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# II. World Trade Organization

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## Overview<sup>1</sup>

The WTO was established in 1995 as an outgrowth of the Uruguay Round of multilateral trade negotiations conducted under the auspices of the General Agreement on Tariffs and Trade (GATT). The GATT is one of the pillars of the post-World War II system of international institutions created under U.S. leadership which has been so successful in promoting global economic growth, increased standards of living and strengthening international security over the past half-century. The WTO's creation takes this system one step forward by providing a coherent institutional apparatus to direct and oversee implementation of the agreements concluded during the Uruguay Round, as well as a forum in which further international trade liberalization may be pursued. The results of the Uruguay Round negotiations substantially expanded and reinforced the multilateral trading system by reforming and liberalizing agricultural and textiles trade, strengthening dispute settlement procedures and extending new rules to trade in services and the protection of intellectual property rights. The WTO also builds upon the structure of the previous GATT system by ensuring that all WTO Members ultimately assume all of the rights and obligations of all of the multilateral agreements, irrespective of a country's stage of development. This facilitates the beneficial impact that adherence to WTO rights and obligations can play in advancing

various Members' economic reform and development programs, while guaranteeing that the commitments undertaken are of mutual and balanced advantage to all Members of the trading system.

The WTO faced a number of challenging questions about its mission, direction and internal organization at the outset of last year. While a relatively new organization, the WTO has quickly had to come to grips with fundamental decisions over how best to fulfill its basic policy aims in the light of a diverse and growing membership and the ever more complex interface of trade policy with other policies and issues of concern to the broader civil society. Over the course of 2000, the United States worked actively with its WTO partners to identify and address these concerns with the dual aim of resolving individual problems while strengthening the WTO's capacity to manage these challenges more effectively in the years to come. By year's end, much progress had been accomplished, yet additional work was clearly needed to ensure that the rules-based trading system continues to lend meaningful and dynamic impetus to increased prosperity, sustainable development and market-based reforms throughout the world. Competing concerns about the implications of "globalization" and the need to fashion a substantive and consensus-based response provided the context for much of the WTO's efforts to meet its challenges. As a result, considerable attention was directed towards: (1) making the institution more transparent and internally responsive; (2) identifying immediate steps to enhance the system's benefits for its poorest and most marginalized participants; (3) providing support and impetus to the

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<sup>1</sup>This Chapter and Annex II to this report are provided pursuant to the reporting requirements contained in sections 122 and 124 of the Uruguay Round Agreements Act.

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commencement of mandated negotiations in services and agriculture; (4) and ensuring that responsible steps were being taken to address the concerns of all Members regarding the implementation of existing WTO rules and commitments.

Under the leadership of the General Council, the WTO resolved many of the concerns voiced by its newer and smaller Members that internal WTO procedures and consultation processes had failed to keep all Members adequately informed about and included in the development of issues and work programs. Improvements in this area should also help to increase the overall transparency of the organization and its ability to respond to concerns and questions voiced by outside stakeholders. Nevertheless, further progress remains to be achieved in making the WTO more accessible to, and better understood by, the broader public, which will be critical both to refining and fulfilling the WTO's future mission.

The collective efforts of numerous WTO Members, including the United States, also improved the commercial and economic stake of poorer countries in the trading system through the expansion of unilateral trade preference programs. These expansions allow the least-developed countries and others to enjoy greater access to foreign markets for many of the products in which they are most competitive. Enactment of the U.S. Trade and Development Act of 2000, which opens the door to increased opportunities for our trading partners in sub-Saharan Africa and the Caribbean Basin, represented an important contribution to this effort. Moreover, the sound progress made last year in advancing the previously mandated negotiations on agricultural reform and services liberalization also served to illustrate the widespread interest of WTO Members – rich and poor – to secure real benefits from further market-opening initiatives.

This focus on the future was suitably balanced by attention to the present. Over the past several

years, particularly as transition periods provided for developing countries under several WTO agreements have approached expiration, there has been a heightened concern among all Members that adequate attention and resources be dedicated to resolution of implementation problems under various agreements. While differences remain in certain areas as to which solutions are the most appropriate, WTO Members were unified in their commitment to tackle these problems in a serious manner and, where possible, to settle upon pragmatic, case-by-case solutions that provided support to implementation efforts without detracting from the substance of WTO obligations. In this regard, particular success was recorded in such areas as customs valuation obligations and in the work of the responsible subsidiary bodies, such as the Committee on Technical Barriers to Trade.

By the end of the year, the decisions taken by WTO Members in furtherance of the organization's vast and varied program of work was testimony to the belief of those Members in the value of the system and to its continued vitality and effectiveness. Similarly, the expansion of WTO membership in the past year to 140 Members reflects the faith and commitment of economies at all levels of development that integration into the rules-based trading system of the WTO remains one of the best guarantors of future growth and stability.

A consensus has not yet emerged on an agenda for a new round of multilateral trade negotiations. Last year's report discussed points of disagreement concerning the scope and content of that agenda, including in the areas of agriculture; implementation; market access and the extent to which new negotiations should address non-agricultural as well as agricultural goods. In addition, questions existed whether there should be new negotiations on investment and competition policy; the inclusion of trade and the environment among negotiating issues; the reopening of WTO rules in areas such as standards, intellectual property rights and trade remedies; and whether or how to address trade

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and labor as an issue in the WTO. Many of these issues remain unresolved. However, the real progress made by Members during 2000 to reinvigorate the ongoing work of the WTO should help to encourage further constructive exchanges and reflections on these issues and, hopefully, set the stage for the development of a consensus on a new round.

In the following pages, we review the active program of work that has been pursued by the various WTO councils and committees in the past year, as well as provide a look forward to the challenges that lie ahead in 2001. In November of this year, the trade ministers of WTO Members will reconvene in Doha, Qatar, for their fourth biennial ministerial conference to assess developments in the organization and chart a course for further work. Members will be consulting actively with one another and with their domestic constituents over the course of this year to fashion a vigorous and relevant agenda for this ministerial and the WTO more generally.

### **A. Implementation**

WTO Members accord a high priority to the effective implementation of agreements concluded under WTO auspices – ranging from agreements achieved in the Uruguay Round and subsequently in areas such as Basic Telecommunications, Financial Services and Information Technology. Operationally, each of the agreements is supported by a Council or Committee, with final oversight provided by the WTO General Council. At each of their meetings since the WTO was created, ministers have reinforced the priority they attach to implementation and the responsibilities of the General Council for monitoring and compliance. At their 1998 ministerial meeting, ministers instructed the General Council to include implementation as a central issue in the development of the agenda for the 1999 Seattle Ministerial Conference. This was done: (1) to ensure that the negotiations in agriculture and services mandated at the conclusion of the Uruguay Round would be initiated on schedule in

2000; (2) to address emerging concerns with respect to implementation of the vast set of agreements resulting from the Uruguay Round; and (3) to provide an opportunity to consider whether the implementation issues warranted further negotiations in areas not covered by the built-in agenda.

The implementation issue remained unresolved after the Seattle Ministerial Conference, although the negotiations on the built-in agenda have proceeded as noted elsewhere in this chapter. Accordingly, early in 2000, Members agreed to establish a series of Special Sessions of the General Council to give greater prominence to the outstanding concerns on implementation, in particular to deal with issues that might benefit from greater technical cooperation or attention by Members. Formal meetings of the General Council meeting in Special Session were convened in May, June, October and December. Numerous informal consultations were conducted by the Chairman of the General Council. An inventory of specific concerns identified by certain developing countries prior to the Seattle Ministerial provided the benchmark for discussions, but the work was not limited to these concerns.

The debate about implementation that occurred as part of the Seattle preparatory process and continued through 2000 reflected differences among WTO Members over the operation, pace and direction of the WTO. It revealed the concern of some Members, particularly poorer countries, that implementation of existing agreements was more complex than originally envisioned. This was brought into sharp focus with the completion under many Agreements of transition periods provided to developing country Members to phase in adherence to WTO rules (e.g., in the areas of trade-related intellectual property rights (TRIPS), trade-related investment measures (TRIMS), and customs valuation). The discussions brought to light two sometimes competing, sometimes overlapping objectives. Some Members sought to use the process to seek improved compliance with WTO obligations,

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and/or to ensure practical aid and support from the system for doing so. Other Members sought to use the process to call into question the reasonableness of the obligations imposed by the Agreements, and to seek a “rebalancing” of those obligations and/or a delay in pursuing new liberalization and negotiations.

The General Council’s examination frequently confirmed that some Members lacked sufficient institutional capacity to fully overcome their implementation problems; this was particularly the case in customs valuation, where responsible plans and work programs were developed to address the problems on a case-by-case basis. In other areas, such as standards, the implementation discussion provided an opportunity for the responsible committees to identify and adopt improvements to the operation of their Agreements. Finally, in areas like trade remedies and textiles, some Members preferred to focus on proposals for selective changes to agreements. There was no consensus to approve such changes or, for that matter, to support negotiations aimed at a broader range of issues.

On a positive note, the General Council’s review revealed that a tremendous amount of support and activity had already been undertaken by both individual Members and the WTO Secretariat to tackle pressing needs in the area of technical cooperation and assistance. The United States took the opportunity to highlight its major contributions to technical cooperation valued at \$650,000 over the year, including assistance in the areas of customs valuation and standards. Beyond noting these commitments, and furthering Members’ understanding of the scope and nature of issues being addressed, the review also yielded several important clarifications by the General Council designed to facilitate management and resolution of these issues. The Council’s decision of December 15, 2000, is included in Annex II. The following pages outline the progress to date in the various councils and committees, as well as identify the outstanding issues in each Agreement. The information detailed in this chapter confirms that while

implementation remains a concern of all WTO Members, the system works continually at resolving problems and improving performance. In certain areas, the discussion also reveals that remaining issues may be best addressed, through further negotiation, provided there is consensus.

### **Prospects for 2001**

Implementation will continue to be an important feature of the WTO’s on-going work program, including the work of the individual committees. The United States has encouraged WTO Members to continue to pursue their legitimate implementation concerns in these bodies as the best means to secure practical, tangible progress. As the course of work proceeds this year, the committees will be asked to assess the state of implementation and to identify areas requiring further attention. The United States intends to participate actively in view of the importance of effective compliance to the realization of U.S. interests in the multilateral system..

### **B. Built-In Agenda Negotiations in Agriculture and Services**

At the core of the WTO’s agenda this year will be negotiations mandated by the Uruguay Round to pursue further agricultural reform and liberalization in services. Early in 2000, Members established time frames for tabling proposals in both areas and conducted a rigorous program of special sessions of the Committee on Agriculture and the Council for Trade in Services (CTS) throughout 2000. The stage is set in both areas to move from the conceptual issues of framing negotiations to focusing on the details of securing reform and liberalization. By the end of March 2001, Members will need to set a course for the negotiations in the coming year.

**Agriculture:** The WTO provides multilateral disciplines on agricultural trade policies and serves as a forum for further negotiations on agricultural trade reform. The Uruguay Round Agreement on Agriculture provided the framework for further negotiations, leaving

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Members the task of focusing on subsidy reductions and improvements to market access. The WTO is uniquely situated to advance the interests of U.S. farmers and ranchers. Through WTO rules, U.S. producers and exporters are able to impose disciplines on other large agricultural producing and consuming nations simultaneously. For example, absent a WTO agreement on agriculture there currently would be no limits on EC subsidization or firm commitments for access to the Japanese market. Through the built-in agenda negotiations, America has the best hope to open important markets for U.S. farm products and reduce subsidized competition.

Developing countries, particularly members of the Cairns Group<sup>2</sup>, look to the negotiations as the best means of enhancing their economic performance and participation in the global economy. In the first three years of the implementation of the Uruguay Round, developing countries' export growth accelerated, with an annual increase of 7.2 percent for 1994-97 versus 6.1 percent for 1990-94. Agricultural exports of developing countries expanded more rapidly than those of the developed countries in the period after the conclusion of the Uruguay Round. Developing countries' share of world agricultural exports, which had increased from 40 to 41.5 percent between 1990 and 1994, reached 42.5 percent in 1998.

With the first stage of negotiations nearly complete (including the tabling of twenty-four proposals by Members), the next phase of negotiations will focus on developing reform modalities -- general approaches to reducing protection and support, and creating new disciplines on trade-related agricultural policies. The three main areas for improvements are

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<sup>2</sup>Current Cairns Group Members are: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand, Uruguay.

export subsidy discipline, market access and domestic support. Specific negotiating time lines were not established by the Uruguay Round. However, the expiration of the agricultural "peace clause" at the end of 2003, and continued domestic farm reform efforts in the United States, Europe, and other countries will intensify pressure on WTO Members to move the negotiations forward to achieve meaningful reform.

*Export Subsidies.* The current Agreement places limits on the use of export subsidies. Products that had not benefitted from export subsidies in the past are banned from receiving them in the future. Where countries had provided export subsidies in the past, the future use of export subsidies has been capped and reduced. Currently, the European Union accounts for over 90 percent of global annual spending on agricultural export subsidies. A number of countries, including the United States and some developing countries, have called for the new negotiations to eliminate export subsidies. A number of countries have also called for stricter disciplines on other export programs, including export credits, food aid, and privileges enjoyed by state trading enterprises.

*Market Access.* The current Agreement set agricultural trade on a more predictable basis by requiring the conversion of non-tariff barriers, such as quotas and import bans, into simple tariffs. Quotas, discriminatory licensing, and other such measures are now prohibited. Also, all agricultural tariffs have been reduced from earlier levels and "bound" in the WTO; a decision by a member to impose tariff rates above a binding would violate WTO obligations. Creating a "tariff-only" system for agricultural products is an important advance, yet tariffs on agricultural products around the world remain too high. Additionally, administrative difficulties with tariff-rate quota systems continue to impede international trade of food and fiber products. Substantial tariff reductions and reform of administrative systems are a key feature of a number of negotiating proposals submitted in

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2000. The U.S. proposal focuses on reducing high tariffs, an outcome that would benefit U.S. producers who generally have less tariff protection than producers in other countries. The United States also has proposed tightening disciplines on the administration of tariff-rate quotas, expanding access under tariff-rate quotas, simplifying tariff systems, and reducing the trade-distorting potential of state trading enterprises. Members of the Cairns Group of exporting countries and some developing countries have focused their proposals on substantial tariff reductions in developed country markets.

*Domestic Support.* Governments have the right to support farmers if they so choose. However the Agriculture Agreement encourages such support to be provided in a manner that causes minimal distortions to production and trade. The Agreement caps and reduces trade-distorting domestic supports that a Member can provide to its farmers but allows criteria-based “green box” policies that can support agriculture while minimizing distortions to trade. The U.S. proposal calls for reducing the level of trade-distorting support and establishing a ceiling on trade-distorting support that applies equally to all countries proportionate to the size of their agricultural economy. This proposal will reduce unfair competition in world markets and eliminate disparities resulting from unequal levels of support provided in the base period. Some other WTO Members have called for elimination of all trade-distorting support and a cap on the “green box” non-trade-distorting support.

*Negotiating Proposals:* Twenty-four proposals were submitted during the year, (all of these papers can be accessed by the public from the WTO web site at <http://www.wto.org> ). The United States tabled the first comprehensive proposal on June 23, and a proposal on tariff-rate quota reform on November 13. The Cairns group of exporting countries has tabled four proposals, one each on export competition, domestic support, market access, and export restrictions.

An *ad hoc* group<sup>3</sup> of developing countries have submitted three proposals on special and differential treatment, domestic support, and market access. The European Community has submitted a comprehensive proposal and four narrower proposals on animal welfare, domestic support, food quality, and export competition. Japan, Switzerland and Mauritius also submitted comprehensive proposals. Canada has submitted proposals on market access and domestic support. The ASEAN group and a group of small island developing states<sup>4</sup> have submitted proposals on special and differential treatment. A group of transition economies<sup>5</sup> moving from centrally-planned economies submitted two papers on domestic support and market access. Swaziland submitted a proposal on market access. In addition, discussion papers have been submitted by the United States on domestic support, by a group of import-sensitive countries on non-trade concerns, by a group of Latin American countries on export subsidies and food security, and by Argentina on non-trade concerns.

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<sup>3</sup>The ad hoc group of developing countries includes: Cuba, Dominican Republic, Honduras, Pakistan, Haiti, Nicaragua, Kenya, Uganda, Zimbabwe, Sri Lanka, El Salvador, India, and Nigeria; (not all countries endorse all proposals).

<sup>4</sup> Dominica, Jamaica, Mauritius, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.

<sup>5</sup> Albania, Bulgaria, Croatia, the Czech Republic, Estonia, Georgia, Hungary, the Kyrgyz Republic, Latvia, Lithuania, Mongolia, Slovak Republic and Slovenia; (not all countries endorse all proposals).

**Key Elements of U.S. Proposals for  
Agricultural Reform**

**Tariffs and TRQs.** Comprehensive reductions in tariffs and increases in tariff-rate quota quantities, without exception.

**Export Subsidies.** Elimination of export subsidies.

**Domestic Support.** Simplification of the current structure by creating two categories of support: non-trade distorting measures that are not subject to limits and trade-distorting measures that would be subject to reductions.

**Disparities.** Reduction of disparities in tariffs and domestic support between countries, a key domestic concern. Establishment of a common trade-distorting domestic support limit based on a fixed proportion of the value of national agricultural production.

**State Trading Enterprises.** Disciplines the activities of import and export state trading enterprises, including ending their monopoly privileges.

**New Technologies.** Flags the importance of addressing trade barriers to products of new technology, including biotechnology, but does not suggest specific disciplines.

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**Export Restrictions.** Strengthens disciplines on export restrictions to increase the reliability of global food supply.

**Special and Differential Treatment.** Provides special consideration to the concerns of the poorer WTO Members to ensure the agreement is appropriate for their circumstances.

embarked upon new, multisectoral services negotiations under Article XIX of the General Agreement on Trade in Services (GATS). The Council for Trade in Services, meeting in special session, serves as the negotiating body.

The services negotiations are critically important to the U.S. economy. Services are what most Americans do for a living. Service industries account for nearly 80 percent of U.S. employment and GDP. U.S. exports of commercial services (i.e., excluding military and government) were \$255 billion in 1999, supporting over 4 million services and manufacturing jobs in the United States. Cross-border trade in services accounts for more than 25 percent of world trade, or about \$1.4 trillion annually. U.S. services exports have more than doubled over the last 10 years, increasing from \$118 billion in 1989 to \$255 billion in 1999. U.S. services compete successfully worldwide. In 1999, major export markets for U.S. services include the European Union (\$85 billion), Japan (\$30 billion), and Canada (\$21 billion). At \$13 billion, Mexico is presently the largest emerging market for exports.

Services are important to an efficient economy. They include essential infrastructure systems like telecommunications, finance, energy services, transportation, and distribution; professional services like accounting, law, architecture, and engineering; and environmental services such as sewage, refuse disposal, sanitation and exhaust gas reduction services.

*Negotiating Proposals:* With the start of the mandated services negotiations, WTO Members reached early agreement on a work program through March 2001. The “roadmap” called for WTO Members to submit negotiating proposals and proposals related to the conduct of the negotiations by a notional deadline of December 2000. The United States submitted the first comprehensive negotiating proposal in July 2000.

To complement and elaborate on the U.S. July submission, the United States, in December

**Services:** Pursuant to the mandate provided in the Uruguay Round, in 2000, Members

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2000, presented more specific views on interests and objectives in 11 individual service sectors:

- C accountancy services
- C audiovisual and related services
- C distribution services
- C education and training services
- C energy services
- C environmental services
- C express delivery services
- C financial services
- C legal services
- C telecommunications, value-added network, and complementary services
- C tourism services

In addition, the United States presented more specific views regarding one GATS “mode of delivery” (movement of natural persons).

The July and December submissions are available on USTR’s website. Other countries have followed with negotiating proposals of their own. At a March 2001 stocktaking, the CTS is expected to pave the way for focused discussion of each of these proposals.

*The GATS.* The GATS is the first multilateral, legally enforceable agreement covering trade and investment in the services sector. Its objective is to reduce or eliminate governmental measures that prevent services from being freely provided across national borders or that discriminate against locally-established service firms with foreign ownership, while at the same time maintaining regulators’ ability to meet legitimate objectives. Trade in services includes economic activities whose outputs are other than tangible goods, such as banking, insurance, securities, telecommunications, distribution services (retail and wholesale trade), computer and related services, advertising, professional services, private education and training, private health care, audiovisual and tourism services.

The GATS consists of a framework agreement that lays out the general obligations for trade in services in much the same way that the General

Agreement on Tariffs and Trade does for trade in goods. Most-favored-nation treatment (MFN), market access, and national treatment are three of the important principles included in the general framework of the GATS. Thus, the GATS provides a legal framework for addressing barriers to trade and investment in services, and it includes specific commitments by WTO Members to restrict their use of those barriers. These commitments are contained in national schedules, similar to the national schedules for tariffs. The Council for Trade in Services oversees implementation of the GATS and reports to the General Council.

All Members of the WTO are signatories to the GATS framework agreement and have made sector-specific commitments pertaining to national treatment, market access, and MFN treatment. Ministerial Decisions at the conclusion of the Uruguay Round had called for negotiations on further liberalization in, *inter alia*, the financial services and basic telecommunications sectors, the results of which entered into force in 1999 and 1998, respectively, as well as a work program in professional services, which completed its work with respect to accountancy in 1999.

### **Key Elements of the U.S. Proposals for Services**

Following is an explanation of the importance of the 12 detailed services negotiating proposals to the United States and to the GATS negotiations. These documents are available at <http://www.ustr.gov/sectors/services/docsvcs.html>.

#### **Accountancy**

The proposal is designed to make it easier for accountants and accounting firms to serve clients in other countries, as this profession becomes increasingly globalized. It would address citizenship and prior residency requirements for licensing, and would strengthen the Accountancy Disciplines, adopted by the WTO in 1998, which

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are scheduled to become effective after this set of negotiations. The proposal addresses market access and national treatment obstacles, which were not addressed under the mandate of the WTO Working Party on Professional Services, which developed the Disciplines.

International revenues of accounting firms amount to tens of billions of dollars and are growing annually. Two million accountants are employed worldwide. Accounting firms create job opportunities in virtually all countries; they assist manufacturers and businesses in developing and maintaining cost-effective operations and in preparing tax returns and financial statements.

### **Audiovisual and related services**

The proposal is intended to provide a framework for future negotiations in the WTO that will contribute to the continued growth of this sector by ensuring an open and predictable environment that recognizes public concern for the preservation and promotion of cultural values and identity. Today's audiovisual sector has changed significantly during the last 10 years. New technologies stimulate the growth and development of audiovisual services and products from around the globe and offer consumers worldwide access to a multitude of entertainment and information services.

As part of the explosion in information technology that has taken place in the past decade, audiovisual services, too, play their role in fostering a nation's economic development, both through the spread of information and ideas and by fostering investment in a nation's advanced communications infrastructure. Electronically delivered audiovisual products and services, for example, which increase use of the network, are helping to create an environment that will encourage investment in the digital networks of tomorrow.

### **Distribution services**

This proposal addresses barriers faced by wholesalers, retailers, and other distribution companies in operating supply chains internationally (e.g., restrictions on real estate purchases, store location, etc.). It requests countries that have not yet taken commitments in this sector to match the U.S. Uruguay Round commitments (no limitations on market access or national treatment) or to formulate an offer addressing identified obstacles in this sector. It also proposes that all Members undertake additional commitments relating to regulation in this sector (e.g., provide transparency of domestic laws and regulations; provide an opportunity for service providers to meet with local officials and community representatives to discuss location of facilities).

Efficient distribution is an essential feature in the infrastructure of modern economies. Supply chains from manufacturers to wholesalers, retailers, franchisers, direct sellers, and marketers provide consumers with a wide selection of products and reasonable prices, important factors in improving the quality of life. These companies consistently produce large numbers of jobs and income opportunities both directly and in other ancillary services, such as transportation, packaging, logistics management, and information technology. Retailers and wholesalers are among the largest employers in a number of countries.

### **Education and training services**

This proposal addresses barriers to market access and national treatment for suppliers of education and training services, both cross-border and at facilities abroad. The proposal would be limited to higher (tertiary) education, adult education, and training, and would not apply to primary and secondary schools. It would not seek to displace public education systems, but rather would supplement them and provide opportunities for suppliers to make their services available to students in other countries. The intent is to help

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upgrade knowledge and skills through these educational and training programs, while respecting each country's role in administering public education.

Specialized education and training is needed in many countries, particularly in high-tech fields. Such education is becoming more important in the development and operation of modern economies. Hundreds of thousands of foreigners visit the United States each year to study at our educational institutions. U.S. balance of payments receipts from incoming students amount to some \$9 billion annually. In addition, receipts from training services add another \$400 million a year. This does not include the receipts of a growing number of branches and other ventures established overseas by U.S. educational service providers. The most popular courses offered by these establishments are business administration, management and leadership training, language training, and computer and information technology education, some of which are delivered by a combination of classroom discussion and interactive internet sessions ("distance learning").

### **Energy services**

Energy services involve a wide range of activities, from exploration of energy resources to transmission and distribution of energy, to marketing and trading of energy, to services promoting the clean and efficient use of energy and other services necessary to obtain, convert, and deliver an energy resource to consumers.

Liberalization of energy services is a priority for the United States in the current round of services negotiations. Broad market openings in the sector are fundamental to the economic health of both developed and developing countries. The energy services initiative offers developing countries the opportunity to save hundreds of billions of dollars through enhanced efficiencies in energy development and usage, as well as to provide energy to the roughly 2 billion people

today that do not have access to commercial power.

During the last major round of trade negotiations, the Uruguay Round, little attention was paid to energy services. This was partly because, at the time, most service functions were performed "in-house" by state-owned or regulated oil companies and power generation utilities that controlled the whole production and distribution chain. Today, deregulation and privatization have led to an unbundling of energy services activities and the development of a \$600 billion energy services sector.

The U.S. proposal calls on WTO Members to assure nondiscriminatory access to foreign energy service providers across the entire value-chain of energy services. Equally important, the U.S. proposal suggests that WTO Members consider how best to create an appropriate regulatory environment for energy services so that opaque or discriminatory regulatory practices do not undermine commitments to open markets to foreign service providers.

### **Environmental services**

The benefits of services that prevent, reduce, or correct environmental degradation are increasingly seen as important to ensure that environmental problems are adequately addressed and that future problems are prevented or limited. Liberalization in this sector will benefit all countries, not only developed economies that often have the technology to compete in this industry. We are increasingly aware that the trans-boundary effects of many environmental issues make this sector important to both developing and developed countries. The reduction of barriers to the provision of environmental services will enhance competitive forces ensuring that technology advances are better dispersed and provided at more affordable rates. This will ensure greater access to these services for all countries.

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At the same time, liberalization in these sectors must not impair the ability of governments to impose performance and quality controls on environmental services and to otherwise ensure that service providers are fully qualified and carry out their tasks in an environmentally sound manner.

### **Express delivery services**

This proposal addresses barriers faced by express delivery companies in providing integrated services from pick-up to end user delivery. It seeks the adoption of a separate classification for express delivery services and requests countries to undertake commitments on market access and national treatment. It also proposes that all Members undertake additional commitments relating to regulation in this sector (e.g., provide transparency of domestic laws and regulations; provide an opportunity for service providers to meet with local officials and community representatives to discuss location of facilities).

The world market for express delivery services, estimated at over \$50 billion, is projected to grow rapidly over the next several years, partly driven by the increasing use of online purchasing by businesses and consumers, as well as the need for vendors to match the speed of electronic ordering with rapid physical delivery. Consumers benefit not only from the speed of delivery but from the lower costs resulting from efficiencies of operation. Express delivery service providers employ tens of thousands of people worldwide. These services have become an important feature of a modern, efficient economy.

### **Financial services**

Financial services liberalization – which includes insurance, banking, securities, asset management, pension funds, financial information, financial advisory activity, and other financial services – enhances and strengthens capital market efficiency, bolsters financial sector stability, stimulates innovation, and provides consumers

with the broadest range of services at the lowest cost. The United States is one of the world's most competitive suppliers of financial services. In 1997, in the insurance sector, U.S.-owned affiliates' sales in foreign markets reached \$ 47.2 billion. The United States is also a world leader in providing cross-border insurance services. Even excluding core deposit-taking and lending business, U.S. banking and securities firms recorded cross-border exports of \$13.9 billion in 1998, and recorded comparable sales via their affiliates abroad. Growth of the U.S. financial services sector in overseas markets also stimulates demand for a wide range of other U.S. services, including telecommunications, professional services, and computer and related services.

A strong and vibrant financial sector is particularly important for emerging economies to provide a strong basis for their trade in a diverse range of goods and services. Ambitious commitments for financial services also make countries more attractive destinations for investment in e-commerce networks and associated technologies. In short, liberalization of financial services, when implemented in conjunction with transparent and strong regulatory regimes, is one of the most important catalysts of economic and trade growth.

The United States proposal on financial services establishes benchmarks for further financial services liberalization including: (1) commitments constituting fundamental liberalization; and (2) commitments on transparency and other principles for regulation.

### **Legal services**

With the acceleration of world economic integration, law firms have become increasingly important in advising clients on a variety of business matters, including mergers and acquisitions with foreign companies and business contracts involving multiple jurisdictions. Negotiations on legal services will enable WTO Members to examine liberalization opportunities

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with regard to market access and national treatment barriers. This examination should focus on liberalization opportunities regarding commercial presence, citizenship and residency requirements for licensing, scope of practice, association of foreign-qualified lawyers with local lawyers, and association of foreign-partner law firms with local law firms. Negotiations should include other relevant modes of supply, including the movement of personnel.

In many respects, lawyers and law firms pave the way for international trade and investment and they are regarded as a part of the infrastructure of commerce. For the United States, balance of payments receipts for legal services amount to roughly \$2.5 billion annually.

**Telecommunications, value-added network, and complementary services**

WTO Members seeking to benefit from the growth opportunities provided by an increasingly “networked” global economy will need to attract extensive private investment to build the infrastructure of telecommunications and computer facilities. The WTO and its Members can play a key role in stimulating such investment by:

- < ensuring market access and national treatment for providers of both network infrastructure and key service sectors that use this infrastructure;
- < implementing the Basic Telecommunications Reference Paper commitments that promote competition in basic telecommunications; and,
- < consistent with Article VI of the GATS, avoiding unnecessary restrictions on services offered by competitive suppliers.

To achieve this goal the United States proposed, in conjunction with sector-specific negotiations, a negotiating framework that elicits commitments in both basic and value-added

telecommunications services, as well as complementary services that could be integrated into network transactions such as distribution services, express delivery services, computer services, advertising services, and certain financial services. Such a package will ensure that the opportunity to build and fully utilize networks is supported by WTO disciplines, encouraging investment and the broadest possible development of services that are flourishing through the efficiencies of networked transactions.

Worth \$650 billion in 1997, the global telecommunications market is now rapidly approaching one trillion dollars in annual sales. Before the agreement came into force, only 17 percent of the world's top 20 global markets were open to U.S. firms; now, measured by annual sales, U.S. companies have access to over 95 percent of global telecommunications markets, according to the International Telecommunications Union.

By the end of 2000, spending on telecommunications equipment and services was estimated at \$983 billion in Canada, Mexico, Western and Eastern Europe, Latin America, and the Asia-Pacific region combined. Spending on telecommunications transport services, equipment, and support services will soar to \$1.8 trillion in 2003 at a 16.7 percent compound annual growth rate. U.S. manufacturers are expected to garner \$45 billion -- that is 12.7 percent -- of the estimated \$345 billion that will be spent on telecommunications equipment in 2003.

According to 1999 statistics, e-commerce generated over \$171 billion in revenue. Forty-four percent of U.S. companies are selling online; 36 percent more indicated that they will do so by the end of 2000. According to industry estimates, internet advertising generated \$1.92 billion in 1998, double the 1997 figure.

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## **Tourism services**

This proposal focuses on hotels as a sub-sector of tourism. It builds on a proposal by three developing countries on tourism, which is currently under discussion in the GATS Council. It requests countries that have not yet taken commitments with respect to hotels to match the U.S. Uruguay Round commitments (no limitations on market access or national treatment) or to formulate an offer based on a list of obstacles in this sector (e.g., limitations on foreign investment or on purchase of real estate; discriminatory treatment of parties in a joint venture, etc.). It also proposes that all Members undertake additional commitments relating to travelers and international conferences to promote expansion of international tourism.

