Congress of the United States
U.S. House of Representatives
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March 28, 2008

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The "National Trade Estimate" report (NTE) is scheduled to be released next week, in accordance with section 181 of the Trade Act of 1974, as amended. Contained in the NTE is a catalogue of barriers to U.S. exports of goods and services, investment and intellectual property rights. Many of the cases raised in this year's NTE will highlight barriers that have been persistent and long-standing problems for U.S. exporters, investors, and service providers for years. Yet these problems have not been effectively addressed.

We encourage the Administration to move past merely inventorying the systemic, recurring trade barriers that U.S. companies face, and to take a positive step forward and begin enforcing U.S. rights more vigorously. In a global economy, the negotiation of rules and agreements is important; however, without strong enforcement, the value of those agreements is significantly reduced. In the seven years that the Bush Administration has been in office, USTR has brought an average of less than three WTO cases per year. By contrast, the Clinton Administration brought an average of 11 WTO cases per year.

The United States cannot afford to continue down this path. The U.S. trade deficit last year remained at historically high and unsustainable levels. In 2007, the U.S. trade deficit was $711.6 billion – the third highest in history and over five percent of the U.S. economy. Manufacturing has borne the highest cost, with the manufacturing trade deficit increasing by over 80 percent between 2001 and 2007, and the loss of over three million jobs during that period. Contrary to Administration claims, the trade deficit does not reflect strictly low-cost, low value-added imports. For example, during this time, the trade balance for advanced technology products shifted from a $4.4 billion surplus in 2001, to a deficit of $53.5 billion in 2007.

These massive trade deficits come at another steep price; over the past six years alone, foreign-owned debt has more than doubled. It currently stands at $2.4 trillion, or 17 percent of U.S. GDP. This Administration has accumulated more debt to foreign governments and individuals than all previous Administrations combined.

These deficit levels are unsustainable – both for the United States and the global economy – and unacceptable. The right trade policies and priorities can help fix the problem. Unfortunately, during the last seven years, this Administration has mismanaged America's trade policy. We urge you to take important steps to remedy this situation.

The Appendix to this letter contains a compilation of a number of the most persistent barriers to trade, and proposed causes of action to address each. These matters are long overdue for effective action by the Administration. We strongly encourage you to instruct USTR to request immediate consultations with the following key trading partners: Canada, China, the European Union, Japan, Korea, Mexico, Russia, and the United Kingdom. If these significant trade issues cannot be resolved within the consultation period, we urge USTR to take appropriate action, whether under WTO rules, U.S. law, in bilateral negotiations, or a combination of these approaches. These trade barriers affect the manufacturing, services and agriculture sectors of our economy, and many involve the violation of intellectual property rights (IPR). USTR has recognized many of these barriers to trade in its NTE reports for the years 2001 - 2007. USTR, however, has failed to take effective action to redress these barriers.

Over the last 14 months, we have been pleased to see the Administration move forward to initiate important cases dealing with WTO violations by China. Notably, the Administration has filed cases on China's prohibited subsidies and IPR violations, issues that we have raised in previous letters to the Administration. We encourage USTR to take similar action on the remaining matters that we have highlighted.

The proliferation of Regional Trade Agreements (RTAs) also raises substantial concerns. In the last ten years, 140 RTAs were notified to the WTO as entering into force under Article XXIV of the GATT or the Enabling Clause. We are not convinced that the WTO is sufficiently monitoring these agreements or enforcing Article XXIV of the GATT. To compound this problem, in the last seven years, USTR has not challenged a single RTA at the WTO. Therefore, we now charge USTR with preparing a comprehensive assessment of significant RTAs to determine whether or not they are compliant with Article XXIV of the GATT and report to Congress its findings within six months. Additionally, USTR should provide conclusions regarding how it intends to address the trade barriers presented by RTAs that are not in compliance with Article XXIV and work with the WTO to fix the notification and review system to ensure strict enforcement of Article XXIV.

We additionally ask for your support of forthcoming legislation we will introduce to strengthen the enforcement of U.S. rights under our trade agreements. The legislation will include the creation of the office of a Congressional Trade Enforcer and renewal of "Super 301" authority.

Without vigorous enforcement, trade agreements do not benefit U.S. companies, workers, farmers or consumers. Americans deserve a trade policy that holds trading partners to the bargain negotiated and produces real results for the United States. The issuance of this year's NTE report presents an important opportunity to move in a positive and proactive way to ensure vigorous enforcement of U.S. trade agreements. We hope that your Administration takes advantage of this opportunity and we stand ready to work with you to improve the direction of American trade policy and restore the credibility of the global trading system.

Sincerely,

The Honorable Charles B. Rangel

The Honorable Sander M. Levin

The Honorable Fortney Pete Stark

The Honorable John Lewis (GA)

The Honorable Richard E. Neal

The Honorable Xavier Becerra

The Honorable Earl Pomeroy

The Honorable Mike Thompson

The Honorable John B. Larson

The Honorable Earl Blumenauer

The Honorable Bill Pascrell, Jr.

The Honorable Shelley Berkley

The Honorable Kendrick B. Meek

The Honorable Allyson Y. Schwartz

APPENDIX:

Last Chance for Enforcement: It's Now or Never for the Bush Administration

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Over the last seven years, the United States has run a massive trade deficit with the rest of the world, including all of our largest trading partners. During those seven years, our trading partners have filed 48 WTO cases against the United States, alleging unfair subsidies or trade barriers by the United States. Meanwhile, the U.S. trade deficit grows in part because U.S. products are excluded or prohibited from many markets by trade-distorting barriers. When compared to record-level trade deficits, the Administration's response has been underwhelming. We should be aggressively using all U.S. trade agreements and trade laws, including the WTO to address real violators of global trading rules, especially if our trading partners continue to resist a significant WTO agreement in the Doha Round. Other countries have not hesitated to use WTO litigation to attempt to improve their Doha Round negotiating positions. We should do the same. As the country with the world's most open major economy and largest trade deficit, we have by far the most reason to use the WTO process.

