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BRETT LOPER,
MINORITY STAFF DIRECTOR

March 29, 2007

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

Dear Mr. President:

Tomorrow, as required by law, your Administration will release the "National Trade Estimate" report (NTE). The NTE contains an inventory of barriers to U.S. exports of goods and services, investment, and intellectual property rights. As in previous years, this year's NTE report will identify numerous barriers that have blocked or obstructed American exports for years, have facilitated or allowed theft to American intellectual property rights, and have yet to be effectively addressed.

We hope this year that the Administration will use the opportunity of the issuance of the NTE report to move beyond cataloguing these barriers and to begin enforcing U.S. rights. Too often in the past, this Administration has devoted its resources to negotiating new rules – at the expense of ensuring that our trading partners play by the rules already in place. Failure to enforce vigorously existing agreements undercuts the value of those agreements. In the six years that this Administration has been in office, USTR has brought an average of less than three WTO cases per year. By contrast, the Clinton Administration brought an average of 11 WTO cases per year.

The United States cannot afford to continue down this path. Last year, the U.S. trade deficit continued to grow at a record-breaking pace, setting another record for the fifth straight year. In 2006, the U.S. trade deficit reached $765 billion – the highest ever in history and almost six percent of the U.S. economy. Manufacturing has borne the highest cost, with the manufacturing

deficit increasing by 70 percent between 2001 and 2006, and the loss of almost three million jobs during that period. But manufacturing is not alone. Over the same period, the U.S. services surplus has dropped 10 percent, and the U.S. agricultural surplus has fallen by 61 percent in the last five years.

These massive trade deficits come at another steep price; over the past five years alone, foreign-owned debt has more than doubled. It currently stands at $2.2 trillion, or 17 percent of U.S. GDP. This Administration has accumulated more debt to foreigners than all previous Administrations combined.

These deficit and debt levels are unsustainable. The right trade policies and priorities can help fix the problem. We urge you to take two concrete steps.

First, we urge you to direct the USTR to request immediate consultations with eight key U.S. trading partners – Canada, China, the European Union, Japan, Korea, Mexico, Russia, and the United Kingdom – and to take action (whether under WTO rules, under U.S. law, or in bilateral negotiations), unless during a "consultation" period the problem in each case is successfully resolved. The matters raised are ones that involve critical U.S. manufacturing sectors (including steel, steel pipe, commercial aircraft engines, and automotive products), key services sectors (including electronic payments), and intellectual property rights. USTR has, in its NTE reports for the years 2001 through 2007, carefully documented many of these problems, but taken little or no effective action to redress or eliminate them.

In the past year, we were pleased to see the Administration initiate cases on spirits from India and on export subsidies in China. We believe these cases will succeed – China has already eliminated one export subsidy targeted by the Administration's case – and urge the Administration to take similar action on the remaining issues we have identified. The details of these additional cases are set forth in an Appendix to this letter.

Second, we ask you to support legislation to be introduced next month that strengthens the enforcement of trade agreements and the preservation of U.S. rights under those agreements. The legislation will seek to pry open foreign markets to U.S. goods and services by ensuring that our trading partners play by the rules. It also will address a number of problems with the WTO dispute settlement system. A growing number of trade experts – including trade officials in your Administration – are expressing serious concerns that the WTO Appellate Body is imposing obligations on WTO Members, including the United States, that were not agreed to by those Members in the negotiations. According to a former Deputy USTR from the Reagan Administration, "the WTO dispute settlement system is veering off course and is increasingly a threat to the legitimacy of the entire body." We would like to work with your Administration to re-establish the legitimacy and integrity of that system – a linchpin in the multilateral trading system.

Without vigorous and responsible enforcement, trade agreements will increasingly be seen as part of the problem. Americans deserve a trade policy that produces real results. The issuance of this year's NTE report presents an important opportunity to announce a new, proactive approach to enforcing vigorously U.S. trade agreements. We hope that your Administration takes advantage of this opportunity and stand ready to work with you to restore credibility to American trade policy and the trading system.