Tourism, broadly defined, is regarded as the world's largest industry and one of the fastest-growing, accounting for over one-third of the value of total worldwide services trade. The labor-intensive nature of the industry makes it a major source of employment, especially in remote and rural areas. Tourism ranks in the top five export categories for 83 percent of countries, according to the World Tourism Organization, and is the leading source of foreign exchange in at least one in three developing countries. Tourism generates not only employment but retail sales and tax revenues. With annual receipts in excess of \$75 billion and payments of over \$50 billion, the United States is the world's leading exporter and importer of tourism services. The hotel industry is a most important part of the tourism industry with worldwide revenues estimated at \$253 billion.

## **Movement of natural persons**

An important component of U.S. competitiveness in the services sector is human capital – skilled managers and professionals involved in the delivery of services in foreign markets. Too often, however, companies face regulatory hurdles in moving personnel to foreign locations

This proposal would apply across all services sectors, recognizing that movement of natural persons is relevant to all services sectors. The proposal highlights the temporary nature of this GATS mode of supply – WTO Members undertake no obligations with respect to permanent entry or stay of individuals as service suppliers – and the role that access to information and regulatory transparency can play in ensuring full implementation of GATS commitments in this area.

## **C. Dispute Settlement Body**

### **1. The Dispute Settlement Understanding**

The Understanding on Rules and Procedures Governing the Settlement of Disputes (“Dispute Settlement Understanding” or “DSU”), which is annexed to the WTO Agreement, provides a mechanism to settle disputes under the Uruguay Round Agreements. Thus, it is key to the enforcement of U.S. rights under these Agreements.

The DSU is administered by the Dispute Settlement Body (DSB), which includes representatives of all WTO members. The DSB is empowered to establish dispute settlement panels, adopt panel and Appellate Body reports, oversee the implementation of panel recommendations adopted by the DSB and authorize retaliation. The DSB makes all its decisions by "consensus." Annex II at the end of this chapter provides more background information on the WTO dispute settlement process.

### **Dispute Settlement Body Actions in 2000**

The DSB met 23 times in 2000 to oversee disputes and to take care of tasks such as electing Appellate Body members and approving additions to the roster of governmental and non-governmental panelists.

*Roster of Governmental and Non-Governmental Panelists:* Article 8 of the DSU makes it clear

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that panelists may be drawn from either the public or private sector and must be “well-qualified,” such as persons who have served on or presented a case to a panel, represented a government in the WTO or the GATT, served with the Secretariat, taught or published in the international trade field, or served as a senior trade policy official. The Secretariat maintained a roster of non-governmental experts since 1985 for GATT 1947 dispute settlement, which was available for use by parties in selecting panelists. In 1995, the DSB agreed on procedures for renewing and maintaining the roster, and expanding it to include governmental experts. In response to a U.S. proposal, the DSB also adopted standards increasing and systematizing the information to be submitted by roster candidates, to aid in evaluation of candidates’ qualifications and to encourage appointment of well-qualified candidates who would have expertise in the subject matters of the Uruguay Round Agreements. In 2000, the DSB approved by consensus a number of additional names for the roster. The United States scrutinized the credentials of these candidates to assure the quality of the roster.

The present WTO panel roster appears in the background information at the end of this chapter. The list in the roster notes the areas of expertise of each roster member (goods, services and/or TRIPS).

*Rules of Conduct for the DSU:* The DSB completed work on a code of ethical conduct for WTO dispute settlement and on December 3, 1996, adopted the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes*. A copy of the Rules of Conduct was printed in the Annual Report for 1996 and is available on the WTO and USTR websites. There were no changes in these Rules in 2000.

The Rules of Conduct were designed to elaborate on the ethical standards built into the DSU, and to maintain the integrity, impartiality and confidentiality of proceedings conducted under

the DSU. The Rules of Conduct require all individuals called upon to participate in dispute settlement proceedings to disclose direct or indirect conflicts of interest prior to their involvement in the proceedings, and to conduct themselves during their involvement in the proceedings so as to avoid such conflicts. The Rules of Conduct also provide parties to a dispute an opportunity to address potential material violations of these ethical standards. The coverage of the Rules of Conduct exceeds the goals established by Congress in section 123(c) of the URAA, which directed the USTR to seek conflicts of interest rules applicable to persons serving on panels and members of the Appellate Body. The Rules of Conduct cover not only panelists and Appellate Body members, but also (1) arbitrators; (2) experts participating in the dispute settlement mechanism (e.g., the Permanent Group of Experts under the Subsidies Agreement); (3) members of the WTO Secretariat assisting a panel or assisting in a formal arbitration proceeding; (4) the Chairman of the Textile Monitoring Body (“TMB”) and other members of the TMB Secretariat assisting the TMB in formulating recommendations, findings or observations under the Agreement on Textiles and Clothing; and (5) support staff of the Appellate Body.

As noted above, the Rules of Conduct established a disclosure-based system. Examples of the types of information that covered persons must disclose are set forth in Annex 2 to the Rules, and include the following: (1) financial interests, business interests, and property interests relevant to the dispute in question; (2) professional interests; (3) other active interests; (4) considered statements of personal opinion on issues relevant to the dispute in question; and (5) employment or family interests.

*Appellate Body:* The DSU requires the DSB to appoint seven persons to serve on an Appellate Body, which is to be a standing body, with members serving four-year terms, except for three initial appointees determined by lot whose terms expire at the end of two years. At its first

meeting on February 10, 1995, the DSB formally established the Appellate Body, and agreed to arrangements for selecting its members and staff. They also agreed that Appellate Body members would serve on a part-time basis, and sit periodically in Geneva. The original seven Appellate Body members, who took their oath on December 11, 1995, were: Mr. James Bacchus of the United States, Mr. Christopher Beeby of New Zealand, Professor Claus-Dieter Ehlermann of Germany, Dr. Said El-Naggar of Egypt, Justice Florentino Feliciano of the Philippines, Mr. Julio Lacarte Muró of Uruguay, and Professor Mitsuo Matsushita of Japan. On June 25, 1997, it was determined by lot that the terms of Messrs. Ehlermann, Feliciano and Lacarte-Muró would expire in December 1997. The DSB agreed on the same date to reappoint them for a final term of four years commencing on 11 December 1997. On October 27, 1999 and November 3, 1999, the DSB agreed to renew the terms of Messrs. Bacchus and Beeby for a final term of four years, commencing on December 11, 1999, and to extend the terms of Dr. El-Naggar and Professor Matsushita until the end of March 2000. On April 7, 2000, the DSB agreed to appoint Mr. Georges Michel Abi-Saab of Egypt and Mr. A.V. Ganesan of India to a term of four years commencing on June 1, 2000. On May 25, 2000, the DSB agreed to the appointment of Professor Yasuhei Taniguchi of Japan to serve through December 10, 2003, the remainder of the term of Mr. Beeby, who passed away on March 19, 2000. The names and biographical data for the Appellate Body members are included in Annex II.

The Appellate Body has also adopted Working Procedures for Appellate Review. On February 28, 1997, the Appellate Body issued revision of the Working Procedures, providing for a two-year term for the first Chairman, and one-year terms for subsequent Chairmen. Mr. Lacarte Muró, the first Chairman, served until February 7, 1998; Mr. Beeby served as Chairman from February 7, 1998 to February 6, 1999; Mr. El-Naggar served as Chairman from February 7, 1999 to February 6, 2000; and Mr. Feliciano's

term as Chairman will run from February 7, 2000 to February 6, 2001.

In 2000, the Appellate Body issued ten reports, of which seven involved the United States as a party and are discussed in detail below. The three other reports concerned Canada's measures affecting the automotive industry, Brazil's export financing program for aircraft and Canada's measures affecting exports of civilian aircraft. The United States participated in all three of these proceedings as an interested third party.

### **Prospects for 2001**

In 2001, we expect that the DSB will continue to focus on the administration of the dispute settlement process in the context of individual disputes. Experience gained with the DSU will be incorporated into the U.S. litigation and negotiation strategy for enforcing U.S. WTO rights, as well as the U.S. position on DSU reform. DSB Members will continue to consider reform proposals in 2001.

## **2. Dispute Settlement Activity in 2000**

During its first six years in operation, 219 requests for consultations (25 in 1995, 40 in 1996, 50 in 1997, 40 in 1998, 30 in 1999, and 34 in 2000) concerning 168 distinct matters were filed with the WTO. During that period, the United States filed 56 requests for consultations and received 46 requests for consultations on U.S. measures. A number of disputes commenced in earlier years that continued to be active in 2000. What follows is a description of those disputes in which the United States was either a complainant or a defendant during the past year.

### **a. Disputes Brought by the United States**

In 2000, the United States continued to be one of the most active users of dispute settlement in the WTO. This section includes brief summaries of dispute settlement activity in 2000 with respect to those cases in which the United States was a

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complainant. These cases involve a variety of different WTO-inconsistent trade barriers maintained by several different governments. As demonstrated by these summaries, the WTO dispute settlement process has proven to be an effective tool in combating barriers to U.S. exports. Indeed, in many instances, the United States has been able to achieve satisfactory outcomes invoking the consultation provisions of the dispute settlement procedures, without recourse to formal panel procedures.

*Argentina—Patent and test data protection for pharmaceuticals and agricultural chemicals*

On May 6, 1999, the United States filed a consultation request challenging Argentina's failure to provide a system of exclusive marketing rights for pharmaceutical products, and to ensure that changes in its laws and regulations during its transition period do not result in a lesser degree of consistency with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"). Consultations were held on June 15, and on July 27, 1999. On May 30, 2000, the United States expanded its claims in this dispute to include new concerns that arose as a result of Argentina's failure to fully implement its remaining TRIPS obligations that came due on January 1, 2000. These concerns include Argentina's failure to protect confidential test data submitted to government regulatory authorities for pharmaceuticals and agricultural chemicals; its denial of certain exclusive rights for patents; its failure to provide such provisional measures as preliminary injunctions to prevent infringements of patent rights; and its exclusion of certain subject matter from patentability. Consultations were held July 17, 2000. Additional consultations were held November 29, 2000.

*Australia—Measures affecting imports of fresh, chilled or frozen salmon*

Australia banned imports of fresh, chilled, or frozen salmon from Canada and the United

States, allegedly for the protection of fish health, even though a draft risk assessment found in 1995 that there was no risk of transmitting fish disease from imports of dead, eviscerated fish. The United States alleged that this practice was inconsistent with numerous requirements of the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"). On May 11, 1999, the United States requested a panel. The panel was established on June 16, 1999, but the United States requested that its proceedings be suspended pending the outcome of a case brought by Canada regarding the same measure. Canada prevailed in its challenge, and on May 17, 2000, Canada and Australia settled the dispute by reaching an agreement that will benefit U.S. exporters as well.

*Australia—Prohibited export subsidies on leather*

On June 21, 2000, the United States resolved its dispute with Australia regarding subsidization of Australia's sole exporter of automotive leather. Under a bilateral settlement agreement, the subsidy recipient agreed to a partial repayment of the prohibited export subsidy it received, and the Australian Government committed that it will exclude this industry from current and future subsidy programs, and provide no other direct or indirect subsidies.

The agreement is the result of a WTO case brought by the United States in 1998, when Australia, after consultations with the United States, excluded its automotive leather industry from two export subsidy programs, but then compensated its automotive leather exporter by means of a \$30 million grant. The United States alleged, and the dispute settlement panel agreed, that this grant was a *de facto* export subsidy and had to be withdrawn. Australia announced in September 1999 that it had complied with the WTO ruling by requiring the recipient to repay less than 27 percent of the grant, which it called the prospective portion. At the same time, Australia announced a new loan subsidy to the exporter's parent company. In response, the

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original WTO panel was reconvened at the request of the United States. The panel concluded that Australia had failed to comply with the panel's recommendations and rulings because the repayment was insufficient and the new loan subsidy nullified even that insufficient repayment. Following this decision, the United States and Australia began exploring a mutually satisfactory resolution of this matter.

#### *Belgium—Rice imports*

Belgian customs authorities disregarded the actual transaction values of rice imported from the United States from July 1, 1997 to December 31, 1998, in computing the applicable customs duties. The United States believes that this failure to use transaction values contravenes Belgium's WTO obligations. By not using transaction values to compute customs duties Belgium has assessed duties on rice that are higher than the levels provided for in the "Schedule of Specific Commitments of the European Communities and Their Member States." Belgium's administration of its tariff regime for rice, moreover, has contributed to substantial uncertainty regarding the rate of duty that will be applicable to shipments of imported rice. On October 12, 2000, the United States requested consultations with Belgium regarding this matter, and consultations were held November 30, 2000.

#### *Brazil—Customs valuation*

The United States requested consultations on May 31, 2000, with Brazil regarding its customs valuation regime. U.S. exporters of textile products reported that Brazil uses officially-established minimum reference prices both as a requirement to obtain import licenses and/or as a base requirement for import. In practice, this system works to prohibit the import of products with declared values below the established minimum prices. This practice appears inconsistent with Brazil's WTO obligations, including those under the Agreement on Customs Valuation. The United States participated as an

interested third party in a dispute initiated by the EU regarding the same matter, and decided to pursue its own case as well. The United States held consultations with Brazil on July 18, 2000.

#### *Brazil—Patent protection*

Although Brazil has a largely WTO-consistent patent regime that has been in place for some time, there remains a longstanding difference of views between the United States and Brazil over a narrow provision in the TRIPS Agreement that the United States considers Brazil to be violating because it requires patent owners to manufacture their products in Brazil in order to maintain full patent rights. Having been unable to resolve this difference over the past five years, the United States decided to resort to WTO dispute settlement procedures and on May 31, 2000, requested consultations with Brazil.

Consultations were held June 29, 2000.

Additional consultations were held December 1, 2000, and thereafter the United States requested the establishment of a panel.

#### *Canada—Export subsidies and tariff-rate quotas on dairy products*

The United States prevailed on its claim that Canada was providing subsidies to exports of dairy products without regard to its Uruguay Round commitment to reduce the quantity of subsidized exports, and was maintaining a tariff-rate quota on fluid milk under which it only permitted the entry of milk in retail-sized containers by Canadian residents for their personal use. On August 12, 1998, the following panelists were selected, with the consent of the parties, to review the U.S. claims: Professor Tommy Koh, Chairman; Mr. Guillermo Aguilar Alvarez and Professor Ernst-Ulrich Petersmann, Members. On May 17, 1999, the panel issued its report upholding U.S. arguments by finding that Canada's export subsidies are inconsistent with the Agreement on Agriculture, and that Canada's practice of restricting the import of milk to retail-sized containers imported by Canadian residents is

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inconsistent with its obligations under the GATT 1994. On October 13, 1999, the Appellate Body issued its report upholding the panel's finding that Canada's export subsidies are inconsistent with its GATT obligations. The panel and Appellate Body reports were adopted by the Dispute Settlement Body ("DSB") on October 27, 1999. On December 22, 1999, the parties reached agreement on the time period for implementation by Canada. Under this agreement, Canada was to implement the DSB's recommendations and rulings in stages; Canada has already implemented on some measures, and was to complete full implementation no later than January 31, 2001. While Canada has eliminated one of the export subsidies subject to the DSB findings, all of its exporting provinces have instituted substitute measures that appear to duplicate most of the elements of the export subsidies which they replace. Information regarding the new measures indicates that only exporters have access to milk at prices that are below domestic market levels in Canada. Therefore, the United States announced that it would request that the panel be reconvened to review Canada's compliance.

*Canada—Patent protection term*

The United States prevailed in this dispute, in which the United States argued that the Canadian Patent Act is inconsistent with the TRIPS Agreement. The TRIPS Agreement obligates WTO members to grant a term of protection for patents that runs at least 20 years from the filing date of the underlying application, and requires each Member to grant this minimum term to all patents existing as of the date of application of the Agreement to that Member. Under the Canadian Patent Act, patents issued on the basis of applications filed before October 1, 1989, are granted a term of only 17 years from the date on which the patent is issued. The United States initiated this dispute on May 6, 1999. The panel was established on September 22, 1999, and on October 22, 1999, the Director-General composed the panel as follows: Mr. Stuart Harbinson, Chairman; Mr. Sergio Escudero and

Mr. Alberto Heimler, Members. In its report, circulated on May 5, 2000, the panel agreed with the United States that Canada's law fails to provide the patent term guaranteed by TRIPS. On September 18, 2000, the Appellate Body affirmed the panel's rulings. The DSB adopted the reports of the panel and Appellate Body on October 12, 2000. The United States has asked an arbitrator to determine the reasonable period of time for Canada to comply.

*Denmark—Measures affecting the enforcement of intellectual property rights*

The United States used the dispute settlement procedures in this case to encourage legislative action by Denmark to implement its TRIPS obligations. The TRIPS Agreement requires that all WTO Members provide provisional relief in civil intellectual property rights enforcement proceedings. After numerous consultations with the United States in 1997 and 1998, the Government of Denmark agreed to form a special committee to consider amending Danish law to provide this type of remedy. The committee concluded its work in May 2000, and we expect Denmark to move toward amendment of its law expeditiously. We continue to monitor Denmark's progress on this issue.

*EU—Beef Hormone ban*

The United States and Canada challenged the EU ban on imports of meat from animals to which any of six hormones for growth promotional purposes had been administered. On July 2, 1996, the following panelists were selected, with the consent of the parties, to review the U.S. claims: Mr. Thomas Cottier, Chairman; Mr. Jun Yokota and Mr. Peter Palecka, Members. The panel in the case found that the EU ban is inconsistent with the EU's obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"), and that the ban is not based on science, a risk assessment, or relevant international standards. Upon appeal, the Appellate Body affirmed the panel's findings that the EU ban fails to satisfy

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the requirements of the SPS Agreement. The Appellate Body also found that while a country has broad discretion in electing what level of protection it wishes to implement, in doing so it must fulfill the requirements of the SPS Agreement. In this case the ban imposed is not rationally related to the conclusions of the risk assessments the EU had performed.

Because the EU did not comply with the recommendations and rulings of the DSB by May 13, 1999, the final date of its compliance period as set by arbitration, the United States sought WTO authorization to suspend concessions with respect to certain products of the EU, the value of which represents an estimate of the annual harm to U.S. exports resulting from the EU's failure to lift its ban on imports of U.S. meat. The EU exercised its right to request arbitration concerning the amount of the suspension. On July 12, 1999, the arbitrators determined the level of suspension to be \$116.8 million. On July 26, 1999, the DSB authorized the United States to suspend such concessions and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of \$116.8 million. On May 26, 2000, USTR announced that it was considering changes to that list of EU products. While discussions with the EU to resolve this matter have continued, to date no resolution has been achieved. On November 3, 2000, the EU notified the WTO of its plans to make permanent the ban on one hormone, oestradiol.

*EU—Regime for the importation, sale and distribution of bananas*

The United States, along with Ecuador, Guatemala, Honduras, and Mexico, successfully challenged the EU banana regime under WTO dispute settlement procedures. The regime was designed, among other things, to take away a major part of the banana distribution business of U.S. companies. On May 29, 1996, at the request of the complaining parties, the Director-General selected the following panelists to serve in this dispute: Mr. Stuart Harbinson,

Chairman; Mr. Kym Anderson and Mr. Christian Häberli, Members. On May 22, 1997, the panel found that the EU banana regime violated WTO rules; the Appellate Body upheld the panel's decision on September 9, 1997. At the request of the complaining parties, the compliance period was set by arbitration and expired on January 1, 1999. However, on January 1, 1999, the EU adopted a regime that perpetuates the WTO violations identified by the panel and the Appellate Body. The United States sought WTO authorization to suspend concessions with respect to certain products of the EU, the value of which is equivalent to the nullification or impairment sustained by the United States. The EU exercised its right to request arbitration concerning the amount of the suspension and on April 6, 1999, the arbitrators determined the level of suspension to be \$191.4 million. On April 19, 1999, the DSB authorized the United States to suspend such concessions, and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of \$191.4 million. On May 26, 2000, USTR announced that it was considering changes to that list of EU products. Meanwhile, discussions with the EU to resolve this matter have continued.

*EU—Protection of trademarks and geographical indications for agricultural products and foodstuffs*

EU Regulation 2081/92, as amended, does not provide national treatment with respect to geographical indications for agricultural products and foodstuffs; it also does not provide sufficient protection to pre-existing trademarks that are similar or identical to such geographical indications. The United States considers this measure inconsistent with the EU's obligations under the TRIPS Agreement. The United States requested consultations regarding this matter on June 1, 1999. Consultations were first held July 9, 1999; most recently consultations were held November 28, 2000.

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*India—Import quotas on agricultural, textile and industrial products*

The United States prevailed in its challenge to India's import restrictions on more than 2,700 tariff items. These restrictions are no longer justified under the balance-of-payments ("BOP") exceptions of the GATT 1994. On February 20, 1998, at the request of the complaining parties, the Director-General selected the following panelists to serve in this dispute: Mr. Celso Lafer, Chairman; Prof. Paul Demaret and Prof. Richard Snape, Members. On April 6, 1999, the panel circulated its report, finding that India's quantitative restrictions on imports violate the WTO Agreement, and rejecting India's claim that its BOP situation justified them. The Appellate Body confirmed the panel's determination on August 23, 1999. The DSB adopted the panel and Appellate Body reports at its meeting on September 22, 1999. The United States and India agreed that India would implement the DSB's recommendations and rulings by April 1, 2000 for approximately 73 percent of the tariff items at issue in this case, and by April 1, 2001 for the remaining items. The liberalization due on April 1, 2000, took place on time. The United States continues to monitor developments until full implementation.

*India—Measures affecting the motor vehicle sector*

In order to obtain import licenses for certain motor vehicle parts and components, India requires manufacturing firms in the motor vehicle sector to achieve specified levels of local content, to neutralize foreign exchange by balancing the value of certain imports with the value of exports of cars and components over a stated period, and to limit imports to a value based on the previous year's imports. Considering these requirements inconsistent with India's obligations under the GATT 1994 and the Agreement on Trade-related Investment Measures ("TRIMS Agreement"), the United States requested consultations on June 2, 1999. Consultations were held July 20, 1999. The matter remained unresolved following

consultations and, on May 15, 2000, the United States requested the establishment of a panel. A panel was established on July 27, 2000, and on November 17, 2000, that panel was merged with a panel established at the request of the EU regarding the same matter. On November 24, 2000, at the request of the complaining parties, the Director-General selected the following panelists to serve in this dispute: Mr. John Weekes, Chairman; Ms. Gloria Peña and Mr. Jeffrey Waincymer, Members.

*Ireland and EU—Measures affecting the grant of copyright and neighboring rights*

In this dispute, the United States used WTO dispute settlement consultations to encourage Ireland to take further steps to implement its TRIPS obligations. Ireland had not yet comprehensively revised its copyright law to implement the TRIPS Agreement. Examples of TRIPS inconsistencies include the absence of rental rights for sound recordings and the lack of "anti-bootlegging" provisions. After consultations with the United States, Ireland committed in February 1998 to accelerate its implementation of comprehensive copyright reform legislation, and agreed to pass a separate bill, on an expedited basis, to address two particularly pressing enforcement issues. Consistent with this agreement, Ireland enacted legislation in July 1998 raising criminal penalties for copyright infringement and addressing other enforcement issues. On July 10, 2000, Ireland passed its comprehensive copyright legislation. Subsequently, Ireland agreed to implement this legislation by the end of December 2000. Based on these developments, the parties agreed on November 6, 2000, that a mutually satisfactory solution has been reached.

*Korea—Taxes on alcoholic beverages*

This case, which joined complaints by the United States and the EU, concerns Korean excise tax rates that discriminate in favor of the Korean distilled spirit soju and against whisky and other Western-type distilled spirits. On May 23,

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1997, the United States requested consultations. On October 16, the DSB established a single panel to consider both the EU and U.S. complaints against Korea. On December 5, 1997, at the request of the complaining parties, the Director-General selected the following panelists to serve in this dispute: Mr. Åke Lindén, Chairman; Professor Frédéric Jenny and Mr. Carlos da Rocha Paranhos, Members. The final panel report, circulated on September 17, 1998, found that Korea's liquor taxes violate Article III:2 of GATT 1994. The Appellate Body confirmed this finding on January 18, 1999. The reports were then adopted on February 17, 1999. Korea confirmed to the DSB its commitment to meet its obligations under the WTO with respect to this matter, and an arbitrator determined that Korea had to comply by January 31, 2000. To comply with the rulings, the Korean Government has harmonized tax rates on Korean and imported alcoholic beverages and has reduced taxes on imports of U.S. whisky by 28 percentage points.

*Korea—Measure affecting government procurement*

Practices applied by Korea in the procurement for construction of the new Incheon International Airport project favor Korean firms over foreign firms. The United States argued that these practices, including the use of domestic partnering, short deadlines and certain licensing requirements, are inconsistent with the Agreement on Government Procurement (“GPA”). Korea did not deny the inconsistencies of its practices, but instead argued that the entities procuring for this airport project are not covered under its GPA obligations. Because the two governments could not come to an agreement after two years of discussions, the United States asked a panel to examine this issue. A panel was established on June 16, 1999, and on August 30, 1999, the panel was composed with the consent of the parties as follows: Mr. Michael D. Cartland, Chairman; Ms. Marie-Gabrielle Ineichen-Fleisch and Mr. Peter-Armin Trepte, Members. On

May 1, 2000, the panel circulated its final report, finding that the GPA does not cover this particular project. The panel report was adopted on June 19, 2000.

*Korea—Measures affecting imports of fresh, chilled, and frozen beef*

The United States prevailed in this dispute, which challenged Korea's regulatory scheme that discriminates against imported beef by confining sales of imported beef to specialized stores, limiting the manner of its display, and otherwise constraining opportunities for the sale of imported beef. In addition to the regulatory scheme, the United States contends that Korea imposes a markup on sales of imported beef, limits import authority to certain so-called “super-groups” and the Livestock Producers Marketing Organization (“LPMO”), and provides domestic support to the cattle industry in Korea in amounts that cause Korea to exceed its aggregate measure of support as reflected in Korea's WTO schedule. The United States alleged that these restrictions are inconsistent with the GATT 1994, the Agreement on Agriculture, and the Import Licensing Agreement. Consultations were held March 11-12, 1999, and a panel was established on May 26, 1999. Australia also requested a panel on the same measures, and the two disputes were consolidated. On August 4, 1999, the following panelists were selected, with the consent of the parties, to review the U.S. and Australia claims: Mr. Lars Anell, Chairman; Mr. Paul Demaret and Mr. Alan Matthews, Members. The final panel report, released on July 31, 2000, found Korea in violation of its WTO obligations. Korea appealed the panel's rulings on September 11, 2000. On December 11, 2000, the Appellate Body upheld the panel on all significant issues.

*Mexico—Antidumping investigation of high fructose corn syrup from the United States*

On January 28, 2000, a WTO panel ruled that Mexico's imposition of antidumping duties on U.S. imports of high fructose corn syrup

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("HFCS") was inconsistent with the requirements of the Antidumping Agreements in several respects. The panel, which was composed on January 13, 1999, with the consent of the parties, included: Mr. Christer Manhusen, Chairman; Mr. Gerald Salembier and Mr. Edwin Vermulst, Members. Mexico had begun this antidumping investigation based on a petition by the Mexican sugar industry. The United States successfully demonstrated that Mexico's threat of injury determination and imposition of provisional and final antidumping duties was flawed. Mexico did not appeal, and the panel report was adopted on February 24, 2000. On April 10, Mexico agreed to implement the panel recommendation by September 22, 2000. On September 20, 2000, Mexico announced that it has conformed to the panel's recommendations and rulings by redetermining that there was a threat of injury to the domestic sugar industry and maintaining the subject antidumping duties, while at the same time determining that the provisional amounts paid from June 26, 1997, to January 23, 1998, would be refunded with interest. The United States, however, disagrees that such action results in full implementation of the panel's recommendations and rulings. Therefore, on October 12, 2000, the United States requested that the panel be reconvened to examine this matter. The panel was established for this purpose on October 23, 2000, with Mr. Paul O'Connor replacing Mr. Vermulst, who no longer was available to serve.

*Mexico—Measures affecting trade in live swine*

On July 10, 2000, the United States requested consultations with Mexico regarding Mexico's October 20, 1999, definitive antidumping measure involving live swine from the United States as well as sanitary and other restrictions imposed by Mexico on imports of live swine weighing more than 110 kilograms. The United States considers that Mexico made a determination of threat of material injury that appears inconsistent with the Antidumping Agreement, and that other actions by Mexico in the conduct of its investigation are also in

violation of the Agreement. In addition, the United States considers that, by maintaining restrictions on the importation of live swine weighing 110 kilograms or more, Mexico was acting contrary to its obligations under the Agreement on Agriculture, the SPS Agreement, the Agreement on Technical Barriers to Trade ("TBT Agreement"), and the GATT 1994. Consultations were held September 7, 2000. Subsequent to the consultations, Mexico issued a protocol which is designed to allow a resumption of U.S. shipments of live swine weighing 110 kilograms or more into Mexico. At about the same time, Mexico self-initiated a review of its threat of injury determination based on information, including a shortage of slaughter hogs, that suggests that market conditions have changed substantially in Mexico.

*Mexico—Measures affecting telecommunications services*

On August 17, 2000, the United States requested consultations with Mexico regarding its commitments and obligations under the General Agreement on Trade in Services ("GATS") with respect to basic and value-added telecommunications services. The U.S. consultation request covered a number of key issues, including the Government of Mexico's failure to (1) maintain effective disciplines over the former monopoly, Telmex, which is able to use its dominant position in the market to thwart competition; (2) ensure timely, cost-oriented interconnection that would permit competing carriers to connect to Telmex customers to provide local, long-distance, and international service; and (3) permit alternatives to an outmoded system of charging U.S. carriers above-cost rates for completing international calls into Mexico. Prior to such consultations, which were held on October 10, 2000, the Government of Mexico issued rules to regulate the anti-competitive practices of Telmex (Mexico's major telecommunications supplier) and announced significant reductions in long-distance interconnection rates for 2001. Nevertheless, given that Mexico still had not

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fully addressed all U.S. concerns, the United States, on November 10, 2000, filed a request for establishment of a panel as well as an additional request for consultations on Mexico's newly issued measures.

*Philippines—Measures affecting trade and investment in the motor vehicles sector*

On May 24, 2000, the United States requested consultations with the Philippines regarding measures affecting trade and investment in the motor vehicle sector (*i.e.*, automobiles, motorcycles and commercial vehicles). Among other things, the measures require producers to incorporate specified amounts of locally-produced inputs, precluding the purchase of U.S. parts. There is also a requirement that imports be balanced in an amount related to a company's foreign exchange earnings. These measures substantially restrict the sale of U.S. motor vehicle parts and inhibit the free flow of trade and investment, which appear to violate the TRIMS Agreement. Under WTO rules, the Philippines was required to remove these measures by January 1, 2000, but recently requested an extension of five years pursuant to the TRIMS Agreement to bring these measures into WTO compliance. Consultations were held July 12, 2000. On October 12, 2000, the United States requested the establishment of a panel; a panel was established on November 17, 2000.

*Romania—Minimum import prices*

The United States requested consultations on May 31, 2000, with Romania regarding its customs valuation regime, which uses officially-established prices for imported products such as clothing, various agricultural products, including poultry, and certain types of distilled spirits. This appears to violate Romania's obligations under the Customs Valuation Agreement, the GATT 1994, the Agreement on Textiles and Clothing, and the Agreement on Agriculture. Consultations were held July 13, 2000, and efforts to reach a mutually satisfactory solution are continuing.

**b. Disputes Brought Against the United States**

Section 124 of the URAA requires *inter alia* that the Annual Report on the WTO describe, for the preceding fiscal year of the WTO, each proceeding before a panel or the Appellate Body that was initiated during that fiscal year regarding Federal or State law, the status of the proceeding, and the matter at issue; and each report issued by a panel or the Appellate Body in a dispute settlement proceeding regarding Federal or State law. This section includes summaries of dispute settlement activity in 2000 with respect to those cases in which the United States was a defendant.