Outlined below are twenty-one examples of trade barriers where action should be pursued immediately by the Bush Administration — either under the agreements of the World Trade Organization (WTO), within the current world trade negotiations, and/or under established provisions of U.S. law — to create new opportunities for American exports of goods and services, and to protect U.S. intellectual property rights. Action on these cases is long overdue.

The list of cases outlined below covers foreign barriers in need of immediate action. Many of the previously reported IPR violations in China, Russia, Canada, and Mexico continue to create serious trade losses for U.S. copyright and other industries. Ongoing currency manipulation in China and Japan continues to undercut U.S. products at home and abroad. Subsidies to the steel industry in China create unbalanced playing fields for U.S. manufacturers of those products. Non-tariff barriers to the auto and auto parts markets in Japan and Korea and to service sectors in China add to the U.S. trade imbalance with all of these countries. This list, however, is not exhaustive. Many other countries maintain the same types of subsidies and/or barriers across the manufacturing, agriculture, intellectual property rights, and services sectors.

We have raised many of these issues and similar ones in past letters to the Administration; however, with a few exceptions, little effective action has been taken. When the Administration has adopted our suggestions, as for example in the 2006 WTO case against the European Union for providing subsidies to Airbus and the 2007 cases against China for IPR violations, market access for publications and audiovisual entertainment products and prohibited export subsidies, the approach has been highly effective. Within one month of the Administration filing the export subsidy case on China, China had repealed one of the laws to which USTR objected.

For the last seven years, the Bush Administration has failed to take effective action on these and other important cases documented in its own National Trade Estimate Report on Foreign Trade Barriers. Now is the time for a new trade policy that makes the global trading system work.

List of Trade Barriers

The following list of trade barriers is organized by economic sector. It should be noted that the majority of these cases involve our five largest trading partners – China, the EU, Japan, Canada, and Mexico.

I. Currency Manipulation.

A. China – Ongoing currency manipulation undercuts U.S. exports.
B. Japan – Ongoing currency manipulation undercuts U.S. exports.

II. Barriers to U.S. Manufactured Products.

A. China – Trade-distorting subsidies hurt U.S. steel manufacturers.
B. China – Standards regime creates barriers to U.S. products.
C. EU – Information Technology Agreement compliance.
D. Japan – Non-tariff barriers to U.S. autos and auto parts.
E. Korea – Discriminatory taxes and non-tariff barriers close auto market.
F. Korea – Non-transparent certification tests impede entry of U.S. goods to Korean market.
G. Mexico – WTO violations in large diameter pipe anti-dumping case.
H. UK – Aero-engine subsidies harm U.S. manufacturers.

III. Intellectual Property and Investor Rights.

A. Canada – Canadian law and enforcement do not protect copyrights.
B. China – Non-enforcement of U.S. copyrights and trademarks.
C. EU – French government attempts to force turnover of intellectual property.
D. Mexico – IPR violations hurt U.S. motion picture industry and music and recording industry.
E. Russia – Copyright piracy.
F. United Arab Emirates (Dubai) – Investor Rights.

IV. Agriculture.

A. Multiple countries – Misuse of sanitary/phytosanitary laws.

V. Services.

A. China – Electronic payments commitments not being met.
B. China – Insurance branch licensing process is unfair to U.S. companies.

VI. Other Barriers.

A. EU Regional Agreements.
B. Arab League Boycott of Israel.

Description of Cases

I. CURRENCY MANIPULATION

Note: Even as the United States dollar hits 30-year lows with respect to virtually all major currencies, the Japanese yen and Chinese yuan remain largely immune. Currency manipulation – particularly when conducted on a massive scale – can exacerbate international financial instability and prevent international financial markets from adjusting to actual underlying market-based fundamentals. For the past four years, we have consistently raised this issue as a major and growing problem for the international financial system and a major artificial barrier to U.S. goods and services. Concrete and decisive action to address this practice is long overdue.

A. China – Currency manipulation undercuts U.S. producers and exporters

- **Trade Barrier and Harm to U.S. Interests:** The continued undervaluation of the yuan has made Chinese products artificially cheaper, harming U.S. workers, farmers and businesses, and exacerbating the massive and growing U.S.-China trade deficit. China's currency manipulation gives China's goods and services a built-in unfair competitive advantage over American goods and services and has contributed to another record bilateral goods trade deficit in 2007, of $256 billion. A former senior economist of the International Monetary Fund (IMF) estimates that illegal currency practices contribute $130 billion to $180 billion to the U.S.-China trade deficit each year. Yet, even in the face of these stark figures, and serious consequences that they mean to U.S. farmers, workers and businesses, the Administration has failed to take any effective action to deal with China's currency manipulation. In fact, the Treasury Department has failed even to issue a simple finding that China is manipulating its currency.

- **Bilateral and WTO Actions:** The Administration sought China's accession to the WTO on the premise that China would be held accountable under WTO rules. There is a growing view that China's currency practices violate at least three WTO provisions that relate to: (1) subsidies (Agreement on Subsidies and Countervailing Measures), (2) currency manipulation (Article XV of the General Agreement on Tariffs and Trade (GATT) 1994), and (3) nonviolation nullification or impairment (Article XXIII:1(b) of the GATT 1994).

