

II. The World Trade Organization¹

A. Introduction

Over the past year, Members of the World Trade Organization embarked on the important business of moving forward a major round of global trade negotiations – the Doha Development Agenda (DDA), scheduled to be completed by January 1, 2005. The Doha Agenda is heavily oriented towards market access issues, with agricultural reform at the heart of the agenda. These negotiations, along with the day-to-day implementation of the rules governing world trade, mark a new and welcome phase of global trade liberalization and strengthening of the trading system that is so vital to the growth of the world economy and continued peace and prosperity.

This chapter outlines the progress in the work program of the WTO, and most importantly the work ahead for 2003, beginning with the negotiations launched at Doha and the prospects for the WTO's Fifth Ministerial Meeting in Cancun, Mexico, September 10-14, 2003. In 2002, WTO Members moved swiftly to organize the negotiations and then turned their attention to the market opening agenda of the negotiations. The United States has been an active participant in the negotiations, pressing other Members to pursue bold and aggressive trade liberalization and agricultural reform. At the same time, given the emphasis on development, the United States and other WTO Members have provided unprecedented contributions to strengthen technical assistance and capacity building to ensure the participation of all Members in the negotiations. After detailing the DDA's progress to date, this chapter follows with a review of the implementation of existing Agreements, including the critical negotiations to expand the WTO's membership to include new members seeking to reform their economies and join the rules-based system of the WTO.

B. Trade Negotiations Committee and The Doha Development Agenda

The Trade Negotiations Committee (TNC), established at the WTO's Fourth Ministerial Conference in Doha, Qatar, oversees the agenda and negotiations in cooperation with the WTO General Council. The TNC met regularly throughout 2002 to supervise negotiations. Early in 2002, WTO Members established the various negotiating bodies and designated chairs to lead the various groups and manage the agenda (a complete listing of the bodies for the TNC and General Council is provided in Annex II). Importantly, Members agreed to appoint the WTO Director General to serve as the Chair of the TNC. Once the TNC was established, Members moved ahead to pursue the substantive issues in the negotiations, aided by the preparatory work of the WTO's built-in agenda on agriculture and services.

WTO Members reached the end of 2002 with far-reaching proposals submitted in all areas of the negotiations, in particular on market access. The work in 2003 will be devoted to preparations for the Ministerial Conference in Cancun, where Ministers are required to review progress at the mid-point of the

¹The information in this section is provided pursuant to the reporting requirements contained in sections 122 and 124 of the Uruguay Round Agreements Act.

DDA negotiations and convene a Ministerial Conference in line with Article IV of the Marrakesh Agreement Establishing the WTO. Under Article IV, the WTO is required to hold a ministerial conference at least once every two years. Given the WTO's ongoing responsibility to supervise and assist in the implementation of commitments, for the further liberalization of trade, and for the resolution of disputes, the Members believed it would be important for Ministers to meet on a regular basis in order to provide necessary direction and political oversight to the organization's work. The regular cycle of ministerial meetings was an important innovation for the WTO.

WTO Members in the coming year will be working to build consensus in all areas of the negotiations. As reported in November 2001, the agreements reached at the Doha meeting open a new chapter for the WTO. Unlike previous trade negotiating rounds, it is widely recognized that developing countries, which now comprise more than two-thirds of the WTO's membership, are at the center of the new negotiations. In addition to our traditionally close working relationship with the European Union and our developed country partners, the United States worked closely with our developing country partners throughout the year in setting the agenda for negotiations. This dialogue with developing countries reached from the Cairns Group on Agriculture to our partners in sub-Saharan Africa. To prepare the approximately 35 proposals and submissions tabled in 2002, the United States solicited public comments in the Federal Register and engaged in an extensive consultation process with Congress and the private sector.

Prospects for 2003

The pace of negotiations will intensify in preparation for the Cancun meeting. WTO Members will need to move expeditiously to ensure that by the time of the Cancun meeting, sufficient progress is made in the negotiations to permit these historic negotiations to conclude on schedule, by January 1, 2005. Just as U.S. leadership was essential to the initiation of negotiations at Doha, an aggressive and active posture by the United States will be critical to guarantee success for America's interests. Key subjects will include:

- ***Agriculture:*** In July 2002, the United States capped its intensive campaign for agricultural reform by tabling a far-reaching and aggressive proposal addressing each of the three pillars of the negotiations: market access, export subsidies and domestic support. By March 2003, the negotiating schedule calls for an agreement on the "modalities", or the extent to which WTO Members will cut barriers to market access and export subsidies. At the Cancun meeting, Ministers will assess progress and provide additional guidance on the next steps. The WTO negotiations in agriculture are closely linked to the subject matter of the negotiations for a Free Trade Area of the Americas (FTAA). FTAA trading partners are committed to reform in agriculture that will only be possible in the WTO context (including as it would, commitments from Europe to address its export subsidies). Rapid progress in 2003, particularly in the first half of 2003, through substantive, credible proposals, is essential for both the WTO and FTAA negotiations.
- ***Non-Agricultural Market Access:*** The United States has pressed its partners to ensure that new market access opportunities for manufacturing will keep pace with the progress on agriculture. For this reason, the United States tabled a similarly ambitious and bold proposal to eliminate in two steps all duties on industrial and consumer goods by 2015, utilizing a formula-based approach. The United States also plans to submit a proposal addressing non-tariff barriers that impede trade. Negotiators are to agree on modalities for these negotiations before the end of May 2003, at the latest. Working together with Congress and industry, during 2003 we will develop

proposals so that we meet the deadline for reaching a consensus on modalities. Past U.S. efforts have been instrumental in bringing about the Information Technology Agreement, Chemical Harmonization and a host of other initiatives aimed at eliminating barriers to trade in non-agricultural products. Our efforts in the Doha negotiations show a similar determination and ambition.

- **Services:** An aggressive agenda for market opening in services, including audio-visual services, financial services (including insurance), express delivery services, energy services and telecommunication services, is being pursued in the negotiations. At the end of June 2002, the United States and key trading partners made liberalization requests of other Members, and liberalization offers are to be tabled in March 2003. Since the United States is the world's leader in services for the 21st century economy, and services account for 80 percent of U.S. employment, our efforts in this area continue to be significant. Market opening in services is essential to the long-term growth of the U.S. economy. For developing countries, services are a great economic multiplier and essential to their respective development strategies.
- **Dispute Settlement:** The United States has led efforts to strengthen the rules governing the settlement of disputes because the system of WTO rules is only as strong as our ability to enforce our rights under these Agreements. For this reason, the United States has led the efforts to promote transparency in the operation of dispute settlement. Negotiations will intensify as the deadline to complete the review of the Dispute Settlement Understanding (DSU) in May 2003 draws near.
- **WTO Rules:** Utilizing the solid mandate achieved at Doha, negotiations are now focused on strengthening the system of trade rules and addressing the underlying causes of unfair trade practices. American workers need strong and effective trade rules to combat unfair trade practices, particularly as tariffs decline. While there are no major deadlines in 2003, negotiators will continue to identify, and more precisely define, issues of concern. The process envisioned in the WTO should result in strengthened trade rules in antidumping and subsidies, as well as new disciplines on harmful fisheries subsidies that contribute to overfishing.
- **Trade Facilitation (Customs Procedures):** Increasingly, WTO Members are convinced that the key to developing their economies and combating corruption is in strengthening the trade rules governing customs procedures to ensure the free flow of goods and services in the new just-in-time economy. Strengthening these rules is the eventual aim of work in the WTO. Progress is crucial, for example, to the success of our express delivery industry. In 2003, the agenda for trade facilitation will be refined further, building on the successes achieved in the FTA negotiations with Chile and Singapore. These agreements should provide positive momentum to the WTO negotiating agenda in this area.
- **Environment:** The United States has continued to take a practical and pragmatic approach to these important WTO negotiations, which have started with improving the process of communication and cooperation between the Secretariats of Multilateral Environmental Agreements (MEAs) and the WTO. Building on this cooperative spirit, the negotiations will consider other, more difficult, areas such as the relationship of MEA's to WTO rules. Along with our work in market access and rules, we will continue to be vigilant to ensure that these

negotiations are not used to introduce protection under the guise of safeguarding the environment. The U.S. agenda is aimed at promoting growth, trade and the environment.

- ***Competition and Investment:*** In both of these areas, decisions will need to be taken in Cancun about how negotiations should proceed. Substantial resistance remains, particularly from developing countries. The United States has taken a constructive approach to these negotiations. 2003 will be devoted to forging a consensus on a way forward that is acceptable to all WTO Members and ensures openness and transparency in the regimes of newly-emerging markets.
- ***Transparency in Government Procurement:*** Discussions in 2002 continued on the elements of an agreement to govern government purchasing. The work in the WTO in 2003 will be aimed at complementing initiatives underway in other fora, including the G-8, to combat corruption and unfair trade practices.
- ***Trade and Development:*** An essential ingredient in the DDA has been a more intensive program of technical assistance and capacity building to integrate developing countries into the trading system. The United States has pressed the WTO and other international institutions to intensify their cooperation. Early in 2002, the WTO received pledges of financial support to its trust fund of more than 30 million Swiss Francs. The United States contribution to WTO technical assistance exceeded \$1.6 million. Success in the negotiations will only be achieved if the United States and its trading partners focus on the need to integrate developing countries into the multilateral trading system.
- ***Implementation:*** Work continued in 2002 on the rigorous work program regarding the implementation of previously negotiated commitments, including issues that were discussed in the Doha preparatory process. Conclusions were not reached in all areas and this work will continue in 2003. The most contentious issues involve the treatment of rules issues, particularly trade-related investment measures and whether to expand the negotiations in the TRIPS agreement regarding geographical indications beyond wines and spirits. In some cases, differences may be bridged only through further negotiation, and in still others, a consensus for action may not emerge. The United States will continue to participate seriously in these discussions during 2003, and in developing the report that will be provided to the TNC at the end of the year.

1. Special Session of the Committee on Agriculture

Status

At the Fourth WTO Ministerial Conference in Doha, WTO Members agreed to an ambitious mandate for agriculture, including "substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support." WTO Members also established an ambitious negotiating time line, calling for reform modalities, such as tariff and subsidy reduction formulas, to be established no later than March 31, 2003 and submission of draft schedules of specific commitments by the Fifth Ministerial Conference.

The WTO provides multilateral disciplines on agricultural trade policies and serves as a forum for further negotiations on agricultural trade reform. The WTO is uniquely situated to advance the interests of U.S.

farmers and ranchers because only through WTO rules are U.S. producers and exporters able to impose disciplines on the broad range of large agricultural producing and consuming Members simultaneously. For example, absent a WTO Agreement on Agriculture, there would be no limits on European Union subsidization nor firm commitments for access to the Japanese market. Negotiations in the WTO provide the best hope to further open important markets for U.S. farm products and reduce subsidized competition.

Major Issues in 2002

The United States has taken the lead in calling for substantial reform of agricultural trade policies, across all Members and all products. The United States has proposed comprehensive reform by reducing high levels of allowed protection and trade-distorting support through formulas that reduce tariff and subsidy disparities across countries, as well as strengthening WTO rules on a range of trade-related measures. In addition, the United States has proposed that WTO Members agree to eliminate all trade-distorting subsidies and all tariffs by a date certain. Members with heavily-distorted agricultural sectors, such as the European Union and Japan, have opposed substantial reform and instead have called for marginal reductions in protection and trade-distorting support while also calling for new WTO provisions to legitimize measures oriented toward addressing non-trade concerns. Developing countries, particularly within the Cairns Group², look to the agriculture negotiations as a principal means for achieving more meaningful trade participation in the global economy. Many developing country Members, including within the Cairns Group, have called for substantial reform in developed country Members' agricultural policies while also proposing that reforms required of developing countries be mitigated by special and differential treatment provisions.

The Uruguay Round Agreement on Agriculture provided the framework for further negotiations. The three main areas for improvement in disciplines affecting agricultural trade are export subsidies, market access, and domestic support. Negotiations on agriculture began in the year 2000 and in the first two years some 45 proposals were submitted on behalf of 121 Members. Members focused attention in the year 2002 on specific proposals for establishing reform modalities, consistent with the Doha mandate. The United States submitted the first comprehensive set of proposed modalities for reform, helping set the discussions in Geneva on an ambitious reform track. A number of other Members, including the Cairns Group and other developing countries, also submitted specific modality proposals oriented toward substantial reform. The European Union, Japan, and other Members with high tariff and subsidy levels did not come forward with specific or forthcoming modality proposals, instead making general proposals for marginal reform.

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

Export Competition: The WTO Agreement on Agriculture places limits on the use of export subsidies. Products that have 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 was capped and reduced. Currently, the European Union accounts for nearly 90 percent of global annual spending on agricultural export subsidies, up to \$5 billion a year. The United States spends between \$20 million and \$100 million per year.

The United States has proposed phasing out over a five year period any use of export subsidies. The goal of eliminating export subsidies in these negotiations is supported by many WTO Members, in particular developing countries. Specific proposals have also been submitted for reforming other export-related government programs, including export credits, food aid, and privileges enjoyed by state trading enterprises. Several Members have also proposed stronger rules to discipline the use of export restrictions.

Market Access: The WTO Agreement on Agriculture set agricultural trade on a more predictable basis by requiring the conversion of non-tariff barriers, such as quotas and import bans, into tariffs. Today, tariffs represent the primary WTO-consistent restriction on trade in agricultural products. Quotas, discriminatory licensing, and other unjustified non-tariff 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 without authorization 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 (which operate as two-tier tariff regimes) continue to impede international trade in food and fiber products.

The United States has proposed substantial reductions for all tariffs through the use of a tariff reduction formula that would reduce all tariffs in a manner that results in all countries having similar tariff levels. The U.S. proposal on tariffs – called the Swiss 25 formula – would cut the global average allowed tariff on agricultural products from 62 percent to 15 percent and ensure that no tariff is higher than 25 percent when cuts are fully implemented. The U.S. average tariff on agricultural products would fall from 12 percent to 5 percent. 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

Key Elements of U.S. Proposals for Agricultural Reform

Tariffs and TRQs. Comprehensive reductions in tariffs and tariff disparities through the Swiss 25 formula and a 20% increase in tariff-rate quota quantities, without exception.

Export Subsidies. Elimination of export subsidies.

Domestic Support: Simplifies the current structure by creating two categories of support: 1) non-trade distorting measures that are not subject to limits; and, 2) trade-distorting measures that would be subject to reductions. Establishes a limit of trade-distorting support equal to 5% of the value of Members’ agriculture production.

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

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

Export Credits. Establishes a rules-based approach to guard against circumvention of export subsidy rules by disciplining elements such as repayment period, premia, and fees. Identifies the need for developing countries to have access to export credit facilities to enhance food security. Consideration to the concerns of the poorer WTO Members to ensure the agreement is appropriate for their circumstances.

countries and many developing countries have also focused their proposals on the need for substantial tariff reductions in developed country markets, with lesser reduction commitments required for developing country Members. A number of Members have also proposed using safeguard mechanisms to guard against market disruption from imports.

Domestic Support: Governments have the right to support farmers if they so choose. However, the Agreement on Agriculture encourages that support be provided in a manner that causes no or minimal distortions to production and trade. The Agreement caps trade-distorting domestic support that a Member can provide to its farmers, but preserves the criteria-based “green box” policies that can provide support to agriculture in a manner that minimizes distortions to trade.

The United States has proposed a reduction in the level of trade-distorting support and the establishment of a ceiling on all trade-distorting support that applies equally to all countries. Under the U.S. proposal, the ceiling would be set at 5 percent of the value of total agricultural production. This proposal, when phased in over five years, would cut the amount of allowed trade-distorting support globally by over \$100 billion a year, reducing unfair competition in world markets and eliminating disparities resulting from unequal levels of support provided in the base period. Some other WTO Members have called for the elimination of all trade-distorting support while other Members have called for strengthening disciplines, or imposing a cap on the green box of non-trade distorting support.

Prospects for 2003

The Doha mandate identifies two key deadlines for the agriculture negotiations in 2003. First, modalities, such as tariff and subsidy reduction formulas, are to be established by March 31, 2003. To meet this deadline, negotiators are engaged in intensive discussions in Geneva and in capitals. Second, based on these modalities, WTO Members are to submit initial draft schedules of specific commitments, such as reduction schedules for individual tariff lines and subsidy allowances, by the Fifth Ministerial Conference in Cancun in September 2003. Chairman Harbinson, the Chair of the Special Session, intends to pursue an intensive negotiating schedule in the first quarter of 2003 with these deadlines in mind. He is likely to table a series of proposals aimed at reaching a consensus on negotiating modalities.

2. Special Session of the Council for Trade in Services

Status

Pursuant to the mandate provided in the Uruguay Round, Members embarked upon new, multi-sectoral services negotiations in 2000 under Article XIX of the General Agreement on Trade in Services (GATS). The Doha Declaration recognized the work already undertaken in services negotiations and reaffirmed the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services (CTS) in March 2001. The Doha mandate directed Members to conduct negotiations with a view to promoting the economic growth of all trading partners. The Doha mandate also set deadlines for initial services requests and offers. In February 2002, the TNC established a Special Session of the Council for Trade in Services to serve as the negotiating body.

Major Issues in 2002

The GATS negotiations entered a new phase in 2002 as WTO Members submitted requests consistent with the time frames established in the Doha Ministerial Declaration. The United States submitted its requests on July 1 and at the same time made public a description of the requests, available at: www.ustr.gov/sectors/services/2002-07-01-proposal-execsumm.PDF.

Discussions have also taken place on three provisions contained in the GATS that relate to the negotiations. The GATS calls for an “assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV, *Increasing Participation of Developing Countries*.” A number of WTO Members have made written and oral presentations discussing the effects of services liberalization. In addition, the GATS calls for establishment of two sets of procedures, the first dealing with the treatment of least developed countries in the negotiations, and the second dealing with “the treatment of liberalization undertaken autonomously by Members since previous negotiations.” In July 2000, the United States was the first to make specific proposals regarding the former.

Prospects for 2003

In light of the new phase of the negotiations, sessions in Geneva have been organized to allow greater time for bilateral meetings to present and discuss requests. Country-specific liberalization offers in response to the requests are due by March 31, 2003.

Discussions will continue on the three topics noted above (the “assessment,” the modalities for treatment of least developed countries and of so-called autonomous liberalization).

3. Negotiating Group on Non-Agricultural Market Access

Status

At the Fourth WTO Ministerial Conference held in Doha, Ministers agreed to launch non-agricultural market access negotiations in order to reduce or eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Modalities for the reduction/elimination were to be agreed. Ministers also affirmed that product coverage in these negotiations would be comprehensive and without *a priori* exclusions.

Major Issues in 2002

The WTO Negotiating Group on Non-Agricultural

U.S. Proposals for a Tariff-Free World

The U.S. proposal would eliminate tariffs on a full-range of consumer and industrial goods ranging from women's shoes, to tractors, to children's toys. The proposal calls for a two-step approach to tariff elimination.

Step 1: Members must cut and harmonize their tariffs in the five year period from 2005 to 2010. WTO Members would eliminate all tariffs at or below 5 percent by 2010, cut all other tariffs through a "tariff equalizer" formula to less than 8 percent by 2010, and eliminate tariffs in certain highly-traded industry sectors as soon as possible, but not later than 2010.

Step 2: Members would make equal annual cuts in remaining tariffs between 2010 and 2015. These cuts would result in zero tariffs.

The proposal also calls for a separate program to identify and eliminate non-tariff barriers, which would run on a parallel track with the negotiations on industrial tariffs. The United States will put forward an initial list of such barriers in January.

Market Access set out a work plan in 2002 designed to develop the approaches that would be utilized in negotiations to reduce or eliminate tariff and non-tariff barriers for non-agricultural products. The Negotiating Group agreed that proposals on possible approaches to the negotiations should be submitted between November 1 and December 31, 2002, established March 31, 2003, as the target date for reaching a common understanding on the possible outline of modalities and set May 31, 2003, as the deadline for agreement on modalities. This timetable is designed to ensure agreement on the negotiating approach in advance of the September 2003 Fifth Ministerial Conference in Cancun, Mexico. The Negotiating Group agreed to provide information on the types of non-tariff barriers Members believe should be addressed by January 31, 2003, with a view to reaching consensus on approaches to address non-tariff measures by May 31, 2003 in conjunction with tariff understandings.

In May 2002, the negotiating group organized a technical assistance and training session for all participants to facilitate participation by WTO Members in the negotiations. Work on the substantive approaches that could be taken to liberalization began in earnest in August. Four subsequent sessions were held in 2002 to consider specific proposals on possible approaches to tariff negotiations tabled by the United States, Chile, China, the European Union, Hong Kong, Japan, Mexico, Oman, and Switzerland. Most of these proposals call for a “cocktail” of different approaches to achieve the Doha goals. Virtually all call for a tariff-cutting formula to be the core of the negotiations, with other approaches applied to ensure that all elements of the mandate are met. In addition to various formula approaches, proposals also suggested elimination of tariffs below 5 percent, sectoral “zero/zero” initiatives, harmonization or “compression” methodologies to reduce the disparity across tariff schedules and defined a number of possible approaches to special treatment for the least developed and/or other developing country Members. While an initial deadline for such proposals had been set for December 31, 2002, proposals from several other countries are anticipated early in 2003.

Prospects for 2003

In the first half of 2003, it is anticipated that intense negotiations will occur on the best approaches to use to reduce or eliminate tariffs and non-tariff barriers. The United States will be pursuing its tariff proposal aggressively and working intensively with the private sector, labor, and other interested constituencies to ensure that U.S. interests are advanced through the approaches agreed. In the second half of the year it is anticipated that the intense process of tabling offers and undertaking bilateral negotiations will begin so that tariffs and non-tariff barriers are liberalized to the maximum extent possible by the end of Doha negotiations.

4. Negotiating Group on Rules

Status

In paragraph 28 of the Doha Ministerial Declaration, the Ministers agreed to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement) and on Subsidies and Countervailing Measures (the Subsidies Agreement), while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives. Ministers also directed that the negotiations take into account the needs of developing and least developed participants. The Doha mandate specifically calls for the development of disciplines on trade-distorting practices, which are often the underlying causes of unfair trade, and also calls for clarified and improved WTO disciplines on fisheries subsidies. In addition, paragraph 29 of the

Doha Ministerial Declaration provides for negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements.

The Doha Declaration provides for a two-phase process for the negotiations, in which participants would identify in the initial phase of negotiations the provisions in the Agreements that they would seek to clarify and improve in the subsequent phase. The initial issue-identification phase is expected to continue at least until the Fifth Ministerial Conference.

Major Issues in 2002

The Rules Group held five formal meetings in 2002 (in March, May, July, October, and November) under the Chairmanship of Ambassador Tim Groser from New Zealand. The Group based its work primarily on the written submissions from Members, organizing its work in the following categories: (1) antidumping; (2) subsidies, including fisheries subsidies; and (3) regional trade agreements. Since the Group was in the initial issue-identification phase for all of the meetings in 2002, most of the 41 papers formally submitted by Members to the Group in 2002 have raised issues for discussion rather than making proposals on how to change the Agreements. Some of the papers presented questions or comments on prior submissions.

Antidumping

Given the Doha mandate that the basic concepts and principles underlying the Antidumping and Subsidies Agreements must be preserved, the United States presented a paper at the October meeting outlining the basic concepts and principles of the trade remedy rules. The U.S. paper identified four core principles that would guide U.S. proposals for the Rules Negotiating Group:

- First, these negotiations must maintain the strength and effectiveness of the trade remedy laws and complement a fully effective dispute settlement system which enjoys the confidence of all Members;
- Second, trade remedy laws must operate in an open and transparent manner. This principle is fundamental to the rules-based system as a whole, and the transparency and due process obligations should be further refined as part of these negotiations;
- Third, disciplines must be enhanced to address more effectively underlying trade-distorting practices. Work has already begun along these lines with respect to the steel sector in discussions among the major steel producing nations at the OECD, based on the general recognition that market-distorting practices have contributed to global excess capacity; and
- Fourth, it is essential that dispute settlement panels and the Appellate Body, in interpreting obligations related to trade remedy laws, follow the appropriate standard of review and not impose on Members authorities obligations that are not contained in the Agreements.

In furtherance of the second principle, the United States presented a paper at the November meeting on improving investigatory procedures in antidumping and countervailing duty investigations, highlighting a number of areas in which interested parties and the public could benefit from greater openness and transparency by investigating authorities, as well as some areas where improved procedures could reduce

costs. Since U.S. exporters are a major target of foreign antidumping proceedings, it is essential to improve transparency and due process in these proceedings so that U.S. exporters are fairly treated.

A group calling itself the “Friends of Antidumping” has presented three papers identifying a total of 31 antidumping issues for discussion by the Rules Group. The “Friends” group includes Brazil, Chile, Colombia, Costa Rica, Hong Kong, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Taiwan (referred to in the WTO as “Chinese Taipei”), Thailand, and Turkey, although not all of its members have joined in each paper by the Friends. While the Friends’ papers have raised issues for discussion rather than making specific proposals to change the Antidumping Agreement, the United States believes that the Friends’ ultimate goal is to restrict the use of antidumping measures. In addition to the submissions by the Friends group and the United States, papers on antidumping issues have also been submitted by Australia, Brazil, the European Union, India, and Morocco. The United States has been actively engaged in addressing the submissions from the Friends and other Members, posing written questions to them, and seeking to ensure that the Doha mandate for the Rules Group is fulfilled.

Subsidies

In the subsidies area, the United States submitted a paper on special and differential treatment and the Subsidies Agreement. This paper reviewed the substantial existing special and differential provisions in the Subsidies Agreement and made the case against the indiscriminate use of subsidies as an economic development tool. Other submissions on subsidies issues have been made by Australia, Brazil, Canada, the European Union and India. Among the issues raised in these papers are: proposals for additional special and differential treatment provisions; the OECD Arrangement on export credits; the need to examine the original framework of the Subsidies Agreement (*i.e.*, the traffic light approach to the categorization of subsidies); and indirect subsidies.

As to the issue of fisheries subsidies specifically, the discussion to date has focused on the question of whether fisheries subsidies have, in fact, led to environmentally harmful overfishing, and whether fisheries subsidies pose particularly unique problems which justify a stronger and/or separate set of rules. The United States has joined with a number of developed and developing countries (including Australia, Chile, Ecuador, Iceland, New Zealand, Peru, and the Philippines) in calling for stronger disciplines, while Japan and Korea, in particular, have argued that it has not been demonstrated that fisheries subsidies, rather than poor fishery management, have led to the present poor state of the world’s fisheries. China has also submitted a paper on fisheries subsidies issues.

Regional Trade Agreements

The discussion in the Rules Group on regional trade agreements (RTAs) in 2002 focused on ways in which WTO rules governing customs unions and free trade agreements, and economic integration agreements for services, might be clarified and improved. Many of the issues encompassed by the Doha mandate on RTAs previously have been identified during work on systemic issues within the WTO Committee on Regional Trade Agreements. A Secretariat-prepared synopsis of that work has informed the discussion in the Rules Group. Australia, Chile, the European Union, and Turkey submitted papers to the Rules Group on RTA issues, and the United States has been an active participant in the RTA discussions in the Group.

Among the substantive issues discussed in 2002 are the requirements of GATT Article XXIV that RTAs eliminate tariffs and "other restrictive regulations of commerce" on "substantially all the trade" between parties (and the analogous provisions for the GATS), the possible harmonization of rules of origin for RTAs, and the relationship between RTA rules and the application of trade remedies. Suggestions for procedural improvements include clarifying when, how and to what extent Members must notify the WTO of the provisions of a new RTA, and how the WTO can best review these provisions. Some developing country Members, citing the GATT "Enabling Clause" decision of 1979 (GATT Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries), have opposed applying disciplines to preferential agreements among them. Some European Members have argued for "grandfathering" preexisting RTAs so as to exempt them from some or all new disciplines that may emerge from the negotiations.

Prospects for 2003

The work of the Rules Negotiating Group in 2003 in preparation for the Fifth Ministerial Conference in Cancun will continue to focus on identifying issues to be addressed in the second phase of negotiations. On RTAs, a more focused discussion of possible procedural improvements within the WTO to enhance transparency is likely in early 2003. It is expected that the Rules Group will hold three or four meetings prior to the September Cancun meeting.

