2007 ANNUAL REPORT
OF THE
PRESIDENT OF THE UNITED STATES
ON THE
TRADE AGREEMENTS PROGRAM

II. THE WORLD TRADE ORGANIZATION

A. Introduction

At the core of U.S. trade policy is a steadfast support of the rules-based multilateral trading system. Working through the World Trade Organization (WTO), the United States remains in a leadership role in securing the reduction of trade barriers in order to expand global economic opportunity, raise standards of living, and reduce poverty. The WTO Agreement also provides the foundation for high standard U.S. bilateral and regional agreements that make a positive contribution to a dynamic global trading system based on the rule of law. This chapter outlines the work of the WTO in 2007 and the work ahead in 2008 – including on the multilateral trade negotiations launched at Doha, Qatar in November 2001, known as the Doha Development Agenda (DDA or Doha Round). This chapter details the work under the DDA and provides a review of the implementation and enforcement of the WTO Agreement. It also covers the critical accession negotiations to expand the WTO's membership to include new Members seeking to reform their economies and join the rules-based global trading system. In 2007, Tonga and Vietnam acceded to the WTO and Cape Verde was approved for membership by the General Council.

The DDA is the ninth successive round of multilateral trade negotiations to be carried out since the end of World War II. The DDA negotiations remain, along with the day-to-day implementation of the rules governing world trade, a U.S. priority that reflects the imperative of continued multilateral trade liberalization as part of the foundation that ensures stability and growth in a dynamic world economy.

Throughout 2007, the United States worked to advance the Doha trade negotiations and the implementation of the WTO Agreement. After the July 2006 suspension of the negotiations due to deadlocks in the negotiations on agriculture and industrial goods, the United States led the way over the following months in breathing new life into the Doha Round, resulting in an informal Geneva resumption of negotiations in Geneva before the close of the year. In early 2007, the United States stepped forward again, engaging with India, Brazil, and EUin a "G4" process aimed at moving the Doha negotiations toward solutions in agriculture and industrial goods that could contribute to the broader multilateral process and achieve the needed breakthrough modalities in these areas that would allow moving forward into the final phase of the overall negotiations. While some technical results were achieved, the G4 process broke down in mid-2007 and the central focus of the Doha Round returned to the multilateral process in Geneva. As 2008 begins to unfold, the negotiations face a critical juncture as never before.

B. The Doha Development Agenda under the Trade Negotiations Committee

The DDA was launched in Doha, Qatar in November 2001, at the Fourth WTO Ministerial Conference where Ministers provided a mandate for negotiations on a range of subjects and for work in on-going WTO Committees. In addition, the mandate gives further direction on the WTO's existing work program and implementation of the WTO Agreement. The goal of the DDA is to reduce trade barriers in order to expand global economic growth, development, and opportunity. The main focus of the negotiations under the DDA is in the following areas: agriculture; industrial market access; services; trade facilitation; WTO rules (*i.e.*, trade remedies, fish subsidies, and regional trade agreements); and development.

The Trade Negotiations Committee (TNC), established at the WTO's Fourth Ministerial Conference in Doha, oversees the agenda and negotiations in cooperation with the WTO General Council. The WTO

Director-General serves as Chairman of the TNC and worked closely with the Chairman of the 2007 General Council, Ambassador Muhamad Noor of Malaysia. Through formal and informal processes, the Chairman of the General Council, along with WTO Director-General Pascal Lamy, plays a central role in steering efforts toward progress on the DDA. (Annex II identifies the various negotiating groups and special bodies responsible for the negotiations, some of which are the responsibility of the WTO General Council).

As 2007 began, WTO Members were working to overcome the deadlock in negotiations that marked 2006. Members continued to work towards agreement on modalities – the key variables that would define the depth of tariff cutting and the extent of so-called flexibilities in agriculture and non-agricultural market access (NAMA), and set the stage for schedules and texts to be put on the table over the ensuing months in order to start the final stage of negotiations. As a result of U.S. leadership, momentum had been built, as 2006 closed, through a broadly-based informal engagement process. That process focused on working with key trading partners to revive the multilateral negotiations by putting them on a path toward an ambitious, market-opening result. At the core of this effort were so-called "quiet conversations" by senior officials and technical experts taking place in Geneva and elsewhere, allowing new ideas for breaking the Doha Round impasse to be fully explored. At a January 31, 2007 meeting of the TNC, Director-General Lamy called for a "full resumption" of negotiations, while emphasizing that discreet contacts between delegations would continue to be necessary and useful to achieving progress.

Discussions outside the formal negotiating process coalesced by April with participation of the United States, Brazil, the EC and India in a "G4" process, the results of which would be fed into the multilateral process to stimulate agreement by all WTO Members. As with the quiet discussions which preceded them, the G4 discussions were to look behind the "headline" numbers (*e.g.*, the overall average tariff cut applicable to developed and developing countries) and focus on specific sensitivities and concrete priorities. The first discussions took place in Delhi, India in April, and continued in nearly weekly meetings between senior officials or ministers through June. In parallel with G4 discussions over that time, various groupings of Members, including the G33 developing countries, Caricom, and the Cairns Group, held ministerial meetings that reinforced their commitment to completing the Round. And in May, the Chair of the Agriculture Negotiating Group, Crawford Falconer, issued two papers that served to stimulate discussions on various issues in the agriculture negotiations.

The G4 efforts resulted in some progress in exploring and mapping out potential solutions for breaking the deadlock in agriculture, including with regard to agricultural market access, subsidies, and export competition. At the same time, significant gaps in ambition remained — not just among the G4 but also with regard to other key Members. Further, Brazil and India hardened their positions toward a less than ambitious result on industrial tariffs. That hardening resulted in the breakdown of the G4 process in Potsdam on June 21, 2007. In those meetings, which began on June 19 and were intended to last a week, Brazil and India advocated for a co-efficient to be used under the formula for cutting advanced developing country tariffs on industrial goods that would result in reducing only a small number of the currently applied tariffs. After the Potsdam breakdown, USTR Susan C. Schwab traveled immediately to Geneva to meet with Director-General Lamy, key negotiating group chairs, and various other Members to discuss next steps. A meeting of the TNC was called, and it was agreed that forthcoming texts by Agriculture and Non-agricultural market access (NAMA) Chairs would be the key next step in the negotiations. As a result, the focus of the negotiations shifted from the G4 process to a multilateral, Chair-led process.

Even before the Chairs' texts were issued, on June 25, 2007, a number of developing countries including Chile, Colombia, Costa Rica, Hong Kong China, Mexico, Peru, Singapore, and Thailand separated themselves from the hard-line NAMA position taken by Brazil and India, issuing a paper proposing a more ambitious "middle ground" in the NAMA tariff-cutting coefficients and flexibilities.

The Agriculture and NAMA Chairs issued their texts on July 17, 2007. During informal negotiating group sessions and a July 27 formal TNC meeting the Chairs and Members stressed that the texts were draft, not negotiated, were not agreed, and would be revised as a result of Members' input. Most Members welcomed the texts as a starting point for further negotiation, although most Members, including the United States, had concerns with various aspects of the texts. Some developing countries complained that both texts were unbalanced, but the NAMA text drew substantial criticism, including several assertions that the text was not a basis for further negotiations. At the TNC meeting, many Members welcomed an announcement by the Chair of the Rules Negotiations that he planned to put forward a Chairman's text when the Agriculture and NAMA Chairs put forward their next revised texts. A significant number of Members, including the United States, emphasized the need for a strong outcome to the services negotiations to be an integral part of any Doha result. Most Members noted their willingness to return to the negotiating table for intense work starting in early September.

September began with a statement from the APEC Economic Leaders meeting in Sydney. The 21 Leaders, whose economies account for roughly half of the world's trade, expressed a clear and very strong commitment to conclude a Doha Round agreement that will deliver new trade flows in agriculture, manufactured goods, and services. They pledged to exercise "the political will, flexibility and ambition to ensure that the Doha round negotiations enter their final phase" and called on their trading partners to do the same. The Leaders at APEC also were unambiguous in their commitments to resume the negotiations "on the basis of the draft texts tabled by the chairs of the negotiating groups on agriculture and non-agricultural market access."

Following through on the APEC commitment, the United States publicly stated in Geneva that it was prepared to negotiate within the range of subsidy reductions in the draft agriculture text, provided that the other leading nations did the same with respect to new market access for agricultural and industrial goods. However, Argentina, India, Argentina, South Africa, and Brazil in their statements at that time – and in subsequent statements – appeared to signal an unwillingness to negotiate within the texts' ranges, as well as a desire to nullify market-opening commitments through loopholes.

November and December were marked by continuing resistance to the Chair's texts by Brazil, India, South Africa, Argentina, and China. Although these countries claimed to speak for all developing countries in resisting the Chairs' texts, on December 13, 2007 the so-called "middle-ground" developing countries (Chile, Colombia, Costa Rica, Hong Kong China, Israel, Mexico, Pakistan, Peru, Singapore, and Thailand) issued a paper supporting the NAMA Chair's text and pressing for a more ambitious tariff-cutting outcome.

On November 30, 2007, the Chair of the Rules negotiating group issued texts on antidumping, subsidies and countervailing measures, and fisheries subsidies.

Prospects for 2008

The negotiations under the DDA begin the year with intensive discussions on the various Chairs' texts. Following extensive discussions in January, the Chairs of the Agriculture and NAMA negotiating groups issued revised texts and the Chair of the Services negotiating group issued a report. Members will continue to face the challenge of how to deliver on the core Doha market access mandate, not only in agriculture but also in industrial goods and services. The United States will continue to work with other WTO Members in pursuit of a successful conclusion to the DDA that opens new markets and creates meaningful new trade flows. The challenge in 2008 will continue to be how to translate the expressions of political will into concrete and specific details that will enable WTO Members to complete the work begun with the launch of negotiations at the Doha meeting.

1. Committee on Agriculture, Special Session

Status

The WTO provides multilateral disciplines and rules 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 the WTO can impose disciplines on the entire broad range of agricultural producing and consuming Members. For example, absent a WTO Agreement on Agriculture, there would be no limits on the EU's subsidization practices or firm commitments for access to Japan's market. Negotiations in the WTO provide the best means to expand incomes, and thereby demand for agricultural products, and to open global markets for U.S. farm products and reduce subsidized competition. The United States has long advocated fundamental reform of all trade-distorting measures by all WTO Members.

Negotiations in the Special Session of the Committee on Agriculture are conducted under the mandate agreed at the Fourth WTO Ministerial Conference in Doha, Qatar that calls for "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." This mandate, calling for ambitious results in three areas (so-called "pillars"), was augmented with specific provisions for agriculture in the framework agreed by the General Council on August 1, 2004, and at the Hong Kong Ministerial Conference in December 2005.

Substantive discussions on agriculture at Hong Kong focused on export subsidies, where Members agreed to an end date for export subsidies in 2013. Members further narrowed some of their key differences in other areas, including a commitment to a sectoral negotiation on cotton in which trade-distorting domestic support for cotton would be cut deeper and more quickly than for other commodities (with the actual numbers subject to negotiation) and a commitment that developed country Members would eliminate tariffs on cotton exports from the least-developed country Members.

Negotiations in 2006 focused on specifying how far and how fast tariffs and trade-distorting domestic support would be reduced, and how to phase in the elimination of export subsidies. Major differences existed among Members. Despite intensive negotiations and additional special negotiating sessions among WTO Members, agreement was not reached, and in July, WTO Director-General Lamy formally suspended the negotiations. The United States led the way over the following months to re-invigorate the negotiations, resulting, before the end of 2006, in an informal Geneva consensus that led to a formal resumption of the negotiations on February 7, 2007.

Major Issues in 2007

In early 2007, the United States engaged in discussions on agriculture with Brazil, the European Union and India as part of the broader "G4" process. The G4 process aimed at moving the Doha negotiations toward solutions on agriculture and industrial goods that could contribute to the broader multilateral process. During the spring and early summer, the United States also participated in the informal discussions of Doha Round agriculture issues that were convened in various venues in Geneva by Ambassador Crawford Falconer as Chair of the Agriculture Negotiations. In these discussions, the United States continued working to achieve a high level of ambition in all three pillars: market access in developed and developing countries, export competition and trade-distorting domestic support.

When the G4 process broke down in June 2007, the central focus of the Doha negotiations returned to the multilateral process in Geneva. Ambassador Falconer tabled his draft text on agriculture in July on his own initiative, attempting to reflect progress in the negotiations and to narrow differences.

Reflecting to some degree the state of play in the agriculture negotiations, one concern with the draft text was the uneven handling across the three "pillars" in agriculture. While the domestic support and export competition pillars sections of the text were highly developed, many key topics in the market access pillar remained conceptual at best – with regard to both developed and developing country market access. For example, much more work was needed on critical elements such as the precise provisions for Special Products and the Special Safeguard Mechanism, and details concerning the implementation of Sensitive Product treatment.

Furthermore, while the United States remains committed to work with Members to ensure treatment for cotton, consistent with the Hong Kong Ministerial Declaration, the draft text on cotton failed to take into account reductions to cotton-specific support relative to other commodities through the general formula. The United States has stated consistently that one cannot determine the application of the Hong Kong text until one knows the outcome from the basic disciplines and continues to believe that the only path forward is through that sequence.

After a preliminary exchange of views on the draft text in July, Ambassador Falconer undertook numerous discussions and consultations through the remainder of 2007 on all aspects of his draft text, with considerable focus on the outstanding market access issues. The intensive process enabled the Chair to produce additional working documents on specific topics for Members' review and further consideration in his "Room E" consultations.

Prospects for 2008

Immediately after the New Year, Ambassador Falconer will continue his intensive consultations on the agriculture text. The U.S. objectives for agriculture reform will continue to focus on the principles of greater harmonization across WTO Members, substantial overall reforms, and specific commitments of interest in key developed and developing country Member markets. The United States seeks balanced, ambitious results for each of the three pillars; an ambitious outcome is the best way to fulfill the promise of the Doha Round.

2. Council for Trade in Services, Special Session

Status

The Special Session of the Council for Trade in Services (CTS-SS) was formed in 2000, pursuant to the Uruguay Round mandate to undertake new multi-sectoral services negotiations. The Doha Declaration of November 2001, recognizing the work already undertaken in the services negotiations, directed Members to conduct negotiations with a view to promoting the economic growth of all trading partners and set deadlines for initial market access requests and offers. These negotiations for new General Agreement on Trade in Services (GATS) commitments are one of the core market access pillars of the Doha Round, along with agriculture and non-agricultural goods. A strong and ambitious result in services is essential for a successful outcome of the Doha Round.

The Hong Kong Ministerial Declaration called for the negotiations to proceed to conclusion with a view to promoting the economic growth of all trading partners, with due respect for the right of Members to regulate their domestic markets. The Hong Kong Declaration provided a framework for intensifying the

negotiations, with the goal of expanding the sectoral and modal coverage of commitments and improving their quality. The work of the CTS-SS resumed in March 2007 after a hiatus resulting from the suspension of the negotiations in July 2006.

Major Issues in 2007

The United States continued to engage actively in bilateral negotiations, pressing Members for a high level of ambition for services liberalization, particularly in key sectors such as financial, telecommunication, computer, energy, distribution, express delivery, environmental, and audiovisual services. The United States renewed its active participation in the "plurilateral process," through which Members joined together to develop collective market access requests for 21 sectors and issues of particular interest. In February 2006, the United States joined in co-sponsoring 13 of these requests in the following areas: architectural, engineering and integrated engineering services; audiovisual services; computer and related services; construction and related engineering services; distribution services; private education services; energy services; environmental services; financial services; legal services; Mode 3 (commercial presence); postal/courier services including express delivery; and telecommunication services. The U.S. continued to pursue its objectives in 2007. Despite substantive discussions and a frank exchange of views, the results of the overall plurilateral process were disappointing, with few Members indicating they would make improvements in their next revised offers.

As the overall negotiations progressed, the United States and other Members encouraged the Chair to hold consultations with Members on the elements necessary for a draft services text. The United States pursued a strong statement of ambition for services market access, on par with that in the agriculture and non-agricultural goods negotiations, including improvements that respond to bilateral and plurilateral requests; a binding of current levels of liberalization and new market access in key service sectors; elimination of barriers to establishment, such as foreign equity requirements; and removal of limitations on the cross-border supply of services.

Issues concerning Mode four (movement of natural persons) and development continue to be a prominent fixture in CTS-SS discussions. With respect to Mode 4, the United States has emphasized that few Members have matched our existing level of commitments. Nevertheless, it is clear that some developing country Members see new and improved Mode four commitments from developed country Members, including the United States, as a critical element to the successful conclusion of the services negotiations.

The United States recognizes the importance of modalities for the special treatment of least-developed country Members in the negotiations on trade in services (LDC Modalities) and the need to expedite consultations on an LDC mechanism pursuant to paragraph nine of Annex C of the Hong Kong Ministerial Declaration. Regarding development in general, the United States has consistently supported flexibility for the LDC Members, while noting that trade liberalization in services is important to sustainable economic development. Access to cutting-edge technology, management knowledge, and investment through liberalized services markets is critical for developing countries. The Internet, express delivery, cellular communication, and other services are growth accelerators that create new industries and transform traditional ones – reducing production costs, enhancing productivity gains, facilitating product distribution, and providing the major source of jobs in the global economy today and for decades to come.

Prospects for 2008

The United States will continue to pursue aggressively its critical market access objectives, including opening up foreign markets to our world-class service providers by getting Members to remove equity limitations, quantitative restrictions, and other barriers to trade in services. A substantial amount of work

is underway in the Council for Trade in Services—see Section G—and the United States will continue to seek a high level of ambition.

3. Negotiating Group on Non-Agricultural Market Access

Status

In the NAMA negotiations, which cover industrial goods and fish and fish products, the United States is seeking significant new competitive opportunities for U.S. businesses through cuts in applied tariff rates and the reduction of non-tariff barriers. The Hong Kong Ministerial Conference in December 2005 locked in the progress that had been made in the NAMA negotiations since the July 2004 Framework Agreement. Members reaffirmed the goal of reducing or eliminating tariff peaks, high tariffs, and tariff escalation. Members also agreed that further liberalization of tariffs should be achieved through a harmonizing (Swiss) tariff cutting formula that would cut the highest tariffs the most. The Hong Kong Ministerial text also recognized the work that was done on moving forward discussions on sectoral tariff elimination initiatives and the important efforts to reduce or eliminate non-tariff barriers (NTBs).

In June 2006, the NAMA Chairman tabled a paper that linked the Hong Kong Ministerial text with Members' positions on the various NAMA elements in order to indicate for Members the gaps where there is no agreement. The suspension of the Doha Round in July 2006 halted efforts to narrow the gaps and find consensus on these issues.

As NAMA discussions resumed in January 2007, Members returned to the issues identified by the Chairman and refocused on structuring a NAMA package that achieves the trade liberalizing objectives of the Doha mandate for industrial goods. A new text tabled by the NAMA Chairman in July 2007 proposed the mechanism for finalizing a NAMA agreement, indicating the achievements of ongoing negotiations on specific NAMA issues, and identifying areas that are still unresolved. The text demonstrated progress in the efforts to finalize the elements of the tariff cutting formula and flexibilities for developing countries and noted developments in discussions on sectoral initiatives and NTBs.

The outcome of these negotiations is crucial for trade in industrial goods, which accounts for over 75 percent of total global trade in goods and more than 90 percent of total U.S. goods exports. In 2007, U.S. exports of industrial goods grew to $982 billion – almost 11 times the level of U.S. agricultural exports. This figure is up 10 percent from 2006 and up 128 percent from 1994.

The Doha Round provides an opportunity to lower tariffs in key markets like India and Egypt, which still retain ceiling tariff rates as high as 150 percent. Likewise, gains from tariff rate reductions made as a result of the Doha Round will accrue to developing country Members, which currently pay over 70 percent of duties collected to other developing countries.

Tariff Profiles

Simple Average Tariffs as reported by the World Trade Organization

Markets	WTO Maximum Tariffs	2005 Applied Tariffs
United States	3.9	3.9
EU	4.0	4.0
Argentina	30.6	10.5
Brazil	29.8	11.0
China	9.0	9.0
Egypt	30.4	12.5
India	43.7	19.5
Philippines	24.6	5.6
South Africa	18.6	9.9

Major Issues in 2007

In 2007, Members focused on a number of substantive elements of the Hong Kong Ministerial Declaration in order to finalize the mechanism for tariff liberalization in NAMA: (1) the elements of a

tariff-cutting formula and specifics on the level of ambition to be achieved by developed and developing country Members; (2) flexibilities to be provided for least-developed country (LDC) Members, poor and revenue-strapped Members just above the LDC level, and other developing country Members; (3) a sectoral tariff component; and (4) work on non-tariff barriers. Final consensus on these issues continued to be elusive.

The key U.S. NAMA objective is to achieve an ambitious outcome that results in significant real market access through cuts in applied tariff rates in both developed and key developing country Member markets. The United States therefore supports a combination of tariff cuts applying a Swiss formula with dual coefficients[1] and sectoral tariff initiatives to most effectively achieve the objectives laid out in the Doha mandate. The United States also believes that all the elements of the Framework must be considered in tandem. There is an inextricable link between discussions on the formula, flexibilities, and sectors.

In discussions leading up to the Chairman's July 2007 text and in response to it, the formula coefficients and flexibility options were a primary area of discussion. With regard to coefficients, Members discussed options that reflect the appropriate levels of ambition, through the depth of tariff cuts they will produce, for developed and developing countries. The Chair's text proposed a coefficient between 19 and 23 for developing countries and 8 or 9 for developed countries.

Approximately thirty countries are expected to apply the developing country coefficient.[2] These countries include the 10 members of the so-called NAMA-11[3] which advocates for a high developing country coefficient in the formula and expanded flexibilities for developing countries, as well as the members of Middle Ground group[4], which supports stronger market opening results. Also among the countries applying the developing country coefficient are the four Recently Acceded Members (RAMs)[5] that are not considered small, vulnerable economies or Very Recently Acceded Members (VRAMs).

Discussions also continued on flexibilities, or special and differential treatment for developing country Members, including "less than full reciprocity," with a number of specific and general approaches under consideration. Decisions on the levels of flexibility for developing countries will be integrally linked to the outcome of negotiations on the formula and sectoral agreements.

Work is proceeding on the following tariff sectoral initiatives, proposed by various Members:

- chemicals;
- electronics/electrical products;
- fish and fish products;
- forest products;
- healthcare products (pharmaceuticals and medical equipment);
- autos and related parts;
- bicycles and related parts;
- gems and jewelry;
- sports equipment;
- textiles, clothing and footwear;
- hand tools;
- raw materials;
- toys; and
- environmental goods.

[1] Members are negotiating the coefficients to be used in the Swiss formula to determine the depth of tariff cuts for developed country Members and the depth of the tariff cuts for developing country Members. The coefficient represents the tariff rate ceiling for industrial goods.

[2] Argentina; Bahrain; Brazil; Chile; China; Chinese Taipei; Colombia; Costa Rica; Croatia; Egypt; Hong Kong, China; India; Indonesia; Israel; Korea; Kuwait; Malaysia; Mexico; Morocco; Oman; Pakistan; Peru; Philippines; Qatar; Singapore; South Africa; Thailand; Tunisia; Turkey; Venezuela; and UAE.

[3] Argentina, Brazil, Egypt, India, Indonesia, Namibia, Philippines, South Africa, Tunisia, and Venezuela.

[4] WTO Members affiliated with the Middle Ground group include: Chile; Colombia; Costa Rica; Hong Kong, China; Israel; Mexico; Pakistan; Peru; Singapore; and Thailand.

[5] China; Chinese Taipei; Croatia; and Oman.

Small, vulnerable economies, whose share of world trade in industrial goods is less than 0.1 percent, as well as Members that have low levels of tariff bindings[6] (the so-called "Paragraph six countries") have raised concerns regarding their contributions to a final outcome and will be required to make smaller commitments. In addition, several developing country Members continue to raise their concerns with the potential erosion of preferences or loss of government revenue due to tariff cuts.

Further progress was made on sectoral tariff initiative discussions in 2007. The United States continued efforts to inform other Members of the benefits of sectoral liberalization and began developing specific flexibility options for developing country Members based on sensitivities they raised in sector-specific discussions. The U.S. worked with other sponsors of sectoral initiatives to refine sectoral proposals and begin drafting the structure of individual sectoral agreements. Members have formally and informally proposed several sectors that are being considered for such agreements.

Non-tariff barriers remain an integral and equally important component of the NAMA negotiations. In line with the Hong Kong Ministerial Declaration, WTO Members continued to consider how NTBs could be addressed horizontally (*i.e.*, across all sectors), vertically (*i.e.*, pertaining to a single sector), and through a bilateral request/offer process. In 2007, the United States tabled a draft text for a proposed agreement to facilitate and harmonize labeling requirements for textiles, clothing, and footwear and travel goods as well as a proposal to address barriers to trade in remanufactured products. The United States also tabled bilateral requests of other WTO Members on a variety of NTB issues.

Prospects for 2008

In 2008, work will focus on concluding the NAMA work within the overall Doha Round agreement, including the details of the Swiss formula and coefficients to be employed, the appropriate balance of flexibilities to be provided to developing country Members, the structure and participants for individual sectoral agreements, and agreements on specific NTBs. The United States continues to seek an ambitious approach that will deliver real market access in key developed and developing country Member markets, while supporting elements of flexibility for developing country Members that does not operate to undermine the overall ambition. The United States remains committed to the view that true development gains can best be achieved through further real market liberalization by both developed and developing Members.

4. Negotiating Group on Rules

Status

At the Doha Ministerial Conference in 2001, Ministers agreed to negotiations aimed at clarifying and improving disciplines under the Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement) and the Agreement on Subsidies and Countervailing Measures (the SCM 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 country Members. The Doha mandate also calls for clarified and improved WTO disciplines on fisheries subsidies.

The Negotiating Group on Rules (the Rules Group) has based its work primarily on written submissions from Members, organizing its work in the following categories: (1) antidumping (often including similar issues relating to countervailing duty remedies); (2) subsidies, including fisheries subsidies; and (3)

[6] Cameroon; Congo; Cote d'Ivoire; Cuba; Ghana; Kenya; Macao, China; Mauritius; Nigeria; Sri Lanka; Suriname; and Zimbabwe.

regional trade agreements. Since the Rules Group began its work in 2002, Members have submitted over 200 formal papers and over 150 elaborated informal proposals to the Group.[7] In 2004, the Group began a process of in-depth discussions of proposals in informal session to deepen the understanding of the technical issues raised by these proposals. In 2005, the Rules Chairman began holding a series of plurilateral consultations with smaller groups of interested Members, in order to have more intensive and focused technical discussions on elaborated proposals. In 2005, the Chairman also established a Technical Group as part of the Rules Group's work to examine in detail issues relating to antidumping questionnaires and verification outlines.

At the Hong Kong Ministerial Conference in December 2005, Ministers directed the Rules Group to intensify and accelerate the negotiating process in all areas of its mandate, on the basis of detailed textual proposals, and to complete the process of analyzing proposals as soon as possible. On fisheries subsidies, Ministers acknowledged broad agreement on stronger rules, including a prohibition of the most harmful subsidies contributing to overcapacity and overfishing, and appropriate effective special and differential treatment for developing country Members. Ministers also directed the Rules Chairman to prepare consolidated texts of the Antidumping and SCM Agreements, taking account of progress in other areas of the negotiations. In accordance with the Hong Kong Declaration, the Rules Group accelerated its work in early 2006, and had completed analysis of most submitted proposals when work on the Doha Round was suspended in July 2006. Work in the Rules Group resumed in late 2006, and continued in 2007, focusing on in-depth analysis of several new or revised textual proposals submitted.

In November 2007, the Chairman of the Rules Group, Ambassador Guillermo Valles Galmés of Uruguay, issued draft consolidated texts on antidumping and on subsidies and countervailing measures, including fisheries subsidies. The texts were in the form of proposed revisions to the existing WTO Agreements on Antidumping and Subsidies and Countervailing Measures. Shortly after the text was issued, the United States publicly stated that it was very disappointed with important aspects of the draft text, but believed that it provided a basis for further negotiations.

The Rules Group held a meeting in December 2007 to discuss Members' initial reactions to the text. At this meeting, nearly all Members who commented expressed their disappointment with the text, but none rejected it as a basis for further work. The Chairman scheduled additional meetings in January and February 2008 for more in-depth review of the text by Members and stated his intention to circulate revised drafts of the text when he has sufficient basis to do so.

The Doha Declaration also directed the Rules Group to clarify and improve disciplines and procedures governing Regional Trade Agreements (RTAs) under the existing WTO provisions. To that end, in July 2006, the Rules Group approved a draft decision for the provisional application of a "Transparency Mechanism for Regional Trade Agreements." In addition, the Rules Group has explored the establishment of further standards governing the relationship of RTAs to the global trading system.

Major Issues in 2007

Antidumping: Since the Rules Group had largely completed its analysis of the outstanding antidumping proposals by June 2006, the antidumping discussions in 2007 focused on a few new proposals. While China and Egypt submitted new antidumping proposals in 2007, the proposal which engendered by far the most discussion in the Rules Group, was the one made by the United States in June 2007 to address the issue of offsets for non-dumped comparisons in antidumping proceedings, often referred to as the "zeroing" issue.

[7] Both sets of Rules papers are publicly available on the WTO website: the formal papers may be found using the "TN/RL/W" document prefix, and the elaborated informal proposals may be found using the "TN/RL/GEN" prefix.

In submitting its zeroing proposal, the United States noted its strong disagreement with recent dispute settlement findings by the WTO Appellate Body regarding zeroing, and emphasized that zeroing must be addressed in the WTO Rules negotiations, so that the issue is resolved by rules agreed to by WTO Members.

Although it did not submit any new proposals in 2007, a group calling itself the "Friends of Antidumping Negotiations" (FANs) has been very active in the Rules Group since the beginning of the negotiations, generally seeking to impose limitations on the use of antidumping remedies. The FANs group consists of Brazil, Chile, Colombia, Costa Rica, Hong Kong China, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Chinese Taipei, Thailand, and Turkey. Most of the FANs were strongly critical of the U.S. zeroing proposal.

In addition to submitting its zeroing proposal, the United States continued working to build support for proposals it had previously submitted, including those on issues such as injury causation, anticircumvention, new shipper reviews, and facts available, as well as a number of proposals to improve transparency and due process in antidumping proceedings. The United States also continued to be a leading contributor to the technical discussions aimed at deepening the understanding of Members of the issues raised in the Rules Group, drawing upon extensive U.S. experience and expertise as both a user of trade remedies and as a country whose exporters are often subject to other Members' use of trade remedies. In addition to presenting its own submissions, the United States has remained actively engaged in addressing the submissions from other Members, carefully scrutinizing and vigorously questioning the technical merits of the issues they have raised, as well as seeking to ensure that the Doha Round mandate for the Rules negotiations is fulfilled.

The Chairman's text issued in November 2007 addressed many of the antidumping issues raised by U.S. proposals, including zeroing, injury causation, anticircumvention, new shipper reviews, facts available and transparency and due process, but in many cases the text treated those issues in a very different fashion than did the U.S. proposal. With respect to zeroing, the Chairman's text addressed important aspects of the U.S. proposal, by providing that zeroing would be permitted in reviews and in transaction-to-transaction and "targeted dumping" comparisons in antidumping investigations, but also provided, contrary to the U.S. proposal, that zeroing would not be permitted in average-to-average comparisons in investigations.

At the December Rules Group meeting, the United States expressed its preliminary views about the text, and voiced specific concerns about the text's treatment of such issues as sunset reviews and zeroing in investigations. A number of Members, with Japan and India being the most vocal, submitted a joint statement at the December meeting expressing their unhappiness that the Chair's text addressed the U.S. zeroing proposal at all and urged that zeroing should not be permitted.

Subsidies/CVD: In 2007, the United States, Australia, and India submitted textual proposals on subsidies issues. Most notably, the United States submitted a textual proposal to expand the prohibited category of subsidies. Currently, only two types of subsidies are prohibited by the SCM Agreement: export subsidies and import-substitution subsidies. However, serious market and trade distortions can also result from other types of subsidies. To strengthen the subsidies rules, the United States proposed expanding the current prohibition to include other types of subsidies, such as those listed in the now-lapsed "dark amber" category of subsidies, as well as other forms of egregious government intervention. The U.S. textual proposal also included a requirement that Members notify the WTO Committee on Subsidies and Countervailing Measures of any intended provision of equity capital as well as other transparency measures for all government-controlled companies.

The Chair's November draft text makes only relatively modest changes to the existing SCM Agreement. The text does include an important clarification to the existing rules by firmly establishing the "benefit-to-recipient" approach to the calculation of subsidy benefits, a position long advocated by the United States. In addition, the text includes enhanced disciplines on natural resources pricing and "dual pricing" practices, another issue of long-standing interest to the United States. Other areas of subsidies rules addressed within the Chair's text include: serious prejudice, state-owned banking practices, subsidy calculation methodologies, benefit pass-through, and export credits. Notably absent from the Chair's text were changes to the CVD provisions corresponding to proposals that were incorporated into the Chair's text for the AD Agreement on issues of common relevance. The Chair explained that such changes in the CVD provisions were not made because further technical discussions were needed.

In its initial comments on the Chair's text in December, the United States noted generally that the text would appear to result in little strengthening of the current general subsidy disciplines, despite the Doha negotiating mandate to clarify and improve the rules and address trade-distorting practices. The United States further commented that the text regrettably does not reflect the U.S. proposal on prohibited subsidies or other proposals that would significantly strengthen the rules, such as the reinstatement of the Article 6.1 "dark amber" provisions. The United States urged the Chair to rectify these deficiencies in subsequent versions of the text. The United States also strongly advocated that the process of determining which provisions of the AD draft text be considered for inclusion in the SCM Agreement start as soon as possible, given that the validity and appropriateness of each potential change would need to be assessed in light of the object and purpose of the SCM Agreement.

