

**TESTIMONY OF**  
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**BEFORE THE**  
**SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT,**  
**GOVERNMENT INFORMATION, AND INTERNATIONAL SECURITY**

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Thank you Chairman Coburn, Ranking Member Carper and members of the committee. I appreciate this opportunity to speak to you today about the relationship between the United States and the World Trade Organization (WTO).

The specific title of today's hearing is "Securing American Sovereignty." An equally appropriate topic would be "Securing American Economic Strength." For those two complementary objectives together form our guiding principles in the WTO. U.S. participation in the WTO and the world trading system is absolutely critical to our continued economic growth. At the same time, the safeguards that are built into the system fully preserve our sovereign right to regulate as we -- the U.S. Government, state and local governments, and the people of America to whom we answer -- see fit.

Since 1994, when the Uruguay Round Agreements were completed, the United States has experienced an extraordinary period of economic growth. USTR's Annual Report, issued in May of this year, details these benefits at great length. I won't discuss them all here today, but will highlight some of the key statistics covering the period 1994-2004:

- Real gross domestic production of the United States has risen a strong 38% since 1994 and average per capita income increased by a quarter. Growth last year alone was 4.4%.
- Moreover, Americans have average real incomes 40% greater than the nearly 700 million people living in the other countries that the World Bank classifies as "high income."
- U.S. industrial production -- 78% of which is manufactures -- rose by 35 percent between 1994 and 2004, exceeding the 27% increase achieved between 1984 and 1994.
- The 35% increase in U.S. industrial production in the last 10 years was greater than in many of our trading partners: 18% in France, 17% in Germany, 9% in Japan and 5% in the U.K.

- Productive investment, central to healthy growth and rising living standards, has increased. Even excluding housing, U.S. non-residential fixed, or business, investment has risen by 78% since 1994, compared to a 34% rise between 1984 and 1994.
- 17.2 million net new U.S. jobs were created between 1994 and 2004. This resulted in an average unemployment rate of 5.1% in the ten years ending 2004, compared to an average unemployment rate of 6.4% during the prior decade (1984-1994).
- Trade in goods and services now accounts for 25% of U.S. GDP, up from 18% in 1984, and 22% in 1994.
- NAFTA and the WTO agreements together are estimated to increase the annual income of the average U.S. family of four by between \$1,300 and \$2,000.

In short, the benefits of U.S. participation in the WTO are large, tangible, and widespread, as recognized by the House of Representatives last month, when it voted 338-86 to defeat a resolution calling for U.S. withdrawal from the WTO.

### *Protection of American Sovereignty*

During the Uruguay Round negotiations that led to the creation of the WTO, and in the current round of negotiations under the Doha Development Agenda, U.S. trade negotiators have been ever mindful of the need to protect U.S. sovereignty. It is critical that, at the same time we work to integrate the global economy and maximize opportunities for U.S. workers, farmers and businesses, we fully preserve our sovereign prerogatives.

To better explain how we have sought to achieve that objective, I will break my testimony into three parts – first, a discussion of the substantive rules; second, a discussion of the administrative structure of the WTO; and third, a discussion of the landmark dispute settlement mechanism negotiated during the Uruguay Round.

### Rules for a Modern World

The predecessor to the WTO, the General Agreement on Tariffs and Trade (GATT), lasted for approximately 50 years and covered only trade in goods. While many people still think of “trade” as solely trade in tangible goods, the global economy looks much different today than it did 50 or 60 years ago.

For example, the services sector now accounts for 60-80% of the U.S. economy, and is the one area of trade where the U.S. has a substantial trade surplus. Protection of intellectual property has also come to play a central role in U.S. economic growth. The

value of innovation, creativity and branding – covering everything from movies and music, to software, to pharmaceuticals, to basic trademarks – has become a key driver of U.S. competitiveness.

In recognition of the changing nature of global economy, new rules were developed in the Uruguay Round to cover services and intellectual property. At the same time, new rules were developed to modernize and elaborate on the older GATT disciplines, covering areas such as standards, sanitary and phytosanitary measures, and trade remedies. Yet, all of these rules share the same hallmarks of the previous GATT system. They set general parameters to liberalize trade and eliminate protectionist measures, while at the same time allowing within those general parameters ample flexibility to regulate in the public interest.

The GATT and the General Agreement on Trade in Services (GATS) contain general rules prohibiting discrimination on the basis of nationality, promoting transparency and the like. Outside of those general guidelines, however, they impose few constraints on a country's ability to regulate as it sees fit. In the context of the GATS, a country may agree to open, for example, its markets to foreign firms seeking to provide legal and architectural services, but governments retain their right to regulate admission, licensing and disciplinary standards. Indeed, the GATS Annex on Financial Services contains an explicit provision to allow regulators to take measures for prudential reasons. As another example, the Agreement on the Application of Sanitary and Phytosanitary Measures requires that governments base their food safety standards on science. Governments are free to adopt as high a standard of protection as they desire, provided that the standard is science-based.

The GATT and GATS also contain explicit exceptions for measures taken, for example, to protect health and safety, or national security. In addition, a WTO Member may change its specific tariff commitments under the GATT or specific commitments under the GATS through a formal negotiation process.

With respect to intellectual property, the negotiation of the Agreement on Trade-Related Aspects of Intellectual Property Rights codified, elaborated on, and made consistent a hundred years of international practice and rule making. At the end of the day, this exercise effectively obligated other countries to meet standards that the United States by and large already met.

