V. TRADE ENFORCEMENT ACTIVITIES

A. Enforcing U.S. Trade Agreements

1. Overview

USTR coordinates the Administration's active monitoring of foreign government compliance with trade agreements and pursues enforcement actions, using dispute settlement procedures and applying the full range of U.S. trade laws when necessary. Vigorous investigation efforts by relevant agencies, including the Departments of Agriculture, Commerce, and State, help ensure that these agreements yield the maximum benefits in terms of ensuring market access for Americans, advancing the rule of law internationally, and creating a fair, open, and predictable trading environment. Ensuring full implementation of U.S. trade agreements is one of the Administration's strategic priorities. We seek to achieve this goal through a variety of means, including:

- Asserting U.S. rights through the World Trade Organization (WTO), including the stronger dispute settlement mechanism created in the Uruguay Round, and the WTO bodies and committees charged with monitoring implementation and with surveillance of agreements and disciplines;
- Vigorously monitoring and enforcing bilateral agreements;
- Invoking U.S. trade laws in conjunction with bilateral and WTO mechanisms to promote compliance;
- Providing technical assistance to trading partners, especially in developing countries, to ensure that key agreements such as the Agreement on Basic Telecommunications and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) are implemented on schedule; and
- Promoting U.S. interests under free trade agreements (FTAs) through work programs, accelerated tariff reductions, and use or threat of use of dispute settlement mechanisms, including with respect to labor and environment.

Through the vigorous application of U.S. trade laws and active use of WTO dispute settlement procedures, the United States has effectively opened foreign markets to U.S. goods and services. The United States also has used the incentive of preferential access to the U.S. market to encourage improvements in workers' rights and reform of intellectual property laws and practices in other countries. These enforcement efforts have resulted in major benefits for U.S. firms, farmers, and workers.

To ensure the enforcement of WTO agreements, the United States has been one of the world's most frequent users of WTO dispute settlement procedures. Since the establishment of the WTO in 1994, the United States has filed 80 complaints at the WTO, thus far successfully concluding 52 of them by settling 26 cases favorably and prevailing in 26 others through litigation before WTO panels and the Appellate Body. The United States has obtained favorable settlements and favorable rulings in virtually all sectors, including manufacturing, intellectual property, agriculture, and services. These cases cover a number of WTO agreements – involving rules on trade in goods, trade in services, and intellectual property protection – and affect a wide range of sectors of the U.S. economy.

Satisfactory settlements: The hope in filing cases is to secure benefits for U.S. stakeholders rather than to engage in prolonged litigation. Therefore, whenever possible the United States has sought to reach favorable settlements that eliminate the foreign breach without having to resort to panel proceedings.

The United States has been able to achieve this preferred result in 26 cases concluded so far, involving: Argentina's protection and enforcement of patents; Australia's ban on salmon imports; Belgium's duties on rice imports; Brazil's auto investment measures; Brazil's patent law; Canada's antidumping and countervailing duty investigation on corn; China's value added tax; China's prohibited subsidies; China's treatment of foreign financial information suppliers; Denmark's civil procedures for intellectual property enforcement; Egypt's apparel tariffs; the EU's market access for grains; an EU import surcharge on corn gluten feed; Greece's protection of copyrighted motion pictures and television programs; Hungary's agricultural export subsidies; Ireland's protection of copyrights; Japan's protection of sound recordings; Korea's shelf-life standards for beef and pork; Mexico's restrictions on hog imports; Pakistan's protection of patents; the Philippines' market access for pork and poultry; the Philippines' auto regime; Portugal's protection of patents; Romania's customs valuation regime; Sweden's enforcement of intellectual property rights; and Turkey's box-office taxes on motion pictures.

Litigation successes: When U.S. trading partners have not been willing to negotiate settlements, the United States has pursued its cases to conclusion, prevailing in 26 cases to date, involving: Argentina's tax and duties on textiles, apparel, and footwear; Australia's export subsidies on automotive leather; Canada's barriers to the sale and distribution of magazines; Canada's export subsidies and an import barrier on dairy products; Canada's law protecting patents; China's charges on imported auto parts; the EU's import barriers on bananas; the EU's ban on imports of beef; the EU's regime for protecting geographical indications; India's import bans and other restrictions on 2,700 items; India's protection of patents on pharmaceuticals and agricultural chemicals; India's and Indonesia's discriminatory measures on imports of U.S. automobiles; India's additional and extra-additional duties on alcoholic beverages and other products; Japan's restrictions affecting imports of apples, cherries, and other fruits; Japan's barriers to apple imports; Japan's and Korea's discriminatory taxes on distilled spirits; Korea's restrictions on beef imports; Mexico's antidumping duties on high-fructose corn syrup; Mexico's telecommunications barriers; Mexico's antidumping duties on rice; the EU's moratorium on biotechnology products; Mexico's discriminatory soft drink tax; Turkey's measures affecting the importation of rice; and the EU's non-uniform classification of LCD monitors.

USTR also works, in consultation with other government agencies, to ensure the most effective use of U.S. trade laws to complement its litigation strategy and to address problems that are outside the scope of the WTO and U.S. free trade agreements. USTR has effectively applied Section 301 of the Trade Act of 1974 to address unfair foreign government measures, "Special 301" for intellectual property rights protection and enforcement, and Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 for telecommunications trade problems. The application of these trade law tools is described further below.

2. WTO Dispute Settlement

Enforcement successes in 2008 include rulings against the EU's import regime for bananas and China's charges on imported auto parts.

The United States also favorably resolved several disputes after completing, initiating, or threatening to initiate WTO dispute settlement procedures. For example, China agreed to take certain steps, including the revision and repeal of certain existing measures, as well as the adoption of new measures, to respond to the U.S. concerns regarding the absence of an independent regulator and the imposition of unfair requirements and restrictions on U.S. financial information service suppliers operating in China.

China's commitments under the agreement include the establishment of an independent regulator for foreign financial information service suppliers, and the implementation of new non-discriminatory and transparent regulations.

Ongoing enforcement actions include disputes involving the EU's aircraft subsidies, the EU's tariff treatment for certain information technology products, China's measures affecting the enforcement and protection of intellectual property rights, China's measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products, and China's government support tied to China's industrial policy to promote the sale of Chinese brand names and other products abroad.

The cases described in Chapter II of this report further demonstrate the importance of the dispute settlement process in opening foreign markets and securing other countries' compliance with their WTO obligations. Further information on WTO disputes to which the United States is a party is available on the USTR website: http://www.ustr.gov/Trade_Agreements/Monitoring_Enforcement/Dispute_Settlement/WTO/Section_Index.html.

3. Other Monitoring and Enforcement Activities

a. Subsidies Enforcement

The WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) establishes multilateral disciplines on subsidies. Among its various disciplines, the Subsidies Agreement provides remedies for subsidies that have adverse effects not only in the importing country's market, but also in the subsidizing government's market and in third-country markets. Prior to the Subsidies Agreement coming into effect in 1995, the U.S. countervailing duty law was the only practical mechanism for U.S. companies to address subsidized foreign competition. However, the countervailing duty law focuses exclusively on the effects of foreign subsidized competition in the United States. Although the procedures and remedies are different, the multilateral remedies of the Subsidies Agreement provide an alternative tool to address foreign subsidies that affect U.S. businesses in an increasingly global market place.

Section 281 of the Uruguay Round Agreements Act of 1994 (URAA) sets out the responsibilities of USTR and the Department of Commerce (Commerce) in enforcing U.S. rights in the WTO under the Subsidies Agreement. USTR coordinates the development and implementation of overall U.S. trade policy with respect to subsidy matters; represents the United States in the WTO, including the WTO Committee on Subsidies and Countervailing Measures; and leads the interagency team on matters of policy. The role of Commerce's Import Administration (IA) is to enforce the countervailing duty law and, in accordance with responsibilities assigned by the Congress in the URAA, to spearhead the subsidies enforcement activities of the United States with respect to the disciplines embodied in the Subsidies Agreement. The IA's Subsidies Enforcement Office (SEO) is the specific office charged with carrying out these duties.

The primary mandate of the SEO is to examine subsidy complaints and concerns raised by U.S. exporting companies and to monitor foreign subsidy practices to determine whether there is reason to believe they are impeding U.S. exports to foreign markets and are inconsistent with the Subsidies Agreement. Once sufficient information about a subsidy practice has been gathered to permit it to be reliably evaluated, USTR and Commerce confer with an interagency team to determine the most effective way to proceed. It is frequently advantageous to pursue resolution of these problems through a combination of informal and formal contacts, including, where warranted, dispute settlement action in the WTO. Remedies for

violations of the Subsidies Agreement may, under certain circumstances, involve the withdrawal of a subsidy program or the elimination of the adverse effects of the program.

During this past year USTR and IA staff have handled numerous inquiries and met with representatives of U.S. industries concerned with the subsidization of foreign competitors. These efforts continue to be importantly enhanced by IA officers stationed overseas (*e.g.*, in China), who help gather, clarify, and check the accuracy of information concerning foreign subsidy practices. State Department officials at posts where IA staff are not present have also handled such inquiries.

The SEO's electronic subsidies database continues to fulfill the goal of providing the U.S. trading community with a centralized location to obtain information about the remedies available under the Subsidies Agreement and much of the information that is needed to develop a countervailing duty case or a WTO subsidies complaint. The website (http://ia.ita.doc.gov/esel/index.html) includes information on all the foreign subsidy programs that have been investigated in U.S. countervailing duty cases since 1980. This database is frequently updated, making information on subsidy programs quickly available to the public.

b. Monitoring Foreign Antidumping and Countervailing Duty Actions

The WTO Agreement on Implementation of Article VI (Antidumping Agreement) and the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) permit WTO Members to impose antidumping or countervailing duties to offset injurious dumping or subsidization of products exported from one Member to another. The United States closely monitors antidumping and countervailing duty proceedings initiated against U.S. exporters to ensure that foreign antidumping and countervailing duty actions are administered fairly and in full compliance with the WTO Agreements.