Sincerely,

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John Lewis

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APPENDIX:

Six Years Asleep at the Wheel: Time to Take Action

SYNOPSIS

Over the last six years, the United States has run a massive and steadily increasing trade deficit with the rest of the world, including all of our largest trading partners. During those six years, our trading partners have filed 47 cases against the United States in the World Trade Organization ("WTO"). Meanwhile, the U.S. trade deficit grows in part because U.S. products are excluded from many markets by trade-distorting barriers. We should be aggressively using the WTO against major violators of global trading rules, especially if our trading partners continue to resist a significant WTO agreement in the Doha Round of WTO negotiations. Other countries have not hesitated to use WTO litigation to attempt to improve their Doha Round negotiating position. We should do the same. As the country with the world's most open economy and largest trade deficit, we have by far the most reason to use the WTO process.

Outlined below are 18 examples of trade barriers where action should be pursued immediately by the Bush Administration — either under the agreements of the World Trade Organization (WTO), within the current world trade negotiations, and/or under established provisions of U.S. law — to create new opportunities for American exports of goods and services, and to protect U.S. intellectual property rights. Action on these cases is long overdue.

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

We have raised these issues and similar ones in past letters to the Administration, but little effective action has been taken, with a few exceptions, such as the 2006 WTO case against the European Union for providing subsidies to Airbus and the 2007 case against China for prohibited export subsidies. These few cases have, nonetheless, been highly effective. Within a month of the Administration filing the export subsidy case on China, China had repealed one of the laws that USTR objected to. The Wall Street Journal (March 15, 2007) has surmised that there are government officials in China who want to make these changes- but they need the U.S. and WTO pressure to be able to overcome resistance from their own bureaucracy.

For the last six years, the Bush Administration has failed to take effective action to address these and other important cases documented in its own National Trade Estimate Report on Foreign Trade Barriers. The Bush Administration is still asleep at the wheel in enforcing U.S. trade agreements. Now is the time for a new trade policy that makes the global trading system work.

List of Trade Barriers

The following list of trade barriers is organized by economic sector. The majority of these cases involves the United States' five largest trading partners — Canada, China, the EU, Japan and Mexico.

I. Currency Manipulation.

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

II. Barriers to U.S. Manufactured Products.

A. China- Manufacturing subsidies and export aid.
B. EU- Information Technology Agreement compliance.
C. Japan- Non-tariff barriers to U.S. autos and auto parts.
D. Korea- Discriminatory taxes and non-tariff barriers close auto market.
E. Mexico- WTO violations in large diameter pipe anti-dumping case.
F. UK- Aero-engine subsidies.

III. Intellectual Property and Investor Rights.

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

IV. Agriculture.

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

V. Services.

A. China- Electronic payments commitments not being met.

VI. Other Barriers.

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

Description of Cases

I. CURRENCY MANIPULATION

A. China - Ongoing currency manipulation undercuts U.S. producers and exporters

- **Trade Barrier and Harm to U.S. Interests:** The continued undervaluation of the yuan has made Chinese products artificially cheaper, harming U.S. workers, farmers, and businesses, and exacerbating the massive and growing U.S.-China trade deficit. China's currency manipulation gives China's goods and services a built-in unfair competitive advantage over American goods and services and has contributed to another record bilateral goods trade deficit in 2006, of $233 billion. Most recently, in January 2007, U.S. imports from China outpaced exports by almost 6 to 1. Yet, even in the face of these stark figures, and serious consequences that they mean to U.S. farmers, workers and businesses, the Administration has failed to take any effective action to deal with China's currency manipulation. In fact, the Treasury Department has failed even to issue a simple finding that China is manipulating its currency.

