

**DEPARTMENTS OF COMMERCE, JUSTICE, AND
STATE, THE JUDICIARY, AND RELATED
AGENCIES APPROPRIATIONS FOR FISCAL
YEAR 2004**

THURSDAY, MARCH 20, 2003

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10 a.m., in room S-146A, the Capitol,
Hon. Judd Gregg (chairman) presiding.
Present: Senators Gregg, Stevens, Hollings, and Kohl.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

STATEMENT OF HON. DONALD L. EVANS, SECRETARY OF COMMERCE

Senator GREGG. Let me formally welcome you, Mr. Secretary. We appreciate your coming by to tell us what is happening at the Commerce Department. The floor is yours.

Did you have a statement or anything?

Senator HOLLINGS. No, thank you.

Secretary EVANS. Thank you, Mr. Chairman. If you do not mind, Mr. Chairman, for the record let me go ahead and read a brief edition of what I would like to submit to the record in my written remarks.

Mr. Chairman, Mr. Hollings, members of the committee, I am pleased to be here again to present the President's fiscal year 2004 budget request for the Department of Commerce. With your permission, I would like to briefly highlight some of the key components of our budget and submit my written testimony for the record.

A vibrant private sector is essential to American jobs and security. One hundred years ago, Congress created the Department of Commerce to promote American industry and business and economic opportunity for our citizens. This is the nexus of our diverse programs in trade, technology, entrepreneurship, and environmental stewardship.

In developing the budget request, I have carefully followed the President's directive to focus on four priorities. As you know, making a budget entails difficult decisions and resources are limited. Choices have to be made. Clearly, these troubled times of war and attacks on our way of life demand responsible, targeted spending. The President's total budget request for the Department of Com-

merce is \$5.4 billion. This budget provides for the continued funding of key Commerce programs, while focusing resources on four critical priorities: fostering economic growth, contributing to homeland security, advancing science and technology, and upgrading facilities.

To generate jobs and economic growth, government and business decisionmakers need the best possible economic information. An additional \$5.4 million is requested for the Bureau of Economic Analysis. These funds are required to improve the quality and timeliness of GDP and economic accounts data. As you know, two-thirds of the revisions in the last three GDP annual releases were due to lack of information.

For the Census Bureau, which monitors the Nation's social and economic development, we are asking \$9.3 million in increased spending. The money is for improved data collection and methods for measurement of the important services sector and continued planning for the 2010 census.

The President and I are very concerned about the economic security of America's workers. A proposed increase of \$13.8 million for economic development administration will assist communities severely impacted by plant closures and layoffs.

To meet homeland security needs, the President is requesting an additional \$2.3 million for the Bureau of Industry and Security. The funds will be used to strengthen export controls on the dual use of goods and technologies that would strengthen the military capabilities of our adversaries.

The NOAA budget request includes \$5.5 million to expand NOAA weather radio to a truly national all-hazards warning network. The funding will allow first responders and emergency managers direct access to the network to transmit all hazard messages, and to further strengthen homeland security, we are requesting \$10.3 million for NIST. As you know, NIST is investigating the collapse of the World Trade Center buildings. Using lessons learned, we want to help develop new standards for cost-effective safety and security of buildings. Additionally, the funds will be used to test performance standards for biometric systems used to identify visitors to our country and to test radiation standards.

To support technology innovation and provide for intellectual property protection, the Department is working to eliminate the practice of using USPTO revenues for unrelated Federal programs. Making more fees available sooner will enable the agency to increase the quality of patents and trademarks issued. Because America's leadership in science and technology has a direct impact on our economic and homeland security, we also are requesting \$9.2 million for NIST research in such emerging areas as nanotechnology, quantum computing, and health care quality assurance.

We also include a \$16.9 million increase for NOAA to study areas of scientific uncertainty in climate change, and an additional \$29.8 million increase to modernize fishery management to better protect this \$50 billion industry.

Mr. Chairman, the scientists, engineers, and support staff in our Commerce laboratories are world-class. Unfortunately, in some cases, the facilities they occupy are not. For example, the NIST fa-

cilities in Boulder, Colorado were built in the 1950s under the Eisenhower administration. I have seen them. They lack adequate temperature controls. They suffer power outages and spikes. All of this adversely affects our vital research. The fiscal year 2004 budget request includes funding to renovate the NIST Boulder facilities and to bolster safety and security in NOAA's facilities and throughout the Department.

One last comment. As I said earlier, these are troubled, threatening times for our Nation, and we have had to make some tough choices affecting some very good programs. To enable us to focus on new economic and homeland security needs, this budget phases out funding for the Advanced Technology Program and the Technology Opportunities Program. It includes funding only for those manufacturing extension partnership centers in operation for less than 7 years, as the original law specifies, and it suspends funding for the public telecommunications facilities planning and construction.

I know that there will not be universal agreement about these choices. There are members of this committee and other Members of Congress who will have different views on priorities and on funding. Let me say here, I sincerely respect those views and those judgments, and I look forward to working with you and working through the budget process with you on the many issues affecting this Department.

Mr. Chairman, we appreciate the support of the committee and the support of the committee members that provided for the Commerce programs and initiatives in the past. This budget is focused on helping our Nation meet the challenges it faces in these difficult times.

PREPARED STATEMENT

I welcome your comments, and will be pleased to answer any questions you may have. Thank you, Mr. Chairman.

[The statement follows:]

PREPARED STATEMENT OF DONALD L. EVANS

Thank you for the opportunity to appear before you to present the Department of Commerce's fiscal year 2004 budget request. Our focus is on funding the core mission of the Department and its bureaus. As you know, the Administration faces great challenges in its commitment to fight and win the war on terrorism, while at the same time harnessing the resources of the Federal government to protect the lives and safety of all Americans. I hope to fully utilize the resources of the Department of Commerce not only to provide for the physical security of the Nation, but also to work with other agencies and the private sector to promote economic security.

The Commerce Department's budget request of \$5.4 billion supports the President's budget plan to focus resources to strengthen our core Commerce activities. In particular, our request supports the Administration's economic revitalization and homeland security priorities and continues our commitment to fund important work of the Department to provide infrastructure for technological innovation and to observe and manage the Nation's oceanic and atmospheric environment. To complement the digital convergence in the private sector, we will be proposing legislation to modernize the technology and telecommunication entities of the Department.

The Commerce Department undertakes a wide range of activities designed to stimulate growth of the nation's economy. Commerce gathers and develops economic and demographic data for business and government decision-making; helps American firms and consumers benefit from open and fair international trade; issues patents and trademarks that support innovation; helps set industrial standards and

performs cutting-edge scientific research; forecasts the weather to improve public safety; and promotes sustainable stewardship of the oceans, including ocean fisheries.

This diversity of activities is reflected in Commerce's five strategic goals:

- Foster the Nation's economic growth.
- Secure our homeland and enhance public safety.
- Upgrade the Department's facilities, infrastructure, and safety.
- Improve and streamline the Nation's fishery management system to better meet commercial, recreational, and conservation objectives.
- Implement the Administration's Climate Change Research Initiative to reduce present uncertainties in climate science, and support policy and management decisions to benefit public safety and quality of life.

To enhance these activities, resources will be shifted from various lower priority programs.

ECONOMIC GROWTH

Economic growth is a central theme for the President and for the Department of Commerce's bureaus for fiscal year 2004. The Economics Statistics Administration's Bureau of Economic Analysis (BEA) supplies the nation's key economic statistics, including gross domestic product (GDP), which are crucial ingredients for business and government decision making. BEA seeks to strengthen the understanding of the United States economy and its competitive position by providing accurate economic accounts data in a timely and cost-effective manner. BEA's request includes a \$5.4 million increase to accelerate the release of major economic estimates, to incorporate new international economic data classifications, and to acquire real-time data to improve the quality and timeliness of economic statistics.

In conjunction with BEA's request, the Census Bureau's budget request includes an increase of \$39.1 million in current economic and demographic statistics to fill gaps in data collection, to improve methodologies for collecting that information, and to improve the measurement of the Nation's service sector. The Census Bureau's budget for fiscal year 2004 also includes funding to process and to review data from the Economic Census, and to continue planning and designing the 2010 Decennial Census.

The International Trade Administration (ITA) is responsible for assisting the growth of export businesses, enforcing U.S. trade laws and agreements, and improving access to overseas markets by identifying and pressing for the removal of trade barriers. ITA's budget for fiscal year 2004 focuses on promoting U.S. exports and enhancing the competitiveness of U.S. businesses in the global economy, by fighting unfair foreign trade barriers and by negotiating and implementing multilateral and bilateral trade agreements.

The Economic Development Administration (EDA) helps communities across the nation create economic opportunity by promoting a favorable business environment to attract private capital investments and higher-skill, higher-wage jobs. EDA accomplishes this principally through infrastructure investments and capacity building. A program increase of \$13.8 million is requested for EDA to assist communities that demonstrate a high level of economic distress.

The Minority Business Development Agency (MBDA) will continue to focus on accelerating the competitiveness and growth of minority-owned businesses by closing the gap in economic opportunities and capital access. MBDA is transitioning from an administrative agency to an entrepreneurial organization, and is driven by entrepreneurship and innovation. MBDA will continue to provide minority business development services, through its Minority Business Information Portal and local Business Development Centers.

For more than one hundred years, the Nation has relied upon the Technology Administration's National Institute for Standards and Technology (NIST) for scientific and technical expertise to promote economic growth, commerce and trade, and national security. The quality of NIST work is exemplified by the awards in 1997 and 2001 of the Nobel Prize, the world's ultimate recognition in science, to two NIST scientists—Bill Phillips in Gaithersburg, Maryland, and Eric Cornell in Boulder, Colorado. The work they are leading in super-cold matter and the strange nature of quantum mechanics is driving whole new areas of science and technology, from atomic clocks that do not gain or lose more than a billionth of a second in thirty years, to the potential for unimaginably powerful computers based on individual atoms, to new forms of telecommunications that provide the ultimate in information security.

The President's request includes a total of \$340.8 million for the NIST Laboratories to strengthen the national measurements and standards infrastructure that

enables innovation and economic growth. The request will enable NIST to expand its work in the areas of nanotechnology, advanced information technology, and health care diagnostics—all areas with broad economic impact.

NIST will expand its program in nanotechnology, the so-called “tiny revolution” in technology, (total request of \$62 million). Nearly all industrial sectors plan to exploit this emerging technology, and most of these plans call for appropriately scaled measurements and standards, which is NIST’s specialty. NIST closely coordinates its nanotechnology work with other Federal agencies through the President’s National Nanotechnology Initiative, or NNI. NIST appropriately has the lead in providing the measurements and standards infrastructure for the NNI.

The request also includes \$7.3 million to build on NIST’s world-class expertise in quantum computing and communications. This effort, with teams led by NIST’s two Nobel laureates, is developing revolutionary means of making calculations much more quickly than traditional electronic computers will ever be able to do. NIST scientists already have made the working elements of quantum computers based on individual atoms.

The fiscal year 2004 Budget also requests funding to allow NIST to strengthen its programs supporting health care diagnostics, which not only improve the quality of health care, but also ensure that U.S. manufacturers can compete fairly in the \$20 billion global market for these products. The request includes a total of \$17.1 million to strengthen this effort. Consistent with the President’s emphasis on shifting resources to reflect changing national needs, the President’s fiscal year 2004 Budget proposes terminating the Advanced Technology Program (ATP) and requests a total of \$27 million for administrative and close-out costs. The fiscal year 2004 President’s Budget also proposes maintaining the fiscal year 2003 policy of significantly reducing Federal funding for the Manufacturing Extension Partnership (MEP), for which the budget requests \$12.6 million. These programs have been well-run, but the scarce resources are needed for higher priority programs. The budget request focuses on NIST’s core mission of measurements, standards, and laboratory research, rather than its extramural programs, by providing the 21st century facilities the NIST Laboratories need for success. Investment of limited NIST resources in the Laboratory programs and facilities will have the greatest impact on fostering innovation that leads to economic growth.

The U.S. Patent and Trademark Office (PTO) request will support the second year of the agency’s strategic plan to enhance the quality of products and services and to keep pace with workload growth by promoting e-government activities and reducing pendency. We understand that intellectual property protection is paramount to the Nation’s ability to innovate and move products into the marketplace. Concurrently, Commerce has recently proposed legislation to restructure PTO fees to better align the fee system with the work undertaken by PTO. The Department is also working to eliminate the practice of using USPTO revenues for unrelated Federal programs so that a greater share of the applicants’ fees are available to the agency in the year they are collected.

HOMELAND SECURITY

The Bureau of Industry and Security (BIS) seeks to advance U.S. national security and foreign policy interests by regulating exports of critical goods and technologies that could be used to damage those interests, while furthering the growth of legitimate U.S. exporters to maintain our economic leadership. The fiscal year 2004 budget includes a \$5.6 million increase for BIS to address vulnerabilities in regulating exports of critical goods and technologies. This budget increase will enable BIS to strengthen export enforcement with additional agents and capabilities and to enhance the bureau’s analysis of U.S. export control regulations to ensure they reflect the dynamics of 21st century market and technological changes.

We request an increase of \$13.3 million (for a total of \$38.7 million) for NIST to address key national needs for homeland security measurements, standards, and technologies. This request will strengthen NIST’s portfolio of more than 100 projects that address homeland security technology needs.

Included in this request is an increase of \$7 million (for a total of \$10.9 million) as part of a program to use lessons learned from the NIST-led investigation of the World Trade Center (WTC) collapse to make buildings, occupants, and emergency responders safer from terrorist attacks on buildings and other building disasters. NIST has the unique combination of technical expertise in a broad range of building and fire sciences and lengthy experience working with the building and emergency responder communities to provide the Nation with the maximum benefit from the WTC investigation and associated research.

The NIST homeland security request also includes an increase of \$5.3 million (for a total of \$26.8 million) to develop the measurement infrastructure needed to detect nuclear and radiological (“dirty bomb”) threats, to improve the use of radiation such as x-rays and other imaging techniques to detect concealed terrorist threats, and to use radiation safely and effectively to destroy biowarfare agents such as anthrax.

Our homeland security request also includes a total of \$1 million to develop standards and test methods for biometric identification systems, used to positively identify the approximately 20 million non-citizens who enter the United States each year or apply for visas. This will enable NIST to carry out the mandate of the USA PATRIOT Act, which requires NIST to develop technology standards for biometric identification, recognizing NIST’s long history of expertise in this area.

Ensuring public safety remains a priority of NOAA and its National Weather Service (NWS). The budget request for NOAA includes an increase of \$7.7 million (for a total of \$65.1 million) to enhance homeland security. This increase includes new funding in the amount of \$5.5 million to support a scaled upgrade of the current NOAA Weather Radio (NWR) operation to an All Hazards Warning Network. This upgrade includes systems to standardize and automate receipt and dissemination of non-weather emergency messages. The Administration is also requesting \$2.2 million in new funding for emergency preparedness and safety to improve physical security at 149 NWS facilities to prevent unauthorized individuals from entering and/or tampering with NWS property.

The fiscal year 2004 budget request also includes an increase of \$3.7 million to secure core aspects of ITA’s worldwide communications network, to defend against unauthorized access, and to create recovery mechanisms should damaging events occur.

FACILITIES, INFRASTRUCTURE AND SAFETY

The fiscal year 2004 budget strengthens key Commerce programs that provide the infrastructure that enables U.S. businesses to maintain their technological edge in world markets. Important priorities for fiscal year 2004 are to upgrade NIST’s and NOAA’s facilities and laboratories and begin consolidating PTO facilities. The NIST budget request includes \$36.2 million to address inefficiencies and safety problems at its facilities in Boulder, Colorado and Gaithersburg, Maryland. Valuable research continues to be lost or interrupted by power outages, spikes, and fluctuations. This budget increase will enable NIST to protect critical research data from degradation, and to maintain employee safety and security. The budget also requests \$8.2 million to equip, maintain, and operate NIST’s Advanced Measurement Laboratory, and to fund time scale and time dissemination backup elements.

The budget includes a \$47.7 million program increase for NOAA to address safety and security concerns associated with its buildings, aircraft, and ships, to upgrade weather forecast offices in the continental United States, Alaska and the Pacific Islands, to modernize the primary NWS telecommunications gateway, to continue construction of the NOAA Satellite Operations Facility in Suitland, Maryland, and to plan the replacement of the World Weather Building to be co-located with a major research institution. During fiscal year 2004, NOAA will also continue the tri-agency acquisition (with DOD and NASA) of the next-generation polar-orbiting satellites, and systems design and development for the next-generation geostationary satellite series (GOES R).

In fiscal year 2004, the PTO will begin relocating its facilities from 18 buildings in Arlington, VA into a consolidated 5-building campus in Alexandria, VA with an initial move into two of the buildings this December. The new consolidated facility is designed to meet the PTO’s operational needs, provide flexibility to future program or process changes, and fully comply with current fire, life-safety and accessibility guidelines. The budget includes a \$44.6 million program increase for construction inflation costs that occurred during the project delay generated by litigation and maintaining dual rent and simultaneous operations during the eighteen-month move period.

To strengthen the spectrum management capabilities of the National Telecommunications and Information Administration (NTIA), to meet the increasing demand for Federal wireless communication systems and services, the Department of Commerce requests an increase of \$1 million for NTIA to establish a paperless system for spectrum issue resolution, certification, satellite coordination and frequency authorization, and to intensify research aimed at expanding spectrum utilization through greater understanding of radio frequency interference. The fiscal year 2004 budget also proposes to suspend the Public Telecommunications Facilities Planning and Construction (PTFPC) grants, a program reduction of \$41.1 million for NTIA during fiscal year 2004. Up to \$80 million in funding for digital conversion grants

for public television stations can be made available from within the Corporation for Public Broadcasting (CPB) \$380 million appropriation, which has already been enacted. The fiscal year 2004 President's Budget also proposes to terminate the Technology Opportunities Program (TOP) as funding within the Department of Commerce has been redirected to higher priority programs.

GSA, in coordination with DOC, is planning a major renovation of the 70-year old Herbert C. Hoover Building. This initiative will restore the great building to its original condition, bring it up to current code requirements, address the realities of post 9/11 security needs and extend the useful life of this historic building. It is essential to the optimal stewardship of the taxpayers money that we establish a Renovations Office in fiscal year 2004. In addition, the Department will focus on safety issues by instituting a new Occupational Safety and Health Program targeted toward preventing accidents and injuries through incident tracking and proactive prevention.

FISHERIES

NOAA's budget request for fiscal year 2004 contains a \$29.8 million program increase to modernize and improve the nation's fishery management system. Specifically, the requested funding addresses the need to improve socioeconomic data collection, to reduce bycatch in targeted fisheries, to increase fishery observer coverage, to streamline the current fisheries regulatory process, and to implement the Columbia River Biological Opinion effectively. New funds will also increase the understanding of the effects of climate change on marine and coastal ecosystems, and build a national observer program for the collection of high-quality fisheries and environmental data. The fiscal year 2004 budget includes a reduction of \$40 million for the Pacific Salmon Treaty for which all U.S. obligations have been met.

CLIMATE CHANGE

Finally, one of the highlights of the Department's fiscal year 2004 Budget is the request of \$295.9 million for NOAA's climate change research, observations and services. This amount includes an increase of \$16.9 million as part of a total request of \$41.6 million for NOAA's contribution to the President's interagency Climate Change Research Initiative (CCRI). The NOAA fiscal year 2004 CCRI request supports NOAA's efforts to: enhance ocean observations for climate; augment carbon-monitoring capabilities in North America as well as in key under-sampled oceanic and continental regions around the globe; advance the understanding of all major types of aerosols; establish a climate modeling center within NOAA's Geophysical Fluid Dynamics Laboratory, which will focus on research, analysis, and policy applications for the development of model product generation; and coordinate and manage the Nation's interagency climate and global change programs through the Climate Change Science Program Office.

The President's CCRI led to the creation of a new interagency framework in order to enhance coordination of Federal agency resources and research activities. Under this framework, thirteen Federal agencies are working together under the leadership of a Cabinet-level committee on climate change to improve the value of U.S. climate change research.

The President's fiscal year 2004 Budget request for climate change activities reflects the President's priorities by focusing Federal research on the elements of the U.S. Global Change Research Program (USGCRP) that can best support improved public discussion and decision-making. Under the CCRI, various agencies will adhere to specific performance goals, including providing products to decision-makers within four years. The priorities of the CCRI are: reducing key scientific uncertainties; designing and implementing a comprehensive global climate and ecosystem monitoring and data management system; and providing resources to support public evaluation of a wide range of climate change scenarios and response options. Even in this time of difficult budget decisions, the President is committed to fully funding climate research so that we can continue to reduce the uncertainties associated with climate change.

As I previously stated, this budget request for the Department of Commerce has been carefully crafted to focus on those core functions that the American people rely on from this agency. We will focus on promoting innovation, entrepreneurship, exports, and safety, while spreading opportunity to all Americans and ensuring responsible stewardship of our natural resources.

