman and thank you for both being here.

In our last panel today, we will hear from Thea Lee, policy director for the AFL-CIO. At the AFL-CIO, Thea oversees research on international trade and investment policy as well as implementation of those policies. She previously worked as an international trade economist for the Economic Policy Institute here in town.

We are also pleased to have Lisa Schroeter, today speaking in her capacity as the chair of NAM's Trade Working Group. Ms. Schroeter is also the director of international policy for the Dow Chemical Company, and prior to her work at Dow, she served as the executive director of the Trans-Atlantic Business Dialogue.

We look forward to hearing from both of you today, and Ms. Lee, if you would care to start off.

### **STATEMENT OF THEA LEE, POLICY DIRECTOR, AFL-CIO**

MS. LEE: Thank you very much, Members of the Commission. It is a pleasure to be here and to give a brief overview of how labor views the Doha Round and the Hong Kong Ministerial. I have to say that we are not particularly optimistic about a favorable outcome for our members. When we look at these talks, we see the cumulative impact of the wrong priorities of our own government, as well as of the international institutions.

When we look at the agenda for the Doha Round, we see that the key issues that should be the most important priorities for a multilateral trade organization are not even on the agenda, while many issues that we find potentially perilous for our members are very much on the agenda in a way that could potentially endanger jobs and wages.

I wanted to give a little background in terms of the WTO talks. The labor movement in fact does believe in the concept of multilateral trade rules. Unlike some of the NGOs who focus more on the sovereignty issue, our view is that for working people all around the world, it is important to have an institution which can bring together representatives of different countries to agree on what multilateral trade rules should be. But, we don't think that either our own government or the WTO has done a good job so far of balancing the different concerns of multinational corporations and working people.

We work very closely with our counterparts in many developing countries and other industrialized countries as well. Many other trade unions share a lot of our concerns; they also feel that the interests of working people have been off the agenda in the WTO. If you look back all the way to 1950, when the GATT first formed, there was an intention, at least, for the issues of employment standards and the impact of trade liberalization on jobs to be part of the original International Trade Organization. Unfortunately, that organization wasn't formed, and the GATT did not really take up workers' rights or employment issues, although these have been a concern of the U.S. Congress for many decades. We haven't made the progress we would like to see.

There is a lot of talk about why the WTO round is moving so slowly or failing to deliver the kinds of benefits and outcomes that people are looking for. When we look at the post-Uruguay Round record of the WTO, we see more failure than success.

There was a failed Ministerial in Seattle in 1999, launch of the round in Doha in 2001 under a tremendous amount of pressure, another failure in Cancun, and essentially another failure that we're headed towards in Hong Kong. In order to take the sting out of it, it seems like the trade ministers have gotten together before the meeting even started and declared failure so that it won't look too bad once they get there.

But the pre-ministerial spin can't hide the fact that the trade ministers have been meeting for a couple of years, and they haven't been able to come to any kind of consensus on the most basic modalities, schedules, commitments, and language. The draft Ministerial text that we're looking at is full of brackets and full of aspirations, but not full of much concrete benefit or solid commitments.

We in labor would argue that one of the reasons that WTO talks have moved so slowly is that trade liberalization under this current set of rules and policies has not delivered for many working people and the poor all around the world. That is the reason why, when every trade minister walks into the ministerial, he or she thinks about the kind of domestic sacrifices that will have to be made, and thinks about the political reaction to bringing a deal home, and they can't bring themselves to do it. It's not really protectionism or fear. It's simply that they add up the costs, they add up the benefits, and they can't really see the interests for their own country. It's not a question of being shortsighted, but rather it's a reflection of the fact that the WTO is off track and has failed to deliver on its promises.

Let me talk about the key issues from labor's perspective that are not on the agenda in Hong Kong. I think everybody knows that the labor movement has pushed very hard for a long time to include workers' rights in the core of trade talks, and in our own government's trade policies, whether they're unilateral or bilateral or regional. Certainly, the key place we would like to see labor rights discussed is the multilateral trade forum; that's the place where those talks belong.

The international trading system needs some guidance for its member countries and for companies that it simply is not legitimate to compete in the global economy by violating the fundamental human rights of workers. That should be clear, and the only way that can be made clear is if the WTO will speak up on that issue, because that is the role of the WTO, to give signals to governments, to corporations, about what forms of competition are legitimate in the global economy and what are not.

The WTO is able to speak on things that are very sensitive and that impinge on a lot of domestic regulation work like subsidies, sanitary and phytosanitary regulations, intellectual property protections and so on. Our contention is that labor rights -- how workers are treated -- is just as much a trade issue as any of the other issues on the agenda at the WTO. Yet, I would say mistakenly, the WTO members have really dug in their heels and not only refused to put in place concrete measures

that would protect workers' rights in the international trading system but have refused even to talk about labor or anything related to labor.