Fisheries Subsidies: The United States continues to believe that the fisheries subsidies negotiations provide an historic opportunity for the WTO to play its part in addressing environmental issues of global significance as well as traditional trade concerns. In March 2007, the United States submitted a significant proposal for legal text, based on a "top down" approach – a broad ban of subsidies to enterprises engaged in marine wild capture fishing, with narrowly targeted exceptions for subsidies that generally do not contribute to fleet overcapacity and overfishing (such as subsidies for marine conservation, disaster relief, early retirement and retraining for fishers, and vessel decommissioning under appropriate conditions). The United States also proposed new fishery-specific criteria for serious prejudice and text for provisions on anti-circumvention, notifications, review, transitional arrangements and consultations, and dispute settlement. Further, while not offering specific text on the issue, the United States expressed interest in exploring flexibility under appropriate conditions for programs that, by virtue of the small benefits conferred, would not contribute to overcapacity and overfishing but might nevertheless be inconsistent with the prohibition. Concerning the appropriate treatment of developing countries, the United States supported further work on proposals by Argentina and Brazil that would allow some otherwise-prohibited subsidies to developing country fishing fleets subject to a number of conditions related to environmental sustainability and fisheries management.

The United States proposal was generally well received, with many delegations stating that the proposal or significant parts of it could serve as the basis for further work. However, Japan, Korea, Chinese Taipei, and the European Communities, which have generally resisted stronger rules, continued to express reservations about the U.S. approach. Japan, Korea, and Chinese Taipei subsequently submitted a revision of their earlier proposal, centered on a "bottom up" approach (a narrow list of specific prohibitions combined with an expansive list of subsidies that would become non-actionable). Much of the remaining work of the Rules Negotiating Group centered on technical discussions of a joint proposal from Brazil and Argentina concerning special and differential treatment. The Brazil and Argentina approach, premised on the "top down" approach, sought to further develop sustainability criteria that should apply to exceptions from the broad prohibition for developing countries.

The Chair's November draft text draws upon the U.S. proposal in significant respects, although it adopted the "bottom up" approach rather than the "top down" approach supported by the United States and other Friends of Fish (including Argentina, Australia, Chile, Ecuador, Iceland, New Zealand, and Peru), as well as Brazil. The text includes a specific prohibition of almost all types of subsidies that contribute to fleet overcapacity and overfishing in wild marine capture fisheries. The text also provides for a limited list of general exceptions available to all Members and additional exceptions for developing countries, all of which would remain actionable under the existing SCM Agreement. In addition, the text contains provisions concerning fisheries management systems, peer review through the UN Food and Agricultural Organization (FAO), notification and surveillance, dispute settlement, and transition arrangements.

In the initial discussion of the Chair's text in December, Members supported using the text as the basis for further work. While expressing disappointment that the text did not adopt the "top down" approach, the United States and other Friends of Fish praised its level of ambition and said they would work to further improve it. The opponents of stronger disciplines – Japan, Korea, Chinese Taipei, and the European Communities – objected to the inclusion of a number of items in the prohibition (for example, fisheries infrastructure, processing, and operational costs, particularly fuel). Several developing countries, including Brazil, argued that the conditions placed on developing countries were too prescriptive and that the benefits conferred were too limited.

Regional Trade Agreements: The discussions on regional trade agreements in the Rules Group have focused on ways in which the WTO rules governing customs unions and free trade agreements, and economic integration agreements for services, might be clarified and improved.

In February 2007, the Rules Group held an informal meeting to discuss the implementation of the "Transparency Mechanism for Regional Trade Agreements" (WT/L/671). The General Council approved this provisional transparency mechanism in December 2006 to improve the transparency of RTAs. The General Council agreed that during the initial year of implementation, Members, with the assistance of the WTO Secretariat, would try to pinpoint any legal aspects that arise in the course of implementation. In December 2007, the Chair of the Rules Group concluded that the transparency mechanism is continuing to evolve, with minor adjustments to be made to its operations.

Prospects for 2008

The Rules Group will meet in 2008 for more in-depth review of the draft texts by Members. The Chairman has stated his intention to circulate revised drafts of the texts when he has a sufficient basis to do so.

The United States will continue to pursue an aggressive affirmative agenda building upon the U.S. proposals submitted thus far with respect to, *inter alia*, preserving the effectiveness of the trade remedy rules; improving transparency and due process in trade remedy proceedings; and strengthening the existing subsidies rules. Concerning fisheries subsidies, the United States will continue to press for an ambitious outcome and work to further improve and refine many of the provisions included in the Chair's draft text.

On RTAs, the transparency mechanism will continue to evolve, with minor adjustments made to its operations. An initial substantive review of the mechanism, as foreseen by the Chair of the General Council, may take place but the exact timing of this review is yet to be determined. The United States will continue to advocate strong substantive standards for RTAs that support and advance the multilateral trading system.

5. Negotiating Group on Trade Facilitation

Status

An important U.S. objective was met when WTO negotiations on Trade Facilitation were launched under the August 1, 2004 Decision by the General Council on the Doha Work Program. The inclusion of negotiations on Trade Facilitation has greatly enhanced the market access aspect of the Doha negotiating agenda. Opaque border procedures and unwarranted delays faced at the borders of key export markets can add costs that are the equivalent of a significant tariff and are the non-tariff barriers that are most frequently cited by U.S. exporters.

The agreed negotiating mandate includes the specific objective of "further expediting the movement, release and clearance of goods, including goods in transit," while also providing a path toward ambitious results in the form of modernized and strengthened WTO commitments governing how border transactions are conducted.

Major Issues in 2007

The work of the Trade Facilitation Negotiating Group (TFNG) continued to have as its hallmark in 2007, broad-based and constructive participation by Members of all levels of development – a positive negotiating environment that is seen as offering "win-win" opportunities for all. Of particular note was continued emergence within the TFNG of leadership from Members representing significant emerging markets, including India, the Philippines, Egypt, and China which, by working closely with the United States and others has helped to steer the negotiations forward in a practical, problem-solving manner. The "Colorado Group", consisting of the United States; Australia; Canada; Chile; Colombia; Costa Rica; the EU; Hong Kong, China; Japan; Korea; Morocco; New Zealand; Norway; Paraguay; Singapore; and Switzerland, also played an important role on this issue.

For many developing country Members, results from the negotiations that bring improved transparency and an enhanced rules-based approach to border regimes will be an important element of broader ongoing domestic strategies to increase economic output and attract greater investment. There is also a growing understanding that such an outcome would squarely address one of the factors holding back increased regional integration and south-south trade. Most Members see these negotiations as bringing particular benefits to the ability of small and medium-sized businesses to participate in the global trading system.

The modalities for conducting the trade facilitation negotiations, set forth as part of the August 1, 2004 General Council decision launching the negotiations, include the following: "Negotiations shall aim to clarify and improve relevant aspects of Articles V, VIII, and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit. Negotiations shall also aim at enhancing technical assistance and support for capacity building in this area. The negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues."

The modalities also include references that underscore the importance of addressing implementation issues such as costs, potential implications with regard to infrastructure, capacity building, the status of LDC Members, and the work of other international organizations.

During 2007, the TFNG stepped up its work on addressing the challenge of implementing the results of the negotiations that will face many developing country Members. The WTO and assistance organizations, including the U.S. Agency for International Development, began training exercises with

developing country Members to help them to undertake assessments of their individual situations regarding capacity and how to progress toward implementing the proposals submitted. There has also been intensified work on issues related to technical assistance, such as a potential role for a future Committee. Informally, it is already apparent that many of the developing country Members have implemented – or are taking steps to do so – a number of the concrete measures proposed as new WTO commitments. At the same time, it is also clear that a number of developing country Members openly recognize that they have an "offensive" interest in seeking implementation by their neighbors of any future new commitments in this area. This realization has led to broad developed and developing country Member alliances on some of the proposals. A similar dynamic emerged toward taking up how to address "special and differential" treatment as part of the negotiating outcome, with concrete and creative proposals emerging out of informal joint cooperative work by various developed and developing country Members.

As the recent Free Trade Agreements (FTAs) undertaken by the United States have been implemented, there has been a positive synergy with the WTO negotiations on Trade Facilitation. With partners as diverse as Chile, Singapore, Australia, Morocco, Bahrain, South Korea, Peru, Panama, Costa Rica, and Colombia, each FTA negotiated by the United States has included a separate, stand-alone chapter that contains significant commitments on customs administration. Each of our current and future FTA partners has become an important partner and champion in Geneva for moving the negotiations ahead and toward a rules-based approach to trade facilitation.

The proposals by Members for specific new and strengthened WTO commitments submitted thus far to the Trade Facilitation negotiations generally reflect measures that would capture forward-looking practices that would bring improved efficiency, transparency, and certainty to border regimes, while diminishing opportunities for corruption. Notably, the submission of many of these proposals, as well as their initial discussions within the negotiating group, has featured alliances not traditionally seen at the WTO. Examples include a U.S. joint proposal with Uganda (calling for elimination of consularization formalities and fees) and a joint proposal with India (proposing a cooperation mechanism for customs facilitation and compliance).

The work of the TFNG during 2007 was characterized by intensive, Member-driven, text-based negotiations. Members submitted and revised textual proposals in an effort to narrow differences and build support. The approach of crafting a draft text through a "bottom up" Member-driven process, rather than through a chair-issued text, continued to enjoy strong support among Members. Among the proposals discussed, the TFNG devoted considerable time and attention to proposals on special and differential treatment and trade-related technical assistance.

Prospects for 2008

2008 will likely bring a continuation of the NGTF's text-based, Member-driven "focused drafting mode," in a process aimed at achieving a timely conclusion of text-based negotiations. As negotiations toward new and strengthened disciplines move forward, it will remain important that work proceeds in a methodical and practical manner on the issue of how all Members can meet the challenge of implementing the results of the negotiations – including with regard to the issues of special and differential treatment and technical assistance. It is possible that some further specific proposals may be submitted, but it is likely that much of the work will involve the consideration of the proposals listed below as part of a process leading to refinement and, ultimately, articulation of some into an agreed text.

MEASURES PROPOSED BY WTO MEMBERS RELATED TO GATT ARTICLES V, VIII, AND X[8]

A. Publication and Availability of Information
    - Publication of Trade Regulations and Penalty Provisions
    - Internet Publication
    - Notification of Trade Regulations
    - Establishment of Enquiry Points/SNFP/Information Centers
B. Time Periods between Publication and Implementation
C. Consultation and Comments on New and Amended Rules
D. Advance Rulings
E. Appeal Procedures
    - Right of Appeal
    - Release of Goods in Event of Appeal
F. Other Measures to Enhance Impartiality and Non-Discrimination
    - Uniform Administration of Trade Regulations
    - Maintenance and Reinforcement of Integrity and Ethical Conduct Among Officials
    - Import Alerts/Rapid Alerts
    - Detention
    - Test Procedures
G. Fees and Charges Connected with Importation and Exportation
    - General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation
    - Reduction/Minimization of the Number and Diversity of Fees/Charges
H. Formalities Connected with Importation and Exportation
    - Disciplines on Formalities/Procedures and Data/Documentation Requirements Connected with Importation and Exportation
    - Non-discrimination
    - Periodic Review of Formalities and Requirements
    - Reduction/Limitation of Formalities and Documentation Requirements
    - Use of International Standards
    - Uniform Customs Code
    - Acceptance of Commercially Available Information and of Copies
    - Automation
    - Single Window/One-time Submission
    - Elimination of Pre-Shipment Inspection
    - Phasing out Mandatory Use of Customs Brokers
I. Consularization
    - Prohibition of Consular Transaction Requirement
J. Border Agency Cooperation
    - Coordination of Activities and Requirement of all Border Agencies
K. Release and Clearance of Goods
    - Expedited/Simplified Release and Clearance of Goods
    - Pre-arrival Clearance

[8] As set out in the report of the Negotiating Group on Trade Facilitation to the Trade Negotiations Committee (TN/TF/3; November 21, 2005), endorsed by the Ministers at the December 2005 Hong Kong Ministerial and included in Annex E of the Hong Kong Ministerial Declaration. *See also* WTO Negotiations on Trade Facilitation: Compilation of Members' Textual Proposals (TN/TF/W/43/Rev.13; November 5, 2007).

- Expedited Procedures for Express Shipments
- Risk Management /Analysis, Authorized Traders
- Post-Clearance Audit
- Separating Release from Clearance Procedures
- Establishment and Publication of Average Release and Clearance Times

L. Tariff Classification

- Objective Criteria for Tariff Classification

M. Matters Related to Goods Transit

- Strengthened Non-discrimination
- Disciplines on Fees and Charges
- Disciplines on Transit Formalities and Documentation Requirements
- Improved Coordination and Cooperation
- Operationalization and Clarification of Terms
- Quota-free Transit Regime

MEASURES RELATED TO COOPERATION BETWEEN CUSTOMS AND OTHER AUTHORITIES ON TRADE FACILITATION (TF) AND CUSTOMS COMPLIANCE

Exchange and Handling of Information

MEASURES RELATED TO SPECIAL & DIFFERENTIAL (S&D) TREATMENT, TECHNICAL ASSISTANCE & CAPACITY BUILDING (TACB), CAPACITY ASSESSMENT AND OTHER IMPLEMENTATION MATTERS

Implementation Mechanism of TF Commitments Including Key Elements for Technical Assistance
Implementation Mechanism for S&D and TACB Support

6. Committee on Trade and Environment, Special Session

Status

Following the 2001 WTO Ministerial Conference at Doha, the Trade Negotiations Committee (TNC) established a Special Session of the Committee on Trade and Environment (CTE) to implement the mandate in paragraph 31 of the Doha Declaration. Paragraph 31 of the Doha Declaration includes a mandate to pursue negotiations, without prejudging their outcome, in three areas:

i. the relationship between existing WTO rules and specific trade obligations (STOs) set out in Multilateral Environmental Agreements (MEAs) (with the negotiations limited to the applicability of existing WTO rules among parties to such MEAs and without prejudice to the WTO rights of Members that are not parties to the MEAs 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 trade in environmental goods and services.

Major Issues in 2007

In 2007, the CTE in Special Session (CTESS) had an intense schedule of formal and informal meetings, which focused primarily on DDA sub-paragraphs 31(ii) and 31(iii) of the negotiating mandate. Members made excellent progress on paragraph 31(ii) concerning the procedures for information exchange and observership for MEAs. Based on the broad support for a paper put forward by the United States in early 2007 (TN/TE/W/70), the CTESS Chair developed "elements of a draft text" for delegations to consider and discuss. While there remain a few minor differences of view, Members have largely agreed on the major elements of future procedures to exchange information with MEA secretariats, as well as a short set of flexible, non-exhaustive criteria for WTO committees to consider when reviewing observership requests from MEA secretariats.

Members continued in 2007 to intensify their discussions under paragraph 31(iii) on environmental goods, seeking to clarify the scope of the mandate and move closer to a result in the negotiations. Since the negotiations began, nine Members have put forward lists of environmental goods that should be addressed in the negotiations, including the United States, which proposed a list of 155 products in July 2005. The products included in Members' lists (such as air pollution filters and solar panels) have been compiled in the WTO Secretariat's *Synthesis of Submissions on Environmental Goods*.[9] More recently, in an effort to advance the negotiations and focus their scope, the United States, together with nine other Members, developed a set of 156 products for tariff liberalization that could offer a basis for convergence among a wider group of delegations. The proposal, tabled in April 2007[10], covers a broad variety of products, including air pollution control technologies, renewable energy technologies, and wastewater treatment equipment. The United States and the European Communities followed-up on this proposal with an even more ambitious and innovative proposal in November 2007 that calls upon WTO Members to eliminate tariffs and other trade barriers to climate-friendly technologies and services on a priority basis and lays the groundwork for a broader, ground-breaking WTO agreement on environmental goods and services (EGSA).[11] While many Members noted their interest in these more focused proposals, discussions also continued on India's "alternative" approach to multilateral tariff-cutting negotiations, described as the national "Environmental Project Approach." In addition, Brazil proposed a traditional "request-offer" negotiation as the means to an outcome on environmental goods, whereby individual WTO Members would make requests of other Members based on agricultural and/or industrial products of interest. Members raised questions about the operability and transparency of such a proposal. There continues to be, at this stage, a divergence of views among Members as to how the work should proceed in the CTESS, and how the CTESS should interface with other negotiating groups where environmental goods and services market access are also under discussion.

Regarding sub-paragraph 31(i) on the relationship between MEAs and WTO rules, a large majority of Members, including the United States, Australia, and Argentina, have noted their interest in continuing experience-based discussions and have resisted premature consideration of potential results in the negotiations. The same majority of Members have opposed outcomes that go beyond the sub-paragraph 31(i) mandate by altering Members' WTO rights and obligations.

Prospects for 2008

In 2008, the CTESS is expected to move toward fulfillment of all aspects of the mandate under Paragraph 31 of the Doha Declaration, taking into account the progress made in related negotiating groups. Under sub-paragraph 31(i), Members are expected to wrap up their discussions of national

[9] This compilation is contained in document TN/TE/W/63, which is available on the WTO website, www.wto.org.
[10] JOB(07)54
[11] JOB(07)193. A summary of the proposal is available on USTR's website, www.ustr.gov.

experiences in the negotiation and implementation of STOs set out in MEAs, including drawing any lessons that might be learned from such experiences. The United States continues to view this experience-based exchange as the best way to explore the relationship between WTO rules and STOs contained in MEAs and maintains that these experiences should form the basis for an outcome in the negotiations. Discussions under sub-paragraph 31(ii) are likely to become more concrete and text-based in the coming year, as many Members feel that this is an area that is ready for progress. Several Members have also noted their interest in exploring linkages between sub-paragraphs 31(i) and (ii), in light of the view that enhanced cooperation between the WTO and MEA secretariats could contribute to improving both international and national coordination, and could further contribute to a mutually supportive relationship between trade and environment regimes. Finally, the CTESS will remain the primary forum for discussing the importance of liberalization in both environmental goods and services in order to secure concrete benefits associated with access to state-of-the-art environmental technologies that promote sustainable development. The United States will continue to show leadership in advancing a robust outcome in the negotiations, including further development of an EGSA, which can open markets for environmental goods and advance Members' environmental and development policies.

7. Dispute Settlement Body, Special Session

Status

Following the Doha Ministerial Conference in 2001, the Trade Negotiations Committee 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." In July 2003, the General Council decided that: (i) the timeframe for conclusion of the negotiations on clarifications and improvements of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) be extended by one year, *i.e.*, to aim to conclude the work by May 2004 at the latest; (ii) this continued work will build on the work done to date, and take into account proposals put forward by Members as well as the text put forward by the Chairman of the Special Session of the DSB (DSB-SS); and (iii) the first meeting of the DSB-SS when it resumed its work be devoted to a discussion of conceptual ideas. Due to complexities in negotiations, deadlines were not met. In August 2004, the General Council decided that Members should continue work toward clarification and improvement of the DSU, without establishing a deadline.

Major Issues in 2007

The DSB-SS met eight times during 2007 in an effort to implement the Doha mandate. In previous phases of the review of the DSU, Members had engaged in a general discussion of the issues. Following that general discussion, Members tabled proposals to clarify or improve the DSU. Members then reviewed each proposal submitted and requested explanations and posed questions to the Member(s) making the proposal. Members also had an opportunity to discuss each issue raised by the various proposals.

The United States has advocated two proposals. One would 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 submissions and panel reports. In addition to open hearings, public submissions and early public release of panel reports, the U.S. proposal calls 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 addition, the United States and Chile submitted a proposal to help improve the effectiveness of the WTO dispute settlement system in resolving trade disputes among Members. The joint proposal contained specifications 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. For example, the current dispute settlement rules do not provide for suspending appeal proceedings to allow parties additional time to seek to negotiate a settlement. The U.S. proposal would provide for the ability to obtain such a suspension. Similarly, under the current rules parties are required to accept findings in reports that may detract from a resolution of a dispute, for example because they are not necessary or helpful to resolve the dispute. The U.S. proposal would provide opportunities to delete such findings so that reports would be more closely aimed at resolving particular disputes.

Prospects for 2008

In 2008, Members will continue to work to complete the review of the DSU. Members will be meeting several times over the course of 2008.

8. Council for Trade-Related Aspects of Intellectual Property Rights, Special Session

Status

With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council) on the implementation of Article 23.4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), Ministers agreed at the 2001 Doha Ministerial Conference to negotiate the establishment of a multilateral system of notification and registration of geographical indications (GIs) for wines and spirits. At the 2005 Hong Kong Ministerial Conference, Ministers agreed to intensify their work in order to complete these negotiations within the overall time-frame for the conclusion of the Doha negotiations. This topic is the only issue before the Special Session of the TRIPS Council.

Major Issues in 2007

During 2007, the TRIPS Council Special Session held several informal consultations on implementation of Article 23.4 of the TRIPS Agreement, working to facilitate discussion on a multilateral notification and registration system for certain GIs. There was no significant shift, during the course of the year, in currently-held positions among WTO Members, nor any movement towards bridging sharp differences between competing proposals. Key positions are reflected in a 2005 WTO Secretariat document (TN/IP/W/12) which contains a side-by-side presentation of the three proposals before the Special Session; the Secretariat expanded upon this document in May 2007, with an addendum detailing the various arguments and questions raised by proponents of these proposals (TN/IP/W/12/Add. 1). In a July 2007 report to the TNC (TN/IP/17), the Chairman of the TRIPS Council Special Session highlighted, in particular, ongoing divergences with respect to participation in the multilateral register system (*i.e.*, whether the system would apply to all Members or only to those opting to participate in it) and to the nature of the legal obligations provided for in the system (*i.e.*, the extent to which legal effects at the domestic level determine the effect of registration of a GI for a wine or spirit in the system).

The United States, together with Argentina, Australia, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Namibia, New Zealand, the Philippines, and Chinese Taipei continued to support the Joint Proposal under which Members would notify their GIs for wines and spirits for incorporation into a register on the WTO website. Several Joint Proposal co-sponsors have submitted a Draft TRIPS Council Decision on the Establishment of a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits to the Special Session to set out clearly in draft legal form, a means by which Members could implement the mandate from paragraph 18 of the Doha Ministerial Declaration and Article 23.4 of the TRIPS Agreement. Members choosing to use the system would agree to consult the system when making any decisions under their domestic laws related to GIs or, in some cases, trademarks. Implementation of this proposal would not impose any additional GIs obligations on Members that chose not to participate nor would it place undue burdens on the WTO Secretariat.

The EU together with a number of other Members continued to support their alternative proposal for a binding, multilateral system for the notification and registration of GIs for wines and spirits. The current EU position is reflected in a June 2005 document in the form of draft legal text that combines two proposals: the multilateral GI register for wines and spirits and an amendment to the TRIPS Agreement to extend Article 23-level GI protection to products beyond wines and spirits. The effect of this proposal would be to expand the scope of the negotiations to all GI products and to propose that any GI notified to the EU's proposed register would be automatically protected as a GI throughout the world with very few permissible grounds for objection. In addition, the notified GI would be presumed valid against a competing rightholder, including a prior rightholder. Essentially, the system proposed by the EU could, as a practical matter, enable one Member to mandate GI protection in another Member simply by notifying that GI to the system. Such a proposal would negatively affect pre-existing trademark rights, as well as investments in generic food terms, and would directly contradict the principle of territoriality with respect to intellectual property in favor of a system based upon the unilateral and extraterritorial application of domestic law and national intellectual property regimes.

A third proposal, from Hong Kong, China, remains on the table. This proposal is aimed at establishing a system under which a registration should be accepted by participating Members' domestic courts, tribunals, or administrative bodies as *prima facie* evidence: (a) of ownership; (b) that the indication is within the definition of GIs under Article 22.1 of the TRIPS Agreement; and (c) that it is protected in the country of origin. The intention is that the issues will be deemed to have been proved unless evidence to the contrary is produced by the other party to the proceedings before domestic courts, tribunals, or administrative bodies when dealing with matters related to GIs. In effect, a presumption that could be rebutted is created in favor of owners of GIs in relation to the three issues identified above. Although this proposal has been discussed in the Special Session, it has not been endorsed by supporters of either the Joint Proposal or the EU proposal.

Prospects for 2008

The United States will aggressively pursue additional support for the Joint Proposal in the coming year, and will seek a more flexible and pragmatic approach on the part of the EU, so that the negotiations can be completed.

9. Committee on Trade and Development, Special Session

Status

The Special Session of the Committee on Trade and Development (CTD-SS) was established by the Trade Negotiations Committee (TNC) in February 2002, to fulfill the Doha mandate to review all special and differential treatment (S&D) provisions "with a view to strengthening them and making them more precise, effective and operational." Under existing S&D provisions, Members provide developing country Members with technical assistance and transitional arrangements toward implementation of WTO Agreements and, ultimately, full integration into the multilateral trading system. S&D provisions also enable Members to provide developing country Members with better-than-MFN access to markets.

As part of the S&D review, developing country Members have submitted 88 proposals to augment existing S&D provisions in WTO agreements. Following intensive negotiations in 2002 and 2003, the CTD-SS agreed *ad referendum* on nearly a third of those proposals for consideration at the Fifth Ministerial Conference in Cancun, Mexico in 2003. Due to the breakdown of the DDA negotiations, these proposals were not adopted at Cancun. Since Cancun, WTO Members have taken no action to adopt them, and in November 2005 the Africa Group submitted a paper to the CTD-SS repudiating the agreed texts of these proposals. In 2004 and early 2005, focus of the CTD-SS shifted to discussions on new approaches to address the mandate more effectively, and reflected a desire to find a more productive approach than that associated with the specific proposals that individual Members or groups tabled. Despite extensive discussions, Members were unable to reach agreement on an alternative framework for approaching the mandate of the CTD-SS.

Leading up to the 2005 Hong Kong Ministerial, Members turned their focus in the CTD-SS to five S&D proposals put forth by the LDC Members. These included proposals on: access to WTO waivers; coherence; duty-free and quota-free treatment (DFQF) for LDC Members; Trade Related Investment Measures (TRIMS); and flexibility for LDC Members that have difficulty implementing their WTO obligations. At the Hong Kong Ministerial Conference, Members reached agreement in these five areas. The decisions on these proposals are contained in Annex F of the Hong Kong Ministerial Declaration.

Major Issues in 2007

Following the Hong Kong Ministerial, the CTD-SS conducted a thorough "accounting" of the remaining agreement-specific proposals. Though the number of proposals had been reduced considerably since their introduction in 2002 and 2003, divergences among Members' positions on the remaining proposals were quite wide. In 2007, the Chairman of the CTD-SS continued to work closely with the Chairs of the other negotiating groups and Committees to which the proposals had been referred due to their technical complexity. The Chairs reported that there has been very little development on these proposals. However, some of the Chairs of the negotiating bodies indicated that a number of the issues raised in the proposals form an integral part of the ongoing negotiations. In addition, there are a number of bodies in which discussions on the proposals are continuing on the basis of revised language tabled by the proponents.

With respect to the remaining proposals still under consideration in the CTD-SS, Members have continued to focus their text-based discussions on 7 of the 16 remaining Agreement-specific proposals. These proposals cover issues relating to the scope for action relating to government subsidies, balance-of-payments adjustment and infant industry protection under Article XVIII (two proposals); access to WTO waivers for non-LDC developing country Members; transition periods under the SPS Agreement; and

allocation of Import Licenses to developing country Members. No consensus on these proposals emerged during the discussions in 2007. The nine remaining Agreement-specific proposals that have been set aside at the instruction of the Chair will not be addressed until new ideas or new language is tabled.

The Hong Kong Declaration directs the CTD-SS to "resume work on all other outstanding issues, including the cross-cutting issues, the Monitoring Mechanism and the architecture of WTO rules." In 2007, the possible elements of a Monitoring Mechanism continued to be discussed. During formal and informal meetings, Members have continued to emphasize the need for the mechanism to be simple, practical, and forward-looking. There continues to be disagreement among Members as to whether the mechanism requires a new bureaucratic structure to function and whether the scope of the mechanism should be broadened to include monitoring the implementation and effectiveness of special and differential provisions.

Prospects for 2008

In 2008, work will continue on the remaining S&D proposals and on the underlying issues inherent in them. As in 2007, much of the practical work on S&D in 2008 is likely to take place in the other Negotiating Groups, for example the Negotiating Groups on Agriculture, Non-Agricultural Market Access, Services, and Trade Facilitation. However, it is also likely that discussions will continue in the CTD-SS toward a mechanism to monitor implementation of S&D provisions and other cross-cutting issues.

C. Work Programs Established in the Doha Development Agenda

1. Working Group on Trade, Debt, and Finance

Status

Ministers at the 2001 Doha Ministerial Conference established the mandate for the Working Group on Trade, Debt, and Finance (WGTDF). Ministers instructed the WGTDF to examine the relationship between trade, debt, and finance, and to examine recommendations on possible steps, 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 country Members. Ministers further instructed the WGTDF to consider possible steps to 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 2007

The WGTDF held one formal meeting in 2007. The Members discussed whether it was prudent to revisit issues previously discussed due to recent global events or whether there were new topics that should be discussed.

At this meeting, the United States and other Members continued to stress the importance that the Working Group avoid venturing into discussions and work already covered by the mandates of the IMF and World Bank as well as other relevant bodies of the WTO.

Prospects for 2008

In 2008, the WGTDF will examine whether it has exhausted its mandate concerning the relationship between trade, debt, and finance, and make 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 LDC Members.

2. Working Group on Trade and Transfer of Technology

Status

During the 2001 Doha Ministerial Conference, WTO Ministers 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." In fulfillment of that mandate, the Trade Negotiations Committee (TNC) established the Working Group on Trade and Transfer of Technology (WGTTT), under the auspices of the General Council, which would report on its progress to the 2003 Ministerial Conference at Cancun. The WGTTT met four times in 2007, continuing its Doha Ministerial mandate to examine the relationship between trade and the transfer of technology. During the 2005 Hong Kong Ministerial Conference, WTO Ministers recognized "the relevance of the relationship between trade and transfer of technology" and further agreed that, "building on the work carried out to date, this work shall continue on the basis of the mandate contained in paragraph 37 of the Doha Ministerial Declaration." Members have not reached consensus on any recommendations.

Major Issues in 2007

In the period since the Doha Ministerial, the WGTTT has considered submissions from the Secretariat, WTO Members, other WTO bodies, and other inter-governmental organizations.

In 2003, a group of developing country Members, led by India and Pakistan, circulated a paper entitled "Possible Recommendations on Steps that Might be Taken within the Mandate of the WTO to Increase Flows of Technology to Developing Countries." The United States and several other Members have objected to much of the analysis in this paper, which suggested that some WTO agreements were hindering the transfer of technology. In particular, the United States and other Members expressed the strong view that effective intellectual property rights protections under the TRIPS Agreement promote the transfer of technology by private firms, rather than hindering such transfer, as the paper suggested.

During these discussions, the United States and other Members consistently argued that market-based trade and investment are the most efficient means of promoting technology transfer and that governments should generally not require the transfer of technology. The United States has also argued that the contribution of commerce to technology transfer reinforces the case for continued trade and investment liberalization. The United States and other Members suggested that developing country Members take steps to enhance their ability to absorb foreign technologies and described how technical assistance could promote technology transfer and absorption. Finally, the United States and other Members expressed the view that many of the issues raised should be discussed in WTO bodies with expertise on the particular subject matter.

During 2007, the Chair of the working group encouraged Members to share their experiences with technology transfer initiatives. The Philippines made a presentation on its experience with technology

generation and its transfer. The presentation stressed that the successful transfer of technology played an important role in stimulating the formation and growth of advanced technology entrepreneurial start-ups, contributed to increased revenues of existing firms, and made a positive contribution to the country's economic development. In addition, improved allocation of resources among economic sectors and industries, as well as the generation and adaptation of technology, resulted in better organization of firms, which led to greater competitiveness, growth, and productivity across the economy. Members agreed that this presentation was useful and the Chair encouraged other Members to make similar presentations.

In October 2005, India, Pakistan, and the Philippines submitted a new paper, also entitled "Steps that Might be Taken within the Mandate of the WTO to Increase Flows of Technology to Developing Countries." This paper continued to be the focus of much of the WGTTT's discussion in 2007, including a number of question-and-answer discussions. The submission focused on: expanding technical assistance under the TRIPS Agreement; encouraging multinational firms to perform science and technology development work in developing countries; discouraging use of allegedly restrictive business practices by technology owners; and enhancing mobility of scientists and technicians under the GATS Agreement. Although this paper raises some of the same concerns as previous submissions, the United States and other Members expressed appreciation for the pragmatic tone and viewed it as a good basis for further discussions. The United States and other developed country Members noted the extent to which the technical assistance issues raised in this paper may already be addressed under the existing programs. Further, Members urged a discussion of ways in which measurement of restrictions on FDI and technology transfer could be built into the consideration of the proposals tabled.

Prospects for 2008

As of this writing, no WGTTT meetings have been scheduled in 2008. It is expected that other Members will follow up on the Philippines' discussion of its national experience by making similar presentations of their own, and that the group will continue its examination of issues raised in the October 2005 India/Pakistan/Philippines paper.

3. Work Program on Electronic Commerce

Status

Pursuant to the Hong Kong Ministerial Declaration, Members are working to reinvigorate the Work Program on Electronic Commerce. To that end, Members are considering development-related issues and the trade treatment, *inter alia*, of electronically delivered software. In addition, the moratorium on imposing customs duties on electronic transmission, first agreed to in 1998, continues until the next Ministerial Conference.

Since 2001, the Work Program on Electronic Commerce has held several dedicated discussions under the auspices of the General Council. These informal discussions examined cross-cutting issues that the various sub-bodies of the General Council identified as affecting two or more of the various WTO legal instruments. The most controversial cross-cutting issue has been whether to classify electronically-delivered products (*e.g.*, software, music, and video) as a good or a service. Resolution of that issue has not been reached, but Members may examine it more thoroughly in the coming year.

Major Issues in 2007

The Work Program on Electronic Commerce remains an item in the Doha mandate. There have been no follow-up dedicated discussions since the meeting in November 2005 during which Members examined

two issues raised by the United States – the trade treatment of electronically delivered software and the customs duties moratorium on electronically transmitted products. No sessions of the Work Program were held in 2007.