CIAO MOVED TO HOMELAND SECURITY

Senator GREGG. Thank you, Mr. Secretary. CIAO has been moved over to Homeland Security, at least in theory. I am wondering to what extent that has actually occurred, how it is physically being done, and whether the transfers are affecting the operations past the infrastructure protection efforts.

Secretary EVANS. It has been done. As far as I know the transfer was made smoothly. We continue within NIST to work with areas of CIAO in terms of protecting cybersecurity in this country, but the CIAO group has been moved over.

Senator GREGG. Have they physically left?

Secretary EVANS. Yes, gone. At least, I am not seeing them around there any more. On March 1, 2003, pursuant to Public Law 107-296 Homeland Security Act of 2002, the CIAO was transferred from the Department of Commerce to the Department of Homeland Security. There are plans for the CIAO/DHS to move out of the Herbert C. Hoover Building, but the move has not yet taken place.

ENTRY/EXIT SYSTEM BASED ON BIOMETRICS

Senator GREGG. NIST is doing biometric identification work. To what extent is that being coordinated with the INS efforts to produce an exit/entry system which is based on biometrics, do you know?

Secretary EVANS. I am certain that there is close coordination, because that is the purpose of it, is to be used in identifying people coming into this country with biometric techniques, and so I know there is close coordination. I am not sure of the specific meetings.

Senator GREGG. I would be interested in getting, or having your staff get for us an explanation of to what extent you are working with INS and to what extent NIST has evaluated the INS efforts in exit/entry, and whether or not they are on the right track.

Secretary EVANS. Sure.

Senator GREGG. This committee has had very serious reservations about INS' capacity to do exit/entry system based on biometrics. NIST is an extremely talented agency, filled with talented people, a very strong agency. I would be very interested in their evaluation of the INS efforts in this area.

Secretary EVANS. You bet.

[The information follows:]

NIST'S WORK WITH INS ON THE ENTRY/EXIT SYSTEM

Under the USA PATRIOT Act of 2001 and the Enhanced Border Security and Visa Entry Reform Act of 2002, NIST (with the Attorney General and Secretary of State) is required to "develop and certify a technology standard, including appropriate biometric identifier standards, that can be used to verify the identity of persons applying for a United States visa or such persons seeking to enter the United States pursuant to a visa for the purposes of conducting background checks, confirming identity, and ensuring that a person has not received a visa under a different name . . ." NIST has an on-going mandate to provide technical guidance on appropriate biometric identifiers based on technology evaluations and to write reports with the Departments of Justice, State, Defense, and Homeland Security/INS on recommendations for entry-exit systems. The first report, entitled "Use of Technology Standards and Interoperable Databases With Machine-Readable, Tamper-Resistant Travel Documents," was submitted to Congress on February 4, 2003. The NIST appendix to that report is available at http://222.itl.nist.gov/iad/894.03/NISTAPP_Nov02.pdf. The second report on biometric standards has been com-

pleted and is currently circulating for comments within the agencies. NIST is evaluating face recognition and fingerprint matching systems for the INS and is planning an evaluation of the INS' Automated Biometric IDENTification System (IDENT) later in fiscal year 2003.

NIST PROGRESS INVESTIGATING WTC ATTACKS

Senator GREGG. NIST is also investigating the WTC attack and the destruction of the buildings. Do you have any conclusions yet that we can share?

Secretary EVANS. No—well, I think there are some, Mr. Chairman. I know that we have been sharing with some of the designers in New York some of the preliminary findings. I think there is a preliminary report, I believe that will be out this summer, but the full study is scheduled to take 2 years, which means we will not be finished for I think another year or so, but I know that those who are doing the designs under the new construction in New York have been talking to NIST, and they have been communicating, but still the findings, of course, are preliminary.

Senator GREGG. Do they have the funding they need? There has been some indication maybe too much stuff has been sent to the scrap heap and NIST could not get their hands on the necessary material.

Secretary EVANS. Right, Mr. Chairman. That was an issue that was brought up about 1 year ago. I went back and inquired and yes, there was concern about that initially. But after inquiring, my understanding now is, they feel like they have the necessary materials to provide the public with a full, and complete, and thorough report of what occurred, and what kind of standards we ought to think about implementing for providing more safety and security of these kinds of structures.

BACKLOG OF PATENT APPLICATIONS

Senator GREGG. The Patent Office has a 400,000 backlog of patent applications, and that is staggering. What is the game plan for getting that to some sort of reasonable conclusion?

Secretary EVANS. Well, as I mentioned, part of the game plan is more funding, and recruiting more examiners. Part of the game plan is modernization of the systems going from a paper-loaded system to a paperless system, which will take some time. In general, pendency rates have not moved a lot. They have come down a little bit, but I think the thrust, I would say, Mr. Chairman, is to move from a paper system to a technology computer information kind of system where we make more use of the modern information systems we have today, as well as continuing to recruit more examiners.

But I must say to you that a substantial amount of the funding also is going to go into a new program that we are implementing which is just the requalification of the examiners themselves. Right now, the way PTO works is, examiners, once they are a full-time examiner, you would think of it as tenure. They are always a full-time examiner, and we felt like it was important to have a system in place where periodically they go through a requalification process.

One other area, Mr. Chairman, I think—I mean, we are putting a lot of energy and a lot of effort into this, because it is so critical not only to protecting patents here in the United States—not protecting them, but approving them in a timely kind of way, but also making sure that those patents are recognized and honored around the world, and we are moving very aggressively toward a global patent system.

We are working aggressively with USPTO, Europe and with Japan—85 percent of the patents in the world are in those three areas, and so we are working toward a system that would eventually result in the mutual exploitation of search results in terms of integrating the information we have and sharing it with the European Patent Office (EPO) and with Japan, and other intellectual property offices and also them sharing their information with us. We feel like that would not only make the patent system more efficient but reduce a lot of duplication that is out there in the world today.

So just rest assured that I think we have got a very good team working on this. It is certainly a big focus of ours. We understand, just industry after industry in our country, how important intellectual property is, and protecting intellectual property.

Senator GREGG. Well, I do not know about other Members of the Senate, but I have heard from a number of folks in New Hampshire that their frustration with the Patent Office is fairly significant right now. Some of them have just given up on going that route, so I would be interested if there is a plan, a formalized plan for how you are going to reduce the backlog and how you are going to make it more electronically controlled, and how you are going to develop this international system. I would like to see such a plan, if it is a formal plan.

Secretary EVANS. We will be glad to provide that to you, you bet. [The information follows:]

The U.S. Patent and Trademark Office (USPTO), in response to stakeholder input, updated its June 2002 *21st Century Strategic Plan* on February 3, 2003, and submitted it to the Congress in support of the fiscal year 2004 President's budget.

The USPTO prepared its *21st Century Strategic Plan* in response to Congressional direction. For example, the Senate CJS Subcommittee report language dated July 19, 2001 directed the Secretary of Commerce to develop a five-year plan with three core objectives: Prepare the agency to handle the workload associated with the 21st century economy; improve patent quality; and reduce patent and trademark pendency.

The Committee further said that the plan should include: Recommendations to improve retention and productivity of examiner workforce; targeted hiring increases to deal with high-growth areas; improved training; E-Government and other capital improvements designed to improve productivity; and benchmarks for measuring progress in achieving each of these objectives.

The Committee also directed that the "electronic file wrapper" be fully implemented by the end of fiscal year 2004.

The attached plan identifies the specific actions the USPTO is taking to

- Deliver an operational system to process patent applications electronically by October 1, 2004.
- Reduce duplication of effort and decrease workload by relying on search results obtained via partnerships with other intellectual property offices (see Work Sharing 1).
- Achieve an interim patent pendency goal of 27 months by fiscal year 2008. The USPTO will continue to work toward reducing pendency and pursue the long-term optimum goal of 18 months pendency beyond the five-year horizon of the strategic plan.

—Reduce total patent examiner hires through fiscal year 2008 compared to the fiscal year 2003 budget and business plan projection.

Each of these actions is supported by a detailed analysis of the issue and an implementation plan. These are posted on the USPTO web site and can be made available to the Senator's staff.

THE 21ST CENTURY STRATEGIC PLAN

EXECUTIVE OVERVIEW

Today, the United States Patent and Trademark Office (USPTO) is under siege. Patent application filings have increased dramatically throughout the world. There are an estimated seven million pending applications in the world's examination pipeline, and the annual workload growth rate in the previous decade was in the range of 20–30 percent. Technology has become increasingly complex, and demands from customers for higher quality products and services have escalated. Our applicants are concerned that the USPTO does not have access to all of the fees they pay to have their patent and trademark applications examined, thereby jeopardizing the benefits intellectual property rights bring to our national economy. In the United States, these demands have created a workload crisis. The Congress, the owners of intellectual property, the patent bar, and the public-at-large have all told us that we must address these challenges aggressively and promptly.

We agree. We believe that the USPTO must transform itself into a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. And we also believe that we have the tools, the skills, the will and the plan to do so.

—*The tools.*—The technology exists to create a high-quality, cost-effective, responsive, paperless patent examination process, building on our current success in automating trademarks.

—*The skills.*—We have a cadre of talented staff with the technical expertise and the vision to help guide and support the technical and, even more important, the cultural transformation of the USPTO.

—*The will.*—Organizational transformations require sustained commitment and constancy of purpose “from the top.” The USPTO leadership is dedicated to this task.

—*The plan.*—This strategic plan lays out our approach to creating, over the next five years, an agile, capable and productive organization fully worthy of the unique leadership role the American intellectual property system plays in both the American and the global economies.

This new 21st Century Strategic Plan is aggressive and far-reaching. However, anything less would fall short of the expectations of the U.S. Congress, the applicants for, and owners of, patents and trademarks, the patent and trademark bar, and the public-at-large. Additionally, the failure to adopt this strategic plan would have negative consequences. We would be unable to implement our quality and e-Government initiatives, pendency would rise to uncontrollable levels, and our costs would continue to grow.

After the implementation of this strategic plan:

—Market forces will drive our business model.

—Geography and time will be irrelevant when doing business with the USPTO.

—We will strengthen our ability to be ranked as one of the highest quality, most-efficient intellectual property organizations in the world.

—Our products and services will be tailored to meet the needs of customers.

—Examination will be our core expertise.

—Our employees will be recognized as expert decision makers.

—Independent inventors, U.S. industry and the public will benefit from stronger, more enforceable intellectual property rights worldwide.

—Our workplace will become a state-of-the-art facility designed for the 21st Century.

—Following implementation of this plan and its underlying assumptions, including the enactment of legislation to restructure fees, statutory fees will remain steady for the foreseeable future.

ABOUT THE 21ST CENTURY STRATEGIC PLAN

This five-year strategic plan reflects both a thorough internal process review and a systematic attempt to incorporate the best thinking of our applicants, our counterparts in Europe, Japan and other countries, and our stakeholders, including our Public Advisory Committees. Key stakeholders also include our dedicated employ-

ees, without whose commitment the strategic plan could not have been developed and its success could not be assured.

The strategic plan takes a global perspective by envisioning the patent and trademark systems of the future that American innovators would need to remain competitive around the world. It is built on the premise that American innovators want to obtain enforceable intellectual property rights here and abroad as seamlessly and cost-effectively as possible. It emphasizes the opportunity for the USPTO to collaborate with intellectual property organizations in automation, global patent classification, and exploitation of search results. Finally, the plan is predicated on changes to the way all players in the intellectual property system do business with the USPTO and the way USPTO employees respond.

The strategic plan is supported with detailed documentation analyzing all of the related issues, a five-year implementation plan with identified critical tasks, proposed revisions to the fiscal year 2003 budget request to enable timely implementation of the strategic plan, and corresponding proposed legislation and regulations necessary for a successful multi-year implementation.

This strategic plan cannot succeed without enactment of the legislation changing the USPTO's current fee schedule and access to revenue generated in fiscal year 2003, to the extent provided in the President's fiscal year 2003 Budget, revisions to current rules, and legislation for streamlining the patent and trademark systems to facilitate these changes. There are a number of variables, such as potential changes in restriction practice and the use of commercial search services that could affect our projected costs and revenues. Once they have been clarified, any ensuing revisions to our program costs and fee schedule will be resolved in the context of the USPTO's annual budget submission to the Congress.

Proof of Concept

To ensure the USPTO proposes appropriate changes to patent and trademark laws, makes changes to internal processes that provide benefits and increased efficiency, and makes sound investment decisions, the initiatives proposed in this plan will be subjected to thorough evaluation. Pilot projects will be initiated and tested wherever necessary. Evaluation plans will incorporate, where appropriate, measurable objectives, critical measures of success, baseline data, and conditions for full implementation.

Performance Measures

This plan contains measurable objectives and milestones for each of the general goals. The annual budget submission to the Congress will provide additional criteria by establishing key measurements and yearly milestones that will be used to determine the USPTO's success in achieving these goals. The annual integrated budget/performance plan is the most efficient and effective way of establishing accountability by making sure that performance measures and milestones are consistent with the views of the Administration and the Congress in the enacted annual budget.

STRATEGIC AGENDA

Vision

The USPTO will lead the way in creating a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system for the 21st Century.

We believe that quality must permeate every action taken by every employee of the USPTO. The new initiatives in our strategic plan are targeted toward creating a cultural transformation whereby quality is the principal focus of everything we do.

Mission

The USPTO mission is to ensure that the intellectual property system contributes to a strong global economy, encourages investment in innovation, and fosters entrepreneurial spirit.

In order to accomplish our mission, we have prepared this strategic plan. Provided we receive the funding and statutory changes necessary to implement this new strategy, we will:

- Enhance the quality of patent and trademark examining operations through consolidation of quality assurance activities in fiscal year 2003.
- Achieve 27 months overall patent pendency goal¹ in fiscal year 2008.

¹Pendency is a measurement of USPTO's traditional examination processing time; i.e., from filing (under 35 U.S.C. 111(a)) to ultimate disposal.

- Reduce total patent examiner hires through fiscal year 2008 by 2,400 compared to the 2003 Business Plan.²
- Accelerate processing time by implementing e-Government in Trademarks by November 2, 2003, and in Patents by October 1, 2004.
- Competitively source classification and search functions, and concentrate Office expertise as much as possible on the core government functions.
- Expand our bilateral and multilateral discussions to strengthen intellectual property rights globally and to reduce duplication of effort among offices.

Strategic Themes

To achieve our vision and accomplish our mission, we must transform our organization and become a more agile, more capable and more productive USPTO. The Congress has directed us to (1) improve patent and trademark quality, (2) aggressively implement e-Government to handle the workload associated with the 21st Century economy, and (3) reduce patent and trademark pendency. We have identified three strategic themes that correspond directly to these Congressional requirements:

- 1. *Agility: Address the 21st Century Economy by Becoming a More Agile Organization.*—We will create a flexible organization and work processes that can handle the increasing expectations of our markets, the growing complexity and volume of our work, and the globalization that characterize the 21st Century economy. We will work, both bilaterally and multilaterally, with our partners to create a stronger, better-coordinated and more streamlined framework for protecting intellectual property around the world. We will transform the USPTO workplace by radically reducing labor-intensive paper processing.
- 2. *Capability: Enhance Quality through Workforce and Process Improvements.*—We will make patent and trademark quality our highest priority by emphasizing quality in every component of this strategic plan. Through the timely issuance of high-quality patents and trademarks, we will respond to market forces by promoting advances in technology, expanding business opportunities and creating jobs.
- 3. *Productivity: Accelerate Processing Times Through Focused Examination.*—We will control patent and trademark pendency, reduce time to first Office action, and recover our investments in people, processes and technology.

We will transform the USPTO by adhering to these themes in each of the improvement initiatives upon which this strategic plan is based, as well as in all of our other programs. These initiatives are discussed in more detail under each of the major theme sections.

Agility: Address the 21st Century Economy by Becoming a More Agile Organization

An agile organization responds quickly and efficiently to changes in the economy, the marketplace, and the nature and size of workloads. In pursuit of an agile organization, the USPTO will focus both internally and externally.

As a first priority, we have made electronic end-to-end processing of both patents and trademarks the centerpiece of our business model.

We will create a nimble, flexible enterprise that responds rapidly to changing market conditions. We will make the USPTO a premier place to work; we will rely on a smaller cadre of highly trained and skilled employees; and we will place greater reliance on the private sector, including drawing on the strengths of the information industry. We will enhance the quality of work life for our employees by exploring expansion of work-at-home opportunities and moving to the new Carlyle campus facility in Alexandria, Virginia.

Further, we will enhance existing and establish new alliances with our friends in other national and international intellectual property organizations to strengthen American intellectual property rights around the world.

Specific actions, with parenthetical cross-references to the analyses and implementation plans in the Appendices, include:

Implement automation for patent and trademark applications

Develop a trademark electronic file management system and begin e-Government operations on November 2, 2003, in tandem with implementation of the Madrid Protocol. [E-Government 1]

Deliver an operational system to process patent applications electronically by October 1, 2004, including electronic image capture of all incoming and outgoing paper documents. [E-Government 2]

²The 2003 Business Plan was submitted to the Congress in February 2002 as part of the USPTO's fiscal year 2003 Budget.

Develop an automated information system to support a post-grant patent review process. [E-Government 3]

Establish an information technology security program for fully certifying and accrediting the security of automated information systems. [E-Government 4]

Provide back-up systems to ensure maximum availability of computer systems to examiners, attorneys, the public and other patent and trademark offices by establishing appropriate back-up systems. [E-Government 5]

Expand work-at-home opportunities

Increase the efficiency and return on investment of our work-at-home program and thereby encourage more employees to participate. [Work-at-Home 1]

Increase flexibility through greater reliance on the private sector or other intellectual property offices

Increase reliance on the private sector or other intellectual property offices for: Classifying patent documents. [Flexibility 1]

Supporting national application and Patent Cooperation Treaty search activities. [Flexibility 2]

Transitioning to a new global patent classification system. [Flexibility 3]

Classifying trademark goods/services and searching design codes. [Flexibility 4]

Global Development: Streamline intellectual property systems and strengthen intellectual property rights around the world

Promote harmonization in the framework of the World Intellectual Property Organization and its Standing Committee on the Law of Patents; resolve major issues in a broader context and pursue substantive harmonization goals that will strengthen the rights of American intellectual property holders by making it easier to obtain international protection for their inventions and creations. [Global Development 1]

Negotiate bilateral and multilateral agreements to facilitate global convergence of patent standards. [Global Development 2]

Accelerate Patent Cooperation Treaty reform efforts, focusing on the USPTO's proposal for simplified processing. [Global Development 3]

Develop a "universal" trademark electronic application by leveraging the United States' experience with electronic filing of trademark applications. [Global Development 4]

Share search results with other intellectual property offices

Reduce duplication of effort and decrease workload by relying on search results obtained via partnerships with other intellectual property offices. [Work Sharing 1]

Planned Agility Accomplishments

Accelerate processing time by implementing e-Government in Trademarks by November 2, 2003, and in Patents by October 1, 2004.

Competitively source classification and search functions, and concentrate USPTO expertise as much as possible on core government functions.

Expand our bilateral and multilateral discussions to strengthen intellectual property rights globally and to reduce duplication of effort among intellectual property offices.

Capability: Enhance Quality Through Workforce and Process Improvements

A capable organization has a highly skilled, appropriately sized workforce; it has systems and procedures that enhance the capability of every employee; and it has in place effective quality management processes to ensure high quality work and continuous performance improvement. In other words, a capable organization is committed to doing the right job right—the first time and every time. We will be such an organization.

Quality will be assured throughout the process by hiring the people who make the best patent and trademark examiners, certifying their knowledge and competencies throughout their careers at the USPTO, and focusing on quality throughout the examination of patent and trademark applications. By bolstering confidence in the quality of U.S. patents and trademarks, the USPTO will enhance the reliability in the quality of products and services needed to increasingly spur our economy and reduce litigation costs.

Specific actions, with parenthetical cross-references to the analyses and implementation plans in the Appendices, include:

Enhance workforce capabilities by certifying competencies

Create an enterprise-wide training strategy that meets the needs of the new business model and the e-Government generation. [Transformation 1]

Restructure the USPTO by redirecting resources to core examination activities, implement revised performance plans to incorporate changes required to implement an e-Government workplace, meet agency-wide standards for senior executives, and implement selected award packages. [Transformation 2 and 3]

Transform the workforce by exploring alternative organizational concepts and structures. [Transformation 4]

Ensure that professionals, support staff and supervisors responsible for the patent process possess the requisite skills needed to carry out their responsibilities. [Transformation 5]

Certification of knowledge, skills and ability in the Trademark Process. [Transformation 6]

Implement pre-employment testing for patent examiners. [Transformation 7 and 8]

Recertify the knowledge, skills and abilities of primary examiners to ensure currency in patent law, practice and procedures. [Transformation 9]

Certify the legal competency and negotiation abilities of patent examiners before promotion to grade 13. [Transformation 10]

Improve the selection and training of supervisory patent examiners to focus on their primary responsibilities of training patent examiners and reviewing and approving their work. [Transformation 11]

Make improvements in patent and trademark quality assurance techniques

Enhance the current quality assurance programs by integrating reviews to cover all stages of examination. [Quality 1]

Expand reviews of primary examiner work. [Quality 2]

Engineer quality into our processing including the selective expansion of the “second pair of eyes” review³ of work products in such advanced fields of technology as semiconductors, telecommunications, and biotechnology. [Quality 3 and 4]

Incorporate an evaluation of search quality into the patent work product review process, and survey practitioners on specific applications. [Quality 5 and 6]

Enhance the reviewable record of prosecution in patent applications. [Quality 7]

Certify and monitor the quality of searching authorities to ensure that patent searches provided by the private sector contractors or other patent offices are complete and of the highest quality. [Quality 8]

Make process improvements that contribute to enhanced quality through legislation/rule changes

Propose legislation and/or rule changes that have been identified as critical for the accomplishment of this strategic plan. Continue the process of seeking comments from stakeholders on proposed changes.