The United States will pursue an aggressive affirmative agenda in 2003, based on the four core principles identified in the October U.S. paper. The United States expects to make a number of written submissions raising additional issues to be addressed by the Rules Group, as well as posing additional questions with respect to the submissions made by other Members.

5. Special Session of the Committee on Trade and Environment

Status

Following the Fourth Ministerial Conference at Doha, the TNC established a Special Session of the Committee on Trade and Environment (CTE) to implement the new negotiating mandate contained in paragraph 31 of the Doha Declaration. The CTE in regular session took up other environment-related issues which did not entail a specific negotiating mandate.

Major Issues in 2002

The CTE in Special Session met four times in 2002, including three formal meetings and a fourth informal meeting with representatives of several secretariats for Multilateral Environmental Agreements (MEAs). At all three formal meetings, the CTE in Special Session addressed each of the negotiating mandates set forth in the three sub-paragraphs under paragraph 31 of the Doha Declaration:

- (i) the relationship between existing WTO rules and specific trade obligations set out in MEAs (with specific reference to the applicability of such existing WTO rules as among parties to such MEAs and without prejudice to the WTO rights of Members that are not parties to any MEA in question);

- (ii) procedures for regular information exchange between MEA secretariats and relevant WTO committees, and the criteria for granting observer status; and
- (iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

MEA Specific Trade Obligations and WTO Rules: Negotiations under this mandate commenced with a discussion among participants on interpretations of the mandate, prompted by a submission by the European Union. A large number of other Members expressed opposing views regarding the scope of the mandate, noting in particular their views that the mandate is narrowly focused on “specific trade obligations.” Additionally, there were a variety of views on whether the terms in the mandate should be defined in the abstract and how these negotiations could be phased. Australia submitted a proposal for three phases, starting with an analysis of specific trade obligations contained in relevant MEAs. Most delegations favored proceeding on the basis of the 14 agreements listed in a WTO Secretariat compilation (WT/CTE/W/160/Rev.1). Several Members, including Switzerland and Japan, submitted more conceptual papers proposing generic approaches for clarifying the relationship between specific trade obligations in MEAs and WTO rules. Many Members considered these submissions to be premature, particularly in proposing solutions when no specific problems had yet been articulated. Instead, these delegations supported the more analytical approaches contained in submissions by Korea and New Zealand, utilizing the phasing approach suggested by the Australian proposal. Members were able to agree, however, to proceed with future discussions starting in 2003 by focusing on examples of specific trade obligations, while not precluding discussion of other issues.

Procedures for Information Exchange and Criteria for Observer Status: Members generally expressed support for finding additional mechanisms to enhance communication and cooperation between MEA secretariats and WTO bodies, although many suggested that the question of observer status is an issue for the WTO overall and is currently before the General Council and TNC. The United States made the first submission under this negotiating mandate, calling for a more formal structure for conducting information sessions with MEA secretariats, greater access to WTO documents for MEAs that are not observers in relevant WTO bodies, and new procedures for responding to requests for observer status from MEAs. The U.S. submission emphasized that these improvements in procedures could contribute to greater coordination between trade and environment officials at international and national levels and enhance mutual understanding with respect to negotiation and implementation of international trade and environment obligations. The European Union followed up with a submission that complemented the U.S. paper and called for action under this mandate not later than the Fifth Ministerial Conference. In November, the CTE in Special Session held an informal meeting devoted to providing an opportunity for MEA secretariats to make suggestions on how information exchange could be improved. The MEA secretariats that participated in the meeting welcomed this opportunity, although they expressed concerns that there had been no action to respond to their requests for observer status in the CTE in Special Session.

Environmental Goods and Services: Members agreed at the outset of the Doha negotiations that new market access undertakings for environmental goods and services should take place in the Non-Agriculture Market Access Negotiating Group and the Committee in Trade in Services in Special Session. Nevertheless, they also left room for the CTE in Special Session to support these negotiating groups, particularly with respect to the definition of environmental goods. New Zealand and the United States made early submissions on this issue to both the Non-Agricultural Market Access Negotiating Group and

CTE in Special Session, suggesting that the list developed in APEC would provide a useful starting point, while Japan made a subsequent submission that elaborated on OECD work. In discussions in the CTE in Special Session, most delegations expressed concerns about extending the definition to include distinctions based on non-product process and production methods (PPMs).

Prospects for 2003

Negotiations under all three mandates in paragraph 31 of the Doha Declaration are likely to focus on concrete progress that can be accomplished by the Fifth Ministerial Conference. Under sub-paragraph 31(i), this may be limited to obtaining a clearer picture of whether there are specific problems that could be practically addressed in these negotiations. This suggests continuing with an analysis that involves identification of examples of specific trade obligations, while providing the opportunity for individual Members to raise concrete concerns related to the applicability of WTO rules. Negotiations under sub-paragraph 31(i) may also be advanced through rapid progress under sub-paragraph 31(ii) since enhanced communication and cooperation between MEAs and the WTO are key elements in ensuring that the two systems of international obligations remain compatible and mutually supportive. Finally, the CTE in Special Session is likely to explore opportunities for contributing to negotiations on market access for environmental goods and services, particularly as a forum to discuss the importance of liberalization in both areas in order to secure concrete benefits associated with access to state-of-the-art environmental technologies that promote sustainable development.

6. Special Session of the Dispute Settlement Body

Status

Following the Fourth Ministerial Conference in November, 2001, the TNC established the Special Session of the Dispute Settlement Body (“DSB”) to fulfill the Ministerial mandate found in paragraph 30 of the Doha Declaration which provides: “We agree to negotiations on improvements and clarifications of the Dispute Settlement Understanding. The negotiations should be based on the work done thus far as well as any additional proposals by Members, and aim to agree on improvements and clarifications not later than May 2003, at which time we will take steps to ensure that the results enter into force as soon as possible thereafter.”

Major Issues in 2002

The Special Session of the DSB met frequently during 2002 in an effort to implement the Doha mandate and report to the General Council. In the first of several phases of the review of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”), Members engaged in a general discussion of the issues. Following that general discussion, Members then tabled proposals to clarify or improve the DSU.

The United States submitted a proposal in August to expand transparency and public access to dispute settlement proceedings. The proposal would open WTO dispute settlement proceedings to the public for the first time and give greater public access to briefs and panel reports. In addition to open hearings, public briefs, and early public release of panel reports, the U.S. proposal called on WTO Members to consider rules for “amicus curiae” submissions - submissions by non-parties to a dispute. WTO rules

currently allow such submissions, but do not provide guidelines on how they are to be considered. Guidelines would provide a clearer roadmap for handling such submissions.

In December, the United States, joined by Chile, submitted a proposal to help improve the effectiveness of the WTO dispute settlement system in resolving trade disputes among WTO Members. The proposal particularly is aimed at giving parties to a dispute more control over the process and greater flexibility to settle disputes. Under the present dispute settlement system, parties are encouraged to resolve their disputes, but do not always have all the tools with which to do so. The joint proposal contains specific options aimed at giving parties greater flexibility and more control over the process.

Members conducted a review of each proposal submitted and provided an opportunity to request explanations and pose questions of the Member(s) making the proposal. Members also had an opportunity to discuss each issue raised by the various proposals.

Prospects for 2003

In 2003, Members will intensify their work with a view to the May 2003 deadline to complete the review of the DSU. Many proposals were submitted in narrative form. The Chairman of the DSU review has encouraged Members to reduce their proposals to draft legal text where appropriate early in 2003. Members will then discuss the various textual proposals, without prejudice to Members' positions on the merits of the proposal under discussion. Members will be meeting monthly in multi-day sessions through the end of May in an effort to complete their work.

7. Special Session of the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Status

With a view to completing the work started in the TRIPS Council on the implementation of Article 23.4, Ministers agreed at Doha to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. This is the only issue before the Special Session of the Council.

Major Issues in 2002

During 2002, the TRIPS Council continued its negotiations under Article 23.4, which is intended to facilitate protection of geographic indications. The European Union together with a number of other countries submitted a proposal for a system, nearly identical to that which they had submitted previously, under which Members would notify the WTO of their geographical indications for wines and spirits. Other Members would then have eighteen months in which to object to the registration of particular notified geographical indications that they believed were not entitled to protection within their own territory. If no objection were made, each notified geographical indication would be registered and all WTO Members would be required to provide protection as required under Article 23. If an objection were made, the notifying Member and the Member objecting would negotiate a solution, but the geographical indication would have to be protected by all Members that had not objected. Argentina, Australia, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Namibia, New Zealand, the Philippines, Taiwan, and the United States

introduced an alternative proposal (the joint proposal), similar to that which had been introduced previously by Canada, Chile, Japan, and the United States, under which Members would notify their geographical indications for wines and spirits for incorporation into a register on the WTO website. Members choosing to use the system would agree to consult the website when making any decisions under their domestic laws related to geographical indications or, in some cases, trademarks. Implementation of this proposal would not impose any additional obligations with regard to geographical indications on Members that chose not to participate nor would it place undue burdens on the WTO Secretariat.

Prospects for 2003

In his report to the TNC, the Chair of the Special Session of the Council for Trade-Related Aspects of Intellectual Property Rights applauded Members' "best endeavors" thus far. However, he noted that positions remained far apart. With respect to the multilateral registry for geographic indications, he said that Members were divided along two distinctively different approaches: one approach calling for the establishment of a geographical indications database and the other approach calling for a registration system with legal effect. He called on Members to work harder and show more flexibility.

The United States will aggressively pursue additional support for the joint proposal in the coming year, so that the negotiations can be completed by the Fifth Ministerial Conference.

8. Special Session of the Committee on Trade and Development

Status

The TNC established the Special Session of the Committee on Trade and Development (CTD) in February 2002 to fulfill the Ministerial mandate found in paragraph 44 of the Doha Declaration. The TNC charged the Special Session with conducting a review of existing special and differential treatment (S&D) provisions available to developing country Members and with providing recommendations to the General Council to make S&D more precise, effective, and operational as a means to more fully integrate developing country Members into the WTO system.

Major Issues in 2002

The CTD met frequently during 2002 in an effort to implement the Doha mandate and report to the General Council. The first of several phases of the review began with a request for the Secretariat to compile information relating to the range of S&D provisions available and their utilization by Members. Following this first phase of Secretariat research, Members submitted proposals on a number of issues such as the principles and objectives of S&D, coherence with other international organizations, technical assistance and capacity building, effective use of transition periods, proposals addressing specific agreements, trade preferences and related issues, and differentiated treatment of developing country Members. At the close of 2002, twenty-two submissions had been contributed by fourteen Members (or groups of Members). The United States submitted a paper in June that outlined the benefits of an open, rules-based trade regime in fostering growth and development and suggested that discussions should naturally focus on using S&D provisions as a means to reach the goal of integrating developing country Members into the trading system. Among the topics raised by the Africa Group was a call for a mechanism by which Members could monitor the utilization of S&D treatment with the aim of ensuring

more effective use of S&D provisions. Members responded positively to the idea, acknowledging that S&D treatment could benefit from improved monitoring.

Given the range and complexity of the issues raised in Member submissions, the CTD requested that the General Council to provide an extension of the deadline for recommendations from July 2002 to the end of the year. At the same session, the General Council agreed to establish a monitoring mechanism for S&D treatment and requested that the CTD elaborate the functions, structure, and terms of reference of such monitoring.

In an intensive fall meeting schedule, the Special Session examined a number of cross-cutting issues and engaged in a dialogue on the agreement-specific proposals presented by delegations in earlier submissions. In this examination, the Special Session was aided by the participation of other WTO Committee and Agreement experts. Chairman Ransford Smith of Jamaica scheduled seven fall sessions around meetings of other WTO bodies. These supplementary sessions facilitated participation of experts from the Committee on Technical Barriers to Trade, the Antidumping Committee, the Committee on Agriculture, the Committee on Sanitary and Phyto-Sanitary Measures, and the Dispute Settlement Body. The resulting CTD discussions benefitted from this exchange.

In addition to sessions dedicated to agreement-specific issues, the Committee undertook a number of discussions of cross-cutting S&D issues, including the principle and objectives guiding the use of S&D, graduation and differentiation among Members, and benchmarking progress toward implementing Agreements. Members expressed a range of views on these issues. Also as part of the Fall work program, the Chair held consultations on how to elaborate the functions, structure, and terms of reference of an S&D monitoring mechanism. The United States submitted a proposal outlining possible monitoring procedures for consideration by Members. The proposal reinforced a role for monitoring of Doha negotiations by the CTD. It suggested ways to strengthen ties between the negotiating bodies and Committees, and ways to produce more effective coordination of technical assistance. In consultations held by the Chair on monitoring, there was a convergence of views among Members on such matters as the role of the mechanism and the sources of information. Some remaining issues, however, will require further discussion.

Prospects for 2003

There has been significant work completed over this past year as part of the S&D review by the CTD Special Session. While discussions have shown some convergence of views, there remain a number of areas that require further discussion in 2003. The CTD will continue the review and examination of how S&D treatment fits within the goal of furthering the participation of developing country Members in the WTO system. A preliminary discussion has been held on how S&D treatment and graduation/differentiation among various levels of development might be incorporated into the architecture of the WTO. These and other aspects of the mandate will be discussed in 2003.

C. Work Programs established under the Doha Development Agenda

The Doha Ministerial Declaration continued or established several additional work programs. For issues initially raise at the WTO's First Ministerial Conference in Singapore, modalities for negotiations are to be developed. These discussions could lead to a decision to launch negotiations at the Fifth Ministerial Conference scheduled for Cancun. The DDA work programs are: Transparency in Government

Procurement; Trade Facilitation; Relationship between Trade and Investment; Interaction between Trade and Competition; Electronic Commerce; Trade, Debt, and Finance; and Trade and Transfer of Technology.

1. Working Group on Transparency in Government Procurement

Status

Building on the progress in the Working Group on Government Procurement, the Doha Ministerial Declaration calls for decisions to be taken at the Fifth WTO Ministerial Conference on the modalities for negotiations on a potential Agreement on Transparency in Government Procurement, and for negotiations to begin on that basis.

Continued progress toward a multilateral Agreement on Transparency in Government Procurement is an important element of the United States' longstanding effort to bring all WTO Members' procurement markets within the scope of the international rules-based trading system. This work 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.

Major Issues in 2002

The Working Group has made significant progress in identifying many of the key substantive elements of a potential Agreement on Transparency in Government Procurement, including:

- 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.

The Working Group's discussions have confirmed that a wide range of WTO Members consider these elements to be fundamental to an efficient and accountable procurement system and, accordingly, already incorporate these elements, as appropriate, in their existing procurement laws, regulations, and practices.

In 2002, in addition to discussions of the potential elements of a transparency agreement, the Working Group considered technical assistance and capacity-building needs in relation to the negotiation of such an agreement. Many delegations recognized the importance of incorporating predictable standards of transparency in government procurement into the rules-based international trading system. Accomplishing this would facilitate commercial development and the integration of all Member economies into the global trading system. Some developing country delegations noted that computer-based information and communications technologies could provide a cost-effective way for all governments to achieve their transparency objectives. The United States submitted two papers to the Working Group: a Work Plan that suggested the Working Group identify the elements of an agreement and questions on capacity-building related to a transparency agreement.

Prospects for 2003

The overall aim for 2003 is for the Fifth Ministerial to launch negotiations of an Agreement on Transparency in Government Procurement. To achieve this aim, the United States will, pursuant to the Doha Ministerial Declaration, work with other WTO Members to address several key issues relating to the negotiation of an Agreement, including: 1) capacity building needs related to the substance of the negotiations; and 2) the appropriate enforcement mechanisms for an agreement, including domestic review procedures and application of WTO dispute settlement procedures to an Agreement.

2. Trade Facilitation

Status

The Fourth Ministerial Conference at Doha established an ambitious and focused work program on Trade Facilitation leading to the Fifth Ministerial Conference, including a mandate for the Council on Trade in Goods to “review and as appropriate, clarify and improve relevant aspects of Article V, VIII, and X of GATT 1994 and identify the trade facilitation needs and priorities of Members, in particular developing and least developed countries.” At Doha, it was agreed that negotiations on Trade Facilitation will take place after the Fifth Ministerial Conference, based upon a decision to be taken at that Ministerial on the modalities of negotiations.

Major Issues in 2002

The Council on Trade in Goods held four separate formal sessions in 2002 on Trade Facilitation, several of which were two days in length. The first session of 2002 was devoted largely to GATT Article X (“Publication and Administration of Trade Regulations”) and focused on improved commitments that would enhance transparency in border regimes, such as publication of laws and regulations on the Internet. A subsequent session was held on GATT Article VIII (“Fees and Formalities connected with Importation and Exportation”), addressing a broad range of topics, including the potential for strengthened or new WTO disciplines related to ensuring rapid release of imported goods. Another Council session focused on GATT Article V (“Freedom of Transit”), a subject that is of particular interest to land-locked developing countries. A fourth session was also held in order to address more broadly the work undertaken throughout 2002, and to plan for 2003. Consistent with the Doha mandate, each session included an agenda item pertaining to the identification of the trade facilitation needs and priorities of Members, while also addressing issues to ensure adequate technical assistance and support for capacity building in this area.

Some resistance continues on the part of certain developing country Members to developing new and strengthened WTO commitments on Trade Facilitation. However, many developing countries joined the United States and other Members in recognizing that developing a rules-based environment for conducting trade transactions would be an important element for securing continued economic growth for all WTO Members. Consensus was evident among Members that systemic reforms related to increased transparency and efficiency in the conduct of border transactions would diminish corruption, while providing the additional 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 advancing WTO work in the area of Trade Facilitation. 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, while at the same time are particularly disadvantaged when border procedures are opaque and overly burdensome.

Prospects for 2003

The Council will hold at least two formal sessions on Trade Facilitation in 2003, prior to the Fifth Ministerial Conference. The United States will continue its leadership role, working with other key Members to ensure that the WTO work on Trade Facilitation is well-positioned by the time of the Fifth Ministerial Conference. The United States views this work as ultimately leading to one of the most important systemic negotiations to be undertaken by the WTO, a true "win-win" opportunity in view of the important linkages between a rules-based trade transaction environment and a stable economic infrastructure. Efforts will continue in 2003 to advance ongoing complementary initiatives involving existing Agreements such as implementation of the WTO Agreement on Customs Valuation. The United States will also be working with key Members to ensure that technical assistance in this area is both demand-driven and effective in bringing about concrete measurable results that will translate into increased trade and investment opportunities for all Members.

3. Working Group on Trade and Competition Policy

Status

In 2003, the WTO Working Group on the Interaction between Trade and Competition Policy (Working Group) enters its seventh year of work under the oversight of the WTO General Council. The Working Group was set up by WTO Trade Ministers at their first Ministerial Conference in Singapore in December 1996. Its mandate was 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." In December 1998, the General Council authorized the Working 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 Working Group's work until the Doha Ministerial Conference in 2001.

In Paragraph 23 of the November 2001 Doha Ministerial Declaration, the Ministers agreed that "negotiations on trade and competition policy" will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations. The Ministerial Declaration provides that further work in the Working Group leading up to the Fifth Session will focus on the clarification of: core principles, including transparency, non-discrimination and procedural fairness; provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building. The Ministers recognized the needs of developing and least developed countries for technical assistance and capacity building in this area, and pledged to work in cooperation with other intergovernmental organizations, including UNCTAD, to provide assistance to respond to these needs.

Major Issues in 2002

The Working Group held four meetings in 2002. The Working 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 and UNCTAD. The Working Group's discussions focused on the issues specified in paragraphs 24 and 25 of the Doha Ministerial Declaration. The April meeting focused on technical assistance and capacity building; the July meeting on provisions on hardcore cartels and modalities for voluntary cooperation; the September meeting on core principles, including transparency, non-discrimination and procedural fairness; and the November meeting on review and approval of the Working Group's annual report.

Thirty-four written submissions were contributed by 15 Members (counting the European Union and its 15 Member States as one contributor): Argentina, Australia, Canada, Egypt, the European Union, India, Japan, Korea, Mexico, New Zealand, Romania, South Africa, Switzerland, Thailand, and the United States. The United States played an active role in the Working Group, making five written submissions to the Working Group in 2002. These included a submission for the April meeting on U.S. experience in providing antitrust technical assistance; a submission for the July meeting on provisions on hardcore cartels; a second submission for the July meeting on modalities for voluntary cooperation; a submission for the September meeting on transparency and non-discrimination; and a second submission for the September meeting on procedural fairness.

Prospects for 2003

The work of the Working Group until the Fifth Ministerial Conference in Cancun in September 2003 will continue to focus on the clarification of the issues specified in the Doha Ministerial Declaration (*i.e.*, core principles, hardcore cartels, voluntary cooperation, technical assistance and capacity building). It is expected that the Working Group will hold two meetings in 2003 before the Cancun Ministerial Conference. Under the Doha Declaration, decisions are to be taken at the Cancun Ministerial Conference regarding future negotiations in this area.

4. Working Group on Trade and Investment

Status

The Working Group on Trade and Investment (WGTI) was established by the Singapore WTO Ministerial Declaration in 1996. The WGTI provides a multilateral forum for the consideration of investment liberalization and international investment agreements and their relationship to trade and economic development. The WTO General Council oversees the work of the WGTI, whose mandate was extended at the Doha Ministerial Conference until the Fifth Ministerial Conference to be held in Cancun. At the Fourth Ministerial Conference in Doha, Ministers agreed that investment negotiations "will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on the modalities of negotiations." The United States and other Members believe the Working Group provides an opportunity to promote international understanding of the benefits of open investment policies.

Major Issues in 2002

The Doha Declaration tasked the WGTI to use the time before the next Ministerial Conference to examine a core set of issues that will shape WTO investment negotiations. These issues include: the scope and definition of investment; transparency; non-discrimination; approaches to commitments on the treatment of investment prior to establishment, based on a GATS-type, positive list; development provisions; exceptions and balance-of-payments safeguards; and consultation and the settlement of disputes between Members. WTO Members addressed these issues during four WGTI meetings held during 2002. The Working Group also devoted considerable time to discussing WTO activities and plans relating to technical assistance on trade and investment issues.

Discussions during 2002 have revealed significant differences among Members on whether and how the WTO should proceed with investment negotiations after the Fifth Ministerial Conference. The European Union and Japan are the strongest advocates for investment negotiations. Some developing countries argue that the Doha Declaration does not require that investment negotiations begin in 2003. The United States has steered a middle course between these two positions, urging WTO Members to incorporate several fundamental principles, including transparency and non-discrimination, into any future WTO investment agreement. Members have also debated how an investment agreement might address the concerns of developing countries while maintaining a commitment to strong investment protections. The United States submitted one major proposal in the WGTI during 2002, arguing that any multilaterally agreed disciplines or protections should extend to portfolio as well as to direct investment.

Prospects for 2003

The prospect of WTO investment negotiations beginning after the Fifth Ministerial Conference has intensified Member participation and interest in WGTI discussions. WTO Members will need to work intensively in 2003 to achieve consensus on the content and structure of investment negotiations. Members are likely to submit a number of concrete proposals on negotiating modalities to the WGTI during 2003, as the Working Group shifts from the more conceptual discussions of 2002 to an effort to prepare recommendations for the General Council and the Fifth Ministerial Conference.

5. Work Program on Electronic Commerce

Status

The Doha Declaration renewed the Work Program on Electronic Commerce, and extended until the Fifth Ministerial Conference the current practice of not imposing customs duties on electronic transmissions. The General Council was directed to determine the most appropriate institutional arrangement for the Work Program. The General Council endorsed the current framework, which is a series of dedicated discussions focused on cross-cutting issues identified in 2001. Cross-cutting issues are those issues that may have relevance to two or more WTO bodies, such as classification of certain electronically downloaded products. Two dedicated discussions took place in 2002, and more are planned for 2003.

Major Issues in 2002

The two dedicated discussions in 2002 examined aspects of the classification of digital products. In particular, the Working Group considered whether such products should be considered as “goods” and

therefore subject to GATT, or “services” subject to GATS. Some Members would prefer to classify all products that are digitally downloaded and electronically transmitted as services, while others consider such a classification premature. No conclusions were drawn, and the issue remains unresolved. Another issue discussed in the Working Group related to the fiscal implications of electronic commerce and the moratorium on imposing customs duties on electronic transmissions. This issue was discussed as part of a wider seminar in the Committee on Trade and Development in April 2002.

Prospects for 2003

The United States will continue to be an active participant in the dedicated discussions on electronic commerce. The electronic commerce work program has the potential to play an even more useful role in ongoing negotiations and work program discussions that impact electronic commerce if key goals or objectives can be identified to guide such discussions. These objectives might serve as a useful measure for Members seeking to embrace the opportunities and meet the challenges presented by global electronic commerce.

6. Working Group on Trade, Debt, and Finance

Status

Ministers at Fourth Ministerial Conference held in Doha established the mandate for the Working Group on Trade, Debt and Finance (TDF). Ministers instructed the Working Group to examine the relationship between trade, debt and finance, and to examine any possible recommendations on steps that might be taken within the mandate and competence of the WTO to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and least developed countries, as well as strengthen the coherence of international trade and financial policies, with a view to safeguarding the multilateral trading system from the effects of financial and monetary instability.

Major Issues in 2002

The Working Group held four meetings in 2002. Working Group discussions focused on the following areas: the relationship between trade and finance; the relationship between trade and debt; and the need for greater coherence between the WTO and other international organizations in regards to the issues of trade, debt, and finance. During these meetings, representatives from the International Monetary Fund (IMF), the United Nations Conference on Trade and Development (UNCTAD), the Asian Development Bank, and the Organization for Economic Cooperation and Development (OECD) provided brief presentations to assist the Working Group in its analysis. Additionally, the Working Group received papers from the World Bank, the United Nations Economic Commission for Africa, and the United Nations Economic Commission for Latin American and the Caribbean to assist the group in its discussions.

Prospects for 2003

The Working Group on Trade, Debt and Finance, which is scheduled to meet two times in 2003, will continue to assess trade, debt and finance linkages with a view to preparing a report to the Fifth Ministerial Conference.

7. Working Group on Trade and Transfer of Technology

Status

Ministers at the Fourth Ministerial Conference at Doha agreed to an “examination ... of the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries.” The TNC established the Working Group on Trade and Technology Transfer (WGTTT) under the auspices of the General Council, which is to report to the Fifth Session of the Ministerial Conference on the Group’s progress.

Major Issues in 2002

The WGTTT met formally four times in 2002. Principal subjects addressed by the WGTTT during the year included presentations on trade and transfer of technology by intergovernmental organizations and academia; presentations on country experiences relating to trade and transfer of technology by Members; background papers on trade and transfer of technology prepared by the Secretariat; and submissions by Members.

At a number of sessions of the WGTTT, representatives from UNCTAD, the Institute for New Technologies of the United Nations University (UNU/INTECH), the Industrial Promotion and Technology Branch of UNIDO, and the World Bank made presentations on their work related to trade and transfer of technology. A number of WTO Members shared country experiences in the field, including the head of Brazil's Science and Technology Division, the Deputy Director of China's Department of Science and Technology and the Director of Strategic Alliances, Industrial Research Assistance Program, Canada, and made presentations. The Secretariat prepared a general background paper, on its own responsibility, which Members discussed and critiqued. Another paper prepared by the Secretariat entitled "A Taxonomy of Country Experiences on International Technology Transfers" will be discussed at the next session of the WGTTT in 2003.

A number of Members also prepared submissions for consideration by the Working Group. A submission made jointly by the delegations of Bangladesh, Cuba, the Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda, and Zimbabwe recommended various initiatives and measures. For example, the submission recommended a possible terms of reference for the WGTTT to examine home country measures that encourage transfer of technology and to examine WTO agreements to determine whether certain provisions may create barriers to transfer and dissemination of technology, with a view to making amendments; analytical work; and technical cooperation. Some Members expressed concern that these proposals, by their nature, suggested automatic recommendations and went beyond the Doha mandate. Another communication was received from India, Indonesia, Kenya, Zimbabwe, Egypt, Honduras, and Cuba, identifying various WTO provisions they believe relate to transfer of technology. The submission suggested using the provisions to increase technology flows and suggested that the WGTTT develop concrete proposals. A submission from the European Union proposed the WGTTT focus on developing a common understanding of the definition of technology transfer; identifying the various channels of transfer of technology; and examining ways to make those channels more effective. The European Union emphasized the importance to facilitating transfer of technology of foreign direct investment, trade in goods and services, licensing of

technology subject to intellectual property rights, government procurement, development cooperation, multilateral environment agreements, and private and public partnerships.