To this end, IA tracks foreign antidumping and countervailing duty actions, as well as safeguard actions, involving U.S. exporters and gathers information collected from U.S. embassies worldwide, enabling U.S. companies and U.S. Government agencies to monitor other Members' administration of such actions involving U.S. companies. Information about foreign trade remedy actions affecting U.S. exports is accessible to the public via IA's website at http://ia.ita.doc.gov/trcs/index.html. The stationing of IA officers to certain overseas locations, as noted above, has contributed to the Administration's efforts to monitor the application of foreign trade remedy laws with respect to U.S. exports.

Based in part on this monitoring activity, the United States has mounted a successful WTO challenge of Mexico's antidumping measure on U.S. exports of rice, as well as certain changes to Mexico's foreign trade laws. Among trade remedy proceedings of U.S. goods that were closely monitored in the past year are Brazil's measures on butyl acrylates, supercalendared paper, and recordable CD/DVDs; China's investigations of adipic acid and polyamide 6,6; India's investigations of acetone, phenol, polyvinyl chloride and potassium carbonate; the European Commission's investigation of biodiesel; Korea's investigation of kraft paper; Mexico's review of beef and its reinvestigation of apples; South Africa's proceedings on frozen chicken, lysine and polyvinyl chloride; Russia's safeguard investigation of combine harvesters; and Turkey's investigation of oriented strand board. IA personnel have also participated in technical exchanges with the administering authorities of Australia, Cambodia, the Dominican Republic, the European Commission, India, Thailand, Turkey, Ukraine, and Vietnam to obtain a better understanding of these countries' administration of trade remedy laws and compliance with WTO obligations.

Members must notify on an ongoing basis and without delay their preliminary and final determinations to the WTO. Twice a year, WTO Members must also notify the WTO of all antidumping and countervailing duty actions they have taken during the preceding six-month period. The actions are identified in semi-

annual reports submitted for discussion in meetings of the relevant WTO committees. Finally, Members are required to notify the WTO of changes in their antidumping and countervailing duty laws and regulations. These notifications are accessible through the USTR and IA website links to the WTO's website.

B. U.S. Trade Laws

1. Section 301

Section 301 of the Trade Act of 1974, as amended (the Trade Act), is designed to address foreign unfair practices affecting U.S. exports of goods or services. Section 301 may be used to enforce U.S. rights under bilateral and multilateral trade agreements and also may be used to respond to unreasonable, unjustifiable, or discriminatory foreign government practices that burden or restrict U.S. commerce. For example, Section 301 may be used to obtain increased market access for U.S. goods and services, to provide more equitable conditions for U.S. investment abroad, and to obtain more effective protection worldwide for U.S. intellectual property.

a. Operation of the Statute

The Section 301 provisions of the Trade Act provide a domestic procedure whereby interested persons may petition the USTR to investigate a foreign government act, policy, or practice that may be burdening or restricting U.S. commerce and take appropriate action. The USTR also may self-initiate an investigation. In each investigation, the USTR must seek consultations with the foreign government whose acts, policies, or practices are under investigation. If the consultations do not result in a settlement and the investigation involves a trade agreement, Section 303 of the Trade Act requires the USTR to use the dispute settlement procedures that are available under that agreement.

If the matter is not resolved by the conclusion of the investigation, Section 304 of the Trade Act requires the USTR to determine whether the acts, policies, or practices in question deny U.S. rights under a trade agreement or whether they are unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce. If the acts, policies, or practices are determined to violate a trade agreement or to be unjustifiable, the USTR must take action. If they are determined to be unreasonable or discriminatory and to burden or restrict U.S. commerce, the USTR must determine whether action is appropriate and, if so, what action to take. The time period for making these determinations varies according to the type of acts, policies, or practices alleged. Investigations of alleged violations of trade agreements that contain dispute settlement procedures must be concluded within the earlier of 18 months after initiation or 30 days after the conclusion of dispute settlement proceedings, whereas investigations of alleged unreasonable, discriminatory, or unjustifiable acts, policies, or practices (other than the failure to provide adequate and effective protection of intellectual property rights) must be decided within 12 months.

Actions that the USTR may take under Section 301 include to: (1) suspend trade agreement concessions; (2) impose duties or other import restrictions; (3) impose fees or restrictions on services; (4) enter into agreements with the subject country to eliminate the offending practice or to provide compensatory benefits for the United States; and/or (5) restrict service sector authorizations.

After a Section 301 investigation is concluded, the USTR is required to monitor a foreign country's implementation of any agreements entered into, or measures undertaken, to resolve a matter that was the subject of the investigation. If the foreign country fails to comply with an agreement or the USTR considers that the country fails to implement a WTO dispute panel recommendation, the USTR must determine what further action to take under Section 301.

b. Developments during 2008

USTR received no new Section 301 petitions during 2008. There were developments relating to the Section 301 investigation described in part c. below.

c. EC - Measures Concerning Meat and Meat Products (Hormones)

A European Commission (EC) directive prohibits the import into the European Union of animals and meat from animals to which certain hormones had been administered (the "hormone ban"). This measure has the effect of banning nearly all imports of beef and beef products from the United States. A WTO panel and the Appellate Body found that the hormone ban was inconsistent with the EC's WTO obligations because the ban was not based on scientific evidence, a risk assessment, or relevant international standards. Under WTO procedures, the EC was to have come into compliance with its obligations by May 13, 1999, but failed to do so. Accordingly, in May 1999 the United States requested authorization from the Dispute Settlement Body (DSB) to suspend the application to the EC, and Member States thereof, of tariff concessions and related obligations under the GATT. The EC did not contest that it had failed to comply with its WTO obligations, but objected to the level of suspension proposed by the United States.

On July 12, 1999, WTO arbitrators determined that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent hormone ban was $116.8 million per year. Accordingly, on July 26, 1999, the DSB authorized the United States to suspend the application to the EC and its Member States of tariff concessions and related obligations under the GATT covering trade up to $116.8 million per year. In a *Federal Register* notice published in July 1999, the USTR announced that the United States was exercising this authorization by using authority under Section 301 to impose 100 percent *ad valorem* duties on a list of certain products (the "retaliation list") of certain EC Member States.

In February 2005, a WTO panel was established to consider the EC's claims that it had brought its hormone ban into compliance with the EC's WTO obligations and that the increased duties imposed by the United States were no longer covered by the DSB authorization. The WTO panel concluded its work in 2008. The panel report was appealed to the WTO Appellate Body, which issued its report on October 16, 2008. The report of the Appellate Body confirmed that the July 1999 DSB authorization to the United States to suspend the application of tariff concessions and related obligations remains in effect. For further information on this matter, see Chapter II, Section H.

Section 307(c) of the Trade Act provides for USTR to conduct a review of a section 301 action four years after the action was taken. During 2008, the U.S. Court of International Trade held that USTR must also conduct a section 307(c) review eight years after the action was taken. Accordingly, USTR proceeded to conduct such a review. First, USTR notified in writing the representatives of the domestic beef industry of the court ruling and inquired whether the industry wished for the prior action to terminate or to be continued. Representatives of the domestic beef industry submitted written requests to continue the July 1999 action.

USTR then proceeded to conduct a review pursuant to section 307(c)(3) of the Trade Act. With the advice of the interagency Section 301 Committee, USTR examined the following aspects of the July 1999 action: (A) the effectiveness in achieving the objectives of section 301 of (i) such action, and (ii) other actions that could be taken (including actions against other products), and (B) the effects of such actions on the U.S. economy, including consumers. As part of this review, in November 2008 USTR published a *Federal Register* notice inviting public comments.

USTR announced the results of the review in January 2009. Pursuant to authority under sections 306 and 307 of the Trade Act, the USTR decided to modify the July 1999 retaliation list by making additions to and deletions from the list of products subject to additional duties, by changing the EC Member States whose products are subject to the duties, and, for one product, by increasing the level of the additional duties.

2. Special 301

During the past year, the United States continued to vigorously implement the Special 301 program, resulting in continued improvement in the global intellectual property environment. Publication of the Special 301 lists indicates those trading partners whose intellectual property protection regimes most concern the United States and alerts firms considering trade or investment relationships with such countries that their intellectual property rights (IPR) may not be adequately protected. Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act (enacted in 1994), USTR must identify those countries that deny adequate and effective protection for IPR or deny fair and equitable market access for persons that rely on intellectual property protection. Countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are designated as "Priority Foreign Countries" unless those countries are entering into good faith negotiations, or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of IPR. USTR may identify a trading partner as a Priority Foreign Country or remove such identification whenever warranted. Priority Foreign Countries are subject to an investigation under the Section 301 provisions of the Trade Act of 1974, unless USTR determines that the investigation would be detrimental to U.S. economic interests.

In addition, USTR has created a Special 301 "Priority Watch List" and "Watch List." Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property. Countries placed on the Priority Watch List receive increased attention in bilateral discussions with the United States concerning problem areas.

Additionally, under Section 306 of the Trade Act of 1974, USTR monitors whether U.S. trading partners are in compliance with bilateral intellectual property agreements with the United States that are the basis for resolving investigations under Section 301. USTR may apply sanctions if a country fails to satisfactorily implement such an agreement.

a. 2008 Special 301 Review Announcements

On April 25, 2008, the United States announced the results of the 2008 Special 301 annual review, which examined in detail the adequacy and effectiveness of intellectual property protection in 78 countries. USTR placed 46 countries on the Priority Watch List, Watch List, or the Section 306 monitoring list.