Planned Capability Accomplishments

Enhance the quality of patent and trademark examining operations through consolidation of quality assurance activities in fiscal year 2003.

Productivity: Accelerate Processing Times Through Focused Examination

We are committed to promoting advances in technology, expansion of business opportunities and creation of jobs through the timely issuance of high quality patents and trademarks. A productive organization maximizes its output of work performed. Improved productivity is key to reducing pendency and inventory.

This strategic plan has aggressive timeliness goals: to make available, on average, a first Office action for first-filed U.S. non-provisional patent applications, at the time of 18-month publication, and a patent search report for other patent applications in the same time frame—by far the fastest in the world. This will be accomplished through a redesign of the entire patent search and examination systems based upon multiple-examination tracks, greater reliance on qualified patent search services, and variable, incentive-driven fees. In Trademarks, achieve an average 12-month total pendency. This will be accomplished by a three-track examination system. Likewise, both Patents and Trademarks will restructure the way they do business to be compatible with an e-Government environment.

Specific actions, with parenthetical cross-references to the analyses and implementation plans in the Appendices, include:

Transition to market-driven examination options

Adopt procedures that give greater choice and flexibility to trademark applicants for filing and examination of applications for the registration of trademarks, with

³A secondary review of applications for proper claim interpretation and to ensure that the closest prior art has been discovered and correctly applied.

a focus on using technology to improve the process and provide a lower cost filing option. [Pendency 1]

Move from a “one-size-fits-all” patent examination process to a multi-track examination process that leverages search results of other organizations and permits applicants to have freedom of choice in the processing of their applications. This new process will eliminate duplication of effort, encourage greater participation by the applicant community and public, and improve the quality of our patents and decrease processing time. [Pendency 2]

Address the number of claims presented for examination in an application and the size of applications through fee-setting legislation to reflect the cost of processing complex applications. [Shared Responsibility 1]

Achieve greater examiner productivity by reducing their prior art search responsibilities. [Pendency 3]

Implement an accelerated examination path option

Offer patent applicants the market-driven new “rocket docket” option of choosing an accelerated examination procedure with priority processing and a pendency time of no longer than 12 months. [Accelerated Examination 1]

Share responsibility for timely and high quality patents and trademarks between applicant and the USPTO

Seek enactment of legislation to restructure the USPTO fee schedule by mid-fiscal year 2003, and thereby create incentives that contribute to achievement of USPTO goals. For example, the filing fee will be kept as low as possible to incentivize applicants to file, and the refund provision expanded to allow the USPTO to refund a portion of the search fee if the application is expressly abandoned before search or examination. [Shared Responsibility 1]

Make patents more reliable by proposing amendments to patent laws to improve a post-grant review of patents. [Shared Responsibility 2]

Planned Productivity Accomplishments

Achieve first Office action patent pendency of 14.7 months in fiscal year 2008. Achieve an interim patent pendency goal of 27 months by fiscal year 2008. Note: The USPTO will continue to work toward reducing pendency and pursue the long-term optimum goal of 18 months pendency beyond the five-year horizon of this strategic plan. Our best estimate is that it will take at least a decade to achieve the 18-month goal.

Reduce total patent examiner hires through fiscal year 2008 by 2,400 compared to the 2003 Business Plan projection. [See Figure 1]

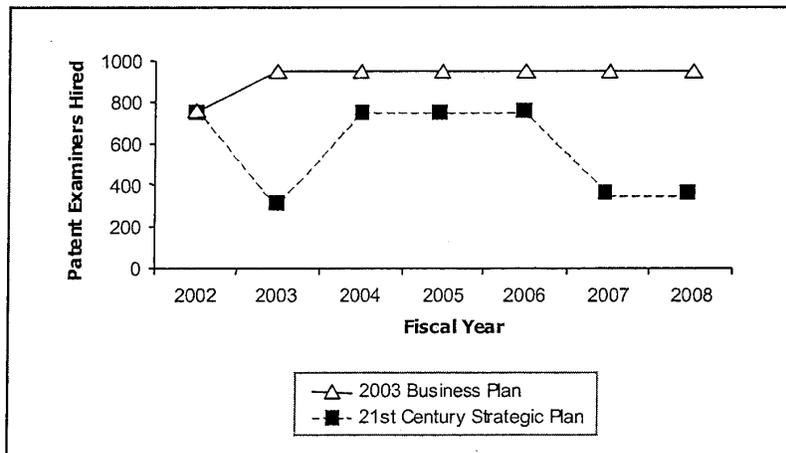


FIGURE 1. Patent Examiner Hiring Comparison

Critical Needs

The performance commitments outlined in this strategic plan demand extraordinary effort from every USPTO employee, and the full support of our key stakeholders. Our strategic plan is built around the following critical needs.

Multilateral and Bilateral Agreements

We need to consult with, and receive support of, other patent offices in structuring new bilateral and multilateral initiatives.

Legislation/Rules

We will need enactment of legislation by the Congress to adjust certain patent and trademark fees and access to revenue generated by mid-fiscal year 2003 to the extent provided in the President's fiscal year 2003 Budget. We also will need to promulgate final rules to effect fee changes.

We will need to continue working to develop the proposed legislation and rule changes that have been identified, and continue the process of seeking comments from interested parties on ways to improve our operation.

Labor Relations

We will need to notify the three bargaining units representing USPTO employees of proposed changes and negotiate, where necessary, any changes in working conditions.

Budget

We will need enactment of an appropriation for fiscal year 2003 that is consistent with the level of the President's 2003 Budget.

Move to Carlyle in Alexandria, Virginia

We will need to carefully plan the logistics for relocating the USPTO to a consolidated campus in Alexandria, Virginia, while minimizing any adverse effects on employees, applicants and the public. The USPTO is quickly moving into the implementation phase of the relocation of its facilities from 18 buildings spread throughout Crystal City to a single lease in a consolidated campus. This consolidation is expected to save us \$72 million over the 20-year term of the lease, but it is a highly complex and difficult endeavor.

President's Management Agenda

Secretary Donald Evans has committed the Department of Commerce to speedy implementation of the President's Management Agenda. President Bush has stated that true government reform must be based on a reexamination of the role of the Federal Government. In this regard, he has called for "active, but limited" government: a government that empowers states, cities, and citizens to make decisions; ensures results through accountability; and promotes innovation through competition. The reforms that he has identified to help the Federal Government adapt to a rapidly changing world include a government that is: Citizen-centered—not bureaucracy-centered; results-oriented—not process-oriented; and market-based—actively promoting, not stifling, innovation, and competition.

This strategic plan supports the President's Management Agenda:

Human Capital.—We will provide the tools and the resources to ensure that we have a highly qualified, certified, knowledge-based, accountable workforce. Specifically, we will strengthen pre-employment testing; develop a competency certification program; create a new labor-management paradigm to meet changing business needs; streamline our workforce to maximize quality and efficiency; and focus our training, performance evaluation and assessment environment on our core expertise—examination.

Competitive Sourcing.—We are committed to achieving performance enhancements and cost-savings, through the process of competitive sourcing. This process compares the capabilities and costs of commercial service providers with current government program providers. Greater competition drives down costs and yields more innovative solutions. We will seek improved effectiveness in the following areas: patent searching, patent documentation classification, and information technology and logistical support operations.

Improved Financial Management.—The USPTO has a strong, fully integrated financial management system in place and we will continue to strengthen our internal controls, improve the timeliness and usefulness of our management information and continue to achieve an unqualified financial audit opinion.

E-Government.—We are accelerating deployment of critical automated information systems, particularly electronic end-to-end processing of patent and trademark applications. In addition, we are currently working on ways to improve delivery schedules, reliability, performance, security and the cost of all our automated information systems.

Budget/Performance Integration.—We will allocate budget resources to the programs based on the concept of linking them to the achievement of both enterprise-wide goals and individual unit performance. The USPTO will expand the involve-

ment of applicants and the public in assessing the accomplishment of our goals and performance targets.

As a reflection of our commitment to fund our strategic priorities, we conducted a comprehensive review of current operations and redirected substantial fiscal year 2003 resources toward improving examination quality and implementing e-Government processing.

Long-term Agenda

This strategic plan is only the first step toward creating a quality-focused, highly productive, responsive USPTO that supports a market-based intellectual property system for the 21st Century. Once the initial phases of this plan have been supported, adopted and implemented, the USPTO will explore further options to enhance its ability to more fully operate like a business.

Within the framework of the legislative and regulatory packages there are a number of items that will be implemented in the out-years of the strategic plan.

Restriction practice.—We will conduct a study of the changes needed to implement a Patent Cooperation Treaty (PCT) style unity of invention standard in the United States. The study will be completed and appropriate legislation will be introduced before the end of the 108th Congress.

Patent term adjustment.—Before seeking legislation to simplify patent term adjustment, we will explore a number of options to address this issue with the small business community and other key stakeholders.

Mutual exploitation of examination results.—In anticipation of achieving our long-term goal of substantive patent harmonization, we will take a cautious approach to mutual exploitation of examination results by first evaluating International Preliminary Examination Reports during national stage examination. We will subsequently analyze the potential of whether the acceptance of examination results (granted patents) from foreign offices is a proper basis for use in counterpart applications in the United States. However, the USPTO will never recommend any changes that would compromise our sovereign right to determine patentability issues or to preclude our right to make further examinations when necessary.

Copyright issues.—As part of the implementation of the electronic file wrapper, we will ascertain the best means for assuring that these documents in an application file that may be subject to copyright protection can be included in the USPTO's databases. The intent of this option would be to ensure full public access to all the information contained in a pending application file.

Third party request for reexamination.—As part of the initiative to seek post-grant review legislation, we will explore the need for retention of third-party requested reexamination.

District court actions.—We will evaluate the desirability of a revision to the provisions for judicial review of USPTO decisions to make an appeal to the U.S. Court of Appeals for the Federal Circuit the sole avenue for judicial review of a Board of Patent Appeals and Interferences or a Trademark Trial and Appeal Board decision.

Patent Cooperation Treaty Activities.—We will actively pursue revisions to Patent Cooperation Treaty search and examination guidelines to achieve an enhanced level of reliance on PCT International Search Reports and International Preliminary Examination Reports.

Business-like practices.—We also will explore whether we have a good justification for operating in a more business-like manner.

USPTO Campus.—Once we have settled into the Carlyle campus and have fully implemented automated patent and trademark processing, we will be able to assess the feasibility of expanding our work-at-home program by using such virtual office concepts as telecommuting and flexible workplace to the maximum potential.

Examiner Training.—We will evaluate the feasibility of reinstating the Examiner Education Program through corporate sponsorship to enable patent examiners to gain better insights into technological developments in the fields in which they examine.

Some Final Thoughts

This 21st Century Strategic Plan sets forth an ambitious agenda to resolve the crisis all intellectual property organizations are facing. We believe economic and technological progress in the United States and the global market can be significantly enhanced through the implementation of the initiatives proposed in this plan.

We intend to refine and update our strategic plan periodically to adjust to changing conditions and to incorporate the best thinking of the entire intellectual property community. We are eager to work with those who believe, as we do, that American innovators and businesses must have the very best intellectual property system in

the world. This 21st Century Strategic Plan represents an important first step in the pursuit of this goal.

FREE TRADE CONCERNS

Senator GREGG. Senator Hollings.

Senator HOLLINGS. Thank you, Mr. Chairman.

Mr. Secretary, we have got a hot war ongoing, and there is no question in this Senator's mind or anybody in this room that we will win that one, but we have got a cold war economically that we are losing, and you are the Chairman of the Joint Chiefs of Staff in that cold war.

As Secretary of Commerce, you are the most important member, and with the President, the most influential member, and we are looking at the results. The war did not start when you folks came to town. This war has been going on since World War II, and we had the Marshall Plan. It worked. We sent over the expertise, we sent over the technology and everything else into Europe and to the Pacific Rim and they revived them.

But now you look and you find out you have got over \$420-some billion in the deficit in the balance of trade last year, and now it is inching up to over \$500 billion this year, and I am looking at different items—well, I've already lost, don't worry about my questions being about textiles. They are Republican and they have gone anyway, so it is a sort of twofer for me.

Senator GREGG. They left New Hampshire a long time ago to go to South Carolina.

Senator HOLLINGS. Over two-thirds of the clothing I am looking at is imported, over 86 percent of the shoes on the floor are imported, but then I look at the list that you made of critical items to our national security, and you list about some 500, and we have a \$5 billion deficit in the balance of trade in those critical items.

We have got a deficit in the balance of trade in semiconductors. I know I have got a deficit in the balance of trade in cotton. I am riding through the cotton fields politicking down home, but I am importing Chinese cotton because we do not produce enough in this country, and then I looked and found that we made finally a deficit in the balance of trade in farm products for the second time in the history of the country.

Free trade is fine in the textbooks, and fine for England when she was in control of the world's empire. In other words, when old Alexander Hamilton got the note that what we ought to do, having won our little freedom as a colony, we ought to trade back what we produced best, and they in Britain would trade back what they produced best, the doctrine of comparative advantage, David Ricardo, old Hamilton said bug off—we are not going to remain your colony, just shipping our timber and our coal and our iron ore and farm products. We are going to build up our own manufacturing.

So he introduced, and by gosh, old Madison supported him in the second bill. The first bill was for the U.S. Seal as a Nation. The second bill that passed the Congress was the 50-percent tariff bill, protectionism, on about 60 articles, and we started rebuilding, and in fact we financed the country with protectionism until 1913, when we finally got the income tax.

Other countries are doing the same thing, after World War II, the Japanese, the Koreans and everybody coming right on down the road, and they do not practice free trade, they practice protectionism.

One of the big reasons behind my Advanced Technology Program was to try to compete with the subsidization, the financing of the industry, the banking, and not only that, but also protecting in every respect the retail markets, and the pricing by our foreign competitors. My Lexus cost me \$30,000. In downtown Tokyo, that same car, I priced it, is \$45,000.

So my point is, I am trying to bring around our administration to where even Ronald Reagan was. He was long on common sense. We were losing out on semiconductors and still are, but he put in a voluntary restraint agreement on semiconductors and they instituted at the congressional level, Senator Danforth and myself, Sematech. We had VRAs in steel and automobiles and machine tools, and it worked, and it saved those industries.

Now, we have got to start competing here. I am looking at the Ambassador from Singapore, Frank Levin. He recently concluded this United States-Singapore free trade agreement, and Levin said in the long run, and I quote him, the most significant economic aspect of this FTA, free trade agreement, could be provisions allowing products assembled in the two Indonesian outer islands to be counted as Singaporean in origin for the purpose of the FTA. This would allow U.S. electronics manufacturers to take advantage of low wage rates on those islands to assemble components from Singapore and then the electronic products can enter the United States duty free. Do you agree with that?

Secretary EVANS. Well, I have not seen the statement. You read the statement. I have not seen it before. I mean, I must say that I think that when you have a free trade agreement with Singapore, you have a free trade agreement with Singapore. You do not have a free trade agreement with some other country, or some other island. That is who the free trade agreement is with.

And so I think there is a basic principle, and it is products and services that come from that country, not from some other sovereign nation or country to that country and into the United States, but I must admit, I do not know the exact relationship of those islands with Singapore. Are they separate countries or separate sovereign nations, or are they a part of Singapore? I do not think they are.

Senator HOLLINGS. Well, it is not the technicality of the thing, it is the actual tenor and thrust of low wage rates. That is what happened—58,000 textile jobs have gone from my little State of South Carolina down to Mexico. If your competition leaves, you have got to leave, so that swishing sound that old Ross talked about, I am telling you right now, we can hear it loud and clear in the Piedmont section of South Carolina, I can tell you.

That is the whole point. What we have got to do is start competing, and we have done everything for that export administration. Your Commerce Department has commercial attachés around the world, and we have done everything to help our businesses compete.

One other thing that we do is just that, the Advanced Technology Program. The distinguished Secretary talks growth, growth, growth. That is the buzzword around here. You get everybody on the message, so the growth thing is the Advanced Technology Program. That gives the growth. There is not any question.

We have got I do not know how many studies. I think there were 14 studies, the Department of Commerce Inspector General, the National Academy of Sciences, the National Research Council, and go right on down the list, and they found that, quote, ATP could use more funding effectively and efficiently, and we cut and eliminated that and the Manufacturers Extension Partnership Program, but we give money to the Bureau of Economic Analysis to get more analysis. That is not going to hire any more people, except pointy-headed intellectuals, as George Wallace would say.

We give money to the Patent and Trademark Office—

Senator GREGG. We don't quote from George Wallace.

Senator HOLLINGS. That's right. Well, I thought I'd get you. I like to stick the Chairman every now and again.

We give money to the International Trade Administration for promoting U.S. exports and all those things, they are not going to get growth. The one thing that is going to get the growth, and it has proved out, and they are not pork, they have got to be vetted by the National Academy of Engineering, like you said, and NIST.

I got together—we had a fellow over there, Craig Fields in DARPA, and he found out the Navy program for research was rapid manufactured parts. We got it going through the Department of Commerce, because a boat would break down in the gulf and the destroyer is 30 years old, or whatever it is, and the part, they have to languish there in the gulf for 2 months and then go back. We have got a system now where they do not languish over 24 hours.

So we have got DARPA, we have got NIST, we have got the Advanced Technology Program, and why do we eliminate it?

Secretary EVANS. Well, again, like I said, those are good programs, no question about it.

Senator HOLLINGS. That is all. You do not have to explain any more. I am going to quote you.

Secretary EVANS. You can.

Senator HOLLINGS. Thank you. I would yield to the distinguished Senator from Wisconsin.

Secretary EVANS. Good.

MANUFACTURING EXTENSION PARTNERSHIP PROGRAM

Senator KOHL. Thank you, Mr. Chairman, and Secretary Evans, I would like to talk a little bit about the Manufacturing Extension Partnership Program.

I know this administration supports research and development to maintain American leadership and technology development and commercialization. To quote from the Commerce Department's Web site, "Americans will never win the game to see who can pay their workers less. We do not want to, and continued innovation means that we will not have to. Innovation excellence starts with research and development, and since taking office, the President has proposed record levels of Federal R&D."

So Mr. Secretary, I am concerned and puzzled by your proposed budget, which includes only \$12.6 million for the Manufacturing Extension Partnership Program, called MEP. This program has always had bipartisan congressional support. By way of comparison for fiscal year 2003, we funded the program at well over \$100 million. Given the current situation, I therefore cannot understand why you would virtually eliminate a program like this, which truly makes a difference.

The United States is losing hundreds of thousands of manufacturing jobs and production know-how to low-wage countries like China. We have our largest imbalance with China, an imbalance growing by 30 percent a year. In my State of Wisconsin, the jobs we are losing to overseas production are high-paying jobs.

To help counter this trend, my State MEP centers work directly with small manufacturers to help these companies compete by being more productive and more effective, and so my question is, why are you virtually gutting Federal support for this program? Virtually half of the program's costs and expenses come from the Federal Government. Small manufacturers in my State have said this program is important to them, and so I do not know what I should be telling them with respect to what I know is your commitment to the development of small manufacturing innovation, efficiency, technology, and your apparent opinion that the MEP program is not all that important. I just give you this map for you to peruse.

Secretary EVANS. Sure, thanks Senator.

Senator KOHL. Those MEP centers, as you can see, are all over the country. There are hundreds and hundreds of MEP centers, and without Federal support they may well evaporate.

Senator GREGG. Aren't they called Hollings centers?

Senator KOHL. Pardon me?

Senator GREGG. No, I think they're called Hollings centers, aren't they?

Senator KOHL. Hollings centers?

Secretary EVANS. You know, I will say what I said earlier, I think, that there are certainly some very good stories from ATP that one can look to and can say were successes. I think the same thing applies to MEP, the Manufacturing Extension Partnership Program. I travel all across the country on university campuses, from time to time, talk to universities and how they are participating in these MEPs with the Federal Government, with other cities, with counties and so I am very much aware of the programs.

First of all, I would just say it is a matter of priorities, and understanding at some point you have to draw the line, and we are not all going to draw the line at exactly the same place, and I know that and you know that, and so I am more than happy to work through the budget process with the committee and talk about our differences with respect to these programs, but when you look at the MEP program, what confuses me is why this program would not be a success in the private sector, and the reason I say that is because the studies people show me and want to give to me in the way of results are the sizeable returns that people enjoy by participating in the MEP.

