



## HUMANE SOCIETY INTERNATIONAL

May 10, 2013

*Electronic Submission*

United States Trade Representative  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street, N.W.  
Washington, DC 20508

**Re: Transatlantic Trade & Investment Partnership, Docket #: USTR-2013-0019**

On behalf of Humane Society International (HSI) and The Humane Society of the United States (HSUS), we hereby submit these comments on the proposed Transatlantic Trade & Investment Partnership (TTIP) with the European Union pursuant to 78 FR 19566 (April 1, 2013). Our organizations appreciate the opportunity to provide our views on this very important topic, which has far-reaching implications for the environment and the protection of animals.

HSI is the international arm of The Humane Society of the United States (HSUS). Together, HSUS and HSI represent one of the largest animal protection organizations in the world with a constituency of over 11 million people and a significant global presence. HSI actively participates in discussions of international trade policy at the World Trade Organization (WTO) addressing such issues as equitable development, humane and sustainable agriculture, environmental conservation, and wildlife and habitat protection. In addition, as a member of the Trade and Environment Policy Advisory Committee (TEPAC) in the United States, HSI advises the United States Trade Representative (USTR) and the United States Environmental Protection Agency (EPA) on trade and environment issues. HSI also implements a number of trade capacity building and technical assistance programs in developing WTO Member countries to support sustainable economic development, including humane agricultural practices and habitat and wildlife protection policies.

The following comments are primarily focused on the harmonizing upward of animal welfare standards specifically in the implementation and enforcement of environmental laws relevant to the TTIP and in the areas of farm and laboratory animals.

## **BACKGROUND AND SUMMARY**

There are many threats to our world's natural resources. Illegal wildlife trade is a booming multi-billion dollar industry, forests and natural habitats are disappearing, ocean stocks are plummeting, and climate change poses grave risks to humans and animals alike. HSI believes that while the TTIP may likely encourage trade and development among a number of key U.S. trading partners, such pursuits must not fail to simultaneously combat widespread wildlife trade abuses and strengthen animal protection.

The May 2007 Bipartisan Trade Deal (BTD) reflected bold ideas favorable to the environment and its animals, such as a commitment to implement and effectively enforce laws and regulations under a number of multilateral environmental agreements (MEAs). The U.S.-Peru Trade Promotion Agreement (TPA) built upon the BTD, and included unprecedented provisions on biodiversity conservation and the link between illegal logging and illegal wildlife trade. HSI applauds the U.S. Congress, USTR and other agencies on these achievements. There is now potential to build from this momentum and craft a new agreement that takes into account both existing and emerging environmental issues.

Our recommendations follow.

## **HSI'S RECOMMENDATIONS**

### ***1. Starting Point for Negotiations***

It is our strong belief that any agreement between the EU and U.S. must not backtrack from progress made in U.S. Free Trade Agreements (FTAs). If the U.S. were to propose or accept environmental provisions that were weaker than those in recent FTAs or the BTD, it will be sending a signal that the U.S. is only serious about such standards when it comes to developing countries and/or countries where it feels it has leverage, and, it will undermine the U.S. ability to advocate for an enforceable chapter in this and other pending negotiations. We therefore believe it is imperative that the BTD environmental provisions be a minimum starting point for negotiations on environmental issues. Likewise, it is also imperative that we harmonize upward where existing EU standards are already strong.

### ***2. Inclusion of an Environment Chapter***

A threshold negotiating objective should be inclusion of an environment chapter in the agreement itself that requires parties to effectively enforce their environmental laws, with failure to do so subject to dispute settlement. EU Member States are obliged to implement EU trade policy and agreements and some Member States have better enforcement than others. Without a hard obligation to enforce the environment/sustainable development chapter, there will be varying levels of enforcement – creating unpredictability in the marketplace and a disincentive for EU Member States with better enforcement to devote resources to enforcement (knowing that those with poor enforcement will not be held accountable).

