Congress of the United States
U.S. House of Representatives
COMMITTEE ON WAYS AND MEANS
1102 LONGWORTH HOUSE OFFICE BUILDING
(202) 225–3625
Washington, DC 20515–6348
http://waysandmeans.house.gov

March 26, 2009

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. The report catalogues barriers to U.S. exports of goods and services, investment and intellectual property rights. Congress mandated this report to call attention to these barriers and to help to eliminate them. Unfortunately, in years past, the report has grown in size and has simply demonstrated that all too many barriers remain in place year after year without resolution.

Too often in the past, we have negotiated rules and agreements, but then failed to hold our trading partners accountable. In the past eight years of the Bush Administration, the United States 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. This record of the Bush Administration is indicative of a "hands off" policy that contributed to our largest trade deficits in history. In a letter to President Bush at this time last year, many of us warned that these deficit levels were "unsustainable – both for the United States and the global economy." Unfortunately, many observers now believe that these deficits did indeed contribute to our current global economic crisis.

This is the beginning of a new Administration. We were encouraged that your Trade Policy Agenda recognized the need for a "rules-based trading system," and that U.S. Trade Representative Kirk testified in his confirmation hearing that the enforcement of our existing trade agreements will be a top priority in this new Administration.

We ask you to examine not only the specific issues described in this letter, but to think about ways that the United States can *systematically* improve its ability to eliminate barriers and open foreign markets to U.S. exporters. We need a comprehensive strategy that, among other things: identifies priority foreign country practices the elimination of which is likely to have the most significant potential to increase U.S. exports; allocates additional resources to investigating and eliminating other countries' barriers; improves interagency and international coordination on enforcement initiatives; uses diplomacy more effectively to pry open foreign markets; and makes full use of our rights under our bilateral and multilateral trade agreements.

The Appendix to this letter contains a compilation of a number of the most persistent and significant barriers to trade, and proposed causes of action to address each. Many of these matters are long overdue for effective action. If these issues cannot be resolved within a reasonable consultation period, we urge USTR to take appropriate action, whether under WTO or other dispute resolution mechanisms, U.S. law, in bilateral negotiations, or a combination of these approaches.

We look forward to working with you and your Administration as the United States moves forward with a new trade policy, one that seeks to expand trade and to spread its many benefits while recognizing and mitigating its costs.

Sincerely,

The Honorable Charles B. Rangel
Chairman
Committee on Ways and Means

The Honorable Sander M. Levin
Chairman, Subcommittee on Trade
Committee on Ways and Means

The Honorable Fortney Pete Stark

The Honorable John Lewis

The Honorable Richard E. Neal

The Honorable Earl Pomeroy

The Honorable John B. Larson

The Honorable Earl Blumenauer

The Honorable Bill Pascrell, Jr.

The Honorable Shelley Berkley

The Honorable Chris Van Hollen

The Honorable Kendrick B. Meek

The Honorable Linda T. Sanchez

The Honorable Brian Higgins

The Honorable Mike Thompson

The Honorable Danny K. Davis

Enclosure

APPENDIX:

Change: A New Day for Trade

President Obama has a U.S. trade deficit running nearly five percent – or more – of GDP for the last five years. There are several causes for this unprecedented deficit, but in part it is a result of a trade policy built on an ideology that says "leave the market alone and it will fix itself." As the last few years have shown, the market does not always fix itself, or when it does, the fix is late and when earlier action would have avoided more unnecessary damage.

Every year, the National Trade Estimate report shows many examples of where our trading partners violate the spirit and the law of global trade agreements. The previous Administration's failure to take vigorous, consistent action against closed markets contributed to Americans' disaffection with trade and exacerbated the global imbalances that have caused so much harm in the last year.

Outlined below are examples of trade barriers where we hope to see action pursued by the Obama 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.