Well, having been somebody that was out there in the private sector for some 26 years of my life, that looks like to me a pretty good opportunity to start a business, because if I can give those kinds of returns to some of the small businesses in the area, then it seems like they would be willing to pay me for that service I am providing to them.

You know, I had the same kind of issue, the same related issue with ATP, and that I really felt like if we were going to provide funding for seed capital, or venture capital for research, and if it is successful, then maybe some of that ought to come back to the American taxpayer that funded it to begin with.

So I think it is good programs that—what I see opportunity for, I see some opportunity for the private sector to step in and provide the same kind of service. And I also see an opportunity, if it is successful, if it works, then maybe there is an opportunity to return some of the benefits, not all of them, but some of those benefits back to the American taxpayer to help pay for the program, if the program were to continue.

Senator KOHL. I do not totally disagree with what you are saying, but my response is that this is not entirely a Federal program. This is a 50–50 partnership between the Federal Government and private industry, and so the question is not really why does the Federal Government have to fund this program entirely. It is that, what is wrong with the partnership concept?

I mean, if this were 100 to nothing, or 100 to zero in terms of percent of funding, I would understand what you are saying, but it is 50–50. It seems to me that is reasonable—reasonable, and I guess my question is, why would you all take the position that on your list of priorities, in terms of funding, that almost comes down to zero?

Secretary EVANS. Well, again I guess I would say, Senator, it is priorities. I mean, like you, we think about the Federal debt and the deficit, and there are lots of worthwhile programs that we would like to see funded, but the resources are not there to fund all of the programs that we would all like to see funded, and so you have to draw the line some place. You have to make tough choices, and I understand that, we will have differences of opinion as to where the line should be drawn, and this is one of those areas where we have a difference of opinion.

I am not here saying that these programs have not provided a service. I am not here saying that there is not some good results to point to historically, but I am saying that one, particularly at this moment in our history, we have some priorities of homeland security and national security that we are all certainly very focused on, and these are just some tough choices that have to be made, but certainly, as I mentioned, I look forward to working through the process, working with the committee and working through our differences of opinion.

Senator KOHL. Well, thank you. I will keep on badgering if I can, and see if we cannot get something.

Secretary EVANS. Sure, sure.

Senator GREGG. The Senator from Wisconsin is a very good badger.

Secretary EVANS. Very good, very good. Not bad. Very good, Chairman.

Senator GREGG. Mr. Secretary, following up on the Senator's point, your comment that maybe there should be a greater return to the taxpayer when these MEPs produce a commercial event that has profitability, do you have language that you would insert to change the programs to create that atmosphere?

Secretary EVANS. No, Mr. Chairman, I have not. It is something that we would be glad to look at and would be glad to think about. It just seems that if you have a company that enjoys some 25 percent return or 35 percent return from the services they have been provided, then maybe they would want to return some funding back to the center to help some other small manufacturer who comes along.

Senator GREGG. I'm attracted to the idea, so if we end up refunding these as a result of the Senator from Wisconsin's energies, I would be interested if you had language that could accomplish that as a part of the exercise.

Secretary EVANS. I know if I was out there running a small business and I had this available to my company, and it was successful, and we had great results from it, I would feel some kind of responsibility to support that program in a pretty direct kind of way, and so that the program could benefit other small, or other manufacturing companies that come along behind.

Senator KOHL. They do. I say, the program is supported 50 percent by these companies, so it is not as though they are only taking. They are also giving to the program.

Senator GREGG. On ATP, we really do not have any place in the Government right now where people who are coming up with creative ideas on the issue of counterterrorism, technology ideas, can go and get a grant quickly that would allow them to expand their efforts, and I do not know about other offices. Maybe once a month somebody comes in with some fairly unique idea as to how they are going to screen somebody, or what they can do, or how they are going to develop something.

RESEARCH AND DEVELOPMENT FOR COUNTERTERRORISM

Would it make sense if we reauthorized or refunded ATP to redirect it into an exercise of being more focused on counterterrorism, producing technology for counterterrorism, experimental or commercial?

Secretary EVANS. I guess what has been called to my attention is, Homeland Security is requesting some \$900 million in this area of R&D for counterterrorism.

Senator GREGG. How are they going to oversee that? Well, we will have Secretary Ridge. We will ask him.

We have been joined by the chairman of the full committee.

Senator STEVENS. Good morning, Mr. Secretary.

Senator GREGG. Do you have anything more?

Senator HOLLINGS. Yes, I will, but for example, from 1992 to 2004, the ATP funded \$270 million in projects with primary relevance to the detection of and protection from and response to potential terrorist activity. They have been coming to my office, too,

and I have been sending them over there and it is working. You are helping Secretary Ridge.

Senator GREGG. I think it makes a lot of sense.

Senator Stevens, do you have any questions?

Senator STEVENS. No, I had no questions this year. I just stopped by to see our friend and say hello.

Senator HOLLINGS. Well, I have a few more questions, and I am like Senator Stevens and I am going to work with the chairman. Your budget is in good shape, and I will work with Chairman Gregg for what he thinks we ought to do.

But frankly, I am worried about this war, and I have moved from the military to the trouble we have in the world community. If the President asked me to come over in the next 10 minutes and asked me what to do, I would say, I would get that best friend of yours, Secretary Evans, up to Canada. You cannot just get everybody—I see on my TV this morning the President is on the phone trying to still get support. Isn't that a hell of a note? But he is on the phone this morning trying to get support.

Now, we all support it, we are committed, but in my war, World War II, the first in was Canada. So we have got to get you back involved. You come with the calling card of President Bush—and you know how to talk to people. You can help us with Vicente Fox. You know him down there in Mexico.

When you start an engagement of this kind, and can't even get Mexico and Canada, we have got to start working back upstream now to get some help from the United Nations and everything else like that, and do not worry about budgets and ATP and MEP and all that other stuff. Right now, let us get going on this war. Yes, sir.

Senator GREGG. Senator Stevens.

Senator STEVENS. Mr. Secretary, we lost a big one yesterday as far as my State is concerned, but I know we have had talks about the Alaska gas pipeline. We have a new hybrid proposal we want to discuss with the administration, and I hope we can get some time on your schedule to discuss that sometime soon.

Secretary EVANS. We can.

Senator STEVENS. We will be coming in this week and next week to talk about it. It's not an immediate project—it won't run gas to our system before 2011, but it is an 8-year project at a minimum. If we can get it off the ground this year it will be very meaningful. I hope you are both familiar with that project.

All of the gas that is produced with 17 billion barrels of oil we produce and send down the Alaska pipeline was separated out and put right back in the ground right there at Prudhoe. We do not have to explore for it. All we have to have is a mechanism to transport it, and it is a substantial amount of gas.

Secretary EVANS. I would be glad to come by at your calling. Just give me a call and I will be there.

Senator STEVENS. Maybe we can arrange for you to come back up to our State again this summer and take a look at it.

Secretary EVANS. Good. Thank you, Senator.

Senator GREGG. While we are here, I do want to acknowledge and thank the chairman of the committee for returning a hearing room to its rightful spot.

Senator HOLLINGS. I thank you, Mr. Chairman.

Senator GREGG. We very much appreciate it.

Senator HOLLINGS. I was chairman of legislative appropriations. I walked in here and it was just a pile of wood and paint cans and everything else, and the Architect of the Capitol was using this just as a storeroom to do repair work all over, and we cleaned it up.

Senator GREGG. I believe this was the room that the Dartmouth College case was argued in by Daniel Webster.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. And *Marbury v. Madison*.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR JUDD GREGG

HOMELAND SECURITY

Question. Mr. Secretary, BIS' work towards controlling the proliferation of sensitive dual-use technologies is critical to our national security. We are now faced with a restless nuclear power on the Korean Peninsula that has already acquired the necessary technologies to create weapons of mass destruction. There are many more regimes in the world that are hostile to the United States and are aggressively pursuing these technologies. How is BIS adapting to this rapidly changing global security environment? How has its mission changed since 9/11? Have BIS' requirements changed?

Answer. The Bureau of Industry and Security (BIS) administers U.S. export controls for dual-use items, including items that may be used for the development of weapons of mass destruction, delivery vehicles for these weapons, and advanced conventional arms. Its mission remains, as before, to advance U.S. national security, foreign policy, and economic interests. Since September 11, 2001, BIS has been actively working with its counterparts in the Departments of State, Energy, and Defense to ensure that export controls address current global security challenges and, in particular, are adequate to prevent the acquisition of such items and use by hostile nations or terrorist groups. To that end, we have advocated proposals to strengthen export controls and procedures in all four multilateral export control regimes (the Nuclear Suppliers Group (NSG), the Australia Group (AG), the Missile Technology Control Regime (MTCR), and the Wassenaar Arrangement).

For example, in the NSG, the United States has proposed a "watch list" of non-controlled commodities that could be of use to North Korea's nuclear program. This list would be shared with non-regime partners to make them more aware of the commodities that could aid North Korea's nuclear program. The AG has accepted U.S. proposals to tighten the controls on small fermenters that terrorists could use to produce biological warfare agents. The AG also has agreed to a U.S. proposal to tighten controls on technology transferred through intangible means such as the Internet. In the MTCR, the United States has advocated expanding the controls to include small unmanned aerial vehicles that could have applicability in spreading chemical and biological weapons agents. In the Wassenaar Arrangement, the United States advocated amending the "Initial Principles" to include, as a core regime objective, the prevention of terrorism.

These regime changes support BIS efforts to address security concerns originating not only from hostile nations but also from terrorist groups and individuals.

Question. Your fiscal year 2004 request for the Bureau is only \$3.5 million above the fiscal year 2003 enacted level. Is this amount adequate to meet all of the new requirements you will surely face in the upcoming months and years?

Answer. BIS is comfortable with the funding request contained in the President's budget. In order to address new requirements, BIS believes that the budget request should be funded in full.

Question. Is BIS' technology infrastructure adequate? From high-powered data warehousing at headquarters to satellite phone capability in the field, does BIS have the tools it needs to do its job?

Answer. BIS currently has an adequate technology infrastructure to perform its mission-critical functions. BIS is in the process of modernizing its Export Control Automated Support System (ECASS), which was developed in the mid-1980s, from

a mainframe-based system to a modern server-based system with a relational database. BIS also has upgraded all personal computers, desktop software, and telecommunications links to provide its users with up-to-date technology and to improve productivity. BIS continues to seek ways to modernize its technology infrastructure to empower its employees to deliver critical services to its customers.

To that end we note that in the President's fiscal year 2004 budget proposal, additional resources are requested to support BIS's Seized Computer Evidence Recovery System (SCERS) program. This program, which uses evidence seized from computer disk drives, has a significant backlog of evidence awaiting analysis. This delay has hindered the processing of cases and the completion of time-sensitive investigations. In the President's fiscal year 2004 budget, BIS seeks additional personnel (one agent and two technical analysts) to staff a modern SCERS lab, thus alleviating the burden placed on SCERS agents in the field currently performing this work.

Question. To what extent will BIS be working with the Department of Homeland Security? In your opinion, what is the appropriate relationship between BIS and Homeland Security? To what degree will the new Department influence BIS' mission, policies, and agenda?

Answer. BIS has an excellent working relationship with various agencies now located in the Department of Homeland Security, and we anticipate that we will continue to work well with those agencies. BIS has long had an excellent working relationship with the U.S. Customs Service in the administration and enforcement of dual-use export controls. BIS also maintains a good working relationship with the Information Analysis and Infrastructure Protection Directorate of DHS, to which BIS's Critical Infrastructure Assurance Office was transferred earlier this year. The creation of the Department of Homeland Security has not altered BIS's mission, policies, or agenda.

Question. To what extent is the Bureau of Industry and Security working with the Department of State, which has responsibility for regulating weapons exports? Could you describe how this relationship has evolved since September 11? Are State and BIS sharing information and lessons-learned? Are State and BIS collaborating their efforts overseas, for example, sharing information about end-use checks, monitoring, enforcement, and the like?

Answer. BIS continues to have a close working relationship with the Department of State on the implementation of U.S. export controls. BIS has been involved with the Departments of State, Defense, and Energy, and the National Security Council in a comprehensive review of goods and technologies on the U.S. Munitions List (USML). The State Department implements export controls under the USML. In addition, by Executive Order, State reviews export license applications submitted to BIS and BIS-promulgated regulations concerning exports of U.S. dual-use goods and technologies. BIS also works closely with State on changes to the multilateral export control regime lists. Through these various processes, State and BIS share information about countries and end-users of concern. Moreover, since the mid-1990s, BIS has worked closely with State to share information relevant to each other's watch lists and end-use checks. Finally, BIS works closely with the State Department in rendering technical assistance to other countries to assist the development of strong indigenous export control systems and improve cooperation in export controls, under the State Department administered Export Control and Border Security program.

CRITICAL INFRASTRUCTURE PROTECTION

Question. Mr. Secretary, CIAO was created within the Department of Commerce in fiscal year 1999. A conscious decision was made to put CIAO at Commerce because of Commerce's strong ties to the private sector, which controls the lion's share of our national critical infrastructure (the Internet and utilities, to name just two examples). This month, CIAO began its transition to the Department of Homeland Security.

How do you think CIAO's mission will change once it is incorporated into the new Department? Will CIAO continue to have primary responsibility for liaising with the private sector on matters relating to critical infrastructure protection and for ensuring that the private sector does not inadvertently create weaknesses in our national critical infrastructure, or will this responsibility remain at Commerce?

Answer. CIAO's mission consisted of three main functions related to critical infrastructure protection when it transferred into the Department of Homeland Security (DHS): national outreach and awareness, planning and policy coordination, and critical asset and interdependency identification for federal government agencies (Project Matrix). Consistent with the requirements of the Homeland Security Act of 2002, these functions were fully integrated into the Information Analysis and Infrastructure Protection Directorate. Since private industry owns and operates 85-90

percent of the nation's critical infrastructures, we anticipate that DHS will need to continue to work closely with U.S. industry, and has primary responsibility for doing so. The Planning and Partnerships Office of the new Directorate retains CIAO's core public-private partnering competencies and previously-built contacts with the private sector. Commerce stands ready to assist where appropriate.

Question. Do you think Homeland Security is well-suited to handle the task of liaising with the private sector, as CIAO did while it was at Commerce? How do you think companies will react to having DHS—which is essentially a law enforcement agency—involved in their internal efforts to strengthen their systems against attack?

Answer. Our experience suggests that U.S. industry generally cooperates well with government agencies on issues of national security and homeland defense. As we all have seen since September 11, 2001, national and economic security depends on homeland security. Private industry in general recognizes this new reality. We are optimistic that industry and the Department of Homeland Security will have a productive and mutually beneficial relationship with respect to critical infrastructure protection. The Commerce Department stands ready to assist in this effort as appropriate.

Question. With the transfer of CIAO, will the Bureau of Industry and Security have any role in critical infrastructure protection?

Answer. The Department of Commerce generally, and the Bureau of Industry and Security specifically, will continue to carry out programs and activities relating to the economic security component of critical infrastructure protection—as they did before CIAO was created in the Department of Commerce. For example, the National Telecommunications and Information Administration has responsibility for spectrum management and chairs the interagency Internet Protocol version 6 (IPv6) task force. The Technology Administration's National Institute for Standards and Technology will continue its leading role in developing standards relating to the physical and cyber security of products, services, and processes, which are shared internationally as well as domestically.

The Bureau of Industry and Security (BIS) continues to have significant defense industrial base responsibilities. The defense industrial base was recognized as one of the fourteen critical sectors in the National Homeland Security Strategy. BIS administers the priorities and allocations authority under Title I of the Defense Production Act to ensure the timely delivery of industrial products, equipment, materials, and services for approved national defense and homeland security programs. Under that authority, BIS has assisted the Transportation Security Administration and the FBI in acquiring products and equipment needed for the war on terrorism. BIS also conducts assessments of the viability of various critical industry sectors. Finally, consistent with its mission of furthering U.S. national security and economic security, BIS continues to advocate the importance of protecting the country's critical infrastructures and assets.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST)/HOMELAND SECURITY

Question. It is clear that NIST and the Department of Homeland Security (DHS) must develop a close working relationship. Have you had any preliminary talks with Secretary Ridge on this subject? Do you believe the Director of NIST has a clear understanding of what will be expected of NIST under the new homeland security framework? Does he have the resources he needs to meet these requirements?

Answer. There have been extensive discussions between the Department of Commerce (DoC) and the Department of Homeland Security (DHS) on the need to develop a close and effective collaboration. Such discussions led to the signing of a Memorandum of Understanding (MOU) on May 22, 2003, between the Technology Administration (TA) of DoC and the Science and Technology (S&T) Directorate of DHS. The MOU allows the S&T Directorate to leverage TA's, and specifically NIST's, expertise in measurement science and standards to accelerate the development, testing, evaluation, and deployment of homeland security technologies. S&T and TA seek to collaborate on research and planning activities, and share where appropriate facilities, personnel, and scientific information. This MOU builds on the long history of collaboration between NIST and the various agencies incorporated into DHS, such as the Federal Emergency Management Agency (FEMA), and the Office for Domestic Preparedness (ODP). To further improve ties between NIST and DHS in the areas of measurements and standards, NIST has detailed on a full-time basis the Division Chief from its Ionizing Radiation Division and a staff member (part time) from its Computer Security Division to the Office of Standards in the DHS S&T Directorate.

The Director of NIST has a clear understanding of NIST's role in homeland security. This role is defined by NIST's unique mission to develop and promote measurement, standards, and technology to enhance productivity, facilitate trade, and improve the quality of life. Because of the overwhelming importance of homeland security to the quality of our life, NIST will work with the new DHS to ensure that the appropriate measurements and standards are in place to support the efforts of DHS in chemical, biological, radiological, nuclear, and explosive detection and defense, cybersecurity, critical infrastructure protection, first responders, etc. NIST's partnership with DHS will build upon years of experience working with a number of the agencies making up the new Department.

NIST is also building upon its experience in consensus standards and its partnerships with standards development organizations (SDO's) to address the needs for homeland security standards. The Chief of NIST's Standards Services Division is the government co-chair of the ANSI Homeland Security Standards Panel that is coordinating the efforts of standards development organizations (SDOs) in developing standards required for homeland security technologies.

Because of the importance of homeland security to our citizens, NIST has redirected resources to develop the critical measurements and standards in this area. When appropriate, NIST homeland security efforts are supplemented by funds from other government agencies. When sufficient funding is not available through these approaches, the Administration has proposed budget initiatives for NIST in the area of measurements and standards for homeland security. For fiscal year 2004 the following homeland security budget initiatives have been proposed: Homeland Security: Standards, Technology, and Practices for Buildings and First Responders (\$4.0 million, 7 permanent positions, and 5 FTE); Measurement Infrastructure for Homeland Security (\$5.3 million, 12 permanent positions, and 9 FTE); and Standards for Biometric Identification Systems (\$1.0 million, 4 permanent positions, and 3 FTE).

NIST/LAW ENFORCEMENT TECHNOLOGIES STANDARDS

Question. Mr. Secretary, a great deal of funding has been earmarked during the last two years to help first responders purchase the equipment they need to effectively combat terrorism. Justice has been doing some work in the area, but standards-development is really NIST's bailiwick.

The President's budget does not request any direct funding for the Office of Law Enforcement Standards at NIST. Are you planning to request funds for OLES in the fiscal year 2005 budget request? Wouldn't you agree that there is a significant need in this area and that NIST is uniquely qualified to fill it?

Answer. In response to your statement, developing performance standards for communication and personal protection equipment for first responders is very important and the National Institute of Standards and Technology (NIST) has an important role to play here. For several years, NIST's Office of Law Enforcement Standards (OLES) has been working with the Department of Justice's National Institute of Justice (NIJ) and other government agencies developing performance standards for first responders.

The ability of law enforcement and public safety agencies to communicate and exchange data in critical situations is fragmented by equipment incompatibilities and the lack of standards to provide a common, nationwide approach to telecommunications and information sharing. In its efforts to resolve this issue, NIST's OLES has been working hard on a Public Safety Communications Standards program geared toward solving public safety interoperability and information sharing problems by developing and adopting NIJ standards for voice, data, image, and video information transfers for first responders. In addition, OLES has been holding discussions with end users about their requirements and evaluating commercial devices instrumental to ensure that the equipment and technologies currently being used by the U.S. first responders community are interoperable, safe, dependable, and effective.

In addition, OLES has been managing a program since 1999, to develop CBRNE (chemical, biological, radiological, nuclear, and explosive) protective equipment standards for emergency first responders. This program, initially funded by NIJ, will continue with funding provided by the Office for Domestic Preparedness (ODP). An Interagency Agreement has been signed between the ODP, formerly of the Office of Justice Programs, now part of the Borders and Transportation Security Directorate, Department of Homeland Security, to continue the program managed by OLES for the development of a national suite of CBRNE protective equipment standards for emergency first responders. This program led to a National Institute of Occupational Safety and Health (NIOSH) standard for Self-Contained Breathing Apparatus (SCBA) and Air Purifying Respirators (gas masks) and produced an im-

portant set of guides and databases to help emergency first responders in the evaluation and purchase of chemical and biological detection, personal protective, and communications equipment. The continuation of this program under ODP will be significantly expanded beyond development of personal protective equipment standards to address radiological threats, decontamination standards, and explosive detection standards.