China remained a top IPR enforcement priority in 2008 and was placed again on the Priority Watch List. USTR continued to address selected issues through WTO dispute settlement proceedings, and to pursue bilateral engagement on IPR issues through the U.S.-China Joint Commission on Commerce and Trade (JCCT) and other mechanisms. The China section of the Special 301 report noted that levels of copyright piracy and trademark counterfeiting remained unacceptably high.

Russia also continued to be a serious concern and remained on the Priority Watch List. The Special 301 report noted that Russia had continued to make progress towards implementing the November 2006

United States-Russia Bilateral Market Access Agreement on Intellectual Property Rights (the IPR Bilateral Agreement) by addressing IPR protection and enforcement concerns, but Russia needs to take further steps to fully implement the IPR Bilateral Agreement.

Countries on the Priority Watch List are the focus of increased bilateral attention concerning problem areas. In addition to China and Russia, seven countries were placed on the Priority Watch List in 2008: Argentina, Chile, India, Israel, Pakistan, Thailand, and Venezuela.

Thirty-six trading partners were placed on the lower level Watch List, meriting bilateral attention to address underlying IPR problems. The Watch List countries were: Algeria, Belarus, Bolivia, Brazil, Canada, Colombia, Costa Rica, the Czech Republic, the Dominican Republic, Ecuador, Egypt, Greece, Guatemala, Hungary, Indonesia, Italy, Jamaica, Kuwait, Lebanon, Malaysia, Mexico, Norway, Peru, the Philippines, Poland, the Republic of Korea, Romania, Saudi Arabia, Spain, Taiwan, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan, and Vietnam. Paraguay remains under Section 306 monitoring.

Due to progress on intellectual property rights protection, the status of several countries in the 2008 Special 301 report improved in comparison to the 2007 report. Egypt, Lebanon, Turkey, and Ukraine were moved from the Priority Watch List to the Watch List, reflecting improvements in IPR protection or enforcement. Two other trading partners – Belize and Lithuania – were removed from the Special 301 list altogether in recognition of IPR improvements.

The 2008 Special 301 report also announced Out-of-Cycle Reviews for Israel and Taiwan. Out-of-Cycle Reviews are conducted for countries that warrant further review before the next Special 301 report and may result in changes to a country's listing.

b. Initiatives

The 2008 Special 301 report sets out priorities for the coming year, such as implementing free trade agreements (FTAs) and combating Internet piracy and pharmaceutical counterfeiting. The 2008 Special 301 report detailed ongoing U.S. efforts to conclude FTAs with strong IPR chapters and to work closely with FTA partners to achieve appropriate implementation of FTA obligations in domestic law. The report reviewed USTR's examination of IPR practices in connection with its administration of trade preference programs, such as the ongoing Generalized System of Preferences (GSP) reviews of countries. In addition to the Anti-Counterfeiting Trade Agreement negotiations discussed elsewhere in this Report, USTR reported on the status of ongoing initiatives and significant developments:

- **Continuing to Advance the STOP! Initiative:** USTR reported that it was actively engaged in implementing the Strategy Targeting Organized Piracy (STOP!) initiative. As part of this effort, USTR, in coordination with other agencies, continued to advocate the adoption of best practices guidelines for IPR enforcement.

- **Global Scope of Counterfeiting and Piracy:** USTR reported that global IPR theft and trade in fakes have grown to unprecedented levels, threatening innovative and creative economies around the world. Counterfeiting of pharmaceuticals and consumer safety were highlighted as areas of particular concern in the 2008 Special 301 report.

- **Notorious Markets:** Noting that global piracy and counterfeiting thrive in part due to large marketplaces that deal in infringing goods, USTR listed "notorious markets" in the Special 301 report. The listed markets are examples of both virtual (online) markets and traditional physical markets that have been the subject of IPR enforcement action, those that may merit further investigation for possible IPR infringements, or both.

- **Destruction of Seized Counterfeit Goods and Manufacturing Equipment:** The Special 301 report noted that the destruction of seized counterfeit goods, materials, and related manufacturing equipment is a reliable way to ensure that these goods do not wind up in the hands of consumers.

- **In Transit Goods:** In transit goods pose a high risk for counterfeiting and piracy. USTR reported that transshipment or in transit goods are significant problems in many countries, as well as in certain free trade zones.

- **Internet Piracy and the WIPO Internet Treaties:** USTR reported that, in order to realize the enormous potential of the Internet, a growing number of countries are implementing the WIPO Internet Treaties and creating a legal environment conducive to investment and growth in Internet-related businesses and technologies. The Special 301 report noted that as of April 2008, there were 64 members of the WIPO Copyright Treaty and 62 members of the WIPO Performances and Phonograms Treaty; these numbers will rise significantly when the EU Member States join.

- **Optical Media Piracy:** USTR reported that some trading partners had taken important steps toward implementing much-needed controls on optical media production in order to address and prevent future piracy. However, other countries urgently need to implement controls or to improve inadequate existing measures.

- **Ensuring Government Use of Authorized Software:** USTR reported continued progress in its ongoing work with other governments, particularly those in need of modernizing their software management systems or about which concerns regarding government use of illegal software have been expressed.

- **Ensuring Compliance with the WTO TRIPS Agreement:** USTR reported on efforts to ensure compliance by U.S. trading partners with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

- **Intellectual Property and Health Policy:** Noting the Administration's dedication to addressing serious health problems, such as HIV/AIDS, afflicting least-developed countries in Africa and elsewhere, USTR reported on developments following the 2001 Doha Declaration on the TRIPS Agreement and Public Health.

- **Supporting Pharmaceutical Innovation:** USTR reported on its efforts to eliminate market access barriers faced by U.S. pharmaceutical companies in many countries to provide for affordable health care today and support the innovation that assures improved health care tomorrow.

3. Section 1377 Review of Telecommunications Agreements

Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 requires USTR to review by March 31 of each year the operation and effectiveness of U.S. telecommunications trade agreements. The purpose of the review is to determine whether any act, policy, or practice of a foreign country that has entered into a telecommunications-related agreement with the United States: (1) is not in compliance with the terms of the agreement; or (2) otherwise denies, within the context of the agreement, to telecommunications products and services of U.S. firms mutually advantageous market opportunities in that country.

The 2008 Section 1377 Review focused on country-specific concerns, as well as more general issues of concern. Country-specific concerns included: (1) access to the telecommunications network of the major supplier in Australia; (2) impediments to market access in China, including high capitalization requirements and limits on joint-venture partnerships; (3) problems interconnecting with major suppliers in El Salvador and Guatemala; (4) access to network elements of the major supplier's network in Germany; (5) concerns related to the application and administration of Jamaica's universal service program; (6) telecom equipment testing requirements in Mexico; (7) delays in licensing basic telecommunications services in Oman; and (8) access to leased lines in Singapore.

General issues of concern identified in the 2008 1377 Review include: (1) regulatory frameworks that hinder the development of competitive telecommunications markets; (2) excessively high mobile termination rates; (3) continued barriers to the use of Voice over Internet Protocol (VoIP) technology; and (4) conformity assessment requirements relating to telecommunications and information technology equipment.

In the 2008 1377 Review, USTR also marked progress in key markets on issues identified in earlier reviews, including: (1) Colombia, which drastically reduced a high licensing fee for long distance service that had long served as a barrier to market entry; and, (2) India, which eliminated its Access Deficit Charge, a fee that increased costs to U.S. carriers sending telecommunications traffic to India.

4. Antidumping Actions

Under the antidumping law, duties are imposed on imported merchandise when the Department of Commerce (Commerce) determines that the merchandise is being dumped (sold at "less than fair value") and the U.S. International Trade Commission (USITC) determines that there is material injury or threat of material injury to the domestic industry, or material retardation of the establishment of an industry, "by reason of" those imports. The antidumping law's provisions are incorporated in Title VII of the Tariff Act of 1930 and have been substantially amended by the l979, 1984, and 1988 trade acts as well as by the 1994 Uruguay Round Agreements Act.

An antidumping investigation usually starts when a U.S. industry, or an entity filing on its behalf, submits a petition alleging, with respect to certain imports, the dumping and injury elements described above. If the petition meets the applicable requirements, Commerce initiates an antidumping investigation. In special circumstances, Commerce also may initiate an investigation on its own motion.

After initiation, the USITC decides, generally within 45 days of the filing of the petition, whether there is a "reasonable indication" of material injury or threat of material injury to a domestic industry, or material retardation of an industry's establishment, "by reason of" the allegedly dumped imports. If this preliminary injury determination by the USITC is negative, the investigation is terminated and no duties are imposed; if it is affirmative, Commerce will make preliminary and final determinations concerning

the allegedly dumped sales into the U.S. market. If Commerce's preliminary determination is affirmative, Commerce will direct U.S. Customs to suspend liquidation of entries and require importers to post a bond or cash deposit equal to the estimated weighted-average dumping margin.

If Commerce's final determination regarding dumping is negative, the investigation is terminated and no duties are imposed. If affirmative, the USITC makes a final injury determination. If the USITC determines that there is material injury or threat of material injury, or material retardation of an industry's establishment, by reason of the dumped imports, an antidumping order is issued. If the USITC's final injury determination is negative, the investigation is terminated and the cash deposits are refunded or the bonds posted are released.
Upon request of an interested party, Commerce conducts annual reviews of dumping margins pursuant to Section 751 of the Tariff Act of 1930. Section 751 also provides for Commerce and USITC review in cases of changed circumstances and periodic review in conformity with the five-year "sunset" provisions of the U.S. antidumping law and the WTO Antidumping Agreement.