If you look at the draft Ministerial text, the words "employment," and "labor," and "workers' rights" are not present in any shape or form. The labor movement has really tried to address this from a very reasonable and moderate point of view, asking for a joint ILO/WTO symposium on workers' rights, or a study group on workers' rights or even a study group on the employment impact of trade liberalization.

We have failed. In Doha, we couldn't even get in the Ministerial text a sentence that said that the WTO members note and *welcome* the work being done over at the ILO on the social dimension of globalization. This work was done by an important commission that John Sweeney, President of the AFL-CIO, sat on along with heads of state and employer representatives and union representatives from around the world. We couldn't even get the WTO to recognize and welcome the ILO's report on the social dimension of globalization. When the WTO talks about policy coherence, the World Bank and the IMF are explicitly mentioned.

Why couldn't WTO work also be coherent with that of the ILO? The failure to even mention the ILO in the context of the WTO work tells us that it's not just a question of the WTO punting this ball over to the ILO, but really of the WTO choosing deliberately to ignore the whole issue and to assume that trade rules are more important and take precedence over any kinds of commitments that the same countries might have made at another U.N. institution, at the ILO.

So that failure to discuss workers' rights at the WTO is one of our key complaints and objections. When the labor movement hears the talk about all the trade liberalization and the ambitious results that the business community is looking for in terms of lowering tariffs, we know that the issue that's most important to us, workers' rights, isn't even being talked about. That raises our level of anxiety, because to the extent that we've succeeded in incorporating workers' rights conditionalities into trade agreements at the unilateral level through GSP or the African Growth and Opportunity Act and others or at the bilateral level through the Jordan or the Cambodia agreements, these commitments risk being undermined by trade liberalization. That is especially true for dramatic and ambitious trade liberalization that could take place in the context of a new round if there are no new commitments made on workers' rights. So we would essentially see erased some of the progress that we've already made, and that's another reason for concern.

The second issue that's not on the WTO agenda is currency manipulation. I know this Commission has given a lot of attention to this issue, and so has the labor movement. We consider this to be a pretty important issue, a huge contributor to the enormous and exploding U.S. current account deficit, which will probably hit \$800 billion this year.

The fact that the WTO ministers are not even going to discuss currency manipulation again seems to us a huge problem. These two issues that I've just raised, workers' rights and currency manipulation, are of crucial importance with respect to China, which is the main focus of this Commission. These issues also impact the global economy's stability and sustainability and the way that developing countries try to compete in the global economy with China. The fact that we aren't talking about currency manipulation or workers' rights is a huge handicap in that context.

Let me finish quickly by saying that several of the issues that are on the Hong Kong are of great concern to American workers. I know you've talked earlier today to some extent about our trade laws and the fact that U.S. trade laws are quite vulnerable in this round. When the talks are in trouble, it is always labor's issues and labor's concerns that get sold out at the last minute in order to close a deal. That is certainly our fear in this area, that new WTO negotiations would have the effect of weakening our trade rules because there is such an offensive attack from so many other countries looking to do that, and we are very concerned that that could be a problem.

The other issue is mode four in services trade, that is, the movement of natural persons. This is another issue where there is a lot of offensive interest on the part of certain countries, particularly India, to try to convince the United States to change its visa limits for temporary entry of professionals through the H-1B program. We really see this as inappropriate. We just don't believe that permanent changes to U.S. immigration rules should be made in the context of trade negotiations, where they are less subject to amendment, to open hearings, to discussions, and certainly can't be changed if they turn out to be problematic.

So let me end there, and I look forward to your questions. Thank you very much.  
[The statement follows:]

### **Prepared statement of Thea Lee, Policy Director, AFL-CIO**

#### **Impact on Labor**

Labor unions, both in the United States and around the world, tend to view the current round of WTO negotiations with considerable skepticism and pessimism. From labor's point of view, past liberalization has failed to deliver on its promises and potential- both in terms of creating and supporting good jobs in industrialized nations, and in terms of laying the foundation for sustainable and equitable development in poor countries. Labor is also concerned about the encroachment of trade policy and trade institutions (such as the WTO) into the domestic regulatory arena.

I'd like to layout some of the grounds for labor's pessimism and concern, and argue that the politics of trade are not as simple as many economists assume.

The traditional economist's explanation for domestic political resistance to trade liberalization is that a noisy injured minority blocks a socially desirable outcome, since the injuries to displaced workers and industries tend to be deeper and more visible than the benefits of liberalization, which are widely spread out and therefore less prominent.

But I would argue that labor's critique of the current global economic rules goes beyond concern for threatened jobs in declining sectors. Rather, the argument is that, without deeper reform than currently contemplated, another WTO round will not address the current global crises of poverty, inequality, and underemployment, and therefore will once again fail to deliver on its promises. Furthermore, taking the labor critique of the WTO seriously and addressing labor's concerns substantively could in fact help bolster the WTO's legitimacy and viability, and help it get beyond the paralysis it currently faces.