Yes, the National Institute of Standards and Technology (NIST) believes there is a significant need in the criminal justice and public safety area and NIST is uniquely qualified to fill it. NIST has successfully filled these needs over the past 32 years through a number of reimbursable agreements with other agencies, such as the Department of Justice's National Institute of Justice, the Department of Transportation, and most recently with the Department of Homeland Security's Office of Domestic Preparedness.

The \$3 million funding for NIST's Office of Law Enforcement Standards (OLEs) provided in the fiscal year 2003 Omnibus Appropriations Act will go a long way in helping NIST to ensure that NIST has the critical personnel with the expertise to implement law enforcement standards initiatives proposed by their partner federal agencies as specifically stated in the Act itself. This funding supports NIST with an appropriation in fiscal year 2003 for the staff and administrative costs related to the Office of Law Enforcement Standards, giving NIST the means to independently hire, maintain and manage the appropriate technical expertise to perform its responsibilities to the law enforcement community. In addition, it allows NIST to devote the entirety of its funding from reimbursable sponsors to the technical needs of those sponsors, without diverting any funding from sponsors to cover staff and administrative costs at NIST.

At the time the fiscal year 2004 President's budget request was submitted, the fiscal year 2003 Omnibus Appropriations Act had not been enacted. Therefore, the fiscal year 2004 President's budget request builds from the fiscal year 2003 President's budget request, which did not include any direct appropriated funding for NIST's OLES. Decisions on the funding priorities to be included in the President's fiscal year 2005 budget have not been finalized, and we will bear your concerns in mind as we evaluate the many competing requests for funding.

NIST/WORLD TRADE CENTER INVESTIGATION

Question. Before NIST took over the World Trade Center investigation, there was a huge controversy over whether too much of the structural steel from the Twin Towers had been sold to scrap yards, creating an impossible situation for NIST's scientist and engineers. Now that NIST is seven months into the investigation, has it been able to gather enough evidence including structural steel to conduct the investigation? Could you report on NIST's progress or any preliminary findings from the investigation?

Answer. Yes, the National Institute of Standards and Technology (NIST) is basing its review, analysis, modeling, and testing work for the World Trade Center (WTC) investigation on a solid foundation of technical evidence.

NIST has in its possession nearly 250 pieces of WTC steel. The vast majority of the pieces are of significant size and include perimeter prefabricated column-spandrel elements, rectangular box beams, wide flange sections, truss sections, channels and several smaller pieces, such as bolts. As of March 28, 2003, NIST has catalogued 235 pieces of WTC steel which includes a database with photographic records and member markings. In addition, NIST has examined additional steel stored by the Port Authority at JFK airport and has transported 12 specimens to NIST. NIST believes that this collection of steel from the WTC towers is adequate for purposes of the investigation.

NIST has also received considerable cooperation and large volumes of information from a variety of organizations and agencies representing the building designers, owners, leaseholders, suppliers, contractors, and insurers.

Local authorities providing information include the Port Authority of New York and New Jersey (PANYNJ or Port Authority) and its consultants and contractors; the Fire Department of New York (FDNY); the New York Police Department (NYPD); the New York City Department of Design and Construction (DDC); the New York City Department of Buildings (DOB); and the New York City Office of Emergency Management (OEM). In addition, the Occupational Safety and Health Administration (OSHA) provided correspondence sent to it regarding the evacuation experience of WTC occupants on September 11, 2001.

NIST also has received information from Silverstein Properties (Silverstein) and its consultants and contractors; the group of companies that insured the WTC towers and its technical experts; Nippon Steel; Laclede Steel; Isolatek International,

formerly known as U.S. Mineral Products; Marsh & McLennan (a tenant of WTC 1), and Roger Morse Associates. The information from Silverstein and the insurance companies includes the large body of technical work completed by both parties as part of the insurance litigation involving the WTC towers, such as reports on the structural collapse, fire spread and severity, and wind tunnel test results for the WTC towers. In addition, technical experts for both parties independently provided extensive briefings to the WTC investigation team and discussed the tenability environment and the evacuation procedures in the buildings.

Solid progress has been made by the investigation team at the one-third mark of the ongoing 24-month effort. On May 7, 2003, NIST released a progress report (<http://wtc.nist.gov/>) on the WTC investigation, its second since the effort began in August 2002. This interim report does not include any conclusions or make any recommendations, since the investigation is still in its early stages.

Key points in the progress report included:

- a status update on efforts to collect critical data about the WTC disaster of September 11, 2001, such as building documents, video and photographic records, emergency response records and oral histories (a complete listing of materials collected to date and those items still needed are included in the report);
- an interim report that documents the procedures and practices used to provide the passive fire protection (fireproofing) for the floor system of the WTC towers (nothing in the interim report based on a review of factual data in documents obtained by NIST should be taken to imply that the floor trusses played a critical role in the collapse of the WTC towers);
- a detailed description of the key factors that NIST is considering in its analysis of the various collapse scenarios hypothesized for the WTC buildings, including fire endurance testing of a typical WTC floor system and individual steel members;
- a look at the integrated approach for identifying the most probable of the technically possible collapse sequences for WTC 1 and 2 (the Twin Towers) and WTC 7; and
- a review of NIST plans originally presented in April 2003 for studying the WTC evacuation and emergency response by collecting first-person data from survivors (both WTC occupants and first responders), families of victims, and individuals with operational and command authority during the WTC disaster.

NIST/WARWICK, RHODE ISLAND FIRE INVESTIGATION

Question. Mr. Secretary, in January, we in New England suffered a horrible tragedy when 96 people were killed in a nightclub fire in West Warwick, Rhode Island. Was the National Construction Safety Team Act successful in helping avoid confusion over responsibility for the investigation into this tragedy? How is the Administration proposing to fund this and future investigations? If NIST is going to be responsible for investigating these events when they occur, should funds be set aside within NIST for this purpose to avoid the delay in starting the investigation?

Answer. The tragic fire in West Warwick, Rhode Island, is the type of event that the National Institute of Standards and Technology (NIST) would have investigated under its existing authority prior to the passage of the National Construction Safety Team (NCST) Act. What the Act has done, however, is to allow us to respond immediately and to raise the awareness and appreciation of our activities in the eyes of local officials and the other Federal agencies that are conducting investigations. The Act provides for the criminal investigation to have priority over NCST activities. We have briefed local and state authorities on the role and objectives of the NCST investigation, and established liaisons with the Rhode Island State Fire Marshal's office, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the U.S. Fire Administration. The NCST is gathering evidence, to the extent possible, independent of any criminal investigations.

The Rhode Island investigation plan was issued based upon the redirection of base funds. The plan targets completion of the investigation by the end of calendar year 2003.

NIST has not been appropriated any additional funding for activities associated with the NCST Act. Where appropriate, NIST will continue to undertake investigations of major building disasters as authorized by law.

PATENT AND TRADEMARK OFFICE, INCREASE IN USER FEES

Question. PTO's fiscal year 2004 budget request includes a 15 percent increase in user fees. This fee increase will mean an additional \$300 million in fee revenue for the PTO that it would otherwise not collect. How is a 15 percent increase in user

fees justified when, under the current plan, PTO does not expect to significantly decrease patent pendency?

Answer. The fee legislation currently pending in Congress will generate additional revenues and ensure the implementation of the USPTO's 21st Century Strategic Plan. If the fee legislation is not implemented for fiscal year 2004, the USPTO's projection of fee collections is \$1,302.7 million and if the fee legislation is implemented before fiscal year 2004, the USPTO's projection of fee collections is \$1,503.8 million in fiscal year 2004. This equates to an additional \$201.1 million, or a 15 percent increase. The proposed Fee Modernization Act of 2003 is a critical component to the successful implementation of the strategic plan. The strategic plan aims to modernize the agency for the 21st century by addressing patent pendency as well as quality, workload, and e-Government. As Under Secretary James E. Rogan has testified before Congress, without the additional fees secured by passage of a fee bill this year, average patent pendency will climb to more than 40 months by 2008.

The USPTO has been responsive to concerns that it continually attempts to address workload demands by hiring increasingly more patent examiners. The 21st Century Strategic Plan addresses this concern through a number of initiatives that will enable patent examiners to focus on the core mission of the organization—the examination of patent applications. These initiatives include the multi-track patent examination process, the mutual exploitation of search results, competitive sourcing of search, and the proposed fee restructuring. These initiatives, plus Under Secretary Rogan's top-to-bottom review resulted in a plan that reduces patent examiner hires through fiscal year 2008 by 2,400 compared to the fiscal year 2003 Business Plan.¹ As noted in the strategic plan, average patent pendency time will increase over the short-term and be at 27 months in 2008. The USPTO will continue to work toward reducing pendency and pursue the long-term optimum goal of 18 months pendency beyond the five-year horizon of the strategic plan.

[ATTACHMENT]

CONSEQUENCES OF FAILING TO ENACT FEE LEGISLATION IN 2003

Inability to Hire Needed Examiners.—In fact, patent pendency will increase dramatically because of our inability to hire 2,900 new patent examiners. An inability to hire patent examiners beginning in fiscal year 2003 and the out years will increase processing delays and severely impact USPTO's ability to bring down pendency. Over 140,000 patents will not issue over the next five years if the USPTO is held to current fees and funding levels.

Unexamined Patent Applications Skyrocket.—If recommended funding levels are not appropriated in future years, the inventory of unexamined patent applications would skyrocket to over 1,000,000 applications by 2008 (more than double the current amount).

Average Patent Pendency Skyrockets.—As measured from the time of filing, pendency would jump to over 40 months in 2008, the highest pendency rate in more than four decades.

Delaying Full e-Government.—Inability to meet the stated goals of a fully electronic, e-Government environment for patent and trademark applications.

PTO/FIVE YEAR STRATEGIC PLAN

Question. Mr. Secretary, I understand the PTO is now placing a higher priority on goals like quality assurance and e-government initiatives (the latter goal being driven primarily by OMB). While I agree that these are valid goals, I remain concerned about the issue of patent pendency. I understand that there is currently a 400,000 patent backlog. How will the Five Year Strategic Plan help decrease patent pendency? Will the PTO remain committed to the goal of 18 months for patent pendency? When can we realistically expect PTO to meet this goal?

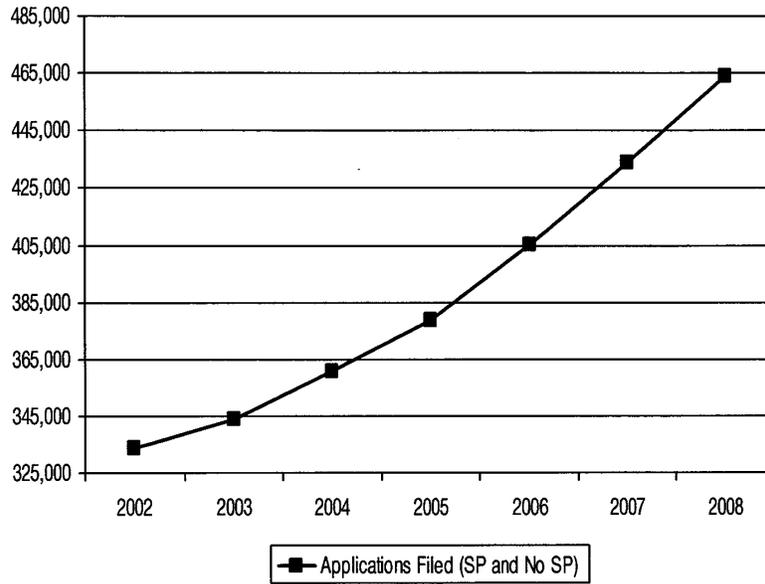
Answer. As you know, there is general agreement among the nation's CEOs, the inventor community, throughout lawyers in the bar, and people in the capital equity markets that issuing U.S. patents faster (vis-a-vis reducing pendency) without adequate quality assurance behind them would lead to uncertainty for the tech community and be a terrible mistake overall. Further, if we do not complete our e-government initiatives to electronically process patent applications, we would remain less able to respond quickly to changes in workloads.

As Under Secretary Rogan has also testified before Congress, without the passage of the Fee Bill, the USPTO's patent application backlog is predicted to rise to

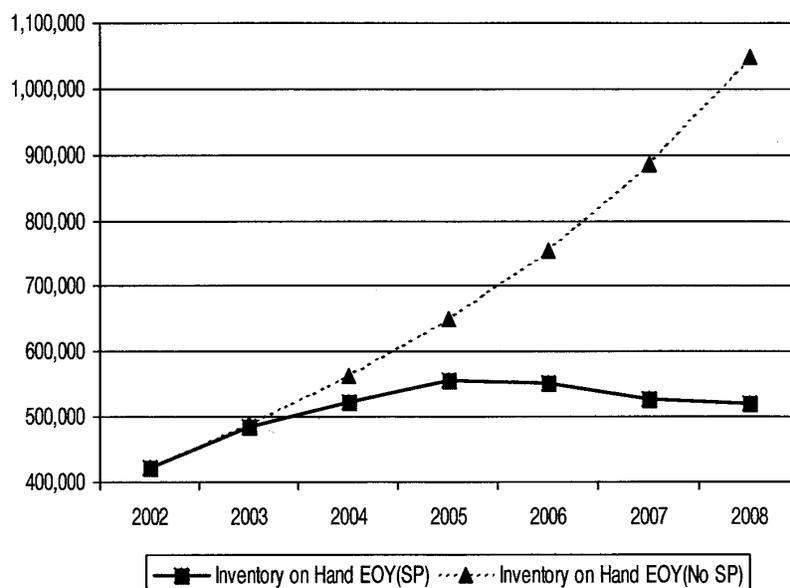
¹The 2003 Business Plan was submitted to the Congress in February 2002 as part of the USPTO's fiscal year 2003 Budget.

1,000,000 by 2008 and more than 140,000 patents will not issue in that time frame. We continue to work on all of these agency goals—pendency, backlog, quality assurance—through the 21st Century Strategic Plan and its initiatives. [See following graphs.]

Applications Filed



Inventory on Hand EOY



While the USPTO is making quality and e-Government initiatives an immediate priority, it continues to implement initiatives to support the USPTO's long-term pendency goals. The 21st Century Strategic Plan has aggressive timeliness goals: to make available, on average, a first Office action for first-filed U.S. non-provisional patent applications, at the time of 18 month publication, and a patent search report for other patent applications in the same time frame—by far the fastest in the world. This will be accomplished by redesigning the entire patent search and examination system based upon multiple-examination tracks, greater reliance on qualified patent search services, and variable, incentive-driven fees.

Upon enactment of the Fee Modernization Act of 2003, the USPTO will move from a "one-size-fits-all" patent examination process to a multi-track examination process that leverages search results of other organizations and permits applicants to have freedom of choice in the processing of their applications. The new process will eliminate duplication of effort, encourage greater participation by the applicant community and the public, and improve the quality of patents and decrease processing time. For example, the proposed fee legislation contains significant authorities needed to implement the strategic plan, such as providing refundable search and examination fees rather than the composite fee currently charged. This change will provide patent applicants with the opportunity to terminate the application process because an invention does not have sufficient commercial viability and obtain a refund. This would abandon the application and obviate the need for the USPTO to proceed with the examination of the application. The USPTO will continue to work toward reducing pendency and pursue the long-term optimum goal of 18 months pendency beyond the five-year horizon of the strategic plan. Their best estimate is that it will take at least a decade to achieve the 18-month goal.

Under a new paradigm, the USPTO will concentrate Office expertise as much as possible on the core government function of examination, and over the five-year horizon of the strategic plan, expects to hire 2,400 fewer patent examiners than originally envisioned. However, they will make available, on average, a first Office action for first-filed U.S. non-provisional applications at the time of 18 month publication, and a patent search report for other patent applications in the same time frame which industry acknowledges is a highly beneficial interim pendency solution.

PAPERLESS PATENT APPLICATION PROCESS

Question. Could you describe PTO's progress towards instituting a paperless patent application process? How high a priority is this for the PTO? How is this related to PTO's implementation of the various e-government initiatives?

Answer. The USPTO's priorities in the 21st Century Strategic Plan are to (1) improve patent and trademark quality, (2) aggressively implement e-Government to handle workload associated with the 21st Century economy, and (3) reduce patent and trademark pendency. One of the USPTO's highest priority e-Government initiatives is delivering an operating pipeline to process patent applications electronically by October 1, 2004, including electronic capture of all post-filing paper correspondence. At the center of the e-Government strategy is the collaboration with the European Patent Office (EPO) to use their ePHOENIX system, and collaboration with the Trilateral Offices (EPO and the Japan Patent Office) to achieve common goals and share systems already in use or development. The USPTO's Tools for Electronic Application Management (TEAM) project will also continue to support the e-Government strategy.

The USPTO is on schedule to meet its October 1, 2004 planned electronic patent application processing date as follows:

In May 2003, a prototype Image File Wrapper (IFW) system was installed in five Patent Examining Pilot Art Units, and more than 100 patent examiners and support staff were trained on the use of the system.

In June 2003, the USPTO will begin scanning all newly filed patent applications into the IFW system, and the digital copy replaces paper as the official patent file.

In July 2003, the USPTO will begin full production roll-out of the IFW system. Seven Art Units, comprised of about 100 employees, will be added to the system each week. Upwards of 7,000 applications will be scanned per week resulting in adding over 8 million pages to the database each month.

In December 2003, all working patent application files of the three Technology Centers moving to the USPTO's new Carlyle facility in Alexandria, Virginia, will be operating on the IFW system. At this time, there will be over 2,000 total users of the system.

In January 2004, the USPTO will begin the final phase of full deployment of the IFW system throughout the Patent Examining Corps.

In October 2004, all patent application processing will occur in a totally electronic environment that will be used by over 4,000 patent examiners and 2,500 support staff.

Beginning in fiscal year 2004, the USPTO will collaborate with the European Patent Office to initiate an effort to process captured patent application images into text and associated images. This effort will use an eXtensible Markup Language (XML)-based data representation enabling text-based patent application processing (e.g., document navigation, document searching) by fiscal year 2006.

SOFTWOOD LUMBER

Question. Mr. Secretary, are you aware of the softwood lumber issue, and can you give us a status report on the countervailing and antidumping investigations? Are you aware of the particular problem that some loggers and landowners in New England have had, which is that a dumping tax was, in effect, imposed on U.S. lumber that is shipped to Canada for processing? Is there going to be any opportunity for these companies to present their case and thus rectify this situation?

Answer. After complex and thorough investigations, antidumping and countervailing duty orders on softwood lumber from Canada were issued in May 2002.

I am aware of the issue involving duties being imposed on U.S. lumber shipped to Canada for processing and re-imported into the United States. In fact, in February 2003, based on comments we received, the Department issued a scope ruling to address this very issue. In essence, we clarified that U.S.-origin softwood lumber that is further processed in Canada may re-enter the United States free of antidumping and countervailing duties so long as, at the time of importation, the Bureau of Customs and Border Protection (BCBP) can be satisfied that the lumber was first produced in the United States. We believe that this matter has now been resolved. Since the Department issued its scope clarification, we have heard of no instances of BCBP collecting duty deposits on U.S. lumber processed in Canada and returned to the United States.

In addition, during May 2003, we received numerous requests for administrative reviews of both the antidumping and countervailing duty orders. We will be initiating the administrative reviews by the end of June 2003.

WORKING CAPITAL FUND

Question. Mr. Secretary, what would be the advantages and disadvantages of directly appropriating funds for central administrative services, rather than depending upon the Working Capital Fund?

Answer. The Department's Working Capital Fund (WCF) was established on June 28, 1944, pursuant to 5 U.S.C. 607 (15 U.S.C. 1521). The Working Capital Fund is a no-year revolving fund established to support departmental services delivered more efficiently, economically, or advantageously on a centralized basis. Although activities and services have changed over the years of operation, the WCF continues to display full costing of services in bureau budgets. We see no advantages to directly appropriating funds for central administrative services.

The disadvantages of directly appropriating funds for central administration services include the loss of:

- Responsiveness/Flexibility for Bureaus.*—The WCF provides a mechanism where Bureaus can request additional services based on their needs and funding availability, which varies year to year. For example, additional guard service and security investigations are requested as needed by Bureaus. If directly appropriated, bureaus would lose this flexibility.
- Flexible Cost Sharing Mechanism.*—As a result of the 9/11/01 tragedy, applications for government jobs through the Postal Service were significantly delayed throughout the federal government. Hiring came to a halt in most federal agencies. However, DOC job applications continued to be processed through Commerce Opportunities On-Line (COOL), an automated job application system. Individual DOC Bureaus may not have been able to fund this initiative alone, but collectively through the WCF this on-line job application system was developed and is being used successfully by all participating Bureaus.
- Economies of Scale.*—The WCF provides a better vehicle to manage inventory accounts and purchase large equipment or quantities of items in which the Bureaus share in expenses and cost savings. For example, we consolidate buying power and management of services through large orders for administrative services such as janitorial and printing. The WCF serves as a better vehicle to realize volume cost savings.
- Full Cost in Bureau Budgets.*—Costs charged through the WCF ensure that the Bureau's full cost of doing business is reflected in Bureau budgets, not in a general administration budget.

