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“Aiding American Business Abroad:
Government Action to Help Beleaguered American Firms”
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Chairman Sherman, Ranking Member Royce, and distinguished members of the Committee, thank you for the opportunity to speak to you today about how the United States Department of Commerce assists U.S. companies with commercial disputes in foreign countries. I welcome the Committee’s focus on this topic, and its continued dedication to supporting policies and programs intended to strengthen our nation’s exporters.

The mission of the Department of Commerce’s International Trade Administration (ITA) is to help assure the continued ability of U.S. firms and workers to compete and win in the global marketplace and to create prosperity by strengthening the competitiveness of U.S. industry, promoting trade and investment, and ensuring fair trade and compliance with trade laws and agreements.

ITA plays a key role in supporting and advancing the Administration’s trade agenda – seeking to expand commercial opportunities for American firms through free and fair trade at the bilateral, regional, and multilateral levels. ITA works to promote U.S. exports, remove trade barriers, ensure foreign compliance with trade agreements, enforce trade laws, and enhance the competitiveness of U.S. industry at home and abroad. Our trade team is stationed in over 230 offices domestically and internationally and is organized into four program areas: Manufacturing and Services (MAS), Market Access and Compliance (MAC), Trade Promotion and the U.S. & Foreign Commercial Service (CS), and Import Administration (IA). Today, I would like to focus on the activities of the first three, each of whom is dedicated to the global competitiveness of U.S. industry through promoting exports, opening markets abroad, and ensuring that our trade agreements throughout the world are respected and enforced.

As ITA’s Assistant Secretary for Trade Promotion and Director General of the U.S. and Foreign Commercial Service, I have the privilege of leading an organization dedicated to helping U.S. companies, especially small and medium-sized enterprises (SMEs), compete and win in the global economy. We are a field-based network of trade professionals located in 107 U.S. cities and over 126 overseas offices in 76 countries who provide commercial diplomacy and trade promotion support to U.S. companies. We guide companies through every step of the export process, from shipping and logistics to learning about foreign regulations. We offer trade counseling and advocacy and customized solutions to enter new markets and overcome exporting

hurdles. Because of our field presence, we are often the first part of the U.S. Government that companies come to when they have a problem. We estimate that over half of our officers' time is spent working to facilitate resolution of U.S. company problems.

Businesses come to us with a variety of issues, but many are either problems involving a foreign government or commercial disputes. Bureaucratic obstacles can involve goods stuck in port over documentation problems, not having a certificate from the relevant Ministry, or being removed from the foreign government-approved short-list on an infrastructure project. Commercial disputes with local companies frequently involve payment issues or an alleged intellectual property rights violation.

Government Disputes

When a company has a problem involving a foreign government, we employ a variety of means to address the issue through direct government-to-government channels and commitments made through trade agreements.

If a company comes to one of our overseas posts, a domestic field office, or an ITA trade specialist in Washington, complaining that it has been unfairly treated by a foreign government, and we determine that the issue is not covered by a trade agreement, we will often address this issue through government-to-government diplomacy.

For example, last August, an Ohio-based electronics manufacturer, requested Commercial Service Warsaw's help with obtaining a permit from the Ministry of Interior. The company had sought to acquire a Polish manufacturer of electrical power components and needed permission to purchase the land on which the factory was built. The Ministry had held the company's application without action for three months and further delays threatened to jeopardize the \$7 million deal. In an effort to prevent further delay, our team contacted working-level Ministry officials, urged them to process the application promptly, and tracked the matter through the bureaucratic channels. CS Warsaw also engaged the Embassy's Legal Attaché to make simultaneous appeals with Ministerial contacts. Within a month, the Polish Ministry of Interior approved the company's purchase of land, and the parties successfully concluded the transaction.

