2012 ANNUAL REPORT
OF THE
PRESIDENT OF THE UNITED STATES
ON THE
TRADE AGREEMENTS PROGRAM

II. THE WORLD TRADE ORGANIZATION

A. Introduction

This chapter outlines the work of the World Trade Organization (WTO) in 2012 and the work anticipated for 2013 to find new, credible approaches to advancing negotiations in the WTO, including under the Doha Development Agenda (DDA). This chapter also details work of WTO Standing Committees and their subsidiary bodies, provides an overview of the implementation and enforcement of the WTO Agreement, and discusses accessions of new members to this rules-based organization.

The United States maintains an abiding commitment to the rules-based multilateral trading system, which advances the well-being of the people of the United States and of our trading partners. The WTO represents the multilateral bedrock of U.S. trade policy, playing a vital role in securing new economic opportunities for American workers, farmers, ranchers, manufacturers, and service providers and promoting global growth and development with widely shared benefits. The United States continues to take a leadership role at the WTO, working to ensure that trade makes a powerful contribution in expanding the global economy. The WTO provides a forum for enforcing U.S. rights under the various WTO agreements to ensure that the United States receives the full benefits of WTO membership. The WTO agreements also provide a foundation for high-standard U.S. bilateral and regional agreements that make a positive contribution to a dynamic and open global trading system based on the rule of law. On a day-to-day basis, the WTO provides opportunities for advancing U.S. interests through its more than 20 standing committees (not including numerous additional working groups, working parties, and negotiating bodies). These groups meet regularly to permit WTO Members to exchange views, work to resolve questions of Members' compliance with commitments, and develop initiatives aimed at systemic improvements.

The DDA is the ninth round of multilateral trade negotiations to be carried out since the end of World War II. At the WTO's Eighth Ministerial Conference in Geneva, Switzerland in December 2011, there was a consensus among Ministers that the DDA was at an impasse, with "significantly different perspectives on . . . possible results." The agreed summary for the Ministerial Conference noted that "Members need to more fully explore different negotiating approaches," and reiterated previous ministerial guidance that, where progress can be achieved on specific elements of the DDA, provisional or definitive agreements might be reached before all elements of the negotiating agenda are fully resolved. In fact, 2012 has been a year of collective exploration of opportunities to advance specific areas of the DDA negotiations and consideration of initiatives outside the DDA that can lead to new trade liberalization.

In parallel, the United States and other WTO Members have generated renewed focus on the day-to-day work of the WTO's standing committees and other bodies, which remained instrumental in promoting transparency of WTO Member trade policies and providing critical fora for monitoring and resisting protectionist pressures during a time of global economic challenges. Through discussions in these fora, Members sought detailed information on individual Members' trade policy actions and collectively considered them in light of WTO rules and their impact on individual Members and the trading system as a whole. The discussions enabled Members to assess their trade-related actions and policies in light of concerns that other Members raised and to consider and address those concerns in domestic policymaking. The United States also took advantage of opportunities in standing committees to consider how implementation of existing WTO provisions can be enhanced and to discuss areas that may hold potential for developing future rules.

B. The Doha Development Agenda under the Trade Negotiations Committee and Other Priority WTO Activities

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

The Trade Negotiations Committee (TNC), established at the WTO's Fourth Ministerial Conference in Doha, oversees the agenda and negotiations under the DDA in cooperation with the WTO General Council. The WTO Director General serves as Chairman of the TNC. *(Annex II identifies the various negotiating groups and special bodies responsible for the negotiations, some of which are the responsibility of the WTO General Council.)*

In 2012, WTO Members continuously assessed the implications of the results at the Eighth Ministerial Conference and how they could make progress on discreet areas of the DDA with the possibility of early results. Broadly, the United States joined others in validating that the WTO had "turned the page" in the DDA negotiations and that only new, creative approaches could offer opportunities for delivering results. In this regard, the Membership increasingly discussed prospects for agreements by the time of the Ninth Ministerial Conference, which will take place in Bali, Indonesia in December 2013. WTO Members demonstrated the possibilities of a new collective will to overcome differences and reach agreements by concluding a new set of guidelines for the accession to the WTO of least-developed countries. These new guidelines will facilitate future negotiations with individual least-developed countries, particularly in providing benchmarks for goods and services market access commitments in accession packages. In other areas of the DDA, technical negotiations on a multilateral trade facilitation agreement made important progress, and WTO Members worked hard to address particular development concerns in the Committee on Trade in Development in Special Session and began to explore approaches that may advance parts of the agriculture agenda in realistic ways.

Beyond the DDA negotiations, Parties to the WTO Government Procurement Agreement (GPA), a plurilateral agreement within the WTO framework, formally adopted the results of negotiations on a revised GPA, which should enter into force during 2013, and focused on prospects for new Members, particularly with respect to negotiations with China. Negotiations are also effectively underway to expand the product coverage of the Information Technology Agreement and are picking up steam. Additionally, twenty-one developed and developing WTO Members are moving forward with discussions on a possible plurilateral services agreement, which could provide future impetus to broader multilateral results on services.

The WTO is much more than a negotiating forum and venue for filing dispute settlement cases. The United States believes that the WTO demonstrates its value every day through the work of the standing committees and other WTO bodies. In 2012, the United States made effective use of the Council on Trade in Goods, the Committee on Import Licensing, and the Committee on Agriculture to raise the profile of trade protectionist actions by other Members. In the Committee on Technical Barriers to Trade, the United States and other Members completed the Sixth Triennial Review of that WTO agreement, clarifying existing rules in important respects and identifying priorities for future work, such as good

regulatory practices. WTO Members also conducted far-reaching discussions on the issue of trade and exchange rate fluctuations in the Working Group on Trade, Debt and Finance.

Overall the United States noted that new energy seemed to be developing in the operations of the WTO during the course of 2012 and that the focus of new efforts were not exclusively limited to the DDA. This greater appreciation for the broad spectrum of WTO work, from the DDA to other areas, may be the critical factor in sustaining the relevance of the WTO in international trade in years to come.

Prospects for 2013

The United States will continue to play a leadership role across the range of WTO activities. It is particularly important to sustain and enhance the WTO's critical work in monitoring and providing a forum for resisting protectionism. Accordingly, the United States will be devoting additional attention to making the best possible use of the WTO's existing committees and other structures, using them both to advance specific U.S. trade policy objectives as well as to ensure the ongoing strength and credibility of the multilateral trading system. Additionally, the United States will seek to achieve outcomes at the Ninth Ministerial Conference in Bali, Indonesia in December 2013 that reflect U.S. export interests and other trade policy priorities and that can usher in a new period of multilateral trade liberalization in the WTO.