Prospects for 2003

The WGTTT adopted a work program for 2003 in November 2002. The work of the WGTTT will turn to developing a report to the Fifth Ministerial Conference. The Chairman will continue consultations on the number of meetings needed in 2003 to implement the agreed work plan.

D. General Council Activities

Status

The WTO General Council is the highest decision-making body in the WTO that 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 Fourth Ministerial Conference met most recently in Doha, Qatar). 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 respectively.

Three major 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. The Doha Ministerial Declaration formed a number of new work programs and working groups which have been given mandates to report to the General Council such as the Working Group on Trade, Debt, and Finance and the Working Group on Trade and Transfer of Technology. The mandates are part of DDA and these were treated earlier in this chapter.

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.

Prior to 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 creation of the WTO, Members had created a permanent negotiating forum to achieve trade

liberalization. The Financial Services Agreement, the Basic Telecommunications Services Agreement, Information Technology Agreement, and the “built-in agenda” negotiations initiated in 2000 are examples of how the WTO has evolved into a permanent negotiating body.

Major Issues in 2002

Ambassador Sergio Marchi of Canada served as Chairman of the General Council in 2002. The following issues figured prominently in the General Council activities:

Transparency: In 2002, the General Council completed work on efforts to improve its 1996 document availability decision, a step which was advocated by several Members, including the United States. The General Council Decision of May 14, 2002 represents a substantial, though still imperfect, improvement over the rules that had been in place since July 1996. The most significant changes are the elimination of the automatic restriction of certain types of documents, a significant shortening of the period during which documents issued as restricted remain restricted, and automatic derestriction of documents that in the past could remain restricted for an extended period of time based on the request of a Member.

Procedures for the Selection of Director-Generals: In 2002 the General Council completed work on guidelines for the selection of the WTO Director-General. Work on the guidelines had been initiated by Members several years ago out of a desire to reduce the risk of a repeat of the divisive selection process that had taken place in 1999. The new guidelines set time frames for the selection process and a mechanism for facilitating the consensus building process. While many Members had wanted the guidelines to include procedures for voting in the case of a deadlock, there was no consensus on whether there should be voting or what type of voting might be employed. As a result the guidelines simply state that in the event of an intractable deadlock, Members should consider whether to put the matter to a vote and, if so, through what procedure.

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 for the Caribbean Basin Economic Recovery Act, and preferences for the Former Trust Territories of the Pacific Islands. 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 Article IX waivers currently in force.

Accessions to the WTO: The General Council, acting on behalf of the Ministerial Council, approves the accessions of new Members to the WTO after the final terms have been adopted by the Working Parties established by the Council. In 2002, the General Council approved the accession of Armenia and Macedonia. They will become Members of the WTO 30 days after each of them deposit their instrument of ratification.

During 2002, the General Council agreed on guidelines aimed at facilitating the accession of least-developed countries (LDCs). Additional details concerning the formulation of these new guidelines, acceding countries, and the accession process are discussed below in the section entitled "Accessions to the World Trade Organization."

Global Electronic Commerce: The Work Program on Electronic Commerce held two dedicated discussions under the auspices of the General Council in 2002. Those sessions focused on the

classification of certain products that could be transmitted electronically, as well as certain fiscal implications of electronic commerce. Further dedicated discussions are planned for 2003, also under the guidance of the General Council.

Capacity Building through Technical Cooperation: The General Council continued its supervision of technical assistance for the purpose of capacity building in developing countries (*i.e.*, modernizing their government operations to facilitate effective implementation of the WTO Agreements). For its part, the United States donated \$1 million to the WTO Global Trust Fund for Technical Assistance and an additional \$370,000 to assist African countries specifically.

Prospects for 2003

The General Council will continue its important role in overseeing implementation of the WTO Agreements, expanding the current program of work for the WTO. It will also continue to oversee the negotiations launched at the Fourth Ministerial Conference at Doha in 2001, including preparations for the Fifth Ministerial Conference in Cancun, Mexico. Management of the WTO, especially with respect to outreach efforts to the public, consultations with Members, and its work with other institutions on capacity building, will figure prominently in Council discussions over the next year. The Council likely will meet at least quarterly to discharge its functions and will undertake a review of a U.S. waiver to legislation known as the "Jones Act".

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 the practice of other international organizations. Ministerial Conferences were convened in Singapore (1996), Geneva (1998), Seattle (1999), and Doha (2001). The General Council has the authority to add issues to the WTO's agenda, whether for a work program or negotiation. The informal processes on transparency and oversight of the work program on electronic commerce will remain an important part of the Council's work.

1. The Dispute Settlement Understanding

Status

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 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 provides more background information on the WTO dispute settlement process.

Major Issues in 2002

The DSB met 19 times in 2002 to oversee disputes and to address responsibilities such as consulting on proposed amendments to the Appellate Body working procedures 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 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. Since 1985, the Secretariat has maintained a roster of non-governmental experts for GATT 1947 dispute settlement, which has been 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. These modifications will aid in evaluating candidates’ qualifications and encouraging the appointment of well-qualified candidates who have expertise in the subject matters of the Uruguay Round Agreements. In 2002, 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 in Annex II. 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 2002.

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 Uruguay Round Agreements Act (URAA), which directed the USTR to seek conflict 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 II 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 expired 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. On September 25, 2001, the DSB agreed to appoint Mr. Luiz Olavo Baptista of Brazil, Mr. John S Lockhart of Australia and Mr. Giorgio Sacerdoti of Italy to a term of four years commencing on December 19, 2001. The names and biographical data for the Appellate Body members are included in Annex II of this report.

The Appellate Body has also adopted Working Procedures for Appellate Review. On February 28, 1997, the Appellate Body issued a revision of the Working Procedures, providing for a two-year term for the first Chairperson, and one-year terms for subsequent Chairpersons. In 2001 the Appellate Body amended its working procedures to provide for no more than two consecutive terms for Chairperson. Mr. Lacarte-Muró, the first Chairperson, served until February 7, 1998; Mr. Beeby served as Chairperson from February 7, 1998 to February 6, 1999; Mr. El-Naggar served as Chairperson from February 7, 1999 to February 6, 2000; Mr. Feliciano served as Chairperson from February 7, 2000 to February 6, 2001; Mr. Ehlermann served as Chairperson from February 7, 2001 to December 10, 2001, and Mr. Bacchus's term as Chairperson runs from December 15, 2001 to December 10, 2003 (including his election to serve an additional term).

In 2002, the Appellate Body issued eight reports, of which six involved the United States as a party and are discussed in detail below. The two other reports concerned the European Communities' measures affecting the labeling of sardines and Chile's price band measures for agricultural imports. The United States participated in both of these proceedings as an interested third party.

Dispute Settlement Activity in 2002: During its first eight years in operation, 276 requests for consultations (22 in 1995, 42 in 1996, 46 in 1997, 44 in 1998, 31 in 1999, 30 in 2000, 27 in 2001, and 34 in 2002) were filed with the WTO. During that period, the United States filed 61 complaints against other Members' measures and received 71 complaints on U.S. measures. A number of disputes commenced in

earlier years continued to be active in 2002. What follows is a description of those disputes in which the United States was either a complainant, defendant, or third party during the past year.

Prospects for 2003

In 2003, 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 2003.

a. Disputes Brought by the United States

In 2002, the United States continued to be one of the most active participants in the WTO dispute settlement process. This section includes brief summaries of dispute settlement activity in 2002 where the United States was a complainant. 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 a number of cases the United States has been able to achieve satisfactory outcomes invoking the consultation provisions of the dispute settlement procedures, without recourse to formal panel proceedings.

Argentina—Patent and test data protection for pharmaceuticals and agricultural chemicals (DS171/196)

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, 1999, and again 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 as required 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 began July 17, 2000. On May 31, 2002, the United States and Argentina notified the DSB that a partial settlement of this dispute had been reached. Of the ten claims raised by the United States, eight were settled. The United States reserved its right to pursue future consultations and WTO dispute settlement with respect to two remaining issues: protection of test data against unfair commercial use and the application of enhanced TRIPS Agreement rights to patent applications pending as of the entry into force of the TRIPS Agreement for Argentina (January 1, 2000).

Brazil—Customs valuation (DS197)

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 European Union regarding the same matter, and decided to pursue its own case as well. The United States held consultations with Brazil on July 18, 2000, and continued to monitor the situation in 2002.

Canada—Export subsidies and tariff-rate quotas on dairy products (DS103)

The United States prevailed on its claim that Canada is providing subsidies to exports of dairy products in violation of its Uruguay Round commitment to reduce the quantity of subsidized exports of dairy products. The United States initiated this dispute in 1998, contending that Canada was providing export subsidies on dairy products in excess of its commitment levels and was maintaining a tariff-rate quota (TRQ) 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 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 complete full implementation of the DSB's recommendations and rulings no later than January 31, 2001.

While Canada eliminated one of the export subsidies subject to the DSB findings, it introduced its "commercial export milk" scheme under which exporters have access to milk at prices that are below domestic market levels in Canada. Therefore, on February 16, 2001, the United States, along with New Zealand, requested that the DSB reestablish the panel to review Canada's compliance measures. At the same time, the United States requested authorization to withdraw concessions benefiting goods from Canada if the panel agreed that Canada had failed to comply with the rulings against it. The panel was reestablished on March 1, 2001, with Mr. Peter Palečka replacing Professor Koh, who was no longer available to serve, and with Professor Petersmann serving as Chairman. The panel found that the steps Canada took to implement the adverse rulings regarding its dairy export practices were insufficient and that Canada continued to subsidize its dairy exports at a level that is inconsistent with its WTO commitments. Canada appealed the panel's findings. On December 3, 2001, the Appellate Body concluded that it did not have enough facts to make a ruling against Canada.

As a result, the United States, along with New Zealand, requested on December 6, 2001 that the panel be reconvened again to allow the complaining parties to present additional factual information. The panel was reestablished on December 18, 2001, with Mr. Peter Palečka and Mr. Guillermo Aguilar Alvarez serving as panelists, and with Professor Petersmann serving as Chairman. On July 26, 2002, the panel found that the steps Canada took to implement the adverse rulings regarding its dairy export practices were insufficient and that Canada continued to subsidize its dairy exports at a level that is inconsistent with its WTO commitments. Canada appealed the panel's findings. On December 20, 2002, the Appellate Body upheld the panel's findings. The DSB adopted the panel and Appellate Body reports on January 17, 2003.

Canada – Measures Relating to Exports of Wheat And Treatment of Imported Grain (DS276)

On December 17, 2002, the United States requested consultations with Canada concerning the export of wheat by the Canadian Wheat Board and the treatment accorded by Canada to grain imported into Canada. The consultations were held on January 31, 2003. The Government of Canada established the Canadian Wheat Board and granted to this enterprise exclusive and special privileges, including the exclusive rights to purchase and sell Western Canadian wheat for human consumption. The actions of the Government of Canada and the Canadian Wheat Board appear to be inconsistent with the obligations of the Government of Canada under Article XVII of the GATT 1994. Furthermore, with regard to the treatment of grain that is imported into Canada, the United States considers that Canadian measures discriminate against imported grain, including grain that is the product of the United States, in breach of the GATT 1994.

European Union—Regime for the importation, sale and distribution of bananas (DS27)

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 European Union adopted a regime that perpetuated 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 European Union, the value of which is equivalent to the nullification or impairment sustained by the United States. The European Union 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 imposed 100 percent *ad valorem* duties on a list of EU products with an annual trade value of \$191.4 million.

On April 11, 2001, the United States and the European Union agreed to an Understanding that identified the means by which the dispute could be resolved. Pursuant to the Understanding, the European Union implemented a revised import licensing regime for its banana tariff-rate quota on July 1, 2001, and allocated a significantly increased number of licenses to U.S. operators. The United States thereupon suspended its increased duties. The European Union implemented an additional change to the tariff-rate quota by January 1, 2002, which resulted in further increases of licenses allocated to US operators.

European Union—Protection of trademarks and geographical indications for agricultural products and foodstuffs (DS174)

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 European Union'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, and continued through 2002.

European Union – Provisional Safeguard Measure on Imports of Certain Steel Products (DS260)

On May 30, 2002, the United States requested consultations with the European Union concerning the consistency of the European Union's provisional safeguard measures on certain steel products with the General Agreement on Tariffs and Trade (1994) and with the WTO Agreement on Safeguards. Consultations were held on June 27 and July 24, 2002, which, unfortunately, did not resolve the dispute. Therefore, on August 19, 2002, the United States requested that a WTO panel examine these measures. The panel was established on September 16, 2002.

India—Measures affecting the motor vehicle sector (DS175)

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 European Union 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. On December 21, 2001, the panel issued its report. The panel found that the measures in question were inconsistent with India's obligations under GATT Articles III:4 and XI:1, and it recommended that India bring the measure into compliance with its obligations. The panel exercised judicial economy and did not reach the claims made under the TRIMS Agreement. India appealed the panel's report, but then withdrew its appeal on March 14, 2002. At the DSB meeting of November 11, 2002, India announced it had implemented the DSB recommendations and rulings.

Japan - Measures Affecting the Importation of Apples (DS245)

On March 1, 2002, the United States requested consultations with Japan regarding Japan's measures restricting the importation of U.S. apples in connection with fire blight or the fire blight disease-causing organism, *Erwinia amylovora*. These restrictions include: the prohibition of imported apples from U.S. states other than Washington or Oregon; the prohibition of imported apples from orchards in which any fire blight is detected; the prohibition of imported apples from any orchard (whether or not it is free of fire blight) should fire blight be detected within a 500 meter buffer zone surrounding such orchard; the requirement that export orchards be inspected three times yearly (at blossom, fruitlet, and harvest stages) for the presence of fire blight for purposes of applying the above-mentioned prohibitions; a post-harvest surface treatment of exported apples with chlorine; production requirements, such as chlorine treatment of containers for harvesting and chlorine treatment of the packing line; and the post-harvest separation of apples for export to Japan from those apples for other destinations. Consultations were held on April 18, 2002, and a panel was established on June 3, 2002. The Director-General selected as panelists Mr. Michael Cartland, Chair, and Ms. Kathy-Ann Brown and Mr. Christian Haerberli, Members.

Mexico—Measures affecting trade in live swine (DS203)

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 has allowed 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. The United States continues to monitor the situation.

Mexico—Measures affecting telecommunications services (DS204)

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 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. Those consultations were held on January 16, 2001. The United States requested the establishment of a panel on March 8, 2002. The panel was established on April 17, 2002. On August 26, 2002, the Director-General appointed as chairperson Mr. Ulrich Petersmann (Germany), and Mr. Raymond Tam (Hong Kong, China) and Mr. Björn Wellenius (Chile) as panelists.

Venezuela – Import Licensing Measures on Certain Agricultural Products (DS275)

On November 7, 2002, the United States requested consultations with Venezuela concerning its import licensing systems and practices that restrict agricultural imports from the United States. The United States considers that Venezuela's system creates a discretionary import licensing regime that appears to be inconsistent with the Agreement on Agriculture, the TRIMS Agreement, and the Import Licensing Agreement. The United States held consultations with Venezuela on November 26, 2002.

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 2002 when the United States was a defendant.

United States—Foreign Sales Corporation (“FSC”) tax provisions (DS108)

The European Union 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, 2000, the President signed the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (“the ETI Act”), legislation that repealed and replaced the FSC provisions. However, the European Union claimed that the new legislation failed to bring the US into compliance with its WTO obligations.

On January 14, 2002, the Appellate Body issued its report with respect to the ETI Act. The Appellate Body affirmed the findings of the panel that: (1) the ETI Act's tax exclusion constituted a prohibited export subsidy under the WTO Subsidies Agreement; (2) the tax exclusion constituted an export subsidy that violated U.S. obligations under the WTO Agriculture Agreement; (3) the ETI Act's foreign article/labor limitation provides less favorable treatment to “like” imported products in violation of Article III:4 of GATT 1994; and (4) the ETI Act's transition rules resulted in a failure to withdraw the subsidy as recommended by the DSB under Article 4.7 of the Subsidies Agreement. The DSB adopted the panel and Appellate Body reports on January 29, 2002.

In November 2000, the European Union had sought authority to impose countermeasures in the amount of \$4.043 billion as a result of the alleged U.S. non-compliance, and the United States had challenged this amount by requesting arbitration. Under a September 2000 procedural agreement between the United States and the European Union, the arbitration was suspended pending the outcome of the EU's challenge

to the WTO-consistency of the ETI Act. With the adoption of the panel and Appellate Body reports, the arbitration automatically resumed. On August 30, 2002, the arbitrator circulated its decision. The arbitrator found that the countermeasures sought by the European Union were “appropriate” within the meaning of Article 4.10 of the Subsidies Agreement because, according to the arbitrator, they were not “disproportionate to the initial wrongful act to which they are intended to respond.”

Following the adoption of the panel and Appellate Body reports, legislation was introduced in the U.S. House of Representatives to repeal the ETI Act and hearings were held in both the U.S. House of Representatives and the U.S. Senate.

United States—1916 Revenue Act (DS136/162)

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 Grèar 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 European Union and Japan requested arbitration to determine the period of time to be given the United States to implement the panel’s recommendation. By mutual agreement of the parties, Mr. A.V. Ganesan was appointed to serve as arbitrator. On February 28, 2001, he determined that the deadline for implementation was July 26, 2001. On July 24, the DSB approved a U.S. proposal to extend the deadline until the earlier of the end of the then-current session of the U.S. Congress or December 31, 2001. Legislation to repeal the Act and extinguish cases pending under the Act was introduced in the House on December 20, 2001 and in the Senate on April 23, 2002, but legislative action was not completed.

United States—Section 110(5) of the Copyright Act (DS160)

As amended in 1998 by the Fairness in Music Licensing Act, section 110(5) of the U.S. Copyright Act permits certain retail establishments to play radio or television music without paying royalties to songwriters and music publishers. The European Union claimed that, as a result of this exception, the United States is in violation of its TRIPS obligations. Consultations with the European Union 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 provided for 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 European Union requested arbitration to determine the period of time to be given the United States to implement the panel's recommendation. By mutual agreement of the parties, Mr. J. Lacarte-Muró was appointed to serve as arbitrator. He determined that the deadline for implementation should be July 27, 2001. On July 24, 2001, the DSB approved a U.S. proposal to extend the deadline until the earlier of the end of the then-current session of the U.S. Congress or December 31, 2001.

On July 23, 2001, the United States and the European Union requested arbitration to determine the level of nullification or impairment of benefits to the European Union as a result of section 110(5)(B). In a decision circulated to WTO Members on November 9, 2001, the arbitrators determined that the value of the benefits lost to the European Union in this case is \$1.1 million per year. On January 7, 2002, the European Union sought authorization from the DSB to suspend obligations vis-à-vis the United States. The United States objected to the details of the EU request, thereby causing the matter to be referred to arbitration. However, because the United States and the European Union have been engaged in discussions to find a mutually acceptable resolution of the dispute, the arbitrators suspended the proceeding pursuant to a joint request by the parties filed on February 26, 2002. The arbitration may be resumed at any time at the request of either party.

United States—Section 211 Omnibus Appropriations Act (DS176)

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 questioned 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 European Union requested a panel. A panel was established on September 26, 2000, and at the request of the European Union 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. The panel report was circulated on August 6, 2001, rejecting 13 of the EU's 14 claims and finding that, in most respects, section 211 is not inconsistent with the obligations of the United States under the TRIPS Agreement. The European Union appealed the decision on October 4, 2001. The Appellate Body issued its report on January 2, 2002. The Appellate Body reversed the panel's one finding against the United States, and upheld the panel's favorable findings that WTO Members are entitled to determine trademark and trade name ownership criteria. The Appellate Body found certain instances, however, in which section 211 might breach the national treatment and most favored nation obligations of the TRIPS Agreement. The panel and Appellate Body reports were adopted on February 1, 2002. On March 28, 2002, the United States and the European Union notified the DSB that they had agreed that the reasonable period of time for the United States to implement the DSB's recommendations and rulings would expire on December 31, 2002, or on the date on which the current session of the U.S. Congress adjourns, whichever is later, and in no event later than January 3, 2003. On December 20, 2002, this agreed period was extended to June 30, 2003.

United States—Antidumping measures on certain hot-rolled steel products from Japan (DS184)

Japan alleged 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 claimed that these procedures and regulations violate the GATT 1994, as well as the Antidumping Agreement and

the Agreement Establishing the WTO. 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. On February 28, 2001, the panel circulated its report, in which it rejected most of Japan's claims, but found that, *inter alia*, particular aspects of the antidumping duty calculation, as well as one aspect of the U.S. antidumping duty law, were inconsistent with the WTO Antidumping Agreement. On April 25, 2001, the United States filed a notice of appeal on certain issues in the panel report. The Appellate Body report was issued on July 24, 2001, reversing in part and affirming in part. The reports were adopted on August 23, 2001. Pursuant to a February 19, 2002, arbitral award, the United States was given 15 months, or until November 23, 2002, to implement the DSB's recommendations and rulings. On November 22, 2002, the Department of Commerce issued a new final determination in the hot-rolled steel antidumping duty investigation, which implemented the recommendations and rulings of the DSB with respect to the calculation of antidumping margins in that investigation. In view of other DSB recommendations and rulings, after consultations with Japan, the United States requested that the "reasonable period of time" in this dispute be extended until December 31, 2003, or until the end of the first session of the next Congress, whichever is earlier. That request was approved by the DSB at its meeting of December 5, 2002. Subsequently the two parties agreed to extend this date until December 31, 2003.

United States—Definitive safeguard measures on imports of circular welded carbon quality line pipe from Korea (DS202)

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 argued that such measures were inconsistent with the Agreement on Safeguards and the GATT 1994. Consultations were held July 28, 2000. On September 14, 2000, Korea requested the establishment of a panel. A panel was established on October 23, 2000, and composed of the following panelists: Mr. Dariusz Rosati, Chairman (selected by the Director-General); Robert Azevedo and Eduardo Bianchi, Members (selected by mutual agreement of the parties). The panel report was circulated on October 29, 2001. The panel found that the U.S. measure violates the Safeguards Agreement, but at the same time rejected several of Korea's claims related to both the measure itself and the investigation. The U.S. notice of appeal was filed with the WTO Appellate Body on November 19, 2001.

The Appellate Body issued its report on February 15, 2002. It rejected some of the panel's findings in favor of the United States, but also upheld several of those findings. The DSB adopted the panel report, as modified by the Appellate Body report, on March 8, 2002. The United States and Korea reached agreement in the dispute on July 29, 2002. Pursuant to that agreement, the United States increased the quantity of Korean line pipe exempt from the safeguard measure to 17,500 tons per quarter, effective September 1, 2002. The safeguard measure remained unchanged with regard to other import sources. It is scheduled to terminate on March 1, 2003.

United States—Antidumping measures and countervailing measures on steel plate from India (DS206)

India contended 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 amended on February 10, 2000. India also argued that the USITC made errors with respect to the negligibility, cumulation, and material injury caused by such products. India claimed 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. The United States and India held consultations in November 2000 and in July 2001. India then filed a panel request, which focused on a subset of the claims it had raised during consultations. On June 21, 2002, the Panel issued its report in the dispute, rejecting most of India's claims. The Panel agreed with India that one aspect of the challenged determination was not consistent with the Antidumping Agreement. It found that the Department of Commerce had failed to explain why it would have been "unduly difficult" to use certain information that the Indian respondent submitted. The DSB adopted the report on July 29, 2002. On August 27, 2002, the United States announced its intentions on implementing the DSB's rulings and recommendations arising from the report. The United States and India subsequently reached agreement on a reasonable period of time for implementation, ending on December 29, 2002.

United States—Countervailing duty measures concerning certain products from the European Communities (DS212)

On November 13, 2000, the European Union 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 European Union, all with respect to the Department of Commerce's "change in ownership" (or "privatization") methodology that was challenged successfully by the European Union in a WTO dispute concerning leaded steel products from the UK. Consultations were held December 7, 2000. Further consultations were requested on February 1, 2001, and held on April 3. A panel was established at the EU's request on September 10, 2001. In its panel request, the European Union challenged 12 separate US CVD proceedings, as well as Section 771(5)(F) of the Tariff Act of 1930. At the request of the European Union, the WTO Director-General composed the panel on November 5, 2001, as follows: Mr. Gilles Gauthier, Chairman; Ms. Marie-Gabrielle Ineichen-Fleisch and Mr. Michael Mulgrew, Members.

On July 31, 2002, the panel circulated its final report. In a prior dispute concerning leaded bar from the United Kingdom, the European Union successfully challenged the application of an earlier version of Commerce's methodology, known as "gamma." In this dispute, the panel found that Commerce's current "same person" methodology (as well as the continued application of the "gamma" methodology in several cases) was inconsistent with the Subsidies Agreement. The panel also found that section 771(5)(F) of the Tariff Act of 1930 – the "change of ownership" provision in the U.S. statute – was WTO-inconsistent. The United States appealed, and the Appellate Body issued its report on December 9, 2002. The Appellate Body reversed the panel with respect to section 771(5)(F), finding that it did not mandate WTO-inconsistent behavior. The Appellate Body affirmed the panel's findings that the "gamma" and "same person" methodologies are inconsistent with the Subsidies Agreement, although it modified the panel's reasoning.

United States—Countervailing duties on certain corrosion-resistant carbon steel flat products from Germany (DS213)

On November 13, 2000, the European Union 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 European Union alleged 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 European Union held consultations pursuant to this request on December 8, 2000. A second round of consultations was held on March 21, 2001, in which the European Union made a new allegation that the automatic initiation of sunset reviews by the United States is inconsistent with the SCM Agreement. A panel was established at the EU's request on September 10, 2001. The panel was composed of: Mr. Hugh McPhail, Chair, and Mr. Wieslaw Karsz, Member (selected by agreement of the parties); and Mr. Ronald Erdmann, Member (selected by the Director-General).

In its final report, which was circulated on July 3, 2002, the panel made the following findings in favor of the United States: (1) the EU claims regarding "expedited sunset reviews" and "ample opportunity" for parties to submit evidence were not identified in the panel request, and were therefore outside the panel's terms of reference; (2) because Article 21.3 of the Subsidies Agreement contains no evidentiary standard for the self-initiation of sunset reviews, the automatic self-initiation of sunset reviews by Commerce was not a violation; and (3) the U.S. CVD law "as such" is not inconsistent with Article 21.3 with respect to the obligation that authorities "determine" the likelihood of continuation or recurrence of subsidization in a sunset review. Disagreeing with the United States, however, a majority of the panel found that the Subsidies Agreement's one percent *de minimis* standard for the investigation phase of a CVD proceeding applies to sunset reviews. Because U.S. law applies a 0.5 percent *de minimis* standard in reviews, the majority found a violation with respect to U.S. law "as such" and as applied in the German steel sunset review. In a rare step, one panelist dissented from this finding. The panel also found that Commerce's determination of likelihood of continuation or recurrence of subsidization in the German steel sunset review lacked "sufficient factual basis," and therefore was inconsistent with the obligation to "determine" under Article 21.3.

The United States appealed the *de minimis* finding, but not the case-specific finding concerning Commerce's determination of likelihood. The European Union cross-appealed on the findings it lost. The Appellate Body issued its report on November 28, 2002, and found in favor of the United States on all counts. The DSB adopted the panel and Appellate Body reports on December 19, 2002.

United States—Safeguard measures on imports of line pipe and wire rod from the European Communities (DS214)

On December 1, 2000, the European Union requested consultations with the United States regarding U.S. safeguard measures on imports of circular welded carbon quality line pipe and wire rod. The European Union argued that these measures are inconsistent with the Agreement on Safeguards and the GATT 1994. The European Union also claimed 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 prevented the United States from respecting certain provisions of the Agreement on Safeguards and the GATT 1994. Consultations were held on January 26, 2001, and informal consultations continued thereafter. A panel was established at the EU's request on September 10, 2001, but it has not yet been composed.

