

**NOMINATION OF CARLOS M. GUTIERREZ TO BE  
SECRETARY OF COMMERCE**

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**HEARING**

BEFORE THE

**COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION**

**UNITED STATES SENATE**

**ONE HUNDRED NINTH CONGRESS**

**FIRST SESSION**

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**JANUARY 5, 2005**  
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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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**NOMINATION OF CARLOS M. GUTIERREZ TO  
BE SECRETARY OF COMMERCE**

**WEDNESDAY, JANUARY 5, 2005**

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Committee met, pursuant to notice, at 4 p.m. in room SR-253, Russell Senate Office Building, Hon. Ted Stevens, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. TED STEVENS,  
U.S. SENATOR FROM ALASKA**

The CHAIRMAN. The hearing on the nomination of Carlos Gutierrez to be the Secretary of Commerce will come to order. It's a pleasure to have some new Members. I'll welcome them later. We'll begin now, and in order that Senator Levin may return, Senator Inouye and I will make our statements after you make yours, Carl.

I'm pleased to call the Senator from Michigan to introduce our nominee.

**STATEMENT OF HON. CARL LEVIN,  
U.S. SENATOR FROM MICHIGAN**

Senator LEVIN. Well, I'm very grateful for that, Senator Stevens, Senator Inouye.

Senator Pryor, I see you're in your traditional position on the Committee. We lost Senator Pryor to the Armed Services Committee, where he was sitting in a very similar position; and, therefore, we were unable to retain him. But he'll make a terrific contribution to this Committee.

But, Mr. Chairman, congratulations to you on your new duties here. And, Senator Inouye, it's always great to see you.

And it's particularly a pleasure for me to be with Carlos Gutierrez here this afternoon. He is somebody that we're very, very proud of in Michigan, as CEO and president of the Kellogg Company. He has done wonderful things with that company. It's on a very strong financial footing, for many reasons; particularly, the community that it is centralized and localized in, but also because of his leadership.

His experience in running various parts of the Kellogg Company across this globe will help him to be a tremendous Secretary of Commerce. He worked, really, up from the bottom rung of the Kellogg ladder. He came to the United States when he was 7 years old, and his first job with Kellogg's was delivering cereal from a van,

stocking the shelves, I believe, in Mexico, and working himself up from there so that, during his career with Kellogg's, he has managed several international divisions, including general manager of Kellogg of Mexico, president and CEO of Kellogg Canada, president of Kellogg Asia Pacific. And this vast business experience in the United States and abroad has given him a unique understanding of our country's role and the challenges that we face in the global marketplace.

We need greater access to foreign markets; he knows that firsthand. We need to address the soaring trade deficit; he understands that firsthand. And he also, in addition to coming from mid-America, the Heartland of America, in a mid-sized town, Battle Creek, he understands the values of mid-America and the value of hard work. He also understands some of the challenges that we face in the manufacturing sectors of America, because—Kellogg being, of course, a major manufacturer.

Mr. Gutierrez also represents the quintessential American dream—as I said, emigrating to America when he was 7 years old, from Cuba, and then working himself up the ranks of Kellogg.

His story is as American as cornflakes and baseball, and he's a fan of both. Of course, being born in Cuba, I think he probably had that love of baseball even before he reached here, but it's been emphasized, I'm sure, significantly as an American.

His home, in Battle Creek, Michigan—again, a medium-sized mid-western city in our heartland—he's got a very firm grounding in the values and strengths that make our country great, and he's got a firm grasp of the challenges that face American manufacturers in the global economy that we are in.

So I know this Committee will address this nomination speedily, as well as thoroughly. I couldn't be more pleased than to be here for just these few minutes to introduce Carlos Gutierrez to our colleagues. And I see Senator Stabenow is now at my side. So for both of us, representing Michigan, it is a real privilege and an honor to represent a man who stands for so many of the values that we believe in here in this country, and that we represent in the U.S. Senate.

And, again, I thank you very much, Mr. Chairman, for allowing me to go first so that I could return to the Armed Services Committee.

[The prepared statement of Senator Levin follows:]

PREPARED STATEMENT OF HON. CARL LEVIN, U.S. SENATOR FROM MICHIGAN

Mr. Chairman and Members of the Committee, it is my privilege to introduce President Bush's Commerce secretary nominee, Carlos Gutierrez, Chairman of the Board and CEO of Michigan's Kellogg Company.

I am delighted with this choice and heartily support the nomination of Mr. Gutierrez to be Secretary of Commerce. Mr. Gutierrez has vast business experience in the United States and abroad, which gives him a unique understanding of our country's role and challenges in the global marketplace.

During his time at Kellogg, Mr. Gutierrez managed several of the company's international divisions, including serving as the general manager of Kellogg of Mexico, the president and CEO of Kellogg Canada Inc., and the president of Kellogg Asia-Pacific. These experiences provide him with the expertise needed to address our soaring trade deficit and create a climate where U.S. products have the same access to foreign markets as we give in this county to foreign products.

Mr. Gutierrez represents the quintessential American dream, emigrating to this country with his parents at the age of 7 from Cuba and working his way up the

ranks of the Kellogg company, starting with selling Kellogg cereal from a van, stocking the shelves of his customers, to becoming the highly respected President and CEO of a top American Fortune 500 Company. His story is as American as Corn Flakes and baseball, of both of which he is a passionate fan.

Mr. Gutierrez's home is in Battle Creek, Michigan, a medium-sized, mid-western city in America's heartland. Mr. Gutierrez has a firm grounding in many of the values and strengths that make this country great. He also has a firm grasp of some of the challenges facing American manufacturers.

The U.S. has battled for decades to open foreign markets to U.S. goods. Carlos Gutierrez knows the ropes of those markets and can provide this nation with that invaluable experience. I have confidence that he will recommend firm action both to pry open foreign markets now closed or partially closed to American goods as well as to reinvigorate America's manufacturing base.

I urge the Committee to report Mr. Gutierrez's nomination favorably as soon as possible and I look forward to working with him in this new and important role as Secretary of Commerce.

The CHAIRMAN. Thank you, Senator Levin. We're delighted to have you come.

Senator Stabenow, we'd be pleased to have your remarks concerning the nominee.

**STATEMENT OF HON. DEBBIE A. STABENOW,  
U.S. SENATOR FROM MICHIGAN**

Senator STABENOW. Thank you, Mr. Chairman and Ranking Member Inouye.

I'm very pleased to be here today with all of you. And I do also want to clarify—when Senator Levin talks about “cornflakes,” it is “Kellogg Corn Flakes” that we are speaking about here. That's important.

But I am very pleased to be here to support the nomination and present to you a fellow Michigianian as our next Secretary of Commerce. Carlos Gutierrez is a man with a remarkable story. As you have heard on many occasions, his impressive background reveals a shining example of an individual who came to America, to our nation of immigrants, and enjoyed a very real opportunity to pursue the American Dream, which he continues to pursue today.

Mr. Gutierrez was born in Havana, Cuba. His father was a pineapple merchant in Havana before he brought his family to the United States. From this humble beginning, Mr. Gutierrez has risen to become one of the most respected and influential Latino leaders in American business today, and, I would say, most respected leaders in business today, as well.

Our Secretary-designate first joined Kellogg in Mexico City at age 20, with an entry-level sales and delivery job. And by age 30, Mr. Gutierrez was general manager of Kellogg's Mexican operations, truly an impressive story.

In 1982, Kellogg promoted and transferred him to the corporate headquarters in Battle Creek, Michigan. There, he continued to rise through the executive ranks to become Kellogg's president and chief executive officer in April 1999.

Mr. Gutierrez has been an effective and visionary leader at Kellogg. When he began his leadership, sales were flagging. He turned things around, he reduced the company's debt—we could use your help—and increased net sales by 43 percent, helping to make Kellogg the number-one cereal-maker in the United States.

Now, more than ever, our nation needs a strong leader to create jobs here at home. The loss of 2.8 million manufacturing jobs, and increased outsourcing, continues to hurt millions of American families. And we need his help in Michigan, as well, where we've lost over 225,000 jobs over the last 4 years. That number puts Michigan near the top of the list of states in the country with the highest number of recent job losses. And I'm so appreciative of his insight, coming from Michigan.

With his experience, Mr. Gutierrez is, without a doubt, the right man for the job. His journey from the bottom of the corporate ladder to the top shows how big dreams can triumph over traditional barriers, and he draws on the lessons of his journey to help create new opportunities for America's next generation of leaders.

Mr. Gutierrez is co-trustee of the W.K. Kellogg Foundation, which is such an important source of investment and—creating opportunities in Michigan, as well as around the world. In 1997, the Foundation launched one of the single largest philanthropic efforts in the country to increase educational opportunities for Latinos, a group with one of the top high school dropout rates in the United States.

That's one of many, many reasons that I am pleased that Carlos Gutierrez will be a member of the President's Cabinet. I wish him the best as he takes on the challenges of this new assignment, working on business and commerce issues that affect families in Michigan, across the country, and around the world.

Mr. Chairman, I am pleased to be here to support the nomination of Carlos Gutierrez, and I hope the Committee and the full Senate will confirm him as soon as possible.

[The prepared statement of Senator Stabenow follows:]

PREPARED STATEMENT OF HON. DEBBIE A. STABENOW, U.S. SENATOR FROM MICHIGAN

Thank you Mr. Chairman and Ranking Member Inouye. I am very pleased to be here today with all of you, and I do also want to clarify that when Senator Levin talks about corn flakes, it is Kellogg's Corn Flakes that we are speaking about here. That's important.

But I am very pleased to be here to support the nomination and present to you a fellow Michiganiaan as our next Secretary of Commerce.

Carlos Gutierrez is a man with a remarkable story, as you have heard on many occasions. His impressive background reveals a shining example of an individual who came to America—to our nation of immigrants—and enjoyed a very real opportunity to pursue the American dream, which he continues to pursue today.

Mr. Gutierrez was born in Havana, Cuba. His father was a pineapple merchant in Havana before he brought his family to the United States. From this humble beginning, Mr. Gutierrez has risen to become one of the most respected and influential Latino leaders in American business today—and I would say, most respected leaders in business today as well.

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Mr. Chairman, I am pleased to be here to support the nomination of Carlos Gutierrez. And I hope the Committee and the full Senate will confirm him as soon as possible.

Thank you.

The CHAIRMAN. Thank you very much, Senator.

Mr. Gutierrez, you come very well recommended by your state's Senators, and I'm delighted that this first hearing of this Congress starts off on a truly bipartisan basis, with the Senators endorsing the President's nomination that you take the position of Secretary of Commerce.

This is, sort of, a different Committee. Senator Inouye and I have served together now for 3½ decades or more, and we have formed a partnership, really, in many ways, and conduct our business in a different way. So I will be greeting the new Members here soon, and make some comments. But we hope that we can start off listening to witnesses. We'd like to hear your statement first, and then we'll make our comments.

Mr. GUTIERREZ. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Secretary?

**STATEMENT OF CARLOS M. GUTIERREZ, NOMINEE TO BE  
SECRETARY OF COMMERCE**

Mr. GUTIERREZ. Thank you, Mr. Chairman.

If I may, sir, I would like to briefly introduce my family, who's with me today. Sitting behind me is my wife Edilia, of 25 years. We met in Mexico, at the time when I was there with Kellogg. To her left is our youngest daughter, Karina, who is 18 and currently lives in Florida. And to her left, is Erica, 21, a resident of Michigan. And then, to her left, is my son, Carlos, Jr., who is 24. And thank you for allowing me to introduce them.

The CHAIRMAN. Well, we're delighted to have you with us, as members of the future Secretary's family, and we note the beautiful daughters, Mr. Secretary.

[Laughter.]

Mr. GUTIERREZ. Thank you, sir. Thank you. I think they've been harder to manage than the Kellogg Company, sir.

[Laughter.]

Mr. GUTIERREZ. Thank you, Mr. Chairman.

Mr. Chairman, Senator Inouye, and Members of the Committee, I thank you very much for the opportunity to appear before you today. I also want to thank Senators Levin and Stabenow for those very kind and generous introductions. I'm grateful for your courtesy and support, and I'm very grateful for the kindness shown to me by Members of Congress during this process. I have welcomed the advice—it's been very helpful—and the views that many of you have shared with me, in person or by phone.

Before proceeding, if I may, I would like to acknowledge how humbled and honored I am that President Bush would ask me to work in his Cabinet. If confirmed, I will be proud to work under his leadership.

I am especially appreciative of the tremendous opportunity to build on the accomplishments achieved at the Commerce Department under Secretary Evans' distinguished and exemplary leadership, as well as those of his predecessors.

Today, I would like to give you a better sense, briefly, of who I am and what I believe I can do for our country as Secretary of Commerce, if given that opportunity. Most of all, I hope to leave you with a clear understanding of my commitment to the ideals of our country, and of my strong support for the Commerce Department's mission of creating conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness, and environmental stewardship.

My passion for this country is rooted in the opportunities I received after coming to America as a young Cuban refugee with my family. We arrived with few material possessions, but we had many dreams at that time.

My parents instilled in me a belief that, in the United States, one could achieve almost anything through hard work, determination, and the hunger and the humility to learn. They taught me the noble American values of personal liberty and personal responsibility, and the importance of both to our democratic and free-enterprise system.

When my parents and my brother and I became U.S. citizens, in a Brooklyn, New York, courtroom, in 1965, I can assure you, I believe it was one of my father's proudest moments, as it was when my whole family and children became U.S. citizens.

After I joined the Kellogg Company, in 1975, I focused on doing my very best at each job, as a way of preparing myself for the opportunities that may arise in the future. This approach served me well, leading to wonderful experiences in Kellogg, including important managerial assignments on four continents. Ultimately, I assumed the roles of Chairman and Chief Executive Officer. But little did I imagine—little did I imagine—that I would be preparing for the challenges of public service as Secretary of Commerce.

I welcome the prospect of this new challenge and the opportunity to give back something to the country that has provided us with so much. My journey, from young refugee to the leadership of a great American company, has prepared me to do so by engraining in me a deep appreciation of the individual contributions made by—and the challenges facing—employees at all levels of American industry. I also developed a keen sense of the forces of global com-

petition that will continue to reshape our business environment in the years to come.

Drawing on these experiences, Mr. Chairman, I would hope to pursue several goals as Secretary of Commerce, including, one, fostering the environment in which our free-enterprise system will flourish by serving as an advocate for reducing trade and regulatory barriers that unreasonably burden our businesses and their workers; two, collaborating with the U.S. Trade Representative both in the negotiation of sound trade agreements that will open markets to U.S. exports and in vigorous challenges to policies and practices abroad that violate those agreements; three, enhancing management of our marine resources, especially our marine fisheries and threatened marine ecosystems; and, finally, developing greater analytical and predictive capabilities concerning the global climate system, including an enhanced forecasting capability with regard to potentially hazardous weather and maritime conditions. And I know this is a subject that is very much top-of-mind, given the recent tragedies in several countries off the Indian Ocean.

I recognize that the continued success of the Commerce Department will require collaboration across all departments of the U.S. Government and with Congress. If confirmed, I would serve as a committed and inclusive leader that builds bridges across boundaries, whether it be political, cultural, economic, or geographic. I would work with all stakeholders to generate effective ideas and actions. And just as I have insisted at the Kellogg Company, I pledge to maintain the highest standards of integrity in the manner in which the Department conducts its business.

I have been blessed with the rewards of American freedom, and I have a great confidence in the direction of the country and the prosperity of this great country. I am eager to work with the Members of this Committee and other Members of Congress to find ways to help our fellow Americans realize their dreams, as well.

In closing, I wish to thank my family for their support in this new endeavor. I believe if we—if confirmed, Mr. Chairman, and we move to Washington, that would be about our 15th move since my wife and I were married. They have supported me in all others, and we have undertaken this whole journey together.

I would also be remiss if I did not recognize and thank the 25,000 employees of the Kellogg Company who have had a great deal to do with my personal success.

I thank this Committee, again, for the time provided to address you today. And I also want to thank President Bush for the confidence that he has expressed in me.

That concludes my statement. Thank you, again. And I would be pleased to address any of your questions at this point in time.

[The prepared statement of Mr. Gutierrez follows:]

PREPARED STATEMENT OF CARLOS M. GUTIERREZ, NOMINEE TO BE SECRETARY OF COMMERCE

Mr. Chairman, Senator Inouye, and Members of the Committee:

Thank you very much for the opportunity to appear before you this morning. And thank you, Senator Levin and Senator Stabenow, for those kind and generous introductions. I am grateful for your courtesy and support, as I am for the kindness shown to me by all Members of Congress so far in this process. I have welcomed

the helpful advice and views many of you have shared with me, in person or by phone.

Hearing your perspectives and your ideas has given me an even greater appreciation for the significant responsibilities of the Secretary of Commerce, and for the important work that lies ahead. There clearly is a shared understanding of the economic challenges that our nation faces, both at home and abroad; and just as important, a sincere commitment to work together to create an even more robust economy, one in which all of our fellow Americans fully share. If confirmed, I very much hope to work closely with the Members of this Committee to advance the best interests of our country.

Before proceeding, if I may, I would like to acknowledge how humbled and honored I am that President Bush would ask me to work in his Cabinet. If confirmed, I would be proud to work under his leadership. And I am especially appreciative of the tremendous opportunity to build on the accomplishments achieved at the Commerce Department under Secretary Evans' distinguished and exemplary leadership, as well as those of his predecessors.

Today, I would like to briefly give you a better sense of who I am and what I believe I can do for our country as Secretary of Commerce if given that opportunity. Most of all, I hope to leave you with a clear understanding of my commitment to the ideals of our country and of my strong support for the Commerce Department's mission of creating conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness, and environmental stewardship.

My passion for this country is rooted in the opportunities I received after coming to America as a young Cuban refugee with my family. We arrived with few material possessions, but we had many dreams. My parents instilled in me the belief that in the United States, one could achieve almost anything through hard work, determination, and the hunger and the humility to learn. They taught me the noble American values of personal liberty and personal responsibility, and the importance of both to our democratic and free enterprise system. When my parents and their two sons became U.S. citizens in a Brooklyn, NY courtroom in 1965, it was one of my father's proudest moments.

After I joined the Kellogg Company in 1975, I focused on doing my very best at each job, as a way of preparing for whatever the next opportunity would be. This approach served me well, leading to wonderful experiences in Kellogg, including important managerial assignments on four continents. Ultimately, I assumed the roles of Chairman and Chief Executive Officer—but my approach remained the same. I've worked hard at my current positions. But little did I imagine that I might be preparing for the challenges of public service, as Secretary of Commerce!

I welcome the prospect of this newest challenge, and the opportunity to give back something to the country that has provided me with so much. My journey from young refugee to the leadership of a great American company has prepared me to do so, by engraining in me a deep appreciation of the individual contributions made by—and the challenges facing—employees at all levels of American industry. I also developed a keen sense of the forces of global competition that will continue to reshape our business environment in the years to come.

Drawing on my experiences, I thus hope to pursue several goals as Secretary of Commerce, including:

- 1) Fostering the environment in which our free enterprise system will flourish, by serving as an advocate for reducing trade and regulatory barriers that unreasonably burden our businesses and their workers;
- 2) Collaborating with the U.S. Trade Representative both in the negotiation of sound trade agreements that will open markets to U.S. exports, and in vigorous challenges to policies and practices abroad that violate those agreements;
- 3) Enhancing management of our marine resources, especially our marine fisheries and threatened marine ecosystems; and
- 4) Finally, developing greater analytical and predictive capabilities concerning the global climate system, including an enhanced forecasting capability with regard to potentially hazardous weather and maritime conditions.

I recognize that the continued success of the Commerce Department will require collaboration across all departments of the United States Government and with the Congress. If confirmed, I would serve as a committed and inclusive leader that builds bridges across boundaries—whether it be political, cultural, economic, or geographic. I would work with all stakeholders to generate effective ideas and actions. And just as I have insisted at the Kellogg company, I pledge to maintain the highest standard of ethics in the manner in which the Department conducts its business.

I have been blessed with the rewards of America's freedoms, and I have great confidence in our nation's direction and future prosperity. I am eager to work with the Members of this Committee, and other Members of Congress, to find ways to help our fellow Americans realize their dreams as well.

In closing, I wish to thank my family for their support in this new endeavor, as they have supported me in all others we previously have undertaken together. I would also be remiss if I did not recognize and thank the 25,000 employees of the Kellogg Company who have had a great deal to do with my success. I thank this Committee again for the time provided to address you today. And I thank President Bush for the confidence that he has expressed in me.

That concludes my statement. I would be pleased to address your questions at this time.

The CHAIRMAN. Thank you very much, Mr. Gutierrez. Yours is an inspiring story, and—

Mr. GUTIERREZ. Yes, sir.

The CHAIRMAN.—we all share your feelings about the opportunity you now have at this magnificent Department. As I said before the hearing, you'll see much more of us than you really want to see of us; but it will be a working partnership, we assure you. And we're very pleased that you have brought your wife and children along with you today to be with you.

You come before us at a time when there's been significant change to the American economy. The shock of September 11th, the series of corporate scandals, and the pressures of spending on the wars in Afghanistan and Iraq and the war against terror generally really are taking their toll, as far as our national scene is concerned. The President's economic stimulus program and tax relief that we put into effect are helping. There are a whole series of issues we'll face as we go forward. We'll be guided by your advice, in terms of changes for the future.

You will find most of your budget is devoted to the National Oceanic and Atmospheric Administration. NOAA's programs will be a major focus of this Committee's efforts. We'll seek to reauthorize the Magnuson-Stevens Act, the Marine Mammal Protection Act, the Coastal Zone Management Act, and other laws affecting the use of the marine environment. And we'll review the report of the U.S. Commission on Ocean Policy. We have a whole series of other issues before us, from all forms of transportation, communication, science, and space. This Committee's jurisdiction is extremely broad, and we intend to pursue all of these areas to the utmost during this period of time.

As I said, Senator Inouye and I have worked together now for so many years. We have never found an issue we couldn't resolve amicably. I don't think we've ever had an argument and we don't intend to break that record. So I commend the Committee to work with us on a bipartisan basis to try to resolve some of the issues that will come before us.

And I want to take the time, before I recognize my colleague, to recognize Senator Ben Nelson, and Senator Pryor and Senator DeMint and Senator Vitter, who are new Members. They will be confirmed in those roles tomorrow, but we're meeting today with the idea that we'll probably meet off the floor, after the first vote, to vote on the nomination, because I don't think we'll have a full quorum here today.

We have a little problem: Our colleagues have not been confirmed as Members of the Committee yet, and we haven't been confirmed as chairmen yet. It's one of those things.

[Laughter.]

The CHAIRMAN. I just want to close, before I introduce my colleague and ask him for his comments, we'll go through a round of 5 minutes each. Members can make a statement or ask questions. After the first round, we'll go back through again, if that's necessary. But I do hope that Members will keep in mind, as we go through these hearings, that we want full participation, and we will recognize Members based on the time that they come to the hearing, at this and all hearings. It's the early bird rule, which I think is the fairest way to handle matters. And Senator Inouye and I have followed that procedure in other areas, and we intend to follow it now.

So, let me call on my colleague, Senator Inouye, at this time.

**STATEMENT OF HON. DANIEL K. INOUE,  
U.S. SENATOR FROM HAWAII**

Senator INOUE. I thank you very much, Mr. Chairman.

I wish to join my Chairman in welcoming you, Mr. Gutierrez, to your first appearance before this Committee. You may not be aware of this, but it's through sheer determination that we're meeting today. As you noted, we're not technically confirmed to do this, but that's how we do business.

[Laughter.]

Senator INOUE. Mr. Chairman, when Mr. Gutierrez and I met in December, we discussed many things. As he noted in his opening statement, he said that it is critical that the Department play an active role in linking businesses with market opportunities throughout the world, supporting our companies where needed, and, I think, ensuring that the Department's role in our embassies is expanded. And I look forward to working with you on these and many other important matters within the Department's jurisdiction.

As you've noted, Mr. Gutierrez, in the past 2 weeks we've seen photos after photos of devastation, death, and misery throughout the Indian Ocean area. The unprecedented loss of life and devastation is beyond comprehension. And living in an island state in the midst of volcanic activity, such as Hawaii, the people of Hawaii are very well aware of the destructive power of tsunamis. And the Chairman, who is from Alaska, is also familiar with the threats posed by earthquakes and tsunamis to our coastal communities. And that's why we have worked together very closely, throughout the many years, to increase our support for the funding of NOAA's tsunami warning program, including warning sensors in Hawaii and Alaska.

Despite our efforts, much more must be done. And, as you are well aware, 85 percent of all the tsunamis occur in the Pacific Ocean area, and we spend about \$10 million annually for the Pacific system. We have only six buoys deployed; we need at least 12 more. And I'm assured that the expansion will be completed, not next year, but in the next 7 years, and I think that is not acceptable, with what is happening out there. We have the technology,

we have the system in place. All we need is the commitment to carry this out. And I think with your commitment, we can do this.

So I look forward to working with you, Mr. Gutierrez—

Mr. GUTIERREZ. Thank you, Senator.

Senator INOUE.—to assure that our Department has adequate resources to address this matter and fulfil your many other important responsibilities.

And I'll wait for my second turn.