### **Why the WTO talks are in trouble – again**

In 2005, the globalization debate (and the WTO negotiations) are not just about how quickly to cut tariffs and non-tariff barriers, but what rules to put in place to govern international flows of goods, services, capital, and people -- and what sort of an institution should administer those rules, and how. And yet many people paint the trade debate as bi-polar: free trade versus protectionism, pro-globalization versus anti-globalization. It is entirely possible, however, to understand and value the potential benefits of trade liberalization and still reject the current path of WTO rules and negotiations.

Since the completion of the Uruguay Round, the WTO has not regained its forward momentum. The Seattle ministerial collapsed without a deal in 1999. The Doha Round was launched in 2001 (in a tense post-911 atmosphere), but has not stayed on track since then, with a failed ministerial in Cancun in 2003, and the Hong Kong ministerial scaled back significantly. WTO members are unable to reach the necessary consensus on basic principles, formulas, and commitments. Trade ministers from rich and poor countries are unwilling to make the domestic political sacrifices for uncertain gains.

In the United States, we face a current account deficit likely to hit \$800 billion in 2005, rising poverty, falling real median incomes, and stagnant real wages. While the WTO is not responsible for all (or even most) of the problems in our domestic economy, there is plenty of evidence that trade liberalization under current policies has exacerbated, rather than ameliorated, these problems, especially for workers in the manufacturing sector. So it is not unreasonable to question whether moving ahead faster on the current track will solve more problems than it creates.

### **Labor Perspective on the Doha Round**

The American labor movement's pessimism about the Doha Round results from several factors. On the one hand, issues that we would like to see at the center of multilateral trade talks are not on the agenda at all; on the other, issues that could be quite damaging to the interests of American workers are very much in play. Our experience with past rounds of trade liberalization is that when the talks are not going well, it is often workers' interests that get sold out in the interests of cutting a deal.

#### *What's not on the agenda?*

The key WTO issue for the labor movement is moving forward a constructive discussion about how the global trading system can strengthen international protections for workers' rights, rather than allow global competitive pressures to undermine those protections. In an intensely competitive global economy, the absence of rules in one area becomes an important signal - both for governments and for corporations - about what forms of competition are considered legitimate or illegitimate.

If WTO rules can be applied to protect copyrights and patents across national borders, judge whether national environmental or public health laws are legitimate, and pressure governments to eliminate or reform subsidy programs, then surely the WTO can clarify that no country should gain a competitive

advantage by violating the human rights of its own workers (as defined by the international consensus reached at the ILO and embodied in the 1998 Declaration on Fundamental Principles and Rights at Work).

Yet, despite coordinated and concerted efforts by the international labor movement (reflected in the statements of the International Confederation of Free Trade Unions) over many years, WTO members have consistently and vociferously resisted any move to allow labor issues or workers' rights to be on the formal agenda of the WTO. WTO members have rejected proposals for a study group, a working group, or even a joint WTO-ILO symposium on workers' rights.

Ironically, the complete exclusion of workers' rights from the WTO agenda simply ensures that this issue will be addressed unilaterally or bilaterally by the industrialized countries (through the Generalized System of Preferences or FTAs) - where the bargaining power of the developing countries is significantly less. It would seem preferable to address the issue in a multilateral forum so that developing countries can be at the table to voice their specific concerns, and so that a multilateral solution can be developed.

A second crucial issue not on the WTO agenda is currency manipulation. Even though WTO rules in principle forbid frustrating WTO commitments "through exchange action," this provision has never been applied. It is clear that the WTO needs guidance on how to operationalize currency rules effectively. The WTO's failure to address this issue effectively strains the entire global trading system, as certain countries intervene extensively and one-sidedly into currency markets to bolster their export industries. Yet there does not appear to be any intention for the trade ministers to even discuss currency manipulation in Hong Kong.

Finally, the Doha Round will not address needed institutional reforms at the WTO, especially in the areas of transparency and accountability. Key reforms would include timely declassification of documents and open dispute settlement proceedings.

*Issues of concern on the Doha Agenda*

While issues that labor would most like to see addressed in Hong Kong are not even on the table, many issues of great concern are under discussion. U.S. trade and immigration laws are vulnerable, as many countries have expressed interest in weakening our trade laws, and in obtaining new commitments to raise current limits on temporary entry visas. NAMA negotiations put enormous pressure on the few remaining industrial sectors with high tariffs - while offering little hope of progress on workers' rights or significant reciprocal market access concessions. Services negotiations threaten the viability and quality of some public services.

All in all, the Doha Round offers numerous potential pitfalls and few concrete benefits for American workers. Maybe the repeated failures to reach agreement will convince our negotiators and their counterparts that an entirely new approach to global trade rules is needed if significant forward progress is to be attained.

*[Note: This article appeared in Global Economy Journal, vol. 5, Issue 4, 2005:  
"Perspectives on the WTO Doha Development Agenda Multilateral Trade Negotiations. "]*

HEARING COCHAIR WESSEL: Thank you.