*United States—Measures relating to the importation of shrimp and shrimp products*

India, Malaysia, Pakistan, and Thailand challenged U.S. restrictions on imports of shrimp and shrimp products harvested in a manner harmful to endangered species of sea turtles. A dispute settlement panel, agreed upon by the parties on April 15, 1997, and consisting of Mr. Michael Cartland (Chairman), and Mr. Carlos Cozende and Mr. Kilian Delbrück (Members), found that the U.S. import restrictions were inconsistent with WTO rules. The United States appealed, and on October 12, 1998, the Appellate Body partially reversed the panel's ruling. The Appellate Body confirmed that WTO rules allow WTO Members to condition access to their markets on compliance with certain policies such as environmental conservation, and agreed that the U.S. "shrimp-turtle law" was a permissible measure adopted for the purpose of sea turtle conservation. The Appellate Body also found that WTO rules permit panels to accept unsolicited amicus briefs from non-governmental organizations. The Appellate Body, however, found fault with certain aspects of the U.S. implementation of the shrimp-turtle law. The reports were adopted on November 6, 1998. On November 25, 1998, the United States informed the DSB of its intention to implement the recommendations and rulings of

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the DSB in a manner consistent not only with WTO obligations but also with the firm commitment of the United States to protect endangered species of sea turtles. The United States and the complaining parties reached agreement on an implementation period of 13 months from the date of adoption of the reports. Upon completion of the implementation period in December 1999, the United States notified the DSB that it had completed implementation of the Appellate Body report by modifying the implementation of the shrimp-turtle law in accordance with the recommendations of the DSB. On October 23, 2000, Malaysia requested that the original panel examine whether the United States had fully implemented the DSB's recommendations, and the panel was reestablished for that purpose. As of January 1, 2001, the panel proceeding was still pending.

*United States—Antidumping measures on DRAMs from Korea*

Korea challenged the Department of Commerce's antidumping review of dynamic random access memory ("DRAM") semiconductors from Korea, alleging that Commerce's decision not to revoke the antidumping order was inconsistent with the Antidumping Agreement and the GATT 1994. The panel consisted of Mr. Crawford Falconer (Chairman) and Mr. Meinhard Hilf and Ms. Marta Lemme (Members). The final panel report was circulated on January 29, 1999. While the panel rejected almost all of Korea's claims, it found that, technically, the "not likely" standard in Commerce's regulations did not meet the requirements of Article 11.2 of the Antidumping Agreement. The panel report was adopted on March 19, 1999, and neither side appealed. In accordance with the period for implementation negotiated with Korea, the United States implemented the ruling of the DSB by November 19, 1999. Korea disagreed that the United States had fully implemented the ruling and on April 6, 2000, Korea requested that the panel be reconvened to examine U.S. implementation. Following the revocation of the DRAMS antidumping order under U.S. "sunset

review" procedures, the parties agreed that this development constituted a mutually satisfactory solution regarding this matter, thereby resulting in the termination of the dispute on October 20, 2000.

*United States—Foreign Sales Corporation ("FSC") tax provisions*

The EU challenged the FSC provisions of the U.S. tax law, claiming that the provisions constitute prohibited export subsidies and import substitution subsidies under the Subsidies Agreement, and that they violate the export subsidy provisions of the Agreement on Agriculture. A panel was established on September 22, 1998. On November 9, 1998, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Crawford Falconer, Chairman; Mr. Didier Chambovey and Mr. Seung Wha Chang, Members. The panel found that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, and also violates U.S. obligations under the Agreement on Agriculture. The panel did not make findings regarding the FSC administrative pricing rules or the EU's import substitution subsidy claims. The panel recommended that the United States withdraw the subsidy by October 1, 2000. The panel report was circulated on October 8, 1999 and the United States filed its notice of appeal on November 26, 1999. The Appellate Body circulated its report on February 24, 2000. The Appellate Body upheld the panel's finding that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, but, like the panel, declined to address the FSC administrative pricing rules or the EU's import substitution subsidy claims. While the Appellate Body reversed the panel's findings regarding the Agreement on Agriculture, it found that the FSC tax exemption violated provisions of that Agreement other than the ones cited by the panel. The panel and Appellate Body reports were adopted on March 20, 2000, and on April 7, 2000, the United States announced its intention to respect its WTO obligations. On November 15,

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2000, the President signed legislation that repealed and replaced the FSC provisions, but the EU has claimed that the new legislation fails to bring the US into compliance with its WTO obligations.

In anticipation of a dispute over compliance, the United States and EU reached agreement in September 2000 on the procedures to review U.S. compliance with the WTO recommendations and rulings. Pursuant to a request approved by the WTO, the deadline for U.S. compliance was changed from October 1, 2000, as recommended by the panel, to November 1, 2000. The procedural agreement also outlined certain procedural steps to be taken after passage of US legislation to replace the FSC. The essential feature of the agreement provides for sequencing of WTO procedures as follows: (1) a panel will determine the WTO-consistency of FSC replacement legislation (the parties retain the right to appeal); (2) only after the appeal process is exhausted will arbitration over the appropriate level of retaliation be conducted if the replacement legislation is found WTO-inconsistent. With few exceptions, the time frames set forth in the Dispute Settlement Understanding for such adjudications are reflected in this agreement. Pursuant to the procedural agreement, on November 17, the EU requested authority to impose countermeasures and suspend concessions in the amount of \$4.043 billion. On November 27, the United States objected to this amount, thereby referring the matter to arbitration (which will be suspended pending a review of the legislation's WTO-consistency). On December 7, the EU filed a request for establishment of a panel to review the legislation, and that panel was established on December 20, 2000. As of January 1, 2001, that panel proceeding was still pending.

#### *United States—1916 Revenue Act*

Title VII of the Revenue Act of 1916 (15 U.S.C. §§ 71-74, entitled “Unfair Competition”), often referred to as the Antidumping Act of 1916,

allows for private claims against, and criminal prosecutions of, parties that import or assist in importing goods into the United States at a price substantially less than the actual market value or wholesale price. On April 1, 1999, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Johann Human, Chairman; Mr. Dimitrij Gr•ar and Mr. Eugeniusz Piontek, Members. On January 29, 1999, the panel found that the 1916 Act is inconsistent with WTO rules because the specific intent requirement of the Act does not satisfy the material injury test required by the Antidumping Agreement. The panel also found that civil and criminal penalties in the 1916 Act go beyond the provisions of the Antidumping Agreement. The panel report was circulated on March 31, 2000. Separately, Japan sought its own rulings on the same matter from the same panelists; that report was circulated on May 29, 2000. On the same day, the United States filed notices of appeal for both cases, which were consolidated into one Appellate Body proceeding. The Appellate Body report, issued August 28, 2000, affirmed the panel reports. This ruling, however, has no effect on the U.S. antidumping law, as codified in the Tariff Act of 1930, as amended. The panel and Appellate Body reports were adopted by the DSB on September 26, 2000. On November 17, 2000, the EU and Japan requested arbitration to determine the reasonable period of time by which the United States should comply with the panel's recommendations and rulings. As of January 1, 2001, that arbitration proceeding was still pending.

#### *United States—Section 110(5) of the Copyright Act*

As amended in 1998 by the Fairness in Music Licensing Act, section 110(5) of the U.S. Copyright Act provides that certain retail establishments may play radio music without paying royalties to songwriters and music publishers. The EU claimed that, as a result of this exception, the United States is in violation of its TRIPS obligations. Consultations with the

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EU took place on March 2, 1999. A panel on this matter was established on May 26, 1999. On August 6, 1999, the Director-General composed the panel as follows: Ms. Carmen Luz Guarda, Chair; Mr. Arumugamangalam V. Ganesan and Mr. Ian F. Sheppard, Members. The panel issued its final report on June 15, 2000, and found that one of the two exemptions found in section 110(5) is inconsistent with the United States' WTO obligations. The panel report was adopted by the DSB on July 27, 2000, and the United States has informed the DSB of its intention to respect its WTO obligations. On October 23, 2000, the EU requested arbitration to determine the reasonable period of time by which the United States should comply with the panel's recommendations and rulings. By mutual agreement of the parties, Mr. J. Lacarte-Muró was appointed to serve as arbitrator.

*United States—Import measures on certain products from the EU*

In this dispute the EU challenged increases in U.S. Customs bonding requirements on certain imports from the EU, alleging violations of the Dispute Settlement Understanding ("DSU") and of the GATT 1994. The United States had increased bonding requirements to preserve its ability to collect any increased duties which might ultimately be authorized by the DSB as a result of the EU's failure to comply with the DSB's recommendations and rulings in the dispute involving *Bananas* (see description above). The measures at issue in this dispute were discontinued on April 19, 1999.

Nevertheless, consultations were held on April 21, 1999, and a panel was established on June 16, 1999. On October 8, 1999, the Director-General composed the panel as follows: Mr. Hugh McPhail, Chairman; Mrs. Leora Blumberg and Mr. Peter Pale..ka, Members. On July 17, 2000, the panel issued its report, concluding that the United States acted prematurely when it changed its bonding requirements, but rejecting the EU claim that the tariffs now in place as a result of the *Bananas* dispute are not consistent with WTO procedural

requirements. The EU appealed this portion of the panel report on September 12, 2000. On December 11, 2000, the Appellate Body rejected this appeal, and upheld the panel's finding that the tariffs now in place were not affected by this dispute. No action is required of the United States in response to this report.

*United States—Measures affecting textiles and apparel*

This dispute has been resolved through consultations. On May 23, 1997, the EU requested consultations concerning U.S. rules of origin for textile and apparel products provided for in section 334 of the Uruguay Round Agreements Act. The EU request stated that these rules adversely affect exports of EU fabrics, scarves and other flat products to the United States; it cited possible incompatibility with the Agreement on Textiles and Clothing ("ATC"), the Agreement on Rules of Origin, GATT 1994, and the TBT Agreement. On July 15, 1997, the EU and United States reached agreement on a settlement under which the United States agreed to introduce changes to its rules of origin legislation. However, this legislation was not enacted, and the EU again requested consultations on November 19, 1998. Consultations were held on January 15, 1999, and later the two sides reached an agreement to settle this case on August 16, 1999. A legislative proposal to implement that settlement was included in the Trade and Development Act of 2000, which was enacted on May 18, 2000.

*United States—Sections 301 -310 of the Trade Act of 1974*

The United States prevailed in this dispute, in which the EU challenged sections 301-310 of the Trade Act of 1974, especially sections 304 to 306, alleging that the law does not allow the United States to comply with the DSU. Consultations were held on December 17, 1998, and a panel was established on March 2, 1999. The Director-General, at the request of the EU, composed the panel on March 31, 1999, as

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follows: Mr. David Hawes, Chairman; Mr. Terje Johannessen and Mr. Joseph Weiler, Members. On December 22, 1999, the panel circulated its report rejecting the EU complaint. The panel concluded that the U.S. law was not inconsistent with U.S. WTO obligations, and it found nothing to contradict evidence that the United States has in fact acted in accordance with its WTO obligations in every Section 301 determination involving an alleged violation of U.S. WTO rights. The panel concluded that neither the EU nor the third parties to the dispute had demonstrated otherwise. The EU decided not to appeal and the panel report was adopted on January 27, 2000.

*United States—Definitive safeguard measure on imports of wheat gluten from the European Communities*

By Presidential Proclamation 7103 of May 30, 1998, the United States imposed safeguard measures in the form of a quantitative limitation on imports of wheat gluten from the EU, Australia, and other countries. On March 17, 1999, the EU requested consultations concerning this safeguard measure, asserting that it is in violation of the Agreement on Safeguards, the Agreement on Agriculture, and the GATT 1994. Consultations were held on May 3, 1999. A panel was established July 26, 1999. On October 11, 1999, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Wieslaw Karsz, Chairman; Ms. Usha Dwarka-Canabady and Mr. Alvaro Espinoza, Members. Subsequently, Mr. Maamoun Abdel-Fattah replaced Mr. Karsz as Chairman, with the consent of the parties. The panel report was released on July 31, 2000. The panel found that certain aspects of the U.S. measure were inconsistent with WTO rules. The United States filed its notice of appeal on September 26, 2000. On December 22, 2000, the Appellate Body issued its report, reversing the panel's conclusion on causation, the key issue in the case, thereby upholding the U.S. causation test in Section 201 of the Trade Act of 1974.

However, the Appellate Body ruled against the United States on two issues.

*United States—Section 211 Omnibus Appropriations Act*

Section 211 addresses the ability to register or enforce, without the consent of previous owners, trademarks or trade names associated with businesses confiscated without compensation by the Cuban government. The EU questions the consistency of Section 211 with the TRIPS Agreement, and it requested consultations on July 7, 1999. Consultations were held September 13 and December 13, 1999. On June 30, 2000, the EU requested a panel. A panel was established on September 26, 2000, and at the request of the EU the WTO Director-General composed the panel on October 26, 2000, as follows: Mr. Wade Armstrong, Chairman; Mr. François Dessemontet and Mr. Armand de Mestral, Members. As of January 1, 2001, that panel proceeding was still pending.

*United States—Safeguard measure on imports of fresh, chilled, or frozen lamb*

On July 22, 1999, the United States imposed a safeguard measure on imports of lamb meat from New Zealand and Australia, pursuant to section 203 of the Trade Act of 1974. New Zealand and Australia requested consultations on July 16 and July 23, 1999, respectively, claiming violations of the GATT 1994 and the Agreement on Safeguards. Consultations were held August 26, 1999. A panel was established on November 18, 1999, and the two cases have been consolidated. On March 21, 2000, the following panelists were selected with the consent of the parties: Prof. Tommy Koh, Chairman; Prof. Meinhard Hilf and Mr. Shishir Priyadarshi, Members. The panel issued its report on December 21, 2000, finding certain aspects of the U.S. safeguard measure to be inconsistent with WTO rules, and the United States announced its intention to appeal the negative aspects of the panel's report.

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*United States—Imposition of countervailing duties on certain hot-rolled lead and bismuth carbon steel products originating in the United Kingdom*

In this dispute the EU challenged several administrative reviews conducted by the Department of Commerce with respect to the countervailing duty order imposed on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom, alleging violations of the Subsidies Agreement. The EU claimed that the Department of Commerce improperly decided that the benefit of subsidies received by government-owned British Steel Corporation continued after privatization. Consultations were held on July 29, 1998, and a panel was established February 17, 1999, the panel consisting of Mr. Ole Lundby (Chairman) and Mr. Paul O'Connor and Mr. Arie Reich (Members). The panel report, circulated on December 23, 1999, found that the Department of Commerce had imposed countervailing duties on U.S. imports of leaded bars in violation of the Subsidies Agreement. In reaching its conclusion, the panel determined that the Department of Commerce had to reassess whether pre-privatization subsidy benefits continue to exist after a company is sold to new owners. The United States appealed, and on May 10, 2000, the Appellate Body affirmed the panel findings. The Appellate Body and panel reports were adopted on June 7, 2000. However, the countervailing duty order in question was revoked by operation of law, on January 1, 2000, under the Department of Commerce's "sunset review" procedures.

*United States—Anti-dumping measures on stainless steel from Korea*

The Government of Korea alleged that several errors were made by the U.S. Department of Commerce and the USITC in the preliminary and final determinations of *Stainless Steel Plate in Coils from Korea*, dated January 20, 1999, and June 8, 1999, respectively. Korea claims that these errors resulted in improper findings and

deficient consultations as well as the imposition, calculation and collection of antidumping margins which are incompatible with the obligations of the United States under the Antidumping Agreement and the GATT 1994. On October 14, 1999, Korea requested the establishment of a panel. A panel was established on November 18, 1999, and on March 24, 2000, the panel was constituted with the consent of the parties as follows: Mr. José Antonio S. Buencamino, Chairman; Mr. G. Bruce Cullen and Ms. Enie Neri de Ross, Members. The panel accepted some of Korea's arguments, finding that Commerce's treatment of local sales, unpaid sales, and multiple averaging periods was inconsistent with the WTO Anti-Dumping Agreement. However, the United States prevailed in its defense of some of Korea's key claims.

*United States—Anti-dumping measures on certain hot-rolled steel products from Japan*

Japan contends that the preliminary and final determinations of the Department of Commerce and the USITC in their antidumping investigations of certain hot-rolled steel products from Japan, issued on November 25 and 30, 1998, February 12, 1999, April 28, 1999, and June 23, 1999, were erroneous and based on deficient procedures under the U.S. Tariff Act of 1930 and related regulations. Japan claims that these procedures and regulations violate the GATT 1994, as well as the Antidumping Agreement. Consultations were held on January 13, 2000, and a panel was established on March 20, 2000. In May 1999, the Director-General composed the panel as follows: Mr. Harsha V. Singh, Chairman; Mr. Yanyong Phuangrath and Ms. Lidia di Vico, Members. As of January 1, 2001, the panel proceeding was still pending.

*United States—Section 337 of the Tariff Act of 1930*

The EU has complained about Section 337 of the Tariff Act of 1930 on both national treatment and TRIPS grounds. In response to the last

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GATT panel report finding certain aspects of Section 337 inconsistent with the U.S. national treatment obligations under Article III of GATT 1947, the United States implemented a number of amendments to Section 337 in the Uruguay Round Agreements Act. The amendments modified certain U.S. Department of Commerce and USITC procedures that the panel had identified as denying national treatment. Consultations on the amended version of Section 337 were held on February 28, 2000.

*United States—Transitional safeguard measure on combed cotton yarn from Pakistan*

Pakistan contends that a March 17, 1999, transitional safeguard measure applied by the United States on combed cotton yarn from Pakistan is inconsistent with U.S. obligations under the Agreement on Textiles and Clothing (“ATC”). Specifically, Pakistan considers that the U.S. measure does not meet the requirements for transitional safeguards as set forth in Article 6 of the ATC, particularly with respect to the identification of the domestic industry at issue and the attribution of serious damage to imports from Pakistan. The WTO Textiles Monitoring Body (“TMB”) reviewed this matter during 1999. When the matter was not resolved in the TMB, on April 3, 2000, Pakistan requested the establishment of a panel, which was established on June 19, 2000. On August 30, 2000, the following panelists were selected with the consent of the parties: Mr. Wilhelm Meier, Chairman; Mr. Carlos Antônio da Rocha Paranhos and Mr. Virachai Plasai, Members. As of January 1, 2001, the panel proceeding was still pending.

*United States—Measures Treating Export Restraints as Subsidies*

On May 19, 2000, Canada requested consultations with the United States about U.S. government statements regarding treatment of a restriction on exports of a product as a countervailable subsidy to other products (those made by using or incorporating the restricted product), if the domestic price of the restricted

product is affected by the export restriction. The United States agreed to consult with Canada, notwithstanding Canada's failure to identify a "measure" in its request for consultations. Consultations were held on June 15, 2000. Canada then requested the establishment of a panel on August 4, 2000, identifying a provision of the U.S. countervailing duty statute and “US practice thereunder” as the challenged measures. A panel was established on September 11, 2000. On October 23, 2000, the following panelists were selected with the consent of the parties: Mr. Michael Cartland, Chairman; Mr. Scott Gallacher and Mr. Richard Plender, Members. As of January 1, 2001, the panel proceeding was still pending.

*United States—Section 306 of the Trade Act of 1974 and amendments thereto*

On June 5, 2000, the EU requested consultations with the United States regarding section 306 of the Trade Act of 1974, as amended by section 407 of the Trade and Development Act of 2000 (Public Law 106-200). Also known as the “Carousel” amendment, section 407 directs the USTR to periodically revise the list of products subject to suspension of WTO concessions as a result of a country’s non-compliance with recommendations and rulings made pursuant to a dispute settlement proceeding. The EU considers the amendment to be inconsistent with the DSU, the WTO Agreement, and the GATT 1994. Consultations were held on July 5, 2000.

*United States—Definitive safeguard measures on imports of circular welded carbon quality line pipe from Korea*

On June 13, 2000, Korea requested consultations regarding safeguard measures imposed by the United States on imports of circular welded carbon quality line pipe. These measures were proclaimed by the United States on February 18, 2000, and introduced on March 1, 2000. Korea argues that such measures are inconsistent with the Agreement on Safeguards and the GATT 1994. Consultations were held July 28, 2000.

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On September 14, 2000, Korea requested the establishment of a panel. A panel was established on October 23, 2000.

*United States—Antidumping measures and countervailing measures on steel plate from India*

India contends that the Department of Commerce made several errors in its final determinations regarding certain cut-to-length carbon quality steel plate products from India, dated December 13, 1999 and affirmed on February 10, 2000. India also argues that the USITC made errors with respect to the negligibility, cumulation, and material injury caused by such products. India claims that these errors were based on deficient procedures contained in the U.S. antidumping and countervailing duty laws, and thus raised questions concerning the obligations of the United States under the Antidumping Agreement, the GATT 1994, the Subsidies Agreement, and the Agreement Establishing the WTO. India requested consultations with the United States regarding this matter on October 4, 2000. Consultations with India were held November 21, 2000.

*United States—Countervailing duty measures concerning certain products from the European Communities*

On November 13, 2000, the EU requested WTO dispute settlement consultations in 14 separate U.S. countervailing duty proceedings covering imports of steel and certain other products from member states of the EU, all with respect to the Department of Commerce's "change in ownership" (or "privatization") methodology that was challenged successfully by the EU in a WTO dispute concerning leaded steel products from the UK. Consultations were held December 7, 2000.

*United States—Countervailing duties on certain corrosion-resistant carbon steel flat products from Germany*

Also on November 13, 2000, the EU requested dispute settlement consultations with respect to the Department of Commerce's countervailing duty order on certain corrosion-resistant flat rolled steel products from Germany. In a "sunset review", the Department of Commerce declined to revoke the order based on a finding that subsidization would continue at a rate of 0.54 percent. The EU alleges that this action violates the Subsidies Agreement, asserting that countervailing duty orders must be revoked where the rate of subsidization found is less than the 1 percent *de minimis* standard for initial countervailing duty investigations. The United States and the EU held consultations pursuant to this request on December 8, 2000.

*United States—Safeguard measures on imports of line pipe and wire rod from the European Communities*

On December 1, 2000, the EU requested consultations with the United States regarding safeguard measures imposed by the United States on imports of circular welded carbon quality line pipe and on wire rod. The EU argues that these measures are inconsistent with the Agreement on Safeguards and the GATT 1994. The EU also claims that certain aspects of the underlying U.S. safeguards legislation – Sections 201 and 202 of the Trade Act of 1974 – and Section 311 of the NAFTA Implementation Act prevent the United States from respecting certain provisions of the Agreement on Safeguards and the GATT 1994. Consultations were scheduled for January 26, 2001.

*United States—Continued Dumping and Subsidy Offset Act of 2000 ("Byrd Amendment")*

On December 21, 2000, Australia, Brazil, Chile, the EU, India, Indonesia, Japan, Korea, and Thailand requested consultations with the United States regarding the Continued Dumping and

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Subsidy Offset Act of 2000 (19 USC 754), which amended Title VII of the Tariff Act of 1930 to transfer import duties collected under U.S. antidumping and countervailing duty orders from the U.S. Treasury to the companies that filed the antidumping and countervailing duty petitions. Consultations were scheduled for February 6, 2001.

*United States—Countervailing duties on certain carbon steel products from Brazil*

On December 21, 2000, Brazil requested consultations with the United States regarding U.S. countervailing duties on certain carbon steel products from Brazil, alleging that the Department of Commerce’s “change in ownership” (or “privatization”) methodology, which was ruled inconsistent with the WTO Subsidies Agreement when applied to leaded steel products from the UK, violates the Subsidies Agreement in this situation as well.

## **Implementation of the WTO Agreements**

### **A. General Council Activities**

#### **Status**

The WTO General Council is the highest decision-making body in the WTO and meets on a regular basis during the year. It exercises all of the authority of the Ministerial Conference, which is required to meet once every two years. The General Council and Ministerial Conference consist of representatives of all WTO Members. Only the Ministerial Conference and the General Council have the authority to adopt authoritative interpretations of the WTO Agreements, submit amendments to the agreements for consideration by Members, and grant waivers of obligations. All accessions to the WTO must be approved by the General Council or the Ministerial Conference.

Technically, meetings of both the Dispute Settlement Body (DSB) and the Trade Policy Review Body (TPRB) are meetings of the

General Council convened for the purpose of discharging the responsibilities of the DSB and TPRB.

Three major categories of bodies report directly to the General Council: the Council for Trade in Goods, the Council for Trade in Services, and the Council for Trade-Related Aspects of Intellectual Property Rights. The Committee on Trade and Environment, the Committee on Trade and Development, the Committee on Balance of Payments Restrictions, the Committee on Budget, Finance and Administration, and the Committee on Regional Trading Arrangements report directly to the General Council. The Working Groups established at the First Ministerial Conference in Singapore to examine investment, trade and competition policy, and transparency in government procurement also report directly to the General Council. A number of subsidiary bodies report through the Council for Trade in Goods or the Council for Trade in Services to the General Council. Ambassador Kare Bryn of Norway served as Chairman of the General Council in 2000.

The General Council uses both formal and informal processes to conduct the business of the WTO. In addition, informal groupings, which generally include the United States, can play an important role in consensus building. Special sessions of the General Council were convened to address matters concerning implementation of WTO Agreements.

#### **Major Issues in 2000**

The General Council met 10 times in 2000 in regular session and 10 times in special session. In 2000, the General Council has had an oversight role over the progress of the built-in negotiations on agriculture and services, and approved the Secretariat’s cooperation agreements with the World Customs Organization and International Telecommunications Union.

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The following other issues figured prominently in General Council activities:

*Transparency:* Following the Seattle ministerial, the General Council Chairman initiated an informal consultative process to review the level of transparency in Members' conduct of WTO business among themselves as well as the extent to which the WTO interrelates with the public. With respect to the first, there were extensive discussions on whether current WTO processes were sufficiently transparent to permit the participation of all Members, particularly with respect to the preparatory process for ministerial meetings. After review, the consensus among Members was that no fundamental institutional changes should be made at this time. However, the review has confirmed Members' strong desire for decision making in the WTO to continue to be based on consensus and that decision making procedures be inclusive and transparent to all Members. The review of the WTO's relations with the public began in earnest in the fall. Members credited the Secretariat's information and outreach activities (including its upgraded website and continued seminars and symposia with the public) as critical tools in the continued dissemination of information on WTO activities.<sup>6</sup> In that context, the General Council has taken under consideration the modification of its 1996 decision on WTO document availability. Although the vast majority of WTO documents have now been made publicly available, several Members, including the United States, urged that certain critical documents, such as panel reports and substantive background notes, be made available on a more timely basis. A U.S. paper submitted in October also proposed other steps for improving WTO transparency in the

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<sup>6</sup> Details on WTO transparency and outreach activities are set forth on pp. 15-17 of the Annual Review of the Director General, Overview of Developments in the International Trading Environment. WTO Document WT/TPR/OV/6, November 22, 2000.

short term, including designating some WTO meetings as open to the public.<sup>7</sup> Although the proposals concerning access to documents enjoy a wide degree of support among WTO Members, many WTO Members have resisted other efforts that they perceive as threatening the successful government-to-government nature of the organization.

*Waivers of Obligations:* As part of the annual review required by Article IX of the WTO Agreement, the General Council considered reports on the operation of a number of previously agreed waivers, including those applicable to the United States concerning the Caribbean Basin Economic Recovery Act, the Andean Trade Preferences Act, and preferences for the Former Trust Territory of the Pacific Islands. Unless otherwise decided, these waivers are valid until the expiration dates specified in each. The General Council also approved several other waivers, as described in the section on the Council on Trade in Goods (CTG). Annex II contains a detailed list of waivers currently in force.

*Accessions:* The General Council, acting on behalf of the Ministerial Council, approves the final terms of accession to the WTO for new

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<sup>7</sup> Following on a March 28, 2000 *Federal Register* notice, seeking public comments for the Mandated Multilateral Trade Negotiations on Agriculture and Services in the WTO and Priorities for Future Market Access Negotiations on Non-Agricultural Goods, USTR solicited public comments via a *Federal Register* notice on June 8, 2000, on U.S. objectives and proposals for improving the functioning of the WTO, particularly with respect to its outreach efforts and the transparency of its operations. USTR also sought comments on whether and how the WTO might undertake activities to ensure that the social, environmental and development dimensions of continued trade liberalization are adequately addressed.

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Members, after these terms are agreed by the working parties established by the Council to conduct the negotiations. In 2000, the accession terms for Albania, Croatia, Oman, and Lithuania were approved by the Council by consensus. In addition, the Council established working parties for the accessions to the WTO for Cape Verde and Yemen. Additional details are discussed below in the section entitled "Accession to the World Trade Organization."

*Global Electronic Commerce:* At the direction of the General Council, the WTO made important strides in the promotion of e-commerce in the course of 2000. At its final meeting in December, a majority of Members broadly endorsed critical principles on e-commerce that will enhance the ongoing work of the WTO. The mandate and work program originated in the 1998 Ministerial Declaration on e-commerce, in which WTO Members pledged to support "duty-free cyberspace," ensures that electronic transmissions remain free from tariffs. The Council action in 2000 lays the foundation for further WTO attention to e-commerce in the years ahead. In developing these principles, the United States and its trading partners have ensured that the trading system provides comparable treatment for electronic business as it does for conventionally traded commerce. This will enable governments, businesses and consumers around the world to use new telecommunications infrastructure and new technologies such as the internet to engage in international trade.

A majority of WTO Members have stated their support for the following principles and action on e-commerce: (1) the relevance of existing WTO agreements to electronic commerce; (2) the importance of applying liberal multilateral rules and principles to this sector, avoiding unnecessarily restrictive measures; (3) the recognition of the tremendous potential of e-commerce and the internet to contribute to infrastructure capacity building and market access, particularly for developing countries; and (4) at a meeting in early 2001, the General

Council will explore ways to pursue its work, either through an ad hoc task force or special session of the General Council, to examine certain issues affecting e-commerce such as the classification of certain digital products.

*Review of U.S. Jones Act Exemption:* To the extent that U.S. laws collectively known as the Jones Act provide preferential treatment to ships built in the United States, the United States has required an exemption from its obligations under the GATT. The Jones Act provisions were grandfathered under the GATT 1947, and a special exemption for them was included in the GATT 1994. The only condition necessary for the maintenance of this exemption is the continued existence of the mandatory U.S. non-conforming legislation, although any amendment to a Jones Act provision would not be eligible for the exemption to the extent it increased its inconsistency with certain GATT requirements. In 2000, as prescribed by the GATT 1994, the General Council continued its five-year review of the need for the exemption, which began in 1999. The United States explained why the exemption is still needed, and engaged in an extended question-and-answer process with other WTO Members.

*Capacity-building Through Technical Cooperation:* The General Council resolved at the beginning of the year to adopt a supervisory role in ensuring that capacity- building in developing countries (i.e., modernizing their government operations to permit effective implementation of the WTO Agreements) is accelerated through technical assistance. For its part, the United States pledged \$650,000 to the WTO Global Trust Fund for Technical Assistance to provide training courses for African countries and develop computer training modules for in-country training.

## **Prospects for 2001**

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The General Council will continue its important role in overseeing implementation of the WTO Agreements, pursuing the built-in agenda negotiations on agriculture and services, expanding the current program of work for the WTO, and coordinating preparations for the 4<sup>th</sup> Ministerial Conference that will be held at the end of 2001 in Qatar. Management of the WTO, in terms of its outreach efforts with the public, consultations with Members, and its work with other institutions on capacity-building, will feature prominently in the Council discussions over the next year. The Council will likely meet at least quarterly to discharge its functions.

The requirement for ministerial meetings was established in the Uruguay Round to assure regular, political-level review by ministers of the operation of the WTO, similar to practice of other international organizations. Ministerial Conferences were convened in Singapore (1996), Geneva (1998), and Seattle (1999), with differing agendas and results. The Council discussions during the course of 2001 will culminate with preparations for the next ministerial conference, which at a minimum will take stock of the work programs and negotiations to date. The General Council, which acts on behalf of the Ministerial Conference, has the authority to add issues to the WTO's agenda, whether it is for a work program or negotiations. The informal processes on transparency and oversight of the work program on electronic commerce will also feature importantly in the Council's work.

Prior to the establishment of the WTO in 1995, annual meetings of GATT Contracting Parties were convened with representatives from capitals generally at the subcabinet level, and only held at the ministerial level to launch or conclude negotiations. Part of the logic behind this change from the GATT was the fact that with the creation of the WTO, Members had created a permanent negotiating forum to achieve trade liberalization. The Financial Services Agreement, the Basic

Telecommunications Services Agreement, the Information Technology Agreement and the built-in agenda negotiations underway are examples of how the WTO has evolved into a permanent negotiating body.

## **B. Council for Trade in Goods**

### **Status**

The WTO Council for Trade in Goods (CTG) oversees the activities of 12 committees (Agriculture, Antidumping Practices, Customs Valuation, Import Licensing Procedures, Information Technology, Market Access, Rules of Origin, Safeguards, Sanitary and Phytosanitary Measures, Subsidies and Countervailing Measures, Technical Barriers to Trade and Trade-related Investment Measures (TRIMS)) in addition to the Textiles Monitoring Body (TMB), the Working Party on State Trading, and the Working Party on Preshipment Inspection). In 2000, the CTG held five formal meetings.