### ***3. Compliance with MEAs***

There must be a requirement that parties implement and effectively enforce their obligations under relevant MEAs. HSI recommends that the seven listed MEAs in the BTD be a starting point for the

universe of agreements subject to this requirement, but given the diverse geographic areas and issues represented under the Partnership, USTR should consider incorporating additional MEAs into the agreement. For example, both the United States and the European Union are parties to the UN Fish Stocks Agreement, which is focused on conservation and management of fish stocks.<sup>1</sup> Moreover, the parties should be required to consider in good faith whether to join MEAs to which they are not yet parties. HSI finds it highly desirable for all TTIP member countries to participate in those MEAs and strongly supports efforts to broaden the membership in those agreements.

Of note, the EU-Korea FTA has a section on MEAs, and states that the Parties shall reaffirm their commitment to reaching the objective of the UNFCCC and Kyoto Protocol. It does not mention other MEAs like the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). However, the EU also recently concluded agreements with Peru and Colombia, as well as Central America, which did include explicit language requiring parties to “reaffirm their commitment to effective implementation of CITES.” Although these provisions are not binding, we see this as positive progress in EU trade policy generally, and hopefully an opening to having enforceable commitments on MEAs in any agreement with the U.S.

#### ***4. Wildlife Protection***

Illegal wildlife trade is not just a grave threat to species all over the world, but is also becoming a national security threat. Illegal wildlife crime could be worth as much as \$20 billion per year, more valuable than any criminal activities except for arms and narcotics trafficking.<sup>2</sup> Organized crime significantly benefits from such activity and a CRS Report noted that “some terrorist groups may also be seeking to finance their activities through illegal wildlife trade, according to some experts.”<sup>3</sup>

The black market trade in wildlife and wildlife products is global. The U.S. and EU rank among the top three consuming nations for wildlife,<sup>4</sup> while regions rich in biodiversity like Southeast Asia are major suppliers.<sup>5</sup> Although some trade in wildlife is legal, the illegal trade is pervasive and growing in parallel to increased trade from market liberalization. Therefore, in the context of wildlife in particular, the TTIP should require: (1) effective enforcement of laws implementing CITES; and (2) parties to combat illegal wildlife trade (with failure to do so subject to dispute settlement). With respect to number two, we recommend that the U.S. pursue an obligation similar to that proposed in TPP, which would require parties to make it unlawful to trade in products (wildlife, timber, and marine) that are illegally harvested or taken in violation of national and international laws.

Moreover, given the size of the EU and U.S. consuming markets for wildlife and wildlife products, it will also be particularly important to focus on ways the TTIP can help to curb demand. This could be facilitated through environmental cooperation programs aimed at public education about the

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<sup>1</sup>See [http://www.un.org/Depts/los/convention\\_agreements/convention\\_overview\\_fish\\_stocks.htm](http://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm).

<sup>2</sup>See *Wildlife Trafficking is a Serious Problem, Lucrative Business* (June 16, 2008), available at <http://www.america.gov/st/env-english/2008/June/20080616142333mlenuhret0.8286859.html>.

<sup>3</sup>See CRS Report, *International Illegal Trade in Wildlife: Threats and U.S. Policy* at CRS-3 (March 3, 2008) (Order Code: RL34395).

<sup>4</sup>See European Union (EU) Wildlife Trade Initiative, TRAFFIC, <http://www.traffic.org/eu-wildlife-trade/>.

<sup>5</sup> CRS Report, *International Illegal Trade in Wildlife: Threats and U.S. Policy* at CRS-2 – 5; USAID Asia, ASEAN Wildlife Enforcement Network Fact Sheet, available at [http://usaid.eco-asia.org/files/fact\\_sheets/ASEAN\\_WEN.pdf](http://usaid.eco-asia.org/files/fact_sheets/ASEAN_WEN.pdf).

consequences of trading in/consuming illegal wildlife/products, both in terms of legal penalties and impacts on species populations, introduction of new diseases, and human health.

Ensuring that the laws on the books implementing CITES are strong and that human and financial resources are brought to bear to enforce CITES are some of the most pressing obstacles to cracking down on illegal wildlife trade.

## ***5. Protection of Oceans and Marine Life***

As USTR is aware, HSI has long focused on the numerous threats to our oceans. The Partnership should support the progress on marine conservation, and especially on fisheries subsidies, that the United States has already made in other trade forums, such as the WTO and the TPP.

