

**Secretary of Commerce Carlos M. Gutierrez**  
**Remarks to the U.S. Chamber 9th Annual Legal Reform**  
**Summit**  
**Washington, D.C.**

Thank you. I'm pleased to be here for the 9th Annual Legal Reform Summit. Congratulations to President Donohue of the Chamber and President Rickard of the Institute for Legal Reform for what promises to be a successful event.

Let me start with a quick economic update:

- People are understandably concerned about their financial futures.
- We took swift, decisive action to bring stability to the credit markets through the financial rescue package.
- Last week, we took further steps to restore confidence by directly injecting capital into the financial markets.
- This move is limited in size, scope and duration and preserves free enterprise – not replaces it.
- We also understand this is a global crisis, which is why we are coordinating with other nations on an international response to this global crisis.
- Last week, President Bush announced plans to hold a Summit on Financial Markets and the World Economy in November.
- We're confident that the economy will come back in the long run because of the entrepreneurial spirit of the American people and our workers.

Today we're here to discuss the important issue of legal reform. I think we all would agree that the more Americans truly understand the wide-ranging effects of frivolous litigation, the better chance we have of solving the problem.

Frivolous litigation prevents our businesses from hiring and growing, discourages foreign investment and by tying up the courts, it delays access to justice to individuals who are truly injured. These costs ultimately get passed on to the

American families. And added financial burdens are the last thing this economy needs.

The vitality of our economy is small business and entrepreneurs—people who are willing to take an educated risk and turn a dream into a new business.

The implications of a hostile litigation environment for American entrepreneurs and small businesses are alarming.

A study, conducted here at the Institute for Legal Reform found that 46 percent of small business owners and managers have been threatened with an actual lawsuit.

Seventy-five percent say that these threats added time and expense to their business operations, while 54 percent say the threats caused them to make business decisions they would not otherwise have made.

And what are the consequences of those 54 percent whose business decisions are shaped by fear? Perhaps they won't expand their business, act on a new idea or hire new employees or increase compensation for existing employees. That hesitancy can ultimately suppress innovation and economic growth.

Among NFIB members surveyed nationally, almost one in four small-business owners has either been sued or been threatened with a lawsuit. And, according to a 2005 NFIB National Small Business Poll, the average small business spends about \$5,000 to settle a single lawsuit.

Now let's be clear: legitimate cases and grievances should have their day in court. Our legal system was crafted to allow for just that. However, the Founders didn't intend for the legal system to be usurped for unwarranted complaints.

In order for the creative genius of American entrepreneurship to thrive, we must operate within a legal framework that does not unnecessarily encourage litigation.

Day by day, our interconnectedness with the world becomes more apparent. And global trade and investment continue to drive economic growth.

Last year, the U.S. exported a record \$1.6 trillion dollars in goods and services. And exports accounted for more than 50 percent of the 2.8 percent real growth we saw in the second quarter.

Clearly trade is vital to our economy. And so is foreign direct investment. Foreign companies:

- Employ nearly 5.3 million American workers—4.6 percent of employment in private industry in the U.S.;
- They account for 14 percent of U.S. R&D expenditures;
- And they are responsible for 19 percent of our exports of goods.

We do not always recognize the important economic contributions made by internationally-owned companies.

Such well-known brands as Shell, Michelin, Nestle, T-Mobile, and even Ben & Jerry's are foreign owned.

Germany's Siemens, with 66,000 employees in the United States, employs more people here than Microsoft and Coca-Cola combined.

In May, Governor Schwarzenegger and I had the chance to visit Hitachi's plant in Torrance, California. The plant, which re-manufacturers auto parts, is just one facility owned and operated by a "foreign" company that employs 16,000 Americans.

Today, I am pleased to release a Commerce Department report on *The U.S. Litigation Environment and Foreign Direct Investment*. It includes a number of important conclusions:

First, while the U.S. is recognized as having one of the world's best legal systems, our litigation environment is seen by many foreigners as a source of increased cost and uncertainty.

Second, there are a number of published surveys and reports that raise policy concerns. According to one such study, tort costs have tripled in terms of their share of U.S. gross domestic product (GDP) since 1950, increasing from 0.62 percent to 1.87 percent of GDP.

Interestingly, this mirrors evidence that U.S. tort costs, as a percentage of GDP, are significantly higher than in other industrialized countries. A study found them to be at least double that of Germany, Japan and Switzerland and triple that of France and the United Kingdom.

Finally, the report notes that there have been a number of important changes in the last several years that are still being implemented.

For example:

- The Supreme Court's decisions establishing upper limits on punitive damages on due process grounds;
- Passage of the *Class Action Fairness Act of 2005* which limits forum shopping in class action lawsuits; and
- Recognition by State governments of the importance of tort reform and its connection to economic development and attracting FDI.

Consider a survey done by the U.S. Chamber of Commerce and its European equivalent, *Eurochambre*. In this survey businesses from both continents were asked 'what were the most significant barriers to trade between the United States and Europe?'

The fear of legal liability was one of the top three barriers that European companies cited about investing in the U.S.

Foreign investment is risky enough without the burden of rampant litigation.

In February 2007, Toyota announced it would spend \$1.3 billion to build a new manufacturing facility near Tupelo, Mississippi. Mississippi's Governor Barbour specifically noted that Toyota would not have made this investment in Mississippi if the state hadn't passed tort reform.

This example is played out in the global markets each and every day. When the United States loses out to foreign investment on account of an investor's fear of an overreaching litigation environment, it directly translates into fewer jobs and less economic opportunities for Americans.

While this new paper and this conference focus on litigation reform, the overall high quality of our legal system is worth emphasizing.

That high quality is re-enforced by our open investment policy, which is based on the principle that foreign investors should not be treated differently from domestic investors.

While no system is perfect, the United States is justifiably proud of its legal system and the level of international investment that has come here subject to its protection.

I would like to thank the Chamber for hosting this wonderful summit and to all of you for being so engaged and informed. Our hard work on behalf of legal reform really can make a difference in the everyday lives of American people.

We must not regress. Doing so would send a message to American entrepreneurs and foreign investors alike that our business culture breeds superfluous litigation and uncertainty. We cannot afford this regression.

In the end, I am confident that American drive, innovation and determination will ultimately triumph. Thank you again.