### **Major Issues in 2000**

As the central oversight body in the WTO for all agreements related to trade in goods, the CTG primarily devoted its attention to providing formal approval of decisions and recommendations proposed by its subsidiary bodies. The CTG also served as a forum for airing initial complaints regarding actions taken by individual Members with respect to the operation of agreements. Many of these were resolved by interested Members through consultations, although some were subsequently pursued through the Dispute Settlement Body.

In addition, two major issues were extensively debated in the CTG in 2000:

*Request for TRIMS Extensions:* Article 5 of the WTO Agreement on Trade Related Investment Measures (TRIMS) required developing countries to eliminate certain measures by January 1, 2000. However, the CTG can extend

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the transition period for the elimination of inconsistent measures for countries that demonstrate particular difficulties implementing the agreement. Nine countries (Argentina, Chile, Colombia, Malaysia, Mexico, Pakistan, Philippines, Romania and Thailand) made requests for such an extension. (See the section of this report on the Committee on TRIMS for more details on this Agreement). At least one of the requesting Members had not properly notified the relevant measures in accordance with the requirements of Article 5.1 of the Agreement. TRIMS not properly notified under Article 5.1 never had coverage under the agreement and are thus not eligible for an extension. In addition, one Member made a request for an extension after the January 1, 2000 expiration date, which also precludes an extension. Informal consultations were held in 1999 and 2000 to explore the means of addressing and resolving the requests. It was clear throughout the consultations in 2000 that each request had to be addressed on a case-by-case basis. The United States had engaged in several consultations to find a way to support legitimate requests for extension in the CTG, including renewed support in the General Council in May 2000 for consultations in accordance with Article 5.3 of the TRIMS Agreement. The Chairman of the CTG held consultations and the matter was addressed in the CTG in July, October and November 2000. However, some requesting Members took positions preferring a combined approach which would force the CTG to approve all requests regardless of their merit or the interests of other Members concerned about the maintenance of WTO-inconsistent measures beyond the five years originally provided for developing countries. The United States consistently maintained that while solutions were desirable, they could not be pursued in such a manner as to extract *de facto* extensions and compromise Member rights under other WTO agreements, including the Dispute Settlement Understanding (DSU). In this regard, the United States has exercised its DSU rights in the case of the Philippines. (See section of this report on

dispute settlement for more details on this dispute). The discussions on these extensions will continue in the year 2001.

*Waivers:* The CTG approved the extension of several waivers, including those related to the implementation of the Harmonized System and renegotiations of tariff schedules, waivers for trade preferences by Turkey and the EU to the Western Balkans, and a waiver with regard to the implementation of the Agreement on Customs Valuation by Uruguay. A list of waivers currently in force can be found in Annex II. In April 2000, the EU requested a waiver for the interim trade provisions of its new ACP-EC “partnership” agreements, which have replaced the preferences of the Lomé Convention. The request is still pending.

### **Prospects for 2001**

The CTG will continue to be the focal point for the agreements in the WTO dealing with trade in goods. One issue that Members are likely to raise in the course of preparation for the next meeting of the Ministerial Conference will be whether to reorganize the Councils in a way to eliminate the CTG, allowing the General Council to assume oversight responsibilities. Outstanding waiver and TRIMS requests will also be further examined.

### **1. Committee on Agriculture**

#### **Status**

The WTO Committee on Agriculture oversees the implementation of the Agreement on Agriculture and provides a forum for WTO Members to consult on matters related to provisions of the Agreement. In many cases, the Committee resolves problems without needing to refer them to WTO dispute settlement. The Committee also has responsibility for monitoring the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Program on Least-

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Developed and Net Food-Importing Developing Countries.

### **Major Issues in 2000**

The Committee held four formal meetings in March, June, September and November to address ongoing issues related to the implementation of the Agreement on Agriculture. The Committee also met in special session to begin negotiations on continuing the reform process in agriculture.

During its meetings, the Committee reviewed progress on the implementation of commitments negotiated in the Uruguay Round. This review was undertaken on the basis of notifications by Members in the areas of market access, domestic support, export subsidies, export prohibitions and restrictions, and general matters relevant to the implementation of commitments. For the November meeting, the Committee gave specific priority to implementation and monitoring of the Decision on Least Developed and Net Food Importing Developing Countries.

Over 260 notifications were subject to review in the year 2000. The United States actively utilized the notification exercise to raise specific issues concerning the operation of Member's agricultural policies. For example, the United States raised questions concerning elements of Canada's domestic support programs, the export subsidy amounts associated with the European Communities' inward processing arrangements for dairy products, and the amount of product entered under tariff-rate quotas in Norway. The Committee also proved to be an effective forum for raising more general issues concerned with agricultural trade policy. For example, the United States identified concerns with South Korea's application of import tariffs for a variety of agricultural commodities in excess of bound rates, import restrictions by Venezuela that were disrupting grain, oilseed and dairy imports, the use by Turkey and Panama of import permits and other restrictions to impede

imports of a variety of commodities, Turkey's use of export subsidies for grain, and Indonesia's import ban on poultry parts.

On a number of occasions, U.S. intervention in the Committee led to immediate corrective action by the countries concerned. For example, U.S. pressure on Hungary regarding restrictive import policies for beef products resulted in Hungary's decision to open a special quota for high-quality North American beef. Questions directed to Korea regarding its annual rice import requirements led to improvements in that country's administration of its tariff rate quota commitments.

At its November meeting, the Committee also initiated discussions on the implementation of Article 10.2 of the Uruguay Round Agriculture Agreement, as requested by the October 18, 2000 Special Session of the General Council. Article 10.2 of the Agriculture Agreement requires that "Members undertake to work toward the development of internationally agreed disciplines to govern the use of export credits, export credit guarantees..." The discussions on export credits that were mandated under Article 10.2 have taken place in the OECD. The results of the discussion were reported to the General Council, and this activity will be an agenda item at future meetings of the Committee.

### **Prospects for 2001**

The United States will continue to make full use of Committee meetings to ensure timely notification, transparency and enforcement of Uruguay Round commitments as they relate to export subsidies, market access, domestic support or any other trade-distorting practices by WTO Members. In addition, the Committee will continue to monitor and analyze the impact of the possible negative effects of the reform process on least-developed and net food-importing developing countries as indicated in the Agreement on Agriculture.

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## 1. Committee on Antidumping Practices

### Status

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement) sets forth detailed rules and disciplines prescribing the manner and basis on which Members may take action to offset the injurious dumping of products imported from another Member. Implementation of the Agreement is overseen by the Antidumping Committee, which operates in conjunction with two subsidiary bodies, the Ad Hoc Group on Implementation and the Informal Group on Anti-circumvention.

The Ad Hoc Group is an active body which focuses on practical issues and concerns relating to implementation. Based on papers submitted by Members on specific topics for discussion, the work of the Ad Hoc Group permits Members to develop a better understanding of the similarities and differences in their policies and practices for implementing the terms of the Agreement. Where possible, the Ad Hoc Group endeavors to develop draft recommendations on the topics it discusses which it forwards to the Antidumping Committee for consideration. To date, the Committee has adopted two Ad Hoc Group recommendations, on pre-initiation notifications under Article 5.5 of the Agreement and, in May of 2000, on the periods used for data collection in investigations of dumped imports and of injury caused or threatened to be caused by such imports.

At Marrakesh in 1994, Ministers adopted a Decision on Anti-circumvention directing the Antidumping Committee to develop rules to address the problem of circumvention of antidumping measures. In 1997, the Antidumping Committee agreed upon a framework for discussing this important topic and established the Informal Group on Anti-circumvention. As per the framework, the Informal Group held meetings in May and November 2000 to discuss the topics of “what

constitutes circumvention” and “what is being done by Members confronted with what they consider to be circumvention.”

### Major Issues in 2000

The Antidumping Committee’s work remains an important venue for reviewing Members’ compliance with the detailed provisions in the Antidumping Agreement, improving mutual understanding of those provisions, and providing opportunities to exchange views and experience on Members’ application of antidumping remedies.

In 2000, the Antidumping Committee held two regular meetings, in May and November, as did the Ad Hoc Group on Implementation and the Informal Group on Anti-circumvention. At its meetings, the Antidumping Committee focused on implementation of the Antidumping Agreement, in particular, by continuing its review of Members’ antidumping legislation. The Committee also reviewed the reports that the Agreement requires Members to provide of their preliminary and final antidumping measures and actions taken in each case over the preceding six months.

Among the more significant activities undertaken in 2000 by the Antidumping Committee, the Ad Hoc Group on Implementation and the Informal Group on Anticircumvention are the following:<sup>8</sup>

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<sup>8</sup> In addition to the matters described here, during the Committee’s November 2000 meeting a number of other WTO Members expressed concern about enactment in the United States of the so-called “Byrd amendment” (H.R. 4461/P.L. 106-387), which was attached as a rider to the fiscal year 2001 agriculture appropriations bill and provides for the apportionment of revenue stemming from duties collected under an AD/CVD order to the members of the domestic industry which filed the petition or supported the initiation of the

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*Notification and Review of Antidumping Legislation:* To date, 62 Members of the WTO have notified that they currently have antidumping legislation in place, while 24 Members have notified that they maintain no such legislation. In 2000, the Antidumping Committee reviewed notifications of new or amended antidumping legislation submitted by Argentina, Australia, Chile, Estonia, India, Kyrgyz Republic, Malaysia, Thailand and Turkey. In addition, the Committee continued its review (for the most part via a written question and answer procedure) of the previously notified legislation of the EU and the United States. Members, including the United States, were active in formulating written questions and in making follow-up inquiries at Committee meetings. Follow-up questions posed by other Members with respect to the United States continued to focus on the U.S. Department of Commerce's regulations for sunset review procedures.

*Notification and Review of Antidumping Actions:* In 2000, 26 WTO Members notified antidumping actions taken during the latter half of 1999, whereas 28 Members did so for the first half of 2000. (By comparison, 36 Members notified that they had not taken any antidumping actions during the latter half of 1999, while 27 Members notified that no actions were taken in the first half of 2000). These actions, in addition to outstanding antidumping measures currently maintained by WTO Members, were identified in semi-annual reports submitted for the Antidumping Committee's review and discussion.

*Ad Hoc Group on Implementation:* The Ad Hoc Group held two rounds of multi-day working meetings in May and October/November 2000. At these sessions, the Group continued its

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proceeding. On December 22, Australia, Brazil, Chile, the EU, India, Indonesia, Japan, Korea, and Thailand jointly requested dispute settlement consultations with respect to this law.

review and discussion of six topics approved by the Antidumping Committee in 1999, *i.e.*, (i) practical issues and experience in applying Article 2.4.2 of the Agreement; (ii) termination of investigations under Article 5.8 in cases of *de minimis* import volume; (iii) practical issues and experience in cases involving cumulation under Article 3.3; (iv) practical issues and experience with respect to questionnaires and requests for information under Article 6.1 and 6.1.1; (v) practical issues and experience in providing opportunities for industrial users and consumer organizations to provide information under Article 6.1.2; and (vi) practical issues and experience in conducting "new shipper" reviews under Article 9.5. In addition, the Group considered two draft recommendations, on the period of data collection for antidumping investigations and on the contents of preliminary affirmative determinations. The Group reached a consensus in May on the recommendation concerning the period of data collection, which was then adopted by the Committee, also at its May meeting. No agreement has yet been reached on the draft recommendation concerning the contents of preliminary affirmative determinations, but progress was made at both the spring and fall meetings on a number of aspects of the draft and it was agreed to continue work on this topic in the next year.

The Ad Hoc Group continues to serve as an active venue for concrete work regarding the practical implementation of WTO antidumping provisions. It offers important opportunities for Members to examine issues and candidly exchange views and information across a broad range of topics. It has drawn a high level of participation by Members and, in particular, by capital-based experts and officials of AD administering authorities, many of whom are eager to obtain insight and information from their peers. Since the inception of the Ad Hoc Group, the United States has submitted papers on most topics, and has been an active participant at all meetings. Implementation concerns and questions stemming from each

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Member's own administrative experience or from observing the practices of others are equally addressed. While not a negotiating forum in either a technical or formal sense, the Ad Hoc Group serves a vitally important role in promoting improved understanding of the Agreement's provisions and exploring options for "best practices" among AD administrators.

*Informal Group on Anti-circumvention:* The Antidumping Committee's establishment of the Informal Group on Anti-circumvention in 1997 marked an important step towards fulfilling the Decision of Ministers at Marrakesh to refer this matter to the Committee. At its two meetings in 2000, the Informal Group on Anti-circumvention continued its useful discussions on the subject of "what constitutes circumvention" and, at the same time, proceeded to consider the second item in the agreed framework concerning "what is being done by Members confronted with what they consider to be circumvention." With respect to the latter item, Members submitted papers outlining scenarios based on factual situations faced by their investigating authorities, and exchanged views on how their respective authorities might respond to such situations. Moreover, those Members, such as the United States, which have legislation intended to address circumvention, responded to inquiries from other Members as to how such legislation operates and the manner in which certain issues may be treated.

### **Prospects for 2001**

Work in 2001 will proceed in all of the areas that the Antidumping Committee, the Ad Hoc Group on Implementation and the Informal Group on Anti-circumvention addressed this past year. The Antidumping Committee will pursue its review of Members' notifications of antidumping legislation, and Members will continue to have the opportunity to submit additional questions concerning previously reviewed notifications. This on-going review process in the Committee is important to ensuring that antidumping laws around the

world are properly drafted and implemented, thereby contributing to a well-functioning, liberal trading system. As notifications of antidumping legislation are not restricted documents, U.S. exporters will continue to enjoy access to information about the antidumping laws of other countries which should assist them in better understanding the operation of such laws and to take them into account in commercial planning.

The preparation by Members and review in the Committee of semi-annual reports and reports of preliminary and final antidumping actions will also continue in 2001. The 1996 decision of the WTO General Council to liberalize the rules on the restriction of WTO documents has resulted in these reports also becoming accessible to the general public, in keeping with the objectives of the Uruguay Round Agreements Act. (Information on accessing WTO notifications is included in Annex II). This has been an important development in promoting improved public knowledge and appreciation of the trends in and focus of all WTO Members' antidumping actions.

The discussions in the Ad Hoc Group on Implementation will, if anything, play an increasingly important role as more and more Members enact laws and begin to apply them. The special implementation review exercise conducted over the last year by the General Council underscores the sharp and widespread interest in clarifying understanding of the many complex provisions of the Antidumping Agreement. Tackling these issues in a serious manner will require the involvement of the Ad Hoc Group, as that is the setting best suited to provide the kind and degree of technical and administrative insight needed to shed light on important nuances and to offer practical alternatives for solving problems. Indeed, it is only in the Antidumping Committee and the Ad Hoc Group that Members can devote the considerable time and resources needed to conduct a responsible examination of these questions. For these reasons, the United States

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will continue to rely upon the Ad Hoc Group to learn in greater detail about other Members' administration of their antidumping laws, especially as that forum provides opportunities to discuss not only the laws as written, but also the operational practices which Members employ to implement them.

The work of the Informal Group on Anti-circumvention will also continue to be pursued in 2001, according to the framework for discussion which Members agreed. Many Members, including the United States, recognize the importance of using the Informal Group to pursue the 1994 decision of the Ministers at Marrakesh, who expressed the desirability of achieving uniform rules in this area as soon as possible.

### **3. Committee on Customs Valuation**

#### **Status**

The purpose of the WTO Agreement on Customs Valuation is to ensure that the valuation of goods for customs purposes, such as for the application of duty rates, is conducted in a neutral and uniform manner, precluding the use of arbitrary or fictitious customs values. Adherence to the Agreement has become an increasingly important issue for U.S. exporters and a priority in the negotiations for all countries in the process of acceding to the WTO. Provisions that allowed for delayed implementation of the Agreement expired for nearly one-third of the WTO membership in the course of 2000. This brought increased attention to the important issue of implementation and compliance.

#### **Major Issues in 2000**

The Agreement is administered by the WTO Committee on Customs Valuation, which met formally six times in 2000. The Agreement established a Technical Committee on Customs Valuation under the auspices of the World

Customs Organization (WCO). In accordance with a 1999 recommendation of the WTO Working Party on Preshipment Inspection which was adopted by the General Council, the Committee on Customs Valuation also provided a forum for reviewing the operation of various Members' preshipment inspection regimes and the implementation of the WTO Agreement on Preshipment Inspection.

Achieving universal adherence to the Agreement on Customs Valuation has been a longstanding important objective of the United States, dating back more than twenty years. The Agreement was initially negotiated in the Tokyo Round, but its acceptance was voluntary as a "code," until mandated as part of membership in the WTO. The WTO Agreement on Customs Valuation has provided special transitional measures for developing country Members, providing additional time to bring their respective regimes into compliance with the provisions of the Agreement.

Since the completion of the Uruguay Round and the resulting dramatic growth in trade combined with the continuing shift to a faster-moving manufacturing and distribution environment, issues pertaining to the conduct of trade transactions, such as customs valuation determinations, are increasingly viewed as important systemic matters. U.S. exporters across all sectors – including agriculture, automotive, textile, steel, and information technology products – have experienced difficulties related to the conduct of customs valuation regimes outside of the disciplines set forth under the WTO Agreement on Customs Valuation. Generally they are related to arbitrary and inappropriate "uplifts" in the transfer prices that are ultimately used by the importing country for the application of tariffs. If unchecked, the use of arbitrary and inappropriate 'uplifts' in the valuation of goods by importing countries when applying tariffs can result in an unwarranted doubling or tripling of duties, undermining market access opportunities gained through tariff reductions.

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Experience also demonstrates that the implementation of the Agreement often represents a first concrete and meaningful step taken by developing countries toward reforming their customs regimes, and ultimately moving to a rules-based border environment for conducting trade transactions. Because implementation of the Agreement precludes the use of arbitrary customs valuation methodologies, an additional positive result is to diminish what is often the genesis of much corruption by customs officials. For all of these reasons, as part of an overall strategic approach to trade facilitation, the United States has taken an aggressive leadership role at the WTO on matters related to customs valuation.

At the end of the Uruguay Round, many developing country Members opted for recourse under the provisions of the Agreement for delayed application for up to five years from January 1, 1995, or the date of entry into force of the WTO Agreement. For 30 of these Members, the expiration of this five year delay meant an implementation deadline of January 1, 2000, while for others the expiration of the five year delay was set at various dates throughout 2000 and into 2001.

*Members with 2000 Deadlines for  
Implementation of the WTO Customs Valuation  
Agreement*

**Members with Deadline of January 1, 2000**

Bangladesh, Brunei, Darussalam, Chile, Malta, Costa Rica, Côte d'Ivoire, Israel, Malaysia, Bahrain, Myanmar, Philippines, Uganda, Venezuela, Gabon, Kuwait, Mauritius, Nigeria, Pakistan, Senegal, Singapore, Ghana, Honduras, Indonesia, Uruguay, Kenya, Paraguay, Sri Lanka, Thailand, Tanzania, Zambia.

**Members with Deadline on Various Dates  
during 2000**

Dominican Republic, Jamaica, Tunisia, Cuba, Colombia, El Salvador, Central Africa Republic, Djibouti, Togo, Mali, Mauritania, Burkina Faso, Egypt, Guatemala, Burundi, Nicaragua, Bolivia, Madagascar, Cameroon.

While many developing country Members undertook timely implementation of the Agreement, the Committee continued throughout 2000 to address individual Member requests for either a transitional reservation for implementation methodology, or for a further extension of time for overall implementation. Working with key trading partners, the United States led consultations on each request, which resulted in the development of a detailed decision tailored to the situation of each Member. Each decision included an individualized benchmarked work program toward full implementation, along with reporting requirements and specific commitments on other implementation issues important to U.S. export interests.

Of the Members with deadlines during 2000, implementation is reported for 19 Members. Six developing country Members implemented the Agreement through transitional reservations granted by the Committee, while 15 developing country Members with deadlines in 2000 were granted extensions by the Committee. These extensions were generally 12 months in duration, with certain least developing country Members granted extensions up to 24 months in duration. The situation of the remaining Members with 2000 deadlines is being addressed through further Committee consultations.

In this manner, the Committee's work throughout 2000 was hallmarked by a cooperative focus among all Members toward practical methods to address specific problems of individual Members, and thereby was advancing a key WTO role in ensuring greater economic stability. As part of its problem-solving approach, the Committee continued to take an active role in exploring how best to

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ensure effective technical assistance, and in 2000, it gradually began a shift toward including meeting post-implementation needs of developing country Members.

### **Prospects for 2001**

The Committee's work in 2001 will include a review of the relevant implementing legislation and regulations submitted by newly-implementing Members, along with addressing requests by other Members concerning implementation deadlines. The Committee will monitor progress by Members with regard to their respective work programs that were included in the decisions granting transitional reservations or extensions of time. The Committee also will continue to provide a forum for sustained focus on issues arising from practices of all Members that have implemented the Agreement, to ensure that such Members' customs valuation regimes do not utilize arbitrary or fictitious values, such as "minimum reference prices."

## **4. Committee on Import Licensing**

### **Status**

The Agreement on Import Licensing Procedures establishes rules for all WTO Members that use import licensing systems to regulate their trade. Its aim is to ensure that the procedures used by Members in operating their import licensing systems do not in themselves form barriers to trade, to increase the transparency and predictability of such regimes, and to create disciplines to protect the importer against unreasonable requirements or delays associated with the licensing regime. While the Agreement's provisions do not directly address the WTO consistency of the underlying measures that licensing systems regulate, they establish the base line of what constitutes a fair and non-discriminatory application of the procedures. The Agreement covers both "automatic" licensing systems, which are intended only to monitor imports, not regulate

them, and "non-automatic" licensing systems where certain conditions must be met before a license is issued. Governments often use non-automatic licensing to administer import restrictions for quotas and tariff-rate quotas or to administer safety or other requirements (e.g., for hazardous goods, armaments, antiquities, etc.). Requirements for permission to import that act like import licenses, such as certification of standards and sanitary and technical regulations, are also subject to the rules of the Agreement.

### **Major Issues in 2000**

The Committee on Import Licensing was established to administer the Agreement and monitor compliance with the mutually agreed rules for the application of these widely used measures. It does this by reviewing initial or follow-up information on import licensing requirements that WTO Members are required to submit on a regular basis. The Committee meets twice a year to review these submissions, to receive questions from Members on the licensing regimes described, and to address specific observations and complaints concerning Members' licensing systems. While not a substitute for dispute settlement procedures, these consultations on specific issues allow Members to clarify problems and resolve possible potential problems before they become disputes.

At its meetings in April and October 2000, the Committee reviewed initial or revised notifications or completed questionnaires on procedures followed in 48 WTO Members (including EU Member States). The United States submitted written questions on a number of the notifications in order to clarify the nature of the procedures and to verify that the legislation notified met the procedural requirements of the Agreement. The Committee also continued discussion on Brazil's import licensing procedures, conducted its third biennial review of the implementation and operation of the Agreement, and considered how

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the number and frequency of notifications by Members could be increased.

As import licensing procedures have become more widely used, e.g., in the administration of tariff rate quotas applied to agricultural imports and of standards certification systems, more WTO dispute settlement cases have involved their proper application.

### **Prospects for 2001**

The question of licensing has already emerged as an issue in the built-in agenda negotiations on agriculture. Improvements needed in agriculture may raise the issue of whether the Agreement should also be strengthened. In recent years, compliance with the notification and other transparency requirements of the Agreement has become a preoccupation of the Committee, which has increased its efforts to encourage timely submission of notifications. Submissions for the April 2001 meeting are coming in at a greater rate than last year. In addition, acceding Members commit to supply basic information on their licensing regime, including the texts of relevant legislation and answers to a standard questionnaire upon accession or shortly thereafter. These efforts are likely to result in an increased number of submissions for Committee review during 2001. The Committee will continue to be the point of first contact in the WTO for Members with complaints or questions on the licensing regimes of other Members, and additional attention will be given to the disciplines in this area as negotiations proceed in agriculture, particularly in the administration of tariff rate quotas. In particular, Members that use licensing to operate their TRQs on agricultural tariff lines should be encouraged to provide the basic transparency required by the WTO Agreement.

## **5. Committee on Market Access**

### **Status**

WTO Members established the Committee on Market Access in January 1995, consolidating the work of the Committee on Tariff Concessions and the Technical Group on Quantitative Restrictions and other Non-Tariff Measures from the GATT 1947. The Committee on Market Access supervises the implementation of concessions on tariffs and non-tariff measures (where not explicitly covered by another WTO body, e.g., the Textiles Monitoring Body (TMB)) agreed in negotiations under WTO auspices. The Committee also is responsible for future negotiations and verification of new concessions on market access in the goods area.

### **Major Issues in 2000**

During 2000, WTO Members continued implementing the ambitious package of tariff cuts agreed in the Uruguay Round with the Committee having responsibility for verifying that implementation is proceeding on track. The Committee held four formal and eleven informal meetings in 2000 to discuss the ongoing review of WTO tariff schedules to accommodate updates to the Harmonized System (HS) tariff nomenclature; the WTO Integrated Data Base; and procedures for finalizing consolidated schedules of WTO tariff concessions in current HS nomenclature.

*Updates to the Harmonized System (HS) nomenclature.* In 1993, the Customs Cooperation Council (now known as the World Customs Organization, or WCO) agreed to approximately 400 sets of amendments to the HS, which were to enter into effect on January 1, 1996. These amendments resulted in changes to the WTO schedules of tariff bindings. In keeping with their WCO obligations, most WTO Members have implemented the HS96 changes in their national customs nomenclature. The Committee previously had developed procedures for identifying possible effects on the scope of WTO tariff bindings due to the HS96 updates. Members have the right to object to any proposed nomenclature affecting

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bound tariff items on grounds that the new nomenclature (as well as any increase in tariff levels for an item above existing bindings) represents a modification of the tariff concession. Unresolved objections can trigger a GATT 1994 Article XXVIII process.

Most WTO Members were unable to carry out the procedural requirements related to the introduction of HS96 changes in WTO schedules prior to implementation of those changes. Accordingly, since 1996 successive waivers have been granted by decisions of the General Council until the implementation procedures can be finalized. The majority of WTO Members have completed the process, but 25 Members<sup>9</sup> continue to require waivers. The current waiver expires on April 30, 2001, at which time issues related to the adoption of HS96 are expected to be completed. The Committee also examined issues related to the transposition and renegotiation of the schedules of certain Members which had adopted the HS in the years following its introduction on January 1, 1988. Technical assistance is being provided to some Members to assist in the transposition of their pre-Uruguay Round schedules into the HS and in the preparation of documents required for the HS96 updates.

The Committee also began to discuss the next set of WCO amendments, which are scheduled to take effect on January 1, 2002 (HS2002). Drawing from the experience of HS96, the Committee initiated discussion on an electronic verification procedure that will facilitate and shorten the process of reviewing and approving the 373 proposed amendments under HS2002.

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<sup>9</sup>Argentina, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Costa Rica, Egypt, El Salvador, Honduras, Guatemala, Iceland, Israel, Malaysia, Maldives, Mexico, Morocco, New Zealand, Norway, Pakistan, Panama, Paraguay, Switzerland, Thailand, Uruguay, Venezuela.

*Integrated Data Base (IDB):* The Committee addressed issues concerning the IDB, which is to be updated annually with information on tariffs, trade data and non-tariff measures maintained by WTO Members. The U.S. objectives are to achieve full participation in the IDB by all WTO Members and, ultimately, to develop a method to make the trade and tariff information publicly available. In recent years, the United States has taken an active role in pushing for a more relevant database structure with the aim of improving the trade and tariff data supplied by WTO Members.

In 1997, the Committee agreed to a complete restructuring of the IDB from a mainframe environment to a personal computer-based system (PC IDB). The Committee also recommended that all WTO Members be mandated to supply tariff and trade information on an annual basis. After review by the Council on Trade in Goods, the General Council adopted the Decision in July 1997, with initial implementation to occur beginning in December 1997. During 2000, the Committee held several informal meetings focused on improving IDB participation and identifying technical assistance needs. As a result, participation has continued to improve: as of October 2000, 74 Members and two acceding countries had provided IDB submissions. As a next step, the Committee agreed to hold a series of meetings to be held by region in early 2001 to further examine the problems of remaining IDB non-participants and identify solutions towards achieving full participation.

*Consolidated schedule of tariff concessions (CTS).* The Committee continued its work to establish a PC-compatible structure for tariff and trade data. The CTS will facilitate the Committee's ongoing work to establish electronically each Member's consolidated "loose-leaf" schedule of tariff concessions. This highly technical task is essential in order to generate an up-to-date schedule in current tariff nomenclature of the tariff bindings for each WTO Member that reflects Uruguay Round

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tariff concessions, HS96 updates to tariff nomenclature and bindings, and any other modifications to the WTO schedule (e.g., participation in the Information Technology Agreement). The Committee reviewed the work of the Secretariat, which through a technical assistance project is facilitating the preparation of loose-leaf schedules for developing countries. These schedules are targeted for completion in the first quarter of 2001. The target for developed countries was the end of 2000.

The Committee also reviewed and agreed to an electronic format for identifying agricultural commitments. This information will be integrated into Members' consolidated schedules. The Secretariat also is facilitating the creation of these tables for developing countries, while developed countries are finalizing their own tables. The entire consolidated schedules, including the agricultural commitments, are targeted for dissemination among Members by the middle of 2001. The CTS will be the vehicle for conducting future tariff negotiations in the WTO, such as the mandated negotiations on agriculture that are underway and any new negotiations on non-agricultural tariffs.

### **Prospects for 2001**

The ongoing work program of the Committee, while highly technical, will ensure that all WTO Members' schedules are up-to-date and available in electronic spreadsheet format so that any new negotiations on goods market access can be performed with greater efficiency. Much of the work program will be completed in 2001, so as to provide the tariff schedules and data needed for the ongoing negotiations on agriculture and possible negotiations on non-agricultural market access. The Committee will finalize its work on the electronic schedules of consolidated tariff bindings, with the aim of disseminating the schedules of each Member by the middle of the year. Committee efforts to secure updated data on applied tariffs and trade through the integrated database also will

intensify. While access to the IDB currently is restricted to Members, as a part of a broader effort to improve transparency in the WTO, the United States will work with Members to improve public access to this important commercial information.

In addition to finalizing the HS96 updates, the Committee will develop procedures to facilitate the adoption of updates to the harmonized tariff nomenclature in 2002 and begin to submit amended schedules for review and approval by Members. The United States will seek to ensure that the new HS2002 procedures will be electronically-based, transparent and easy to implement, in order to minimize disruptions to any ongoing negotiations on tariffs (e.g., in agriculture).

## **6. Committee on Rules of Origin**

### **Status**

The objective of the WTO Agreement on Rules of Origin is to increase transparency, predictability, and consistency in both the preparation and application of rules of origin. In addition to setting forth disciplines related to the administration of rules of origin, the Agreement provides for a work program of negotiations that is to result in multilateral harmonization of rules of origin used for non-preferential trade regimes. The negotiations are more complex than originally envisioned, making their conclusion in the original 3-year time frame of 1998 an unrealistic deadline. These negotiations are continuing.

The Agreement established a WTO Committee on Rules of Origin to oversee the work program on harmonization. The Committee has also served as a forum to exchange views on notifications by Members concerning their national rules of origin, along with those relevant judicial decisions and administrative rulings of general application. The Agreement also established a Technical Committee on Rules of Origin in the World Customs

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Organization to assist in the harmonization work program.

### **Major Issues in 2000**

The WTO Committee on Rules of Origin met formally eight times in 2000, and also conducted numerous informal consultations and working party sessions related to the harmonization work program negotiations. As of the end of 2000, 72 WTO Members had made notifications concerning non-preferential rules of origin, and 75 had made notifications concerning preferential rules of origin.

The Committee continued to be focused on conducting the work program aiming toward multilateral harmonization of nonpreferential rules of origin. The Committee work proceeded in accordance with a work program developed at the beginning of 2000, setting out a schedule of meetings along with an agreed-upon sequence for addressing the myriad of issues. The Committee has been assisted in this work by the Technical Committee on Rules of Origin that was established at the World Customs Organization under the terms of the Agreement. In June 1999, the Technical Committee finished this phase of its work, forwarding to the WTO Committee several hundred product-specific issues that could not be resolved on a technical basis. Throughout 2000, the WTO Committee on Rules of Origin continued to address several important and complex issues of broad application to the harmonization work program, including undertaking important work toward a common understanding as to the implications of applying harmonized rules consistent with the rights and obligations under other WTO agreements. Despite the sheer volume and magnitude of complex issues which must be addressed for literally hundreds of unique specific products, significant progress has been made toward completion of this effort.