Most antidumping determinations may be appealed to the U.S. Court of International Trade, with further judicial review possible in the U.S. Court of Appeals for the Federal Circuit. For certain investigations involving Canadian or Mexican merchandise, appeals may be made to a binational panel established under the NAFTA.

The numbers of antidumping investigations initiated in and since 1986 are as follows: 83 in 1986; 16 in 1987; 42 in 1988; 24 in 1989; 35 in 1990; 66 in 1991; 84 in 1992; 37 in 1993; 51 in 1994; 14 in 1995; 21 in 1996; 15 in 1997; 36 in 1998; 46 in 1999; 45 in 2000; 77 in 2001; 35 in 2002; 37 in 2003; 26 in 2004; 13 in 2005; 7 in 2006; 28 in 2007; and 16 in 2008. The numbers of antidumping orders (not including suspension agreements) imposed in and since 1986 are: 26 in 1986; 53 in 1987; 12 in 1988; 24 in 1989; 14 in 1990; 19 in 1991; 16 in 1992; 42 in 1993; 16 in 1994; 23 in 1995; 9 in 1996; 11 in 1997; 9 in 1998; 19 in 1999; 20 in 2000; 31 in 2001; 27 in 2002; 16 in 2003; 14 in 2004; 18 in 2005; 5 in 2006; 2 in 2007; and 23 in 2008.

5. Countervailing Duty Actions

The U.S. countervailing duty (CVD) law dates back to late 19th century legislation authorizing the imposition of CVDs on subsidized sugar imports. The current CVD provisions are contained in Title VII of the Tariff Act of 1930, as amended effective January 1, 1995, by the Uruguay Round Agreements Act. As with the antidumping law, the USITC and Commerce jointly administer the CVD law.

The CVD law's purpose is to offset certain foreign government subsidies that benefit imports into the United States. CVD procedures under Title VII are very similar to antidumping procedures, and CVD determinations by Commerce and the USITC are subject to the same system of judicial review as are antidumping determinations. Commerce normally initiates investigations based upon a petition submitted by a U.S. industry or an entity filing on its behalf. The USITC is responsible for investigating material injury issues. The USITC makes a preliminary finding as to whether there is a reasonable indication of material injury or threat of material injury, or material injury retardation of an industry's establishment, by reason of the imports subject to investigation. If the USITC's preliminary determination is negative, the investigation terminates; otherwise, Commerce issues preliminary and final determinations on subsidization. If Commerce's final determination of subsidization is affirmative, the USITC proceeds with its final injury determination. If the USITC's final determination is affirmative, Commerce will issue a CVD order.

The numbers of CVD investigations initiated in and since 1986 are as follows: 28 in 1986; 8 in 1987; 17 in 1988; 7 in 1989; 7 in 1990; 11 in 1991; 22 in 1992; 5 in 1993; 7 in 1994; 2 in 1995; 1 in 1996; 6 in 1997; 11 in 1998; 10 in 1999; 7 in 2000; 18 in 2001; 4 in 2002; 5 in 2003; 3 in 2004; 2 in 2005; 3 in 2006; 7 in 2007; and 6 in 2008. The numbers of CVD orders imposed in and since 1986 are: 13 in 1986; 14 in 1987; 7 in 1988; 6 in 1989; 2 in 1990; 2 in 1991; 4 in 1992; 16 in 1993; 1 in 1994; 2 in 1995; 2 in 1996; 0 in 1997; 1 in 1998; 6 in 1999; 6 in 2000; 6 in 2001; 10 in 2002; 2 in 2003; 3 in 2004; 0 in 2005; 2 in 2006; 0 in 2007; and 7 in 2008. Under its sunset review procedures, Commerce revoked 8 and continued 22 countervailing duty orders in 2000; revoked 1 countervailing duty order and continued 5 orders in 2001; revoked no countervailing duty orders and continued no orders in 2002; revoked no countervailing duty orders and continued no orders in 2003; revoked no countervailing duty orders and continued no orders in 2004; revoked 4 and continued 12 countervailing duty orders in 2005; revoked 7 and continued 3 countervailing duty orders in 2006; revoked 8 and continued 5 countervailing duty orders in 2007; and revoked 1 and continued 2 orders in 2008.

6. Other Import Practices

a. Section 337

Section 337 of the Tariff Act of 1930, as amended, makes it unlawful to engage in unfair acts or unfair methods of competition in the importation or sale of imported goods. Most Section 337 investigations concern alleged infringement of intellectual property rights, such as U.S. patents and trademarks.

The United States International Trade Commission (USITC or Commission) conducts Section 337 investigations through adjudicatory proceedings under the Administrative Procedure Act. The proceedings normally involve an evidentiary hearing before a USITC administrative law judge who issues an Initial Determination that is subject to review by the Commission. If the USITC finds a violation, it can order that imported infringing goods be excluded from the United States and/or issue cease and desist orders requiring firms to stop unlawful conduct in the United States, such as the sale or other distribution of imported goods in the United States. A limited exclusion order covers only certain imports from particular named sources, while a general exclusion order covers certain products from all sources. Cease and desist orders are generally directed to entities maintaining inventories of infringing goods in the United States. Many Section 337 investigations are terminated after the parties reach settlement agreements or agree to the entry of consent orders.

In cases in which the USITC finds a violation of Section 337, it must decide whether certain public interest factors nevertheless preclude the issuance of a remedial order. Such public interest considerations include an order's effect on the public health and welfare, U.S. consumers, and the production of similar U.S. products. If the USITC issues a remedial order, it transmits the order, determination, and supporting documentation to the President for policy review. In July 2005, President Bush assigned these policy review functions, which are set out in section 337(j)(1)(B), section 337(j)(2), and section 337(j)(4) of the Tariff Act of 1930, to the USTR. The USTR conducts these reviews in consultation with other agencies. Importation of the subject goods may continue during this review process if the importer pays a bond set by the USITC. If the President (or the USTR exercising the functions assigned by the President) does not disapprove the USITC's action within 60 days, the USITC's order becomes final. Section 337 determinations are subject to judicial review in the U.S. Court of Appeals for the Federal Circuit with possible appeal to the U.S. Supreme Court.

The USITC also is authorized to issue temporary exclusion or cease and desist orders before it completes an investigation if it determines that there is reason to believe a violation of Section 337 exists.

In 2008, the USITC instituted 40 new Section 337 investigations. It also instituted three enforcement proceedings relating to a previously-issued USITC remedial order. During the year, the USITC issued one general exclusion order, three limited exclusion orders, and two cease and desist orders, covering imports from foreign firms, as follows: *Certain Digital Multimeters and Products with Multimeter Functionality,* No. 337-TA-588 (a general exclusion order and 2 cease and desist orders); *Certain DVD Players, Recorders, and Certain Products Containing Same*, Inv. No. 337-TA-603 (a limited exclusion order); *Certain Magnifying Loupe Products and Components Thereof,* Inv. No. 337-TA-611 (a limited exclusion order); and *Certain Bulk Containers*, Inv. No. 337-TA-538 (a limited exclusion order).

b. Section 201

Section 201 of the Trade Act of 1974 provides a procedure whereby the President may grant temporary import relief if increased imports are a substantial cause of serious injury or the threat of serious injury. Relief may be granted for an initial period of up to four years, with the possibility of extending the relief to a maximum of eight years. Import relief is designed to redress the injury and to facilitate positive adjustment by the domestic industry; it may consist of increased tariffs, quantitative restrictions, or other forms of relief. Section 201 also authorizes the President to grant provisional relief in cases involving "critical circumstances" or certain perishable agricultural products.

For an industry to obtain relief under Section 201, the USITC must first determine that a product is being imported into the United States in such increased quantities as to be a substantial cause (a cause which is important and not less than any other cause) of serious injury, or the threat thereof, to the U.S. industry producing a like or directly competitive product. If the USITC makes an affirmative injury determination (or is equally divided on injury) and recommends a remedy to the President, the President may provide relief either in the amount recommended by the USITC or in such other amount as he finds appropriate. The criteria for import relief in Section 201 are based on Article XIX of the GATT 1994 – the so-called "escape clause" – and the WTO Agreement on Safeguards.

As of January 1, 2008, the United States had no safeguard measures in place. The United States did not impose any safeguard measures during 2008, and did not commence any safeguard investigations.

c. Section 421

The terms of China's accession to the WTO include a unique, China-specific safeguard mechanism. The mechanism allows a WTO member to limit increasing imports from China that disrupt or threaten to disrupt its market if China does not agree to take action to remedy or prevent the disruption or threatened disruption. The mechanism applies to all industrial and agricultural goods and will be available until December 11, 2013.

Section 421 of the Trade Act of 1974, as amended by the U.S.-China Relations Act of 2000, implements this safeguard mechanism in U.S. law. For an industry to obtain relief under Section 421, the USITC must first make a determination that products of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. The statute directs that if the USITC makes an affirmative determination, the President shall provide import relief, unless the President determines that provision of relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action would cause serious harm to the national security of the United States.

China's terms of accession also permit a WTO Member to limit imports where a China-specific safeguard measure imposed by another Member causes or threatens to cause significant diversions of trade into the

first Member's market. The trade diversion provision is implemented in U.S. law by Section 422 of the Trade Act of 1974, as amended.

Through 2005, six petitions had been filed and adjudicated under Section 421. No new petitions were filed during 2006, 2007, or 2008.

