STATEMENT OF THE HONORABLE STEPHEN KOPLAN, CHAIRMAN
UNITED STATES INTERNATIONAL TRADE COMMISSION
BEFORE THE SENATE COMMITTEE ON FINANCE

April 26, 2006

Introduction

Mr. Chairman and members of the Committee, I am pleased to have this opportunity to discuss the budget request of the United States International Trade Commission for fiscal year (FY) 2007. I am accompanied today by Stephen McLaughlin, who serves in the dual capacity of Director of Administration and Chief Information Officer, and Nancy Carman, our Congressional Relations Officer.

At the outset, I will take this opportunity to thank you and Senator Baucus for enabling me, Vice Chairman Okun, and Commissioners Lane and Pearson to brief a significant number of Committee staff with respect to our budgetary needs. During my nearly eight years at the Commission, this Committee has always been most supportive of our agency.

Mission and Function

The U.S. International Trade Commission is an independent, nonpartisan agency, with a wide range of trade-related mandates. The trade laws we administer include investigating the effects on the domestic industry of dumped and/or subsidized imports. We also conduct global safeguards investigations. In addition we conduct intellectual property-based import investigations involving imported goods that allegedly infringe intellectual property rights that include patents, trademarks and copyrights. We also administer what is commonly known as the China safeguards statute. Through such proceedings, the Commission works to facilitate a rules-based international trading system.

The Commission also serves as a Federal resource where trade data and other trade policy-related information are gathered and analyzed. The information and analysis is provided to the President, the Office of the United States Trade Representative (USTR), and the Congress who shoulder the responsibility for formulating and implementing trade policy. The Commission is authorized to make most of this information and analysis available to the public to promote better understanding of international trade issues.

The mission of the Commission is to (1) administer U.S. trade remedy laws within its mandate in a fair and objective manner; (2) provide the President, USTR, and the Congress with independent, quality analysis, information, and support on matters of tariffs and international trade and competitiveness; and (3) maintain the

Harmonized Tariff Schedule of the United States (HTS). In so doing, the Commission serves the public by implementing U.S. law and contributing to the development of sound and informed U.S. trade policy.

Budget Request for FY 2007

Our FY 2007 appropriation request is for $64,200,000. This is a 3.6 percent increase over our FY 2006 net appropriation of $61,950,000. The FY 2007 request is actually lower than our original FY 2006 request. However during FY 2005 the Commission revised its request downward for FY 2006 by $2,750,000 by letter dated May 21, 2005. I have brought a copy of that letter with me and ask that it be included in the record of this hearing along with the full text of my prepared statement. We have previously provided that letter to Committee staff during our briefing sessions. That revision was primarily the result of a developing surplus in FY 2005, not a reduction in our FY 2006 requirements.

The FY 2006 appropriation was further reduced by two across-the-board rescissions at the end of the appropriation process (one in our appropriation bill and the other in the Department of Defense omnibus bill). As I just stated, our FY 2006 net appropriation was $61,950,000.

Cost Increases Beyond the Control of the Commission

Assuming stable staffing, nearly 93 percent of the Commission's budget is for the most part fixed for FY 2007. It is comprised of salaries (57 percent), benefits (13.8 percent), rent set by GSA (10 percent), and required contract support services (12 percent), such as security services and network services.

Increased costs in FY 2007 and beyond for these categories of expenses are the principal cause of increased budget requirements and are driven by external factors over which the Commission has no control. I refer to the fact that salaries increase based on the Federal pay raise coupled with earned step increases. Benefits increase with salaries, but also because of increased health insurance costs and the shift in our mature workforce from Civil Service Retirement System (CSRS) to Federal Employees Retirement Systems (FERS). CSRS employees cost us 8.45 percent of salary while FERS employees, who ultimately replace them, cost 23.35 percent. Rent increases are driven by GSA's cost of leasing our building. I note that we will have a new 10 year lease beginning in August of 2007 and we have been told to expect an increase of about 12 percent above the FY 2007 rate. Labor rates on recurring service contracts increase as a result of required increases in broad categories of labor charges as determined by the Department of Labor.