**STATEMENT OF LISA SCHROETER, DOW CHEMICAL, ON  
BEHALF OF THE NATIONAL ASSOCIATION OF  
MANUFACTURERS TRADE WORKING GROUP**

MS. SCHROETER: First of all, I want to thank the Commission for letting me appear here on behalf of the National Association of Manufacturers. My company, The Dow Chemical Company, and NAM feel strongly that effective reciprocal market access



is a tremendous benefit to our economy and a key path to ensuring sustained economic growth. That's the reason Dow assumed the chairmanship of NAM's International Economic Policy Committee and the reason we will be represented in Hong Kong to support our Government's efforts on these global trade discussions.

From a manufacturing perspective, there are a number of key issues to be addressed in Hong Kong. The most significant are non-agricultural market access, NAMA, and trade facilitation. NAMA speaks to the heart of our company's interests. That area talks about reducing tariffs around the globe in order to support increased sales, imports, exports of our manufactured goods.

Reducing the tariffs increases the opportunities. As NAM, we've been very concerned that WTO member countries are overlooking the imperative of liberalizing industrial tariffs through NAMA. After all, manufactured goods account for 75 percent of world merchandise trade, and the Doha negotiations cannot be brought to a successful conclusion without deep and comprehensive cuts in industrial trade barriers.

Similarly, trade facilitation is about our ability to move goods in and out of countries. Trade facilitation focuses on the day-to-day problems: inefficient customs practices, discriminatory treatment, and bureaucratic delays. These delays delay product and can cost sales; particularly for small businesses, they can prevent market access at all.

The Hong Kong Ministerial, of course, will address other key issues like agriculture and services. As a manufacturer, I can't speak to those areas. They're all important, but no one area should delay or diminish progress in the others, particularly, as I said, for NAMA and trade facilitation. Indeed, from our perspective, the Doha Round can't be considered a success if it doesn't achieve substantial improvements in foreign market access for American industry.

To date, the U.S. Government has been a forceful leader in ensuring that these issues are addressed. Several weeks ago, Ambassador Portman put forward an innovative and progressive agricultural proposal that's gone a long way to spur or encourage real negotiation. In consultation with stakeholders, USTR is working to ensure a truly productive agenda for Hong Kong.

While the reality is that the unfortunate lack of progress on ag has reduced expectations, USTR continues to work to ensure that the discussions move forward, and we can move forward on a road map to the modalities for the early part of next year.

The U.S. has shown tremendous leadership and has also been a true partner in the process, working with a number of governments and key trading partners to press for real progress in Hong Kong. China is one of those significant partners. It was a key issue, obviously, for the President to address while he was recently there.

In many respects, our trade interests are quite similar, and we are potential partners with China in the Doha enterprise. As a major

world trader, China, like the United States, benefits from further trade liberalization in the Doha Round. This Round particularly supports that type of partnership, since there's not only a focus on the what needs to be liberalized, like tariffs and NAMA, but also on the how, like improving customs efficiency through trade facilitation and capacity-building progress.

As we seek to work with China on common goals in the Doha Round, we also remain focused on ensuring China to comply fully with WTO membership commitments. China has made significant progress since acceding to the WTO in implementing their obligations. We'd like to see further improvements, and these are areas where, again, working in partnership on things like intellectual property rights enforcement and reducing counterfeit products, we have real opportunities to grow both as partners and as responsible members of the global economy.

China's actions under its WTO commitments to reduce tariffs and liberalize trade can also set a real useful example to other developing countries. China has demonstrated the economic value of continued liberalization at a time when other developing countries continue to pursue more protectionist policies. Ultimately, we see progress in Hong Kong as a question of political will, at the moment, very much the will of the developed countries to open up competitive agricultural markets.

The benefits are obvious, particularly in further NAMA liberalization. As a representative of the chemical industry, we have pressed very hard for a sectoral liberalization effort on chemicals in the Doha Round. This sector is ripe for such a commitment. Not only is it good for our industry, including key chemical producers in China and other developing countries, it's good for other developing economies.

Access to key chemicals for downstream manufacturing would be an economic multiplier. Chemicals are a job creator. For every one job in the actual chemical industry, six are created downstream. We have valued USTR support in pressing for these sectorals as well as the six other countries that were willing to join together to promote this chemical sectoral liberalization within the WTO, and we hope to leverage our discussions in Hong Kong to bring more countries on board.

In short, WTO continues to represent a tremendous opportunity to reduce the barriers, impediments, and inefficiencies that hamper further economic growth. Ninety-five percent of the world's consumers live outside the U.S. As an American manufacturer and representing NAM, we need access to those consumers to continue to deliver economic growth here in the U.S.

We value the Commission's attention to these upcoming events and look for your support for Sino-U.S. cooperation in global trade liberalization. I want to thank you again for letting me stand in for NAM and participate in this hearing this morning.

### **Panel III: Discussion, Questions and Answers**

HEARING COCHAIR WESSEL: We appreciate your being here. I know it was on somewhat short notice, so thank you. I know you're getting ready to leave for Hong Kong in the not too distant future, so you will be in the middle of all these issues shortly.