1. Committee on Agriculture, Special Session

Status

Negotiations in the Special Session of the Committee on Agriculture are conducted under the mandate agreed upon at the Fourth WTO Ministerial Conference in Doha, Qatar that calls for: "substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support." This mandate, calling for ambitious results in three areas (so called "pillars"), was augmented with specific provisions for agriculture in the framework agreed by the General Council on August 1, 2004, and at the Hong Kong Ministerial Conference in December 2005.

Major Issues in 2012

In 2012, the United States continued to lead the effort to approach the Doha negotiations with a focus on how countries might realistically work together to advance the negotiations.

Ambassador John Adank, the Chair of the Agriculture Negotiations, held several meetings in formal and informal settings to assess Members' views on substantive issues. A few negotiating proposals emerged in 2012. The G20 developing country group, led by Brazil, submitted two proposals. One proposal was on tariff-rate quota (TRQ) administration, and the other proposal suggested that the Secretariat update reports on Members' TRQ fill rates and use of provisions in the export competition pillar, using data from Members' notifications. The G33 developing country group, led by India, also sponsored India's public food stockholding proposal. The Chair held various consultations allowing such proposals to be presented, with some discussion among Members.

Deputy U.S. Trade Representative and U.S. Permanent Representative to the WTO Ambassador Michael Punke continued to urge Members to approach the overall Doha negotiations on the basis of a realistic assessment of possibilities for progress. Throughout 2012, U.S. negotiators undertook discussions at

various levels (technical and political) and in various formats (bilateral and small group) to determine Members' will and interests in moving the negotiations forward.

Prospects for 2013

Members in 2013 will continue to look at fresh approaches to achieve results. A key to concluding the DDA will be securing meaningful market access commitments in agriculture. The advanced developing countries – which have been the fastest growing economies and are increasingly players in the global economy – will play an important role. The challenge in 2013, as Members approach the Ninth Ministerial Conference, will be to make continual progress towards fair, balanced results in agriculture.

2. Council for Trade in Services, Special Session

Status

The Special Session of the Council for Trade in Services (CTS-SS) was formed in 2000 pursuant to the Uruguay Round mandate of the General Agreement on Trade in Services (GATS) to undertake new multi-sectoral services negotiations. The Doha Declaration of November 2001 recognized the work already undertaken in the services negotiations and set deadlines for initial market access requests and offers. The services negotiations thus became one of the core market access pillars of the Doha Round, along with agriculture and nonagricultural goods.

The 2005 Hong Kong Ministerial Declaration called for the negotiations to proceed to conclusion with a view to promoting the economic growth of all trading partners, with due respect for the right of Members to regulate in their domestic markets. The Hong Kong Declaration provided a framework for intensifying the negotiations, with the goal of encouraging Members to improve their commitments by removing significant limitations and covering a broader range of service sectors and supply channels (*i.e.*, cross border supply, consumption abroad, commercial presence, and presence of natural persons). To complement the existing bilateral request/offer process, the Hong Kong Declaration also encouraged negotiations to proceed on a plurilateral basis. Members subsequently developed a "plurilateral request process," through which like-minded Members joined together to develop collective market access requests for more than 20 sectors and issues of interest.

Major Issues in 2012

The CTS-SS did not meet during 2012, as the lack of general progress under the DDA affected negotiations on services.

Prospects for 2013

The United States continues to believe that a high level of ambition for services liberalization is a key to economic growth and prosperity. To that end, we remain willing to pursue new ideas and approaches to create new trade and investment opportunities for service providers.

3. Negotiating Group on Non-Agricultural Market Access

Status

The U.S. Government's longstanding objective in the Non-Agricultural Market Access (NAMA) negotiations – which cover manufactures, mining, fuels, and fish products – has been to obtain a balanced

market access package that provides new export opportunities for U.S. businesses through liberalization of global tariffs and non-tariff barriers. Trade in industrial goods accounts for more than 90 percent of world merchandise trade[1] and more than 95 percent of total U.S. goods exports. In developing countries, industrial goods comprise 94 percent of goods exports, more than 65 percent of which corresponds to manufactures – an increasing share of which is exported to other developing countries.[2] Yet, many emerging economies still charge very high tariffs on imported industrial goods, with ceiling tariff rates exceeding 150 percent in some cases. Thus, achieving a market opening outcome is critical to stimulating trade and driving economic development in the wake of the global economic downturn.

However, despite continued, intensive efforts by USTR negotiators to engage with key trading partners in 2011, the NAMA negotiations remain at an impasse. Without significant improvements, including specific commitments from advanced developing economies, the current industrial goods market access package would provide very little, if any, new access into the markets of the future. Given the changing global economic landscape, namely the emergence of certain new economic powers, securing broad-based liberalization that ensures that major industrial producers and traders compete on a level playing field is crucial.

Major Issues in 2012

There were no substantive meetings or other activities related to either the tariff or non-tariff elements of the Non-Agricultural Market Access negotiations. Proposals that had been under negotiation remain on the table until such time as the Doha negotiations resume. A new Chairman for the NAMA Negotiating Group was elected in 2012.

Prospects for 2013

In 2013, the United States intends to work with other WTO Members to pursue fresh and credible approaches to meaningful multilateral trade liberalization.

4. Negotiating Group on Rules

Status

At the Doha Ministerial Conference in 2001, Ministers agreed to negotiations aimed at clarifying and improving disciplines under the Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement) and the Agreement on Subsidies and Countervailing Measures (the SCM Agreement), while preserving the basic concepts, principles, and effectiveness of these Agreements and their instruments and objectives. Ministers directed that the negotiations take into account the needs of developing and least-developed country Members. The Doha Round mandate also calls for clarified and improved WTO disciplines on fisheries subsidies.

The Negotiating Group on Rules (the Rules Group) has based its work primarily on written submissions from Members, organizing its work in the following categories: (1) the antidumping remedy, often including procedural and domestic industry injury issues potentially applicable to the countervailing duty remedy; (2) subsidies and the countervailing duty remedy, including fisheries subsidies; and (3) regional trade agreements. In November 2007, the Chairman of the Rules Group issued draft consolidated texts on the antidumping remedy, subsidies and the countervailing duty remedy, and fisheries subsidies.

[1] WTO, International Trade Statistics 2011.
[2] WTO document WT/COMTD/W/143/Rev.4.