On February 10, 2006, the U.S. Court of Appeals for the Federal Circuit dismissed the complaint filed against President Bush by Motion Systems Corporation, the petitioner in the first Section 421 investigation. The Court of Appeals held that the President has discretion in applying Section 421 and therefore judicial review is not available. The Court of Appeals also affirmed the Court of International Trade's decision that the U.S. Trade Representative could not be sued under Section 421 because the USTR's statutory role does not constitute "final agency action" and thus cannot be challenged in court. Motion Systems Corporation filed a petition for review with the Supreme Court. The Supreme Court denied the request on October 2, 2006.

d. China Textile Safeguard

The terms for China's accession to the WTO included a special textiles safeguard, which was available to WTO members until December 31, 2008. This safeguard covered all products that were subject to the WTO Agreement on Textiles and Clothing on January 1, 1995.

Until its recent expiration, Paragraph 242 of the *Report on the Working Party for the Accession of China to the World Trade Organization* ("Paragraph 242") had allowed WTO Members that believed imports of Chinese-origin textile or apparel products were, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with China with a view to easing or avoiding such market disruption. Under Paragraph 242, the importing country was required to supply to China data which, in its view, show the "existence or threat" of market disruption and the role of Chinese-origin products in that disruption. On receipt of a request for consultations, China was required to impose specified limits on its exports of such products to the member country. If the consultations failed to yield a solution to the threat or existence of market disruption, the WTO Member could continue such limits on imports of Chinese-origin textile or apparel products for up to one year, unless such limits were reapplied.

As noted in last year's Annual Report, on November 8, 2005, China and the United States signed a broad agreement that addressed imports of certain textile and apparel products from January 1, 2006 through December 31, 2008. This agreement also replaced safeguard measures that had previously been taken by the United States under Paragraph 242.

7. Trade Adjustment Assistance

a. Overview and Assistance for Workers

The Trade Adjustment Assistance (TAA) program for workers, established under Title II, Chapter 2, of the Trade Act of 1974, as amended, provides assistance for workers affected by foreign trade. Congress has appropriated funds for the TAA program through March 6, 2009. Available assistance includes job retraining, trade readjustment allowances (TRA), out-of-area job search assistance, relocation allowances, a health insurance tax credit, and a wage supplement for older displaced workers. The program was last amended by the Trade Adjustment Assistance Reform Act (TAA Reform Act), which was part of the Trade Act of 2002, enacted on August 6, 2002. The TAA Reform Act expanded the TAA program and superseded the North America Free Trade Agreement Transitional Adjustment Assistance (NAFTA-

TAA) program. The TAA Reform Act also raised the statutory cap on training funds that may be allocated to the States for training from $110 million to $220 million per year.

The TAA Reform Act expanded eligibility for the TAA program. For workers to be eligible to apply for TAA, the Secretary of Labor must certify that a significant number or proportion of the workers in a firm (or appropriate subdivision of the firm) have become totally or partially separated or threatened with such separation and: (1) increased imports contributed importantly to a decline in sales or production and to the separation or threatened separation of workers; or (2) there has been a shift in production to a country that has a free trade agreement with the United States or is a beneficiary country under the African Growth and Opportunity Act, the Andean Trade Preference Act, or the Caribbean Basin Economic Recovery Act; or (3) there has been a shift in production to another country, and there has been or is likely to be an increase in imports of like or directly competitive articles; or (4) loss of business as a supplier or downstream producer for a TAA-certified firm contributed importantly to worker layoffs. The fourth basis for certification is designed to cover certain secondarily-affected workers.

The U.S. Department of Labor (DOL) administers the TAA program through the Employment and Training Administration (ETA). States act as agents of the United States in administering TAA benefits for members of TAA-certified worker groups. Workers certified as eligible to apply for adjustment assistance may apply for TAA benefits and services at the nearest local One-Stop Career Center. Local One-Stop Career Centers can be found on the Internet at http://www.servicelocator.org or by calling 1-877-US2-JOBS. In order to be eligible for TRA, the income support available under the program, workers must be enrolled in approved training within 8 weeks of the issuance of the DOL certification or within 16 weeks of the worker's most recent qualifying separation (whichever is later). A 45-day extension is available under extenuating circumstances. A state may waive the training requirement under any of six specific conditions outlined in the law.

The TAA Reform Act created the Health Coverage Tax Credit (HCTC) for certain trade-impacted workers and others. Covered individuals may be eligible to receive a tax credit equal to 65 percent of the amount they paid for qualifying health insurance coverage. The tax credit may be claimed at the end of the year, or a qualified individual may receive the credit in the form of monthly advance payments made directly to the health insurance provider.

In addition, the TAA Reform Act of 2002 created the Alternative Trade Adjustment Assistance (ATAA) for Older Workers program. This program was implemented on August 6, 2003, and provides qualified trade-impacted workers, who are at least 50 years of age and find other work within 26 weeks of separation, with a wage supplement of up to half the difference between their old and new salaries, in lieu of retraining. The maximum amount payable is $10,000 over a two-year period, and workers must earn less than $50,000 per year in their new employment to qualify for the program.

Since implementation of the TAA Reform Act, DOL has implemented administrative reforms to improve program efficiency and the quality of services delivered to workers, including a reengineered petition process, certification of workers who produce intangible articles (*e.g.,* software), inclusion of leased or contract workers in certifications, distribution of TAA training funds by formula, institutionalization of quarterly performance reporting requirements, and integration of services with those provided under the Workforce Investment Act through the One-Stop Career Center system. The administrative reforms have led to a reduction in the average petition processing time from 96 days in Fiscal Year 2002 to 37 days in Fiscal Year 2008, increased ability of workers to access program benefits and services, and improved fiscal management.

In 2008, DOL issued 1,371 certifications for TAA, covering an estimated 126,317 workers. Around 69 percent of all TAA petitioners were certified as eligible to apply for program benefits and services. Over 80,000 workers participated in a TAA training program in 2008.

b. Assistance for Farmers

The Trade Act of 2002 also contained a provision for Trade Adjustment Assistance for Farmers, with an appropriation of not more than $90 million for each fiscal year between 2003 and 2007 to be administered by the U.S. Department of Agriculture. Authority for the program was extended by Congress through December 31, 2007, with an appropriation of $9 million for the three-month period beginning October 1, 2007. The Secretary of Agriculture delegated authority for this program to the Administrator of the Foreign Agricultural Service.

The regulation to implement Trade Adjustment Assistance for Farmers was published in the *Federal Register* on August 20, 2003, and is now codified at 7 C.F.R. § 1580. Primary requirements for a farmer to be eligible were that the price of the basic agricultural commodity produced by the farmer in the most recent year was less than 80 percent of the average price over the previous five years, and that imports contributed importantly to the price decline.

If a group of farmers was certified as eligible for benefits, individual producers could then apply to the Farm Service Agency for technical assistance and/or cash benefits. A producer had to receive technical assistance to become eligible for cash benefits. Cash benefits were subject to certain personal and farm income limits, and could not exceed $10,000 per year to an individual producer. The cash benefit per unit was one-half of the difference between the most recent year's price and the previous five-year average price. If the funding authorized by Congress was insufficient to pay 100 percent of all claims during the fiscal year, payments will be prorated. Cash payments disbursed over the duration of the program amounted to approximately $26.2 million.

c. Assistance for Firms and Industries

The Trade Adjustment Assistance for Firms Program (the TAAF Program) is authorized by Title II, Chapter 3 of the Trade Act of 1974, as amended (19 U.S.C. 2341 et seq.) (the Trade Act). The TAAF Program provides technical assistance to help U.S. firms experiencing a decline in sales and employment to become more competitive in the global marketplace. To be certified for the TAAF program, a firm must show that an increase in imports of like or directly competitive articles contributed to an important part of its decline in sales, production, or both, and to the separation or threat of separation of a significant portion of the firm's workers. The Secretary of Commerce is responsible for administering the TAAF Program and has delegated the statutory authority and responsibility under the Trade Act to the Department of Commerce's Economic Development Administration (EDA). EDA regulations implementing the TAAF Program are codified at 13 CFR Part 315 and may be accessed via EDA's Internet website at: http://www.eda.gov/InvestmentsGrants/Lawsreg.xml

In Fiscal Year (FY) 2008, EDA awarded a total of $14,099,992 in TAAF Program funds to its national network of 11 Trade Adjustment Assistance Centers (TAACs), each of which is assigned a different geographic service area. During FY 2008, EDA certified 173 petitions for eligibility and approved 139 adjustment proposals.

Additional information on the TAAF Program (including eligibility criteria and application process) is available at http://www.eda.gov/AboutEDA/Programs.xml.

8. United States Preference Programs

a. Overview

The United States has a number of programs designed to encourage economic development in lower income countries by offering preferential duty-free U.S market access to imports from countries covered by these programs. Individual countries may be covered by more than one preferential access program with the opportunity for exporters to choose among programs when seeking preferential access to the U.S. market. The extent to which developing countries take advantage of the preferential access provided under U.S. trade law is measured by the total value of imports (for consumption) receiving preferential access under any one of the individual programs. Such U.S. imports totaled $115 billion in 2008, up 26 percent from full year 2007 ($90.9 billion). As a share of total U.S. goods imports for consumption, these preferential imports rose from 4.6 percent in 2007 to 5.4 percent in 2008. The programs, with each one's share of total imports from the group, are as follows: African Growth Opportunity Act (AGOA, excluding GSP), 51.5 percent; GSP, 28.5 percent; Andean Trade Preference Act (ATPA), 15.7 percent; Caribbean Basin Initiative (CBI) 2.7 percent; and Caribbean Basin Trade and Partnership Act (CBTPA), 1.5 percent. The strongest growth in usage between 2007 and 2008 was under AGOA (excluding GSP) (up 41.3 percent) and ATPA (up 46.4 percent). Usage under CBI was up 11.7 percent and GSP was up just 4.0 percent. Usage under CBTPA fell by 31.0 percent. The 26 percent growth rate in imports under these five programs compares to a 9.5 percent increase for U.S. total goods imports (for consumption) from the world over the same period.

b. Generalized System of Preferences

i. History

The U.S. Generalized System of Preferences (GSP) provides preferential duty-free treatment for 3,448 products from 131 designated beneficiary developing countries and territories, which comprise more than half of all dutiable products entering the United States. The GSP program was initially authorized under the Trade Act of 1974 (19 U.S.C. §§ 2461 et seq.) for a ten-year period and was instituted on January 1, 1976.