  In September 2004, again in April 2005, and again in May 2007, a bipartisan group of Members of Congress filed a "Section 301" petition, which called on the Administration to take concrete steps to eliminate China's artificial advantage resulting from currency manipulation. The three filings by Members followed an initial filing by U.S. businesses and labor unions. All were summarily rejected by the Administration. **The**

Administration should: (1) initiate consultations with China immediately under WTO rules; **(2)** file a WTO action if China does not agree swiftly to begin to revalue the yuan and move towards a flexible, market based exchange rate; **(3)** issue the statutorily-mandated Treasury Report, due April 15, on time; **(4)** comply with U.S. law by ending the Administration's previous attempts to deny that China's actions constitute manipulation; **(5)** strengthen U.S. leadership at the IMF by calling on the organization to abide by Article IV of the IMF Articles of Agreement, which requires it to exercise "firm surveillance" over members to ensure that they "avoid manipulating exchange rates . . . to gain an unfair competitive advantage over other members" and urging the IMF to hold China accountable in its staff report due this Spring on the 2007 Article IV consultation with China; and **(6)** work with other countries to address the problem most effectively.

B. Japan – Currency manipulation undercuts U.S. exports

- **Trade Barrier and Harm to U.S. Interests:** China's exchange rate practices have received much attention. However, Japan's intervention – and its readiness to intervene – in currency markets have been largely ignored. The Japanese government has acquired $968 billion in foreign exchange reserves to prevent the dollar from falling against the yen. The success of recent Japanese government action has served to keep the yen artificially low, notwithstanding that Japan has not formally intervened in the currency markets since 2004. High government officials continue to send clear signals to the currency markets that the government is prepared to intervene. For example, in November 2007, Prime Minister Fukuda said the yen is appreciating "too fast," and, "in the short term, yen appreciation would certainly be a problem." In addition, on March 5, 2008, the *Financial Times* reported that Japan's Minister of Economy, Hiroko Ota, said that he was "really concerned about the recent abnormal strengthening of the yen against the dollar"and that he was also concerned about the "effect that could have on corporate profits. The *Financial Times* also reported that Japan's Finance Minister, Fukushiro Nukaga stated that the government would "keep watching movements in foreign exchange rates from now on." Japan's continued readiness to "talk down" the yen combined with its readiness to intervene, its track record of intervening when the yen appreciates, and its clear and growing capacity to intervene again have maintained pressure on the currency markets. This pressure has artificially suppressed the value of the yen an estimated 15-20 percent, and, thereby, given Japanese exporters an estimated 15-20 percent advantage in Japan, the United States and around the world.

- **WTO Actions: The Administration should** take the following steps. **(1)** In its April report on currency manipulation, Treasury should cite Japan for its exchange rate interventions – and widely understood readiness and ability to intervene – as required by U.S. law. **(2)** Per statute, Treasury should then initiate intensive consultations to end Japan's exchange rate manipulation "on an expedited basis." Given the clear and egregious nature of Japan's manipulation and its impact on U.S. firms and workers, including in the automotive sector, which comprised 64 percent of the U.S. 2007 trade deficit with Japan, the problem should be addressed within 180 days. **(3)** If the problem is not resolved by that time, USTR should then immediately initiate consultations under the WTO dispute resolution system, based on Articles XV, XVI and XXIII:1(b) of GATT 1994. And, **(4)** if these consultations do not yield a satisfactory outcome in the consultative period, USTR should immediately file a complaint in the WTO.

II. BARRIERS TO U.S. MANUFACTURED PRODUCTS

A. China – Manufacturing subsidies and export aid to manufacturing

- **Trade Barrier and Harm to U.S. Interests**: In some major manufacturing industries, China uses heavy state-run industrial policy. For example, almost all of China's 50+ soda ash producers are state-run. Subsidized bank lending, state run vertical supply chains, subsidized energy costs, tax abatements for exports, and government-aided rapid increases in production are all tools commonly used by the Chinese government.

- Similar problems have been paramount in the steel industry. U.S. steel producers have identified that state-owned enterprises account for the vast majority of total Chinese steel production; 19 of the top 20 steel groups are majority-owned or -controlled by the Chinese government. Besides state ownership, China's national, provincial and local governments use equity infusions, debt-to-equity swaps, direct cash grants, tax incentives, preferential loans, debt forgiveness, assistance with energy and other input costs, and a lack of enforcement of basic worker and environmental standards to help Chinese steel producers. These efforts have succeeded – Chinese steel production has exploded from under 150 million metric tons in 2000, to over 500 million metric tons in 2007.

- These subsidies have also resulted in China becoming a net exporter of steel. Indeed, Chinese steel exports have risen dramatically in recent years. For example:

- China's steel pipe exports to the United States have exploded, with U.S. carbon and alloy line pipe imports from China increasing 450 percent in just two years, from 80,300 metric tons in 2005, to 441,590 metric tons in 2007. Likewise, structural pipe imports from China increased 515 percent in just two years, from 25,915 metric tons in 2005, to 159,474 metric tons in 2007.

- China's exports of carbon and alloy heavy structural shapes to the United States increased from only 1,113 metric tons in 2005, to 112,722 metric tons in 2007, an increase of over 10,000 percent. Similarly, China's exports of carbon and alloy hot-rolled steel bars increased from 23,685 metric tons in 2005, to 96,737 metric tons in 2007, an increase of over 300 percent. China's exports of steel rails to the United States increased from 1,002 metric tons in 2005 to 81,424 metric tons in 2007, an increase of over 8,000 percent.

- U.S. fair trade laws can play a role in helping to provide a WTO-sanctioned remedy for unfairly produced goods. However, these laws do not provide a comprehensive solution to the problem. If unfairly subsidized Chinese pipe is met with antidumping or countervailing (CVD) duties, the subsidized Chinese steel can go into other products besides pipe. If the unfairly subsidized Chinese steel is met with duties, then Chinese producers of downstream products can buy the subsidized steel in China and capture U.S. market share for the downstream product. Accordingly, U.S. trade laws may be able to address emergency cases; however, the long-term problem of Chinese subsidization needs to be solved at its root with a comprehensive and enforceable agreement by China to abandon the pervasive use of trade-distorting subsidies and other forms of socialist industrial policies.