I'll take the prerogative of the Chair and begin, if that's okay. Thea, you mentioned the issue of mode four and the question of labor, and you also indicated that workers' rights is not on the agenda. From my perspective, I would say that worker rights is on the agenda when you look at mode four as being a labor issue and the question of what could happen with trade in people.

India, I guess, started this whole effort back in the early eighties by seeking to have trade in people's services, and that effort has continued and expanded with other countries. I've heard some who indicate that we could, in fact, face permanent changes, and I think you talked about this briefly, in our immigration laws as a result of a Doha Round agreement.

There are some who have even questioned whether, depending on how an agreement could be structured, work crews for building trades, for example, could be brought in on short-term contracts and perhaps not even be paid prevailing wages here. That, for example, a Guatemalan brick laying crew could be brought up to work on a housing project, et cetera, for two, three weeks at a time, and be paid prevailing wages in Guatemala, not here.

Could you give us a little more information on what the issues are here, whether potential permanent changes in our immigration laws are possible?

MS. LEE: Thank you, Mike, I'd be glad to.

There are several issues with respect to immigration and temporary entry of certain types of workers, in principle, for the purpose of carrying out trade and trade in services. One of the concerns that we have is that these provisions have been misused and abused by employers in the past and that the temporary entry programs are in particular quite vulnerable to abuse, in the sense that workers come over on a temporary basis. Their immigration status is dependent on a single employer, and that that is inherently disempowering for the worker. For example, if the worker tries to form a union or complain or ask for a wage increase, that person can always be sent back and another person brought in their place.

The issues are several. One is numerical limits and ceilings. The United States has already made a commitment on our H-1B visas in the context of GATS. We wrote into our GATS commitments that we wouldn't ever lower the H-1B ceiling below 65,000, which was in current U.S. law at the time. Since then, Congress has raised and lowered that ceiling.

I think it is a mistake to make a numerical commitment in the context of the GATS. Most other countries have not done so. Yet now, they are pushing us to make an even larger numerical commitment.

The reason I would say that is that we don't really know what the American labor market is going to look like in 10 or 15 or 20 years. We could go through a period when we had much higher unemployment than we have now and Congress might want to adjust the ceiling.

Once we've made the commitment in the context of trade negotiations, we can't lower the ceiling below 65,000 without paying a penalty to our trading partners. That just seems to me wrong for Congress to give up that flexibility in the future. I believe on L-1 visas, which is another kind of business visa, the U.S. has essentially agreed not to have any ceilings on the L-1 visas. Again, that is a program that has been abused. L-1 visa recipients are in principle supposed to be employees of a company moving back and forth and being transferred within the company. In fact, there are temporary employment shops that have set up to facilitate large numbers of people who aren't actually permanent employees of a company, but rather working for a temporary employment agency to come in under the L-1 visa. So there has been a tremendous amount of abuse, and we have already given away our ability to put any kind of numerical ceiling on those kinds of visas, even if we chose to do so.

The second issue is also very important: what kind of labor laws and conditions apply to workers who come to the United States under these programs. This is a risky area. One of the proposals put forward by India with respect to Mode 4 was that workers who came over on temporary visas would be subject to the labor laws of the sending country, not the receiving country. The United States government did not object to that immediately. I thought that proposal would have evoked outrage, and a response that it was totally out of the question, but I didn't see our own government react with the kind of vigor that I would have liked to see.

HEARING COCHAIR WESSEL: That would be rather effective, I guess, if China were to impose its own labor laws, which, as I recall, are virtually nonexistent for their sending workers here, but please--

MS. LEE: Yes, it's extremely troubling that this is even on the table, that it is being discussed. One of the key things that the American labor movement has said in the context of the immigration debate is that we do want to protect the rights of workers who are in this country, no matter what their immigration status is, and we certainly don't want to see them subjected to much lower wages and weaker laws from another country if they're here, in the United States, on American soil.

Another question is about the labor market conditionalities. We have very specific rules written into the H-1B program that an employer needs to attest that he or she has at least looked for workers at home and hasn't been able to find them. That's not a particularly well

enforced provision of the H-1B program, and it's been abused as well, but there is also danger that even that condition could be weakened by commitments made in the context of trade negotiations if we're not careful.

Another piece that's also in danger is the fee. We currently have a \$1,000 fee under the H-1B program that is supposed to be dedicated to training American workers. The employers' argument has always been that they need to bring in workers from other countries because American workers don't have the skills to do the jobs that they need. So, the response has been to set up a training program with this money, and it's been okay, not great but okay. Yet, even that fee, is vulnerable to the extent that we include these Mode 4 provisions in our trade negotiations. One of the proposals that has been put forward is that all fees be only sufficient to cover administrative costs. That would obviously not allow us to continue the current training program.

So I think there are numerous areas in which the way we structure our immigration programs, particularly temporary entry programs, are vulnerable if they are subject to discussion in the WTO talks.

Thank you.

HEARING COCHAIR WESSEL: Thank you.