### Fisheries subsidies that contribute to overcapacity and overfishing

The scope and magnitude of fisheries subsidies and their impacts on overcapacity and overfishing is so significant that global subsidy reform is one of the most beneficial steps that can be taken to protect the oceans. The subsidies, and the activity that they enable, result in overexploited fish populations, undermine fishing control programs, prevent depleted fish populations from recovering, and create incentives to fish more, even when catches are declining.<sup>6</sup> Some subsidies, such as those that enable high seas bottom trawling, support the destruction of valuable marine habitats.

Fisheries subsidies not only harm the environment, but they also preserve uneconomic and inefficient practices. The operations of large-scale, distant water fleets are often highly subsidized, allowing EU Member States to send their fleets as far away as Australia; an endeavor that would not be profitable without these high levels of government subsidies.<sup>7</sup> In 2009, subsidies to the EU's fishing sector totaled € 3.3 billion. In 13 Member States, the value of the subsidies administered was higher than the total value of fish landings.<sup>8</sup>

Important progress can be made in protecting the marine environment by addressing the subsidies administered by the European Union and its Member States. Accordingly, TTIP negotiations between the European Union and the United States should address ways to limit harmful fisheries subsidies, particularly those that already are provided to fisheries suffering from overcapacity or overfishing.

### Illegal, unreported and unregulated fishing

The TTIP could strengthen the ability of countries to combat illegal, unreported and unregulated (IUU) fishing activities. The global illegal catch of fish is estimated to be between \$10 billion to \$23

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<sup>6</sup>Sumaila, U.R. and D. Pauly (Editors) 2006. Catching More Bait: A Bottom-up Re-estimation of Global Fisheries Subsidies. Fisheries Centre Research Reports Vol. 14(6) 114 pp [www.fisheries.ubc.ca/publications/reports/fcrr.php]

<sup>7</sup>Sumaila, U. R., Teh, L., Watson, R., Tyedmers, P., and Pauly, D. 2008. Fuel price increase, subsidies, overcapacity, and resource sustainability. – ICES Journal of Marine Science, 65: 832–840.

<sup>8</sup>Schroeer, Anne. et al. "The European Union and Fishing Subsidies." Oceana. 2011.

billion annually. This figure is significant compared to value of the *legal* reported world catch, ranging from \$80 billion to \$100 billion annually.<sup>9</sup>

The main drivers of IUU fishing include overcapacity, high demand and prices, limited monitoring, ineffective sanctions, poor fisheries management and weak economic and social conditions. Even where there is otherwise adequate management, illegal fishing can still compromise sustainable fisheries. Both the European Union and the United States have already taken steps to address illegal fishing but more could and should be done. The TTIP should take the most ambitious steps possible to live up to the highest international standards in combating IUU fishing.

### Marine species conservation

HSI feels it is imperative to ensure the long-term sustainability through adequate conservation and management measures of sharks, marine turtles, and marine mammals. These measures should include collection of species-specific data and appropriate prohibitions, to improve conservation and enforcement. For example, the TTIP provides an opportunity to promote proper enforcement and implementation of existing fins attached legislation for sharks. It would also be important for the TTIP to enhance cooperation of the EU with U.S. to stop the detrimental international commercial trade in polar bear skins by listing the species on CITES Appendix I, and to ensure that the EU bans importation of polar bear parts from declining and data deficient Canadian populations.

### Additional Recommendations

We recommend that the TTIP include:

- explicit requirements that countries comply with their obligations under applicable MEAs and/or regional fisheries management programs, including but not limited to CITES, IWC, CCAMLR, and IATTC;<sup>10</sup>
- environmental cooperation activities focused on conserving and protecting marine life, such as through the creation of marine sanctuaries or the elimination of harmful fishing practices such as shark-finning;<sup>11</sup>
- explicit requirement that the EU support a future proposal by the U.S. and/or the Russian Federation to list the polar bear on CITES Appendix I;

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<sup>9</sup>U.N. Food and Agriculture Organization's ("FAO").

<sup>10</sup>As mentioned earlier, we recommend that other MEAs be investigated to see if they should be included, such as the UN Fish Stocks Agreement, or the Western and Central Pacific Fisheries Commission (WCPFC). See <http://www.wcpfc.int/> (members include Australia, China, Canada, Cook Islands, European Community, Federated States of Micronesia, Fiji, France, Japan, Kiribati, Korea, Republic of Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, Solomon Islands, Chinese Taipei, Tonga, Tuvalu, United States of America, Vanuatu.)