When a company's problem involves an issue covered by a trade agreement, ITA's Trade Agreements Compliance Program, led by our Market Access and Compliance unit, works with the client to develop a strategy for addressing the complaint. We bring together all relevant Department of Commerce, and if necessary, U.S. Government, experts so the company does not have to go to several different government agencies for assistance in finding a solution to their concern. This team of experts analyzes the issue, verifies the information, and develops an action plan for addressing the concern. This team has the ability to elevate the issue to bring the full weight of the U.S. government to bear on the U.S. company's behalf.

ITA staff are working on approximately 200 active cases to assist U.S. companies gain market access in countries that are parties to a trade agreement with the United States (the term “trade agreements” includes both bilateral and multilateral agreements). From FY 2001 through 2007, we initiated over 630 compliance cases and closed over 460 of them where agreements were involved, including nearly 160 that were resolved successfully.

For example, a small Florida company that refurbishes copier equipment and parts reported on the Trade Compliance Center (TCC) Hotline that a shipment of its goods were being held in Chilean Customs. The company believed that the shipment was being held due to a competitor lobbying Chilean Customs, and asked for USG assistance. The TCC alerted relevant DOC experts, including the Department’s Chile desk officer, who called the company directly to obtain additional information. The desk officer determined that the company had improperly filled out the certificate-of-origin for claiming preferential treatment under the U.S.-Chile FTA and provided the company with resources, including a specialist at the U.S. Embassy in Santiago, to assist in filling out the paperwork and getting the shipment released. A Commercial Service officer in Chile then contacted the company’s agent and Chilean Customs, who said that the company would have to pay a steep fine to obtain release of the goods. The Embassy consulted with the team in Washington, including an expert on rules-of-origin issues, and determined that Article 4.16.4 of the FTA states: "A Party shall not subject an importer to penalties where the importer that made an incorrect declaration voluntarily makes a corrected declaration." Chilean Customs reversed its earlier decision to fine the company for incorrectly claiming preference under the FTA and released the shipment. The company stated that the team’s assistance in speaking with Chilean Customs was "absolutely key" in getting the container released.

In another case last year, Kazakhstani Customs interpreted an amendment to the Kazakhstani Customs Code to require importers of U.S. goods to provide a Shipper’s Export Declaration (SED). The SED is a confidential Census Bureau document, and U.S. exporters are prohibited by U.S. law from disclosing it. As a result, some \$70 million worth of U.S. goods were unable to clear Kazakhstan Customs. We were contacted by more than 25 U.S. companies whose shipments were either being held by Kazakhstan Customs or who were reluctant to ship because they had heard of the problem. The U.S. Embassy in Astana, the U.S. State Department, and the Department of Homeland Security’s Bureau of Customs and Border Protection, together with the Department of Commerce, repeatedly met with, and sent letters to, Kazakhstan government counterparts in Washington and Astana to urge resolution of the issue. By the end of November, the Kazakhstan government enacted an amendment to the Kazakhstani Customs Code that deleted the section requiring importers to provide a Shippers Export Declaration in order to clear customs.

Commercial Disputes

Our approach is different when a U.S. company brings to our attention a problem that involves a commercial dispute with a local private-sector company. Our overseas teams of experts operate based on guidance found in both the Commercial Service Operations Manual and the State Department Guidance Cable regarding “Assistance to American Citizens Involved in Commercial, Investment, Trade and Other Business Related Disputes Abroad.” First, our policy is that support for U.S. businesses and investors operating overseas is a top priority for all U.S. trade agencies. We encourage our team to meet with the U.S. company and the foreign company to provide assistance appropriate to the circumstances. We work with the U.S. company to help facilitate resolution of the issue.

Once a case enters the foreign court system, our ability to help the U.S. company is reduced. We can provide a list of local attorneys compiled by the Embassy, share information about the judicial system or possible dispute resolution procedures, and provide information about how to contact host-government officials who can be of assistance.

Of course, in commercial disputes, the U.S. Government cannot provide legal advice or act as an agent of a U.S. business. Our objective is to ensure that U.S. companies’ issues are promptly and fairly resolved. As a general rule the U.S. Government does not intervene in the judicial process of foreign governments, in this instance commercial disputes.