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. General and Systemic Issues

II. Currency Manipulation

III. Barriers to U.S. Manufactured Products

A. China – Manufacturing Subsidies and Export Aid to Manufacturing
B. China – WTO-Illegal Trade Policy to Increase Downstream Wire and Wire Product Exports
C. China – Standards Regime Creates Barriers to U.S. Products
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. Korea – Other Trade-Distorting Policies
H. Mexico – WTO Violations in Large Diameter Pipe Anti-Dumping Case
I. Canada and United Kingdom – Aero-Engine Subsidies Harm U.S. Manufacturers
J. Korea, Japan, and EU – Subsidies for Lithium-Ion Batteries
K. EU – REACH

IV. Intellectual Property and Investor Rights

A. Canada – Canadian Law and Enforcement Do Not Protect U.S. 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

V. Agriculture

A. Multiple Countries – Misuse of Sanitary/Phytosanitary Laws
B. Taiwan – Rice
C. Taiwan – Beef and Pork
D. EU – Canned Fruit Subsidies
E. Canada – Dairy Products
F. Canada - Softwood Lumber Unfair Trade Practices Undermine U.S. Manufacturers

VI. Services

A. China – Electronic Payments Industry Commitments Not Being Met
B. China - Insurance Branch Licensing Process is Unfair to U.S. Companies

C. China – Domestic Express Delivery
D. Japan – Postal Insurance

VII. Other Barriers

A. Regional Trade Agreements (RTAs) Are Increasing and May Not Be in Accordance with International Rules
B. Arab League Boycott of Israel – Compliance with FTA Conditions and Expanded Reporting

Description of Issues

I. GENERAL AND SYSTEMIC ISSUES

- **Enhanced Enforcement Funding and Interagency and International Coordination**

  U.S. attorneys within the Office of the U.S. Trade Representative often lack the facts they need to prosecute violations of trade agreements. Some U.S. businesses and other stakeholders have the resources to develop the factual record themselves, but many others do not. The need to devote substantial resources to the development of these facts has grown in recent years, as disputes have become more fact-intensive (due in part to the role that non-tariff barriers play). It is often necessary to discover and translate into English obscure legal measures (including unpublished measures, and measures adopted by local and provincial officials) and to determine whether, how, and to what extent those measures have an adverse effect on trade. Indeed, the United States rarely files an "actionable" subsidy case (which requires the United States to demonstrate that the subsidy causes "adverse effects") against a foreign government, except where a U.S. industry is willing and able to devote substantial resources to developing the factual record for U.S. prosecutors.

  The United States needs to enhance its funding for the monitoring and enforcement of U.S. trade agreements. It also needs to improve its interagency and international coordination of enforcement activities. USTR attorneys need to work more closely with employees of the Department of Commerce, the State Department, and other federal agencies that gather information on the practices and policies of our trading partners.

  The United States also needs to work more closely with other governments that face the same trade barriers that the United States faces. This collaboration can take the form of developing the factual record for a formal dispute, as well as applying coordinated pressure on those governments that violate their trade agreements. It can also include initiatives such as the Anti-Counterfeiting Trade Agreement (ACTA) – if that agreement is negotiated properly, with improved transparency and input from all relevant stakeholders. The ACTA could improve international cooperation on IPR enforcement by, among other things, facilitating the exchange of information between signatory countries' law enforcement agencies. Finally, international coordination should include high-level economic dialogue that effectively addresses bilateral trade issues with key trading partners. Too often in the past, "dialogue" has sent weak signals, produced meager results, and caused delay in eliminating trade barriers and trade distortions. But when utilized properly, and as part of a more comprehensive strategy, it can help resolve differences and to expand rules-based trade.

- **Identification of Trade Enforcement Priorities ("Super 301")**

  In 1988, President Reagan signed into law a provision known as "Super 301". Super 301 required the U.S. Trade Representative to submit an annual report to Congress that identifies: (1) U.S. trade enforcement priorities; (2) trade enforcement actions taken in the previous year and an assessment of their impact; and (3) those priority foreign country practices on which the USTR will focus its enforcement efforts in the upcoming year.

  President Clinton renewed Super 301 by executive order when it expired under statute. The Bush Administration allowed Super 301 to lapse early in its tenure. The Obama Administration should renew Super 301.

- **Identification of Countries that Maintain Unfair Technical Barriers to Trade**

  The USTR should develop an annual report that identifies "priority foreign countries" that maintain technical barriers to trade in industrial and agricultural products that are unreasonable or discriminatory and burden or restrict U.S. commerce. This report could be modeled on the existing "Special 301" provision concerning the protection of intellectual property rights, which has proven effective in addressing IPR issues with our trading partners. (Section 104 of the Trade Enforcement Act of 2009 (H.R. 496) would require this report by statute.)

