

**Questions for the Record from February 9, 2011  
Committee on Ways and Means Hearing**

Question from Rep. Devin Nunes

**1. Mexican Trucking**

Ambassador Kirk, you met with Mexican officials the week of January 10, right after Secretary LaHood released a concept paper as a “starting point” for negotiating a new, “phased” cross-border trucking program with Mexico, to bring the United States back into compliance with its NAFTA obligations. You noted after your meetings in Mexico that negotiations would move ahead promptly and that the program could be in place “as quickly as within the next four to six months.” I have three questions:

- Are you confident that the final terms of the trucking program that you are currently negotiating with the Mexicans will be consistent with our NAFTA obligations, so that we can ensure an end to Mexico’s retaliatory tariffs, which have cost us over \$4 billion already?

**A: Once a final agreement on the program is reached, Mexico will suspend its retaliatory tariffs in stages beginning with reducing tariffs by 50 percent at the signing of an agreement and will suspend the remaining 50 percent when the first Mexican carrier is granted operating authority under the program. Mexico will terminate all current tariffs once the program is normalized.**

- What timeframe do you now expect for a deal? Are you still on pace to hit your “four to six months” deadline, which means mid-May to mid-July?

**A: Now that we have reached an agreement with Mexico on a path forward, the next step is for negotiating teams to work on the details. The proposed agreement between the Department of Transportation and Mexico will be available for Congressional briefings and will be published for public comment by late March or early April. We expect the final agreement to be signed in late May or early June.**

- What are you doing to encourage Mexico to lift the retaliatory tariffs now, based on the United States already having made a good-faith proposal for resolving the trucking issue?

**A: It was important for the United States to seek relief from the retaliatory tariffs that Mexico has imposed on certain U.S. exports. On March 3, the President announced that we reached agreement with Mexico on a series of steps that will lead to the lifting of the tariffs. Once a final agreement on the program is reached, Mexico will suspend its retaliatory tariffs in stages beginning with reducing tariffs by 50 percent at the signing of an agreement and will suspend the remaining 50 percent when the**

**first Mexican carrier is granted operating authority under the program. Mexico will terminate all current tariffs once the program is normalized.**

## **2. New Zealand Dairy Market Access**

Ambassador Kirk, as you may recall from our interactions on this issue last year, I am a co-chairman of the Congressional Dairy Farmers Caucus. The American dairy industry is deeply concerned about the impact of expanding U.S.-New Zealand dairy trade. It is working to cultivate many export opportunities and to help to usher in a mindset among producers that trade can be beneficial. But the prospect of expanding dairy trade with a country that's 90 percent dominated by a single company and which exports more dairy products than any other single country has given both dairy farmers and processors throughout this country grave concern. How is USTR working to address those concerns as it goes about its bilateral market access negotiations with New Zealand?"

- A: I appreciate hearing your views on market access for New Zealand dairy products in the Trans-Pacific Partnership (TPP) negotiations. We view the TPP initiative as an important element in our efforts to expand U.S. exports to the Asia-Pacific region, including new export opportunities for U.S. dairy products. At the same time, we also recognize the concerns raised by many of our dairy producers with regard to expanding dairy trade with New Zealand. We intend to work closely with our many stakeholders in the agricultural sector and Congress as the negotiating process moves forward. It will be very important for us to continue our dialogue with Congress and our dairy industry on the specific concerns they see and how best to address them.**

## **3. Geographic Indicators**

Ambassador Kirk, I am very concerned about the prospect that provisions regarding Geographic Indicators (GI's) in the Free Trade Agreement (FTA) between the European Union (EU) and South Korea will unfairly limit, if not foreclose, opportunities for enhanced market access that may otherwise be provided to the American dairy industry through the enactment of the U.S.-Korea Trade Promotion Agreement. I am appreciative of the efforts you have made to prevent such a result and am hopeful that the situation will be successfully resolved, in part through South Korea's fair and expeditious processing of U.S. dairy trademarks.

Although the lengthy delay in the enactment of U.S.-Korea Trade Promotion Agreement certainly has not helped, it is readily apparent that the EU is aggressively working to improperly use GI provisions to gain an unfair advantage for its dairy products. In addition to the situation in South Korea, I am very concerned that such GI provisions will also be included in other FTAs the European Union is seeking, such as with Colombia, Panama, and Peru. Thus, I am curious to know what efforts the Office of the United States Trade Representative is taking to ensure that the EU is not successful in bilaterally undermining the value of the concessions the U.S. has secured in its FTAs, particularly as they relate to use of EU-driven dairy GI provisions.