U.S. proposals for the WTO origin harmonization work program are developed under the auspices of a Section 332 study being

conducted by the U.S. International Trade Commission pursuant to a request by the U.S. Trade Representative. The proposals are formulated utilizing the input received from the private sector, with ongoing consultations with the private sector as the negotiations have progressed from the technical stage to deliberations at the WTO Committee on Rules of Origin. Representatives from several U.S. government agencies are actively involved in the WTO origin harmonization work, including the U.S. Customs Service, the U.S. Department of Commerce, and the U.S. Department of Agriculture.

### **Prospects for 2001**

The harmonization work program will continue to be conducted through a sector-by-sector approach, in accordance with a work program again developed by the Committee at the close of 2000. The work will continue on the development of product-specific rules by focusing primarily on methodologies involving change in tariff classification, although, where appropriate, the work program has also been giving consideration to other possible requirements beyond a change of tariff classification methodology. In accordance with a decision taken by the General Council's Special Session in December 2000, the Committee will expedite its efforts toward completing the harmonization work program by the end of 2001, also ensuring results that are sound from both a technical and policy standpoint. Progress in the harmonization work program will remain contingent on obtaining appropriate resolution of several important and complex issues concerning the overall structure and operation of the harmonized rules, as well as their future application consistent with the rights and obligations under other WTO agreements.

Virtually all issues and problems cited by U.S. exporters as arising under the origin regimes of U.S. trading partners arise from administrative practices that result in non-transparency,

discrimination, and a lack of certainty. Attention will continue to be given to the implementation of the Agreement's important disciplines related to transparency, which are recognized elements of what are considered to be "best customs practices." The Agreement on Rules of Origin provides important disciplines for conducting preferential and non-preferential origin regimes-- such as the obligation to provide binding origin rulings upon request to traders within 150 days of request.

## 7. Committee on Safeguards

### Status

The Committee on Safeguards was established to administer the WTO Agreement on Safeguards. The Agreement establishes rules for the application of safeguard measures as provided in Article XIX of GATT 1994. Effective safeguards rules are important to the viability and integrity of the multilateral trading system. Armed with the assurance that they can act quickly to help industries adjust to temporary import surges, the availability of a safeguards mechanism provides WTO Members a flexibility they otherwise would not have to open their markets to international competition. At the same time, WTO safeguards rules ensure that such actions are of limited duration and are gradually less restrictive over time.

The Agreement on Safeguards incorporates into WTO rules many concepts embodied in U.S. safeguards law (i.e., section 201 of the Trade Act of 1974, as amended). The Agreement requires all WTO Members to use transparent and objective procedures when taking emergency actions to prevent or remedy serious injury to domestic industry caused by increased imports.

Among its key provisions, the Agreement:

- < requires a transparent, public process for making injury determinations;

- < sets out clearer definitions of the criteria for injury determinations;
- < requires safeguard measures to be steadily liberalized over their duration;
- < establishes an eight year maximum duration for safeguard actions, and requires a review and determination no later than the mid-term of the measure;
- < allows safeguard actions to be taken for three years without the requirement of compensation or the possibility of retaliation; and,
- < prohibits so-called "grey area" measures, such as voluntary restraint agreements and orderly marketing agreements, which had been utilized by countries to avoid GATT disciplines and which adversely affect third-country markets. Measures of this type in existence when the Agreement entered into force were required to be phased out over four years.

### Major Issues in 2000

During its two meetings in 2000, the Committee continued its review of Members' laws, regulations and administrative procedures, based on notifications required by Article 12.6 of the Agreement. The Committee reviewed new or amended legislative texts from Chile, Ecuador, the Kyrgyz Republic, Latvia, Thailand and Venezuela. As of early November 2000, 39 Members had notified the Committee of their domestic safeguards legislation, and 48 other Members notified that they had no such specific legislation.

The Committee noted that all notified pre-existing measures covered by Articles 10 and 11 of the Agreement had been phased out by January 1, 2000. Nigeria had notified, in 1998, that its import prohibitions on wheat flour,

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sorghum, millet, gypsum and kaolin were “pre-existing Article XIX measures.” At the fall 2000 meeting, Nigeria undertook to update the Committee on the status of these measures as soon as possible.

The Committee reviewed Article 12.1(a) notifications of the initiation of and reasons for an investigatory process relating to serious injury or threat thereof from: Argentina (motorcycles), Chile (tires, wheat, wheat flour, sugar, edible vegetable oils, cotton and synthetic socks, and UHT liquid and powdered milk), Ecuador (matches), Egypt (fluorescent lamps and powdered milk), India (white and yellow phosphorous, gamma ferric oxide and magnetic iron oxide, and methylene chloride), Korea (garlic), Morocco (bananas), El Salvador (pork and rice), the United States (line pipe, crab meat and extruded rubber thread), and Venezuela (cold-rolled steel, hot-rolled steel, and tires).

The Committee reviewed Article 12.1(b) notifications of a finding of serious injury or threat thereof caused by increased imports from: Argentina (footwear); Brazil (toys); Chile (wheat, wheat flour, sugar, and edible vegetable oils); the Czech Republic (sugar); Egypt (fluorescent lamps); India (acetone); Korea (garlic); Latvia (swine meat); and the United States (steel wire rod and line pipe).

The Committee reviewed Article 12.1(c) notifications of a decision to apply a safeguard measure from: Argentina (footwear), Brazil (toys), Chile (wheat, wheat flour, sugar, and edible vegetable oils), the Czech Republic (sugar), Egypt (fluorescent lamps), India (acetone and phenol), Korea (garlic), Latvia (swine meat) and the United States (line pipe, steel wire rod and wheat gluten). The Committee received notifications from Chile (wheat, wheat flour, sugar, edible vegetable oils, tires and cotton socks), India (white/yellow phosphorous), the Slovak Republic (swine meat), the United States (crabmeat) and Venezuela (cold-rolled steel and hot-rolled steel) of the termination of a safeguard

investigation with no safeguard measure imposed. The Committee also reviewed a notification from the United States on the results of the mid-term review of the safeguard measure on wheat gluten.

The Committee reviewed Article 12.4 notifications of the application of a provisional safeguard measure from: Chile (wheat, wheat flour, sugar, edible vegetable oils, synthetic socks and liquid UHT and powdered milk) Egypt (powdered milk), and Korea (garlic).

The Committee also received some additional notifications shortly before the end of the reporting period, which will be reviewed in the year 2001, including from Chile (investigation of synthetic socks), Colombia (termination of investigation of taxis), Egypt (provisional measure on milk powder), the Slovak Republic (initiation of investigation on cane or beet sugar), United States (termination of investigation on extruded rubber thread) and Venezuela (provisional measure on matches).

At the November 2000 meeting, the Committee agreed to have the Chairman consult informally on the desirability of the Committee establishing a venue for discussing matters concerning the application of the Safeguards Agreement.

### **Prospects for 2001**

The Committee’s work in 2001 will continue to focus on the reviews of safeguard actions that have been notified to the Committee and on the notification of any new or amended safeguards laws. The Chairman of the Committee will also hold an informal meeting, in early February 2001, to determine whether or not there is a need for the Committee to discuss issues concerning the application of the Safeguards Agreement, and if such discussion should address procedural or substantive issues.

## **8. Committee on Sanitary and Phytosanitary Measures**

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## Status

The WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures establishes rules and procedures to ensure that sanitary and phytosanitary measures address legitimate human, animal and plant health concerns, do not arbitrarily or unjustifiably discriminate between Members' agricultural and food products, and are not disguised restrictions on international trade. SPS measures protect against risks associated with plant or animal borne pests and diseases, additives, contaminants, toxins and disease-causing organisms in foods, beverages, or feedstuffs. The Agreement requires that, with the exception provided in Article 5.7, such measures be based on science and developed through systematic risk assessment procedures. At the same time, the SPS Agreement preserves every WTO Member's right to choose the level of protection it considers appropriate with respect to SPS risks.

The Committee on SPS Measures is a forum for consultation on the implementation and administration of the Agreement, including discussions of specific measures Members perceive to violate the Agreement, and the exchange of information on implementation of the Agreement. It also provides a venue for discussions of the Agreement's provisions relating to transparency in the development and application of SPS measures, special and differential treatment, technical assistance, and equivalence.

Participation in the Committee is open to all WTO Members. Certain non-WTO Members also participate as observers, in accordance with guidance agreed to by the General Council. Representatives of a number of international organizations are invited to attend meetings of the Committee as observers: the Food and Agriculture Organization (FAO), the World Health Organization (WHO), the FAO/WHO Codex Alimentarius Commission, the FAO International Plant Protection Convention

Secretariat (IPPC), the International Office of Epizootics (OIE), the International Organization for Standardization (ISO) and the International Trade Center (ITC).

## Major Issues in 2000

*Article 5.5 Guidelines:* During 2000, a major focus of the Committee was completion of the guidelines called for in Article 5.5 of the Agreement. Article 5.5 calls for the Committee to develop guidelines for Members' use to "avoid arbitrary or unjustifiable distinctions in the levels" of protection they "consider to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on trade." Since 1996, the Committee has conducted informal consultations aimed at developing a consensus on the provisions and use of these guidelines. The United States was an active participant in these consultations, working to ensure that the guidelines do not compromise its sovereign rights and to further ensure that WTO Members base their SPS measures on science. The Committee approved final guidelines in July.

*Implementation Issues:* At the November 10-11, 1999 Committee meeting, several developing country Members called on the Committee to discuss the implementation of specific provisions of the Agreement including special and differential treatment, technical assistance and equivalence provisions at meetings in 2000. At each meeting in 2000, one of these issues was discussed and the United States submitted papers on technical assistance (G/SPS/GEN/181) and equivalence (G/SPS/GEN/212) as part of those discussions, which were not conclusive and will continue in 2001.

*Biotechnology :* In view of the increasing trade in agricultural and food products derived from modern biotechnology and the number of international fora addressing biotechnology, the United States emphasized to WTO Members that the provisions of both the SPS Agreement

and Agreement on Technical Barriers to Trade (TBT) apply to international trade in these products. The United States submitted a paper (G/SPS/GEN/186) drawing attention to notifications to the SPS Committee and TBT Committee from WTO Members of their proposals regarding food and agricultural biotechnology products. The paper also encouraged all Members to notify proposals related to food and agricultural biotechnology to the appropriate WTO committee; the United States submitted a similar paper to the TBT Committee (G/TBT/W/115). The United States noted in these papers that, as of June 10, 2000, 15 WTO Members had submitted 48 notifications: 24 notifications to the SPS Committee and 24 notifications to the TBT Committee. In addition, representatives from the Codex Alimentarius Commission and the International Plant Protection Convention (IPPC) reported on the respective work of their organizations regarding agricultural and food products derived from biotechnology. The United States emphasized the importance of the work related to biotechnology underway in these organizations and encouraged WTO Members to participate in the work of these organizations.

*Risk Assessment:* The Agreement requires Members to base SPS measures on a science-based risk assessment. With the aim of increasing understanding and use of risk assessments, the WTO, with support from the United States, sponsored a workshop on risk assessment in June. The workshop demonstrated the fundamentals of risk analyses, described the links between risk analyses and the disciplines of the SPS Agreement, identified the work in this area by the three standard setting organizations referenced in the Agreement (Codex, IPPC, and OIE), and shared information on risk analyses among Committee members.

*Transparency:* The SPS Agreement provides a process whereby WTO Members can obtain information on other Members' proposed SPS regulations and control, inspection, and

approval procedures, and the opportunity to provide comments on those proposals before implementing Members make their final decisions. These transparency procedures have proved extremely useful in preventing trade problems associated with SPS measures. The United States continued to press all WTO Members to establish an official notification authority, as required by the Agreement, and to ensure that the Agreement's notification requirements are fully and effectively implemented. Each Member is also required to establish a central contact point, known as an inquiry point, to be responsible for responding to requests for information or making the appropriate referral. This inquiry point circulates notifications received under the Agreement to interested parties for comment.

The SPS inquiry point for the United States is:

**U.S. INQUIRY POINT**

Office of Food Safety and Technical Services  
Attention: Carolyn F. Wilson  
Foreign Agricultural Service  
U.S. Department of Agriculture  
AG Box 1027  
Room 5545 South Agriculture Building  
14th and Independence Avenue, S.W.  
Washington, DC 20250-1027

Telephone: (202) 720-2239  
Fax: (202) 690-0677  
email: ofsts@fas.usda.gov

**Prospects for 2001**

The Committee will continue to monitor implementation of the Agreement by WTO Members. The number of specific trade concerns raised in the Committee appears to be increasing and the Committee has been a useful forum for Members to raise issues and then work bilaterally to resolve specific trade concerns. The number of disputes in this area is evidence of the importance which Members

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place on the effective operation of the Agreement.

In 2001, the United States expects the Committee to continue discussions on technical assistance, special and differential treatment, and equivalence. To date, developed countries have submitted most of the papers and the United States will be encouraging developing country Members to participate more actively in both formal meetings and informal consultations to identify improvements. The Committee will also consider criteria for admitting intergovernmental organizations as observers to SPS Committee meetings. Finally, the Committee will continue to monitor the development of international standards, guidelines and recommendations by standard setting organizations. The Committee will seek to identify areas where the development of additional or new standards would facilitate international trade and provide this information to the appropriate standard setting organization for consideration.

## **9. Committee on Subsidies and Countervailing Measures<sup>10</sup>**

### **Status**

The Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) provides rules and disciplines for the use of government subsidies and the application of remedies – through either WTO dispute settlement or countervailing duty (CVD) action – to address subsidized trade that causes harmful commercial effects. The Agreement nominally divides subsidy practices among three classes: prohibited (red light) subsidies; permitted yet actionable (yellow light) subsidies; and

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<sup>10</sup> For further information, see also the Joint Report of the United States Trade Representative and the U.S. Department of Commerce, *Subsidies Enforcement Annual Report to the Congress*, February 2001.

permitted, non-actionable (green light) subsidies. Export subsidies and import substitution subsidies are prohibited. All other subsidies are permitted, yet are also actionable (through CVD or dispute settlement action) if they are (i) “specific”, *i.e.*, limited to a firm, industry or group thereof within the territory of a WTO Member and (ii) found to cause adverse trade effects, such as material injury to a domestic industry or serious prejudice to the trade interests of another WTO Member. At present, the only non-actionable subsidies are those which are not specific, as defined above.

Prior to 2000, Article 8 of the Agreement provided that certain limited kinds of government assistance granted for industrial research and development (R&D), regional development, or environmental compliance purposes would also be treated as a non-actionable subsidy so long as such assistance conformed to the applicable terms and conditions set forth in Article 8. In addition, Article 6.1 of the Agreement provided that certain other subsidies, referred to as dark amber subsidies, could be presumed to cause serious prejudice. These were: (i) subsidies to cover an industry’s operating losses; (ii) repeated subsidies to cover a firm’s operating losses; (iii) the direct forgiveness of debt (including grants for debt repayment); and (iv) when the *ad valorem* subsidization of a product exceeds five percent. If such subsidies were challenged on the basis of these dark amber provisions in a WTO dispute settlement proceeding, the subsidizing government would have the burden of showing that serious prejudice had *not* resulted from the subsidy. However, as explained in last year’s report, a mandatory review was conducted in 1999 under Article 31 of the Agreement to determine whether to extend the application of these provisions beyond December 31 of that year. Because a consensus could not be reached among WTO Members on whether or the terms by which these provisions might be extended beyond their

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five-year period of provisional application, they expired on January 1, 2000.<sup>11</sup>

### Major Issues in 2000

The Committee held two regular meetings in 2000. In addition to its routine activities concerned with reviewing and clarifying the consistency of WTO Members' domestic laws, regulations and actions with Agreement requirements, the Committee continued to accord special attention to the matter of general subsidy notifications and the process by which such notifications are made to and considered by the Subsidies Committee. In this regard, at its regular meeting in May 2000, the Committee decided to take several actions to address the poor and declining state of compliance with subsidy notifications, including deciding to revive its Working Party on Subsidy Notifications in an effort to find a long-term solution to the problem. The Committee also concluded its mandated review of the operation of Article 27.5/27.6 of the Agreement, and selected a new member for its Permanent Group of Experts. Further information on these various activities is provided below.<sup>12</sup>

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<sup>11</sup> Pursuant to section 282(c)(5) of the Uruguay Round Agreements Act of 1994 (URAA), USTR submitted a report to the Congress on June 30, 2000, identifying the provisions of U.S. law which were enacted to implement these provisions and which "should be repealed or modified" due to the lack of a decision by the Subsidies Committee to extend their application beyond 1999. This report is available for review at: <http://www.ustr.gov/wto/goodsub.html>. As set forth in section 251 of the URAA, the green light provisions of U.S. CVD law corresponding to Article 8 of the Agreement automatically expired on July 1, 2000, in light of the fact that the provisions of Article 8 no longer had force.

<sup>12</sup> In addition to the matters described here, at the Committee's November 2000

*Review and Discussion of Notifications:* Throughout the year, Members submitted notifications of: (i) new or amended CVD legislation and regulations; (ii) CVD investigations initiated and decisions taken; and (iii) measures which meet the definition of a subsidy and which are specific to certain recipients within the territory of the notifying Member. Notifications of CVD legislation and actions, as well as updating subsidy notifications, were reviewed and discussed by the Committee at both of its regular meetings. In reviewing notified CVD legislation and subsidies, the Committee procedures provide for the exchange in advance of written questions and answers in order to clarify the operation of the notified measures and their relationship to the obligations of the Agreement.

To date, 51 Members of the WTO (counting the EU as one) have notified that they currently have CVD legislation in place, while 32 Members have notified that they maintain no such legislation. Among the notifications of CVD laws and regulations reviewed in 2000 were those of Argentina, Australia, Chile, Estonia, India, Kyrgyz Republic, Malaysia, Thailand and Turkey.<sup>13</sup> As for CVD measures,

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meeting a number of other WTO Members expressed concern about enactment in the United States of the so-called "Byrd amendment" (H.R. 4461/P.L. 106-387), which was attached as a rider to the fiscal year 2001 agriculture appropriations bill and provides for the apportionment of revenue stemming from duties collected under an AD/CVD order to the members of the domestic industry which filed the petition or supported the initiation of the proceeding. On December 22, Australia, Brazil, Chile, the EU, India, Indonesia, Japan, Korea, and Thailand jointly requested dispute settlement consultations with respect to this law.

<sup>13</sup> The Committee also continued its review of the previously notified legislation of the EU and the United States although, in

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seven WTO Members notified CVD actions taken during the latter half of 1999, whereas seven Members also notified actions taken in the first half of 2000. The Committee reviewed actions taken by Australia, Canada, Chile, the EU, Egypt, South Africa and the United States. With respect to subsidy notifications, the Committee continued its examination of new and full notifications submitted for 1998, as well as updating notifications submitted for 1997, 1999 and 2000. The table contained in Annex II of this report shows the WTO Members whose subsidy notifications were reviewed by the Committee in 2000.

As of January 1, 2001, when membership in the WTO had reached 140, only 49 Members had submitted new and full subsidy notifications for 1998, while 35 and 25 Members, respectively, had submitted updating notifications for the 1999 and 2000 periods. Notably, 44 Members have never made a subsidy notification to the WTO, although three of these acceded to the WTO only in the fourth quarter of 2000 and none account for a significant share of world trade. In view of the ongoing difficulties experienced by Members, including the United States, in meeting the Agreement's subsidy notification obligations, the Committee took several actions in 2000 aimed at improving the situation. First, it urged that any Member having outstanding subsidy notifications should take the steps needed to come into compliance with its obligations as soon as possible before the end of 2000. Second, it suggested that Members with more than one notification outstanding could make a single "best efforts" notification covering all the preceding time periods for which a notification was due,

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keeping with WTO practice, the bulk of the review took place in the Antidumping Committee. Follow-up questions posed to the United States continued to focus on the U.S. Department of Commerce's regulations for sunset review procedures.

placing the greatest emphasis on supplying information in relation to the most recent periods. Third, it reconvened the Working Party on Subsidy Notifications to take a fresh look at the notification problems confronting Members and develop possible long-term solutions for the Committee's consideration. The working party met on the margins of the regular fall Subsidies Committee meeting and, as initial steps: (i) authorized the Secretariat to circulate a questionnaire to Members inquiring about the specific problems they face in making notifications; and (ii) authorized the Chairperson to pursue direct contact with individual Members that have not yet made a notification.

*Review of the Operation of Article 27.5/27.6:* Article 27.5 and 27.6 of the Agreement provide that a developing country which has reached 3.25 percent of world trade in a given product over two consecutive years must accelerate the phase-out of its export subsidies on that product. The product scope is defined as a section heading of the Harmonized System nomenclature, and application of this provision can be triggered either by a notification made by the developing country or a computation done by the WTO Secretariat at the request of another Member. Pursuant to Article 27.6, the Subsidies Committee began reviewing the operation of this provision at the end of 1999, but decided to conclude the review at its May 2000 meeting in large part because the provisions had never been invoked and there was no concrete experience by which to judge their operation. The Committee agreed to reconsider this issue, however, in the future should any Member so request – and, as explained below, the Committee will, in fact, examine these provisions further in 2001.

*Permanent Group of Experts:* Article 24 of the Agreement directs the Committee to establish a Permanent Group of Experts (PGE), "composed of five independent persons, highly qualified in the fields of subsidies and trade relations." The Agreement articulates three possible roles for

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the PGE: (i) to provide, at the request of a dispute settlement panel, a binding ruling on whether a particular practice brought before that panel constitutes a prohibited subsidy, within the meaning of Article 3 of the Agreement; (ii) to provide, at the request of the Committee, an advisory opinion on the existence and nature of any subsidy; and (iii) to provide, at the request of a WTO Member, a “confidential” advisory opinion on the nature of any subsidy proposed to be introduced or currently maintained by that Member. (To date, the PGE has not yet been called upon to perform any of the aforementioned duties.) Article 24 further provides for the Committee to elect the experts to the PGE, with one of the five experts being replaced every year. At its May 2000 meeting, the Committee chose Mr. Hyung-Jin Kim, nominated by Korea, to replace Canadian member Robert Martin, whose term of office had expired earlier in the spring. Another PGE member, Mr. A. V. Ganesan of India, resigned his membership, effective May 18, 2000, prior to the end of his term. Consultations are ongoing on whom should replace Mr. Ganesan.

*Subsidies to the Fisheries Sector:* At its May 2000 meeting, the Committee had an exchange of views concerning the issue of trade-distorting and environmentally harmful subsidies to the fisheries sector, initiated at the request of Iceland in regard to responses submitted by the EU on its 1999 updating subsidies notification. Iceland, supported by the United States and some other Members, suggested that the Committee take up as an ongoing agenda item consideration of the fishery subsidies issue, with a focus on the technical and legal dimensions of the issue (as distinct from the “political” context which, Iceland pointed out, had been the context for discussions in the Committee on Trade and the Environment). Among the options for further work, Iceland suggested that the Committee could: (i) undertake to identify fishery subsidies, including those which were trade distorting and/or a cause of overcapacity and overfishing; (ii) consider which Subsidies Agreement disciplines could apply to fishery

subsidies and which may need to be clarified/strengthened in order to deal more effectively with such practices; and (iii) explore the extent to which fishery subsidies with adverse effects could be identified. Although several Members were not prepared to agree to this proposal as an ongoing Committee work program, it was acknowledged that any Member could place an item on the Committee’s agenda and a number of Members expressed interest in holding further discussions of these issues. The United States, Iceland and a number of other Members had proposed negotiations in this area as part of the WTO’s preparations for its 1999 Ministerial Conference.

### **Prospects for 2001**

In 2001, the Subsidies Committee will continue and, likely, intensify its attention to implementation issues in a variety of respects. First, as noted above, the United States will continue to work with others to try to identify ways to rationalize the burdens of subsidy notification for all WTO Members without diminishing transparency or taking away from the other substantive benefits of the notification obligation. Second, the United States will continue to participate actively in the review of other WTO Members’ CVD legislation and actions, and will bring to Members’ and the Committee’s attention any concerns which may arise about such laws or actions, whether in general or in the context of specific proceedings.

Certain implementation issues will also be taken up in the Committee as a direct result of decisions taken by the General Council in its implementation review exercise conducted in 2000 (see discussion of activities undertaken by the General Council in 2000).<sup>14</sup> Specifically,

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<sup>14</sup> Among its December 15 decisions, the General Council “called upon the Director-General to take appropriate steps, in accordance with WTO usual practice, to rectify the omission of Honduras from the list of Annex

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pursuant to the decisions reached by the General Council at its special session of December 15, 2000, the Committee will “examine, as an important part of its work:

- < all issues relating to Articles 27.5 and 27.6 of the ... Agreement, including the possibility to establish export competitiveness on the basis of a period longer than two years; [and]
- < the issues of aggregate and generalized rates of remission of import duties and

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VII(b) countries ... [t]aking into account the unique situation of Honduras as the only original Member of the WTO with a GNP per capita of less than US\$1000 [per annum] that was not included in Annex VII(b) to the Agreement”. Annex VII to the Agreement identifies two specific groups of developing countries – the least-developed countries as designated by the United Nations and other specified WTO Members which had annual per capita GNP levels of less than \$1000 at the time that the Annex was drafted. These countries receive treatment more generous than that given to other developing countries with respect to both export subsidy obligations and the application of CVD rules. Over the past several years, a number of developing countries have raised concerns about the scope and operation of Annex VII. While there is no justification for arbitrarily expanding the scope of this Annex, in terms of either countries covered or the exceptions provided from normal Agreement rules and disciplines, some legitimate questions have been raised about the manner in which Annex VII may have operated or been interpreted. The clarification of Honduras’s inclusion is one such issue, and the United States is prepared to engage in additional discussions about other aspects of this Annex which may deserve attention and possible clarification, recognizing that the eventual elimination of export subsidies should be a goal shared by all WTO Members.

of the definition of ‘inputs consumed in the production process’, taking into account the particular needs of developing country Members.”

The United States intends to participate actively and constructively in this examination with a view towards arriving at practical solutions to any legitimate implementation problems which may be identified, consistent with sustaining and strengthening WTO subsidy disciplines. In line with these same principles, the United States is also prepared to engage in any preparatory work that the Committee may decide to begin in anticipation of possible future requests by developing country Members that the Committee approve an extension of their transition periods for the phase-out of export subsidies.<sup>15</sup>

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<sup>15</sup> Article 27.2 of the Subsidies Agreement in general gives developing country Members an additional eight years from the date of entry into force of the Agreement (*i.e.*, January 1, 1995) in which they may use export subsidies. Therefore, the export subsidy transition period for most developing country Members expires on January 1, 2003. Although the United States and other Members have asked certain developing countries to report on the status of their phase-out plans during the review of general subsidy notifications, little information has typically been supplied in response. Notwithstanding that Article 27.4 stipulates that individual requests for extension need not be made until January 1, 2002, the Agreement does prescribe that these subsidies are to be phased out “in a progressive manner” and within a shorter period where “the use of such . . . subsidies is inconsistent with [a country’s] development needs.” Given this, there may be grounds for the Committee to consider during the course of 2001 how it intends to take up extension requests which may be made under these provisions and/or whether there is a need for a special reporting and monitoring process to facilitate export subsidy

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## 10. Committee on Technical Barriers to Trade

### Status

The Agreement on Technical Barriers to Trade (TBT Agreement) establishes rules and procedures regarding the development, adoption, and application of voluntary product standards, mandatory technical regulations, and the procedures (such as testing or certification) used to determine whether a particular product meets such standards or regulations. Its aim is to prevent the use of technical requirements as unnecessary barriers to trade. The Agreement applies to a broad range of industrial and agricultural products, though sanitary and phytosanitary (SPS) measures and specifications for government procurement are covered under separate agreements. It establishes rules that help to distinguish legitimate standards and technical regulations from protectionist measures. Standards, technical regulations and conformity assessment procedures are to be developed and applied on a non-discriminatory basis, developed and applied transparently, and should be based on international standards and guidelines, when appropriate.

The TBT Committee<sup>16</sup> serves as a forum for  

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phase-outs.

<sup>16</sup>Participation in the Committee is open to all WTO Members. Certain non-WTO Member governments also participate, in accordance with guidance agreed by the General Council. Representatives of a number of international intergovernmental organizations were invited to attend meetings of the Committee as observers: the International Monetary Fund (IMF), the United Nations Conference on Trade and Development (UNCTAD); the International Trade Center (ITC); the International Organization for Standardization (ISO); the International Electrotechnical Commission (IEC); the Food

consultation on issues associated with the implementation and administration of the Agreement. This includes discussions and/or presentations concerning specific standards, technical regulations and conformity assessment procedures maintained by a Member that are creating adverse trade consequences and/or are perceived to be violations of the Agreement. It also includes an exchange of information on Member government practices related to implementation of the Agreement and relevant international developments.

*Transparency and Availability of WTO/TBT Documents:* A key opportunity for the public resulting from the TBT Agreement is the ability to obtain information on proposed standards, technical regulations and conformity assessment procedures, and to provide written comments for consideration on those proposals before they are finalized. The Members are also required to establish a central contact point, known as an inquiry point, which is responsible for responding to requests for information on technical requirements or making the appropriate referral.

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and Agriculture Organization (FAO); the World Health Organization (WHO); the FAO/WHO Codex Alimentarius Commission; the International Office of Epizootics (OIE); the Organization for Economic Cooperation and Development (OECD); the UN Economic Commission for Europe (UN/ECE); and the World Bank. The International Organization of Legal Metrology (OIML), the United Nations Industrial Development Organization (UNIDO), the Latin American Integration Association (ALADI), the European Free Trade Association (EFTA) and the African, Caribbean and Pacific Group of States (ACP) have been granted observer status on an *ad hoc* basis, pending final agreement by the General Council on the application of the guidelines for observer status for international intergovernmental organizations in the WTO.

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**U.S. Inquiry Point**

National Center for Standards and Certification  
Information  
National Institute of Standards and Technology (NIST)  
100 Bureau Drive, Stop 2150  
Gaithersburg, MD 20899-2150

Telephone: (301) 975-4040  
Fax: (301) 926-1559  
email: [nesci@nist.gov](mailto:nesci@nist.gov)

The National Institute of Standards and Technology (NIST) serves as the U.S. inquiry point. NIST maintains a reference collection of standards, specifications, test methods, codes and recommended practices. This reference material includes U.S. government agencies' regulations, and standards of U.S. private standards-developing organizations and foreign national and international standardizing bodies. The inquiry point responds to all requests for information concerning federal, state and private regulations, standards and conformity assessment procedures. Upon request, NIST will provide copies of notifications of proposed regulations from foreign governments received under the TBT Agreement to interested parties in the United States. NIST also serves as the notification authority for the United States and identifies proposals and prepares notifications on behalf of U.S. agencies. NIST will also provide information on central contact points for information maintained by other WTO Members. On questions concerning standards and technical regulations for agricultural products, including SPS measures, the NIST refers requests for information to the U.S. Department of Agriculture, which maintains the U.S. inquiry point under the Sanitary and Phytosanitary Agreement.

A number of documents relating to the work of the TBT Committee are available to the public directly from the WTO website: [www.wto.org](http://www.wto.org). TBT Committee documents are indicated by the symbols, "G/TBT/..." Notifications by Members of proposed technical regulations and

conformity assessment procedures which are available for comment are issued as "G/TBT/Notif./..." (followed by a number).<sup>17</sup> Parties in the United States interested in submitting comments to foreign governments on their proposals should send them through the U.S. inquiry point at the address above. Minutes of the Committee meetings are issued as "G/TBT/M/..." (followed by a number). Submissions by Members (e.g., statements; informational documents; proposals; etc.) and other working documents of the Committee are issued as "G/TBT/W/..." (followed by a number). As a general rule, written information provided by the United States to the Committee is provided on an "unrestricted" basis and available to the public on the WTO's website.

**Major Issues in 2000**

The TBT Committee met five times in 2000. At the meetings, the Committee addressed implementation of the Agreement, including an exchange of information on actions taken by Members domestically to ensure implementation and ongoing compliance. A number of Members used the Committee meetings to raise concerns about specific technical regulations which affected, or had the potential to affect, trade adversely and were perceived to create unnecessary barriers to trade. For example, in 2000, the United States continued to express concerns with draft European Commission Directives on Waste from Electrical and Electronic Equipment (WEEE) and on the Restriction of the Use of Certain Hazardous

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<sup>17</sup>Beginning in 2000, the number of notifications of proposed technical regulations and conformity assessment procedures will be changed to read: *G/TBT/N* (which stands for "notification")/*USA* (which, in this case stands for the United States of America; three letter symbols will be used to designate the WTO member originating the notification)/*X* (where "x" will indicate the numerical sequence for that country).