United States—Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) (DS217/234)

On December 21, 2000, Australia, Brazil, Chile, the European Union, India, Indonesia, Japan, Korea, and Thailand requested consultations with the United States regarding the Continued Dumping and 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 held on February 6, 2001. On May 21, 2001, Canada and Mexico also requested consultations on the same matter, which were held on June 29, 2001. On July 12, 2001, the original nine complaining parties requested the establishment of a panel, which was established on August 23. On September 10, 2001, a panel was established at the request of Canada and Mexico, and all complaints were consolidated into one panel. The panel was composed of: Mr. Luzius Wasescha, Chair (selected by mutual agreement of the parties); and Mr. Maamoun Abdel-Fattah and Mr. William Falconer, Members (selected by the Director-General).

The panel issued its report on September 2, 2002, finding against the United States on three of the five principal claims brought by the complaining parties. Specifically, the panel found that the CDSOA constitutes a specific action against dumping and subsidies and therefore is inconsistent with the WTO Antidumping and SCM Agreements as well as GATT Article VI. The panel also found that the CDSOA distorts the standing determination conducted by the Commerce Department and therefore is inconsistent with the standing provisions in the Antidumping and SCM Agreements. The United States prevailed against the complainants' claims under the Antidumping and SCM Agreements that the CDSOA distorts the Commerce Department's consideration of price undertakings (agreements to settle AD/CVD investigations). The panel also rejected Mexico's actionable subsidy claim brought under the SCM Agreement. Finally, the panel rejected the complainants' claims under Article X:3 of the GATT, Article 15 of the Anti-dumping Agreement, and Articles 4.10 and 7.9 of the SCM Agreement. The United States appealed the panel's adverse findings on October 1, 2002. The Appellate Body issued its report on January 16, 2003, upholding the panel's finding that the DCSEA is an impermissible action against dumping and subsidies, but reversing the panel's finding on standing. The DSB adopted the panel and Appellate Body reports on January 27, 2003. At the meeting, the United States stated its intention to implement the DSB recommendations and rulings.

United States—Countervailing duties on certain carbon steel products from Brazil (DS218)

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 as it was applied by the United States in this countervailing duty case. Consultations were held on January 17, 2001.

United States—Section 129(c)(1), Uruguay Round Agreements Act (URAA) (DS221)

On January 17, 2001, Canada requested consultations with the United States regarding Section 129(c)(1) of the URAA, and the accompanying Statement of Administrative Action (SAA) at page 1026 of the SAA, alleging that this provision precludes the United States from complying fully with rulings of the WTO Dispute Settlement Body in cases where the United States has acted inconsistently with its WTO

obligations with respect to an antidumping or countervailing duty proceeding. The United States and Canada held consultations in March 2001, and a panel was established at Canada's request in August 2001. The following three panelists were selected by mutual agreement of the parties: Mrs. Claudia Orozco, Chair; and Mr. Edmund McGovern and Mr. Simon Farbenbloom, Members. On June 12, 2002, the Panel issued a report rejecting Canada's challenge. The Panel agreed with the United States that Canada had misinterpreted section 129(c)(1) and found that the provision does not breach any of the WTO provisions that Canada had cited. The Panel refused Canada's request to issue legal findings on the nature of a Member's implementation obligations in WTO cases involving antidumping and countervailing duty measures, since section 129(c)(1) did not implicate any entries of merchandise that would be affected by such issues. Canada did not appeal.

United States—Antidumping duties on seamless pipe from Italy (DS225)

On February 5, 2001, the European Union requested consultations with the United States regarding antidumping duties imposed by the United States on seamless line and pressure pipe from Italy, complaining about the final results of a "sunset" review of that antidumping order, as well as the procedures followed by the Department of Commerce generally for initiating "sunset" reviews pursuant to Section 751 of the Tariff Act of 1930 and 19 CFR §351. The European Union alleges that these measures violate the WTO Antidumping Agreement. Consultations were held on March 21, 2001.

United States—Preliminary determinations with respect to certain softwood lumber from Canada (DS236)

On August 21, 2001, Canada requested consultations with the United States regarding the U.S. Department of Commerce's preliminary countervailing duty and critical circumstances determinations concerning certain softwood lumber from Canada, as well as section 777A(e)(2)(A) and (B) of the Tariff Act of 1930 (19 U.S.C. 1677f-1(e)(2)(A) and (B)). Consultations were held on September 17, 2001, and a panel was established at Canada's request on December 5, 2001. The panel members were: Dr. Dariusz Rosati, Chair (selected by the Director-General); and Mr. Robert Arnott (selected by mutual agreement of the parties) and Mr. Gonzalo Biggs (selected by the Director-General), Members. On September 27, 2002, the panel released its report, which: (1) agreed with the United States that the Canadian provincial governments' sale to lumber producers of timber from public lands constitutes a "financial contribution" by the government that can give rise to a subsidy under the terms of the WTO Subsidies Agreement; (2) agreed with the United States that the provisions of U.S. law governing expedited and administrative reviews of final countervailing duty orders are not inconsistent with U.S. obligations under the WTO Subsidies Agreement; (3) found against the United States with respect to the particular methodology used to calculate the amount of the subsidy; and (4) found against the United States with respect to the retroactive imposition of provisional remedies based on its preliminary determination that "critical circumstances" existed in this case. The Dispute Settlement Body adopted the panel's report on November 1, 2002.

United States—Final countervailing duty determination with respect to certain softwood lumber from Canada (DS257)

On May 3, 2002, Canada requested consultations with the United States regarding the U.S. Department of Commerce's final countervailing duty determination concerning certain softwood lumber from Canada. Among other things, Canada challenges the evidence upon which the investigation was initiated, claims

that Commerce imposed countervailing duties against programs and policies that are not subsidies and are not “specific” within the meaning of the Agreement on Subsidies and Countervailing Measures, and that the Commerce Department failed to conduct its investigation properly. Consultations were held on June 18, 2002, and a panel was established at Canada’s request on October 1, 2002. The panel is composed of Mr. Elbio Rosselli, Chair, and Mr. Weislaw Karsz and Mr. Remo Moretta, Members (all selected by the Director-General).

United States—Calculation of dumping margins (DS239)

On September 18, 2001, the United States received from Brazil a request for consultations regarding the *de minimis* standard as applied by the U.S. Department of Commerce in conducting reviews of antidumping orders, and the practice of “zeroing” (or, not offsetting “dumped” sales with “non-dumped” sales) in conducting investigations and reviews. Brazil submitted a revised request on November 1, 2001, focusing specifically on the antidumping duty order on silicon metal from Brazil. Consultations were held on December 7, 2001.

United States – Definitive safeguard measures on imports of certain steel products (DS248-49, 251-54, 258-59)

By Presidential Proclamation 7529 of March 5, 2002, the United States imposed safeguard measures on ten products: certain carbon flat-rolled steel, hot-rolled bar, cold-finished bar, rebar, certain welded pipe, carbon and alloy fittings and flanges, stainless steel bar, stainless steel rod, stainless steel wire, and tin mill steel. The measures consisted for the most part of supplemental tariffs, with one type of certain carbon flat-rolled steel (steel slab) being subject to a tariff-rate quota (“TRQ”). All measures are scheduled to remain in effect until March 21, 2005, with the tariff rates being decreased by one-fifth in the second and third years. (For the slab TRQ, the in-quota quantity would increase by 3 percent each year). Our FTA partners (Canada, Mexico, Israel and Jordan), along with developing country WTO Members that account for less than three percent of total imports, are not subject to these measures.

The EC, Japan, Korea, China, Switzerland, and Norway requested consultations under the WTO Dispute Settlement Understanding in March and early April of 2002. Consultations were held on 11-12 April 2002 with these countries as complaining parties, and Canada, Mexico, New Zealand, and Venezuela as third parties. These countries requested the formation of panels, which were established and consolidated with each other in June and July of 2002. New Zealand requested consultations on the steel safeguard measures on May 14, and Brazil on May 21. Consultations were held simultaneously with both on June 13. Panels were established in response to the New Zealand and Brazil requests, and consolidated with the panels in the other disputes. The United States reached agreement with the complaining parties to request that the panel adopt an extended briefing schedule. The United States and the complaining parties could not reach agreement on any panelist for the dispute. Accordingly, the Director-General selected all three panelists on July 25, 2002, with Ambassador Stefan Johannesson as chair, and Mr. Mohan Kumar, and Ms. Margaret Liang as panelists. It is scheduled to issue its report to the parties on April 14, 2003. Chinese Taipei subsequently requested consultations on November 1, 2002, and the consultations were held December 12, 2002.

United States—Rules of origin for textiles and apparel products (DS243)

Section 334 of the Uruguay Round Agreements Act established statutory rules of origin for textile and apparel products. Section 405 of the Trade and Development Act of 2000 amended Section 334. On January 11, 2002, India requested consultations regarding the rules set out in Section 334 and Section 405, claiming that they distorted textile trade and were protectionist in violation of the Agreement on Rules of Origin. Consultations with India took place on February 7, 2002, February 28, 2002 and March 26, 2002. A panel on this matter was established on June 24, 2002, and composed on October 10, 2002. The members are as follows: Mr. Lars Anell, Chair; Mr. Donald McRae and Ms. Elizabeth Chelliah. The first meeting of the Parties with the Panel was held on December 12-13, 2002. A decision is expected on April 11, 2003.

United States – Sunset review of antidumping duties on corrosion-resistant carbon steel flat products from Japan (DS244)

On January 30, 2002, Japan requested consultations with the United States regarding the final determination of both the United States Department of Commerce and the United States International Trade Commission on the full sunset review of corrosion-resistant carbon steel flat products from Japan, issued on August 2, 2000 and November 21, 2000, respectively. Consultations were held on March 14, 2002. A panel was established at Japan's request on May 22, 2002. The Director-General selected as panelists Mr. Dariusz Rosati, Chair, and Mr. Martin Garcia and Mr. David Unterhalter, Members.

United States – Equalizing excise tax imposed by Florida on processed orange and grapefruit products (DS250)

On March 20, 2002, Brazil requested consultations with the United States regarding the "Equalizing Excise Tax" imposed by the State of Florida on processed orange and grapefruit products produced from citrus fruit grown outside the United States – Section 601.155 Florida Statutes. Consultations were held with Brazil on May 2, 2002, and June 27, 2002, and a panel was established on October 1, 2002, but is not yet composed.

United States – Sunset reviews of antidumping and countervailing duties on certain steel products from France and Germany (DS262)

On July 25, 2002, the European Union requested consultations with the United States with respect to anti-dumping and countervailing duties imposed by the United States on imports of corrosion-resistant carbon steel flat products ("corrosion resistant steel") from France (dealt with under US case numbers A-427-808 and C-427-810) and Germany (dealt with under US case numbers A-428-815 and C-428-817), and on imports of cut-to-length carbon steel plate ("cut-to-length steel") from Germany (dealt with under US case numbers A-428-816 and C-428-817). Consultations were held on September 12, 2002.

United States—Final dumping determination on softwood lumber from Canada (DS264)

On September 13, 2002, Canada requested WTO dispute settlement consultations concerning the amended final determination by the U.S. Department of Commerce of sales at less than fair value with respect to certain softwood lumber from Canada, as published in the May 22, 2002 Federal Register, along with an antidumping duty order with respect to imports of the subject products. Canada alleged

that Commerce's initiation of its investigation concerning the subject products, as well as aspects of its methodology in reaching its final determination, violated the GATT 1994 and the Agreement on Implementation of Article VI of GATT 1994. Consultations were held on October 11, 2002. However, they failed to resolve the matter. On December 6, 2002, Canada requested establishment of a WTO dispute settlement panel to consider this matter. The United States opposed that request at the December 19, 2002 meeting of the WTO Dispute Settlement Body ("DSB"). The DSB established a panel on January 8, 2003, but it is not yet composed.

United States – Subsidies on upland cotton (DS267)

On September 27, 2002, Brazil requested consultations with the United States regarding alleged prohibited and actionable subsidies provided to U.S. producers, users and exporters of upland cotton, as well as legislation, regulations, statutory instructions and amendments thereto providing such subsidies. Consultations were held on December 3-4, 2002, and December 19, 2002.

United States – Sunset reviews of antidumping measures on oil country tubular goods from Argentina (DS268)

On October 7, 2002, Argentina requested consultations with the United States regarding the final determinations of the United States Department of Commerce (USDOC) and the United States International Trade Commission in the sunset reviews of the antidumping duty order on oil country tubular goods (OCTG) from Argentina, issued on November 7, 2000, and June 2001, respectively, and the USDOC's determination to continue the antidumping duty order on OCTG from Argentina, issued on July 25, 2001. Consultations were held on November 14, 2002, and December 17, 2002.

United States—Investigation of the U.S. International Trade Commission in softwood lumber from Canada (DS277)

On December 20, 2002, Canada requested WTO dispute settlement consultations concerning the May 16, 2002 determination of the U.S. International Trade Commission (notice of which was published in the May 22, 2002 Federal Register) that imports of softwood lumber from Canada, which the U.S. Department of Commerce found to be subsidized and sold at less than fair value, threatened an industry in the United States with material injury. Canada alleged that flaws in the U.S. International Trade Commission's determination caused the United States to violate various aspects of the GATT 1994, the Agreement on Implementation of Article VI of GATT 1994, and the Agreement on Subsidies and Countervailing Measures. On December 23, 2002, the United States accepted Canada's request to enter into consultations.

2. 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 serves as a valuable resource for improving transparency in WTO Members' trade and investment regimes and in ensuring 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 starts with an independent report on a Member's trade policies and practices that is written by the WTO Secretariat on the basis of information provided by the relevant Member. This report is accompanied by a report prepared by the Member under review. Together the reports are subsequently discussed by WTO Members in a TPRB session, at which representatives of the Member under review discuss the reports on its trade policies and practices and answer questions. The purpose of the process is to strengthen Member observance of WTO provisions and contribute to the smoother functioning of the multilateral trading system. A number of Members have remarked that the preparations for the review are helpful in improving their own trade policy formulation and coordination. The current process reflects improvements to streamline the instrument and gives it more coverage and flexibility. Reports now cover services, intellectual property rights and other issues addressed by WTO Agreements. The reports issued for the reviews are available to the public on the WTO's web site at www.wto.org. Documents are filed on the site's Document Distribution Facility under the document symbol "WT/TPR."

Major Issues in 2002

During 2002, the TPRB conducted 15 reviews: Guatemala, Pakistan, Malawi, Mexico, Slovenia, India, Barbados, the European Union, Mauritania, Australia, the Dominican Republic, Zambia, Japan, Venezuela and Hong Kong. Five countries were reviewed for the first time, including two least developed countries, Malawi and Mauritania. As of the end of 2002, the TPRM had conducted 165 reviews, covering 89 out of 130 Members (counting the European Union as a single Member) and representing approximately 85 percent of world merchandise trade. Sixteen of the WTO's 30 least developed country Members have been reviewed.

For many developing and least developed countries, 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 U.S. businesses, the reports are a dependable resource for assessing the commercial environment of WTO Member countries.

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 fulfillment 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, the adaptation of national legislation to WTO requirements and technical assistance. Despite the importance of the TPRM, the WTO's ability to carry out Trade Policy Reviews is being challenged as the Membership expands.

Prospects for 2003

The TPRM is an important tool for monitoring and surveillance and an effective avenue to encourage Members to meet their WTO obligations and to maintain or expand trade liberalization measures. The program for 2003 calls for conducting 16 reviews covering 21 Members (Niger and Senegal will be reviewed simultaneously, and Botswana, Lesotho, Namibia South Africa and Swaziland will be reviewed jointly as members of the Southern African Customs Union). Members to be reviewed individually in 2003 include: the Maldives, El Salvador, Canada, Burundi, New Zealand, Morocco, Indonesia, Honduras, Bulgaria, Guyana, Haiti, Thailand, Chile, and Turkey.

E. 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), and the Working Party on State Trading.

Major Issues in 2002

In 2002, the CTG held seven formal meetings. 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 complaints were resolved through consultation. In addition, four major issues were extensively debated in the CTG in 2002:

Waivers: The CTG approved several requests for waivers, including those related to the implementation of the Harmonized Tariff System, renegotiation of tariff schedules, and waivers for El Salvador and the Cote d'Ivoire with respect to the application of minimum values for customs valuation. A list of waivers currently in force can be found in Annex II.

Review of the Agreement on Textiles and Clothing (ATC): The CTG met four times during 2002 to conduct the major review of the implementation of the ATC in the second stage (1998-2001) of its integration into the WTO. Article 8.11 of the ATC contains the provisions regarding integration. These discussions revealed a major disagreement between textile exporters (typically developing country Members) and importers (mostly developed-country Members). The developing countries assert that the spirit of the ATC requires faster liberalization by importers. Exporters point out, for example, that almost all textile products subject to quota restraint in 1995 will still be subject to quotas until the end of the ATC in 2004. Importers reply that they have fulfilled the requirements of the ATC in precisely the manner foreseen by the drafters of the Agreement. With respect to the issue of quotas remaining in force until 2004, importers maintain that the Agreement provides for faster growth rates compared to the situation existing before the entry into force of the ATC. These faster growth rates have resulted in a substantial increase in developing country textile exports since 1995. The differences in views between

exporting and importing countries resulted in the Chair of the CTG reporting that he was not in a position to draft a report with recommendations for the CTG's consideration.

Doha Implementation Issues: The CTG met a number of times formally and informally to consider tires 4.4 and 4.5 of the Doha Ministerial Declaration related to textile implementation issues. The discussion covered the same issues and revealed the same differences of opinion encountered in the major review of the Agreement on Textiles and Clothing. The outcome of the discussion paralleled the outcome of the ATC review. The Chair reported that he was not in a position to put any draft recommendations before the CTG.

China Transitional Review: On November 22, the CTG conducted China's Transitional Review (TRM) as mandated by the Protocol on the Accession of the People's Republic of China to the WTO. China supplied the CTG with information, answered questions posed by Members and reviewed the TRM reports of CTG subsidiary bodies. (See Chapter IV Section F on China for more detailed discussion of its implementation of WTO commitments).

Trade Facilitation: The CTG met three times in 2002 in sessions dedicated to this issue. The CTG discussed how to improve and clarify Article X (transparency), Article VIII on fees and formalities, and Article V (transit). Progress was made in all of these areas and work will continue in 2003.

Prospects for 2003

The CTG will continue to be the focal point for discussing agreements in the WTO dealing with trade in goods. One issue that Members may continue to consider is whether to reorganize the Councils in a way that eliminates the CTG, allowing the General Council to assume direct oversight responsibilities. Outstanding waiver 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 parties to the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Program on Least Developed and Net Food-Importing Developing Countries (or "NFIDC Decision").

Major Issues in 2002

The Committee held four formal meetings in March, June, September, and November, 2002 to address ongoing issues related to the implementation of the Agreement on Agriculture. The Committee also met in Special Session to negotiate 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.

In total, 196 notifications were subject to review during 2002. The United States actively participated in the notification process and raised specific issues concerning the operation of Members' agricultural policies. For example, the United States raised questions concerning elements of domestic support programs used by the European Union and Japan; identified restrictive import licensing and tariff-rate quota administration practices used by China, the Dominican Republic, and Costa Rica; questioned Taiwan's use of the special agricultural safeguard; and raised concerns with China's and India's export policies. The Committee also proved to be an effective forum for raising issues relevant to the implementation of Members' commitments. For example, the United States identified concerns with Venezuela's import regime, Turkey's rice import policy, and new European Union subsidies to wine producers.

On a number of occasions, U.S. intervention in the Committee led to corrective action by the Members concerned. For example, Costa Rica allowed the entry of shipments of U.S. rice that had been held up after the United States raised the issue of Costa Rica's restrictive import requirements in the Committee on Agriculture. U.S. interventions in the Committee concerning Venezuela's import licensing system resulted in Venezuela allowing some corn to be imported. However, Venezuela failed to establish an open and predictable system for issuing import licenses, and in November, the United States requested dispute settlement consultations with Venezuela to discuss its import licensing practices that restrict imports of a wide range of U.S. agricultural goods including corn, sorghum, dairy products, fruits, poultry, beef, pork, yellow grease, and soybean meal.

As a follow-up to the relevant Committee recommendations that were approved by the Doha Ministerial Conference, the following implementation-related issues were considered or further considered at the Committee's meetings: (1) the development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees, or insurance programs pursuant to Article 10.2 of the Agreement on Agriculture, taking into account the effect of such disciplines on net food-importing countries; (2) improving the effectiveness of the implementation of the NFIDC Decision; and (3) enhancing Members' notifications on tariff-rate quotas (TRQs) in accordance with the General Council's decision regarding the administration of TRQ regimes in a transparent, equitable, and non-discriminatory manner. In line with the reporting requirements approved by the Doha Ministerial Conference, a follow-up report on these issues was submitted to the General Council on the responsibility of the Chairman.

At the meeting of the Committee in March, Dominica and Jordan were included in the WTO list of net food-importing developing countries. This list currently comprises the least developed countries as recognized by the United Nations, and the following 23 developing country Members of the WTO: Barbados, Botswana, Côte d'Ivoire, Cuba, Dominica, the Dominican Republic, Egypt, Honduras, Jamaica, Jordan, Kenya, Mauritius, Morocco, Pakistan, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sri Lanka, Trinidad and Tobago, Tunisia, and Venezuela. The annual monitoring exercise on the follow-up to the Marrakesh NFIDC Decision as a whole was undertaken at the November meeting of the Committee.

At the meeting in September, the Committee held its annual Transitional Review under paragraph 18 of the Protocol of Accession of the People's Republic of China. The United States submitted extensive questions on China's TRQ administration and export subsidies in this forum. The Committee's report

regarding its review was submitted to the Council for Trade in Goods on the responsibility of the Chairman.

Prospects for 2003

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.

2. Committee on Antidumping Practices

Status

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the 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 Committee on Antidumping Practices, which operates in conjunction with two subsidiary bodies, the Working Group on Implementation (formerly the Ad Hoc Group on Implementation) and the Informal Group on Anticircumvention.

The Ministerial Decision on Implementation-Related Issues and Concerns in November 2001 referred three issues to the Committee (and, with respect to the first two issues, to the Working Group as well) for examination and preparation of appropriate recommendations within twelve months: (1) clarification of the modalities of application of Article 15 of the Antidumping Agreement pertaining to developing country Members; (2) the timeframe to be used in calculating the volume of dumped imports for making the determination under Article 5.8 of the Antidumping Agreement as to whether the volume of such imports is negligible; and (3) guidelines for the improvement of annual reviews under Article 18.6 of the Antidumping Agreement. The Committee reached agreement in November 2002 on recommendations with respect to Article 5.8 and Article 18.6, but was unable to reach agreement on a recommendation with respect to Article 15.

The Working 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 activities of the Working Group permit Members to develop a better understanding of the similarities and differences in their policies and practices for implementing the terms of the Antidumping Agreement. Where possible, the Working 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 Working Group recommendations on: (1) pre-initiation notifications under Article 5.5 of the Agreement; (2) the periods used for data collection in investigations of dumped imports and of injury caused or threatened to be caused by such imports; (3) extensions of time to supply information; and, as noted above, (4) the timeframe for measuring whether import volumes are negligible under Article 5.8. The Committee considered at its April and October 2002 meetings a draft decision regarding the status to be accorded adopted recommendations, but was unable to reach a consensus on the text of the decision, and will consider the issue again at its April 2003 meeting. The Working Group reached a consensus in

October 2001 on a recommendation concerning the contents of preliminary affirmative determinations, but that recommendation was tabled by the Committee, given the lack of agreement within the Committee on the draft decision regarding the status of adopted recommendations.

At Marrakesh in 1994, Ministers adopted a Decision on Anticircumvention 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 Anticircumvention. Under this framework, the Informal Group held meetings in April and October 2002 to discuss the topics of: (1) what constitutes circumvention; (2) what is being done by Members confronted with what they consider to be circumvention; and (3) to what extent circumvention can be dealt with under existing WTO rules and what other options may be deemed necessary.

Major Issues in 2002

The Antidumping Committee 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 with respect to Members' application of antidumping remedies.

In 2002, the Antidumping Committee held two regular meetings, in April and October, as did the Working Group on Implementation and the Informal Group on Anticircumvention. At its regular 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 reports required of Members that provide preliminary and final antidumping measures and actions taken in each case over the preceding six months.

Among the more significant activities undertaken in 2002 by the Antidumping Committee, the Working Group on Implementation and the Informal Group on Anticircumvention are the following:

Doha Implementation Issues: A major focus of the work of the Committee and Working Group was on the issues referred by the Doha Ministerial Decision on Implementation-Related Issues and Concerns. In addition to discussing these Doha implementation issues at the regular meetings in April and October, the Committee and Working Group also convened special meetings in March, June, September, November, and December to further address these issues. The United States played a major role in this process, tabling written proposals containing draft recommendations with respect to Article 15 and Article 18.6, and playing an active role in the discussions of the Committee and/or Working Group on all three issues. As previously noted, the Committee reached agreement in November 2002 on recommendations with respect to Article 5.8 and Article 18.6, but was unable to reach agreement on a recommendation with respect to Article 15.

Notification and Review of Antidumping Legislation: To date, 72 Members of the WTO have notified that they currently have antidumping legislation in place, while 31 Members have notified that they maintain no such legislation. In 2002, the Antidumping Committee reviewed notifications of new or amended antidumping legislation submitted by Antigua and Barbuda; Argentina; Brazil; El Salvador; Georgia; Grenada; India; Japan; Lithuania; Moldova; Myanmar; Pakistan; Peru; Philippines; Taiwan; Turkey; and Uruguay. In addition, the Committee continued its review (for the most part via a written question and

answer procedure) of the previously notified legislation of Peru. Members, including the United States, were active in formulating written questions and in making follow-up inquiries at Committee meetings.

Notification and Review of Antidumping Actions: In 2002, 27 WTO Members notified antidumping actions taken during the latter half of 2001, whereas 30 Members did so for the first half of 2002. (By comparison, 39 Members notified that they had not taken any antidumping actions during the latter half of 2001, while 26 Members notified that they had taken no actions in the first half of 2002). 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.

China Transitional Review: At the October 2002 meeting, the Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its first transitional review with respect to China's implementation of the Agreement. A number of Members, including the United States, addressed written and oral questions to China, primarily relating to China's notification to the WTO of its antidumping regulations. China's representatives provided responsive information at the October 2002 meeting.

Working Group on Implementation: The Working Group held two rounds of multi-day working meetings in April and October 2002, as well as special one-day meetings in March, June, September, November and December. The Working Group's principal focus in 2002 was on the implementation issues under Article 5.8 and Article 15 referred by the Ministers at Doha. In addition to these implementation issues, the Group also considered at the April and October 2002 meetings a draft recommendation on conditions of competition relevant to cumulation under Article 3.3. No agreement has been reached by the Group on this draft recommendation, but it was agreed to continue work on this topic in the next year.

The Working Group continues to serve as an active venue for 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 antidumping administering authorities, many of whom are eager to obtain insight and information from their peers. Since the inception of the Working Group, the United States has submitted papers on most topics, and has been an active participant at all meetings. Implementation concerns and questions stemming both from one's own administrative experience and from observing the practices of others are equally addressed. While not a negotiating forum in either a technical or formal sense, the Working Group serves a vitally important role in promoting improved understanding of the Agreement's provisions and exploring options for "best practices" among antidumping administrators.

Informal Group on Anticircumvention: The Antidumping Committee's establishment of the Informal Group on Anticircumvention 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 2002, the Informal Group on Anticircumvention continued its useful discussions on the first two items of the agreed framework of "what constitutes circumvention?" and "what is being done by Members confronted with what they consider to be circumvention?" In addition, the Informal Group began discussions on the third topic of the agreed framework: "to what extent can circumvention be dealt with under the relevant WTO rules? To what extent can it not? And what other options may be deemed necessary?"

Members submitted papers and made presentations 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, that 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. As to the third topic, the United States submitted a paper in which it reviewed some of the scenarios previously discussed in the Informal Group, and noted that while there was as yet no consensus on what constitutes circumvention, Members would also benefit from general guidelines on what does not constitute circumvention.