**A: USTR is committed to continuing its efforts to ensure that the Korea-EU Free Trade Agreement (FTA) does not impair the improved market access for U.S. products, including dairy products, which are provided for in the U.S.-Korea Trade Agreement (KORUS). In addition to commitments to open its markets to U.S. products, Korea also undertook a number of obligations in KORUS regarding the protection of trademarks and geographical indications (GIs). USTR continues to work with Korea to ensure that these commitments are not undermined by the Korea-EU FTA.**

**More generally, USTR is working intensively, through bilateral and multilateral channels, to advance U.S. market access and intellectual property rights interests, including with respect to U.S. dairy products. These efforts include on-going negotiations at the World Trade Organization and the Trans Pacific Partnership, to expand market access and secure appropriate protection of trademarks and GIs. Additionally, USTR carries out these efforts through its ongoing monitoring of the implementation of other U.S. free trade agreements.**

Question from Rep. Pat Tiberi and Rep. Dave Reichert:

**1. Exports of Travel and Tourism**

One opportunity to increase exports to meet the goals of the National Export Initiative is through travel and tourism, our nation's largest service export. International travelers to the U.S. spend, on average, \$4,000 per visit. Chinese travelers spend an average of \$7,000 per visit.

Unfortunately, one of the most significant barriers is not one imposed by a foreign government, but instead by our own government. Burdensome visa processing procedures and visa interview delays result in the U.S. losing out to destinations such as Europe or Australia. Can you please provide the Committee with an analysis of the impact that U.S. visa processing procedures and visa interview delays are having and could have over the next two years from key travel markets -China, Brazil and India- where demand is outpacing visa processing resources? As you may be aware, the President's Export Council offered recommendations on this very topic at its September 16, 2010 meeting.

Our travel services companies also face barriers abroad. In China, for example, foreign travel and tourism firms are restricted from competing under the same conditions as Chinese firms. The Chinese government places restrictions on foreign-owned enterprises in selling outbound travel packages and airline tickets. And China requires travel agents and airlines to connect into China's nationally owned computer reservation system when booking airline tickets. How will the Administration work to resolve these issues?

**A: The Administration recognizes the enormous value of the U.S. tourism industry, and the billions of dollars of export revenue that it generates for U.S. companies and workers. We are committed to creating and maintaining an effective and efficient visa process that ensures our country remains open to legitimate travel, while securing America's borders from external threats. In recent years, the Department**

of State has implemented initiatives to improve access to information about U.S. visa requirements and procedures, in addition to measures to reduce wait times for interview and visa processing. The Department of State's Bureau of Consular Affairs can provide further information about these activities, including with respect to specific markets.

The U.S. Administration also understands well the importance of China's travel and tourism market. We continue to press China's National Tourism Administration and China's Ministry of Commerce, including under the auspices of a JCCT Working Group on Travel and Tourism, to liberalize its market for travel and tourism services. Last year, China announced that it will launch a pilot project allowing a certain number of joint ventures to sell outbound travel and we are staying in close touch with the Chinese Government on that issue. We also will continue to engage China regarding its computer reservation services system. During the 2009 JCCT, China's Civil Aviation Administration committed to holding a joint forum addressing the expansion of travel distribution services, including computer reservation system technology. We have since confirmed an agenda and are presently exploring dates for holding the forum later this year.

Questions from Rep. Pascrell:

**1. Turkey's Inspection of Pharmaceutical Manufacturers**

In April 2009, Turkey implemented a requirement for inspections of pharmaceutical manufacturing facilities exporting to Turkey. This inspection is required before a product can be approved. Turkey does not have the current capacity to conduct these inspections for the hundreds of products in the regulatory queue in a timely manner, meaning product entry could be delayed up to 6 years or more. This policy represents a significant market access barrier for US companies. What is USTR's plan to change the Turkish government's current policy?

- A:** The Administration has brought this problem to the attention of Turkish authorities from the beginning, raising it at both working and cabinet level on multiple occasions. Through the new Framework for Strategic Economic and Commercial Cooperation (FSECC), Ambassador Kirk and Secretary of Commerce Locke have made clear to their Turkish counterparts that Turkish government actions regarding Good Manufacturing Practices (GMPs) certificates for pharmaceuticals have created a very significant barrier to bilateral trade. The Administration has also reached out to Turkish Ministry of Health officials through expert level discussions in order to promote understanding and cooperation between regulators, with the aim of enhancing MOH capacities to carry out future inspections in an effective and above all timely manner. We have also strongly encouraged direct communication between Turkish authorities and U.S. pharmaceutical firms. Senior officials from USTR and a number of U.S. agencies have been firm in noting to the Turks that immediate action is needed. We will continue to pursue this issue in upcoming meetings with Turkish officials, including the next meeting of the FSECC, now envisioned for the fall of 2011.