Prospects for 2008

The United States remains committed to advancing meaningful trade policies that promote the growth of electronic commerce. Indeed, the focus of work in all negotiating groups has been to advance market openings in key information technology product and service sectors. Market access for these products and services will further encourage the expansion of electronic commerce. The United States continues to support extending the current practice of not imposing customs duties on electronic transmissions and is in the process of examining ways to make the moratorium permanent and binding in the future. Furthermore, the United States will work to focus Members' attention on the growing importance of maintaining a liberal trade environment for electronically-delivered software. Depending on progress in the overall Doha Round in 2008, Members would renew their efforts under the Work Program to work toward those objectives.

D. General Council Activities

Status

The WTO General Council is the highest-level 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 no less than once every two years. However, no ministerial-level conference was held in 2007 due to the pressing work of the Doha Round negotiations. 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. The General Council or the Ministerial Conference must approve the terms for all accessions to the WTO. Technically, both the Dispute Settlement Body (DSB) and the Trade Policy Review Body (TPRB) are General Council meetings that are convened for the purpose of discharging the responsibilities of the DSB and TPRB, respectively.

Four major bodies report directly to the General Council: the Council for Trade in Goods, the Council for Trade in Services, the Council for Trade-Related Aspects of Intellectual Property Rights, and the Trade Negotiations Committee (TNC). In addition, 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 Trade Agreements report directly to the General Council. The Working Groups established at the First Ministerial Conference in Singapore in 1996 to examine investment, trade and competition policy, and transparency in government procurement also report directly to the General Council, although these groups have been inactive since the Cancun Ministerial Conference in 2003. A number of subsidiary bodies report to the General Council through the Council for Trade in Goods or the Council for Trade in Services. The Doha Ministerial Declaration approved 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. These mandates are part of DDA and their work is reviewed in the Working Group on Trade, Debt, and Finance and the Working Group on Trade and Transfer of Technology sub-sections of Section C.

The General Council uses both formal and informal processes to conduct the business of the WTO. Informal groupings, which generally include the United States, play an important role in consensus-building.

Major Issues in 2007

Throughout 2007, the Chairman of the General Council, together with the Director-General, conducted extensive informal consultations with both the Heads of Delegation of the entire WTO Membership and a wide variety of smaller groupings. These consultations were convened with a view towards making progress on the core issues in the DDA, as well as towards resolving outstanding issues on the General Council's agenda. In 2007, however, the main focus of work in the DDA negotiations was in the individual negotiating groups and reports on those groups are set out in other sections of this chapter.

Ambassador Muhamad Noor Jacob of Malaysia served as Chairman of the General Council in 2007. In addition to work on the DDA, activities of the General Council in 2007 included:

Accessions: Capping over six years of work, the General Council approved the terms of accession for Cape Verde in December 2007 (see section on Accessions in Section J.6). The General Council also approved requests from Comoros and Liberia to initiate accession negotiations.

Aid for Trade: In November 2007, the General Council held its first annual debate on Aid for Trade, which served as the final segment of a global review of Aid for Trade. This review was aimed at taking stock of what was happening on Aid for Trade, identifying what should happen next, and improving WTO monitoring and evaluation of this issue (see section on Aid for Trade in Section J.7).

China Transitional Review Mechanism: In December, the General Council concluded its sixth annual review of China's implementation of the commitments that China made in its Protocol of Accession. The United States and other Members commented on China's progress as a WTO Member, while also raising concerns in areas such as intellectual property rights enforcement, and urged China to make further progress toward the institutionalization of market mechanisms, fairness, transparency, and predictability in its trade regime.

Bananas: Several banana-producing Latin American Members continued to register complaints regarding the effect of enlargement and tarriffication of quotas under the EU banana regime. Under Article XXVIII, a WTO Member that considers it has a "substantial interest" that is not being recognized by the relevant Member may refer the matter to the General Council for a formal determination. The General Council considered these complaints over the course of 2007, but the issue remains unresolved.

Jones Act Review: Paragraph three of GATT 1994 mandates the General Council to conduct a review every two years to ascertain whether the original conditions creating the need for the exemption under this paragraph "still prevail." That exemption applies to certain statutory provisions (collectively referred to as the "Jones Act") that the United States notified to the WTO that prohibit foreign-built or repaired ships from engaging in the coastwise trade (*i.e.*, cabotage). The United States would lose this exemption if the Jones Act were amended to become less WTO-consistent. The General Council conducted its fifth review of Paragraph three in December 2007. During this review, a number of WTO Members raised concerns about the impact of the Jones Act on their commercial interests. The General Council took note of the statements made during this year's review and agreed that the next review would begin in 2009.

Waivers of Obligations: The General Council adopted waiver extension requests for the U.S. preference program for the Former Trust Territory of the Pacific and for Mongolia's accession commitment on export of raw cashmere. It also adopted the waivers for the Harmonized System 1996, 2002, and 2007

changes to WTO schedules of tariff concessions. Annex II contains a detailed list of Article IX waivers currently in force.

Prospects for 2008

The General Council is expected to be more active in 2008 as Members endeavor to bring the DDA negotiation to its concluding phase. In addition to its management of the WTO and oversight of implementation of the WTO Agreements, the General Council will continue to closely monitor work on all aspects of the DDA negotiations.

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); and the Working Party on State Trading Enterprises.

The CTG is the forum for discussing issues and decisions which may ultimately require the attention of the General Council for resolution or a higher-level discussion, and for putting issues in a broader context of the rules and disciplines that apply to trade in goods. The use of the GATT 1994 Article IX waiver provisions, for example, is considered in the CTG and the CTG gave initial approval to waivers for trade preferences granted to ACP countries and the Caribbean Basin Initiative (CBI) countries by the European Union and the United States, respectively.

Major Issues in 2007

In 2007, the CTG held five formal meetings in January, March, May, July, and November. As the central oversight body in the WTO for all agreements related to trade in goods, the CTG devoted its attention primarily 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 that individual Members had taken with respect to the operation of goods-related WTO Agreements. Many of these complaints were resolved through consultation. In addition, three major issues were debated extensively in the CTG in 2007:

Waivers: The CTG approved several requests for waivers, including those related to the implementation of the Harmonized Tariff System and renegotiation of tariff schedules, and the United States' request for an extension of the waiver for the Former Trust Territory of the Pacific Islands. In addition, the CTG took up waiver requests for which discussions are continuing: the United States' request concerning the African Growth and Opportunity Act (AGOA), Caribbean Basin Economic Recovery Act (CBERA) and Andean Trade Promotion Act (ATPA); the EU's request for an extension of its Africa, Caribbean, and Pacific (ACP) group banana tariff rate quota; and Senegal's request for an extension of its waiver for continued use of minimum values for customs valuation purposes.

China Transitional Review: On November 23, the CTG conducted the sixth annual Transitional Review Mechanism (TRM) review of China, as mandated by the Protocol on the Accession of the People's Republic of China to the WTO. China supplied the CTG with information and answered questions that

Members posed, and the CTG reviewed the TRM reports of CTG subsidiary bodies (see Chapter III Section E on China for a more detailed discussion of China's implementation of WTO commitments).

Textiles: The CTG met several times to review a proposal by small exporting Members to find ways to assist them with post-Agreement on Textiles and Clothing (ATC) adjustment problems. These Members argued that the elimination of quotas resulted in a disastrous loss of market share from small suppliers to the large exporters such as China and India. They asked that the CTG study this adjustment issue with a view to adopting proposals to ease the transition. These proposals were blocked by the large exporting Members, such as China and India. They argued that 40 years of textile restraints were long enough and it was necessary for this sector to return to normal trade rules. China and India contended that any attempt to ease the transition to a quota-free environment would perpetuate the distortions that had characterized this sector for so long.

Prospects for 2008

The CTG will continue to be the focal point for discussing agreements in the WTO dealing with trade in goods. Post-ATC adjustment and the outstanding waiver requests will be prominent issues on the agenda.

1. Committee on Agriculture

Status

The WTO Committee on Agriculture (the Agriculture Committee) oversees the implementation of the Agreement on Agriculture (the Agriculture Agreement) and provides a forum for Members to consult on matters related to provisions of the Agriculture Agreement. In many cases, the Agriculture Committee resolves problems on implementation, permitting Members to avoid invoking lengthy dispute settlement procedures. The Committee also has responsibility for monitoring the possible negative effects of agricultural reform on LDC and net food-importing developing country (NFIDC) Members.

Since its inception, the Agriculture Committee has proven to be a vital instrument for the United States to monitor and enforce agricultural trade commitments that were undertaken by other Members in the Uruguay Round. Members agreed to provide annual notifications of progress in meeting their commitments in agriculture and the Agriculture Committee has met frequently to review the notifications and monitor activities of Members to ensure that trading partners honor their commitments.

Under the watchful eye of the Agriculture Committee, Members have, for the most part, complied with the agricultural commitments that they undertook in the WTO. However, there have been important exceptions where U.S. agricultural trade interests have been adversely affected by other Members' agricultural policies. In these situations, the Agriculture Committee has frequently served as an indispensable tool for resolving conflicts before they become formal WTO disputes.

Major Issues in 2007

The Agriculture Committee held three formal meetings in March, September, and November 2007 to review progress on the implementation of commitments negotiated in the Uruguay Round. At those meetings, Members undertook reviews based on 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, 40 notifications were subject to review during 2007. The United States participated actively in the review process and raised specific issues concerning the operation of Members' agricultural policies. The Committee proved to be an effective forum for raising issues relevant to the implementation of Members' commitments. For example, the United States used the review process to raise concerns about Japan's state trading enterprises and the distribution and marketing of imported rice, as well as Nigeria's import bans on certain agricultural products and its use of reference prices for custom valuation purposes instead of actual declared values. The United States also raised concerns about the European Union's low pork quota fill and their pork tariff-rate quota (TRQ) administration, as well as Tunisia's low quota fill for almonds, other tree nuts, snack food, confectionary products, processed fruits and vegetables, and raisins and Tunisia's TRQ administration including value-added taxes (VAT). In addition, the United States used the review process to raise concerns about reports that Thailand's allocation of some tariff-rate quotas, for soybeans, soybean meal, corn, skimmed milk, and fresh potatoes for example, are subject to a domestic purchase requirement by the quota recipients.

The United States also raised questions concerning how China allocates TRQs for cotton; the Dominican Republic's TRQ administration and the fact that no trade had entered under its chicken quota; and elements of domestic support programs used by Brazil, Canada, and the EU.

During 2007, the Agriculture Committee addressed a number of other agricultural implementation-related issues, such as: (1) 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 Agriculture Agreement, taking into account the effect of such disciplines on NFIDCs; (2) review of Members' notifications on TRQs in accordance with the General Council's decision regarding the administration of TRQ regimes in a transparent, equitable, and non-discriminatory manner; (3) annual monitoring of the Marrakesh NFIDC decision on food aid; and (4) annual consultations, under Article 18.5 of the Agriculture Agreement, concerning Members' participation in the normal growth of world trade in agricultural products within the framework of commitments on export subsidies.

Also during 2007, the Committee conducted the sixth annual Transitional Review Mechanism for China, which is required as part of that country's Protocol of Accession. The United States asked about China's VAT exemptions and export VAT rebates and stated the need for more transparency in China's TRQ administration for bulk agricultural commodities, specifically mentioning cotton.

Prospects for 2008

The United States will continue to make full use of the Agriculture Committee to ensure transparency through timely notification by Members and to enhance 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 NFIDCs in accordance with the Agriculture Agreement.

2. Committee on Market Access

Status

In January 1995, WTO Members established the Committee on Market Access (MA Committee), consolidating the work under the GATT system of the Committee on Tariff Concessions and the Technical Group on Quantitative Restrictions and other Non-Tariff Measures. The MA Committee supervises the implementation of concessions on tariffs and non-tariff measures where not explicitly

covered by another WTO body, and is responsible for verification of new concessions on market access in the goods area. The MA Committee reports to the Council on Trade in Goods.

Major Issues in 2007

The MA Committee held two formal meetings in April and October 2007 to discuss the following topics: (1) the ongoing review of WTO tariff schedules to accommodate updates to the Harmonized Tariff System (HTS) tariff nomenclature; (2) the WTO Integrated Data Base; and (3) finalizing consolidated schedules of WTO tariff concessions in current HTS nomenclature. The Committee also conducted its sixth annual Transitional Review of China's implementation of its WTO accession commitments.

Updates to the HTS nomenclature: The MA Committee examines issues related to the transposition and renegotiation of the schedules of certain Members that adopted the HTS in the years following its introduction on January 1, 1988. Since then, the HTS nomenclature has been modified in 1996, 2002, and 2007. 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. Members may pursue unresolved objections under GATT 1994 Article XXVIII. The majority of Members have completed the process of implementing HTS 1996 changes, but Argentina and Panama continue to require waivers.

In 2005, the MA Committee agreed to new procedures using the Consolidated Schedule of Tariff Concessions (CTS) database and assistance from the Secretariat for the introduction into Members' schedules and verification of the 373 amendments that took effect on January 1, 2002 (HTS 2002). Work on this conversion to HTS 2002, which is essential to laying the technical groundwork for analyzing tariff implications of the DDA negotiations, continued throughout 2007.

In January 2007, the Committee began the process of the transposition of Members' schedules to HTS 2007, and at its meeting of April 4, 2007, the Committee discussed the WTO Secretariat's procedures and timelines for this work.

Integrated Data Base (IDB): The MA Committee addressed issues concerning the IDB, which is 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 United States continues to take 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. As a result, participation has continued to improve. In 2007, the Committee granted requests from three intergovernmental organizations and NGOs for access to the IDB and CTS databases.

Consolidated Schedule of Tariff Concessions (CTS): The MA Committee continued work on implementing an electronic structure for tariff and trade data. The CTS includes: tariff bindings for each WTO Member that reflect Uruguay Round tariff concessions; HTS 1996 and 2002 updates to tariff nomenclature and bindings; and any other modifications to the WTO schedule (*e.g.*, participation in the Information Technology Agreement). The database also includes agricultural support tables. The CTS has been linked to the IDB and serves as the vehicle for conducting the DDA negotiations in agriculture and non-agricultural market access.

China Transitional Review: In October 2007, the MA Committee conducted its sixth annual review of China's implementation of its WTO commitments on market access. The United States, with support from other WTO Members, raised questions and concerns regarding China's implementation in the areas of export quotas on raw materials and value-added tax exemptions.

Prospects for 2008

The ongoing work program of the MA Committee, while highly technical, will ensure that all WTO Members' schedules are up-to-date and available in electronic spreadsheet format. The Committee will continue to explore technical assistance needs related to data submissions and to finalize Members' amended schedules based on the HTS 2002 revision. In addition, the Committee will continue to organize and conduct the conversion of Members' schedules to HTS 2007.

3. Committee on the Application of Sanitary and Phytosanitary Measures

Status

The Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) establishes rules and procedures that ensure that WTO Members' SPS measures address human, animal, and plant health concerns, do not arbitrarily or unjustifiably discriminate between Members' agricultural and food products, are not disguised restrictions on trade, and are not more trade restrictive than necessary. SPS measures protect against risks associated with plant or animal borne pests and diseases as well as additives, contaminants, toxins, and disease-causing organisms in foods, beverages, and feedstuffs.

Fundamentally, the SPS Agreement provides that SPS measures be based on science; be based on risk assessment; and, in cases where no international standard exists or the proposed measure is not substantially the same as the relevant international standard and may have a significant trade impact, notified to the WTO SPS Secretariat for distribution to other Members in sufficient time for Members to comment before final decisions are made, except in cases of emergency when standards can be immediately implemented. The SPS Agreement provides for each Member to adopt a level of protection it considers appropriate with respect to SPS risk consistent with the obligations described above.

The Committee on the Application of Sanitary and Phytosanitary Measures (the SPS Committee) is a forum for consultation on Members' existing and proposed SPS measures, the implementation and administration of the SPS Agreement, technical assistance, and the activities of the international standard setting bodies recognized in the SPS Agreement. These international standard setting bodies are: the Codex Alimentarius Commission, for food; the World Organization for Animal Health (OIE), for animal health; and the International Plant Protection Convention (IPPC), for plant health. The SPS Committee also discusses specific provisions of the SPS Agreement, including: transparency in Members' development and application of SPS measures (Article 7); equivalence (Article 4); regionalization (Article 6); technical assistance (Article 9); and special and differential treatment (Article 10). There is no consensus that the current text of the SPS Agreement needs to be changed and some members indicate that prevailing SPS issues and concerns generally stem from the failure of Members to implement fully existing obligations under the SPS Agreement. With this view in mind, the Committee has undertaken focused discussions on various articles of the SPS Agreement. These discussions have provided Members the opportunity to share experiences regarding implementation of SPS measures and to develop procedures to assist Members in meeting specific SPS obligations.

For example, the SPS Committee has elaborated procedures or guidelines regarding notification of SPS measures, the "consistency" provisions under Article 5.5 of the SPS Agreement, equivalence, and transparency regarding the provisions for special and differential treatment.

Participation in the SPS Committee is open to all WTO Members. In addition, representatives from a number of international intergovernmental organizations are invited to attend Committee meetings as observers on an *ad hoc* basis. A partial list of such observers includes: the Food and Agriculture Organization (FAO); the World Health Organization (WHO); the Codex Alimentarius Commission; the IPPC; the OIE; the International Trade Center; and the World Bank.

Major Issues in 2007

In 2007, the SPS Committee met on three occasions in March, June, and October. Members have increasingly utilized SPS Committee meetings to raise concerns regarding new and existing SPS measures of other Members. For example, in 2007, the United States raised concerns with measures imposed by India on dairy products and its avian influenza restrictions, China's and El Salvador's zero tolerance for salmonella on raw meat and poultry, and Australia's restrictions on apple imports. In addition, Members treat Committee meetings as a forum for exchanging views and experiences regarding the implementation of various provisions of the SPS Agreement, such as transparency, regionalization, and equivalence. Members also provide information to the SPS Committee on efforts to declare areas of their country free from specified pests and diseases. The United States views these steps as positive developments, as they demonstrate a growing familiarity with the provisions of the SPS Agreement and increasing recognition of the value of the SPS Committee as a venue to discuss SPS-related trade issues among Members.

BSE - TSE[12]: The SPS Committee devoted considerable time to discussing Members' measures restricting trade as a result of incidents of animal diseases, including trade in beef and beef products due to BSE-related concerns. U.S. beef and other bovine-related exports were severely restricted by several Members after the detection of a single imported cow in Washington State in 2003 infected with the disease and two additional cases (one in 2005 in Texas, and one 2006 in Alabama). At each of the meetings, the United States updated Members with regard to its BSE surveillance program that indicates BSE prevalence in the United States is extremely low. The United States encouraged all Members who have BSE-related measures in place that unjustifiably restrict trade in U.S. beef and beef products to remove them based on the available scientific evidence clearly demonstrating the safety of U.S. beef and cattle. Other Members joined the United States by noting concerns that many Members' restrictions did not appear to be based on the international standard established by the OIE and that no scientific justification was provided by Members banning imports of beef and beef products. The United States expects that BSE will continue to be an issue raised in the SPS Committee.

Avian Influenza: During the 2007 SPS Committee meetings, several WTO Members reported on their efforts to control and eradicate avian influenza (AI) and the resulting restrictions on trade in poultry. Members expressed concerns with the restrictions implemented by certain other Members on trade in poultry that either did not appear to be based on the international standards established by the OIE or did not appear to adhere to the regionalization provisions of the SPS Agreement or otherwise justified by a science-based risk assessment. In response to the U.S. intervention on India's specific restrictions at the October meeting, the delegate from the OIE further reiterated that India's restrictions were not based on international standards or science and urged India to review its measures and international obligations.

Notifications: The SPS notification process is becoming increasingly important for trade and has also provided a means for Members to report on determinations of equivalence and special and differential treatment. In 2007, the United States and other Members expressed concern about the failure of some Members to notify SPS measures which could have significant effects on trade. The United States made

[12] Bovine Spongiform Encephalopathy and Transmissible Spongiform Encephalopathy.

311 SPS notifications to the WTO Secretariat in 2007 and submitted comments on 61 SPS measures notified by other Members.

Regionalization: The SPS Committee held informal meetings on regionalization in advance of each formal Committee meeting in 2007. Regionalization can be an effective means to reduce restrictions on trade due to animal and/or plant health concerns. In many cases, country-wide import prohibitions can be reduced to state- or county-wide prohibitions, depending on the characteristics of the pest or disease at issue as well as other factors. Some Members expressed concerns with the time Members require to make regionalization decisions and to publish the appropriate regulations, and are seeking to establish timeframes for decision-making. Due to the unique circumstances of the pest or disease in question, environmental factors, the SPS infrastructure, and other significant issues, the United States believes the OIE and IPPC Commissions are the appropriate bodies to consider the need and utility of timeframes. The United States is working with Members on both sides of the timeframe issue to develop a consensus approach to the regionalization debate in the Committee. The SPS Committee will continue to discuss this issue. The United States expects to present a draft guidance document to the Committee on behalf of the small working group in early 2008.

China's Transitional Review Mechanism: The United States participated in the SPS Committee's sixth review of China's implementation of its WTO obligations as provided for in paragraph 18 of the Protocol on the Accession of the People's Republic of China. The United States submitted questions regarding China's notification and transparency procedures; the scientific basis for specific SPS measures which restrict U.S. exports; risk assessment procedures; and control, inspection and approval procedures. Other Members also provided written comments and questions and offered comments during the review. China responded orally during the review and restated its commitment to implement fully the provisions of the SPS Agreement.

Prospects for 2008

The SPS Committee will hold three meetings in 2008, and informal sessions are anticipated in advance of each formal meeting. The Committee has a standing agenda for meetings that can be amended to accommodate new or special issues. The SPS Committee will continue to monitor Members' implementation activities and the discussion of specific trade concerns will continue to be an important part of the Committee's activities. The Committee will also continue to serve as an important venue for Members to exchange information on SPS-related issues, including BSE, AI, food safety measures, and technical assistance.

The United States anticipates that the SPS Committee will also focus on furthering priorities identified in the third review, such as the implementation of transparency, regionalization, and the provision of technical assistance under special and differential treatment. Finally, the Committee will continue to monitor the use and development of international standards, guidelines, and recommendations by Codex, OIE, and IPPC. The SPS Committee will also discuss the proliferation of private and commercial standards and how best to enhance the *ad hoc* consultation provisions of the Agreement for all members.

4. Committee on Trade-Related Investment Measures

Status

The Agreement on Trade-Related Investment Measures (the TRIMS Agreement), which entered into force with the establishment of the WTO in 1995, prohibits investment measures that are inconsistent with national treatment obligations under Article III:4 of the GATT 1994 and reinforces the prohibitions

on quantitative restrictions set out in Article XI:1 of the GATT 1994. The TRIMS Agreement requires the elimination of certain measures imposing requirements on, or linking advantages to, certain actions 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 includes an illustrative list of measures that are inconsistent with Articles III:4 and XI:1 of the GATT 1994.

Developments relating to the TRIMS Agreement are monitored and discussed both in the Council on Trade in Goods (CTG) and in the Committee on Trade-Related Investment Measures (the TRIMS Committee). Since its establishment in 1995, the TRIMS Committee has been a forum for the United States and other Members to address concerns, gather information, and raise questions about the maintenance, introduction, or modification of TRIMS by Members.

Major Issues in 2007

The TRIMS Committee held one formal meeting during 2007.

As part of the review of special and differential treatment provisions, the TRIMS Committee continued to consider several TRIMS-related proposals submitted by a group of Members from Africa. A revised version of these proposals, circulated in April 2007, was discussed at informal meetings on June 20, 2007 and October 26, 2007.

As was the case for the previous versions, one proposal argued that Members should interpret and apply the TRIMS Agreement in a manner that supports WTO-consistent measures taken by African Members to safeguard their balance of payments. A second proposal argued that LDC or other low-income Members experiencing balance-of-payments difficulties should be permitted to maintain measures inconsistent with the TRIMS Agreement for periods of not less than six years. The final proposal would require the CTG to grant new requests from certain African Members for the extension of transition periods or for fresh transition periods for the notification and elimination of TRIMS.

In response to these proposals, the United States and other Members argued that any TRIMS imposed for balance-of-payments purposes must follow existing WTO rules on balance-of-payments safeguards. The United States also argued that it would not be appropriate to adopt fixed time periods for maintaining TRIMS in response to balance-of-payments crises given the varying nature of such crises and that, given the lack of requests for TRIMS extensions from LDC Members to date, it was not clear that a policy of automatically granting requests for longer TRIMS transition periods was warranted.

The Committee Chair reported to the General Council that the revised version of these proposals had not led Members closer to a consensus. The TRIMS Committee is expected to continue these discussions in 2008.

Pursuant to paragraph 18 of the Protocol on the Accession of the People's Republic of China to the WTO, the TRIMS Committee conducted its sixth annual review in 2007 of China's implementation of the TRIMS Agreement and related provisions of the Protocol. The United States' main objectives in this review were to obtain information and clarification regarding China's WTO compliance efforts and to convey to China, in a multilateral setting, the concerns that it has regarding Chinese practices and/or regulatory measures that may not be in accordance with China's WTO commitments. During the November meeting of the TRIMS Committee, U.S. questions focused on China's foreign investment policies, and, in particular, China's new mergers and acquisitions regulations, China's automobile industrial policy, and China's steel policy. U.S. questions also continued to focus on China's Foreign

Investment Catalogue. U.S. agencies are analyzing China's policies and its responses to U.S. questions in an effort to decide whether and how to pursue these issues during future meetings of the CTG or the TRIMS Committee.

Prospects for 2008

The United States will engage other Members in efforts to promote compliance with the TRIMS Agreement and avoid weakening the disciplines of that Agreement.

5. Committee on Subsidies and Countervailing Measures[13]

Status

The Agreement on Subsidies and Countervailing Measures (the SCM 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. Subsidies contingent upon export performance and subsidies contingent upon the use of domestic over imported goods are prohibited. All other subsidies are permitted, but are actionable (through CVD or WTO dispute settlement actions) 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 Member.

Major Issues in 2007

The Committee on Subsidies and Countervailing Measures (the SCM Committee) held three formal meetings in 2007, in April, October, and December. The Committee continued to review and clarify the consistency of Members' domestic laws, regulations, and actions with the SCM Agreement's requirements. During the October meeting, the Committee held its sixth review of China's implementation of the SCM Agreement, pursuant to the Transitional Review Mechanism provided by China's protocol of WTO accession. Other issues addressed in the course of the year included: a further extension of the transition period for the phase-out of export subsidies for certain developing country Members, the examination of specific export subsidy program extension requests, the updating of the methodology for Annex VII(b) of the SCM Agreement and consideration of new members for the 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: (1) new or amended CVD legislation and regulations; (2) CVD investigations initiated and decisions taken; and (3) 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 SCM Committee at the meetings in April and October.

In reviewing notified CVD legislation and subsidies, SCM 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. At the end of 2007, 87 WTO Members (counting the 27 members states of the European Union as one) have notified that they currently

[13] 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 2008.

have CVD legislation in place, or have notified that they have no such legislation; 35 Members have not, as yet, made a notification. In 2007, the Committee reviewed the notifications of CVD laws and regulations of Albania, Chinese Taipei, the EU, India, Japan, Mexico, New Zealand, Nigeria, Panama, Turkey, and the United States.[14]

As for CVD measures, five Members were notified of CVD actions taken during the latter half of 2006 and six Members were notified of actions taken in the first half of 2007. Specifically, the SCM Committee reviewed actions taken by Australia, Brazil, Canada, Chile, EUand the United States. The Committee also examined 4 new and full 2007 subsidy notifications and 15 new and full 2005 subsidy notifications. Notably, the Committee continued the review of China's first new and full subsidy notification, originally submitted in April 2006 (see *China Transitional Review* below). Unfortunately, numerous Members have never made a subsidy notification to the WTO, although many are lesser developed country Members.

While not reviewed in the 2007 Committee meetings, the United States submitted its 2005 new and full subsidies notification, detailing more than 40 federal programs and nearly 400 state programs. This notification will be reviewed by the SCM Committee in 2008.

China Transitional Review: At the October meeting, the SCM Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, the sixth annual Transitional Review with respect to China's implementation of its WTO obligations in the areas of countervailing measures, subsidies, and pricing policies.

Following increasing pressure from the United States and other WTO members, China finally submitted its long-overdue subsidies notification to the WTO's Subsidies Committee in April 2006. Although the notification reported on over 70 subsidy programs, it is notably incomplete, as it failed to notify any subsidies provided by China's state-owned banks or by provincial and local government authorities. In addition, while China notified several subsidies that appear to be prohibited, it did so without making any commitment to withdraw them, and it failed to notify other subsidies that appear to be prohibited. The United States has devoted significant time and resources to monitoring and analyzing China's subsidy practices, and these efforts helped to promptly identify very significant omissions in China's subsidy notification. In accordance with SCM Committee procedures, the United States submitted extensive written questions and comments on China's subsidies notification in July 2006, as did several other Members, including the EU, Japan, Canada, Mexico, Australia, and Turkey. Although China responded in writing to these submissions in the fall of 2007, very little new information was provided. More generally, in the context of the Transitional Review, the United States raised subsidy issues with respect to China's: (1) textile and steel industries; (2) state-owned bank and state-owned asset management company practices; and (3) government support policies for the restructuring of state-owned enterprises in China's northeast regions (see *People's Republic of China*, under *Bilateral and Regional Negotiations* below, for further details).

Extension of the transition period for the phase out of export subsidies: Under the SCM Agreement, most developing country Members were obligated to eliminate their export subsidies by December 31, 2002. Article 27.4 of the SCM Agreement allows for the SCM Committee to grant an extension of this deadline. If the Committee does not affirmatively sanction a continuation, the export subsidies must be phased out within two years.

[14] 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.

To address the concerns of certain small developing country Members, a special procedure within the context of Article 27.4 of the SCM Agreement was adopted at the Fourth Ministerial Conference in 2001. Members meeting all the qualifications for the agreed-upon special procedures were eligible for annual extensions for a five-year period through 2007, in addition to the two years referred to under Article 27.4. Antigua and Barbuda, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Jamaica, Jordan, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Uruguay have made yearly requests since 2002 under these special procedures.[15] These requests were approved by the SCM Committee each year.

In April 2006, the Members which benefited from the special procedures agreed to in 2001 requested a further extension through the year 2018. After numerous informal meetings, the SCM Committee decided to recommend to the General Council that it extend the transition period until 2013 under similar special procedures as those that had previously been in place, with a two-year phase-out period ending in 2015. An important outcome of these negotiations, insisted upon by the United States and other developed and developing countries, was that the beneficiaries have no further recourse to extensions beyond 2015. The SCM Committee also decided to recommend that certain less developed countries that have not graduated from Annex VII of the SCM Agreement and that participated under the earlier special procedures be allowed to take advantage of the extension from the date of graduation through the available remaining period. The General Council adopted the recommendation of the SCM Committee in July 2007.

Specific export subsidy program extension requests under the newly agreed upon procedures were made in 2007 by all of the developing country Members listed above. These requests required, *inter alia*, a detailed examination of whether the applicable standstill and transparency requirements had been met. In total, the SCM Committee conducted a detailed review of more than 40 export subsidy programs. At the end of the process, all of the requests under the new special procedures were granted.

The Methodology for Annex VII (b) of the SCM Agreement: Annex VII of the SCM Agreement identifies certain lesser developed country Members that are eligible for particular special and differential treatment. Specifically, the export subsidies of these Members are not prohibited and, therefore, are not actionable as prohibited subsidies under the dispute settlement process. The Members 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).[16] A country automatically "graduates" from Annex VII(b) status when its per capita GNP rises above the $1,000 threshold. At the Fourth Ministerial Conference, decisions were made which led to the adoption of an approach to calculate the $1,000 threshold in constant 1990 dollars. The WTO Secretariat updated these calculations in 2007.[17]

Permanent Group of Experts: Article 24 of the SCM 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

[15] Bolivia, Honduras, Kenya, and Sri Lanka are all listed in Annex VII of the SCM Agreement and thus may continue to provide export subsidies until their "graduation". Therefore, these Members only reserved their rights under the special procedures in the event they graduated during the five-year extension period contemplated by the special procedures.

[16] Members identified in Annex VII(b) 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.

[17] See G/SCM/110/Add.4.

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 three of the SCM 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 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. In the beginning of 2007, the members of the Permanent Group of Experts were: Mr. Yuji Iwasawa (Japan) and Mr. Asger Petersen (Denmark). The SCM Committee has been unable to reach a consensus as to the appointment of new members to succeed Mr. Hyung-Jin Kim (Korea), Mr. Terence P. Stewart (United States), and Professor Okan Aktan (Turkey), whose terms expired in 2005, 2006, and 2007, respectively. At the regular fall meeting, the SCM Committee Chairman announced his intention to hold consultations with Members on this matter.

Prospects for 2008

In 2008, the United States will devote special attention to the subsidy notifications submitted to and considered by the SCM Committee. The United States will also continue to focus on China's subsidy programs and the Transitional Review Mechanism to ensure that China meets its obligations under its Protocol of Accession and the SCM Agreement. As noted above, in 2008 the SCM Committee will review the United States' subsidy notification, which will likely entail an exchange of written questions and answers, and an extensive discussion at the SCM Committee's spring meeting. Finally, the United States is prepared to work with the Chairman of the SCM Committee to resolve the impasse with respect to the PGE membership.

6. Committee on Customs Valuation

Status

The purpose of the Agreement on the Implementation of GATT Article VII (known as the WTO Agreement on Customs Valuation, referred to herein as the "Valuation Agreement") 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 important for U.S. exporters, particularly to ensure that market access opportunities achieved through tariff reductions are not negated by unwarranted and unreasonable "uplifts" in the customs value of goods to which tariffs are applied. 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.

Major Issues in 2007

The Valuation Agreement is administered by the Committee on Customs Valuation (the Customs Valuation Committee), which held two formal meetings in 2007. The Agreement established a Technical Committee on Customs Valuation under the auspices of the World Customs Organization (WCO) with a view to ensuring, at the technical level, uniformity in interpretation and application of the Valuation Agreement. The Technical Committee also held two meetings in 2007.

In accordance with a 1999 recommendation of the WTO Working Party on Preshipment Inspection that was adopted by the General Council, the Customs Valuation Committee 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.