In December 2008, the Chairman issued revised texts on antidumping, subsidies, and the countervailing duty remedy, as well as a roadmap for fisheries subsidies that identified key questions that need to be addressed in order to advance the negotiations towards a new fisheries text. In keeping with his earlier pronouncements, the draft texts on antidumping and subsidies/countervailing duties reflected a "bottom up" approach, identifying the most contentious issues contained in brackets with no legal text provided. In July 2010, the Rules Group formally elected a new Chair, Ambassador Dennis Francis of Trinidad and Tobago, who replaced Ambassador Guillermo Valles of Uruguay. Following an intensification of work at the end of 2010 and beginning of 2011, in April 2011, the Chairman issued a report reflecting the work to date in the Rules Group on antidumping, subsidies and fisheries subsidies, and regional trade agreements.[3] Included in this report was a slightly revised text on antidumping reflecting several technical changes. There were no changes made to the 2008 draft text on Subsidies and Countervailing Measures or the 2007 draft text on Fish Subsidies. Following the resignation of Ambassador Francis, in October 2011, Ambassador Wayne McCook (Jamaica) was selected as the new Chair for the Rules Group.

The Doha Declaration also directed the Rules Group to clarify and improve disciplines and procedures governing Regional Trade Agreements (RTAs) under the existing WTO provisions. To that end, the General Council in December 2006 adopted a decision for the provisional application of the "Transparency Mechanism for Regional Trade Agreements" to improve the transparency of RTAs. A total of 125 RTAs have been considered under the Transparency Mechanism since then. Pursuant to its mandate, in the past, the Rules Group has explored the establishment of further standards governing the relationship of RTAs to the global trading system. However, such discussions have failed to produce common ground on how to clarify or improve existing RTA rules.

Major Issues in 2012

Antidumping and Subsidies/CVD:

On October 25, 2012, Rules Chair Wayne McCook held an open-ended informal meeting of the Rules Group to provide a brief summary of his activities since assuming the chairmanship and provide a forum for Members to share their views. Chairman McCook acknowledged that the rules negotiations were at an impasse and that there was little appetite to try to move the discussions forward without further substantive progress in other areas. Many Members expressed support for the antidumping technical group, with suggestions that the discussions be more inclusive to encourage the participation of more Members. The Friends of Fish (Australia, Argentina, Chile, Colombia, Iceland, New Zealand, Norway, Pakistan, Peru, and the United States) delivered a joint statement, pressing for an ambitious fisheries subsidies discipline and highlighting the need for transparency of programs in the short-term. There is no proposed date for a future meeting of the Rules Group.

Regional Trade Agreements:

At the end of 2006, the General Council established, on a provisional basis, a new transparency mechanism (TM) for all regional trade agreements (WT/L/671), which was agreed upon in the Negotiating Group on Rules and implemented in 2007. In December 2010, the Rules Negotiating Group initiated a review of the operation of the RTA Transparency Mechanism, and the Chair invited Members to submit any proposals to modify the TM in light of the experience gained under its operation. While the TM has on the whole significantly improved transparency with respect to RTAs, some of its operational aspects could be improved. Most notably, while there is no doubt that the TM applies to all RTAs – whether negotiated under GATT 1994, the GATS, or the Enabling Clause – practical questions of the

[3] TN/RL/W/252, TN/RL/253, TN/RL/W/254, all dated April 21, 2011.

venue of consideration have arisen when parties to an agreement differ among themselves in their view of the relevant WTO provision for concluding a particular preferential agreement. While such underlying differences go beyond the scope of the review of the TM, the United States in January 2011 submitted a proposal to help ensure the consideration of RTAs that have been "duly notified" under such circumstances, so as to eliminate, or at least reduce, disagreement and procedural challenges in a way that is without prejudice to any underlying rights. The U.S. submission[4] proposes a specific solution, in the form of a proposed change to paragraph 18 of the TM, to consolidate the consideration of all RTAs in a single committee, the Committee on Regional Trade Agreements. There was no discussion on the operationalization of the RTA TM in 2012 in the Rules Negotiating Group.

Prospects for 2013

In 2013, the United States will continue to focus on, *inter alia*, preserving the effectiveness of trade remedy rules, improving transparency and due process in trade remedy proceedings, and strengthening existing subsidies rules. Concerning fisheries subsidies, the United States will continue to press for an ambitious outcome in the WTO, including by pursuing results to discipline fisheries subsidies through other fora such as the Trans-Pacific Partnership negotiations, which will assist our efforts to reach eventual agreement on fisheries subsidies in the WTO. Preparations will also continue for a fisheries subsidies symposium to take place in early 2013 to build on previous discussions in the Rules Negotiating Group.

On RTAs, the United States will continue to advocate for increased transparency and strong substantive standards for RTAs that support and advance the multilateral trading system. The TM will continue to be applied in the consideration of additional RTAs.

5. Negotiating Group on Trade Facilitation

Status

An important U.S. objective was met when WTO negotiations on Trade Facilitation were launched under the August 1, 2004 Decision by the General Council on the Doha Work Program. Opaque border procedures and unwarranted delays faced at the borders can add costs that are the equivalent of a significant tariff, and they are the non-tariff barriers that are most frequently cited by U.S. and other exporters. The trade facilitation negotiations are seeking to reduce these barriers through transparent and predictable multilateral trade rules under the WTO. The agreed negotiating mandate includes the specific objective of "further expediting the movement, release, and clearance of goods, including goods in transit," while also providing a path toward ambitious results in the form of modernized and strengthened WTO commitments governing how border transactions are conducted.

Major Issues in 2012

The work of the Negotiating Group on Trade Facilitation (NGTF) continued to have as its hallmark in 2012 broad-based and constructive participation by Members of all levels of development – a positive negotiating environment that is seen as offering "win-win" opportunities for all. There continued to be active leadership within the NGTF from individual developing country Members and from regional groupings to include the landlocked developing countries (LLDCs), least-developed countries (LDCs), and the African, Caribbean and Pacific (ACP) which, by working closely with the United States and other Members, have helped to steer the negotiations forward in a practical, problem-solving manner. The

[4] TN/RL/W/248, dated January 24, 2011.

United States also worked in various configurations of countries in bilateral and plurilateral formations to advance work on specific textual proposals.

