



October 29, 2003

VIA FACSIMILE AND U.S. MAIL
202-395-4549

The Honorable Robert B. Zoellick
United States Trade Representative
Winder Building
Room 209A
600 17th Street, N.W.
Washington, D.C. 20508

Dear Ambassador Zoellick:

We are writing to you on behalf of the American Association of Law Libraries, the American Library Association, the Association of Research Libraries, and the Special Libraries Association. We seek your assistance to improve opportunities for stakeholder participation in the trade negotiation process. Most urgently, we request that, for all bilateral and regional trade negotiations, the Office of the United States Trade Representative:

- At least 30 days prior to the conclusion of the negotiation phase, post on USTR's website the proposed agreement text and request through the *Federal Register* public comment upon it; and
- Post on the USTR website all comments received in electronic format and a listing of all comments received, updated promptly as new comments arrive.

As discussed more fully below, adopting these procedures will enable meaningful participation in the trade negotiating process by all interested parties, reduce the potential for drafting and other error, and, most fundamentally, help ensure the integrity of these trade negotiations.

The American Library Association ("ALA"), the oldest and largest library association in the world, is a nonprofit organization of over 65,000 librarians, library trustees, and other friends of libraries dedicated to the development, promotion, and improvement of library and information services to enhance learning and ensure access to information for all.

The Association of Research Libraries ("ARL") is a nonprofit association of 123 research libraries in North America. ARL's members include university libraries, public libraries, government and national libraries. Its mission is to shape and influence forces affecting the future of research libraries in the process of scholarly communication. ARL programs and services promote equitable access to and effective uses of recorded knowledge in support of teaching, research, scholarship and community service.

The American Association of Law Libraries ("AALL") is a nonprofit educational organization with over 5,000 members nationwide. AALL's mission is to promote and enhance the value of law libraries to the legal and public communities, to foster the profession of law librarianship, and to provide leadership in the field of legal information and information policy.

The Special Libraries Association ("SLA") is a nonprofit, educational organization serving more than 13,000 members of the information profession, including special librarians, information managers, brokers, and consultants.

USTR's policy and practice reflect its appreciation that sound United States trade policy requires consideration of the diverse views of interested stakeholders. USTR's efforts to seek necessary input include both requests in the *Federal Register* for stakeholder comment prior to initiating trade negotiations and informal consultations with stakeholders prior to taking action that might negatively impact domestic policy affecting them. In particular, we greatly appreciate the efforts your staff has made to meet with us to hear and address our concerns regarding existing and proposed obligations. While important and valuable, USTR's current overall approach, however, has clear practical limits that pose significant risks.

USTR's current approach leads to imprecise and unbalanced public input. No stakeholders can provide precise, informed comments if they cannot review proposed text, but USTR has generally made proposed text available, if at all, on an informal, unpublished basis through its *ad hoc* consultation procedures. In addition, these same *ad hoc* procedures depend on USTR's identifying and contacting interested parties, and USTR does not always know all the parties whose interests might be impacted. As a result, these procedures do not ensure USTR's exposure to the multiple perspectives needed for it to have a balanced understanding of the ramifications of the rights and obligations it negotiates. Further, such procedures can create an appearance of unfairness and bias even if USTR succeeds in eliciting widely representative views.

The limitations of USTR's current approach pose particularly significant risks, of inadvertent and inappropriate interference with domestic policy-making, when trade negotiations address areas of policy that are in flux domestically. This is especially true when negotiators attempt to establish detailed rights and obligations relating to these areas, as USTR continues to do, for instance, with respect to copyright and related intellectual property rights. Even seemingly minor drafting changes to such provisions might inadvertently limit the flexibility of lawmakers to adjust existing law.

Regardless of a negotiation's topic or level of detail, however, it remains essential that the stakeholders most deeply affected by, and intimately familiar with, the area of law and policy have the opportunity to provide timely, informed comment. The need for greater public participation becomes ever more obvious as the issues addressed in trade negotiations implicate an ever wider array of domestic laws and policies. The severe time and resource constraints under which USTR must operate only increase the risk of inadvertent oversights and errors, which informed, balanced public input can help prevent.

More fundamentally, failure to provide for timely, informed and transparent comment from all interested stakeholders threatens the integrity of the trade negotiating process. Promotion of robust, transparent opportunities for comment is essential to enable, and to demonstrate a commitment to, balanced consideration of the impacts that international rights and obligations might have. Allowing for transparent review of draft text, in particular, is consistent with the usual rights afforded to the public of notice and comment for draft regulations and legislation. The actual and perceived limitations that Trade Promotion Authority imposes on after-the-fact congressional review of free trade agreements makes enhancement of stakeholder participation opportunities all the more critical.

We applaud USTR's successful efforts to encourage the publication of draft texts for the Free Trade Area of the Americas Agreement, and USTR's subsequent posting of these drafts on its website and requesting of public comment on them in the *Federal Register*. We believe the United States can and should foster similar transparency and public participation in all trade negotiations. We appreciate that USTR faces a significant challenge in pursuing public participation in multilateral trade negotiations due to the concerns of other governments. However, at least in bilateral and regional negotiations, the United States should be able to mandate a more open negotiating process. At a minimum, USTR can and should immediately establish that governments must agree to the timely publication of draft texts as a precondition for entry into bilateral or regional trade negotiations with the United States.

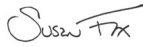
Helping maintain a well-informed citizenry able to perform its civic responsibilities and exercise its public rights is central to the mission of America's libraries. The United States has long acted as a leading advocate of transparency and public participation at the international level, and as a staunch supporter of equivalent domestic reforms by governments throughout the world. We value this

commitment and appreciate the efforts USTR has made to enable civil society to monitor, inform and participate in the development of international trade law and policy.

Ambassador, you have the opportunity to enhance productively and importantly the role of the public in trade negotiations. We urge you to act expeditiously to ensure all stakeholders will be able to provide informed and transparent comment for the multiple regional and bilateral negotiations currently underway, as well as for future negotiations.

We thank you for your attention to this important issue and look forward to an ever more productive relationship with USTR.

Respectfully,



Susan Fox
Executive Director
American Association of Law Libraries



Keith Fiels
Executive Director
American Library Association



Duane E. Webster
Executive Director
Association of Research Libraries



Janice R. Lachance
Executive Director
Special Libraries Association