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

  In September 2004, and again in April 2005, a bipartisan group of Members of Congress filed a "Section 301" petition, which called on the Administration to take concrete steps to eliminate China's artificial advantage resulting from currency manipulation. The two filings by Members followed an initial filing by U.S. businesses and working people. All were summarily rejected by the Administration. **The Administration should**: **(1)** reverse its decision, accept the petition and initiate consultations with China immediately under WTO rules; **(2)** file a WTO action if China does not agree swiftly to a Plaza-type accord to revalue the yuan and move towards a flexible, market based exchange rate; **(3)** issue the statutorily-mandated Treasury Report, due April 15, on time; and **(4)** comply with U.S. law by ending its previous attempts to deny that China's actions constitute manipulation.

B. Japan - Ongoing currency manipulation undercuts U.S. exports

- **Trade Barrier and Harm to U.S. Interests:** China's exchange rate practices have received much attention. However, Japan's intervention- and its readiness to intervene- in currency markets has been largely ignored. The Japanese government has acquired almost $900 billion in foreign exchange reserves to prevent the dollar from falling against the yen. The success of recent Japanese government action has served to keep the yen artificially low, notwithstanding that Japan has not formally intervened in the currency markets since 2004. Japan's readiness to intervene, its track record of intervening when the yen weakens, and its clear capacity to intervene again have maintained pressure on the currency markets. This pressure has artificially suppressed the value of the yen an estimated 15-20 percent, and, thereby, given Japanese exporters an estimated 15-20 percent advantage in Japan, the United States, and around the world.

- **WTO Actions:** The Administration should take the following steps. **(1)** In its April report on currency manipulation, Treasury should cite Japan for its exchange rate interventions- and widely understood readiness and ability to intervene- as required by U.S. law. **(2)** Per statute, Treasury should then initiate intensive consultations to end Japan's exchange rate manipulation "on an expedited basis." Given the clear and egregious nature of Japan's manipulation and its impact on U.S. firms and workers, including the automotive sector, which comprised 65 percent of our 2006 trade deficit with Japan, the problem should be addressed within 180 days. **(3)** If the problem is not resolved by that time, USTR should then immediately initiate consultations under the WTO dispute resolution system, based on Articles XV, XVI and XXIII:1(b) of GATT 1994. And, **(4)** if these consultations do not yield a satisfactory outcome in the consultative period, USTR should immediately file a complaint in the WTO.

II. BARRIERS TO U.S. MANUFACTURED PRODUCTS

A. China - Manufacturing subsidies and export aid to manufacturing

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

- Similar problems have been paramount in the steel industry. U.S. steel producers have identified that state-owned enterprises account for 57 percent of total Chinese steel production. Besides state ownership, China's national, provincial, and local governments use debt-to-equity swaps, an estimated billions of dollars of subsidies, preferential loans, assistance with energy and other input costs, and a lack of enforcement of worker and environmental standards to help Chinese steel producers. These efforts have succeeded- Chinese steel production has exploded from under 150 million metric tons in 2000, to almost 450 million metric tons in 2006, and China has become a net exporter of steel.

- Unfairly subsidized steel in turn is made into steel pipe, which in addition is also produced using many of the same unfair subsidies. China's steel pipe exports to the United States have also exploded, with U.S. line pipe imports from China increasing almost 350 percent in a single year, from 89,000 net tons in 2005, to 398,000 net tons in 2006. Likewise, structural pipe imports from China increased more than 1200 percent in just two years, from 8,000 net tons in 2004, to 111,000 net tons in 2006.

- U.S. fair trade law can play some role in helping stem this tide of unfairly produced goods. However, these laws can not begin to provide a comprehensive solution to the problem. If unfairly subsidized Chinese pipe is countered with antidumping or countervailing (CVD) duties, the subsidized Chinese steel can go into other products besides pipe. If the unfairly subsidized Chinese steel is countered with duties, then Chinese producers of downstream products can buy the subsidized steel in China and capture U.S. market share for the downstream product. Accordingly, U.S. trade laws may be able to address emergency cases; however, the long-term problem of Chinese subsidization needs to be solved at its root with a comprehensive and enforceable agreement by China to rid itself of export subsidies. Failing that, USTR should file a WTO case or a series of smaller cases.