The use of minimum import prices, a practice inconsistent with the provisions of the Agreement, continues to diminish as more developing country Members undertake full implementation of the Agreement. The United States has used the Customs Valuation Committee as an important forum for addressing concerns on behalf of U.S. exporters across all sectors – including agriculture, automotive, textile, steel, and information technology products – that have experienced difficulties related to the conduct of customs valuation regimes outside of the disciplines set forth under the Agreement.

Achieving universal adherence to the Valuation Agreement in the Uruguay Round was an important objective of the United States. The Agreement was initially negotiated in the Tokyo Round, but its acceptance was voluntary until mandated as part of membership in the WTO. A proper valuation methodology under the Agreement, avoiding arbitrary determinations or officially established minimum import prices, can be the foundation for the realization of market access commitments. Just as important, the implementation of the Agreement also often represents the first concrete and meaningful steps taken by developing country Members toward reforming their customs administrations and diminishing corruption, and ultimately moving to a rules-based trade facilitation environment.

While many developing country Members undertook timely implementation of the Agreement, the Customs Valuation Committee continued throughout 2007 to address various individual Member requests for either a transitional reservation for implementation methodology, or for a further extension of time for overall implementation. 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. No Members maintain an extension of the delay period in accordance with the provisions of paragraph 1, Annex III. One Member (Sri Lanka) maintains reservations that have been granted under paragraph 2, Annex III for minimum values, and one Member (Senegal) has requested an extension of a waiver for the application of minimum values granted under Article IX of the WTO Agreement.

An important part of the Customs Valuation Committee's work is the examination of implementing legislation. As of October 2007, 74 Members had notified their national legislation on customs valuation; 50 Members have not yet notified their national legislation on customs valuation. During 2007, the Committee concluded the examinations of the legislations of the Former Yugoslav Republic of Macedonia and Swaziland. At the Committee's October 2007 meeting, the Committee undertook its examination of the custom valuation legislations of Egypt, Saudi Arabia, and Tanzania, and continued its examination of the legislation of Thailand. The Committee's examination of these Members' customs valuation legislation will continue in 2008.

Working with information provided by U.S. exporters, the United States played a leadership role in these examinations, submitting in some cases a series of detailed questions as well as suggestions toward improved implementation, particularly with regard to customs valuation practices of Egypt, Nigeria, Indonesia, and Thailand.

In 2007, the Customs Valuation Committee concluded China's Sixth Transitional Review in accordance with the Protocol of Accession of the People's Republic of China to the WTO. During 2007, the United States again sought clarifications about China's customs-related regulatory measures and legislation. The United States has been concerned about the implementation of these measures by China's customs personnel. The U.S. delegation continued to urge China to work to establish uniformity in the administration of its customs valuation regime and its adherence to WTO customs valuation rules.

The Customs Valuation Committee's work throughout 2007 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.

Prospects for 2008

The Customs Valuation Committee's work in 2008 will include reviewing 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. 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 Valuation 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.

7. Committee on Rules of Origin

Status

The objective of the Agreement on Rules of Origin (the ROO Agreement) is to increase transparency, predictability, and consistency in both the preparation and application of rules of origin. The ROO Agreement 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 that request. In addition to setting forth disciplines related to the administration of rules of origin, the ROO Agreement provides for a work program leading to the multilateral harmonization of rules of origin used for non-preferential trade. The Harmonization Work Program (HWP) is more complex than initially envisioned under the Agreement, which originally provided for the work to be completed within three years after its commencement in July 1995. The HWP continued throughout 2007 and will continue into 2008.

The ROO Agreement is administered by the Committee on Rules of Origin (the ROO Committee), which met formally once in 2007, and held informal consultations throughout the year. The Committee also serves 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 ROO Agreement also established a Technical Committee on Rules of Origin with the World Customs Organization to assist in the HWP.

Major Issues in 2007

As of the end of 2007, 77 Members notified the WTO concerning non-preferential rules of origin. In these notifications, 35 Members notified that they had non-preferential rules of origin and 42 Members notified that they did not have a non-preferential rule of origin regime. Forty-seven Members have not notified non-preferential rules of origin.

Eighty-four Members have notified the WTO concerning preferential rules of origin, of which 80 notified their preferential rules of origin and 4 notified that they did not have preferential rules of origin. Forty Members have not notified preferential rules of origin.

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 are not transparent, allow discrimination, and lack predictability. Substantial attention has been given to the implementation of the ROO Agreement's important disciplines related to transparency, which constitute internationally recognized "best customs practices."

Many of the ROO Agreement's obligations, such as issuing binding rulings upon request of traders in advance of trade, have frequently been cited as a model for more broad-based commitments that could emerge from future WTO work on Trade Facilitation.

The ROO Agreement has provided a means for addressing and resolving many problems facing U.S. exporters pertaining to origin regimes, and the ROO Committee has been active in its review of the Agreement's implementation. The ongoing HWP leading to the multilateral harmonization of non-preferential product-specific rules of origin has attracted a great deal of attention and resources. Significant progress has been made toward completion of this effort, despite the large volume and magnitude of complex issues which must be addressed for hundreds of specific products.

The ROO Committee continued to focus on the work program to achieve multilateral harmonization of non-preferential rules of origin. U.S. proposals for the WTO origin HWP have been developed under the auspices of a Section 332 study which was conducted by the U.S. International Trade Commission pursuant to a request by the U.S. Trade Representative. The U.S. proposals reflect input received from ongoing consultations with the private sector as the negotiations have progressed from the technical stage to deliberations at the ROO Committee. Representatives from several U.S. Government agencies continue to be involved in the HWP, including the U.S. Department of Agriculture, the U.S. Department of Commerce, U.S. Customs and Border Protection (formerly the U.S. Customs Service), and the U.S. Trade Representative.

In addition to the October 2007 formal meeting, the ROO Committee conducted several informal consultations related to the HWP negotiations. The Committee's work in 2007 proceeded in response to the July 28, 2006 General Council extension of the deadline for completion of work on the 94 core policy issues by July 31, 2007. The General Council then agreed that following resolution of the core policy issues, the Committee would complete its remaining work on the HWP by December 2007.

While the ROO Committee made some progress towards fulfilling the mandate of the ROO Agreement to establish harmonized non-preferential rules of origin, the Committee is still grappling with a number of fundamental issues including many product-specific rules of origin for agricultural and industrial goods, and the scope of the prospective obligation to apply equally for all purposes the harmonized non-preferential rules of origin.

This issue and the remaining "core policy issues" are among the most difficult and sensitive matters for the Members and continued commitment and flexibility from all Members will be required to conclude the work program and implement the non-preferential rules of origin.

Because of the impasse among Members on (i) the product-specific rules related to the 94 core policy issues, (ii) the absence of a common understanding of scope of the prospective obligation to apply equally for all purposes the harmonized non-preferential rules of origin, and (iii) the growing concern among Members that the final result of the HWP negotiations would not produce a result consistent with the objectives of the HWP set forth in Article nine of the ROO Agreement, the General Council recognized that its guidance was needed on how to resolve these issues. At the July 2007 General Council meeting, the General Council endorsed the recommendation of the ROO Committee that substantive work on these

issues be suspended until the ROO Committee receives the necessary guidance from the General Council on how to reconcile the differences among Members on the above-mentioned impediments. The General Council also agreed with the recommendation of the Chair of the ROO Committee that the Committee would continue its work with a view to resolving all technical issues as soon as possible and report periodically to the General Council on its efforts in this regard.

Prospects for 2008

Further progress in the HWP will remain contingent on achieving appropriate resolution of the "core policy issues", to reaching a consensus on the scope of the prospective obligation to apply equally for all purposes the harmonized non-preferential rules of origin, and achieving a result that is consistent with the objectives set forth in Article nine of the Agreement on Rules of Origin. In accordance with the decision taken by the General Council in July 2007 and subject to further guidance from the General Council, in 2008, the ROO Committee will focus on technical issues, including the technical aspects of the overall architecture of the HWP product-specific rules, through informal consultations as well as bilateral and small-group meetings. The ROO Committee will continue to report periodically to the General Council on its progress in resolving these technical issues.

8. Committee on Technical Barriers to Trade

Status

The Agreement on Technical Barriers to Trade (the 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. The aim of the TBT Agreement is to prevent the use of technical requirements as unnecessary barriers to trade.

Although the TBT Agreement applies to a broad range of industrial and agricultural products, sanitary and phytosanitary (SPS) measures and specifications for government procurement are covered under separate agreements. TBT Agreement rules 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 nondiscriminatory basis, developed and applied transparently, and should be based on relevant international standards and guidelines, when appropriate.

The Committee on Technical Barriers to Trade (the TBT Committee)[18] serves as a forum for consultation on issues associated with the implementation and administration of the TBT Agreement. The role of the TBT Committee includes discussions and/or presentations concerning specific standards, technical

[18] 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.

regulations and conformity assessment procedures proposed or 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 TBT Agreement and relevant international developments.

Transparency and Availability of WTO/TBT Documents: A key benefit to 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 that 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 and standards and standards of U.S. and foreign non-governmental standardizing bodies. The inquiry point responds to requests for information concerning federal, state, and non-governmental standards, regulations, and conformity assessment procedures. Upon request, NIST will provide copies of notifications of proposed regulations from foreign governments received under the TBT Agreement. NIST also will provide information on central contact points for information maintained by other WTO Members. NIST refers requests for information concerning standards and technical regulations for agricultural products, including SPS measures, to the U.S. Department of Agriculture, which is the U.S. inquiry point pursuant to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

A number of documents relating to the work of the TBT Committee are available to the public directly from the WTO website: http://www.wto.org. TBT Committee documents are indicated by the symbols, "G/TBT/...". Notifications by Members of proposed technical regulations and conformity assessment procedures that 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 Member).[19] 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 TBT 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). Decisions and recommendations adopted by the TBT Committee are contained in G/TBT/1/Rev.8. As a general rule, written information that the United States provides to the TBT Committee is submitted on an "unrestricted" basis and is available to the public on the WTO website. The WTO Secretariat has expanded the information it provides on its "technical barriers to trade" website that is available to the public, including summaries of meetings, agendas, workshops, technical assistance, and key documents.

With the implementation of the Marrakesh Agreement establishing the WTO, *all* Members assumed responsibility for compliance with the TBT Agreement. Although a predecessor to the TBT Agreement existed as a result of the Tokyo Round, known as the Standards Code, the expansion of its applicability to all Members as a result of the Uruguay Round negotiations was significant and resulted in new obligations for many Members. As a result of the TBT Agreement, interested parties in the United States have the right to receive information on proposed standards, technical regulations, and conformity assessment procedures being developed by other Members. The TBT Agreement also provides an

[19] Before 2000, the numbering of notifications of proposed technical regulations and conformity assessment procedures read: "G/TBT/Notif./..." (followed by a number).

opportunity for interested parties to influence the development of such measures by taking advantage of the opportunity to provide written comments on drafts. Among other things, this opportunity helps to prevent the establishment of technical barriers to trade. The TBT Agreement has functioned well in this regard, although discussions on how to improve the operation of the provisions on transparency are ongoing. Other disciplines and obligations, such as the prohibition of discrimination and the call for measures not to be more trade restrictive than necessary to fulfill legitimate regulatory objectives, have been useful in evaluating potential trade barriers and in seeking ways to address them.

The TBT Committee also plays an important monitoring and oversight role. It has served as a constructive forum for discussing and resolving issues, which has perhaps alleviated the need for more dispute settlement undertakings. Since its inception, an increasing number of Members, including developing countries, have used the Committee to highlight trade problems.

Article 15.4 of the TBT Agreement requires the Committee to review the operation and implementation of the TBT Agreement every three years. Four such reviews have now been completed (G/TBT/5, G/TBT/9, G/TBT/13 and G/TBT/19). From the U.S. perspective, a key benefit of these reviews is that they prompt WTO Members to review and discuss all of the provisions of the TBT Agreement, which facilitates a common understanding of Members' rights and obligations. The reviews have also prompted the Committee to host workshops on various topics of interest, including technical assistance, conformity assessment, labeling, and good regulatory practice.

Major Issues in 2007

The TBT Committee met three times in 2007, March (G/TBT/M/41), July (G/TBT/M/42), and November (G/TBT/M/43). At each of these meetings, Members made statements informing the Committee of measures they had taken to ensure the implementation and administration of the TBT Agreement. They also used Committee meetings to raise concerns about specific technical regulations or conformity assessment procedures that affected, or had the potential to affect, trade adversely and were perceived to create unnecessary barriers to trade. The number of specific trade concerns brought to the attention of the TBT Committee set a record in 2007 with some 39 different concerns raised with regard to Members' implementation and administration of the TBT Agreement. Environmental regulations and proposals (*e.g.*, the EU's "Registration, Evaluation, Authorization and Restriction of Chemicals (REACH)" and "Energy Using Product (EuP) Directive", and China's "Pollution Control of Electronic Information Products" (also known as China RoHS)) continue to draw significant attention in the Committee.

Following the adoption of the Fourth Triennial Review in November 2006, in 2007, the Committee initiated an exchange of experiences on the future work items identified in the Fourth Triennial Review, including good regulatory practice, conformity assessment procedures, transparency, technical assistance, and special and differential treatment.

At its March 2007 meeting, the TBT Committee completed the Twelfth Annual Review of the Implementation and Operation of the TBT Agreement (G/TBT/21/Rev.1 and Corr.1) and the Twelfth Annual Review of the Code of Good Practice for the Preparation, Adoption, and Application of Standards. This work was based on the following background documents: a list of standardizing bodies that have accepted the Code in 2006 (G/TBT/CS/1/Add.11), a list of standardizing bodies that have accepted the Code since January 1, 1995 (G/TBT/CS/2/Rev.13 and Corr.1), and the Twelfth edition of the WTO TBT Standards Code Directory prepared by the ISO/IEC Information Centre.

The Fifth Special Meeting on Procedures for Information Exchange was held on November 7-8, 2007. The meeting addressed issues relating to: publication practices, notification practices, the use of electronic tools, and technical cooperation and the work of inquiry points. At the meeting, the U.S.

Inquiry Point offered the Inquiry Points of other WTO Members the use of the U.S. software program to manage incoming and outgoing notifications. Forty-one people from 22 different Inquiry Points have registered in response to this offer thus far.

At the November meeting, the TBT Committee also completed the Sixth Annual Transitional Review mandated in the Protocol of Accession of the People's Republic of China. The United States (G/TBT/W/279), Japan (G/TBT/W/278), and the EU (G/TBT/W/281) submitted written comments and questions. China's submission is contained in G/TBT/W/282. The Committee's report of the Review is contained in G/TBT/22.

During the 2007 meetings of the TBT Committee, representatives of the Codex, IEC, ISO, ITC, OECD, OIML, and UNIDO (observers to the Committee) updated the Committee on their activities relevant to its work, including on technical assistance.

Prospects for 2008

The TBT Committee will continue to monitor implementation of the TBT Agreement by Members. The number of specific trade concerns raised in the Committee appears to be increasing. Aside from the specific trade concerns, the Committee will continue work on the future work items identified in the Fourth Triennial Review, including planning for a technical assistance workshop. Discussion of new issues will be driven by Member statements and submissions. In 2008, U.S. priorities are likely to continue to focus on good regulatory practice, transparency, and technical assistance. On March 18-19, 2008, the TBT Committee will host a Workshop on Good Regulatory Practice that is intended to deepen the understanding of the contribution of good regulatory practice to the implementation of the TBT Agreement.

9. 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 Antidumping Agreement is overseen by the Committee on Antidumping Practices (the Antidumping Committee), 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 Antidumping Committee is 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 experiences with respect to Members' application of antidumping remedies.

The Working Group on Implementation (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 provisions 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 Antidumping Committee has adopted Working Group recommendations on five antidumping topics.

The Working Group 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. While not a negotiating forum in either a technical or formal sense, the Working Group serves an important role in promoting improved understanding of the Antidumping Agreement's provisions and exploring options for improving practices among antidumping administrators.

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 (the Informal Group). Many Members, including the United States, recognize the importance of using the Informal Group to pursue the 1994 decision by Ministers.

Major Issues in 2007

In 2007, the Antidumping Committee held meetings on April 24-25 and October 22-23. At its meetings, the Antidumping Committee focused on implementation of the Antidumping Agreement, in particular, by continuing its review of Members' antidumping legislation. The Committee also reviewed reports required of Members that provide information as to preliminary and final antidumping measures and actions taken over the preceding six months.

The following is a list of the more significant activities that the Antidumping Committee, the Working Group, and the Informal Group undertook in 2007:

Notification and Review of Antidumping Legislation: To date, 71 Members have notified that they currently have antidumping legislation in place and 27 Members have notified that they maintain no such legislation. In 2007, the Antidumping Committee reviewed notifications of new or amended antidumping legislation submitted by Argentina, Armenia, China, Colombia, European Communities, India, Japan, Mexico, New Zealand, Panama, Chinese Taipei, Turkey, and the United States. Members, including the United States, were active in formulating written questions and in making follow-up inquiries at Antidumping Committee meetings.

Notification and Review of Antidumping Actions: In 2007, 28 Members notified that they had taken antidumping actions during the latter half of 2006, whereas 25 Members did so with respect to the first half of 2007 (by comparison, 29 Members notified that they had not taken any antidumping actions during the latter half of 2006, and 19 Members notified that they had taken no actions in the first half of 2007). These actions, as well as outstanding antidumping measures currently maintained by Members, were identified in semi-annual reports submitted for the Antidumping Committee's review and discussion (the semi-annual reports for the second half of 2006 were issued as "G/ADP/N/153/…" and the semi-annual reports for the first half of 2007 were issued as "G/ADP/N/158/…"). At its April and October 2007 meetings, the Committee reviewed Members' notifications of preliminary and final actions pursuant to Article 16.4 of the Antidumping Agreement.

China Transitional Review: At the October 2007 meeting, the Antidumping Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its sixth annual Transitional Review with respect to China's implementation of the Antidumping Agreement. Several Members, including the United States, presented written and oral questions to China with respect to China's

antidumping laws and practices, and the United States also presented a statement at the meeting addressing both substantive and procedural concerns with respect to China's practices. China orally provided information in response to the U.S. statement and the other comments and questions at the meeting.

Working Group on Implementation: The Working Group held meetings in April and October 2007. Beginning in 2003, the Working Group has held discussions on four agreed-upon topics: (1) export prices to third countries vs. constructed value under Article 2.2 of the Antidumping Agreement; (2) foreign exchange fluctuations under Article 2.4.1; (3) conduct of verifications under Article 6.7; and (4) judicial, arbitral or administrative reviews under Article 13. The discussions in the Working Group on these topics have focused on submissions by Members describing their own practices, including past submissions by the United States on all four topics. In 2007, the Working Group discussed a draft recommendation prepared by the WTO Secretariat on the conduct of verifications. Given that no Members submitted new papers on any of these four topics in 2007, at the October meeting there was a discussion of whether the Working Group should move on to consider new topics. Members decided that the Group would continue its discussion of the first two topics, regarding Articles 2.2 and 2.4.1 of the Agreement, but would also begin discussing a new topic: "Article 3.2 – How do Members determine whether there has been a significant price undercutting by dumped imports?"

Informal Group on Anticircumvention: In 2007, the Informal Group held meetings in April and October. The Informal Group continued its useful discussions on the first three items of the agreed framework 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 can circumvention be dealt with under the relevant WTO rules, and what other options may be deemed necessary.

In the Informal Group, Members have submitted papers and made presentations outlining scenarios based on factual situations that their investigating authorities face, 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, have responded to inquiries from other Members as to how such legislation operates and the manner in which certain issues may be treated. One new paper was submitted in the Informal Group in 2007, a paper by New Zealand regarding "bundling" of invoices to circumvent antidumping duties, which was discussed at both the April and October meetings.

Prospects for 2008

Work will proceed in 2008 on the areas that the Antidumping Committee, the Working Group and the Informal Group addressed this past year. The Antidumping Committee will pursue its review of Members' notifications of antidumping legislation, and Members will continue to have the opportunity to submit additional questions concerning previously reviewed notifications. This ongoing review process in the Antidumping Committee is important for ensuring that Members' antidumping laws are properly drafted and implemented, thereby contributing to a well-functioning, rules-based trading system. Since notifications of antidumping legislation are not restricted documents, U.S. exporters will continue to enjoy access to information about the antidumping laws of other Members 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 Antidumping Committee of semi-annual reports and reports of preliminary and final antidumping actions will also continue in 2008. The semi-annual reports are accessible to the general public from the WTO website, in keeping with the objectives of the Uruguay Round Agreements Act (Information on accessing WTO notifications is included in Annex II). This transparency 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 Members enact antidumping laws and begin to apply them. There has been a sharp and widespread interest in clarifying the many complex provisions of the Antidumping Agreement. Tackling these issues in a serious manner will require the involvement of the Working Group, which is the forum best suited to provide the necessary technical and administrative expertise. For these reasons, the United States will continue to use 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 that Members employ to implement them. In 2008, the Working Group will continue its discussion of two topics that it has been discussing since 2003: (1) export prices to third countries vs. constructed value under Article 2.2 of the Antidumping Agreement; and (2) foreign exchange fluctuations under Article 2.4.1, while beginning discussion of a new topic: (3) Article 3.2 – How do Members determine whether there has been a significant price undercutting by dumped imports? In addition, the Working Group will continue its discussion of the draft recommendation on the conduct of antidumping verifications.

The work of the Informal Group on Anticircumvention will also continue in 2008 according to the framework for discussion on which Members agreed, with the discussion of New Zealand's submission on "bundling" of invoices to continue. However, given the focus on anticircumvention issues in the WTO Rules negotiations under the Doha Development Agenda, it is possible that there may be relatively little activity on these issues in the Informal Group in 2008.

10. Committee on Import Licensing

Status

The Committee on Import Licensing (the Import Licensing Committee) was established to administer the Agreement on Import Licensing Procedures (Import Licensing Agreement) and to monitor compliance with the mutually agreed rules for the application of these widely used measures set out in the Agreement. The Import Licensing Committee normally meets twice a year to review information on import licensing requirements submitted by WTO Members in accordance with the obligations of the Agreement. The Import Licensing Committee also receives questions from Members on the licensing regimes of other Members, whether they have been notified to the Import Licensing Committee or not. The meetings also address specific observations and complaints concerning Members' licensing systems. These reviews are not intended to substitute for dispute settlement procedures; rather, they offer Members an opportunity to focus multilateral attention on licensing measures and procedures that they find problematic, to receive information on specific issues and to clarify problems, and possibly to resolve issues before they become disputes.

Since the accession of China to the WTO in December 2001, the Import Licensing Committee has conducted an annual review of China's compliance with accession commitments in the area of import licensing as part of the Transitional Review Mechanism (TRM) provided for in China's Protocol of Accession. China's sixth review concerning its import licensing procedures was conducted at the October 2007 meeting of the Import Licensing Committee.

The Import Licensing Agreement establishes rules for all Members that use import licensing systems to regulate their trade, and sets guidelines for what constitutes a fair and non-discriminatory application of such procedures. Its provisions establish disciplines to protect Members from unreasonable requirements or delays associated with a licensing regime.

These obligations are intended to ensure that the use of import licensing procedures does not create additional barriers to trade beyond the policy measures implemented through licensing (the Import Licensing Agreement's provisions discipline licensing *procedures,* and do not directly address the WTO consistency of the underlying measures). The notification requirements and the system of regular Committee reviews seek to increase the transparency and predictability of Members' licensing regimes.

The Import Licensing Agreement covers both "automatic" licensing systems, which are intended only to monitor imports, not regulate them, and "non-automatic" licensing systems, under which certain conditions must be met before a license is issued. Governments often use non-automatic licensing to administer import restrictions such as quotas and tariff-rate quotas (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 Import Licensing Agreement.

Major Issues in 2007

At its meetings in April and October 2007, the Import Licensing Committee reviewed 80 submissions from 49 Members,[20] including initial or revised notifications, completed questionnaires on procedures, and questions and replies to questions. This count represented a significant increase both in the number of notifications submitted to the Committee, and in the number of Members notifying. The Chairman reported that by the end of 2007, two additional Members (Kuwait and Thailand) had made initial notifications, and that only 21 of 124 Committee Members had never submitted a notification to the Committee, including newly acceded members Tonga and Vietnam.[21] This number brings the percentage of Members with at least an initial notification to over 80 percent. Despite this progress, the Chairman and some Committee Members continued to express concern that even participating Members are not submitting notifications with the frequency required by the Import Licensing Agreement. The Committee Chairman reminded Members that notifications were required even if only to report that no import licensing system existed and that the WTO Secretariat was prepared to assist Members in developing their submissions.

The United States remained one of the most active members of the Import Licensing Committee, using the forum to gather information and to discuss import licensing measures applied to its trade by other Members. We continued to press Brazil to provide information on its quotas on and non-automatic licensing system for imports of certain lithium compounds, *i.e.*, lithium carbonate and lithium hydroxide, noting that these measures appear to be part of a system of restrictions that had not been notified to the Committee. Brazil reported that this issue remains under review by the Brazilian government, but was unable to provide any additional information. The United States presented further comments on Indonesia's non-automatic licensing system for selected textile products, noting that the system clearly restricted potential imports and appeared not to be consistent with WTO rules. Indonesia's responses to previous questions, simply claiming that the system was one of automatic licensing since a decision on

[20] The Members making submissions were: Argentina, Armenia, Australia, Barbados, Brazil, Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Dominica, European Communities, Gambia, Grenada, Guatemala, Haiti, India, Indonesia, Israel, Japan, Korea, Kuwait, Kyrgyz Republic, Macao, China, Malaysia, Mauritius, Mexico, Nigeria, Peru, Philippines, Saint Lucia, Saudi Arabia, Singapore, Thailand, Trinidad and Tobago, Tunisia, Turkey, and the United States.

[21] The EU and its member states are recorded by the Committee as a single Member for the purposes of submissions to the Committee. The Members that have never submitted a notification in this Committee are Angola, Belize, Botswana, Cambodia, Central African Republic, Congo, Djibouti, Egypt, Guinea, Guinea Bissau, Lesotho, Mauritania, Mozambique, Myanmar, Nepal, St. Vincent & the Grenadines, Sierra Leone, Solomon Islands, Tanzania, Tonga, and Vietnam.

the application was made within 10 days, were not helpful. In addition, importers faced onerous reporting requirements on their import requirements and plans. This was not consistent with WTO provisions. The United States continues to press for removal of the system.

The United States also voiced concern that Argentina's non-automatic procedures for certain footwear and toys establish a pre-release verification mechanism to monitor and control imports of such goods and to verify technical requirements, but does not appear to be either necessary or applied to similar domestic goods. While thanking Argentina for its notification of the measures, the United States noted that these requirements also appear to act as quantitative import restrictions, asked for further information and suggested their elimination. The United States asked for additional information on how import licences on footwear were allocated to both foreign and domestic producers and on how the verification procedure was administered by domestic agencies, noting that the processing time for applications for imported footwear was taking up to three times longer than provided for in the regulations. Argentina had also not yet provided requested information on the same system applied to imported toys. The United States also asked for information on import licences required for certain tariff lines corresponding to the toy sector. The licences were non-automatic and there was no information available on how applications for these licences were considered.

At its October meeting, the Committee conducted, pursuant to the Protocol on the Accession of the People's Republic of China, its sixth annual Transitional Review of China's implementation of its WTO accession commitments in the area of import licensing procedures. The United States was the only delegate that engaged China at this meeting. He pressed China once again for information on its licensing system for poultry and on import of bulk agriculture commodities. China explained that the purpose of the import registration system for poultry was to collect statistics and to prevent and control potential bird influenza. The registration certificates were granted automatically if the application forms were completed correctly. His delegation did not find the system unnecessary, nor trade restrictive. Concerning the draft administrative measure of reporting information publication on import of bulk agriculture commodities, China stated that the intent of this measure was to strengthen market transparency in the sector to prevent price fluctuation and to provide market access to small- and medium-sized new enterprises. He also noted that the draft measure was not yet enforced and that his delegation would welcome Members' comments to be dealt with bilaterally.

Prospects for 2008

The administration of import licensing continues to be a significant topic of discussion in the context of the DDA, as well as in the day-to-day administration of current obligations. As tariffs are liberalized, it becomes more critical that Members use import licensing procedures properly, particularly in the administration of agricultural TRQs, and to ensure that licensing procedures do not, in themselves, restrict imports in a manner not consistent with WTO provisions. Licensing continues to be a factor in the application of safeguard measures, technical regulations, and sanitary requirements applied to imports as well. The Import Licensing 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 as a forum for discussion and review. As demonstrated by the U.S. complaint against Turkey concerning its regulation of rice imports (DS334, discussed in section H of this Chapter), these discussions may be the introduction to further dispute settlement cases.

The Committee will continue discussions to encourage enhanced compliance with the notification and other transparency requirements of the Import Licensing Agreement, with renewed focus on securing timely revisions of notifications and questionnaires, and timely responses to written questions, as required by the Agreement.

11. Committee on Safeguards

Status

The Committee on Safeguards (the Safeguards Committee) was established to administer the WTO Agreement on Safeguards (the Safeguards Agreement). The Safeguards 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, providing them with flexibility they would not otherwise 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 Safeguards Agreement incorporates into WTO rules many of the concepts embodied in U.S. safeguards law (section 201 of the Trade Act of 1974, as amended). Among its key provisions, the Safeguards Agreement: requires a transparent, public process for making injury determinations; sets out clearer definitions of the criteria for injury determinations; requires that safeguard measures be steadily liberalized over their duration; establishes maximum periods 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.

The Safeguards Agreement requires Members to notify the Safeguards Committee of their laws, regulations, and administrative procedures relating to safeguard measures. It also requires Members to notify the Safeguards Committee of various safeguards actions, such as (1) the initiation of an investigatory process; (2) a finding by a Member's investigating authority of serious injury or threat thereof caused by increased imports; (3) the taking of a decision to apply or extend a safeguard measure; and (4) the proposed application of a provisional safeguard measure.

Major Issues in 2007

During its two regular meetings in April and October 2007, the Safeguards Committee continued its review of Members' laws, regulations, and administrative procedures, based on notifications required under Article 12.6 of the Safeguards Agreement. The Committee reviewed a new or amended legislative text from Panama.

The Safeguards Committee reviewed Article 12.1(a) notifications, regarding the initiation of a safeguard investigatory process relating to serious injury or threat thereof and the reasons for it, from the following Members: Jordan on ceramic tiles; Moldova on cane or beet sugar; South Africa on lysine; and Turkey on frames and mountings for spectacles and on travel goods.

The Safeguards Committee reviewed Article 12.1(b) notifications, regarding a finding of serious injury or threat thereof caused by increased imports, from the following Members: Argentina on compact discs; Chile on powdered milk, liquid milk, and gouda cheese; Jordan on footwear; South Africa on lysine; and Turkey on motorcycles.

The Safeguards Committee reviewed Article 12.1(c) notifications regarding a decision to apply a safeguard measure from the following Members: Argentina on compact discs; Chile on powdered milk, liquid milk, and gouda cheese; Jordan on footwear; Panama on PVC films; South Africa on lysine; and

Turkey on motorcycles. It also reviewed Article 12.1(c) notifications regarding a decision to extend a safeguard measure from the Philippines on float glass, on figured glass, and on glass mirrors.

The Safeguards Committee reviewed Article 12.4 notifications, regarding the application of a provisional safeguard measure, from the following Members: Chile on powdered milk, liquid milk, and gouda cheese; Panama on PVC films; and South Africa on lysine.

The Safeguards Committee received notifications from the following Members of the termination of a safeguard investigation with no definitive safeguard measure imposed: from Jordan on ceramic tiles and the Philippines on sodium tripolyphospates.

China Transitional Review: At the October 2007 meeting, the Safeguards Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its sixth annual Transitional Review with respect to China's implementation of the Safeguards Agreement. Given that China reported no new safeguards legislation or safeguards actions taken in the past year, the United States did not submit any questions, and the discussion was very brief.

Implementation: At the April 2007 meeting, the Safeguards Committee discussed various issues pertaining to Article 9.1 of the Safeguards Agreement, concerning the exclusion of developing country Members from the application of safeguard measures when certain criteria are met. At the April 2007 meeting, the Committee also discussed Brazil's safeguard measure with respect to toys, with the United States raising questions about developments since the expiration of that measure in June 2006.

Prospects for 2008

The Safeguards Committee's work in 2008 will continue to focus on the review of safeguard actions that have been notified to the Committee and on the review of notifications of any new or amended safeguards legislation.

12. Working Party on State Trading Enterprises

Status

Article XVII of the GATT 1994 requires Members, *inter alia*, to ensure that state trading enterprises (STEs), as defined in that Article, act in a manner consistent with the general principle of non-discriminatory treatment, make purchases or sales solely in accordance with commercial considerations, and abide by other GATT disciplines. The Understanding on the Interpretation of Article XVII of the GATT 1994 (the Article XVII Understanding) defines a state trading enterprise more narrowly for the purposes of providing a notification that is required under the Article XVII Understanding. Members must notify the Working Party of enterprises in their respective territories that meet this definition, whether or not such enterprises have imported or exported goods. Members are required to submit new and full notifications to the Working Party for review every two years.

The Working Party on State Trading Enterprises (WP-STE) was established in 1995 to review, *inter alia*, Member notifications of STEs and the coverage of STEs that are notified, and to develop an illustrative list of relationships between Members and their STEs and the kinds of activities engaged in by these enterprises.

Major Issues in 2007

The WP-STE held one formal meeting in October 2007. At the meeting, the Working Party reviewed 29 notifications: new and full notifications reporting 2006 data for Canada; Chile; Colombia; European Communities; Japan; Macao, China; Qatar; Saudi Arabia; Singapore; Chinese Taipei; Turkey; the United States; Zambia; and Zimbabwe, new and full notifications reporting 2004 data for Australia; Canada; Chile; Colombia; the European Communities; and Zambia, updating notifications reporting 2003 and 2002 data for Canada; Chile; and the European Communities, and new and full as well as updating notifications reporting 2000 and 1999 data for Canada. The Working Party also adopted its Annual Report to the Council for Trade in Goods for the year 2007.

Prospects for 2008

The WP-STE is scheduled to meet in October 2008. Prior to this meeting, the United States will submit a new and full notification of its STEs to the Working Party for review. The United States' STEs include the Commodity Credit Corporation, Isotopes Production and Distribution Program, Power Administrations, and Strategic Petroleum Reserve.