- **Improved Defense of U.S. WTO-Compliant Laws**

  In recent decisions, the WTO Appellate Body has ignored the plain text of the WTO agreements and imposed upon the United States and other WTO Members obligations that the Members themselves never agreed to accept. By reading new obligations into the text of existing agreements, the Appellate Body will only undermine WTO Member confidence in the dispute settlement system and, more generally, the WTO as an institution. Ultimately, this will make it more difficult to reach new agreements to expand and liberalize trade. While the Bush Administration was extraordinarily critical of some of these Appellate Body decisions, that criticism was ineffective. The Obama Administration should develop a more effective response to Appellate Body overreach.

- **Confronting the Threat of Retaliation for the Legitimate Exercise of WTO Rights**

  Many U.S. businesses, particularly those operating in China, have expressed a fear that if the United States exercises its WTO rights by questioning the WTO consistency of China's laws and practices, the Government of China will retaliate against those businesses (by revoking licenses to operate in China, granting government contracts to other suppliers, etc.). The rules-based multilateral

trading system cannot function properly under such a threat of unlawful retaliation. The Administration should raise this systemic issue directly and assertively with the Government of China.

II. CURRENCY MANIPULATION

Currency manipulation can contribute to international financial instability and prevent international financial markets from adjusting to actual underlying market-based fundamentals. For many 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.

In March 2008, many of us wrote to President George W. Bush expressing our grave concerns about China's ongoing manipulation of its currency. (A copy of that letter is attached.) We called on the Administration to adopt and implement a new strategy to address this fundamental issue that has contributed significantly to massive global imbalances that threatened the stability of the global economy. While we warned that Congress would take action, if necessary, "to guard against international economic instability," we also recognized that the Executive Branch "is in the best position to provide leadership and has the tools it needs to do so."

Today, of course, we no longer face the mere threat of international economic instability. The manipulation of exchange rates has contributed significantly to massive global imbalances, and those imbalances have contributed significantly to the current global economic crisis. It is now critical that we work closely with other nations to stimulate the global economy and to address the causes of the crisis in the hopes of avoiding such crises in the future.

The Bush Administration attempted to address the issue of currency manipulation through "quiet diplomacy," mostly in a bilateral context with many other economic issues competing for space on the same agenda. That approach failed. We urge the new Administration to consider a new approach, one that may include the actions identified in the March 2008 letter to the President.

In particular, we urge you to "multilateralize" this important issue in order to end other countries' "beggar-thy-neighbor" currency policies. Countries around the globe engage in currency manipulation, and other currencies appear to otherwise be "fundamentally misaligned." Japan engaged in currency manipulation in the recent past and is now being urged by Japanese exporters to do so again. At the same time, many countries around the globe are adversely affected by currency manipulation and other fundamental misalignments of currencies.

Indeed, as many call for a "new Bretton Woods system," we must recognize that the obligations under the existing Bretton Woods system have been ignored. In particular, Article IV of the IMF Articles of Agreement requires the IMF to exercise "firm surveillance" over its members to ensure that they "avoid manipulating exchange rates ... to gain an unfair competitive advantage over other members;" and Article XV of the General Agreement on Tariffs and Trade

provides that WTO Members "shall not, by exchange action, frustrate the intent of the provisions of this Agreement."

As this new Administration determines how best to address the issue of currency manipulation in this time of global economic crisis, we wish to call your attention to the following three facts:

- Special Multilateral Negotiations. There is important precedent for addressing the current currency-driven imbalances through an effective strategy of multilateral coordination, as explained in the March 2008 letter referenced above. Early in 1985, senior members of Congress called on the Reagan Administration to address the issue of misaligned currencies and the large U.S. trade deficit. (At its peak, our trade deficit in the 1980s was 3.2 percent of GDP. In 2008, our deficit was 4.8 percent of GDP, down from 5.7 percent of GDP in 2006, but still higher than in any year before 2004.) Later that year, a number of countries joined in an agreement to address the problem. Today's circumstances are not identical, but the current misalignment of currencies and the even-larger trade deficits today may present some useful parallels with that earlier time.

- Treasury Report to Congress on International Economic and Exchange Rate Policies. The Exchange Rates and International Economic Policy Coordination Act of 1988 requires the Secretary of the Treasury to consider "whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of ... gaining unfair competitive advantage in international trade." It is important to note that, since that law was enacted, every administration, except the most recent administration of George W. Bush, designated at least one country as a currency manipulator. The Reagan Administration, the George H.W. Bush Administration, and the Clinton Administration all designated countries as currency manipulators. Taiwan, South Korea, and China have all been identified over the years.