Prospects for 2003

Work will proceed in 2003 on the areas that the Antidumping Committee, the Working Group on Implementation and the Informal Group on Anticircumvention addressed this past year, with the exception of the three Doha implementation issues, on which the Committee's work was completed in 2002. 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 ongoing 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 that should assist them in better understanding the operation of such laws and in taking 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 2003. These reports are 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 promotes improved public knowledge and appreciation of the trends in and focus of all WTO Members' antidumping actions.

Discussions in the Working Group on Implementation will continue to play an important role as more and more Members enact laws and begin to apply them. There has been a 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 Working 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 Working 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 will continue to rely upon the Working 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. Therefore, as Members continue to submit papers on the topics being considered and participate actively in the discussions, the Group's utility should continue to grow. In addition to its continuing work on a draft recommendation on conditions of competition relevant to cumulation under Article 3.3, the Working Group will also select and begin addressing new topics for discussion in 2003.

The work of the Informal Group on Anticircumvention will also continue in 2003 according to the framework for discussion on which Members agreed. Many Members, including the United States,

recognize the importance of using the Informal Group to pursue the 1994 decision of 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 the Implementation of GATT Article VII (also known as the “WTO Agreement on Customs Valuation”) is to ensure that determinations of the customs value for the application of duty rates to imported goods are conducted in a neutral and uniform manner, precluding the use of arbitrary or fictitious customs values. Adherence to the Agreement is an important issue for U.S. exporters, particularly to ensure that market access opportunities provided through tariff reductions are not negated by unwarranted and unreasonable “uplifts” in the customs value of goods to which tariffs are applied.

Major Issues in 2002

The Agreement is administered by the WTO Committee on Customs Valuation, which met formally eight times in 2002. 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 continued to provide a forum for reviewing the operation of various Members’ preshipment inspection regimes and the implementation of the WTO Agreement on Preshipment Inspection. In July 2002, the WTO Secretariat compiled information indicating that 31 Members were using preshipment inspection regimes.

Experience continues to demonstrate that the implementation of the Agreement on Customs Valuation often represents the 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 the Agreement precludes the use of arbitrary customs valuation methodologies, an additional positive result is to diminish one of the incentives for 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.

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. U.S. exporters to many developing countries have had market access gains undermined through the application of arbitrarily-established minimum import prices, often used as a crude, broad-brush type of trade remedy—one that provides no measure of administrative transparency or procedural fairness. 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. It is notable that such a use of minimum import prices, a practice inconsistent with the operation of the Agreement on Customs Valuation, is diminishing as more developing countries undertake full implementation of the Agreement.

Achieving universal adherence to the WTO Agreement on Customs Valuation has been a longstanding and 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. Under the Uruguay Round Agreement, special transitional measures were provided for developing country Members, allowing for delayed implementation of the Agreement on Customs Valuation and resulting in individual implementation deadlines for such Members beginning in 2000.

While many developing country Members undertook timely implementation of the Agreement, the Committee continued throughout 2002 to address various 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 the requesting Member. Each decision has included an individualized benchmarked work program toward full implementation, along with requirements to report on progress and specific commitments on other implementation issues important to U.S. export interests.

In accordance with the Doha Ministerial mandate on “Implementation-Related Issues and Concerns,” in 2002 the Committee continued to examine five proposals from India pertaining to the operation of several provisions of the Agreement. Support for these proposals from other WTO Members was generally quite limited. The Committee also actively worked to meet another Doha implementation-related mandate to “identify and assess practical means” for addressing concerns by several Members on the accuracy of declared values of imported goods.

An important part of the Committee’s work is the examination of implementing legislation. As of November 2002, 73 Members had notified their national legislation on customs valuation. During 2002, the Committee concluded the examinations of the legislation of Brunei Darussalam, Croatia, Georgia, Kenya, Korea, Lithuania, Moldova, Tunisia, and Venezuela. In November 2002, while commencing an examination of China’s implementing customs valuation legislation, the Committee also conducted a Transitional Review in accordance with Paragraph 18 of the Protocol of China’s accession to the WTO.

The Committee’s work throughout 2002 continued to reflect a cooperative focus among all Members toward practical methods to address the specific problems of individual Members. As part of its problem-solving approach, the Committee continued to take an active role in exploring how best to ensure effective technical assistance, including with regard to meeting post-implementation needs of developing country Members. As part of ongoing Committee efforts to re-invigorate its work in this area, in November 2002 a two-day seminar was held on technical assistance. The seminar focused on working to enhance coordination and cooperation among donors of assistance related to customs valuation, and exploring potential linkage between such technical assistance and the individual implementation work programs elaborated by various developing country Members.

Prospects for 2003

The Committee’s work in 2003 will include a review of the relevant implementing legislation and regulations notified by Members, along with addressing any further 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 for implementation. The Committee will also continue to examine the implementation-related proposals by India, as well as work toward addressing concerns by several

Members with regard to accuracy of declared values on imported goods. In this regard, the Committee 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 through the use of minimum import prices. Finally, the Committee will continue to address technical assistance issues as a matter of high priority.

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 TRQs 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.

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. The Committee 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 possibly to resolve them before they become disputes. As use of import licensing increases, e.g., to enforce national security, environmental, and technical requirements, to administer TRQs, or to manage safeguard measures, utilization of the Committee as a forum for discussion and review will increase.

Major Issues in 2002

At its meetings in May and September 2002, the Committee reviewed 79 initial or revised notifications, completed questionnaires on procedures, and replies to questions from Committee Members from 48 WTO Members (including European Union 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 most extensive of these questions concerned the establishment and maintenance of non-automatic licensing systems for selected agricultural products for what appeared to be protective purposes by both Turkey and Venezuela. The United States sought information on the reasons and WTO justification for the licensing requirements, on their scope of

operation, and on their non-transparent and arbitrary application, as they had not been notified to the Committee nor addressed in the most recent responses to the Import Licensing questionnaire.

In November 2002, the United States requested and held consultations with Venezuela under WTO dispute settlement procedures on this issue. Information was also requested from Costa Rica on its use of non-automatic licensing to operate TRQs on certain agricultural imports. Other questions focused on the use of licensing and other forms of prior authorization requirements to administer the application of technical regulations and sanitary and phytosanitary requirements on imports.

The Committee continued discussions on how the number and frequency of notifications by Members could be increased. The Chairman reported that at the end of 2002, 31 of 144 Members (counting European Union member states individually), had never submitted a notification to the Committee. While this represented a small improvement from the total in 2001, many of the notifications to the Committee were not being submitted with the frequency required by the Agreement. Based on follow-up letters from the Chairman to Members reminding them of their obligations and identifying questions that have not yet received a response, a number of delegations indicated that their submissions were being developed and would soon be provided.

In addition to the traditional review of notifications and discussions, the Committee carried out its first review of China's implementation of its WTO accession commitments in the area of import licensing procedures as part of the Transitional Review Mechanism (TRM). The United States and other WTO Members expressed a number of concerns with China's implementation of its commitments, in particular in the use of import licensing to administer import quotas, TRQs, and sanitary and phytosanitary requirements for imports. Additional information was requested of China.

Prospects for 2003

Consideration of licensing in the administration of agricultural TRQs will intensify as the Doha negotiations proceed. This will include consideration of possible modifications to the Agreement necessary to improve operation of these mechanisms. The Committee will continue discussions to encourage enhanced compliance with the notification and other transparency requirements of the Agreement. This has become a long-standing priority of the Committee. In addition, timely submission of initial information on licensing regimes, including responses to the questionnaire, is a standard commitment of newly acceding Members. The Committee also 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 encouraging timely responses by Committee Members to questions submitted on the notified information. The Committee will also continue to conduct annual reviews of China's import licensing operations in support of the TRM.

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)). The Committee also is responsible for verification of new concessions on market access in the goods area. The Committee reports to the Council on Trade in Goods.

Major Issues in 2002

During 2002, 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 schedule. The Committee held three formal and ten informal meetings in 2002 to discuss: the ongoing review of WTO tariff schedules to accommodate updates to the Harmonized System (HS) tariff nomenclature; the WTO Integrated Data Base; finalizing consolidated schedules of WTO tariff concessions in current HS nomenclature; and implementation issues related to “substantial interest.” The Committee also conducted its first annual transitional review of China’s implementation of its WTO accession commitments.

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 result in changes to the WTO schedules of tariff bindings. Using agreed examination procedures, Members have the right to object to any proposed nomenclature change affecting 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 and can pursue unresolved objections under GATT 1994 Article XXVIII.

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 a few Members continue to require waivers. 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.

Using the same procedures, the Committee also began to review Members’ WCO amendments which took effect on January 1, 2002 (HS2002). Drawing from the experience of HS96, the Committee, working with the Secretariat, has developed electronic procedures that will facilitate and expedite the process of reviewing and approving the 373 proposed amendments under HS2002. The United States submitted its proposed changes to the Secretariat in December 2001.

Integrated Data Base (IDB): The Committee addressed issues concerning the IDB, which is to be updated annually with information on the tariffs, trade data, and non-tariff measures maintained by WTO Members. Members are required to provide this information as a result of a General Council Decision adopted in July 1997. 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 pressing for a more relevant database structure with the aim of improving the trade and tariff data supplied by WTO Members.

During 2002, the separate Negotiating Group on Non-Agricultural Market Access also took up this issue and developed procedures to facilitate the transfer of applicable tariff and trade data from other sources.

As a result, participation has continued to improve. As of September 2001, seventy-four Members and four acceding countries had provided IDB submissions.

Consolidated schedule of tariff concessions (CTS): The Committee completed its work to create a PC-compatible structure for tariff and trade data. The electronic CTS includes: tariff bindings for each WTO Member that reflects Uruguay Round 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 data base also includes agricultural support tables. The CTS will be linked to the IDB and will serve as the vehicle for conducting agricultural and newly mandated non-agricultural market access negotiations in the WTO.

China Transitional Review: In September, the Committee conducted the first annual review of China's implementation of its WTO commitments on market access. The review included issues, such as implementation of China's schedule of tariff commitments, tariff-rate quota administration, management of industrial quotas, and China's application of value added and consumption taxes.

Implementation Issues: The Committee also discussed two implementation issues referred by the General Council. The first, proposed by St. Lucia, dealt with the definition of "substantial supplier" in the context of quota allocations. The Secretariat undertook several analyses on the issue but several other developing countries expressed concern that the proposal could undermine the rights and obligations of Members. The Committee also briefly examined the issue of redistribution of negotiating rights. In December, the Committee reported it could not reach a consensus on either issue. The General Council likely will direct the Committee to continue its work in 2003.

Prospects for 2003

The Committee will play an integral role in the negotiations for non-agricultural goods launched at Doha. 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 the negotiations on goods market access can be performed with greater efficiency. The Committee will likely explore technical assistance needs related to data submissions and use.

As it finalizes the HS96 updates, the Committee will turn to reviewing Members' amended schedules based on the HS2002 updates. The electronic verification process, which incorporates the CTS data, will facilitate the review process and help developing countries to generate their own HS2002 submissions.

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. 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. In addition to setting forth disciplines related to the administration of rules of origin, the Agreement provides for a work program leading to the multilateral harmonization of rules of origin used for non-preferential trade regimes. The harmonization work program is more complex than initially envisioned under the

Agreement, which originally set for the work to be completed within three years after its commencement in July 1995. This work program continued throughout 2002.

The Agreement is administered by the WTO Committee on Rules of Origin, which met formally three times in 2002. 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 Organization to assist in the harmonization work program.

As of the end of 2002, 83 WTO Members had made notifications concerning non-preferential rules of origin, of which 42 Members notified their non-preferential rules of origin and 41 Members notified that they did not have a non-preferential rules of origin regime. Eighty-seven Members had made notifications concerning preferential rules of origin, of which 84 notified their preferential rules of origin and three notified that they did not have preferential rules of origin.

Major Issues in 2002

The WTO Committee on Rules of Origin continued to focus on the work program on the multilateral harmonization of non-preferential rules of origin. U.S. proposals for the WTO origin harmonization work program have been 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 reflect input received from the private sector and 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 continue to be 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.

In addition to its three formal meetings, the Committee conducted numerous informal consultations and working party sessions related to the harmonization work program negotiations. The Committee proceeded in accordance with a December 2001 mandate from the General Council, which extended the harmonization work program while specifically requesting that the Committee on Rules of Origin focus during the first half of 2002 on identifying core policy issues arising under the harmonization work program that would require attention of the General Council.

The Committee continued to make progress in reducing the number of issues that remained outstanding under the harmonization work program, and proceeding on a track toward achieving consensus on product-specific rules of origin for more than 5000 tariff lines. In mid-2002, the Chairman of the Committee transmitted approximately 90 unresolved issues to the General Council as “core policy issues.” Many of these issues are particularly significant due to their broad application across important product sectors, including steel, beef products, sugar, automotive goods, and dairy products. Specific origin questions among these “core policy issues” include, for example, how to determine the origin of fish caught in an Exclusive Economic Zone, or whether the refinement, fractionation, and hydrogenation substantially transform oil and fat products to a degree appropriate to confer country of origin. During the fall, the General Council commenced working informally to address these issues, focusing on the implications of implementing the results of the work program in a manner consistent with the rights and obligations under other WTO Agreements.

Prospects for 2003

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 predictability. 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."

Further progress in the harmonization work program on its current track will remain contingent on achieving appropriate resolution of the 'core policy issues' transmitted by the Committee to the General Council. In accordance with a decision taken by the General Council in December 2002, work will continue on addressing these issues, with a report to the General Council due in July 2003, with an aim to complete any necessary technical work within six months of resolution of such issues. The General Council put forward the objective of completion of the remaining technical work of the harmonization work program within six months of resolution of the "core policy issues."

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. The availability of a safeguards mechanism gives WTO Members the assurance that they can act quickly to help industries adjust to import surges, thus providing them with the flexibility they otherwise would not have to open their markets to international competition. At the same time, WTO safeguard 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 (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 a 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 than GATT Article XIX 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 no later than the mid-term of any measure with a duration exceeding three years;
- 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 affected third-country markets.

Major Issues in 2002

During its two meetings in April and October 2002, 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 the Dominican Republic, Korea, Lithuania, Moldova, Poland, and Taiwan. As of October 2002, 52 Members had notified the Committee of their domestic safeguards legislation, while 47 other Members had notified that they had no such specific legislation.

The Committee previously 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 notified, in 1998, that its import prohibitions on wheat flour, sorghum, millet, gypsum and kaolin were "pre-existing Article XIX measures." At the Committee's April 2002 meeting, Nigeria confirmed that these measures were still in force.

The Committee reviewed Article 12.1(a) notifications from the following Members of the initiation of a safeguard investigatory process relating to serious injury or threat thereof and the reasons for it: Bulgaria on crown corks, ammonium nitrate, urea and certain steel products; Canada on certain steel products; Chile on certain steel products, lighters and fructose/glucose; Costa Rica on rice; the Czech Republic on ammonium nitrate, cocoa powder, citric acid, wire, ropes and cables, tubes and pipes, and certain steel products; the European Union on certain steel products; Hungary on certain steel products; India on phenol, acetone, epichlorohydrin, industrial sewing machine needles, and vegetable oil; Jordan on magnetic tapes, ceramic sinks, ceramic tiles, cooking appliances, electric accumulators, and pasta; Latvia on live pigs and pork; Mexico on plywood panels; the People's Republic of China on certain steel products; Poland on calcium carbide, water heaters and certain steel products; the Slovak Republic on ammonium nitrate; and Venezuela on paper and iron/steel "U sections."

The Committee reviewed Article 12.1(b) notifications from the following Members of a finding of serious injury or threat thereof caused by increased imports: Brazil on coconuts; Bulgaria on crown corks; Canada on certain steel products; the Czech Republic on cocoa powder; the European Union on certain steel products; India on phenol and epichlorohydrin; Jordan on magnetic tapes; Lithuania on pastry yeast; the Philippines on grey portland cement and ceramic floor tiles; the Slovak Republic on sugar; and the United States on certain steel products.

The Committee reviewed Article 12.1(c) notifications from the following Members of a decision to apply or extend a safeguard measure: Brazil on coconuts; Chile on certain steel products; the Czech Republic on cocoa powder; the European Union on certain steel products; India on acetone, phenol and gamma ferric oxide/magnetic iron oxide; Jordan on magnetic tapes; Lithuania on pastry yeast; the Philippines on ceramic floor tiles; the Slovak Republic on sugar; and the United States on certain steel products. The Committee also reviewed supplemental notifications under Article 12.1(c) from the United States with respect to the termination of a safeguard measure on lamb meat, and the modification of existing safeguard measures on circular welded line pipe and on certain wire rod.

The Committee received notifications from the following Members of the termination of a safeguard investigation with no safeguard measure imposed: Chile on steel, lighters and glucose; Japan on tatami-omote, welsh onion and shiitake mushrooms; Morocco on rubber; the Philippines on tomato paste; El Salvador on fertilizer; and the United States on certain steel products.

The Committee reviewed a notification from Brazil on the results of the mid-term review of its safeguard measure on toys.

The Committee reviewed Article 12.4 notifications from the following Members of the application of a provisional safeguard measure: Bulgaria on ammonium nitrate; Chile on certain steel products; Costa Rica on rice; the Czech Republic on cocoa powder; the European Union on certain steel products; Hungary on certain steel products; Jordan on magnetic tapes; the People's Republic of China on certain steel products; the Philippines on grey portland cement and ceramic floor tiles; Poland on certain steel products.

China Transitional Review. At the October 2002 meeting, the Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its first transitional review with respect to China's implementation of the Agreement. A number of Members, including the United States, addressed written and oral questions to China, primarily relating to China's notification to the WTO of its safeguard regulations, with some questions relating to China's notifications of its safeguard investigation with respect to certain steel products. China's representatives provided responses at the October meeting.

Implementation Issue. At its regular meetings in April and October 2002, and at an informal meeting in October 2002, the Committee discussed a safeguards implementation issue pursuant to paragraph 12 of the Doha Ministerial Declaration and section 13 of the Ministerial Decision on Implementation-Related Issues and Concerns. This implementation issue concerned a proposal to amend Article 9.1 of the Agreement, which currently provides that safeguard measures shall not be applied against a product originating from a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 percent, provided that developing country Members with less than 3 percent import share collectively account for not more than 9 percent of total imports of the product concerned. The proposed amendment would have raised the 3 percent threshold to 7 percent, and the 9 percent threshold to 15 percent. The Committee was unable to reach consensus, and its consideration of this implementation issue has concluded.

Prospects for 2003

The Committee's work in 2003 will continue to focus on the reviews of safeguard actions that have been notified to the Committee and on the notifications of any new or amended safeguards laws. In addition, while the Committee's consideration of the Article 9.1 implementation issue has concluded, it was agreed that Article 9.1 will be on the agenda for the Committee's April 2003 meeting, pursuant to which the Committee may discuss any concerns that Members have regarding Article 9.1, including concerns beyond those discussed in 2002, but without any mandate for the Committee to address any particular issues.

8. Committee on Sanitary and Phytosanitary Measures

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. Fundamentally, the Agreement requires that 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 SPS Committee is a forum for consultation on Members' existing or proposed SPS measures that affect international trade, the implementation and administration of the Agreement, technical assistance, and the activities of the international standard-setting bodies. It also includes discussions of the Agreement's provisions related 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 by the General Council. In addition, representatives of a number of international organizations are invited to attend meetings of the Committee as observers on an *ad hoc* basis: 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), the International Trade Center (ITC), and others.

A number of documents relating to the work of the SPS Committee are available to the public directly from the WTO website: www.wto.org. The SPS Committee documents are indicated by the symbols, "G/SPS/...." Beginning in 2000, notifications of proposed SPS measures are indicated by G/SPS/N ("N" 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 or Member). Parties in the United States interested in submitting comments to foreign governments on their proposals should send them through the U.S. inquiry point shown in the box below. Reports of Committee meetings are issued as "G/SPS/R/..." (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/SPS/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 2002

In 2002, the Committee met three times. These meetings are used increasingly by Members to raise concerns regarding the new and existing SPS measures of other Members. The United States views this as a positive development as it demonstrates growing familiarity with and implementation of the provisions of the SPS Agreement and increasing recognition of the value of the Committee as a venue to discuss SPS-related trade issues among Members. The Committee also continued discussions about the implementation of the Agreement, especially regarding notifications and equivalence.

With assistance from the United States and other donors, all 34 countries participating in the Free Trade Area of the Americas negotiations attended the November meeting of the Committee. This significantly expanded capital-based participation in the Committee and plans are being made to continue this assistance for attendance at future meetings.

Avian Influenza: During 2002, the Committee engaged in extensive discussions regarding the activities of Members to control and eradicate avian influenza. The United States experienced geographically limited outbreaks in 2002 of low pathogenic avian influenza which prompted some Members to restrict U.S.

exports of poultry and poultry products without sufficient scientific justification. These discussions led to a request by the Committee to the International Office of Epizootics (OIE) to review and modify as appropriate international standards regarding avian influenza. The results of the OIE's efforts should provide updated science-based international standards to facilitate trade in poultry and poultry products.

Foot and Mouth Disease: During 2002, the Committee also discussed Members' activities to control and eradicate Foot and Mouth Disease (FMD). The initial outbreak in February 2001, and subsequent spread of the epidemic to several countries in Europe and in other countries, prompted many Members, including the United States, to take emergency actions restricting trade to protect animals within their borders and control the epidemic. As measures were implemented and the epidemic was controlled, Members reported in November 2001 that they were gradually relaxing emergency control measures. The International Office of Epizootics continued to provide updated information regarding international standards for the control of FMD and the disease status of countries.

BSE-TSE³: The Committee also devoted considerable time to discussing Members' activities regarding BSE and TSE's. Several Members have proposed and introduced measures to protect consumers and animals against BSE. The Committee discussed the need for these measure to be based on science and that international standards should be used as the basis of Members' actions, unless Members have a scientific justification for a more protective measure than that provided by the international standard. The United States anticipates that BSE will continue to be an issue of interest and concern to many Members, and the Committee will have extensive discussions about the nature of the disease and measures taken by Members to protect public health and animal health. Several Members, including the United States, raised concerns about the non-science based categorization of countries' BSE-status and the use of this categorization to restrict trade.

Equivalence: At the request of developing country Members, the Committee held several informal meetings on the provisions of Article 4 of the Agreement - Equivalence. In 2001, the United States submitted a paper (G/SPS/W/111) outlining our views and the activities of regulatory agencies as they relate to equivalence. This paper and submissions from other Members enabled the Committee to develop and approve a decision of the Committee (G/SPS/19) which outlines steps designed to make it easier for Members to make use of the provisions of Article 4 of the Agreement. In 2002, the Committee began discussions on certain aspects of this decision which need clarification. The Committee adopted a work plan for the next two years on the clarification of this decision.

Notifications: During several discussions in the Committee regarding specific trade concerns among Members and equivalence, Members indicated that a specific discussion on the notification requirements and process would be helpful. The Committee decided to have informal meetings on notifications and transparency in 2002. At the June meeting, the Committee adopted a revision to the notification form and added space for Members to describe measures recognized to be equivalent.

Technical Assistance: In June 2000, the United States submitted information (G/SPS/W/181) on technical assistance which had been provided to Members on SPS issues and updated this information in July 2001

³ Bovine Spongiform Encephalopathy and Transmissible Spongiform Encephalopathy

(G/SPS/W/181add.1). At the June Committee meeting, the United States provided updated information (G/SPS/W/181add.2) describing the technical assistance provided by U.S. agencies since the last report.

China's Transitional Review: The United States participated in the Committee's first review of China's implementation of its WTO obligations under the mechanism established in Section 18 of the Protocol on the Accession of the People's Republic of China. The United States submitted questions regarding China's inspection permits, raw meat and poultry standards, pest risk assessment, and harmonization of international standards (G/SPS/W/126). This paper and those of other Members formed the basis of the Committee's discussions at the November meeting. China provided oral responses to the questions raised by the United States and other Members and restated its commitment to implement the provisions of the SPS Agreement.

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 2003

The Committee will continue to monitor implementation of the Agreement by WTO Members. As mentioned above, 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 then work bilaterally to resolve specific trade concerns. The number of disputes in this area is evidence of the importance and Members place on the effective operation of the Agreement. The Committee will continue to be an important forum for Members to provide information about efforts to manage and control food safety and animal health emergencies as well as ongoing food safety, animal and plant health activities

that affect international trade.

In addition, during 2003, the United States expects the Committee to continue discussions on technical assistance, notifications 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. As a result of implementation discussions in the General Council, the Committee will need to address plans for conducting a review of the Agreement as agreed upon by the General Council. 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. The Committee will also prepare for and conduct a review of China's implementation of the SPS Agreement.

9. Committee on Subsidies and Countervailing Measures⁴

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 permitted, non-actionable (green light) subsidies.⁵ 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. With the expiration of the Agreement's provisions on green light subsidies, at present, the only non-actionable subsidies are those which are not specific, as defined above.

Major Issues in 2002

The Committee held two regular meetings in 2002. 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 general matter of

⁴ 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 2003.

⁵ 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 be treated as non-actionable subsidies 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 our 1999 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. They expired on January 1, 2000 because a consensus could not be reached among WTO Members on whether to extend or the terms by which these provisions might be extended beyond their five-year period of provisional application.

subsidy notifications and the process by which such notifications are made to and considered by the Subsidies Committee. In this regard, the Committee took action to address the poor and declining state of compliance with subsidy notifications in an effort to find a long-term solution to the problem. During the fall meeting, the Committee also undertook its first transitional review with respect to China's implementation of the Agreement

The Committee throughout the year extensively discussed and addressed a very large number of requests made by certain developing countries to extend the transition period for the phase-out of their export subsidy programs as well as other implementation issues referred to it by the Fourth Ministerial Conference. At the fall formal meeting of the Committee, the United States expressed serious concerns regarding the government financial assistance provided to the Korean specialty paper industry. Finally, the Committee selected a new Member for its Permanent Group of Experts. Further information on these various activities is provided below.

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 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, 95 Members of the WTO (counting the European Union as one) have notified that they currently have CVD legislation in place, while 34 Members have not yet notified that they maintain such legislation. Among the notifications of CVD laws and regulations reviewed in 2002 were those of Antigua and Barbuda, Argentina, El Salvador, Georgia, Grenada, India, Moldova, Myanmar, Pakistan, Peru, Philippines and Uruguay.⁶ The notifications of the following Members were scheduled to be reviewed at the fall 2002 regular meeting: Antigua and Barbuda, Argentina, Brazil, Grenada, Japan, Lithuania, Taiwan, and Turkey but were postponed until next year.

As for CVD measures, eight WTO Members notified CVD actions taken during the latter half of 2001, and eight Members notified actions taken in the first half of 2002. The Committee reviewed actions taken by Argentina, Australia, Canada, the European Union, Mexico, New Zealand, South Africa and the United States. With respect to subsidy notifications, the Committee continued its examination of new and full notifications submitted for 1998 and 2001, as well as updating notifications submitted for 1999 and 2000.⁷ Importantly, the United States submitted its subsidy notification in 2002 – covering the years 1998-2001 – thereby bringing it into compliance with its subsidy notification obligations under the Agreement.

⁶ In keeping with WTO practice, the review of legislative provisions which pertain or apply to both antidumping and CVD actions by a Member generally took place in the Antidumping Committee.

⁷ One Indian subsidy program not notified of particular interest to U.S. industry provides subsidies to producers of a specific fertilizer. In April 2002, the United States submitted written questions to India regarding this program. A partial written response to these questions was received in November 2002 and is being reviewed to determine the appropriate future course of action.

As of January 1, 2002, when Membership in the WTO had reached 144, only 51 Members had submitted new and full subsidy notifications for 2001, while 47 and 39 Members, respectively, had submitted updating notifications for the 1999 and 2000 periods. Notably, 32 Members have never made a subsidy notification to the WTO.

In view of the ongoing difficulties experienced by Members, in meeting the Agreement's subsidy notification obligations, a three-prong strategy has been employed to address the problems of subsidy notifications. The first prong was to examine alternative practical approaches to the frequency and nature of subsidy notifications, as well as their review. In 2001, Members decided to devote maximum effort to submitting new and full notifications, every two years, and to de-emphasize the review of the annual updating notifications. Examination of the format for a subsidy notification constitutes the second prong of the strategy. Efforts in this regard were made in 2002 and will continue into 2003. The third prong was the organization of a subsidy notification seminar, geared to participation by capital-based officials responsible for notification, held prior to the fall committee meeting. The WTO funded capital-based participation from Members which identified themselves as developing countries in need of assistance.