- **Bilateral and WTO Actions: (1) The Administration should** urge and support passage of, and then swiftly sign into law, the House CVD for NME (non-market economy) bill, which will allow U.S. companies to file countervailing duty cases against China and achieve an appropriate remedy in cases in which subsidized Chinese imports are injuring a U.S. industry. **(2) The Administration should** catalogue China's subsidies. **(3) The Administration needs to develop** a comprehensive strategy for addressing China's trade-distorting subsidies, including effective utilization of both CVD remedy and all appropriate WTO remedies relating to the different methods and programs that China's national, provincial and local governments use to subsidize their manufacturing producers. These methods and programs include, but are not limited to, excessive state ownership, preferential loans, assistance with energy costs, and tax breaks.

B. **China – Standards regime creates barriers to U.S. products**

- **Trade Barriers Harm U.S. Interests:** U.S. industries have raised concerns about China's commitments with regard to standards, both in the context of its WTO accession commitments on transparency in standards application and the standard-setting process. Concerns also have been raised about China moving away from its commitments under the Agreement on Technical Barriers to Trade (TBT) to harmonize standards through the use of international standards. USTR raised standards issues in the 2007 NTE (93-98), and should take action to resolve these trade barriers.

- In its WTO accession agreement, China made several commitments with regard to standards that it is not currently upholding. Included in the accession agreement was a commitment to apply the same standards to both imported and domestic products; a commitment to apply the same fees and procedures to both imported and domestic products; a commitment to eliminate multiple or duplicative conformity assessment procedures; and a commitment to ensure that the standards development and regulatory process is open and transparent. U.S. businesses have raised concerns with regard to transparency of the standard-setting processes in China, as well as an inability to participate in the standard-setting process. This is a persistent and growing problem.

- U.S. businesses have also raised concerns regarding the recent tendency of the Government of China to move away from global standards toward proprietary national standards in areas ranging from mobile phone batteries to encryption to wireless protocols. Government mandated standards not only inhibit innovation and impede trade, but they also prevent Chinese consumers from having access to world-class products and services.

- In addition to China's proliferation of national standards, some U.S. companies have raised concerns about China maintaining a strictly narrow definition of what constitutes an international standard. In the Second Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade, Members rejected adopting a specific list international standards, but rather agreed on and adopted a set of principles to clarify and strengthen the concept of international standards (Annex IV) development. Despite these principles, in certain cases, China assigns the definition of "international standards" to only those standards created by certain forums such as the International Organization for Standards (ISO), International Electrotechnical Commission (IEC), and International Telecommunication Union (ITU) – and not to other, equally valid forums.

This interpretation is not in line with the principles determined by Members in Annex IV, and is a barrier to trade for U.S. companies who rely on standards developed by other standards bodies that satisfy the Annex IV principles besides those listed above.

- **Bilateral and WTO Action:** The Administration, through bilateral fora such as the Strategic Economic Dialogue (SED) and Joint Commission on Commerce and Trade (JCCT), should highlight the importance of China's commitments to transparency in its standards regime. Specifically, USTR should impress upon the Chinese the importance of including foreign industry representatives to participate on technical committees that devise China's standards. Through bilateral dialogue, **USTR should** stress the importance of China's adherence to well established international standards rather than national standards. Furthermore, **USTR should** insist that China recognize the principles established in Annex IV of the TBT in order to determine what properly constitute international standards. At the WTO, **USTR should** carefully monitor and engage with China on its TBT notifications to ensure that China fulfills its commitments to recognize international standards.

C. EU – Information Technology Agreement Compliance

- **Trade Barrier and Harm to U.S. Interests:** The EU has reclassified a number of information technology products so as to move them out of the product categories covered by the Information Technology Agreement (ITA) into other, dutiable tariff lines and is in the process of reclassifying more products. Among the products already affected are computer monitors, set-top boxes, multi-functional printers, and digital cameras. The ITA committed signatories to eliminate tariffs on information technology products. Now, the EU is arguing that as new capabilities are developed for products on the ITA list, the "new" products are no longer covered by the agreement. This trade barrier was raised by the Administration in its 2007 NTE (206), and we encourage USTR to take immediate and effective action.

  The current situation with regard to trade in set-top boxes is illustrative of the EU's flawed implementation of the ITA. As the EU moves forward with its planned switch from analog to digital television, set-top boxes that will convert the digital signal for analog television sets will be in high demand. Despite the fact that set-top boxes are covered by the ITA, the EU is assessing a 14 percent tariff on these items, claiming that because these devices have evolved to deliver digital signals, they are no longer covered by the ITA. This action puts U.S. set-top producers at a significant disadvantage.

The ITA has been a critical trade agreement with measurable results for American workers and producers in an area of advantage for the United States – nearly doubling global IT trade in the last decade. The United States should hold the EU to its commitments. The EU's actions in this instance are counter to its ITA commitments as well as its trade-liberalizing rhetoric.

- **WTO Action: USTR should** immediately initiate consultations under the WTO dispute resolution system challenging the reclassification of computer monitors and other products already affected. If these consultations do not yield a satisfactory outcome in the consultative period, then USTR should immediately file a complaint in the WTO.

D. Japan – Non-tariff barriers to U.S. autos and auto parts

- **Trade Barrier and Harm to U.S. Interests:** In 2007, the United States had a $55.2 billion trade deficit in auto and auto parts with Japan, 67 percent of the total U.S. trade deficit with Japan and nearly 8 percent of the total U.S. trade deficit. U.S. exports of autos and auto parts to Japan declined by over 25 percent in 2007, over 2000 exports.