- WTO Obligations and Negotiations. Currency manipulation is inconsistent with both the WTO General Agreement on Tariffs and Trade (GATT) and the WTO Agreement on Subsidies and Countervailing Measures. The Clinton Administration recognized this fact in its November 1993 Treasury Report on International Economic and Exchange Rate Policies. The Treasury Secretary reported that "it is Treasury's judgement that China manipulates its exchange system to prevent balance of payments adjustment and gain unfair competitive advantage." The Secretary went on to say that "China has not yet brought its foreign exchange regime into conformity with GATT Article XV. Article XV states that GATT members 1) shall not, by exchange action, frustrate the intent of the GATT trade provisions; and 2) may only apply exchange restrictions in accordance with the IMF Articles of Agreement. Treasury urges China to bring

its exchange system into compliance with GATT Article XV and the IMF Articles of Agreement as it accedes to the GATT."

China is once again out of compliance with GATT Article XV. To be sure, China's currency practices today take a different form from its practices in 1993, when it operated a dual exchange rate system. But, today, China's massive, prolonged, one-way and sterilized intervention in the currency market, its unprecedented foreign exchange reserve accumulation ($1.9 trillion), and its massive current account surplus demonstrate that, once again, China is manipulating its currency.

It is also important to recognize that China's currency practices, and its other trade-distorting policies that lead to a heavily export-dependent economy, have impeded progress in the WTO Doha Round of trade negotiations. A number of countries have been reluctant to open their markets further to *fairly* traded imports, in part because they are struggling to fully absorb *unfairly* traded imports from China.

- **Bilateral and Multilateral Actions: The Administration should** consider a new approach to effectively address currency manipulation. Consistent with the recommendations made in a March 2008 letter that many of us sent to President Bush, that new approach may include the following: (1) strengthened U.S. leadership in the International Monetary Fund; (2) action in the World Trade Organization (including through the enforcement of existing obligations in WTO dispute settlement proceedings); (3) special multilateral negotiations with key countries; and (4) enforcing existing U.S. trade and exchange rate laws.

III. 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. Subsidized bank lending, state run vertical supply chains, subsidized energy costs, tax subsidies for exports, and government-funded capacity expansion, are all tools commonly used by the Chinese government.

- Government subsidies have been particularly problematic in the steel sector. U.S. steel producers have identified that state-owned enterprises account for the vast majority of total Chinese steel production, with 19 of the top 20 steel groups being majority-owned or -controlled by the Chinese government. And these Chinese state-owned enterprises provide subsidized steel inputs to companies that make manufactured steel products. In addition, 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, land subsidies, VAT and import duty exemptions for imported capital equipment, and a lack of enforcement of basic worker and environmental standards to help Chinese steel producers and others. 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 resulted in China becoming a net exporter of steel. Indeed, even as U.S. steel plants now see their capacity utilization at only 44 percent, Chinese steel exports to the United States rose from 4.2 million metric tons in 2007 to 4.4 million metric tons in 2008.

- 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 be used to produce products other than 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 partially address the problem in some cases, but the overarching issue of Chinese subsidization needs to be solved at its root: China must abandon its pervasive use of trade-distorting subsidies and other forms of market-distorting industrial policies.

- China has indicated that it has scaled back some of the activities named in the 2008 letter. However, the time frame for elimination of these activities was very long, many of these activities (such as state control over the auto, steel, and aircraft sector) were never scheduled for true privatization, and it is likely that China has not even lived up to its own schedule. And it is important to recall that, after the United States filed a WTO case against certain Chinese export subsidies, and China agreed to eliminate those subsidies, the United States then discovered that China had put in place other export subsidies, leading to the filing of the recent "Famous Brands" case at the WTO. That case involves more than 70 different measures at all levels of the Chinese government, covering more than 70% of exports. But it is likely only the tip of the iceberg. For example, the case only involves subsidies that are contingent upon export, not other forms of trade-distorting subsidies that are actionable under WTO rules.