China Transitional Review. At the fall meeting, the Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its first transitional review with respect to China's implementation of the Agreement. A number of Members, including the United States, addressed written and oral questions to China, relating to China's notification to the WTO of its countervailing duty law and regulations, subsidy programs and pricing policies. At the meeting, China's representatives provided responsive information.

Extension of the transition period for the phase out of export subsidies: Under the Agreement, most developing countries were obligated to eliminate their export subsidies by December 31, 2001. Article 27.4 of the Agreement allows for an extension of this deadline provided consultations were entered into with the Subsidies Committee by December 31, 2002. The Committee has the authority to decide whether an extension is justified. In making this determination, the Committee must consider the "economic, financial and development needs" of the developing country Member. If the Committee grants an extension, annual consultations with the Committee must be held to determine the necessity of maintaining the subsidies.⁸ If the Committee does not affirmatively sanction a continuation, the export subsidies must be phased out within two years.

In an attempt to try and address the concerns of small exporter developing countries, a special procedure within the context of Article 27.4 of the Agreement, was adopted at the Fourth Ministerial Conference under which countries whose share of world exports was not more than 0.10 percent and whose Gross National Income was not greater than \$20 billion could be granted a limited extension for particular types of export subsidy programs subject to rigorous transparency and standstill provisions. Members meeting

⁸ Any extension granted by the Committee would only preclude a WTO dispute settlement case from being brought against the export subsidies at issue. A Member's ability to bring a countervailing duty action under its national laws would not be affected.

all the qualifications for the agreed upon special procedures are eligible for a five-year extension of the transition period, in addition to the two years referred to under Article 27.4.⁹

Colombia, El Salvador, Panama and Thailand made requests under the normal extension process provided for in the Agreement. Antigua and Barbuda, Barbados, Belize, Bolivia, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Honduras, Jamaica, Jordan, Kenya, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, Sri Lanka, and Suriname made requests under the special procedures adopted at the Fourth Ministerial Conference for small exporter developing countries.¹⁰ Uruguay requested an extension for one program under both the normal and special procedures. Additionally, Colombia sought an extension for two of its export subsidies programs under a procedure agreed to at the Fourth Ministerial Conference analogous to that provided for small exporter developing countries.

Altogether the Committee conducted a detailed review of more than 70 export subsidy programs for which extensions were requested. Although nearly all of the requests were granted, some were eventually withdrawn and others were not approved for the full extension requested. Throughout the review and approval process, the United States took a leadership role to define as narrowly as possible the scope of the extensions and to ensure that the conditions imposed on the extensions will strengthen the ability of the developing countries involved to come into compliance with their obligations upon expiration of the extension.

Other implementation issues: Two other implementation issues were addressed by the Committee in 2002: (1) a review of the Agreement's provisions regarding countervailing duty investigations; and, (2) the methodology for the calculation of the per capita GNP threshold in Annex VII of the Agreement.

1. *Review of the provisions of the Agreement regarding countervailing duty investigations*

The General Council first referred this topic to the Committee in August 2001. Brazil and India submitted papers making specific proposals as to how to clarify or, in some instances, modify the provisions of the Agreement regarding countervailing duty investigations. The proposals related to: the appropriate definitions of "domestic industry" and "like product;" the use of "facts available;" numerous calculation issues; and the conduct of annual reviews of countervailing duty orders already in place. Due to the breadth and complexity of the issues raised and the relatively short period of time prior to the Fourth Ministerial Conference, very little substantive discussion occurred with respect to the specific proposals made beyond the formal presentation of proposals. Thus, the Committee recommended to the General

⁹ In addition to agreement on the specific length of the extension, it was also agreed at the Fourth Ministerial Conference, in essence, that the Committee should look favorably upon the extension requests of Members which do not meet all the specific eligibility criteria for the special small exporter procedures but which are similarly situated to those that do meet all the criteria. This provision added at the request of Colombia.

¹⁰ Bolivia, Guatemala, Honduras, Kenya and Sri Lanka are all listed in Annex VII of the Subsidies Agreement and thus, may continue to provide export subsidies until their "graduation". Therefore, these countries have only reserved their rights under the special procedures in the event they graduate during the five-year extension period contemplated by the special procedures. Because these countries are only reserving their rights at this time, the Committee did need to make any decisions as to whether their particular programs qualify under the special procedures.

Council that the Committee continue to consider these issues and report to the General Council by July 31, 2002. This recommendation was adopted as part of the implementation decision adopted at the Fourth Ministerial Conference.

Pursuant to this mandate, the Committee held several meetings to address the procedural and substantive aspects of the review. The substance of the review was conducted on the basis of the proposals from Brazil and India tabled prior to the Fourth Ministerial Conference, as well as an exchange of written questions and answers. No consensus was reached as to how to address these issues. Many Members, including the United States, suggested that the Rules Negotiating Group was the most appropriate forum to discuss the issues raised. The Committee Chair submitted his report to the General Council in July 2002.¹¹

2. *The methodology for the calculation of the per capita GNP threshold in Annex VII of the Agreement*

Annex VII of the Agreement identifies certain lesser developed countries that are eligible for particular special and differential treatment. Specifically, the export subsidies of these countries are not prohibited and, therefore, are not actionable under the dispute settlement process. Secondly, a higher *de minimis* threshold is provided for in countervailing duty investigations of imports from these countries, although this standard expired at the end of 2002.¹² The countries identified in Annex VII include those WTO Members designated by the United Nations as “least developed countries” (Annex VII(a)) as well as countries that had, at the time of the negotiation of the Agreement, a per capita GNP under \$1,000 per annum and are specifically listed in Annex VII(b).¹³ A country automatically “graduates” from Annex VII(b) status when its per capita GNP rises above the \$1,000 threshold. When a Member crosses this threshold it becomes subject to the subsidy disciplines of other developing country Members.

Since the adoption of the Agreement in 1995, the *de facto* interpretation by the Committee of the \$1,000 threshold was current (*i.e.*, nominal or inflated) dollars. The concern with this interpretation, however, was that a Member could graduate from Annex VII on the basis of inflation alone, rather than on the basis of real economic growth.

In 2001, the Chairman of the Committee, in conjunction with the WTO Secretariat, developed an approach based on certain World Bank data that were used by the Uruguay Round negotiators in 1990 in developing Annex VII(b). While many Members expressed the view that they could accept this proposed methodology, other Members indicated that it was more appropriate to rely on more recently available data. Thus, it was not possible to reach a consensus on the question of methodology.

At the Fourth Ministerial Conference, it was agreed:

¹¹ See, G/SCM/45.

¹² This *de minimis* for Annex VII countries is 3 percent, compared with the 2 percent for other developing countries.

¹³ Annex VII(b) countries are Bolivia, Cameroon, Congo, Cote d’Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka, and Zimbabwe. In recognition of the technical error made in the final compilation of this list and pursuant to a General Council decision, Honduras was formally added to Annex VII(b) on January 20, 2001.

. . . that Annex VII(b) to the Agreement on Subsidies and Countervailing Measures includes the Members that are listed therein until their GNP per capita reaches U.S. \$1,000 in constant 1990 dollars for three consecutive years. This decision will enter into effect upon the adoption by the Committee on Subsidies and Countervailing Measures of an appropriate methodology for calculating constant 1990 dollars. If, however, the Committee on Subsidies and Countervailing Measures does not reach a consensus agreement on an appropriate methodology by 1 January 2003, the methodology proposed by the Chairman of the Committee set forth in G/SCM/38, Appendix 2 shall be applied. A Member shall not leave Annex VII(b) so long as its GNP per capita in current dollars has not reached U.S. \$1000 based upon the most recent data from the World Bank.¹⁴

In the course of 2002, no alternative methodology was proposed. Therefore, the Chairman's methodology proposed in 2001 will be applied in the future.

Financial Support by the Government of Korea for the Korean specialty paper industry: At the fall formal meeting in 2002, the United States made a statement expressing concern regarding the financial support which various Korean government authorities have been providing to the Korean specialty paper industry. In the wake of the Asian financial crisis, several Korean paper companies, like many other companies in Korea, were beset by severe liquidity shortages and overwhelming debt-to-equity ratios. As has been seen in other sectors, such as steel and semiconductors, some companies, which under normal market conditions would have been reorganized, sold, or forced out of business, were instead the beneficiaries of special government help designed to ensure their survival. In the paper sector, there have been reports of debt-for-equity swaps, reduced interest rates on various types of loans, loan guarantees, extensions on debt repayment periods, and tax benefits for facilities expansion. Most, if not all of these measures appear to have been undertaken either directly by the government or by government-owned or -controlled financial institutions, such as the Korea Development Bank and the Industrial Bank of Korea, which frequently implement government policy. In addition to expressing its concern, the United States submitted written questions to Korean authorities on a bilateral basis and received partial answers which are currently under review.

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 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 the beginning of 2002, the members of the Permanent Group of Experts were: Prof. Okan Aktan; Mr. Jorge Castro Bernieri;

¹⁴ The addition of the phrase "for three consecutive years" was added at the request of Honduras which was concerned that their possible graduation from Annex VII in the near future might place them in a worse condition than those Members which avail themselves of the special procedures under Article 27.4 for small developing country exporters.

Dr. Marco Bronckers; Prof. R.G. Flores Jr.; and Mr. Hyung-Jin Kim. At its spring 2002 regular meeting, the Committee re-elected Prof. Aktan to serve another term.

Prospects for 2003

In 2003, 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 participate actively in the review of other WTO Members' CVD legislation and actions, as well as China's Transitional Review, 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. The United States will also actively review any additional normal extension requests made under Article 27.4 and will ensure the close adherence to the provisions of the agreed upon extension procedures for small exporter developing countries. Finally, the United States is prepared to take a leadership role in addressing any technical questions that the Subsidies Committee may be asked to consider in the context of issues that may arise within the Rules Negotiating Group.

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 relevant international standards and guidelines, when appropriate.

The TBT Committee¹⁵ serves as a forum for 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. 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.

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, standards of U.S. private standards-developing organizations, and foreign national standardizing bodies. The inquiry point responds to 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. The NIST also will provide information on central contact points for information maintained by other WTO Members. The NIST refers requests for information concerning standards and technical regulations for agricultural products,

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: ncsci@NIST.GOV

NIST offers a free web-based service, Export Alert!, that provides U.S. customers with the opportunity to review and comment on proposed foreign technical regulations that can affect them. By registering for the Export Alert! Service, U.S. customers receive, via e-mail, notifications of drafts or changes to foreign regulations for a specific industry sector and/or country. To register on-line contact: <http://ts.nist.gov/ncsci>.

¹⁵ Participation in the Committee is open to all WTO Members. Certain non-WTO Member governments also participate, in accordance with guidance agreed on 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 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.

including SPS measures, 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. 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/N* (the “N” 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 or Member).¹⁶ 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 is available to the public on the WTO’s website.

Major Issues in 2002

The TBT Committee met three times in 2002. 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. U.S. interventions were primarily targeted at a variety of proposals from the European Commission that could seriously disrupt trade.

The Committee conducted its seventh Annual Review of the Implementation and Operation of the Agreement based on background documentation contained in G/TBT/11, and its Seventh 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 G/TBT/CS/1/Add.6 and G/TBT/CS/2/Rev.8. Decisions and recommendations adopted by the Committee are contained in G/TBT/1/Rev.8.

Follow-up to the Second Triennial Review of the Agreement: Beyond bilateral trade concerns discussed under “Statements on Implementation,” the work of the Committee has focused on issues identified in the Second Triennial Review of the Agreement (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 their rights and obligations under the Agreement. In follow-up to that review, priority attention has been given to technical assistance and the implementation needs of developing countries, as well as to trade effects resulting from labeling requirements.

Technical Assistance: In the Second Triennial Review, the Committee recognized the importance of ensuring that solutions to implementation problems were targeted at the specific priorities and needs

¹⁶ Before 2000, the numbering of notifications of proposed technical regulations and conformity assessment procedures read: “G/TBT/Notif./...” (followed by a number).

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 the priority infrastructure needs of a specific Member. The Committee recognized the need for coordination and cooperation between donor Members and organizations, as well as between the Committee, other relevant WTO bodies, and donor organizations. 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. To this end, the Committee developed and conducted a *Questionnaire for a Survey to Assist Developing Country Members to Identify and Prioritize their Specific Needs in the TBT Field* (G/TBT/W/178). To date, some 50 WTO Members have responded to the survey and a Workshop is planned on Technical Assistance for March 2003. While the survey responses are not publically available, the Secretariat prepared an un-restricted summary of the information received prior to the October 17, 2002, meeting of the Committee (G/TBT/W/186). The United States is evaluating the requests received with a view to targeting resources to assist with implementation, as appropriate.

Labeling: The Committee intensified its exchange of information on issues associated with labeling requirements, noting the frequency with which specific concerns regarding mandatory labeling were raised at meetings of the Committee during discussions on implementation, and stressing that although such requirements can be legitimate measures, they should not become disguised restrictions on trade. Since the conclusion of the Second Triennial Review, a number of Members have put forward papers on the subject: Switzerland (G/TBT/W/162), the United States (G/TBT/W/165), Canada (G/TBT/W/174), the European Union (G/TBT/W/175), and Japan (G/TBT/W/176). Although Switzerland and the European Union have suggested the need for clarification of TBT disciplines to better address labeling concerns, their view has gained little support, with most WTO Members including the United States who have emphasized the need to comply with existing obligations. In response to a request from the Committee, the Secretariat prepared two background papers to inform the discussions: a compilation of notifications made since 1995 (G/TBT/W/183), and a compilation of specific trade concerns related to labeling raised at meetings of the TBT Committee (G/TBT/W/184). The Secretariat estimates some 723 notifications have been made between January 1, 1995 and August 31, 2002 which involved labeling proposals. The Committee is developing an agenda for a “learning event” (originally proposed by Canada) to be held in conjunction with its June 2003 Committee meeting.

Prospects for 2003

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. The Committee has been a useful forum for Members to raise concerns and facilitate bilateral resolution of specific concerns. In 2003, the Committee is required to conclude its Third Triennial Review of the Agreement, which is mandated by Article 15.4. The Second Triennial Review requires the Committee to evaluate its progress on implementing the technical assistance work program. The United States is considering other areas which may be useful to highlight in the context of the review that could assist Members in implementation.

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 obligation to treat imports no less favorably than domestically produced products and the GATT Article XI obligation not to impose quantitative restrictions on imports. The TRIMS Agreement thus requires the elimination of certain measures imposing requirements on the performance of foreign investors, such as measures that require, or provide benefits for, the incorporation of local inputs in manufacturing processes (“local content requirements”) or measures that restrict a firm’s imports to an amount related to the quantity of its exports or of its foreign exchange earnings (“trade balancing requirements”). The Agreement provides an illustrative list of measures that violate its obligations. When the WTO Agreement entered into force in January 1, 1995, formal notification to the WTO, and eventual elimination, of any TRIMS in place was required. Developed countries were required to eliminate notified TRIMS by January 1, 1997. Developing countries were required to eliminate any TRIMS by January 1, 2000. Least developed countries were given a deadline of January 1, 2002. Several developing countries requested and were granted up to four additional years in which to come into full compliance with their TRIMS Agreement obligations.

Developments relating to the TRIMS Agreement are monitored and discussed both in the Council for Trade in Goods (CTG) and in the Committee on Trade-Related Investment Measures (TRIMS Committee).

Major Issues in 2002

During 2002, the CTG continued the review of the operation of the TRIMS Agreement mandated by Article 9 of the Agreement. As part of this review, Members discussed a study of trade-related investment measures and other performance requirements prepared jointly by the secretariats of the WTO and UNCTAD. The first part of the joint study described different types of performance requirements and surveyed disciplines on such requirements found in various international agreements. The second part of the study reviewed evidence on the economic impact of TRIMS and other performance requirements. Members also discussed a proposal submitted by Brazil and India recommending that the TRIMS Agreement be amended to allow developing countries to use measures prohibited by the Agreement for development purposes. The United States and several other WTO Member countries opposed the Brazil/India proposal, arguing that TRIMS have been shown to distort trade flows and discourage foreign investment, harming developing countries. The United States opposed any amendment of the TRIMS Agreement and suggested that the Article 9 review should be concluded.

During its May 7 meeting, the CTG assigned to the TRIMS Committee responsibility for conducting work on outstanding TRIMS implementation issues under the Doha Ministerial mandate. The TRIMS Committee met four times during 2002 to discuss implementation and other issues. In these meetings, and in the CTG, the United States continued to press WTO Members that received extensions of the deadline for phasing out their remaining TRIMS to meet their phase-out deadlines and to come into full compliance with the Agreement. The TRIMS Committee also devoted some time to discussions of the joint WTO/UNCTAD study.

Pursuant to paragraph 18 the Protocol on the Accession of the People’s Republic of China to the WTO, the TRIMS Committee also reviewed China’s implementation of the TRIMS Agreement and related

provisions of the Protocol. The United States joined several other WTO Members, including the European Union and Japan, in pressing China to meet its TRIMS obligations and to clarify the intent of several domestic laws and regulations. In response to questions by the United States and other countries, China provided more detailed information on its progress in implementing the TRIMS Agreement and on related domestic policies during an October TRIMS Committee meeting,

Prospects for 2003

The CTG and the TRIMS Committee, with strong support from the United States, will continue to monitor the status of the TRIMS phase-out efforts of the developing countries that received formal extensions of the deadline for complying with the Agreement. The Article 9 review will continue. The TRIMS Committee will also continue to work on implementation issues, which are likely to be a principal focus of discussion at the Fifth Ministerial Conference.

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 2002, TMB membership was composed of appointees and alternates from the United States, the European Union, Japan, Canada/Norway, Switzerland/Turkey, Brazil, Thailand, China/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 arrangement which provides for the gradual integration of the textile and clothing sector into the WTO and provides 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 ATC in a manner 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 a WTO Member has “integrated” a product, the 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 one and two were completed in 1995 and 1998. The United States notified the TMB in 2001 of the integration commitments

for stage three and implemented these commitments on January 1, 2002. The list for all three stages 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 9.3 percent in 2002.

Major Issues in 2002

Notifications: 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 2001 to submit a list of products comprising at least 18 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 has carried into 2002. 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. 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 also reviewed notifications from the United States, the European Union, Canada and Turkey concerning their textile restraints on China and Taiwan. These notifications were made to the TMB following the accession of China to the WTO in December 2001 and Taiwan in January 2002.

Doha Implementation Issues: The Council on Trade in Goods (CTG) met a number of times formally and informally to consider tires 4.4 and 4.5 of the Doha Ministerial Declaration related to textile implementation issues. The discussion covered the same issues and revealed the same differences of opinion encountered in the major review of the Agreement on Textiles and Clothing (see CTG section) . The outcome of the discussion paralleled the outcome of the ATC review. The Chair reported that he was not in a position to put any draft recommendations before the CTG.

Prospects for 2003

The United States will continue to monitor compliance by trading partners with market opening commitments, and will raise concerns regarding the implementation of 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 Members to place certain restrictions on the behavior of state 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 Members to ensure that these “state trading enterprises” act in a manner consistent with the general principle of non-discriminatory treatment, that is 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,” an agreement was reached in the Uruguay Round referred to as “*The Understanding on the Interpretation of Article XVII*” (the “Understanding”). The Understanding provides a working definition of a state trading enterprise and instructs Members to notify the Working Party of all enterprises 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, *inter alia*, the notifications of state trading enterprises and the coverage of state trading enterprises that are notified, and to develop an illustrative list of relationships between Members and state trading enterprises 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.

The Uruguay Round ensured that the operation of agricultural state trading enterprises would be subject to international scrutiny and disciplines. Before the Uruguay Round, agricultural products were effectively outside the disciplines, of GATT 1947. This limited the scrutiny of state trading enterprises since many of them directed trade in agricultural products. The lack of tariff bindings on agricultural products in most countries also limited the scope of GATT 1947 disciplines because without tariff bindings governments could raise import duties and state trading enterprises could impose domestic mark-ups on imported products.

The Uruguay Round Agreement on Agriculture marked an important step in bringing the activities of agricultural state trading entities under the same disciplines that apply to non-agricultural products. All agricultural tariffs (including TRQs) are now bound. While further work is needed on the administration of TRQs, bindings act to limit the scope of state traders to manipulate imports. Likewise, the disciplines on export competition, including value and quantity ceilings on export subsidies, apply fully to state trading enterprises. U.S. agricultural producers and exporters have expressed concerns about the operation of certain state trading enterprises, particularly single-desk importers or exporters of agricultural products, and called for more meaningful disciplines.

Major Issues in 2002

New and full notifications were first required in 1995 and, subsequently, every third year thereafter. Updating notifications indicating any changes are to be made in the intervening years. The notifications submitted by WTO Members as of November 19, 2002 were: 21 updating notifications for 2002; 20 new and full notification for 2001; 6 updating notifications for 2000; five updating notifications for 1999; four updating notifications for 1998; and two updating notifications for 1997.

The Working Party held one formal meeting in November 2002 where it reviewed Member notifications. At the meeting, the Working Party discussed the situation regarding the notifications of state trading enterprises.

Prospects for 2003

In December 2002, the United States submitted a request for information from Canada concerning the sales and purchases of western Canadian wheat by the Canadian Wheat Board, pursuant to Article XVII:4(c) of GATT 1994. The Article provides that a Member who has reason to believe its interests are being adversely affected by the operations of a state trading enterprise may request the Member establishing, maintaining or authorizing such enterprise supply information about its operations related to the GATT. The United States believes that its interests are being adversely affected by the operations of the Canadian Wheat Board (CWB), which the Government of Canada notified to the WTO. The request for additional information was made in concert with the filing of a U.S. request for consultations under the Dispute Settlement Understanding.

As part of the agricultural negotiations in the WTO, the United States proposed specific disciplines on both import and export agricultural state trading enterprises that would expand transparency and competition for these entities. Specifically, the United States has proposed the elimination of exclusive trading rights of single desk exporters, stronger notification requirements, and the elimination of the use of government funds or guarantees to finance potential operational deficits or to otherwise insulate export state trading enterprises from market or pricing risk.

The Working Party on state trading enterprises will contribute to the ongoing discussion of these and other state trading issues through its review of new notifications and its examination of what further information might be appropriate to notify to enhance transparency of state trading enterprises. The Working Party will undertake a process to identify solutions to the problem of compliance with notification obligations.

F. 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 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. Ongoing negotiations take place in the CTS meeting in Special Session, described earlier in this chapter. The following section discusses work of the CTS regular session.

Major Issues in 2002

The Council reached agreement on procedures dealing with changes to exemptions from Most Favored Nation (MFN) treatment. A GATS annex provides that such exemptions are subject to negotiation but procedures did not exist should a WTO Member decide to liberalize or terminate an MFN exemption. Procedures also did not exist to allow for purely technical changes. Document S/L/106 contains procedures agreed to in 2002 by the Council.

As discussed below, the CTS decided to extend the deadline for negotiations on the question of emergency safeguards, under GATS Article X, to March 15, 2004.

At the request of the concerned WTO Members, the CTS took the steps necessary to allow Bolivia and Papua New Guinea to implement new commitments on financial services and basic telecommunications, respectively.

The United States, with the support of other WTO Members, raised concerns with China's implementation of its GATS commitments in the insurance and express delivery sectors during regular CTS meetings and as part of the Transitional Review of China's implementation of its services commitments.

The CTS has discussed proposals by some WTO Members for a technical review of one or more GATS provisions. Discussion has focused on the scheduling provisions in Article XX:2, which may produce unintended confusion. No decision has yet been taken on whether to conduct such a review.

The air transport review, which is required in the GATS Annex on Air Transport Services, began in late 2000. The review continued in 2002, although only one meeting was held. The review examines "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." The CTS chair held informal consultations on scheduling of further meetings. In October 2001, the United States submitted a written statement presenting its views that to date bilateral and plurilateral venues outside the WTO have proven to be effective in promoting liberalization in this important sector (available at <http://docsonline.wto.org>). Documents are filed in the Document Distribution Facility under the document symbol: S/C/W/198).

Prospects for 2003

The CTS will continue to discuss work related to ongoing implementation of the GATS.

1. Committee on Trade in Financial Services

Status

The Committee on Trade in Financial Services (CTFS) enables WTO Members to explore any financial services market access or regulatory issue deemed appropriate, including implementation of existing trade commitments.

Major Issues in 2002

CTFS met five times in 2002. Several WTO Members reported the developments under their financial services regimes. One focus of discussion was transparency in development and application of financial services regulations spurred by an earlier presentation from the United States regarding the advance notice and comment procedures it followed for regulations necessary to implement the Financial Modernization Act. Taiwan, Mexico, and Canada shared their own experiences regarding development of advance notice and comment and other transparency measures.

In October 2002, the CTFS carried out a review of China's implementation of its WTO financial services commitments as part of China's Transitional Review. The United States and other WTO Members expressed concerns with China's implementation of its commitments in the insurance, motor vehicle financing, banking and other financial sectors.

WTO Members urged those seven countries that have not yet ratified their commitments under the 1997 Financial Services Agreement – the Fifth Protocol to the GATS – to do so as quickly as possible and required those Members to provide detailed information on the status of their domestic ratification processes. During the reporting period, Bolivia notified that it had completed ratification procedures and subsequently obtained the agreement of CTS Members to reopen the Fifth Protocol for acceptance. Brazil, the Dominican Republic, Jamaica, Poland, the Philippines, and Uruguay have not yet completed their ratification procedures.

In July, the IMF made a presentation on the Financial Sector Assessment Program.

Prospects for 2003

Work will continue on transparency and other technical issues in support of the ongoing negotiations.

2. 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 and procedures “do not constitute unnecessary barriers to trade in services.” A 1994 Ministerial Decision 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).

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. The Working Party is to report its recommendations to the CTS not later than the conclusion of the services negotiations.

Major Issues in 2002

With respect to development of generally applicable regulatory disciplines, Members have discussed needed improvements in GATS transparency obligations, which the United States supports. Members also have begun discussion of possible disciplines aimed at ensuring that regulations are not in themselves a restriction on the supply of services. The United States has taken a deliberate approach in this second area and has supported discussion focusing first on problems or restrictions for which new disciplines would be appropriate. Some Members suggested that any regulatory disciplines only apply to sectors in which countries have scheduled specific commitments.

To continue work on professional services, Members agreed to solicit views on the accountancy disciplines from their relevant domestic professional bodies, exploring whether the accountancy disciplines might serve as a model for those professions with appropriate modifications. As agreed, Members contacted their domestic professional bodies, requesting comments on the applicability of the accountancy disciplines to those professions. Some professions in various countries found that the disciplines, with perhaps a few modifications, could apply to their profession; some professions in several countries found otherwise. Given the large number of professions and Member countries, the information thus far is incomplete and work is continuing. Members also agreed on a list of international professional organizations, compiled by the Secretariat from Member submissions, and sent a letter to the organizations listed to consult regarding the applicability of the accountancy disciplines to those professions.

Prospects for 2003

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, as well as working with interested U.S. constituencies to consider their applicability to other professions.

3. 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 2002

Of the three issues, the GATS established a deadline only for safeguards. In 2002, this deadline was again extended, to March 15, 2004, reflecting the continuing disagreement among WTO Members on both the desirability and feasibility of a safeguards provision for trade in services. Additionally, Members agreed to provide a progress report by March 2003 on safeguards negotiations and to prepare to “take stock of progress” on government procurement and subsidies at the Fifth Ministerial Conference.

Safeguards discussions in 2002 evaluated different approaches including establishing a core mechanism for emergency safeguards or the desirability and feasibility of services safeguards across different modes of delivering services. Discussions drew from submissions made by Australia, the European Union, and the United States. The United States argued that the desirability and feasibility of an emergency safeguard mechanism had not been adequately considered and needed to be discussed further. Members also drew on previous submissions by ASEAN, Canada, Mexico, Mauritius, Argentina, Chile, Switzerland, and Costa Rica which addressed concepts including domestic industry, acquired rights, modal application of safeguards, situations justifying safeguards, and indicators and criteria to determine injury and causality. All discussions were without prejudice to the question of whether the GATS should include such provisions.