  Japan also continues to block imports of U.S. auto parts using a combination of non-tariff barriers. For example, Japan levies an annual automobile tax that increases by engine size, discriminating against many U.S. vehicles. Japan also continues to restrict severely (and largely to Japanese Original Equipment Manufacturers (OEMs)) the number of garages that can perform service repairs through its "certified garage" and "designated garage" system. The vast majority-80 percent- of aftermarket parts and services sales is controlled by dealerships affiliated with Japanese OEMs, which are inclined to buy and sell auto parts from closely related Japanese auto companies. The reverse is true in the United States, where only 20 percent of aftermarket parts and services sales is controlled by OEM-affiliated garages or dealerships. In 1995, Japan agreed to open the auto services market by certifying more independent, non-OEM-affiliated garages, such as ones associated with U.S. auto affiliates. However, this commitment has not been realized.

  By largely excluding the U.S. auto and auto parts industries from the Japanese market, Japanese auto parts companies and affiliated auto companies gain from diminished competition and excessive prices in their home market. These barriers reduce not only potential sales of U.S. autos and auto parts, but also potential U.S. services in Japan. These barriers also provide a safe haven for Japanese producers to earn extra profits on their sales, allowing these companies to use these profits to offer lower prices in the U.S. market, purchase additional research and development,

and take steps with the extra revenue gained. Some of these barriers have been identified by the Bush Administration, yet it has taken no effective action to fix the problem: 2001 NTE (255-256), 2002 NTE (242), 2003 NTE (225), 2004 NTE (274), 2005 NTE (337-338), 2006 NTE (375), 2007 NTE (333-334).

- **Bilateral and WTO Actions:** Several of Japan's non-tariff barriers in this sector are inconsistent with WTO requirements, including the GATT and the General Agreement on Trade in Services (GATS). Others are actionable under section 301 of the Trade Act of 1974. The Bush Administration has failed to renew the U.S.-Japan Auto Agreement, which expired on December 31, 2000, leaving auto and auto parts discussions with Japan to an "Automotive Consultative Group (ACT)." The ACT has not been an effective forum to date in persuading Japan to open its market. **USTR should take the following steps: (1)** initiate an investigation under section 301 into Japan's auto and auto parts barriers; **(2)** use the investigation to catalogue Japan's barriers; **(3)** seek a comprehensive market-opening agreement; and **(4)** if that is not possible in a short period of time, utilize the WTO dispute settlement system against each barrier that is a WTO violation and section 301 provisions against barriers that are not.

E. Korea – Discriminatory taxes and non-tariff barriers close auto market

- **Trade Barrier and Harm to U.S. Interests:** Korea is the world's fifth largest automobile producer (after Japan, the United States, China and Germany), yet maintains one of the most closed automobile markets in the world. Korea's trade barriers have resulted in its imports from all sources having only a 4.3 percent share of the Korean market. The United States imported over 675,000 autos from Korea in 2007, while Korea imported about 10,000 autos from the United States. Existing Korean restrictions include: discriminatory taxes, regulations, and certification standards as well as an 8 percent import tariff. The United States concluded two separate automotive agreements with Korea in 1995 and 1998. In the 1998 agreement, Korea agreed to reduce taxes prejudicial to imported automobiles by addressing discriminatory and non-transparent tax, safety, and environmental standards and certification procedures that hinder U.S. imports. Korea instead has created new standards and certification barriers. These non-tariff barriers hinder the exportation of U.S. automotive products to the Korean market. Some of these barriers have been identified by the Bush Administration for five years running, yet it has taken no effective action to redress or eliminate these non-tariff barriers: 2001 NTE (293), 2002 NTE (256), 2003 NTE (240), 2004 NTE (313-314), NTE 2005 (388-389), NTE 2006 (413-414), 2007 NTE (369).

- **Bilateral Action: USTR should** include the Bipartisan Congressional Proposal to Open Korea's Automotive Market in the U.S.-Korea FTA.

F. **Korea – Non-transparent certification tests impede entry of U.S. goods to Korean market**

- **Trade Barrier and Harm to U.S. Industry:** Companies must get their products certified by one of the Korean quasi-governmental certification bodies before they can do business in Korea. Unfortunately, the certification process can be costly and burdensome and lacks transparency. Critically, certification test results are not made public and cannot be challenged. Moreover, these Korean certification bodies will not recognize the findings of independent third-party certification laboratories. In at least some cases, it appears that Korea may be using the certification process to shut U.S. goods out of the Korean market.

- **WTO Action: USTR should: (1)** ensure that Korea complies with its WTO commitments, including Article 2 of the Agreement on Technical Barriers to Trade, and does not use the certification process as an illegal technical barrier to trade; and **(2)** additionally, in the context of the U.S.-Korea free trade agreement being negotiated between the two countries, address problems with the Korean certification process, including through the development of a dispute resolution mechanism that resolves certification issues on an expedited basis and ensures that U.S. goods are not unfairly shut out of the Korean market or that their access to that market is not unfairly impeded.

G. **Mexico – WTO violations in large diameter pipe anti-dumping case**

- **Trade Barrier and Harm to U.S. Interests:** Mexico has misused antidumping law in imposing duties on U.S.-produced large diameter line pipe. The main U.S. supplier of large diameter line pipe to Mexico had shut down its operations a year before the Mexican final determination. However, the Mexican government did not take that fact into account as it went ahead with a case that, consistent with the Standard of Review at Article 17.6 of the Antidumping Agreement, violates several provisions of that agreement.

- **WTO Action:** In the large diameter line pipe case, the Mexican government (1) used a period of investigation that violates articles 1, 3.1, 3.2, 3.4, and 3.5 of the WTO Anti-Dumping Agreement ("the Agreement"), and (2) failed to complete the investigation in 12 months or show special circumstances to justify extension, as required in article 5.10

of the Agreement. **USTR should** immediately initiate consultations under the WTO dispute resolution system. If these consultations do not yield a satisfactory outcome in the consultative period, then USTR should immediately file a complaint in the WTO.