In FY 2007, we anticipate that personnel expenses will increase by $1,385,000, or 3.1 percent. This assumes a Federal pay raise of about 2.2 percent, the lowest pay raise in at least 5 years. Benefits will go up by $510,000 which represents an increase of 6.1 percent due to rising health care costs and the shift of employees from CSRS into FERS as previously mentioned. Rent will go up by $260,000 in FY 2007 an increase of about 4.2 percent, but as noted, our lease must be renewed, and we are already on notice that our costs will increase significantly in August 2007.

Our overall expenditure plan level remains virtually unchanged. The reason is that cost increases will be offset by reductions elsewhere in our budget. For example, expenses for two-year term employees have been eliminated corresponding to a decline in five-year sunset investigative activity in FY 2007. This adjustment saved $250,000. Non-personnel expenses will decrease by $1,330,000, or 6.6 percent. Services costs are declining by 16.4 percent or $1,510,000 as a number of information technology and human resource projects have been completed. As a result, costs dropped to maintenance levels. Further, equipment purchases will decline by 22.4 percent, or $314,000, as we complete major cyclical infrastructure replacement projects.

Commission Caseload Estimates are Reasonable

Our FY 2007 budget request is premised on fairly conservative caseload estimates. We are not projecting increases in our caseload over the current level. Current caseload levels, however, are relatively high compared to historical averages, for each of the three categories of investigation (Import Injury, Intellectual Property, and Industry and Economic Analysis).

We estimate that Import Injury caseload will decline when the second cyclical set of sunset reviews is completed in FY 2007. Also, we anticipate that the substantial increase in Intellectual Property caseload that has persisted for several years will stabilize. Similarly, we estimate that the Industry and Economic Analysis workload will remain fairly stable. While we are prepared to meet the challenge of increased caseload, should it arise, the requested funding level does not allow for additional staff beyond our current staffing plan. Any significant increase in caseload over the current levels, if it persists for more than a couple of months, would put a serious strain on our resources.

Flexible Staffing in Response to Variations in Caseload

The Commission's staffing needs are driven by the demands of its investigative workload. Over 80 percent of the Commission's annual costs are attributed directly or indirectly to investigative activity. The Commission has met changes in caseload by shifting resources to areas of need, rather than increasing overall staffing levels. Only when caseload exceeds our overall capacity and potential internal reassignments have been exhausted, do we hire additional staff. In those instances, we normally hire two-year term employees, rather than permanent staff. As of today, we have 363 permanent positions occupied.

The Effect of the Sunset Cycle

Overall activity levels throughout the Commission are influenced by a five–year cycle with a variable caseload tied to transition sunset reviews. The sunset provisions require a review of every outstanding antidumping (AD) and countervailing duty (CVD) order every five years as long as the order remains in effect. When the requirement for sunset review was first established in 1995, more than 300 orders in effect were reviewed by the Commission during the transition period from 1999 to 2001. This resulted in 108 consolidated investigations that were completed in 2001.

The transition sunset orders that remained in effect as a result of the first round of reviews returned for a second round beginning in late FY 2004. They reached sustained high levels in FY 2005 and will remain at those levels through midyear FY 2007. Increased activity due to transition sunset reviews requires increased resource allocations, including the transfer of resources from other areas within the agency, on a cyclical basis.

As a result of the second round of transition sunset reviews, the average number of active import injury investigations per month has increased from the low teens during FY 2004 to the low 20s for FY 2005. The monthly average is expected to remain at that elevated level through midyear FY 2007.

The import injury caseload peaked as expected, and will continue through midyear FY 2007. A 50 percent decline in new petitions for import injury investigations in FY 2005 alleviated the staffing pressure somewhat. That allowed the Commission to meet the overall increase in caseload with temporary internal reassignments. The need to hire two-year term employees to meet the demands of the peak sunset cycle proved unnecessary.