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

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

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

The work of the NGTF during 2012 was characterized by intensive, Member-driven, text-based negotiations. Significantly, the draft consolidated negotiating text is not a "Chair's text," based on the Chair's perception of Members' desired outcomes. Rather, the text reflects all proposals on the table and modifications to those proposals that Members have suggested. Consistent with the Member-driven, "bottom up" approach that has characterized the NGTF from the outset, the NGTF's work requires continued engagement of Members with each other to resolve differences. During 2012, that engagement occurred in various formats, both formal and informal, as proponents and Chair-appointed facilitators for various sections of the text stepped forward to lead efforts to close gaps. The NGTF met in plenary sessions in January, April, July, October, and December to capture progress achieved through the intervening small group and facilitator-led work and to further refine the text. New revisions of the draft negotiating text that successively reduced the number of open issues were released in April, October and December, and are publicly available on the WTO website at www.wto.org.

The proposals reflected in the draft negotiating text cover each of the areas provided for in the NGTF modalities. There are a number of proposals to promote transparent rules and procedures, including publication requirements, such as a U.S. proposal on Internet publication, proposals to promote appeal procedures and enquiry points, and a proposal on advance administrative rulings. There are also several proposals to expedite release and clearance of goods, including through pre-arrival processing, separation of release and clearance, and expedited shipment procedures (the last item a U.S. proposal), and to simplify and eliminate fees and formalities. Likewise the draft consolidated negotiating text includes provisions on transit procedures and customs cooperation, and establishing disciplines on customs penalties originally proposed by the United States.

During 2012, the NGTF also continued its work on addressing the challenge of implementing the results of the negotiations that will face many developing country Members. The draft consolidated negotiating text includes textual proposals from the United States and other Members on transition provisions for developing and least developed country Members, intended to provide these Members with the flexibility necessary for them to fully implement the negotiating outcome, as well as the assurance that they will have the time and assistance to do so. The negotiating sessions in 2012 made significant progress in creating a coherent text that has helped to focus discussion on these special and differential treatment (S&D) provisions. In addition, the December 2012 NGTF meeting featured Member presentations on different means to advance the text, including by the United States. The presentations highlighted that core elements of the S&D provisions of the draft negotiating text that address transition periods for implementation are already agreed to by Members, but that divergences related to notifying transition periods and conditions placed on implementation remain.

As part of the substantial assistance already being provided for trade facilitation, the WTO and assistance organizations like USAID have, over the course of the negotiations, provided training programs with developing country Members to help them undertake assessments of their individual situations regarding capacity and make progress in implementing the proposals under negotiation. The Member assessments, which are currently being updated, have made it apparent that many of the developing country Members have implemented – or are taking steps to do so – a number of the concrete measures proposed as new WTO commitments. At the same time, it is also clear that many developing country Members openly recognize that they have an offensive interest in seeking implementation by their neighbors of any new commitments in this area. The WTO's training efforts have also included regional workshops for senior customs and trade officials of developing country Members to help them gain a deeper understanding of proposed measures and of issues relating to future implementation.

The draft NGTF provisions for specific new and strengthened WTO commitments generally reflect measures that would capture forward-looking practices that would bring improved efficiency, transparency, and certainty to border regimes while diminishing opportunities for corruption.

Prospects for 2013

In 2013, the NGTF will continue its efforts to refine the draft consolidated negotiating text through the Member driven, bottom-up process, consistent with the efforts of WTO Members to move forward on areas where progress is possible in the Doha Round negotiations. As negotiations toward new and strengthened trade facilitation disciplines move forward, it will remain important that work proceeds in a methodical and practical manner on the issue of how all Members can meet the challenge of implementing the results of the negotiations – including with regard to the issues of S&D and technical assistance.

6. Committee on Trade and Environment, Special Session

Status

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

i. the relationship between existing WTO rules and specific trade obligations (STOs) set out in Multilateral Environmental Agreements (MEAs) (with the negotiations limited to the

applicability of existing WTO rules among parties to such MEAs and without prejudice to the WTO rights of Members that are not parties to the MEAs in question);

ii. procedures for regular information exchange between MEA secretariats and relevant WTO committees, and the criteria for granting observer status; and

iii. the reduction or, as appropriate, elimination of tariff and non-tariff barriers to trade in environmental goods and services.

Major Issues in 2012

The CTESS did not meet in 2012.

Prospects for 2013

The United States remains fully committed to the WTO and to a positive trade and environment agenda; however, given the deep substantive divergences that have proven difficult to resolve in the CTESS, we will approach these negotiations with fresh thinking. This year, we are committed to exploring creative and innovative trade and environment solutions that can yield meaningful outcomes. In particular, we will consider ways to build on the results we achieved in APEC on environmental goods liberalization (*see Chapter III.B.3*).

7. Dispute Settlement Body, Special Session

Status

Following the Doha Ministerial Conference in 2001, the Trade Negotiations Committee established the Special Session of the Dispute Settlement Body (DSB) to fulfill the Ministerial mandate found in paragraph 30 of the Doha Declaration which provides: "We agree to negotiations on improvements and clarifications of the Dispute Settlement Understanding. The negotiations should be based on the work done thus far, as well as any additional proposals by Members, and aim to agree on improvements and clarifications not later than May 2003, at which time we will take steps to ensure that the results enter into force as soon as possible thereafter." In July 2003, the General Council decided that: (1) the timeframe for conclusion of the negotiations on clarifications and improvements of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) be extended by one year (*i.e.*, to aim to conclude the work by May 2004 at the latest); (2) this continued work will build on the work done to date, and take into account proposals put forward by Members as well as the text put forward by the Chair of the Special Session of the DSB (DSB-SS); and (3) the first meeting of the DSB-SS when it resumed its work be devoted to a discussion of conceptual ideas. Due to complexities in negotiations, deadlines were not met. In August 2004, the General Council decided that Members should continue work toward clarification and improvement of the DSU, without establishing a deadline.

Major Issues in 2012

The DSB-SS met seven times during 2012 in an effort to implement the Doha mandate. In previous phases of the review of the DSU, Members had engaged in a general discussion of the issues. Following that general discussion, Members tabled proposals to clarify or improve the DSU. Members then reviewed each proposal submitted and requested explanations and posed questions to the Member(s) making the proposal. Members also had an opportunity to discuss each issue raised by the various proposals. The Chair of the review issued a Chair's text in July 2008 "to take stock of" the work to date

and to provide a basis for its continuation. In 2012, the Chair continued a more intensive process, in which delegations engaged on the basis of the comments received in the previous phase, and Members concluded their discussions of the Chair's text.