Mr. GUTIERREZ. Thank you, Senator.

The CHAIRMAN. Well, let me just take this occasion, Mr. Secretary, if you will—I'd like to introduce the Chief of Staff of the Committee now, Lisa Sutherland, who's been with me for many years, and General Counsel of this Committee will be David Russell. The Deputy Chief of Staff will be Christine Drager. The Press Secretary will be Melanie Alvord.

I only have one question to ask before we yield under the early-bird rule.

I noticed a report yesterday that the board of Kellogg has granted you special consideration on the pension plan, based upon a determination that you had not quite reached 30 years. It's my understanding the board will compensate you beginning, I guess, when you leave government, or 2009, on a basis that you had completed the full 30 years. How far were you from reaching 30 years, Mr. Gutierrez?

Mr. GUTIERREZ. Yes, Mr. Chairman, I will—I would have my 30-year anniversary on September 1st, 2005.

The CHAIRMAN. And this determination, as I understand it, was filed with the SEC?

Mr. GUTIERREZ. Yes, sir, it was filed through an 8-K report, and it was a determination made by the board of directors, which is a body, in our company, made up of all independent directors, with the exception of myself.

The CHAIRMAN. And that compensation is roughly equivalent to what it would have been if you had served the full 30 years?

Mr. GUTIERREZ. Yes, sir. Yes, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Under the early-bird rule, I now recognize Senator Pryor.

**STATEMENT OF HON. MARK PRYOR,  
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR. Thank you, Mr. Chairman. And in lieu of making an opening statement, I would just like to submit my prepared statement for the record. I would also like to say thank you for welcoming me to this Committee. I look forward to working with you and Senator Inouye and everybody on this Committee. I look forward to really diving into these issues. I know we have a lot of challenges, and I just look forward to your leadership.

And, Mr. Secretary-designee, thank you for being here today. It's nice to meet you today.

I have, really, basically two questions. One is about broadband, specifically about broadband, getting broadband out into rural America. And, of course, that impacts my state and a number of other states here. And I'd just like to get your thoughts on any

plans or proposals or ideas you have to try to get broadband out into rural America.

[The prepared statement of Senator Pryor follows:]

PREPARED STATEMENT OF HON. MARK PRYOR, U.S. SENATOR FROM ARKANSAS

Mr. Chairman, Senator Inouye, I am delighted to be joining the Commerce Committee and look forward to working with my colleagues. Mr. Gutierrez, good afternoon, I am pleased to meet you.

This is truly a Committee that impacts much of Arkansas as well as the Nation. In that light, I wanted to take a moment to highlight for the Committee—and for Mr Gutierrez—some key areas within the U.S. Department of Commerce that are important to Arkansas.

**International Trade Administration**

Arkansas is home to a diverse and vibrant business community, one that depends on fair and transparent trade laws. From Wal-Mart, to Tyson Food, Riceland Rice, Producer's Rice Mill, Stevens, Aciom or Nucor Steel, Arkansans care about international trade and the actions of the International Trade Administration.

Arkansans welcome fair competition. Arkansans also expect trade rules to be transparent and for all countries to play by the rules. During times of economic struggles for much of the globe, this goal can be very difficult.

I look forward to working with the Committee and you, Mr. Gutierrez, in strengthening the international trade and investment position of the United States.

**Minority Business Development Agency**

I am also keenly devoted to minority business development and, therefore, I hope to work with you on empowering the Minority Business Development Agency. I extend the offer to my colleagues and to you, Mr. Gutierrez, to join me in Arkansas and meet with the many industrious men and women from our African-American and Hispanic communities who could be our next generation of great entrepreneurs but are daunted by economic disadvantages.

Mr. Gutierrez, Arkansas has a population consisting of 15.58 percent African-Americans and 3.25 percent Hispanics. The growth rate in the Arkansas Hispanic population is the second highest in the country.

We must ensure that all Americans have the opportunity to reach their full potential and I urge you to join me in reaching out to these communities.

**Economic Development Administration**

I am a strong supporter of the Economic Development Administration (EDA). EDA has provided essential assistance to economically distressed communities in Arkansas, especially in the Delta. EDA is an important tool to ensure that the vast wealth of this great nation provides opportunities for all.

**Technology Administration**

With regard to the Department of Commerce's Technology Administration, you might be interested to learn that Arkansas is at the forefront of important technological advancement for enhanced commercialization, including logistics and nanotechnology.

The University of Arkansas and Arkansas State University have developed and continue to work on initiatives that support real commerce opportunities for Arkansas businesses such as agriculture, oil, timber, cotton and advanced manufacturing.

**National Telecommunications and Information Administration**

Finally, the National Telecommunications and Information Administration has and will continue to change the landscape of Arkansas. Arkansas has a strong telecommunications industry. In fact, ALLTEL Corporation, an integrated telecommunications provider with almost 13 million consumers and over \$8 billion in annual revenues, is headquartered in Little Rock, Arkansas.

The future of telecommunications could offer vast opportunities for rural America and especially its children. We must do more to provide broadband to our smaller communities at a reasonable cost. We must do more to ensure that the benefits of telecommunications are within reach of more of our population.

Thank you for this time to speak Mr. Chairman. I look forward to working with you and the other Committee members.

Mr. GUTIERREZ. Yes, Senator Pryor, thank you.



I hope to have a lot more knowledge of the subject, if confirmed, and elaborate a little bit more in the future. My understanding is that the President has set a goal to provide accessible and affordable broadband for all Americans, and, of course, including rural America, which is an important objective. I think that is a very powerful goal, both on a global scale, competitively for the nation, and it's one that I—it's one that I totally endorse and totally support, sir.

Senator PRYOR. Great. And the second question I have, again, relates to one of the President's policies—and one of your predecessor, Don Evans, policies—about the steel industry. There's been a steel monitoring—import monitoring program in place since 2002. In December of 2003, President Bush made the determination to extend that program—along with Secretary Evans. But, as I understand it, as of today, the Commerce Department has not adopted regulations to extend the program. And I don't know if you're familiar with that, but I'd ask you to please look into it. And that's an important industry to a lot of different states in the United States, but I think it's an important industry to the American economy. Do you know anything about that?

Mr. GUTIERREZ. Not enough, as I should, Senator Pryor. I have not been involved in the budgetary process. I will do so, if confirmed. And I know that is important to you; I know it's important to many Members of the Committee. That was a program that was mentioned to me quite frequently during the courtesy visit. So I will definitely keep that in mind and remember your commitment to that, as well.

Senator PRYOR. Great. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

We have enough people here—if you listen to me just a minute, will you please?

[Laughter.]

The CHAIRMAN. Based on the fact that we will be confirmed by the time we vote on this nomination on the floor, and we will vote off the floor on reporting the nominee, I want to put in the record now a motion that the Secretary—that the nomination be recommended to the floor for confirmation. We will vote on that after the first vote on the floor. Is there objection?

Senator SMITH. Is that tomorrow?

The CHAIRMAN. I believe it will be tomorrow.

Senator ROCKEFELLER. Mr. Chairman?

The CHAIRMAN. Yes.

Senator ROCKEFELLER. I have a whole series of written questions, which I wish to submit, as well as the ones that I'll ask today. And I didn't know that this was going to happen, until last night. And, you know, people who have not been sworn in as Committee Members, or whatever, the—approved by the Senate as Committee Members—can't vote. I suppose that'll happen tomorrow, but I doubt that I'll get the answers to my questions tomorrow, and I've never been through a hearing, that I can remember, where I've voted in favor of somebody who hasn't responded to written questions. And so, my approach would be that I would have to vote no in Committee, if you're going to do that today, and then

hopefully wait until the Secretary-designate answered the questions.

I mean, I'm a United States Senator. I represent the people from West Virginia. I have a right to get the answers to my questions.

The CHAIRMAN. The Senator is correct. I asked if there's any objection. You've objected. I'll withdraw the request. We'll take care of it at the proper time.

As for the qualifications, they will be qualified by the time they vote. As for your questions, we intend to vote on this on January 20th. And it's my understanding that we'll not be here after Friday, and the first time we'll be back will be January 20th. I hope you get your questions by that time, because we'll vote after the first vote on the floor. I will make the motion at that time.

I Recognize Senator Smith.

**STATEMENT OF HON. GORDON H. SMITH,  
U.S. SENATOR FROM OREGON**

Senator SMITH. Thank you, Mr. Chairman.

Mr. Gutierrez, it's a pleasure to see you here.

Mr. GUTIERREZ. Thank you, Senator.

Senator SMITH. I enjoyed our visit. I want to re-emphasize what I told you in private—is that, before this job is over for you, you will know more about fish than cornflakes.

[Laughter.]

Senator SMITH. And I look forward to working with you on those issues.

As you're aware, I think, from our conversation, the largest trade case in American history is between the United States and Canada on the soft wood lumber issue. Currently, the Department of Commerce is collecting duties on that. I'm hoping that you will tell me that those duties will not be surrendered until they are part of a negotiated settlement. And that is very important in my part of the world. Do you have a position on that, at this point?

Mr. GUTIERREZ. Senator, I—just in deference of this Committee and yourself, I would like to commit to things that I know I can deliver on, and I'd like to delve into this matter a little bit before expressing any commitment. I do know that the lumber issue is one that has come up. You are very strong on it. I believe just about every Member of the Committee was very forceful on this issue. It is a serious matter. It's been lingering for quite awhile, and it is something that I will definitely pursue.

Senator SMITH. It's very important, and it's in the interest of Canada and the United States that we negotiate a settlement so that this industry, on both sides of the border, can survive. And these duties that are being collected are an important—a very important part of that negotiated settlement.

On the issue of piracy, Mr. Gutierrez, America's copyright industry generates some 12 percent of American GDP, and account for over 8 percent of the total U.S. employment. Specifically, the four copyright categories are movies, music, publishing, and software—computer software. They account for over \$90 billion in foreign sales and exports—more than agriculture, more than automobiles, and more than aircraft. And there are just untold numbers of people whose jobs are in jeopardy because of the amount of theft that

is occurring overseas on American copyrighted materials. And so, I don't know if you have a comment on that, but I raise this issue, because I think it's so important to highlight to the Department of Commerce that we vigorously pursue piracy issues, specifically with China, specifically with Russia, where we have lost billions. Pretty soon our entertainers are going to be on street corners with monkey-grinders, trying to get people to pay them. But, ultimately, if we lose copyright issues, we're going to lose a great and valuable part of the American economy.

Mr. GUTIERREZ. Senator, I agree. And I agree with the passion with which you state the problem. We actually lived through this, as a food company, ironically, where we had—we found that our brand was actually being copied and used in some markets, and obviously without any authorization. And one of the great assets that we have as a country are our brands, our technology.

So I agree, I think this is a matter to focus on. I think it is a big issue, and I know it's a matter of great concern to you, as it is for me, Senator.

Senator SMITH. Finally, Mr. Chairman—Mr. Gutierrez, I understand that China is on the verge of releasing government procurement regulations for China that will have the effect of barring most U.S. soft-wood products from being sold in China. I don't know if you're aware of that. I want to make you aware of that. It's obviously an issue of real importance to timber workers in the State of Oregon. So, I don't know if you've heard of it, or will focus on it, but I sure hope you will.

Mr. GUTIERREZ. Senator, I will focus on it. I know it's of importance to you and the Committee, and I will focus on that.

Senator SMITH. Thank you, Mr. Chairman. If I may, for the record, I'll put my opening statement in the record.

The CHAIRMAN. Without objection.

[The prepared statement of Senator Smith follows:]

PREPARED STATEMENT OF GORDON H. SMITH, U.S. SENATOR FROM OREGON

Thank you Mr. Chairman. I want to first congratulate you on your election as our new Chairman of the Senate Commerce Committee. I look forward to working with you and all our colleagues on the many difficult issues the Committee will be tackling this year.

Mr. Gutierrez, I want to welcome you to today's confirmation hearing and want to congratulate you for being nominated as our next Secretary of Commerce. Your success story will continue to be an encouragement to many young entrepreneurs in America. I would like to invite you to Oregon to see the new and emerging technologies in my state. Oregon continues to have economic development needs and, unfortunately, leads the country in unemployment.

On a more specific issue, it is my understanding that Oregon has not been able to receive any assistance from the Minority Business Development Agency for at least 10 years because the agency has focused its efforts primarily on larger states and cities. I would like to ask for your assistance to investigate this issue at the MBDA, so that all minority-owned businesses can benefit from this agency. I look forward to working with you to develop and coordinate policies that will provide spur growth and jobs for our nation.

On the issue relating to the wake of the recent tsunami, we continue to mourn the enormous loss of life in southeast Asia. As policymakers, we must look for lessons we can learn from this tragedy and what steps we can take to help prevent such devastation should a similar event occur in the future. I have no doubt that in the coming months and years this panel will spend a great deal of time evaluating the strengths and weaknesses of our current ocean monitoring and research systems. As a Senator from a coastal state, I have a very obvious and personal in-

terest in this debate. I look forward to working with you, the Administration, and those in our coastal communities to address these and other issues.

Mr. Gutierrez, thank you for your appearance today. Thank you, Mr. Chairman.

The CHAIRMAN. Next, I'll recognize Senator Lautenberg.

**STATEMENT OF HON. FRANK R. LAUTENBERG,  
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Thank you, Mr. Chairman, and welcome, Mr. Gutierrez.

You're here at a historic moment, not only for you, but for this Committee, as well, because it is a—I don't want to use the term "reformed"—restructured Committee. And I welcome our new colleagues, not as joyously as I might have had if they were sitting on this side of the aisle—

[Laughter.]

Senator LAUTENBERG.—but, nevertheless, I look forward to working with you.

And, Mr. Gutierrez, I would think that you'd have to note that Senator Inouye, Senator Stevens, and I are among the more mature Members here, and we, the three of us, served in World War II. We are, I think, the last ones to have been active during the period in the—in this Senate. And, therefore, you have some idea of our age; we're all over 60. And—

[Laughter.]

Senator LAUTENBERG. I hear a snicker go through the crowd.

[Laughter.]

Senator LAUTENBERG. But—

The CHAIRMAN. For some of us, it's not that apparent.

[Laughter.]

Senator LAUTENBERG. Well, you know why, Mr. Gutierrez. It's that Special K and Corn Flakes and Rice Krispies.

[Laughter.]

Senator LAUTENBERG. That's what did it.

[Laughter.]

Senator LOTT. Salmon is what did it.

[Laughter.]

Senator LAUTENBERG. Oh, salmon, I'm sorry.

[Laughter.]

Senator LAUTENBERG. And if we continue like this, we'll never get to talk about the serious subject.

But we do welcome you and really look at your history as a quintessential American story. And it's wonderful to be repeated. In many instances through this body, we've met people who similarly—I was born of immigrant parents, and had a fortunate and somewhat lucky business career before coming here, so I respect greatly what you've accomplished, from the—where you started to where you are today. And we're going to look to you, Mr. Gutierrez, for a response that I noted in your comments, and that was that you hoped to bridge the boundaries, and you included, in there, political, economic, et cetera. And I urge you to do that. We sometimes have disagreements that ought to be able to be dealt with in a more comprehensive fashion, and I hope that you'll help us.

This department, this Committee, has an enormous array of items that we work with, and you'll have a chance to hear about

them and learn about them, and going from the communications side to the marine side to the trade and business side. And when I look at where we are, Mr. Gutierrez, I don't understand what it is that has us with a dollar that's so cheap compared to other currencies. And yet, our trade balance is still in the negative column. What has to happen with our products that are sold at these very relatively low prices and still don't enable us to gain a favorable trade balance?

So those are among the things that—and, Mr. Chairman, I would ask that my full statement be included in the record.

[The prepared statement of Senator Lautenberg follows:]

PREPARED STATEMENT OF HON. FRANK R. LAUTENBERG,  
U.S. SENATOR FROM NEW JERSEY

Mr. Chairman:

I want to commend our outgoing Chairman, Senator McCain, and congratulate him for the Committee's accomplishments during his tenure. I think I can speak for all of the Committee Members on this side of the dais when I say that he has been very *fair* to the minority.

I also want to note how much we will miss Senator Hollings.

And I want to take this opportunity to congratulate our incoming Chairman and Ranking Member, Senator Stevens and Senator Inouye. The Committee will be in good hands with these two men at the helm. Between them, they have nearly *80 years* of Senate service.

Today's hearing is on the nomination of Carlos Gutierrez to be Secretary of Commerce. I welcome the nominee and look forward to hearing his views on how he will promote American business interests in a way that *creates jobs*. There are still fewer jobs today than there were four years ago; meanwhile, the labor force keeps getting bigger.

Mr. Gutierrez's story is an inspirational one—he came to America as a six-year old immigrant from Cuba, he worked hard, and he became the CEO of a well-known American company, Kellogg, at the age of 45.

Mr. Gutierrez, your story is the quintessential "American Dream." I know about the American Dream because I have lived it, too. My parents arrived here as immigrants and I was able to rise to the top of the business world as you have, so I can appreciate your success.

Mr. Gutierrez, at the outset, let me alert you of my concern over this administration's *budget and trade policies*. We are currently running the biggest budget and trade deficits in history. We need to borrow *2.5 billion dollars* from *foreign* sources each and every *day* to finance our current consumption. As a businessman, you should know that's just not sustainable.

I also want to apprise you of my strong support of the Manufacturing Extension Program (MEP), which helps thousands of small manufacturers to increase their productivity and create and retain high-skilled *American* jobs.

In Fiscal Year 2003, because of the assistance they received, MEP clients:

- saved 681 million dollars in operating/production costs;
- invested 940 million dollars in new plant and equipment;
- retained or created 35,000 jobs; and
- reported sales of 1.84 billion dollars.

I hope that you will work to preserve Commerce Department programs like the Manufacturing Extension Program.

Thank you, Mr. Chairman.

Senator LAUTENBERG. And I would just ask this one question of Mr. Gutierrez, and that is, If the dollar continues to fall, would it be your view that it's either good or bad for the economy? What would your perspective be, sir?

Mr. GUTIERREZ. Senator, thank you.

Senator, I have a lot to learn about Washington and about how our business is conducted here. One thing I have learned is that the only two people who speak on behalf of the currency, or about

the currency, are the Secretary of the Treasury and the President. So if you'll forgive me, I will refrain from answering that specifically. I would hate to get myself in trouble before I even start this mission, sir.

Senator LAUTENBERG. Think about it. The question——

Mr. GUTIERREZ. Yes, sir.

Senator LAUTENBERG.—could come up again.

Mr. GUTIERREZ. Thank you.

Senator LAUTENBERG. Thank you——

[Laughter.]

Senator LAUTENBERG.—very much, Mr. Chairman.

The CHAIRMAN. Well, thank you very much.

We will now recognize Senator Vitter.

**STATEMENT OF HON. DAVID VITTER,  
U.S. SENATOR FROM LOUISIANA**

Senator VITTER. Thank you, Mr. Chairman and Ranking Member, and thank you for the warm welcome to the Committee.

Mr. Gutierrez, good to have you, and congratulations on a splendid career, as well as your appointment.

I have just a couple of quick areas of interest. One of them is trade. I'm a strong supporter of free and fair trade. In a lot of cases, a lot of trade cases, I think the great frustration among a lot of Americans is that we don't have reasonable or quick-enough relief when there are trade violations by our trading partners. And so, even when we have a trade agreement, when the other side breaks the rules, they often do it with relative impunity, at least for a good amount of time. And for a lot of small business, justice delayed is justice denied. Louisiana, I'm thinking of seafood, shrimp, and crayfish, and some other things.

What can we do, both with our bureaucracy and the international bureaucracy, so we can respond more effectively and more quickly to trade violations?

Mr. GUTIERREZ. Senator Vitter, this is something that I have had brief discussions on, and it concerns me, as well. As someone who does business in a way where we like to follow the rules, it is sometimes extremely frustrating when we find that our partners overseas aren't following the same rules. I share that sentiment. And if there's something that we can do in terms of speed, something that we can do in terms of being more efficient and effective about that, please be assured that that will be high on my agenda, Senator.

Senator VITTER. Well, great.

Let me mention a couple of examples that are, again, important to Louisiana. I——

Mr. GUTIERREZ. Yes, sir.

Senator VITTER.—mentioned crayfish. There are tariffs on certain foreign crayfish. One of the problems has been that, within our own bureaucracy, the rate of properly imposing those is under 20 percent; whereas, the overall rate, in terms of proper tariff enforcement by our own people—I'm talking about our government—is over 95 percent. And we've been pushing and pushing and pushing Customs and others to get our act together to fix that. So I'd commend that to you.

Mr. GUTIERREZ. Yes, sir.

Senator VITTER. Also, another case affects Louisiana's shrimp. There have been recent decisions that have confirmed that there's dumping—illegal dumping of foreign shrimp, and we're moving to respond to that. But, again, some of this process takes so long that if you're a small business, which every Louisiana shrimper is, it doesn't matter if it happens 5 years from now. It's too late. It's way too late. So I'd commend that situation—

Mr. GUTIERREZ. Yes, sir.

Senator VITTER.—to you, too.

Mr. GUTIERREZ. Yes, Senator, thank you.

Senator VITTER. I'd also like to touch on NOAA, which is very important to my part of the world, in the Gulf of Mexico. I'm a strong supporter of NOAA, and it does a lot of important things, including pure science and research, but it also does some very applied things, which are important, like survey work in Alaska, in the Gulf of Mexico, elsewhere. I'm a big supporter of making sure we get that survey work done, because it's not several steps removed from commerce; it is directly related to commerce, certainly in the Gulf. And I'd just like your reaction to that, and your thoughts on that end of, sort of, the NOAA spectrum of work.

Mr. GUTIERREZ. Well, NOAA, from what I have seen, is a tremendous part of the budget of the Commerce Department. It is a big part of what we do, and it is something that is a priority because it is a priority for this Committee, because it is right, and because it is something with which the Commerce Department has been charged. So I can't claim to be an expert on NOAA, Senator, but I can promise you that this is going to be one of my biggest areas of focus.

Senator VITTER. Great. Well, I appreciate that.

Mr. GUTIERREZ. It has to be. And I—

Senator VITTER. And I'd offer two thoughts. One is that, in the NOAA scheme of things, my observation is that the pure-science end is often the, sort of, "sexy" end that gets attention and money, and the applied end sometimes gets short shrift. And that is often the end that has the most immediate impact on commerce. And things like routine updating of surveys of the Gulf and the waters off Alaska and elsewhere is very important for maritime commerce.

Also, I'm a strong supporter of getting the most bang for the buck for that sort of work, however the chips may fall, whether it's a government-owned vessel or whether it's contracting out to private firms. And I would encourage you to use no test, other than what is going to get the taxpayer the most bang for the buck. In survey work, it's pretty simple, in terms of, you know, How much surveying are you going to be able to do for X amount of dollars? And I hope we can do that, in the future.

Mr. GUTIERREZ. Thank you. I appreciate the pragmatism, Senator, and I will definitely keep that in mind.

I also want to say, I think it's very insightful, the comment about small businesses, that they are in a hurry, they do want to get their matters solved. They are worried about cash-flow. They can't wait as long as sometimes we'd like them to. And I understand that urgency, and I understand that that is the reality that they

live. So I just want to say, I agree with that, and I share that concern.

Senator VITTER. Thank you. And that also translates, ultimately, into how much political support we have for trade, because if we don't have reasonable enforcement in a reasonable amount of time, and small business is hurt every step of the way, obviously—

Mr. GUTIERREZ. Right.

Senator VITTER.—that erodes support for the whole policy.

The CHAIRMAN. The Senator's time is expired.

Senator Vitter is recognized—or Senator DeMint is recognized, pardon me.

**STATEMENT OF HON. JIM DeMINT,  
U.S. SENATOR FROM SOUTH CAROLINA**

Senator DeMINT. Thank you, Mr. Chairman. And I, too, am appreciative of the warm welcome. I'm honored to serve on the Committee. As you know, my predecessor, Senator Hollings, from South Carolina, served many years, and I don't know if I can serve as many, but I look forward to serving with all of you.

As I understand the protocol from your opening statement, you have to still approve me as a—or confirm me as a Member before we confirm you as Chairman before we confirm Mr. Gutierrez—

[Laughter.]

The CHAIRMAN. You've got that right, but it will all happen after the first vote.

Senator DeMINT. OK, good deal.

[Laughter.]

Senator DeMINT. All right. Well, we can still ask questions.

And I want to thank Mr. Gutierrez for being here, being willing to serve. And I liked a lot of the things you said, particularly about fostering a better business environment in this country. As I visit businesses all over the country, particularly in South Carolina, I hear more and more about the burden of costs and regulation and taxes and liability that comes from being a U.S.-based manufacturer, particularly. And as a producer, yourself, for many years, doing business internationally, I'd just like to hear you talk a little bit about how we can make American business more competitive, and cut the costs of doing business in this country, and make this the best place in the world to do business. And I'm sure, in your role at Kellogg, many times you've said, "If I was in Washington, this is what I would do, this is what I would change." And I'd just love to hear you just talk a few minutes, generally, about what you think we need to focus on here in the Senate, in the Congress, the President, and what you would do, in the Department of Commerce, to make America the best place in the world to do business.

Mr. GUTIERREZ. Thank you, Senator.