- **Bilateral and WTO Actions:** **(1)** The Administration should urge and support passage of, and then swiftly sign into law, the CVD for NME (non-market economy) bill, which will allow U.S. companies to file countervailing duty cases against China. **(2)** The Administration should carefully study and act on the International Trade Commission's Congressionally-requested study to catalogue China's subsidies. **(3)** The Administration needs to file either a comprehensive WTO case on China's export subsidies or a number of cases on the different methods and programs that China's national, provincial, and local governments use to

subsidize their manufacturing producers. These methods and programs include, but are not limited to, excessive state ownership, preferential loans, assistance with energy costs, and subsidies.

B. EU Information Technology Agreement Compliance

- **Trade Barrier and Harm to U.S. Interests:** The EU has been threatening to move products out of the product categories covered by the Information Technology Agreement on to other, dutiable tariff lines. The ITA committed signatories to eliminate tariffs on information technology products. Now, the EU is arguing that as new capabilities are developed for products on the ITA list, the "new" products are no longer covered by the agreement.

- **WTO Action:** If the EU begins to reclassify products out of the ITA as producers improve those products' capability, then **USTR should** immediately initiate consultations 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.

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

- **Trade Barrier and Harm to U.S. Interests:** In 2006, the United States had a nearly $60 billion trade deficit in auto and auto parts with Japan, 65 percent of the total U.S. trade deficit with Japan and nearly 8 percent of the total U.S. trade deficit. U.S. exports of autos and auto parts to Japan declined by almost 10 percent in 2006, over 2003 exports.

  Japan also continues to block imports of U.S. auto parts using a combination of non-tariff barriers. For example, Japan levies an annual automobile tax that increases by engine size, discriminating against many U.S. vehicles. Japan also continues to restrict severely (and largely to Japanese Original Equipment Manufacturers) 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 Original Equipment Manufacturers (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 countries to use these profits to offer lower prices in the U.S. market, purchase additional research and development, and take steps with the extra revenue gained. Some of these barriers have been identified by the Bush Administration, yet it has taken no effective action to fix the problem: 2001 NTE (255-256), 2002 NTE (242), 2003 NTE (225), 2004 NTE (274), 2005 NTE (337-338), 2006 NTE (375).

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

D. 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, 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 3.5 percent share of the Korean market. The United States imported over 700,000 autos from Korea in 2006, while Korea imported only 4,556 autos from the United States. Existing Korean restrictions include: discriminatory taxes, regulations, and certification standards as well as an 8 percent import tariff. The United States concluded two separate automotive agreements with Korea in 1995 and 1998. In the 1998 agreement, Korea agreed to reduce taxes prejudicial to imported automobiles by addressing discriminatory and non-transparent tax, safety, and environmental standards and certification procedures that hinder U.S. imports. Korea instead has created new standards and certification barriers. These non-tariff barriers hinder the exportation of

U.S. automotive products to the Korean market. Some of these barriers have been identified by the Bush Administration for five years running, yet it has taken no effective action to redress or eliminate these non-tariff barriers: 2001 NTE (293), 2002 NTE (256), 2003 NTE (240), 2004 NTE (313-314), NTE 2005 (388-389), NTE 2006 (413-414).

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

E. 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"), (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, and (3) applied the "all others" rate to two U.S. producers who had no exports to Mexico during the period of investigation, violating article 6.8 of the Agreement (as found in the Appellate Panels in Rice and Hot Rolled Steel). **USTR should** immediately initiate consultations 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.

F. UK - Aero-engine subsidies

- **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 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 violated the provisions in Articles 5 and 6 of Part III of the Agreement on Subsidies and Countervailing Measures. While several years have passed since the last announcement of royalty-based financing for Rolls Royce, the threat of more such financing still exists.