## 2. Russian Protectionist Policies

USTR has made progress in ensuring Russia's compliance with its outstanding bilateral obligations to the U.S., including passage of legislation strengthening IP legislation in Russia as a part of Russia's WTO accession process. However, protectionist policies have increased in Russia in many spheres, including pharmaceuticals. Many aspects of Russia's PhRMA 2020 strategy are clearly protectionist and would violate Russia's pending WTO obligations. Is USTR working with the Russian government to ensure a review and cessation of existing major policies in Russia that would run afoul of WTO requirements?

**A: USTR leads an interagency team that works with Russia through regular bilateral and multilateral meetings to address WTO requirements as well as to improve Russia's intellectual property rights rules and enforcement efforts. Removing barriers to market access for U.S. exports, including pharmaceuticals, is also a major objective. The National Trade Estimate Report and the Special 301 Report, which are issued at the end of March and April, respectively, lay out concerns that have been expressed and our ongoing efforts to address those concerns.**

## 3. Copyright Infringement in China

I understand the Committee is going to be working on Customs Reauthorization legislation in the next several months. Every year, Customs reports that the number one source of copyright infringing products is China. What should we be doing to address this problem?

**A: International trade in counterfeit and pirated goods is a major problem. U.S. Customs data confirm that many IPR-infringing goods seized at U.S. borders originate in China. We engage extensively with China through the JCCT and other mechanisms to press for stronger action on this problem at the source. In addition, USTR is also joining together with other U.S. trading partners to step up cooperation in the effort to fight this illicit trade around the world. For example, last fall, USTR and partner countries representing more than half of global trade finalized the text of the Anti-Counterfeiting Trade Agreement (ACTA). The ACTA is an important new tool to fight the global scourge of counterfeiting and piracy. Moreover, ACTA is only one of many efforts that the Administration is pursuing to address the broader challenges of IPR enforcement. For a fuller description of the Administration's efforts, I would refer you to the *2010 U.S. Intellectual Property Enforcement Coordinator Annual Report on Intellectual Property Enforcement*, transmitted in February 2011, which describes the ongoing implementation of the Administration's Joint Strategic Plan on Intellectual Property Enforcement.**

## 4. Chinese Software Piracy

The piracy rate for software in China has remained constant for the last five years—hovering around 80 percent for the industry, and worse for some companies. While I am encouraged by commitments China has made to address the problem at the JCCT and President Hu's recent state visit, the proof is in the pudding. It seems that there needs to be a metric that

ensures a substantial increase in software sales over the next three years. I also believe that increasing sales of legitimate software in China can be an important contributor to the President's National Export Initiative goal of doubling our exports in five years. What is your plan for ensuring China lives up to its recent commitments?

**A: We continue to engage China at all levels to address software piracy. I agree that this is a major problem; in fact, it was raised by the President during the recent State visit by President Hu Jintao. During that visit and the preceding meetings of the Joint Commission on Commerce and Trade (JCCT), China took new steps on software piracy by committing to allocate budget funding for legal software purchases by government agencies, as well as making a commitment to audit the use of the legal software and publish the results of those audits. Furthermore, China said it would promote the use of licensed software in private companies and in state owned enterprises through software asset management programs. We are encouraging China to make additional efforts in the context of the "Special Campaign against counterfeiting and piracy" that was launched by the State Council in October.**

**While we must see how these steps work out in practice, and much more work remains to be done, China's recent commitments mark a significant opportunity for genuine progress on this difficult issue. As always, we will monitor progress on these issues to make sure that China is following through on its commitments, using such tools at the JCCT IPR working group, and other opportunities. We expect to see concrete and measurable results, including indications of a more robust market for legal software. We also look forward to studying the results of the forthcoming ITC study on the quantitative effects of IPR infringement and "indigenous innovation" policies in China.**

Questions from Rep. Dave Reichert:

**1. U.S.-Korea Trade Promotion Agreement**

Chapter 18 of the U.S.-Korea Trade Promotion Agreement contains provisions that South Korea, like the United States and other trade agreement partners, will ensure that its central government agencies are not using infringing computer software and other materials protected by copyright. These are important provisions and all governments need to ensure that they are using legitimate software. What is the status of South Korea's implementation of these provisions? Has South Korea started the necessary budget process to address this situation? I understand that for some important ministries in the central government there still was substantial work to do to ensure compliance.