I would say, first of all, that throughout the last century, I believe, American business has led the way, and it has done so through, I think, the spirit of free enterprise, innovation, investment, just being able to be the engine for growth around the world. I understand the need for regulation. And as a businessperson, I understood the need for certain regulations that, perhaps, were not evident or were not in place. I think we have to be careful that we do not make business risk almost a liability, or business risk al-



most a crime. I think what has driven our economy is, over time—our country—is the idea that someone can take a risk, they can have an idea, and they can strive and dream to make their business larger and prosperous.

And we do have to be careful. Sitting on the other side, it is—it can become a point where businesspeople become a little bit paranoid, where businesspeople become a little fearful to do their job. And that notion frightens me, just the idea that we are not promoting risk-taking, we are not promoting innovation, entrepreneurship in the future. And I'm not suggesting that that is the case today, but that is a notion that does give me some nightmares sometimes, Senator.

Senator DEMINT. And if I could just echo some of the things we've heard, as far as trade, I'm from a textile-producing state. I'm very much a free-trader myself. But the political support and just the pragmatism of trade really only exists if we're going to enforce our agreements, if we're going to protect our copyrights and our patents. And I think if there's one thing we need from the Commerce Department more than anything else, is a level, balanced playing field around the world, and just good enforcement, so we can do business everywhere in the world with—and on a fair basis. So I would hope that would be a priority of yours.

Mr. GUTIERREZ. Yes, sir, it is. And I share that same concern. And it is an evolutionary process, and I think every time we have an agreement, every time we have a new agreement with a country, or with a set of countries, it is an opportunity to evolve, to make progress toward the kind of world we'd like to see. But I share your concern. I think the rest of the world has to understand what "fair and free trade" means to us. And I am as concerned as you are, Senator.

Senator DEMINT. Yes.

Mr. GUTIERREZ. Thank you.

Senator DEMINT. Thank you, sir. And thank you, Mr. Chairman. I yield back.

The CHAIRMAN. Thank you very much.

I Recognize Senator Dorgan.

**STATEMENT OF HON. BYRON L. DORGAN,  
U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. Mr. Chairman, thank you.

Mr. Gutierrez, thank you very much. I have, kind of, a foghorn voice today. Excuse me for that.

You have a very compelling life story, and I'm really pleased that you're willing to provide public service to your country.

Unless I hear something startling from you, it's my expectation I will support your nomination. But I am going to precede your nomination vote on the floor with about a 1-hour speech on trade, and I'm only going to ask you about trade today.

You began your statement with trade. And the reason I'm only going to ask you about trade is, I think we have a growing and dangerous trade deficit. And it's not just this Administration, although—I mean, it started 15, 20 years ago. It has grown and grown and grown. It's the highest in the history of the world. It is dangerous. And this Congress and this Administration, and pre-

vious Administrations, seem willing to snore through it by chanting about free trade.

Let me show you a chart that shows the red ink on trade deficits. I mean, you don't need a lot of understanding to understand that bar chart. These trade deficits are dramatic and, I think, reckless and dangerous.

Now, let me ask you about a couple of specific things. First of all, I have to ask you about sugar, as you might well expect.

You were CEO of an excellent company, but you lobbied very hard in Congress to kill the sugar program, with that company. And the Mexico Economy Minister, Fernando Canales, has said that you and he have spoken about the sweetener dispute in NAFTA, and that you and he have established a work plan for when you take office. Obviously, I have a lot of constituents—probably Mr. Vitter does, as well, and some others—about the sugar program, who are concerned about the sugar program. I don't know whether you will have decision points in the Commerce Department on this issue, but, if you do, how will you deal with them? Will you recuse yourself on those issues? Do you intend—some have suggested that you will come to Washington to lobby to kill the sugar program. That was in a couple of press reports. Give me your assessment of what all that is.

Mr. GUTIERREZ. Senator, thank you.

A couple of things on the sugar program. And I should say that, as a manufacturer and business which relies on sugar, I had to see the world in a certain way, I was paid to do that, that was in the best interest of the owners of the company. But I fully understand that the scope of my responsibilities will be a lot greater than just having one set of share owners who are interested in the price of sugar. So, I fully recognize that I would have to expand my scope and realize that I am no longer the Chairman and CEO of the Kellogg Company, but the Commerce Secretary.

Senator DORGAN. Have you determined whether you would recuse yourself on sugar issues if, in fact, you had a decision-making authority there?

Mr. GUTIERREZ. Senator, if it is deemed, for the purpose of ethics or even optics, that I not participate, and this Committee feels that way, I would be very comfortable in recusing myself. I believe I can be very objective. I believe I can avoid the conflict, but I'd be willing to do so, sir, if that's the—

Senator DORGAN. Mr. Gutierrez, thank you.

On another issue, then—Senator Ashcroft and I passed a piece of legislation, that has become law, that allows, for the first time in 40-some years, us to sell agricultural products into the Cuban marketplace for cash. We have sold nearly \$1 billion worth of agricultural products to Cuba for cash. The Department of the Treasury is now taking an exceptional and unusual interpretation of the language of the law, and trying to do everything they can to impede and stop the legitimate sale, under current law, of agricultural commodities to Cuba. You and I spoke about that just briefly. You talked about wanting to reduce the barriers and burdens of our ability to sell overseas. Would that include in the market of Cuba, since it is now legal?

Mr. GUTIERREZ. Senator, you mentioned this during our visit, and I understand you feel very strongly about this. I am aware of the subject of the payment or the cash in advance, and the interpretation of that. I know that is a matter to be resolved by the Treasury Department. I have not gotten into that, obviously. But I understand that you are worried about that and you think that that is a different interpretation than what it should be. And I will certainly look into that.

I should say, Senator, as well, as I mentioned to you, I support the President's policy on Cuba. I'm very concerned about doing anything that would prolong the current status. And, most of all, I believe very firmly in the objective of bringing democracy to Cuba, which I know is what drives the policy.

But I know where you stand, and I know your concern on the payments issue, and I will look into that. And I would be glad to discuss that in the future, although, from a Commerce standpoint, that is a little bit outside our purview.

Senator DORGAN. Well, I see my time is about up. I'll stay for a second round, I guess. But let me just ask one other question, if I might, under the yellow light.

There are proposals by the USTR, that we would be willing to negotiate away our anti-dumping provisions. I'm very concerned about trade remedies. We don't have the backbone or the will or the steel to employ them hardly at all, ever, but negotiating them away is fundamentally folly, in my judgment, for this country. What's your position on that?

Mr. GUTIERREZ. Well, I think we absolutely need—remedies, and trade agreements without some sort of remedy, without some sort of course of action, would make them somewhat feeble. So I share the concern and the belief that we need a way to enforce our laws in a way that our partners understand.

Senator, may I go—I'm sorry, I just wanted to address something you said earlier.

I did receive a call from Mr. Canales, who, I believe, would be my counterpart in Mexico if I am confirmed and sworn in. I believe the conversation was one of, "Look forward to working with you. Thank you very much." But I can assure you I did not make any commitments on behalf of the Administration or the U.S. Government, knowing that I have not been confirmed as Secretary of Commerce.

Senator DORGAN. So you have not established a work plan with him, as he alleges.

Mr. GUTIERREZ. No, Senator.

The CHAIRMAN. The Senator's time has expired.

Senator Rockefeller is recognized.

**STATEMENT OF HON. JOHN D. ROCKEFELLER IV,  
U.S. SENATOR FROM WEST VIRGINIA**

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Mr. Gutierrez, I, also, very, very much admire—it was very interesting the way the press just fastened right on the story of how you came up and just did things that are possible in America, but which rarely happen. And you, sort of, captivated a nation, really, before anybody knew anything about you.

I've spent 20 years here trying to convince Byron Dorgan and others that I, sort of, came up the same way, but I haven't made much progress.

[Laughter.]

Senator ROCKEFELLER. But it does give me a chance to really pay honor to that. I mean, that is—that's very, very—it's a marvelous thing, an emotional, marvelous tribute to, obviously, a strong man.

I don't mean to hold anything up, and it would—I will probably end up voting for you, but I do want to get the answers to some questions that I will submit to you, and they're—and they won't be, I don't think, particularly difficult. But I do want to get answers to them, because they—I come from the State of West Virginia, which is the second-poorest state in the country—I think I can say that safely. Can I, Mark? All right.

And steel—there's a big question there—and steel, to some people, is, kind of, a subject which has passed us by. I remember talking with a former—member of a former Administration, a Democratic Administration, and I talked about the fact that free-trade—I mean, you made mention that you've got to have good trade-remedy laws, in an answer to Senator Dorgan. And somehow, free trade and free-trade remedies and the holding on to—not weakening the laws at Doha, et cetera, which our current USTR Ambassador promised me, and then, within 3 months, was giving them away, negotiating them away—that's very, very serious in West Virginia, where our unemployment is very high, and where only 4 percent of the land is flat, and where life is constantly hard. There are many rural states here, and that's why you're hearing about individual problems. There are very few, sort of, states that have all kinds of opportunities, economic opportunities.

The Doha package is very important to me, and I want to know—although—that you will do everything in your power, as Secretary of Commerce, which I think you will become, to not negotiate any further trade-remedy laws away. We're hurting.

Mr. GUTIERREZ. Yes, Senator. First of all, I'm—

Senator ROCKEFELLER. I understand it's under USTR, but you'll be a part of that—

Mr. GUTIERREZ. Yes.

Senator ROCKEFELLER.—Cabinet.

Mr. GUTIERREZ. Yes, Senator.

First of all, I just want to recognize the seriousness of the steel matter and the—and acknowledge the importance to you and your state. And I—that is something that I was aware of, just as—reading the papers before this process got started. And it worries me, and I agree with you that steel is as much a part of our future as it's been part of our past, and there is room for us to be a power in steel, and to continue to grow. And I just pledge to you, sir, to keep your concern very much in mind and do what I can to make sure that our workers are protected.

Senator ROCKEFELLER. It's not a high-tech, in the usual sense—you know, the Silicon Valley sense—but, oh, there are so many people that work for it for generations, and then they come out, and their retirement is gone, their pension is gone, their health benefits, gone, everything is gone. And that, of course, is the point of trade-adjustment assistance. And when that was—when some of

these changes were made, in 2002, the Congress passed a TAA, which—a reform act, which said that up to 65 percent of the cost of health insurance would be borne and available to the employees.

Now, what's interesting is that only 6 percent of the employees that this affects have taken advantage of that, which is shocking, in a sense, but it means that the 65 percent doesn't do the job. And the thinking, generally around here is, it's got to be 95 percent if it's going to do the job. But the 6 percent thing, I wish you would look into why—why is it so little, when healthcare costs—these, of course, are much older people, people who have been injured, et cetera, and I would like to hear, at some point, your thoughts on that question.

Mr. GUTIERREZ. I will—

Senator ROCKEFELLER. You may not have had a chance to study it yet.

Mr. GUTIERREZ.—I will, Senator, as soon as I can, yes, sir.

Senator ROCKEFELLER. I appreciate that.

Also—and my time is about up—when the President put in the existing Steel Import Monitoring Program, there was a—that was also, at the same time, a Section 201 pass, which was temporary relief for steel. And, at that time, Secretary Evans, your predecessor, stated, unequivocally, that the existing program would be expanded to additional steel products, and made indefinite in duration. Now, that program is about to run out, in fact; it's about to expire. And I would hope that you would commit yourself, to the extent that you can, that this program would continue.

Mr. GUTIERREZ. Senator, my commitment to you is that I will give it the attention that it warrants, and I will heed your advice on that. And once I've had some time to even go through our budget and where our funds are being allocated, I would like to get back to you and discuss that with you.

Senator ROCKEFELLER. I thank you very much, sir.

Thank you, Mr. Chairman.

Mr. GUTIERREZ. Thank you.

The CHAIRMAN. Senator Allen is recognized.

**STATEMENT OF HON. GEORGE ALLEN,  
U.S. SENATOR FROM VIRGINIA**

Senator ALLEN. Thank you, Mr. Chairman. And I welcome our new Members to the Committee, and thank Mr. Gutierrez for being here, and, moreover, thank him for the service that he will be performing for our country. It's no easy task to be a Cabinet Secretary. Secretary of Commerce is an important position. So thank you and your family for your patriotism and your service and leadership and insights you'll be providing to us and, obviously, the President and, ultimately, benefiting the American people.

Mr. GUTIERREZ. Thank you. Thank you, Senator.

Senator ALLEN. I'm one, Mr. Gutierrez, that believes that we need to do everything we can to make sure that this country is more competitive, more desirable for investment and job creation. That means our tax policies, regulatory policies, research, education—all need to make sure that every American has a better ability to compete and succeed internationally. And so, many of the

issues that have been brought up here by some of my colleagues are important in that regard.

Trade agreements are important, but they need to be enforced. So I'm glad to hear your comments. It'll be important that you work with our trade representatives to enforce when China is cheating in a variety of areas, whether it's intellectual property, whether that's software or other matters, furniture, textiles, or semiconductor chips. If we're going to have trade agreements, those contracts need to be enforced, and enforced quickly. This will be necessary if we're going to continue to try to have the support of the American people for trade agreements as a net-plus.

Trade adjustment assistance is important, understanding that there are some folks that are hurt by international treaties, trade agreements. And I'm one who's been advocating making sure that folks don't lose their homes, have a transition for mortgages for 12 months so they don't lose their homes as they're retraining and finding another job.

One thing we've done on the Foreign Relations Committee, to Senator Smith's comments on intellectual property and piracy, is provided \$5 million to help train and enforce copyright or intellectual property rights, and make sure those countries are enforcing them, because it's pretty hard for us to do it in another country if they don't care about it there.

Senator Pryor, on the issue of broadband—and I do think broadband is important. And one issue we're going to bring up here is the whole Telecommunications Act and getting that thing up to date so that broadband will be available. It is the way that small businesses in small towns and rural areas can communicate, conduct business, get education and information.

Your predecessor was helpful in my efforts to make sure that the Internet was not taxed with access taxes—on average of about 18 percent, if the state and local commissars have their way. Can you give us assurance that you'll continue to be in favor of keeping the Internet free of Internet access taxes, no matter which platform one receives broadband, whether it's by DSL, satellite, over power lines, or wireless?

Mr. GUTIERREZ. Senator, I'm very much in favor of the current status and the fact that we are not taxing the Internet. And it is a source of competitive advantage. It is something that we cannot afford to fall behind on. I sometimes read about some countries which are making great progress on the Internet, and I don't think we can afford to fall behind. So I share that concern, and I share that vision for the future, as well.

Senator ALLEN. Good, because I think the people who would be hurt the most by taxes on broadband would be, clearly, those of lower income, as well as smaller jurisdictions.

One other measure—that I've worked on—and this Committee has passed, for the knowledge of some of the new Members—is a measure to upgrade the technology capabilities at minority-serving institutions, higher education—whether they're historically black colleges and universities, tribal universities, or Hispanic-serving institutions—to upgrade their technology so those students have the faculty, the training, the education to get the good jobs, 60 percent of which require technological proficiency. And so, I'm going to keep

working on that. We got it through the Senate; we've got to get it through the House and get the Administration onboard.

But could you share with me any experiences that you've had as a leader of the Kellogg Company, insofar as working with minority-serving institutions?

Mr. GUTIERREZ. Yes, Senator. We—several years ago, we joined a partnership—in a partnership with Tom Joyner, who is a radio broadcaster—and, as a company, we made donations to him which were earmarked for historically black universities. And, as you talk about bringing technology for everyone and making sure that everyone has access and making sure that our Internet and our technology is a sign of our freedom and our democracy, I was very proud, as a business leader, to be able to contribute. And that's been my experience. There are ways of being able to do that. Our experience was with historically black universities, but I understand that there are others. So I appreciate your bringing that up.

Senator ALLEN. Is your wonderful bride, Edilia, and your children going to be moving with you, if you are so-confirmed?

Mr. GUTIERREZ. Well, we are—we have just experienced the transition to empty-nesters, although we'll try to convince some of our children to study here in Washington, Senator.

Senator ALLEN. Well, I hope you will reside in Virginia. Choose Virginia, in this region.

[Laughter.]

Senator ALLEN. You'll find that sales taxes on your cereals are less than in the other jurisdictions.

[Laughter.]

Senator ALLEN. Thank you, sir.

The CHAIRMAN. Thank you very much.

Senator Snowe is recognized.

**STATEMENT OF HON. OLYMPIA J. SNOWE,  
U.S. SENATOR FROM MAINE**

Senator SNOWE. And I ask unanimous consent to include my entire statement in the record.

[The prepared statement of Senator Snowe follows:]

PREPARED STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Mr. Chairman, thank you for calling today's hearing concerning the President's nominee for Secretary of Commerce, Carlos M. Gutierrez.

Mr. Gutierrez, welcome to the Senate Commerce Committee and congratulations on your nomination. Let me begin by saying how impressed I am with your personal history and experience. As a corporate leader, you have proven yourself a skilled executive and innovative leader who understands what it takes to create jobs and build a business—and you will certainly need that entrepreneurial know-how writ large as you take the helm from Secretary Don Evans, who has served our country so effectively over the past four years.

Your nomination comes at a time of monumental challenges for our economy, as unfair trade practices and currency manipulation deepen our nation's \$535 billion, record-high trade deficit, and continue to threaten U.S. manufacturing jobs. Our trade relationship with China is particularly troublesome, with a \$158 billion trade deficit, and is only exacerbated by a barrage of product dumping and the end of textile export quotas just last week. On that count, I urge you to review and act upon recommendations from the U.S.-China Economic and Security Review Commission's 2004 Report to Congress. That examination revealed that the U.S. is failing to vigilantly protect intellectual property rights, and pointed out that we are not properly addressing China's illegal trade subsidies and unfair manipulation of the yuan.

We will look to you to help American businesses overcome these and other trade obstacles by aggressively enforcing our trade laws, standing up to violations and insisting that WTO members abide by their own commitments. It is my hope that you will draw upon your international trade expertise as you fight to help our American workers and businesses compete and win on a level playing field.

Because no industry has paid a steeper price for unfair trade than domestic manufacturing, which lost nearly 2.7 million jobs from January 2001 through August 2004—and 17,600 in my home State of Maine. I applaud the President for recognizing the critical need for government to be a partner with domestic manufacturers by appointing the first ever Assistant Secretary of Manufacturing and Services—a post to which he named Albert Frink, Jr. It is imperative that you work closely with Mr. Frink to promote open markets and a level playing field, as well as developing strategies to lower the structural costs for U.S. manufacturers and help those firms remain competitive. As we take those steps forward, let us also understand that it is counter-intuitive to take any leaps backward by reducing programs like the Manufacturing Extension Partnership. I was pleased to help lead efforts in the Senate to restore the MEP to a funding level of \$109 million for FY 2005, and I am troubled by suggestions that the Administration's budget may severely reduce funding for this invaluable program. So that is certainly one issue I hope we can come together on.

Shifting from land to sea, as a Senator from a state with a three quarter billion dollar fishing industry, I am acutely concerned with the stewardship of our oceans. And as Chair of the Commerce Subcommittee on Oceans, Fisheries, and Coast Guard, I am responsible for overseeing the National Oceanic and Atmospheric Administration—which comprises 59 percent of the Department of Commerce's budget.

In that oversight role, I have seen both the opportunity and dire need for enhancing NOAA—and the time for action is now. A clear starting point is the U.S. Commission on Ocean Policy's final report—which includes 212 recommendations. One pressing priority among the recommendations is establishing a global ocean and coastal observation system. And indeed, the urgency of such action was underscored by the unfathomable toll of the Indian Ocean tsunami—about which NOAA alerted only two of eleven affected countries. That narrow warning demonstrates the current observation system limitations, but also raises questions about the unresponsiveness of the NOAA bureaucracy in apparently not having the ability to contact all vulnerable nations. Sadly, another case of bureaucratic paralysis contributed to tragedy last month, as five fishermen died while scalloping—trying to avoid ill-conceived NMFS penalties that encourage fisherman to remain at sea even under dangerous weather conditions. So recognizing the grave challenges facing the agency, I look forward to working with you to make NOAA as responsive and effective as possible, as quickly as possible.

As Secretary you will also help develop the Administration's telecom policy, just as Congress embarks on anticipated reform of the Telecom Act of 1996. The President has called for universal affordable access to broadband technology by the year 2007, and recently-passed spectrum relocation legislation will help make next generation wireless telephone technologies a reality. I could not be more supportive of these initiatives that promise to bridge the economic and technological divide between urban and rural areas. Also critical is strengthening Universal Service, as the Universal Service High Cost Fund and the E-Rate Program guarantee affordable access to phone and Internet service for all segments of our society. And that's why, when an arbitrary application of new accounting rules prevented the issuance of \$400 million in E-Rate funding to schools and libraries, Senator Rockefeller and I fought successfully to exempt the Universal Service Fund from those accounting rules—an exemption that should be made permanent this year.

Again, Mr. Gutierrez, I welcome you to the Commerce Committee and thank you for your willingness to serve our country. Thank you, Mr. Chairman.

Senator SNOWE. And I also want to welcome our new colleagues, here on the Committee, as well.

I want to welcome you, Mr. Gutierrez, and am looking forward to working with you in the future. Certainly, the Commerce Department has a number of issues that are vital, not only to my own constituency in Maine, but throughout this country.

And, first and foremost, I know that many have raised the issue of trade. And, certainly, that is—been one of my major areas of concern for some time, since I've been in both the House and Senate,



particularly from the standpoint that our government has failed to aggressively enforce our trade laws. And you're in a prime position, given your very impressive personal history and your entrepreneurial abilities, and being a skilled leader and corporate executive, in how to create jobs and to build a business, and I think that entrepreneurial spirit will be absolutely vital at a time when we're confronting monumental change in our own economy.

As others have mentioned here, you know, we have had, obviously, huge disparities with respect to trade, unfair trade subsidies. We've had currency manipulation, certainly by China. And that has certainly aggravated the domestic manufacturing sector. Certainly the case in Maine, and it's true across America.

Whereas, you probably know, there are more than 2.7 million jobs that have been lost in the manufacturing segment of our economy; and, in Maine over the last 4 years, 17,600 jobs. And so, it is vital that we aggressively pursue the tools to enforce our agreements.

And I would encourage you to review the—Congress created a commission, the U.S.–China Economic and Security Review Commission, and it recently issued a report. And it was—that examination indicated, very specifically and explicitly, that the U.S. was failing to vigilantly protect intellectual property rights. And it also said that we were not properly addressing China's illegal trade subsidies, and, of course, the unfair manipulation of its currency, the yuan. And I know that's not your area. But it's all, I think, intertwined to the problems that we're facing that has undermined our manufacturing sector unfairly.

So, I would hope you would use your leadership and your abilities and your knowledge to fight these issues and to challenge our trading partners, where they are trading illegally, unfairly, and also holding our WTO members accountable to the commitments that they're required to make. And, certainly, that has been the case with China in the past, and that's why we've got this enormous record-high trade deficit.

It all goes back to the domestic manufacturing sector that has paid a very steep price for this unfairness. And so, you really have a prime opportunity. And I urge you, and I encourage you, to use it, to fight on behalf of our industry.

You know, the President created, for the first time ever, a manufacturing czar, an Assistant Secretary for Manufacturing, and that was recently filled as a position, and I would hope that you would work with the Assistant Secretary, Mr. Frink, to work on these issues, to open up markets, to help, as others have indicated here, to reduce the structural costs to manufacturers so that they can remain competitive and to keep that competitive edge.

So, I would hope that you would use the auspices of this position to do all that you can to enforce these agreements. And I hope we can work, in the future, in that area.

Mr. GUTIERREZ. Thank you, Senator. I appreciate the encouragement. And, as a manufacturer and someone who has worked in manufacturing for all my life, I believe that manufacturing is a competitive advantage. I believe we have some of the best factories in the world, and the technologies and the supply chain systems and just the ability to use manufacturing to make us more efficient

than our competition abroad. So I share that, and I thank you, Senator, for that.

Senator SNOWE. I appreciate that. And I also would certainly point out that one program within the Commerce Department is the Manufacturing Extension Partnership Program—it's now the Hollings Manufacturing Extension Partnership—and that program is vital to manufacturers. And I was very concerned that that program was cut—in fact, from, like, 106 million in 2004, to 39 million. It's sort of counterintuitive, at a time in which we're creating a new position for Assistant Secretary for Manufacturing, we were cutting the program that provides the very tools and expertise to manufacturers in our country. We now have restored it to its proper funding level, but I understand the Administration's budget might contain another severe cut, and I think that's the wrong direction, the wrong message at a time in which our manufacturers have been hurting as a result of all the issues that I have raised. So, I hope you will be very supportive of that program.

Mr. GUTIERREZ. I will look into that as soon as I get into the budget, Senator Snowe.

Senator SNOWE. OK.

Mr. GUTIERREZ. And I will—

Senator SNOWE. Great. I hope so.

Mr. GUTIERREZ. Yes.

Senator SNOWE. And I would like to talk to you further about that, as well.

Mr. GUTIERREZ. I would look forward to that.