Regarding government procurement, work continued on definitional questions relevant to services and how such disciplines would relate to the results of ongoing negotiations in the WTO Working Group on Transparency in Government Procurement. Members also discussed an EU proposal to establish transparency disciplines and market access commitments for government procurement of services. The United States noted its interest in pursuing transparency of government procurement in goods and services through 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. Chile and other WTO Members favor circulating a revised questionnaire on all subsidies, not simply those that are trade-distortive. Discussion was limited in this area due to the Working Party's focus on safeguards and government procurement.

Prospects for 2003

Information-gathering and discussion on all three issues will continue. The continuing sharp divergence of views on safeguards may result in this issue being discussed at a political level. Developing countries are indicating that their meaningful services liberalization commitments in the current negotiations may depend on agreement for an emergency safeguard mechanism. On government procurement, the United States will have to ensure that any course of action does not negatively affect U.S. objectives in the WTO Working Group on Transparency and Government Procurement. Subsidies discussions will continue to focus on definitional issues, including the scope of subsidies to be considered.

4. 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 Member schedules in sectors for which there is no sectoral body, currently all sectors except financial services. The Committee works to improve the classification of services so that scheduled commitments reflect the services activities, particularly to ensure coverage of evolving services.

Major Issues in 2002

In 2002, the Committee took up two issues relevant to new commitments resulting from the ongoing GATS negotiations. First, the Committee decided that new commitments ultimately should be included in a single, consolidated schedule that would incorporate both pre-existing and new commitments. Second, the Committee agreed that offers should be presented on the basis of informal consolidated schedules incorporating Uruguay Round and post-Uruguay Round commitments (e.g., from the extended negotiations on financial services and basic telecommunications).

The Committee also continued work on improving classification of services in individual sectors for which problems have been identified.

Prospects for 2003

Work will continue on technical issues, including classification of services, in support of the ongoing negotiations.

G. 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. The TRIPS Agreement also establishes minimum standards for the enforcement of intellectual property rights through 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 requires as well that, with very limited exceptions, WTO Members provide national and most-favored-nation treatment to the nationals of other WTO Members with regards to the protection and enforcement of intellectual property rights. Disputes between WTO Members regarding implementation of the TRIPS Agreement can be settled using the procedures of the WTO's Dispute Settlement Understanding.

The TRIPS Agreement entered into force on January 1, 1995, and its obligations to provide "most favored nation" and national treatment became effective on January 1, 1996 for all Members. Most substantive obligations are phased in based on a Member's level of development. Developed-country Members were required to implement the obligations of the Agreement fully by January 1, 1996; developing country Members generally had to implement fully by January 1, 2000; and least-developed country Members must implement by January 1, 2006. Based on a proposal made by the United States at the Doha WTO Ministerial Conference, however, the transition period for least developed countries to implement or apply Sections 5 and 7 of Part II of the TRIPS Agreement with respect to pharmaceutical products, or to enforce rights with respect to such products, was extended by the TRIPS Council until January 1, 2016. The WTO General Council, on the recommendation of the TRIPS Council, similarly waived until 2016 the obligation for least developed country Members to provide exclusive marketing rights for certain pharmaceutical products if those Members did not provide product protection for pharmaceutical inventions.

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.

Major Issues in 2002

In 2002, the TRIPS Council held four formal meetings, including “special negotiation sessions” on the establishment of a multilateral system for notification and registration of geographical indications for wines and spirits called for in Article 23.4 of the Agreement (See separate discussion of this topic elsewhere in Chapter IV and below). In addition to continuing its work reviewing the implementation of the Agreement by developing countries and newly-acceding Members, the Council’s work in 2002 focused on TRIPS issues addressed in the Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health.

Review of Developing Country Members’ TRIPS Implementation: As a result of the Agreement’s staggered implementation provisions, the TRIPS Council during 2002 devoted much of its time to reviewing the Agreement’s implementation by developing country Members and newly acceding Members as well as to providing assistance to developing country Members so they can fully implement the Agreement. In particular, 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. This article permits Members to exclude from patentability plants, animals, and essential biological processes for producing plants and animals. The Council also concentrated on institution building 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 by highlighting specific concerns regarding individual Members’ implementation of their obligations.

During 2002, the TRIPS Council initiated reviews of the implementing legislation of China (as part of China’s transitional review), Taiwan, Qatar, Saint Vincent and the Grenadines, and completed its reviews of the legislation of Albania, Antigua and Barbuda, Barbados, Botswana, Brunei Darussalam, Taiwan, Côte d’Ivoire, Gabon, Ghana, Guyana, India, Lithuania, Malaysia, Namibia, Oman, Sri Lanka, Thailand, Tunisia, the United Arab Emirates, and Uruguay.

Intellectual Property and Access to Medicines: At the Doha Ministerial Conference, Ministers acknowledged the serious public health problems afflicting Africa and other developing and least developed countries, especially those resulting from HIV/AIDS, malaria, tuberculosis, and other epidemics. In doing so, WTO Ministers adopted the Declaration on the TRIPS Agreement and Public Health, clarifying the flexibilities available in the TRIPS Agreement that may be used by WTO Members to address public health crises. The declaration sends a strong message of support for the TRIPS Agreement, confirming that it is an essential part of the wider national and international response to the public health crises that afflict many developing and least developed Members of the WTO, in particular those resulting from HIV/AIDS, tuberculosis and malaria and other epidemics. Ministers worked in a cooperative and constructive fashion to produce a political statement that answers the questions identified by certain Members regarding the flexibility inherent in the TRIPS Agreement. This strong political

statement demonstrates that TRIPS is part of the solution to these crises. The statement does so, without altering the rights and obligations of WTO Members under the TRIPS Agreement, by reaffirming that Members are maintaining their commitments under the Agreement while at the same time highlighting the flexibilities in the Agreement. Ministers agreed on the need for a balance between the needs of poor countries without the resources to pay for cutting-edge pharmaceuticals and the need to ensure that the patent rights system which promotes the continued development and creation of new lifesaving drugs is promoted.

The United States is pleased that the Declaration reflects and confirms our profound conviction that the exclusive rights provided by Members as required under the TRIPS Agreement are a powerful force supporting public health objectives. As a consequence of Ministers' efforts, we believe those Members suffering under the effects of the pandemics of HIV/AIDS, tuberculosis and malaria, particularly those in sub-Saharan Africa, should have greater confidence in meeting their responsibilities to address these crises. The United States will continue working with the international community to ensure that additional funding and resources are made available to the least developed and developing country Members to assist them in addressing their public health care problems.

One major part of the Doha Declaration was the agreement to provide an additional ten-year transition period (until 2016) for least developed countries, which was first proposed by the United States. On June 27, 2002, the TRIPS Council implemented this aspect of the Doha Declaration by taking a decision that least developed country Members will not be obliged, with respect to pharmaceutical products, to implement or apply sections 5 and 7 of Part II of the TRIPS Agreement or to enforce rights provided for under these Sections until January 1, 2016. This decision is made without prejudice to the right of least developed country Members to seek other extensions of the period provided for in paragraph 1 of Article 66 of the TRIPS Agreement.

In paragraph 6 of the Declaration on the TRIPS Agreement and Public Health, Ministers recognized the complex issues associated with the ability of certain Members lacking domestic manufacturing capacity to make use of the flexibilities in the TRIPS Agreement. Ministers directed the TRIPS Council to find an expeditious solution to the difficulties certain Members might face in using compulsory licensing if they lacked sufficient manufacturing capacity in the pharmaceutical sector and to report to the WTO General Council by the end of 2002. The TRIPS Council began its work at the March 2002 meeting and continued throughout 2002 in both formal and informal meetings. Developed country Members generally supported a solution that, with appropriate provisions on scope, safeguards and transparency, would waive the obligation in paragraph 31(f) that requires that compulsory licenses, when granted, be predominantly for the supply of the domestic market, since it is this limitation that could make it difficult for a Member lacking manufacturing capacity of its own to obtain a needed pharmaceutical if that product were patented in the Member from which supply was being sought.

Throughout the ensuing negotiations to develop such a solution, the United States remained committed to the Doha Declaration and worked intensively to find a solution that would provide life-saving drugs to those truly in need. As the negotiations drew to a close, however, it became clear that some WTO Members and advocacy organizations sought to expand the scope of diseases beyond that intended at Doha to allow countries to override drug patents to treat a wide range of concerns, such as obesity. The United States was seriously concerned that this approach could substantially undermine the WTO rules on patents which provide incentives for the development of new pharmaceutical products. As no consensus could be obtained in support of the final proposal made by the Chairman of the TRIPS Council, negotiations

concluded for the year on December 20, 2002. In concluding the negotiations, Members agreed that the General Council should instruct the TRIPS Council to resume its work as soon as possible in the new year so that a decision on this issue could be taken at the next meeting of the General Council on February 10, 2003.

While pledging to continue to work with other WTO Members to try to find a solution within the WTO, on December 20, the United States announced an immediate practical solution to allow African and other developing countries to gain greater access to pharmaceuticals and HIV/AIDS test kits when facing public health crises. The United States pledged to permit these countries to override patents on drugs produced outside their countries in order to fight HIV/AIDS, malaria, tuberculosis, and other types of infectious epidemics, including those that may arise in the future. Specifically, the United States pledged not to challenge any WTO Member that contravenes WTO rules to export drugs produced under compulsory license to a country in need, and called on others to join the United States in this moratorium on dispute settlement.

The United States notified the WTO in early January 2003 of the specific terms and conditions of the moratorium. The key elements of this moratorium include a commitment not to pursue dispute settlement against a Member that notifies the TRIPS Council of its intention to issue a compulsory license to permit the production and export of a patented pharmaceutical product or HIV/AIDS test kit to eligible importing economies. Eligible importing economies will be those economies, other than those classified by the world bank as "high income economies," that: (1) are facing a grave public health crisis associated with HIV/AIDS, malaria or tuberculosis or other infectious epidemics of comparable scale and gravity, including those that may arise in the future; (2) have no or insufficient production capacities in the pharmaceutical sector; and (3) have so notified the TRIPS Council. The moratorium will also include measures to guard against product diversion, including steps to ensure that the product can be easily identified and a requirement that all countries, to the extent of their ability, act to ensure that the drugs are not diverted from countries in need.

TRIPS-related WTO Dispute Settlement Cases: During the year, the United States continued to pursue consultations with the European Union regarding its failure to provide TRIPS-consistent protection of geographical indications of U.S. nationals. On May 31, the United States and Argentina notified the partial settlement of a WTO dispute settlement procedure related to patent and data protection issues. Of the ten claims raised by the United States, eight were settled. The United States reserved its right to pursue future consultations and WTO dispute settlement with respect to two claims: protection of test data against unfair commercial use, and the application of enhanced TRIPS rights to patent applications pending as of the entry into force of TRIPS for Argentina.

There are a number of other WTO Members that likewise appear not to be in full compliance with their TRIPS obligations. The United States, for this reason, is still considering initiating dispute settlement procedures with members of the Andean Community, the Dominican Republic, Hungary, India, Israel, and Kuwait. We will continue to consult informally with 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.

Geographical Indications: The Doha Ministerial Declaration directed the TRIPS Council to discuss "issues related to extension" of Article 23-level protection to geographical indications for products other

than wines and spirits and to report to the Trade Negotiations Committee by the end of 2002 for appropriate action. Throughout 2002, the United States has argued that *demandeurs* had not established that the protection provided geographical indications for products other than wines and spirits was not adequate, that the administrative costs and burdens would be considerable for those Members that did not have a longstanding statutory regime for the protection of geographical indications, and that the benefits accruing to those few Members that had longstanding statutory regimes for the protection of geographical indications would represent a windfall, while other Members with few or no geographical indications would receive no counterbalancing benefits. A number of multiple-sponsor papers were introduced during the year expressing the views and concerns of both supporters of extension and Members opposing such extension. To facilitate the discussion, the Council Chairman identified three sets of issues and focused discussions at each meeting on one or more sets. The Secretariat prepared compilations of oral statements of various Members and of documents submitted, to assist Members in making reference to those statements and documents. At the November meeting, those favoring negotiations on extension recommended a report to the Trade Negotiations Committee proposing initiation of negotiations on such extension while those opposing extension of Article 23 to geographical indications for products other than wines and spirits recommended that the report note that issues had been discussed thoroughly but no consensus reached.

Ultimately, no consensus could be reached in the TRIPS Council on how the Chair should report to the TNC on the issues related to extension of Article 23-level protection to geographical indications for products other than wines and spirits. At the TNC meeting, in light of the strong divergence of positions on the way forward on geographical indications and other implementation issues, the TNC Chair closed the discussion by saying he would consult further with Members and revert to this issue at the next meeting of the TNC (February 4-5, 2003).

No further progress has been made on the Article 24.2 review of the application by Members of TRIPS provisions on geographical indications in spite of the review continuing to be on the TRIPS Council's agenda. At each of the 2002 TRIPS Council meetings, the United States urged developing country Members that have not yet provided information on their regimes for the protection of geographical indications, and most of them have not, to do so. The United States also continued to support a proposal by New Zealand in 2000, and by Australia in 2001, that the Council conduct the review by addressing each article of the TRIPS Agreement covering geographical indications in light of the experience of Members as reflected in the responses to the "checklist," but others, including the European Union, continue to oppose such a review, saying that Members that are interested can read the papers.

Review of Current Exceptions to Patentability for Plants and Animals: TRIPS Article 27.3(b) permits Members to except from patentability plants and animals and biological processes for the production of plants and animals. Members may not, however, except from patentability micro-organisms and non-biological and microbiological processes. As called for in the Agreement, the TRIPS Council initiated a review of this provision in 1999 and, because of the interest expressed by some Members, the discussion continued through 2000 and 2001. In 1999, in order to facilitate the review by enabling easy comparisons, the Secretariat had prepared a synoptic table of information provided by developed Members on their practices. This portion of the review revealed that there was considerable uniformity in the practices of the developed Members. 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, had given rise to a whole new industry that has brought inestimable benefits in health care, agriculture, and protection of the environment in those countries providing patent protection in this area. In 2001, the

United States again called for developing country Members to provide this same information so that the Council would have a more complete picture on which to base its discussion. Regrettably, most developing country Members have chosen not to provide such information and have raised topics that fall outside the scope of Article 27.3(b), such as the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), and traditional knowledge.

The Doha Ministerial Declaration directs the Council for TRIPS, in pursuing its work program under the review of Article 27.3(b) to examine, *inter alia*, the relationship between the TRIPS Agreement and the CBD, and the protection of traditional knowledge and folklore. The Council, at its March 2002 meeting, agreed to handle each of these topics as a separate agenda item, in order to avoid confusion, but the discussions have tended to overlap during 2002. Since the review began in 1999, the United States has introduced five separate papers discussing various aspects of the subjects under discussion, including a paper discussing in depth the provisions of the CBD that might have any relationship to the TRIPS Agreement and describing how the CBD's provisions regarding access to genetic resources and benefit sharing can be implemented through an access regime based on contracts that would spell out the conditions of access, including benefit sharing and reporting. Other papers describe the practices of the National Cancer Institute and the access regime of the U.S. National Park Service as examples of how a contractual access regime would function. The United States has suggested that any Member that has a question about whether a particular CBD implementation proposal would run afoul of TRIPS obligations raise the issue with the Council so that it might obtain the views of other Members. Updated information on organization activities was submitted from the FAO, the CBD, UNCTAD, UPOV, WIPO and the World Bank.

Non-violation: The Doha Ministerial Declaration on Implementation directs the TRIPS Council to continue its examination of the scope and modalities for non-violation nullification and impairment complaints related to the TRIPS Agreement, to make recommendations to the Fifth Ministerial Conference, and, during the intervening period, not to make use of such complaints. Throughout the year, the Council continued to discuss the operation of non-violation nullification and impairment complaints in the context of the TRIPS Agreement. Some Members argued that the possibility of such complaints created uncertainty. As in past years, the United States continued to argue that no more uncertainty was created than was the case with other WTO agreements, and that Article 26 of the Dispute Settlement Understanding and GATT decisions on non-violation provide sufficient guidance to enable a panel or the Appellate Body to make appropriate determinations in such cases.

Electronic Commerce: The TRIPS Council continued discussing the provisions of the TRIPS Agreement most relevant to electronic commerce and explored how these provisions apply in the digital world. The United States specifically suggested that the Secretariat might usefully undertake a study of how Members are implementing TRIPS with respect to the Internet environment. The United States will continue to support discussion of the application of the TRIPS Agreement in the digital environment. The Secretariat updated its factual background note on intellectual property and electronic commerce.

Further Reviews of the TRIPS Agreement: Article 71.1 calls for a review of the Agreement in light of experience gained in implementation, beginning in 2002. The Council continues to consider how the review should best be conducted in light of the Council's other work. The Doha Ministerial Declaration directs that, in its work under this Article, the Council is also to consider the relationship between intellectual property and the CBD, traditional knowledge, folklore, and other relevant new developments raised by Members pursuant to Article 71.1.

Technical cooperation and capacity building: As in each past year, the United States and other Members provided reports on their activities in connection with technical cooperation and capacity building.

Implementation of Article 66.2: Article 66.2 requires developed countries to provide incentives for enterprises and institutions in their territories to promote and encourage technology transfer to least developed Members in order to enable them to create a sound and viable technological base. This provision was reaffirmed in the Doha Decision on Implementation-related Issues and Concerns and the TRIPS Council was directed to put in place a mechanism for ensuring monitoring and full implementation of the obligation, and developed countries were directed to submit before the end of 2002 detailed reports on the actual functioning of the incentives they provide. The reports are to be reviewed in the TRIPS Council and are to be updated annually. The Chairman circulated an informal paper prior to the September meeting suggesting elements that might be considered by the Council to fulfill the instructions. Another informal note was circulated by the Chairman containing a draft decision for consideration by the TRIPS Council. The United States had given detailed reports on specific U.S. Government institutions (the African Development Foundation and Agency for International Development) at the first two Council meetings. Because there was insufficient time for consultations, the Chairman pushed back the discussion of the implementation of Article 66.2 to the February 2003 TRIPS Council meeting. As a result, the United States submitted its report on Article 66.2 at the end of December 2002.

Prospects for 2003

In 2003, the TRIPS Council will continue to focus on its built-in agenda and the additional mandates established in Doha, including on the Council's work on paragraph 6 of the Doha Declaration on TRIPS and Public Health, on issues related to the extension of Article 23-level protection for geographical indications for products other than wines and spirits, on the relationship between the TRIPS Agreement and the CBD, and on traditional knowledge and folklore, as well as other relevant new developments.

U.S. objectives for 2003 continue to be:

- to achieve a multilateral solution to the compulsory licensing issue identified in paragraph 6 of the Doha Declaration on TRIPS and Public Health;
- to resolve differences through dispute settlement consultations and panels, where appropriate;
- to continue its efforts to ensure full TRIPS implementation by developing-country Members;
- to ensure that provisions of the TRIPS Agreement are not weakened; and
- to develop further Members' views on the relationship between the TRIPS Agreement and electronic commerce.

H. Other General Council Bodies/Activities

1. 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. Following the Doha Ministerial Conference concluded in November 2002, the CTE in regular session continued discussion of many of the issues under consideration in recent years. The CTE regular session focused on issues identified in the Doha Declaration as those to pursue within the Committee's current terms of reference, including market access for issues associated with environmental measures; TRIPS and environment, and labeling for environmental purposes under paragraph 32; capacity-building and environmental reviews under paragraph 33; and discussion of the environmental aspects of Doha negotiations under paragraph 51.

Major Issues in 2002

The CTE in regular session met three times in 2002. The United States played an active role in discussions, particularly with respect to those issues identified in the Doha Declaration, as discussed below.

Market Access under Doha Sub-Paragraph 32(i): The CTE in regular session structured discussions on both a general and sectoral basis. With respect to the general discussion, Members focused on a submission from India that outlined some of the particular challenges faced by developing countries in meeting environmental requirements in the markets of developed countries. On sectoral questions, Members considered a submission from New Zealand on fisheries (which is being negotiated separately in the Rules Negotiating Group), Japan on forestry, and Saudi Arabia on energy.

TRIPS and Environment under Doha Sub-Paragraph 32(ii): Discussions under this item continued to focus, as they had prior to the Doha Ministerial Conference, on whether there may be any inherent conflicts between the TRIPS Agreement and the Convention on Biological Diversity (CBD) with respect to genetic resources and traditional knowledge. While Members generally acknowledged that the TRIPS Council was the most appropriate forum to consider this issue, they reiterated in the CTE in regular session views that had been previously expressed in the TRIPS Council. In this regard, a few Members argued for consideration of changes to the TRIPS Agreement to address perceived contradictions between the WTO and the CBD. The United States referred to two papers that it had circulated last year in the TRIPS Council on the relationship between WTO and CBD provisions and on programs for the sharing of benefits associated with genetic resources, making clear its view that there is no incompatibility between WTO Agreements and the CBD.

Labeling for Environmental Purposes under Doha Sub-Paragraph 32(iii): Members focused discussions on a paper from Switzerland. Most noted the view that existing WTO obligations, particularly those set forth in the TBT and SPS agreements, are sufficient with respect to the development and application of labeling programs and that there is no need for negotiations in this area.

Capacity Building and Environmental Reviews under Doha Paragraph 33: Many developing country Members stressed the importance of benefitting from technical assistance related to negotiations in the

WTO on trade and environment, particularly given the complexity of some of these issues. Most Members agreed that a key aspect of capacity building in this area involves increasing communication and coordination between trade and environment officials at national levels. Regarding environmental reviews, the United States and Canada regularly updated the CTE in regular session on their respective reviews of the WTO negotiations, while the European Union provided information on its sustainability impact assessments.

Discussion of Environmental Effects of Negotiations under Doha Paragraph 51: Most of the discussion that took place under paragraph 51 during 2002 involved procedural questions of how to carry out this mandate. The United States, however, pushed other Members to move beyond procedural questions and onto a substantive discussion of Members' views of what might be the environmental implications of negotiations across all areas of the Doha mandate.

Prospects for 2003

Much of the focus in 2003 is likely to continue to be on the environmental issues identified in the Doha Declaration that do not have a negotiating mandate, particularly with respect to those issues identified for reporting at the Fifth Ministerial Conference. Additionally, the CTE in regular session is likely to devote increasing attention to the substance of the mandate in paragraph 51 of the Doha Declaration.

2. Committee on Trade and Development

Status

The GATT established the Committee on Trade and Development (CTD) in 1965 to strengthen the institution's role in the economic development of less-developed Contracting Parties. In the WTO, the CTD is a subsidiary body of the General Council. The Committee provides developing-country Members, who comprise two-thirds of the WTO's Membership, an opportunity to discuss 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 Committee focuses on the means to accomplish the WTO's goal of full integration of Members into the multilateral trading system with particular attention paid to the benefits of trade liberalization as means to improve the prospects for economic development.

Following the WTO's First Ministerial Conference held in Singapore in 1996, the CTD formed a sub-committee to implement a plan of action agreed by Ministers that was designed to concentrate efforts to integrate least-developed countries into the trading system. The plan of action outlines an "Integrated Framework" (IF) to better coordinate trade-related technical assistance activities of donors to least-developed countries from 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. The IF process also encourages the participation of the broader development community through a consultative group of bilateral donors and other multilateral organizations. The Doha Declaration, in order to continue progress toward this goal, instructed the subcommittee to design a work plan to consider issues of importance to least-developed countries including further coordination of technical assistance through the IF and additional steps to facilitate the process of least-developed countries in joining the WTO.

Major Issues in 2002

The Committee held eight formal meetings and one seminar in 2002. The Committee's work focused on the participation of developing countries in world trade, the implementation of WTO agreements, technical cooperation and training, small economy issues, the development dimensions of electronic commerce, development of guidelines for the terms of accession for least-developed countries seeking to join the WTO, and the generalized system of tariff preferences. The Committee held one seminar which examined the revenue implications of electronic commerce.

WTO Technical Assistance Plan: The Doha Ministerial Declaration confirmed that technical cooperation and capacity building are core elements of the development dimension of the multilateral trading system. Ministers established an extensive mandate on technical cooperation and capacity building to enable beneficiary countries to implement WTO rules and obligations, and prepare them for effective participation in the work of the WTO, including for future negotiations.

Throughout 2002, the Committee worked to improve the WTO's trade-related technical assistance programs. The WTO Secretariat introduced its first annual technical assistance plan to coordinate the trade-related technical assistance requests of developing countries, which form the basis for the 2002 plan. The WTO received over 900 requests from 111 countries (reflecting all levels of development) and delivered over 450 activities for trade-related technical assistance in 2002. Activities generally took the form of regional or national seminars and workshops, trade policy courses, and internships, and covered topics ranging from accession and market access issues to technical barriers to trade. In addition, the U.S. Government contributed \$250,000 to expand the WTO's Trade Policy Training Programs to two universities in Africa, located in Morocco and Kenya. This important WTO project, which builds on the excellent Trade Policy Training Courses offered in Geneva, will be continued in 2003.

While concerns persist about the quality of the technical assistance plan, the Committee has worked tirelessly with donors and recipient Members to improve its efficiency and effectiveness. Continued collaboration among all participants will ensure the success of the plan as it strives to meet the goals of the DDA.

Small Economy Issues: The Doha Declaration mandates an examination of issues relating to trade of small economies with the objective of framing responses to those issues identified. The goal of this activity is to achieve the fuller integration of such economies into the multilateral trading system, not to create a sub-category of WTO Members. In written submissions and Committee discussions, a number of small economy Members described the structural impediments or shared characteristics of vulnerability of small economies in the multilateral trading system. The United States engaged in Committee discussions on development strategies for small economies, emphasizing the potential benefits of Doha negotiations for smaller economies which rely on an open trading system to foster growth. The Declaration mandates that the General Council provide recommendations to the Fifth Ministerial Conference.

Sub-Committee on Least-Developed Countries: In 2002, the Sub-Committee on Least-Developed Countries took several important steps towards its goal of furthering trade integration of least-developed countries. The Subcommittee began the year by adopting a work program focusing on several key issues for least developed countries, including market access, trade-related technical assistance and capacity building, support for diversification of production and the export base, mainstreaming trade to improve participation in the multilateral trading system, and accessions of least developed countries into the WTO.

The “Integrated Framework”(IF): The IF process starts with a Diagnostic Trade Integration Study (DTIS), which analyzes the technical assistance requirements for each country. Such analysis is critical to enabling least developed countries to draw on the benefits of the multilateral trading system. Beginning as a pilot process in 2001, diagnostic studies were conducted for three countries: Cambodia, Madagascar, and Mauritania. Additional studies are scheduled for Burundi, Djibouti, Eritrea, Ethiopia, Guinea, Lesotho, Malawi, Mali, Nepal, Senegal, and Yemen. The DTIS is a first step toward mainstreaming trade, producing policy recommendations, identifying technical assistance needs, and developing poverty reduction strategies. Follow-up activities are planned for each country. Timely and effective follow-up projects remain the greatest challenge to the IF process. The U.S. Government has set aside \$3 million to support such projects and has helped fund the DTIS during the past two years by contributing to the Integrated Framework Trust Fund. Voluntary contributions finance the Trust Fund, which is managed on behalf of the six agencies by the UNDP. Total pledges from all donors amounted to \$10.4 million as of October 2002.

WTO Accessions of Least Developed Countries: The Sub-Committee also worked to develop guidelines to streamline and simplify the accession process for least developed applicant countries, which the General Council adopted in December 2002. The guidelines reflect to a large extent the current consensus that least developed accession applicants should have full recourse to the flexibilities and transitional provisions already provided for least developed countries in WTO Agreements and that market access commitments should not be onerous. The agreed guidelines call for minimizing the number of meetings, and other methods to help accelerate the negotiating process for least-developed countries prepared to undertake reasonable market access commitments and to adopt and enforce WTO-consistent trade rules. In designing these guidelines, the United States worked with other WTO Members and the Secretariat to ensure that technical assistance will be available to help least developed countries to implement their WTO commitments.