QUESTION SUBMITTED BY SENATOR PETE V. DOMENICI

PUBLIC TELECOMMUNICATIONS FACILITIES, PLANNING AND CONSTRUCTION

Question. Secretary Evans, public television stations all across the country are facing a federal mandate to convert to digital broadcasting. Approximately 192 stations out of 355 have filed with the Federal Communications Commission for a waiver because they are not going to meet the May 2003 deadline due to lack of funding. These stations are counting on the Public Telecommunications Facilities Program (PTFP), which provides grants to public radio and TV stations for equipment, to help them cross the digital TV finish line with a federal matching grant.

The President's fiscal year 2004 budget submission doesn't request funding for this important matching grant program. Can you please explain the thinking behind this decision?

Answer. The President's fiscal year 2004 Budget proposes to suspend funding for the PTFP grant program in fiscal year 2004. The President's fiscal year 2004 Budget also proposes that Federal support of public television's digital television conversion be funded through monies previously appropriated to the Corporation for Public Broadcasting (CPB). As you probably are aware, CPB is funded through a two-year advance funding procedure. CPB's fiscal year 2004 appropriation of \$380 million was enacted into law on January 10, 2002, as part of the Labor/HHS/Education appropriation, Public Law 107-116.

The Administration proposes that up to \$80 million in funding for digital conversion grants be made available from within CPB's \$380 million appropriation. The President's fiscal year 2004 budget recognizes that the FCC digital conversion requirement should be addressed in the next fiscal year.

To date, public television stations have kept pace with their commercial counterparts in the digital conversion. PTFP's 2003 funding will assist approximately 109 stations meet the FCC's 2004 deadline. In addition, CPB has been appropriated \$48 million for the digital transition as part of its fiscal year 2003 appropriation. NTIA has been in contact with CPB officials and understands that CPB will award these

funds later in the year. Given competing national budget priorities and the availability of funds within CPB, the Administration believes that suspending PTFP grants for a year is prudent.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUE

TOURISM

Question. Our country's engagement with Iraq has begun. The apprehension caused by this military conflict and terrorist incidents within the United States has led to a decline in air travel. This, coupled with weak economic conditions, has led to a decline in tourism such as we saw after September 11, 2001, and Desert Storm.

Has the Commerce Department developed a strategy to reduce the effects on the tourism industry from this decline in business? Does the fiscal year 2004 budget request the necessary resources to shore up this important industry?

Answer. In the fiscal year 2003 Omnibus Appropriation, Congress appropriated \$50 million to market and promote the United States as a tourism destination. We are working with industry to implement this program and expect the tourism promotion campaign to commence in fiscal year 2004.

The Department of Commerce is working in a number of ways to support the travel and tourism industry and to assist in its recovery. Immediately after 9/11, I reconvened the Tourism Policy Council (TPC) to coordinate throughout government the programs and policies that impact travel and tourism. The TPC provides the private sector with a forum for making known to the Federal government the industry's ideas and concerns. The TPC also ensures that the various Federal programs are coordinated to maximize support for the industry.

The Department has launched a public-private partnership between the United States and Japan to restore travel and tourism between our two countries. Through promotional programs and events, this "Tourism Export Expansion Initiative" also seeks to address Japanese concerns about security and to convey that the United States is a safe destination—key to restoring travel from this market.

The Department provides support to the travel and tourism industry through its Market Development Cooperator Program (MDCP). The MDCP is a competitive, matching grants program that seeks to leverage limited Federal support for expanding exports of small and medium-sized businesses. The Western States Tourism Policy Council received an award to focus on a cooperative strategy to restore international tourism in gateway communities in and around the federal public lands.

The Department also provided a \$788,000 grant to the State of Hawaii to help offset some of its losses attributable to the lack of tourism resulting from 9/11. The project was awarded to the Hawaii Visitor and Convention Bureau (Hawaii VCB) for a marketing campaign to attract visitors. Marketing will be multi-media and focused on mainland cities. The Hawaii VCB is based in Honolulu County but the project will benefit all counties of Hawaii.

The Department provides support to the travel and tourism industry through its market research program. The Department is responsible for collecting and disseminating international traveler statistics, including arrival statistics and visitor expenditures.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)

Question. Support for NOAA activities and resources in Hawaii. I am concerned with what appears to be a lack of Administration support for NOAA's commitment to address critical needs in Hawaii and the American Flag Territories. I have two items of particular concern. First, the NOAA ship VINDICATOR (to be renamed HI' ALAKAI) will be converted this fiscal year to support the National Ocean Service's activities in the Pacific including coral reef research. I understand that while the vessel will be ready for deployment during fiscal year 2004, the Administration's budget proposal does not include any funding for the operations of this vessel. Please explain in full detail why funds were not requested by the Administration for the operation of the VINDICATOR?

Answer. At the time the fiscal year 2004 budget was being formulated, NOAA was still defining the multi-disciplinary mission requirements that would be used to develop the specification package to convert HI' ALAKAI to meet the requirements. The likely date for award of the shipyard conversion contract was still unknown as was the expected amount of time that would be required for conversion and shake-down of new or modified systems. Considering those unknowns, it seemed unlikely the ship would be ready for operations early enough to require fiscal year 2004 operating funds.

Second, the National Marine Fisheries Service will finally establish the new Pacific Islands Region next month. I am informed that NOAA does not have the two SES positions needed to provide the new Region with its top level managers: a Regional Administrator and a Science Director. In addition to the SES positions, I have not received any credible confirmation that there will be adequate FTE positions to staff the new Region.

Question. Please explain how you plan to address these personnel problems and when we can expect these problems to be resolved.

Answer. With respect to the two Senior Executive Service (SES) positions, the National Marine Fisheries Service has requested authority from the Department of Commerce to recruit for a Pacific Islands Regional Administrator and Science Center Director. We expect to receive approval shortly and have these positions filled permanently by the end of the year. To fully staff the Pacific Islands Region and Science Center, we have projected a long term requirement (2010) of 187 FTE positions in addition to approximately 70 contract employees to primarily assist in carrying out science related activities. Currently, there are 117 funded FTE positions (including the two SES positions) and 70 contract employees located in Honolulu that constitute the initial staff for the Pacific Islands Region.

Question. Streamlining Fisheries Management. According to your written statement, one of your Department's strategic goals is to "improve and streamline the Nation's fishery management system to better meet commercial, recreational, and conservation objectives." How do you plan to implement this goal on a national scale, and how far will the Administration's request of \$29.8 million in fiscal year 2004 go toward meeting this goal?

Answer. The National Marine Fisheries Service (NOAA Fisheries) has responsibility for the management of sustainable fisheries, the recovery and protection of marine mammals and endangered and threatened species, and the conservation and restoration of marine habitat. NOAA Fisheries works closely with regional fishery management councils, states, and other constituents to carry out these mandates. The regulatory process affects not just marine resources but also the associated people, businesses, and communities.

The goal of the Regulatory Streamlining Project (RSP) is to improve the efficiency and effectiveness of regulatory operations and decrease NMFS's vulnerability to litigation. While the RSP initiative highlights the National Environmental Policy Act (NEPA) as a critical component of the regulatory process, there are many other requirements that must be addressed to ensure compliance with all of the agency's mandates. Extensive analyses and documentation are required to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other associated mandates such as the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), Administrative Procedure Act (APA), Regulatory Flexibility Act (RFA), Paperwork Reduction Act (PRA), Coastal Zone Management Act (CZMA), and Executive Orders 12612, 12630, and 12866. NOAA's fiscal year 2004 budget request for NOAA Fisheries includes \$1.5 million specifically to implement RSP during fiscal year 2004, as well as requests for additional resources for increasing the number of stock assessments around the country and the collection of comprehensive biological, economic, and sociological data on an increasing number of species and the environmental factors that influence their health and abundance. Current and improved analyses are critical to front-loading the management and regulatory process.

There are a number of other initiatives that are critical to regulatory streamlining on a national level. These include electronic rulemaking and information systems, improvements to the regulatory process, professional training to ensure compliance with all relevant laws and executive orders, and quality control/quality assurance.

Fiscal year 2004 funding would support the development of an electronic web-based system for all regulatory and information collection activities, including rule development, the maintenance of administrative records or dockets that support rulemaking, and rule-related communications with stakeholders. This initiative will directly support the RSP by expanding constituent participation, facilitating information dissemination, encouraging a more transparent decision making process, fostering better collaboration with stakeholders, and contributing to problem-solving early in the rulemaking process. NOAA Fisheries' performance will be greatly enhanced as the time required to review and process rules and regulations is reduced and long-term cost savings are generated. NOAA Fisheries is developing a training program specific to our rulemaking needs. The program will ensure that all appropriate staff are fully conversant with Federal Register documentation requirements, Agency documentation standards, compliance with all legal requirements, etc. Existing internal and external training opportunities will be utilized to the extent possible. Nevertheless, it will be necessary to develop specialized training which incor-

porates all applicable requirements relative to the fishery management context. These needs will be assessed and addressed in conjunction with development of revised Operational Guidelines. As additional responsibility is transferred to the Regions under the RSP, the Regional staff will need specialized training to be able to fulfill their changing responsibilities. In addition, during 2004, NOAA Fisheries will undertake a retrospective bench-marking of past performance dealing with litigation, timeliness, and the need for Federal Register corrections.

As part of RSP, NOAA Fisheries delegated signature authority for Endangered Species Act (ESA) section 7 consultations to Regional Administrators, except for those that are national in scope (i.e., programmatic, multi-Regional, etc.) or for permits issued by the Office of Protected Resources. In NOAA Fisheries Headquarters, the consultation program must conduct national consultations, provide guidance, training, expertise and program review to the Regional Offices, as well as all Federal agencies, Congress, and constituents. Regional Offices require additional resources to conduct a variety of consultations and to provide expert advice to fishery management councils and constituents. One important goal of the RSP is to have NOAA Fisheries alert fishery management councils and others early in their planning process of potential endangered species-fisheries interactions.

A centerpiece of successful ESA section 7 delegation will be NOAA Fisheries' continued commitment to train managers and consulting biologists to ensure that they maintain the knowledge, skills, and abilities that are necessary to implement the agency's section 7 program consistently, efficiently, and effectively. In particular, the following programs would be supported by fiscal year 2004 funding: Develop and implement basic and advanced section 7 training; develop and implement section 7 training for managers and Senior Executives; develop and implement annual regional section 7 workshops; and develop and implement training sessions for special topics.

Question. You have highlighted the climate change request of \$295.0 million for fiscal year 2004. However, \$266 million, or 89 percent of that figure, is listed as "other programs," which are maintained at fiscal year 2003 level funding. Please explain how the majority of NOAA's \$16.9 million increase for the Climate Change Research Initiative shows a commitment to "fully funding climate research" when no new funds are being requested for long standing, well respected, NOAA climate programs?

Answer. The \$16.9 million request for the Climate Change Research Initiative (CCRI) represents a single NOAA climate request that is targeted toward the highest priority national needs as described in this Presidential initiative and in the National Academy of Sciences 2001 report *Climate Change Science: An Analysis of Some Key Questions*. This is on top of providing full funding for NOAA's long-standing climate programs, including provision of inflationary costs and planned pay raises in the President's fiscal year 2004 budget. The request makes full use of NOAA's long-standing climate programs. In particular, of the \$16.9 million request, we are using existing programs and laboratories as follows:

- Global Ocean Observing System (+\$6.3 million request).*—This effort will be managed by NOAA's Office of Global Programs (OGP) and is expected to include support for Scripps Institution of Oceanography, University of Miami, Woods Hole Oceanographic Institution, and University of Hawaii, among others.
- Carbon Cycle Observing System (\$5.0 million).*—This system, focused on determining the amount of carbon dioxide taken up by North America, is to be operated by NOAA's Climate Monitoring and Diagnostics Laboratory (CMDL) in conjunction with the Climate and Global Change Program. CMDL has substantial experience in operating large-scale atmospheric observing systems, having operated the Baseline Observatories (including Mauna Loa) that document the global rise in greenhouse gases. The Climate and Global Change Program will ensure university involvement in modeling and data analysis.
- Aerosol-Climate Interactions (\$1.0 million).*—This increase builds on an existing program aimed at one of the most prominent uncertainties in climate projection, namely the impacts of fine airborne particles on climate. This will be administered through NOAA's Office of Global Programs and the Aeronomy Laboratory.
- Supercomputing (\$3.5 million).*—This will support an increase in climate computational ability at NOAA's Geophysical Fluid Dynamics Laboratory, which originated the modeling of climate in the 1960's.

The remaining \$1.1 million in NOAA's fiscal year 2004 requested CCRI increase would be to fund the Climate Change Science Program Office, which would provide coordinated national leadership for the President's interagency climate and global change program, including the coordination for CCRI among the Departments of Commerce, State, Interior, Health and Human Services, Energy, Agriculture, and Defense, and the Environmental Protection Agency, the National Science Founda-

tion, the National Aeronautics and Space Administration, the Smithsonian Institution, the Office of Management and Budget, and the Office of Science and Technology Policy.

In addition, fiscal year 2003 CCRI funding is also being used in existing programs. CCRI supports expansion of the Regional Integrated Science and Assessments Program (RISA) of OGP, which focuses on developing pilot projects for using climate information and enhancing collaboration among researchers, decision-makers, and the public. This year, a new RISA project will be started in Hawaii at the East-West Center looking at the options, risks, and uncertainties in mitigating and adapting to year-to-year climate variability and long-term climate change.

TRADE ADJUSTMENT ASSISTANCE

Question. The Commerce Department administers a small program, Trade Adjustment Assistance for Firms, that is authorized to be funded at \$16 million, but is currently operating at \$10.4 million. Small companies in my state have benefited from expertise provided through this program and have improved their competitiveness against imports. I was pleased that the fiscal year 2004 budget request includes funding of \$13 million, but am concerned by reorganization proposals. It is my understanding that the Trade Adjustment Assistance Centers (TAACs) may be moved into the Economic Development Administration regional offices providing another level of bureaucracy to this small and successful program. I am aware that discussions have been initiated to keep the TAACs as free-standing programs under the International Trade Administration. It is also my understanding that the formula is being recalculated in a manner that would be unfavorable to the Western Region TAAC. Could you discuss these proposed changes and the effect they may have on the program?

Answer. EDA's transition to a decentralized program delivery structure was begun during the last Administration. Current EDA leadership is simply completing the process. EDA's Public Works, Economic Adjustment and Local Technical Assistance (including University Centers) programs are all administered by EDA's six regional offices. The Trade Adjustment Assistance (TAA) for Firms program is the only regional program activity that is administered by EDA headquarters rather than by the EDA regional offices.

The realignment of the TAA for Firms program to mirror the decentralized structure of EDA's other programs will simply transfer TAA for Firms processing functions, currently being performed in EDA headquarters, to the regional offices. The requirements and basic processes for the TAA for Firms program will remain unchanged. As with EDA's other programs that have been successfully decentralized to the regional level for many years, this action will bring the TAA for Firms program closer to the firms it serves and in line with the President Management Agenda. This change will not affect the structure of the 12 Trade Assistance Adjustment Centers (TAAC).

Under this structure, the TAACs will interact with new, more locally-based EDA personnel, but the structure will not result in an additional level of bureaucracy. In fact, the more robust program delivery capability of EDA regional offices is expected to improve EDA's overall administration of the TAA for Firms program.

EDA funding allocations for the TAACs for fiscal year 2003 were calculated following the same methodology used in fiscal year 2002 and previous years. EDA is presently working with the TAAC community to establish a formalized and quantifiable funding formula that can be replicated year-to-year, allocating funding based on various factors, including TAAC performance levels. EDA has not yet proposed a funding formula for 2004 and beyond. On March 5, 2003, EDA staff met with representatives of the TAACs to seek input and to discuss possible funding formulas. On May 29, 2003, the TAAC community responded with a suggested funding formula, which EDA currently is considering. In addition, some TAACs, including the Great Lakes TAAC (Ann Arbor, MI) and the Western TAAC (Los Angeles, CA) expressed concerns about the overall TAAC community's recommendations to EDA. These minority opinions are also being considered by EDA. EDA intends to proceed with the development of a formalized and quantifiable funding formula, in consultation with the TAAC community, that will not only provide each TAAC with a base level of funding but will also reward those TAACs with the highest performance levels.

QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

TRADE AGREEMENTS—IMPACT ON SUGAR

Question. Mr. Secretary, the Administration has sought to move the WTO and FTAA negotiations into a more serious phase, concluded negotiations on free trade agreements (FTA's) with Chile and Singapore and launched four new FTA negotiations—with Central America, Morocco, the South Africa Customs Union, and Australia. And more such FTA initiatives may be on the way.

I am concerned that negotiations pursued piecemeal, with inadequate attention to industry-specific problems, as they seem now headed, could bring disastrous results to American sugar beet and cane producers and refiners.

Do you share my concern that inclusion of sugar trade provisions in bilateral or regional trade agreements could leave the U.S. sugar industry vulnerable to increased competition without opening European and other consumer markets?

Answer. The U.S. Department of Agriculture has jurisdiction over this issue and therefore is the appropriate agency to respond to this question.

Question. Every other major sugar producing country excludes sugar from their regional and bilateral trade agreements, even so-called "free trade agreements." Why would the United States include sensitive products like sugar in FTA's if other countries do not?

Answer. The U.S. Department of Agriculture has jurisdiction over this issue and therefore is the appropriate agency to respond to this question.

Question. Should trade in sugar therefore be addressed only in the multilateral negotiations of the World Trade Organization (WTO)?

Answer. The U.S. Department of Commerce, primarily through its International Trade Administration unit supports bilateral and multi-lateral trade negotiations and monitors the results of signed trade agreements. However, in relation to sugar trade issues the U.S. Department of Agriculture has jurisdiction and therefore is the appropriate agency to respond more fully to these questions.

Question. How do you plan to address other countries' policies distorting trade in sugar, which create a "dump" in the market with prices averaging barely half the world average cost of production for the past two decades? Do you seek to impose restrictions on sugar trade-distorting policies on developing and developed countries alike?

Answer. In general, the Department of Commerce is examining the role of market distortions and their effect on trade in the context of the Doha Round. We note that in their mandate for negotiations on Rules in the Doha Round, the Trade Ministers included disciplines on "trade-distorting practices" as an explicit area for further clarification and improvement. Accordingly, the United States has addressed this issue already in our submissions to the Rules Negotiating Group. For example, in our October 22, 2002 Basic Concepts and Principles paper, we noted that:

"A government's industrial policies or key aspects of the economic system supported by government inaction can enable injurious dumping to take place. Although these policies take on many different forms, they can provide similar artificial advantages to producers. For instance, these policies may allow producers to earn high profits in a home 'sanctuary market,' which may in turn allow them to sell abroad at an artificially low price. Such practices can result in injury in the importing country since domestic firms may not be able to match the artificially low prices from producers in the sanctuary market." (TN/RL/W/27, at 4)

We believe that addressing market- and trade-distorting practices is essential to a rules-based multilateral trading system where U.S. domestic producers and U.S. exporters can compete on a level playing field, and we will press strongly throughout these negotiations for strengthened disciplines in this area.

More specifically, the Department of Commerce vigorously enforces the unfair trade laws, and has three outstanding antidumping duty orders covering sugar from Belgium, France, and Germany. There is also a countervailing duty order covering sugar from the European Community in effect. As you know, our antidumping and countervailing duty laws apply to developed and developing countries alike.

TRANSPARENCY IN TRADE NEGOTIATIONS

Question. Representatives of American workers and industries report that they have not been consulted or even briefed sufficiently on ongoing trade negotiations, including Free Trade Agreements and the U.S.-Mexico sweetener agreement. What measures are you taking to improve transparency of trade negotiations with key American constituencies?

Answer. Transparency throughout the negotiating process significantly strengthens the ability of U.S. negotiators to craft trade agreements that will benefit the U.S. economy. The Department of Commerce makes every effort to consult with American constituencies before, during, and after trade negotiations on all aspects of trade negotiations in which the Department is involved. The U.S.-Mexico sweetener agreement has been handled by the Department of Agriculture and the U.S. Trade Representative.

At the launch of negotiations, and when major policy issues arise, the Administration issues a Federal Register notice. After carefully reviewing and cataloging the responses, we draw on this material to inform our positions throughout the negotiation. We also participate in public hearings to get additional input.

During the negotiations, Department staff regularly brief industry groups on the status of trade negotiations. It is extremely important to share as much information as possible, as early as possible, with interested parties. One of the ways we seek private-sector input is through the Industry Consultations Program, which is jointly administered by Commerce and the United States Trade Representative, and includes 21 industry sector and functional advisory committees and approximately 345 industry executives as members.