Senator SNOWE. Another area—because I know my time will be expiring, so can I shift from land to sea—I have chaired the Ocean, Fisheries, and Coast Guard Subcommittee. And, as the Chairman indicated, NOAA represents about 59 percent of the Commerce budget. So it's a critical program. And the stewardship to the ocean is absolutely vital. And I would commend you, as well, to the U.S. Commission on Ocean Policy and the 212 recommendations that they have made. And to use your leadership to begin to work with the Committee and the Congress to systematically implement those recommendations, where we can, to find the funding on those critical issues, because it is evermore important. In fact, I do believe that we should create a national global warning system, ocean observing and warning system. And I have established one in the State of Maine, and I have recommended, and the Commission has recommended, creating a national system. And we can tie it to the tsunami warning system. I know there's a Pacific warning system, and I've had concerns about NOAA, and I have expressed that recently, after the devastating tsunami, where they did not contact officials in other countries. They did contact Australia, and Australia contacted Indonesia when there were signs of this impending tsunami in the Indian Ocean. I realize it's a Pacific warning system, but I think we have to work through those issues to see how we can set up an observation system that will work.

And this global warning system can work in that regard, not only for monitoring the sea, but also to provide these indications.

The CHAIRMAN. Thank you, Senator.

Senator SNOWE. I guess my time is up. Thank you.

The CHAIRMAN. Senator Lott is recognized.

**STATEMENT OF HON. TRENT LOTT,  
U.S. SENATOR FROM MISSISSIPPI**

Senator LOTT. Well, thank you, Mr. Chairman. And I'm delighted to be here this afternoon, with you presiding for the first time over this Committee. I'm looking forward to an exciting 2 years under your leadership.

I want to say how proud I am to have the new Members, and I've already been visiting, on both sides of the aisle, and I've been assured that the gentleman from Arkansas is going to be voting with me more over the next 2 years than he did the previous years. And I'll get around to Nelson next.

And I want to say, Mr. Gutierrez, that we're very proud of you. Like others, we know of your history and what a magnificent life you've lived. And we congratulate you on your nomination, and we extend to your family, sitting behind you, our thanks for their willingness to sacrifice so that you can do this job. So, to you, congratulations; to them, commiserations.

[Laughter.]

Senator LOTT. We understand that there's a certain loss of funds involved in this process.

[Laughter.]

Senator LOTT. But we're so proud that you're willing to do it. We're looking forward to working with you.

Mr. GUTIERREZ. Thank you, Senator.

Senator LOTT. Mr. Secretary-designee, do you remember the picture I drew for you—

Mr. GUTIERREZ. Yes, sir.

Senator LOTT.—when you visited? What was that?

Mr. GUTIERREZ. I still have it.

Senator LOTT. What—

Mr. GUTIERREZ. It's a picture of a fish.

Senator LOTT. Very good. Very good.

[Laughter.]

Senator LOTT. You're going to be fine.

Mr. GUTIERREZ. If confirmed, I would like to get it framed, Senator.

Senator LOTT. Well, you can feel free to do so. And with your predecessor, every time I got a letter from him, or sent one, there was always a fish drawn at the bottom of the letter. But the problem is, at Commerce, you've got so many things you're going to be dealing with, important issues, that sometimes fisheries sort of fall off the end of the table. And that's unfortunate, because this is a—it's a tremendous industry. It creates jobs, produces revenue. I commend the new Senator from Louisiana. I was afraid we wouldn't hear any more about Gulf shrimp, but—with John Breaux gone—but I'm reassured that I've got an ally here, and am making the point to you that fisheries are in the Gulf, not just in the Northeast and the Northwest. And we'll look forward to working with you on that.

I also join my colleagues, on both sides of the aisle, and particularly the new Senator from South Carolina, on the trade issue. Like most of them, I have voted consistently for all the trade agreements—GATT, NAFTA, China agreement, all of them—but I do think that we've got to also use common sense, and we've got to

make sure that they are—our trading partners are fair in their treatment and dealings with us. They have not been.

I was pleased to see the rulings with regard to shrimp. I thought that the Administration has done some good work in the timber area. But don't let it slip away. And not good enough yet. And I could just go down the list.

I just hope that you will continue to push for trade and—Americans can compete as long as they don't cheat on the other side. So I won't repeat all of that.

And, Mr. Chairman, I ask consent that my entire statement be made a part of the record.

The CHAIRMAN. It will be.

[The prepared statement of Senator Lott follows:]

PREPARED STATEMENT OF HON. TRENT LOTT, U.S. SENATOR FROM MISSISSIPPI

Thank you Mr. Chairman, and congratulations on holding your first hearing as Chairman of the Committee on Commerce, Science and Transportation. I met with Mr. Gutierrez last month and am impressed with his personal story and his business background. I look forward to moving his nomination through this Committee and the Senate as soon as possible.

The Department of Commerce has a diverse collection of agencies with a variety of missions, but I would like Mr. Gutierrez to focus on three specific areas: oceans and fisheries; trade enforcement; and automotive manufacturing.

My interest in Gulf of Mexico fisheries is well known to his predecessors, as I'm sure it will be with him. It is important that he understand that fisheries issues in the Gulf are often different from those in the Chairman's home State of Alaska, or from those in New England, but no less important. The Gulf commercial fishing industry has been the subject of intensive regulation by the Gulf of Mexico Fisheries Management Council without adequate representation on that Council and Gulf fisheries have not received adequate support from the Department and its agencies. I hope that Mr. Gutierrez will improve on that record.

While I am a supporter of expanded international trade, I also insist that it be conducted fairly. The Department of Commerce has a vital role in protecting U.S. industries against unfair dumping by other countries. I believe the Department has made a good effort to address this problem with respect to imported shrimp and Canadian softwood lumber. I hope Mr. Gutierrez will ensure that the Department strongly enforces U.S. laws against unfair trade actions by other countries. This will make our current and future trade agreements more effective.

I note that last month the Department of Commerce announced a new partnership, called the U.S. A-TEAM, directed at improving the competitiveness of the U.S. automotive industry. However, I am concerned that this partnership includes one foreign-owned company, DaimlerChrysler, but excludes others with a significant manufacturing and R&D presence in the United States, especially Nissan North America. I call on Mr. Gutierrez to recognize that the U.S. automotive industry is much broader than Ford, GM, and DaimlerChrysler by expanding the U.S. A-TEAM partnership to companies such as Nissan that are growing the automotive industry here in America.

I thank the Chairman and ask that my statement be included in the record.

Senator LOTT. One point, though, that I don't believe has been raised, and that's with regard to the new partnership called the U.S. A-Team. Has anybody asked about that? This is directed at improving competitiveness of the U.S. automotive industry, and it—but it only includes—it includes just—basically, Ford, General Motors, and DaimlerChrysler, but not other foreign companies that have significant domestic activity. And that could—you know, that includes, obviously, Nissan and Honda and Toyota and—well, Mercedes is DaimlerChrysler.

I'd like you to take a look at this and make sure that we are approaching this right, that we don't penalize companies that are cre-

ating jobs and doing significant business in this country. To include one foreign company, but not others that are doing this domestic work, I believe is a mistake, and I hope that you will look at that. And I'd appreciate a response from you when—once you get settled in. It's an issue that, obviously, I'm not going to use in any way to delay.

I look forward to voting for your nomination and confirmation, and to working with you in the next 4 years.

Mr. GUTIERREZ. Thank you, Senator Lott.

Senator LOTT. Thank you.

Mr. GUTIERREZ. Appreciate it. Thank you.

Senator LOTT. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Let me recognize Senator Nelson.

**STATEMENT OF HON. BILL NELSON,  
U.S. SENATOR FROM FLORIDA**

Senator BILL NELSON. Thank you, Mr. Chairman.

Mr. Gutierrez, a lot of my constituents are very proud of you. We have a very large Cuban-American community, as you know. Bienvenido al Senado.

Mr. GUTIERREZ. Gracias. Gracias.

Senator BILL NELSON. We've talked, already, about a number of issues, when you and I had the opportunity to sit down. I just want to underscore. Because since we had our personal visit, and I told you about the fact that Brazil, if it were to have the tariff eliminated on Florida citrus, would not become free trade; it would become monopoly trade. They would have 100 percent of the world market. But since then, in late December, as reported by the Wall Street Journal, the Brazilians are still up to no good. They are dumping, on the market, both frozen concentrate, at 37 percent less than production costs, and selling pasteurized not-from-concentrate juice at 78 percent lower than production costs. The Commerce Department is going to weigh in on these kinds of things, and I just want to underscore to you what we had talked about before.

I flew on one of your hurricane hunters. And, as a matter of fact, I was flying off the southern coast of Cuba, as we had surrounded Hurricane Charley, as it was moving to the northwest, dropping those instruments that gave realtime data that, then, we collected on the airplane and beamed it by satellite back to the National Hurricane Center, and has given us the opportunity for very accurate forecasting. And then, lo and behold, we end up getting hit by four hurricanes within a 6-week period. Some of your equipment is getting old. Those aircraft that are like the Navy P-3s, and they need a replacement. NOAA is a big part of your Department.

I think Senator Snowe mentioned that it was actually the NOAA Pacific Tsunami Warning Center in Hawaii that picked up the earthquake off Indonesia, but they didn't have the buoys out there to know where the tsunami was going. But they alerted people that there was a 9.0 earthquake. And with a little-better warning system, we can be a little more accurate.

And then, in your Department, you have the National Telecommunications and Information Administration that oversees Federal Government spectrum usage of the electromagnetic spec-

trum. We simply need to relieve some of the spectrum that now, with digital, can be combined and—do what with it? To give it to first-responders. And that was one of the recommendations of the 9/11 Commission.

We have battled here on this Committee, because there are powerful entities that we are battling. And yet, for the good of the country, we're going to have to do that, and we're going to have to accommodate all these people in the telecommunications industry.

So, Mr. Chairman, I'll leave it at that.

Eventually, we're going to have to address the intellectual property issue with regard to other countries, particularly China. That means a great deal to our country and to its ability to compete in the world, and that's going to be in your sphere of influence, as well.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Mr. GUTIERREZ. Thank you, Senator.

The CHAIRMAN. Senator Nelson?

**STATEMENT OF HON. E. BENJAMIN NELSON,  
U.S. SENATOR FROM NEBRASKA**

Senator BEN NELSON. Thank you, Mr. Chairman.

And thank you, Mr. Gutierrez, for being here today. I enjoyed our brief conversation the other evening, and I look forward to working with you.

Mr. GUTIERREZ. Thank you, Senator.

Senator BEN NELSON. Nebraska's economy, as is the case with many economies in the Midwest, is driven by agricultural and non-agricultural trade, especially as it pertains to exports to other parts of the world. I doubt that you expected to talk as much about trade today as, perhaps, you have, given the fact that Ambassador Zoellick gets an earful, as well, about the challenges we have with trade, the growing deficit that we have in so many parts of the world, particularly with the People's Republic of China; the weak dollar and how that is supposed to work to our benefit, but it gets pegged by other currency and, therefore, there is no major advantage; the European barriers, which I suspect you may know first hand, coming from the food-processing and packaging and distribution industry, as it relates to the genetically modified organisms and all the other ways that the Europeans seem to have not to import our agricultural products. And you probably have received an earful about the importance of free trade combined with fair trade, so that we do have the ability to throw a flag when there's a—where there's an infraction, to try to get something resolved as quickly as we possibly can.

Having set that up as a background, without setting you up, do you have any particular thoughts about what you might do to work with Ambassador Zoellick, within the Administration, and with this Committee and others, to try to resolve some of the major disputes, such as with the European trading partners, perhaps with Canada and some of the areas that we challenge there. You understand the sugar challenges that we've had there in the past. Nebraska is also a sugar state, as well. So maybe you have some thoughts, just general thoughts that you have. One big idea or

something that might be able to give us some idea of what you have in mind.

Mr. GUTIERREZ. Well, Senator, one of the things that you mentioned, the whole subject of non-tariff barriers, is something that I have personally lived through over—

Senator BEN NELSON. Yes.

Mr. GUTIERREZ.—you know, 29 years.

Senator BEN NELSON. Yes, you have.

Mr. GUTIERREZ. Little things like the vitamin fortification that we have in the U.S. is not accepted in Canada, so, therefore, our products, if they're going to be exported, they have to be re-manufactured, which adds some cost. We have the same problem across the European Union, where some countries will just say, "We don't want fortification." So, therefore, we have to manufacture specially for them, which raises our costs. And I think that is something that, perhaps, is a little bit under the radar, but it's there.

Senator BEN NELSON. It's there.

Mr. GUTIERREZ. It's there, and our products have been held up, in many countries, in many markets, because of these hard-to-explain non-tariff barriers. And it's something that I would like to work with the U.S. Trade Representative to try to put the issue on the table and begin to address it, because it is as impactful as a tariff. It impedes us from actually competing in those markets.

Senator BEN NELSON. As it relates to the currency, I suspect that Secretary Snow has some interest in that, and you'll have the opportunity to work with him. But we were all told that a weak dollar would be good for exports from America, because the high value of the other currency should be able to buy more. We haven't seen that occur. Do you have any thoughts about that?

Mr. GUTIERREZ. Senator, respectfully, I will refrain from having any thoughts on the currency, if you'll allow me.

[Laughter.]

Senator BEN NELSON. Well, can you assure me that you'll talk to Secretary Snow about it? Because I intend to—

Mr. GUTIERREZ. Yes, sir.

Senator BEN NELSON.—as well.

Mr. GUTIERREZ. Yes, Senator.

Senator BEN NELSON. As it relates to balance of trade, as you look to the future, because of the importance of exports from America, particularly as it relates to manufactured goods, do you have any thoughts about steel prices? You've said, "Steel has been part of our past, and will be part of our future." But the challenge that we have right now with the steel prices in the U.S. versus steel prices elsewhere, and the outsourcing and the offshoring of jobs—

Mr. GUTIERREZ. Senator, I'm aware that steel is a major concern and a major problem. I am not aware of the intricacies of the price differences and subsidies that foreign countries may be receiving at our expense. But, as I mentioned to Senator Rockefeller, that is something that I want to look into, and it concerns me, as well.

Senator BEN NELSON. Thank you, Mr. Gutierrez.

Mr. GUTIERREZ. Thank you, sir.

Senator BEN NELSON. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. Gutierrez, we'll start a second round if anyone wants to ask questions. I've neglected to go through my usual procedure of explaining to you the state that I represent, Mr. Gutierrez. We have half the coastline of the United States. We are one-fifth the size of the lower 48. We have very few roads, and we depend primarily upon aviation. But we use the oceans a lot. We are involved with your people, with EDA, with tourism, with trade, with science, and with NOAA, but there's only one way to really understand Alaska, and that's to come see us. So you have my invitation, when—

Mr. GUTIERREZ. Thank you, Senator.

The CHAIRMAN.—you're the Secretary, to come soon, and we'll have a little side venture, which should be a little bit of exploration to see how we recover from the oceans some of the creatures of the deep. Some people call it "fishing."

[Laughter.]

The CHAIRMAN. I look forward to introducing you to my state, and hopefully we'll take the whole Committee up there sometime. But I do encourage you, at your first opportunity, to come visit us. Have you ever been to Alaska?

Mr. GUTIERREZ. Senator, I have not, and—actually, I just spoke with someone who was on a terrific tour of Alaska, one of these cruise tours, and they said it was the most incredible thing they've ever seen in their life. So I don't know what my travel schedule is—I haven't seen a travel schedule—but I make a commitment to be in Alaska as soon as possible, sir.

The CHAIRMAN. The President, by executive order, recently created a new Oceans Commission—it's really a committee on ocean policy, as I understand it—within the White House. This is primarily the jurisdiction of your Department, but we're going to take that initiative and try to work with the new Committee. And we would encourage you to join us—get your people from NOAA—so that we can work in partnership and not end up in crossed purposes, as far as this new initiative is concerned.

I think we will have a Subcommittee that addresses the ocean policy. I want to reconstruct—really, call back into existence—the National Ocean Policy Study, which was authorized by Congress several Congresses ago. It, sort of, was ignored for a couple of Congresses, but we're going to put it back into being. So, it will be another function of this Committee that I would urge you to become familiar with.

This Committee also started an initiative on tourism. And we believe that the tourism portion of our trade is extremely important. And the Congress passed a bill that we initiated here, and we look forward to working with you on that. The funding—

Mr. GUTIERREZ. Thank you, Mr. Chairman.

The CHAIRMAN.—on that is very small.

But I do want to tell you that—I don't have any more questions—I think your willingness to serve this nation, that has served you so well for your own career—and the freedoms of this country are demonstrated by your being here, as you stated yourself. We look forward to trying to work with you to develop a strong relationship with your Department, so that we don't have investigations; we have active participation, on a bipartisan basis, on legislation, or amendments to legislation, that are necessary to make



the programs that you administer function, and function as best as we possibly can arrange for them to do so.

I do thank you, again, for agreeing to meet with us here this afternoon.

Mr. GUTIERREZ. Thank you, Mr. Chairman.

The CHAIRMAN. We'll do our best to get this nomination to the floor and voted on after the first vote that the Senate will make. It may be tomorrow. We're not sure.

I would yield to my good friend and colleague—we call each other “co-chairman.” We also call each other “brother.” So, we look forward to working with you in tandem.

Mr. GUTIERREZ. Thank you, Mr. Chairman.

Mr. Chairman, I look forward to working with the Committee, and I commit to you to working in partnership with this Committee, sir.

Senator INOUE. Mr. Chairman, before proceeding with my questions, I'd like to, most respectfully, suggest to the Secretary-designee that when Chairman Stevens invites you to Alaska, there's only one answer:—

Mr. GUTIERREZ. Yes.

Senator INOUE.—“Yes.”

[Laughter.]

Senator LOTT. Could I inquire of the Senator from Hawaii, maybe a trip with the Secretary to your state would be in order.

[Laughter.]

Senator INOUE. My only problem is, they all want to go there.

[Laughter.]

Senator INOUE. Mr. Chairman, I'd like to submit questions for the record.

The CHAIRMAN. Without objection, that will be submitted.

The CHAIRMAN. And we would ask that you respond, to the questions that have been submitted to you, by Friday, if it's possible, Mr. Secretary.

Mr. GUTIERREZ. Yes, Mr. Chairman, I will do everything possible—

Senator INOUE. Mr. Gutierrez, I've had the high privilege and the great honor of serving in the Congress for—since 1949—1959, I'm sorry—and in the Senate for 42 years. And in that period, I've had the opportunity to work with Cabinet Secretaries, appointees of several Presidents. And all of them would have resumes speaking highly of their academic accomplishments, doctorate from Harvard, or a Ph.D. from some other place, Oxford and all of this. And all the appointees that I've sat through on their hearings of this nature, you're the only appointee that I know of who has no college degree. And the job that you're about to undertake is a highly technical one. What makes your background such that you believe would well serve the country as Secretary of Commerce?

Mr. GUTIERREZ. Thank you, Senator.

I would like to say, first of all, that, although you're right, I don't possess a college degree, I have never ceased to be a student, and I have been a student of business for 30 years. And I will be a student of—if confirmed—of the Commerce Department, as I have been of business. And perhaps the fact that I did not have a college degree, working my way up the system, forced me to work, some-

times, harder; to work sometimes smarter. But I always knew that perhaps I had a handicap that I had to confront.

I have been able to work around the world, which I consider a great fortune, being able to work with different cultures, being able to understand the nuances of how to deal with people of other countries, the minor nuances of the difference between an Argentinian and a Chilean, the difference between Korea and China and Japan, which, as you know, are very marked. And I think that is something that I can bring to this job—very practical experience and knowledge of dealing with foreign cultures and understanding how to get the best of our foreign partners.

Also, growing up in the system—and, as you've mentioned, I've had many MBAs reporting to me over my career. If it's—one thing that it has done is taught me the value of having the best people you can, and that, really, a team is only as good as its people, and a good leader surrounds himself or herself with the best people, and hopefully would have the self-confidence to do so. I have been able to do that. I think that's a big part of why I am where I am. I am very pleased that, in my few weeks in Washington, I have met some of the brightest people I've ever met in my life. And that is a great source of motivation, a great source of inspiration for me.

So I hope to bring those things, I hope to add value. That is my prime objective, Senators—to bring something to the party, to add value, to deliver results, which is really what I have been trained to do throughout my 30-year career. And, hopefully, maybe even, one day, as I have told my wife, just go back and pick up on that one piece of my life and get a college degree.

[Laughter.]

Senator INOUE. Well, yours is an extraordinary American success story. And I know that it's quite un-senatorial to announce your decision before decision-time, but I'm prepared to cast my vote in your favor at this moment.

Mr. GUTIERREZ. Thank you, Senator.

Senator INOUE. I think America is fortunate to have you, sir.

Mr. GUTIERREZ. Thank you, Senator.

Senator INOUE. Thank you.

The CHAIRMAN. Does any Senator wish anything further?

[No response.]

The CHAIRMAN. We really do commend you for coming here on such short notice. I want to tell you that I served as an assistant to a Cabinet Officer, Secretary of the Interior Fred Seaton, who had no college degree. One of the finest men I ever worked with, and probably the brightest. So I feel sorry for your assistants, because I think you know how to work, and you'll work the people around you as they should work.

Mr. GUTIERREZ. Thank you, Mr. Chairman.

The CHAIRMAN. And we're happy to have you, and I'll join my colleague in voting for your confirmation and bring it before the Senate as rapidly as possible.

Mr. GUTIERREZ. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much for taking on the challenge of this job.

Mr. GUTIERREZ. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. We will adjourn, and request, again, that the answers to the questions submitted be filed by Friday.

Mr. GUTIERREZ. Thank you, Mr. Chairman.

[Whereupon, at 5:45 p.m., the hearing was adjourned.]



## A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO  
CARLOS M. GUTIERREZ

*Question 1.* In 2001, the National Academy of Sciences (NAS) reported the following: “Greenhouse gases are accumulating in the Earth’s atmosphere as a result of human activities, causing surface air temperatures and subsurface ocean temperatures to rise. Temperatures are, in fact, rising. The changes observed over the last several decades are likely mostly due to human activities, but we cannot rule out that some significant part of these changes is also a reflection of natural variability.” Do you agree with the NAS’s assessment?

*Answer.* I do not know whether NAS’s assessment is correct. While I am not an expert on climate change, I will work closely with the Under Secretary for Oceans and Atmosphere, Conrad Lautenbacher, and the National Oceanic & Atmospheric Administration (NOAA) to increase my understanding of this important issue. The NAS question points to significant uncertainties in the field of climate change science. I understand that the Climate Change Science Program, an interagency research effort led by the Department of Commerce and NOAA, is working on the key uncertainties in climate change science in order to provide the federal, state, and local officials and the private sector with the most up-to-date information products to support decision-making concerning climate change issues. I intend to continue Secretary Evans’ support for these efforts, as well as the parallel interagency Climate Change Technology Program, led by the Department of Energy, which is directing substantial research and development work on new technologies intended to reduce, avoid, or capture greenhouse gases.

*Question 2.* In a December 2004 report issued by the Council on Competitiveness on Innovation (Council), the Council stated that where, how, and why innovation occurs are in flux and that the barriers to innovation are falling. The Council’s report further asserts that for innovation in the United States to thrive it will not be enough—in fact, it could be counterproductive—simply to intensify current stimuli, policies, and management strategies, and to make incremental improvements to organizational structures and curricula. As a former CEO of a major international corporation, what changes do you believe are necessary in our nation’s innovation system to ensure continued leadership in this area?

*Answer.* While I am not in a position to discuss changes to the Nation’s innovation system at the present time, I know firsthand that innovation is the key to our economic future. I am pleased that virtually the entire Department has been playing a leading role in advancing innovation. Innovation makes our nation more competitive and is necessary to maintain our technological preeminence. It is critical that both our public and business leaders focus on developing America’s innovative capacity. It is also critical that the Federal Government support America’s innovative capacity. The Federal Government can help ensure that the United States maintains the intellectual capital that catalyzes innovation, encourages workforce flexibility and life-long learning, and supports entrepreneurship.

*Question 3.* The Kyoto Protocol will become effective in February 2005. Pursuant to the treaty, many countries around the world will be required to reduce their greenhouse gas emissions. The United States is not a signatory to the protocol. What impact do you believe this treaty will have on the competitiveness of U.S. industry?

*Answer.* I do not have sufficient information on which to make an informed judgment about the relative impact, if any, of the Kyoto Protocol on the competitiveness of U.S. industry. I have been advised, however, that the Bush Administration’s approach to greenhouse gas reduction is to decrease emission intensity—emissions of greenhouse gas per unit of economic productivity—by 18 percent by 2010. The Administration has challenged U.S. businesses and industries to develop new technologies to meet this goal, and is supporting such efforts through the Climate Change Technology Program and other means. I agree with President Bush’s view

that a healthy economy—one in which investments in research and development can thrive—is central to any successful emissions reduction strategy. I expect that American businesses utilizing cutting-edge technologies to reduce greenhouse gases and boost energy efficiency will have a competitive edge in the world market.

*Question 4.* Last fall, SpaceShipOne won the \$10 million Ansari X-Prize competition for the first privately funded group to send three people on a suborbital flight and repeat the feat within two weeks using the same vehicle. Some believe that this event will open a new area of space commerce for suborbital space flights. Also last year, Congress passed legislation authorizing the Federal Aviation Administration to regulate these suborbital space launches. What are your plans for the Department of Commerce's Office of Space Commercialization?