As part of the agriculture negotiations in the WTO, the United States proposed specific disciplines on export agricultural STEs that would increase transparency, improve competition and tighten disciplines for these entities. In 2008, the WP-STE 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 could be submitted as part of the notification process to enhance transparency of STEs.

F. Council for Trade Related Aspects of Intellectual Property Rights

Status

The WTO Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council) monitors implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (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 sets minimum standards of protection for copyrights and neighboring rights, trademarks, geographical indications (GIs), 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 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.

Developed country Members were required to implement fully the obligations of the TRIPS Agreement by January 1, 1996, and developing country Members generally had to achieve full implementation by January 1, 2000. LDC Members have had their deadline for full implementation of the TRIPS Agreement extended to July 1, 2013, as part of a package that also requires them to provide information on their priority needs for technical assistance in order to facilitate TRIPS implementation. This action is without prejudice to the existing extension, based on a proposal made by the United States at the Doha Ministerial Conference, of the transition period for LDC Members to implement or apply Sections five and seven of

Part II of the TRIPS Agreement with respect to pharmaceutical products, or to enforce rights with respect to such products, until January 1, 2016. In 2002, the WTO General Council, on the recommendation of the TRIPS Council, similarly waived until 2016 the obligation for LDC country Members to provide exclusive marketing rights for certain pharmaceutical products, if those Members did not provide product patent protection for pharmaceutical inventions.

Major Issues in 2007

In 2007, the TRIPS Council held three formal meetings, generally accompanied by informal "special session" consultations on the establishment of a multilateral system for notification and registration of GIs for wines and spirits called for in Article 23.4 of the TRIPS Agreement (see separate discussion of this topic under section B of this Chapter, "Council for Trade-Related Intellectual Property Rights, Special Session," and below). In addition to continuing its work reviewing the implementation of the Agreement, the TRIPS Council's work in 2007 focused on TRIPS issues addressed in the Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health. Some Members, including the United States, also sought to have the TRIPS Council continue to examine issues related to the enforcement provisions of the TRIPS Agreement.

Review of Developing Country Members' TRIPS Implementation: The TRIPS Council during 2007 continued to devote time to reviewing the TRIPS Agreement's implementation by developing country Members and newly acceding Members, as well as to providing assistance to developing country Members so they can implement fully the TRIPS Agreement. In particular, the TRIPS Council continued to urge developing country Members to respond to the questionnaires already answered by developed country Members regarding their protection of GIs and implementation of the TRIPS Agreement's enforcement provisions, and to provide detailed information on their implementation of Article 27.3(b) of the TRIPS Agreement. 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 Member's implementation of the TRIPS Agreement's obligations, particularly with regard to China's efforts.

The Transitional Review Mechanism under Section 18 of the Protocol on the Accession of the People's Republic of China has been an important means to raise concerns about China's implementation of the TRIPS Agreement. This process has been instrumental in helping to understand the levels of protection of intellectual property rights in China, and provides a forum for addressing the concerns of U.S. interests in this process. The United States has been active in seeking answers to questions on a wide range of intellectual property matters and in raising concerns about enforcement of intellectual property rights.

During 2007, the TRIPS Council undertook reviews of the implementing legislation of Saudi Arabia, Mauritius, and Swaziland, in addition to the above-referenced review of China.

Intellectual Property and Access to Medicines: The August 30, 2003 solution (the General Council Decision on "Implementation of Paragraph six of the Doha Declaration on the TRIPS Agreement and Public Health", in light of the statement read out by the General Council Chairman) continues to apply to each Member until the formal amendment to the TRIPS Agreement replacing its provisions takes effect for that Member. The amendment text adopted by the General Council in December 2005 and the statement by the Chair preserve all substantive aspects of the August 30, 2003 solution and do not alter the substance of the previously agreed solution. The United States was the first Member to submit its acceptance of the amendment to the WTO. At the end of 2007, a total of 13 Members had accepted the amendment, which will enter into force, for those Members that have accepted it, upon its acceptance by two-thirds of the membership of the WTO. At its October 2007 meeting, the TRIPS Council reviewed

implementation of the August 30, 2003 solution. Several members commented on the importance of the solution and reported on preparations to formally accept the amendment.

TRIPS-related WTO Dispute Settlement Cases: In April 2007, the United States initiated WTO dispute settlement proceedings over deficiencies in China's legal regime for the protection and enforcement of intellectual property rights (IPR) by requesting consultations with China. On September 25, 2007, the WTO Dispute Settlement Body established a panel to consider the dispute. The U.S. panel request alleges breaches of various provisions of the TRIPS Agreement related to three aspects of China's IPR regime. First, the request challenges quantitative thresholds in China's criminal law that must be met in order to start criminal prosecutions or obtain criminal convictions for copyright piracy and trademark counterfeiting. These thresholds give pirates and counterfeiters in China a safe harbor to avoid criminal liability. Second, the panel request addresses the rules for disposal of IPR-infringing goods seized by Chinese customs authorities. Those rules appear to permit goods to be released into commerce following the removal of fake labels or other infringing features, when WTO rules dictate that these goods normally should be kept out of the marketplace altogether. Third, the panel request addresses the apparent denial of copyright protection for works poised to enter the market but awaiting Chinese censorship approval. It appears that Chinese copyright law provides the copyright holder with no right to complain about copyright infringement (including illegal/infringing copies and unauthorized translations) before censorship approval is granted.

During 2007, the United States continued to monitor EU compliance with a 2005 ruling of the WTO Dispute Settlement Body (DSB) that the EU's regulation on food-related GIs is inconsistent with the EU's obligations under the TRIPS Agreement and the GATT 1994. The United States has raised certain questions and concerns with regard to the revised EU regulation and its compliance with the DSB findings and recommendations, and continues to monitor implementation in this dispute.

The United States continues to monitor the compliance of WTO Members with their TRIPS Agreement obligations and will consider the further use of the WTO dispute settlement mechanism as appropriate.

Geographical Indications: The Doha Declaration directed the TRIPS Council to discuss "issues related to extension" of Article 23-level protection to GIs for products other than wines and spirits and to report to the Trade Negotiations Committee (TNC) by the end of 2002 for appropriate action. Because 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 GIs for products other than wines and spirits, and, in light of the strong divergence of positions on the way forward on GIs and other implementation issues, the TNC Chair closed the discussion by saying he would consult further with Members. At the December 2005 Hong Kong Ministerial Conference, the Ministers directed the Director-General to continue his consultative process on all outstanding implementation issues, including on extension of Article 23-level protection to GIs for products other than wines and spirits. Consistent with this mandate, the Director-General appointed a Deputy Director-General to hold a number of such consultations with Members on the issue of extension.

Throughout 2007, the United States and many like-minded Members maintained the position that the demandeurs had not established that the protection provided GIs for products other than wines and spirits was inadequate, and thus proposals for expanding GI protection were unwarranted. The United States and other Members noted that the administrative costs and burdens of proposals to expand protection would be considerable for those Members that did not have a longstanding statutory regime for the protection of GIs, that the benefits accruing to those few Members that have longstanding statutory regimes for the protection of GIs would represent a windfall, and that other Members with few or no GIs would receive no counterbalancing benefits. While willing to continue the dialog in the TRIPS Council, the United States believes that discussion of the issues has been exhaustive and that no consensus has

emerged with regard to extension of Article 23-level protection to products other than wines and spirits. The United States and other Members have also steadfastly resisted efforts by some Members to obtain new GI protections in the WTO agriculture negotiations.

Review of Article 27.3(b), Relationship between TRIPS and the Convention on Biological Diversity, and Protection of Traditional Knowledge and Folklore: As called for in the TRIPS Agreement, the TRIPS Council initiated a review of TRIPS Article 27.3(b) (permitting Members to except from patentability plants and animals and biological processes for the production of plants and animals). 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).

The Doha Declaration directs the TRIPS Council, 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 Convention on Biological Diversity (CBD) and the protection of traditional knowledge and folklore. Consideration of this set of issues also continues to be guided by the direction of Ministers in the Hong Kong Declaration, that all implementation issues (including the relationship of the TRIPS Agreement and the CBD) should be the subject of consultations facilitated by the WTO Director-General. Furthermore, Ministers agreed that work would continue in the TRIPS Council on this issue.

A number of developing country Members continue to advocate for amending the patent provisions of the TRIPS Agreement to require disclosure of the source of the genetic resource or traditional knowledge, as well as evidence of prior informed consent to obtain the genetic resource and adequate benefit sharing with the custodian community or country of the genetic resource in order to obtain a patent. In 2006, a group of developing country Members submitted draft text for such an amendment to the TRIPS Agreement. There is, however, no consensus in the TRIPS Council that an amendment should be pursued.

The United States, with support from other Members, continues to maintain that there is no conflict between the TRIPS Agreement and the CBD, that an amendment to the TRIPS Agreement is neither necessary nor appropriate, and that shared objectives with respect to genetic resources and traditional knowledge (such as prior informed consent and effective access and benefit-sharing arrangements) can best be achieved through mechanisms outside of the patent system. The United States has also advocated for a discussion in the TRIPS Council that is fact-based and focused on national experiences in areas such as access and benefit-sharing and prior informed consent. While some Members continue to press for amending the TRIPS Agreement, the TRIPS Council's deliberations in 2007 generally tended toward constructive questioning and information-sharing on these matters. This approach has clarified a number of points of divergence and convergence, and has tracked more closely the debate suggested by the United States to discuss proposals based on whether or not they achieve the objectives purportedly sought, rather than presupposing any particular outcome.

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 (*see* IP/C/W/496/Add.5). In addition, and in accordance with a November 29, 2005 Decision of the TRIPS Council, two LDC Members (Uganda and Sierra Leone) submitted information on their priority needs with regard to technical cooperation related to their implementation of the TRIPS Agreement.

Implementation of Article 66.2: Article 66.2 of the TRIPS Agreement requires developed country Members to provide incentives for enterprises and institutions in their territories to promote and encourage technology transfer to least-developed country 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. Developed country Members are required to provide detailed reports every third year, with annual updates, on these incentives. In October 2007, the United States provided an updated report on specific U.S. government institutions and incentives, as required.

Enforcement: The United States, together with other Members including the EU, Japan, and Switzerland, continued in 2007 to promote a discussion within the TRIPS Council of experiences in implementing the enforcement provisions of the TRIPS Agreement. The United States has noted that such a discussion is particularly valuable in light of the growing global problems surrounding counterfeiting and piracy of intellectual property. At the February 2007 meeting of the TRIPS Council, the United States made a presentation on its experience with border enforcement measures. A number of Members have resisted a substantive discussion of enforcement in the TRIPS Council.

Prospects for 2008

In 2008, the TRIPS Council will continue to focus on its built-in agenda and the additional mandates established in the Doha Declaration, including issues related to the extension of Article 23-level protection for GIs 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 2008 continue to be to:

- resolve differences through consultations and use of dispute settlement procedures, where appropriate;
- continue its efforts to ensure that developing country Members fully implement the Agreement;
- continue to encourage a fact-based discussion within the TRIPS Council on the enforcement provisions of the TRIPS Agreement; and
- ensure that provisions of the TRIPS Agreement are not weakened.

G. Council for Trade in Services

Status

The General Agreement for Trade in Services (GATS) is the first multilateral, legally enforceable agreement covering trade in services and investment in the services sector. It is designed to reduce or eliminate governmental measures that prevent services from being freely supplied across national borders or that discriminate against locally established services firms with foreign ownership. The GATS 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 Member schedules, similar to the Member schedules for tariffs.

The Council for Trade in Services (CTS) oversees implementation of the GATS and reports to the General Council. In addition, the CTS is responsible for a technical review of GATS Article XX.2 provisions; waivers from specific commitments pursuant to paragraphs three and four of Article IX of the Marrakesh Agreement Establishing the WTO; the transitional review mechanism under Section 18 of the Protocol on the Accession of the People's Republic of China; implementation of GATS Article VII; the

MFN review; and notifications made to the General Council pursuant to GATS Article III.3, V.5, V.7, and VII.4.

The ongoing market access negotiations take place in the CTS Special Session, described earlier in this chapter. Other bodies that report to the CTS include: the Committee on Specific Commitments, the Committee on Trade in Financial Services, the Working Party on Domestic Regulation, and the Working Party on GATS Rules. The following section discusses work in the CTS regular session.

Major Issues in 2007

The CTS met four times in 2007 – in March, June, October, and November. The CTS elected the delegate from Barbados as its new Chairperson.

The Committee on Regional Trade Agreements recommended a new format for notification of regional trade agreements. The CTS discussed the new format, which includes notifications under GATS Article V, and circulated a draft decision document for Members' consideration. The United States and other Members supported the proposed changes. In addition, Australia, the United States, and other Members continued to raise issues related to the certification of the EC-25 schedule of commitments pursuant to GATS Article XXI and the procedures outlined in S/L/80 and S/L/84.

In March and October, the CTS held the second and third meetings dedicated to the second Review of Air Transport Services. In accordance with paragraph five of the Annex on Air Transport Services, the CTS is to review periodically, at least every five years, developments in the air transport sector and the operation of the annex.

As part of China's Transitional Review Mechanism, the CTS held its sixth annual review of China's implementation of its WTO commitments in November 2007. The United States and other Members used the opportunity to raise questions and express concerns with regard to China's implementation of certain commitments.

The CTS received a number of notifications pursuant to GATS Article III.3 (transparency), GATS Article V (economic integration), and GATS Article VII (recognition). Armenia, Bolivia, and Switzerland made notifications under Article III.3. Notifications pursuant to GATS Article V were made by Honduras; Guatemala; Jordan and Singapore; Japan and Malaysia; United States, Guatemala, Honduras, El Salvador and Nicaragua; EFTA States and the Republic of Korea; Costa Rica and Mexico; United States and the Kingdom of Bahrain; Brazil, on behalf of Mercosur; the United States, the Dominican Republic, El Salvador, Honduras, Nicaragua and Guatemala; Panama and Singapore; India and Singapore; and Brunei Darussalam, Chile, New Zealand and Singapore. Switzerland made a notification pursuant to GATS Article VII.

Prospects for 2008

The CTS will continue discussions pursuant to the Air Annex review and other mandated reviews, and various notifications related to GATS implementation.

1. Committee on Trade in Financial Services

Status

The Committee on Trade in Financial Services (CTFS) provides a forum for Members to explore financial services market access or regulatory issues, including implementation of existing trade commitments.

Major Issues in 2007

The CTFS met twice in 2007 – in June and November. In June 2007, the Committee elected the delegate from Australia as the new Chairperson.

Brazil, Jamaica, and the Philippines are the only remaining participants in the negotiations on the 1997 Financial Services Agreement that have not yet ratified their commitments from those negotiations and accepted the Fifth Protocol (which is necessary for these commitments to enter into effect under the GATS). Members continue to urge those three countries to take the necessary steps to accept the Fifth Protocol as quickly as possible. At the request of the Chair, the three countries provided some information on the status of their domestic ratification efforts in both meetings.

In November 2007, as part of China's Transitional Review Mechanism, the CTFS carried out its sixth annual review of China's implementation of its WTO financial services commitments. The United States and other Members used that opportunity to raise questions and express concerns with China's implementation of certain commitments concerning insurance, banking and related services, securities, pensions, and financial information services.

The CTFS also provided a forum for discussion of other topics, including a report from UNCTAD on Expert Meeting on Trade and Development Implications of Financial Services and recent developments in financial services trade.

Prospects for 2008

The CTFS will continue to use the broad and flexible mandate of the CTFS to discuss various issues, including ratification of existing commitments and market access and regulatory issues.

2. Working Party on Domestic Regulation

Status

GATS Article VI:4, on Domestic Regulation, provides for Members to develop any necessary disciplines relating to qualification requirements and procedures, technical standards and licensing requirements and procedures. A Ministerial Decision assigned priority to the professional services sector, and Members subsequently established the Working Party on Professional Services (WPPS). In May 1997, the WPPS developed Guidelines for the Negotiation of Mutual Recognition Agreements in the Accountancy Sector, adopted by the WTO. The WPPS completed Disciplines on Domestic Regulation in the Accountancy Sector in December 1998 (The texts are available at http://www.wto.org).

In May 1999, the CTS established a new Working Party on Domestic Regulation (WPDR) which took on the work of the predecessor WPPS and its existing mandate. The WPDR is charged with determining whether any new disciplines are deemed necessary beyond those negotiated for the accountancy sector.

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

At the December 2005 Hong Kong Ministerial Conference, Ministers directed their negotiators to develop disciplines on domestic regulation pursuant to the mandate under Article VI:4 of the GATS before the end of the current round of negotiations, and called upon Members to develop text. Thereafter the pace of negotiations increased dramatically until the suspension of negotiations in July 2006. At the time of the suspension there remained very significant disagreement among proponents of the many proposals under consideration.

Major Issues in 2007

Following the resumption of negotiations in January 2007, the WPDR Chair issued an informal note on possible new disciplines for domestic regulation in April 2007. The informal Chair's note was based on intensive consultations with Members during 2006 and early 2007 and was an attempt to consolidate elements of Members' proposals, with a view to moving Members closer to a consensus on basic threshold issues, such as the appropriate level of ambition for disciplines applied to all services sectors, whether or not to submit any new disciplines to an operational "necessity test," how to balance the goal of diminishing regulatory trade barriers with the fundamental right to regulate, and how to address different levels of development. Members welcomed the Chair's informal note as a step forward and agreed that it could serve as the basis for further informal discussion.

For the remainder of 2007, Members met in regular informal sessions and consultations with the Chair. During these sessions Members engaged in intensive review and revision of the proposed disciplines with a view to producing an accepted negotiating text that would reflect majority views on major threshold issues. In general, Members felt these review sessions were successful.

During the 2007 review sessions, the United States engaged actively and constructively with other Members and continued to negotiate on the basis of its June 2006 position paper on the WPDR (http://www.ustr.gov/assets/Trade_Sectors/Services/asset_upload_file142_1037.pdf). The United States believes that the horizontal or sector-specific application of any new disciplines should depend on the nature of the proposed disciplines and that strong disciplines are not feasible on a horizontal basis. For that reason, the United States' priority in 2007 continued to be horizontal disciplines for regulatory transparency. Such disciplines are appropriate for horizontal implementation because they involve universal principles that promote governmental accountability, rule of law, and good governance. The United States also joined many other Members in voicing strong caution about submitting domestic regulations to an operational "necessity test" or other intrusive disciplines that could have negative implications for Members' rights to regulate.

Prospects for 2008

The WPDR will likely continue to work in informal and *ad hoc* meetings and through consultations, and it is expected that the Chair will circulate a revised note sometime in the first half of 2008.

3. Working Party on GATS Rules

Status

The Working Party on GATS Rules (WPGR) continues to discuss the possibility of new disciplines on emergency safeguard measures, government procurement, and subsidies in the context of the GATS.

Major Issues in 2007

The WPGR held formal meetings in April, July, and September of 2007 in accordance with the Doha Work Program resulting from the Hong Kong Ministerial Conference in December 2005. That program called for Members to intensify their efforts to conclude the negotiations on rule-making under GATS Articles X (emergency safeguard mechanism), Article XIII (government procurement), and Article XV (subsidies). In April 2007, the WPGR elected the delegate from Pakistan as its new Chairperson.

Regarding emergency safeguard measures, Members continued discussion on the basis of an informal communication from a group of ASEAN Members that proposed legal language establishing rules for the use of emergency safeguard measures in services. Issues raised during these largely informal discussions included the relationship of an emergency safeguard measure to market access commitments, modal application, conditions of application, how to establish a causal link, and special and differential treatment. Members continue to express divergent views on the various aspects raised in relation to emergency safeguard measures, and the United States and other Members continue to question the desirability and feasibility of any such measures.

On government procurement of services, delegations continued their discussion of a proposal by the European Communities regarding a legal text for an annex to the GATS. Members exchanged views on this proposal, and raised issues relating to possible benefits of opening procurement markets, procedural rules, special and differential treatment, the relationship to the plurilateral Government Procurement Agreement, and MFN application. The United States continues to engage on this issue but has questioned the need for a government procurement annex to the GATS in light of the fact that the Agreement on Government Procurement already covers services.

With respect to subsidies, Members discussed an informal communication from Hong Kong, China and Mexico and a follow-up document from Hong Kong, China on non-actionable subsidies. Members also discussed a note from the Secretariat that compiled information on subsidies found in Trade Policy Review (TPR) reports. The Chairperson reported on consultations undertaken in response to Member's request on obstacles to sharing information as called for under Article XV of the General Agreement on Trade in Services. The United States has questioned whether a meaningful information exchange or a discussion of non-actionable subsidies is possible in the absence of an agreed definition of subsidies in the services context.

Prospects for 2008

Members will continue to explore possible avenues for concluding the negotiations on rule-making. Such negotiations will involve more focused discussions in all three areas, including technical and procedural questions relating to the operation and application of any possible emergency safeguard measures in services; proposals by Members concerning government procurement of services; and further discussion of how to facilitate a productive information exchange on subsidies.

4. Committee on Specific Commitments

Status

The Committee on Specific Commitments (CSC) examines ways to improve the technical accuracy of scheduling commitments, primarily in preparation for the GATS negotiations, and oversees the application of the procedures for the modification of schedules under GATS Article XXI. The CSC also oversees implementation of commitments in Members' schedules in sectors for which there is no sectoral

body, which is currently the case for all sectors except financial services. The CSC also works to improve the classification of services, so that scheduled commitments reflect the services activities, in particular in new or evolving services.

Major Issues in 2007

In 2007, the CSC met in June and September. The CSC addressed classification issues, scheduling issues, editorial conventions for the submission of revised offers, and the relationship between old and new commitments. In June 2007, the CSC elected the delegate from the Czech Republic as its new Chairperson.

Classification: The CSC discussed classification issues related to computer and related services and distribution services. The European Communities circulated an informal document that outlined the classification it uses for distribution services in its preferential trade agreements. Several Members, including the United States, raised concerns with this classification system, and discussions are ongoing. The European Communities, supported by other Members, also provided a communication on the scope of coverage of computer and related services.

Relationship between old and new commitments: Discussions continued on the relationship between existing schedules and the new commitments resulting from the current negotiations**.**

Prospects for 2008

Work will continue on technical issues and other issues that Members raise. The CSC will likely continue to examine classification issues pertaining to other service sectors. Once the Doha Round concludes, the CSC will work to review offers for consistency with negotiated outcomes.

H. 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.

Major Issues in 2007

The DSB met 19 times in 2007 to oversee disputes and to address responsibilities such as appointing members to the Appellate Body and approving additions to the roster of governmental and non-governmental panelists.

Roster of Governmental and Non-Governmental Panelists: Article eight 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 submitted by roster candidates. These modifications 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 2007, 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.

Pursuant to the requirements of the Uruguay Round Agreements Act (URAA), 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 Trade Related Aspects of Intellectual Property (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 2007.

The Rules of Conduct elaborate on the ethical standards built into the DSU 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 an opportunity to dispute to address potential material violations of these ethical standards. The coverage of the Rules of Conduct exceeds the goals established by Congress in section 123(c) of the URAA, which directed 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 Agreement on Subsidies and Countervailing Measures (SCM 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: (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. On November 7, 2003, the DSB agreed to appoint Professor Merit Janow of the United States to a term of four years commencing on December 11, 2003, to reappoint Professor Taniguchi for a final term of four years commencing on December 11, 2003, and to reappoint Mr. Abi-Saab and Mr. Ganesan for a final term of four years commencing on June 1, 2004. On September 27, 2005, the DSB agreed to reappoint Mr. Baptista, Mr. Lockhart, and Mr. Sacerdoti for a final term of four years commencing on December 12, 2005. On July 31, 2006, the DSB agreed to the appointment of Mr. David Unterhalter of South Africa to serve through December 11, 2009, the remainder of the term of Mr. Lockhart who passed away on January 13, 2006. On November 27, 2007, the DSB agreed to appoint Ms. Lilia R. Bautista and Ms. Jennifer Hillman as members of the Appellate Body for four years commencing on December 11, 2007 and to appoint Mr. Shotaro Oshima and Ms. Yuejiao Zhang as members of the Appellate Body for four years commencing on June 1, 2008. The names and biographical data for the Appellate Body members during 2007 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 the 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; Mr. Bacchus served as Chairperson from December 15, 2001 to December 10, 2003; Mr. Abi-Saab served as Chairperson from December 13, 2003 to December 12, 2004; Mr. Taniguchi served as Chairperson from December 17, 2004 to December 16, 2005; Mr. Ganesan served as Chairperson from December 17, 2005 to December 16, 2006; Mr. Sacerdoti served as Chairperson from December 17, 2006 to December 17, 2007; and Mr. Baptista's term runs from December 18, 2007 to December 17, 2008.

In 2007, the Appellate Body issued five reports, two of which involved the United States as a party and are discussed in detail below.

Dispute Settlement Activity in 2007: During the DSB's first thirteen years in operation, WTO Members filed 369 requests for consultations (22 in 1995, 42 in 1996, 46 in 1997, 44 in 1998, 31 in 1999, 30 in 2000, 27 in 2001, 37 in 2002, 26 in 2003, 19 in 2004, 11 in 2005, 20 in 2006, and 14 in 2007). During that period, the United States filed 77 complaints against other Members' measures and received 107 complaints on U.S. measures. Several of these complaints involved the same issues (three U.S. complaints against others and 22 complaints against the United States). A number of disputes

commenced in earlier years remained active in 2007. What follows is a description of those disputes in which the United States was a complainant, defendant, or third party during the past year.

Prospects for 2008

While there were improvements to the multilateral trading system's dispute settlement system as a result of the Uruguay Round, there is still room for improvement. Accordingly, the United States has used the opportunity of the ongoing review to seek improvements in its operation, including greater transparency. In 2008, we expect the DSB to 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. Participants will continue to consider reform proposals in 2008.

a. Disputes Brought by the United States

In 2007, 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 2007 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 by 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 (the 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 have arisen as a result of Argentina's failure to implement fully its remaining TRIPS obligations that came due on January 1, 2000. These concerns include Argentina's failure to protect confidential test data submitted to government regulatory authorities for pharmaceuticals and agricultural chemicals; its denial of certain exclusive rights for patents; its failure to provide such provisional measures as preliminary injunctions to prevent infringements of patent rights; and its exclusion of certain subject matter from patentability. Consultations continued until April 16, 2002, when the two sides agreed to settle 8 of the 10 issues in the dispute. Argentina and the United States notified a settlement of these issues to the DSB on May 31, 2002. The United States reserved its rights with respect to the remaining issues, and the dispute remains in the consultation phase with respect to these issues.

Brazil – Measures on Minimum Import Prices (DS197)

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

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

Canada – Provisional Anti-Dumping and Countervailing Duties on Grain Corn from the United States (DS338)

On March 17, 2006, the United States requested consultations with Canada regarding Canada's December 2005 imposition of preliminary antidumping and countervailing duties on imports of grain corn from the United States. The United States alleged that the preliminary injury determination of the Canadian International Trade Tribunal (CITT) failed to address several factors, such as the volume and price of imports, and expressly decided not to analyze the evidence before it with respect to causation. In addition, Canada's antidumping and countervailing duty statutes appeared to authorize the imposition of duties in situations even in the absence of a specific finding that subsidized or dumped imports had caused injury to Canada's domestic industry. Canada and the United States held consultations on this matter on April 7, 2006. On April 18, 2006, the CITT issued a final negative injury determination in the matter, and all provisional duties were refunded. The CITT's negative final determination was upheld by Canada's Federal Court of Appeal on June 5, 2007.

China – Measures Affecting Imports of Automobile Parts (DS340)

On March 30, 2006, the United States requested consultations with China regarding China's treatment of motor vehicle parts, components, and accessories ("automotive parts") imported from the United States. Although China's WTO commitments limit its tariffs on imported auto parts to rates that are significantly below China's tariffs on finished vehicles, China implemented regulations that impose a charge on imported automotive parts equal to the tariff on complete automobiles, if the final assembled vehicle in which the parts are incorporated fails to meet certain local content requirements. The United States is concerned that these regulations impose a tax on U.S. automotive parts beyond that allowed by WTO rules and result in discrimination against U.S. auto parts. These regulations appear inconsistent with several WTO provisions including Articles II and III of the GATT 1994 and Articletwoof the *Agreement on Trade-Related Investment Measures*, as well as specific commitments made by China in its WTO accession agreement. The EU (WT/DS/339) and Canada (WT/DS/442) also initiated disputes regarding the same matter. The EU, Canada, and the United States requested the establishment of a panel on September 28, 2006, and a single panel was established on October 26, 2006 to examine the complaints. On January 29, 2007, the Director-General composed the panel as follows: Mr. Julio Lacarte-Muró, Chair, and Mr. Ujal Singh Bhatia and Mr. Wilhelm Meier, Members.

China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights (WT/DS362)

On April 10, 2007, the United States requested consultations with China regarding certain measures pertaining to the protection and enforcement of intellectual property rights in China. The issues of concern included: (1) the thresholds that must be met in order for certain acts of trademark counterfeiting and copyright piracy to be subject to criminal procedures and penalties; (2) the disposal by Chinese customs authorities of goods that infringe intellectual property rights and that have been confiscated by those authorities, in particular, the disposal of such goods following removal of their infringing features; (3) the denial of copyright and related rights protection and enforcement to creative works of authorship, sound recordings, and performances that have not been authorized for publication or distribution within China; and (4) the scope of coverage of criminal procedures and penalties for unauthorized reproduction or unauthorized distribution of copyrighted works. The Chinese measures at issue appear to be inconsistent with China's obligations under several provisions of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (the TRIPS Agreement).

The United States and China held consultations on June 7-8, 2007, but they did not resolve the dispute. On August 13, 2007, the United States requested the establishment of a panel with respect to issues (1) through (3) in the consultation request, and a panel was established on September 25, 2007. On December 13, 2007, the Director-General composed the panel as follows: Mr. Adrian Macey, Chair; and Mr. Marino Porzio and Mr. Sivakant Tiwari, Members.

China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products (WT/DS363)

On April 10, 2007, the United States requested consultations with China regarding certain measures related to the import and/or distribution of imported films for theatrical release, audiovisual home entertainment products (*e.g.*, video cassettes and DVDs), sound recordings, and publications (*e.g.*, books, magazines, newspapers, and electronic publications). On July 10, 2007, the United States requested supplemental consultations with China regarding certain measures pertaining to the distribution of imported films for theatrical release and sound recordings.

Specifically, the United States is concerned that certain Chinese measures: (1) restrict trading rights (such as the right to import goods into China) with respect to imported films for theatrical release, audiovisual home entertainment products, sound recordings, and publications; and (2) restrict market access for, or discriminate against, imported films for theatrical release and sound recordings in physical form and foreign service providers seeking to engage in the distribution of certain publications, audiovisual home entertainment products, and sound recordings. The Chinese measures at issue appear to be inconsistent with several WTO provisions, including provisions in the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and *General Agreement on Trade in Services* (GATS), as well as specific commitments made by China in its WTO accession agreement.

The United States and China held consultations on June 5-6, 2007 and July 31, 2007, but they did not resolve the dispute. On October 10, 2007, the United States requested the establishment of a panel, and on November 27, 2007 a panel was established.

China – Prohibited Subsidies (WT/DS358)

On February 2, 2007 and April 27, 2007, the United States requested consultations and supplemental consultations, respectively, with China regarding subsidies provided in the form of refunds, reductions, or exemptions from income taxes or other payments. Because they are offered on the condition that enterprises purchase domestic over imported goods or on the condition that enterprises meet certain export performance criteria, these subsidies appear to be inconsistent with several provisions of the WTO Agreement, including Article three of the *Agreement on Subsidies and Countervailing Measures*, Article III:4 of the *General Agreement on Tariffs and Trade 1994* and Articletwoof the *Agreement on Trade-Related Investment Measures*, as well as specific commitments made by China in its WTO accession agreement. Mexico also initiated a dispute regarding the same subsidies.

Because consultations did not resolve the disputes, the WTO Dispute Settlement Body, at the request of the United States and Mexico, established a single dispute settlement panel on August 31, 2007, to hear both disputes.

On December 19, 2007, the United States and China informed the DSB that they had reached an agreement with respect to this matter and circulated a copy of the agreement. The agreement calls for China to take certain steps, including the revision and repeal of certain existing measures as well as the adoption of new measures that would eliminate the import substitution and export subsidies challenged by

the United States by January 1, 2008. The agreement also commits China to not re-introduce those subsidies or establish import substitution or export subsidies under its new income tax law that went into effect on January 1, 2008. Mexico reached a similar agreement with China with respect to Mexico's dispute on the same subsidies.

European Union – Measures Concerning Meat and Meat Products (hormones) (DS26, 48)

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

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

Because the EU did not comply with the recommendations and rulings of the DSB by May 13, 1999, the final date of its compliance period as set by arbitration, the United States sought WTO authorization to suspend concessions with respect to certain products of the EU, the value of which represents an estimate of the annual harm to U.S. exports resulting from the EU's failure to lift its ban on imports of U.S. meat. The EU exercised its right to request arbitration concerning the amount of the suspension. On July 12, 1999, the arbitrators determined the level of suspension to be $116.8 million. On July 26, 1999, the DSB authorized the United States to suspend such concessions and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of $116.8 million. On May 26, 2000, USTR announced that it was considering changes to that list of EU products. While discussions with the EU to resolve this matter are continuing, no resolution has been achieved yet. On November 3, 2003, the EU notified the WTO of its plans to make permanent the ban on one hormone, oestradiol.

As discussed below (DS320), on November 8, 2004, the EU requested consultations with respect to "the United States' continued suspension of concessions and other obligations under the covered agreements" in the EU – Hormones dispute.