However, our overseas staff can mention the dispute to local officials and the American Chambers of Commerce without commenting on the merits of the case. U.S. business associations will often raise U.S. company problems with local officials, which can have an impact as local officials do not want their region to be seen as hostile to business investment.

Global Nature of Disputes

Companies encounter problems with governments and with their private-sector counterparts in every country around the world, including the United States. The nature of the disputes varies by location. In Mexico, our commercial officers report that the most common type of assistance they give U.S. companies involves payment disputes with local Mexican companies – this is also reportedly the biggest problem that Mexican companies face with each other. In Brazil, our officers report that the most frequent problem that U.S. companies raise with us is their goods being stuck in port because of the complex Brazilian customs and taxation regime. In India, U.S. companies report having the most problems with the regulatory and general bureaucratic system, and Indian companies report the same problem.

In China U.S. companies face, for example, difficulties because of inconsistent regulatory interpretation, as well as lack of transparency in the development, adoption, and execution of certain rules and regulations. Many Chinese authorities are reluctant to offer guidance on certain

requirements. Furthermore, many Chinese laws provide substantial discretion to administrative authorities.

Since China's accession to the World Trade Organization in 2001, IPR, transparency, and other issues have seen marked improvements. However, further improvement is needed in IPR and other areas. The U.S. government is looking to further encourage developments in such areas as the anti-monopoly law that will help improve the business climate for U.S. firms. We use our two primary economic dialogues with China, the U.S.-China Strategic Economic Dialogue and the U.S.-China Joint Commission on Commerce and Trade (JCCT), to address our concerns about China's business and investment environment and to resolve specific concerns.

Being Proactive in the United States

The most important thing we do in addressing any type of business issue is to be proactive. This involves educating and counseling U.S. companies about local business issues and working with foreign governments to effect changes to make their commercial environments more hospitable for all companies. We urge U.S. companies to study export markets in order to have a strong understanding of both the opportunities and the challenges—this due diligence is essential.

There are a number of ways we try to ensure that U.S. companies are aware of potential business issues in foreign markets. First, the trade specialists in our 107 domestic offices are trained to address the kinds of issues U.S. companies face. They conduct local outreach and seminars to the U.S. business community and cover both the opportunities and challenges of entering foreign markets. They also conduct individual counseling sessions with U.S. companies – we estimate that over 100,000 such sessions took place last year. When involved, U.S. Commercial Service trade specialists are able to provide counseling early in the export strategy process to give companies a better understanding of a foreign country's rules and regulations, how to capitalize on them, how to comply with safety and security regulations, and how to jump over exporter hurdles, such as shipping logistics, financing, payments, legalities.

U.S. Commercial Service offices help prepare Country Commercial Guides for specific countries, which is the U.S. Government publication that U.S. companies principally turn to before going overseas. This guide has a section in the first chapter on "Market Challenges," which outlines the problems about which U.S. companies need to be aware. It also includes an Investor Climate Statement, prepared by our colleagues at the State Department.

U.S. companies can easily access a number of resources by calling the Trade Information Center's (TIC) toll free trade help line at 1-800- USATrad(e), to speak to regional experts, or be referred to any of the 107 U.S. Export Assistance Centers nationwide. The TIC also conducts webinars, on such topics as: *How the European Union Chemical Regulation May Affect Your Company* and the *New Automated Export System Requirements*.

We now have three region-specific business information centers (China, the Middle East, and India) to support the efforts of U.S. companies in these regions. Each information center is staffed with regional experts and has a web site linked to *Export.gov* with the latest market information, including sections on problems companies are likely to encounter in those markets.