Answer. I expect that the Department will continue to play an important role in the development of U.S. Government policies that foster the growth and competitiveness of the U.S. commercial space industry. I understand that several DOC bureaus (NOAA, ITA, TA, NTIA, BIS) are and will remain engaged in commercial space issues ranging from GPS to commercial remote sensing, fair trade and exports, space transportation, protection of space frequencies, and protection of the U.S. industrial base. I am advised that pursuant to the FY05 appropriations bill, the Department intends to integrate the Office of Space Commercialization functions into NOAA.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CONRAD BURNS TO  
CARLOS M. GUTIERREZ

**Timber Industry**

*Question 1.* [Submitted on behalf of Senators Burns and Snowe] U.S. timber industry jobs and operations, including small mill operators in Montana, rely on effective enforcement of U.S. trade laws, particularly against unfair Canadian lumber imports. In evaluating the extent of Canadian timber subsidies, for example, it is imperative that the Commerce Department ascertain the true market value of Canadian timber in comparison to timber pricing data that reflects full value. Will you ensure full enforcement of the trade laws in the softwood lumber sector, including selection of accurate subsidy-measurement benchmarks?

*Question 1a.* [Submitted on behalf of Senators Burns and Snowe] The unfair trade determinations under review by NAFTA panels are the original Commerce Department and International Trade Commission final determinations issued at the end of countervailing duty and antidumping duty investigations in 2002. I understand that under U.S. law, the decisions of these NAFTA panels can only have prospective effect. That is, their only impact can be to change the rates at which duty deposits are collected on imports entering the United States after publication of notice of the NAFTA panel decisions. The outcomes of these appeals could not result in the U.S. Government returning cash deposits already paid on Canadian lumber imports or, for that matter, collection of additional deposits on those imports. Can you confirm that this is your understanding as well? Furthermore, can you confirm my understanding that the U.S. Government would be legally forbidden to return duty deposits in response to these NAFTA panel decisions (apart from special authority that would be available to allocate deposits in the context of settlement of the Canadian lumber dispute)?

Answer. Yes, I will ensure full enforcement of the trade laws in all respects and in all sectors, including the softwood lumber sector.

Regarding the impact of NAFTA litigation, I understand that the Department's position is that the general rule is that NAFTA decisions only apply prospectively. There is an exception to that general rule, but it only applies with respect to NAFTA decisions regarding a review of an existing antidumping or countervailing duty order, not the original investigation. I have been advised that, because that exception does not apply to investigations, the Department's position is that the current litigation will not impact pre-judgment imports of lumber. Any assessments or refunds of antidumping and countervailing duties on the pre-judgment imports will be decided in subsequent administrative reviews by the Department.

**Broadband Deployment**

*Question.* Last year the Administration came out with a goal of universal broadband deployment by 2007, and I applaud that. I wanted to ask if you've had an opportunity to look at the broadband expensing legislation that Senator Rockefeller and I have pushed for several years now. I think it could really help us meet the 2007 goal. We have passed it through the Senate twice now, but it's always gotten hung up in the House. I think your support would make all the difference in

getting that legislation through the House. I know tax legislation is not your bailiwick, but broadband deployment is, so I would like to ask if you and the Administration in general would reconsider this bill and see if you can support it.

Answer. As you note in your question, President Bush has articulated a bold new vision for broadband in America by setting a national goal for universal and affordable access to broadband by 2007. I think that this is a very important goal, both for the Nation and on a global scale, in terms of our nation's competitiveness and it is one that I wholeheartedly endorse and fully support.

I have been advised that although the recently enacted American Jobs Creation Act of 2004 did not include the broadband provision that you and Senator Rockefeller sponsored, the President signed the Jobs and Growth Tax Reconciliation Act of 2003, which included provisions that allow companies to accelerate depreciation of capital-intensive broadband equipment. I have also been informed that the Administration has championed making the research and experimentation tax credit permanent, and the President has signed into law an 18-month extension of this credit. The President has also supported dramatic increases in funding for research and development initiatives.

I believe that President Bush is dedicated to keeping our nation on the leading edge of progress in the 21st century by encouraging entrepreneurship and making the best technology available to our citizens. If confirmed, I hope to join him in helping to achieve his goal of universal and affordable access to broadband for all Americans. I will look forward to working with you and other members of the Committee and the Congress on achieving the President's goal, and I would be willing to look at your bill and other relevant legislation introduced in the 109th Congress. I would also consult with other members of the Administration on this issue which crosses a number of departments.

#### **Agriculture Safeguards**

*Question.* Perishable and cyclical agricultural products face special needs because of the perishability of the product. One of the negotiating objectives in the Trade Act of 2002 was for the U.S. to ensure that special rules were negotiated to address the needs of this sector. The Australian Free Trade Agreement represented a positive commitment to this objective by including safeguards for beef. Please indicate your views on special rules for perishable products and their role in future trade negotiations.

Answer. I appreciate the importance the agriculture community attaches to the special issues associated with perishable products, and the role of such issues in future trade negotiations. I also understand that specific agriculture safeguard measures with respect to imports of beef and horticultural goods have been included in our trade agreements. Since this is an issue that falls primarily under the purview of the Department of Agriculture and the U.S. Trade Representative, I will be pleased to discuss this issue with my colleagues in those agencies if I am confirmed.

#### **Manufacturing Extension Partnership (MEP)**

*Question.* One program I have been supportive of over the years, within the Department of Commerce is the Manufacturing Extension Partnership (MEP) program. Congress appropriated \$109 million for this program in FY 2005 and it is doing important work in Montana where we have over 2,000 manufacturing firms. We are a rural state but we have needs and opportunities that MEP has addressed. For example, our MEP Center helps companies understand costs, implement Lean Manufacturing. I would like to hear your thoughts on the program and get some assurance your office will work with this Committee and my colleagues on the Appropriations Committee to address the yearly funding struggles we face with the program.

Answer. As someone who has spent his professional career with a U.S. manufacturer, I can assure you that I know how vital a role manufacturers large and small play in our economy. The national manufacturing network of the Hollings Manufacturing Extension Partnership is assisting our nation's small manufacturers and seeks to contribute to a strong economy. I will work with the members of the Commerce and Appropriations Committees to ensure that small manufacturers have access to technical and information resources to allow them to remain competitive.

#### **ICANN and Internet Domain Name Security**

*Question 1.* What is your view on ICANN as an institution, and how do you think its functioning could be improved, if at all? Is it currently responsive enough to all Internet stakeholders?

*Question 1a.* What is your assessment of the White Paper/Green Paper processes that were initiated under former Clinton Administration official Ira Magaziner in

the mid-1990s? Do you feel that there was sufficient consultation at that time with the Congress regarding the major commitments that were made?

*Question 1b.* What is the current number of full-time equivalent employees in the NTIA who monitor and participate in ICANN activities? Given the broad scope of ICANN's authority over the Internet and the direct impact its actions could have on Internet users and businesses, both in the U.S. and abroad, do you feel that this is sufficient?

*Question 1c.* ICANN currently sends regular reports to NTIA in which it outlines its progress toward certain "milestones", which are set in ICANN's MOU with the Commerce Department and which were initially outlined by the Magaziner task force. If NTIA feels all these milestones have been met, according to my understanding, the MOU will be allowed to expire next year and the USG will have no more role in ICANN than any other government. Given the USG's historic role in developing, funding, and overseeing the Internet, do you feel the USG should have no oversight role at all over the future development and security of the DNS? If not, what specific role and/or authority should the USG retain into the future?

*Question 1d.* What is your view on the proper use of the WHOIS databases, and what is your assessment of current ICANN processes underway regarding WHOIS?

Answer. I have not had the opportunity to study the history of the Internet Corporation for Assigned Names and Numbers (ICANN) or its current operations. I understand that the Department, through its Memorandum of Understanding with ICANN, has closely monitored and assessed ICANN's evolution since its inception. If confirmed, I expect to be briefed more fully and would be pleased to discuss ICANN issues with you and the Committee.

With regard to the second part of your question, I do not have enough information to comment on actions taken by officials in the previous Administration. I do believe the Bush Administration has valued its opportunities to consult with Congress, and will continue to do so in its second term.

I am not aware of the exact staffing levels devoted to ICANN activities, but understand the Department believes that it devotes sufficient resources within the Department to monitoring and participating in ICANN-related activities. If confirmed, I am committed to ensuring that the Department's resources are appropriately focused on priority issues of importance to the Administration, the Congress, and the economy as a whole.

I have been advised that the underlying premise for the creation of ICANN is the privatization of the management of the domain name system, and that the MOU between the Department and ICANN is structured to meet that goal. If I am confirmed, I expect to be more fully briefed on this important issue, as well as the many other issues related to ICANN and the management of the domain name system, including the WHOIS database, and will be pleased to hold further exchanges with you and the Committee at a later time.

#### **Implementation of New E-911 Law**

*Question 1.* What unobligated or carry-forward balances exist that would permit the Department to immediately activate the newly authorized E-911 office?

*Question 1a.* How soon does the Department plan to have the Office staffed and operational?

*Question 1b.* How does the Administration envision the Office operating and reporting within the Department?

Answer. I view the recently enacted "Enhance 911 Act of 2004" as an important piece of legislation intended to move forward the availability of critical E-911 services. I have been informed that appropriate Departmental personnel are currently reviewing the requirements under the legislation and evaluating ways to best implement them. It is my understanding that there were no funds appropriated. I understand that Department of Commerce officials will be working closely with the Department of Transportation to develop an approach to fulfill the statutory obligations of the legislation.

#### **International Digital Television Outreach**

*Question 1.* What can the Commerce Department do to assist the FCC, industry groups and consumers to make the transition to terrestrial digital TV (DTV) broadcasting more successful in the United States?

*Question 1a.* The U.S. has adopted one DTV standard (ATSC) and the European Union and several other countries around the world have adopted a different, incompatible standard (DVB). Japan has a third DTV standard still in development, but many developing countries are soon expected to choose between the U.S. and



European standards. At stake is the technology for many millions of future DTV sets and broadcasting equipment around the world, and the corresponding possible sales for many of the firms who have been implementing DTV in the U.S. What will the Commerce Department do under your leadership to advocate for the ATSC standard in the near future? What kinds of resources can you devote to supporting and complementing U.S. industry outreach, particularly in Latin America?

Answer. I have been advised that the President's Fiscal Year 2005 budget included a proposal that would require television broadcasters to begin paying an annual fee for the continued use of analog broadcast spectrum beyond the initial deadline. I support this proposal and believe that it is a necessary tool to encourage broadcasters to transition to digital broadcasting so that recovered analog spectrum can be used for a number of new wireless and public safety services. If confirmed, I would look forward to continuing this and other efforts to hasten the transition to digital television.

The Administration supports the Advanced Television Systems Committee (ATSC) standard and has repeatedly advocated its adoption in bilateral dialogs with a number of nations, including those in Latin America. If confirmed, I would continue to promote this standard through discussions with my foreign counterparts. Additionally, if confirmed, I will review the Department's budget to ensure that adequate resources are being brought to bear to support the adoption of this standard in the global marketplace.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TRENT LOTT TO  
CARLOS M. GUTIERREZ

*Question 1.* Mr. Gutierrez, will you pledge to me that, if you are confirmed, you will open the U.S. A-TEAM partnership to other foreign-owned automotive manufacturers beyond DaimlerChrysler that have invested in a significant U.S. manufacturing and R&D presence?

Answer. I have been informed about the collaboration established by the U.S. Council for Automotive Research (USCAR) and the Department of Commerce's Technology Administration on December 9, 2004, that created the U.S. A-TEAM partnership. I understand this collaboration was initiated over a year ago by USCAR, the pre-competitive research consortium of General Motors, Ford and DaimlerChrysler, and thus the collaboration is not with individual auto manufacturers. The Department of Commerce, however, continues to work very closely with all American automotive manufacturers and, we would be open to discussions with other companies or organizations interested in establishing similar cooperative manufacturing R&D relationships.

*Question 2.* Mr. Gutierrez, I understand that the Department of Commerce is working with the U.S. Trade Representative to address problems with China enforcing contracts under the 1958 New York Convention, of which it is a signatory. Many U.S. companies have experienced problems with Chinese companies not abiding by contracted agreements. If you are confirmed, will you aggressively confront this problem with China, and any other countries with similar problems?

Answer. I understand that the Bush Administration is committed to encouraging China to strengthen its commercial legal system, including the need to recognize and enforce foreign arbitral awards under the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. I have been advised that the Commerce Department, through the U.S.-China Joint Commission on Commerce and Trade, has long sought to promote commercial law development in China, particularly with respect to promoting arbitration and ensuring that arbitral awards are honored. If confirmed, I intend to continue this work and to fully support U.S. companies in China, as well as in any other country where they might encounter similar problems.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO  
CARLOS M. GUTIERREZ

**Timber Industry**

*Question 1.* [Submitted on behalf of Senators Burns and Snowe] U.S. timber industry jobs and operations, including small mill operators in Montana, rely on effective enforcement of U.S. trade laws, particularly against unfair Canadian lumber imports. In evaluating the extent of Canadian timber subsidies, for example, it is imperative that the Commerce Department ascertain the true market value of Canadian timber in comparison to timber pricing data that reflects full value. Will you

ensure full enforcement of the trade laws in the softwood lumber sector, including selection of accurate subsidy-measurement benchmarks?

*Question 1a.* [Submitted on behalf of Senators Burns and Snowe] The unfair trade determinations under review by NAFTA panels are the original Commerce Department and International Trade Commission final determinations issued at the end of countervailing duty and antidumping duty investigations in 2002. I understand that under U.S. law, the decisions of these NAFTA panels can only have prospective effect. That is, their only impact can be to change the rates at which duty deposits are collected on imports entering the United States after publication of notice of the NAFTA panel decisions. The outcomes of these appeals could not result in the U.S. Government returning cash deposits already paid on Canadian lumber imports or, for that matter, collection of additional deposits on those imports. Can you confirm that this is your understanding as well? Furthermore, can you confirm my understanding that the U.S. Government would be legally forbidden to return duty deposits in response to these NAFTA panel decisions (apart from special authority that would be available to allocate deposits in the context of settlement of the Canadian lumber dispute)?

Answer. Yes, I will ensure full enforcement of the trade laws in all respects and in all sectors, including the softwood lumber sector.

Regarding the impact of NAFTA litigation, I understand that the Department's position is that the general rule is that NAFTA decisions only apply prospectively. There is an exception to that general rule, but it only applies with respect to NAFTA decisions regarding a review of an existing antidumping or countervailing duty order, not the original investigation. I have been advised that, because that exception does not apply to investigations, the Department's position is that the current litigation will not impact pre-judgment imports of lumber. Any assessments or refunds of antidumping and countervailing duties on the pre-judgment imports will be decided in subsequent administrative reviews by the Department.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON H. SMITH TO  
CARLOS M. GUTIERREZ

### **Softwood Lumber**

*Question.* As you know, the lumber dispute between the United States and Canada is the largest trade case in our history. Four years of well-intentioned work has yielded little progress in bringing the dispute to a conclusion. Do you intend to maintain the Commerce Department's position that duties collected on Canadian lumber will not and cannot be returned unless it is part of a negotiated settlement?

Answer. Yes.

### **Piracy**

*Question 1.* Mr. Gutierrez, America's copyright industries generate some 12 percent of GDP and account for over 8 percent of total U.S. employment. The four core copyright industries—movies, music, publishing and computer software—account for almost \$90 billion in foreign sales and exports—more than agriculture, more than automobiles and parts, more than aircraft. How do you intend to protect this significant component of our economy in an age when technological theft is so easy?

Answer. The Bush Administration recognizes the importance of protecting the intellectual property of the copyright industries and other U.S. businesses and has made it a priority to fight counterfeiting and piracy. Having spent a number of years with a consumer products company, I fully recognize the value of intellectual property assets and, if confirmed, would continue to give intellectual property protection priority status.

Recently, the Department of Commerce helped launch an Administration cooperative initiative called the Strategy Targeting Organized Piracy (STOP) to combat counterfeiting and piracy. If confirmed, I would work with Administration colleagues to make that initiative a success.

In negotiations and consultations with our trading partners, I would place significant emphasis on the need for improved criminal, civil and administrative enforcement and the need to protect copyright over the Internet and promote accession to the World Intellectual Property Organization's (WIPO) Internet Treaties by all countries, especially those with a high incidence of piracy.

In addition, if confirmed, I would work to support the Administration's commitment to vigorously enforce trade laws and agreements and to make sure our trading partners comply with their TRIPs (Agreement on Trade-Related Aspects of Intellectual Property Rights) obligations. The Administration has negotiated and will con-

tinue to negotiate strong intellectual property provisions in all free trade agreements. If confirmed, I would strongly support those efforts.

*Question 2.* Copyright piracy is a huge problem in China for our creative industries. For the computer software industry, only about 8 percent of the software installed in a given year in China is legally purchased—much of it by the Chinese government. Now it seems that the Chinese government is about to implement a policy of buying only Chinese software. How do you propose to address these twin market access barriers of piracy and discriminatory procurement policies?

*Answer.* I understand that China's top leadership has committed to reducing infringement of intellectual property rights (IPR) in China and that last year, during the U.S.-China Joint Commission on Commerce and Trade meeting, China specifically committed to extend its ban on the use of pirated software in central government and provincial agencies to include local governments. I am advised that in September 2004, Vice Premier Wu Yi directed that all institutions at the provincial level use only legal software by the end of the year, and many local governments, including Shanghai, Beijing, and Guangzhou, have undertaken measures to ensure that their agencies use only legal software. If confirmed, I will follow up with China's leadership to ensure these commitments are honored. I also understand that, for an industry such as software, where U.S. companies either dominate or are competitive in nearly all segments of the sector, having access to China's government procurement market is critical. I understand that the Administration is already actively engaged with the Chinese Government to encourage China to keep its government procurement market open to American firms, and, if confirmed, I will continue to press the Chinese leadership on this issue.

#### **Trade Policy**

*Question 1.* I understand that China is on the verge of releasing government procurement regulations that will bar most U.S. software products from the government market. What is the Administration's position on this issue, and what is its strategy for addressing it?

*Answer.* I understand that the Administration has been monitoring China's development of its software government procurement policy since the issue emerged in early 2003, and has been actively engaging Chinese leadership to encourage China to allow U.S. companies to continue to provide software products and services. I understand Secretary Evans intends to raise this issue with senior Chinese leaders when he travels to China this week. This is a priority issue for the Administration, and, if confirmed, I will continue to press the Chinese on this issue at senior levels.

*Question 2.* Many nations, unlike the United States, have not signed the WTO Agreement on Government Procurement or similar bilateral trade agreements with the U.S., which means that these nations are free to exclude U.S. firms from government procurement contracts. Even some countries that have signed onto the Government Procurement Agreement seek to benefit domestic suppliers over U.S. firms indirectly—for instance, by extended preferences to software firms that follow specific development or licensing models, regardless of the underlying merits of the software at issue. As Secretary of Commerce, will you work aggressively to persuade United States' trading partners that such barriers to open and merit-based procurement undermine the principles of neutrality and non-discrimination that are the foundation of international trade? Will you also assure this Committee that you will continue the Department's advocacy against software procurement preferences that limit competition or are based on factors unrelated to merit? What specific steps will you take with respect to China's efforts to cut off access of U.S. software companies to its government procurement market, a development that foreshadows the exclusion of many other U.S. industries to PRC government procurement?

*Answer.* If confirmed as Secretary of Commerce, I will be aggressive in encouraging our trading partners to adopt non-discriminatory approaches to government procurement that conform to generally accepted international practices. I will ensure the Department continues to advocate for government procurement rules whereby decisions are made based on the principle of best value. I will also reach out to my counterparts in the European Union and Japan, and other countries that have invested significantly in China, to encourage Chinese Government leadership to reconsider their proposed software procurement policy. If confirmed, I will take advantage of every opportunity to raise our concerns about China's government procurement policy with China's senior leadership.

*Question 3.* Technology innovation has been the engine of American economic growth for years, and America's innovation industries are leaders in the global economy. The Department of Commerce has long been a champion of American innovation, and I have no doubt that this will continue under your leadership. Your coun-

terparts in other countries, however, may not always perceive U.S. innovation as we do and may even view U.S. leadership in this area as a threat to their own industries. In particular, there is a risk that other nations may condemn, as anti-competitive, business practices that from a U.S. perspective promote innovation and are pro-consumer. As Secretary of Commerce, would you make it a priority for the Department to advance the interests of America's innovation industries in foreign markets? Specifically, would you engage actively with other U.S. agencies to ensure that our key trading partners do not use competition law to unfairly disadvantage U.S. firms in foreign markets?

Answer. If confirmed as Secretary of Commerce, I am committed to maintaining the competitiveness of America's technology innovation industries. Advancing those industries' interests in foreign markets will be on my agenda. I will work with my colleagues in the Administration as well as our trading partners to ensure that competition laws are not used to disadvantage American firms in foreign markets.

*Question 4.* As you know, China has a huge trade surplus with the United States. China's Premier has stated that China will reduce this surplus by importing more American products. Yet it appears that the Chinese Government is about to throw up a new barrier to market access for one of our most competitive exports by requiring government ministries to purchase only Chinese software. What will the Department of Commerce do, under your leadership, to hold China to its word?

Answer. I understand that the Administration has been monitoring China's development of its software government procurement policy since the issue emerged in early 2003, and has been actively engaging Chinese leadership to encourage China to allow U.S. companies to continue to provide software products and services. Secretary Evans intends to raise this issue with senior Chinese leaders when he travels to China during this week. This is a priority issue for the Administration, and, if confirmed, I will continue to press the Chinese on this issue at senior levels.

#### **Columbia River Issues**

*Question 1.* You are aware of the importance of the Federal Columbia River Power System to the economy of the Pacific Northwest as it provides transportation, irrigation, flood control, and almost one-half of the electricity used in the region. The Department of Commerce (NOAA Fisheries) plays an enormous role in how this system is managed. As you oversee the Department's role in managing the Fisheries and Endangered Species Act aspects of salmon and steelhead policy, how will you ensure that the Department adequately considers the impacts of those policies on farmers, ranchers, and electricity ratepayers in the Northwest?

Answer. I am aware that NOAA Fisheries, in conjunction with the Bonneville Power Administration and the Army Corps of Engineers, plays a key role in the operation of the Federal Columbia River Power System. The existence of the dams that make up this system contribute significantly to the economic foundation of the Pacific Northwest by providing electric power generation, navigation, irrigation, and flood control. I understand that great attention is warranted as we attempt to balance the needs of listed salmon and steelhead with the operation of a hydropower system. Should I be confirmed, I will work diligently to ensure that decisions made by the Department of Commerce give adequate consideration to all of the region's stakeholders, including farmers, ranchers, and the electricity ratepayers you mentioned.

*Question 2.* NOAA Fisheries is responsible for developing recovery plans for ESA-listed fish in the Northwest that take into account impacts to the fish beyond the narrow focus of the hydropower system (many factors such as harvest, hatcheries and habitat play a large role). NOAA expects to issue these plans by the end of the year. Is this pace realistic, and can you please give details regarding whether there is adequate funding allocated to this effort?

Answer. I understand that NOAA Fisheries has been working collaboratively at the local level, including through the Northwest Power Planning and Conservation Council's sub-basin planning process to develop and acquire the information necessary to issue recovery plans for ESA-listed fish. Nevertheless, I am unable to comment specifically on the efficacy of the timelines you mention until I have time to become familiar with the details of this process. With respect to your question regarding funding for this effort, the President's FY 2006 Budget is in its final stages of review and will be released in February. Should I be confirmed, I would be pleased to have additional discussions with you about these issues after the President's Budget request is submitted to the Congress.

*Question 3.* For several years, salmon and steelhead have returned to the Columbia River in record numbers. Does NOAA Fisheries have a clear definition for what

constitutes numerical “recovery” of these runs? If so, please elaborate on that definition. Also, please describe the status of any pending de-listing determinations.

Answer. I am still working to educate myself on the particulars of many NOAA issues, notably the complexities of salmon policy. Nevertheless, I understand the critical importance of recognizing what defines “recovery” and that this issue is one that will continue to dominate the salmon policy debate. If confirmed, I will work with NOAA Fisheries to ensure that realistic recovery targets are developed as expeditiously as possible. With respect to your question regarding pending de-listing determinations, I am unable to comment until I have more time to become familiar with NOAA’s work on this issue.

#### **Klamath Basin Issues**

*Question 1.* One of the pressing issues in southern Oregon and northern California concerns the Klamath Project and NOAA Fisheries biological opinions for coho salmon in the Klamath River. In 2001, a NOAA Fisheries biological opinion was largely responsible for cutting off water to family farms and wildlife refuges that depend on water supplied through the federal Klamath Project. As a result of an independent review of that opinion by the National Research Council we now know that the requirement for higher flows was not backed by science or existing data. At the same time, there remains in place a biological opinion that calls for high Klamath River flows, to be achieved to a large degree by idling productive farmland and taxing groundwater supplies. It is my understanding that the Bureau of Reclamation and NOAA Fisheries will complete a new ESA consultation for the Klamath Project and coho salmon before the 2006 irrigation season. Will you provide me with the anticipated schedule for that consultation and a description of the role that will be played by the affected water users in the Klamath Project?

