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December 15, 2005

The Honorable Robert J. Portman
United States Trade Representative
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Mr. Ambassador:

We are writing to inquire about statements in a recent press report regarding problems that have apparently arisen in the implementation of the Central America Free Trade Agreement (CAFTA). According to the December 9 edition of *Inside U.S. Trade*, the CAFTA "is unlikely to go into effect on Jan. 1, 2006 as planned because the U.S. insists that several signatory countries are falling short of the deal's commitments," particularly in the areas of intellectual property protection and agricultural market access. The report attributes the U.S. positions to the Office of the U.S. Trade Representative (USTR).

We were surprised to learn of these USTR positions as they appear to contradict directly positions taken by USTR during the congressional consideration of the CAFTA. In particular, the news report indicates that USTR has rejected the position taken by the CAFTA countries that they do not have to change their domestic laws in order to implement the CAFTA provisions on intellectual property and agriculture market access. The CAFTA countries have stated that under their legal systems, obligations under an international agreement, treaty or convention prevail over any inconsistent (or nonexistent) domestic law. By contrast, USTR is reported to be taking the position that the CAFTA countries must change their domestic laws to reflect the commitments the countries undertook in the trade agreement.

The position taken by USTR with regard to the CAFTA countries' commitments on intellectual property and agriculture market access appears to contradict directly USTR's stated position with regard to the countries' commitments on basic labor standards. In the months prior to the vote in Congress on the CAFTA, USTR advised Members of Congress that by ratifying the basic Conventions of the International Labor Organization (ILO), the CAFTA countries had incorporated these basic international labor standards into their domestic laws. USTR further asserted that because these conventions were incorporated into the CAFTA countries' domestic

laws, the provision in the CAFTA requiring that the countries enforce their existing labor laws would in effect require them to enforce basic labor standards as enumerated by the basic ILO conventions.

For example, during the Ways and Means Committee hearing on the CAFTA held on April 21, 2005, Rep. William Jefferson and Acting U.S. Trade Representative Peter Allgeier had the following exchange:

> REP. JEFFERSON: *From my research what it looks like to me – and I want you to see if you can confirm this – that unlike the U.S., which is a common law system, the six CAFTA countries are a civil law system and when they adopt international conventions, as with the ILO standards, they become a part of their domestic law. Is that true or not? Is that what your reading shows?*
>
> MR. ALLGEIER: *Yes, Congressman.* ***That is accurate, that when they ratify these agreements, at the moment that it is ratified it then becomes essentially incorporated in their law. It is domestic law.***
>
> REP. JEFFERSON: *If that be true, then when you require them to enforce their domestic laws you require them to enforce all of the conventions which they have adopted as a part of their domestic law, would that not be true?*
>
> MR. ALLGEIER: *That's right.*
>
> (Emphasis supplied.)

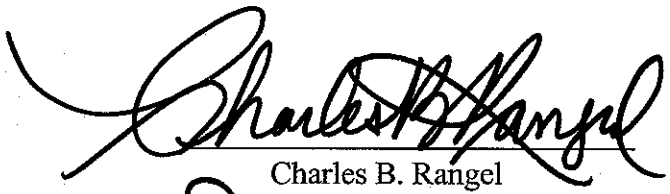
Now, it appears as if the Administration is taking the opposite position with respect to CAFTA countries' apparent failure to enact certain changes to their domestic laws as relates to intellectual property protections and agricultural market access provisions. We are disappointed that the Administration did not take the same position with respect to basic international labor standards. We support other countries enacting specific changes to law to implement trade agreement and other pertinent international obligations as the most transparent and effective way to implement those obligations; however, we believe there should be a single standard applied to all areas, rather than a double standard that gives preferential treatment to some areas over others. The Administration once again appears to be applying a double standard when it comes to the question of including basic international standards of decency and fairness for working people in U.S. FTAs.

Additionally, we were surprised to learn about what appears to be a clear delay in the

implementation of the CAFTA, given the urgency with which the Administration pushed the agreement through Congress this summer. In light of the delay — accentuated by the fact that one of the CAFTA countries still has not even ratified the agreement — we regret that the Administration did not use the additional time necessary for implementation of the CAFTA in Central America to work with us and other Democrats to develop an agreement that would have garnered broad, bipartisan support.

We look forward to hearing from you on this issue.

Sincerely,



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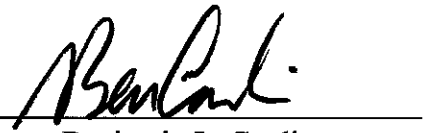

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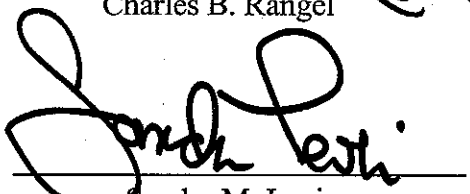

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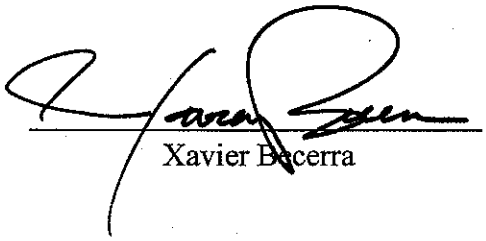

Xavier Becerra