

Hearing on Trade Advisory Committee System, July 21, 2009

Letters submitted for the record follow in this document. Testimony by Panel Members recorded separately.

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1. Testimony By American Association of Exporters and Importers, Statement

Statement of the American Association of Exporters and Importers

Introduction and Overview

AAEI appreciates the opportunity to offer these comments on the Trade Advisory Committee System, which is currently being reviewed by the House Ways and Means Committee – Subcommittee on Trade in the U.S. House of Representatives.

AAEI has been a national voice for the international trade community in the United States since 1921. Our unique role in representing the trade community is driven by our broad base of members, including manufacturers, importers, exporters, wholesalers, retailers and service providers, including brokers, freight forwarders, trade advisors, insurers, security providers, transportation interests and ports. Many of these enterprises are small businesses seeking to export to foreign markets. With promotion of fair and open trade policy and practice at its core, AAEI speaks to international trade, supply chain security, export controls, non-tariff barriers, import safety and customs and border protection issues covering the expanse of legal, technical and policy-driven concerns.

As a trade organization representing those immediately engaged in and directly impacted by developments pertaining to international trade, trade facilitation and supply chain security, we are very familiar with the operational impact of U.S. trade policies and programs. Many AAEI members serve on the Commercial Operations Advisory Committee and the International Trade Advisory Committees to various federal agencies. Therefore, AAEI is deeply interested in

the Trade Advisory Committee System designed to assist U.S. officials concerning implementation of international trade policy.

2. Commercial Operations Advisory Committee

The Commercial Operations Advisory Committee (“COAC”) was established in the 1980’s to assist the U.S. Department of Treasury oversee the U.S. Customs Service. Specifically, Section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 authorized the Secretary of Treasury to establish COAC as follows:

(1) The Secretary of the Treasury shall establish an advisory committee which shall be known as the ‘Advisory Committee on Commercial Operations of the United States Customs Service’ (hereafter in this subsection referred to as the ‘Advisory Committee’).

(2)(A) The Advisory Committee shall consist of 20 members appointed by the Secretary of the Treasury.

(B) In making appointments under subparagraph (A), the Secretary of the Treasury shall ensure that—

(i) the membership of the Advisory Committee is representative of the individuals and firms affected by the commercial operations of the United States Customs Service; and

(ii) a majority of the members of the Advisory Committee do not belong to the same political party.

(3) The Advisory Committee shall—

(A) provide advice to the Secretary of the Treasury on all matters involving the commercial operations of the United States Customs Service; and

(B) submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that shall—

(i) describe the operations of the Advisory Committee during the preceding year, and

(ii) set forth any recommendations of the Advisory Committee regarding the commercial operations of the United States Customs Service.

(4) The Assistant Secretary of the Treasury for Enforcement shall preside over meetings of the Advisory Committee.

19 U.S.C. § 2071. At that time, COAC's focus was on customs procedures which had an impact on the trade community's commercial operations.

Over the last several years, particularly since 2002, the COAC has shifted its focus more to trade security issues to reflect the transfer of the U.S. Customs Service to the U.S. Department of Homeland Security ("DHS"), which now functions as U.S. Customs and Border Protection ("CBP"). COAC's charter was revised in 2004 to reflect its new focus on homeland security issues, particularly maritime cargo. The membership of COAC reflected this change with more representatives with supply chain security expertise, which previously were not involved in import and export regulatory procedures.

In addition to the change in focus, COAC's government chairman was relegated to the Commissioner of CBP instead of senior management of DHS, who did not express interest in attending COAC meetings let alone hearing COAC's views on significant policy issues, such as:

- Customs-Trade Partnership Against Terrorism
- "First Sale" Rule
- Uniform Rules of Origin
- Importer Security Filing ("10+2")

AAEI recommends a number of changes to COAC, which we believe will return COAC to its traditional role in assisting the Departments (both DHS and Treasury) properly provide advice to and report to the Secretaries and the Congress concerning the operations of CBP. Specifically, AAEI recommends the following changes:

- Remove COAC from the Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. 2 §§ 1 – 14. Specifically, we suggest that Congress enact legislation adding a section to 19 U.S.C. § 2071, stating:

Nonapplicability of FACA. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commercial Operations Advisory Committee under this section.

- For COAC to fulfill its statutory obligation to Congress in assisting both Departments, DHS and Treasury, COAC and CBP must collaborate on the development of agendas and issues which are timely and relevant to the international trade community. The statute states that COAC "shall provide advice to the Secretary of Treasury [and DHS] on all matters involving the commercial operations of [CBP]." The statute is expansive in the scope of issues that COAC can advise on and report to Congress with recommendations. Nowhere in the statute does it state that advice and recommendations are limited only to those issues deemed appropriate by CBP. COAC shall make the final determination on all subject matters covered by its meeting agendas.
- COAC members shall choose their own Chairman, who will recommend the establishment of sub-committees, create and manage the agenda and prepare the annual reporting to Congress and the Secretaries.
- COAC should be free to establish subcommittees as needed "on all matters" involving commercial operations of CBP. The membership of such subcommittees should not be limited to members of COAC or FACA appointments as such issues may require either specific expertise not represented within the current membership of COAC, or may require a wider segment of the trade community who should be consulted on such issues before COAC can render advice to CBP and recommendations to Congress.
- In order to avoid conflicts of interest, industry members selected for COAC should not derive any income, directly or indirectly, from CBP. COAC members who are employed with firms who are contractors or consultants to CBP have a direct

conflict of interest with the mission of COAC since the Committee's work often reviews, assesses and critiques the very projects which a member's firm has developed for CBP.

- COAC members should be selected based on well-established criteria which are transparent and published well in advance of the solicitation for applicants. Moreover, COAC members should be chosen through a selection committee comprised of both government and industry representatives to ensure that the membership as a whole is balanced among the broad spectrum of interests of the international trade community. The current system whereby the agency forwards names to Congress for comments or vetting is too opaque, and may not necessarily produce the best mix of COAC members based on professional experience.
- If changes are made to trade advisory committees through legislation, we recommend that any such changes grandfather existing 11th term COAC members to ensure they complete their 2nd year term with the 12th term COAC, if they elect to do so.
- In order to fulfill its statutory obligation to provide timely and relevant recommendations to Congress regarding commercial operations of CBP, COAC must be free to submit comments to Congress on the impact on commercial operations of any existing or pending statutory or regulatory matters.
- To fulfill the spirit of the transfer of functions from the Secretary of Treasury to the Secretary of Homeland Security, COAC meetings must presided over by both the Assistant Secretary of Treasury for Trade and Assistant Secretary for Policy of the U.S. Department of Homeland Security under 6 U.S.C., Section 203, and the Department of Homeland Security Reorganization Plan of November 25, 2002 as modified by a note in Section 542 of Title 6. CBP should not preside over COAC meetings which reviews the agency's performance relating to commercial operations.

3. International Trade Advisory Committees

Because of the importance of product safety, AAEI recommends the establishment of a trade advisory committee for the U.S. Consumer Product Safety Commission ("CPSC"). The CPSC ITAC shall be comprised of representatives from industry, including quality assurance professionals, international trade compliance professionals, certification companies and laboratories, and other commercial stakeholders affected by the laws and regulations of CPSC.

The CPSC ITAC should also be permitted to interact with COAC to provide additional commercial operations expertise where appropriate. Again, we recommend that CPSC ITAC members be chosen through a selection committee comprised of both government and industry representatives to ensure that the membership as a whole is balanced among the broad spectrum of interests of the international trade community with a financial stake in product safety regulations and programs.

The Committee's desire to add more diverse representation to the ITACs is may not produce better results since trade policy is rarely decided at the Tier 3 ITAC level. Rather, the ITACs are designed to include the commercial stakeholders impacted by and responsible for implementing established trade policy.

Stakeholders representing broader segments of the public should be limited to Tier 2 advisory committees rather than be involved at the Tier 3 level ITAC. ITACs generally require technical and function knowledge of commercial operations in order to advise agencies on implementation of the trade policy established by Tier 1 and Tier 2 advisory committees.

The U.S. regulatory regime, like the World Trade Organization framework, regulates trade based on physical products with certain exceptions under U.S. law

(*e.g.*, deemed export rule) and certain U.S. export controls on information technology (*e.g.*, release of information). Only recently has “trade in services” become part of the trading regime, but it does not generally involve the work of Tier 3 ITACs. Other non-commercial interests should be handled by the U.S. Congress and the President in establishing U.S. trade policy. The health and safety impact resulting from global trade cannot be adequately addressed at the Tier 3 ITAC level since it requires a broader political consensus at a higher level of government.

4. Conclusion

In conclusion, AAEI believes that Congress should exercise more oversight over federal agencies’ interaction with Trade Advisory Committees to ensure that the system is functioning the way Congress intended it to. AAEI thanks the House Ways and Means Committee Subcommittee on Trade for holding this timely hearing and considering our comments.

2. Testimony By Michael J. Stanton, Statement

Statement of Michael J. Stanton

The Association of International Automobile Manufacturers (AIAM) appreciates this opportunity to comment on the advisory committee system and ways to increase transparency and participation in the development of U.S. trade policy. For reasons summarized below, we believe the time has come to open the federal advisory committee process to individuals associated with U.S. subsidiaries of international companies, particularly with respect to the automobile industry.

We take this position for three principal reasons:

1. Neither the Federal Advisory Committee Act (FACA) nor the Trade Act of 1974 explicitly or implicitly requires that federal advisory committee members be employees of U.S.-owned corporations.
2. The U.S. auto industry has changed dramatically. Aside from the large and growing level of U.S. automotive production by U.S. subsidiaries of foreign-owned corporations, there may shortly be only two U.S.-owned major motor vehicle manufacturers, with the “new” Chrysler now under the operational control of Fiat SpA, Italy’s largest automaker.[1] We do not believe U.S. government trade negotiators can secure the best possible advice on trade negotiating positions from only two of the eleven (soon to be thirteen with the addition of Kia and VW) U.S. vehicle manufacturers.
3. The confidentiality requirements of the FACA prevent the disclosure of advice sought or given as part of the advisory committee process to those without the requisite security clearance. Accordingly, the issue of corporate ownership is moot.

* * *

AIAM is a trade association representing the interests of the U.S. subsidiaries of international automobile manufacturers, including many of the largest automotive companies in America[2] Collectively, AIAM companies are responsible for billions of dollars annually in cross-border trade, involving all aspects of manufacturing and distribution of passenger cars, light trucks and multipurpose vehicles.

Both individually and as a group, AIAM companies have a substantial interest in trade policy matters and, we believe, much useful information and guidance to offer through the federal advisory committee process. As detailed in these

comments, at the end of 2008, AIAM-member companies accounted for about one-third of all manufacturing plant employment in the U.S. automobile and light truck manufacturing industry^[3]. We are increasingly being recognized as the positive side of the “globalization” coin for many Americans employed in manufacturing. In the automotive sector, U.S. subsidiaries have invested more than \$40 billion in new production and distribution capacity over the last 25 years, creating more than 90,000 high-skill, high-wage jobs across the country.

Despite the substantial and growing role of AIAM companies in the U.S. economy and the contributions such companies could make to the federal international trade policy development process, under current agency practice no one associated with AIAM – or any other U.S. subsidiary – may sit on a federal advisory committee for trade policy matters. While no formal rule has ever been promulgated, the Office of the U.S. Trade Representative (USTR) and the Commerce Department have for many years applied a blanket prohibition on advisory committee membership to individuals employed by U.S. subsidiaries or otherwise representing their interests.

This policy was most recently reaffirmed and restated in April 2006 when the Commerce Department published a *Notice on the Charter Renewal of the Industry Trade Advisory Committees (ITACs); Request for Nominations*.^[4] As stated in the *Notice*, current policy requires that an advisory committee member “must represent a U.S. entity” which is defined as “an organization incorporated in the United States (or if unincorporated, having its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity.” The policy further states that “[a]n entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities.” In addition, a nominee to advisory committee membership who represents an entity or corporation with ten percent or more non-U.S. ownership “must demonstrate at the time of nomination that this ownership interest does not constitute control and will not adversely affect his or her ability to serve as a trade advisor to the United States.” ^[5]

We do not believe this policy is consistent with the Federal Advisory Committee Act (FACA) requirement that membership on advisory committees be “fairly balanced.” Nor do we believe this discriminatory rule can be justified on public policy grounds. In fact, the real question is “can, or even should, the Commerce Department determine the nationality of the stockholders of major international corporations?” Whatever restrictions may have been warranted in the past, U.S. subsidiaries and their American employees unquestionably have a stake and interest in U.S. trade policy matters and important information and guidance to contribute to the policymaking process.

The Subcommittee's hearing offers a timely opportunity to reassess the rules governing U.S. subsidiary participation in the federal advisory committee process and, through more rigorous application of FACA's "fair balance" requirement, better ensure that U.S. policymakers receive "timely, relevant trade policy advice" on a representative basis. The automotive sector provides a particularly good window on the changes taking place in the national and global economy, but the issue raised by the blanket U.S. subsidiary prohibition is much broader. The ultimate question for USTR and the Commerce Department is whether trade policy can or should be driven solely by narrow questions of capital affiliation (i.e., nationality of ownership) or also, as we believe, must take into account the interests and issues of U.S.-based workers and manufacturing. The U.S. subsidiary prohibition puts front and center the question of what is meant, or should be meant when we refer to "American" companies in the context of the emerging global economy.

* * *

U.S. Subsidiary Prohibition Contravenes Statutory "Fair Balance" Requirement

Neither FACA nor the Trade Act of 1974 authorizes the U.S. subsidiary prohibition. To the contrary, they appear to mandate participation where U.S. subsidiaries represent a significant part of the domestic industry.