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Substances in Electrical and Electronic Equipment (notified as G/TBT/Notif.00/310); an early draft directive on batteries and accumulators; the Commission's reliance on an IEC standard which is under revision to control for low frequency emissions under its EMC Directive; and, a notification (G/TBT/Notif.00/428) concerning mandatory egg labeling requirements in Europe. The United States also used a meeting of the Committee to raise questions and alert other WTO Members to potential concerns with restrictive origin requirements in the "*Protocols to the Europe Agreements*" under negotiation by the Commission (see G/TBT/W/152). The United States also raised concerns regarding the transparency of Japan's safety regulations for small craft boat engines. The United States compiled information on notifications relating to bio-engineered products under the TBT Agreement (G/TBT/W/115), as well as the Agreement on Sanitary and Phytosanitary Measures (SPS) (G/SPS/GEN/186), to emphasize to WTO Members that the provisions of both agreements were relevant to international trade in bio-engineered products.

The Committee conducted its fifth Annual Review of the Implementation and Operation of the Agreement based on background documentation contained in G/TBT/8, and its Fifth Annual Review of the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the Agreement) based on background documentation contained in WTO TBT Standards Code Directory, G/TBT/CS/1/Add.4 and G/TBT/CS/2/Rev.6. Decisions and recommendations adopted by the Committee are contained in G/TBT/1/Rev.7.

*Second Triennial Review of the Agreement:* The primary focus of the Committee in 2000 was the work program arising from its First Triennial Review of the Operation and Implementation of the Agreement (G/TBT/5, completed in 1997) and the culmination of subsequent discussions, workshops and proposals in the conclusion of

the Second Triennial Review (see G/TBT/9). The review provided the opportunity for WTO Members to review and discuss all of the provisions of the Agreement, which facilitated a common understanding of the rights and obligations. The review, which was concluded in November, highlighted issues of implementation and a number of areas for further consideration by the Committee. In July, 2000, the Committee convened a Workshop on Technical Assistance and Special and Differential Treatment in the context of implementation of the TBT Agreement to promote information exchange and in-depth consideration of the practical issues facing developing and least-developed WTO Members in implementing the Agreement and with a view toward clarifying technical assistance needs. A complete listing of the proposals which were under consideration as well as summaries of the various workshops which were held are contained in G/TBT/9 along with the Second Triennial Review itself. The following briefly summarizes the Second Triennial Review:

< *Implementation and Administration of the Agreement by Members (Article 15.2):* Discussion focused on the Members' obligation to submit statements containing information on domestic implementation of the Agreement. The Committee recognized that there was no single model bureaucratic or administrative structure that all countries should follow, but that it would be useful for Members to have in place a national policy concerning TBT matters that would involve relevant government agencies (regulatory, as well as trade agencies), private sector standardizing and conformity assessment bodies and other interested parties. The Committee also recognized that developing the information required by the Statement was a useful tool for officials responsible for overseeing domestic implementation. Given that only 77

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Members had submitted their Statement on Implementation, the Committee would continue to exchange information and seek practical solutions where obstacles had prevented their timely submission.

The Committee agreed to continue its exchange of information on good regulatory practice for the preparation, adoption and application of technical regulations.

The Committee also noted the General Council discussions on implementation issues, particularly those related to the participation of developing country Members in international standardization activities. It noted this issue was relevant to the range of topics under consideration by the Committee in the Triennial Review as well as ongoing Committee work and it would continue to inform the General Council of developments. Implementation issues facing developing countries were an integral part of the discussions in the Triennial Review.

< *Notifications and Procedures for Information Exchange:* The Committee highlighted the importance for product suppliers and other interested parties of obtaining early information on proposals for new technical regulations and conformity assessment procedures, providing comments on them while still in draft, and having those comments considered before a final rule is adopted and agreed that the procedural aspects of notification should be the subject of ongoing review. Particular attention was drawn to the need to coordinate at the national and sub-national levels and to ensure all authorities were aware of the rights and obligations under the Agreement. Taking into account the

results of a survey on electronic capabilities, the Committee agreed to work toward greater use of the internet to provide texts of documents that had been the subject of notifications to facilitate their timely review and the submission of comments. It was also acknowledged that the use of information technology could facilitate communications with interested parties domestically on developments in international standardization and could facilitate participation at the international level. The Committee noted that in some cases a lack of human, financial and infrastructure impeded the ability of a Member to establish an inquiry point and/or ensure its effective functioning and acknowledged that regional cooperation and information exchange could be useful.

< *International Standards, Guides and Recommendations:* The Committee acknowledged that the Agreement accords significant emphasis on the development and use of international standards for preventing unnecessary trade barriers. It recognized, however, that trade problems could arise through, *inter alia*, the absence of international standards or their non-use due to possible outdated content. In November 1998 the WTO held an “Information Session of Bodies Involved in the Preparation of International Standards” to improve Committee Members’ understanding of the procedures by which international standards are developed and the ongoing activities of these bodies, and to enhance these bodies’ awareness of the ongoing discussions on international standards in the TBT Committee. The Committee noted that a diversity of bodies were involved in the preparation of international standards –

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intergovernmental or non-governmental; specialized in standards development or involved also in other related activities – and that different approaches and procedures were adopted by them. Nevertheless, the obligation under the TBT Agreement for Members to use international standards was the same. Recognizing that for purposes of the TBT Agreement and the prevention of unnecessary obstacles to trade, it was important that all interested parties should have the opportunity to participate in the elaboration and adoption of international standards; i.e., that such bodies should operate on the basis of open, impartial and transparent procedures that afforded an opportunity for consensus among all interested parties. As a result of the Triennial Review, the Committee adopted a Decision containing a set of principles it considered important for international standards development (e.g., transparency, openness, impartiality and consensus) and urged Members and their standardizing bodies to consider them in relation to their participation in international bodies. The Committee also agreed to continue its information exchange with international bodies, and to exchange information in the Committee on how equivalency could facilitate trade in the absence of international standards. The Committee agreed that certain developing country constraints

on participation in international standardization deserved ongoing attention within international and regional standardizing bodies. The Committee also urged Members facing problems of participation to undertake national consultations to assess and prioritize areas of interest so that assistance by other Members and/or the Committee could be better targeted.

< *Conformity Assessment Procedures:* The Committee discussed the growing concern with the restrictive effect on trade of multiple testing, certification and other conformity assessment procedures. In June 1999, it held a “Symposium on Conformity Assessment Procedures” to develop an improved understanding of the issues. The Symposium enabled Committee members to learn from the perspectives and experience of a broad range of experts on the use of conformity assessment procedures for business transactions in the marketplace and as a tool to promote regulatory compliance. Information was obtained on agreements and arrangements which are evolving to facilitate trade and reduce compliance costs. In addition, members have continued to provide information on their national experience and practice.

The Committee noted the existence of different mechanisms to facilitate the acceptance of conformity assessment results, e.g., mutual recognition agreements for conformity assessment to specific regulations; in the voluntary sector, cooperative arrangements between domestic and foreign conformity assessment bodies; the use of accreditation to qualify conformity

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assessment bodies; government designation; unilateral recognition of results of foreign conformity assessment; and reliance on supplier's declaration of conformity and developed an indicative list to illustrate the variety of approaches and as a basis for further discussions. The use of relevant international standards and guides was recognized as a useful benchmark of technical competence. Capacity building and technical assistance needs were also reviewed.

< *Technical Assistance and Special and Differential Treatment:* In addition to the discussions under the specific topics above, the Committee considered the results of its Workshop on Technical Assistance and Special and Differential Treatment held in July 2000, and recognized the importance of ensuring that solutions were targeted at the specific priorities and needs identified by individual or groups of developing country Members. This called for effective coordination at the national level between authorities, agencies and other interested parties to identify and assess priority infrastructure needs of a specific Member. The Committee recognized work under the Integrated Framework for Least Developed Countries and the need for coordination and cooperation between donor Members and organizations, and between the Committee, other relevant WTO bodies, and other donor organizations. The Committee agreed to continue to exchange information on assistance provided by Members, as well as to examine the specific needs of Members for assistance. In order to enhance the effectiveness of technical assistance and cooperation, the

Committee agreed to develop a demand-driven technical cooperation program beginning with the identification and prioritization of needs by developing countries, and working with other relevant international and regional organizations. The Committee agreed to assess progress made in the context of the Third Triennial Review.

< *Labeling:* The Committee noted that concerns regarding labeling were raised frequently at meetings of the Committee during discussions on implementation and stressed that such requirements should not become disguised restrictions on trade.

### **Prospects for 2001**

The Committee will continue to monitor implementation of the Agreement by WTO Members. The number of specific trade concerns raised in the Committee appears to be increasing and the Committee has been a useful forum for Members to raise concerns and facilitate bilateral resolution of specific concerns. In 2001, the United States expects continued attention to issues relating to technical assistance and implementation of the Agreement by developing country Members in particular. It is likely that there will be greater attention given to labeling issues as well as the exchange of information on good regulatory practice for the development and adoption of technical regulations.

### **11. Committee on Trade-Related Investment Measures**

#### **Status**

The Agreement on Trade-Related Investment Measures (TRIMS) prohibits investment measures that violate the GATT Article III obligations to treat imports no less favorably than domestically produced products, or the GATT Article XI obligation not to impose

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quantitative restrictions on imports. The Agreement thus expressly requires eliminations of measures such as those that require or provide benefits for the incorporation of local inputs in the manufacturing process (“local content requirements”), or measures that restrict a firm’s imports to an amount related to its exports or related to the amount of foreign exchange a firm earns (“trade balancing requirements”). It also includes an illustrative list of measures that violate its requirements. The Agreement requires that any such measures existing as of the date of entry into force of the WTO (January 1, 1995) be notified and eventually eliminated. Developed countries were required to bring notified measures into conformity by January 1, 1997. Developing countries had until January 1, 2000, and least developed countries have until January 1, 2002.

### **Major Issues in 2000**

The TRIMS Committee held one meeting which was limited to discussion of technical and organizational issues such as notifications under Article 6.2 of the Agreement. Under Article 6.2, Members with non-conforming TRIMS must provide a notification to the WTO regarding the publications in which information on such measures can be found. There still remain several countries that have not properly met this requirement.

The key TRIMS issues related to Article 5.3, which outlines the process for granting an extension of the transition periods for developing countries and Article 9, which describes a mandated review of the Agreement, are both required topics for discussion in the Council for Trade in Goods (CTG) rather than in the TRIMS Committee. Future meetings of the Committee will also provide the opportunity to address violations of the agreement’s prohibition on certain measures.

### **Prospects for 2001**

In addition to ensuring full compliance with the obligations under Article 6.2, the Committee will be expected to continue to support the TRIMS-related discussions that remain unfinished in the CTG. Decisions will need to be made regarding the extension requests under Article 5.3 of the Agreement and greater focus is expected on the Article 9 review.

Developing countries have expressed the need for the review to consider the question of relief from the obligations of the Agreement for development reasons. On the other hand, Article 9 is also an opportunity for Members to consider provisions that might strengthen the Agreement’s objectives to reduce the trade-restrictive and distorting effects of investment measures and to facilitate international investment. The guidance provided by the CTG will dictate the approach taken in future meetings of the TRIMS Committee.

## **12. Textiles Monitoring Body**

### **Status**

The Textiles Monitoring Body (TMB), established in the Agreement on Textiles and Clothing (ATC), supervises the implementation of all aspects of the Agreement. In 2000, TMB membership was composed of appointees and alternates from the United States, the EU, Japan, Canada/Norway, Czech Republic/Turkey, Costa Rica, Thailand, Pakistan/Macau, India/Egypt, and Hong Kong/Republic of Korea. Each TMB member serves in a personal capacity.

The ATC succeeded the Multifiber Arrangement (MFA) as an interim arrangement establishing special rules for trade in textile and apparel products on January 1, 1995. All Members of the WTO are subject to the disciplines of the ATC, whether or not they were signatories to the MFA, and only members of the WTO are entitled to the benefits of the ATC. The ATC is a ten-year, time-limited arrangement which provides for the gradual integration of the textile and clothing sector into the WTO and provides

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for improved market access and the gradual and orderly phase-out of the special quantitative arrangements that have regulated trade in the sector among the major exporting and importing nations.

The United States has implemented the Agreement on Textiles and Clothing in a manner in which ensures that the affected U.S. industries and workers as well as U.S. importers and retailers have a gradual, stable and predictable regime under which to operate during the quota phase-out period. At the same time, the United States has aggressively sought to ensure full compliance with market opening commitments by U.S. trading partners, so that U.S. exporters may enjoy growing opportunities in foreign markets.

Under the ATC, the United States is required to “integrate” products which accounted for specified percentages of 1990 imports in volume over three stages during the course of the transition period, that is, to designate those textile and apparel products for which it will henceforth observe full GATT disciplines. Once it has “integrated” a product into the GATT, a WTO Member may not impose or maintain import quotas on that product other than under normal GATT procedures, such as Article XIX. As required by Section 331 of the Uruguay Round Agreements Act, the United States selected the products for early integration after seeking public comment, and published the list of items at the outset of the transition period, for purposes of certainty and transparency. The integration commitments for stages 1 and 2 were completed in 1995 and 1998. The list may be found in the *Federal Register*, volume 60, number 83, pages 21075-21130, May 1, 1995.

Also keyed to the ATC “stages” is a requirement that the United States and other importing members increase the annual growth rates applicable to each quota maintained under the Agreement by designated factors. Under the ATC, the weighted average annual growth rate for WTO Members’ quotas increased from 4.9

percent in 1994 to 5.7 percent in 1995 and 7.3 percent in 2000.

Article 5 of the ATC requires that Members cooperate to prevent circumvention of quotas by illegal transshipment or other means. The United States has actively worked with trading partners to improve cooperation and information sharing, and concluded a new agreement with Hong Kong to this end. The United States has also established a Textile Transshipment Task Force at the U.S. Customs Service to improve enforcement of textile quotas at U.S. borders and has tightened enforcement actions vis-a-vis other trading partners where an improved bilateral agreement was not possible.

### **Major Issues in 2000**

*Safeguard Restraints:* A special three-year safeguard is provided in the ATC to control surges in uncontrolled imports that cause or threaten to cause serious damage to domestic industry. Actions taken under the safeguard are automatically reviewed by the TMB. In 2000, the TMB reviewed a safeguard action taken by Argentina on imports of five fabric categories from Pakistan. The TMB found that Argentina had not demonstrated serious damage or actual threat thereof with respect to four of the fabric categories but did find serious damage for the fifth category. The TMB also reviewed a safeguard action taken by Argentina on imports of three fabric categories from Korea. The TMB found that Argentina had not demonstrated serious damage or actual threat thereof with respect to two of the categories but did find serious damage for the third category.

In another matter, in 1996 as part of an agreement settling a transshipment dispute with Pakistan, the U.S. imposed a new restraint on imports of man-made fiber bed sheets from Pakistan. In 2000, Pakistan brought a complaint to the TMB claiming that this new restraint violated the provisions of the ATC. The case was withdrawn from the TMB after consultations between the United States and

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Pakistan resulted in a mutually satisfactory solution.

*Notifications and Other Issues:* A considerable portion of the TMB's time was spent reviewing notifications made under Article 2 of the ATC dealing with textile products integrated into normal GATT rules and no longer subject to the provisions of the ATC. WTO Members wishing to retain the right to use the Article 6 safeguard mechanism were required in 1998 to submit a list of products comprising at least 17 percent by trade volume of the products included in the annex to the ATC. A number of these notifications were defective for various reasons and in a number of cases the TMB's review carried into 2000. The TMB expressed concern that a number of countries which announced their intention to retain the right to use Article 6 safeguards failed to make the required integration notification. On its own initiative, the TMB raised the issue of a new restraint on category 352/652 (underwear), as reported in the U.S. *Federal Register*, with the United States and Turkey. The United States and Turkey provided the TMB with a joint communication containing information concerning this restraint. The TMB concluded that the parties had not provided the TMB enough information about the agreement establishing this restraint to allow it to determine if the restraint was in conformity with the provision of the ATC. TMB documents are available on the WTO's web site: <http://www.wto.org>. Documents are filed in the Document Distribution Facility under the document symbol "G/TMB." The TMB's annual report to the General Council for 2000 appears as document G/L/318.

### **Prospects for 2001**

The United States will continue to monitor compliance by trading partners of market opening commitments, and will raise concerns regarding these commitments in the TMB or other WTO fora, as appropriate. The United States will also pursue further market openings, including in the negotiation of new Members'

accessions to the WTO. In addition, the United States will continue to respond to surges in imports of textile products which cause or threaten serious damage to U.S. domestic producers. The United States will also continue efforts to enhance cooperation with U.S. trading partners and improve the effectiveness of customs measures to ensure that restraints on textile products are not circumvented through illegal transshipment or other means.

### **13. Working Party on State Trading**

#### **Status**

Article XVII of GATT 1994 requires governments to place certain restrictions on the behavior of their trading firms and on private firms to which they accord special or exclusive privileges to engage in importation and exportation. Among other things, Article XVII requires governments to ensure that these "state trading enterprises, (STE)," act in a manner consistent with the general principle of non-discriminatory treatment; e.g., to make purchases or sales solely in accordance with commercial considerations, and to abide by other GATT disciplines. To address the ambiguity regarding which types of firms fall within the scope of "state trading enterprises," agreement was reached in the Uruguay Round on "The Understanding on the Interpretation of Article XVII." It provides a working definition and instructs Members to notify all firms in their territory that fall within the agreed definition, whether or not such enterprises have imported or exported goods.

A WTO working party was established to review the notifications and their adequacy and to develop an illustrative list of relationships between governments and state trading entities, and the kinds of activities engaged in by these enterprises. All Members are required under Article XVII of GATT 1994 and paragraph 1 of the Understanding to submit annually notifications of their state trading activities.

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The Uruguay Round ensured, for the first time, that the operation of agricultural state trading entities would be subject to international scrutiny and disciplines. Agricultural products were effectively outside the disciplines of GATT 1947, thereby limiting the scrutiny of state trading entities since many state trading entities direct trade in agricultural products. For example, the lack of tariff bindings on most agricultural products in most countries also limited the scope of GATT 1947 disciplines that could be brought to bear on state trading entities (e.g., importing state trading entities could capriciously adjust the import duty and/or domestic mark-up on imported products.)

The WTO Agreement on Agriculture marked an important step in bringing the activities of agricultural state trading entities under the same disciplines that apply to industrial products. All agricultural tariffs (including tariff-rate quotas) are now bound. While further work is needed on the administration of tariff-rate quotas, bindings do act to limit the scope of state traders to manipulate the tariff import system. Likewise, the disciplines on export competition, including value and quantity ceilings on export subsidies, apply fully to state trading entities. U.S. agricultural producers and exporters have expressed concerns about the operation of certain state trading entities, particularly single-desk importers or exporters of agricultural products.

#### **Major Issues in 2000**

New and full notifications were first required in 1995 and, subsequently, every third year thereafter, while updating notifications are to be made in the intervening years, indicating any changes. By November 2000, new and full notifications for 1995 were received from 59 Members and for 1998 from 33 Members. Since 1996, Members have submitted 116 updating notifications.

The working party held two formal meetings; one in July and one in November 2000, to review Member notifications and to continue

work on the illustrative list. During the year, the working party reviewed 49 notifications, including eleven new and full notifications. At both formal meetings, the Chairman made statements concerning the need for timely compliance with notification requirements. At the July meeting of the working party, it was decided that the Chairman would write to the 53 Members who had yet to make a state trading notification and urge them to do so. Most of those Members are small, developing countries.

#### **Prospects for 2001**

The three areas of discipline in the WTO Agreement on Agriculture – market access, export competition and domestic support – provide the basis on which to pursue further reform in the mandated negotiations on agriculture. Several countries identified issues to be addressed in the negotiations related directly to measures used by state trading entities, such as in tariff-rate quota administration or export competition. The working party will contribute to the ongoing discussion of these and other state trading issues, including through its review of new notifications and its examination of what further information might be appropriate to notify to enhance transparency of state trading entities. In anticipation of more detailed negotiations on agriculture during the year, the working party also will intensify efforts to improve the notification record.

#### **C. Council for Trade in Services**

##### **Status**

The General Agreement on Trade in Services (GATS) is the first multilateral, legally enforceable agreement covering trade and investment in the services sector. It is designed to reduce or eliminate governmental measures that prevent services from being freely provided across national borders or that discriminate against locally-established service firms with

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foreign ownership. The Agreement provides a legal framework for addressing barriers to trade and investment in services. It includes specific commitments by WTO Members to restrict their use of those barriers and provides a forum for further negotiations to open services markets around the world. These commitments are contained in national schedules, similar to the national schedules for tariffs. The Council for Trade in Services (CTS) oversees implementation of the GATS and reports to the General Council.

### **Major Issues in 2000**

The major activity of the Council this year has been pursuit of the Built-In-Agenda (BIA) negotiations which are described at the outset of this chapter. In addition to the BIA, the CTS is conducting three previously-agreed reviews. The GATS requires two of these reviews – a review of exemptions from most-favored-nation treatment that WTO Members entered upon joining the WTO, and a review of the exclusion of most air transport services from the scope of the GATS.

As stipulated in the GATS, the MFN exemptions review provided an opportunity for countries to provide information on “whether the conditions which created the need for the exemption still prevail.” In response to questions posed by a small number of other WTO Members including Australia, the European Communities, Hong Kong, Japan, and Korea, the United States explained the policy, statutory, or other reasons for U.S. MFN exemptions, and further explained that the relevant conditions still existed. Most other WTO Members provided comparable explanations as well.

The air transport review, required in the GATS Annex on Air Transport Services, will continue into 2001, and is looking at “developments in the air transport sector and the operation of this Annex with a view to considering the possible further application of the Agreement in this

sector.” While a small number of countries have advocated changes to the current exclusion, to date the United States has taken the position that bilateral and plurilateral venues outside the WTO have proven to be effective in promoting U.S. interests in this sector.

The third review, regarding the status of basic telecommunications accounting rates under GATS MFN provisions, was provided in the course of the basic telecommunications negotiations and will continue into 2001. The United States has agreed with the view that Members should continue to refrain from challenging the MFN-consistency of accounting rates.

Separately, at the initiative of the United States, the CTS took steps to improve access to “inquiry points” and “contact points” that countries established pursuant to Articles III and IV, respectively, and is considering steps to improve review of preferential free trade agreements for their consistency with countries’ GATS obligations.

### **Prospects for 2001**

WTO Members have agreed to use the March 2001 CTS meeting for a “stocktaking” of progress to date in the first phase of the negotiations. More importantly, the March meeting will consider how best to move forward in the second phase of the negotiations.

The CTS will take up formal discussion of U.S. and other negotiating proposals beginning with its March meeting as well. These discussions will mark the start of the more substantive phase of the negotiations.

#### **1. Agreement on Basic Telecommunications Services**

##### **Status**

The WTO Agreement on Basic Telecommunication Services, which came into

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force in February 1998, opened over 95 percent of the world telecommunications market, by revenue, to competition. The range of services and technologies covered by the agreement is vast – from submarine cables to satellite systems, from broadband data to cellular services, from business networks based on the internet to technologies designed to bring low-cost access for under-served rural communities. The majority of WTO Members have made regulatory as well as market access commitments, ensuring adherence to a multilateral framework for promoting competition in this sector. Although Brazil, the Philippines, and Papua New Guinea have made such commitments, they are still in the process of ratifying the accord.

Through the Agreement on Basic Telecommunications Services, the United States has largely succeeded in shaping an international consensus, unthinkable five years ago, that telecommunications monopolies must be replaced with competitive markets for any economy to enjoy the benefits of the digital era.

Accordingly, WTO Members around the world are rewriting rules to permit effective competition and to promote the growth of new markets. The results have exceeded our trading partners' expectations: usage of telecommunications networks has increased as prices have dropped, fueling new services and introducing new efficiencies throughout economies. With demand for advanced services, including the internet, not being met by traditional suppliers, new entrants willing to innovate with different technologies are creating markets that simply would not have developed had control of other nations' networks remained in the hands of monopolists.

As a result of this Agreement, U.S. firms have invested billions of dollars abroad, extending their networks, bringing down the cost of communications for U.S. consumers and businesses, and laying the infrastructure for global electronic commerce. The experience

U.S. firms have gained in developing competitive markets in the United States has provided an enormous advantage in these newly opened markets, allowing them to bring to these markets the same innovation and efficiency U.S. consumers have long enjoyed. Opening foreign markets has had immediate benefits for U.S. consumers and businesses as well. Prices for calls to several competitive markets differed little from domestic long-distance prices. For instance, calls to Canada now cost the same as those within the U.S., and those to the UK, Germany, and Japan are as low as seven to eleven cents, close to domestic long distance rates.

Growth in demand for international voice and data services, especially for the internet, has led to massive investments in submarine cable and the development of new radio-based mobile systems. These new infrastructures will provide quantum increases in transmission capacity. Lower prices made possible by this increased capacity are in turn fueling further demand for telecommunications services, setting the stage for global growth worth several hundreds of billions of dollars in this sector over the next five years.

Often overlooked is the fact that the growth in new services stimulated by open markets has stimulated a boom in equipment sales. U.S. manufacturers have been major beneficiaries in the growth of a global market for telecommunications equipment, which is projected to grow at an average annual rate of 15 percent to reach over \$400 billion in 2001. This spending is largely dedicated to investment in new networks, or upgrades to existing networks, driven by competitive pressures.

### **Major issues in 2000**

In 2000, the Agreement's pro-competitive policies led to deep reductions in end-user prices for international and other services around the world, and to the explosion in global capacity made available for internet and other

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services. Investment opportunities increased dramatically in developed countries due to the Agreement's open-market requirements. Governments have recognized the value of reducing the governmental role in the supply of telecommunications services, and have continued to divest shares in government-owned operators – including in Germany, Greece, Israel, Japan, Korea, Norway and Taiwan.

Newly-acceding WTO Members also made broad-based telecommunications commitments in 2000. In addition, a number of current Members liberalized further (e.g., Hong Kong, Korea, Singapore, India) to keep pace with the global competition for investment in this sector. Dominica also ratified the Basic Telecommunications Agreement.

The United States addressed implementation problems in Canada, Germany, Israel, Japan, Mexico, Peru, South Africa, and the UK through ongoing bilateral consultations, using WTO disciplines as the framework for resolving market access issues. The United States also employed WTO dispute settlement procedures where appropriate, notably in regard to telecommunications trade barriers in Mexico. The United States played a key role in instituting a dialogue in the WTO between trade and regulatory officials and in increasing coordination between the WTO and other multilateral institutions, such as the World Bank. The United States also promoted a Memorandum of Understanding with the International Telecommunications Union. Such agreements are enlisting the help of these institutions in building global support for more vigorous competition in the global telecommunications marketplace.

### **Prospects for 2001**

The global appetite for investment in the telecommunications sector, and U.S. firms' interest in meeting this demand show no sign of abating. Demand for high-capacity (broadband) services on wireline networks and the

development of advanced wireless services (e.g. so-called Third Generation services) ensure that competitive opportunities, and the importance of the Agreement as a framework for ensuring market access, will increase.

Given the recent trend in unilateral liberalization, prospects are good that the WTO services negotiations now underway will expand existing commitments to cover a broader range of telecommunications sub-sectors with fewer market access limitations. In regions that were previously not a major market focus (e.g., in less developed countries) there is substantial room for improved commitments.

## **2. Agreement and Committee on Trade in Financial Services**

### **Status**

The Committee on Trade in Financial Services (CTFS) met five times in 2000. It serves as a forum for discussion of important issues related to WTO Members' existing liberalization commitments and for technical approaches regarding further liberalization.

### **Major Issues in 2000**

Among other developments, the United States circulated a statement with initial ideas on technical approaches for further financial services liberalization. This paved the way, in December 2000, for the United States to submit a financial services sectoral proposal to the GATS Council in special session.

The United States also worked aggressively to maintain pressure on the ten remaining countries that have not ratified their commitments under the 1997 Financial Services Agreement – the Fifth Protocol to the GATS – to do so as quickly as possible. During this reporting period, three more countries, Ghana, Nigeria and Kenya, notified their acceptance of the Fifth Protocol. With the three additions, 63 of the original 70 WTO Members making improved commitments

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as part of the 1997 negotiations, have now accepted the Protocol. Progress was reported by most of the remaining seven.

Delegations also undertook initial consideration of a proposal from Japan to enable the CTFS to receive reporting from principal international financial services regulatory bodies on current work. Some discussion also took place on an Australian informal note regarding the definition of the "Prudential Measures" clause found in the Financial Services Annex. In addition, several WTO Members reported on developments in their financial services regimes, including a U.S. description of further financial services modernization ("Gramm-Leach-Bliley").

### **Prospects for 2001**

Work of the CTFS will pick up pace in 2001. The CTFS will provide the opportunity for WTO Members to hold a more intensive discussion on financial services sectoral proposals or other proposals containing financial services elements that have been, or will be tabled, as part of the current GATS negotiations. At an appropriate time, it is also expected to resume its previous role overseeing the market access negotiations in this sector.

### **3. Working Party on Domestic Regulation**

#### **Status**

GATS Article VI, on Domestic Regulation, directs the CTS to develop any necessary disciplines "with a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services." A 1994 Ministerial Decision had assigned priority to the professional services sector, for which the Working Party on Professional Services (WPPS) was established. The WPPS developed Guidelines for the Negotiation of Mutual

Recognition Agreements in the Accountancy Sector, adopted by the WTO in May 1997. The WPPS completed Disciplines on Domestic Regulation in the Accountancy Sector in December 1998. (The texts are available at [www.wto.org/english/news\\_e/pres97\\_e/pr73\\_e.htm](http://www.wto.org/english/news_e/pres97_e/pr73_e.htm) and [www.wto.org/english/news\\_e/pres98\\_e/pr118\\_e.htm](http://www.wto.org/english/news_e/pres98_e/pr118_e.htm), respectively.)

After the completion of the Accountancy Disciplines, in May 1999 the CTS established a new Working Party on Domestic Regulation (WPDR) which also took on the work of the predecessor WPPS and its existing mandate. Using the experience from accountancy, the WPDR is now charged with determining whether these or similar disciplines may be generally applicable across sectors as appropriate for individual sectors. The working party is to report its recommendations to the CTS no later than the conclusion of the services negotiations.

### **Major Issues in 2000**

With respect to development of generally applicable regulatory disciplines, Members have discussed needed improvements in GATS transparency obligations. In May, the United States presented a submission aimed at improving GATS provisions in this area. The OECD Secretariat also presented a paper reflecting relevant conclusions from OECD work on regulatory reform.

Members also have begun discussion of possible disciplines aimed at ensuring that regulations are not more trade restrictive than necessary to fulfill legitimate objectives for the full range of service sectors. The United States has taken a deliberate approach in this area and has supported discussion first of problems or restrictions for which new disciplines would be appropriate.

To continue work on professional services, Members agreed to solicit views on the

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accountancy disciplines from their relevant domestic professional bodies, addressing whether other professions would favor use of the accountancy disciplines with appropriate modifications. As agreed, Members contacted their domestic professional bodies, requesting comments on the applicability of the accountancy disciplines to their professions. In various countries some professions found that the disciplines, with perhaps a few modifications, could apply to their professions. In several countries some professions found otherwise. Given the large number of professions and Member countries, the information thus far is incomplete and work is continuing. Members also reviewed a list of international professional organizations, compiled by the Secretariat from Member submissions, and are considering whether the organizations listed are appropriate to consult regarding the applicability of accountancy disciplines to those professions.

#### **Prospects for 2001**

The working party will continue discussion of possible regulatory disciplines, both horizontal and sector-specific, to promote the GATS objective of effective market access.

The work program on accounting was an important step in the multilateral liberalization of this important sector. While the United States was disappointed that Members ultimately were not able to agree to early application of the accountancy disciplines, the disciplines remain open for improvement before they are to become effective at the conclusion of the current GATS negotiations. The United States will be working to improve the accountancy disciplines, and working with interested U.S. constituencies to consider their applicability to other professions.

#### **4. Working Party on GATS Rules**

##### **Status**

The Working Party on GATS Rules was established to determine whether the GATS should include new disciplines on safeguards, government procurement, or subsidies.

##### **Major Issues in 2000**

Of the three issues, the GATS established a deadline only for safeguards. In 2000, this deadline was again extended, to March 2002, reflecting continuing disagreement among WTO Members on both the desirability and feasibility of a safeguards provision similar to the WTO provisions for goods.

Discussions were more focused in 2000 than in previous years, benefitting from submissions by ASEAN, including a proposed draft text. Discussion among Members addressed concepts including domestic industry, acquired rights, modal application of safeguards, situations justifying safeguards, and indicators and criteria to determine injury and causality. All such discussions were without prejudice to the question of whether the GATS should include such provisions.