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

III. INTELLECTUAL PROPERTY AND INVESTOR RIGHTS

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

- **Trade Barrier and Harm to U.S. Interests:** Canada has been on the USTR Watch List since at least 2002, in part because its IPR laws and enforcement remain far behind most other developed countries. Canada should enact legislation to bring it into compliance with the WIPO (World Intellectual Property Organization) 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 on pirated products. Canada's IPR violations have been documented extensively by the Bush Administration: 2001 NTE (32-33), 2002 NTE (33-34), 2003 NTE (34-35), 2004 NTE (42-43), 2005 NTE (55-57), 2006 NTE (74-75).

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

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

- **Trade Barrier, Lack of IPR Protection, and Harm to U.S. Interests:** China's market access restrictions and pirate market growth cost the U.S. copyright industries almost $3 billion in 2006. The piracy rates of physical copyright products remain virtually the highest in the world, at 85-95 percent depending on the industry sector and product format (e.g., 95 percent of DVDs in China are pirated). The estimated trade losses due

to copyright piracy by the Chinese industry are: business software, $1.9 billion; entertainment software, $590 million; motion pictures, $244 million; records and music, $206 million; and books $52 million. Market access restrictions by the Chinese government have exacerbated the piracy problem by severely restricting the supply of legal filmed entertainment. Market access restrictions imposed by the Government of China include: (i) a state-run monopoly that controls a single importer and two film distributors and (ii) government determination of box office revenue share. These restrictions on foreign audio-visual products 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. audiovisual industry market's sales in China. There has also been a lack of enforcement for the widespread photocopying of books. The lack of effective IPR protection is in violation of Articles 41 and Article 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).

- **Bilateral and WTO Actions:** To encourage China to live up to its WTO commitments, **USTR should (1)** immediately request consultations under the WTO Agreement on TRIPs and GATS; **(2)** commence a dispute resolution case under WTO procedures if the problem cannot be resolved in the 60-day consultation period; and **(3)** keep China on the U.S. government's Special 301 Priority Watch List of countries that present significant piracy problems for U.S. copyright holders until serious reforms are successfully implemented.

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

- **Trade Barrier and Harm to U.S. Interests:** As a part of broader legislation intended to implement the EU Copyright Directive, France passed a 2006 law that would require that companies turn over their Digital Rights Management (DRM) to competitors. This government-mandated taking of protected intellectual property not only violates the underlying premise for securing copyrights and patents - to ensure protection of the rights of innovators- but also runs contrary to the basic protections provided to rights holders under TRIPS. This new law threatens the key comparative advantage of U.S. firms- innovation- and puts copyrighted music at risk of pirating. Further, France's actions have emboldened other European nations to take similar action, which may result in government -sanctioned expropriation of the intellectual property of successful U.S. companies.

- **Bilateral and WTO Actions:** To encourage France and the EU to live up to their WTO commitments, **USTR should (1)** immediately request consultations under a number of articles of the WTO Agreement on TRIPs; **(2)** commence a dispute resolution case under WTO procedures if the problem cannot be resolved in the 60-day consultation period; and **(3)** move France to the U.S. government's Special 301 "Priority Watch List" of countries that present significant piracy problems for U.S. copyright holders.

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

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

- **Bilateral and WTO Actions:** To encourage Mexico to live up to its WTO commitments, **USTR should (1)** immediately request consultations under Articles 41 and 61 the WTO Agreement on TRIPs; **(2)** commence a dispute resolution case under WTO procedures if the problem cannot be resolved in the 60-day consultation period; and **(3)** move Mexico on the U.S. government's Special 301 "Priority Watch List" of countries that present significant piracy problems for U.S. copyright holders.

E. Russia - Copyright piracy

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

  When determining whether Russia can be a GSP recipient, the President is authorized to evaluate whether Russia is providing "adequate and effective protection" of intellectual property rights. U.S. efforts to date to urge the Russian government to enforce its own copyright laws need to be stronger. 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). However, the Administration needs to tie GSP explicitly to Russia improving 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 one-year Action Plan to improve Russia IPR enforcement.