H. UK – Aero-engine subsidies harm U.S. manufacturers

- **Trade Barriers and Harm to U.S. Interests:** Subsidies to Rolls Royce's production of engines for large civil aircraft are WTO-inconsistent: The U.S. industry producing engines for large civil aircraft is strategically and technologically critical to U.S. national security and supports tens of thousands of high-quality jobs. The adverse effects for the U.S. industry due to past subsidization of the production of engines in the United Kingdom are substantial and include: (1) the loss of new engine sales; (2) loss of revenues due to price suppression; and (3) lost aftermarket business on engines in service. The subsidies that have been provided remain actionable pursuant to Articles 5 and 6 of Part III of the Agreement on Subsidies and Countervailing Measures. Given the historical use of engine production subsidies, the threat of more such financing still exists notwithstanding that several years have passed since the last announcement of royalty-based financing for Rolls Royce.

- **WTO Actions:** To encourage the United Kingdom to live up to its WTO commitments, **USTR should** call on the UK to retract currently actionable subsidies, audit all past royalty-based financing to ascertain a subsidy component, and not provide any new subsidies.

III. INTELLECTUAL PROPERTY AND INVESTOR RIGHTS

A. Canada – Canadian law and enforcement do not protect U.S. copyrights

- **Trade Barrier and Harm to U.S. Interests:** Canada has been on the USTR Watch List since at least 2002, in part because its IPR laws and enforcement remain far behind most other developed countries. Canada should enact legislation to provide effective protection of copyrighted materials in the online environment and enact legislation to bring it into compliance with the World Intellectual Property Organization (WIPO) Internet treaties. Due to gaps in its laws, Canada has become a leading exporter of pirated goods and of devices to enable piracy. Canada also lacks effective border controls to prevent both the importation and exportation of pirated products. The lack of effective IPR enforcement and border controls violates Articles 41, 51, and 61 of the TRIPs Agreement. Canada's IPR violations have been documented extensively by the Bush Administration: 2001 NTE (32-33), 2002 NTE (33-34), 2003 NTE (34-35), 2004 NTE (42-43), 2005 NTE (55-57), 2006 NTE (74-75), 2007 NTE (65-66).

- **Bilateral and WTO Actions: USTR should**: **(1)** immediately request consultations under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement; **(2)** commence a dispute resolution case under WTO procedures if the problem cannot be resolved in the 60-day consultation period; and **(3)** move Canada onto the U.S. government's Special 301 "Priority Watch List" of countries that present significant piracy problems for U.S. copyright holders until serious reforms are successfully implemented.

B. China – Non-enforcement of U.S. copyrights and trademarks

- **Trade Barrier, Lack of IPR Protection, and Harm to U.S. Interests:** China's market access restrictions and pirate market growth cost U.S. copyright industries almost $3 billion in 2006. The piracy rates of physical copyright products remain virtually the highest in the world, at 85-95 percent depending on the industry sector and product format (e.g., 95 percent of DVDs in China are pirated). The estimated trade losses due to copyright piracy by the Chinese industry are: business software, $1.9 billion; entertainment software, $590 million; motion pictures, $244 million; records and music, $206 million; and books $52 million. Market access restrictions by the Chinese government have exacerbated the piracy problem by severely restricting the supply of legal filmed entertainment, books and records. Such restrictions include: (i) a state-run monopoly that controls a single importer and two film distributors; (ii) government determination of box office revenue share; and (iii) a prohibition on foreign ownership of entities engaged in the online and mobile distribution of legitimate sound recordings and discriminatory censorship rules applied to foreign sound recordings. These restrictions effectively leave the Chinese market to pirates who fill the void resulting from government delays and limited legitimate foreign access to the market. Pirates comply with none of the government's regulations and restrictions, while capturing 85-95 percent of the U.S. entertainment industry's sales in China. There has also been a lack of enforcement against widespread Internet piracy as well as the photocopying of books. The lack of effective IPR protection is in violation of Articles 41 and 61 of the TRIPs Agreement. China's IPR violations have been documented extensively by the Bush Administration: 2001 NTE (55-58), 2002 NTE (56-59), 2003 NTE (58-60), 2004 NTE (72-75), 2005 NTE (95-100), 2006 NTE (121-128), 2007 NTE (105-112).

- **Bilateral and WTO Actions:** To encourage China to live up to its WTO commitments, **USTR should: (1)** vigorously pursue the WTO cases that

have been initiated against China's IPR and market access violations on these matters; and **(2)** keep China on the U.S. government's Special 301 Priority Watch List of countries that present significant piracy problems for U.S. copyright holders until serious reforms are successfully implemented.

C. **EU – French government attempts to force turnover of intellectual property**

- **Trade Barrier and Harm to U.S. Interests:** In 2006, France passed a law that could potentially require that companies turn over their Technical Protection Measures (TPM) technology to a newly-created government authority. This government-mandated taking of protected intellectual property has serious implications for protecting intellectual property, stifling innovation, and threatening U.S. competitiveness. The French government is currently drafting implementing regulations for this law. Until that work is completed, the full impact of the threat to proprietary technical information will not be known. While the goal of promoting interoperability is positive, the enforced transfer of technology, as proposed by France in this case, is contrary to sound policy and WTO rules.

- **Bilateral and WTO Actions:** To encourage France and the EU to live up to their WTO commitments, **USTR should** closely monitor the progress of the regulations implementing these provisions of law and communicate to the French government its expectation that intellectual property protection be maintained. USTR should meet with the French government within six months of the date of this letter, and if this issue has not been resolved, USTR should request consultations under all pertinent articles of the WTO Agreement on TRIPs, and commence a dispute resolution case under WTO procedures if the problem cannot be resolved in the 60-day consultation period.