European Union – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs (DS174)

EU Regulation 2081/92, *inter alia*, discriminates against non-EU products and nationals with respect to the registration and protection of geographical indications for agricultural products and foodstuffs; it also protects geographical indications to the detriment of TRIPS-guaranteed trademark rights. The United States therefore considered this measure inconsistent with the EU's obligations under the TRIPS Agreement and the GATT 1994. The United States requested consultations regarding this matter on June 1, 1999 and on April 4, 2003, requested consultations on the additional issue of the EU's national treatment obligations under the GATT 1994. Australia also requested consultations with respect to this measure. When consultations failed to resolve the dispute, the United States requested the establishment of a panel on August 18, 2003. A panel was established on October 2, 2003, to consider the complaints of the United States and Australia. On February 23, 2004, the Director-General composed the panel as follows: Mr. Miguel Rodriguez Mendoza, Chair; and Mr. Seung Wha Chang and Mr. Peter Kam-fai

Cheung, Members. On April 20, 2005, the DSB adopted the panel report, which found that the EU's regulation on food-related geographical indications (GIs), EC Regulation 2081/92, is inconsistent with the EU's obligations under the TRIPS Agreement and the GATT 1994. This finding results from the long-standing U.S. complaint that the EU GI system discriminates against foreign products and persons – notably by requiring that EU trading partners adopt an "EU-style" system of GI protection – and provides insufficient protections to trademark owners. The WTO panel agreed that the EU's GI regulation impermissibly discriminates against non-EU products and persons. The panel also agreed with the United States that Europe could not, consistent with WTO rules, deny U.S. trademark owners their rights; it found that, under the regulation, any exceptions to trademark rights for the use of registered GIs were narrow, and limited to the actual GI name as registered. The panel recommended that the EU amend its GI regulation to come into compliance with its WTO obligations. The EU, the United States, and Australia (which filed a parallel case) agreed that the EU would have until April 3, 2006, to implement the recommendations and rulings. On April 10, 2006, the EU announced that it had issued a new regulation, which came into force on March 31, 2006, that implements the DSB's recommendations and rulings. The United States continues to monitor the situation.

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

On May 30, 2002, the United States requested consultations with the EU concerning the consistency of the EU's provisional safeguard measures on certain steel products with the GATT 1994 and with the WTO Agreement on Safeguards. Consultations were held on June 27 and July 24, 2002, but 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.

European Union – Measures Affecting the Approval and Marketing of Biotechnology Products (DS291)

Since the late 1990s, the EU has pursued policies that undermine agricultural biotechnology and trade in biotechnology foods. After approving a number of biotechnology products up through October 1998, the EU adopted an across-the-board moratorium under which no further biotechnology applications were allowed to reach final approval. In addition, six member states (Austria, France, Germany, Greece, Italy, and Luxemburg) adopted unjustified bans on certain biotechnology crops that had been approved by the EU prior to the adoption of the moratorium. These measures have caused a growing portion of U.S. agricultural exports to be excluded from EU markets, and unfairly cast concerns about biotechnology products around the world, particularly in developing countries.

On May 13, 2003, the United States filed a consultation request with respect to: (1) the EU's moratorium on all new biotechnology approvals, (2) delays in the processing of specific biotechnology product applications, and (3) the product-specific bans adopted by six EU member states (Austria, France, Germany, Greece, Italy, and Luxembourg). The United States requested the establishment of a panel on August 7, 2003. Argentina and Canada submitted similar consultation and panel requests. On August 29, 2003, the DSB established a panel to consider the claims of the United States, Argentina, and Canada. On March 4, 2003, the Director-General composed the panel as follows: Mr. Christian Häberli, Chairman; and Mr. Mohan Kumar and Mr. Akio Shimizu, Members.

The Panel issued its report on September 29, 2006. The Panel agreed with the United States, Argentina, and Canada that the disputed measures of the EU, Austria, France, Germany, Greece, Italy, and Luxembourg are inconsistent with the obligations set out in the SPS Agreement. In particular:

- The Panel found that the EU adopted a *de facto*, across-the-board moratorium on the final approval of biotechnology products, starting in 1999 up through the time the panel was established in August 2003.

- The Panel found that the EU had presented no scientific or regulatory justification for the moratorium, and thus that the moratorium resulted in "undue delays" in violation of the EU's obligations under the SPS Agreement.

- The Panel identified specific, WTO-inconsistent "undue delays" with regard to 24 of the 27 pending product applications that were listed in the U.S. panel request.

- The Panel upheld the United States' claims that, in light of positive safety assessments issued by the EU's own scientists, the bans adopted by six EU member States on products approved in the EU prior to the moratorium were not supported by scientific evidence and were thus inconsistent with WTO rules.

The DSB adopted the panel report on November 21, 2006. At the meeting of the DSB held on December 19, 2006, the EU notified the DSB that the EU intends to implement the recommendations and rulings of the DSB in these disputes, and stated that it would need a reasonable period of time for implementation. On June 21, 2006, the United States, Argentina, and Canada notified the DSB that they had agreed with the EU on a one-year period of time for implementation, to end on November 21, 2007. On November 21, 2007, the United States, Argentina, and Canada notified the DSB that they had agreed with the EU to extend the implementation period to January 11, 2008.

European Union – Regime for the Importation, Sale, and Distribution of Bananas – Recourse to Article 21.5 of the DSU by the United States (WT/DS27)

On June 29, 2007, the United States requested the establishment of a panel under Article 21.5 of the DSU to review whether the European Union (EU) has failed to bring its import regime for bananas into compliance with its WTO obligations and the DSB recommendations and rulings adopted on September 25, 1997. The request relates to the EU's apparent failure to implement the WTO rulings in a proceeding initiated by Ecuador, Guatemala, Honduras, Mexico and the United States. That proceeding resulted in findings that the EU's banana regime discriminates against bananas originating in Latin American countries and against distributors of such bananas, including a number of U.S. companies. The EU was under an obligation to bring its banana regime into compliance with its WTO obligations by January 1999. The EU committed to shift to a tariff-only regime for bananas no later than January 1, 2006. Despite these commitments, the banana regime implemented by the EU on January 1, 2006 includes a zero-duty tariff rate quota allocated exclusively to bananas from African, Caribbean, and Pacific countries. All other bananas do not have access to this duty-free tariff rate quota and are subject to a 176 Euro per ton duty. The United States believes that this new regime is in violation of GATT Articles I:1 and XIII.

Ecuador requested the establishment of a similar compliance panel on February 23, 2007 and a panel was composed in response to that request on June 15. The panel in response to the United States request was established on July 12, 2007. On August 13, 2007, the Director-General composed the panel as follows: Mr. Christian Häberli, Chair; and Mr. Kym Anderson and Mr. Yuqing Zhang, members. Mr. Häberli and Mr. Anderson were members of the original panel in this dispute.

The panel granted the parties' request to open the substantive meeting with the parties, as well as a portion of the third-party session to the public. The public observed these meetings from a gallery in the room in which the meetings were conducted.

European Union – Subsidies on Large Civil Aircraft (DS316)

On October 6, 2004, the United States requested consultations with the EU, as well as with Germany, France, the United Kingdom, and Spain with respect to subsidies provided to Airbus, a manufacturer of large civil aircraft. The United States alleged that such subsidies violated various provisions of the SCM Agreement, as well as Article XVI:1 of the GATT 1994. Consultations were held on November 4, 2004. On January 11, 2005, the United States and the EU agreed to a framework for the negotiation of a new agreement to end subsidies for large civil aircraft. The parties set a three-month time frame for the negotiations and agreed that, during negotiations, they would not request panel proceedings.

The United States and the EU were unable to reach an agreement within the 90-day time frame. Therefore, the United States filed a request for a panel on May 31, 2005. The Panel was established on July 20, 2005. The U.S. request challenges several types of EU subsidies that appear to be prohibited, or actionable, or both.

On October 17, 2005, the Deputy Director-General composed the panel as follows: Mr. Carlos Pérez del Castillo, Chair; and Mr. John Adank and Mr. Thinus Jacobsz, Members.

European Communities — Subsidies on Large Civil Aircraft (WT/DS347)

On January 31, 2006, the United States requested a second set of consultations with the EU, as well as with Germany, France, the United Kingdom, and Spain with respect to subsidies provided to Airbus, a manufacturer of large civil aircraft. The United States alleged that such subsidies violated various provisions of the SCM Agreement, as well as Articles III:4 and XVI:1 of the GATT 1994. On April 6, 2006, the United States filed a request for a panel. The Panel was established on May 9, 2006. The U.S. request challenges several types of EU subsidies that appear to be prohibited, or actionable, or both. On July 17, 2006, the Deputy Director-General composed the panel as follows: Mr. Tim Groser, Chair; and Mr. Mario Matus and Mr. Eduardo Pérez Motta, Members. At the request of the United States, the Panel suspended its work on October 9, 2006, in order to allow the DS316 panel to complete its work first. The authority for establishment of that panel lapsed on October 7, 2007, pursuant to Article 12.12 of the DSU.

India – Alcohol Tariffs (WT/DS360)

On March 6, 2007, the United States requested consultations with the government of India regarding India's additional customs duty and extra-additional customs duty on imports from the United States. The dispute involves alcoholic beverages as well as a number of other products for which India imposes customs duties in excess of bound rates set forth in its Schedule to the GATT 1994. Specifically, in its WTO Schedule, India committed to maintaining ordinary customs duties 150 percent *ad valorem* or less and that it would not impose other duties or charges on imports of alcoholic beverages. India, however, has imposed ordinary customs duties on imports of alcoholic beverages from the United States that result in ordinary customs duties on these imports as high as 550 percent. These duties, therefore, appear inconsistent with India's obligation under Article II:1(a) and (b) of the GATT 1994 not to apply ordinary customs duties or other duties or charges in excess of those set forth in its WTO Schedule or to accord less favorable treatment to imports than set forth in its WTO Schedule. India imposes these customs duties by levying an "additional customs duty" and an "extra-additional customs duty" in addition to and on top of a "basic customs duty" on imports of alcoholic beverages. The extra-additional customs duty also appears inconsistent with Article II:1(a) and (b) of the GATT 1994 with respect to a number of imports other than alcoholic beverages, likewise resulting in imposition of customs duties that exceed those set forth in India's WTO Schedule. These products include certain agricultural products such as milk, raisins, and orange juice, as well as various other products.

The United States and India held consultations on April 13, 2007 in Geneva. The European Union (EU) was joined in the consultations. These consultations failed to result in a mutually satisfactory resolution to this dispute and on May 24, 2007, the United States requested the establishment of a panel. The DSB considered this request at its meetings of June 4 and June 20, 2007, and established the Panel on June 20 with standard terms of reference. Australia, Chile, the EU, Japan, and Vietnam reserved third party rights in the dispute. On July 3, 2007, the parties agreed on the panelists, as follows: Mr. Luzius Wasescha, Chair, and Mr. Mateo Diego-Fernández and Mr. Bruce McRae, members.

The establishment of the Panel in this dispute (WT/DS360) followed the establishment of a panel on April 24, 2007 to consider similar claims raised by the EU against the additional and extra-additional customs duties on imports of wine and distilled spirits (WT/DS352). On July 3, 2007, the United States along with the EU and India agreed to have the same panelists, working procedures, and schedule for both disputes, but to have separate panel reports. However, on July 13, 2007, the EU requested, pursuant to DSU Article 12.12, that the panel in DS352 suspend its work and the panel granted that request on July 16, 2007. This did not affect the work of the panel requested by the United States.

Mexico – Definitive Antidumping Measures on Beef and Rice (DS295)

On June 16, 2003, the United States requested consultations on Mexico's antidumping measures on rice and beef, as well as certain provisions of Mexico's Foreign Trade Act and its Federal Code of Civil Procedure. The specific U.S. concerns included: (1) Mexico's injury investigations in the two antidumping determinations; (2) Mexico's failure to terminate the rice investigation after a negative preliminary injury determination and its decision to include firms that were not dumping in the coverage of the antidumping measures; (3) Mexico's improper application of the "facts available;" (4) Mexico's improper calculation of the antidumping rate applied to non-investigated exporters; (5) Mexico's improper limitation of the antidumping rates it calculated in the beef investigation; (6) Mexico's refusal to conduct reviews of exporters' antidumping rates; and (7) Mexico's insufficient public determinations. The United States also challenged five provisions of Mexico's Foreign Trade Act. The United States alleged violations of various provisions of the Antidumping Agreement, the SCM Agreement, and the GATT 1994. Consultations were held the summer of 2003. The United States requested the establishment of a panel on the measure on rice and the five measures of the Foreign Trade Act on September 19, 2003, and the DSB established a panel on November 7, 2003. The United States is continuing to monitor developments surrounding the beef antidumping measures.

On June 6, 2005, the panel issued its final report siding with the United States on all of the major claims in dispute. Specifically, the panel found that Mexico improperly: (1) based its injury analysis on outdated information and failed to examine half of the injury data it collected; (2) applied its antidumping measure to two U.S. exporters that were not dumping; (3) applied an adverse "facts available" margin to a U.S. exporter that had no shipments during the period of investigation; and (4) applied "facts available" margins to U.S. exporters and producers that it did not even investigate. The panel also found that six provisions of Mexico's antidumping and countervailing duty law are inconsistent "as such" with the WTO Antidumping Agreement and the SCM Agreement.

On July 20, 2005, Mexico appealed the findings in the panel report. The Appellate Body issued its final report on November 29, 2005. The Appellate Body upheld all but one of the panel's findings relating to the antidumping measure, and it upheld all of the panel's findings relating to the provisions of Mexico's antidumping and countervailing duty laws.

The one finding that the Appellate Body reversed went to the question of whether Mexico had properly applied "facts available" margins to U.S. exporters and producers it did not investigate, and the Appellate Body found on different grounds that Mexico had not acted properly in this respect. Accordingly, the

bottom line did not change. The DSB adopted the panel and Appellate Body reports on December 20, 2005. On September 11, 2006, Mexico revoked the antidumping measure on rice, thereby implementing the DSB's recommendations and rulings with respect to that measure. In December 2006, Mexico amended the Foreign Trade Act to address the inconsistencies that the WTO had identified with respect to the law.

Mexico – Tax Measures on Soft Drinks and Other Beverages (DS308)

On March 16, 2004, the United States requested consultations with Mexico regarding its tax measures on soft drinks and other beverages that use any sweetener other than cane sugar. These measures apply a 20 percent tax on soft drinks and other beverages that use any sweetener other than cane sugar. Soft drinks and other beverages sweetened with cane sugar are exempt from the tax. Mexico's tax measures also include a 20 percent tax on the commissioning, mediation, agency, representation, brokerage, consignment, and distribution of soft drinks and other beverages that use any sweetener other than cane sugar. Mexico's tax measures work, *inter alia,* to restrict U.S. exports to Mexico of high fructose corn syrup, a corn-based sweetener that is directly competitive and substitutable with cane sugar.

The United States considers these measures to be inconsistent with Mexico's national treatment obligations under Article III of the GATT 1994. Consultations were held on May 13, 2004, but they failed to resolve the dispute.

The United States requested the establishment of a panel on June 10, 2004, and the DSB established a panel on July 6, 2004. On August 18, 2004, the parties agreed to the composition of the panel as follows: Mr. Ronald Saborío Soto, Chair; and Mr. Edmond McGovern and Mr. David Walker, Members. On October 7, 2005, the panel circulated its report. The panel concluded that Mexico's beverage tax is inconsistent with Articles III:2 and III:4 of GATT 1994 and rejected Mexico's defense that the tax is justified as necessary to secure U.S. compliance with the North American Free Trade Agreement. The panel found that the beverage tax discriminates against U.S. sweeteners, including high-fructose corn syrup, by subjecting beverages made with any sweetener other than cane sugar to a 20 percent tax whereas beverages made with cane sugar are tax-exempt. On December 6, 2005, Mexico appealed the findings in the panel report, and on March 6, 2006, the Appellate Body issued its report. The Appellate Body rejected Mexico's appeal and affirmed that Mexico's tax is inconsistent with its WTO obligations. The DSB adopted the panel and Appellate Body's findings on March 24, 2006, and the United States and Mexico agreed on a reasonable period of time for Mexico to bring the tax into conformity with its WTO obligations of no later than January 1, 2007, or if Mexico's Congress enacted legislation to repeal the tax in December 2006, no later than January 31, 2007. Mexico repealed the tax effective January 1, 2007.

Turkey – Measures Affecting the Importation of Rice (DS334)

On November 2, 2005, the United States requested consultations regarding Turkey's import licensing system and domestic purchase requirement with respect to the importation of rice. By conditioning the issuance of import licenses to import at preferential tariff levels upon the purchase of domestic rice, not permitting imports at the bound rate, and implementing a *de facto* ban on rice imports during the Turkish rice harvest, Turkey appeared to be acting inconsistently with several WTO agreements, including the Agreement on Trade-Related Investment Measures (TRIMS), the GATT 1994, the Agreement on Agriculture, and the Agreement on Import Licensing Procedures. Consultations were held on December 1, 2005. The United States requested the establishment of a panel on February 6, 2006, and the DSB established a panel on March 17, 2006. On July 31, 2006, the Director-General composed the panel as follows: Ms. Marie-Gabrielle Ineichen-Fleisch, Chair; Mr. Yoichi Suzuki and Mr. Johann Frederick Kirsten, Members. The final report of the panel was circulated to WTO Members and made public on September 21, 2007. In the final report, the panel found that the system by which Turkey decided to

deny, or fail to grant, certain certificates required for importing rice outside the tariff rate quota from September 2003 and at certain periods thereafter, constituted a quantitative import restriction as well as a practice of discretionary import licensing inconsistent with Turkey's obligations under Article 4.2 of the Agreement on Agriculture. The panel also found that Turkey's domestic purchase requirement for rice imports accorded less favorable treatment to imported rice than domestic rice and was therefore inconsistent with Turkey's national treatment obligations under Article III:4 of the GATT 1994. The panel report was adopted by the DSB on October 22, 2007. Turkey informed the DSB at the end of November 2007 that it was in the process of implementing the recommendations and rulings of the DSB in this dispute and that it preserved its rights to a reasonable period of time (RPT) for such implementation.

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 2007 in which the United States was a responding party.

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 exempts certain retail and restaurant establishments that play radio or television music from paying royalties to songwriters and music publishers. The EU claimed that, as a result of this exception, the United States was in violation of its TRIPS obligations. Consultations with the EU took place on March 2, 1999. A panel on this matter was established on May 26, 1999. On August 6, 1999, the Director-General composed the panel as follows: Ms. Carmen Luz Guarda, Chair; Mr. Arumugamangalam V. Ganesan and Mr. Ian F. Sheppard, Members. The panel issued its final report on June 15, 2000, and found that one of the two exemptions provided by section 110(5) is inconsistent with the U.S. WTO obligations. The panel report was adopted by the DSB on July 27, 2000, and the United States has informed the DSB of its intention to respect its WTO obligations. On October 23, 2000, the EU requested arbitration to determine the 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 EU requested arbitration to determine the level of nullification or impairment of benefits to the EU 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 EU in this case is $1.1 million per year. On January 7, 2002, the EU 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 EU 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.

On June 23, 2003, the United States and the EU notified the WTO of a mutually satisfactory temporary arrangement regarding the dispute. Pursuant to this arrangement, the United States made a lump-sum

payment of $3.3 million to the EU, to a fund established to finance activities of general interest to music copyright holders, in particular awareness-raising campaigns at the national and international level and activities to combat piracy in the digital network. The arrangement covered a three-year period, which ended on December 21, 2004.

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 requested consultations on July 7, 1999. Consultations were held September 13 and December 13, 1999. On June 30, 2000, the EU requested a panel. A panel was established on September 26, 2000, and at the request of the EU the WTO Director-General composed the panel on October 26, 2000. The Director-General composed the panel 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 EU 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, and the United States informed the DSB of its intention to implement the recommendations and rulings. The reasonable period of time for implementation ended on June 30, 2005. On June 30, 2005, the United States and the EU agreed that the EU would not request authorization to suspend concessions at that time, and that the United States would not object to a future request on grounds of lack of timeliness.

United States – Antidumping Measures on Certain Hot-Rolled Steel Products from Japan (DS184)

Japan alleged that the preliminary and final determinations of the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (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 2000, the Director-General composed the panel as follows: Mr. Harsha V. Singh, Chairman; Mr. Yanyong Phuangrach 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, 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. The reasonable period of time

ended on July 31, 2005. With respect to the outstanding implementation issue, on July 7, 2005, the United States and Japan agreed that Japan would not request authorization to suspend concessions at that time and that the United States would not object to a future request on grounds of lack of timeliness.

United States – Countervailing Duty Measures Concerning Certain Products from the European Communities (DS212)

On November 13, 2000, the EU requested WTO dispute settlement consultations in 14 separate U.S. countervailing duty proceedings covering imports of steel and certain other products from member states of the EU, all with respect to the Department of Commerce's "change in ownership" (or "privatization") methodology that was challenged successfully by the EU in a WTO dispute concerning leaded steel products from the United Kingdom. Consultations were held December 7, 2000. Further consultations were requested on February 1, 2001 and held on April 3, 2001. A panel was established at the EU's request on September 10, 2001. In its panel request, the EU challenged 12 of the 14 U.S. countervailing duty proceedings, as well as Section 771(5)(F) of the Tariff Act of 1930.

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 EU 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 SCM 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 SCM Agreement, although it modified the panel's reasoning.

On January 27, 2003, the United States informed the DSB of its intention to implement the DSB's recommendations and rulings in a manner that respects U.S. WTO obligations. U.S. implementation proceeded in two stages. First, Commerce modified its methodology for analyzing a privatization in the context of the countervailing duty law. Commerce published a notice announcing its new, WTO-consistent methodology on June 23, 2003. Second, Commerce applied its new methodology to the 12 determinations that had been found to be WTO-inconsistent. On October 24, 2003, Commerce issued revised determinations under section 129 of the URAA. As a result of this action, Commerce: (1) revoked two countervailing duty orders in whole; (2) revoked one countervailing duty order in part; and (3) in the case of five countervailing duty orders, revised the cash deposit rates for certain companies.

On November 7, 2003, the United States informed the DSB of its implementation of the DSB's recommendations and rulings.

On March 17, 2004, the EU requested consultations regarding Commerce's new change of ownership methodology. The EU contended that Commerce countervails the entire amount of unamortized subsidies, even if the price paid for the acquired firm was only $1 less than the fair market value. With respect to Commerce's revised determinations, the EU complained about the three sunset reviews in which Commerce declined to address the privatization transactions in question on what essentially were "judicial economy" grounds. With respect to a fourth sunset review, the EU challenged Commerce's analysis of the sale of shares to employees of the company in question. Consultations took place on May

24, 2004. A panel was established on September 27, 2004. The original three panelists agreed to serve on the compliance panel.

On August 17, 2005, the panel circulated its report. With respect to one determination, the panel did not find that Commerce's application of the privatization methodology was inconsistent with U.S. WTO obligations. The panel did find that Commerce should have applied the privatization methodology in two other determinations relating to certain cut-to-length carbon steel plate from Spain and the United Kingdom, where Commerce simply assumed the benefit of the subsidy was extinguished by the privatization; in addition, the panel found that Commerce should have taken into account new record evidence presented during the redetermination proceeding. The panel also found that the USITC was not obliged to revisit its sunset determination on likelihood of injury. The DSB adopted the panel report on September 27, 2005, at which meeting the United States stated its intention to comply with the findings.

On May 26, 2006, Commerce issued revised determinations with respect to certain cut-to-length carbon steel plate from Spain and the United Kingdom. The Department revoked the countervailing duty orders in place with respect to *Cut-to-Length Carbon Steel Plate from Spain* and *Cut-to-Length Carbon Steel Plate from the United Kingdom* on October 4, 2006 and February 2, 2007, respectively. In addition, following a separate sunset review initiated in 2005, Commerce revoked the order with respect to the United Kingdom in October 2006. Also, following a separate sunset review, the USITC issued a determination that revocation of the antidumping duty order on cut-to-length carbon steel plate from Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

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

On December 21, 2000, Australia, Brazil, Chile, the EU, India, Indonesia, Japan, Korea, and Thailand requested consultations with the United States regarding the Continued Dumping and Subsidy Offset Act of 2000 (19 U.S.C. § 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, 2001. 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; and Mr. Maamoun Abdel-Fattah and Mr. William Falconer, Members.

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 Article VI of the GATT 1994. The panel also found that the CDSOA distorts the standing determination conducted by Commerce 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 Commerce's consideration of price undertakings (agreements to settle antidumping and countervailing duty 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 Antidumping 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 CDSOA 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. On March 14, 2003, the complaining parties requested arbitration to determine a reasonable period of time for U.S. implementation. On June 13, 2003, the arbitrator determined that this period would end on December 27, 2003. On June 19, 2003, legislation to bring the Continued Dumping and Subsidy Offset Act into conformity with U.S. obligations under the Antidumping Agreement, the SCM Agreement and the GATT of 1994 was introduced in the U.S. Senate (S. 1299).

On January 15, 2004, eight complaining parties (Brazil, Canada, Chile, the EU, India, Japan, Korea, and Mexico) requested WTO authorization to retaliate. The remaining three complaining parties (Australia, Indonesia, and Thailand) agreed to extend to December 27, 2004, the period of time in which the United States had to comply with the WTO rulings and recommendations in this dispute. On January 23, 2004, the United States objected to the requests from the eight complaining parties to retaliate, thereby referring the matter to arbitration. On August 31, 2004, the arbitrators issued their awards in each of the eight arbitrations. They determined that each complaining party could retaliate, on a yearly basis, covering the total value of trade not exceeding, in U.S. dollars, the amount resulting from the following equation: amount of disbursements under CDSOA for the most recent year for which data are available relating to antidumping or countervailing duties paid on imports from each party at that time, as published by the U.S. authorities, multiplied by 0.72.

Based on requests from Brazil, the EU, India, Japan, Korea, Canada, and Mexico, on November 26, 2004, the DSB granted these Members authorization to suspend concessions or other obligations, as provided in DSU Article 22.7 and in the Decisions of the Arbitrators. The DSB granted Chile authorization to suspend concessions or other obligations on December 17, 2004. On December 23, 2004, January 7, 2005 and January 11, 2005, the United States reached agreements with Australia, Thailand and Indonesia that these three complaining parties would not request authorization to suspend concessions at that time, and that the United States would not object to a future request on grounds of lack of timeliness.

On May 1, 2005, Canada and the EU began imposing additional duties of 15 percent on a list of products from the United States. On August 18, 2005, Mexico began imposing additional duties ranging from 9 to 30 percent on a list of U.S. products. On September 1, 2005, Japan began imposing additional duties of 15 percent on a list of U.S. products.

On February 8, 2006, President Bush signed the Deficit Reduction Act into law. That Act includes a provision repealing the CDSOA. Certain of the complaining parties nevertheless continued to impose retaliatory measures because they considered that the Deficit Reduction Act failed to bring the United States into immediate compliance. Thus, on May 1, 2006, the EU renewed its retaliatory measure and added eight products to the list of targeted imports. Japan renewed its retaliatory measure on September 1, 2006, retaining the same list of targeted imports. Mexico adopted a new retaliatory measure on September 14, 2006, imposing duties of 110 percent on certain dairy products through October 31, 2006. After that date, Mexico has taken no further retaliatory measures. Canada did not renew its retaliatory measures once they expired on April 30, 2006.

On April 17, 2007, the EU announced that it would renew its retaliatory measure as of May 1, 2007, adding 32 more products to the 2006 list. On September 1, 2007, Japan once again renewed its retaliatory duties.

United States – Subsidies on Upland Cotton (DS267)

On September 27, 2002, Brazil requested WTO consultations pursuant to Articles 4.1, 7.1 and 30 of the SCM Agreement, Article 19 of the Antidumping Agreement, and Article four of the DSU. The Brazilian consultation request on U.S. support measures that benefit upland cotton claimed that these alleged subsidies and measures are inconsistent with U.S. commitments and obligations under the SCM Agreement, the Agreement on Agriculture, and the GATT 1994. Consultations were held on December 3, 4 and 19, 2002, and January 17, 2003.

On February 6, 2003, Brazil requested the establishment of a panel. Brazil's panel request pertained to "prohibited and actionable subsidies provided to U.S. producers, users and/or exporters of upland cotton, as well as legislation, regulations and statutory instruments and amendments thereto providing such subsidies (including export credit guarantees), grants, and any other assistance to the U.S. producers, users and exporters of upland cotton" [footnote omitted]. The DSB established the panel on March 18, 2003. On May 19, 2003, the Director-General appointed as panelists Mr. Dariusz Rosati, Chair; Mr. Daniel Moulis and Mr. Mario Matus, Members.

On September 8, 2004, the panel circulated its report to all WTO Members and the public. The panel made some findings in favor of Brazil on certain of its claims and other findings in favor of the United States:

- The panel found that the "Peace Clause" in the WTO Agreement on Agriculture did not apply to a number of U.S. measures, including (1) domestic support measures and (2) export credit guarantees for "unscheduled commodities" and rice (a "scheduled commodity"). Therefore, Brazil could proceed with certain of its challenges.

- The panel found that the GSM 102, GSM 103, and SCGP export credit guarantees for "unscheduled commodities" (such as cotton and soybeans) and for rice are prohibited export subsidies. However, the panel also found that Brazil had not demonstrated that the guarantees for other "scheduled commodities" exceeded U.S. WTO reduction commitments and therefore breached the Peace Clause. Further, Brazil had not demonstrated that the programs threaten to lead to circumvention of U.S. WTO reduction commitments for other "scheduled commodities" and for "unscheduled commodities" not currently receiving guarantees.

- Some U.S. domestic support programs (*i.e.*, marketing loan, counter-cyclical, market loss assistance, and so-called "Step 2 payments,") were found to cause significant suppression of cotton prices in the world market in marketing years 1999-2002 causing serious prejudice to Brazil's interests. However, the panel found that other U.S. domestic support programs (*i.e.*, production flexibility contract payments, direct payments, and crop insurance payments) did not cause serious prejudice to Brazil's interests because Brazil failed to show that these programs caused significant price suppression. The panel also found that Brazil failed to show that any U.S. program caused an increase in U.S. world market share for upland cotton constituting serious prejudice.

- The panel did not reach Brazil's claim that U.S. domestic support programs threatened to cause serious prejudice to Brazil's interests in marketing years 2003-2007. The panel also did not reach Brazil's claim that U.S. domestic support programs per se cause serious prejudice in those years.

- The panel also found that Brazil had failed to establish that FSC/ETI tax benefits for cotton exporters were prohibited export subsidies.

- Finally, the panel found that Step 2 payments to exporters of cotton are prohibited export subsidies, not protected by the Peace Clause, and Step 2 payments to domestic users are prohibited import substitution subsidies because they were only made for U.S. cotton.

On October 18, 2004, the United States filed a notice of appeal with the Appellate Body; Brazil then cross-appealed. The Appellate Body circulated its report on March 3, 2005. The Appellate Body upheld the panel's findings appealed by the United States.

The Appellate Body also rejected or declined to rule on most of Brazil's appeal issues. On March 21, 2005, the DSB adopted the panel and Appellate Body reports and, on April 20, 2005, the United States advised the DSB that it intends to bring its measures into compliance.

On June 30, 2005, the United States announced that it would cease to issue GSM 103 export credit guarantees, and that it was instituting a new fee structure for the GSM 102 export credit guarantee program. Further, on July 5, the United States proposed legislation relating to the export credit guarantee and Step 2 programs. On July 5, 2005, Brazil requested authorization to impose countermeasures and suspend concessions in connection with the prohibited export subsidies findings. On July 14, 2005, the United States objected to the request, thereby referring the matter to arbitration. On August 17, 2005, the United States and Brazil agreed to suspend the arbitration. On October 1, 2005, the United States ceased to issue export credit guarantees under the SCGP. On October 6, 2005, Brazil made a separate request for authorization to impose countermeasures and suspend concessions in connection with the "serious prejudice" findings. The United States objected to Brazil's request on October 17, 2005, thereby also referring that matter to arbitration. On November 21, 2005, the United States and Brazil agreed to suspend the arbitration.

On February 8, 2006, President Bush signed into law the Deficit Reduction Act of 2005. That Act includes a provision repealing the Step 2 program as of August 2006.

On August 18, 2006, Brazil requested the establishment of an Article 21.5 panel. On September 28, 2006, the DSB established a panel to consider Brazil's claims. On October 25, 2006, the Director-General composed the panel as follows: Mr. Eduardo Pérez Motta, Chairman; and Mr. Mario Matus and Mr. Ho-Young Ahn, Members. On December 18, 2007, the Article 21.5 panel circulated its report. The panel found, *inter alia*, that: (1) U.S. export credit guarantees issued under the modified GSM 102 program with respect to unscheduled and certain scheduled (rice, pig and poultry meat) commodities constituted prohibited export subsidies; and (2) U.S. marketing loan and counter-cyclical payments for upland cotton were continuing to cause serious prejudice to Brazil by significantly suppressing world upland cotton prices. The panel rejected Brazil's claim that payments under the marketing loan and counter-cyclical payment programs were responsible for an increase in U.S. market share in MY 2005 and thereby caused serious prejudice to Brazil's interests. The panel also found that the United States was not required to have refused to perform on export credit guarantees that were issued prior to the deadline for the implementation of the DSB's recommendations and rulings as to such guarantees (July 1, 2005) and that were still outstanding as of that date.

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 Commerce and the USITC 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 Commerce'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. Argentina requested the establishment of a panel on April 3, 2003. The DSB established a panel on May 19, 2003. On September 4, 2003, the Director-General composed the panel as follows: Mr. Paul O'Connor, Chairman; and Mr. Bruce Cullen and Mr. Faizullah Khilji, Members. In its report circulated July 16, 2004, the panel agreed with Argentina that the waiver provisions prevent Commerce from making a determination as required by Article 11.3 and that Commerce's Sunset Policy Bulletin is inconsistent with Article 11.3 of the Antidumping Agreement. The panel rejected Argentina's claims that the USITC did not correctly apply the "likely" standard and did not conduct an objective examination. Further, the panel concluded that statutes providing for cumulation and the time-frame for continuation or recurrence of injury were not inconsistent with Article 11.3.

On August 31, 2004, the United States filed a notice of appeal. The Appellate Body issued its report on November 29, 2004. The Appellate Body reversed the panel's finding against the Sunset Policy Bulletin and upheld the other findings described above. The DSB adopted the panel and Appellate Body reports on December 17, 2004.

Argentina requested arbitration in order to determine the reasonable period of time for the United States to implement the recommendations and rulings of the DSB. The arbitrator awarded the United States 12 months, until December 17, 2005. On August 15, 2005, Commerce published proposed regulations to implement the finding that the waiver provisions were inconsistent with Article 11.3. Commerce published the final regulations on October 28, 2005, effective October 31, 2005. On December 16, 2005, Commerce issued the redetermination of the sunset review in question.