F. United Arab Emirates development

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

- **Bilateral Action:** USTR should emphasize that satisfactory resolution of this case (and any others like it) is necessary for any further progress toward an FTA.

IV. AGRICULTURE

A. Trade barrier: Many countries also use WTO-inconsistent sanitary/phyto-sanitary (SPS) regulations to keep their agricultural markets closed to U.S. exports. Issues that bear careful scrutiny include SPS restrictions by China and Mexico on U.S. avocados, restrictions by China on U.S. fruit, and restrictions by the EU on U.S. fruit and processed food.

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

V. SERVICES

A. China- Electronic payments industry commitments not being met

- **Trade Barrier and Harm to U.S. Interests:** China's WTO accession contained a clear commitment to provide unrestricted market access and national treatment for many financial services by December 11, 2006. However, China still allows payment systems providers to issue cards only if they co-brand with China Union Pay (CUP), which is owned by China's largest banks. Additionally, all Chinese domestic transactions must be processed over the CUP network. The Chinese government needs to live up to its WTO commitments and implement this obligation.

- **WTO Action: USTR should** immediately initiate 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.

VI. OTHER BARRIERS

A. European Union - Regional Agreements -

- **Trade Barrier and Harm to U.S. Interests:** The EU continues to pursue regional trade agreements that do not comply with WTO rules. In 5 years, USTR has failed to challenge even a single one of these agreements. The agreements do not comply with Article XXIV of the GATT, by excluding some or all agricultural products. These agreements discriminate against American exports of goods and services.

- **WTO Actions:** To encourage the EU to live up to its WTO commitments, **USTR should (1)** immediately request consultations per GATT Article XXIV; and **(2)** commence a dispute resolution case under WTO procedures if the problem cannot be resolved in the 60-day consultation period.

B. Arab Boycott - Compliance with FTA Conditions and Expanded Reporting

- **Trade Barrier**: The Arab League Boycott of Israel is a significant impediment to U.S. trade and investment in some countries in the Middle East and North Africa. The primary aspect of the boycott prohibits the importation of Israeli-origin goods and services into boycotting countries. The secondary and tertiary aspects of the boycott discriminate against U.S.

and other foreign firms that wish to do business with both Israel and boycotting countries. Currently, USTR's National Trade Estimate Report (NTE) contains limited reporting describing the extent to which a handful of Arab League members comply with or enforce the boycott, without following any specific, uniform criteria. Also, the report does not include information on non-Arab League countries with which the U.S. is engaged in FTA negotiations that maintain boycotts against Israel. Consistent and uniform reporting would enable USTR to monitor the extent to which these boycotts create barriers for U.S. products and services overall, and help identify negotiating objectives for FTAs with member countries of the Arab League Boycott, as well as other countries that maintain boycotts of Israel. The elimination of participation in the Arab League Boycott has been raised and required in recent FTAs with Oman and Bahrain. Pursuant to these FTAs, both countries have agreed to dismantle completely the boycott of Israel and USTR has committed to monitor and report each country's compliance in accordance with specific criteria. USTR also has agreed to raise Malaysia's boycott of Israel in on-going FTA negotiations. Malaysia is not a member of the Arab League, but it does enforce an economic and political boycott against Israel.

- **Actions**: USTR should expand the scope of the NTE section on the Arab League Boycott of Israel to cover all members of the Arab League Boycott of Israel, not just those with which the U.S. has secured specific monitoring commitments through a free trade agreement, or is currently negotiating such an agreement. It also should include reporting on non-Arab League countries that maintain an economic boycott against Israel with which the U.S. is negotiating a free trade agreement, such as Malaysia. USTR also should strengthen the report by including the following uniform criteria for each country (with slight modifications for non-Arab League countries): (1) whether the country attends Arab League Boycott meetings; (2) whether the country maintains a boycott office or personnel; (3) whether the country has changed its domestic boycott laws or regulations; (4) whether the country encourages or condones informal boycotts; (5) whether the boycott has had an impact on U.S. exports with Israeli content; and (6) the volume of trade between the country and Israel.