MS. SCHROETER: If I could, actually, just to highlight, too, there's one other element of that, and there are benefits in being able to do particularly intercompany personnel transfers. For a company such as mine, we have 42,000 employees around the world, and the majority that we bring in to this country for temporary stays are very senior executives across our world headquarters.

We would like for them to be able to operate out of Michigan. We have been based there for 108 years. To be able to bring them in and spend significant time there and then take that learning back out into the company, that is a huge benefit that is a big part of our culture and something we see obviously real benefits in being able to continue.

It's also a training issue. As you can imagine, in the chemical industry, we have some pretty extensive training programs. So to be able to bring in our JV partners as well as our employees from around the world and have them spend, six months to a year working out of Texas not only helps us be able to train them but also really be able to bring them into the Dow American culture. There's tremendous advantage in that.

HEARING COCHAIR WESSEL: No, I clearly understand, as you well know, that is an issue independent of the multilateral negotiations that we can make on our own rather than having to commit. When I believe the Singapore and the Chilean free trade agreements were done, there were implementing legislation changes made or changes done to our immigration laws done in the implementing legislation which drew real concerns here in Congress, and it's very hard to mix different issues,

to deal with the trade issue and then deal with other issues, including, for example, as was raised on the last panel, underlying tax changes, that these are often viewed as separate inboxes, and we can have separate discussions about them.

Commissioner Reinsch.

COMMISSIONER REINSCH: Well, I was with you up until that last thing.

HEARING COCHAIR WESSEL: Me or--

COMMISSIONER REINSCH: You.

HEARING CO-CHAIR WESSEL: Okay.

COMMISSIONER REINSCH: It is a trade issue. I am delighted that Lisa said what she said, because it is about the efficient allocation of resources, and labor is a resource the same way capital and technology and other things are resources, and companies want to be in a position to be able to move their people around to take advantage of them where they need them.

Thea and I had this argument on Monday when we both appeared together at a House event, and we went through the same thing, and I won't bore you with the same stuff except to say I am delighted at the comments Lisa made, because, without wanting to disagree with the issue of abuse, which I think is an important one and where I certainly agree that we ought not to tolerate that, there is another side to this issue, that involves more senior or professional employees as well, which I think we need to factor in.

It is not a separate issue. It is the same issue that is on the table in the mode four negotiations. India is not doing what it's doing because it wants to get all of its bricklayers into the United States. India is doing what it's doing because it wants to get its engineers in the United States. Now, that may or may not be a good idea, but a lot of the debate is about highly educated professional employees above and beyond workers.

Now, that said, I also want to take exception today, as I did on Monday, to one thing that Ms. Lee said, which is that this is about immigration. This is not about immigration; it is about the temporary movement of persons. Now, there are reasons why the temporary movement of persons can be abused, and Commissioner Wessel cited a good example of that.

Nevertheless, it is not immigration, and what is not on the table in this negotiation is an effort to get the United States or anybody else for that matter to permanently change its immigration rules about who gets to come here and stay here. That said, there are a lot of other issues, and I appreciate the debate between the two of you, which was, I think, better than the debate between the two of us on Monday in terms of highlighting what the problems are from the AFL-CIO's perspective, and I think that is a welcome education on my part, but there is this other side of it as well.

Let me just ask one more thing. Commissioner Bartholomew has goaded me into doing this, so you can blame her for it.

COMMISSIONER BARTHOLOMEW: We're not going to like this outcome.

COMMISSIONER REINSCH: I can't help but comment that the two basic issues that you've raised, Ms. Lee, in your testimony, worker rights and currency, are issues where there are other institutions that deal with them, ILO and IMF. And, we all know why we're here, and that is that the WTO has teeth, and the ILO doesn't. And really, neither does the IMF, or if it does, they don't chew with them. They just put them in the glass at night and leave them there. They gum away.

HEARING COCHAIR WESSEL: Are you making our point or yours?

COMMISSIONER REINSCH: Well, I'm making the point that it's frustrating to, on the one hand, load all this stuff into the WTO, because it is the only institution that is capable of addressing the problems in a meaningful way, and then turn around and criticize the WTO when it fails to deal with them.

They have failed to deal with them. I think there are a lot of people who are trade mavens, if you will, who think that the best place to deal with them in an ideal world would be somewhere else, and that maybe we ought to devote as much energy to getting the ILO to have teeth as we are to trying to get the WTO to deal with these problems.

I agree that there are problems that should be dealt with. There's no question about that, and if the WTO is the only institution that's capable of dealing with them, maybe we ought to do it there. But I would like at the same time to see at least some lip service paid to the idea that there is another institution that specializes in labor and worker issues and that maybe we ought to spend some time trying to beef that institution up. This administration probably hasn't spent any time on it. I don't know whether the last one did or not. You're a better judge of that.

But I wish you would build into your testimony the next time we appear together at least, a nod in the direction of this other institution. Comment, please.