The Federal Advisory Committee Act

The starting point for analyzing agency authority and responsibilities on matters involving federal advisory committees is the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2. Its provisions apply to all federal advisory committees, including those established by USTR and the Commerce Department to advise on trade policy matters. *See, e.g., Northwest Ecosystem Alliance v. USTR*, C99-1165R at 7 (W.D. Wash. Nov. 9, 1999) (rejecting a blanket prohibition on ISAC participation by non-business interests).

Congress' paramount objective when it passed FACA in 1972 was to reform an out-of-control advisory committee system. The numerous committees in existence at the time had no clearly-defined role or responsibilities and, in the absence of enforceable membership guidelines, too often functioned as closed conduits for special interests. Reform was to be accomplished by making the process more transparent and representative. To this end, Congress reclaimed sole authority to authorize advisory committees and prescribed operational guidelines to ensure that advisory committees have "a clearly defined mission, balanced representation, assurance of autonomy, legislation authorization for funds [and] a time certain for termination." H.R. Rep. 92-1017 at 6 (1972).

The “balanced representation” requirement at the heart of this reform was codified in a provision of FACA mandating that membership on advisory committees be “fairly balanced in terms of point of view represented and the functions to be performed by the advisory committee.” 5 U.S.C. app. 2 § 5(b)(2). Its purpose was not simply fairness, but to prevent “special interests” from capturing the process. As the House Committee on Government Operations explained in accompanying report language,

Particularly important among the guidelines are [1] the requirement . . . that ‘the membership of an advisory committee be fairly balanced in terms of point of view represented and the functions to be performed’ and [2] the requirement . . . that in creating an advisory committee the creating authority should include ‘appropriate provisions to ensure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or any special interests.’

One of the great dangers in the unregulated use of advisory committees is that special interest groups may use their membership on such bodies to promote their private concerns. Testimony received at hearings . . . pointed out the danger of allowing special interest groups to exercise undue influence upon the Government through the dominance of advisory committees which deal with matters in which they have vested interests.

H.R. Rep. 92-1017 at 6 (emphasis added).

After describing a specific instance where outside interests had not been reflected on an advisory committee, the Committee went on to observe that “[t]his lack of balanced representation of different points of view and the heavy representation of parties whose private interests could influence their recommendations would be prohibited by the provisions contained in [FACA].” *Id.* [6]

As the court in the Northwest Ecosystem Alliance case observed, “[t]he ‘fairly balanced’ requirement was designed to ensure that persons or groups directly affected by the work of a particular advisory committee would have some representation on the committee.” C99-1165R at 7.[7] This applies with full force to U.S. subsidiaries, whose interests and perspectives on some trade-related policy matters can differ significantly from other U.S. companies.

Nowhere in FACA is there any suggestion that the “fair balance” requirement does not apply to U.S. subsidiaries and their American workers or that they (or any other discrete interest) can be excluded from the committee process. While federal agencies have wide latitude to weigh individual membership applications, FACA does not permit blanket exclusion of persons associated with a particular interest or point of view.

Trade Act of 1974

Two years after passing FACA, Congress included provisions in the Trade Act of 1974 authorizing creation of advisory committees on trade matters. 19 U.S.C. § 2155. With certain limited exceptions (unrelated to committee membership), these trade committees were to be administered in full compliance with FACA provisions, including the “fair balance” requirement. *Id.* § 2155(f).

Section 135 of the Trade Act directs the President to “seek information and advice from representative elements of the private sector and the non-Federal governmental sector” with respect to a broad range of trade policy matters. 19 U.S.C. § 2155(a)(1). These expressly include “(A) negotiating objectives and bargaining positions . . . ; (B) the operation of any trade agreement once entered into . . . ; and (C) other matters arising in connection with the development, implementation and administration of [U.S. trade policy].” *Id.* A second provision further requires that the President “consult with representative elements of the private sector and non-Federal governmental sector on overall current trade policy of the United States.” *Id.* § 2155(a)(2).

To facilitate this information-gathering function, the 1974 Trade Act required creation of an Advisory Committee for Trade Policy and Negotiations (ACTPN) to provide “overall policy advice” and authorized the President to establish two additional types of committees – individual general policy advisory committees to obtain advice from particular interest groups and “such sectoral or functional advisory committees as may be appropriate.” *Id.* § 2155(b), (c). One set of these committees is now organized as Industry Trade Advisory Committees (ITACs).

[8]

For all three types of advisory committees, the importance of balanced representation was reiterated. For ACTPN, the President was directed to seek information and advice from “representative elements of the private sector.” *Id.* § 2155(a)(1). Balanced representation was similarly required for general policy committees, while the Trade Act mandated that sectoral and functional committees (now the ITACs), “insofar as is practicable, be representative of *all* industry, labor, agriculture and service interests . . . in the sector or functional interests concerned.” *Id.* § 2155(c)(2) (emphasis added).

Further guidance on this point was provided in report language accompanying the House version of the bill, in which the House Ways and Means Committee observed that with multilateral trade negotiations on the horizon “the need for the Government to seek information and advice from the private sector [was] more important than ever before” and that “[t]he *broad range of interests* to be represented on this committee [was] intended to provide U.S. negotiators with a balanced view of what objectives U.S. negotiators should pursue in the

multilateral trade negotiations.” H.R. Rep. No. 93-571 at 38 (1973) (emphasis added).

As with FACA, nothing in the statute itself or accompanying legislative history would appear to suggest or otherwise support excluding “U.S. subsidiary” interests from the advisory committee process.^[9]

Non-Statutory Justifications

Over the years, several “justifications” for the blanket U.S. subsidiary prohibition have been alluded to, informally, but none hold up under scrutiny.

The most common argument made is that the advisory committees established by USTR and the Commerce Department are narrowly focused and do not implicate U.S. subsidiary interests. We contend that this view is wrong on two counts. First, as has been noted, the 1974 Trade Act mandates advisory committee involvement not only on export-related issues but a wide spectrum of matters involving U.S. trade policy. Advisory committees provide agency officials with information and recommendations on matters ranging from trade and investment policy to services, intellectual property rights and import rules, not just exports.

Whether focused on exports or a wider range of trade matters, U.S. subsidiaries can make a valuable contribution to the advisory committee process by, among other things, helping to identify and rank agenda priorities and advising on the implications of particular events or proposals for U.S.-based manufacturing. AIAM members invested in U.S. production facilities for a variety of reasons and can provide unique advice on how U.S. trade policy can be improved to increase the attractiveness of the United States to automotive investors. U.S. subsidiaries also have a unique contribution to make on international trade issues involving environmental technologies, customs clearance, technical standards and other product design issues with trade policy implications.

A central argument made by those opposing ITAC membership for U.S. subsidiaries is that individuals employed by these U.S. companies cannot be trusted with classified information. This is simply not defensible. Everyone who serves on an advisory committee must have a confidential security clearance and commit in writing to non-disclosure conditions. Eliminating the U.S. subsidiary prohibition would in no way affect these requirements. Trade advisory committee members cannot legally disclose advice sought and given as part of the advisory process. This requirement holds regardless of the employer. There is no reason to expect lesser compliance from U.S. citizens associated with U.S. subsidiaries.

In fact, were there evidence to suggest a more serious security concern for committee members with ties to U.S. subsidiaries (and we do not believe there is any), this presumably would also be an issue for advisory committee members employed by “U.S. entities” whose professional responsibilities extend to other entities. This would include, for example, committee members working for trade associations that have U.S. subsidiary as well as “U.S. entity” members (i.e., most Washington-based business groups), as well as members employed by accounting and other consulting firms that provide service (and may have fiduciary responsibilities) to U.S. subsidiary clients. The security of confidential information also presumably would be an issue for U.S.-owned companies with foreign subsidiaries, affiliates or joint ventures.

In a 2002 report on international trade advisory committees, the Government Accountability Office (GAO) described the policy of excluding representatives of U.S. subsidiaries from the committees as a “gap in industry representation on committees.”^[10] GAO reported the Commerce Department’s “rationale for this long-standing policy . . . [as] the sensitivity of the subject matter considered by the committees and possible conflicts that might be experienced by U.S. firms that have foreign owners.”^[11] Yet GAO went on to observe that “[t]hese gaps in industry representation have encouraged negotiators to seek advice outside the advisory committee system, including from foreign-owned firms or trade associations that include such firms.”^[12] It seems clear that FACA’s purposes would be better served if such advice were rendered in the established advisory committee forum, rather than in off-the-record meetings.

Whether intended or otherwise, the practical effect of the blanket prohibition on U.S. subsidiary advisory committee membership in many areas has been to foster the very “danger” FACA was designed to prevent – “that special interest groups may use their membership on such bodies to promote their private concerns.” H.R. Rep. No. 92-1017 at 6.

ITAC 2, the Industry Trade Advisory Committee on Automotive Equipment and Capital Goods, is a case in point. Under current rules, only three automakers (General Motors, Ford, and Chrysler) are currently eligible to participate. While the ITAC 2 charter contemplates a membership of “not more than 50 members,” the committee currently has only 27. Only three are from auto manufacturing, one each from General Motors, Ford, and Chrysler. There is no representation, direct or otherwise, of any of the eight other companies manufacturing automobiles in this country.^[13]

It is difficult to imagine a clearer contravention of the FACA “balanced representation” requirement. Three multinational companies, General Motors, Ford, and Chrysler have been given a monopoly on access – in effect, a

proprietary forum for advancing their private corporate perspectives and agendas.

Beyond locking out the rest of the companies that make up the U.S. automotive industry, information and advice from so limited a source has other policy-distorting implications. Like AIAM members, GM, Ford, and Chrysler are international companies with mixed global interests. Even as international automakers have been expanding in the United States, these “U.S.” multinationals – despite their current difficulties - have been shifting production offshore and taking ownership of or controlling interests in offshore automakers. There certainly is nothing wrong with this as a business strategy, but these companies can no longer claim to be the sole repositories of “domestic” interests. On many issues – for example, rules affecting imports – their strategic interests are as likely to reflect foreign-based manufacturing as they are the interests of their U.S. workforce. In such circumstances, U.S. subsidiaries can more fully represent American workforce and manufacturing base interests.

Globalization has made it much harder for policymakers to discern the national interest in any given matter. In true American fashion, FACA rests on the notion that such interests are best divined through full and open debate – in an advisory committee context, by requiring policymakers to seek out information and advice from affected interests on a broadly representative basis.

U.S. Subsidiaries Are “American” Companies

The U.S. subsidiary prohibition rests on a fundamentally flawed premise – that U.S. subsidiaries are foreign rather than American. As former Labor Secretary Reich, among others, has observed, in today’s global economy “domestic” and “foreign” labels are no longer meaningful.

1. Overall U.S. Subsidiary Contributions

U.S. subsidiaries are American companies in every sense of the word, especially in the contribution they make to the U.S. economy and their local communities. *According to a recent Congressional Research Service study (which is based on the Commerce Department’s own data quantifying U.S. subsidiary contributions to the U.S. economy), [14] by the end of 2005, all U.S. subsidiaries of international corporations:*

- Employed 5.5 million people – about 4% of the U.S. workforce;
- Owned over 30,000 U.S. business establishments and with a direct presence in every state; and
- Maintained forty percent of their employment in the hard hit U.S. manufacturing sector, “more than twice the share of manufacturing employment in the U.S. economy as a whole, with average annual compensation (wages and benefits) per worker of about \$63,000.

In addition, the study said that “foreign-owned establishments, on average, are far outperforming their U.S.-owned counterparts. Although foreign-owned firms account for less than 4% of all U.S. manufacturing establishments, they have 14% more value-added on average and 15% higher value of shipments than other manufacturers.” Further, “...foreign-owned firms paid wages on average that were 14% higher than all U.S. manufacturing firms, had 40% higher productivity per worker, and 50% greater output per worker than the average of comparable U.S.-owned manufacturing plants.”

2. Automotive Sector Contributions

The contribution to the U.S. economy made by U.S. subsidiaries of international motor vehicle corporations in the automotive sector is even more dramatic.

Changing Nature of the U.S. Auto Industry. At the time the ISAC process was formally established in 1974, there were no automobiles and light trucks produced in the United States by U.S. subsidiaries of international companies. According to *Automotive News* data, in 2008, AIAM member companies produced 3.1 million vehicles or 36% of all U.S. light duty vehicle production. All international companies manufacturing in the United States produced 3.5 million vehicles or 40% of all U.S. production. These percentages have grown dramatically this year with all international companies producing 51% of all U.S. production and AIAM members producing 48%. These numbers will grow even larger when the Fiat acquisition of Chrysler is completed and the new Kia and Volkswagen plants begin production.

According to a 2009 AIAM Member Economic Impact Survey, in 2008 AIAM members:

- Employed 90,100 Americans
- Supported a total payroll of \$6.62 billion
- Purchased \$65.59 billion from U.S. suppliers
- Purchased \$54.5 billion in U.S. parts and materials from U.S. suppliers; and
- Invested \$41 billion in 325 U.S. facilities, including 109 high value U.S. manufacturing and R&D facilities, 15 vehicle manufacturing facilities and 54 component manufacturing plants. International vehicle manufacturing plants are the only such plants located in California, Mississippi, Alabama, and South Carolina.

Innovation and Competitiveness. Substantial as these figures are, the overall U.S. subsidiary contribution in the auto sector has been even greater. U.S. subsidiaries consistently earn the industry’s top marks for manufacturing efficiency, setting a standard that has helped to make Detroit-based production better and more efficient. Advanced technologies developed by U.S. subsidiaries at their U.S.-based research and design facilities have resulted in greater fuel efficiency, improved safety, and better overall vehicle performance. AIAM

members are the leaders in putting the most advanced and fuel efficient vehicles on America's roads.