<sup>11</sup> Shark-finning involves removing the fin from the body of the shark and then throwing the carcass back into the water. Shark fins are primary used in soup and/or medicinal purposes. .

- explicit requirement that the EU ban the importation of polar bear parts from Canadian populations that are declining or data deficient according to the IUCN/SSC Polar Bear Specialist Group<sup>12</sup>;

## 6. *Farm Animal Welfare*

The Partnership is likely to increase trade (or, at a minimum, increase trade opportunities) in agricultural products including meat, egg, or milk products. The EU has made tremendous progress in the area of farm animal welfare, with bans or restrictions on most extreme confinement systems (barren battery cages, sow stalls, and veal crates) having come into effect within the past few years. It is important that the progress made by the EU be enhanced and supported in any potential partnership.

HSI recommends that the agreement itself incorporate animal welfare by explicitly addressing it in the Sanitary and Phytosanitary Chapter (SPS Chapter) as was done with some aspects of animal welfare in the EU-Chile FTA and, most recently, in the EU-Korea FTA.

With regard to the language of the Agreement itself, HSI recognizes that animal welfare is of great importance to the EU and its citizens. Indeed, animal welfare is enshrined in the Lisbon Treaty as a core value and the EU is obliged to pay full regard to animal welfare in its policymaking.

The following EU Directives cover the on-farm welfare of a range of farm animals.

Council Directive [2001/88/EC](#) on minimum standards for the protection of pigs: outlaws the sow stall for most of a sow's pregnancy from 2013.

Council Directive [98/58/EC](#) concerning the protection of animals kept for farming purposes: states that animals should not be bred or fed in ways that may cause suffering.

Council Directive [1999/74/EC](#) of 19 July 1999 laying down minimum standards for the protection of laying hens: bans the barren battery cage in the EU from 2012.

Council Directive [2007/43/EC](#) laying down minimum rules for the protection of chickens kept for meat production: sets maximum stocking densities to avoid overcrowding.

Council Directive [2008/120/EC](#) of 18 December 2008 (consolidating previous legislation) laying down minimum standards for the protection of pigs: prohibits routine tail docking of growing pigs and requires sufficient enrichment material to allow the pigs "proper investigation and manipulation activities".

Council Directive [2008/119/EC](#) (consolidating previous legislation) laying down minimum standards for the protection of calves: outlaws the use of crates to confine young calves.

Animal welfare is also an issue of importance to American consumers, as reflected in government and corporate policies throughout the U.S. The U.S. states of California and Michigan have already

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<sup>12</sup> IUCN/SSC Polar Bear Specialist Group. 2013. Summary of Polar Bear Population Status per 2010. <http://pbsg.npolar.no/en/status/status-table.html>

imposed restrictions on the barren battery cage confinement of egg laying hens, and Congress has introduced a bill that would phase out use of the barren battery cage throughout the country. Nine U.S. states have passed laws that will prohibit the use of sow stalls to confine breeding sows, and seven states have similar laws prohibiting veal crates.

Leading food companies in the U.S. -- including [Burger King](#), [Walmart](#), Kraft Foods, General Mills, and Con Agra Foods -- have adopted cage-free egg procurement policies, and many more have announced that they will eliminate sow stalls from their supply chains in the U.S. The latter include McDonald's, Wendy's, SUBWAY, and [Oscar Mayer](#). An American Farm Bureau poll found that 95 percent of Americans believe farm animals should be well-cared for, and that most Americans don't consider sow stalls to be humane.

HSI was pleased to see that the SPS chapter of the EU-Chile Agreement includes provisions governing animal welfare with respect to stunning and slaughter. We believe that the TTIP can go even further to promote animal welfare and protection. Specifically, we support inclusion of higher animal welfare practices on issues relating to housing, painful mutilations, and feeding practices.

While farm animal welfare standards are currently higher in the EU, clearly, both EU and U.S. citizens recognize the importance of higher animal welfare. Farm animal welfare standards must be harmonized upwards, setting the more advanced EU standards as the minimal starting point for negotiations on animal welfare issues.