*Question 1a.* The report of the National Research Council makes it abundantly clear that in the recent past there has been an ineffective emphasis on regulating the Klamath Project water supply as a means to attempt to benefit coho in the mainstem Klamath River. Will you provide me with information on how NOAA Fisheries and the Bureau of Reclamation will go about achieving a more appropriate and equitable approach to addressing the coho in the Klamath Basin, including avoidance of land idling and excessive groundwater pumping as tools?

*Question 1b.* It is my understanding that in past consultations the Bureau of Reclamation and NOAA Fisheries have taken different conceptual approaches to the analysis of impacts to coho resulting from Klamath Project operations. In particular, they have apparently not agreed on how one is to identify or characterize the “environmental baseline” that is a critical element in ultimately identifying impacts of a federal action. It seems highly appropriate that your agency and the Bureau of Reclamation resolve this issue well in advance of the consultation itself. Will you pursue an effort to resolve any such areas of disagreement and provide me with a schedule and process for doing so?

Answer. I recognize the importance of the issues you raised regarding the Klamath Basin. I am also aware that balancing the water needs in the Basin has been a priority of this Administration. I am advised that is why, in early March 2002, the President created the Klamath River Basin Working Group of which the Department of Commerce is a member. I understand that Working Group has worked diligently to coordinate federal efforts within the Basin. Should I be confirmed, I will work closely with you and your colleagues in the region to ensure the concerns you raise are given every consideration by NOAA.

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#### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GEORGE ALLEN TO CARLOS M. GUTIERREZ

*Question 1.* I am interested in how you view your responsibilities under our Trade laws with respect to administering dumping cases against the Chinese. It is my understanding that dumping cases against Chinese firms have reached such significant volume that the Office of Import Administration has created a special office for the dispensation of these cases. At the same time, I am concerned that there is often a lack of appreciation for the quality and accuracy of data used to measure the costs of Chinese firms. This is often to the detriment of U.S. manufacturers in these cases. I was pleased to see that in the House Report accompanying the Consolidated Appropriations Act there was language that emphasizes the need to utilize “surrogate” data from market economies that more accurately reflects the costs of Chinese production. This I believe would reverse a disturbing trend toward “zeroing” out U.S. firms in China. Can you provide me with an indication of your intentions with

respect to how these cases that so directly affect U.S. jobs can be fairly administered?

Answer. I fully appreciate the seriousness of the disputes involving unfairly traded products from the People's Republic of China that are entering the United States. I understand that the Commerce Department has aggressively enforced applicable trade laws against unfairly traded products from China, and, if I am confirmed, the Department will continue to do so under my leadership. I am informed that the Department has recently published antidumping duty orders on color televisions and wooden bedroom furniture from China, and has reached an affirmative dumping determination on certain canned and frozen shrimp from China. I understand that, since 2001, the Commerce Department has published 24 antidumping duty orders on products from China, and that over the last four years the number of investigations initiated and antidumping orders put into place by the Commerce Department against products from China is approximately two times greater than the next leading country.

Further, I am informed that the Department's enforcement of the U.S. trade laws against unfairly traded products from China has recently been strengthened by the creation of the Office of China Compliance within the Commerce Department's Import Administration. This office has a large staff of individuals with methodological, language, accounting and computer programming expertise in the conduct of antidumping investigations involving non-market economy countries, of which China is the largest. I understand that, consistent with the law, it is the Department's practice to use surrogates from market economy countries in all proceedings involving non-market economy countries such as China. I am advised that the Department will continue to evaluate the usefulness and reliability of these surrogate values on a case-by-case basis and will modify or update them as appropriate.

Finally, I understand that the Import Administration is also in the process of reviewing the Department's practices in conducting antidumping proceedings involving non-market economy countries. If confirmed as Secretary, I will ensure that this review continues. I will also direct the Import Administration to continue with its program of pro-active measures to identify and address unfair trade practices and policies at their source, including continuing to monitor the 30 largest categories of imports from China with the goal of identifying unfairly traded goods and, where warranted, resolving the problems before domestic industries are injured.

*Question 2.* One of our most longstanding trade issues involves imports of cement from Mexico, which are covered by a U.S. antidumping order. This case is an example of why we need strong enforcement of laws against unfairly priced imports. Unlike U.S. cement producers, Mexican producers have a home market in Mexico that is closed to any outside competition, allowing them to earn high profits by charging among the highest cement prices in the world to Mexican customers. They use their high profits from home market sales in Mexico to subsidize their exports to the United States at unfairly low prices. Without an antidumping order in place, imports from Mexico would injure U.S. producers and impede investment in new cement capacity in the United States. Can you assure us that, under your leadership, the Department of Commerce will be aggressive in enforcing U.S. laws against unfairly traded imports from all countries?

Answer. I have been informed that the antidumping duty order on cement from Mexico has been in place for many years, and that the Commerce Department has conducted numerous annual administrative reviews of the order. These reviews have helped ensure that the amount of dumping occurring is measured in a timely manner, and that the appropriate amount of duties are collected so that these imports do not continue to injure domestic producers. If I am confirmed as the Secretary of Commerce, I will ensure that the Department continues to work vigorously to ensure that domestic industries are not injured by unfairly traded imports, including imports of cement from Mexico.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO  
CARLOS M. GUTIERREZ

*Question 1. Importance of NOAA in Commerce Department.* NOAA's 2005 budget of \$3.9 billion will represent more than 60 percent of the Department of Commerce's budget. In fact, this is the largest budget ever given to NOAA. However, past Secretaries of Commerce have not given NOAA the attention or priority that it deserves with respect to oceanic and atmospheric issues. How do you see NOAA's role within the Department under your direction?

*Question 1a.* What kind of support can we expect to see for NOAA and its missions?

Answer. NOAA is the largest bureau within the Department of Commerce, and with responsibilities of exceptional importance to our economy, public safety, and marine environment, I take NOAA's mission very seriously. Recent world events have made it clear to everyone just how important is that the work that the scientists and managers of NOAA do every day. In speaking with members of the Committee, they have impressed upon me the depth and breadth of issues NOAA handles.

**Question 2. NOAA Funding Needs.** The U.S. Commission on Ocean Policy recommended up to a \$4 billion increase in funding for ocean programs—from fisheries to exploration and mapping. The importance of capitalizing, maintaining and perhaps expanding many of these critical NOAA programs—including the Pacific Tsunami Warning System—has become all too apparent as the press reports on natural disasters, climate change, marine mammal die-offs, oil spills, and the like. What are your plans for the agency's budget, given these emerging fiscal needs?

Answer. The Administration is still developing the FY 2006 budget, and while I have not been involved in that process, I expect it will reflect the President's commitment to sound ocean policy. For example, I have been informed that the Administration has already announced that it will be requesting \$2.7 million to support state and local coral conservation efforts to implement local action strategies developed by the states, territories and commonwealths that make up the U.S. Coral Reef Task Force.

On December 17, 2004, the President released the Administration's response to the U.S. Commission on Ocean Policy, the "U.S. Ocean Action Plan." As noted in the NOAA statement from Admiral Lautenbacher on the release of the Administration's Plan, "this is a commitment we are making not just for the short term. We can look no further than the President's commitment to promote lifelong ocean education as a sign that the Ocean Commission will have an impact for generations to come."

**Question 2a.** Do you foresee a significant increase as recommended by the Commission, or do you see the budget operating at the status quo?

Answer. I expect to testify before the Senate Appropriations Committee after the President's FY 2006 budget is released in early February, and look forward to working with the Congress on NOAA funding needs.

**Question 3. NOAA Management Changes.** The U.S. Commission on Ocean Policy also recommended management changes for NOAA, such as the integration of six line offices, establishing an integrated regional presence (i.e., in the Western Pacific), moving programs from other agencies, and substantial improvements in existing programs. Can you please tell us how you plan to address the Commission's recommendations relating to the restructuring of NOAA?

Answer. I have been advised that the U.S. Commission on Ocean Policy recommended a phased approach to strengthening NOAA. The first recommended step is the passage of an organic act codifying NOAA's existence and mission within the Department of Commerce. Secretary Evans transmitted such a proposal to Congress last June. The next phase would be a review of the various recommendations relating to agency institutional structures and consolidation. It is my understanding that the President has tasked the new interagency Committee on Ocean Policy with this review. If confirmed as Secretary, I would serve on this Cabinet-level committee.

I have had the opportunity to meet with VADM Lautenbacher, Under Secretary of Commerce for Oceans and Atmosphere, to discuss the activities and structure of NOAA. He briefly reviewed the organizational changes that have already occurred to integrate the activities of the Line Offices. I hope to bring my own management experience to further discussions within the Administration and with Members of Congress about how to build upon these improvements.

**Question 4. Opportunities for Strengthening both Commerce and NOAA.** There has been widespread support, from the U.S. Commission on Ocean Policy, former NOAA Administrators, ocean policy experts, and this very Committee, to providing NOAA more budgetary and programmatic independence from the Department of Commerce—and ultimately full independence. NOAA's budget growth, and the continuing need for increased funding, indicates that the agency may have reached a funding ceiling within the Department. This poses a problem for both NOAA and the Department. As Secretary, will you give consideration to this idea that NOAA should be more independent, and that a transition to independence may in turn present an opportunity to strengthen the Department of Commerce by focusing more on trade and business?

Answer. If confirmed as the Secretary of Commerce, I will certainly be examining all of the Department's operations with an eye towards identifying ways to make each operating unit more efficient and effective. Knowing the particular interests that many members of Congress have in NOAA, I will pay special attention to the

many ideas that have been raised about NOAA's current structure. I should note, however, that based upon my experience as a CEO, I frankly would be skeptical about any proposal that would make the Secretary responsible for an organization for which he lacks budgetary and personnel authority.

**Question 5. Implementing U.S. Ocean Commission Recommendations.** As Secretary of Commerce, you will have significant responsibility for implementing the recommendations of the U.S. Commission on Ocean Policy. As you know, the President responded to these recommendations in December of 2004 with the U.S. Ocean Action Plan. Do you believe that this Action Plan adequately addresses the Commission's recommendations?

*Question 5a.* Will the President's proposal to establish an interagency Ocean Committee within CEQ undermine the existing authority of the Department of Commerce and NOAA as the expert civilian ocean agency?

*Question 5b.* What other initiatives do you plan to support at NOAA in order to expand its role in oceanic and atmospheric management?

Answer. The President's U.S. Ocean Action Plan outlines some immediate actions as well as a process and structure for addressing the other recommendations of the U.S. Commission on Ocean Policy's report. I have been informed that the Commission's report included over 200 recommendations. I look forward to learning more about the report and would expect to be actively engaged in the new Committee on Ocean Policy. I anticipate that the increased attention to these important issues will enhance, not undermine, the existing authorities of the Department and NOAA. If confirmed, I will be working closely with NOAA leadership to improve oceanic and atmospheric science and management activities.

**Question 6. Hollings Manufacturing Extension Partnership.** The Hollings Manufacturing Extension Partnership (MEP) supports a network of locally-run centers that provide technical advice and consulting to small manufacturing companies in all fifty states and Puerto Rico. Many of these firms lag behind foreign competitors in technology and operations, leading larger American firms to look increasingly for offshore suppliers. MEP-assisted companies surveyed reported \$2.79 billion in new or retained sales, \$681 million in cost savings, and \$940 million in new investment in FY 2002. During that period, these firms created or retained 41,017 jobs that otherwise might have been lost. For the past two years, the Administration has proposed supporting only the MEP office at NIST and withdrawing support from the centers around the country that directly provide these valuable services to small manufacturers. While Congress has restored full funding for MEP, I understand that OMB has once again recommended this program for elimination in FY 2006. You have pledged to help small businesses like the small manufacturers that MEP helps. Can you assure me that, if confirmed, you will do everything in your power to ensure full funding for this important and successful program?

Answer. Coming from a Michigan-based manufacturer, I am aware of the importance of manufacturing to the economy. If confirmed as Secretary of Commerce, I will support our nation's manufacturers in their efforts to become more competitive and productive in the global marketplace. I have been advised that the national manufacturing network of the Hollings Manufacturing Extension Partnership has assisted small manufacturers and has demonstrated potential for assisting other federal agencies in meeting their missions. I will make every effort to ensure that small manufacturers have access to technical and information resources to allow them to remain competitive.

**Question 7. Advanced Technology Program.** The Advanced Technology Program (ATP) is an industry-led, competitive, and cost-shared program that allows U.S. companies to develop the next generation of breakthrough technologies. These new innovations enable the U.S. to aggressively compete against foreign rivals. The National Academy of Science has found it to be an effective program which could use more funding wisely. ATP is funding research ranging from cancer vaccines to hi-tech flexible displays to composite materials. These are the kinds of ground breaking technologies that provide the country a competitive advantage. Yet, the Administration has moved to eliminate this program. What can you do to help me revive ATP?

Answer. I understand that the Advanced Technology Program has sponsored numerous successful research projects over the years, but that scarce federal resources caused by the need to fight the war on terrorism and protect the homeland have forced the Administration and the Congress to make difficult budget choices affecting ATP and other programs. As a businessman, I can appreciate the need to set priorities and to watch the bottom line.



I also appreciate the need for our industries to stay competitive in a global economy, and I believe that it is important to look at initiatives that offer benefits broadly serving all U.S. businesses. For instance, the President's Manufacturing Initiative sets out a plan to reduce the cost and complexity of the tax code, making tax relief permanent, and lowering health care, energy, and legal costs.

*Question 7a.* In the absence of a program like ATP that fills the gap between basic R&D and a project ready for venture funding, how will the government ensure that we don't just win Nobel Prizes but also win the profits that go with them?

Answer. As someone who has worked in manufacturing in my professional career, I believe that the U.S. continues to enjoy a competitive advantage in the manufacturing sector. We have some of the best factories in the world with technologies and supply chain systems that give us the ability to use manufacturing more efficiently than our competition abroad. I agree that we need to not only develop but also implement technologies into the factory. We can also support our federal technology transfer structure in order to move new technology from the laboratories into the commercial marketplace.

*Question 8. Patent.* We hear a lot of back and forth about the backlog in the Patent Office. For FY 2005, Congress has provided an additional \$342 million over the FY 2004 level for the patent office. What will it take to reduce the backlog and have the Patent Office operate more efficiently?

Answer. I have been advised that the USPTO, at Congress' direction, developed a 21st Century Strategic Plan to not only increase productivity in processing time but also to enhance quality and promote electronic filing and processing. The Plan has the backing of a wide range of businesses, industries and trade groups. If confirmed, I would work with the Director of the USPTO to ensure that the initiatives in the Plan are fully funded and implemented in a timely manner.

Since implementation of the majority of the Plan's initiatives is contingent upon adoption of changes in the fee system that are contained in the United States Patent and Trademark Fee Modernization Act, if confirmed, I would work with Congress to make those adjustments permanent. To ensure effective implementation of the USPTO's strategic plan, we should work toward certainty in achieving stability and certainty in the USPTO's access to future revenues.

*Question 8a.* Are you able to find the kind of folks—educated in both technology and the law—that you need to fill the new positions you intend to create?

Answer. My understanding is that the USPTO has been successful in attracting, hiring and retaining personnel with high levels of education and professionalism. While private sector competition in certain "hot" areas such as communications and electronics has been a challenge, the opportunity for public service, flexible work schedules, telecommuting opportunities, enhanced pay and pro-family and life style benefits the USPTO offers are highly valued by employees and job applicants.

*Question 9. Technology Transfer.* What is your evaluation of the nation's technology transfer policy? How can we improve our system for getting inventions out of the labs and onto production lines?

Answer. The new knowledge and technologies that flow from U.S. research universities and federal laboratories, supported in large part by federally-funded R&D dollars, are key aspects of the Nation's overall innovation system. Effectively transferring and harnessing new technology and know-how in order to create commercial products and new business opportunities has been strategically important for my past industry—as it has been for many other industry sectors.

The Commerce Department, through the Technology Administration, leads our nation's federal technology transfer efforts. I understand that the President's Council of Advisors on Science and Technology (PCAST) reviewed the Nation's federal technology transfer structure in 2003 and made recommendations to improve upon the successful system we already have. I would be pleased to work with the Congress to identify high priority Commerce initiatives to support innovation and technology transfer.

*Question 10. Space Commercialization.* When SpaceShipOne won the X-Prize last year by becoming the first privately-funded aircraft to visit and return from space, many had high hopes for a revitalized U.S. space commerce sector. Yet, your Department's Office of Space Commercialization is moribund, at best. Under your leadership, what role will the Department play in promoting space commerce?

Answer. The Department has played and will continue to play a key role in the development of U.S. Government policies that foster the growth and competitiveness of the U.S. commercial space industry. It serves as an advocate for the industry within interagency deliberations affecting the future of space, encouraging the promotion of commercial interests as well as national security, foreign policy, and other interests. The Department will remain engaged in commercial space issues ranging

from GPS to commercial remote sensing, fair trade and exports, space transportation, protection of space frequencies, and protection of the U.S. industrial base.

*Question 10a.* Do you intend to appoint a Director of Space Commercialization?

Answer. Yes.

*Question 10b.* Virgin airways intended to invest a significant amount in the nascent space tourism business, specifically in the company which flew SpaceShipOne to the X-prize. In the aviation world, our airlines have always faced restrictions on foreign ownership. Given the strategic, as well as economic, importance of the potential private, commercial space launch business, should we consider foreign-ownership restrictions similar to those imposed on the airlines?

Answer. I agree that the U.S. commercial space launch industry is of great strategic and economic importance to the United States. To the extent foreign ownership in this industry may become an issue, I understand that laws are currently in place that can effectively address it. Proposed transactions involving foreign ownership and control in our domestic industry would likely require review by the Committee on Foreign Investment in the United States (CFIUS), chaired by the Treasury Department, under the Exon-Florio provision of the Omnibus Trade and Competitiveness Act of 1988. I understand that the Department of Commerce is an active member of this committee, and that CFIUS regularly reviews proposed foreign acquisitions of U.S. companies to ensure that U.S. interests, such as technological leadership in areas affecting U.S. national security, are not compromised by the transaction.

*Question 11. Census.* The 2000 Census missed about 6 million Americans, according to adjusted Census data that the Department was forced to release. How do you plan to ensure that the Census counts all Americans?

Answer. It is my understanding that Congress has approved and funded a short-form-only 2010 census. The Census Bureau will be able to focus every resource on the Constitutional mandate of counting all the people. The collection of detailed characteristics data, performed once a decade on the long form and constituting 60 percent of the workload, will now occur every year through the American Community Survey (ACS). I am advised that the ACS will provide better and more current data and reduce peak work load spikes. Re-engineering the short form will use the latest technology and methodologies and re-engineering the Master Address lists will provide greater accuracy.

*Question 11a.* Will scientific adjustment of the data, known as "sampling," be on the table if you are confirmed?

Answer. I am advised that the Director of the Census Bureau has informed Congress that the Census Bureau is not seeking any funds for planning or implementation of statistical adjustment in the 2010 Census.

In November 2004, the GAO issued a report entitled "Census Bureau Needs to Accelerate Efforts to Develop and Implement Data Quality Review Standards." The report built on earlier GAO work examining flaws in 2000 Census data reporting the Hispanic and the homeless populations. The report says that standards were never in place to assess data quality in 2000. Furthermore, the report states that while limited improvements and standards have been implemented since then, the Bureau must accelerate its efforts to review data quality and implement new standards in time for the 2010 Census.

*Question 11b.* What steps will you take as Secretary to accelerate this process and bring it more in to the open?

Answer. I am advised that the Census Bureau has responded to the GAO Report and is writing an action plan to be submitted by the end of January to address the GAO recommendations.

*Question 11c.* Do you intend to follow GAO's recommendations to improve Census Data quality?

Answer. I have studied neither the report nor the response. I have confidence in the professionalism of the Census Bureau and understand that the Bureau has a long history of continuously improving data quality in a transparent, comprehensive process.

The Census Bureau is now sharing information with the Department of Homeland Security breaking down the Arab population by zip code and with the Mexican government to allow them to better assess and tax the value of U.S. exports. Some worry that this kind of data sharing will effect the quality of Census data because Americans and American businesses will become reluctant to share data that could be used for law enforcement or taxation purposes.

*Question 11d.* What is your reaction to this kind of data sharing?

Answer. I am advised that the Census Bureau responded to one request for publicly available data from the Department of Homeland Security, just as it would have to any other requester. I also am advised that the Census Bureau and the Department of Homeland Security, after consultation with U.S. industry, have entered into a limited agreement with Mexican law enforcement authorities that permits these authorities to request verification within broad ranges of export value data being reported by exporters to both governments. Like the Census Bureau professionals, I am committed to the protection of individual and business data as provided by law. Federal law provides heavy fines and imprisonment for any breach of privacy, although I understand none occurred in either case you mentioned. I will be vigilant against any violation of the law.

**Question 12. The Economy, the Workforce, and Jobs.** Do you believe that outsourcing is a problem for the United States? If so, what can we do to keep jobs in America?

Answer. I understand that of all the major U.S. layoffs in the past three years, only a small fraction—about 2 percent—were due to overseas relocation of jobs. While losing a job is always traumatic, to create and keep jobs here in the United States, American workers must remain the best qualified and most productive. Education is the key. We have to have our youngest students ready to learn. We need to encourage excellence in math and science. We need to train our young people for tomorrow's jobs and offer retraining to experienced workers.

The President and the Congress have a role, too, to help businesses cut costs. Working together, the Executive and Legislative Branches of government can help businesses get control of health care costs, litigation costs, energy costs, and so on.

I want trade and investment to remain a two-way street. The U.S. benefits from a large amount of "insourcing"—six million Americans work in the United States for foreign companies and millions more jobs are created indirectly from this investment.

I look forward to working with the Congress to enhance the environment for business here at home.

**Question 12a.** The Administration and your predecessor, Secretary Evans, consistently cite job growth as a sign that the economy is moving in the right direction. Yet we're losing manufacturing jobs and poverty continues to rise. We're starting to see the first signs of inflation. What will you do as Secretary to help put the nation on sound financial footing?

Answer. From my vantage point at Kellogg, the U.S. economy is on the right track. Clearly, our economy has overcome several blows in the past few years. But going forward, it appears to me, the essentials of a strong and growing economy are in place.

Job creation and economic growth are signals that we are on firm footing. The economy grew more than 4 percent in 2004 and is expected to grow at 3.5 percent in 2005. We are experiencing a broad-based jobs recovery, with 2.6 million jobs created since August 2003. Inflation is relatively low and energy prices are nudging down.

As Secretary, I will work with the Congress to exercise federal spending restraint, foster a tax and regulatory climate that allows businesses to grow and hire, and serve as a steward of our resources.

**Question 13.** As you know, Senator Stevens and I have annually supported increased funding for the NOAA's tsunami warning program, including warning centers in Hawaii and Alaska. Despite our strong support, we still do not have sufficient coverage in the Pacific, where 85 percent of all tsunamis occur. I understand that NOAA may be considering developing a 20-buoy array for the Indian Ocean, where we today have no buoys. Could you please provide details on NOAA's plan for the Indian Ocean, and how the Administration plans to fund this endeavor? Will these funds be part of a future emergency supplemental funding package or part of your 2006 budget request?

Answer. I have been advised that the Bush Administration is currently reviewing a proposal to implement a Global Tsunami Warning System that would include enhanced coverage in the Pacific Ocean and extension of coverage to the Indian Ocean. This system will be a critical component of the Administration's plan to establish a Global Earth Observing System. The new system will include additional tsunami buoys, tide monitoring stations, and efforts to improve community-based preparation for future events. The tsunami buoys would be placed along the major seismic fault lines to ensure accurate and timely warnings for tsunami events.

I am further advised that the Administration is currently completing its review of the proposal for the Global Tsunami Warning System, but at this time has not made any decisions on funding strategies.

*Question 14.* With respect to the program in the Pacific Ocean, how will you ensure we improve accuracy of the Pacific warning system and will you provide funding for such increases in your FY 2006 and 2007 budget requests?

Answer. The President's FY 2006 budget will be released in early February, and I have not, of course, been involved in its development. As indicated in the previous question, however, the Administration is currently considering a proposal to implement a Global Tsunami Warning System. The proposal includes specific initiatives to improve observations, warnings, and community preparedness in each of the world's major oceans, including the Pacific Ocean. Given the frequency of tsunamis in the Pacific Ocean, the Pacific Region will be a high priority.

The Administration is currently reviewing the proposal for the Global Tsunami Warning System. At this time, the Administration has not made any decisions on funding strategies for FY06 and FY07 budget requests.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV  
TO CARLOS M. GUTIERREZ

#### **Negotiating a Solution To The CDSOA Dispute**

*Question.* Since the Executive Branch's strategy report in 2002, the United States has lost important issues raised in another six Rules cases at the WTO, including the statutory challenge to the Continued Dumping and Subsidy Offset Act of 2000 or "CDSOA"—this provision is also known as the "Byrd amendment" as it was added by my senior colleague.<sup>1</sup> The Administration has recognized the CDSOA decision as imposing new obligations on the United States by prohibiting its distribution of monies sourced from assessed antidumping and countervailing duties. Congress has repeatedly called for negotiations to address the issue not only in letters but in the Fiscal Year (FY) 2004 consolidated appropriations law enacted on January 23, 2004.<sup>2</sup> In response, the United States submitted a proposal in the Rules negotiations to recognize "the right of Members to distribute monies collected from antidumping and countervailing duties."<sup>3</sup> The United States, however, has not yet submitted a formal textual proposal to address the issue.