The United States has advocated two proposals, both of which are reflected in the Chair's text. One would expand transparency and public access to dispute settlement proceedings. The proposal would open WTO dispute settlement proceedings to the public as the norm and give greater public access to submissions and panel reports. In addition to open hearings, public submissions and early public release of panel reports, the U.S. proposal calls on WTO Members to consider rules for "*amicus curiae*" submissions – submissions by nonparties to a dispute. WTO rules currently allow such submissions but do not provide guidelines on how they are to be considered. Guidelines would provide a clearer roadmap for handling such submissions.

In addition, the United States and Chile submitted a proposal to help improve the effectiveness of the WTO dispute settlement system in resolving trade disputes among Members. The joint proposal contained specifications aimed at giving parties to a dispute more control over the process and greater flexibility to settle disputes. Under the present dispute settlement system, parties are encouraged to resolve their disputes, but do not always have all the tools with which to do so. As part of this proposal, the United States has also proposed guidance for WTO Members to provide to WTO adjudicative bodies in three particular areas where important questions have arisen in the course of various disputes.

Prospects for 2013

In 2013, Members will continue to work to complete the review of the DSU. Members will be meeting a number of times over the course of 2013.

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

Status

The work of the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council), Special Session was limited in 2012. With a view to completing the work started in the TRIPS Council on the implementation of Article 23.4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), Ministers agreed at the 2001 Doha Ministerial Conference to negotiate the establishment of a multilateral system of notification and registration of geographical indications (GIs) for wines and spirits. At the 2005 Hong Kong Ministerial Conference, Ministers agreed to intensify their work in order to complete these negotiations within the overall timeframe for the conclusion of the Doha negotiations. This matter is the only one before the Special Session of the TRIPS Council.

Major Issues in 2012

The TRIPS Council Special Session held one informal meeting in 2012, and the TRIPS Council Chair held a number of informal consultations with Members. The United States and its allies on this issue conveyed a consistent message throughout the year, *i.e.*, the establishment of a multilateral system for notification and registration of geographical indications for wines and spirits must: be voluntary; have no legal effects for non-participating members; be simple and transparent; respect different systems of protection of GIs; respect the principle of territoriality; preserve the balance of the Uruguay Round; and, consistent with the mandate, be limited to the protection of wines and spirits. The Joint Proposal group continued to stress that the mandate of the TRIPS Council Special Session is clearly limited to the

establishment of a system of notification and registration of GIs for wines and spirits, and that discussions cannot move forward on any other basis.

Members' views continue to diverge sharply on several core issues. Key positions are reflected in a 2005 WTO Secretariat document (TN/IP/W/12), which contains a side-by-side presentation of the three proposals that are before the Special Session. The Secretariat expanded this document in May 2007, with an addendum that describes the various arguments and that presents questions raised by proponents of the proposals (TN/IP/W/12/Add. 1). In an April 2011 report to the Trade Negotiations Committee (TN/IP/21), the Chair of the TRIPS Council Special Session highlighted, in particular, ongoing divergences with respect to participation in the multilateral register system (*i.e.*, whether the system would apply to all Members or only to those opting to participate in it), the nature of the legal obligations provided for in the system (*i.e.*, the extent to which legal effects at the domestic level determine the effect of registration of a GI for a wine or spirit in the system), and to the mandate of the Special Session (*i.e.*, whether the Special Session has the authority to address GIs for goods other than wines and spirits). In 2011, the Chair led meetings of a drafting group made up of representatives of the sponsors of the three competing proposals, to negotiate a text covering six elements, namely: (1) notification; (2) registration; (3) legal effects/consequence of registration; (4) fees and costs; (5) S&D; and (6) participation. The April 2011 report includes an annex with the Draft Composite Text (JOB/IP/3/Rev. 1), reflecting the current status of the discussions.

The United States, together with Argentina, Australia, Canada, Chile, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Israel, Japan, Korea, Mexico, New Zealand, Nicaragua, Paraguay, the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu, and South Africa, support the Joint Proposal under which Members would voluntarily notify the WTO of their GIs for wines and spirits for incorporation into a registration system. During 2011, Israel formally became a cosponsor of the Joint Proposal. The Joint Proposal cosponsors submitted a revised Proposed Draft TRIPS Council Decision on the Establishment of a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits to the Special Session to set out clearly in draft legal form, a means by which Members could implement the mandate from paragraph 18 of the Doha Ministerial Declaration and Article 23.4 of the TRIPS Agreement, and to reflect changes that Joint Proposal proponents had made during the informal drafting process. Members choosing to use the system would agree to consult the system when making any decisions under their domestic laws related to GIs, or in some cases, trademarks. Implementation of this proposal would not impose any additional obligations – with regard to GIs – on Members that chose not to participate, nor would it place undue burdens on the WTO Secretariat.

The EU, together with a number of other Members, continued to support their alternative proposal for a binding, multilateral system for the notification and registration of GIs for all products, not only wines and spirits, which all Members would be required to use. The current EU position on GIs combines two proposals: the multilateral GI register for wines and spirits and an amendment to the TRIPS Agreement to extend Article 23-level GI protection to products other than wines and spirits. The effect of this proposal would be to expand the scope of the negotiations to all GI products and to propose that any GI notified to the EU's proposed register would benefit from a presumption of eligibility for protection as a GI in other WTO Members. In addition, the notified GI would be presumed valid against a competing rights holder, including a prior rights holder. Essentially, the system proposed by the EU could, as a practical matter, enable one Member to mandate GI protection in another Member simply by notifying that GI to the system. Such a proposal would negatively affect preexisting trademark rights, as well as investments in generic food terms, and would directly contradict the principle of territoriality with respect to intellectual property in favor of a system based upon the unilateral and extraterritorial application of domestic law and national intellectual property regimes. Although a third proposal, from Hong Kong, China remains on the table, this proposal has received little support.

In 2011, the proponents of the Joint Proposal made important gains, advancing support for substantive provisions of the Proposal. In addition, cosponsors were added to the Joint Proposal, and certain proponents of the EU proposal expressed support for key Joint Proposal provisions. The Draft Consolidated Text reflects these developments. For example, that text shows India and Brazil's support for several key components of the Joint Proposal (*e.g.*, participation). Sponsors of the Joint Proposal emphasized, repeatedly, that the Special Session's mandate is limited to GIs for wines and spirits. There was limited discussion of the Joint Proposal in 2012 and no progress in resolving divergent views, with Members instead continuing to adhere to entrenched positions.