Regarding government procurement, work has continued on definitional questions relevant to services and how such disciplines would relate to the results of ongoing negotiating in the WTO Working Group on Transparency in Government Procurement.

With respect to subsidies negotiations, the Committee is working through a "checklist" of issues to help understand better whether new provisions are appropriate in this area, including identification of trade distortions caused by subsidy-like measures. Argentina and Hong Kong have recently become more active in advocating new disciplines in this area. The United States has asked Members that favor new disciplines to provide more information on perceived trade distortions. In October, USTR solicited comments from the private and non-governmental sectors regarding U.S. interests in this area.

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## **Prospects for 2001**

Information-gathering and discussion of all three issues will continue. It is likely that discussions will become more concrete in 2001, as countries consider the implications of any new disciplines in the context of the GATS market access negotiations.

## **5. Committee on Specific Commitments**

### **Status**

The Committee on Specific Commitments examines ways to improve the technical accuracy of scheduling commitments, primarily in preparation for the GATS negotiations, and oversees application of the procedures for the modification of schedules under Article XXI of the GATS. The Committee also oversees implementation of commitments in country schedules in sectors for which there is no sectoral body, currently all sectors but financial services.

### **Major Issues in 2000**

The Committee has made progress revising guidelines that were developed by the GATT Secretariat for use in scheduling country commitments during the Uruguay Round; the purpose of the scheduling guidelines is to improve transparency and consistency of new commitments. By the end of 2000, the Committee had reached informal agreement on new provisions addressing most outstanding issues, with only a small number of more difficult issues remaining.

The Committee also continued work on improving classification of services in individual sectors for which problems have been identified. The United States has advocated changes in express delivery services, energy services, environmental services, and legal

services and has made submissions in each of these areas.

The Committee reached agreement on procedures for the certification of rectifications or improvements to country schedules – that is, procedures allowing WTO Members to assess the impact of purported improvements to a country's GATS commitments under Article XXI.

Finally, at the Committee's direction, the Secretariat has completed compilation of an electronic "looseleaf" version of each Member's GATS schedule, incorporating, for example, the results of the financial services and basic telecommunications negotiations in single, consolidated country schedules. This version is primarily for ease of reference and would not have legal status in the WTO. It will be made available to the public in CD-ROM format as well as on the WTO website.

## **Prospects for 2001**

The Council set March 2001 as a "best endeavor deadline" for completion of the work on classification and scheduling guidelines.

## **D. Council on Trade-Related Aspects of Intellectual Property Rights**

### **Status**

The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) is a multilateral agreement that sets minimum standards of protection for copyrights and neighboring rights, trademarks, geographical indications, industrial designs, patents, integrated-circuit layout designs, and undisclosed information. Minimum standards are established by the TRIPS Agreement for the enforcement of intellectual property rights in civil actions for infringement and, at least in regard to copyright piracy and trademark counterfeiting, in criminal actions and actions at the border. The TRIPS Agreement also

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requires, with very limited exceptions, that WTO Members provide national and most-favored-nation treatment to the nationals of other WTO Members in regard to the protection and enforcement of intellectual property. In addition, the TRIPS Agreement is the first multilateral intellectual property agreement that is enforceable between governments through WTO dispute settlement provisions.

The WTO TRIPS Council monitors implementation of the TRIPS Agreement, provides a forum in which WTO Members can consult on intellectual property matters, and carries out the specific responsibilities assigned to the Council in the TRIPS Agreement. The TRIPS Agreement is important to U.S. interests and has yielded significant benefits for U.S. industries and individuals, from those engaged in the pharmaceutical, agricultural chemical, and biotechnology industries to those producing motion pictures, sound recordings, software, books, magazines, and consumer goods. In 2000, the TRIPS Council held four formal meetings.

### **Major Issues in 2000**

Although the TRIPS Agreement entered into force on January 1, 1995, some obligations are phased in based on a country's level of development (developed country Members were required to implement by January 1, 1996; developing country Members generally had to implement by January 1, 2000; and least-developed country Members must implement by January 1, 2006). A general "standstill" obligation, and an obligation on those Members that fail to provide patent protection for pharmaceuticals and agricultural chemicals to provide a patent "mailbox" and to provide an exclusive marketing rights systems, became effective on January 1, 1995. Obligations to provide "most favored nation" and national treatment became effective on January 1, 1996 for all Members.

As a result of the Agreement's staggered implementation provisions, the TRIPS Council during 2000: (1) monitored the Agreement's implementation by developing country Members and newly-acceding Members; (2) provided assistance to developing country Members so they can fully implement the provisions of the Agreement; and (3) concentrated on institution building, both internally and with the World Intellectual Property Organization (WIPO). During the TRIPS Council meetings, the United States continued to press for full implementation of the TRIPS Agreement by developing country Members and participated actively during the reviews of legislation of 20 Members.

*TRIPS-related WTO Dispute Settlement Cases:* During the year, the United States continued to pursue consultations on enforcement issues with a number of developed countries, including the failure of Denmark to provide provisional relief in civil enforcement proceedings, the European Communities for its failure to provide national treatment to the protection of geographical indications, and Greece, regarding its failure to take appropriate action to stop television broadcast piracy in that country. As a result of Ireland's enactment of needed amendments to its copyright law, the United States and Ireland announced resolution of the WTO case brought by the United States over Ireland's failure to comply with the TRIPS Agreement. Also, the WTO Appellate Body decided in favor of the United States in a dispute with Canada regarding the term of protection for patents applied for prior to October 1, 1989, and recommended that Canada implement the recommendations of the dispute settlement panel within a "reasonable time." As no agreement was reached on what timeframe was reasonable, the United States is pursuing the issue through WTO arbitration.

Also during the year, the United States initiated disputes against Argentina and Brazil regarding patent and data protection issues. The United States is additionally considering the possibility of future dispute settlement cases concerning the

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practices of Australia, the Czech Republic, the Dominican Republic, Egypt, India, Israel, the Philippines and Uruguay. We will continue to consult with all these countries in an effort to encourage them to resolve outstanding TRIPS compliance concerns as soon as possible. We will also gather data on these and other countries' enforcement of their TRIPS obligations and assess the best cases for further action if consultations prove unsuccessful.

*Review of Developing Country Members' TRIPS Implementation:* During 2000, the TRIPS Council reviewed the laws of the following Members: in June - Belize, Cyprus, El Salvador, Hong Kong, Indonesia, Israel, Korea, Macau, Malta, Mexico, Poland, Singapore, and Trinidad and Tobago; in November - Chile, Colombia, Estonia, Guatemala, Kuwait, Paraguay, Peru, and Turkey. In addition, now that the majority of obligations for developing country Members must be implemented, the TRIPS Council called for developing country Members to respond to the questionnaires already answered by developed country Members regarding their protection of geographical indications and implementation of the Agreement's enforcement provisions, and to provide detailed information on their implementation of Article 27.3(b) of the Agreement that permits Members to exclude from patentability plants and animals and essentially biological processes for producing plants and animals.

*Geographical Indications:* During 2000, the Council continued negotiations under Article 23.4 on a multilateral system for notification and registration of geographical indications for wines and spirits, intended to facilitate protection of such indications. In 1999, the European Communities submitted a proposal for such a system under which Members would notify the WTO of their geographical indications and other Members would have one year in which to oppose any such notified geographical indications. If not opposed, the notified geographical indications would be registered and all Members would be required to

provide protection as required under Article 23. The United States, Canada, Chile and Japan introduced an alternative proposal under which Members would notify their geographical indications for wines and spirits for incorporation in a register available to all Members on the WTO website. Under this proposal, Members choosing to participate in the system would agree to consult the notifications made on the website when making decisions regarding registration of related trademarks or otherwise providing protection for geographical indications for wines and spirits. Implementation of this proposal would not place obligations on Members beyond those already provided under the TRIPS Agreement or place undue burdens on the WTO Secretariat. In 2000, the European Communities introduced a revision of its original proposal, and Hungary introduced a proposal for a formal opposition system. The United States continues to support the "collective" proposal that it sponsored with Canada, Chile and Japan. Other delegations including, Argentina, Australia, Brazil, Mexico and New Zealand have also expressed support for the U.S. approach. The United States will aggressively pursue additional support for this approach on a multilateral register in 2001.

A review of the implementation of the application of the TRIPS provisions on geographical indications is underway pursuant to Article 24.2 of the Agreement. The United States urged countries that have not yet provided information on their regimes for the protection of geographical indications to do so. The United States also supported a proposal made by New Zealand in 2000 that the Council conduct the review by addressing each article of the TRIPS Agreement covering geographical indications in light of the experience of Members. Some Members have sought to use the review to initiate negotiations to expand enhanced geographical indication protection under Article 23 for products other than wines and spirits. The United States, supported by several other Members, opposes such efforts to initiate further negotiations in this area, noting

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that there is no provision of the Agreement that provides a mandate for such negotiations.

*Review of Current Exceptions to Patentability for Plants and Animals:* TRIPS Article 27.3(b) authorizes Members to except plants and animals and biological processes from patentability, but not micro-organisms and non-biological and microbiological processes. In 1999, the TRIPS Council initiated a review of this Article as called for under the Agreement and, because of the interest expressed by some Members, discussion of this article continued in 2000. The 1999 review addressed the practices of those Members that were already obligated to implement the provisions and the Secretariat, to facilitate the review, prepared a synoptic table so that the descriptions of Members' practices could be compared easily. This portion of the review revealed that there was considerable uniformity in the practices of the Members who have implemented their obligations. During the discussion, the United States noted that the ability to patent micro-organisms and non-biological and microbiological processes, as well as plants and animals, has given rise to a whole new industry that has brought inestimable benefits in health care, agriculture, and protection of the environment to those countries providing patent protection in this area. In 2000, the United States called for developing country Members to provide this same information so that the Council will have a more complete picture if the discussion of this article is to continue. Regrettably, some other Members have chosen not to provide such information, but rather have raised topics in the discussion that fall outside the scope of Article 27.3(b), such as the relationship between the TRIPS Agreement and the Convention on Biological Diversity, and traditional knowledge. While maintaining the view that these issues are beyond the scope of the review of Article 27.3(b), and that the discussion should focus on relevant information regarding Members' implementation of the provision, the United States has responded by providing two papers expressing its views on these topics. The

United States will continue to make every effort to refocus the discussion in TRIPS Council on issues relevant to Article 27.3(b).

*Non-violation:* Throughout the year, some WTO Members continued to raise questions on the operation of non-violation nullification and impairment complaints in the context of the TRIPS Agreement, and called for the Council to define the appropriate "scope and modalities" for addressing such complaints. They argued that the possibility of such complaints, now that the moratorium on such cases has expired, created uncertainty. As in past years, the United States continued to argue that a "non-violation" provision in TRIPS created no more uncertainty than was the case with "non-violation" provisions in other WTO agreements. In addition, the United States re-stated its long-held view that no "scope and modalities" need be developed by the TRIPS Council because past non-violation disputes and the provision in the Dispute Settlement Understanding on non-violation complaints provide sufficient guidance for any panel hearing such a dispute. The United States will continue to advocate forcefully its position on non-violation complaints.

*Electronic Commerce:* The TRIPS Council continues the work started last year identifying the provisions of the TRIPS Agreement most relevant to electronic commerce and exploring how these provisions apply in the digital world. In 2000, the Council submitted an update of its 1999 report to the General Council, identifying the most relevant Articles and noting that the subject should be pursued further. The United States will continue to support discussion of the application of the TRIPS Agreement in the digital environment.

*Further Reviews of the TRIPS Agreement:* Article 71.1 calls for a review of the implementation of the Agreement, beginning in 2000. The Council currently is considering how the review should best be conducted in light of the Council's other work.

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## Prospects for 2001

In 2001, the TRIPS Council will continue to focus on its built-in agenda. The review of developing country Members' implementation will take considerable time. Yet to be reviewed are: in April 2001 - Bolivia, Brazil, Cameroon, Congo, Dominican Republic, Grenada, Guyana, Jordan, Namibia, Papua New Guinea, Saint Lucia, Surinam, and Venezuela; in June - Antigua and Barbuda, Argentina, Bahrain, Botswana, Costa Rica, Côte d'Ivoire, Dominica, Egypt, Fiji, Georgia, Ghana, Honduras, Jamaica, Kenya, Mauritius, Morocco, Nicaragua, Philippines, St. Kitts and Nevis, and United Arab Emirates; and in November - Barbados, Brunei Darussalam, Cuba, Gabon, India, Malaysia, Nigeria, Pakistan, Qatar, St. Vincent and Grenadines, Senegal, Sri Lanka, Swaziland, Thailand, Tunisia, Uruguay, and Zimbabwe.

Additional responses to the Article 24.2 questionnaire on geographical indications should provide a broader picture of developed and developing country Members' regimes for the protection of geographical indications. That broader picture will ensure that any system of notification and registration of geographical indications for wines and spirits negotiated under Article 23.4 can accommodate the varied regimes of Members. Some Members will likely wish to continue the review under Article 27.3(b). In that review, the United States will continue to provide its views forcefully, in writing. Despite the U.S. position and arguments, it is also likely that the Council will continue to discuss the scope and modalities of possible non-violation nullification and impairment disputes. The United States likewise will continue to provide its views forcefully, in writing. The Council and developed Members will also continue efforts to assist developing country Members to implement their obligations under the Agreement fully in the shortest possible time. The Council will also begin its review under Article 71.1 in a manner to be decided.

Continued U.S. objectives for 2001 are:

- < to resolve differences through dispute settlement consultations and panels where appropriate;
- < to continue efforts to ensure full TRIPS implementation by developing country Members;
- < to participate actively in the review of formal notifications of intellectual property laws and regulations ensuring their consistency with TRIPS obligations by Members;
- < to ensure no weakening of the Agreement;
- < to ensure that no change in obligations in relation to geographical indications is made outside the context of a new round of multilateral trade negotiations; and
- < to further develop Members' views on the relationship between the TRIPS Agreement and e-commerce.

## E. Other General Council Bodies/Activities

### 1. Trade Policy Review Body

#### Status

The Trade Policy Review Body (TPRB), a subsidiary body of the General Council, was created by the Marrakesh Agreement establishing the WTO to administer the Trade Policy Review Mechanism (TPRM). The TPRM has served as a valuable resource for improving transparency in WTO Members' trade and investment regimes and in ensuring their adherence to WTO rules. The TPRM examines national trade policies of WTO Members on a schedule designed to cover all WTO Members on a frequency determined by trade volume. The process begins with an independent report on a Member's trade policies

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WTO Members in the TPRB at a session in which representatives of the country under review discuss reports on its trade policies and practices and answer questions. The purpose of the process is to strengthen Member observance of WTO provisions and provide a smoother functioning of the multilateral trading system. A number of smaller countries have found the preparations for the review helpful in improving their own trade policy formulation and coordination.

The current process reflects changes in the instrument, which was created in 1989, to streamline it and to give it more coverage and flexibility. Reports now cover services, intellectual property and other issues addressed by WTO Agreements. The reports issued for the reviews are available on the WTO web site.

### **Major Issues in 2000**

During 2000, the TPRB conducted fifteen policy reviews, which included Bahrain, Bangladesh, Brazil, Canada, European Communities, Iceland, Japan, Kenya, Korea, Liechtenstein, and Switzerland, Norway, Peru, Poland, Singapore, and Tanzania. Three countries were reviewed for the first time, including one least developed country, Tanzania. By the end of 2000, 135 reviews (127 if reviews were counted as single reviews) have been conducted since the formation of the TPR covering 88 Members, counting the European Communities as one. The Members reviewed represent 83 percent of world merchandise trade and 60 percent of the total membership of the WTO. Of the Members reviewed since 1995, 11 are least developed countries.

Despite the importance of the TPRM, questions continue to be raised about the ever increasing amount of resources needed to conduct the reviews. For many lesser developed countries, however, the reports represent the first comprehensive analysis of their commercial policies, laws and regulations and have

implications and uses beyond the meeting of the TPRB. Some Members have used the Secretariat's Report as a national trade and investment promotion document, while others have indicated that the report has served as a basis for internal analysis of inefficiencies and overlaps in domestic laws and government agencies. For other trading partners and for U.S. businesses, the reports are a dependable resource for assessing the commercial environment of the majority of WTO Members. In the coming year, the United States will give some additional attention to the question of resources for the TPRM and potential improvements.

Reviews have emphasized the macroeconomic and structural context for trade policies, including the effects of economic and trade reforms, transparency with respect to the formulation and implementation of policy, and the current economic performance of Members under review. Another important issue has been the balance between multilateral, bilateral, regional and unilateral trade policy initiatives; in particular, the priorities given to multilateral and regional arrangements have been important systemic concerns. Closer attention has been given to the link between Members' trade policies and the implementation of WTO Agreements, focusing on Members' participation in particular Agreements, the fulfilment of notification requirements, the implementation of TRIPS, the use of antidumping measures, government procurement, state-trading, the introduction by developing countries of customs valuation methods, and the adaptation of national legislation to WTO requirements. Considering that Trade Ministers' reaffirmed a commitment to the observance of internationally recognized core labor standards in Singapore, and made observance of labor standards a legitimate topic for discussion in the WTO, the United States delegation routinely made observations and raised questions relative to labor standards with nearly all those WTO Members which underwent reviews in 2000.

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## Prospects for 2001

The TPRM is an important tool for monitoring and surveillance, in addition to encouraging WTO Members to meet their GATT/WTO obligations and to maintain or expand trade liberalization measures. The program for 2001 contains provision for reviews of 21 Members, including Brunei, Cameroon, Costa Rica, Czech Republic, Gabon, Ghana, Macau, Madagascar, Malaysia, Mauritius, Mozambique, the members of the Organization of East Caribbean States, Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and the Grenadines (a grouped review), Pakistan, Slovak Republic, Uganda, and the United States. The U.S. TPR is scheduled for September 2001. (The EC, Japan and Canada, for scheduling reasons, were all reviewed in 2000.)

## 2. Committee on Trade and Environment

### Status

The Committee on Trade and Environment (CTE) was created by the WTO General Council on January 31, 1995 pursuant to the Marrakesh Ministerial Decision on Trade and Environment. The mandate of the CTE is to make appropriate recommendations to the Ministerial Conference as to whether, and if so what, changes are needed in the rules of the multilateral trading system to foster positive interaction between trade and environment measures and to avoid protectionist measures.

### Major Issues in 2000

The WTO Committee on Trade and Environment met three times in 2000. The United States contributed to this process by, *inter alia*, working to build a consensus that both important trade and environmental benefits can be achieved by addressing fisheries subsidies that contribute to overfishing, and through the liberalization of trade in environmental goods and services.

*Multilateral Environmental Agreements (MEAs):* Inclusion of trade measures in MEAs has been and will continue to be essential to meeting the objectives of certain agreements but may raise questions with respect to WTO obligations. Over the course of the last two years, the CTE helped strengthen WTO Members' understanding of the trade provisions of MEAs by holding meetings with representatives from a number of MEA Secretariats. These representatives briefed the committee members on recent developments in their respective agreements. In addition, in October 2000, the UN Environmental Programme, the CTE, and certain MEA Secretariats held an informal meeting on the synergies between the WTO Agreements and MEAs. There continue to be sharp differences of view within the CTE on whether there is a need to clarify WTO rules in this area. The United States holds the view that the WTO broadly accommodates trade measures in MEAs.

*Market Access:* Work in this area has focused on the environmental implications of reducing or eliminating trade-distorting measures. There is a broad degree of consensus in the Committee that trade liberalization, in conjunction with appropriate environmental policies, can yield environmental benefits. The Committee has discussed in depth the potential environmental benefits of reducing or eliminating fisheries subsidies, drawing on submissions by Committee members including the United States. Discussion in CTE also has touched upon the benefits of improving market access for environmental services and goods. In addition, over the course of the last two years, the Committee has discussed the environmental implications of agricultural and services trade liberalization and liberalization in other sectors, including forestry and energy.

*TRIPS:* The Committee has had brief discussions of the relationship between the TRIPS Agreement and the environment. A few countries have advanced arguments for

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consideration of changes to the TRIPS Agreement to address perceived contradictions between the WTO and the Convention on Biological Diversity. The United States has made clear its view that there are no contradictions between the WTO and the Convention on Biological Diversity.

*Relations with NGOs:* The United States, joined by several other Members, has emphasized the need for further work to develop adequate mechanisms for involving NGOs in the work of the WTO and adequate public access to documents. In the Third Ministerial process, the United States proposed that the WTO General Council's 1996 agreement on Guidelines for Relations with NGOs be reviewed and substantially improved, and the United States continues to lead efforts at enhancing the WTO's transparency, including through the derestriction of documents.

### **Prospects for 2001**

The CTE is scheduled to meet three times in 2001. The Committee will continue to play an important role in bringing together government officials from trade and environment ministries to build a better understanding of the complex links between trade and environment. Among other things, this has helped to address the serious problem of lack of coordination between trade and environment officials in many governments. The CTE also will continue to engage in important analytical work, including in an effort to identify areas in which trade liberalization holds particular potential for yielding environmental benefits. Finally, the Committee will advance discussion of the broad range of trade and environment issues on its agenda, including assessments or reviews of the environmental effects of trade liberalization, transparency, and the relationship between MEAs and the WTO.

## **3. Committee on Trade and Development**

### **Status**

The Committee on Trade and Development (CTD) was established in 1965 to strengthen the GATT's role in the economic development of less-developed GATT Contracting Parties. In the WTO, the Committee on Trade and Development is a subsidiary body of the General Council. The Committee provides developing countries, which comprise two-thirds of the WTO's membership, an opportunity to focus on trade issues from a development perspective, in contrast to the other committees in the WTO structure which are responsible for the operation and implementation of particular agreements. The CTD offers a unique venue for Members to discuss trade issues in the broader context of development. The Committee's discussion has generated considerable interest, debate, and a variety of view points. Among subjects the Committee has discussed are the benefits of trade liberalization to development prospects, the role of technical assistance and capacity building in this effort and electronic commerce pursuant to the 1998 Ministerial decision on e-commerce.

### **Major Issues in 2000**

The Committee held four formal meetings and three seminars in 2000. The Committee's work focused on the following areas: review of the special provisions in the Multilateral Trading Agreements and related Ministerial Decisions in favor of developing country Members (in particular least-developed countries); participation of developing countries in world trade; implementation of WTO agreements, technical cooperation and training, concerns and problems of small economies, development dimensions of electronic commerce; market access for least-developed countries; and the generalized system of preferences. The Committee seminars focused on special and differential treatment, the implementation of WTO Agreements, and the concerns and

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problems of small economies. At the Committee meeting in September 2000, the United States explained recent efforts, such as the African Growth and Opportunity Act, to expand market access for some developing and least-developed countries.

The Committee also discussed the nature of the WTO role in technical assistance and how to collaborate effectively with other international and national agencies in providing and monitoring such assistance. At the Committee meeting in September, the United States submitted a report on U.S. Government initiatives to build trade-related capacity in developing countries. The report, which was compiled by USAID, provides details on the \$600 million worth of trade-related assistance that the United States provides. The report can be viewed on the USTR and USAID websites.

*Sub-Committee on Least-Developed Countries:* The Committee on Trade and Development has a Sub-Committee devoted to the Least-Developed Countries. An element of the Plan of Action for Least Developed Countries agreed to at the 1996 Singapore Ministerial Meeting was the desire to foster an integrated approach to trade-related technical assistance activities for the least-developed countries with a view to improving their overall capacity to respond to the challenges and opportunities offered by the trading system. The result was the Integrated Framework for Trade-Related Technical Assistance (“Integrated Framework”) that seeks to coordinate the trade assistance programs of six core international organizations (the International Monetary Fund, the International Trade Center, the United Nations Conference on Trade and Development, the United Nations Development Program, the World Bank and the WTO). In addition, least developed countries can invite other multilateral and bilateral development partners to participate in the Integrated Framework process. In 2000, the Sub-Committee on Least-Developed Countries of the Committee on Trade and Development continued to focus its work on the

Integrated Framework. This work included communicating with and providing views to the Inter-Agency Working Group, which includes representatives from the six core international organizations on the arrangements for the Integrated Framework.

### **Prospects for 2001**

The Committee on Trade and Development, which is scheduled to meet four times in 2001, will continue its function as the forum for discussion of development issues within the WTO. Particular emphasis is likely to be placed on further improving technical cooperation, special and differential treatment, and participation by developing countries in world trade. The Committee will host three seminars on electronic commerce, developing countries’ access to technology, and policies and strategies for trade and development. The Committee is tracking the rapid developments in e-commerce and encouraging special programs that would provide technical assistance to promote developing countries’ participation in electronic commerce.

The Committee’s Sub-Committee on Least-Developed Countries will also meet four times in 2001. The Sub-Committee will continue to focus on the special needs of and opportunities available to the least developed countries. It will particularly remain interested in learning about increased market access for least developed countries. The Sub-Committee will also hold three seminars: mainstreaming trade into country development strategies, least-developed Members’ implementation of the Customs Valuation Agreement, and a regional seminar on TRIPS. The Sub-Committee may be involved in some of the trade aspects of the third UN Conference on the Least Developed Countries being held in Brussels May 13-20, 2001.

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#### **4. Committee on Balance of Payments Restrictions**

##### **Status**

GATT/WTO rules require any Member imposing restrictions for balance of payments purposes to consult regularly with the BOP Committee to determine whether the use of restrictive measures is necessary or desirable to address its balance of payments difficulties. Full consultations involve a complete examination of a country's trade restrictions and balance of payments situation, while simplified consultations provide more general reviews. Full consultations are held when restrictive measures are introduced or modified, or at the request of a Member in view of improvements in the balance of payments. The Uruguay Round results strengthened substantially the provisions on balance of payments. The BOP Committee works closely with the International Monetary Fund in conducting its consultations.

##### **Major Issues in 2000**

Since entry-into-force of the WTO on January 1, 1995, the WTO BOP Committee has demonstrated that the hard-won new WTO rules provide Members additional, effective tools to enforce obligations under the BOP provisions. During 2000, the Committee held consultations with the Slovak Republic, Romania, Pakistan and Bangladesh. At the September 2000 meeting of the Committee, the Slovak Republic reported that it was progressively reducing the import surcharge it had imposed in 1999 for balance of payments reasons and would eliminate it entirely by the end of the year. At the same meeting, Romania stated it was continuing to reduce the import surcharge it had imposed in 1998 for balance of payments and would eliminate it entirely by the end of the year. At the November meeting of the Committee, Pakistan announced it would implement its existing phase-out plan. Pakistan removed the first tranche of its balance of payments restrictions in December and is

scheduled to remove the remaining restrictions in two tranches in June 2001 and June 2002. At its December meeting, the Committee approved a phase-out plan submitted by Bangladesh to eliminate all of its balance-of-payments restraints on certain textiles in four tranches by January 2005.

##### **Prospects for 2001**

The Committee will consult with Bangladesh in June 2001 and as necessary with other countries maintaining BOP-related restrictions during the year. Additionally, should Members resort to new BOP measures, the WTO provides for a program of rigorous consultation with the Committee. The United States expects the Committee to continue to ensure that WTO BOP provisions are used as intended to address legitimate, serious BOP problems through the imposition of temporary, price-based measures. The Committee will also continue to rely upon the close cooperation with the IMF.

#### **5. Committee on Budget, Finance and Administration**

##### **Status**

WTO Members are responsible for establishing and approving the budget for the organization via the Budget Committee. Traditionally, this is a "hands-on" effort by Members to address the financial matters confronting the institution. The WTO has an annual budget, which is reviewed by the Committee and approved by the General Council. It is the practice in the WTO to take decisions on budgetary issues by consensus. For the 2001 budget, the U.S. assessment rate is 15.631 percent, or approximately \$13 million. Details on the WTO's budget required by Section 124 of the URAA are provided in Annex II.

##### **Major Issues in 2000**

In the course of 2000, it became clear that the continuing expansion of dispute settlement

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activities (particularly in the trade remedies area), the built-in agenda for negotiations on agriculture and services, and the technical needs of developing country Members to meet their five-year WTO implementation commitments, required the Committee to devote much of its time to discussing how to handle proposed increases in 2001 spending. Other issues of significance in 2000 included a decision to change the methodology employed in determining Members' shares of the budget; transition to a performance award system for the WTO staff; and development of guidelines on contributions from non-governmental donors.

*Agreed Budget for 2001:* After considerable debate and delay in reaching a consensus, the Committee proposed, and the General Council approved, a 2001 budget for the WTO Secretariat and Appellate Body of 134,083,610 Swiss Francs (approximately \$84 million). The agreed budget for 2001 represents an increase of about five percent over the approved 2000 budget, with about two percent representing inflation and previously built-in costs increases. The budget debate focused primarily on the Director General's request to bring technical assistance programs for developing countries "on-budget" in order to lend some stability and dependability. Currently, while staffing for technical assistance is provided by the WTO Secretariat, the variable expenses of these programs (mostly for facilities, interpretation and non-Secretariat travel) are largely funded by donations of individual developed countries, including the United States, to the WTO Global Trust Fund for Technical Assistance. The United States and a number of other Members opposed the Director General's proposal to bring such expenses "on-budget" for both systemic and budgetary reasons. In the U.S. case the continued constraints in U.S. funding levels for international organizations is an important concern. The United States agreed to WTO proposals to increase WTO staffing to ensure that the WTO's core operational divisions (market access, agriculture, services, trade

remedies, intellectual property) have sufficient resources to provide necessary expertise to developing countries seeking to implement their commitments. The balance of the small increase over the 2000 budget is largely attributable to the need to hire staff for increased dispute settlement activity at the panel and Appellate Body levels. A sum of 1.5 million Swiss Francs was also appropriated to help address a growing backlog of translation. The appropriation should help ensure that dispute settlement panel reports are released to the membership and the general public more quickly. As a result of the budget agreement, for 2001, the United States owes 20,770,934 Swiss Francs (about \$13 million). Members' assessments are based on the share of WTO Members' trade in goods, services and intellectual property. The current U.S. contribution accounts for 15.631 percent of the total assessments on WTO Members. As the WTO adds new Members, the U.S. assessment will automatically be reduced. At the end of 2000, the accumulated arrears of the United States to the WTO amounted to 3,205,232 Swiss Francs (about \$2 million).

*Methodology for Determining Members' Shares:* Members' assessments have been based on the share of WTO Members' trade in goods, services and intellectual property, as determined by the average trade of each Member over the most recent three-year period for which data are available. In 2000, the Committee considered the concerns of some Members about large variations in assessments from year to year, and the fact that Members were being assessed on different three-year periods because their annual trade data became available at different times. The Committee solved both problems by adopting a new methodology based on the average trade of each Member over a five-year period. To assure uniformity, the fifth year corresponds to the year that is two years before the particular budget year. In other words, for budget year 2001, the U.S. assessment is based on average trade in the years 1995-1999,

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inclusive. The new methodology has not increased the U.S. share.

*Performance Award Program:* At the insistence of the United States and a number of other countries, the WTO is now in the process of moving to a performance-based pay system. This system will replace the practice of staff receiving salary increases based solely on the length of time that they have served. Under the new system, salary increases will only be granted if an employee's performance has been evaluated as satisfactory, and bonuses may be granted for outstanding performance. The new system is being designed to ensure that it does not cost more than the previous system. While the details of the system are being finalized in discussions with Members, the Secretariat has been instructed to begin to take the steps that will be necessary to implement the system in 2002, including developing performance benchmarks and training supervisors in performance assessment.

*Non-Governmental Contributions:* Prompted by the possibility that non-governmental donors may wish to fund some of the WTO's training, technical assistance and seminar activities, the Committee developed guidelines for the acceptance and use of such contributions. Under the guidelines, only donations from private individuals or non-governmental not-for-profit organizations or foundations will be accepted, and the Committee must approve any such donations. In general, all donations will be placed in a single trust fund and disbursed in a manner consistent with the WTO's agreed technical assistance objectives, though Members may decide to accept proposed donations for other uses. Overly narrow earmarking of contributions is discouraged. The WTO will maintain a public registry, accessible through its internet website, containing the details of each non-governmental donation.

## **Prospects for 2001**

*Performance Award Program:* We anticipate that the performance award program will be finalized for implementation in 2002.