In 1996, Congress established a new category of beneficiaries – least-developed beneficiary developing countries (LDBDCs) – that are eligible for expanded benefits. To date, 44 countries have been designated as LDBDCs and can export to the United States an additional 1,434 articles that are eligible for duty-free entry.

In 2006, based on the results of the Administration's overall review of the GSP program, Congress amended the law governing the GSP program to authorize the revocation of competitive need limitation waivers for products that exceed trade value and volume thresholds, thereby removing duty-free treatment under the GSP program from those products. This change has resulted in increased trade opportunities for other GSP beneficiaries that have been able to increase exports to fill U.S. demand.

Since Congress first authorized the GSP program in 1974, it has extended the program 11 times. The most recent renewal, in October 2008, authorized the GSP program through December 31, 2009. Extension of the program without a lapse provided greater certainty for developing country producers and exporters, as well as for U.S. importers and businesses.

ii. Purposes

The purpose of the GSP program is to accelerate economic growth in developing countries by promoting access to the U.S. market[28] for such countries while increasing choices for U.S. businesses and consumers. GSP duty-free treatment is not available for products determined by the President to be import-sensitive, or otherwise prohibited by statute. An underlying principle of the GSP program is that the creation of trade opportunities for developing countries is an effective way of encouraging broad-based economic development and a key means of sustaining momentum for economic reform and liberalization. The GSP program also ensures that U.S. companies have access to intermediate products from beneficiary countries on generally the same terms that are available to competitors in other developed countries that grant similar trade preferences.

iii. Beneficiaries

Currently, more than two-thirds of all countries globally participate in the U.S. GSP program. In December 2008, Kosovo and Azerbaijan were added to the GSP program, and the Solomon Islands were added to the list of LDBDCs in June 2008. Peru, Costa Rica, and Oman were removed from the GSP program when free trade agreements with the United States entered into force in early 2009. Vietnam has submitted a request to become a GSP beneficiary, which is under review.

U.S. industry has noted that a country's participation in the GSP program nurtures conditions that are advantageous to U.S. investors as well as to the beneficiaries. Through various mechanisms, the GSP program encourages beneficiaries to: (1) eliminate or reduce significant barriers to trade in goods, services, and investment; (2) afford workers internationally recognized worker rights; and (3) provide adequate and effective intellectual property rights protection and enforcement. The Administration also evaluates the extent to which GSP beneficiaries have assured the United States that they will provide equitable and reasonable access to their markets, which is a statutory eligibility criterion and considered in deciding whether to grant a waiver of the competitive need limitations (CNLs) with respect to a GSP-eligible article (19 U.S.C. § 2463(d)(2)(A)).

iv. Eligible Products

The combined lists of GSP-eligible products include most dutiable manufactures and semi-manufactures and selected agricultural, fishery, and primary industrial products not otherwise duty-free. The largest groups of eligible products, by tariff line designation, are: (1) chemicals and plastics; (2) machinery, electronics, and high-technology apparatus; and (3) base metals and articles of base metals. Certain articles are prohibited by law (19 U.S.C. § 2463(b)(1)) from receiving GSP treatment, including most non-silk textiles and apparel, watches, footwear, handbags, luggage, flat goods, work gloves, and other leather apparel. Least-developed beneficiaries receive additional preferential access in petroleum, chemicals and plastics; animal and plant products; and prepared food, beverages, spirits, and tobacco products.

Although GSP benefits for textiles and apparel are limited, certain handmade folkloric products are eligible for GSP treatment. The United States has entered into agreements providing for certification and GSP eligibility of handmade, folkloric products with 15 countries: Afghanistan, Argentina, Botswana, Cambodia (new in 2008), Colombia, Egypt, Jordan, Mongolia (new in 2008), Nepal, Pakistan, Paraguay, Thailand, Tunisia, Turkey, and Uruguay. Such agreements provide the basis for extending duty-free treatment to exports produced by women and the poorest, often rural, residents of beneficiary countries.

[28] H.R. Rep. No. 98-1090, at 2 (1984).

v. Program Results

Value of Trade Entering the United States under the GSP program: The value of U.S. imports entering under the GSP program in 2008 (January through November), was approximately $29.8 billion, a 4.0 percent increase as compared to the same period in 2007.

Top U.S. imports[29] under the GSP program in 2008 (through November), by trade value, were crude petroleum oils and oils from bituminous minerals (which are eligible for duty-free import only from LDBDCs), biodiesel (2.6 percent), certain ferrochromium (2.4 percent), silver jewelry valued over $18 per dozen, ferrosilicon manganese, gold necklaces and neck chains, new radial tires for vehicle cars, aluminum alloys, gold and platinum jewelry (not including necklaces and neck chains), and methanol.

Based on trade value, the top five GSP non-oil-exporting beneficiary developing country (BDC) suppliers in 2008 (through November) were: (1) India; (2) Thailand; (3) Brazil; (4) Indonesia; and (5) South Africa. Of the 30 GSP beneficiaries (not including LDBDC oil-exporting beneficiaries) whose 2008 (through November) trade under the GSP program was the largest, the World Bank classified more than half (17 of 30) as either low income or lower middle income countries[30], indicating that the program is achieving the goal of benefiting those countries which need it most. In addition, exports from many low income and lower middle income beneficiaries entering the United States under the GSP program increased significantly in 2008 (through November) as compared to the same period in 2007, for example: Ukraine (109 percent change), Georgia (113.9 percent), Paraguay (53 percent), Tunisia (42 percent), and Pakistan (38 percent).

Where Exports entering under the GSP Program Comprise a Large Percentage of a Country's Total Exports

For 20 beneficiaries that do not export petroleum under GSP, their GSP exports accounted for at least twenty percent of their overall exports to the United States. This demonstrates the significant impact GSP has on certain economies, and the geographic diversity of the countries benefiting from such benefits. These beneficiaries, and the share GSP comprises of their exports to the United States in 2008 (November), were:

Zimbabwe (81 percent), Paraguay (76 percent), Georgia (62 percent), Lebanon (49 percent), Macedonia (47 percent), Fiji (44 percent), Serbia (42 percent), Armenia (39 percent), Somalia and Malawi (36 percent), Croatia (26 percent), Tunisia, Argentina, and the West Bank (each 24 percent), Tokelau Islands and Zambia (each 22 percent), and Sao Tome and Principe, Uruguay, Turkey, and Kazakhstan (each 20 percent).

The top three LDBDC users of GSP benefits, because of large volumes of petroleum exports under the GSP program, were: (1) Angola; (2) Equatorial Guinea; and (3) Chad. Other top LDBDC users, in order of GSP use in 2008 (through November), included: (4) Bangladesh; (5) Zambia; and (6) Ethiopia. Non-oil exporting LDBDCs whose exports to the United States under the GSP program diversified and grew significantly in 2008 (through November) included: Zambia, Bhutan, Lesotho, and Afghanistan.

The GSP Program's Contribution to Economic Development in Developing Nations: The GSP program helps countries diversify and expand their exports, an important developmental goal. The 2008 import data indicates that many beneficiaries have made progress in diversifying and expanding their exports to the United States under the GSP program, despite challenging economic conditions. For example, Georgia's exports under the GSP program grew from 12 types of products to 22, with its GSP trade more than doubling from $64 million in 2007 to more than $137 million in 2008 (through November). Imports under the GSP program from Mongolia, Ethiopia, and Samoa also broadened and expanded.

[29] Based on tariff line (eight-digit) classification in the HTSUS.
[30]Based on World Bank determinations of gross national incomes per capita (Atlas method – 2007)

Efforts to promote wider distribution of the use of GSP benefits among beneficiaries: Per Congressional direction, the GSP program has sought to broaden the use of the GSP program's benefits among its beneficiary countries. Between 2007 and 2008 (through November), the top 30 non-oil producing beneficiaries' share of all U.S. imports under the GSP program continued to decrease. In 2007, more than 64 percent of all imports under the GSP program were supplied by the top 30 non-LDBDC beneficiaries. In 2008 (through November), the percentage had dropped to 62 percent. The percentage use of all GSP benefits by the top three beneficiaries (India, Thailand, and Brazil) in 2008 (through November) also continued to decrease, dropping to 31.1 percent as compared to 38.8 percent in 2007. This is due, in part, to the statutory revocation of GSP eligibility for specific imports, including certain gold jewelry (from India and Thailand), motor vehicle brakes (from Brazil), and certain minerals (from Brazil) that exceeded "super-competitive" import thresholds in 2006 and 2007.