- **Bilateral and WTO Actions:** The Administration should support the passage of, and then swiftly sign into law, the Trade Enforcement Act of 2009 (H.R. 496). Among other things, H.R. 496 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 materially injuring a U.S. industry. The Administration also should: (1) comprehensively investigate the full range of China's subsidies and their effects on trade; and (2) 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.

B. China - WTO-Illegal Trade Policy to Increase Downstream Wire and Wire Product Exports

- **Trade Distortion and Harm to U.S. Interests:** China often imposes export taxes on a range of "upstream" products (such as wire rod) or raw materials while granting rebates on a range of "downstream" products (such as wire or wire products), creating distortions that directly and adversely impact U.S. producers of a range of downstream products.

  The use of export taxes and licenses to limit exports of wire rod is a clear violation of China's Protocol of Accession to the World Trade Organization (WTO). China's imposition of export taxes on upstream raw material – wire rod – encourages the retention of these raw materials in China, resulting in artificially lower input costs for Chinese producers of wire and wire products (e.g., wire hangers). Together, these programs manipulate China's tax and trade laws to favor Chinese industries which export downstream products to the United States and other trading partners. These practices violate the commitments made by the Chinese government when it joined the WTO.

- **Bilateral and WTO Actions:** China should not design or implement its export tax policy to artificially stimulate exports of downstream products in a bid to move ever more quickly up the "value chain" in world trade.

  USTR should request formal WTO dispute settlement consultations on the Chinese export tax programs to send a clear signal that China needs to end these kinds of industrial policies that contribute to global imbalances.

C. China – Standards Regime Creates Barriers to U.S. Products

- **Trade Barriers and Harm to 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 the 2008 NTE (pp. 91-99) and should take action to resolve these trade barriers.

- In its WTO accession agreement, China made several standards 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, they also prevent Chinese consumers from having access to world-class products and services.

- For China's new certification mark (the "CCC"), there has been a persistent requirement that product certification be done in China by Chinese certification bodies.

- 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 of 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, should highlight the importance of China's commitments to transparency in its standards regime. Specifically, USTR should impress upon China 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. Finally, as described in Section I above, **USTR should** develop an annual report that systematically identifies countries that maintain unfair technical barriers to trade.

D. Japan – Non-Tariff Barriers to U.S. Autos and Auto Parts

- **Trade Barrier and Harm to U.S. Interests:** In 2008, the United States had a $55.8 billion trade deficit in auto and auto parts with Japan, 74 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 were almost 27 percent lower in 2008 than in 2000.

  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, invest in additional research and development, and take other measures with the extra revenue gained. Some of these barriers were identified by the Bush Administration, but it took 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), and 2008 NTE (310).

- **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 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 timely manner, 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 5.3 percent share of the Korean market. The United States imported over 616,000 autos from Korea in 2008, while Korea imported about 10,400 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, as USTR has identified in many prior years: 2001 NTE (293), 2002 NTE (256), 2003 NTE (240), 2004 NTE (313-314), NTE 2005 (388-389), NTE 2006 (413-414), 2007 NTE (369), and 2008 NTE (344-345).

- **Bilateral Action: USTR should** include the Bipartisan Congressional Proposal to Open Korea's Automotive Market in the U.S.-Korea FTA, delivered to the USTR on March 28, 2007.

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. Generally, 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)** in the context of the U.S.-Korea free trade agreement, 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. Korea – Other Trade-Distorting Policies

- **Trade Barrier and Harm to U.S. Interests:** Korea's most recent WTO trade policy review raises several more issues that may be worthy of more investigation, for example:

- industrial policy through Korea's usage tariff rates, autonomous tariff quotas, and duty concessions on inputs;
- Korean FDA requirements that pharmaceuticals duplicate overseas clinical tests in Korea;
- loans from the Industrial Bank of Korea (IBK) and the Korean Development Bank (KDB), which, while run commercially in making industrial development loans, have their losses guaranteed by the government;
- lower electricity tariffs for manufacturing activities; and
- extension of a subsidy for shipping.

- **Bilateral Action:** USTR should monitor closely these barriers and any other barriers with trading partners that show a pattern of persistently impeding U.S. exports.

H. 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.

I. Canada and United Kingdom – 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. These subsidies were listed in the 2008 NTE letter, and were once again listed in the 2008 NTE report by USTR.

- The USTR 2008 NTE report also lists a French government effort to support formerly state-owned SAFRAN Group's propulsive engine program with a reimbursable advance of 140 million euros.