### ***7. Sanitary and Phytosanitary (SPS) Issues***

SPS provisions aim to facilitate trade while simultaneously protecting human, animal, and plant life or health from risks arising from the entry/establishment/spread of pests and diseases, and from additives, contaminants, toxins or disease-causing organisms in foods, beverages, or feedstuffs.<sup>13</sup> From HSI's perspective, animal welfare issues such as proper housing, handling, transport, stunning and slaughter are SPS issues that should be addressed in the TTIP. Strong animal welfare standards and practices directly correlate to animal health and to the mitigation of the spread of disease – issues that fall squarely within the scope of the SPS chapter. For example, a scientific report of the European Food Safety Authority found in a study of thousands of egg operations across two dozen countries that facilities confining hens in cages were significantly more likely to harbor *Salmonella*. At a minimum, improvement of animal welfare standards and practices should be explicitly mentioned in the TTIP as a priority area for further development and cooperation. This is especially the case since the agreement will likely increase trade among these countries, also increasing the risk of spreading disease to humans and animals due to poor animal welfare and health standards.

### ***8. Animal Testing***

The U.S. and EU are leaders in basic and biomedical research and the development of new chemistries and products, which presents significant trade opportunities as well as ongoing welfare concerns to the extent that animals continue to be used as human surrogates. U.S. and EU regulatory data requirements across product sectors continue to diverge as the EU progresses in its acceptance of scientifically robust approaches to replace, reduce or refine animal use (hereinafter referred to as “3R best practices”), which continue to provide a high level of protection for human health and the environment

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<sup>13</sup>See WTO SPS Agreement at Annex A (1)(a)-(d).

but at a lower cost to animals in laboratories. This places U.S. and European companies wishing to do business in the U.S. at a disadvantage with respect to additional costs, time and animal use involved in U.S. market access. Adopting EU standards and regulations would decrease the burden of U.S. companies in both U.S. and European markets.

The following issues that should be addressed in the TTIP with an eye to regulatory alignment of 3R best practices to increase testing efficiency and reduce unnecessary costs and animal use:

- Pesticides: EU data requirements for biocides and plant protection products laid down in Regulations [528/2012](#), [283/2013](#) and [284/2013](#) have recently been revised to substantially reduce testing on animals (by up to 50% in some cases). This area is ripe for transatlantic regulatory alignment of 3R best practices. Refer to HSI's 10/31/12 response to the Sept. 2012 Joint Solicitation by U.S.-EU High-Level Regulatory Cooperation Forum for further detail.
- Cosmetics: EU Regulation [1223/2009](#) bans animal testing for cosmetics within the EU, as well as the sale within Europe of beauty products subject to new animal testing for cosmetic purposes after March 11, 2013.
- Vaccine batch testing: EU vaccine regulators have pioneered a novel safety assessment strategy known as the [consistency approach](#), is based upon thorough characterization of the vaccine during development such that the quality of subsequent batches is the consequence of the strict application of a quality system and of a consistent production of batches. The concept of consistency of production is state-of-the-art for new-generation vaccines, where batch release is mainly based on non-animal methods. There is now the opportunity to introduce the approach into established vaccine production, where it has the potential to replace *in vivo* tests with non-animal tests designed to demonstrate batch quality while maintaining the highest quality standards.
- Chemicals: EU Regulation [1907/2006](#) ("REACH") contains numerous measures designed to supply essential safety data while minimizing new animal testing, including a mandate to use available non-animal/alternative test methods and strategies, obligatory data sharing, and opportunities to adapt or waive standard data requirements under certain circumstances. Toxicity data brought forward under REACH are relevant both for chemical regulatory purposes in the U.S. as well as for use in toxicological research efforts such as EPA's ToxCast program and the interagency Tox21 collaboration.
- Pharmaceuticals: Substantial progress toward minimization of animal testing has been achieved through the International Conference on Harmonization; however, country-specific blocks remain to the use of certain animal reduction testing strategies and these should be addressed and overcome.
- Cross-cutting issues: Efforts should be made to better align U.S. and EU approaches to screening, testing, assessment and regulation of endocrine-active (disrupting) substances, nanomaterials, and mixtures/formulations with an eye to enhancing relevance, efficiency, and minimization of animal testing.