MS. LEE: Thank you, and let me try again to explain the difference. One of the things we would like is for the WTO not to render useless the work done at the ILO. We want to replace the ILO with the WTO. The ILO is the institution that has the credibility, the authority, and the knowledge to deal with labor standards in any substantive way.

The problem is that today, countries go to the ILO, and they make a commitment to respect, promote, and realize the core labor standards. Then, at the WTO, they're told that if they take steps, for example to ban the import of goods made with child slave labor, they're in violation of their WTO commitments.

So one of the key things that we in the labor movement want is simply policy coherence between the ILO and the WTO. There needs to

be an explicit clarification that if a country is trying to live up to its ILO commitments, it's not in violation of its WTO obligations. This issue has come up with respect to, for example, Burma, where the ILO invoked article 33 of its constitution, the most serious policy tool it has, for the first time because of Burma's systematic use of forced labor. The ILO asked countries to take steps to make sure that they weren't supporting the use of forced labor in Burma.

Now, the United States did step up to the plate, and the U.S. Congress, in fact, banned imports from Burma, but there is a lot of discussion about whether that is an action that could be subject to WTO challenge. However, I don't think the Burmese Government really wants to have that kind of spotlight.

But certainly, there are a lot of issues where there needs to be clarification that if a country is acting to respect its ILO obligations that it's not violating its WTO obligations. One of the ways that could be done is by clarifying Article 20(e), which is the only place in the WTO where labor rights are actually mentioned. Article 20 (e) says that countries may in fact restrict imports of goods made with prison labor but it does not address forced labor, nor does it address child labor, nor goods made in violation of the other ILO core labor standards.

For example, if Article 20(e) were expanded to incorporate all of the ILO core labor standards, you would still be leaving the bulk of the labor work to be done at the ILO, but you would be clarifying what the relationship between ILO commitments and WTO commitments. That is something that's been done in the environmental area, for example. There's been an attempt to clarify the relationship between multilateral environmental agreements and WTO commitments. If you have two conflicting obligations, does trade always win?

That's really the question we want to answer. It's not trying to load things onto the WTO that don't belong there. I think the multilateral trading system needs to have an opinion about where labor rights and human rights commitments fit into the trading system, and it hasn't done that yet. That's really the conversation we need to have at the WTO.

COMMISSIONER REINSCH: Well, I am glad I asked the question, because that was a really good answer.

Thank you.

HEARING COCHAIR WESSEL: Commissioner Mulloy.

COMMISSIONER MULLOY: Thank you, Mr. Chairman. Thank you to both witnesses for being here. Dr. Schroeter, it is good to see you again. We've worked together in the past when I was in the Clinton administration. By the way, the Clinton administration did work to get a coherence between the ILO and the WTO, and my recollection is when Mr. Lamy represented the EU at that point, he supported those efforts when he was the EU trade minister. He's now, of course, head of the WTO.



So what they're trying to say is these conventions that people agree to multilaterally in the ILO get fed into the trading system, because they're a convention that people have signed up to, and they've said they're going to live up to them. So let's finish up on that.

Dr. Schroeter, in Mr. Brilliant's testimony, he talked about the average tariff of goods coming here is about 3 percent, and the average tariff of our goods going abroad is about 30 percent average. Yes, our manufacturing still faces an average tariff of 30 percent across many other key export markets.

That's a key issue, I think, this manufacturing issue and tariffs for your organization. What would you consider a good outcome in terms of cutting tariffs? What is your goal? What level are you looking for?

Secondly, on the visa issue, if you would comment so that people like me can understand what visa, type of visa are you talking about, and who does it cover? So both of those issues, if you could tell us, and then, Thea, if you have any comments on either.

MS. SCHROETER: Well, first, a point of clarification. I want to thank whomever actually--

HEARING COCHAIR WESSEL: We have granted honorary degrees and doctorates throughout today. Dr. Lee, you have one as well.

MS. LEE: Thank you so much. If I'd finished my dissertation, I would appreciate it.

MS. SCHROETER: Yes, I will take that home and show my parents. They will be thrilled.

In terms of a good outcome, for us, especially, as NAM, we have done the economic analysis and really come down to we need a nonlinear formula to do the tariff cut. We haven't selected a specific number by which, but it's exactly the point you're making.

The real issue for us, too, is that for a lot of the economies where we're looking for these types of tariff reductions, this type of market access, the problem is 30 percent is about the average applied rate. The boundary, even, is much higher, so the rate that countries could apply their tariffs to.

Take, for example, an 80 percent tariff boundary; they're applying it at 30, but once you start to make the cuts, if they start cutting from 80, it could take a very long time to get to anything that was actually meaningful for American exporters.

COMMISSIONER MULLOY: I see.

MS. SCHROETER: So we want to see a very aggressive, very ambitious tariff cutting formula in NAMA.

On the issue of visas, for my company, and I can only actually speak to my company's needs on that issue, we primarily bring people in on L visas, actually, and if you look at the makeup of our Office of the Chief Executive, we have a number of foreign nationals, including

an Australian CEO at the moment, who really like living in Midland, Michigan. We want to make sure that they can stay there.