D. **Mexico – IPR violations hurt U.S. motion picture industry and music and recording industry**

- **Lack of IPR protection:** Conservative estimates of trade losses due to Mexican copyright piracy exceeded $1 billion. Mexican copyright piracy includes hard goods, optical discs, Internet piracy, photocopying, and street sales. Losses included $487 million for sound recordings, $182 million for entertainment software, $296 million for business software, and $41 million for books. The lack of effective IPR protection is in violation of Articles 41 and 61 of the TRIPs Agreement.

- **Bilateral and WTO Actions:** To encourage Mexico to live up to its WTO commitments, **USTR should** move Mexico onto the U.S.

government's Special 301 "Priority Watch List" of countries that present significant piracy problems for U.S. copyright holders.

E. **Russia – Copyright piracy**

- **Trade Barrier, Lack of IPR Protection, and Harm to U.S. Interests:** Russia's copyright piracy problem is one of the most serious in the world, with estimated losses to U.S. copyright industries at nearly $2.2 billion in 2006, and well over $8.2 billion in just the last five years. While Russia has signed an IPR Bilateral Agreement with the U.S., Russia needs to show meaningful compliance with the agreement. The new (December 2006) civil code contains some improvements, but falls short in key respects.

  When determining whether Russia can be a GSP recipient, the President is authorized to evaluate whether Russia is providing "adequate and effective protection" of intellectual property rights. Russia's IPR violations have been repeatedly noted by the Bush Administration: 2001 NTE (382), 2002P NTE (367-368), 2003 NTE (335-336), 2004 NTE (410-411), 2005 NTE (522-524), 2006 NTE (553-555), 2007 NTE (498-501). The Administration now needs to make clear that Russian can retain its GSP benefits only if it improves significantly its IPR enforcement.

- **Bilateral and WTO Actions: USTR should take three steps:** **(1)** maintain Russia on the Priority Watch List and take action under Special 301 if Russia's IPR violations continue; **(2)** ensure that Russia makes substantial progress in this area before concluding the multilateral stage of Russia's application to the WTO; **(3)** support a Congressional resolution to link any Russia PNTR with full compliance by Russia with its bilateral WTO accession agreement; and **(4)** suspend Russia's eligibility for any duty-free trade benefits that it enjoys under the GSP program, while linking restoration of benefits to agreement between the Administration and Russia on a multi-year Action Plan to improve Russia IPR enforcement.

F. **United Arab Emirates (Dubai) – Investor Rights**

- **Inadequate Rule of Law:** In 2005, U.S. developer McKinley Reserve/Capital Partners attempted to purchase 38 acres for the multi-use RiverWalk project in Dubai's TECOM Free Zone. TECOM represented that it had clear and free title to the land; however, contrary to its contractual obligation, it did not have title to a parcel identified as an archeological site by the Dubai Government. TECOM accepted $2.7 million from McKinley Reserve before conceding, after investigation by

the U.S. investors, that TECOM did not have clear and free title to all the land. McKinley Reserve has not received restitution.

- **Bilateral Action: USTR should: (1)** continue to press for a satisfactory resolution of this case though its trade discussions and negotiations with the UAE, including its Trade and Investment Framework Agreement (TIFA) discussions; and **(2)** emphasize that a resolution of this case (and any others like it) is necessary for any further progress toward an FTA.

IV. AGRICULTURE

A. Multiple countries – Misuse of sanitary/phytosanitary laws

- **Trade barrier:** The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) sets out rules to ensure that Members' laws and regulations on food safety and animal and plant health are fair and transparent. Many countries use WTO-inconsistent SPS regulations to keep their agricultural markets closed to U.S. exports. Issues that bear careful scrutiny include SPS restrictions by Mexico on several U.S. products, including avocados, grains, seed products, apples, pork, beef, poultry, potatoes, and eggs; restrictions by China on U.S. avocados, fruit, beef, poultry and pork; and restrictions by the EU on U.S. fruit, processed food, meat, poultry, and dietary supplements.

- Specific examples of the trade barriers faced include U.S. poultry farmers inability to sell poultry in the EU and U.S. pear growers inability to sell pears in China. U.S. poultry farmers are essentially barred from the EU market because of the EU's chlorine standards for water used to wash poultry products. U.S. pear growers have been unsuccessfully trying to gain access to the Chinese market since 1995, despite providing significant information and research to support their products' entry into the market. During this time, the U.S. has provided access to the U.S. market for at least two Chinese pear varieties. U.S. pear growers are growing frustrated at the situation, as they face open competition from Chinese products in the U.S. market, but are not provided the same market access to China. These trade barriers should be carefully scrutinized to determine whether the EU and China are living up to SPS commitments.

- **Bilateral and WTO Actions:** Congress should pass, and **the Administration should** support, "Special 301 for SPS" legislation to give USTR the tools to deal with a large number of discrete cases involving other countries' misuse of SPS regulations.

V. SERVICES

A. China – Electronic payments industry commitments not being met

- **Trade Barrier and Harm to U.S. Interests:** China's WTO accession contained a clear commitment to provide unrestricted market access and national treatment for many financial services by December 11, 2006. China continues to drag its feet on full implementation of its accession requirements. While the People's Bank of China (PBOC) has approved the card issuing applications of some foreign banks, the PBOC continues to have internal disagreement over the current proposal on the use of data processing facilities. In the interim, China still allows payment systems providers to issue cards only if they co-brand with China Union Pay (CUP), which is owned by China's largest banks. Additionally, all Chinese domestic transactions must be processed over the CUP network. The Chinese government needs to live up to its WTO commitments and implement this obligation.

- **WTO Action:** As part of their ongoing bilateral negotiations **USTR should** continue pressing China to meet its GATS obligations by allowing financial institutions in China to issue payment cards of any brand of their choosing without co-branding requirements. USTR should also continue pressing China to eliminate the current requirement that electronic payments be processed over the CUP network. If the bilateral dialogue is unsuccessful, USTR should examine all options, including initiating consultations with China on its GATS obligations under the WTO dispute resolution system. If these consultations do not yield a satisfactory outcome in the consultative period, USTR should immediately file a complaint in the WTO.