- In Canada, government subsidies to the aircraft engine industry (specifically, to support new aircraft engine development and Bombardier's launch of a "C Series" aircraft) may qualify as prohibited export-contingent subsidies, but even if not, are likely actionable in view of their adverse effects on U.S. companies active in the aerospace sector.

- **WTO Actions:** To encourage our trading partners to live up to their WTO commitments, **USTR should** call on the UK and Canada to: retract currently actionable subsidies, audit all past royalty-based financing to ascertain a subsidy component, and not provide any new subsidies. **USTR should** also investigate these subsidies and their effect on trade to determine whether formal WTO dispute settlement consultations would be appropriate.

J. Korea, Japan, and EU – Subsidies for Lithium-Ion Batteries

- **Trade Barriers and Harm to U.S. Interests:** Lithium-ion batteries are the likely power source for the next wave of hybrid automotive vehicles. The United States lags behind other developed countries in producing these batteries, and foreign government subsidies are part of the reason for that lag. In recent testimony before Congress, the director of transportation research at the Argonne National Laboratory testified that the Japanese, Korean, and German governments had all subsidized their lithium-ion battery producers.

- **Trade Actions:** The United States should be prepared to defend vigorously its recent auto assistance programs. The United States'

government has lagged other governments in supporting its auto industry, and should not allow other countries' recent criticism of U.S. action to go unchallenged in light of their continuing subsidies.

K. EU – REACH

- **Trade Barriers and Harm to U.S. Interests:** EU REACH is the EU's new chemical management regulation that entered into force on June 1, 2007. REACH requires all chemicals produced or imported into the EU to be registered in a central database, and imposes new testing and marketing requirements, including authorization for specific uses when determined necessary by the European Chemicals Agency (ECA). REACH will impact virtually every industrial sector because it regulates substances not only on their own, but also in preparations and products.

- REACH requires virtually all substances to be registered at the beginning of the process, and then if the ECA determines that it needs more information on a chemical, that chemical will be put on a list called "Substances of Very High Concern." In other words, before there has been any evaluation, a signal will be sent to the market that the chemical might end up restricted, encouraging substitution to other substances that may not have been studied as well in that use.

- There have been reported potential WTO violations due to REACH, including the following allegations of discrimination against imports:

    - U.S. companies will need to register for REACH by 2010, but EU companies will not need to register until 2018, creating the potential for EU companies to use the work performed by U.S. companies in their own applications; and

    - During REACH's registration process required of all imported and manufactured substances, non-EU companies cannot register their chemicals directly and, instead, have to hire EU representatives to register on their behalf.

- **Bilateral and WTO Action: USTR should** continue its monitoring of REACH, especially for violations of the national treatment obligation and of Article 2.1 of the TBT Agreement. It should seek to resolve the issue expeditiously, perhaps through the WTO TBT Committee, if possible.

IV. 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 has taken some recent steps to embrace IPR protection and enforcement, such as outlawing camcorder recording of movies. Nonetheless, Canada still 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 appears to be inconsistent with Articles 41, 51, and 61 of the TRIPs Agreement. Canada's apparent 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), 2008 NTE (63-64).

- **Bilateral and WTO Actions: USTR should**: **(1)** consider requesting consultations under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement; **(2)** 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; and **(3)** work to resolve these issues with Canada during any ACTA negotiations, if the Administration decides to proceed with those negotiations.

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 $3.5 billion in 2006. The piracy rates of physical copyright products remain virtually the highest in the world, at 82-95 percent depending on the industry sector and product format. The estimated trade losses due to copyright piracy by the Chinese industry are: business software, $3.0 billion; entertainment software, $590 million; motion pictures, $244 million; records and music, $451 million; and books $52 million. Market access restrictions by the Chinese government have exacerbated the piracy problem by severely restricting the supply of legally 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), and 2008 NTE (105-120).

- **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; **(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; and **(3)** consider initiatives to improve IPR enforcement, including through improved international coordination of enforcement activities. An Anti-Counterfeiting Trade Agreement (ACTA), if negotiated properly (with greater transparency and input from stakeholders), could help to achieve these goals.