The decline in new import injury filings and the decision not to hire two-year term employees contributed to the Commission's higher than normal surplus in FY 2005 and the subsequent downward adjustment in its FY 2006 appropriation request. As a result, while the FY 2007 request assumes a gradual increase in new filings in the direction of the historical average, it does not provide for increased two-year term appointments.

IPR Cases Spiked and Continue at High Level

For intellectual property–based import investigations, activity levels were already at historically high levels when new filings surged during the latter half of FY 2004. Prior to FY 2001, the Commission averaged about 15 active intellectual property–based import investigations per month for years.

A surge in new filings began during FY 2001, when the caseload exceeded 30 active cases and ancillary proceedings per month. From FY 2002 through FY 2004, the number of active cases per month stabilized in the low 20s, but new filings surged again in FY 2005. The number of active cases and ancillary proceedings per month was above 30 for almost that entire year. As of the end of March, 2006 there were 34 active proceedings pending.

Given the specialized nature of these investigations, internal reassignments could not meet this demand. Additional staff has been hired in the affected offices during the last few years. The additional positions consisted of a fourth Administrative Law Judge, several intellectual property attorneys, and office support staff. These positions were added without increasing the overall staffing levels at the Commission.

Ramp-Up in FTAs Increases Commission Workload

Requests for Industry and Economic Analysis investigations, especially expedited resource–intensive studies related to bilateral free trade agreements, have increased steadily in the last few years. Many of these investigations result in the production of National Security Information (NSI) classified materials that are more costly to process and make timely collaboration more difficult.

While the workload remains high in this area, discretionary activity has been curtailed in order to facilitate reassignments to the import injury area to assist with transition sunset reviews. Caseload for this activity has increased significantly in recent months, commensurate with the increase in bilateral free trade negotiations.

Maintenance of the HTS and Production of Bill Reports

While the investigative caseload consumes over 80 percent of Commission resources, the

Commission also is responsible for maintaining the Harmonized Tariff Schedules and providing advice to Congress regarding the impact of miscellaneous tariff bills. In FY 2006, the Commission expects to provide advice to Congress on over 700 tariff bills. The Commission also provides direct technical assistance at the staff level to both Congress and USTR on a wide variety of trade-related matters.

Details of the Increase in Salaries

All of the requested budget increase in FY 2007 is tied to salaries and benefits of Commission employees. While the Commission's staffing plan will not increase in FY 2007, salary costs are expected to increase by 3.1 percent. This increase is due to three factors: (1) the expected Federal pay raise of 2.2 percent, (2) a marginal increase in on–board staffing levels (lower vacancy rate) compared to FY 2006, and (3) within-grade increases and promotions.

The FY 2006 expenditure plan assumes an average 9 percent vacancy rate. The vacancy rate was above 10 percent through the end of January, but the current vacancy rate is just over 8 percent. The FY 2007 expenditure plan assumes an 8 percent average vacancy rate.

Details of Benefits Costs Increases

Benefits costs are expected to increase by more than 6 percent in FY 2007. Most benefit costs consist of retirement programs. The cost of retirement programs is increasing due to increased salaries and changes in the composition of the workforce. Increasing numbers of employees are retiring and the Commission's cost of retirement programs for new employees is significantly higher than for certain older employees.

Employees hired before 1984 are part of the CSRS. The Office of Personnel Management provides about two–thirds of the retirement costs of the CSRS employees; the Commission only pays 8.45 percent of salary. Employees hired after 1984 are covered by the FERS. The Commission pays the full cost of FERS retirement benefits, which currently is 23.35 percent of salary.

As the Commission loses CSRS staff to retirement and replaces them with new FERS employees, the retirement benefits cost for each employee increases from 8.45 to 23.35 percent of their salary. The cumulative effect of the increasing proportion of FERS staff by itself is an increase in benefits costs of between $200,000 and $300,000 per year.

In addition to the increase in retirement benefits costs, health insurance costs, which constitute about 22 percent of total benefits costs, have increased by more than 10 percent in each of the last two years. They are projected to increase at that rate through FY 2007.