As the Secretary of Commerce, can you commit to working with the U.S. Trade Representative to develop a formal textual proposal in the context of the Doha Round and to negotiate an early agreement which recognizes the sovereign right of WTO Members to distribute monies collected from antidumping and countervailing duties? This provision has helped the very companies and workers who have been injured by illegal dumping and the U.S. Congress has every right to direct revenues in this common sense manner.

Answer. I am advised that the Administration intends to continue to address this issue in the context of the WTO's ongoing Doha Round of multilateral trade negotiations. I understand the Administration has staunchly defended the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) throughout a long WTO dispute settlement process and will continue to work with our trading partners to achieve a negotiated resolution of the underlying issues. While I understand the United States has not tabled a text on this issue, I understand a paper has been submitted indicating our intent to negotiate on this matter.

As required in Senate Report language, the Department of Commerce and the Office of the U.S. Trade Representative are consulting to ensure proper implementation of the requirements of U.S. law regarding negotiations over the distribution of antidumping and countervailing duties. I am advised that the Administration intends to comply with all such requirements, including reporting requirements. I understand that the Administration will complete these consultations as soon as possible and will continue to work to advance Congressional objectives in the Doha Round negotiations.

#### **Addressing Problems With The WTO Dispute Settlement System**

*Question.* As I understand it, there has also been a startling lack of progress in the Doha dispute settlement negotiations. This is despite the fact that the WTO dispute settlement system has consistently been used to erode the effectiveness of our trade remedy laws. Two years ago, in the Bipartisan Trade Promotion Authority Act of 2002, Congress expressed its concern with the pattern of WTO decisions imposing new obligations and restrictions on the use of antidumping, countervailing, and safe-

<sup>1</sup> 19 U.S.C. § 1675c.

<sup>2</sup> Consolidated Appropriations Act of 2004, Pub. L. 108-199.

<sup>3</sup> TN/RL/W/153 (April 26, 2004).

guard measures.<sup>4</sup> In the Senate Report, Congress recognized that foreign governments have been successfully using dispute settlement procedures to “erode bargained-for trade remedy protections,” which negatively affects American firms, workers, and farmers and could jeopardize public support for a liberal trading system.<sup>5</sup> Therefore, one of principle negotiating objectives with respect to dispute settlement is the negotiation of provisions that would require “determinations based on facts and the principles of the agreements. . . .”<sup>6</sup>

Congress further required the Secretary of Commerce to submit a report to Congress by December 31, 2002, identifying the Executive Branch’s strategy to address WTO decisions that impermissibly add to obligations or diminish U.S. rights under the WTO Agreement.<sup>7</sup> In that report, the Executive Branch acknowledged the problem with the dispute settlement system, particularly in the context of Rules cases, and pledged to address the problem in the ongoing Dispute Settlement and Rules negotiations as well as in ongoing disputes.

The fact is that the United States has been on the receiving end of more GATT and WTO challenges than any other Member.<sup>8</sup> Over the past two years, roughly half of all WTO decisions were issued in cases challenging U.S. measures, and over three-quarters of those decisions addressed the administration of our trade remedy laws. Despite our frequent posture as a responding party in WTO dispute settlement proceedings, the United States has only made four publicly-available submissions in the dispute settlement negotiations concerning two topics. The United States has yet to submit a textual proposal as to how it would provide “some form of additional guidance to WTO adjudicative bodies concerning (i) the nature and scope of the task presented to them (for example when the exercise of judicial economy is most useful) and (ii) rules of interpretation of the WTO agreements.”<sup>9</sup> While I am told that efforts are underway to submit such a proposal, I find it alarming that the United States has not yet approached these negotiations with the same vigor and creativity as our trading partners.

As the Secretary of Commerce, how do you intend to advance the negotiation of changes to the WTO dispute settlement system or the Rules agreements that would reverse the long line of adverse (anti-U.S.) trade remedy decisions?

Answer. Like my predecessor, Secretary Evans, I intend to work very closely with the Office of the U.S. Trade Representative to advance the negotiation of changes to the WTO Dispute Settlement Understanding, as well as the Antidumping and Subsidies Agreements, that will not only reverse the most egregious decisions of WTO dispute settlement panels and the Appellate Body, but will ensure that in future disputes, the panels and the Appellate Body will adhere to the appropriate standards of review and give appropriate deference to the fact-finding and technical expertise of national investigating authorities.

If confirmed, I intend to follow the strategy outlined in Secretary Evans’ December 2002 report to Congress on this topic. First, it will entail working to gain greater Member country control over the dispute settlement process and greater flexibility for Member countries to settle disputes. This should help prevent panels and the Appellate Body from making erroneous and unnecessary findings that have often added or reduced the rights and obligations contained in the Rules Agreements. Second, it will entail working to make the dispute settlement system more transparent. Greater public scrutiny of the system should make panels and the Appellate Body more accountable and less likely to impose obligations on Member countries not found in the WTO agreements. The Administration intends to pursue changes to the Rules Agreements that will ensure that panels and the Appellate Body adhere to the standards of review. Finally, I understand the Administration will continue to pursue changes to those Agreements that will reverse specific adverse findings, including those regarding the Continued Dumping and Subsidy Offset Act, “zeroing,” and injury determinations.

#### **TAA for Firms**

*Question.* The Trade Expansion Act of 1962 established the Trade Adjustment Assistance program for firms to assist firms and industries negatively impacted by import competition. The TAA for Firms program, which is administered by the Department of Commerce through the Economic Development Administration, offers technical assistance to help trade-impacted firms make the strategic adjustments nec-

<sup>4</sup> 19 U.S.C. § 3801(b)(3)(A).

<sup>5</sup> S. Rep. No. 139, 107th Cong., 2d Sess. 8 (Feb. 28, 2002).

<sup>6</sup> 19 U.S.C. § 3802(12)(A).

<sup>7</sup> 19 U.S.C. § 3805(b)(3).

<sup>8</sup> See Pescatore & Stewart and Stewart, Handbook of WTO/GATT Dispute Settlement at Index 3/1-3/8 (Country-Party Index).

<sup>9</sup> TN/DS/W/52 (March 14, 2003).

essary to remain competitive in a global economy. Technical assistance is provided through one of 12 regional trade adjustment assistance centers, usually involving private-sector contractors.

In a December 2000 report on the TAA for Firms program, the Government Accountability Office (GAO) made two disturbing findings regarding the Department of Commerce's administration of the program:

- Less than half (39 percent) of center expenditures (which average about \$10 million annually) were used to fund technical assistance to eligible firms with approved business recovery plans. Instead, the vast majority of center expenditures (61 percent) went to fund operational and administrative costs.
- The impact of the TAA for Firms program is unclear because the Economic Development Administration has failed to formally monitor and track program results.

Mr. Gutierrez, to your knowledge, has the Commerce Department taken steps to ensure that all 12 program centers are making the best use of the limited program funding?

Since this report, has the Department developed a standard process for evaluating program outcomes?

Answer. Senator Rockefeller, I have been advised that the Department of Commerce has undertaken substantial efforts to ensure that the Trade Adjustment Assistance Centers ("TAACs") (11 centers as of 2004) are being run more efficiently and producing favorable results for its clients.

I have been informed that in the five years since the GAO report, the Economic Development Administration (EDA) has implemented several substantive improvements. As reported in the Department's GPRA (Government Performance and Results Act) measurements, EDA closely tracks the number of adjustment proposals implemented, the specific firms receiving assistance, as well as documenting the project descriptions of the assistance provided.

In addition, I have been advised that EDA has implemented a revised allocation model for the TAA for Firms programs that rewards those TAACs that excel in producing results (such as number of firms assisted and number of jobs impacted), while acknowledging the different geographic and demographic factors in each TAAC service area.

#### **Defending and Preserving Existing Trade Remedy Laws, Including Our Ability to Capture the Full Amount of Dumping**

*Question.* As you know, the WTO Agreement condemns the unfair trade practice of injurious dumping and provides rules for how WTO Members should calculate dumping margins. The Commerce Department has the responsibility for administering U.S. trade remedy laws such as the antidumping and countervailing duty laws. Despite efforts by the United States to negotiate clear obligations consistent with U.S. practice, a number of our trading partners have challenged our compliance with the agreements negotiated. Unfortunately, the WTO panel and Appellate Body dispute review system has resulted in a series of decisions that are contrary to the U.S. understanding of obligations assumed.

Congress has mandated that as part of the ongoing negotiations problems in the dispute settlement process in our trade remedy cases be corrected and that our laws be maintained. One particularly troubling string of decisions out of the WTO Appellate Body is worth noting as if ever applied to U.S. law would fundamentally weaken the protection promised by the Congress to our companies, workers and their communities. The string of cases involves whether a government is allowed to offset 100 percent of the dumping found. Some of our trading partners are arguing that they are entitled to "credit" for any exports which are not dumped. In the U.S., 100 percent of the dumping found is captured and, if dumping continues, will be charged dumping duties. This common sense approach is what the U.S. has done for decades and represents the desire of the Congress for a remedy that addresses 100 percent of the dumping found. Trading partners want to reduce the liability by receiving "credit" for non-dumped transactions even though this was never contemplated by the U.S. (or other countries) during the negotiations and would seriously weaken the remedial purpose of U.S. law. The claim by our trading partners is similar to a driver telling a police officer that well, yes, they were going 70 miles per hour in a 30 mile per hour zone but that infraction should be reduced or eliminated because they had been stopped at a traffic light shortly before!

While the Secretary of Commerce has many functions in any Administration, the role of ensuring that our trade remedies are vigorously enforced and our rights fully protected is in my and many members of Congress' view, paramount.

Can you assure this Committee today that you will do everything within your power as Commerce Secretary to defend and preserve our existing trade remedy laws, including our ability to continue to capture 100 percent of the actual dumping (without any offset for non-dumped sales)?

Answer. If confirmed, I will vigorously defend and enforce our existing trade remedy laws, and implement those laws as intended to stop dumped or subsidized goods from injuring U.S. industries.

With respect to the WTO disputes seeking to require a credit for non-dumped goods, it is my understanding that this issue has not been finally resolved. The Commerce Department, working closely with the Office of the United States Trade Representative, is vigorously defending its ability to assess duties on 100 percent of the dumping, without offset from non-dumped goods, in several ongoing WTO disputes. If confirmed as the Secretary of Commerce, I will instruct Commerce officials to continue to defend this important methodology so that no offset is required for non-dumped sales.

#### **Technology Opportunity Program**

*Question.* As the Secretary of Commerce, you will oversee the National Telecommunications and Information Administration (NTIA). As a keen advocate for broadband technology and telecommunications, I believe that NTIA should play an active role in policy and in community outreach.

I am disturbed that this Administration has sought to eliminate funding for the popular and effective Technology Opportunity Program (TOPs), and that funding was eliminated in the 2005 Omnibus Appropriations bill. In 2004, TOPs issued \$14.4 million in 27 grants but there were 494 applications seeking \$277 million. There were 6 grants from West Virginia in 2004, and one telemedicine grant to WV Primary Care Network was successful. Other TOPs grants are helping faith-based programs and supporting first responder networks.

As Secretary of Commerce will you re-evaluate and reconsider the TOPs program. And if not, how do you propose to aggressively fulfill the mission of NTIA to promote telecommunications access, especially in rural areas which has less access to broadband, according to NTIA reports?

Answer. I have been advised that the Administration viewed the TOP program, established in 1994, as one that has fulfilled its mission of generating awareness about how the World Wide Web can enhance delivery of social services. Increasing numbers of Americans have integrated the Internet into their daily lives and are using the Internet at a record pace.

As you note, Congress eliminated funding for the TOP program. Nevertheless, I understand the U.S. Department of Agriculture is working hard to bring telecommunications and broadband services to rural areas through a variety of programs, including the rural broadband program created by the 2002 Farm bill.

Should I be confirmed, I would work to ensure that wireless broadband services and other new and emerging technologies are brought to the marketplace so that broadband service is available to more Americans at affordable prices.

#### **TAA for Workers**

*Question.* I trust you are familiar with our Trade Adjustment Assistance, or TAA, program. In your experience with Kellogg or as a board member of Colgate-Palmolive, you have likely seen examples of American workers benefiting from TAA when global free trade policies resulted in business decisions costing American jobs.

In 2002, Congress passed the Trade Adjustment Assistance Reform Act, which offered trade displaced workers and retirees a tax credit of up to 65 percent of the cost of health insurance coverage. The participation rate for this program has been very low (as of July 2004, less than 6 percent of the 229,044 who were eligible were enrolled). Although this is not something over which you will have direct oversight as Secretary of Commerce, would you be willing to explain how you might advise the President and Congress on ways to improve the program, or do you believe there are other appropriate ways—that may be within your purview as Secretary—to ameliorate some of the negative impacts of trade policies on our domestic workforce?

Answer. From my roles in the private sector I have seen firsthand the powerful effect of trade in creating economic opportunity for workers across the globe.

As I have learned, the Trade Adjustment Assistance (TAA) for Workers is administered by the Department of Labor. I am aware, however, that the Department of Commerce administers the related TAA for Firms program. I have been advised that the Petition for Certification used by firms applying for TAA for Firms benefits includes a section highlighting the TAA for Workers program.

In my discussions with senior Department officials, I have further learned that the Department of Commerce's Economic Development Administration has

partnered closely with the Department of Labor's Employment Training Administration to jointly respond to communities experiencing sudden or severe economic dislocation, such as caused by changing trade patterns.

Should I be confirmed as Secretary of Commerce, I will work to strengthen the ties between the Commerce Department and other federal entities with compatible missions in order to provide the most effective federal response possible to those communities facing economic challenges.

#### **Assessment of the Commerce Department's Application of Duty Drawback**

*Question.* I understand that the Department of Commerce has recently changed their practice as to granting duty drawback adjustments to U.S. price in anti-dumping investigations and reviews. Where a country imposes tariffs on imported products used as inputs in domestically sold products, and which are not collected on exported products, the statute directs the Commerce Department to adjust for the inclusion of these duties in costs and prices of the home market merchandise. However, I understand that Commerce has begun granting these adjustments in cases in which the subject foreign producers use no imports as inputs and pay no duties for products sold in the home market. This contradicts a recent Court case, *Hevensa v. U.S.*, has resulted in low or no margins and increased dumped imports from these countries and rewards countries for having high tariffs. This has resulted in layoffs and has caused economic injury to domestic industries.

Can you please consult with the appropriate Department personnel and respond to me in writing regarding these actions at the Department?

*Answer.* I am advised that there has been no change in the Department's practice on granting adjustments for duty drawback and that the Department's practice is based on the language of the statute. I further understand that in the *Hevensa* case, the party at issue failed to satisfy the two-part test that the Department has traditionally applied and that the U.S. Court of International Trade has consistently upheld. I am told that there has been no departure from that test or from relevant court precedent. One requirement of the two-part test is that there be sufficient imports of raw materials to account for the duty drawback. I understand the Department has not begun granting duty drawback adjustments where there were no imports of raw materials. Such a change to the Department's practice would require a change in the law. The Department continues to grant adjustments only if the respondent satisfies the court-sanctioned two-part test.

#### **Broadband Deployment in Rural America**

*Question.* The President has set a goal of universal broadband deployment by 2007. I wanted to ask about your position on a bill that Sen. Burns and I have worked on for four years now which is designed to help meet that goal. We have proposed a tax incentive for broadband deployment. It's targeted primarily at rural areas and gives special emphasis to next-generation broadband like fiber-to-the-home.

That bill has passed the Senate twice now. Last year in the FSC-ETI conference, the Senate conferees supported this provision 21-0. But the Ways and Means chairman opposed it and it died on the House side. What I can't understand is why the Administration did not weigh in support of the broadband tax incentive. It is completely bi-partisan. Senator Burns and I have worked hand in hand on this, with 60 other members of the Senate. The House sponsor is a Republican, Mr. English from Pennsylvania. We could have passed this bill with your support, and it would have helped us meet the goal of universal deployment by 2007.

So my question is this: Can I have your pledge to look at this legislation anew and get back to me in the next month with a specific answer on whether the Administration will support it? I think if you look at it with a fresh eye, you will agree that it is good policy and will be very helpful in meeting our mutual objective of universal broadband deployment.

*Answer.* As you note in your question, President Bush has articulated a bold new vision for broadband in America by setting a national goal for universal and affordable access to broadband by 2007. I think that this is a very important goal, both for the Nation and on a global scale, in terms of our nation's competitiveness, and it is one that I wholeheartedly endorse and fully support.

I have been advised that although the recently enacted American Jobs Creation Act of 2004 did not include the broadband provision that you and Senator Rockefeller sponsored, the President signed the Jobs and Growth Tax Reconciliation Act of 2003, which included provisions that allow companies to accelerate depreciation of capital-intensive broadband equipment. I have also been informed that the Administration has championed making the research and experimentation tax credit permanent, and the President has signed into law an 18-month extension of this



credit. The President has also supported dramatic increases in funding for research and development initiatives.

I believe that President Bush is dedicated to keeping our nation on the leading edge of progress in the 21st century by encouraging entrepreneurship and making the best technology available to our citizens. If confirmed, I hope to join him in helping to achieve his goal of universal and affordable access to broadband for all Americans. I will look forward to working with you and other members of the Committee and the Congress on achieving the President's goal, and I would be willing to look at your bill and other relevant legislation introduced in the 109th Congress. I would also consult with other members of the Administration on this issue which crosses a number of departments.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
CARLOS M. GUTIERREZ

### **European Government Subsidies to Airbus**

*Question 1.* I am pleased the Administration decided in October to terminate the 1992 US–EU Bilateral Agreement on Aircraft and instead rely on the stricter disciplines of the World Trade Organization's Subsidies Agreement. The 1992 Agreement has become outdated and unhelpful to U.S. interests. It is well past time to end "launch aid for the development and production of large commercial aircraft." Can I assume that you agree with the position that President Bush and the Administration have taken that European government subsidies to Airbus must cease?

*Answer.* I do support the President's position on ending EU subsidies to Airbus. These subsidies have caused unfair loss of U.S. exports, the laying off of highly paid, highly skilled workers critical to the U.S. manufacturing base, and loss of market share to key U.S. companies, and therefore must cease.

I understand that International Trade Administration staff has been working closely with the Office of the United States Trade Representative on its case against the European Commission. I will see to it that the Department of Commerce continues to devote its resources and expertise to resolve this issue.

*Question 2.* In October, the U.S. filed a "Request for Consultation" at the World Trade Organization regarding European government subsidies to Airbus. On January 13, 2005, the U.S. will have the opportunity to request that the WTO's Dispute Settlement Body include this issue on its agenda for its monthly meeting on January 23rd. Does the Administration intend to file a formal request at the January 23rd meeting to establish a panel to look into the Airbus subsidies and the resulting economic damages it has caused? Would you support such an action?

*Answer.* I am advised that the U.S. Trade Representative is leading Administration efforts on this issue with the Europeans. I understand that the Administration has made clear that it is time to bring an end to the subsidies to Airbus. While I am advised that the Administration is prepared to achieve that objective through litigation, I also understand that the Administration continues to explore ways to achieve the same goal through negotiation. If I am confirmed, I can assure you that working with USTR and my other interagency colleagues to bring an end to these subsidies will be a major priority.

*Question 3.* Would you support Administration efforts to negotiate a new agreement on large commercial aircraft with the European Union, with the underlying premise for negotiations that all "launch aid" must cease immediately?

*Answer.* It is important to level the playing field between the United States and European aerospace industries whether it be through a negotiated agreement or through WTO dispute settlement proceedings. If confirmed, I will support any efforts by the Administration toward that end.

I consider this a very important issue and, if confirmed, I would look forward to continuing to work with you to resolve the matter.

### **Pacific Northwest Salmon Recovery**

*Question 1.* Washington State, along with the entire Pacific Northwest, have been engaged in a bipartisan, on-the-ground effort to recover our iconic salmon runs to healthy, harvestable levels. NOAA Fisheries plays a vital role in these recovery efforts. However, over the past year they have issued and proposed several extremely troubling rule changes that lead many of us to question the agency's commitment to using sound science to recover our endangered salmon stocks.

Specifically, these erosions include a flawed rewrite of the government's plan to recover salmon on the Columbia River that is unlikely to withstand judicial review; proposals to reduce critical habitat designations for endangered and threatened salmon and steelhead in Washington, Oregon, Idaho, and California by up to 80 per-

cent; a hatchery fish listing policy that would count salmon grown in a bucket the same as those reproducing in the wild; and finally amendments to the Northwest Forest Plan which seriously dilute the ability of the Federal Government to protect salmon habitat on federal lands.

I am very concerned that these proposals will move us away from the consensus-based recovery efforts and back to uncertainty and turmoil and to the era of court induced “remedies.” I do not want to see that happen. Do NOAA’s proposals represent a concerted effort to erode the Pacific Northwest’s regional efforts to recover endangered salmon runs?

*Question 1a.* I am also very concerned about the allegations of politics trumping scientifically based decision-making. If confirmed as Secretary of Commerce, what will you do to restore confidence in NOAA Fisheries?

*Question 1b.* To date our region has spent several billion dollars over the past 25 years to protect the habitat and survivability of stream-bred wild salmon. Now that we are finally beginning to see results of these efforts, what can you do to assure me that the Commerce Department will continue to request the resources necessary to support our collaborative, science-based recovery efforts?

*Question 1c.* I am concerned that these policy shifts will not be legally defensible and, as occurred in the past, a federal judge may overturn NOAA’s finding and my region would again be plunged into uncertainty and conflict over how to proceed with salmon recovery efforts. How confident are you that these policies will stand up to court challenges?

Answer. First, I appreciate you raising these issues with me. I have come to understand just how essential healthy salmon populations are to the Pacific Northwest region, both culturally and economically. The issues you raise are as important to me as Secretary-designate as they are to you as a representative of the people of Washington. I understand there is a good team of professionals at NOAA, and I assure you I will work closely with them as the issues relating to salmon recovery are considered. I am committed to also working closely with all the stakeholders in the region, as well as their elected representatives and senators, to ensure the actions taken by NOAA Fisheries under my tenure are based on the best available science and every appropriate opportunity for peer review is honored. I look forward to working with you on these issues and, should I be confirmed as Secretary of Commerce, I would welcome the chance to meet with you to discuss them in greater detail.

#### **Recent Listing of Puget Sound Orcas Under the Endangered Species Act**

*Question 1.* Last month NOAA Fisheries proposed listing Puget Sound’s Southern Resident orcas population as “threatened” under the Endangered Species Act. Since the orcas range all over the Puget Sound and are the keystone species, I understand that an ESA listing could potentially have a dramatic impact on my home state. I do not want to see Puget Sound economic activity curtailed or the recovery of these majestic whales slowed because of a lack of agency resources to process the likely increase in NOAA permit requirements. If confirmed as Secretary of Commerce, will you provide NOAA Fisheries with the additional resources they will need to fulfill these additional legal requirements?

*Question 1a.* As you know, an Endangered Species Act listing triggers the development of a conservation plan. Over the past three years I have provided resources to help inform and develop a plan for these orcas allow our region to move forward and begin identifying the steps necessary to recover these regional icons. Will you commit to a clear schedule so this plan can be finalized?

*Question 1b.* Will you commit to working to see that NOAA has the funding to research what is causing these animals to decline?

Answer. I am aware of the Committee’s strong interest in the southern resident killer whale stock. If confirmed as Secretary, I will consult with the Committee on all activities involving the recovery of southern resident killer whales. I am advised that a conservation plan is under development, and a draft should be available in the early Spring of this year. I look forward to working with you with regard to this and other vital economic issues in the Pacific Northwest.

#### **Magnuson-Stevens Reauthorization**

*Question 1.* As Secretary of Commerce, you would have primary responsibility over the nation’s fisheries under the Magnuson-Stevens Fisheries Management Act. Recreational and commercial fishing is vitally important contributor to Washington’s economy, generating billions of dollars in economic activity and thousands of jobs. As you know, the Magnuson-Stevens Act will be brought up for reauthorization

in the upcoming Congress. Could you please identify the reauthorization priorities you would push as Secretary of Commerce?

*Question 1a.* How do you think we can best balance the economic needs of fisherman while maintaining the long-term sustainability of harvestable fish populations?

*Question 1b.* I was pleased that the U.S. Ocean Commissions Report found that North Pacific seafood resources are responsibly managed and can serve as a model of how local interests can collectively address overfishing and create a sustainable and high value use of ocean resources. Do you agree with the Commission's findings?

Answer. I am advised that the Administration plans to submit a revised Magnuson-Stevens Act reauthorization proposal during the first session of the 109th Congress that will include themes similar to those contained in the Administration's proposal that was transmitted to the 108th Congress.