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 companies to 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: 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 consider requesting 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 $1.3 billion in 2007. Mexican copyright piracy includes hard goods, optical discs, Internet piracy, photocopying, and street sales. Losses included $527 million for sound recordings, $273 million for entertainment software, $460 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 $2.8 billion in 2007. While Russia has signed an IPR Bilateral Agreement with the U.S., and has made some meaningful raids on business software pirates in 2008, Russia needs to show more meaningful compliance with the agreement.

  When determining whether Russia can be a GSP recipient, the President is authorized to consider 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), and 2008 NTE (469-471). 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.

V. 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. Specific examples of the trade barriers faced include U.S. cherry growers' difficulties in selling cherries in Japan and Korea and U.S. apple growers' difficulties in selling apples in China.

- **Bilateral and WTO Actions:** In addition to requesting formal WTO dispute settlement consultations where appropriate, the Administration should support the Trade Enforcement Act of 2009 (H.R. 496). Section 104 of H.R. 496 would require USTR to develop an annual report that identifies countries that maintain unfair technical barriers to trade or unfair sanitary or phytosanitary measures. The Administration should also consider creating such a report on its own initiative, before legislation is enacted.

B. Taiwan – Rice

- **Trade Barrier and Harm to U.S. Interest:** Taiwan's WTO accession included a commitment to purchase 64,634 metric tons of imported U.S. rice annually. In FY 2007 and 2008, Taiwan has not fulfilled this commitment because of the artificially low price ceiling under which

Taiwan's state trading enterprise operates.

- **Bilateral and WTO Actions: USTR should** raise this issue with Taiwan in any bilateral meetings. If informal discussions fail to resolve the issue within a reasonably short period of time, USTR should consider initiating formal WTO dispute settlement consultations.

C. Taiwan – Beef and Pork

- **Trade Barrier and Harm to U.S. Interest:** Taiwan does not accept all U.S. beef despite the fact that U.S. beef producers have adopted comprehensive control measures for bovine spongiform encephalopathy (BSE) and that the World Animal Health Organization (OIE) has determined that all cuts of American beef from animals of all ages are safe.

  Taiwan has also restricted imports of U.S. pork because it has found trace amounts of ractopamine, a feed additive that has been approved for use in the United States and 26 other countries. The *Codex Alimentarius* (which sets international food safety standards) has set maximum residue limits for ractopamine, but Taiwan has imposed a *de facto* ban on U.S. pork with trace amounts of ractopamine.

- **Bilateral and WTO Actions: USTR should** raise this issue with Taiwan in any bilateral meetings government needs to keep pressure on Taiwan to fulfill its commitments. If informal discussions fail to resolve the issue within a reasonably short period of time, **USTR should** consider initiating formal WTO dispute settlement consultations. **USTR should** also support the "SPS/TBT Special 301" mechanism described above and included in section 104 of the Trade Enforcement Act of 2009 (H.R. 496).

D. EU – Canned Fruit Subsidies

- **Trade Barrier and Harm to U.S. Interest:** The new EU Common Market Organization (CMO) for fruits and vegetables came into effect on January 1, 2008, and included processing aid subsidies for canned fruit. These subsidies are supposed to be "fully" decoupled after five years, but USTR remains concerned about hidden subsidies and says that it is monitoring EU assistance in this sector, "evaluating potential trade-distorting effects."

- **Bilateral and WTO Actions:** The USTR evaluation should lead to a

conclusion about whether to file a WTO case, and that case should be filed if it is determined to be warranted.

E. Canada – Dairy Products

- **Trade Barrier and Harm to U.S. Interest:** In December 2008, a Canadian law amending compositional standards for cheese went into effect. The law establishes minimum percentages of proteins derived from milk in the production of various cheeses. The law has the effect of shutting out U.S. dairy suppliers that had found recent success in exporting dairy products to Canadian cheese producers – after the United States successfully challenged other Canadian dairy measures at the WTO.

- **WTO Action: USTR should** investigate the Canadian law, raise this issue in bilateral discussions with Canada, and consider requesting formal WTO dispute settlement consultations with Canada in the near future – particularly given the history of barriers imposed on U.S. exporters in this area.