Expenditure Plan Levels Are Unchanged in FY 2007

The Commission's Expenditure Plan for FY 2006 totals $64,145,200. This includes the Commission's net FY 2006 appropriation and an FY 2005 carryover of $2,194,000. Our FY 2007 budget request of $64,200,000 is virtually unchanged from the current level. The FY 2005 carryover was unusually high due to lower than projected personnel costs in FY 2005. Personnel costs were lower due to a decline in new import injury filings and an unusually high vacancy rate (above 10 percent). We do not expect a significant carryover at the end of the current fiscal year.

ITC Retroactively Cut FY 2006 Request

The Commission notified the House and Senate Appropriations Committees on May 21, 2005 (with copies to both authorizing committees) that its FY 2006 request should be lowered by $2,750,000. This was due to a projected larger than normal FY 2005 end-of-year balance because of a higher vacancy rate coupled with lower two-year term costs than anticipated. The Commission normally has a carryover of $500,000 or less. Also, vacancy rates that averaged between 5 and 7 percent have increased in the last few years.

FY 2005 Surplus and the Vacancy Rate Increases in Recent Years

The decline in new import injury cases allowed the Commission to meet the transition sunset workload without hiring additional two-year terms. The high vacancy rate during FY 2005 was attributable to several events:

(1) increased retirements due to the demographic phenomenon of over one-third of the Commission workforce reaching retirement age, and subsequent actual retirements in significantly increased numbers;
(2) delays in filling vacancies pending final approval of the Commission's Human Capital Staffing Plan, and the organizational changes incident to the approval of that plan (that plan was approved in the spring of 2005 and recruitment efforts are underway to fill most positions that are currently vacant); and
(3) the hesitancy of the Commission to fill permanent vacancies during periods of extended Continuing Resolutions (CRs). During the last several years, CRs have run from 3-6 months, effectively causing us to stop recruitment activity during that time. Commission staff are ever mindful of the reduction-in-force that occurred here in 1995.

While the Commission's long term staffing plan calls for fewer permanent staff positions, a declining vacancy rate in FY 2007 should result in more occupied positions than in either FY 2005 or FY 2006. The FY 2007 appropriation request assumes that the Commission will marginally reduce its vacancy rate to 8 percent, but that rate will still be above the historical norms.

Closing

Mr. Chairman, I greatly appreciate the opportunity to appear before the Committee today to summarize the details of our FY 2007 budget request and I will do my best to respond to questions. I note that attached to my testimony is a list of what I identify as risk items that are not covered in our $64,200,000 request.

Risks not Covered

The Commission's appropriation request is fiscally prudent, but there is no contingency fund. The Commission's expenditure plans fully allocate available resources to meet real needs. In doing so, the Commission accepts the risk that certain events may occur that adversely impact our financial condition. The risks not covered in the FY 2007 budget request are:

- A significant rescission at the end of the FY 2007 budget process
- Increased workload that requires additional staff, particularly in Intellectual Property investigations
- Unanticipated Salary increases
  - If the vacancy rate drops below 8 percent
  - If there is a salary increase greater than 3.2 percent (either base increase, locality adjustment or both)
- Larger than normal increase in Benefits
  - A faster shift to FERS due to increased attrition/retirements
  - Larger than anticipated increases in health insurance costs
- Larger than expected increase in Space Rental
  - If the new lease with GSA results in increased monthly costs in August and September of 2007
  - If real estate tax increases are higher than normal
  - If there are significant unplanned costs associated with new lease
  - If there are space costs associated with our Continuity of Operations (COOP) Plan or the four Administrative Law Judges need additional courtroom space due to increased caseload
- If there are significant unplanned Information Technology (IT) expenses
  - If new IT service requirements arise
  - If there is any major hardware or system failure
  - If there are increased requirements for IT to change methods for processing National Security Information (NSI)
  - If there are additional unforeseen costs to comply with Federal Information Security Management Act (FISMA) audit findings
- If there are unexpected security cost increases
  - If more guard hours are required outside of normal working hours or additional guards during normal working hours
  - If there are higher than expected costs of implementing new government personal identity verification (PIV) requirements

- Any other unanticipated major equipment costs