I am further advised by NOAA's fisheries that there are several components necessary to balance the economic needs of fishermen with maintaining harvestable fish populations, including: (1) providing up-to-date and accurate stock assessment information to the Regional Fishery Management Councils; (2) expanding scientific programs to address long-term environmental factors; (3) continuing to upgrade the application of Magnuson-Stevens Act management requirements, especially the national standards and other provisions that specifically address the economics and community needs of federally managed fisheries; and (4) working with the Councils to encourage the development of management measures which appropriately use market-based economic incentives to promote resource sustainability as well as economic viability.

I am advised that the North Pacific Fishery Management Council, the State of Alaska, and all the user groups they represent have done an excellent job in managing the resources in Alaskan waters.

#### **Counterfeiting of U.S. Goods in China**

*Question 1.* The counterfeiting of software, movies, music, and video games abroad, particularly in China, costs the U.S. software and entertainment industries untold billions in losses annually. Initiatives to crack down on pirated U.S. intellectual property and counterfeit goods have been pursued across several Administrations with little sustained success. What priority will you place on stemming the flow of pirated and counterfeit software, games, CDs, and DVDs into the U.S. from China and other countries?

Answer. I know that this Administration recognizes the importance of protecting the intellectual property of U.S. businesses here and abroad and has made it a priority to fight counterfeiting and piracy. Intellectual property is a vital component of our nation's economy and our businesses and innovators deserve full government engagement in this effort. Having spent a number of years with a consumer products company, I fully recognize the value of intellectual property assets and, if confirmed, would continue to follow Secretary Evans' path in giving intellectual property protection high priority status.

*Question 2.* Last October, the Commerce Department announced the Strategy Targeting Organized Piracy initiative. What elements of the initiative focus specifically on stopping the piracy and counterfeiting of the U.S. goods in China?

Answer. The Strategic Targeting Organized Piracy (STOP) initiative, to my knowledge, is intended to address worldwide piracy and counterfeiting and does not specifically target any particular country. All countries need to focus domestically on the escalating problem of piracy and counterfeiting to eradicate the harm it does to the global economy. Because of the scope of the problem in China, the world's largest producer of and market for counterfeit goods, attacking this issue is a high priority for the Department. Under STOP, Commerce will work on the problem of piracy and counterfeiting of U.S. goods in China by providing technical assistance and training to Chinese officials to help them bring their regime for protecting IPR into compliance with their obligations under the WTO, by ensuring that U.S. businesses understand the importance of taking steps to protect and enforce their intellectual assets, and by helping U.S. rights holders navigate the Chinese system. We also see international cooperation with our likeminded trading partners, such as through the WTO, WIPO, and APEC, as critical to improving China's IPR regime.

Additionally, I have been advised that as part of STOP, a new Investigations and Compliance unit has been created to identify and pursue the elimination of foreign trade practices in violation of our trade agreements with respect to IPR. To combat the widespread piracy and counterfeiting in China, the unit established a case referral program with its Chinese counterparts to address specific IPR issues of U.S. companies in a timely and effective manner.

*Question 3.* What is the current status of the initiative's implementation?

Answer. My understanding is that the Department of Commerce and the other agencies involved in this cooperative effort are sharing information and strategies, interacting with representatives of the affected industries, and continuing to map out the most effective and efficient means of stopping the flow of illicit merchandise. The Department of Commerce has set up a hotline and website to assist U.S. right holders in securing intellectual property protection abroad. The Department also has produced and distributed a publication to small businesses detailing how STOP can protect their intellectual property at home and abroad.

*Question 4.* When should U.S. software companies and the entertainment industry expect to see a marked reduction in counterfeit products as a result of the initiative?

Answer. While I would hope and expect to see positive results from the initiative on an expedited basis, I am not in a position at this point to provide any specific estimates. You have my assurance that, if confirmed, I will devote substantial effort to making this initiative work to the benefit of the affected industries.

*Question 5.* How does the Department plan on measuring the success of the initiative?

Answer. I am unaware that any specific method has been determined to measure the success of the initiative. If confirmed, I would work with the other agencies and representatives of the affected industries to develop a reasonable method to do so.

*Question 6.* What is the Administration doing to encourage and assist the Chinese Government to fix the apparent shortcomings in its judicial system with respect to the theft of intellectual property and the counterfeiting of goods?

Answer. My understanding is that the Under Secretary of Commerce for Intellectual Property has led delegations to China for consultations with senior officials at China's patent, trademark, and copyright agencies and other agencies involved in intellectual property issues to further the Administration's goals of improving the intellectual property environment for U.S. right holders in China. Those consultations have, to my knowledge, included specific discussions on improving the effectiveness of the enforcement mechanisms available through the judicial and administrative systems.

I was pleased to learn that for the first time an attorney from USPTO's Office of Enforcement, who is fluent in Mandarin, has been placed as a full-time attaché at our embassy in China to help make sure that China keeps its commitments on intellectual property protection. I also understand that the USPTO maintains a team of China intellectual property rights experts here in Washington and has conducted many training programs over the past several years for Chinese intellectual property officials on the importance of intellectual property protection and enforcement. In recent months, Commerce has devoted considerable energies to improving the criminal IPR enforcement environment. The Department has also worked with the courts, police, judges and other officials in addressing relevant IPR concerns and business issues.

If confirmed, I would certainly encourage further consultations, training sessions and dialogue with Chinese officials.

#### **Diversion of User Fees From the Patent and Trademark Office**

*Question 1.* The general sense of the high-tech community is that the United States patent approval system is under-funded and over burdened. Last year, the creators of intellectual property—businesses, universities, and individuals, said that they would be willing to pay higher fees on patent applications, as well as change how these fees are structured, if the Administration and Congress would promise not to divert these fees to fund unrelated government programs at the Department. Since 1992, approximately \$700 million in PTO user fees have been diverted to unrelated programs. While the FY05 omnibus appropriations bill includes provisions that allowed the PTO to raise its fees over the next two years, and change the way the fees are structured, it did not incorporate language that would once and for all end patent-fee diversion. Is it your position that patent fees should be used only for their intended purpose at the Patent and Trademark Office and not diverted for other purposes within the Department?

Answer. My understanding is that Secretary Evans and this Administration have worked to provide USPTO full access to its fees and that the recently enacted FY 2005 budget gives the USPTO access to most if not all of the fees it expects to collect. The USPTO plays a critical role in our intellectual property system and economy. If confirmed, I would work with my colleagues within the Administration and the Congress to help ensure that the USPTO receives full access to its fees in the future.

*Question 2.* Can you assure me that, if confirmed, you will do everything in your power to ensure that user fees received by the Patent and Trademark Office will not be diverted for other purposes within the Department in budgets you submit to Congress?

Answer. Consistent with my answer to the above question, if confirmed, I would work with my colleagues within the Administration to help ensure that the USPTO receives full funding in the future. My understanding is that the USPTO submits its proposed budget directly to the Office of Management and Budget for consideration.

*Question 3.* What additional plans do you have to ensure high-quality patent search and examinations, to reduce the time it takes to award patents, and to improve the overall cost efficiency of the Patent and Trademark Office?

Answer. My understanding is that the USPTO, at Congress' direction, developed a 21st Century Strategic Plan not only to increase productivity in processing time but also to enhance quality and promote electronic filing and processing. The Plan has the backing of a wide range of businesses, industries and trade groups. If confirmed, I would work with the Director of the USPTO to ensure that the initiatives in the plan are fully funded and implemented in a timely manner.

*Question 4.* The increase in user fees will allow the Patent Office to hire a significant number of new patent examiners. As the fee increase is for only two years, will you have to come back and ask Congress to make the fee increases permanent?

Answer. My understanding is that implementation of the majority of the USPTO's Strategic Plan's initiatives, including the hiring and training of patent examiners, is contingent upon adoption of changes in the fee system that are contained in the United States Patent and Trademark Fee Modernization Act. Effective implementation of the USPTO's strategic plan requires that the USPTO have certainty as to future revenues. If confirmed, I would work with Congress to make those adjustments permanent.

#### **Imports of Cement From Mexico Covered By U.S. Antidumping Orders**

*Question.* One of our most longstanding trade issues involves imports of cement from Mexico, which are covered by a U.S. antidumping order. This case is a perfect example of why we need strong enforcement of laws against unfairly priced imports. Unlike U.S. cement producers, Mexican producers have a home market in Mexico that is closed to any outside competition, allowing them to earn high profits by charging among the highest cement prices in the world to Mexican customers. They use their high profits on home market sales in Mexico to subsidize their exports to the United States at unfairly low prices. Without an antidumping order in place, imports from Mexico would injure U.S. producers and impede investment in new cement capacity in the United States. Can you assure me that, under your leadership, the Department of Commerce will be aggressive in enforcing U.S. laws against unfairly traded imports, including those from Mexico?

Answer. I have been informed that the antidumping duty order on cement from Mexico has been in place for many years, and that the Commerce Department has conducted numerous annual administrative reviews of the order. These reviews have helped ensure that the amount of dumping occurring is measured in a timely manner, and that the appropriate amount of duties are collected so that these imports do not continue to injure domestic producers. If I am confirmed as the Secretary of Commerce, I will ensure that the Department continues to work vigorously to ensure that domestic industries are not injured by unfairly traded imports, including imports of cement from Mexico.

#### **Hollings Manufacturing Extension Partnership**

*Question 1.* The manufacturing sector is important to my state's economy. Washington State has lost nearly 20 percent of its manufacturing workforce since February 2001. As you know, last March the Department announced the President's Manufacturing Initiative and released a report with 63 recommendations. One recommendation called for "support of a newly coordinated Manufacturing Extension Partnership (with other Department programs) and creation of a national virtual network of centers of manufacturing excellence," but was silent on funding program-funding level.

For over 15 years, the MEP program nationally has provided small and medium sized manufacturers with the help they need to make them more globally competitive. In Washington, the Washington Manufacturing Services (WMS) provides expertise and services tailored to meeting the needs of our smaller manufacturers—from introducing lean manufacturing to suppliers to the aerospace industry in the western part of the state to improving the efficiency of food processors in the eastern part of the state. In 2003, Washington Manufacturing Services completed 168

projects, increasing sales of its clients by over \$17 million and reducing their costs by over \$11 million. This is a program that works for Washington's smaller manufacturers. Can you assure me that, if confirmed, you will do everything in your power to ensure full funding for this important and successful program?

Answer. As someone who has spent his professional career with a U.S. manufacturer, I can assure you that I know how vital the role manufacturers large and small play in our economy. The national manufacturing network of the Hollings Manufacturing Extension Partnership is assisting our nation's small manufacturers and seeks to contribute to a strong economy. I will work with the members of the Commerce and Appropriations Committees to ensure that small manufacturers have access to the needed resources which allow them to remain competitive.

*Question 2.* What are your plans to coordinate the Hollings MEP program with other Department programs?

Answer. I have been informed that the Hollings MEP is working with other Commerce agencies as well as with other Departments that may be interested in the program's national manufacturing network. If I am confirmed as Secretary, I would support greater collaborations with other Departments which can use MEP to benefit their mission.

*Question 3.* What are your plans to create a national virtual network of centers of manufacturing excellence?

Answer. Since I have not yet been confirmed, I am not yet part of the budget process, so I cannot speak to any plans for a "virtual network of centers." I am aware of the importance of manufacturing to the economy. If confirmed as Secretary of Commerce, I will support our nation's manufacturers in their efforts to become more competitive and productive in the global marketplace by ensuring that they have access to technical and information resources.

### **Digital Divide**

*Question 1.* This past fall, the NTIA in collaboration with ESA, released "A Nation Online: Entering the Broadband Age." The report describes the results of NTIA's most recent in a series of biennial surveys on our Nation's access and use of the Internet and broadband. The report acknowledged that there remains a digital divide between urban and rural populations with respect to broadband connections, but was silent on whether there remains a digital divide with respect to race and ethnicity. Buried in Appendix Table I there are statistics that would indicate a digital divide remains with respect to race and ethnicity. While 65 percent of non-Hispanic whites use the Internet from any location, only 45 percent of blacks and 37 percent of Hispanics do. Additionally, there is roughly twice as many non-Hispanic whites living in households with broadband (25.7 percent) as there are black and Hispanic households (13.9 percent and 12.6 percent respectively). Given these survey results, I have serious doubts whether President Bush's goal that all Americans should have universal, affordable access to broadband technology by 2007 will be met. Over the years, the Department has funded these biennial surveys through the Technology Opportunities Program (TOP).

As you know, TOP promotes the use of advanced telecommunications and information technologies to improve the provision of education, health care, or public information in the non-profit and public sectors. Unfortunately, the Administration did not request nor did the Congress provide any new appropriations for TOP in 2005. Funding from TOP also funded the biennial survey and reports. With the TOP ending in FY 2004, it is not clear that the Department intends to fund future surveys and reports. Do you believe there remains a digital divide for access to dial-up and broadband Internet with respect to race and ethnicity? With respect to rural and urban populations?

Answer. It is my understanding that Internet usage and broadband usage have grown dramatically since President Bush took office. I have been advised that in the four years since the President took office, broadband subscribership has grown by over 300 percent, with the number of high speed lines growing from 9.6 million to 32 million, and today more Americans access the Internet through broadband than dial-up connections. The President has also worked to harness the forces of market competition to lower the costs of Internet access. For example, the price of computers themselves have fallen substantially to bring the Internet within the financial reach of most households. I have also been informed that while there may be some differences in use of the Internet across some demographic and geographic groups, this gap is closing rapidly and there has been tremendous growth in Internet and broadband usage across all racial, ethnic, and geographic groups.

*Question 2.* What do you see as the federal role in reducing these so called digital divides?

Answer. I share the President's vision of the role of government in addressing these issues. The President has stated that "[t]he role of the government is not to create wealth; the role of the government is to create an environment in which the entrepreneur can flourish, in which minds can expand, in which technologies can reach new frontiers." If confirmed, I would look forward to working with the President to sustain an environment in which we can continue strong growth in Internet and broadband usage across all demographic and geographic groups.

As you note in your question, President Bush has articulated a bold new vision for broadband in America by setting a national goal for universal and affordable access to broadband by 2007. I think that this is a very important goal, both for the Nation and on a global scale, in terms of our nation's competitiveness, and it is one that I wholeheartedly endorse and fully support.

*Question 3.* What will be the Department's role in achieving the President's stated goal that all Americans should have universal, affordable access to broadband technology by 2007?

Answer. If confirmed, I would look forward to working with President Bush to ensure that we create and sustain an economic and regulatory environment in which broadband can continue to grow. I would work with the President to ensure that proper fiscal policies, such as the moratorium on Internet taxes, which I have been informed that the President signed into law, are in place to promote broadband. I have been advised that the Department of Commerce plays an important role in the management of spectrum and development of spectrum policy. Should I be confirmed, I would continue the Administration's efforts to ensure that adequate radio spectrum is available for wireless broadband services and work to ensure that overly burdensome regulations do not impede the development of new broadband technologies, in order to make broadband service available to more Americans at affordable prices.

*Question 4.* Can you assure me that, if confirmed, you will do everything in your power to continue funding the biennial surveys and reports on our Nation's Internet and broadband usage.

Answer. I have been informed that the Department of Commerce has produced reports on Internet and broadband usage. If confirmed, I will be pleased to review the budget and get back to you on this matter. I have been advised that the preparation of the President's Fiscal Year 2006 budget request is nearing completion and as I stated in the hearing I am not willing to commit to promises that I cannot keep as I have not been involved in the Fiscal Year 2006 budget to date. Should I be confirmed, I will be actively involved in the Department's budget and determining how the Department can best carry out its mission.

#### **Unimpeded Market Access for U.S. Software Products in China**

*Question.* As you know, China has a huge trade surplus with the United States. China's Premier has stated that China will reduce this surplus by importing more American products. Yet it appears that the Chinese government is about to throw up a new barrier to market access for one of our most competitive exports by requiring government ministries to purchase only Chinese software. I understand that China is on the verge of releasing government procurement regulations that will bar most U.S. software products from the government market. What is the Administration's position on this issue, and what is its strategy for addressing it?

Answer. I understand that the Administration has been monitoring China's development of its software government procurement policy since the issue emerged in early 2003, and has been actively engaging Chinese leadership to encourage China to allow U.S. companies to continue to provide software products and services. Secretary Evans intends to raise this issue with senior Chinese leaders when he travels to China during the week of January 10. This is a priority issue for the Administration and, if confirmed, I will continue to press the Chinese on this issue at senior levels.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
CARLOS M. GUTIERREZ

*Question 1.* In your view, have the policies of the Bush administration contributed to our huge trade deficit? Do you view the trade deficit as a problem that government has any role in correcting?

Answer. No, I do not believe the policies of the Bush Administration contributed to our huge trade deficit. The trade deficit is a symptom of several developments in the world economy. For example, the trade deficit certainly reflects large disparities in the growth rates of the economies of the United States and its major trading

partners. The strong U.S. economy has attracted imports, while slow growth in Japan and Europe has impeded growth in U.S. exports. Encouraging growth abroad and breaking down foreign barriers to U.S. exports, by negotiating new trade agreements and enforcing existing agreements, are important actions for the Government to continue to pursue. In addition, if Americans increase national savings, that would reduce our reliance on foreign sources of capital to fund U.S. investment. The Administration's recommended policies to increase national saving—by reducing the budget deficit and expanding tax-deferred savings accounts—can play an important role in reducing the trade deficit.

*Question 2.* During President Bush's first term, no net jobs were created. Why did the tax cuts fail to spur payroll employment? Doesn't the policy need to be changed?

Answer. As I experienced firsthand at the Kellogg Company, the U.S. economy was affected by an unusual series of powerful shocks over the past four years—including the collapse of the high-tech stock bubble, the terrorist attacks of 9/11, corporate accounting scandals, and the wars in Afghanistan and Iraq. Those were considerable headwinds for the U.S. economy. Fortunately, the Administration's tax relief—along with aggressive action by the Federal Reserve—helped to moderate the impact of these shocks. As a result, the recent recession was the mildest on record—and U.S. economic growth has been faster than any other G-7 country since the fourth quarter of 2000. Total employment as of the most recent reports in fact shows a net gain in employment since January 2001. In addition, I understand that according to the payroll survey, the U.S. economy has created 2.6 million new jobs over the past 16 months and the unemployment rate is 5.4 percent.

*Question 3.* Many observers on both sides of the aisle acknowledge that the role of cabinet secretaries in this Administration, particularly when it comes to economic policy, has been to cheerlead rather than to make policy. As a relative outsider to a very insular group of people, how will you make your voice heard?

Answer. I plan to be actively involved in policy and decisionmaking that affects the Department of Commerce and the business community. I believe that my experiences running a business, hiring people, and selling products in the United States and overseas, will make mine a valuable voice advising the President. I will work closely with my colleagues in the Cabinet and Members of Congress to continue policies that foster the conditions for businesses and the economy to grow.

*Question 4.* What business dealings did Kellogg's have with Cuba while you were CEO?

Answer. Kellogg Company did not do business with Cuba while I was the Chief Executive Officer. In 2002, our Caribbean division considered participating in a Cuba Trade Show, but decided not to and no Kellogg Company employees participated.

*Question 4a.* Do you believe sanctions against Cuba should be lifted?

Answer. No, I fully support the policy of this Administration as established under the Cuban Democracy Act and other laws. The Administration has indicated that it is prepared to reduce sanctions against the Cuban government once Cuba has a transition government that is committed to the establishment of a fully democratic, pluralistic society. I understand the Administration has stated that the embargo is the best leverage to promote such change, and I agree.

*Question 5.* In September of 2004, Kellogg's was cited in one of the five worst cases of corporate lawsuit abuse by the Foundation for Taxpayer and Consumer Rights. According to the Foundation, Kellogg's engaged in a multi-year harassment campaign against a small business, Toucan Golf, just because the Toucan bird was also used to sell Kellogg's Froot Loops. As Secretary of Commerce, you will have jurisdiction over the Patent and Trademark Office, which has a large role in resolving such disputes. How can we be assured you'll treat small companies fairly in disputes with giant corporations?

Answer. As you know, the Secretary of Commerce has responsibility for many agencies, from the United States Patent and Trademark Office (USPTO) to the Minority Business Development Agency. If confirmed, I assure you that I will take all of these responsibilities seriously and make decisions in a fair and impartial manner, regardless of the size or type of business involved in any particular matter.

The litigation mentioned above is not an action involving the Department of Commerce; it is an action between two private parties who have taken their dispute to the U.S. court system. The Department does not play a role in such matters. To the extent that the Department, through the USPTO, does hear disputes between private parties or ex parte appeals, its proceedings are fully transparent and subject to the rule of law, case precedents, and court review.



*Question 6.* As you know, the Commerce Department has jurisdiction over the National Oceanic and Atmospheric Administration. I have introduced legislation to protect deep water corals. "Deep water corals" make up two-thirds of the ocean's corals and provide vital fishery habitats, but they are being destroyed by bottom trawling. The U.S. Commission on Ocean Policy has made several recommendations regarding the protection of deep water corals. If confirmed, would you work to get these recommendations implemented?

Answer. As one part of the Administration's response to the U.S. Commission on Ocean Policy's report, the *U.S. Ocean Action Plan*, the President tasked the newly formed Committee on Ocean Policy with determining which agency or agencies should take the lead in coordinating the Federal Government's research and science activities related to deep-sea corals. I understand that the role of deep-sea corals in marine ecosystems, is an important emerging issue. I will, if confirmed, ensure that the Department, including NOAA, works with you and your staff and other Members of Congress on this important natural resource issue. I expect the Committee on Ocean Policy and its subordinate bodies will be taking a very careful look at this issue.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO  
CARLOS M. GUTIERREZ

#### **Foreign Trade Barriers on Scrap Exports**

*Question.* Concerns about foreign trade barriers on the export of steel scrap have been brought to my attention. Specifically, I have been advised that the barriers on the export of steel scrap may be harming our manufacturing economy, including U.S. steel consumers, U.S. steel producers, and the manufacturing jobs associated with these companies. Scrap prices have tripled in the last two years, and while U.S. steel scrap exports continue to increase, our trading partners like Russia, the Ukraine, and Korea continue to restrict or even prohibit their own scrap exports to the detriment of U.S. steel consumers and producers. Today, nearly half of all scrap exported by the United States goes to countries that themselves maintain export taxes or other barriers on steel scrap. I am concerned that the reported barriers on steel scrap trade may constitute unfair subsidies that are harming our manufacturing economy. If confirmed as Secretary of the Department of Commerce, what will you do to address this crisis and to level this fundamental imbalance in the global steel scrap market?

Answer. I share your concerns that foreign government restrictions on scrap exports are a problem for steel producers and consumers and their employees in the United States. I am especially concerned about the export duties imposed by Russia and Ukraine.

I understand that Secretary Evans worked actively with Ambassador Zoellick to encourage these countries to remove these duties as soon as possible. In the World Trade Organization (WTO) accession negotiations with both countries, the Administration is seeking the elimination of the duties on steel scrap. I understand that the Commerce Department believes that the Administration's advocacy has helped keep Russia from raising further barriers to scrap exports requested by consumers there. I have been advised that the Korean government, which began monitoring scrap exports early in 2004, stopped doing so on September 30, 2004.

I understand the Administration continues to monitor the scrap and steel price situation carefully, and raises the issue of foreign government export restrictions on steel raw materials in multiple international fora. Moreover, I have been advised that Commerce, working with USTR and the governments of Canada and Mexico, developed a joint NAFTA governments' statement for the January 12-13, 2005 OECD Global Steel Conference, urging governments of steel-producing countries to work with us to eliminate steel raw material export duties and restrictions.

If confirmed as Secretary of Commerce, I will continue Commerce's close collaboration with USTR to seek the removal of foreign government restrictions that contribute to increased prices for steel raw materials for U.S. manufacturers.

#### **Assessment of the Commerce Department's Application of Duty Drawback**

*Question.* I understand that the Department of Commerce has recently changed their practice as to granting duty drawback adjustments to U.S. price in anti-dumping investigations and reviews. Where a country imposes tariffs on imported products used as inputs in domestically sold products, and which are not collected on exported products, the statute directs the Commerce Department to adjust for the inclusion of these duties in costs and prices of the home market merchandise.

However, I understand that Commerce has begun granting these adjustments in cases in which the subject foreign producers use no imports as inputs and pay no duties for products sold in the home market. Concerns have been raised that this contradicts a recent Court case, *Hevensa v. U.S.*; has resulted in low or no margins and increased dumped imports from these countries; and rewards countries for having high tariffs. As a result, the domestic industry has suffered economic injury and layoffs have occurred.

Can you consult with the appropriate Department personnel and respond to me in writing regarding these actions at the Department?

Answer. I have been advised that there has been no change in the Department's practice on granting adjustments for duty drawback and that the Department's practice is based on the language of the statute. I further understand that in the *Hevensa* case, the party at issue failed to satisfy the two-part test that the Department has traditionally applied and that the U.S. Court of International Trade has consistently upheld. I have been told that there has been no departure from that test or from relevant court precedent. One requirement of the two-part test is that there be sufficient imports of raw materials to account for the duty drawback. I understand the Department has not begun granting duty drawback adjustments where there were no imports of raw materials. Such a change to the Department's practice would require a change in the law. The Department continues to grant adjustments only if the respondent satisfies the court-sanctioned two-part test.