AIAM appreciates the opportunity to comment on this important issue. We believe the time has come to open the advisory committee process to all affected U.S. industry and look forward to working with you to this end.

[1] Although Chrysler is not yet "owned" by Fiat, it is effectively controlled by Fiat management and thus raises the question of whether it is a foreign-owned corporation in the spirit of the Commerce Department's rules.

[2] AIAM members include American Honda Motor Co. Inc., American Suzuki Motor Corporation., Aston Martin Lagonda of North America, Inc., Ferrari North America, Inc., Hyundai Motor America, Isuzu Motors America, LLP, Inc., Kia Motors America, Maserati North America, Inc., Mitsubishi Motors North America, Inc., Nissan North America, Inc., Peugeot Motors of America, Inc., Subaru of America, Inc., and Toyota Motor North America, Inc. The Association also represents original equipment suppliers, other automotive-related trade associations, and motor vehicle manufacturers not currently engaged in the sale of motor vehicles in the United States.

[3] [AIAM 2009 Member Economic Impact Survey](#) and the Bureau of Labor Statistics.

[4] U.S. Dep't of Commerce, Internat'l Trade Admin., *Notice of Renewal of the Charters and Request for Nominations*, 71 Fed. Reg. 18720 (Apr. 12, 2006).

[5] *Id.* at 18721. These criteria are also published at the International Trade Administration's ITAC website at http://www.ita.doc.gov/itac/become_an_advisor/index.asp. This policy was relied upon in the past to reject on eligibility grounds an application for membership on ISACs (the acronym for an element of the pre-2003 trade advisory committee structure that was replaced by ITACs) by then-AIAM President Philip Hutchison. We also understand that it was applied to applicants associated with Volkswagen of America and to Chrysler when it was affiliated with DaimlerBenz.

[6] The companion Senate report likewise notes that FACA would "require that membership of the advisory committee shall be representative of those who have a direct interest in the purpose of such committee." S. Rep. No. 92-1098 at 9 (1972).

[7] In a subsequent case, the Northwest Ecosystem Alliance court enforced a Settlement Agreement between the USTR and a coalition of environmental groups that had filed a lawsuit challenging the lack of a health or environmental representative on a particular ISAC. The Agreement obligated the USTR to appoint a “properly qualified environmental representative” to the ISAC. See Washington Toxics Coalition v. USTR, 2003 U.S. Dist. Lexis 25869 (W.D. Wash. Jan. 15, 2003). See also Public Citizen v. National Advisory Committee on Microbiology Criteria for Foods, 886 F.2d 419, 433 (D.C. Cir. 1989) (concurring opinion, Edwards J.), noting that a primary purpose of the “fair balance” requirement is “to constrain executive discretion and to establish a measurable standard against which to judge executive action.”

[8] A reorganization in 2003 resulted in 16 new Industry Trade Advisory Committees (ITACs) that replaced the previous structure of “sectoral or functional advisory committees.” See the joint Department of Commerce and USTR press release, U.S. Department of Commerce and the U.S. Trade Representatives Announce New Industry Trade Advisory Committee Structure,” (Nov. 25, 2003) available at http://www.commerce.gov/opa/press/Secretary_Evans/2003_Releases/November/25_evan_s_itac_release.htm.

[9] Nor can such authority be found elsewhere. The 1994 Executive Order establishing a trade and environment policy committee, for example, states only with respect to membership that “[t]he Committee should be broadly representative of the key sectors and groups of the economy with an interest in trade and environmental policy issues.” Exec. Ord. No. 12905 (Mar. 25, 1994).

[10] U.S. Gov’t Accountability Office, *International Trade: Advisory Committee System Should Be Updated to Better Serve U.S. Policy Needs*, GAO-02-876, at 34 (Sept. 2002).

[11] *Id.* at 35.

[12] *Id.*

[13] The following companies currently operate vehicle manufacturing facilities in the United States: BMW, Honda, Hyundai, Mercedes, Mitsubishi, Nissan, Subaru, and Toyota. In addition, Mazda and Ford have a joint-venture operation and additional vehicle plants are under construction by Kia and Volkswagen.

[14] The Congressional Research Service, “Foreign Direct Investment in the United States: An Economic Analysis”, August 15, 2008.

3. Testimony By Coalition for a Prosperous America, Letter

Coalition for a Prosperous America's Letter

Thank you Chairman Levin, and members of the House Subcommittee on Trade, for allowing the Coalition for a Prosperous America (CPA) to submit this written testimony for the record. CPA works for trade policy reform that benefits U.S. farmers, ranchers, workers and manufacturers. We are a unique coalition of agriculture, manufacturing and organized labor representing the interests of over 2.6 million people through our association and company members.

We submit this testimony to encourage the ITAC inclusion of more domestic producers, i.e. those who produce primarily for the domestic market and are sensitive to unfair imports through foreign government mercantilism.

America's trade policy has been too focused upon opening export markets and innovation without sufficient consideration of either reciprocity, or trading partner protectionism and mercantilism. The past "open-export-markets" and "innovate-our-way-to-prosperity" approaches to trade have proven insufficient and often harmful. We do not oppose those approaches, but oppose relying upon them exclusively.

Our massive trade deficit subtracts directly from gross domestic product. The deficit is disruptive, provides massive economic harm, and handicaps our ability to recover from a recession. Jobs, investment, companies and agricultural production have moved offshore as a result. Fixing America's economy requires a changed trade policy. More balanced membership in, and input from, the Trade Advisory Committee System is necessary to help the U.S. Trade Representative receive better input and advice than in the past.

The Role of the ITACs

The USTR website states specifically how ITACs are used as resources.

U.S. Government policy makers rely on our trade advisors to identify barriers and to provide advice on key objectives and bargaining positions for multilateral, bilateral, and regional trade negotiations, as well as other trade-related policy matters. As a result of these efforts, the United States is able to display a united front when it negotiates trade agreements with other nations. The United States' negotiating position is strengthened because its objectives are developed with bipartisan, private-sector input throughout the negotiations.

... The sixteen ITACs were created to reflect the manufacturing and services sectors of the U.S. economy, as well as issue-oriented matters that cut across all sectors. ...[1]

This is a worthy use of the ITACs. However, the membership of the ITACs, with the exceptions of Textiles and Steel ITACs, has been skewed towards offshoring interests. The lack of balance and diversity has harmed trade policy efforts.

The ITAC Problem – Insufficient Domestic Producer Representation

The sixteen Trade Advisory Committees largely, though not exclusively, represent multinationals. Insufficiently represented are companies producing primarily for the domestic market. The advice currently given to USTR from the ITACs tends to promote offshoring, ease of importation and selective market access.

Exports and innovation have been the mantra of the last two administrations. Those are worthy, but insufficient, goals that fail to respond to current problems. Import volume resulting from unanswered foreign interference in our market and in world markets has given rise to crippling deficits and offshoring. Foreign reciprocity has been absent. National security and food safety have been ignored or criticized as “protectionist.” The ITACs thus fail to represent the diversity of the economy, but rather narrow special interests.

The ITAC Solution: More Domestic Producer Representation

CPA requests that domestic producers be given increased representation in the ITACs to provide balance and additional insight on the modern trade problems. By “domestic producers,” we specifically mean those that produce primarily for the domestic U.S. market.

Because the current ITAC representation is skewed towards multinational corporations, a disproportionate amount of time and effort is spent opening relatively small markets which are of keen interest to a few, and not enough time opening larger markets that would be of interest to a larger set of potential exporters.

Unfair import competition/foreign mercantilism is another topic that has been neglected. Some ITACs and USTR have given too little attention to trade strategies ensuring that competitive American producers are not placed at a crippling disadvantage by mercantilist foreign government policies. Many trading partners misalign their currencies to enable massive sales to the U.S.

Virtually all trading partners rebate value added taxes (VAT) when their companies export to us, a massive global export subsidy. China, for example,

adjusts their VAT rebates monthly depending upon market conditions to support a trade strategy that is not based upon their domestic tax policy. Massive and fundamentally trade distorting foreign subsidies which result in artificially cheap imports at the same time as those same countries place our exporters at a disadvantage in all world markets. State owned government enterprises in Asia and elsewhere are ignored as substantial sources of unfair and subsidized international competition.

The multinationals represented within most ITACs have no interest in curtailing these trade distorting policies. Due to their offshoring, many are interested in continuing those foreign policies and programs for their own benefit, which conflicts with the interests of U.S. workers, farmers and manufacturers.

Additionally, the unbalanced ITACs tend to offer advice to limit the effect of U.S. trade laws, rather than strengthen the effect. U.S. trade laws are a vital tool to prevent foreign government cheating, but are not used.

Furthermore, the lack of balance results in too much focus upon trade facilitation and not enough action on product safety; too much discussion of future trade agreements in tiny markets and not enough enforcement of the agreements we have; and too much discussion on opening new markets and not enough on reciprocal and real market access.

Domestic producers are fundamentally reliant on the good performance of the U.S. economy. Multinational companies spread their risk across the globe and are thus not reliant on the U.S. economy.

Conclusion

A country cannot prosper with a persistent trade deficit. The U.S. cannot recover from the recession without trade balance improvement. More domestic producer input into trade policy is necessary, via the ITACs, to bring new insights into problems long ignored.

We hope your Subcommittee shows support for more domestic producer balance on the ITACs as you consider how to make the Trade Advisory Committee System work better. This diversity will help address the specific shortcomings that persist in U.S. trade policy.

[1] <http://www.ustr.gov/about-us/advisory-committees/industry-trade-advisory-committees-itac>

4. Testimony By V.M. (Jim) DeLisi, Letter

V.M. (Jim) DeLisi's Letter

Dear Chairman Levin & Ranking Member Brady:

I am the President of Fanwood Chemical, Inc., a small chemical sales, marketing and consulting company located in Fanwood, NJ. I have personally been involved in the Advisory Committee process for more than 20 years as a member of ITAC 3 the Industry Trade Advisory Committee for Chemicals, Pharmaceuticals, Health/Science Products and Services, as well as its predecessor ISAC 3, the Industry Sector Advisory Committee for Chemicals and Allied Products. I currently serve as the Chairman of ITAC 3, and am proud to be the first small company Chair of this group in its 35-year history. I also have attended WTO Ministerial Meetings as an Advisor in Seattle, Cancun, and Hong Kong. I can personally attest to how important the existing system is to creating jobs and investment in the USA. Records would show that our Committee has met regularly for 35 years. We are also very proud of the fact that members of ITAC 3 always represent the largest contingent of any sector at the various WTO Ministerials that have occurred in this time period, including four of our members who accompanied you, Mr. Chairman, to Doha. Our sector accounts for approximately \$500 billion in trade during 2008.

First, a point of clarification, I am submitting comments as an individual, not as a representative of ITAC 3, the Department of Commerce (DOC) or the Office of the United States Trade Representative (USTR).

Everyone that I've ever met in the Advisory process believes as I do that every interested citizen of the US deserves to have input into US trade policy. We are very fortunate to have an enormously talented group of individuals, both career and appointed, in both the Office of the USTR and the Department of Commerce, dedicated to expanded trade in goods and services. It has been shown that this is the way towards prosperity. Perhaps the only place where we differ with many in the NGO community is that we also believe that USTR and DOC officials are capable of gathering input from a variety of sources and then distilling from this input the proper trade policy for our nation. Such advice does not need to be contained in a single document, nor does it need to come from a single committee. In fact, we strongly advocate that the best advice is gleaned from committees that can function in a clear and open manner with the ability to reach consensus. This can only be accomplished when there is mutual trust among committee participants. The necessary level of trust is very difficult to achieve if all views are required to be heard and discussed in the same forum.

The existing ITAC system has served the US very well, being especially beneficial to small business. Large companies will always be able to get the ear of government officials. This is a natural outgrowth of their importance to our overall economic well-being. However, the ITAC process allows small companies, such as mine, to also have input into the decision-making process.

As you know, the Advisory System administered by USTR and DOC was specifically created to ensure that our negotiators had as much knowledge of what's happening in the real world sectors of industry as possible so that they could best represent our real needs, not our perceived needs.

At its core are a group of highly motivated industry experts that must undergo a rigorous security clearance. This allows the USG to have confidence that negotiating positions can be discussed without fear of leaks. In fact, during my 20-year tenor only a couple individuals have been removed from the system for breaching this trust. We all take this responsibility very seriously!

I truly believe that the Advisory System has played an important role, not in setting US trade policy, but in helping mold the policy, once it has been set by our political leaders, into a form that assures us that the policy goals, once achieved, will truly be beneficial for our economy as a whole.

As a "Tier 3" committee, we are charged to advise the USTR and DOC on highly technical issues impacting our industry, such as rules of origin, tariffs, and non-tariff barriers to improved global market access for US goods and services.

We have had a great deal of experience with environmental NGO's on ITAC 3 and ISAC 3. Frankly, this experience shows that we "bore them to death" discussing in detail the technical aspects of trade and they rarely show up. When we occasionally do discuss an issue of interest, NGO participation in an ITAC's activities can be highly disruptive and counterproductive. Moreover, most of their expressed concerns have not been sectoral in nature, but more cross cutting (global warming, investment, IPR, labor, environmental, etc.), and therefore do not belong in the "sectoral setting".

ISAC 3 learned first hand what could happen when the Advisory System is not allowed to function. We were shut down by court decree for about 18 months specifically during the time that both the Singapore and Chile Free Trade Agreements were under negotiation. The case was settled just in time for ISAC 3 to meet our statutory deadline to present to Congress our report on these two agreements. While we supported both deals in principle, some of the details that are important to our sector, specifically regarding rules of origin, were not properly reflected in the agreements. This would not have occurred had ISAC 3 been allowed to meet during the period that these agreements were being drafted.