F. Canada - Softwood Lumber Unfair Trade Practices Undermine U.S. Manufacturers

- **Trade Barrier and Harm to U.S. Interests:** Canada ships $5-10 billion in softwood lumber to the United States every year. The Canadian provinces provide enormous subsidies to their lumber producers by, among other things, supplying government timber to them for a fraction of its value. Every U.S. administration since that of President Reagan has recognized these subsidies. The International Trade Commission has consistently found that Canadian softwood lumber imports injure and threaten injury to the U.S. lumber industry, and the Commerce Department has found that Canadian lumber is intensively subsidized and unfairly dumped into the U.S. market. Apart from the provinces simply setting timber prices artificially low through administered pricing systems, Canadian authorities reinforce and preserve the timber pricing subsidy through restrictions on the export of logs.

  In 2006, the United States and Canada established a bilateral agreement - the "Softwood Lumber Agreement" ("SLA") - to address Canada's unfair lumber trade practices. Canada did not commit in the SLA to actually eliminate the unfair practices through open and competitive timber and log markets. But Canada did commit to impose a mixture of export taxes and quotas on its lumber shipments to offset the unfair practices. Regrettably, Canada has been broadly violating the SLA by improperly administering

the export taxes and quotas and by providing new and higher subsidies contrary to SLA anti-circumvention provisions. An arbitral tribunal has directed Canada to impose remedial measures to address some quota-overshipment violations. The U.S. government also is challenging some Canadian lumber-subsidy practices before another arbitral tribunal under the agreement.

A variety of Canada's SLA violations remain ongoing and were left unchallenged by the Bush Administration. These include SLA-inconsistent reductions in timber prices charged by British Columbia, Canada's largest lumber-producing province. Canadian authorities are essentially paying the export taxes for their lumber producers through these subsidies, and the SLA violations are contributing to ruinous lumber market conditions.

- **Bilateral and WTO Actions:** (1) The Administration should inform Canada that it will not tolerate continued SLA violations and follow through on this statement. Canada has, for example, ignored questions that the Bush Administration provided to Canada, in accordance with SLA procedures, about British Columbia timber price reductions. The Administration should assume that the facts support SLA violations to the extent that Canada continues to withhold requested information. (2) The Administration should consider challenging Canada's log export restrictions as being contrary to Article XI of the GATT. These restrictions appear to be GATT-inconsistent trade barriers to which no GATT exemption applies.

VI. SERVICES

A. China – Electronic Payments Industry Commitments Not Being Met

- **Trade Barrier and Harm to U.S. Interests:** China's WTO accession agreement 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, and the PBOC requires that banks that issue cards to cardholders in China

encourage their cardholders to use the CUP network outside of China, thereby using the monopoly status domestically for expansion abroad. The Chinese government needs to live up to its WTO commitments and implement its obligation.

- **WTO Action:** The Bush Administration raised this issue in different bilateral fora with China, and nothing changed. As part of 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, and are currently subject to a moratorium on expansion in regions in which they are already approved through establishment of sales offices. 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.

C. China – Domestic Express Delivery

- **Trade Barrier and Harm to U.S. Interest:** China has delayed consideration of a new draft postal law, but the law has one provision that discriminates in favor of domestic companies by allowing only domestic carriers to carry out express delivery of documents from domestic to domestic addresses. (All carriers can still deliver packages from domestic to domestic addresses.) Four members of Congress sent a November 2008 letter to the Chinese Congress requesting that the law not be passed in current form.

- **Bilateral Actions: USTR should** continue pressing this issue with the Chinese government to ensure that U.S. companies receive equal treatment in China.

D. Japan – Postal Insurance

- **Trade Barrier and Harm to U.S. Interests:** In 2007 Japan Post Insurance (JPI) began a 10 year transition from 100% government ownership to privatized status. No transfer of ownership has yet occurred. (JPI) has applied to offer a new insurance product in competition with private companies. JPI enjoys unique commercial advantages while not yet facing the same regulatory requirements and oversight as private market insurers.

- **Bilateral and WTO Actions:** USTR should assert that the introduction of new postal products under the present conditions of competition constitutes a violation of Japan's bilateral, WTO, and GATS commitments for which Japan will be held accountable.

VII. 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 10 years from 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.

- USTR has not made major modifications to its Arab League reporting section. Most of the language in the Kuwait, UAE, and Saudi Arabia paragraphs is basically unchanged, and the introduction still weakly reads that the boycott "may" conflict with WTO members' obligations. Another concern is that USTR seems to dismiss the 2008 NTE letter's concerns over non-Arab League boycott participants such as Malaysia by saying that information gathered from the State Department "does not paint a clear picture" of boycott participation by non-Arab countries.

- **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.