The U.S. import levels of countries supplying certain products under the GSP program have also increased since June 2007, when President Bush revoked GSP eligibility for certain products meeting the new statutory annual thresholds for CNL waivers. For example, in June 2007, the United States removed GSP eligibility of certain gold jewelry from India and Thailand. In June 2008, the President removed GSP eligibility of certain gold jewelry from Turkey and gold necklaces from India. Following these actions, the United States saw significant increases (through November 2008) in imports under the GSP program of gold jewelry from several beneficiaries - despite an overall decrease in all U.S. imports of gold jewelry, including Tanzania (444 percent change), Ukraine (240 percent), Panama (235 percent), Pakistan (121 percent), and Egypt (61 percent).

Summary of Changes in Country Beneficiary and Product Status: Since 1976, Presidents have graduated 18 countries from the GSP program because their annual per capita gross national income exceeded the statutory limit. In addition, two Presidents have used authority under the statute to graduate GSP beneficiaries based on their overall success exporting globally and to the United States under the GSP program. President Reagan graduated Hong Kong, Singapore, South Korea, and Taiwan in 1989, and President Clinton graduated Malaysia in 1997.

Review of country practice petitions submitted as part of the GSP Annual Review can provide a basis for removing or limiting GSP eligibility. The reviews are based on the GSP eligibility criteria found in U.S. trade law at 19 U.S.C. §§ 2462(b) and (c), and include protection of worker rights and intellectual property rights. The reviews also have provided successful opportunities to work with beneficiary countries so that they improve their protections without losing GSP benefits. For example, in response to petitions asserting labor concerns in Swaziland and Uganda, Swaziland changed its laws to remove a limitation on the minimum number of people required to start a union. Similarly, Uganda passed legislation facilitating the organization of unions, and the government, apparel sector companies, and unions reached the first-ever tripartite agreement in Uganda that allowed for collective bargaining. Improvements in the protection and enforcement of intellectual property rights have also occurred in Brazil, Kazakhstan and Pakistan, in response to GSP reviews.

Countries previously removed from the GSP program can also petition to be reinstated. In 2006, Liberia and Ukraine were reinstated as GSP beneficiaries following resolution of worker rights and intellectual property concerns, respectively.

Since the inception of the GSP program, application of statutory CNLs, including the newly added thresholds for existing CNL waivers added by Congress in 2006, has resulted in the termination of GSP duty-free benefits for 244 products from beneficiary countries that have demonstrated their competitiveness in the U.S. market. For example, 79 of Brazil's products have been removed from GSP eligibility because of their competitiveness, followed by 31 for India and 9 for Thailand. These actions underscore an important principle governing the GSP program: that trade preferences under the GSP

program are to be a temporary form of support for developing countries as these nations make progress in exporting to the U.S. market and in taking on more reciprocal obligations of the world trading system.

GSP Outreach: Another aspect of the Administration's efforts to increase the distribution of GSP benefits is the provision of outreach to increase the use of GSP duty-free benefits, especially to lesser- and least-developed beneficiaries. These efforts lay a foundation for economic engagement and an enhanced relationship with these beneficiaries. USTR's outreach efforts include giving seminars in-country and via videoconferences, distributing export analyses, and publishing GSP guides in the Arabic, Dari, French, Khmer, Mongolian, Spanish, Turkish, and Ukrainian languages.

The GSP program in 2008 focused its educational outreach on beneficiary countries in conflict (Afghanistan, Georgia, and Iraq), new democracies (Ukraine), and countries in North Africa with high percentages of young populations (Egypt and Tunisia). In addition, USTR has led an interagency effort to engage in consultations with businesses, governments, and non-governmental organizations (NGOs) in least-developed and lesser-developed GSP beneficiaries to promote the use of GSP benefits as part of their economic development strategies. These countries include Afghanistan, Algeria, Cambodia, East Timor, Egypt, Fiji, Georgia, Iraq, Liberia, Mongolia, Palau, Papua New Guinea, Paraguay, Sri Lanka, Tunisia, Ukraine, countries of Central Asia, members of the West African Monetary and Economic Union, and beneficiaries in the Pacific Islands. Among the groups consulted are: bilateral chambers of commerce (*e.g.*, Turkish-American Chamber of Commerce and Industry); federal contractors to USAID; and NGOs working on an international basis (*e.g.*, Women's Edge Coalition, Aid to Artisans, the Crafts Center, CHF International, and the Ger Project in Mongolia).

vi. Annual Reviews

An important attribute of the GSP program is its ability to adapt, product by product, to shifting market conditions; to the changing needs of producers, workers, exporters, importers, and consumers; and to concerns about individual beneficiaries' conformity with the statutory criteria for eligibility.

The Administration makes modifications to the lists of articles eligible for duty-free treatment and countries eligible to be in the GSP program by means of an annual review. The process begins with publication of a *Federal Register* notice that requests submission of petitions for modifications to the list of eligible articles and beneficiary countries. For those petitions that are accepted, public hearings are held, the USITC prepares a study of the "probable economic impact" of granting a petition that would affect the list of articles eligible for duty-free treatment, and an interagency committee reviews the relevant material. Following completion of this interagency review, the President announces his decision on each petition.

vii. Conclusion of the 2007 GSP Annual Review

Presidential Proclamation 8272, issued on June 30, 2008, announced the results of the 2007 GSP Annual Review. The Review focused on several key areas, including consideration of: 1) whether to continue GSP eligibility for products from specific countries that exceeded statutory CNLs; 2) whether to terminate GSP eligibility for products that could be found to be competitive or meet other pertinent statutory criteria; and 3) petitions challenging the continued eligibility of certain beneficiary countries for the GSP program.

As a result of the 2007 Annual Review, duty-free treatment for the vast majority of products covered by the GSP program was continued. This included continuation of GSP eligibility for 99 exports from 15 countries by the grant of waivers to statutory thresholds. The approximate import value of the 99

products was $422 million in 2007. In addition, three types of aluminum products were added to the list of GSP-eligible products from all beneficiary countries.

In keeping with the goals of the program and Congressional intent, and following extensive analysis, GSP eligibility was terminated for 25 products from specific beneficiary countries, with an annual import value (2007) of $1.4 billion, which were determined to be able to compete effectively in the U.S. market. This action was taken to advance a more targeted and effective program to promote economic development. These competitive imports included shelled peanuts from Argentina, gold necklaces and neck chains from India, gold jewelry (not including necklaces and neck chains) from Turkey, ferroniobium from Brazil, insulated ignition wiring sets and biodiesel from Indonesia, and ferrochromium and zinc from Kazakhstan.

The Annual Review also involved an analysis of petitions to withdraw or limit a country's GSP benefits for not meeting GSP eligibility criteria. These criteria include the extent to which a country provides adequate and effective protection of intellectual property rights (IPR) and whether a country is taking steps to ensure internationally recognized worker rights. Several beneficiaries remain under active scrutiny because of such concerns, including: Lebanon, Russia, and Uzbekistan regarding their weak IPR protection, and Bangladesh, Niger, the Philippines, and Uzbekistan regarding worker rights. With respect to a petition from the International Intellectual Property Alliance on Russia's IPR protection, the Administration continues to monitor closely the Russian government's progress in implementing the commitments it undertook in the United States-Russia November 2006 Bilateral Agreement on the Protection and Enforcement of IPR. The U.S. and Russian governments have an ongoing dialogue to ensure the full implementation of this binding agreement. USTR will continue to review Russia's progress not only as part of the GSP review, but will also seek further progress in the context of the upcoming 2009 Special 301 review process and the WTO accession negotiations.

viii. Review of the Worst Forms of Child Labor in the Production of Certain Handmade Carpets

Concurrent with the 2007 Annual Review, the Administration completed a review of the steps taken by GSP countries to eliminate the worst forms of child labor, including bonded labor, in the production of seven categories of handmade carpets imported under the U.S. GSP program. Since becoming eligible for the GSP program in 2005, U.S. imports of these carpets from 23 GSP beneficiaries have grown from $11 million in 2004 to $119 million in 2007. As a result of the review, the Administration made no changes to the GSP eligibility of the carpets under review, but will continue to monitor these countries.

ix. 2008 GSP Annual Review

On May 15, 2008, a notice was published in the *Federal Register* announcing that USTR would receive petitions to modify the list of products eligible for duty-free treatment under the GSP program and to modify the GSP status of certain beneficiary developing countries because of country practices. This notice initiated the 2008 Annual Review. Petitions to add 10 products were accepted for review, involving certain agricultural products and high-density polyethylene (HDPE). A petition to add certain types of plywood was continued from the 2007 Annual Review. Petitions to remove GSP eligibility of PET resin when imported from India and Indonesia, and polyamide-6 (nylon-6) when imported from Thailand were also accepted for review. Advice from the USITC on the probably economic impact of the petitions, if granted, on U.S. industry and U.S. consumers was received in December 2008.

Petitions requesting continued GSP eligibility through the grant of waivers to statutory competitiveness thresholds have been accepted regarding certain aminonapthols from Brazil, polyethylene terephthalate from Indonesia, certain leather and calcium silicon ferroalloys from Argentina, certain ferrochromium

from India, and copper wire from Turkey. Advice from the USITC has also been requested on the probable economic impact of the petitions, if granted, on U.S. industry and U.S. consumers and is due in April 2009.

The evaluation to determine whether to accept for review country practice petitions concerning worker rights practices in Iraq and Sri Lanka, as well as a petition concerning market access in the Philippines, will be made no later than March 15, 2009. Country practice petitions that remain under review include those regarding worker rights in Uzbekistan, Bangladesh, the Philippines, and Niger, and regarding protection of IPR in Uzbekistan, Lebanon, and Russia.