I'd like to address two pieces of legislation that are currently in this Congress, HR 1320 and HR 2293.

A few ITAC members have carefully reviewed both of these bills after consultation with your staffs.

We enthusiastically support HR 2293 which creates a Public Health Advisory committee at the "Tier 2" level at USTR. One of the reasons we support this legislation is that it agrees with our contention that USTR is capable of receiving advice from a multitude of sources in different venues. It specifically bans the inclusion of representatives of "commercial interests" on the new committee being proposed.

We could also support HR 1320, except for Section 11 which radically alters the existing practices for disclosing information. All of our members have to undergo a government security clearance prior to joining the committee, which includes the signing of a confidentiality agreement. This is then re-enforced with routine ethics briefings. Therefore, our meetings can be closed to the public, allowing representatives from DOC, USTR and other agencies to discuss negotiating positions and tactics. Section 11 of HR 1320 requires that a transcript, audio or video recording of each meeting be posted on a public website within 30 days of a meeting. This requirement will kill the system since neither USTR, nor DOC would be able to discuss anything of substance in confidence with ITAC-3, as well as every other Advisory Committee, including the Health Care NGO Committee to be established by HR 1320, if they knew it would be made public within 30 days.

I recently had an interesting experience whereby I reviewed my notes of ISAC 3 meetings from the mid 90's. Some of the information in these notes would still be considered trade sensitive today. This is especially true for negotiations that drag on for years, such as has been the case with the Doha Round, but also in cases where negotiations are suspended for several years such as the Free Trade Area of the Americas (FTAA) and the Free Trade negotiations that were begun with the South Africa Customs Union.

If the provisions of Section 11 were removed, we would then also be able to enthusiastically support the passage of HR 1320.

In conclusion, the existing system works well. Mend it – don't end it – by adding appropriately targeted committees to the existing system. Frankly, it is likely that many of the agencies involved already have sufficient authority to make many of these changes themselves, so all that may be needed is a slight "nudge" from Congress.

Thank you for taking the time to review this important subject.

Respectfully submitted,
V.M. (Jim) DeLisi, President
Fanwood Chemical, Inc.

5. Testimony By Humane Society International, Statement

Statement of Humane Society International

On behalf of Humane Society International (HSI), we hereby submit the following written comments for the hearing record in connection with the July 21, 2009 Hearing on the Trade Advisory Committee System before the Trade Subcommittee of the U.S. House of Representative's Committee on Ways and Means. Our organization appreciates the opportunity to submit our views and share our experiences on this topic.

HSI is the international arm of The Humane Society of the United States (HSUS). Together, HSUS and HSI represent one of the largest animal protection organizations in the world with a constituency of over 11 million people and a significant global presence. HSI actively participates in discussions of international trade policy at the World Trade Organization (WTO) addressing such issues as equitable development, humane and sustainable agriculture, environmental conservation, and wildlife and habitat protection. HSI also implements a number of trade capacity building and technical assistance programs in developing WTO Member countries to support sustainable economic development, including humane agricultural practices and habitat and wildlife protection policies.

HSI is also a long-standing Member of the Trade and Environment Policy Advisory Committee (TEPAC). HSI has been a Member of TEPAC since 1998, and is one of the most active participants on the committee, attending meetings, providing comments, and participating in TEPAC subcommittees. Over the years, HSI has found membership on TEPAC to be a valuable way of assisting the Office of the United States Trade Representative (USTR) and the United States Environmental Protection Agency (EPA) with formulation and implementation of trade policies that impact environmental and animal protection at home and abroad. As with any system, there are positive aspects and areas for improvement. This is explained in further detail below.

Overall, in HSI's experience, [1] USTR has been transparent and collaborative on trade and environment issues. Although TEPAC Members only meet several times a year, there are regular liaisons meetings and conference calls, with the opportunity for Members and/or liaisons to raise questions or concerns on trade and environment issues, even if they are not on the agenda. During certain meetings, such as the World Trade Organization Doha Round negotiations, USTR set up times to discuss developments with TEPAC while U.S. negotiators were in Geneva so as to provide real-time updates. USTR also invites TEPAC Members/liaisons to assist U.S. trading partners with establishment of their own

advisory committees, which allows TEPAC Members to encourage strong levels of public participation outside of the U.S.

One example of HSI's experience in particular involves the U.S.-Peru Trade Promotion Agreement (TPA). HSI has been actively working with USTR through TEPAC and its individual capacity on negotiation and implementation of the U.S.-Peru TPA for the last several years. USTR has regularly updated TEPAC about developments in Peru, and has held numerous meetings to gather input that have included TEPAC plus additional interested civil society stakeholders, Congressional staff, and inter-agency representatives. USTR has also invited TEPAC (and additional groups) to Peru for civil society outreach meetings. HSI recently traveled to Lima for one such meeting and was grateful for the opportunity to talk about issues associated with implementation of the trade agreement, including public participation, with Peruvian government officials and non-government organization (NGOs). HSI looks forward to continuing this constructive relationship.

While as a general matter, we have a voice on trade and environment issues through TEPAC, as well as our individual role as HSI, we believe there are ways the trade advisory system can be strengthened. Areas for improvement that complement culture of transparency embraced by Obama Administration include:

- First, one of our main concerns serving on TEPAC over the years involves insufficient time to provide comments on negotiating texts and other issues. It is important to our organization to play a proactive role to the extent possible in influencing trade policy. When negotiating texts (or other issues that arise) are presented to advisors with short turnaround time for comments, the value of our role as advisors is diminished. We recognize that negotiations can be fluid, and developments can arise in short timeframes that do not always allow for robust consultation with advisors. However, we believe institution of a mandatory comment timeframe for advisors would be helpful in this regard. We would be glad to discuss this further with TEPAC and USTR.
- Second, in a similar regard, HSI believes that the 30 day timeframe for TEPAC Members to thoroughly review, analyze and provide opinions of Free Trade Agreements is insufficient. HSI believes Congress should increase this review period to at least 45 days.
- Third, we support creation of a formal policy that would allow for the exchange of information between advisory committees on issues of mutual interest.

HSI looks forward to continuing to work with USTR and EPA through the advisory system, and to continuously finding ways to strengthen the system.

[1] These comments solely reflect the views of HSI, not TEPAC as a whole.

6.6 6. Testimony By Maine Citizens' Trade Policy Commission, New Hampshire Citizens' Trade Policy Commission, and Vermont Commission on International Trade and State Sovereignty, Statement

Statement of Maine Citizens' Trade Policy Commission, New Hampshire Citizens' Trade Policy Commission, and Vermont Commission on International Trade and State Sovereignty

Thank you for the opportunity to submit testimony to the Subcommittee on Trade on how to increase transparency and public participation in the development of U.S trade policy. The trade policy oversight commissions of Maine, New Hampshire, and Vermont have been working cooperatively for several years to communicate shared concerns about federal-state consultation, transparency, and the federalism implications to the U.S. Trade Representative, the U.S. Secretary of Commerce, and our congressional delegations.

Through annual regional meetings and frequent conference calls, the trade policy commissions and other interested parties from neighboring states have discussed how to more effectively communicate issues and concerns to the United States Trade Representative (USTR), implications of new trade developments for states, and principles necessary for ensuring that essential trade promotion activities reflect state priorities.

We all agree that states have a common interest in improved transparency and in a more accessible and vigorous federal-state consultation mechanism with USTR. Increasing information available will allow states to better assess the impact of trade agreements on state export promotion *and* state regulation. Creating an improved process for communication of state issues and concerns will provide both states and USTR with the opportunity to share information to assist USTR in creating new vibrant trade relationships and create opportunities for US businesses.

We look forward to building a more collaborative relationship between the federal government and the states on trade to preserve our federal system and reach out for new trade relationships around the world

7. Testimony By Maine Citizen Trade Policy Commission, Statement

Statement of the Maine Citizen Trade Policy Commission

We, the members of the Maine Citizen Trade Policy Commission, appreciate this opportunity to submit our comments regarding the system of trade advisory committees and how to increase transparency and public participation in the development of U.S. trade policy. We believe in the power of trade as a tool for promoting economic growth and enhancing relationships between the United States and its trading partners.

The Citizen Trade Policy Commission was established by the Maine Legislature in 2004 to monitor the impact of international trade policy on our state. We have members representing the House of Representatives, the State Senate, the Maine International Trade Center, various state agencies, and members affiliated with citizen constituencies including small businesses, manufacturers, labor, environmental organizations, and small farmers.

States and local governments are important partners with private business in the design and implementation of our nation's economic development strategies. States and cities have traditionally acted as the 'laboratories of democracy' where different economic policies can be pioneered. Because trade is a critical part of any successful economic development strategy, and because different states, cities and towns have needs related to trade and trade policy that are as different from one another as are the mix of products and services that we export, we seek to add our voices and expertise to this policy arena.

Since the conclusion of NAFTA and the WTO Uruguay Round, states have been allowed to play only a limited role in the policy-making process. The United States Trade Representative (USTR) has expected our support in all matters pertaining to trade but too often has been unwilling to engage in dialogue with state actors on critical issues of trade and investment. With your assistance, we intend to build a more collaborative relationship between the federal government and the states on trade to preserve our federal system and reach out for new trade relationships around the world.

In meetings convened with the support of national associations such as the National Governors Association, the National Association of Attorneys General, and the National Conference of State Legislatures, officials from the different branches of state and local governments have been meeting in order to articulate a set of approaches that could assist in the development of a better federal-state consultative process on trade. As a result of these discussions, in which Maine has played an essential part, we request your consideration of the following:

The establishment of a **Federal-State International Trade Policy Commission**, and/or the creation of a **Center on Trade & Federalism**, supported by both the federal government and the states, with adequate personnel and resources to ensure that the major provisions of trade agreements and disputes that impact on states can be analyzed, and their findings communicated to and discussed with key state actors on trade.

Changes in the structure and role of USTR trade advisory committees. All state and local government input has been limited to a single committee, the InterGovernmental Policy Advisory Committee (IGPAC); the membership of that committee was determined exclusively by USTR and not by the states themselves. IGPAC was designated few resources and a time line for input that resulted in no meaningful consultation for states. More than half of all states lack any representation on IGPAC.

We look forward to discussing with you opportunities for building a collaborative approach to trade that will strengthen the system of federalism that was part of the genius of our nation's founders.

8. Testimony By Susan Kohn Ross, Letter

Susan Kohn Ross' Letter

Dear Mr. Chairman,

This submission is made on behalf of Mitchell Silberberg & Knupp LLP (MS&K), a 100+ year old full service business law firm headquartered in Los Angeles, with offices in New York and Washington, D.C. MS&K's Homeland Security Regulatory Practice features extensive expertise with security, immigration and international trade issues. In addition to our International Trade, Corporate & Business Transactions and Immigration Practices, MS&K also practices in other areas of law including Labor & Employment, Real Estate, Tax and Litigation, as well as Intellectual Property, Entertainment & New Media and Bankruptcy & Reorganization. As such, our attorneys have broad experience and a wealth of knowledge about the issues companies must deal with daily in seeking to be compliant, good corporate citizens while engaging in the movement of legitimate goods and people across our borders.

In response to the Committee's invitation for comments about the current trade advisory committee structure, we take the liberty of making the following comments and recommendations. There is no question that providing a structure whereby the private sector is empowered to give organized input to Congress and government officials, especially those negotiating on behalf of American businesses, is an invaluable resource for all sides. At the same time, we think the process can be further enhanced to the benefit of all parties.

Our comments will be limited to the Tier Three: Technical and Sectoral Committees. The current structure for the United States Trade Representative's Tier Three advisory committees is division by industry. There is little doubt this is the proper structure to rely on in many instances. For example, the challenges faced in gaining market access while broadly similar across industries, are generally distinguishable for different industries. However, the issues now facing the American trading community have become less industry functional. They are significantly more broad-based. Put another way, concerns such as product and food safety, security, government procurement, export licensing and anti-bribery have become much more complex and so, we conclude they are best addressed across industry sectors.

A recent example in the legislative context is the Food Safety Enhancement Act of 2009 (the Act). Well before Congress took its recent vote, the Produce Marketing Association joined the United Fresh Produce Association to partner with their

affiliate the Canadian Produce Marketing Association and develop the trend setting Produce Traceability Initiative (PTI). PTI relies on broad general standards which, when implemented, greatly assist companies to deal with traceability for a variety of reasons, including damage, loss, outbreak and recall. Those broad principles were blended into the Act when it was presented to the House for the recent floor vote. Similarly, the toy industry (among others) has worked actively with the Consumer Product Safety Commission to quickly and fully implement the Consumer Product Safety Improvement Act. The toy lead safety standard, ASTM F963-07, is now being reviewed to determine whether it needs to be further enhanced following its recent improvement.

In both cases, industry was at the forefront in recognizing the need to enhance consumer confidence, and protect brands, products and company reputations, and so took prompt and meaningful action. This enabled the U.S. to take a leadership role in enacting and implementing standards on crucial questions of international trade. It is timely to institutionalize the key role of the private sector through recognition of formal issue-focused advisory committees. Moreover, in an increasingly globalized economy, chartering such committees will help to reduce the risk of unilateral actions that may be disruptive of international trade, as we have recently seen with the REACH standards enacted in the European Union for chemical and similar products with the registration and labeling requirements. Instead, industry leaders should be encouraged to collaborate to create those cross-industry standards which can then be adopted by countries and companies as are best suited to their local needs.