We also brief other industry groups, associations, and individual companies as requested. We coordinate with broad industry associations, such as the National Association of Manufacturers, to seek input on trade negotiations. Industry-specific trade specialists within the Department's Trade Development Unit canvass their sectors for input regarding all relevant policy decisions. Staff regularly draft material that contributes to trade negotiation summaries which are posted on USTR's public website. We also hold public hearings at important junctures in negotiations so interested parties can hear first-hand from the negotiators or from more senior U.S. officials how negotiations are proceeding. The Department uses other avenues such as World Trade Week and our export assistance centers to try to reach a broad spectrum of interests.

After the negotiations are concluded, we prepare user-friendly summaries and industry-by-industry reports that are posted on our web site.

STEEL TARIFFS—WTO DECISION

Question. Are the temporary tariffs on steel, imposed under section 201 of the Trade Act, having the desired effect?

Answer. In March 2002, following a thorough U.S. International Trade Commission (ITC) investigation and after reviewing the ITC recommendations, the President implemented the steel safeguard remedy to provide the temporary relief the industry needed to facilitate the adjustment and rationalization of the U.S. steel industry.

The U.S. steel industry has experienced an unprecedented level of consolidation and restructuring, with additional consolidation likely in the near future. The International Steel Group led the way by acquiring and reorganizing the integrated production facilities of LTV and Acme Steel and last month bought Bethlehem Steel. US Steel recently acquired National Steel. These and other companies have negotiated more flexible labor agreements that are expected to generate significant cost savings. In the mini-mill sector, Nucor is investing heavily to modernize the mills it purchased from Trico Steel and Birmingham Steel. A number of smaller companies have closed and others have emerged from bankruptcy, downsized and under new ownership.

Any decision regarding modification of the Section 201 remedy will follow submission of the ITC's mid-term review to the President and Congress on September 20, 2003. Our trade law requires the ITC to prepare this report, which will document the efforts of the domestic industry to adjust to import competition.

After the President receives the mid-term report, the statute gives him greater authority to "reduce, modify, or terminate" the safeguard. A decision under this authority will be taken by the President, and we cannot prejudge what his decision may be.

Question. What progress has been achieved in reducing excess steel-making capacity abroad?

Answer. Since September 2001, the steel initiative at the Organization of Economic Cooperation and Development (OECD) has engaged in a serious review of the world steel capacity situation in light of the adverse impact on world steel markets from excess inefficient capacity. To this end, the OECD established the Capacity Working Group to examine approaches that could be used to monitor and encourage the closure of inefficient excess capacity and restructuring developments in the industry through market forces. The primary tool for the Capacity Working Group is

the periodic peer review of the reports from the participating countries on their respective steel industry. These reports describe capacity and production levels, likely closures and new capacities. Information on significant legal and policy changes that affect the steel making capacity are also contained in these reports. The peer reviews are conducted at OECD among the participating countries. When the governments present their reports, the participating countries ask any questions they might have on the reports. The purpose of the peer review to highlight any significant problems related to inefficient excess capacities in the global steel market.

As of May 2003, the participating countries have reported 107.07 million metric tons of crude steel capacity that have been closed during 1998 to 2002. The United States accounts for approximately 14 million metric tons of this reduction. They also forecasted an additional 29.00–35.60 millions of closures for the period of 2003–2005. However, some countries are also estimating some increase in new capacity or replacement of old capacity. On an aggregate level, we expect 16.75–17.05 million metric tons of new capacity for 2003–2005.

Question. When can we expect to achieve a better balance between steel-making capacity and global demand?

Answer. Global production and consumption of steel reached 902 and 812 million metric tons respectively in 2002. While analysts generally agree that the figure for global capacity is about 1 billion metric tons, there is no definitive number. In 2002, production and consumption of steel products significantly increased from 2001, and most of the increase in demand and production has been from China. In some ways, the increase in demand for steel products in 2002 has diminished the need to reduce capacity in many regions. For example, there is no evidence that significant elimination of capacity or decreases in production have taken place in Russia and Ukraine, both countries which analysts cite as having significant amounts of inefficient excess capacity. Similar to the situation in China, these governments are reluctant to face the social cost of dismantling steel mills in towns where the steel mills are the major employment source. Meanwhile, we believe that Russia, Ukraine, Japan, Korea and India have all increased exports to China in 2002. Many analysts wonder how long China's growing economy will sustain this frantic pace of demand. China, which became the largest steel importer in the world in 2002, importing close to 30 million metric tons, is responsible for much of the increase in worldwide demand. Without continued import demand from China, countries that count on exports to sustain their production levels might become sources of excess supply. The OECD Capacity Working Group's peer review process will allow us to quickly detect excess capacity. It is therefore difficult to predict when we can achieve a better balance of capacity and demand. However, we do know that eliminating subsidy and other market-distorting practices from the world steel market is the key to permanently removing inefficient excess capacity.

Question. Is the Administration prepared to continue the temporary steel tariffs, for as long as necessary, even if the World Trade Organization dispute settlement panel rules against the United States?

Answer. The United States disagrees with many of the WTO panel's preliminary conclusions, but we are pleased that the panel rejected some of the complainants' claims. The WTO dispute settlement process regarding the steel safeguard measures is not yet complete, so it is premature to discuss any response to the panel report. In the WTO dispute settlement system, a report from either a panel or the Appellate Body is not final unless formally adopted. The steel panel report has not yet been publicly released in final form, and the appeal has not even begun.

In the meantime, the steel safeguards measure will remain in place. From the beginning, we planned to reduce the supplemental tariffs by one-fifth each year. We made the first such reduction in March of this year. The panel report does not affect this process.

Under our domestic safeguards laws, the International Trade Commission issues a report on domestic producers' condition midway through the term of a safeguard measure, which will occur toward the end of September 2003 in the steel case. The President may reduce, modify, or terminate a safeguard measure after receiving this report.

QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

BYRD AMENDMENT

Question. U.S. Trade Ambassador Zoellick assured me, personally, and publicly, that the Bush Administration would defend the Byrd Amendment against the case brought by our trade competitors before the World Trade Organization. Imagine my

surprise, then, to learn that the Administration had recommended a repeal of the law in its fiscal year 2004 budget request. In fact the press apparently was notified by the Administration of its intent to recommend a repeal of the Byrd Amendment the day before the WTO Appellate Body issued its final determination of the case.

Why would the Administration advise me and recipients of Byrd Amendment funds across the nation that it strongly supported the Byrd Amendment, if, at the same time, the Administration was planning to request its repeal in the fiscal year 2004 budget?

Answer. The Administration vigorously defended the Byrd Amendment at the WTO. Unfortunately, the WTO ruled against the United States on this issue. The Administration continues to believe that the decision on the Byrd Amendment (Continued Dumping and Subsidy Offset Act of 2000) was not inconsistent with WTO rules.

We look forward to working with USTR, Treasury and Congress to develop a response to the WTO's decision. We recognize that the ultimate response to the WTO decision lies with Congress, and your constitutional authority to determine whether, when, and in what way to comply. There may be a number of ways in which U.S. law could be amended to address the issues raised by the WTO Appellate Body without sacrificing our goal of providing effective assistance to companies and workers that have been injured by unfair trade.

Question. On February 4, 2003, I sent a letter to the President signed by 70 Members of the U.S. Senate, urging the Administration to negotiate a solution to the Appellate Body's ruling on the Byrd Amendment, and to consult closely with the Congress on the particulars of these negotiations. Obviously, there is no support in Congress for a repeal of this law.

How does the Administration intend to resolve this issue in WTO negotiations? When will the United States put this issue on the agenda of the WTO negotiations?

Answer. The Office of the United States Trade Representative is the agency primarily responsible for developing the U.S. agenda for these negotiations. We would look forward to working with Congress in crafting a strategy that would allow us to comply while at the same time ensuring the effectiveness of our trade laws.

EMERGENCY STEEL LOAN GUARANTEE PROGRAM

Question. Last year, in its fiscal year 2003 budget request, the Bush Administration recommended rescinding \$96 million from the Emergency Steel Loan Guarantee Program. In its fiscal year 2004 budget request, the Administration again recommended rescinding whatever monies for the program remained in the budget. Congress rightfully rejected the Administration's recommendation for fiscal year 2003, and I fully anticipate it will reject the Administration's recommendation with respect to the fiscal year 2004 budget, as well.

How can the Administration continue to tell America's steelworkers that it is doing all it can to support the U.S. steel industry on the one hand, while, at the same time, seeking to eliminate this program?

Answer. Due to the lower than anticipated demand for steel loan guarantees, the Emergency Steel Loan Guarantee Program has been subject to proposed rescissions in both fiscal year 2003 and fiscal year 2004. The Administration believes that this program has not been an effective method of supporting the U.S. steel industry.

Question. What do you say to families like the 25,000 in the Ohio River Valley, who, right now, are looking to the Emergency Steel Loan Guarantee Program to save their jobs and preserve their pensions?

Answer. The Emergency Loan Guarantee Board has approved, with conditions, a loan guarantee for a loan amount of \$250 million to Wheeling-Pittsburgh Steel Corporation, which is located in the Ohio River Valley.

Question. Can you provide me with the names of any steel industry consultants that were recommended by Bush Administration officials to advise members of the Emergency Steel Loan Guarantee Program about the validity of the application submitted by Wheeling-Pittsburgh Steel?

Answer. Bush Administration officials did not recommend steel industry consultants to advise members of the Emergency Steel Loan Guarantee Board or loan program staff concerning the application submitted by Royal Bank of Canada on behalf of Wheeling-Pittsburgh Steel Corporation. The loan program staff chooses and retains steel industry consultants to assist with review and analysis of applications for loan guarantees. Choices are made based on factors such as specific related prior experience, recommendations from third parties involved in the steel industry, general reputation, satisfactory performance on prior applications, and absence of conflicting relationships.

IMPORT MONITORING PROGRAM

Question. What is the Administration's position regarding instituting a program to monitor surges of all [steel] imports into the United States, not just those steel imports that were originally subject to the 201 investigation of steel products? If the Administration will not support such an import monitoring program, why not?

Answer. The Administration currently monitors steel imports through two steel import monitoring programs administered by the Department of Commerce's Import Administration. These two import monitoring programs differ in scope of coverage and source of information.

One program, which was instituted as part of the safeguard remedy, applies only to products subject to the safeguard, and draws upon aggregate information collected from proprietary information reported on steel import licenses. Information on these imports is collected and reported by product category and country of origin. The primary purpose of this program is to provide early identification of import surges, particularly those from excluded developing countries, that could undermine the relief provided to the industry by the President.

The other steel import monitoring program, which is much broader in scope, covers all imports of steel mill products. This monitoring program was established prior to the safeguard remedy, and is based on the early release of steel import data collected by the Census Bureau. It has been expanded over the past year to provide detailed monthly statistical information on steel imports including import quantity, value and unit values. This early release data is the most timely and reliable monthly data available on U.S. steel imports and is issued roughly three weeks after the close of the import month. Import volume and value data are collected and reported by AISI category as well as section 201 remedy category and by country of origin.

To increase the usefulness of the monitoring programs, detailed information on steel imports compiled from both steel import monitoring programs is available to interested members of the domestic steel industry, government and public through the steel import monitoring website—www.ia.ita.doc.gov/steel/license/. The data is reviewed continuously and is updated on a regular basis—the day of release for monthly Census import data; each week for import license data.

Expansion of the current import monitoring programs, particularly the extension of the licensing requirement to products beyond the scope of the section 201 remedies, would require additional authorizing legislation. Depending upon the scope of the expansion and the number of new product categories and additional Harmonized Tariff Schedule's (HTS) to be added to the system, the expanded monitoring system could entail a considerable outlay of new resources, particularly if the same level of detailed reporting is to be maintained.

Currently, more than 25,000 licenses are issued each month and the website generates approximately 7,000–8,000 tables and graphs which must be reviewed and updated each week. Expansion to all steel mill products would more than double the number of licenses. The number of covered tariff numbers would almost triple and depending upon the number of steel categories added, the number of tables and graphs would likely triple as well. This is far beyond the capabilities of the existing database and monitoring program and would likely cause a decrease in service, timeliness and/or accuracy. Expansion to all tariff numbers in HTS Chapters 72 and 73 would greatly increase the number of licenses, covered tariff numbers and reported product categories and further tax the system.

201 MID-TERM REVIEW

Question. The ITC has begun its mid-term review of the remedies that were imposed last year on imported steel under section 201. What criteria will the Bush Administration use to decide whether to lift the tariffs and other remedies that were imposed as a result of last year's investigation under section 201? Does the Administration plan to base its decision this fall on information gathered by the ITC during mid-term review, and on advice offered by the entities referenced in 19 U.S.C. section 2254, or on additional input, including extraneous comments submitted to the White House, or the U.S. Commerce Department, by foreign countries or foreign exporters, or by U.S. importers of steel products otherwise subject to the 201?

What impact will foreign policy concerns have on the Administration's decision in this respect?

Answer. The President implemented the steel safeguard remedy to provide the temporary relief needed to facilitate the adjustment and rationalization of the U.S. steel industry. Since the implementation of the steel safeguard remedy, the U.S. steel industry has experienced an unprecedentedly high level of consolidation and restructuring, with additional consolidation likely in the near future.

As required by section 201, the International Trade Commission (ITC) recently initiated a mid-term review of the effectiveness of the steel safeguard remedy and the restructuring efforts undertaken by the industry. The ITC will collect information from a broad range of U.S. steel producers, foreign steel producers, and steel importers. Based on a request from the House Ways and Means Committee, the ITC will also review the impact of the safeguard remedies on steel consumers. The ITC will issue its report to the President in September.

The President may reduce, modify or terminate the section 201 remedies imposed in March 2002; he may also leave the measures unchanged. In accordance with the statute, the President will take into account the report and advice of the ITC, as well as the advice of the Secretaries of Commerce and Labor, in reaching a decision under section 204. In addition, the President may consult with the House Ways and Means Committee or the Senate Finance Committee.

However, the statute does not limit the President to consider only these sources in his decision. As it does in every section 201 proceeding, the Administration will consider any information that is potentially relevant to an evaluation of the statutory factors, including information or advice from members of Congress, U.S. steel producers, U.S. steel consumers, U.S. importers and other interested parties. The Administration will also consider any information presented to it by foreign governments or foreign parties that is relevant to the inquiry under section 204.

DEDUCTING 201 DUTIES FROM AD/CVD MARGINS

Question. In a recent case, the Department considered but made no final determination regarding whether to deduct from the U.S. price of a dumped or countervailable product the amount of 201 duties that had already been imposed on an imported steel product. 201 duties reflect a decision by the President to increase normal customs duties, temporarily, and such duties can be deducted from the U.S. price in determining the margin in an antidumping or countervailing duty case. What is the Department's position concerning the deduction of 201 duties from U.S. price in determining the margin in an antidumping or countervailing duty case?

Answer. To date we have not made a decision concerning this important issue. We intend to address it in the context of upcoming antidumping case decisions after we have received comments from interested parties.

The issue of how to treat section 201 duties in our dumping margin calculations was raised in the final weeks of our statutory time period in our recent investigation on steel wire rod from Trinidad and Tobago. In that case, the foreign respondent, the domestic producers and the United Steelworkers of America submitted comments on this issue, but the domestic producers and the United Steelworkers of America requested that the Department allow more time for broader comment on this far-reaching policy determination. Since the adjustment in the steel wire rod from Trinidad and Tobago case would have had an insignificant effect, we did not address the treatment of section 201 duties in that case.

We have a few cases currently pending in which this issue has been raised. We are allowing all interested parties to comment fully on this issue, including parties not involved in these specific proceedings. We will carefully consider all comments before reaching a decision.

IMPORT ADMINISTRATION

Question. My office has been advised that the Office of Policy within the Department's Office of Import Administration has been steadily expanding over the past several years. There is a concern that available resources within Import Administration are being diverted to the Office of Policy at the expense of the other offices within Import Administration that actually conduct the antidumping and countervailing duty investigations and administrative reviews. Could you please provide me with detailed information how the Office of Policy within Import Administration has expanded over the past five years? And for what purpose?

Answer. At no time has the Office of Policy been expanded at the expense of the Operations offices. With the additional fiscal year 2001 funding, management also increased the funding of the three Operations offices within IA that conduct AD/CVD cases. The growth of the Office of Policy resulted directly from increases in the annual appropriations, and represents a conscious decision of both the Executive and Legislative branches during the past two Administrations to develop tools for supporting and supplementing the enforcement of U.S. trade laws to address foreign unfair trade practices. There were no reductions in the budgets of the Operations during this period for the purpose of expanding the Office of Policy, nor was funding diverted to support Office of Policy growth.

IMPORT ADMINISTRATION STAFFING OFFICE OF POLICY VS. OPERATIONS OFFICES FISCAL YEAR 1999–2002

Fiscal Year	Policy	DAS Groups (I, II, III)
1999	27	222
2000	27	222
2001	55	222
2002	65	¹ 222

¹ Does not include miscellaneous overhires to work on steel issues.

(Source: IA Staffing Plans).

During the past five years, IA received two budget increases through the annual appropriations process in fiscal year 1999 and fiscal year 2001. The fiscal year 1999 appropriation included a funding increase for IA to conduct new AD/CVD program activities set forth in the Uruguay Round Agreements Act (URAA). IA management directed the Office of Policy to assume responsibility for the new activities described below.

- AD/CVD Sunset Reviews
- Subsidies Enforcement

The fiscal year 2001 appropriation included a funding increase to support the Trade Compliance Initiative (TCI) first proposed by the Clinton Administration and subsequently supported by the Bush Administration. IA's new TCI program activities were assigned to the Office of Policy and included the following new activities:

- Overseas Compliance Program
- China Trade Compliance and Japan Trade Compliance
- Import Surge Monitoring, Expedited Investigations & Subsidies Enforcement
- IA Senior Official Stationed in Geneva, Switzerland.

In particular, a significant portion of these funds and increased staffing were used to support Import Administration's increasing activity on three fronts—(1) steel issues, (2) pre-petition support to potential users of the AD/CVD laws, and (3) WTO negotiations on rules. Of the new policy analysts hired in the past two years, more than half have been dedicated to these new areas.

IMPORT ADMINISTRATION: CUSTOMS INSTRUCTIONS

Question. I learned of possibly misallocated resources when my office was advised that certain companies have been unable to obtain funds from the special accounts that have been established at the Treasury Department under the Byrd Amendment. It is my understanding that certain companies cannot access funds in the relevant accounts because investigators in Import Administration have been too short-staffed to send necessary instructions regarding certain cases to the U.S. Customs Service. Consequently, some U.S. companies that have been eligible to receive funds under the Byrd Amendment have been told by Customs that there is simply no money in relevant accounts at the U.S. Treasury Department. Are you aware of this problem and can you tell me whether there has been any effort by the Department to address this issue?

Answer. As explained below, it is true that, in some instances, there has been a delay at the Department of Commerce in issuing liquidation instructions. It should be understood, however, that the DOC does not maintain the special accounts established under the Byrd Amendment and cannot, therefore, speak to the reason(s) why any particular claimant has been unable to receive distributions.

DOC conducts administrative reviews of antidumping (AD) and countervailing duty (CVD) orders where a request for review is timely filed by an appropriate interested party. If a review is initiated, the entries covered by the review remain suspended until the Department completes the review (typically 12 to 18 months from initiation). If the Department's final results are not challenged (in either the Court of International Trade or NAFTA), Import Administration issues liquidation instructions, whenever possible, within 15 days of the issuance of the final results of the administrative review. However, if parties challenge our final results and obtain an injunction against liquidation of the entries covered by the review, those entries will be suspended until the litigation is resolved. If the Department does not receive a request for administrative review, or if a review request covers only entries from certain producers/exporters, the Department advises the Department of Homeland Security's Bureau of Customs and Border Protection (BCBP) to liquidate the entries for which a review was not requested.

The Department's liquidation instructions indicate to the BCBP how much in the way of special duties to assess on entries of merchandise subject to an AD and/or CVD order. BCBP then assesses duties on the entries and places the proceeds in special accounts pursuant to the Byrd Amendment. When claims are made for the funds in the special accounts, BCBP determines whether—and to what degree—the claims will be satisfied.

The Department takes a proactive approach to ensure that liquidation instructions are properly issued. Despite these efforts, given the sheer volume of cases and instructions that must be issued by the Department to the BCBP, there may be instances where entries have inadvertently not been liquidated. Typically, the Department is notified of these instances by the BCBP or private parties (such as the domestic producer or the U.S. importer). Import Administration makes every effort to work with parties and the BCBP to identify the problem, and to address it as expeditiously as possible. We closely monitor the accuracy and the timeliness of our issuance of instructions to BCBP and immediately address any problem that we identify or is brought to our attention. We are not aware of any instances in which customs instructions were not sent due to staffing issues.

Finally, we note that, to address concerns that there had been significant delays in the issuance of liquidation instructions in certain cases, the Department conducted a review of all completed proceedings to ensure that BCBP has been issued appropriate instructions. Import Administration officials reviewed more than 200 final decisions in the course of this project, which took several years to complete. As a result, the Department ensured that all liquidation instructions had been issued for all entries subject to the orders/findings involved.