B. China - Insurance branch licensing process is unfair to U.S. companies

- **Trade Barrier and Harm to U.S. Interests:** In its WTO accession agreement, China agreed to eliminate all geographic restrictions on foreign-invested life, non-life, and brokers by 2004. China also committed to allow internal branching at the same time as it phased out geographical restrictions. Based on these commitments, foreign-invested insurers who satisfy the requisite seasoning and capitalization requirements should be able to license multiple branches at the same time, just as domestic Chinese insurers do; however, U.S. insurers have not been granted concurrent branch licensing. China's WTO accession commitments did not include any limitations on national treatment regarding China's obligations on form of establishment in the insurance sector. Further, China made commitments that licensing approvals would not be permitted

to constitute barriers to market access. China's failure to provide concurrent (rather than consecutive) branch licensing puts U.S. insurers at a serious disadvantage. The practice is a significant barrier to U.S. insurers increasing their presence in the Chinese market, and is in violation of China's accession commitments.

- **Bilateral Actions: USTR should** engage in bilateral negotiations with China to ensure that China fulfills its WTO commitments. USTR should keep all other options open and review progress on this matter within 180 days of the date of this letter.

VI. OTHER BARRIERS

A. Regional Trade Agreements (RTAs) are increasing and may not be in accordance with international rules

- **Trade Barrier and Harm to U.S. Interests:** The number of RTAs has substantially increased over the last several years. The WTO reported 199 RTAs in force as of February 10, 2008. In the last ten years alone, notification to the WTO of new RTAs entered into force under Article XXIV of the GATT and the Enabling Clause has increased by 32 percent. 140 RTAs were notified over the last 10 years (1998 - 2007), as compared to 106 during the previous 10-year period (1988-1997). Some of these agreements may not be compliant with Article XXIV, and absent stronger monitoring and enforcement by USTR and the WTO, may be harmful to U.S. interests.

- Article XXIV of the GATT provides an exception for RTAs from the WTO's most-favored nation (MFN) treatment of the products of other Members. The four major requirements of article XXIV are: (1) duties and other restrictive commercial regulations must be eliminated; (2) "substantially all" trade must be covered; (3) external tariffs and commercial regulations affecting third-parties may not be more restrictive than they were prior to the implementation of the RTA; and (4) interim agreements must contain a schedule that completes these goals within a reasonable time period. The WTO has not been able to establish consensus on the interpretation of the requirements of article XXIV, and RTAs enter into force largely unchecked by the WTO or its Members.

- The WTO, via its Provisional Transparency Mechanism (December 2006), has made some improvements in supplying information to its Members regarding the formation of RTAs. However, this provisional mechanism falls far short of providing guidance on the criteria to be used to determine compliance with Article XXIV. The WTO and USTR need to do a better

job of ensuring that all of the myriad RTAs being formed are compliant with Article XXIV.

- **USTR Actions: USTR should: (1)** prepare a comprehensive assessment of significant RTAs to determine compliance with Article XXIV; **(2)** report this analysis to Congress within 6 months of the date of this letter and include specific, concrete steps outlining how USTR intends to address the trade barriers presented by RTAs that are not in compliance with Article XXIV; and **(3)** work with the WTO to strengthen the notification and review system to ensure that the relevant RTA provisions of Article XXIV will be enforced fully and effectively.

B. Arab League Boycott of Israel – Compliance with FTA Conditions and Expanded Reporting

- **Trade Barrier:** The Arab League boycott of Israel is a significant impediment to U.S. trade with some Middle Eastern and North African countries. Although the secondary and tertiary aspects of the boycott have been lifted in most Arab League countries, the primary boycott remains an obstacle to free trade in the region, and also affects U.S. firms with operations or investments in Israel. Currently, USTR's National Trade Estimate report (NTE) does not follow any specific, uniform criteria in its evaluation of the various Arab League members participating in the boycott. This lack of clarity and precision precludes any reliable comparison of boycott performance on a country-by-country or year-to-year basis. Additionally, the NTE does not state affirmatively and unambiguously that the boycott participation of Saudi Arabia, Kuwait, and the UAE is a violation of those countries' obligations to give preferential trade status to Israel, a fellow WTO member. It also paints an overly positive evaluation of Saudi Arabia's boycott status, failing to mention that Israeli-origin goods continue to be entirely banned from the country. Finally, the NTE does not mention that some non-Arab League states—such as Malaysia—also restrict trade with Israel.

- **Actions: USTR should** expand the scope of its NTE section on the Arab League boycott of Israel to include non-Arab League states, such as Malaysia, that follow the League's boycott model. USTR should also strengthen the report by using specific, uniform criteria to evaluate all boycotting countries. These should include: **(1)** whether the country attends Arab League or Organization of the Islamic Conference boycott meetings; **(2)** whether the country maintains a boycott enforcement office; **(3)** whether the country has recently changed its domestic boycott laws or regulations; **(4)** whether the country prohibits Israeli-origin goods from entering its territory; **(5)** whether the country encourages or condones

informal boycotts; and **(6)** whether the country's boycott practices have had an impact on U.S. exports with Israeli content, or on U.S. firms with operations or investments in Israel. **USTR should** also amend the NTE to state affirmatively and unambiguously that the boycott participation of Saudi Arabia and certain other WTO members violates their obligations to give preferential trade status to Israel, a fellow member. This acknowledgment should list such countries by name, within the appropriate country-specific paragraphs, and should definitively state the relevant country's respective WTO obligations vis-à-vis Israel. **USTR should** also modify its NTE passage on Saudi Arabia's role in the boycott, to give a more accurate picture of Saudi performance. The NTE should acknowledge unequivocally that the overt importation of Israeli-origin goods to Saudi Arabia continues to be prohibited, whether by law or by practice.