In seeking to arrive at any broad standards to propose for international adoption, we contend the model of the Investment Working Group is more likely to succeed than the current industry specific committees. As such, we urge the Committee to consider changing the current advisory committee structure to include issue focused committees which address product safety (including food safety), security and anti-bribery/corporate governance.

We recognize that some of the consolidation work could be and currently is performed at the Committee of Chairs. However, from experience, it appears to us the structure should invite as much input as possible so that by the time a proposal reaches the recommended for approval stage, it is as complete as possible. Therefore, the cross-industry structure seems preferable. As you know, H.R. 2293 is currently pending and could be a likely vehicle to accomplish such a goal. H.R. 2293, of course, addresses the creation of a Public Health Advisory Committee on Trade. We propose it be amended it include the creation of one or more of the issue specific committees we have proposed.

We look forward to being of further assistance to the Committee and so are prepared to answer any questions or provide further clarification or additional information regarding these recommendations in person or through other means at the convenience of the Members and staff. In the interim, we remain,

Very truly yours,

Susan Kohn Ross
International Trade Counsel
for
Mitchell Silberberg & Knupp LLP

SKR/vlp

9. Testimony By Raymond C. Offenheiser, Statement

Statement of Raymond C. Offenheiser

Oxfam believes that trade can be an engine for development and poverty reduction as long as the rules of trade work to benefit poor people and developing countries. Well-managed trade has the potential to lift millions of people out of poverty. To achieve such a goal, trade agreements, which set the rules for ongoing trade relations, need to work to improve livelihoods and reduce poverty in developing countries. To that end, it is important that the US take into account economic disparities with our trading partners in the formulation and implementation of trade policy.

We have one fundamental message: sustainable economic development must be a core objective of US trade policy. That has not been the case in practice. It is vital that this change. We will discuss here why development should be at the core of US trade policy, and how Congress and the administration can work more effectively toward that end.

In particular, we recommend establishment of a separate Tier 2 trade advisory committee on development and appointment of development experts to the existing Tier 1 and relevant Tier 3 committees. Furthermore, we support H.R. 2293, introduced by Mr. Van Hollen and Mr. Doggett, which would similarly establish a public health advisory committee and public health representation on existing advisory committees. And we suggest ways to improve the effectiveness of the process of consultation on US trade policy so as to improve accountability in outcomes.

Why development matters

Poverty, disease and lack of economic opportunity in developing countries are a human tragedy that is now being magnified by the global economic crisis. Yet these conditions also have implications for the long-term security and prosperity of the United States. In fact, the Director of National Intelligence testified earlier this year that the global economic crisis is now the top threat to our national security. However, our trade policy has often worked at cross purposes with other policies to address these conditions.

The global economy is more interconnected than ever, and the economic welfare of US citizens is inextricably linked with the well-being of people across the globe. In President Obama's own words, "the world depends on us to have a strong economy, just as our economy depends on the strength of the world's." In order to expand markets abroad for US goods and services there must be healthy

economies and growing middle classes, particularly in developing countries where the majority of the world's population lives.

If trade is to be an engine for growth and poverty reduction in the developing world as well as an avenue for our own export growth, US trade policy would do best to take into account existing disparities in development with our trading partners. It should be one of our own core objectives to ensure developing country needs and interests are addressed in the formulation and implementation of US trade policy. With greater flexibility to foster the development of their industries, poor countries can build up their middle class and provide new consumers for our products. In this way, US trade policy can facilitate economic recovery and promote more just and equitable economic development worldwide.

It's generally accepted that more open trade creates winners and losers, both at home and in our trading partners. The distribution of the benefits from trade can be quite skewed demographically and geographically within a country. To address the problems of those who stand to lose, governments need policies that enable some form of support or compensation to help losers re-adjust and to take advantage of new opportunities from trade. Here in the US, new trade adjustment assistance legislation passed this year is key in this regard.

But in developing countries with high levels of poverty and inequality, benefits from more open trade tend to be very concentrated among those who already have economic and social advantages. It is therefore essential that developing countries maintain adequate policy space in trade agreements to foster their domestic agriculture and manufacturing industries in ways that can reduce poverty and inequality and strengthen their middle class. Furthermore, the timing and pace of market openings is critically important and should be matched to specific conditions in each country. Reducing rather than exacerbating economic and social exclusion in developing countries is vital from the perspective of foreign policy and national security; it should also be a priority for trade policy. From a development perspective, fair trade does not mean equal treatment for all, but rather greater advantages for those left behind in order to help them get a leg up the development ladder.

Assessment of US trade policy looks different when using as a lens the promotion of sustainable economic development rather than just the promotion of US exports. The need for a development lens is warranted for moral reasons, as well as for the purposes of our own longer-term economic prosperity and national security. US foreign policy and development policy acknowledge this reality. More effective coordination and coherence between our trade and aid policies are essential.

Trade policy should be an integrated part of a national strategy for global development

US efforts to promote sustainable economic growth and poverty reduction abroad often face a key obstacle - our own US government. The way our government is organized, both in the Executive Branch and on Capitol Hill, means that trade policy and development policy are segregated. Coordinating the two effectively can be exceptionally difficult.

In practice, this divide means we often shoot ourselves in the foot. For example:

- We collect more in tariffs from MCC countries than we give them in assistance;
- Bangladesh and Cambodia are two of the poorest countries in the world, yet we collect about six times as much in tariffs than we give them in foreign assistance;
- Indonesia is the world's largest Muslim country, a place that is critical to us in fighting Al Qaeda, yet we take in more than five times as much in tariffs than we give in aid.
- Our major aid program to treat HIV and AIDS worldwide, PEPFAR, relies on the use of generic medicines, yet intellectual property protections in our trade policy can choke off supply or curtail production of much needed generics.
- The environmental impact assessment for the MCC compact that is providing nearly half a billion dollars in aid to El Salvador warned of significant harmful impacts of mining in the affected region, yet Salvadoran government action to prevent such mining activities is being challenged in an investor-state suit filed by a US-based Canadian company under CAFTA.

In order to be most effective in combating global poverty – which is in our economic and national security interest – more needs to be done to make sure all elements of our federal government work together effectively. To this end, one key reform that Oxfam supports is a National Strategy for Global Development. This strategy would define the mission of the US government as a whole in fighting global poverty and clarify how various agencies would work together. It would provide a more effective inter-agency mechanism for preventing USTR and USAID from working at cross purposes. It would help ensure that our trade policy is effectively complementing our aid policy, and vice versa.

Formulation and implementation of US trade policy currently lacks a development lens

The Office of the US Trade Representative (USTR) was wisely situated under the Executive Office of the President in order to take into account the broadest interests of the United States and achieve an effective balance among competing interests. Yet in practice the USTR has tended to respond foremost to the export interests of US businesses and to facilitate foreign investment without considering effects on sustainable development or public health.

Trade negotiations have expanded in ways not considered just a couple of decades ago when tariffs were the primary concern. Today, trade negotiations have entered a range of areas that can force changes in a country's economic policy framework, with serious implications for public health and poverty

reduction in developing countries. In today's increasingly globalized economy, only when US trade policy also meets the development needs of poorer countries will it be of greatest benefit to our own economy and well-being. It is therefore essential that the Office of the USTR take steps to effectively ensure that development concerns are adequately addressed in the formulation and implementation of US trade policy.

The structure and functioning of the trade advisory committees and the USTR's public hearing process have not adequately addressed these concerns, as noted by several GAO reports over the last few years (GAO-02-876, GAO-07-1198, GAO-08-59). Representation of development proponents and public health interests on advisory committees still remains insignificant. Where there is or has been participation on committees, those involved have felt marginalized. Similarly, the public hearing process has not led to non-business concerns being taken into account in trade policymaking. In essence, input to USTR from public interest groups, which often represent alternative views to export interests, has not resulted in substantive changes in US trade policy to address concerns raised.

Until recently there was no public health representation on trade advisory committees. Now, after more than four years of public requests and extensive efforts by the public health community, led by the Center for Policy Analysis on Trade and Health (CPATH) and others, only three public health representatives have been named to Tier 3 committees. In addition, two representatives of the generic pharmaceuticals industry have finally been named to one Tier 3 committee (ITAC-3), only one-tenth the representation of the brand-name pharmaceutical industry on trade advisory committees. Yet it's worth noting that nearly two-thirds of all prescriptions filled in the US are now generic medicines.

Limitations of public participation in trade policy making are not confined to the Trade Advisory Committee system. By its very nature, this system cannot be a full mechanism for participation as members are sworn to secrecy and even if expanded will not represent the full range of views and interests affected by trade policy. In important areas where USTR makes policy or adjudicates interests, it follows the most restrictive possible participation mechanisms.

For example, in the "Special 301" review USTR adjudicates complaints against other countries to determine listing on punitive "watch lists" that can lead to investigations and sanctions for intellectual property policies that do not violate any trade agreement. The most full and fair process for such an adjudication of rights under general administrative law norms would be to hold an open hearing on the record before any decision is made, with full rights to reply to complaints in writing and orally. Instead, USTR adjudicates these matters through a notice and comment process. Other policy issues are determined without public consultation, or after meetings where the public can present their views but have

no rights to a decision based on an evidentiary record, as is the norm for other agencies. Such consultation processes have been structured so that they are easily captured by industry interests. While the new USTR has undertaken important outreach efforts to public interest groups, the underlying structural problem remains.

We do not question the importance of enabling US business and industry interests to contribute to trade policy. However, the USTR was established to balance competing interests, and Congress mandated that advisory committees include a 'fair balance' of perspectives. Instead, particular industry interests dominate, such as the brand-name pharmaceutical industry, at the expense of vital public interests. It is quite clear that the public health community and proponents of sustainable economic development have been excluded from effective engagement in the formulation and implementation of trade policy. This does not best serve the overall interests of the United States.

It's important to recognize that consultation cannot be an end in itself, but should be understood as a means towards improving decision-making and affecting an outcome. Without clear mechanisms of accountability and transparency, consultations may not be meaningful. This has generally been the case with USTR and the trade advisory committee system from the perspective of those of us in the non-business and public interest community, particularly public health and development advocates.

Without a development lens, trade policies can undermine sustainable development goals in poorer countries

Trade negotiations at the multilateral, regional and bilateral levels should take into account disparities in development and poverty levels with our trading partners. They should seek to expand opportunities for working people to gain a greater share in the benefits of trade.

Instead, negotiations led by the USTR over the past decade have locked in rules and policy prescriptions that facilitate further concentration of wealth and limit the policy options governments need to address poverty and inequality and to foment broad-based sustainable development. Following are three examples of this concern, involving the areas of intellectual property, investment and agriculture. We will suggest how greater representation and effective engagement of public health groups and development advocates could lead to a trade policy that better serves the broadest interests of the United States.

Intellectual property and access to affordable medicines

Ensuring access to affordable medicines is a core element of the human right to health. Yet over two billion people still lack regular access to affordable medicines, due in part to the high price of existing medicines and the lack of new medicines needed to treat diseases that disproportionately affect poor people in developing countries.

Strict intellectual property (IP) protection strengthens monopolies and restricts generic competition, which leads to higher medicine prices that are unaffordable for most people in developing countries. Although justified in the name of innovation, strict IP rules fail to stimulate medical innovation to address diseases that disproportionately affect people living in poverty.

All World Trade Organization member countries have adopted IP protections in line with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), although least-developed countries have until 2016 to comply with TRIPS provisions. These protections are considered by independent analysts to be more than adequate to balance the need to provide incentives for innovation with the obligation to the public of ensuring access to the benefits of the invention (in this case, medicines).

In 2001, all WTO members adopted the Doha Declaration on TRIPS and Public Health, which reaffirmed the primacy of public health over the protection of intellectual property for medicines. This Declaration rested upon global acknowledgement that high medicine prices charged by brand-name pharmaceutical companies through IP-based monopolies exact a serious and unacceptable toll upon the world's poor. As such, the Doha Declaration empowers developing countries to employ public health safeguards and flexibilities to foster generic competition as a means to ensure affordable medicine prices.

Yet with the strong influence of the pharmaceutical industry, US trade policy has instead been used to extend monopolies for brand name medicines and disable the right of developing countries to use public health safeguards, thereby limiting generic competition and worsening the developing world's public health crisis. A succession of free trade agreements (FTAs) has imposed increasingly strict levels of IP protection in developing countries. When the ink was barely dry on the Doha Declaration, the US entered an FTA with Jordan that introduced stricter IP rules than required by TRIPS.

These rules have had real public health consequences in Jordan and subsequently in other countries that have concluded similar agreements. An Oxfam study conducted in Jordan and published in 2007 concluded that stricter IP rules led to dramatic increases in the price of key medicines to treat cancer and heart disease, which are the main causes of death in the country. Higher medicine prices, due

in part to these stricter IP rules, are now undermining Jordan's public health system. Effects are similar in other countries, but are only manifested over time because it takes several years for newer medicines to go through the pipeline.

USTR has pursued stricter IP rules as a cornerstone of US trade policy through other means too. The Special 301 report, issued annually to review the IP policies of other countries, labels countries as violators of US intellectual property rights for using legitimate measures to protect public health. Placement on the Special 301 List puts enormous pressure on developing countries that take steps to provide affordable health care. Thailand, which has used a key public health safeguard - compulsory licensing - to extend medical treatment to thousands of poor people suffering from HIV and AIDS, cancer and heart disease, has been repeatedly castigated under the Special 301 report, including by the new USTR, for its laudable actions.