VALIDITY OF OUTSIDE CONTRACTOR PATENT SEARCH

Question. Why does the PTO trust that an outside contractor with no relevant patent experience would conduct a valid patent search in the same thorough and learned manner as a patent examiner with years of experience?

Answer. The USPTO is confident that a certified outside contractor can conduct a valid patent search in the same thorough manner as an experienced patent examiner. The USPTO's decision to split the search and examination functions—a key component of the 21st Century Strategic Plan—is not an unprecedented or untested approach. The USPTO and its sister patent offices throughout the world have considerable experience in splitting the two tasks of search and examination. For example, search and examination have been separated within the European Patent Office (EPO) for more than twenty years without any detriment to quality. Indeed, search quality will actually improve under a Contractor Search Service (CSS) system, as the examiner will be acting as a second pair of eyes relative to the search contractors.

The USPTO will provide detailed search guidelines and quality measures to ensure the quality and uniformity of prior art searches performed by a CSS. Prior to contract award, all offerors will be evaluated to ascertain the technical background and skills of their employees and their abilities to provide a high quality search.

The USPTO plans to have multiple levels of Quality Control/Review and will promptly terminate its contract with any provider whose searches and search reports do not meet the standards. Furthermore, patent examiners can always request a further search or perform a supplemental search with approval of their supervisor if the examiner feels the search supplied is inadequate.

With these quality assurance measures, there should be no adverse effects on the presumption of validity or the public confidence in patents. In fact, this collaborative effort in prior art searching will improve both efficiency and substantive focus in the preparation, examination, and prosecution of patent applications in a more cost effective and expeditious manner. It will, with the implementation of the quality measures outlined in the 21st Century Strategic Plan, strengthen the validity of patents, thus providing a more substantive and valuable end product for our customers.

COST OF OUTSIDE CONTRACTOR PATENT SEARCH

Question. Why is the PTO not concerned that outsourcing this function could increase, rather than a decrease agency costs?

Answer. The USPTO believes that, overall, it will be cost effective to competitively source patent searches. The USPTO has been criticized for “hiring its way out” of its growing patent workload problem. For example, in 2002 the Senate Appropriations Committee stated, “PTO management has not been sufficiently innovative. Although patent filings have increased dramatically over the past decade, PTO man-

agement chose to remain wedded to an archaic patent process and attempted to hire its way out of its workload problems.”

Competitive sourcing of searches is part of the USPTO’s effort to address incoming work and an inventory of pending applications by allowing patent examiners to concentrate on patentability determinations rather than spending time on searching. The removal of search functions will allow examiners to process more patent applications, assisting the USPTO in lowering pendency and reducing backlogged applications.

Competitive-sourcing of the search will be validated by a proof of concept before we proceed to full implementation.

RELIABILITY OF OUTSIDE CONTRACTOR PATENT SEARCH

Question. How does the PTO plan to address the issue that searches conducted by an outside firm could prove faulty or unreliable and, as a result, could undermine the validity of patents issued by the PTO?

Answer. In addition to the steps outlined in response to the question above regarding confidence in contractor abilities to conduct prior art searches, the USPTO has benchmarked models that other intellectual property organizations have used for many years. For example:

—The Japan Patent Office (JPO) also has experience in splitting the two tasks of search and examination. The Japanese government established the Industrial Property Cooperation Center (IPCC) in 1985 for such purposes as providing search reports on patent applications pending before the JPO, indexing patents according to the F-term classification scheme used by the JPO, and assigning classifications to patents according to the International Patent Classification system. Since then, more than one million prior art searches have been conducted by IPCC for JPO’s patent examiners and more than two million F-term assignments have been made to JPO’s searchable database. The IPCC is now staffed with about 1,100 engineers, only 40 of whom were previously employed as patent examiners. Based on such an extensive base of empirical data, together with on-site benchmarking reviews that have been conducted with JPO officials over the past decade, we have no doubt that searches can be done with high quality by experienced and skilled engineers.

—Closer to home, the USPTO has allowed examiners to elect the services of searchers to search non-patent literature and foreign patents in the Office’s Electronic Information Centers for the last decade. Thus far this year, examiners have requested 13,011 searches. These searches are conducted by contract staff or Government employees who have extensive knowledge of the database content, search strategy formulation, and command language of several commercial online providers, such as Dialog and Lexis-Nexis. They also have knowledge of internal search systems, such as the Examiner’s Automated Search Tool (EAST) and the Web-based Examiner Search Tool (WEST), and are adept at searching the Internet.

—The European Patent Office (EPO) serves as another benchmark. The EPO has extensive experience that clearly demonstrates that a high quality search can be generated by someone other than the substantive patent examiner with no diminution in the quality of the patentability determination or the patent examiner’s ability to keep current with his or her understanding of, or currency with, the technology and/or state of the art. Since 1978, EPO searchers in The Hague and Berlin (and more recently, Munich) produced almost 1.8 million searches of which half were for EPO’s substantive patent examiners in Munich. In fact, the USPTO has already received more than 75,000 patent search reports from the EPO over the past few years pursuant to the Patent Cooperation Treaty (PCT). While that is not a direct “contractor” model, conceptually there is virtually no difference with the IPCC model described earlier.

The EPO, where the search was carried out by an examiner in The Hague or Berlin and the examination was conducted by a three-man examining division in Munich, currently is moving towards combining the search and examination functions to improve productivity, not because there are quality issues associated with the separation of search and examination. Survey data collected from U.S. patent attorneys over the past five years show that the EPO’s searches and patentability decisions are consistently of high quality.

As Director Rogan explained in his April 3, 2003, testimony before the House Judiciary Committee’s Subcommittee on Courts, the Internet and Intellectual Property, the USPTO and its sister patent offices throughout the world have considerable experience in splitting the two tasks of search and examination, as described above. Contrary to the assertion that quality suffers under such a structure, the re-

verse is true. During the hearing, Director Rogan entered into the record a letter from the President of the EPO, Dr. Ingo Kober, which discusses Europe's experience in this area. See attachment.

While the EPO does not competitively source the search function, search and examination have been separated within the EPO for more than twenty years without any detriment to quality.

For firms that would like to offer search services, the USPTO will follow the Federal procurement process to enter into contractual arrangements with them. The USPTO would maintain the authority to certify that a private firm, individual, or commercial entity was capable of providing a valid, thorough, and complete search of the prior art for patent examination processes.

[ATTACHMENT—EUROPEAN PATENT OFFICE LETTER]

MARCH 4, 2003.

Mr. JAMES E. ROGAN,
Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, 2121 Crystal Drive, Suite 906, Arlington, VA 22202 USA.

DEAR MR. ROGAN, I understand that some organisations and individuals in the United States have recently expressed certain misconceptions concerning a program of the European Patent Office, namely, Bringing Examination and Search Together or BEST. I would like to clarify some basic facts about this program to ensure it is properly understood.

Any characterisation that the European Patent Office chose to "adopt" the American system of searching and examining patent applications is simply not true. Our decision to combine the search and examination functions was based on the need to increase examiner productivity. As you know, these changes occurred during a time of transition to a more automated environment and a significant expansion of our staff.

Indeed, the previous arrangement was initially dictated by historical and geographical reasons which no longer apply. However, this separate search and examination program, where the search was carried out by an examiner in The Hague or Berlin and the examination was conducted by a three-man examining division in Munich, produced high quality results and served us very well over a period of more than 25 years. In fact, feedback we have received from our interested circles has consistently indicated high satisfaction levels with our searches.

Finally, all major industrial property offices in the world currently confront a workload crisis that demands creative solutions. That is why I agreed to sign a bilateral record of discussion with you to explore the potential of exploiting searches generated by our respective Offices for counterpart patent applications. I am convinced that this will help improve patent quality, increase efficiency and productivity, and reduce operating costs.

It is unfortunate that recent statements made by commentators on the EPO's current and future plans as well as on the USPTO's plans have characterised our processes as diverging, when in fact they are indeed converging.

Should you wish further clarification of my views on this matter, I shall be glad to provide additional details.

Yours sincerely,

DR. H.C. INGO KOBER,
President.

VALIDITY OF OUTSIDE CONTRACTOR PATENT SEARCH

Question. Why does the PTO trust that an outside contractor with no relevant patent experience would conduct a valid patent search in the same thorough and learned manner as a patent examiner with years of experience?

Answer. The USPTO is confident that a certified outside contractor can conduct a valid patent search in the same thorough manner as an experienced patent examiner. The USPTO's decision to split the search and examination functions—a key component of the 21st Century Strategic Plan—is not an unprecedented or untested approach. The USPTO and its sister patent offices throughout the world have considerable experience in splitting the two tasks of search and examination. For example, search and examination have been separated within the European Patent Office (EPO) for more than twenty years without any detriment to quality. Indeed, search quality will actually improve under a Contractor Search Service (CSS) system, as the examiner will be acting as a second pair of eyes relative to the search contractors.

The USPTO will provide detailed search guidelines and quality measures to ensure the quality and uniformity of prior art searches performed by a CSS. Prior to contract award, all offerors will be evaluated to ascertain the technical background and skills of their employees and their abilities to provide a high quality search.

The USPTO plans to have multiple levels of Quality Control/Review and will promptly terminate its contract with any provider whose searches and search reports do not meet the standards. Furthermore, patent examiners can always request a further search or perform a supplemental search with approval of their supervisor if the examiner feels the search supplied is inadequate.

With these quality assurance measures, there should be no adverse effects on the presumption of validity or the public confidence in patents. In fact, this collaborative effort in prior art searching will improve both efficiency and substantive focus in the preparation, examination, and prosecution of patent applications in a more cost effective and expeditious manner. It will, with the implementation of the quality measures outlined in the 21st Century Strategic Plan, strengthen the validity of patents, thus providing a more substantive and valuable end product for our customers.

PILOT OF OUTSIDE CONTRACTOR PATENT SEARCH

Question. If the PTO plans to test these searches in some sort of "pilot program," what assurances are there that such a pilot program will actually be undertaken? How will the PTO measure success? Who will measure success? Will the Congress be involved?

Answer. To meet the requirements of their customers and to determine the feasibility of competitively sourcing search functions, the USPTO will implement a proof of concept through a pilot program. The Office will assure quality of contractor performance through continuous monitoring of the pilot and the conduct of a formal evaluation. The planned proof of concept will be widely vetted with USPTO's key stakeholders and the Patent Public Advisory Committee. The results of the pilot will also be widely shared. USPTO will conduct a formal review of the pilot prior to making a final decision as to whether or not to proceed with full implementation. The Congress will be kept informed throughout the process. Although the specifics of the pilot and evaluation have not been finalized, the USPTO is considering using an outside contractor to validate the quality of the searches.

The USPTO already has obtained public comment on its plans and posted on its website for many months the answers to questions or suggestions they have received from the public, patent examiners, and the professional associations with whom it has worked extensively. The Office recently published on its website a detailed action plan which describes the implementation approach. What follows are the highlights of the administrative structure and processes USPTO is fully prepared to implement, including a description of the proof of concept.

The USPTO will use the contractors to prepare complete and accurate search reports for patent applications. One or more contracts would be awarded. It is anticipated that there will be at least one contract specializing in each discipline. The contractor may be a private or commercial search entity with demonstrated expertise and search skills. The request for a search and the resulting search report are activities between the USPTO and the contractor.

The USPTO would administer the same preliminary processing procedures currently established for new application filings. A copy of the application would be forwarded to the contractor approximately three months prior to the examination. The contractor would perform a prior art search and prepare a report using Patent Cooperation Treaty (PCT) guidelines and USPTO search guidelines for additional non-patent literature (NPL) resources as stated above.

Upon completion of the report, the application would be forwarded to the Patent Technology Center to await review by the examiner. The examiner would then review the report and prior art cited. If the report was inadequate or if the examiner was personally aware of other prior art, the examiner could request time to search them, or have the report sent back to the contractor with an explanation of the deficiency and a request for supplemental information.

The USPTO would maintain the authority to certify that a private firm, individual, or commercial entity was capable of providing a valid, thorough, and complete search of the prior art for patent examination processes. A certification process would be done at the USPTO. The process could be given to firms or individuals or a combination thereof. The certification process may be based on industry specific criteria and be given on an individual basis based on the firm's or individual's qualifications. Similar to the Primary Examiner at the USPTO, a senior member of the firm could sign off on an "assistant's" search. Thus, while there are multiple options

available, a preferred one would be to certify the “firm” which, in turn, would be responsible for certifying their individual searchers.

The critical measures of success would be determined based on the contractors’ ability to: (1) determine if disclosed invention is subject to an international search; (2) identify a field of search that would cover the disclosed invention; (3) select the proper tools and art collections to perform the search; (4) determine the appropriate search strategy for each of the selected search tools and art collections; (5) search the art collections using the selected search tools and search strategy, and using any additional strategy suggested by the art that is found; (6) retrieve sufficient information from art that is identified during the search to evaluate the pertinence of the art; (7) select the prior art that is most pertinent to the claimed subject matter; (8) record the results of the art that is selected according to the criteria set forth in the guidelines; and (9) determine if certain claims are found to be searchable subject matter and/or lack clarity or distinctness.

The contractor would have to prove that it has ready access to the appropriate industry-specific search tools. Much of the work in developing industry-specific search tools is either in the process of being done or has already been published on the USPTO intranet in the form of Search Guidelines. These guidelines were developed by Quality Action Teams and represent a listing of appropriate search tools and databases for each technology. The guidelines include PCT Minimum Document requirements, appropriate text search systems, as well as the pertinent commercially available databases. In addition to using the established guidelines, a classified search using the U.S. Patent Classification (USPC) system would also need to be performed, if appropriate.

Another requirement would be the technical qualifications of the contractors’ staff. Just as in examining, varying levels of technical expertise are required for searching different technologies. In addition, the contractor would have to provide proof of a thorough understanding of the patent examining procedures and patent statutes. It is essential that any contractor have the ability to read and analyze claims, as well as broadly apply the prior art to produce a PCT-type search report, which would be submitted to USPTO. The contractor would need to be aware of patent law and practice and be able to understand such concepts as “motivation” for example. This could be ensured through testing requirements. Finally, the contractors’ ability to provide timely reports would be essential to the program’s success. Special attention would be paid to ensure treaty deadlines were enforced.

For proper examination and quality comparisons, a search submission would be expected to include, at a minimum, a listing for every search including: (1) text search systems; (2) commercial databases; (3) USPC classified search, if appropriate; (4) the complete search statement and logic; and (5) a statement regarding the teachings and applicability of each reference against each claim.

The USPTO also would have to maintain a “search quality review process” in order to “sample” the quality of searches submitted by the certified search authorities. A component of the in-process review activity is to evaluate the quality of the search results for each contractor. A statistically valid sample of cases would be reviewed using criteria such as whether the search was based on what is claimed and reasonably expected to be claimed. Additionally, an experienced examiner will conduct a separate search on the same application, to ensure the contractor used the proper search procedures.

The Office would retain the ability to terminate any contract and “de-certify” authorities that submit a number of poor searches from either the test sample or from other sources such as examiner reports, requests for re-examination or post-grant opposition that show clear errors.

It is possible that separate contractor support would be needed to set up, implement, and maintain the necessary certification procedures, along with a dedicated staff of search and examination experts.

Contractors may be required to supply certified translations or English language equivalents, with valid dates, for any non-English language prior art references cited, which would also eliminate the need for examiners requesting certified translations, partial translations and/or on-the-spot translations of non-English documents.

Proof of Concept: The USPTO recognizes that the use of contractors to provide prior art search and/or opinion reports for patent applications is a major change to current patent examination processes. The USPTO also understands customer concerns for excellence in a prior art search. To ensure quality art searches are maintained and that there is uninterrupted service to all USPTO customers, the Office would use the results of the PCT pilot as its foundation for competitively sourcing all other search activities within the Office. By using the pilot study, the USPTO will be able to assess accurately the feasibility of competitively sourcing prior art

searches. Performance and product will be reviewed to ensure the highest quality is maintained, using both an in-process review procedure and separate searches performed by experienced examiners.

The PCT competitive sourcing pilot will be implemented in multiple arts to ensure the contractors can provide a quality search report for any technology. Between three and six different art areas, all with generally high backlogs, would be selected as pilot areas. The results of the PCT pilot will provide the Office with the information necessary to implement the best possible transition from examiner searches to contractor searches. Prior to full-scale implementation, a final report would be developed that identifies the strengths, weaknesses, costs and benefits. This report would be published and made available for general review prior to a decision on whether to further implement competitive-sourcing in other areas of the Office.

There would be multiple evaluations of the search and reports prepared by the contractors. Examiners would complete an evaluation every time a contracted search is used in the examination of a U.S. application. There would also be independent evaluations both during in-process reviews, and by independent third parties (similar to a quality review of the examination). Failure of a contractor to maintain the high quality expectations could result in the “forfeit” of the contract to the contractor.

Regarding the costs of the commercial search, the USPTO’s stakeholders’ view is that quality has not been properly emphasized in recent years. Accordingly, the USPTO has listened to patent applicants and the consistent message they have conveyed is that quality must be improved and the cost of improving quality is something for which they are prepared to pay.

STOPPING PILOT OF COMPETITIVE-SOURCING

Question. Is there any certainty that the outsourcing will stop if the pilot program proves that the experiment is not working?

Answer. Yes. First, the planned proof of concept will be vetted in advance with the USPTO’s key stakeholders and the Patent Public Advisory Committee.

Second, the USPTO has committed to developing a final report documenting the strengths, weaknesses, costs and benefits. The report will be published and made available for general review prior to a decision on whether to implement further competitive-sourcing.

The final decision to implement further competitive-sourcing will rest with the Director, based on the recommendation of the Management Council, which is chaired by the Deputy Director and comprised of senior managers from all USPTO divisions. The Management Council has responsibility for monitoring implementation of the 21st Century Strategic Plan. Once the proof of concept has been completed and the results documented, the Management Council will be responsible for making a final recommendation to the Director.

SEARCH CONTRACTORS OWNING PATENTS

Question. Finally, what safeguards are in place to make sure that the contractors who are chosen to conduct these patent searches do not, themselves, have a financial stake in the patent system?

Currently, by law, patent examiners may not own patents with narrow exceptions such as by inheritance. Will the PTO likewise bar search contractors from owning patents?

Answer. The Federal Acquisition Regulation (“FAR”), 48 C.F.R. § 9.5 et seq., provides guidance and prescribes responsibilities and procedures for identifying, evaluating and resolving organizational conflicts of interest (“OCOI”). In particular, FAR § 9.504 requires the contracting officer, before issuing a solicitation, to prepare an analysis and a recommendation for avoiding, neutralizing, or mitigating organizational conflicts of interest. Pursuant to this guidance, the USPTO is presently considering various plans and methods to avoid and neutralize actual and potential OCOIs that may occur as a result of contracting out patent search services. At a minimum, the USPTO will require patent search firms not only to disclose actual or potential OCOIs, such as past or present associations with major patent application filers, but also to submit suitable OCOI mitigation plans as an integral part of the evaluation of proposals to conduct patent search services. PTO will also seek to ensure that any personal conflicts of interest by employees of the search firms are minimized to the maximum extent practicable. The USPTO plans to award multiple contracts to fulfill its needs and require that all applicable OCOI requirements flow-down to any subcontractors and employees as well.

The USPTO will include in all solicitations and contracts for patent search services clauses that: (1) invite the offerors’ attention to FAR part 9.5; (2) state the na-

ture of the OCOI or potential OCOI; (3) require the prompt disclosure of actual and potential OCOIs; and (4) state the proposed remedies available to the government upon discovery of an OCOI. As part of the procurement process, the Office also plans to solicit comments and suggestions on how the Agency can best mitigate actual or potential OCOIs.

The USPTO also plans to include in its contracts for patent search services clauses which reference 35 U.S.C. § 122 and prohibit the disclosure of information contained in patent applications as well as requirements to safeguard patent applicants' proprietary and trade secret information.

Although the USPTO has not yet made a decision to impose a total ban on the ownership of patents, if ownership of patents creates an impermissible organizational or personal conflict of interest, which cannot be neutralized or mitigated, the USPTO may disqualify that firm from competing for the search contracts. In addition, the USPTO may structure the resulting contracts to allow for termination of the contracts for impermissible conflicts of interest.

As described above, the USPTO fully intends to obtain early exchanges of information from all interested parties through a variety of means, such as additional Requests for Information or draft solicitations, to determine whether a total ban on the ownership of patents will be required from search firms. Further, on May 22, 2003, the USPTO will be holding an "Industry Day," a vendor conference whereby USPTO will be showcasing existing and new agency initiatives. During Industry Day, the Office will be soliciting comments regarding the initiatives from vendors who conduct or will conduct business with the USPTO. The Office will include the issue of OCOI among search firms as a topic for discussion at that time.

SUBCOMMITTEE RECESS

Senator GREGG. Thank you, Mr. Secretary.

[Whereupon, at 10:40 a.m., Thursday, March 20, the subcommittee was recessed, to reconvene subject to the call of the Chair.]