Prospects for 2013

There will be continued discussion regarding the Special Session's mandate. In particular, Members will discuss whether negotiations are limited to GIs for wines and spirits (the position of the Joint Proposal proponents, based on the unambiguous text of Article 23.4 of the TRIPS Agreement) or whether these negotiations should be extended to cover GIs for goods other than wines and spirits (the position of the EU and certain other WTO members). The United States will aggressively pursue additional support for the Joint Proposal in the coming year and will seek a more flexible and pragmatic approach from supporters of the EU proposal.

9. Committee on Trade and Development, Special Session

Status

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

As part of the S&D review, developing country Members submitted 88 Agreement-Specific Proposals (ASPs) to augment existing S&D provisions in the WTO Agreement. Thirty-eight of these proposals were referred to other negotiating groups and WTO bodies for consideration (Category II proposals). Of the proposals remaining for consideration in the Special Session, Members reached an "in principle" agreement on draft decisions for 28 proposals at the 2003 Cancun Ministerial Conference, following intensive negotiations in 2002 and 2003. Due to the breakdown of the DDA negotiations, these proposals were not adopted at Cancun, and in 2012, Members resumed work to review and take stock of these proposals ("Cancun 28").

At the 2005 Hong Kong Ministerial Conference, Members reached agreement on these five ASPs: access to WTO waivers; coherence; duty-free and quota-free treatment (DFQF) for LDC Members; Trade-Related Investment Measures (TRIMS); and flexibility for LDC Members that have difficulty implementing their WTO obligations. The decisions on these proposals are contained in Annex F of the Hong Kong Ministerial Declaration.

Ministers at Hong Kong instructed the Special Session to expeditiously complete the review of all the outstanding Agreement specific proposals and report to the General Council, with clear recommendations for a decision. With respect to the 38 Category II proposals, the Special Session was instructed to continue to coordinate its efforts with relevant bodies to ensure that work on those proposals was concluded and recommendations for a decision made to the General Council. Ministers at Hong Kong

also mandated the Special Session to resume work on all outstanding issues, including a new proposal by the African Group to negotiate a Monitoring Mechanism (MM) for effective monitoring of S&D provisions.

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

At the Eighth Ministerial Conference, Ministers agreed to focus in 2012 on expedited work to finalize the MM, and to take stock of the Cancun 28 with a view to formal adoption of those agreed. With respect to the remaining proposals still under consideration in the CTD-SS, Members have focused their text based discussions on six of the 16 remaining Agreement specific proposals. These proposals cover issues relating to Articles 10.2 and 10.3 of the Agreement on Sanitary and Phytosanitary Measures (SPS) and Article 3.5 of the Agreement on Import Licensing Procedures.

Major Issues in 2012

The bulk of the Special Session's work in 2012 has been dedicated to informal, open-ended meetings to make progress on the MM, Cancun 28, and the six ASPs relating to the SPS and Import Licensing Procedures Agreements. The Chair set up an ambitious schedule of weekly, later reduced to bi-weekly, informal meetings for Members to consider these three issues. In addition, the Special Session held three formal meetings in July and November 2012. The meetings involved intensive negotiations and engagement on language in the six ASPs and on a Chair's text for an MM with some introductory discussions on the Cancun 28.

At the end of 2010, a group of Ambassadors attempted to capture the middle ground on the elements of the MM and proposed informal "guiding principles" to help take the process forward. Although some Members have called into question the guiding principles as a basis for discussion on the MM, the United States has tried to refocus attention on the substance. The Chair has issued "non-papers" after each informal meeting on the MM, with an updated version of the text of the MM and reflecting discussions among Members. With the consent of the Members, all consultations going forward will be based on the Chair's September 15 text. While acknowledging that nothing is agreed until everything is agreed, there appears to be convergence that the scope of the MM will apply to the monitoring of S&D provisions in the WTO Agreements and Ministerial and General Council Decisions. There also appears to be convergence that the MM will operate in dedicated sessions of the CTD and that its work will be based on inputs and submissions by Members, as well as on reports received from other WTO bodies. Prior to each such session, it is envisioned that the WTO Secretariat will compile a factual background document based on inputs and submissions received from Members and other WTO bodies, detailing information relating to the operation, utilization, and implementation of S&D provisions. However, there continues to be disagreement as to whether other negotiating groups and Committees with technical expertise should be involved in the monitoring of Agreement-specific S&D provisions. Members also hold divergent views on the issue of the review procedure and any recommendations made under this Mechanism not prejudging the legal nature of S&D provisions nor affecting Members' rights and obligations under the WTO Agreements.

Members have discussed the Cancun 28 in three informal meetings of the Special Session. Because of the large number of proposals, the Africa Group, who are the proponents, have expressed difficulty in convening all of their Members to review and consult on these proposals. In addition, while the Africa Group has stated that its position is that all of the Cancun 28 should be agreed, other Members have expressed a contrary view, noting, in particular, that considerable time has passed since the Cancun Ministerial, such that certain proposals have been overtaken by events or require modest updates. As a starting point for the discussions, the Secretariat prepared a document that identifies those proposals that, based on the Secretariat's analysis, have been affected by intervening developments. Members have agreed to begin discussions on the six proposals that the Secretariat identified as having been so affected. There are certain proposals for which Members reached agreement; however, the proponents have indicated that they view the Cancun 28 as a package that should be negotiated and concluded as such.

Members have also discussed the six ASPs related to the SPS and Import Licensing Procedures Agreements, primarily focused on the proposals related to Article 10.3 of the SPS Agreement. While discussion proceeded in a constructive manner, Members remained far from developing any common understanding and have not been able to bridge remaining gaps in their divergent positions. The Chair sought input from the Secretariat staff working on SPS to provide background and context for the Article 10.3 proposals. This aided in the discussion. The Chair has also indicated that he will reengage with the relevant Committee Chairs on the Category II proposals, but there was not much progress in 2012 on these proposals.

Prospects for 2013

In 2013, work will continue on the MM, Cancun 28, and remaining ASPs and on the underlying issues inherent in them.

C. Work Programs Established in the Doha Development Agenda

1. Working Group on Trade, Debt, and Finance

Status

Ministers at the 2001 Doha Ministerial Conference established the mandate for the Working Group on Trade, Debt, and Finance (WGTDF). Ministers instructed the WGTDF to examine the relationship between trade, debt, and finance and to examine and make recommendations on possible steps, within the mandate and competence of the WTO, to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and least-developed country Members. Ministers further instructed the WGTDF to consider possible steps to strengthen the coherence of international trade and financial policies, with a view to safeguarding the multilateral trading system from the effects of financial and monetary instability.