On March 6, 2006, Argentina requested the establishment of a panel to evaluate whether the United States complied with the recommendations and rulings of the DSB, and a panel was established on March 17, 2006. On November 30, 2006, the panel, comprising the original panelists, circulated its report. The panel concluded that the United States had not brought its measures into compliance. The panel concluded that the redetermination was not consistent with the Antidumping Agreement. The panel also concluded that the United States was obliged to amend the statute, rather than simply the regulations, and that as a result the statute and regulations were inconsistent with the Antidumping Agreement. The United States appealed, challenging the panel's findings concerning the waiver provisions. On April 12, 2007, the Appellate Body issued its report, agreeing with the United States that the waiver provisions had been brought into compliance.

On May 21, 2007, Argentina filed a request for authorization to suspend concessions under Article 22.2 of the DSU. On June 1, 2007, the United States objected to Argentina's request, thus referring the matter to arbitration under Article 22.6 of the DSU. The original panelists agreed to serve as arbitrators.

As a result of the second sunset review on oil country tubular goods, the antidumping duty order was revoked. On June 4, 2007, Argentina made a statement to the DSB that it welcomed news of the May 31, 2007, decision by the USITC to find that revocation of the order would not lead to the continuation or recurrence of injury. On June 21, 2007, the United States and Argentina filed a joint request to suspend the arbitration, and on June 26, 2007, the arbitrator suspended the proceedings.

United States – Anti-dumping Measures on Cement from Mexico (DS281)

On January 31, 2003, Mexico requested consultations regarding a variety of administrative determinations made in connection with the antidumping duty order on gray portland cement and cement clinker from Mexico, including seven administrative review determinations by Commerce, the sunset determinations

of Commerce and the USITC, and the USITC's refusal to conduct a changed circumstances review. Mexico also referred to certain provisions and procedures contained in the Tariff Act of 1930, the regulations of Commerce and the USITC, and Commerce's Sunset Policy Bulletin, as well as the URAA Statement of Administrative Action. Mexico cited a host of concerns, including case-specific dumping calculation issues; Commerce's practice of zeroing; the analytical standards used by Commerce and the USITC in sunset reviews; the U.S. retrospective system of duty assessment, including the assessment of interest; and the assessment of duties in regional industry cases. Consultations were held April 2-4, 2003. Mexico requested the establishment of a panel on July 29, 2003, and the DSB established a panel on August 29, 2003. On September 3, 2004, the Director-General composed the panel as follows: Mr. Peter Palecka, Chair, and Mr. Martin Garcia and Mr. David Unterhalter, Members.

On January 13, 2006, Mexico requested that the panel suspend its proceedings until further notice. The panel agreed to this request. On March 6, 2006, Mexico and the United States entered into an agreement to promote bilateral trade in cement. This agreement also provides for resolution of the WTO dispute. On January 14, 2007, since the panel had not been requested to resume its work, the authority for the establishment of the panel lapsed, in accordance with Article 12.12 of the DSU. On May 16, 2007, the United States and Mexico notified the DSB that they had reached a mutually agreed solution.

United States – Anti-dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico (DS282)

On February 18, 2003, Mexico requested consultations regarding several administrative determinations made in connection with the antidumping duty order on oil country tubular goods from Mexico, including the sunset review determinations of Commerce and the USITC. Mexico also challenged certain provisions and procedures contained in the Tariff Act of 1930, the regulations of Commerce and the USITC, and Commerce's Sunset Policy Bulletin, as well as the URAA Statement of Administrative Action. The focus of this case appeared to be on the analytical standards used by Commerce and the USITC in sunset reviews, although Mexico also challenged certain aspects of Commerce's antidumping methodology. Consultations were held April 2-4, 2003. Mexico requested the establishment of a panel on July 29, 2003, and the DSB established a panel on August 29, 2003. On February 11, 2003, the following panelists were selected, with the consent of the parties, to review Mexico's claims: Mr. Christer Manhusen, Chair; Mr. Alistair James Stewart and Ms. Stephanie Sin Far Man, Members. On June 20, 2005, the panel circulated its report. The panel rejected Mexico's claim that certain aspects of the U.S. administrative review procedures are inconsistent with U.S. WTO obligations, as well as Mexico's claims regarding the USITC's laws and regulations regarding the determination of likelihood of injury and the likelihood determination itself. The panel did find that the Sunset Policy Bulletin and Commerce's likelihood determination itself were inconsistent with Article 11.3 of the Antidumping Agreement.

On August 4, 2005, Mexico filed a notice of appeal regarding the panel's findings on likelihood of injury. The United States appealed the panel's findings regarding the Sunset Policy Bulletin. On November 2, 2005, the Appellate Body issued its report. The report upheld the panel's findings rejecting Mexico's claims regarding likelihood of injury. In addition, the Appellate Body reversed the panel's findings that the Sunset Policy Bulletin breaches U.S. obligations. The DSB adopted the panel and Appellate Body reports on November 28, 2005. Commerce issued a redetermination on June 9, 2006. Mexico filed a consultation request on August 21, 2006, contending that the United States failed to bring its measure into compliance. Consultations were held on August 31, 2006.

On April 12, 2007, Mexico filed a request for the establishment of a compliance panel, and on April 24, 2007, the compliance panel was established. The original panelists agreed to serve on the compliance panel.

As a result of the second sunset review on oil country tubular goods, the antidumping duty order was revoked. On July 5, 2007, Mexico requested the panel, pursuant to Article 12.12 of the DSU, to suspend the proceedings, and on July 11, 2007, the panel informed the DSB that it had suspended the proceedings until further notice.

United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services (DS285)

On March 13, 2003, Antigua & Barbuda ("Antigua") requested consultations regarding its claim that U.S. Federal, State, and territorial laws on gambling violate U.S. specific commitments under the GATS, as well as Articles VI, XI, XVI, and XVII of the GATS, to the extent that such laws prevent or can prevent operators from Antigua from lawfully offering gambling and betting services in the United States. Consultations were held on April 30, 2003.

Antigua requested the establishment of a panel on June 12, 2003. The DSB established a panel on July 21, 2003. At the request of the Antigua, the WTO Director-General composed the panel on August 25, 2003, as follows: Mr. B. K. Zutshi, Chairman; and Mr. Virachai Plasai and Mr. Richard Plender, Members. The panel's final report, circulated on November 10, 2004, found that the United States breached Article XVI (Market Access) of the GATS by maintaining three U.S. federal laws (18 U.S.C. §§ 1084, 1952, and 1955) and certain statutes of Louisiana, Massachusetts, South Dakota, and Utah. It also found that these measures were not justified under exceptions in Article XIV of the GATS.

The United States filed a notice of appeal on January 7, 2005. The Appellate Body issued its report on April 7, 2005, in which it reversed and/or modified several panel findings. The Appellate Body overturned the panel's findings regarding the state statutes, and found that the three U.S. federal gambling laws at issue "fall within the scope of 'public morals' and/or 'public order'" under Article XIV. To meet the requirements of the Article XIV chapeau, the Appellate Body found that the United States needed to clarify an issue concerning Internet gambling on horse racing.

The DSB adopted the panel and Appellate Body reports on April 20, 2005. On May 19, 2005, the United States stated its intention to implement the DSB recommendations and rulings. On August 19, 2005, an Article 21.3(c) arbitrator determined that the reasonable period of time for implementation would expire on April 3, 2006.

At the DSB meeting of April 21, 2006, the United States informed the DSB that the United States was in compliance with the recommendations and rulings of the DSB in the dispute. On June 8, 2006, Antigua requested consultations with the United States regarding U.S. compliance with the DSB recommendations and rulings. The parties held consultations on June 26, 2006. On July 5, 2006, Antigua requested the DSB to establish a panel pursuant to Article 21.5 of the DSU, and a panel was established on July 19, 2006. The Chairperson of the original panel and one of the panelists were unavailable to serve. The parties agreed on their replacements, and the panel was composed as follows: Mr. Lars Anell, Chairperson; and Mr. Mathias Francke and Mr. Virachai Plasai, Members. The report of the Article 21.5 panel, which was circulated on March 30, 2007, found that the United States had not complied with the recommendations and rulings of the DSB in this dispute. The DSB adopted the report of the Article 21.5 panel on May 22, 2007.

On June 21, 2007, Antigua submitted a request, pursuant to Article 22.2 of the DSU, for authorization from the DSB to suspend the application to the United States of concessions and related obligations of Antigua under the GATS and the TRIPS. On July 23, 2007, the United States referred this matter to arbitration under Article 22.6 of the DSU. The arbitration was carried out by the three panelists who served on the Article 21.5 panel.

On December 21, 2007, the Article 22.6 arbitration award was circulated. The arbitrator concluded that Antigua's annual level of nullification or impairment of benefits is $21 million and that Antigua may request authorization from the DSB to suspend its obligations under the TRIPS Agreement in this amount.

United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("zeroing") (DS294)

On June 12, 2003, the EU requested consultations regarding the use of "zeroing" in the calculation of dumping margins. Consultations were held July 17, 2003. The EU requested further consultations on September 8, 2003. Consultations were held October 6, 2003. The EU requested the establishment of a panel on February 5, 2004, and the DSB established a panel on March 19, 2004. On October 27, 2004, the panel was composed as follows: Mr. Crawford Falconer, Chair, and Mr. Hans-Friedrich Beseler and Mr. William Davey, Members. The panel issued its report on October 31, 2005, finding that Commerce's use of "zeroing" in antidumping investigations is inconsistent with U.S. obligations under the WTO, but rejecting the EU's claims that zeroing in other phases of antidumping proceedings is also inconsistent. On January 17, 2006, the EU appealed the panel report. The Appellate Body issued its report on April 18, 2006. In its report, the Appellate Body upheld the panel's finding that the U.S. "methodology" of zeroing in average-to-average comparisons in investigations is subject to challenge "as such" and that such methodology is inconsistent with the Antidumping Agreement. The Appellate Body also reversed the panel and found that the U.S. use of zeroing in certain assessment proceedings was also inconsistent with the Antidumping Agreement. The reasonable period of time for the United States to bring its measures into compliance expired on April 9, 2007.

On July 9, 2007, the EC requested consultations with the United States concerning its compliance with the recommendations and rulings of the DSB. The EC and the United States held consultations on July 30, 2007. On September 13, 2007, the EC requested the establishment of a compliance panel, and on September 25, 2007, the panel was established. The following individuals were named by the Director-General and will serve as the panelists: Mr. Felipe Jaramillo, Chair, and Ms. Usha Dwarka-Canabady and Mr. Scott Gallacher, members.

United States – Subsidies on Large Civil Aircraft (DS317)

On October 6, 2004, the EU requested consultations with respect to "prohibited and actionable subsidies provided to U.S. producers of large civil aircraft." The EU alleged that such subsidies violated several provisions of the SCM Agreement, as well as Article III:4 of the GATT. Consultations were held on November 5, 2004. On January 11, 2005, the United States and the EU agreed to a framework for the negotiation of a new agreement to end subsidies for large civil aircraft. The parties set a three-month time frame for the negotiations and agreed that, during negotiations, they would not request panel proceedings. These discussions did not produce an agreement. On May 31, 2005, the EU requested the establishment of a panel to consider its claims. The EU filed a second request for consultations regarding large civil aircraft subsidies on June 27, 2005. This request covered many of the measures covered in the initial consultations, as well as many additional measures that were not covered.

A panel was established with regard to the October claims on July 20, 2005. On October 17, 2005, the Deputy Director-General established the panel as follows: Ms. Marta Lucía Ramírez de Rincón, Chair, and Ms. Gloria Peña and Mr. David Unterhalter, Members. Since that time, Ms. Ramirez and Mr. Unterhalter resigned from the panel. They have not been replaced.

The EU requested establishment of a panel with regard to its second panel request on January 20, 2006. That panel was established on February 17, 2006. On December 8, 2006, the WTO issued notices

changing the designation of this panel to DS353. The summary below of *United States–Subsidies on large civil aircraft (Second Complaint) (DS353)* discusses developments with regard to this panel.

United States – Continued Suspension of Obligations in the EU - Hormones dispute (DS320)

On November 8, 2004, the EU requested consultations with respect to "the United States' continued suspension of concessions and other obligations under the covered agreements" in the EU – Hormones dispute. Consultations were held on December 16, 2004. The EU requested the establishment of a panel on January 13, 2005, and the panel was established on February 17, 2005. Australia, Canada, China, Mexico, and Chinese Taipei reserved their third-party rights. On June 6, 2005, the Director-General composed the panel as follows: Mr. Tae-yul Cho, Chairman, and Ms. Claudia Orozco and Mr. William Ehlers, Members. The panel, in a communication dated August 1, 2005, granted the parties' request to open the substantive meetings with the parties to the public via a closed-circuit television broadcast. The panel's meetings with third parties remain closed.

United States – Measures Relating to Zeroing and Sunset Reviews (DS322)

On November 24, 2004, Japan requested consultations with respect to: (1) Commerce's alleged practice of "zeroing" in antidumping investigations, administrative reviews, sunset reviews, and in assessing the final antidumping duty liability on entries upon liquidation; (2) in sunset reviews of antidumping duty orders, Commerce's alleged irrefutable presumption of the likelihood of continuation or recurrence of dumping in certain factual situations; and (3) in sunset reviews, the waiver provisions of U.S. law. Japan claims that these alleged measures breach various provisions of the Antidumping Agreement and Article VI of the GATT 1994. Consultations were held on December 20, 2004. Japan requested the establishment of a panel on February 4, 2005, and a panel was established on February 28, 2005. On April 15, 2005, the Director-General composed the panel as follows: Mr. David Unterhalter, Chair, and Mr. Simon Farbenbloom and Mr. Jose Antonio Buencamino, Members.

The panel report was circulated on September 20, 2006. The panel found that there was one measure, "zeroing," that was applicable in all types of comparisons and all proceedings. The panel agreed with prior reports that zeroing in average-to-average comparisons in investigations is inconsistent with the Antidumping Agreement. However, the panel also found that zeroing in transaction-to-transaction comparisons is not inconsistent with the Antidumping Agreement, and, expressly rejecting the Appellate Body's reasoning in *US – Zeroing (EC),* also found that zeroing in assessment proceedings is not inconsistent with the Antidumping Agreement. Japan appealed the panel report. The United States filed a cross-appeal.

In a report circulated January 9, 2007, the Appellate Body upheld the panel's findings that the United States maintains a single "zeroing procedures" measure applicable to investigations and administrative reviews. The Appellate Body reversed the panel's findings regarding zeroing in transaction-to-transaction comparisons in investigations, and it also reversed the panel's findings concerning zeroing in assessment proceedings. The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body, on January 23, 2007. On February 20, 2007, the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in connection with this matter. On May 4, 2007, the United States and Japan informed the DSB that they had agreed that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would end on December 24, 2007.

United States – Antidumping Measure on Shrimp from Ecuador (DS335)

On November 17, 2005, Ecuador requested consultations with respect to Commerce's imposition of definitive antidumping duties on certain frozen warmwater shrimp from Ecuador. Specifically, Ecuador has alleged that Commerce's use of a "zeroing" methodology is inconsistent with Article VI of the GATT 1994 and several provisions of the Antidumping Agreement. Consultations were held on January 31 and March 3, 2006. Ecuador filed a request for the establishment of a panel on June 6, 2006, and a panel was established on July 19, 2006. On September 26, 2006, the parties agreed to the following panelists: Mr. Alberto Dumont, Chair, and Ms. Deborah Milstein and Ms. Stephanie Sin Far Man, Members.

On January 30, 2007, the panel circulated its report, finding the use of zeroing in this particular investigation to have breached the Antidumping Agreement. On February 20, 2007, the DSB adopted the report. The Department of Commerce recalculated the dumping margins. The recalculated margins were below *de minimis*, and the Department revoked the antidumping duty order.

United States — Measures Relating to Shrimp from Thailand (DS343)

On April 24, 2006, Thailand requested consultations with respect to the imposition by U.S. Customs and Border Protection of an additional bonding requirement on certain importers of shrimp subject to an antidumping duty order on frozen warmwater shrimp from Thailand. In addition, Thailand requested consultations with respect to Commerce's alleged use of "zeroing" in the antidumping investigation that resulted in the order. Thailand has alleged that these measures breach several provisions of the Antidumping Agreement and the GATT 1994. Consultations were held on August 1, 2006. Thailand requested the establishment of a panel on September 15, 2006, and a panel was established on October 26, 2006. On January 26, 2007, the Director-General composed the panel as follows: Mr. Michael Cartland, Chair, and Mr. Graham Sampson and Ms. Enie Neri de Ross, Members.

United States — Final Anti-dumping Measures on Stainless Steel from Mexico (DS344)

On May 26, 2006, Mexico requested consultations with respect to Commerce's alleged use of "zeroing" in an antidumping investigation and three administrative reviews involving certain stainless steel products from Mexico. Mexico claims these alleged measures breach several provisions of the Antidumping Agreement, the GATT 1994 and the WTO Agreement. Consultations were held on June 15, 2006. On October 12, 2006, Mexico filed a request for the establishment of a panel, and a panel was established on October 26, 2006. On December 20, 2006, the Director-General composed the panel as follows: Mr. Albert Dumont, Chair, and Mr. Bruce Cullen and Ms. Leora Blumberg, Members.

On December 20, 2007, the panel circulated its report. The panel found that the use by the United States of "model zeroing" in investigations, including in the particular investigation at issue in this dispute, was inconsistent with U.S. obligations under the Antidumping Agreement. The panel also found, however, that the use by the United States of "simple zeroing" in administrative reviews (including in the administrative reviews at issue in this dispute) was not inconsistent with U.S. obligations under the Antidumping Agreement.

United States — Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties (DS345)

On April 24, 2006, India requested consultations with respect to the imposition by U.S. Customs and Border Protection of an additional bonding requirement on certain importers of shrimp subject to an antidumping duty order on frozen warmwater shrimp from India. India has alleged that these measures breach several provisions of the Antidumping Agreement and the GATT 1994. Consultations were held

on July 31, 2006. India requested the establishment of a panel on October 26, 2006, and a panel was established on November 21, 2006. On January 26, 2007, the Director-General composed the panel as follows: Mr. Michael Cartland, Chair, and Mr. Graham Sampson and Ms. Enie Neri de Ross, Members.

United States — Continued Existence and Application of Zeroing Methodology (Zeroing II) (DS350)

On October 2, 2006, the EU requested consultations with respect to Commerce's alleged use of "zeroing" in 4 antidumping investigations, 35 administrative reviews, and 1 sunset review involving certain products from the EU, as well as Commerce's alleged use of a "zeroing" methodology in determining the dumping margin in reviews. The EU claims these alleged measures breach several provisions of the Antidumping Agreement, the GATT 1994 and the WTO Agreement. Consultations were held on November 14, 2006 and February 28, 2007. On May 10, 2007, the European Communities requested the establishment of a panel. At its meeting on June 4, 2007, the DSB established a panel. On July 6, 2007, the Director-General composed the Panel as follows: Mr. Faizullah Khilji, Chair, and Ms. Lilia R. Bautista and Mr. Michael Mulgrew, Members. Following the resignation on November 8, 2007, of Ms. Lilia R. Bautista as a Member of the panel, the United States and the EC agreed on November 27, 2007, that Ms. Andrea Marie Brown would replace her.

United States – Subsidies on Large Civil Aircraft (Second Complaint) (DS353)

On June 27, 2005, the EU filed a second request for consultations regarding large civil aircraft subsidies allegedly applied by the United States. The section above on *United States–Subsidies on Large Civil Aircraft (DS317)* discusses developments with regard to the dispute arising from the initial request for consultations. The June 2005, request covered many of the measures covered in the initial consultations, as well as many additional measures that were not covered. The EU requested establishment of a panel with regard to its second panel request on January 20, 2006. That panel was established on February 17, 2006. On November 22, 2006, the Deputy Director-General composed the panel as follows: Mr. Crawford Falconer, Chair, and Mr. Francisco Orrego Vicuña and Mr. Virachai Plasai, Members.

The panel granted the parties' request to open the substantive meetings with the parties to the public via a screening of a videotape of the public session. The sessions of the panel meeting that involves business confidential information and the panel's meeting with third parties are closed.

United States – Agriculture Subsidies (Canada) (WT/DS357)

On January 8, 2007, Canada requested consultations with the United States alleging (1) serious prejudice to the interests of Canada within the meaning of Articles five and six of the SCM Agreement in that subsidies to U.S. corn producers had caused price suppression for corn in Canada; (2) that certain U.S. export credit guarantee programs confer export subsidies in contravention of the SCM Agreement and the Agreement on Agriculture, and (3) that the U.S. exceeded its commitments regarding the Total Aggregate Measurement of Support in favor of domestic producers of agricultural products in several years from 1999 to 2005. Consultations were held on February 7, 2007.

Canada requested a panel with respect to points (2) and (3) on June 7, 2007. On November 8, 2007, Canada submitted a revised request that covered point (3) only, and on November 15, 2007, Canada withdrew its June 7 request. On December 17, 2007, the DSB established a single panel to hear both Canada's revised claims and Brazil's claims in DS365, discussed below.

United States – Agriculture Subsidies (Brazil) (WT/DS365)

On July 11, 2007, Brazil requested consultations with the United States alleging (1) that the U.S. exceeded its commitments regarding the Total Aggregate Measurement of Support in favor of domestic producers of agricultural products in several years from 1999 to 2005 and (2) that certain U.S. export credit guarantee programs confer export subsidies in contravention of the SCM Agreement and the Agreement on Agriculture. Consultations were held on August 22, 2007.

Brazil requested a panel on November 8, 2007 with respect to point (1) only. On December 17, 2007, the DSB established a single panel to hear both Brazil's claims and Canada's claims in DS357, discussed above.

United States – Preliminary Anti-Dumping and Countervailing Duty Determinations on Coated Free Sheet Paper from China (WT/DS368)

On September 14, 2007, the government of China (GOC) requested WTO consultations concerning preliminary antidumping and countervailing duty determinations by the Department of Commerce in the coated free sheet paper investigations. China claimed that (1) the determinations that the countervailed subsidies were "specific" or limited to certain industries or companies, (2) the "benefit" calculation for a government loan program, (3) the calculation of the amount of subsidy, and (4) the calculation of the amount of dumping were inconsistent with U.S. obligations under the WTO Agreement. Consultations were held on October 12, 2007. On November 20, 2007, the ITC determined that a U.S. industry is neither materially injured nor threatened with material injury by reason of imports of coated free sheet paper from China. Accordingly, no final antidumping or countervailing duty order was issued.

I. Trade Policy Review Body

Status

The Trade Policy Review Body (TPRB) is the subsidiary body of the General Council, created by the Marrakesh Agreement establishing the WTO, to administer the Trade Policy Review Mechanism (TPRM). The TPRM examines domestic trade policies of each Member on a schedule designed to cover the full WTO Membership on a timetable determined by trade volume. The express purpose of the review process is to strengthen Members' observance of WTO provisions and to contribute to the smoother functioning of the multilateral trading system. Moreover, the review mechanism serves as a valuable resource for improving the transparency of Members' trade and investment regimes. Members continue to value the review process because it informs each government's own trade policy formulation and coordination.

The Member under review works closely with the WTO Secretariat to provide relevant information for the process. The Secretariat produces an independent report on the trade policies and practices of the Member under review. Accompanying the Secretariat's report is the Member's own report. In a TPRB session, the WTO Membership discusses these reports together and the Member under review addresses the reports and answers questions about its trade policies and practices. Reports cover the range of WTO agreements – including those relating to goods, services, and intellectual property – and are available to the public on the WTO's website at http://www.wto.org. Documents are filed on the website's Document Distribution Facility under the document symbol "WT/TPR."

Major Issues in 2007

During 2007, the TPRB reviewed the trade regimes of Argentina; Australia; Bahrain; Canada; Central African Republic; Cameroon; Chad; Costa Rica; European Union; Gabon; India; Indonesia; Japan; Macao, China; Organization of Eastern Caribbean States (Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines); Panama; Peru; Thailand; and Turkey. Central African Republic, Chad, and Panama underwent their first reviews. Two of these Members – Central African Republic and Chad – are LDCs.

From its inception in 1998 to the end of 2007, the TPRM has conducted 248 reviews, covering 133 out of 151 Members (counting the EU as twenty-five) and representing some 97 percent of world trade.

While each review highlights the specific issues and measures concerning the individual Member, certain common themes emerged during the course of the 2007 reviews. These included:

- transparency in policy-making and implementation;
- economic environment and trade liberalization;
- implementation of the WTO Agreements;
- regional trade agreements and their relationship with the multilateral trading system;
- tariff issues, including: preferences, rationalization, and the gap between applied and bound rates;
- customs clearance procedures and valuation;
- import and export restrictions and licensing procedures;
- the use of contingency measures such as anti-dumping and countervailing duties;
- technical and sanitary measures and their relationship to market access;
- standards and their equivalence with international norms;
- intellectual property rights legislation and enforcement;
- government procurement policies and practices;
- state involvement in the economy and privatization programs;
- trade-related investment policy issues;
- incentive measures;
- sectoral trade-policy issues, particularly liberalization in agriculture and certain services sectors;
- GATS commitments; and
- development issues, including technical assistance in implementing the WTO Agreements.

The Trade Policy Review Body's Report to the Singapore Ministerial Meeting suggested that Members pay greater attention to LDCs in preparing the TPRB timetable. A 1999 appraisal of the TPRM's operation also drew attention to this matter. Overall, by the end of 2007, the TPRB had reviewed 27 of the 32 least developed Members of the WTO.

Increasingly, Trade Policy Reviews of LDCs perform a technical assistance function, helping them improve their understanding of the trade policy structure's relationship with the WTO Agreements. The reviews have also enhanced these countries' understanding of the WTO Agreements, thereby enabling them better to comply and integrate into the multilateral trading system. In some cases, the reviews have spurred better interaction between government agencies.

The review process for an LDC now includes a two-to-three-day seminar for its officials on the WTO, in particular on the trade policy review exercise and the role of trade in economic policy. During 2007, the seminars for the Central African Republic and Madagascar focused on preparation for such reviews.

Prospects for 2008

The TPRM will continue to be an important tool for monitoring Members' adherence to WTO commitments and an effective forum in which to encourage Members to meet their obligations and to adopt further trade liberalizing measures. In June 2008, the next trade policy review of the United States is scheduled to take place.

J. 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. Since then, the CTE has discussed many important issues, with a focus on those identified in the Doha Declaration. These issues include: market access associated with environmental measures (sub-paragraph 32(i)); the TRIPS Agreement and the environment (sub-paragraph 32(ii)); labeling for environmental purposes (sub-paragraph 32(iii)); capacity-building and environmental reviews (paragraph 33); and discussion of the environmental aspects of the Doha negotiations (paragraph 51). These issues identified in the Doha Declaration are separate from those that are subject to specific negotiating mandates that are being taken up by the CTESS (discussed in section B.6 of this chapter).

Major Issues in 2007

In 2007, the CTE met twice, in June and December. In general, Members have been less active in meetings of the CTE, given the increased workload and intensified negotiating schedule of the CTESS. That said, the United States has continued its active role in CTE discussions, as discussed below.

- Market *Access under Doha Sub-Paragraph 32(i):* Members considered how the CTE could move the discussion forward in a more structured way, and, more specifically, in the format of Members' experience-sharing, particularly with respect to market access concerns of developing country Members. Attention was also given to specific sectors, including illegal logging. The CTE received information regarding regional workshops on environmental requirements related to trade in electronic goods and organic agricultural products, as well as other work being conducted by the UN Conference on Trade and Development (UNCTAD).

- The *TRIPS Agreement and the 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. Several suggestions for structuring further discussions under this agenda item include studying the effects, if any, of trade and intellectual property rights regimes on biodiversity and exploring funding for biodiversity protection and technology transfer.

- Labeling *for Environmental Purposes under Doha Sub-Paragraph 32(iii):* Discussions under this agenda item continued to reflect a lower level of interest. However, there was increased interest in the success of voluntary, performance-based eco-labeling schemes, such as the U.S. Energy Star Program.

- Capacity *Building and Environmental Reviews under Doha Paragraph 33:* Many developing country Members stressed the importance of benefiting from technical assistance related to WTO negotiations on trade and environment, particularly given the complexity of some of these issues. Members held discussions with respect to national environmental reviews, and the Secretariat informed the CTE of its trade and environment technical assistance activities undertaken in 2007 and planned for 2008.

- Discussion *of Environmental Effects of Negotiations under Doha Paragraph 51:* Discussions under this agenda item continued to focus on developments in other areas of negotiations, based on the updates from relevant WTO divisions regarding the environment-related issues in the Doha negotiations on Agriculture, Market Access for Non-agricultural Products, WTO Rules, and Services (WT/CTE/GEN/8/Suppl.1, WT/CTE/GEN/9/Add.1, WT/CTE/GEN/10/Suppl.1 and WT/CTE/GEN/11/Suppl.1, respectively).

Prospects for 2008

It is expected that the CTE will continue to focus its attention on paragraphs 32, 33, and 51 of the Doha Declaration, and that these discussions may become more structured in 2008.

2. Committee on Trade and Development

Status

The Committee on Trade and Development (CTD) was established in 1965 to strengthen the GATT 1947's role in the economic development of less-developed GATT Contracting Parties. In the WTO, the CTD is a subsidiary body of the General Council. Since the Doha Development Round was launched, two additional sub-groups of the CTD have been established, a Subcommittee on Least Developed Countries (LDCs) and a Dedicated Session on Small Economies.

The CTD addresses trade issues of interest to Members with particular emphasis on issues related to the operation of the "Enabling Clause" (the 1979 Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries). In this context, the CTD focuses on the Generalized System of Preferences (GSP) programs, the Global System of Trade Preferences among developing country Members, and regional integration efforts among developing country Members. In addition, the CTD focuses on issues related to the fuller integration of all developing country Members into the trading system, technical cooperation and training, commodities, market access in products of interest to developing countries, and the special concerns of the LDCs, small, and landlocked economies.

The CTD has been the primary forum for discussion of broad issues related to the nexus between trade and development, rather than the implementation or operation of a specific agreement. Since the establishment of the DDA, the CTD has intensified its work on issues related to trade and development. The CTD has focused on issues such as expanding trade in products of interest to developing country Members, problems associated with reliance on a narrow export base and on commodities, the WTO's

technical assistance and capacity building activities, and an overall assessment of the development aspects of the DDA and sustainable development goals. As directed in the 2005 Hong Kong Ministerial Declaration, the CTD also conducts annual reviews of steps taken by WTO Members to implement the decision on providing duty-free, quota-free (DFQF) market access to the LDC Members.

Work in the Sub-Committee on LDCs and the Dedicated Session on Small Economies has included review of market access challenges related to exports of LDC Members and discussed options for improving export competitiveness in textiles and clothing, and the use of regional bodies to address the trade-related needs of small, vulnerable economies, including island and landlocked states.

Major Issues in 2007

The CTD in Regular Session held six formal sessions in March, May, July, October, November and December 2007. Activities of the CTD and its subsidiary bodies in 2007 included:

Duty-Free, Quota-Free Market Access for LDCs Members: The work of the CTD in 2007 included reviews of papers submitted by the United States, Canada and Japan on steps each had taken to implement the Hong Kong decision to provide DFQF market access to the LDCs Members. The U.S. papers contain a summary of the U.S. domestic legal and consultative process for implementing the DFQF decision (WT/COMTD/W/149/Add.1, Add.2 and Add.4). During these reviews, the LDC Group expressed appreciation to those developed country Members that had fulfilled their obligations under the Decision, and called for the provision of enhanced DFQF market access from others.

Transparency of Preferential Trading Arrangements: In 2007, the CTD reviewed notifications by Members under the Enabling Clause concerning regional trade agreements (RTAs) and Generalized System of Preferences (GSP) programs. Two notifications by the United States concerning its GSP scheme (WT/COMTD/N/1/Add.4 and Add.5) were considered. A central theme in discussions in the CTD over the course of 2007 was the need for greater transparency of recently-notified RTAs and GSP programs, including the China-ASEAN Framework Agreement on Comprehensive Economic Cooperation, the Asia-Pacific Trade Agreement, and the GSP program of the EU. In each case, Members sought to obtain additional information on the terms of these arrangements from the parties in order to better understand how their own trade might be affected. To date, there have been no RTAs notified to the CTD under the new transparency mechanism for RTAs that was implemented in accordance with the December 2006 General Council decision.

In December 2006, the General Council invited the CTD to review the transparency of GSP programs and other preferential agreements under its mandate. Brazil and India circulated a non-paper (JOB(07)/142) in October 2007, which was considered by the Committee at its October meeting. The Chairman encouraged the proponents to reflect on the questions and comments that had been raised by Members on the non-paper, and to start thinking of revising and updating its content. The General Council encouraged the Committee to consider the matter and report back by July 2008 for appropriate action, as necessary, and informal meetings will continue to take place on the subject.

Trade-Related Technical Assistance and Training (TRTA): In 2007, the Secretariat produced the first biennial technical assistance and training plan (the plan had been developed on an annual basis in previous years). This was done as a result of ongoing discussions with Members to create a more predictable and well-thought plan for TRTA (as opposed to the earlier one-year plans). It is envisioned that a multi-year plan will translate into more predictable and stable funding for WTO TRTA. The Biennial Technical Assistance and Training Plan 2008-2009 was adopted at the November meeting.

Other CTD Issues: The CTD considered presentations on a wide range of traditional and non-traditional issues in the trade and development nexus. These issues included commodity dependence and the growth of developing country participation in the global economy. In order to assist the Committee with its requirement to keep under continuous review the participation of developing country Members in the multilateral trading system, the Secretariat prepared a report (WT/COMTD/W/162) highlighting salient features concerning the participation of developing economies in the global trading system.

Dedicated Session on Small Economies: Following on work of the CTD in the Dedicated Session (CTD-DS) to identify the unique characteristics and problems of Small Economies in the trading system, in 2007, the CTD-DS continued to monitor the progress of the small economies' proposals in the negotiating and other bodies. In addition to an informal meeting, the Dedicated Session held one formal meeting in December where the Secretariat presented an updated compilation paper of the small economies' negotiating proposals to assist the Dedicated Session with its monitoring role.