The EU has also substantially augmented its legislation for the protection of animals used for scientific purposes through the adoption of Directive [2010/63/EU](#). The new EU legislation extends the scope of legal protections to a larger range of species and use scenarios; expands the legal requirement to use



alternatives to living animals wherever possible; among other measures. To facilitate European market access of U.S. companies as well as to ensure that the U.S. is achieving 3Rs best practices, the U.S. must harmonize with the more advanced EU standards as the minimal starting point for negotiations on animal welfare issues.

### ***9. Dispute Settlement***

HSI also strongly urges the U.S. to advocate that all environmental provisions be subject to dispute settlement, including a party's failure to enforce their national laws implementing one or more of the listed MEAs. Further, in the event it is determined that a party is failing to effectively enforce its environmental laws, HSI believes that an appropriate penalty should be levied to deter continued violations.

It is also important that the agreement explicitly provide for the selection of independent panelists with experience in environmental matters when forming dispute settlement panels.

### ***10. Public Participation***

It is critical that the TTIP include strong public participation provisions and an emphasis on transparency. All parties should make their environmental and animal welfare laws and regulations publicly available and should be required to provide opportunities for public comments on changes to such laws or regulations as well as on other issues related to implementation of the agreement. To complement these provisions, HSI also recommends that all parties be required to establish national consultative or advisory committees, comprised of persons with knowledge of these issues, to provide views on the implementation of the environment provisions of the agreement.

For public participation to be truly meaningful there must be a mechanism by which private citizens can become involved in environmental and animal welfare issues and alert governmental authorities to related offenses. In prior FTAs, such as the North American Free Trade Agreement (NAFTA) and CAFTA-DR, one of the most important public participation mechanisms has been the establishment of an Independent Secretariat that receives and investigates submissions from private citizens and NGOs alleging that a party is failing to effectively enforce an environmental law. This independent mechanism empowers civil society, NGOs, and the private sector to have a voice in their country's environmental policies, programs, and enforcement regimes without fear of governmental intervention in the process. The citizen submission can be invaluable to identifying environmental harms and consequently having resources directed towards remedying the problem.

To ensure that this mechanism operates as intended, it is essential that the Secretariat receive adequate training to understand the objectives of the environment chapter and be guided by the chapter's working procedures, which should be reviewable and revisable on an annual basis. HSI also urges inclusion of provisions that set deadlines for deliberation of whether a factual record should proceed, and for preparation of the factual record itself. An unnecessarily long process can lead to irreversible environmental harm in some instances, particularly when the case involves threatened or endangered species.

HSI has experience with the public submission process under NAFTA and CAFTA-DR and welcomes the opportunity to work with USTR and Congress to ensure that in the context of the TTIP, these and other public participation provisions are strong and reflect lessons learned.

## ***11. Funding for Trade Capacity Building and Environmental Cooperation***

Lastly, it is incumbent upon the U.S. government and other TTIP parties to devote appropriate levels of long-term funding to environmental cooperation and trade capacity building programs. Without the proper funding, environmental protection commitments will be meaningless. Implementing environmental cooperation projects, strengthening the ability of Ministries to enforce environmental laws (including CITES), and building the capacity of local organizations to participate effectively in the public submission process are just a few examples of the need for funding and technical assistance.

Previous FTAs have not included explicit language calling for long-term dedicated funding. If any funding was set aside for environmental initiatives, it has typically fallen short of what is needed to properly implement the environment chapter or has come only as a result of significant political pressure. The TTIP must break free from this mold and include clear and explicit language and a commitment from all parties to fund environmental initiatives, which will hopefully aid in the U.S. budget and appropriations process. This is especially critical since the intention is to expand the TTIP to even more countries in the region, with far-reaching implications for environmental and animal protection.

We look forward to working with USTR, Congress, and other agencies to consider some of these issues in more detail as negotiations proceed.

Sincerely,

Kitty Block  
Vice President, HSI

Andrew Lurie  
Senior Attorney, International Law & Trade

Amanda Mayhew  
Manager, International Trade Policy

*Humane Society International*