Major Issues in 2012

The WGTDF met three times in 2012. The first meeting was over two days on March 27 and March 28, 2012, for a seminar on the relationship between exchange rates and trade. The seminar comprised four different panels (private sector, government, international organizations, and academia) to provide different perspectives on the issue.

The second meeting was held on June 12, 2012. During this meeting, the WTO Secretariat reported on the WTO-hosted Expert Group on Trade Finance that met on May 15, 2012 and on the state of progress

on the G20's trade finance work. Also, during this meeting, Members discussed their views about the March seminar and whether to continue the discussion on the relationship between exchange rates and trade. Generally, Members were comfortable continuing further discussions about the effects of exchange rates on trade but did not reach consensus to move into a discussion about WTO rules relating to exchange rates. It was agreed that for the next meeting, the Secretariat would provide the working group with a limited update of its literature survey on the relationship between exchange rates and trade.

The third meeting was held on November 26, 2012. During this meeting, the WTO Secretariat reported on the WTO-hosted Expert Group on Trade Finance that met on October 25, 2012. Also during this meeting, Brazil presented a submission on exchange rate misalignment and trade remedies. Members provided initial reactions to Brazil's submission. Further discussions about potential work in the area of exchange rates and trade will take place at the next meeting.

Prospects for 2013

In 2013, the WGTDF will continue to discuss issues relating to the relationship between exchange rates and trade. The WGTDF will also continue to be a forum for discussing trade finance issues. Additionally, the WGTDF will continue its work under the 2001 mandate.

2. Working Group on Trade and Transfer of Technology

Status

During the 2001 Doha Ministerial Conference, WTO Ministers agreed to an "examination . . . of the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries." To fulfill that mandate, the Trade Negotiations Committee (TNC) established the Working Group on Trade and Transfer of Technology (WGTTT), under the auspices of the General Council, and tasked the WGTTT to report on its progress to the 2003 Ministerial Conference at Cancun. At that meeting, Ministers extended the time period for the WGTTT's examination. During the 2005 Hong Kong Ministerial Conference, WTO Ministers recognized "the relevance of the relationship between trade and transfer of technology" and further agreed that, "building on the work carried out to date, this work shall continue on the basis of the mandate contained in paragraph 37 of the Doha Ministerial Declaration." The WGTTT met three times in 2012, continuing its work under the Doha Ministerial mandate to examine the relationship between trade and the transfer of technology. However, to date there has been little progress on reaching consensus on the nature of the relationship between trade and transfer of technology, or on recommendations that may be made to strengthen that relationship.

Major Issues in 2012

During 2012, the OECD and the WTO Secretariat made presentations on the role of global value chains on the transfer of technology to developing countries. The OECD presentation highlighted that organizations work in categorizing types of global value chains, and its conclusion that the extent of knowledge transfer varied and depended on the choice of model. The WTO Secretariat presentation focused on the impacts of fragmentation of production on international competitiveness. It highlighted the fact that services and manufacturing firms operated increasingly across regions and that Members' engagement in global value chains through foreign direct investment resulted in technology transfer and increased exports. The working group also heard a related presentation from UNCTAD on the effects of non-equity partnerships on technology transfer. In two recent studies, UNCTAD had concluded that modern supplier relationships often involve a significant level of non-equity investment in local

producers, and that such non-equity relationships played a crucial role in diffusion of technology and skills to local partners. However, the extent of such technology transfer depended on a variety of factors including local government policies and the nature of the contractual relationship.

In November 2012, Members also considered a communication from Colombia, Costa Rica, Mexico, and Peru for a seminar in 2013 on Trade and Transfer of Technology. Members indicated their openness to such a seminar involving outside speakers; however, Members did not reach a conclusion on the details of scope and timing of such a seminar.

Concerning any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries, in the period since the 2001 Doha Ministerial, the WGTTT has considered submissions from the Secretariat, WTO Members, other WTO bodies, and intergovernmental organizations. There were no new proposals made during 2012, and little in depth discussion of prior proposals. Members continued to focus on a 2008 submission made by India, Pakistan, and the Philippines, which included a proposal to improve the WTO website to allow Members to search more easily for submissions relating to technology transfer and to establish a forum for governments and the private sector to exchange information about technological needs and offers. While the United States has welcomed this approach to the work of the WGTTT, it has requested more information on the precise parameters of these proposals, and maintained its view that any such technology transfer be voluntary and on mutually agreed terms and conditions. In each of the meetings during 2012, the proponents stated that they were in the process of updating their proposal. However, to date, they have not submitted a revision.

Prospects for 2013

No WGTTT meetings have been scheduled yet for 2013. During 2013, Members will continue consideration of the proposal for a seminar. The working group will also welcome presentations by Members on their national experience with technology transfer and additional presentations by outside organizations.

3. Work Program on Electronic Commerce

Status

Pursuant to the 2005 Hong Kong Ministerial Declaration, Members continue to work on ways to advance the Work Program on Electronic Commerce. At the 2011 Ministerial Conference, Ministers agreed to extend once again, until the next Ministerial Conference, the current practice of not imposing customs duties on electronic transmissions. In addition, they agreed to continue the Work Program, with a specific focus on addressing developmental issues.

Major Issues in 2012

Several informal sessions of the Work Program were held in 2012 to review submissions from the United States and other Members relating to electronic commerce. The United States has outlined specific areas where liberalized trade using electronic commerce would be of particular benefit to Members, such as the robust global market for mobile application downloads and the evolving market of cloud computing.

Prospects for 2013

The United States will continue to work with Members to maintain a liberal trade environment for electronically traded goods and services, seeking to ensure that trade rules remain relevant to electronic commerce. The United States is working with Members to advance discussions on such issues through focused meetings and information exchanges involving experts, looking in particular at the developmental benefits of electronic commerce related technologies and services. The General Council will assess the Work Program progress, and consider any recommendations at the next Ministerial Conference, scheduled for December 2013. At that time, WTO Members will again be expected to address the status of the customs duties moratorium on electronic transmissions.

D. General Council Activities

Status

The WTO General Council is the highest level decision-making body in the WTO that meets on a regular basis during the year. It exercises all of the authority of the Ministerial Conference, which is required to meet no less than once every two years.