LDC Subcommittee: The Subcommittee held three meetings in 2007 where it mainly focused on the implementation of the WTO Work Program for the LDCs adopted by Members in 2002. The subjects discussed included: market access for LDCs; trade-related technical assistance and capacity-building initiatives for LDCs; assistance to LDCs in the diversification of their production and export base; and accession of LDCs.

Prospects for 2008

The CTD is expected to continue to monitor developments as they relate to issues of concern to developing country Members, including those related to technical assistance. Interest in market access is expected to continue. In this vein, the CTD will undertake its responsibility to review steps taken by Members, both developed and developing, to provide DFQF market access to the LDC Members. In addition, the CTD's examination of RTAs between developing country Members is likely to increase with the implementation of the new transparency mechanism.

3. Committee on Balance-of-Payments Restrictions

Status

The Uruguay Round Understanding on Balance-of-Payments (BOP) substantially strengthened GATT disciplines on BOP measures. Under the WTO, any Member imposing restrictions for balance-of-payments purposes must consult regularly with the BOP Committee to determine whether the use of such restrictions are necessary or desirable to address a Member's balance of payments difficulties. The BOP Committee works closely with the International Monetary Fund in conducting consultations. Full consultations involve examining a Member's trade restrictions and balance-of-payments situation, while simplified consultations provide for 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.

Major Issues in 2007

During 2007, no Member imposed new balance-of-payments restrictions. The Committee met to consult with Bangladesh under Article XVIII:B in May 2007 to discuss its remaining restrictions on salt, chicks, and eggs. The government of Bangladesh declared that it would remove these restrictions by the end of 2008, and on this basis, the Committee concluded that Bangladesh had met its obligations.

The BOP Committee also met in November to conduct its sixth annual review under China's Transitional Review Mechanism. In light of China's balance-of-payments position, there was little discussion.

Prospects for 2008

Should other Members resort to new BOP measures, WTO rules require a thorough program of consultation with this Committee. The United States expects the BOP Committee to continue to ensure that BOP provisions are used as intended to address legitimate problems through the imposition of temporary, price-based measures.

4. Committee on Budget, Finance and Administration

Status

The Committee on Budget, Finance and Administration (the Budget Committee) is responsible for establishing and presenting the budget for the WTO Secretariat to the General Council for Members' approval. The Budget Committee meets throughout the year to address the financial requirements of the organization. The budget process in the WTO operates on a biennial basis. As is the practice in the WTO, decisions on budgetary issues are taken by consensus.

The United States is an active participant in the Budget Committee. The United States, as the Member with the largest share of world trade, makes the largest contribution to the WTO budget. The assessed contribution of each Member is based on the share of that Members' trade in goods, services, and intellectual property. For the 2008 budget, the U.S. assessed contribution is 14.106 per cent of the total budget assessment, or Swiss Francs (CHF) 25,094,574 (about $22 million). Details required by Section 124 of the Uruguay Round Agreements Act on the WTO's consolidated budget for 2008 and 2009 are provided in Annex II.

Major Issues in 2007

- *WTO Facilities*: In July the General Council agreed to increase funding for construction of a new WTO Annex, to be financed through a 50-year interest-free loan from the Swiss authorities. The WTO Secretariat has outgrown the main WTO building and the new annex was intended to replace temporary facilities that have been needed to house those staff and functions that do not fit in the main building. In 2006, the Director-General brought to Members' attention new alternative possibilities that had opened up that are closer to the main WTO building and could be more cost effective. In 2007, the Budget Committee examined these propositions and, in December 2007, the General Council agreed to authorize the Director-General to negotiate with the host country authorities to reach a mutually agreed solution to the long term needs of the WTO, *i.e.*, on a single site based on the renovation and extension of the current site of the WTO's headquarters and within the funding limits that had been agreed in connection with the WTO Annex project. The Budget Committee will work in close consultation with the Director-General on these negotiations in 2008.

- *Appellate Body Remuneration*: In December 2007, the Budget Committee proposed, and the General Council agreed, to increase the remuneration of Appellate Body Members (for retainer and daily fees) by 10 percent in 2008 and 5 percent in 2009, with annual adjustments thereafter, based on the Geneva Price Index. Appellate Body remuneration has only been increased once, in 2004, since its inception.

- *Security Enhancement Program*: In December 2004, the General Council agreed to fund the Secretariat's proposed Security Enhancement Program. This multi-year plan is designed to meet the new realities of the post-9/11 world by, among other things, improving controls on the entrance of goods, vehicles and people to the WTO facilities as well as by improving the technology available to monitor the WTO's facilities and grounds. Implementation of the program will conclude during the 2008-2009 biennium.

- *Critical Review of the Structure of the WTO Secretariat*: The Director-General has been conducting a critical review of the structure of the WTO Secretariat with a view to streamlining it. Implementation of the reform plan is expected to result in future savings. However, in the short term, financial resources will be needed to bridge a liquidity gap. Therefore, in December 2005, the General Council agreed to a specific allotment of Swiss Francs 500,000 for 2005 and a further Swiss Francs 500,000 for 2006 to meet this need. Developments in 2006 and 2007 made it impossible for the Director-General to complete the critical review. Therefore, it was agreed that Swiss Francs 1,500,000 would be made available from a surplus in the 2006 budget for this purpose. Any funds left at the end of 2008 will be returned to the WTO accounts.

Prospects for 2008

The Budget Committee will continue to monitor the financial and budgetary situation of the WTO on an ongoing basis. The Budget Committee will consider whether any adjustments will be needed to the budget for the second half of the 2008-2009 biennium and will actively work with the Director-General on the negotiations for new and improved facilities for the WTO. It will also be regularly consulted and kept informed of all aspects concerning the finalization and implementation of the restructuring plan and security enhancements.

5. Committee on Regional Trade Agreements

Status

The Committee on Regional Trade Agreements (the 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 in the Uruguay Round Agreements, and considering the systemic implications of such agreements and regional initiatives for the multilateral trading system. Prior to 1996, these reviews were typically conducted by a "working party" formed to review a specific agreement.

GATT Article XXIV is the principal provision governing Free Trade Areas (FTAs), Customs Unions (CUs), and interim agreements leading to an FTA or CU concerning goods. 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 certain agreements between or among developing country Members, also concerning trade in goods. The Uruguay Round added three more provisions: the Understanding on the Interpretation of Article XXIV, which clarifies and enhances the requirements of Article XXIV of GATT 1994; and Articles V and Vbis

of the General Agreement on Trade in Services (GATS), which govern services and labor markets economic integration agreements.

FTAs and CUs are authorized departures from the principle of MFN treatment, if certain requirements are met. With respect to goods, tariffs and other restrictions on trade must be eliminated on substantially all trade between the parties. In addition, duties and commercial measures applied to third countries upon the formation of an FTA or CU must not be higher or more restrictive than was the case before the agreement. If, in forming a CU, a Member exceeds its WTO bound rates, it must so notify the WTO in order to negotiate with other Members compensation in the form of market access concessions. Finally, while interim agreements leading to FTAs or CUs are permissible, transition periods to full FTAs or CUs should exceed 10 years only in exceptional cases.

With respect to trade in services, the CU or FTA must have "substantial sectoral coverage" and prohibit or eliminate substantially all discrimination; in addition, the FTA or CU may not exclude *a priori* any mode of supply from the agreement. As with agreements on goods, barriers or restrictions to trade in services applicable to third parties upon formation of the FTA or CU may not be higher than was the case previously. Finally, a compensation requirement analogous to that in goods agreements exists for services agreements.

Major Issues in 2007

As of November 1, 2007, 385 RTAs have been notified to the GATT or WTO. Of the notified agreements, 197 are currently in force. Of the RTAs in force, 125 have been notified GATT Article XXIV agreements; 22 have been notified Enabling Clause agreements;[22] and 50 have been notified GATS Article V agreements.

At the end of 2006, the General Council established, on a provisional basis, a new transparency mechanism for all RTAs, which was implemented in 2007. The main features of the mechanism, agreed upon in the Negotiating Group on Rules, include the early announcement of any RTA; guidelines regarding the notification of RTAs; the preparation by the WTO Secretariat, on its own responsibility and in full consultation with the parties, of a factual presentation of RTAs to assist Members in their consideration of a notified RTA; timeframes associated with the consideration of RTAs; provisions regarding subsequent notification and reporting of notified RTAs; technical support for developing countries; and the distribution of work between the CRTA – entrusted to implement the mechanism *vis-à-vis* RTAs falling under Article XXIV of GATT 1994 and Article V of the GATS – and the Committee on Trade and Development, entrusted to do the same for RTAs falling under the Enabling Clause.

Prior to the adoption of the transparency mechanism, the CRTA had completed the factual examination of a total of 67 agreements, of which 46 were in the area of trade in goods and 21 in trade in services. Since the adoption of the transparency mechanism, 8 agreements have been examined (all in 2007). A total of 64 RTAs remain to be reviewed, comprising 36 RTAs for which the factual presentation is still to be done and 28 RTAs (mostly with non-WTO Members) for which the factual presentation is on hold.

In June 2007, the WTO Secretariat circulated the factual presentation of the United States-Australia FTA. The United States attended the 47th Session of the CRTA in which the USAFTA was discussed, and responded to all questions (written and oral); the factual examination was completed during the 47th Session of the CRTA in September 2007.

[22] Consistent with past practice, RTAs notified under the Enabling Clause continue to be reviewed in the Committee on Trade and Development.

At the time of the adoption of the Decision on the Transparency Mechanism for Regional Trade Agreements in December 2006, the Chair of the General Council had noted that Members intended to conduct an initial review of the Mechanism within one year. In this context, the Chair of the CRTA, in concert with the Chair of the Negotiating Group on Rules, reported that Members considered that there was not yet enough experience for the review.

Prospects for 2008

In 2008, seventeen RTAs are scheduled for consideration in the CRTA, including the United States-Bahrain Free Trade Agreement and the United States-Morocco Free Trade Agreement. Factual presentations of these RTAs are currently under preparation by the WTO Secretariat.

6. Accessions to the World Trade Organization

Status

During 2007 significant progress was recorded in accession negotiations for a number of countries seeking WTO Membership. Vietnam became the 150th WTO Member on January 11, 2007, and the Kingdom of Tonga followed on July 27, 2007. Concluding 14 years of effort, Ukraine substantially completed its negotiations in 2007, and saw its accession package approved on February 5, 2008. Russia showed new energy in its multilateral negotiations, working intensively with the United States and the EU to revise its draft Working Party report, and with the WTO Secretariat to consolidate nearly 60 bilateral agreements on market access into GATT and GATS Schedules of Specific Concessions. Kazakhstan and Montenegro also took active stances in both bilateral and multilateral negotiations, advancing their negotiations towards possible conclusion in 2008.

Comoros and Liberia applied for accession in 2007, followed by Equatorial Guinea in February 2008. All three of these new applicants are LDCs, bringing the number of countries in negotiations to 29, over one-third of which are LDCs.[23] Accession applicants are welcome in all formal WTO meetings as observers. There were no other new requests for observer status during 2007.[24]

The Working Parties of Azerbaijan, Bhutan, Bosnia, Cape Verde, Iraq, Laos, Lebanon, Montenegro, Serbia, Ukraine, and Yemen met formally and informally throughout 2007 to review the trade regimes of the respective applicants. All except Iraq have initiated market access negotiations. The formal and informal Working Party meetings in 2007 for Cape Verde and Ukraine had a different character, as these accessions were nearing completion and the draft Working Party report (WPR) text, including Protocol commitments, was under negotiation and domestic legislative implementation of WTO rules was underway.

Eight of the 29 applicants (Afghanistan, Bahamas, Comoros, Equatorial Guinea, Iran, Liberia, Libya, and Sao Tome and Principe) have not yet submitted initial descriptions of their trade regimes, the action necessary to activate their Working Parties and begin negotiations. The Working Parties of Andorra, Belarus, Seychelles, Sudan, and Uzbekistan remained dormant, and Vanuatu continued to decline to accept the accession package approved by the Working Party in 2001. The Working Parties of Algeria, Ethiopia, Kazakhstan, Russia, Samoa, and Tajikistan did not meet in 2007, but work continued on their

[23] Accession Working Parties have been established for Afghanistan*, Algeria, Andorra, Azerbaijan, Bahamas, Belarus, Bhutan*, Bosnia and Herzegovina, Comoros*, Equatorial Guinea*, Ethiopia*, Iran, Iraq, Kazakhstan, Laos*, Lebanon, Liberia*, Libya, Montenegro, Russia, Samoa*, Sao Tome and Principe*, Serbia, Seychelles, Sudan*, Tajikistan, Uzbekistan, Vanuatu*, and Yemen* (The 12 countries marked with an asterisk are LDCs).
[24] The Holy See is a permanent observer and will not apply for accession.

accessions. Ethiopia submitted responses to Members' questions on its Memorandum on the Foreign Trade Regime at the beginning of 2008 and Kazakhstan, Russia, and Samoa worked to revise their working party reports and complete their bilateral market access negotiations seeking to move their accession negotiations to the final stage. Working Party meetings for all of these countries are likely during 2008. The chart included in Annex II reports the current status of each accession negotiation.

Background: 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. 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 trade and investment and promote growth and development.

The accession process strengthens the international trading system by ensuring that new Members understand and implement WTO rules from the outset. The process also offers current Members the opportunity to secure market access opportunities from acceding countries, to establish an appropriate level of initial WTO obligations, and to address outstanding trade issues covered by WTO in a multilateral context.

In a typical accession negotiation, an application is submitted to the WTO General Council, which establishes a "Working Party" composed of all interested WTO Members to review the applicant's trade regime and to conduct the negotiations. At the conclusion of its work, the Working Party transmits the agreed results of the negotiations to the General Council. Accession negotiations involve a detailed review of the applicant's entire trade regime by the Working Party and bilateral negotiations for market access of goods and services. Applicants are expected to undertake trade liberalizing specific commitments on market access for industrial and agricultural goods, as well as for services based on requests from Working Party Members, to make necessary legislative changes to implement WTO institutional and regulatory requirements, and to eliminate existing WTO-inconsistent measures. Most accession applicants take these actions on WTO rules prior to accession.[25]

The terms of accession developed with Working Party Members in bilateral and multilateral negotiations are recorded in an accession "protocol package" consisting of a Report of the Working Party and Protocol of Accession, consolidated schedules of specific commitments on market access for imported goods and services by foreign 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 for approval to the General Council or Ministerial Conference. After General Council approval, accession applicants normally submit the package to their domestic authorities for acceptance. Thirty days after the WTO receives the applicant's instrument accepting the terms of accession the applicant becomes a WTO Member.

As a matter of course, the United States takes a leadership role in all aspects of the accessions, including bilateral, plurilateral, and multilateral negotiations. The objective is to ensure that new Members fully implement WTO provisions and to encourage trade liberalization in developing and transforming economies, as well as to use the opportunities provided in these negotiations to expand market access for U.S. exports. The United States also 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.

[25] As outlined below, negotiations with LDC applicants are subject to the special procedures and guidelines of the 2002 Decision on the Accession of Least-Developed Countries (WT/L/508).

This 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 or customs territory. A number of the WTO Members that have acceded since 1995 received technical assistance in their accession process from the United States, *e.g.*, Armenia, Bulgaria, Cape Verde, Estonia, Georgia, Jordan, Kyrgyz Republic, Latvia, Lithuania, Macedonia, Moldova, Nepal, Russia, Ukraine, and Vietnam. Most of these countries had U.S.-provided resident experts for some portion of the process.

Current accession applicants where the United States has provided a resident or other long-term WTO expert for the accession process include: Afghanistan, Algeria, Azerbaijan, Bosnia and Herzegovina, Ethiopia, Iraq, Lebanon, Montenegro, and Serbia; in addition a U.S.-funded WTO expert resident in the Kyrgyz Republic provides resident WTO accession assistance to Kazakhstan and Tajikistan.

Major Issues in 2007

For the second year, work on the accessions focused on the efforts of some applicant countries, *e.g.*, Russia, Ukraine, Cape Verde, and to a lesser extent Kazakhstan, to make decisive progress on their accessions. All four moved aggressively during the year to conclude bilateral market access negotiations, and Ukraine and Cape Verde intensified efforts to enact legislation to implement the WTO Agreement in their respective domestic legal regimes and to complete the accession process. Members continued to give most attention to those accessions demonstrating progress on market access and legislative implementation, as well as to LDC accessions when those applicants showed interest in completing the negotiations. Work on the negotiations of other accession applicants moved forward, but more slowly as efforts to complete the Doha Development Agenda took priority.

Ukraine: Ukraine completed its accession negotiations in 2007, and its accession package was approved by the General Council in February 2008. This was a major accomplishment and an historic event for Ukraine, whose recent status as an independent country was only two years older than its 14 year old bid to join the WTO. Ukraine is by far the largest of the former Soviet Republics to date to conclude its accession negotiations. The terms of accession accepted by Ukraine are broadly liberalizing, including fully bound tariffs at an average rate of less than 5 percent on industrial goods, and less than 12 percent on agricultural products. Ukraine's services schedule is one of the most comprehensive in the WTO, granting nondiscriminatory access to foreign service-suppliers in almost every sector. In addition, Ukraine substantially revised its trade regime, enacting more than 40 laws and regulations in 2007 to implement WTO obligations, including in the areas of customs fees and valuation, import and export restrictions, technical barriers to trade, sanitary and phytosanitary measures, subsidies, trade remedies, and intellectual property rights protection, as well as to provide for the significant liberalization of market access for goods and services.

The United States has strongly supported Ukraine's accession bid from its inception in December 1993, providing Ukraine's first Working Party Chairman and comprehensive technical assistance all the way through the negotiations. But while the terms of accession reflect significant U.S. participation in the negotiating process, Ukraine's commitments are based on its own wide-ranging economic reforms and strategic decision to use the WTO accession process in support of longer term objectives for closer economic integration with the European Union. President Bush signed a proclamation terminating application of title IV of the Trade Act of 1974 (the Jackson-Vanik Amendment) to Ukraine in March 2006, thereby granting products of Ukraine permanent normal trade relations treatment, and ensuring that the United States would be able to establish full WTO relations with Ukraine when it becomes the 152nd WTO Member later in 2008. This will mark the beginning of a new era in the political and economic relationship between the two countries, and promises expanding economic opportunities and cooperation.

Russia: Building on the successful conclusion of the bilateral market access agreement between Russia and the U.S. in the context of Russia's WTO accession at the end of 2006, the United States and Russia intensified work on the remaining multilateral issues and requirements for Russia's WTO Membership during 2007. The principal focus of multilateral work was to revise the draft Working Party report text. By early 2008, with full U.S. participation, most of the remaining draft texts, including those on TRIPS, TBT, and SPS, had been revised and presented to WP members for review. Eventually, a consolidated revision of the report will be issued, allowing WP members to resume WP deliberations on Russia's Protocol of Accession. Russia also turned to compiling a legislative action plan for completing its implementation of WTO provisions, *e.g.*, in the areas of TRIPS, customs valuation, and SPS. In some cases, *e.g.*, the Law on Technical Regulations and Part IV of the Civil Code, it was necessary to make further changes to laws whose recent amendments conflicted with WTO provisions. Russia continued bilateral negotiations with the handful of Members with which it had not yet signed market access agreements (Saudi Arabia, United Arab Emirates, and Georgia), and initiated technical work with the WTO Secretariat to consolidate its goods and services market access bilateral agreements when those negotiations are completed.

Kazakhstan: Kazakhstan continued to focus on its bilateral negotiations on market access for goods and services during 2007, completing agreements with a number of Members, but not with the United States. Bilateral negotiations continue on a number of issues, including tariffs, services, SPS barriers to trade, and the operation of state owned and state controlled enterprises. In 2008, Kazakhstan will move to complete market access negotiations with the United States and others, pursue legislative implementation of WTO provisions, and attempt to complete negotiation of its draft WP report and Protocol of Accession.

Cape Verde. This LDC, slated to lose this status in 2008, successfully completed its market access negotiations and finalized its accession negotiations at the end of 2007. Council approval of the terms of access on December 17, 2007, which made Cape Verde the first sub-Saharan country to accede to the WTO through negotiation. As a result of the negotiations, Cape Verde has pledged to substantially revise the legal basis for its trade regime to bring it into conformity with WTO provisions. In addition, Cape Verde has undertaken market access commitments that bind every tariff line, provide for liberal market access for trade in services, and confirm elimination of agricultural export subsidies. Cape Verde will be the first LDC to join the tariff Agreements on Information Technology (ITA) and on Trade in Civil Aircraft (ATCA), with zero duties to be phased in over 6-10 years. The terms of its accession to the WTO were developed accordingly within the guidelines of the 2002 WTO General Council Decision on Accessions of Least-Developed Countries (WT/L/508), which mandate special consideration of these countries' problems and vulnerabilities during the negotiations. However, the terms achieved in this accession are quite good even for a non-LDC. They represent a tangible contribution to the Doha Development Agenda and demonstrate the role that can be played by the WTO in building trade capacity and helping countries incorporate trade liberalization into their development programs.

LDC Accessions: WTO Members continued to emphasize a need for accelerating the accession process of LDCs, and in making WTO accession more accessible to these applicants. Discussions continued in various WTO fora on how the WTO guidelines on LDC accessions are being implemented. The accession negotiations for all LDC accession applicants are guided by the simplified and streamlined procedures developed for these countries at the end of 2002 in the WTO General Council Decision on Accessions of Least-Developed Countries (WT/L/508). Under these guidelines, the accession process becomes a tool for economic development, laying out a progressive action plan for implementation of WTO rules. The market access schedules and protocols of accession developed under these guidelines reflect the need to address realistically the difficulties faced by LDCs in achieving normal WTO accession objectives. Using the guidelines, WTO Members pledged to exercise restraint in seeking market access concessions, and to agree to transitional arrangements for implementation of WTO Agreements. The United States and other developed WTO Members have sought to support the

transitional goals established in the accession process with LDCs with technical assistance to meet the benchmarks included in the protocol commitments. In this way, the accession process becomes a development tool and an opportunity to mainstream trade in their development programs, to build trade capacity, and to provide a better economic environment for investment and growth.

Prospects for 2008

Russia, Montenegro, Azerbaijan, and Kazakhstan have indicated that they would like to complete their work on WTO accession, if not become Members, prior to the end of the year. Work with Russia and Kazakhstan has already intensified. Montenegro is completing its legislative implementation of WTO provisions, and we have made additional technical assistance available to Azerbaijan. Efforts to advance the accessions of LDCs will also continue. Among the LDCs, Bhutan and Samoa have signaled their hope to complete their accessions during 2008.

For any applicant, the pace of the accession process is largely self-determined. Those that submit usable documentation on a timely basis, make necessary legal changes to implement WTO provisions, and move rapidly to negotiate acceptable market access commitments maximize their opportunities for progress and bring momentum to the negotiations overall.

7. Aid for Trade

The Hong Kong Ministerial Declaration created a new WTO framework in which to discuss and prioritize Aid for Trade. Aid for Trade is an effort to connect the trade priorities of developing countries with trade capacity building assistance – to help those countries implement trade commitments. At Hong Kong, WTO Members agreed on the need to operationalize Aid for Trade efforts to improve the efficacy and efficiency of these efforts amongst WTO Members and other international organizations.

Ministers at Hong Kong also agreed to pursue the enhancement of the Integrated Framework (IF) for trade-related technical assistance for least-developed countries (both WTO Members and non-Members), as a subset of Aid for Trade designed exclusively for that set of countries. The IF is a multi-organization (including the WTO, World Bank, IMF, UNCTAD, UNDP, and the International Trade Centre), multi-donor program that operates as a coordination mechanism for trade-related assistance to LDCs with the overall objective of integrating trade into national development plans.

Task forces were created to address Aid for Trade questions and the enhancement of the IF. These Task Forces submitted their reports in late 2006. The General Council asked the Director-General to manage the follow-up to these reports.

2007 saw an active agenda to implement many of the Task Force's recommendations. In the fall of 2007, the WTO Secretariat and its regional development bank partners sponsored regional discussions of Aid for Trade in Lima, Peru; Manila, Philippines; and Dar es Salaam, Tanzania. A global review of Aid for Trade, incorporating the results of the regional discussions, was held in Geneva in November 2007 with high-level attendance from trade, finance, and development officials.

The IF Task Force recommended the creation of an independent secretariat to manage the Integrated Framework, to intensify in-country support and coordination among LDC participants and for a scaling up of resources to support IF programs. Active discussions among donor countries, IF participating agencies, and least developed countries began in September 2006 on the implementation of the enhanced IF, and continued through much of 2007. The new Enhanced Integrated Framework (EIF) was formally launched in May and is expected to be fully operational in early 2008.

Prospects for 2008

Work on Aid for Trade during 2008 will focus on technical issues and best practices in delivery of trade-capacity building assistance and prioritization of trade in national development plans. We expect the selection of an executive director for the IF Secretariat by mid-year and a fully operational IF during the same timeframe.

K. Plurilateral Agreements

1. Committee on Trade in Civil Aircraft

Status

The Agreement on Trade in Civil Aircraft (Aircraft Agreement) entered into force on January 1, 1980, and is one of two WTO plurilateral agreements (along with the Agreement on Government Procurement) that are in force only for those WTO Members that have accepted it.[26]

The Aircraft Agreement requires signatories to eliminate tariffs on civil aircraft, engines, flight simulators, and related parts and components, and to provide these benefits on a nondiscriminatory basis to other signatories. In addition, the signatories have agreed provisionally to provide duty-free treatment for ground maintenance simulators, although this item is not covered under the current agreement. The Aircraft Agreement also establishes various obligations aimed at fostering free market forces. For example, signatory governments pledge that they will base their purchasing decisions strictly on technical and commercial factors.

There are currently 35 signatories to the Aircraft Agreement: The United States; Canada; the European Communities; Austria; Belgium; Bulgaria; the Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Ireland; Italy; Latvia; Lithuania; Luxembourg; the Netherlands; Poland; Portugal; Romania; the Slovak Republic; Spain; Sweden; the United Kingdom; Chinese Taipei; Egypt; Georgia; Japan; Macao, China; Malta; Norway; and Switzerland.

The Committee on Trade in Civil Aircraft (Aircraft Committee), permanently established under the Aircraft Agreement, provides the signatories an opportunity to consult on the operation of the Aircraft Agreement, to propose amendments to the Agreement, and to resolve any disputes.

Major Issues in 2007

The Aircraft Committee held one regular meeting on November 7, 2007. At this meeting, the Committee considered the status of the 1979 Agreement on Trade in Civil Aircraft under the WTO, and the matter of updating of the HS Codes used in the Product Coverage Annex in the light of the new 2007 HS Codes, and requested the Secretariat to prepare a technical note on this matter for consideration at the Aircraft Committee's next regular meeting. The Technical Sub-Committee of the Committee on Trade in Civil Aircraft did not meet during the period under review and neither did the Sub-Committee of the Committee on Trade in Civil Aircraft.

[26] Additional information on this agreement can be found on the WTO's website at: http://www.wto.org/english/tratop_e/civair_e/civair_e.htm.

Prospects for 2008

The Aircraft Committee agreed to meet once, in the fall of 2008. The United States will continue to encourage observers,[27] including Albania, Croatia, and Oman, to become signatories pursuant to their respective protocols of accession, and other WTO Members to become signatories to the Aircraft Agreement.

2. Committee on Government Procurement

Status

The WTO Agreement on Government Procurement (GPA) is a "plurilateral" agreement included in Annex four 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 the Agreement. WTO Members are not required to join the GPA, but the United States strongly encourages all WTO Members to participate in this important agreement.

Forty WTO Members are subject to the GPA: Canada; the EU and its 27 Member States (Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and the United Kingdom); Hong Kong China; Iceland; Israel; Japan; the Republic of Korea; Liechtenstein; the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; and the United States (collectively the GPA Parties).

As of the end of 2007, nine Members are in the process of acceding to the GPA: Albania, China, Chinese Taipei, Georgia, Jordan, Kyrgyz Republic, Moldova, Oman, and Panama. Five additional Members have provisions in their respective Protocols of Accession to the WTO or Working Party reports regarding accession to the GPA: Armenia, Croatia, the Former Yugoslav Republic of Macedonia, Mongolia, and Saudi Arabia.

When China joined the WTO in 2001, it committed to commence negotiations to join the GPA "as soon as possible." In April 2006, China agreed in the Joint Committee on Commerce and Trade (JCCT) to submit its initial offer of coverage by the end of 2007. Based on these commitments, China submitted its application for accession to the GPA and its Initial Appendix I Offer on December 28, 2007.

With the addition of Saudi Arabia in December 2007, 20 WTO Members, including those in the process of acceding to the GPA, have observer status in the GPA Committee: Albania, Argentina, Armenia, Australia, Cameroon, Chile, China, Chinese Taipei, Colombia, Croatia, Georgia, Jordan, Kyrgyz Republic, Moldova, Mongolia, Oman, Panama, Saudi Arabia, Sri Lanka, and Turkey. Three intergovernmental organizations (IMF, OECD, and UNCTAD) also have observer status.

Major Issues in 2007

Article XXIV:7(b) of the GPA calls for the Parties to undertake further negotiations to improve the Agreement and to expand the procurement that they cover under the GPA. In December 2006, the GPA

[27] As of December 31, 2007, those WTO Members with observer status in the Aircraft Committee are: Albania, Argentina, Australia, Bangladesh, Brazil, Cameroon, China, Colombia, Croatia, Gabon, Ghana, India, Indonesia, Israel, the Republic of Korea, Mauritius, Nigeria, Oman, Saudi Arabia, Singapore, Sri Lanka, Trinidad and Tobago, Tunisia, and Turkey. In addition, the Russian Federation, IMF, and UNCTAD are also observers.

Committee reached provisional agreement on a substantial revision of the text, subject to a legal check and to a mutually satisfactory outcome in the coverage negotiations. The new GPA text will be used as the basis for negotiations with countries in the process of acceding to the GPA.

During 2007, the GPA Committee held six meetings (in February, April, June, October, November, and December) during which Parties focused primarily on completion of the revision of the GPA text, in particular: 1) verification of the linguistic consistency of the English, French, and Spanish versions of the revised text; 2) the development of the final provisions of the revision; and 3) the development of arbitration procedures and indicative criteria for use in facilitating the resolution of disputes relating to the elimination of government control or influence when a Party proposes the withdrawal of an entity from its GPA Annexes.

With respect to the negotiations under GPA Article XXIV:7 that are aimed at expanding procurement covered by the Agreement, very little progress was made during 2007. Only two additional offers were submitted: a revised offer from Korea and an initial offer from Iceland. As of the end of 2007, 10 Parties had submitted initial offers (the United States, Canada, the European Communities, Iceland, Israel, Japan, Korea, Norway, Singapore, and Switzerland), but only 3 Parties had submitted revised offers (the United States, Japan, and Korea).

The GPA Committee dedicated discussions at three informal meetings on Jordan's accession to the GPA (in April, June, and October). During 2007, Jordan submitted its third revised offer.

Prospects for 2008

The GPA Committee has tentatively scheduled six meetings for 2008, with the first set for February, with the aim of completing the revision of the GPA. It also anticipates concluding Jordan's accession to the GPA.

Beginning with the first meeting of 2008, the United States and the other Parties will commence negotiations with China on its accession to the GPA.

3. Committee of Participants on the Expansion of Trade in Information Technology Products

Status

The Information Technology Agreement (ITA) was concluded at the WTO's First Ministerial Conference at Singapore in December 1996. For original participants, the Agreement eliminated tariffs as of January 1, 2000 on a wide range of information technology products. As of November 2007, the ITA had 43 participants (covering 70 Members and States or separate customs territories in the process of acceding to the WTO) representing approximately 97 percent of world trade in information technology products.[28] The Agreement covers a wide range of information technology products including computers and computer peripheral equipment, electronic components including semiconductors, computer software,

[28] ITA participants are: Albania; Australia; Austria; Bahrain; Canada; China; Costa Rica; Croatia; Cyprus; Dominican Republic, Egypt; El Salvador; European Communities (on behalf of 27 Member States); Georgia; Guatemala, Hong Kong, China; Honduras, Hungary; Iceland; India; Indonesia; Israel; Japan; Jordan; Korea; Krygyz Republic; Macao, China; Malaysia; Malta; Mauritius; Moldova; Morocco; New Zealand; Nicaragua, Oman; Panama; Philippines; Saudi Arabia; Singapore;; Switzerland (on the behalf of the customs union of Switzerland and Lichtenstein); Chinese Taipei; Thailand; Turkey; Vietnam; and the United States.

telecommunications equipment, semiconductor manufacturing equipment, and computer-based analytical instruments.

Major Issues in 2007

The WTO Committee on the Expansion of Trade in Information Technology Products held four meetings in 2007. Work continued on classification divergences of ITA products and the Non-Tariff Measures (NTMs) Work Program as well as on drafting a list of conformity assessment procedures for the EMC/EMI pilot project. The Committee membership appointed a new Chairperson, Khalid Emara of Egypt. Also, Ukraine committed to join the ITA as part of its WTO accession. A two-day symposium was held on March 28-29 to celebrate the 10-year operation of the Information Technology Agreement (ITA) with approximately 200 participants representing governments, industry, and consumers from around the world. This was the third symposium organized by the WTO on information technology products.

The Committee also held discussions in 2007 on U.S. proposals to maintain duty-free treatment for ITA covered products. Several ITA participants including the United States; Japan; Singapore; Hong Kong, China; Korea; Chinese Taipei; Malaysia; Canada; Thailand; and the Philippines have expressed concerns about measures by the European Communities that no longer provide or guarantee duty-free treatment for certain products, such as set-top boxes with a communication function, LCD computer monitors, and multifunction printers. The United States submitted a paper outlining its specific concerns about each of these products in January. Producers of the products affected by the EC measures also gave a demonstration of these products during the January meeting. Despite these discussions, the European Commission continued to adopt measures applying duties on these products in 2007.

Prospects for 2008

The next meeting of the Committee has yet to be scheduled. The Chair has indicated he would organize further informal consultations on U.S. proposals to maintain duty-free treatment for ITA covered products. Participants also remain active in discussions on updating the ITA product list from HS1996 to HS2007 nomenclature.