But perhaps the most important safeguard with respect to the substantive rules is the way the United States, in accordance with our Constitution, has chosen to implement them. The rules negotiated in the WTO, in and of themselves, have no domestic legal effect. Instead, the United States implemented the WTO agreements by statute, through the Uruguay Round Agreements Act (URAA). Any and all changes to U.S. law necessary to implement the WTO agreements are contained in the URAA or in subsequent amendments to U.S. law that the Congress may choose to adopt. If Congress chooses not to amend a law that conflicts with a WTO rule, the domestic law prevails. Similarly, the WTO agreements do not automatically preempt state laws.

Section 102(a)(1) of the URAA explicitly states that “No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect.”

Other protections were built into the URAA as well. For example, no private cause of action may be brought in U.S. federal court on the basis that a particular measure is inconsistent with the WTO agreements. In addition, the URAA contains provisions establishing procedures between the federal and state governments regarding implementation of the WTO rules.

### WTO Administration

The WTO is a Member-driven organization. The WTO Secretariat is relatively small with a total budget of \$130 million, which is very small compared to other major international organizations. The WTO Secretariat is funded through Member contributions. Each Member’s share is proportional to its share of global trade. The U.S. share is currently 15.735%, or roughly \$22 million per year. The WTO Secretariat has virtually no independent decision-making ability.

As specified in Article IX of the WTO Agreement, the general rule in the WTO is that decisions are taken by consensus, which means that any Member may in theory exercise a veto. Countries with stronger economic and political clout can effectively use this threat to motivate other Members to reach compromises acceptable to all.

Special rules are spelled out for taking particularly important decisions such as amendments or binding interpretations of the rules.

- Core provisions on MFN and the amendment and decision-making rules may be amended only by consensus.
- No substantive amendment can apply to a Member that does not agree to its application.
- Any interpretation of the rules requires agreement by three-quarters of all Members.
- Waivers require approval of three-quarters of all WTO Members to take effect. However, consensus is required to adopt any waiver extending any transition period for compliance with a WTO commitment.

### Dispute Settlement

Under the old GATT system, the utility of the dispute settlement system was significantly undermined by the fact that any contracting party, including the party that lost the dispute, could block the adoption of a report issued by a dispute settlement panel. As a result, the dispute settlement system was overhauled in the Uruguay Round. The WTO dispute settlement procedures are set forth in the Dispute Settlement Understanding (DSU).

The dispute settlement process is administered by the Dispute Settlement Body (DSB), which is composed of representatives from all Members.

As under the GATT, WTO dispute settlement is available only to governments, not to private parties. The process provides a forum for resolving complaints by one WTO Member that another has acted inconsistently with the WTO agreements or otherwise nullified or impaired the expected benefits of the agreements.

The process begins with consultation, and if that fails to produce a resolution, the complaining Member may submit the dispute to a panel for resolution. The panel is usually composed of 3 members, chosen by the disputing parties, or if no agreement is reached, then by the WTO Director-General. The panel will then issue findings as to whether the responding Member has acted inconsistently with its WTO obligations. If the panel makes an affirmative finding, it will recommend that the Member bring its measure into compliance.

Either Member may appeal the panel's decision to the Appellate Body, a standing body of seven members, one of which is from the United States. The Appellate Body will then issue its findings and correct errors in the panel's report.

The DSB will automatically adopt the panel report (if not appealed) or the Appellate Body report unless it agrees by consensus not to do so. This effectively means that all reports are adopted. Decisions do not have precedential value, though in practice panel and the Appellate Body look to prior decisions for guidance. The entire process from consultations through adoption of an Appellate Body report usually takes 15 months or more.

Additional procedures are built in for determining, for example, whether a Member has taken sufficient action to comply with a DSB decision.

Significantly, even though a panel or Appellate Body report may be adopted by the DSB, the WTO has no authority to require any Member to change a law, regulation or practice. If a Member fails to bring a measure into compliance, it can seek to negotiate compensation with the complaining Member, which could take the form, for example, of lowering tariffs on imports of specific products exported from the complaining Member.

Compensation is, however, rare. If no compensation agreement is sought or reached, then the complaining Member has a right to "retaliate," which means, for example, that it might raise tariffs on products exported from the other Member.

As noted earlier, the WTO cannot force any Member to change a law, regulation or practice. Thus, if a country refuses to comply with a finding, it cannot be forced to do so.

In a sense, this is no different than what could happen if the WTO did not exist – in such a world, any country could impose sanctions on any other country for whatever reason it deemed appropriate. But there are significant differences. For the complaining Member, the official authorization to use trade sanctions is important. For the responding government, the WTO mechanism may result in international pressure to comply with a given finding – but that is much different than a system that compels a government to comply.

The United States has fared well under this system. Since the start of the WTO, the United States has initiated 75 cases, of which it settled 24, won an additional 24, and the remainder are still in litigation, being monitored for progress or otherwise inactive. The United States has been challenged 84 times. Fifty-two of those cases have been completed, and of those, the United States has settled 15 and won 12.

The number of cases filed by the United States and all WTO Members combined has declined over time, as countries picked the low hanging fruit in the first few years of the WTO and the system worked to deter new breaches.

Negotiations are currently under way to improve the dispute settlement process, and the United States has played a central role in that process. We have advocated, for example, increased transparency by opening proceedings to the public, facilitating public access to documents, and consideration of establishing guidelines for accepting amicus curiae submissions. The United States has also suggested that WTO Members provide additional guidance to panels and the Appellate Body to help ensure that the process better serves its primary function of facilitating settlement of disputes and has recommended the development of new mechanisms to improve flexibility and Member control over the process.

### *Conclusion*

Participation in the WTO has benefited the United States tremendously. We recognize, however, that efforts to strengthen integration and open foreign markets for U.S. farmers, workers and businesses must at all times be balanced with appropriate safeguards to protect our sovereignty. As in the past, we will continue to ensure that we preserve this balance as we continue the current round of negotiations.