COMMISSIONER MULLOY: What is the L visa? What is the difference between an L and an H-1B or whatever?

MS. SCHROETER: L is, as I understand it, I'm not an immigration lawyer, but an L allows you to bring in professional executives, basically, for usually two to three year stays.

HEARING COCHAIR WESSEL: Primarily intrabusiness, if I remember.

MS. SCHROETER: Intracompany.

COMMISSIONER REINSCH: Intracompany transfers.

COMMISSIONER MULLOY: Is that a big problem for you, Ms. Lee?

MS. LEE: In general, it shouldn't be. But what I said was that that program has been abused, so that people who aren't actually employees or executives of a company have been brought in under the L-1 program. People have been signed up as quasi-employees through a temporary agency and then get brought back and forth in a way that's not what the visa is intended to accomplish.

HEARING COCHAIR WESSEL: May I ask a follow-up question as it relates to chemicals and your testimony earlier?

MS. SCHROETER: Sure.

HEARING COCHAIR WESSEL: I think you indicated that you were looking potentially for a sectoral initiative as opposed to what is the broad NAMA, and now, we're pursuing the Swiss formula approach. Are there other industries that are looking to break free, other sectors, and potentially reap an early harvest? How are you pursuing this? How is NAM viewing that as it relates to chemicals, and how might this proceed?

MS. SCHROETER: NAM as an organization hasn't identified any specific sectorals that they are supporting, but they do support the sectoral approach. So they have been very active, particularly through their Zero Tariff Coalition, at bringing these sectors together in a way that will help them.

HEARING COCHAIR WESSEL: But in a zero approach, would that be zero for zero, not a Swiss formula or some other approach? Is that right?

MS. SCHROETER: Yes.

HEARING COCHAIR WESSEL: Okay.

MS. SCHROETER: Yes. On the chemical side, there is one other, if I'm not mistaken, I think it's a textile sectoral that's being talked about as well, but chemicals is one of only two that's actually been proposed up to the WTO and will be discussed next week.

HEARING COCHAIR WESSEL: Okay; any comments?

MS. LEE: Just one quick comment about market access. The labor movement is very interested in market access. We'd love to increase exports. We'd like to close the trade deficit through growth in exports as

opposed to just reducing imports. The only problem for us is that a lot of focus on the tariff reductions is misplaced if we aren't addressing these other important issues: taxes, currency, and trade rules. Every time we have a round of these trade negotiations, we hear the same statistics, and they're always very startling -- about how low U.S. tariffs are relative to other countries, and therefore, how much the United States has to gain through another round of trade liberalization.

Yet, in 1993, before the Uruguay Round went into effect, we had a \$70 billion trade deficit. We were told the same thing: we're going to lower tariffs in other parts of the world; we're going to export more stuff. Now, our trade deficit is on the order of \$700 billion.

So, we're a little bit jaded about market opening abroad. If, in fact, U.S. companies have no intention or very little intention of serving export markets by producing on U.S. soil, then, the tariff reductions may be good for the companies, but they're unlikely to produce the kinds of job creation and production here in the United States that we'd really like to see. That's why we really think that the WTO talks need to focus more on some of the basic flaws in the trading system as opposed to just tariff reduction.

COMMISSIONER MULLOY: Mr. Chairman, let me just make a comment. Commissioner Reinsch mentioned exchange rates and loading those onto the WTO, but the WTO has an explicit article, Article 15-4, dealing with exchange rates. So it's not loading it onto the WTO. In fact, when you bring an exchange rate case to the WTO, they will look to the IMF for advice. So you've got to be working both institutions at the same time. But this isn't loading something new on the WTO, in my view.

Thank you, Mr. Chairman.

HEARING COCHAIR WESSEL: With apologies to my cochair and the Chairman, since our schedule is tight, I'm going to give the last comment to Commissioner Bartholomew.

COMMISSIONER BARTHOLOMEW: Which is actually just to say thank you to our witnesses. When Commissioner Reinsch headed down that path saying I had goaded him into it, I was a little nervous about what he was going to try to loop around my neck. But Dr. Lee, you did an excellent job answering that, and I think it's a really clear guidepost for what needs to be done.

Dr. Schroeter, thank you so much for your testimony today. One final point, which is in the last panel, I had made a comment at the end: the question had been how did we get where we are on trade issues now? I think even still, you reinforced the idea that there is this fundamental disconnect between the movement of goods and services and the lives, including the economic lives, of the people who are producing and consuming those goods and services. I think it's essential that we try to connect those two up if we're going to have a world trade regime that the people of this world can support, too. So thank you very much.

HEARING COCHAIR WESSEL: Thank you. Hopefully, we can call on you for advice post-Hong Kong to get your assessment, and the benefit of returning as witnesses is on your second time, you get knighthood bestowed. After that, we move up from there.

So with that, we will adjourn.

[Whereupon, at 12:02 p.m., the Commission adjourned.]