These policies are incoherent with US foreign policy objectives. The United States sponsors one of the world's pre-eminent programs to treat HIV and AIDS – over two million people are on treatment due in part to the generosity of the US government and taxpayers. To treat HIV and AIDS, this program relies almost entirely on the use of generic medicines produced by manufacturers in India – the same manufacturers that export over 70 percent of all generic medicines used in developing countries. Yet US trade policy has sought to choke off the supply of these generic medicines to many developing countries and even to curtail their production in India, although to do so would directly undermine US foreign assistance programs to treat HIV and AIDS.

Such formulation and implementation of US trade policy is enabled by the entire lack of balance in the trade advisory committees, which facilitates the domination of influence by the brand-name pharmaceutical industry on trade policy. The GAO (Report 07-1198) came to the same conclusion and added that the Office of the USTR made little or no effort to advance the goals of the Doha Declaration to promote public health. This imbalance and the undue influence of the pharmaceutical industry translate into trade policies that undermine public health and broader US policy objectives in developing countries.

This must change, and we have seen that it can. Under the leadership of Chairmen Rangel and Levin, IP rules included in FTAs already signed but yet to be considered by Congress were modified in order to address public health concerns as part of the May 10th (2007) Agreement. Their staff engaged a broad range of public interest groups and representatives of the pharmaceutical industry and worked to take into account public health and development concerns. The Agreement achieved an unprecedented reversal in the decade-long trend of increasingly stricter IP provisions. Oxfam applauded this important

initiative, even if it fell short of addressing all our concerns, as it clearly illustrates how trade policymaking can be improved.

The key point here is that Congress should not need to intervene to create balance in the day-to-day process of trade policymaking. That should be the role of the USTR working with its advisory committees. Inclusion of public health representatives and development advocates on trade advisory committees and improvements in their functioning will help to make the formulation and implementation of trade policy more accountable to broader US interests.

Improved public health representation can also improve transparency in US trade policy making. The USTR recently re-started negotiations of an Anti-Counterfeiting Trade Agreement. Despite numerous concerned expressions by public health advocates that such an agreement could undermine access to medicines, the text remains a secret even as various industry representatives have full access through the trade advisory committees. Adequate public health representation on advisory committees as proposed in H.R. 2293 would ensure that at least some public health input can warn, and hopefully forestall, any negative consequences of this Agreement on public health and access to affordable medicines in developing countries.

Investment provisions from a development perspective

This subcommittee held a hearing in May on investment protections in US trade and investment agreements. The testimonies provided by Thea Lee of the AFL-CIO and Robert Stumberg of Georgetown University Law Center raise important points that echo key concerns Oxfam has raised for a number of years with regard to investment provisions in trade agreements. These concerns are illustrated by a very recent example that could have serious implications for sustainable development in El Salvador.

Pacific Rim, a Canadian mining company, has filed a case against the Salvadoran government that will go to international arbitration under CAFTA's investor-state dispute settlement provision because the company has a subsidiary in Nevada. The company claims it has incurred hundreds of millions of dollars in damages for which it must be compensated because it has been unable to obtain a permit for extraction of gold found through initial exploration. The Salvadoran government determined it could not issue such a permit based on results of environmental impact studies that show significant harmful effects would occur from extraction, particularly on the country's already scarce water resources.

At the same time, the Millennium Challenge Corporation's compact in El Salvador, signed in 2006, is providing nearly half a billion dollars for a sustainable development program in the same region where Pacific Rim wants to

extract gold. An environmental impact assessment required by the MCC similarly warned against the anticipated adverse effects that mining activities would have in the region, which already suffers from highly vulnerable water resources, soil problems and environmental degradation. It is clear that if mining activities were to proceed, they would undermine the sustainable development initiative supported by the MCC. And if Pacific Rim wins its case, the Salvadoran government could be forced to pay the company an amount similar to what it is receiving from MCC.

This is a 'no win' situation for both El Salvador and the United States. If the Salvadoran government feels forced to cede to the company's pressure to issue a mining permit despite the harmful effects on the environment as well as on the health of the local population, or ultimately loses the case and has to pay hundreds of millions in compensation to the company, the result would not only be a blow to El Salvador's efforts at development and poverty reduction. It would also undermine US foreign and development policy.

The investor-state dispute settlement mechanism, which has been a part of US trade policy, elevates investor rights in ways that can threaten legitimate environmental protections and undermine sustainable development efforts. Even if the government were to win the case, it does not mean there would be no costs, as legal fees alone can go into the millions. And many developing countries that can hardly afford such fees, much less a potential settlement payment, may be more likely to sacrifice protections of the environment and other public interests rather than risk a challenge from a US-based company. With no check to avoid frivolous lawsuits, investors can use the threat of filing a case to force governments to forgo measures that protect the public interest.

In general, developing country governments need the policy space to regulate investment so that it furthers their national development goals. Yet the investment provisions included in US trade agreements seek to deregulate investment in developing companies, thereby limiting the use of policy tools, such as performance requirements and capital controls, that can help ensure investment will spur sustainable development and help reduce poverty and inequality.

As discussed in the hearing of this subcommittee last month, the State Department has recently created a panel to conduct a formal review of investment provisions in FTAs and the US model bilateral investment treaty, whose recommendations are to feed into an interagency review of investment issues. This is an important initiative that we understand will include development experts. We hope the recommendations of this panel will address the concerns raised here.

However, it will also be important to have development experts on trade advisory committees in order for USTR to receive ongoing advice on investment provisions from a development perspective. There is no advisory committee on investment, but the recent GAO report (08-59) mentions an Investment Working Group that draws from across the ITAC committees. This indicates the importance of development experts and public health representatives being included in these Tier 3 committees.

Agriculture from a development perspective

Some 70 percent of the world's poor depend on agriculture for their livelihoods. Half of the world's undernourished people and those living in absolute poverty reside on small farms. Sales and exports from agriculture constitute the main source of revenue for many poor countries, in some cases upwards of 40 percent of GDP. Here in the United States, agriculture accounts for barely more than 1 percent of output and its share of exports is only about twice that amount.

From a development perspective, it seems obvious that it is indispensable to ensure that trade rules in agriculture work to promote development and poverty reduction. Yet agriculture has no competitors for the title of most distorted sector of the global economy. And the US continues to maintain, and in last year's Farm Bill even expand the scope for, trade-distorting agricultural subsidies. Negotiations on agriculture have been the Gordian Knot of the WTO Doha negotiations, as one of developing countries' greatest needs in the global trading system is to right the wrongs of decades of rigged rules in agriculture.

At the same time, our bilateral and regional FTAs do not take into consideration this reality and instead limit the ability of our developing country trading partners to foster their own agricultural production. This is one of Oxfam's principal concerns with regard to the FTA with Colombia, where rural poverty is a cause of and further fuels the armed conflict and the illegal economy.

The agricultural provisions in the FTA would undermine small farmers in Colombia, who produce 40 percent of the country's basic food basket but would be unable to compete with subsidized US exports. Colombia's rural population is the most vulnerable to being recruited to supply manpower for illicit crops and armed groups. If more agricultural imports from the US threaten small farmer livelihoods, the FTA would increase the pressure on rural populations to engage in the cultivation of illegal crops and to take part in the dynamics of the war.

This is one more example where US trade policy is working at cross purposes with US foreign and development policy. Since 2000, the US has provided \$5 billion in military aid to the Colombian government's war effort and to reduce

coca cultivation. It is not in the best interests of the US or Colombia for a trade agreement to undermine the livelihoods of Colombia's small farmers. From a development perspective, this problem should have been understood and taken into account when the USTR first considered negotiating an FTA with Colombia.

Recommendations for improvement in the trade advisory committee system

Having made a case for including development and public health interests in the formulation and implementation of US trade policy, we make the following concrete recommendations to improve the trade advisory committee system in that regard.

1. Congress should pass H.R. 2293, which would establish a Tier 2 public health advisory committee, include public health organizations on the Tier 1 committee, and improve the process of consultation and reporting on all advisory committees.
2. A separate Tier 2 trade advisory committee on development should be established, in a similar way to the public health advisory committee that would be established under H.R. 2293, and development organizations and experts should be included on the Tier 1 committee. In order for this to be most effective, we also recommend that a position of Assistant US Trade Representative for Development be created to enable development interests and concerns to be effectively coordinated in all aspects of the formulation and implementation of US trade policy undertaken by the Office of the USTR.
3. Congress should clarify, through legislative action, the intent of the 'fair balance' requirement that applies to each advisory committee so as to ensure a clear mandate for adequate representation of non-business interests, including public health and development organizations, on all relevant Tier 2 and Tier 3 committees. It should neither be considered fair nor legitimate to limit Tier 3 committee membership to industry representatives when the focus of the committee is of broader public interest. Diversity of stakeholder representation to include a wide range of interests at all levels of the advisory committee system should be clearly established as a norm. To date, the only non-business representatives on Tier 3 committees have been named following lawsuits brought against the government.
4. Measures should be taken to improve and make more consistent the process of consultation and functioning of the trade advisory committee system in order to increase accountability to stakeholders in the formulation and implementation of trade policy. The following suggestions would contribute toward that end, and some of them are addressed in H.R. 2293:

a. There should be a requirement for advisory committees to meet regularly, with a minimum number of annual meetings - possibly quarterly.

b. Advisory committees should be consulted before entering into negotiations, throughout the negotiating process and prior to final agreement - including seeing and commenting on text before it is tabled or finalized.

c. Advisory committees should regularly submit written reports on their advice provided, including any divergence of opinion in the committee. All efforts should be made to respect diversity of opinions on committees by clearly presenting minority as well as majority advice.

d. The Office of the USTR and relevant agencies that co-administer advisory committees should provide written responses to committee advice received through these reports.

e. USTR should increase the staff resources allocated to advisory committees, which may require Congress appropriating additional funds for this purpose. Effective consultation costs staff time and resources, but it will result in

better outcomes. Without adequate staff resources for USTR to adequately administer, engage, use input from and respond to advisory committees, the system will not be fully effective.

5. The process of consultation with the public on trade policy should be improved and the USTR should be held more accountable to input received. To this end, we recommend the following:

a. Consultations with the public should follow the most participatory models available under the Administrative Procedures Act, including rulemaking after a public hearing on the record with written decisions responding to submissions, as is the norm for rulemaking in other agencies.

i. All public comments solicited by USTR should be organized as ‘open hearings on the record’ and, as such, follow procedures established by the Administrative Procedure Act (Title 5 of the US Code, Chapter 5, section 556). This involves having an open comment period, providing an opportunity for others to respond to comments, and then holding an open public hearing.

ii. Upon completion of the particular consultation process, the USTR should provide a written response explaining whether the input received was used or not and why.

iii. Where data is being used by USTR (such as when it relies on industry estimations of the costs of IP policies in other countries), the methodologies for its generation should themselves be subject to notice and comment, as is required under the currently binding case law under the Administrative Procedures Act.

b. Adjudications of interests, such as development of the Special 301 watch lists, should take place after an administrative process with the full range of protective procedural rights, including an opportunity to reply to industry charges, an open hearing with a written record and opportunity to appeal findings and interpretations of law. To this end:

i. Reform the notice and comment process to permit countries and civil society groups adequate time to reply to pharmaceutical industry Special 301 submissions;

ii. Allow public notice and comment on any data derived from submissions in the comment process that is used as the basis for policy or decision making;

iii. Provide, upon completion of the particular consultation process, a written response explaining whether the input received was used or not and why; and

iv. Regarding the Special 301 Report, publish objective standards for listing decisions, require listing decisions to be preceded by a public (in-person) hearing on the record, and offer opportunities to appeal adverse decisions.

6. There should be greater transparency in the formulation and implementation of US trade policy. Non-business and public interest organizations are often at a disadvantage in providing input to influence policy because negotiating text is generally classified. Even as participants on advisory committees, non-profit organizations may have difficulty in providing timely quality input on the range of technical issues they care about if they are unable to consult with external experts because they cannot share information with anyone who lacks security clearance. A better solution should be found to allow for more effective consultation of the wide range of stakeholders in US trade policy.

Conclusion

- Getting US trade policy right means helping to foster sustainable development in our trading partners while also strengthening our own economy. If we are only looking at one side of that equation, we may be going down the wrong path. To put us on the correct path, Congress and the administration should work to ensure:
- Effective coordination and coherence of our trade policy, foreign policy and aid policy;
- Effective engagement of stakeholders that bring a development perspective and a public health perspective into trade advisory committees and the overall USTR public consultation process;
- Improvement in the functioning of the trade advisory committee system to increase accountability to the broad range of stakeholders in the formulation and implementation of trade policy.

11.

10. Testimony By Susanna Rankin Bohme, Letter

Susanna Rankin Bohme, letter

Dear Members of Congress:

I am writing to ask you to vote in support of the Public Health Trade Advisory Committee Act (HR2293) introduced by Reps. Chris Van Hollen (D-MD) and Lloyd Doggett (D-TX). Although the Federal Advisory Committee Act requires that federal advisory committees be fairly balanced in terms of points of view represented and committee functions performed, public health advocates are underrepresented at all levels of the USTR advisory committees. The creation of a Tier 2 Public Health Advisory Committee on Trade as well as the inclusion of knowledgeable public health advisors in other parts of the advisory system are essential to establishing a fair balance of public representation at the USTR.

As an American Studies scholar whose work focuses on trade and health, and as a member and chair of the American Public Health Association's Forum on Trade and Health, I know that US trade practices and policies often harm rather than improve the health of people worldwide—especially people in poorer nations. The Public Health Trade Advisory Committee Act offers an opportunity to reverse that trend and allow the United States to take global leadership in establishing healthy and truly fair trade policy.

To date, trade agreements negotiated by the USTR have disregarded several important public health priorities. Trade agreements that prioritize health have the potential to improve the daily lives and health of people worldwide in a number of ways.