Electronic Commerce Seminar: In April 2002, the Sub-Committee held a seminar on the revenue effect of electronic commerce. The seminar concluded that e-commerce posed both a challenge and an opportunity to developed and developing countries and for both governments and companies. The direct effects on government revenue appeared small whereas the potential gains in efficiency for an economy can be large.

Prospects for 2003

The CTD will continue its function as the forum for discussion of development issues within the WTO. Particular emphasis is likely to be placed on participation of developing countries in the multilateral trading system, electronic commerce, issues facing small-economy Members, and efforts to improve the effectiveness and accountability of technical cooperation.

The Sub-Committee on Least-Developed Countries will meet four times in 2003. The Sub-Committee will continue to take steps to improve the opportunities available to the least-developed countries and increase integration into the trading system through encouraging greater participation in the Doha negotiations, the subcommittee’s agreed work plan, and technical cooperation efforts such as the IF process.

3. Committee on Balance of Payments Restrictions

Status

WTO rules require any Member imposing restrictions for balance of payments purposes to consult regularly with the Balance of Payments (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 2002

Since entry-into-force of the WTO on January 1, 1995, the WTO BOP Committee has demonstrated that the new WTO rules provide Members additional, effective tools to enforce obligations under the BOP provisions. The year began with the welcomed announcement by Pakistan that it had completed its phase-out plan of BOP restrictions ahead of schedule. In February and again in October, the BOP Committee consulted with Bangladesh on the maintenance of restrictions on four items for BOP purposes. Members noted that Bangladesh had begun the removal of most restrictions under the timetable agreed in consultations concluded in 2000. The Committee approved the maintenance of import restrictions on the four products in question until 2009 recognizing the unique circumstances of Bangladesh as a least-developed country facing continuing balance-of-payments difficulties.

The BOP Committee undertook discussions of two new items in 2002. As part of the work program agreed at Doha, the BOP Committee requested a paper outlining the evolving role of the IMF in BOP proceedings. The paper was prepared by the Secretariat with the help of the IMF, reviewed by Members, and discussed by the Committee. The Committee also discussed proposals to clarify the various roles of the Committee and the IMF in BOP proceedings. In this regard, the Chair made some suggestions on which the Committee did not reach a consensus in 2002. At the November meeting, the BOP Committee also conducted the first annual review of China's accession commitments as part of Transitional Review Mechanism.

Prospects for 2003

Should other 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 continue to rely upon its close cooperation with the IMF and plans on further consultations among Members on several ideas proposed by the Chair with a view to clarifying the respective roles of the IMF and Committee in BOP proceedings.

4. Committee on Budget, Finance, and Administration

Status

WTO Members are responsible for establishing and approving the budget for the WTO Secretariat via the Budget Committee. Although the Committee meets throughout the year to address the financial requirements of the organization, the formal process to approve the budget for the upcoming year begins in the fall when the Secretariat provides to Members the financial data from the previous year and forecasts the financial needs for the upcoming year. The WTO annual budget is reviewed by the Committee and approved by the WTO General Council. It is the practice in the WTO to take decisions on budgetary issues by consensus.

The United States is an active participant in the Budget Committee. For the 2003 budget, the U.S. assessment rate is 15.899 percent of the total assessment, or Swiss Francs (CHF) 24,452,662 (about \$17.5 million). During the course of 2002, the United States paid off longstanding accumulated arrears to the WTO of CHF 3,205,232 (about \$2.1 million). The total assessments of WTO Members are based on the share of WTO Members' trade in goods, services, and intellectual property. Details on the WTO's budget required by Section 124 of the Uruguay Round Agreements Act are provided in Annex II.

Major Issues in 2002

In 2002, the demands created by the launch of the new round of negotiations in Doha and the capacity building needs of developing countries continued to be the major issues facing the Budget Committee. In addition, the Committee began work on the first triennial review of WTO salaries.

Agreed Budget for 2003: After considerable discussion aimed at reconciling growing demands on the WTO Secretariat as a result of the new round of negotiations with budgetary realities, the Committee proposed, and the General Council approved, a 2003 budget for the WTO Secretariat and Appellate Body of CHF 154,954,350 (approximately \$110 million).

As a result of the ongoing first triennial review of WTO salaries, the agreed budget for 2003 provides for an interim salary adjustment of 4 percent, with a 3 percent raise effective January 1, 2003 and the remainder effective July 1, 2003. These adjustments were made because it was found during the review process that WTO salaries had fallen behind UN salaries. In addition, the budget package provides for the possibility of a further adjustment of salaries on July 1, 2003 to take into account a further increase in UN salaries for its professional staff that was still pending at the UN when the Budget Committee completed its work. The Director-General had proposed a higher level of increase to make WTO salaries comparable to a broader range of international institutions dealing with economic issues. However, some Members did not agree with the reasoning behind this proposal and many others believed they needed more time to consider the whole issue of the methodology for determining the remuneration of WTO staff. Therefore, it was decided to continue the triennial review but to complete it and reach conclusions by the end of March 2003. If this review results in a further increase in salaries, the increase would take effect on January 1, 2004. The 2003 budget also provides for an increase in the staffing of the organization by six people to address higher workloads resulting from the launch of the new round.

As provided for in last year's decision creating the Doha Development Agenda Trust Fund, which is financed by voluntary contributions, the Budget Committee was required to set a target level for

contributions for 2003. Based on the 2003 Plan for Trade-Related Technical Assistance, which was agreed by the WTO's Committee on Trade and Development, the Budget Committee agreed to a target of CHF 24 million. In addition, the regular budget of the WTO for 2003 provides for one more of the highly acclaimed WTO training courses, which educate developing countries' officials on how to participate in the work of the WTO, including how to meet their trade obligations.

Building Facilities: The Budget Committee continued to consider a building proposal from the Swiss government intended to accommodate the current needs of the WTO Secretariat, which exceeds the space available in the WTO's main building, and to take into account the future needs of the WTO and its Appellate Body. The proposal allows for the WTO to finance design studies and construction of the building with a loan of CHF 50,000,000 (close to \$31 million) payable over 50 years. The Government of Switzerland would pay the interest on the loan and the Canton of Geneva would pay for the rental of the ground the building would occupy until 2059, at which time the WTO could either purchase the land, negotiate an extension of the agreement, or sell the building. Construction could begin in 2005 and be completed in 2007-2008. A final decision will need to be made by the General Council at some time in the future. Last year the Budget Committee recommended, and the General Council agreed, to accept Switzerland's proposal in principle so that the Swiss authorities can hold the necessary land and work with the WTO to develop the additional plans and analysis that will be necessary to take a final decision. This year the Swiss authorities briefed the Budget Committee on a design competition that it was initiating for the new building, which will be necessary for the Swiss authorities to make their proposal for action to the General Council.

Prospects for 2003

In 2003, the Budget Committee will work on an urgent basis to complete its work on the triennial review of salaries and to recommend to the General Council by the end of March 2003 an agreed methodology for establishing staff salaries. The Budget Committee will also work closely with the Committee on Trade and Development to develop a program of technical cooperation for 2004 and recommend to the General Council a target level of financing from the Doha Development Agenda Trust Fund that will be necessary to fund these efforts. Additional consideration will also need to be given to the Swiss proposal on additional facilities for the WTO. The Budget Committee has also agreed, on the initiative of the United States, to consider moving to a biennial budgeting cycle, as opposed to the current annual budget cycle. In addition, the Committee will take a comprehensive look at the staffing of the Secretariat as compared to the demands placed upon it by Members, as well as ways of achieving savings by adjusting the way the WTO does business.

5. Committee on Regional Trade Agreements

Status

The Committee on Regional Trade Agreements (CRTA), a subsidiary body of the General Council, was established in early 1996 as a central body to oversee all regional agreements to which Members are party. The CRTA 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 on the multilateral trading system. Prior to 1996, these reviews were typically conducted by a "working party" formed to review a specific agreement.

The WTO addresses regional trade agreements in more than one agreement. In the GATT 1947, Article XXIV was the principal provision governing Free Trade Areas (FTAs), Customs Unions (CUs), and interim agreements leading to an FTA or CU. 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 agreements between or among developing countries. The Uruguay Round added two more provisions: the Understanding on the Interpretation of Article XXIV, which clarifies and enhances the requirements of GATT Article XXIV; and Article V of the General Agreement on Trade in Services (GATS), which governs services economic integration agreements.

FTAs and CUs are authorized departures from the principle of MFN treatment if certain requirements are met. First, tariffs and other restrictions on trade must be eliminated on substantially all trade between the parties. Second, the incidence of duties and other restrictions of commerce applied to third countries upon the formation of the FTA or CU must not, on the whole, be higher or more restrictive than was the case 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. With respect to the formation of a CU, the parties must notify Members to negotiate compensation to other Members for exceeding their WTO bindings with market access concessions. An analogous compensation requirement exists for services as well.

Major Issues in 2002

Examination of Reports: The Committee held three formal meetings during 2002. The Committee has 125 agreements under review, 102 referred by the Council on Trade in Goods, 22 by the Council for Trade in Services, and 1 by the Committee on Trade and Development¹⁷. In January 2002, the United States notified the entry into force of the U.S.-Jordan FTA. The Committee has completed its factual examination for over 70 agreements but has a backlog of draft reports, as Members do not agree on the nature of appropriate conclusions. At the same time, in 2002 the Committee received 11 biennial reports on regional agreements notified under Article XXIV of GATT 1947.

Other Issues: The Committee discussed two horizontal surveys prepared by the Secretariat to assist the Committee understand more specifically the impact of regional trade agreements on the multilateral trading system. The reports, *Rules of Origin Regimes in RTAs* ((WT/REG/W/45) and *Coverage, Liberalization Process and Transitional Provisions in RTAs* (WT/REG/W/46) were made publicly available in September 2002. The Committee also sponsored a well-attended seminar on April 26, entitled “Regionalism and the WTO” that engaged economists and the academic community to focus on the impact of regional trade agreements on the multilateral trading system, particularly in terms of market access and various regulatory regimes.

Prospects for 2003

Paragraph 29 of the Doha Declaration calls for clarifying and improving rules for regional trade agreements, a mandate that is being undertaken by the Rules Negotiating Group. Accordingly, the discussion of systemic issues and improving the examination process in the CRTA has in effect been put in

¹⁷ A list of all regional trade agreements notified to the GATT/WTO and in force is included in Annex II to this report.

abeyance. In the meantime, two meetings have been scheduled for 2003, during which the Committee will continue to review the new regional trade agreements notified to the WTO and referred to the Committee. The biennial reporting requirement on the operation of agreements has been shifted by a year, to 2004, given the 2003 workload due to preparations for the Fifth Ministerial Conference planned for September in Cancun.

6. Accessions to the World Trade Organization

Status

Taiwan became the 144th WTO Member on January 1, 2002. In addition, the General Council approved the accession packages of Armenia and Macedonia (officially known as the Former Yugoslav Republic of Macedonia), both of which will become Members after their respective parliaments ratify their accession commitments. Significant progress towards completion of negotiations also was recorded with the twenty-six applicants with established Working Parties, particularly with Russia, Ukraine, Cambodia, and Nepal. Along with Samoa and Tonga, it is expected that negotiations will enter a critical phase for these countries during 2003. WTO Members agreed on guidelines to accelerate and simplify the accession process for least developed countries (LDCs). Equatorial Guinea joined Ethiopia and Sao Tome and Principe as observers to the WTO, not yet seeking accession.

By the end of 2002, only five of the accession applicants with established Working Parties had not yet activated their accession process by submitting initial descriptions of their trade regimes. Bosnia, Yemen, and Yugoslavia provided this essential information during 2002. Initial working parties convened for the accessions of Azerbaijan, Lebanon, and Uzbekistan to conduct a first review of the information that these applicants submitted. After a hiatus of almost four years, work on Algeria's accession resumed at an accelerated pace. Working Party meetings and/or bilateral market access negotiations were also held during 2002 with Armenia, Cambodia, Kazakhstan, Macedonia, Nepal, Russia, Ukraine, and Vietnam. The chart included in Annex II of this report presents the current status of each accession negotiation.

Countries and separate customs territories 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. It is widely recognized that the accession process, with its emphasis on implementation of WTO provisions and the establishment of stable and predictable market access for goods and services, provides a proven framework for adoption of policies and practices that encourage growth, development, and investment.

The accession process strengthens the international trading system by ensuring that new Members understand and can implement WTO rules from the outset, and it offers current Members the opportunity to secure expanded market access opportunities and to address outstanding trade issues in a multilateral context. In a typical accession negotiation, the applicant submits an application to the WTO General Council, which establishes a Working Party to review information on the applicant's trade regime and to conduct the negotiations. Accession negotiations can be time consuming and technically complex, involving a detailed review of the applicant's entire trade regime by the Working Party and negotiations for import market access. Applicants need to be prepared to make legislative changes to implement WTO institutional and regulatory requirements, to eliminate existing WTO-inconsistent measures, and to make trade-liberalizing specific commitments on market access for goods, services, and agriculture.

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 include 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 approval, accession applicants normally submit the package to their domestic authorities for ratification. Thirty days after the applicant’s instrument of ratification is received in Geneva, WTO Membership becomes effective.

The United States provides a broad range of technical assistance to countries seeking accession to the WTO to help them meet the requirements and challenges presented, both by the negotiations and the process of implementing WTO provisions in their trade regimes. This assistance is provided through USAID and the Commercial Law Development Program (CLDP) of the U.S. Department of Commerce. The assistance can include short-term technical expertise focused on specific issues, e.g., Customs, IPR, or TBT, and/or a WTO expert in residence in the acceding country. Current WTO Members that received technical assistance in their accession process from the United States include Albania, Armenia, Bulgaria, Estonia, Georgia, Jordan, Kyrgyz Republic, Latvia, Lithuania, Macedonia, and Moldova. Most had U.S.-provided resident experts for some portion of the process. Among current accession applicants, the United States provides a resident WTO expert for the accessions of Azerbaijan, Cape Verde, Lebanon, Ukraine, and Yugoslavia, and a U.S.-funded WTO expert resident in the Kyrgyz Republic provides WTO accession assistance to Kazakhstan, Uzbekistan, and Tajikistan on an “as requested” basis. The United States provides other forms of technical and expert support on WTO accession issues to Algeria, Bosnia, Nepal, Russia, and Vietnam.

Major Issues in 2002

As part of broader efforts to address the concerns of developing countries in the context of work on the Doha Development Agenda, in December 2002, the General Council formalized guidelines for a streamlined and accelerated accession process for least developed accession applicants.¹⁸ WTO Members have recognized that LDCs, as countries with extremely low levels of income and economic development, face unique problems in applying for WTO accession, e.g., lack of human resources to conduct the negotiations, infrastructure deficiencies, and a general lack of capacity to implement WTO provisions without additional time and technical assistance. Most of the elements of the new guidelines were already being applied in ongoing LDC accessions, e.g., moderated market access requests, use of existing WTO provisions for LDCs and additional transitions for implementation of WTO Agreements and other commitments, and extensive recourse to technical assistance. The guidelines also include more specific suggestions, for instance, that account be taken of the levels of concessions and commitments undertaken by current LDC Members, and that transitional arrangements be accompanied by action plans for WTO compliance by the LDC applicant, and that technical assistance and capacity building measures be

¹⁸Twenty-nine LDCs are already WTO Members. Of the nine additional LDCs that have applied for WTO accession, only Vanuatu has completed negotiations, but it has not submitted the results to the General Council for approval. Negotiations with Cambodia, Nepal, and Samoa are advanced and moving forward. Bhutan, Cape Verde, Laos, Sudan, and Yemen have not yet commenced negotiations. Of the ten remaining LDCs that have not applied for WTO membership, three (Ethiopia, Equatorial Guinea, and Sao Tome and Principe) are WTO observers.

available to complete implementation. However, the guidelines do not mandate a “one size fits all” template for commitments, and preserve the ability of WTO Members to use the process to promote reform and build trade capacity in the applicant economic regimes while simplifying and streamlining the accession process.

Intensive work to complete the accessions of Armenia and Macedonia and to make progress on those of Russia, Cambodia, Nepal, and Algeria took up most of the attention given by WTO Members to individual accessions in 2002. Taking note of this progress, Ukraine, Kazakhstan, and other accession applicants also sought to intensify negotiations during 2002, but as work on the Doha Ministerial agenda intensified, work on other accessions slowed considerably, especially in the latter part of the year. While there were no WTO meetings scheduled on Saudi Arabia's WTO accession during 2002, bilateral contacts and work on legislative implementation continued. U.S. and Saudi Arabian representatives met in September to review the status of work and exchange information on possible next steps.

Macedonia completed its negotiations in July 2002, substantially revising the legal basis for its trade regime to bring it into conformity with WTO Agreements and undertaking market access commitments that lock in liberal non-agricultural tariff and services terms, cap and roll back protective agricultural tariffs, and confirm elimination of agricultural export subsidies. The General Council approved Macedonia's accession package in October 2002.

Armenia, the fourth of the Republics of the former Soviet Union and the twelfth transforming economy to complete accession negotiations under Article XII of the WTO Agreement, was also able to complete legislative work in 2002. At the time its accession package was approved by the General Council in December 2002, Armenia affirmed that it would not take any direct or indirect action that would impede or slow down the accession process of Azerbaijan to the WTO, nor block the decision-making process concerning the accession of Azerbaijan to the WTO. Prior to General Council approval of the accession package, the United States invoked the non-application provisions of the WTO Agreement contained in Article XIII with respect to Armenia. This was necessary because the United States must retain the right to withdraw “normal trade relations” (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 IV of the Trade Act of 1974.¹⁹ 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 by the other country of the WTO or the commitments in its accession package. This brings to six the number of times since the establishment of the WTO in 1995 that the United States has invoked non-application.²⁰

¹⁹In addition to Armenia, seven of the remaining 28 WTO accession applicants with active Working Parties are covered by Title IV. They are: Azerbaijan, Belarus, Kazakhstan, Russia, Ukraine, Uzbekistan, and Vietnam. For further information on this issue, please consult Chapter IV.

²⁰ 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, Georgia and Moldova were approved by the WTO General Council in 1996, 1998, 1999, and 2001, respectively. Congress subsequently authorized the President to grant Romania, Mongolia, the Kyrgyz Republic, and Georgia permanent NTR, and the United States withdrew its invocation of non-application in the WTO for these countries.

Prospects for 2003

The quickening pace of work on Doha issues and preparations for the Fifth Ministerial Conference in Cancun, Mexico in September 2003 will occupy an increasing share of WTO Members' time and resources during the year. As a consequence, most attention will be on accession applicants already well advanced in the process of implementing WTO provisions and in market access negotiations, as well as on continuing efforts to promote progress in the accessions of LDCs. U.S. representatives will remain 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, to promote trade capacity building in LDC applicants, and to support a high standard of implementation of WTO provisions by both new and current Members.

Of all the accession negotiations still underway, Russia is the furthest advanced. During 2002, the Working Party on Russia's WTO Accession met five times. At each meeting, delegations reviewed progress in Russia's legislative plan for implementation of WTO provisions and in bilateral market access negotiations. Based on progress to date, an initial draft of the Working Party report was developed and circulated in March. On the margins of Working Party meetings and other WTO meetings, delegations also met plurilaterally to clarify specific issues in the accession, e.g., in the areas of agriculture, TRIPS, TBT/SPS, services, and energy/subsidies. The goal of the Working Party is to finalize a Working Party report text that accurately reflects both Russia's commitments to WTO implementation and how they have implemented those commitments. The United States strongly supports Russia's WTO accession efforts, and U.S. and Russian teams intensified their bilateral contacts on all aspects of the accession during 2002 to give momentum to the Working Party process. Despite these efforts, a great deal of work remains to be done to bridge outstanding issues in goods and services market access negotiations, to address Russia's commitments on agricultural supports and subsidies, and to establish the legal basis for implementing WTO obligations in the Russian trade regime. Russia, nevertheless, is seeking an accelerated pace for work. Deputy Prime Minister Kudrin, addressing the Working Party in December, pressed for completion of the accession process as soon as possible and pledged the full efforts of the Russian government to promote a rapid completion of the negotiations.

The United States is also committed to promoting trade capacity building among least developed countries through the WTO accessions process. Negotiations with LDCs Cambodia, Nepal, Samoa and Tonga, are expected to make substantial additional progress in 2003. Cape Verde has also announced its intentions to move decisively towards WTO Membership in 2003. The United States chairs Cape Verde's Working Party and is providing technical support to its negotiating team to assist in achieving this goal.

Algeria, Kazakstan, and Belarus, whose accession negotiations stalled earlier in the process, sought to re-energize their negotiations during 2002, and have indicated that they will make WTO accession a priority during 2003. Azerbaijan, Lebanon, and Uzbekistan, which initiated Working Party deliberations in 2002, will be seeking additional meetings, and Yugoslavia, Bosnia, and Yemen, which circulated initial documentation in 2002, will press for initial Working Party reviews.

I. Plurilateral Agreements

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

Status

The Information Technology Agreement, or ITA, was concluded at the WTO's First Ministerial Conference at Singapore in December 1996. The Agreement eliminated tariffs as of January 1, 2000 on a wide range of information technology products. Currently, the ITA has 57 participants representing 93 percent of world trade in information technology products.²¹ The Agreement covers computers and computer equipment, electronic components including semiconductors, computer software products, set-top boxes, telecommunications equipment, semiconductor manufacturing equipment and computer-based analytical instruments.

Major Issues in 2002

The WTO Committee of ITA Participants held four formal meetings in 2002, during which the Committee reviewed the implementation status of the Agreement. While most participants have fully implemented tariff commitments, a few countries are still awaiting the completion of domestic procedural requirements or have not yet submitted the necessary documentation.

The Committee continued its work to address divergent classification of information technology products. The Committee received a reply from the WCO regarding the list of classification issues sent to it by the Committee. An informal meeting of customs experts was held in May 2002 to discuss these classification issues and a report is expected soon summarizing the outcome of the work undertaken by these experts.

The Committee also made progress on the NTMs Work Program, affecting trade in ITA products. As part of this work, the Committee received over two dozen submissions from participants identifying a number of non-tariff measures that act as unnecessary impediments to trade. The Committee prepared an overview of the submissions on which ITA participants had an opportunity to review and comment. The Committee also agreed to a pilot project on Electromagnetic Compatibility (EMC) and Electromagnetic Interference (EMI). Eighteen responses were submitted to a survey on EMC drafted by Canada. Canada also proposed for Committee consideration a workshop be held in 2003 for industry representatives and government regulators to examine EMC practices.

In 2002, China circulated its tariff schedule to all participants. However, China's membership in the Committee has been blocked because it has been requiring end-use certification for ITA products.

²¹ ITA participants are: Albania, Australia, Bulgaria, Canada, Costa Rica, Croatia, Cyprus, Czech Republic, El Salvador, Estonia, European Union (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, Moldova, New Zealand, Norway, Oman, Panama, Philippines, Poland, Romania, Singapore, Slovak Republic, Slovenia, Switzerland and Liechtenstein, Taiwan, Thailand, Turkey, and the United States. Armenia, China, Egypt, Macedonia and Morocco have indicated their intention to join the ITA.

Additionally, the Committee agreed to adopt the General Council decision (WT/L/452) to derestrict and circulate documents of the Committee, with the exception of the documents pertaining to the NTM work program. The decision to derestrict the NTM document series remains to be addressed by the Committee.

Prospects for 2003

The Committee's work program on non-tariff measures continues to proceed in step with tariff implementation issues. The Committee will need to take a decision on whether to hold an EMC workshop and if so, work to maximize participation from both developed and developing ITA participants. Throughout 2003 the Committee will continue to undertake its mandated work, including reviewing new applicants' tariff schedules for ITA participation, 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 specifically signed the GPA in Marrakesh or that have subsequently acceded to it. WTO Members are not required to join the GPA, but the United States strongly encourages all WTO Members to participate in this important Agreement. The 28 current signatories are: the United States, the European Union and its member states (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, United Kingdom), the Netherlands with respect to Aruba, Canada, Hong Kong, China, Iceland, Israel, Japan, Liechtenstein, Norway, the Republic of Korea, Singapore and Switzerland. Iceland acceded to the GPA in April 2001. Albania, Bulgaria, Chinese Taipei, Estonia, Georgia, Jordan, the Kyrgyz Republic, Latvia, Lithuania, Moldova, Oman, Panama, and Slovenia are in the process of negotiating GPA accession. As provided in the Protocol of Accession of the People's Republic of China, China became an observer in the Government Procurement Committee in February 2002.

Major Issues in 2002

Article XXIV:7 of the GPA calls for the Parties to conduct further negotiations with a view to improving both the text of the Agreement and its market access coverage. In 2002, the Parties focused primarily on the simplification and improvement of the Agreement, with the overall objective of promoting expanded membership of the GPA by making it more accessible to non-members. The review has also included discussion of expansion of coverage of the Agreement and elimination of remaining discriminatory measures and practices.

With these objectives in mind, the United States has taken the lead in advocating significant streamlining and clarification of the GPA's procedural requirements, while continuing to ensure full transparency and predictable market access. Much of the existing text of the GPA was developed in the late 1970s during the negotiations on the original GATT Government Procurement Code. As the current review of the Agreement has proceeded, the Committee has become aware that the GPA text needs to be carefully

analyzed and modified to reflect ongoing modernization of the Parties' procurement systems and technologies.

As provided for in the GPA, the Committee monitors participants' implementing legislation. The Committee has completed the reviews of the national implementing legislation of Canada; the European Union; Hong Kong, China; Israel; Japan; Korea; Liechtenstein; Norway; Singapore; Switzerland; and the United States.

Prospects for 2003

In 2003, the Committee will continue its review and revision of the text of the GPA, focusing on proposals by the United States and other Parties aimed at "streamlining" the Agreement's procedural requirements. The Committee has agreed to complete negotiations under Article XXIV:7 by January 1, 2005. The Committee has the aim of reaching provisional agreement on the revised text of the GPA by the Fifth Ministerial Conference, recognizing that it may not be possible to conclude some elements of the text until market access negotiations are completed.

The Committee plans to take up market access negotiations in 2003. It will consider proposals that have been made with respect to potential negotiations to further expand the Agreement's market access coverage. In 2003, the Committee will take up the review of the implementing legislation of Iceland, and continue its review of the legislation of the Netherlands with respect to Aruba.

The Committee also plans in 2003 to consider ways to improve accession procedures, including modalities that could accelerate the process in the case of Members with economies in transition and developing countries.

3. Committee on Trade in Civil Aircraft

Status

The Agreement on Trade in Civil Aircraft (Aircraft Agreement), concluded in 1979, is a plurilateral agreement. The Aircraft Agreement is part of the WTO Agreements, however, it is in force only for those Members who have accepted it.

The Aircraft Agreement requires signatories to eliminate duties on civil aircraft, their engines, subassemblies and parts, ground flight simulators and their components, and to provide these benefits on a non-discriminatory or MFN 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.

As of January 1, 2003, there were 30 signatories to the Aircraft Agreement: Bulgaria, Canada, the European Union, Austria, Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom, Egypt, Estonia, Georgia, Japan, Latvia, Lithuania, Macau, Malta, Norway, Romania, Switzerland, Taiwan, and the United States. Although Albania and Croatia have committed to become parties upon accession to the WTO, which occurred in 2001, neither has formally accepted the Agreement. Oman agreed to become a party within three years of accession, which occurred in 2001.

Major Issues in 2002

The Aircraft Committee, permanently established under the Aircraft Agreement, provides the signatories an opportunity to consult on the operation of the Agreement, to propose amendments to the Agreement and to resolve any disputes. During 2002, the full Committee met twice.

In addition to adopting several technical and statistical improvements in the operation of the Agreement, the Committee also agreed to provide duty-free treatment to aircraft ground maintenance simulators on a provisional basis, since this product does not currently fall within the defined coverage of the Agreement. The United States also raised certain activities by other signatories that might result in market distortions, such as government support for Airbus aircraft development and marketing.

Prospects for 2003

The United States will continue to make it a high priority for countries with aircraft industries that are seeking membership in the WTO to become signatories to the Aircraft Agreement. In addition, other countries that might procure civil aircraft products, but are not currently significant aircraft product manufacturers, are being encouraged to become signatories to the Agreement in order to foster non-discriminatory and efficient selection processes for aircraft products based solely upon product quality, price, and delivery.