We are also leveraging partnerships with private sector providers through our Corporate Partnership Program to educate more U.S. companies about doing business overseas. For the past five years, we have hosted seminars throughout the United States educating companies about the challenges and opportunities of doing business in China. For instance, two years ago we conducted a “Doing Business in China” seminar in Ohio which drew more than 1,000 attendees. For several years, we have participated and counseled companies at the “Asia Business Conference” at the University of Southern California Marshall School of Business. Last fall, we did a seven-stop seminar series with PNC Bank called “China Smart Roadshow.” These seminars featured our Senior Commercial Officer based in China and included presentations on risk management and getting paid, how to evaluate Chinese partners, and tactical considerations for IPR protection. In all, the two week series reached more than 900 SMEs.

Our Trade Compliance Center (TCC) regularly provides training to U.S. officials in the field and at headquarters on methods to identify foreign trade barriers and produce results that gain market access for U.S. exporters and investors. Throughout the year, the TCC conducts outreach activities to raise awareness of ITA’s Trade Agreements Compliance Program among U.S. firms and identify firms that have encountered foreign government trade barriers to market access abroad. This outreach includes counseling companies at trade shows, association meetings, and individually to ensure they are aware of the program and their benefits under our trade agreements. In addition, other important outreach activities include:

- The **TCC Website’s** online resources include: an online complaint form for public inquiries and complaints about foreign trade barriers, the texts of over 270 trade agreements between the United States and its trading partners, exporter guides that explain in easy to understand terms the most important agreements, and links to other U.S. Government resources.
- The **Compliance Liaison Program** is an outreach effort engaging the members of trade associations, state industrial development organizations, Congress and other members of our Compliance Liaison Program, and soliciting the assistance from our Commercial Service domestic field offices and overseas posts to proactively identify instances of foreign governments’ potential non-compliance with U.S. trade agreements. Every Member of Congress has identified a liaison to the Department of Commerce for this purpose.

Being Proactive – Internationally

When U.S. companies arrive in a country to do business, they often seek out U.S. Embassy officials, including our Commercial Service staff. The embassy team often provides a briefing on the unique issues the company will face in the market. Last fall, the Commercial Service launched the Transformational Commercial Diplomacy initiative, which shifts some resources from well-developed markets, such as France and Germany, to rapidly growing emerging markets where U.S. companies are more likely to need our assistance such as Brazil, China, and India.

The Department of Commerce coordinates closely with other U.S. government agencies to work with foreign governments to improve their business environments. For example, the JCCT has made significant progress in helping resolve software piracy issues as the Chinese agreed to preload legal operating system software on all computers produced or imported into China. We also have Commercial Dialogues, government-to-government meetings on issues raised by each country's private sector, with Russia, Brazil, and India. The Commercial Dialogue with Brazil helped to improve the express shipment process within Brazil, which has partially addressed the customs problems U.S. companies encounter.

Senior Commerce Department officials often travel to countries where U.S. companies are experiencing problems consistent with a lack of a rule of law. In such countries, we often raise the need to develop a predictable and transparent legal system to our foreign government counterparts in order to create a more inviting business environment and encourage international trade and investment.

The Department of Commerce's Commercial Law Development Program (CLDP), provides technical assistance to foreign governments on developing a transparent and open commercial legal system. The CLDP trains judges and legislatures in these countries on various subjects from how to write regulations to setting up alternative dispute systems. Countries where the CLDP has recently completed training programs include: Algeria, Jordan, and Tunisia.

Conclusion

In conclusion Mr. Chairman, we have a very robust system for helping U.S. companies when they have problems overseas. We are focused on assisting them with current issues and working hard with foreign governments to prevent problems from occurring in the first place. We have positioned both our overseas staff and our policy focus towards addressing the most common problems U.S. businesses face in the markets where we are most needed.

Our goal is to enhance the U.S. companies' international experience and success so that exporting becomes an integral part of their business - ensuring that U.S. exporters are well-versed in the rules, regulations, trade opportunities and business culture of the target countries

and regional markets to take advantage of changing markets and to avoid exporting missteps that may affect their companies' bottom line.