USTR will issue a *Federal Register* notice in late February 2009, when full year 2008 data are available, that will request public comments on: 1) products that will be eligible for GSP redesignation or for *de minimis* waivers; and 2) products with CNL waivers that meet statutory "super-competitive" thresholds and are subject to potential revocation. The notice will also identify products that will lose GSP eligibility based on statutory CNLs where no waiver has been requested. The President is required to announce any modifications to the list of GSP beneficiaries or countries by June 30, 2009.

c. African Growth and Opportunity Act

The African Growth and Opportunity Act (AGOA) provides incentives to promote economic reform and trade expansion in sub-Saharan Africa, including duty-free access to the U.S. market for products made in beneficiary sub-Saharan African countries. In 2008, over 97 percent of U.S. imports from AGOA eligible countries entered the United States duty-free.

In 2008, Congress passed and the President signed legislation redesignating Mauritius as eligible for AGOA's third-country fabric benefits. The legislation also repealed the so-called "abundant supply" provision, an exception to the third-country fabric provision that, in certain circumstances, would have required AGOA-eligible apparel to be made of African yarns or fabrics in order to qualify for duty-free treatment. The Lesotho Garment Manufacturers Association and other industry stakeholders, including U.S. buyers, had expressed concerns about the potential negative impact of the "abundant supply" provision on the African apparel sector. For example, one major U.S. buyer indicated that concerns about implementation of the abundant supply provision led it to suspend plans to increase imports of African denim apparel, and another major U.S. buyer discontinued orders of denim apparel products from Lesotho.

AGOA requires the President to monitor, review, and report to Congress annually on the progress of sub-Saharan African countries in meeting the AGOA eligibility criteria set out in the legislation. An interagency AGOA Implementation Subcommittee, chaired by USTR, makes recommendations to the President based on an annual eligibility review, drawing information from the private sector, non-governmental organizations, U.S. Government agencies, and prospective beneficiary governments. In 2008, two countries – Togo and Comoros – were granted AGOA eligibility benefits for the first time. On December 19, 2008, President Bush terminated the AGOA eligibility of Mauritania, effective January 1, 2009, bringing the total number of AGOA-eligible countries to 40.

AGOA requires that, in order to receive the apparel benefits, designated beneficiary countries meet certain customs-related requirements, such as the establishment of an effective system for certifying that apparel has met AGOA's rules of origin and other requirements. As of the end of 2008, 27 AGOA-eligible countries had met these requirements and were certified as eligible to export qualifying apparel to the United States under AGOA. In addition, 18 of these countries had met the requirements for handmade, hand-loomed, or folkloric items, and five countries had qualified to export ethnic-printed fabric under AGOA.

AGOA institutionalizes a process for strengthening U.S. trade relations with sub-Saharan African countries by establishing an annual ministerial-level forum with AGOA-eligible countries. The seventh meeting of the U.S.-Sub-Saharan Africa Trade and Economic Cooperation Forum – informally known as "the AGOA Forum" – was held in July 2008 in Washington D.C. U.S. Trade Representative Susan C. Schwab, senior officials from more than a dozen U.S. Government agencies, and ministers from almost all AGOA-eligible countries participated. Government officials, the private sector, and civil society representatives also attended.

AGOA and related Generalized System of Preferences (GSP) imports from AGOA-eligible countries were valued at $63.2 billion for the first 11 months of 2008, 36 percent more than in the corresponding period in 2007.[31] Petroleum products continued to account for the largest portion of AGOA imports with a 92 percent share of overall AGOA imports. AGOA non-oil imports also continued to grow, totaling $4.6 billion from January to November of 2008, a 51 percent increase over the previous year, with notable increases in key non-oil sectors, including vehicles and parts, vegetables, fruits, nuts, cocoa products, and essential oils.

d. Andean Trade Preference Act

One of the ways the United States conducts its trade relationship with the Andean countries is in the framework of the unilateral trade preferences of the Andean Trade Preference Act (ATPA), as amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA). Congress enacted the ATPA in 1991 in recognition of the fact that regional economic development is necessary in order for Bolivia, Colombia, Ecuador, and Peru to provide economic alternatives to the illegal drug trade, promote domestic development, and thereby solidify democratic institutions.

The original ATPA expired in 2001. The ATPDEA, which was signed into law on August 6, 2002 as part of the Trade Act of 2002, restored the benefits of the ATPA, providing for retroactive reimbursement of duties paid during the lapse in the program. In addition, while the original ATPA excluded from duty-free treatment products in several sectors including textiles, apparel, footwear, articles of leather, and tuna in airtight containers, the ATPDEA expanded the list of items eligible for duty-free treatment to include such products.

The most significant expansion of benefits in the ATPA, as amended by the ATPDEA, was in the apparel sector. Apparel assembled in the region from U.S. fabric, fabric components or components knit-to-shape in the United States may enter the United States duty-free in unlimited quantities. Apparel assembled from Andean regional fabric or components knit-to-shape in the region may enter duty-free subject to a cap. The cap was set at 2 percent of total U.S. apparel imports, increasing annually in equal increments to 5 percent.

The ATPA, as amended, has been extended through December 31, 2009 for Colombia and Peru in legislation enacted on October 16, 2008. The same legislation extended ATPA for both Ecuador and Bolivia through June 30, 2009. Provisions extending ATPA benefits for the remainder of calendar year 2009 differ for the two countries. ATPA benefits will continue for Ecuador, unless the President determines that Ecuador does not satisfy the eligibility requirements set forth in the ATPA. ATPA benefits will continue for Bolivia only if the President determines that Bolivia has satisfied ATPA eligibility requirements.

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[31] AGOA imports are considered imports for consumption, while all other import figures are classified as general imports. Imports for consumption include only those goods that enter the U.S. economy for consumption. General imports include all goods that cross the U.S. border, including those destined for bonded warehouses or foreign trade zones.

In August 2008, under an annual process provided for in the legislation, USTR published a *Federal Register* notice inviting the submission of petitions relating to the beneficiary countries' eligibility. No new petitions were filed. USTR received updates to two petitions that are currently under review and a request to withdraw a petition that was under review. That review was terminated and five petitions from prior years remained under review.

On September 15, 2008, President Bush designated Bolivia as a country that has failed demonstrably over the previous 12 months to adhere to its obligations under international counternarcotics agreements and to take the measures set forth in the Foreign Assistance Act of 1961. Bolivia's demonstrable failure to cooperate in counternarcotics efforts indicated that Bolivia was not meeting important eligibility criteria for benefits under the ATPA. On September 26, 2008, Ambassador Susan C. Schwab announced that President Bush had directed her to publish in the *Federal Register* a notice of his proposed action to suspend Bolivia's designation as a beneficiary country under the ATPA. On October 1, 2008, the notice appeared in the *Federal Register* inviting public comment and scheduling a hearing for October 23 on the proposed action. On November 25, 2008, the President decided to suspend Bolivia's designation as a beneficiary country under the ATPA, effective December 15, 2008.

e. Caribbean Basin Initiative

The Caribbean Basin Initiative (CBI) currently provides beneficiary countries and territories with duty-free access to the U.S. market. Current beneficiary countries are: Antigua and Barbuda, Aruba, the Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.

During 2008, the trade programs collectively known as the CBI remained a vital element in U.S. economic relations with its neighbors in Central America and the Caribbean. CBI was initially launched in 1983 through the Caribbean Basin Economic Recovery Act (CBERA). It was substantially expanded in 2000 through the United States-Caribbean Basin Trade Partnership Act (CBTPA). The Trade Act of 2002 increased the type and quantity of textile and apparel articles eligible for preferential tariff treatment accorded to designated beneficiary CBTPA countries. Among other actions, the Trade Act of 2002 extended duty-free treatment for clothing made in beneficiary countries from both U.S. and regional inputs, and increased the quantity of clothing made from regional inputs that regional producers can ship duty-free to the United States annually.

On August 2, 2005, President Bush signed implementing legislation for the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). The CAFTA-DR entered into force for El Salvador on March 1, 2006; for Honduras on April 1, 2006; for Nicaragua on April 1, 2006; for Guatemala on July 1, 2006; for the Dominican Republic on March 1, 2007; and for Costa Rica on January 1, 2009. When the CAFTA-DR entered into force for each of these countries, the country ceased to be designated as a CBERA and CBTPA beneficiary. The United States and Panama signed a free trade agreement on June 28, 2007, but that agreement has not yet entered into force.

Since its inception, the CBI has helped beneficiaries diversify their exports. In conjunction with economic reform and trade liberalization by beneficiary countries, the trade benefits of CBI have contributed to their economic growth.

f. HOPE II Act

On September 30, 2008, President Bush issued a proclamation to increase duty-free access to the U.S. market for Haitian-made apparel and certain other articles under the provisions of the Haitian

Hemispheric Opportunity through Partnership Encouragement Act of 2008 (the "HOPE II Act"). The HOPE II Act expands the benefits provided to Haiti under the original HOPE Act, which was implemented in 2007. The new legislation provides for duty-free access for up to 70 million square meter equivalents (SME) of knit apparel (with some t-shirt and sweatshirt exclusions) and 70 million SMEs of woven apparel without regard to the country of origin of the fabric or components, as long as the apparel is wholly assembled or knit-to-shape in Haiti. The HOPE II Act provides for duty-free treatment of knit or woven apparel under a "three for one" earned import allowance program: for every three SMEs of qualifying fabric (sourced from the U.S. or from certain trade partner countries) shipped to Haiti for production of apparel, qualifying apparel producers may export duty-free from Haiti or the Dominican Republic to the United States one SME of apparel wholly-formed or knit-to-shape in Haiti regardless of the source of the fabric. The HOPE II Act also provides for duty-free treatment for certain brassieres, luggage, headgear, and certain sleepwear. HOPE II allows these Haitian goods to enter the United States duty-free if shipped either directly from Haiti or through the Dominican Republic.