*Development and Agreement on 2002 Budget:* The bulk of the Committee's work in 2001 is expected to be devoted to consideration of a 2002 budget for the WTO. This discussion is likely to take up again the request by some Members to bring certain technical assistance expenditures "on-budget," away from dependence on individual Member donations to the Global Trust Fund. In light of growing contributions to the Global Trust Fund, including a \$650,000 U.S. contribution in 2000 and \$1 million contribution for 2001, the issue is not the level of resources for technical cooperation but rather how such projects are funded. The Secretariat and some WTO Members argue that assessed, or "on-budget" funding is needed in order to provide predictability, assure a fair sharing of the costs, and assure that the program can be managed effectively. However, the United States has argued that many international organizations maintain effective technical cooperation programs based on voluntary contributions. Moreover, since technical assistance programs are intended to benefit only part of the WTO's overall membership, it is questionable whether the costs for these should be borne by all WTO Members in the form of obligatory assessments.

## **6. Committee on Regional Trade Agreements**

### **Status**

Regional trade agreements in the WTO system are reviewed for compliance with WTO obligations and for transparency reasons. Prior to 1996, these reviews were typically conducted in a specific "working party." The Committee on Regional Trade Agreements (CRTA), a subsidiary body of the General Council, was established in early 1996 as a central body to

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oversee all regional agreements to which Members are a party. The Committee is charged with conducting reviews of individual agreements, seeking ways to facilitate and improve the review process, implementing the biennial reporting requirements established by the Uruguay Round agreements, and considering the systemic implications of such agreements and regional initiatives for the multilateral trading system.

Free trade areas (FTAs) and customs unions (CUs), both exceptions to the principle of MFN treatment, are allowed in the WTO system if certain requirements are met. In the GATT 1947, Article XXIV (Customs Unions and Free Trade Areas) was the principal provision governing FTAs and CUs. Additionally, the 1979 Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries, commonly known as the “Enabling Clause,” provides a basis for less-than-comprehensive agreements between or among developing countries. The Uruguay Round added two more provisions: Article V of the General Agreement on Trade in Services (GATS), which governs the services-related aspects of FTAs and CUs; and the Understanding on the Interpretation of Article XXIV, which clarifies and enhances the requirements of GATT Article XXIV.

To the extent that they apply to trade in goods, FTAs and CUs must fulfill several GATT requirements. First, substantially all of the trade between the parties to the agreement must be covered by the agreement, i.e., tariffs and other regulations of trade must be eliminated on substantially all trade. Second, the incidence of duties and other regulations of commerce applied to third countries after the formation of the FTA or CU must not, on the whole, be higher or more restrictive than was the case in the individual countries before the agreement. Finally, while interim agreements leading to FTAs or CUs are permissible, transition periods to full FTAs or CUs can exceed ten years only in exceptional

cases. For a CU, (which by definition involves adopting common regulations of trade, including MFN duty rates, toward third countries), the parties to an agreement must notify WTO Members and begin compensation negotiations prior to the time it violates any tariff bindings. To the extent that they apply in trade in services, FTAs and CUs must fulfill certain requirements under the GATS. Among these, the agreement must have substantive sectoral coverage (in terms of numbers of sectors, volume of trade affected, and modes of supply). The agreement must also provided for the absence or elimination of substantially all national treatment discrimination in those sectors, either on the entry into force of that agreement or within a reasonable period of time. Moreover, the agreement must not raise the overall level of barriers to trade within those service sectors with respect to any third country, as compared to the level applicable before the agreement. If implementation of the FTA or CU requires any party to withdraw or modify any of its specific commitments under the GATS, that party must provide advance notice to WTO Members and begin compensation procedures.

### **Major Issues in 2000**

*Examination of Reports:* The Committee held three formal meetings during 2000. By the end of the year, the Committee started, or continued, the examination of 86 regional trade agreements. The North American Free Trade Agreement (NAFTA) was among those under review.<sup>18</sup> The Committee now has a backlog of draft reports, for which Members do not agree on the nature of appropriate conclusions. The Committee had extensive consultations throughout the year to attempt to resolve Members’ differences. At the same time, the Committee began to consider 20 biennial reports on regional agreements notified

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<sup>18</sup> A list of all regional trade agreements notified to the GATT/WTO and currently in force is included in the appendix to this chapter.

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under the GATT 1947.

*Systemic Issues:* The Committee also conducted substantial, but inconclusive, discussions on systemic effects of regional agreements on the multilateral trading system. To assist further analysis, the Committee directed the Secretariat to prepare “horizontal” studies, starting with a few indicia of internal liberalization, and a survey of all regional trade agreements in existence or under negotiation.

### **Prospects for 2001**

During 2001, the Committee will continue to address all aspects of its mandate, in particular reviewing the new regional trade agreements being notified to the WTO. Special attention also will be given to clearing the backlog of reports, including the report on the NAFTA. Further discussions on improving the review process and the systemic effects of regional agreements will likely be major issues in the coming year, particularly in the context of horizontal studies being undertaken by the Secretariat. Some Members are likely to propose, as they did in the preparations for the 3<sup>rd</sup> Ministerial Conference, that the WTO embark on new negotiations to strengthen disciplines in this area.

## **7. Accessions to the World Trade Organization**

### **Status**

WTO membership continued to be a priority objective for many countries in 2000. Five new Members (Jordan, Georgia, Albania, Oman, and Croatia) joined, bringing the total to 140. In addition, twenty-nine accession applicants and Ethiopia participate as observers. The accession process provides an excellent opportunity for reforming economies to adopt necessary policies and practices within the framework of WTO obligations. It also offers the opportunity for the United States to expand market access opportunities for its exports and to address

outstanding trade issues in a multilateral context. WTO accessions in recent years have been based on full implementation of WTO provisions and the establishment of commercially meaningful market access for other Members’ exports; terms that have strengthened the international trading system.

Countries seeking to join the WTO must negotiate the terms of their accession with current Members, as provided for in Article XII of the WTO Agreement. After accepting an application, the WTO General Council establishes a working party to review information on the applicant’s trade regime and to conduct the negotiations. Accession negotiations are time consuming and technically complex. They involve a detailed review of an applicant’s entire trade regime by the working party. Applicants must be prepared to make legislative changes to implement WTO institutional and regulatory requirements, to eliminate existing WTO-inconsistent measures, and to make specific commitments on market access for goods and services.

The terms of accession developed with working party members in these bilateral and multilateral negotiations are recorded in an accession “protocol package” consisting of a working party report and Protocol of Accession, consolidated schedules of specific commitments on market access for imported goods and foreign service suppliers, and agriculture schedules that contain commitments on export subsidies and domestic supports. The working party adopts the completed protocol package containing the negotiated terms of accession and transmits it with its recommendation to the General Council or Ministerial Conference for approval. After General Council approval, accession applicants normally submit the package to their domestic authorities for ratification. Thirty days after the instrument of ratification is received in Geneva, accession to the WTO occurs.

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At the end of 2000, there were 29 applications for WTO membership still under consideration, down from 33 at the beginning of the year. In addition to the five new Members whose parliaments ratified the results of the negotiations, Lithuania's protocol package was approved by the General Council in December 2000. Lithuania has submitted the accession package to its parliament for ratification, and should become a WTO Member by June 2001. The accession negotiations of Russia, Saudi Arabia, and Ukraine intensified during 2000, particularly market access negotiations on goods and services. All three now need to bring their trade regimes into conformity with WTO provisions, by enacting the laws or regulations necessary to complete the accession process.

The General Council accepted new accession applications from Cape Verde and Yemen during 2000 (Cape Verde's was originally submitted in 1999). Azerbaijan, Samoa, Tonga, Sudan and Uzbekistan responded to initial questions submitted by Members on their foreign trade regimes, and Macedonia and Nepal held first working party meetings to commence accession negotiations. Of the twenty-nine applicants, only six have not yet submitted any documentation to activate the accession process. During the year, working party meetings and/or bilateral market access negotiations were scheduled with Albania, Armenia, Belarus, China, Croatia, Kazakstan, Lithuania, Macedonia, Moldova, Nepal, Oman, Russia, Saudi Arabia, Chinese Taipei (Taiwan), Ukraine, Vanuatu, and Vietnam. The chart included in the Annex to this section reports the status of each accession negotiation. More detailed discussions of the accession negotiations for Russia and China may be found in Chapter Five.

### **Major Issues in 2000**

The most significant aspect of WTO accessions in 2000 was the definitive progress made towards the completion of the accessions of China and Chinese Taipei, and the record number of

countries completing accession negotiations and becoming WTO Members based on commercially meaningful market access commitments and full implementation of WTO provisions. Despite these achievements and the significant progress shown towards completion of the process by other applicants during 2000, the informal group of developing countries argued that the accession process was too burdensome for applicants. This criticism was not limited solely to least-developed applicants with extremely low levels of income and economic development. Other WTO Members contested this, and some recently-acceded Members noted that accession negotiations had helped familiarize their governments with WTO operations and had also supported important domestic economic reforms. There were additional complaints concerning the transparency of the accession process, in particular in the review by the WTO Council of applications to initiate accession negotiations. These issues will be addressed again in 2001.

On four occasions since 1995, the United States has invoked the non-application provisions of the WTO Agreement, contained in Article XIII.<sup>19</sup> This was necessary because the United States must retain the right to withdraw "normal trade relations status (NTR)" (called "most-favored-nation" treatment in the WTO) for WTO Members that receive NTR with the United States subject to the provisions of the "Jackson-Vanik" clause and the other requirements of Title

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<sup>19</sup>The United States invoked nonapplication of the WTO when Romania became an original Member in 1995, and when the accession packages of Mongolia, the Kyrgyz Republic, and Georgia were approved by the WTO General Council in 1996, 1998, and 1999, respectively. Congress subsequently authorized the President to grant them permanent NTR, and the United States withdrew its invocation of non-application in the WTO for these countries.

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IV of the Trade Act of 1974.<sup>20</sup> In such cases, the United States and the other country do not have “WTO relations” which, among other things, prevents the United States from bringing a WTO dispute based on a violation of the WTO or the country’s commitments in its accession package. During 2000, however, the United States was not required to invoke nonapplication with respect to any new WTO Members. Albania was granted permanent NTR prior to Council approval of its accession terms on July 17, 2000. The United States also was able to “disinvoke” nonapplication with respect to the Kyrgyz Republic and Georgia when, pursuant to legislative authorization, the President granted them permanent NTR on June 30, and December 29, 2000, respectively.

### **Prospects for 2001**

Accession negotiations will remain high on the WTO’s work program in 2001. Delegations will review legislation and other documentation for meetings, provide technical assistance to meet WTO requirements, and conduct bilateral negotiations with the applicants. U.S. representatives are key players in all accession meetings, as the negotiations provide opportunities to expand market access for U.S. exports, to encourage trade liberalization in developing and transforming economies, and to support a high standard of implementation of WTO provisions by both new and current Members. Armenia, China, Chinese Taipei (Taiwan), Moldova and Vanuatu are far advanced in the accession process, and expect to complete negotiations in 2001. In addition, Nepal and Macedonia activated their accession

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<sup>20</sup>Ten of the remaining 29 WTO accession applicants are covered by Title IV. They are: Armenia, Azerbaijan, Belarus, China, Kazakhstan, Moldova, Russia, Ukraine, Uzbekistan, and Vietnam. For information on developments in China’s status under Title IV, please consult Chapter V.

negotiations in 2000, and Belarus and Kazakhstan have resumed active negotiations. Along with Russia, Saudi Arabia, and Ukraine, these countries have declared WTO accession a priority issue and will press to intensify, if not complete, negotiations during 2001. Six additional applicants at the very beginning of the accession process, including three additional least-developed countries, have circulated initial documentation and will expect to launch working party reviews of their trade regimes this year. Finally, the expectation remains that countries currently outside the WTO system will seek to initiate accession negotiations.

## **8. Working Group on Trade and Competition Policy**

### **Status**

In 2001, the WTO Working Group on the Interaction between Trade and Competition Policy (WGTCP) enters its fifth year of work under the oversight of the WTO General Council. The WGTCP was set up by WTO Trade Ministers at their first Ministerial Conference in Singapore in December 1996. Its mandate is to “study issues raised by Members relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit further consideration in the WTO framework.” Whereas the Ministers acknowledged that certain WTO provisions already were relevant or related to competition policy, they were careful to specify that the aim of this Working Group was educative and not intended to prejudge whether, at some point in the future, negotiations would be initiated to establish multilateral disciplines in this area. The WGTCP was directed to draw upon the work of a companion working group, also established at Singapore, that was mandated to examine the relationship between trade and investment. The WGTCP was also encouraged to cooperate with UNCTAD and other intergovernmental organizations examining similar trade and competition policy issues in

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order to make the best use of available resources and to ensure that the “development dimension” is fully considered. In December 1998, the General Council authorized the Group to continue its work on the basis of a more focused framework of issues. This framework continued to serve as the basis of the Group’s work in 2000.

### Major Issues in 2000

The WGTCP held three meetings in 2000. The Group continued to organize its work on the basis of written contributions from Members, supplemented by discussion and commentary offered by delegations at the meetings and, where requested, factual information and analysis from the WTO Secretariat and observer organizations such as the OECD, the World Bank and UNCTAD. As noted in last year’s report, in 1999, the WGTCP began work under a more focused framework for study, which continued to set the parameters of the Group’s work in 2000. These parameters are: (i) the relevance of fundamental WTO principles of national treatment, transparency and most-favored-nation treatment to competition policy, and vice-versa; (ii) approaches to promoting cooperation and communication among Members, including in the field of technical cooperation; and (iii) the contribution of competition policy to achieving the objectives of the WTO, including the promotion of international trade.

Beyond these three broad areas of focus, the Group also took account of some suggestions developed by the Working Group Chairman, Professor Frédéric Jenny of France, in the course of informal consultations with Members. These suggestions were that the Group:

- < make greater use of concrete examples in support of arguments and proposals advanced by Members;
- < engage in a more meaningful exploration of the development dimension of issues

raised (*e.g.*, in considering the benefits, challenges and obstacles involved in developing country implementation of competition policies; the problems involved in establishing competition agencies and organizing enforcement activities; and the benefits and costs, especially for developing countries, of enhanced international cooperation on competition issues);

- < consider ways of creating and maintaining a “culture of competition”;
- < accord greater consideration to the practical aspects of competition policy, such as the setting of enforcement priorities and processes and the use of competition advocacy to promote and facilitate market reform, deregulation and privatization policies; and
- < continue to focus on the interaction between trade and competition policy, as opposed to focusing on competition policy alone.

24 written submissions ranging across all of the above areas of focus were submitted by a total of 11 Members (counting the EU and its 15 Member States as one contributor). By far, the majority of these submissions addressed issues arising under the rubric of “approaches to promoting cooperation and communication among Members, including in the field of technical cooperation.” Augmented by oral interventions and exchanges by these and other Members, the leading preoccupation of many delegations was either to advocate or contest the alleged merits and perceived disadvantages of negotiating a multilateral framework for competition rules in any new Round of multilateral trade negotiations. Extensive debate of these issues included: (i) the extent to which any such agreement could sufficiently address the needs or manage the institutional “capacity constraints” of developing countries; (ii) whether

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the focus of future work should be on attempting to define and deal with private anticompetitive conduct in an international context or on enhancing the pro-competitive nature of governmental measures, including those already governed by WTO obligations; (iii) what the elements and scope of any competition agreement might be, and whether attempting to negotiate such provisions would actually advance or undermine multilateral progress in this area from either a trade or an antitrust perspective; and (iv) the extent to which multilateral rules could inappropriately interfere with or distort sound antitrust law enforcement.

In these discussions, the EU, Japan, Canada and a variety of additional Members continued to press for the negotiation of a multilateral competition agreement. This was opposed by a range of developing and developed country Members, including the United States.

Considering that nearly 90 countries have now enacted antitrust laws – and many more are considering doing so, or are pursuing other means of furthering competition policies – the United States’ submissions to the Working Group last year focused on some of the pragmatic questions suggested by the Chairman. These issues must be faced when endeavoring to nurture a culture of competition, such as the considerations and priorities relevant to establishing an effective antitrust agency and assessing the role and importance of competition advocacy by competition authorities.

### **Prospects for 2001**

WTO Members agreed to continue the work of the WGTCP into 2001, with two additional meetings already scheduled through the summer of this year. However, it also remains likely that the long term aims of various Members for future work in this area will continue to contrast and, at times, conflict. Undoubtedly, Members will continue to debate actively the question of whether the issue of trade and competition policy is ripe for negotiations in the WTO and, if so,

what the nature of those negotiations might be. It is also reasonable to expect that certain competition-related issues will continue to be dealt with, as appropriate, in the context of ongoing work and negotiations in the WTO, such as the renewed negotiations to improve market access in services. As for the trade and competition policy agenda more broadly, the United States remains interested in working constructively with those who seek to advance consideration of this issue at the multilateral level in a pragmatic and productive fashion, recognizing the sometimes vast differences among Members as to their goals, views, resources and experiences in this area.

## **9. Working Group on Transparency in Government Procurement**

### **Status**

Drawing largely on proposals made by the United States, Ministers agreed at the 1996 Singapore Ministerial Conference to establish a Working Group on Transparency in Government Procurement. The Working Group’s mandate calls for: (i) conducting a study on transparency in government procurement; and (ii) developing elements for an appropriate WTO Agreement on Transparency in Government Procurement. This work represents an important element of the United States’ longstanding efforts to bring all WTO Members’ procurement markets within the scope of the international rules-based trading system. It also contributes to broader U.S. initiatives aimed at promoting the international rule of law, combating international bribery and corruption, and supporting the good governance practices that many WTO Members have adopted as part of their overall structural reform programs.

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## Major Issues in 2000

The working group has made significant progress in developing and refining a number of delegations' specific proposals for the text of a potential Agreement on Transparency in Government Procurement. Those proposals contained many similar provisions, including in relation to:

- < Publication of information regarding the regulatory framework for procurement, including relevant laws, regulations and administrative guidelines;
- < Publication of information regarding opportunities for participation in government procurement, including notices of future procurements;
- < Clear specification in tender documents of evaluation criteria for award of contracts;
- < Availability to suppliers of information on contracts that have been awarded; and
- < Availability of mechanisms to challenge contract awards and other procurement decisions.

In the past year, the work has focused on areas where significant differences remain, in particular: (i) the appropriate scope and coverage of a Transparency Agreement; and (ii) the appropriate application of WTO dispute settlement procedures to such an Agreement. In addition, responding to concerns that some delegations have expressed about their countries' abilities to implement international commitments in this area, the United States proposed that the Working Group develop a work program to identify potential needs for capacity building in relation to transparency practices in government procurement and existing technical assistance programs that may address those needs.

## Prospects for 2001

The United States will continue to work with other WTO Members to resolve the remaining issues and, in the context of decisions on the broader WTO negotiating agenda, build a consensus for conclusion of an Agreement in this area.

### 10. Working Group on Trade and Investment

#### Status

The Working Group on Trade and Investment (WGTI), which was originally established by the Singapore Ministerial Declaration in 1996, provides a multilateral forum for the consideration of investment liberalization and international investment agreements and their relationship to trade and to economic development. The WTO General Council oversees the work of the WGTI and has approved extensions of the work beyond the initial two-year mandate. The WGTI's mandate is "to examine the relationship between trade and investment." The 1998 General Council decision extending the Working Group specifies that its aim is educative and not intended to prejudge whether, at some point in the future, negotiations would be initiated to establish multilateral disciplines in this area.

The WGTI provides an opportunity for the United States and other countries to present the benefits they have derived from open investment policies and programs and to advance international understanding of these benefits. The Group has analyzed the full range of investment agreement models currently in use, and considered the implications of the differences. The Group has assessed the advantages and disadvantages of the variety of approaches, including as they affect economic development. The United States believes that the WGTI's work significantly raises other countries' understanding of investment rules.

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## Major Issues in 2000

The WGTI met three times in 2000. Drawing from the checklist of issues developed during the initial two years of its work, and relying primarily on written submissions from Members, the WGTI reviewed three broad subject areas. The first was the implications of trade and investment for development and economic growth, including the following subtopics: the relationship between foreign direct investment and the transfer of technology; the relationship between investment rules and policy flexibility; and the possible economic benefits of multilateral investment rules. The second topic was the economic relationship between trade and investment, where the effects of investment incentives were a principal focus of attention. Finally, the Working Group took stock of, and analyzed, existing international instruments and activities regarding trade and investment, in which rules regarding the transparency of investment regimes was a subject of much interest.

## Prospects for 2001

There remains widespread interest in the WTO to continue work in the area of trade and investment. The Working Group has identified a number of areas for further study, such as the relationship between investment and trade for development and economic growth. However, there are differences of view as to what the next steps should be beyond educational work.

## 11. Trade Facilitation

### Status

The 1996 Singapore Ministerial Declaration requested the Council for Trade in Goods “to undertake exploratory and analytical work, drawing on the work of other relevant international organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area.” The Council

continued its work under this mandate in 2000, largely focusing on issues related to customs and other administrative requirements pertaining to the movement of goods across borders.

## Major Issues in 2000

A significant U.S. objective for 2000 was met as the Council for Trade in Goods achieved a renewed momentum toward an increased WTO role in the area of Trade Facilitation. The Council met several times in informal sessions, and ultimately began work based on a method jointly proposed by the United States and Canada. The Council commenced an analysis of various ‘national experience’ submissions, while beginning an examination of potential current “gaps” within the parameters of relevant WTO rules. The Council also took up capacity building and technical assistance issues related to future WTO work in the area of Trade Facilitation. On this basis, the Council work proceeded in accordance with the continuing aim of the United States for future WTO work that strengthens and develops new WTO disciplines focused on two key elements: (i) ensuring greater transparency in procedures for conducting trade transactions; and (ii) providing for increased efficiencies in how goods cross borders, such as through the rapid release of goods from the custody of customs administrations. A number of Members have joined the United States in putting at the core of future work a building upon relevant provisions of GATT Article VIII (“Fees and Formalities Connected with Importation and Exportation”) and GATT Article X (“Publication and Administration of Trade Regulations”). As further evidence of success in the WTO in moving ahead on Trade Facilitation, the Council agreed at the end of the year to augment its work by holding a WTO symposium, in 2001, on technical assistance and capacity building in this area.

Despite these renewed efforts in 2000 toward an ultimate launch of WTO negotiations in the area of Trade Facilitation, there continued to be

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resistance exhibited on the part of some developing country Members. In most cases this resistance was based upon an unfortunate continuing perception that associates further WTO rule-making in this area with a traditional-type trade concession. In contrast, the United States and a growing number of other Members view the development of a rules-based environment for conducting trade transactions as an important element for securing continued growth in the economic output of all WTO Members. Moreover, systemic rules-based reforms related to increased transparency and efficiency diminishes corruption. The reforms also provided the benefit of enhancing administrative capabilities that ensure effective compliance with customs-related requirements or laws concerning health, safety, and the environment. For the United States and many of its key trading partners, small and medium size enterprises (SMEs) have become important stakeholders in further WTO contributions to improving the Trade Facilitation environment. SMEs are especially poised to take advantage of opportunities provided by today's instant communications and ever-improving efficiencies in the movement of physical goods.

### **Prospects for 2001**

The United States views further work in this area as ultimately leading to one of the most important systemic negotiations to be undertaken by the WTO. The United States will actively advocate for the continuation of effective preparatory work. A major challenge for the United States in 2001 will be to encourage other countries to join the group of Members that view future WTO negotiations in the area of Trade Facilitation as a "win-win" opportunity. A key element in meeting this objective will be to increase awareness of the understanding among all WTO Members of the important linkages between a rules-based trade transaction environment and a stable economic infrastructure. This will also include ongoing complementary initiatives involving existing Agreements, such as with

regard to implementation of the WTO Agreement on Customs Valuation. The United States will also be working with key Members in advancing an agenda for addressing capacity building issues, in order to identify potential technical assistance programs that would be developed concurrently as part of any future overall negotiations.

## **F. Plurilateral Agreements**

### **1. Committee on the Expansion of Trade in Information Technology Products**

#### **Status**

The landmark agreement to eliminate tariffs by January 1, 2000 on a wide range of information technology products, generally known as the Information Technology Agreement, or ITA, was concluded at the WTO's first Ministerial Conference at Singapore in December 1996. As of this writing, the ITA has 55<sup>21</sup> participants representing over 95 percent of trade in the \$600 billion-plus global market for information technology products.

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<sup>21</sup>ITA participants are: Albania, Australia, Canada, Costa Rica, Croatia, Cyprus, Czech Republic, El Salvador, Estonia, European Communities (on behalf of 15 Member States), Georgia, Hong Kong China, Iceland, India, Indonesia, Israel, Japan, Jordan, Republic of Korea, Krygyz Republic, Latvia, Lithuania, Macau, Malaysia, Mauritius, New Zealand, Norway, Oman, Panama, Philippines, Poland, Romania, Singapore, Slovak Republic, Slovenia, Switzerland and Liechtenstein, Taiwan, Thailand, Turkey, and the United States. Additional countries, including China, Armenia, Georgia and Moldova, have indicated their intention to join the ITA.

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## Major Issues in 2000

The WTO Committee of ITA Participants held four formal meetings in 2000, during which the Committee reviewed implementation status. For the majority of participants, January 1, 2000 marked the commencement of full implementation of the ITA, which covers computers and computer equipment, semiconductors and integrated circuits, computer software products, set-top boxes, telecommunications equipment, semiconductor manufacturing equipment and computer-based analytical instruments. Under the ITA, some limited staging of tariff reductions for individual products was granted on a country-by-country basis for individual products up to 2005.

Pursuant to the provisions of the Singapore Ministerial declaration establishing the ITA, the Committee continued its work to address diverging classification of information technology products. Several informal meetings of technical experts were held, which resulted in increased alignment of classification practices among ITA participants concerning ITA-covered products. Also in accordance with the Singapore mandate, consultations continued among participants concerning product coverage expansion. In addition, at its final meeting of 2000 the Committee formally adopted a Decision outlining a work program to address non-tariff measures applicable to ITA-covered products.

## Prospects for 2001

The Committee's Decision to establish a benchmarked work program on non-tariff measures effectively demonstrates how the WTO provides a dynamic mechanism that is responsive to the ever-changing nature of the information technology sector. The United States and other key ITA participants have already identified standards as a matter that will be taken up under the work program, although other non-tariff measures may be addressed as well. Throughout 2001 the Committee will continue to undertake

its mandated work, including reviewing possibilities for product expansion ("ITA II") along with addressing further technical classification issues. In addition, the Committee will continue to monitor implementation of the Agreement, including undertaking any necessary clarifications.

## 2. Committee on Government Procurement

### Status

The WTO Government Procurement Agreement (GPA) is a plurilateral agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO's single undertaking and its membership is limited to WTO Members that signed on in Marrakesh or that subsequently acceded to it. The GPA's current membership includes the United States, the Member States of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom), Aruba, Canada, Hong Kong, Israel, Japan, Liechtenstein, Norway, the Republic of Korea, Singapore and Switzerland. In 2000, Iceland completed negotiations for its accession to the GPA. Chinese Taipei, Estonia, Jordan, Kyrgyz Republic, Latvia, and Panama are in the process of negotiating accession to the GPA.

### Major Issues in 2000

In Article XXIV:7 of the GPA, the Parties to the Agreement agreed to conduct further negotiations with a view to improving both the text of the Agreement and its market access coverage. The Parties have also agreed that, as part of the review, the Committee should take into account the objective of promoting expanded membership of the GPA by making it more accessible to non-members.

Much of the existing text of the GPA was developed in the late 1970s, during the

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negotiations on the original GATT Government Procurement Code. As the current review of the Agreement has proceeded, the Committee has become aware that there have been changes in procurement methods, systems and technologies around the world that require careful analysis in the context of potential modification of the GPA text. The Committee has also continued to consider the potential simplification of GPA statistical reporting requirements, an issue that is of particular interest to the Parties' sub-central procurement authorities and to other countries that may potentially be interested in acceding to the GPA.

As provided for in the GPA, the Committee continued the process of monitoring Parties' implementing legislation. In 2000, this included follow-up discussions on issues raised during the review of the United States, Canada and Switzerland implementing legislation, and discussions relating to the implementing legislation of Hong Kong, Norway and Singapore.

### **Prospects for 2001**

In 2001, the Committee will continue its review of the text of the GPA, focusing on the Parties' efforts to "streamline" the Agreement, where appropriate, and ensure that it addresses the types of procurement procedures that are commonly used by the Parties' procuring entities today, including those that make use of modern telecommunications and information technologies. The Committee will continue its review of the United States and Singapore implementing legislation, and begin reviewing the implementing legislation of Israel, Japan, Liechtenstein, and the Netherlands with respect to Aruba.

## **3. Committee on Trade in Civil Aircraft**

### **Status**

The Agreement on Trade in Civil Aircraft (Aircraft Agreement) was concluded in 1979 as part of the Tokyo Round of multilateral trade negotiations and last amended in 1986. While the Aircraft Agreement was not renegotiated during the Uruguay Round, it remains fully in force and is included in Annex 4 to the WTO Agreement as a Plurilateral Trade Agreement.

The Aircraft Agreement requires Signatories to eliminate duties on civil aircraft, their engines, subassemblies and parts, and ground flight simulators and their components, and to provide these benefits on a NTR basis to all WTO Members. On non-tariff issues, the Aircraft Agreement establishes international obligations concerning government intervention in aircraft and aircraft component development, manufacture and marketing, including:

*Government-directed procurement actions and mandatory subcontracts:* The Agreement provides that purchasers of civil aircraft (including parts, subassemblies, and engines) will be free to select suppliers on the basis of commercial considerations and governments will not require purchases from a particular source.

*Sales-related inducements:* The Agreement states that governments are to avoid attaching political or economic inducements (positive or negative linkages to government actions) as an incentive to the sale or lease of civil aircraft.

*Certification requirements:* The Agreement provides that civil aircraft certification requirements and specifications on operating and maintenance procedures will be governed, as between Signatories, by the provisions of the Agreement on Technical Barriers to Trade.

Under Article II.3 of the Marrakesh Agreement, the Aircraft Agreement is part of the WTO

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Agreement, but only for those Members who have accepted it. As of December 31, 2000, there were 27 Signatories to the Agreement: Bulgaria, Canada, the European Communities, Austria, Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom, Egypt, Georgia, Latvia, Malta, Japan, Macau, Norway, Romania, Switzerland and the United States. Albania, Croatia, Chinese Taipei, Estonia and Lithuania have indicated that they will become parties upon accession to the WTO and Oman within three years of accession. Those WTO Members with observer status in the Committee are: Argentina, Australia, Bangladesh, Brazil, Cameroon, Colombia, the Czech Republic, Estonia, Finland, Gabon, Ghana, India, Indonesia, Israel, Korea, Mauritius, Nigeria, Poland, Singapore, the Slovak Republic, Sri Lanka, Trinidad and Tobago, Tunisia and Turkey. In addition, China, Chinese Taipei, the Russian Federation and Saudi Arabia have observer status in the Committee. The IMF and UNCTAD are also observers.

### **Major Issues in 2000**

The Aircraft Committee, permanently established under the Aircraft Agreement, affords the Signatories an opportunity to consult on the operation of the Agreement, to propose amendments to the Agreement and to resolve any disputes. During 2000, the full Committee and the Technical Subcommittee each convened twice. The Committee discussed an array of aircraft-related trade matters including updating the Annex of aircraft items to be accorded duty-free treatment; conforming the language in the Agreement to the WTO; modifying the end-use customs administration by proposing to define "civil" aircraft by initial certification rather than by registration. The United States also identified activities by other Signatories that might result in trade barriers or market distortions, such as the failure by France to promptly certify large civil aircraft at full seating capacity, delay of

certification of business jets by European Joint Airworthiness Authorities, Belgium's government exchange rate guarantees for aircraft component manufacturers, the European Union's support for the development of large civil aircraft and engines and the European Union's restrictions on the operation of aircraft, otherwise compliant with International Civil Aviation Organization Stage III noise standards, based solely on a design standard that targets U.S.-origin engines and environmental equipment.

While the Signatories were unable formally to adopt a Protocol to amend the Annex to the Agreement, the Committee decided to urge Signatories to apply, on an interim basis, duty-free treatment to the goods of the proposed product coverage Annex, including aircraft ground maintenance simulators. In addition, Signatories agreed to consider a further draft revision of the Product Coverage Annex, incorporating changes to the Harmonized System that will enter into effect on January 1, 2002.

### **Prospects for 2001**

The United States will continue to conform the Aircraft Agreement with the new WTO framework while maintaining the existing balance of rights and obligations. A high priority for the upcoming year is to assist countries with aircraft industries that seek membership in the WTO to become signatories to the existing Aircraft Agreement, thereby facilitating their accession to the WTO. In addition, other countries that might procure civil aircraft products, but are not currently significant aircraft product manufacturers, are being encouraged to become members of the Agreement in order to foster non-discriminatory and efficient selection processes for aircraft products based solely upon product quality, price, and delivery.