**A: As you note, the KORUS Agreement has important substantive provisions to ensure Korean government agencies are not infringing computer software and other**

**copyrighted material. We will ensure that these provisions are adequately and effectively implemented.**

## **2. TPP Intellectual Property Rights Standards**

At the last meeting of the President's Export Council in December, I worked with Disney CEO Bob Iger and other Council members on a letter of recommendation that the Council adopted concerning the need to protect intellectual property rights. One of the letter's recommendations was to seek the highest level of protection for IP in our bilateral and multilateral trade agreements, including the Trans Pacific Partnership trade agreement. At the meeting, you correctly noted that: "The beauty of... [the TPP] is [that], for the first time, we're starting with a blank sheet of paper and at least our intent is to be as aspirational as we can in this agreement that we hope will ultimately become the free trade agreement of the entire Asia-Pacific. All of you know the importance of that region... The IPR protections within that will be critically important." Can you assure me that the Administration is proceeding with that goal in mind, and that we can expect the United States to push for an IP Chapter that builds on the high standards of the U.S.-Korea Trade Promotion Agreement?

**A: Our goal in TPP is to achieve standards of IP protection and enforcement that are in line with the benchmarks set in previous U.S. FTAs in the Asia-Pacific region. To date, the United States has put forward proposed text covering many aspects of copyrights, trademarks, patents, and enforcement that would achieve this goal. We have not yet tabled text on some IP issues where we are still developing positions, such as provisions relating to pharmaceutical IP protection, and provisions relating to copyright exceptions. We will be working with Congress and stakeholders to ensure that U.S. proposals strike the appropriate balance on those issues.**

## **3. Substandard Copies of Medicines**

Ambassador Kirk, given your Administration's support for strong IP protections in the U.S.-Korea Trade Promotion Agreement, would you support an initiative to address the concerns associated with the proliferation of substandard copies of medicines (not legitimate generics or counterfeit drugs) in global supply chains for developing world markets? Does your Administration currently have such an initiative? If not, please share your ideas on how to address this growing issue of concern.

**A: The manufacture and distribution of pharmaceutical products bearing counterfeit trademarks is one dimension of the larger problem of substandard medicines and is a growing problem that has important consequences for consumer health and safety. USTR works with other relevant agencies in the U.S. government to ensure that we are attacking this problem holistically, including through encouraging adequate and effective IPR enforcement. We have noted, in the Special 301 Report for instance, our particular concern with the proliferation of the manufacture, sale, and distribution of counterfeit pharmaceuticals in countries such as Brazil, China,**

**India, Indonesia, and Russia. USTR, along with other relevant U.S. government agencies will continue to work to address all aspects of this serious problem.**

Questions from Rep. Adrian Smith:

**1. U.S. Compliance with Trade Obligations**

Representing one of the largest agriculture districts in the country, I am committed to removing obstacles for U.S. exports. One of the greatest frustrations I hear from agriculture producers in my district comes from the unfounded and unscientific sanitary and phytosanitary barriers imposed by our trading partners. American agricultural and food products are routinely targeted by unjustified restrictions from other countries. It is our obligation, however, to ensure the U.S. leads by example and upholds the rules-based system. With this in mind, please explain what the Administration and specifically USTR is doing to ensure U.S. compliance with our trade obligations, so agriculture producers are not targeted for retaliation?

**A: Sanitary and phytosanitary (SPS) issues are some of the most important trade related issues that we deal with at the Office of the United States Trade Representative (USTR). While many countries continue to eliminate barriers to U.S. agricultural exports, some countries continue to insist on imposing unjustified restrictions in the name of food safety or the health of animals or plants. USTR is working diligently to address these issues with our trading partners through a variety of bilateral and multilateral forums and relations in close connection with other agencies, our embassies abroad, and industry stakeholders. In 2010, USTR also published its first Report on Sanitary and Phytosanitary Measures (SPS Report). This report is dedicated to describing significant SPS trade barriers that are a priority of the Administration, and USTR will publish the second version at the end of this month.**

**2. Science-Based Standards**

It is critical for the U.S. government to work closely with our trading partners to eliminate non-tariff trade barriers which could keep U.S. farmers from meeting growing worldwide demand. Using less land to grow more food and fiber is an enormous challenge which will be met only if we encourage advancements in technology and farming practices.