Affordable Medicines

Public health representation can help ensure the availability of safe, effective medicines in poor nations facing extreme public health emergencies.

Environmental, Occupational, and Consumer Regulation

Public health representation can help ensure that nations worldwide are empowered to regulate environmental and occupational health risks in a democratic, transparent, and pro-health manner.

Basic Human Services

Public health representation can help ensure that health care, water, sanitation, energy, education, and other basic services are managed and distributed in a manner that maximizes human health and well being.

Impact on traditional means of livelihood

Public health representation can help ensure that trade agreements are implemented in such a way as to maximize stability rather than dramatically reshaping a nation's industrial and agricultural production, causing unemployment and instability that impact mortality and morbidity.

To improve global health in these areas and more, I urge you to support the passage of Public Health Trade Advisory Committee Act (HR2293). Thank you for your leadership and your consideration.

Sincerely,

Susanna Rankin Bohme, PhD

Chair, American Public Health Association Forum on Trade and Health

11. Testimony By Edward J. Black, Letter

Edward J. Black, Letter

Dear Chairman Levin and Ranking Member Brady:

The Computer & Communications Industry Association (CCIA) appreciates the opportunity to submit comments for the record for the Trade Subcommittee's hearing on the trade advisory committee system. CCIA wholeheartedly supports the Subcommittee's efforts to examine whether "administrative or statutory changes, building on revisions implemented in recent years, might broaden the range of views represented and permit the advisory committees to provide more timely and useful recommendations." The hearing on July 21st focusing on environmental, labor, public health, development, and civil society perspectives was an excellent start. However, these are not the only perspectives that deserve to be reflected in the trade advisory committee system.

In its testimony before the Subcommittee at last week's hearing, the Government Accountability Office stated "that representation of stakeholders is a key component of the trade advisory committee system that warrants consideration in any review of the system. In particular, as the U.S. economy and trade policy have shifted, the trade advisory committee system has needed adjustments to remain in alignment with them, including both a revision of committee coverage as well as committee composition." One of the most significant advances in the U.S. and global economy in the past decade has been the development of the Internet as a tool and stage for commerce in products and services. The Internet has enabled truly global access to products, services and information in a way previously unimagined. This has in turn led to conflicts and issues that are equally new, and for which the traditional trade advisory committee system is not well equipped.

For example, foreign legal regimes contribute to a hostile business environment for U.S. Internet companies. Foreign courts are increasingly imposing sweeping civil – and sometimes criminal – liability on U.S. companies simply for providing innovative online services entirely consistent with U.S. law. Indeed, in some countries, this anti-Internet bias may be viewed as a form of de facto protectionism due to the Internet being identified as a predominantly American phenomenon. Please see the attached analysis on Internet Protectionism for further information and examples.

The advent of a new, networked world has given rise to innovative types of trade barriers. There must be a framework to address this changed landscape, and rules of the road for this new world need to be established. In order for our government to represent our industry's interests, and those of the consumers and

users of the Internet, in this process, CCIA strongly urges the creation of an Industry Trade Advisory Committee (ITAC) on Internet issues. The issues that confront our industry are substantially unique from those facing other industry sectors, and cleared advisers with expertise in the Internet industry would be able to provide USTR with information and a perspective that it is not presently receiving.

We greatly appreciate your attention to the issue of trade advisory committee system reform, and your consideration of our views. We would be pleased to discuss these issues with you and your staff, and to assist in any way we can.

Sincerely,

Edward J. Black

President & CEO

Computer & Communications Industry Association (CCIA)

11212. Testimony By The Council of State Governments Eastern Regional Conference,
Statement

**Statement of The Council of State Governments Eastern Regional
Conference**

Whereas, The economic prosperity of the United States is best served by embracing free and fair trade in global markets, investing in innovative research and technologies, and providing assistance to workers impacted by technology and trade trends; and

Whereas, Expanding trade opportunities for American workers and businesses depends on cooperation between the federal government and the states; and

Whereas, The trade liberalization efforts of the early 1990s and trade agreements such as the North American Free Trade Agreement and the World Trade Organization (WTO) Uruguay Round agreements have increased the role of state policymakers in international trade decisions; and

Whereas, WTO, FTA and other recent trade and investment agreements have proceeded beyond discussion of basic tariffs and quotas and now address government regulation, taxation, procurement, services, investment, subsidies, not-tariff trade barriers, and economic development policies that are implemented at state and local levels;

Whereas, Recent trade agreements that proceed beyond tariffs and quotas also intersect with traditional areas of state authority under the 10th Amendment, such as regulating the environment, health, and safety and, thus, may impact the states' continuing authority to effectively legislate and regulate in these areas; and

Whereas, Trade liberalization has transformed both global markets and the historical state-federal division of power, thereby offering new economic development horizons for state programs, presenting market opportunities to some firms, creating significant competitive challenges for other firms, increasing the need for training and assistance to firms and works having to adjust, and imposing a burden on state agency resources having to determine the impact of new trade agreement provisions on state laws, practices and regulations; and

Whereas, States should be supported by the federal government in trade development activities and trade policy analysis; and

Whereas, States often lack a clearly defined institutional trade policy structure and resources, making it difficult to handle requests from trading partners and federal agencies and to articulate an informed state stance on trade issues; and

Whereas, International lawsuits may be brought against the US that challenge state-level laws, practices or regulations alleged to be in violation of trade agreements and, therefore, the US government should ensure that international trade agreements covering the US would accord presumptive validity and not preempt or undercut those non-discriminatory state laws, practices and regulations adopted for a public purpose and with due process; and

Whereas, There is a need for a stronger federal-state trade policy consultation mechanism so that states are more comprehensively consulted during the negotiation, implementation and dispute resolution of international trade agreements and; and

Whereas, the Intergovernmental Policy Advisory Committee, an advisory committee of the United States Trade Representative, plays an important role in providing state and local government perspectives and input to the United States Trade Representative, but is limited in scope by statute, including prohibitions on sharing classified information with relevant state officials and members of the public, membership determination by the USTR, lack of sufficient resources, etc.; and

Whereas, In August 2004 the Intergovernmental Policy Advisory Committee recommended that a Federal-State International Trade Policy Commission would be an ideal structure for objective trade policy analysis and would foster communication among federal and state trade policy officials; and

Whereas, The creation of a federal-state trade policy infrastructure would assist states in understanding the scope of federal trade efforts, would assist federal agencies in understanding the various state trade processes, and would give states meaningful input in the United States Trade Representative's activities; and

Whereas, Federal-state consultation should include the timely and comprehensive sharing of information on the substance of trade and investment agreement provisions and federal trade and investment programs, including analysis on their potential impacts, benefits and costs related to state laws, practices, programs, and regulations; appropriate use of the state single points of contact (SPOCs); improved trade data to assess the impact of proposed and existing agreements; and a reasonable opportunity for meaningful input by the states; and

Whereas, the Eastern Trade Council has fostered regional cooperation among states and business by jointly promoting trade shows, organizing joint trade missions, sharing trade research data and other resources, and increasing access to business programs through the U.S. Department of Commerce; and

Whereas, the Eastern Trade Council has facilitated regional cooperation to advocate for improving trade data in order to provide sufficient and detailed information to support sub-federal trade development and international investment attraction strategies, and to measure the economic impacts of trade agreements at the state level; and

Whereas, the Eastern Trade Council has participated in regional meetings and calls with states in developing an improved federal-state consultation mechanism;

NOW, THEREFORE, BE IT RESOLVED that the Council of State Governments' Eastern Regional Conference urge Congress to create dedicated capacity to improve federal-state consultation on international trade and investment policy and programs, including improving data available to states and increasing transparency of documents necessary to analyze the impacts of trade and investment agreements on states; and

BE IT FURTHER RESOLVED, that the Council of State Governments' Eastern Regional Conference, including the Eastern Trade Council, renew its efforts to educate and engage states on the importance of international trade development and policy and to understand impacts on states, and create a recommendation on improving federal-state consultation.

13. Testimony By The Society of Chemical Manufacturers and Affiliates, Letter

The Society of Chemical Manufacturers and Affiliates, letter

Dear Chairman Levin & Ranking Member Brady:

The Society of Chemical Manufacturers and Affiliates (SOCMA) is a trade association comprised of custom, batch, and specialty chemical manufacturers. Founded in 1921, SOCMA has over 300 members, the majority of which are small and medium sized businesses. Currently a SOCMA member, V.M. “Jim” DeLisi of Fanwood Chemical serves as the Chairman of ITAC 3, the Advisory Committee for Chemicals, Pharmaceuticals, Health/Science Products and Services. As a “Tier 3” committee, ITAC-3 is charged to advise the USTR and DOC on highly technical issues impacting the chemical manufacturing industry, such as rules of origin and tariffs. Our sector generated about 500 billion dollars in trade during 2008. Fanwood Chemical is the first small company Chair of this group in its 45-year history. Mr. DeLisi has attended WTO Ministerial Meetings as an Advisor in Seattle, Cancun, and Hong Kong. Records would show that his Committee has met regularly for 45 years. The Committee is also very proud of the fact that members of ITAC 3 always represent the largest contingent of any sector at the various WTO Ministerials that have occurred in this time period, including four ITAC 3 members who accompanied you, Mr. Chairman, to Doha.

SOCMA believes that every interested citizen of the US deserves to have input into US trade policy. We are very fortunate to have an enormously talented group of individuals, both career and appointed, in both the Office of the USTR and the Department of Commerce, dedicated to expanded trade in goods and services. It has been repeatedly shown that increased trade is vital to increasing the prosperity of the United States.

We also believe that these officials are capable of gathering input from a variety of sources and then distilling from this input the proper trade policy for our nation. Such advice does not need to be contained in a single document, nor does it need to come from a single committee. In fact, we strongly advocate that the best advice is gleaned from committees that can function in a clear and open manner. This can only be accomplished when mutual trust exists among committee members. This trust is very difficult to achieve if all views need to be expressed in the same forum. Therefore, committees that support manufacturing and services in the USA, such as the existing ITACs, should remain “pure” and not be saddled with members that have different agendas.

The ITAC is a place where various companies and representatives from the same or similar sectors can come together, discuss common challenges, and dialogue with government officials. The relationship established between government and

industry has been mutually beneficial. Government and industry both benefit from educating each other on issues and exchanging ideas and information. The experienced professionals sitting on the ITACs are a valuable resource to government and their expertise should be utilized.

The existing ITAC system has served the country well, being especially beneficial to small business. Most large companies have sufficient resources to present their trade issue interests effectively before government entities. There is nothing wrong with this fact; it is a natural result of their importance to our overall economic well-being. However, the ITAC process is neither exclusive to size nor inherently drawn to only one size of company. Therefore, it appropriately allows smaller companies to also have input into our officials.

The Advisory System at USTR and DOC was specifically created to ensure that U.S. negotiators had as much knowledge as possible of real world situations, so that they could best represent the real needs of American manufacturers, not just their perceived needs. In fact, the advisory system was created in the mid-1970's as U.S. Government officials tried to understand why the USA did not prevail in the Tokyo Round of the GATT negotiations. At the time, it was determined that the significant difference between perception and reality could only be remedied by constructing a system that would allow U.S. negotiators direct access to the best experts in industry, those who truly understood what was required to gain access to foreign markets, based on their real world experience. The only way for this interchange to work was to be sure that the "industry advisors" were granted a level of security clearance sufficient for discussions to be held free from fear of disclosure to the public or to our trading partners. This was the genesis of the existing trade advisory system which has served both Government and Industry very well for over 40 years.

In addition to attendance at the Ministerials described above, SOCMA has specifically partnered with USTR to support efforts in identifying technical barriers to trade within the Asia-Pacific Economic Cooperation Forum.

The US advisory system is unique in the world. Our foreign competitors recognize it as one of our strengths as they have witnessed the outstanding results of this partnership.

The Advisory System has played an important role, not in setting US trade policy, but in helping to mold the policy, once it has been set by our political leaders. In this manner, political leaders can be assured that the policy goals, once achieved, will truly be beneficial for our economy.

In conclusion, the existing ITAC system works well. It serves a noble purpose—to help the government protect the interests of American industry—and is inclusive of those within industry who are permitted to participate.

Respectfully submitted,

Bill Allmond, Vice President of Government Relations and ChemStewards

Justine Freisleben, Assistant Manager, Government Relations

14. Testimony By Vermont Commission on International Trade and State Sovereignty,
Letter

**Vermont Commission on International Trade and State Sovereignty,
letter**

Dear Chairman Levin:

We are writing in response to the request by the Subcommittee on Trade for input on how to increase transparency and public participation in the development of U.S trade policy. The Vermont Commission on International Trade and State Sovereignty (Vermont Commission) was established by the Vermont General Assembly in 2006 to assess the legal and economic impacts of international trade agreements on state and local laws, state sovereignty, and the business environment. As part of this charge, the Vermont Commission closely examined the transparency offered and public participation process utilized by the U.S. Trade Representative (USTR) in the negotiation of trade agreements.

Over the past three years, the Vermont Commission held multiple meetings on the need to increase transparency and public participation in the development of U.S. trade policy. The Commission solicited and received testimony from members of USTR, members of the business community, members of the intergovernmental policy advisory committee (IGPAC), trade officials from Canada, representatives of national trade organizations, and other interested parties. The Vermont Commission, its members, and its staff also met with other state trade commissions and representatives to discuss and develop a regional policy regarding transparency and public participation. In addition, due to the work of Deputy Assistant U.S. Trade Representative Myesha Ward, the Vermont Commission spoke with USTR representatives about the steps taken or considered by the current administration to increase transparency and public participation.