As you know, USTR, along with the U.S. Department of Agriculture, the U.S. Department of State and other U.S. agencies, has a long history of advancing science-based regulatory systems around the world. Looking forward, can you reaffirm the Administration's commitment to working with our trading partners toward developing science-based regulatory systems for new agricultural products?

**A: The Administration is committed to promoting the development and implementation of science-based regulations by our trading partners for all agricultural products. Specifically on the food safety front, the TPP Sanitary and Phytosanitary (SPS) negotiations provide the United States with a real opportunity to resolve specific trade concerns, affirm our international obligations, and to advance the use of safer pesticides and new technologies to protect public health and the environment.**

### **3. Regulatory Coherence**

In addition, please describe what additional steps USTR can take -- either in bilateral or in multilateral negotiations such as the Trans Pacific Partnership -- to promote regulatory coherence so farmers can continue to compete in critical markets around the world?

**A: U.S. trade and regulatory agencies are working together to draft a series of specific SPS-related proposals to enhance food safety, animal and plant health in every TPP country. Proposals could include joint initiatives on pathogen reduction treatments, joint research and data sharing between TPP partners as they establish their pesticide maximum residue levels, and promoting the use of new technologies in agriculture, such as biotechnology and nanotechnology, to promote a safe, wholesome and abundant food supply.**

**In addition, we will be working with Vietnam and some of the other TPP partners as they begin to implement their new food safety legislative mandates and regulations. Our goal is simple: we want to work together to address their legitimate food safety concerns and expand markets for safe and wholesome food from the United States.**

Question from Rep. Diane Black:

### **1. Colombia and Panama Trade Promotion Agreements**

In the President's speech to the U.S. Chamber, he demonstrated yet again that his Administration is making slow progress on advancing the U.S.-Colombia and U.S.-Panama trade agreements. Yet the President's speech reiterates the President's confusing declaration in his State of the Union address to Congress several weeks ago: that he is "pursuing" agreements.

Enacting these vital agreements with Colombia and Panama would create American jobs and lower consumer prices, helping the economy to grow and providing a no-cost stimulus that would actually work. Passing all three agreements in the next six months has the potential to increase U.S. GDP by \$10 billion and create jobs in the U.S.

While the President delays, American farmers and other U.S. exporters are falling behind because other countries' trade agreements with Colombia and Panama give their exporters a competitive advantage. For example, since 2007, the European Union, Canada, Brazil, and

other countries have implemented, or will soon implement, trade agreements with Colombia – and, as a result, the U.S. share of key agricultural exports to Colombia has fallen from 71 percent in 2008 to 27 percent in the first ten months of 2010 heavily affecting my farmers. Even the President himself states that such an increase in U.S. exports could create 250,000 jobs.

Actions are more important than words. The President has offered no concrete plans for consideration of these two vital agreements. The Administration needs to lay out a roadmap for success, and the President's speech was a lost opportunity to do so. What is the roadmap going forward with the FTAs? What are the benchmarks being set to advance the FTAs?

**A: As I stated during my testimony before the Senate Finance Committee on March 9, central to our trade agenda is the movement of pending free trade agreements to Congress as they become ready. On March 7th, we informed your committee that we are prepared to begin collaborative work on the text of the implementing bill for the U.S.-Korea trade agreement as soon as you are ready to do so. It is time to realize this agreement's promise of more than \$10 billion in increased goods exports and more than 70,000 American jobs.**

**We are seeking the same widespread support that the Korea agreement enjoys for agreements with Colombia and Panama. Our goal is to have all three agreements, with their outstanding issues addressed, approved by Congress.**

**On February 9th, I testified before you and other members of the House Ways and Means Committee that President Obama had directed me to intensify engagement with Colombia and Panama to resolve the outstanding issues as quickly as possible this year and submit them to Congress immediately thereafter.**

**The next day, on February 10th, I met with the Vice President of Panama. Our teams have met subsequently and agreed upon actions that, when taken by Panama, will ready that agreement for Congressional consideration.**

**On February 11th, Administration officials began consultations on Colombia with key stakeholders and members of Congress, including House and Senate leadership. On February 15th, USTR led an interagency mission comprised of the State Department, Labor Department and White House officials to Colombia. We have since met multiple times with stakeholders, Members of Congress, and your staffs to review these findings and assess next steps.**

**I announced before the Senate Finance Committee on March 9th that on March 10th senior Santos Administration officials would meet with USTR to engage further on our shared goals to protect labor rights and workers. We are working with the Colombian government to resolve serious outstanding issues regarding the protection of internationally-recognized labor rights, violence against labor leaders,**

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**and the prosecution of perpetrators so that we can advance the agreement for your consideration.**