The extraordinary amount of information and input gathered by the Vermont Commission led in January of 2009 to the Vermont Commission approving a Statement of Principles on International Trade which noted recommended changes to USTR trade policy. A copy of the Statement of Principles is attached for your review. As part of these principles,

the Vermont Commission asserted that the USTR should improve transparency in its trade negotiations and sharing of data and that the process for consultation with states should be improved. Specifically, the Vermont Commission noted that:

- States should be consulted during the negotiation of international trade agreements. Federal-state consultation should include the timely and comprehensive sharing of information on the substance and likely impact of trade agreements on state laws and regulations; appropriate use of the state single points of contact (SPOCs); and a reasonable opportunity for meaningful input by the states; and
- State legislatures and governors should be consulted or have a voice in determining whether their state procurement policies are covered by international trade agreements, and they should be afforded notice and an opportunity to comment and the authority to decline or limit state participation.

In May of 2009, the Vermont Commission met to review and discuss potential methods for improving USTR transparency and consultation. Generally, the Commission members agreed that if changes are made to the USTR consultation process, the new process should be simple in format and structure, acknowledge and respect principles of state sovereignty, and allow additional state access to trade data and texts. In preliminary discussion on how to achieve this goal, the Vermont Commission focused on the need for a new consultative body and two possible models for such a body as a starting point for wider discussion and consideration.

The first model would be a new, federally funded organization or structure established at the national level to allow for consultation between the USTR and the states. This new national consultation organization would replace the existing IGPAC and would be designed to inform states of trade policy and ongoing trade negotiations and their potential impacts on states. The new consultation organization would serve as the mechanism by which state and local representatives would provide comment or requests to USTR. It also could aid USTR in the distribution of trade data and other materials. Membership of the organization would include representatives of all states, but membership could be expanded to include representatives of local governments. In addition, this new organization would need to stand apart from and independent of the USTR and the administration in general in order to ensure non-partisanship.

A second model considered by the Vermont Commission would be the creation of several new regional trade commissions that would represent the varied geographic and economic interests of the states. Regional trade commissions would provide input to IGPAC or a national consultation organization and its members. The regional trade commissions could also serve as interfaces with the states by providing state and local government information and data regarding trade and trade agreements. Federal funding would be necessary to fully staff and successfully implement regional trade commissions.

Establishing and appropriately funding and staffing a new national consultation organization or several regional commissions will significantly increase transparency if USTR cooperates with such a national organization or regional commissions by providing relevant and timely information regarding trade policy, ongoing trade negotiations, the impact on states, and trade information and data. Such information sharing will help states analyze the

impact of trade and agreements while also optimizing trade promotion in order to afford businesses increased trade opportunities. Moreover, a national consultation organization or a regional commission will provide USTR with valuable input regarding the impact of trade agreements on state sovereignty and state legislation.

Thank you for requesting input on how to increase transparency and public participation in the development of U.S trade policy. The Vermont Commission is dedicated to working with Congress and the USTR to develop a trade policy that improves transparency and consultation with the states while continuing to further the trade interests of the United States and its individual states. If you need additional information, please contact the commission staff, Robin Lunge or Michael O'Grady.

Sincerely,

Ginny Lyons

Co-Chair

Kathleen Keenan

Co-Chair

15. Testimony By William A. Gillon, Statement

Statement of William A. Gillon

I appreciate the opportunity to provide written testimony to the Trade Subcommittee of the House Committee on Ways and Means. My name is William Gillon. I am an attorney from the Memphis, Tennessee, area. The Trade Policy Advisory Committee system has been a valuable tool for agriculture to convey its concerns and needs regarding trade negotiations. I am happy to present this testimony in support of that system.

My work experience includes the Office of the General Counsel at the U.S. Department of Agriculture, Senior Counsel to the Senate Committee on Agriculture, Nutrition and Forestry, General Counsel and Director of International Trade Policy for the National Cotton Council, and the private practice of law since 2005. My practice focuses mainly on agriculture and international trade policy. My professional responsibilities at each position I have held since graduating from law school have involved a mix of domestic and international agricultural policy.

I have watched trade negotiations from within USDA, from Congress, from a large commodity trade association, and now as a private attorney for interested parties. The only thing I have not done is directly negotiate for the United States. I have served within the Agricultural Trade Advisory Committee (ATAC) system for a number of years, under several different Presidents. Before becoming a member myself, I worked with industry representatives who served as members of the committees.

As I stated above, I believe the ATAC system helps create a dialogue between an Administration's agricultural trade negotiators and the private sector. The system as it has evolved is one that has enabled industry representatives to become familiar with the trade policy positions of the United States and our trading partners. It has enabled private sector participants to become somewhat familiar with the ever-evolving "language of trade," that special dialogue that occurs within international trade negotiations that has brought words like "modalities" into our standard nomenclature.

Mr. Chairman, it is my hope that the basic structure and representation on the advisory committees be maintained in the future. It should not be the case that individuals are automatically disqualified from membership on a trade advisory committee because they are registered as a lobbyist.

I am a registered lobbyist. When Congress expanded the definition of lobbyist in the Lobby Disclosure Act, I immediately registered and began an extensive review

of my clients to ensure that everyone who should register under the Act did so. I have taken a cautious approach to the Act and a broad approach to registration. If an individual or a company comes close under the lobbyist definitions, I encourage them to register and I help them comply with the statute. I reject, however, the notion that because I am registered and because my activities are reported and public I am nonetheless automatically disqualified from providing sound advice through the ATAC system.

The experience that qualifies me to be a member of an ATAC is the same experience that led some persons to hire me to represent their interests to elected officials or to help them understand the position of elected officials. When an Administration automatically disqualifies persons with significant experience from positions of advice or counsel, it deprives itself of the high level of professional advice and insight they can render and it deprives private citizens of their right to monitor the Administration's activities. This is particularly the case in the area of international trade negotiations where it takes many years of experience just to understand the lingo. Individuals who do not follow trade negotiations every day may know that a certain outcome will or will not be beneficial, but they may not be able to discern whether the language in front of them or the speech just delivered to them contains that detrimental outcome.

Congress may often find itself having to jump the same hurdles. Trade negotiations tend to continue from one Administration to the next with points of reference often shifting significantly from January to December. It is difficult even for Congressional staff to consistently be aware of those shifts and the ultimate impact they may have on citizens in the United States.

The ATAC system itself has been developed to ensure that an Administration hears from affected parties. The commodity representatives on the Tobacco, Cotton, Peanuts and Planting Seeds ATAC are supposed to provide their opinion regarding trade affecting their specific commodity. It is wholly necessary to that role that the individuals on the ATAC be interested in that commodity and, indeed, have a stake in it and deep knowledge of it. For the purposes of representing the interests of a specific commodity, it shouldn't matter whether an individual is a registered lobbyist. First, with respect to the lobbyist, the public is notified as to the lobbyist's clients and political activity, but they are not so well-informed with respect to private citizens.

Second, Mr. Chairman, farmers farm. If they are not putting all of their focus and effort into their farming operations, they increase their already ridiculously high chances of failure. Most farmers I know are not fully aware there is a difference between "special" products and "sensitive" products within the Doha negotiations, nor can they be expected to stop and research the exact scope and impact of those differences. Generally, those farmers associate together and hire

experienced professionals to help them understand these and similarly involved policy issues. The ban on lobbyists should not be extended to representation on the ATACs as it would deprive these farmers of voices they consider to be valuable and necessary to help them protect their interests.

Third, trade negotiations are directed by the Administration that is in office. It is generally understood that all other interested parties, farmers and Congress alike, must find a way to understand what is going on within those negotiations. If ATACs are reformed in such a way as to ban lobbyists from participating, those ATACs will be far less prepared to take on the task of ombudsman. They will not be able to provide the kind of advice that comes from experience and daily immersion. Such a step will not improve the system, it will make it superfluous.

Mr. Chairman, I would like to make one point about diversity on committees. Representation on the committees I have been involved with has been minimally diverse, but knowledgeable. Because of the knowledge and because of even the minimal diversity, ATAC meetings have tended to enhance our understanding of the negotiations and the members of the various ATACs have, by and large, been able to convey to the Administration their needs and concerns with trade discussions. However, as these are committees designed to advise the Administration on agricultural trade policy, they have been committees with membership from the agricultural trade community -- individuals who generally have a mindset and a position that trade is good and beneficial. Membership has evolved and different points of view have populated the committee I have participated in.

While it welcomes diversity, the Tobacco, Cotton, Peanuts and Planting Seeds committee I have been a member of for several years has struggled to reconcile the positions of members of the Committee who are opposed to the export of specific products. As the Committee was asked to review free trade agreements and render its advice, it was difficult to obtain consensus when a committee member is opposed to trade in a product. Advisory Committee members generally do not address the larger questions of whether trade is or is not good or advisable. Instead, the Committee reviews the technical terms of proposals, the draft negotiating documents, to determine if they are fair and reasonable. Diversity of opinion is helpful, but I question whether members of agricultural trade advisory committees shouldn't, at the least, be committed to agricultural trade.

Mr. Chairman, thank you again for holding this hearing and for allowing me to submit testimony.

17. Testimony By Maralyn Chase, Peggy Pierce, Jill Cohenour, Steven D'Amico, and Susi Nord, Statement

Statement of Maralyn Chase, Peggy Pierce, Jill Cohenour, Steven D'Amico, and Susi Nord

Thank you very much for convening a hearing on the future of the U.S. Trade Advisory Committee system, and for taking written comments from interested parties. As state legislators concerned with how international trade rules affects our states, we are grateful for the opportunity to provide our perspectives.

In the last several years states have observed first-hand some of the impacts of international trade agreements, and aggressive actions by trading partners:

- **NAFTA Chapter 11 claims** brought against California's regulatory ability to protect public health and the environment. We appreciate the vigorous defense mounted by the U.S. State Department in arguing against those claims. But we also note that despite a favorable outcome in the *Methanex* and *Glamis* cases, the California Department of Justice was not compensated for the considerable time and expense that they had to devote to defending themselves. We view this as an unfunded mandate—something states can ill afford in the present budget climate.
- **Threatening letters sent by the People's Republic of China** to state legislators in Vermont and Maryland regarding bills introduced in those states dealing with lead content in toys, and electronic waste. China claimed that the bills would violate the World Trade Organization's Technical Barriers to Trade agreement. We dispute the validity of the claim; but equally important, we think it's totally inappropriate that the Department of Commerce would notify China about pending state legislation.
- The **WTO case** brought by Antigua against the United States **on internet gambling**. The WTO found that the U.S. had made such a commitment binding gambling under the services agreement. We appreciate that the U.S. withdrew its WTO commitment, largely as a result of pressure from states that ban all forms of gambling (Utah and Hawaii), but the case has led to a messy and still-unresolved dispute with a number of countries regarding the withdrawal of the commitment that could negatively affect businesses through the U.S. Legislators from coastal states are concerned that USTR has offered to commit services pertaining to liquefied natural gas under WTO rules as compensation for withdrawing 'other recreational services-gambling.'
- **Threatened challenges to California's Low Carbon Fuel Standard** and to greenhouse gas reduction strategies in the 10 Regional Greenhouse Gas Initiative states in the northeast. The federal government of Canada and the Province of Alberta are trying to block the leadership of the states in grappling with these urgent climate change issues by citing WTO and NAFTA rules.
- **Retaliatory tariffs taken by Mexico** as a result of a NAFTA trucking case is causing severe hardship to many of our agricultural producers and manufacturers.

We support efforts made by the Office of the United States Trade Representative to open up new markets for American goods and services. We believe that this can be done in a way that safeguards U.S. federalism, and doesn't put state laws or regulatory authority at risk, or that causes unexpected shocks to our businesses because of retaliatory actions.

To avoid such shocks, and to safeguard U.S. federalism, there needs to be better communication between U.S. trade negotiators and state leaders. There should be regular and open communication between the Office of the United States Trade Representative (USTR) and ALL the states.

Right now, fewer than half the states are represented on InterGovernmental Policy Advisory Committee (IGPAC) . It is hard to feel that USTR takes IGPAC seriously when there have been so few face-to-face meetings between state

leaders and our trade negotiators, and also when USTR posts on its new website a roster of IGPAC members that is several years out of date.

It cannot be expected that states will support existing trade policy when there is so little consultation. States will seek to opt out of agreements about which they are not consulted.

We urge Congress to mandate a regular schedule of face-to-face meetings between the states and USTR, and a review of transparency policies regarding trade so that the states can have a clearer idea of what trade and investment issues are on the table and for negotiators to understand states' positions prior to the start of negotiations. This can be done as part of the formal trade advisory committee system, but the commitment to consultation should go beyond that. We also urge Congress to develop a process that allows states to decide whether to *opt in* to certain non-tariff aspects of trade agreements like procurement, services and investment provisions.

We note that several state trade commissions, as well as IGPAC, have put forward concrete proposals for how to reform some aspects of federal-state consultation on trade. We urge you to give serious consideration to these ideas.

To summarize:

- State legislators supporting this letter appreciate the Trade Subcommittee's consideration of this important issue of the formal trade advisory committee system.
- IGPAC and state commissions have made specific recommendations for improving USTR's consultation with states that have implications for the future of the trade advisory committee system.
- Consultation with the states must go beyond the formal advisory system and include a regular schedule of meetings with state leaders and with the national associations such as NCSL that support our interests.
- Congress should include an "opt-in" mechanism to allow U.S. states to decide whether to be bound to trade pacts' non-tariff regulatory constraints regarding services, procurement and investment in future trade negotiations.
- If states are to be supportive of US trade policy, they must be consulted regarding the content of that policy.

Thank you very much for the opportunity to comment.