Only the Ministerial Conference and the General Council have the authority to adopt authoritative interpretations of the WTO Agreements, submit amendments to the WTO Agreement for consideration by Members, and grant waivers of obligations. The General Council or the Ministerial Conference must approve the terms for all accessions to the WTO. Technically, both the Dispute Settlement Body (DSB) and the Trade Policy Review Body (TPRB) are General Council meetings that are convened for the purpose of discharging the responsibilities of the DSB and TPRB, respectively.

Four major bodies report directly to the General Council: the Council for Trade in Goods, the Council for Trade in Services, the Council for Trade-Related Aspects of Intellectual Property Rights, and the Trade Negotiations Committee. In addition, the Committee on Trade and Environment, the Committee on Trade and Development, the Committee on Balance-of-Payments Restrictions, the Committee on Budget, Finance and Administration, and the Committee on Regional Trade Agreements report directly to the General Council. The Working Groups established at the First Ministerial Conference in Singapore in 1996 to examine investment, trade and competition policy, and transparency in government procurement also report directly to the General Council, although these groups have been inactive since the Cancun Ministerial Conference in 2003. A number of subsidiary bodies report to the General Council through the Council for Trade in Goods or the Council for Trade in Services. The Doha Ministerial Declaration approved a number of new work programs and working groups which have mandates to report to the General Council, such as the Working Group on Trade, Debt, and Finance and the Working Group on Trade and Transfer of Technology. These mandates are part of the DDA set out in the Doha Ministerial Declaration, and this report reviews these groups' work in subsections of Section C entitled *Working Group on Trade, Debt, and Finance* and *Working Group on Trade and Transfer of Technology*.

The General Council uses both formal and informal processes to conduct the business of the WTO. Informal groupings, which generally include the United States, play an important role in consensus-building. Throughout 2012, the Chairwoman of the General Council, together with the Director General, conducted informal consultations with large groupings comprising the Heads of Delegation of the entire WTO Membership and a wide variety of smaller groupings of WTO Members at various levels. The Chairwoman and Director General convened these consultations with a view to resolving outstanding issues on the General Council's agenda. Following Ministers' acknowledgment at the Eighth WTO Ministerial Conference in December 2011 that the DDA is at an impasse, in 2012, the

main focus of work in the DDA negotiations has been to advance discussion in those areas of the negotiation where progress can be made in the short term. Reports on all DDA negotiating groups are set out in other sections of this chapter.

Major Issues in 2012

Ambassador Elin Johansen of Norway served as Chairwoman of the General Council in 2012. In addition to work on the DDA, activities of the General Council in 2012 included:

WTO Accessions: In December 2011, the Eighth Ministerial Conference adopted a Decision on the Accession of LDCs (WT/L/846), which directed the Sub-Committee on LDCs to develop recommendations to further strengthen, streamline, and operationalize the 2002 Guidelines on Accession of LDCs (WT/L/508). Ministers also instructed the Sub-Committee to complete this work and make recommendations to the General Council not later than July 2012. After six months of negotiations, at the July General Council meeting, Members adopted in the form of a decision a set of recommendations, in line with the Ministers' mandate, that has become an addendum to the 2002 General Council Decision on LDC Accession.

In addition on accessions, the General Council established a Working Party for Liberia and agreed to new chairmen for the Working Parties for Afghanistan and Algeria. The General Council also adopted the Working Party reports of Laos and Tajikistan.

Waivers of Obligations: The General Council extended the Kimberley Process waiver, and Cuba's current waiver concerning Article XV:6 of the GATT 1994, and adopted a waiver for the European Union to extend additional autonomous trade preferences to Pakistan. The General Council also reviewed a number of previously agreed waivers, including U.S. waivers related to the Former Territory of the Pacific Islands, the Caribbean Basic Economic Recovery Act, the African Growth and Opportunity Act, and the Andean Trade Preference Act. Annex II of this report contains a detailed list of Article IX waivers currently in force.

Ukraine's request to renegotiate concessions under Article XXVIII of the GATT 1994: At both the October and December General Council meetings, 126 WTO Members, including the United States, pressed Ukraine to abandon its proposed action to renegotiate its tariff bindings on over 350 key agricultural and non-agricultural products.

Prospects for 2013

In addition to its management of the WTO and oversight of implementation of the WTO Agreement, the General Council will have detailed discussions throughout the year to plan for the Ninth Ministerial Conference, to be held from December 3-6, 2013 in Bali, Indonesia. The General Council will also play a key role in appointing the next Director General of the WTO. The term of office of the current Director General, Pascal Lamy, will end on August 31, 2013.

E. Council for Trade in Goods

Status

The WTO Council for Trade in Goods (CTG) oversees the activities of 12 committees (Agriculture, Antidumping Practices, Customs Valuation, Import Licensing, Information Technology, Market Access, Rules of Origin, Safeguards, Sanitary and Phytosanitary Measures, Subsidies and Countervailing

Measures, Technical Barriers to Trade, and Trade-Related Investment Measures) and the Working Party on State Trading Enterprises.

The CTG is the central oversight body in the WTO for all agreements related to trade in goods and the forum for discussing issues and decisions which may ultimately require the attention of the General Council for resolution or a higher-level discussion, and for putting issues in a broader context of the rules and disciplines that apply to trade in goods. For example, the CTG considers the use of the GATT 1994 Article IX waiver provisions and has given initial approval to waivers for trade preferences that the United States and the EU granted to ACP countries and the Caribbean Basin Initiative countries, respectively.

Major Issues in 2012

In 2012, the CTG held four formal meetings, in February, March, June, and November. The CTG devoted its attention primarily to providing formal approval of decisions and recommendations proposed by its subsidiary bodies. The CTG also served as a forum for raising concerns regarding actions that individual Members had taken with respect to the operation of goods related WTO agreements. In addition, two major issues were debated in the CTG in 2012:

Waivers: The CTG approved several requests for waivers related to the implementation of the Harmonized Tariff System and renegotiation of tariff schedules. The CTG approved WTO Members' request for extension of the waiver of certain WTO obligations to allow Members that are participants in the Kimberley Process Certification Scheme for rough diamonds to implement measures consistent with that scheme. The CTG also considered and approved an EU request for a waiver on additional autonomous preferences that it grants to Pakistan. The Philippines requested a waiver relating to special treatment for rice. The CTG included it on its agenda but decided to revert the issue to allow additional time for bilateral consultations among Members.

Market Access Complaints: The CTG also discussed concerns raised by individual Members, including concerns the United States raised, *inter alia*, regarding changes in Ecuador's tariff system, Argentina's import licensing measures and procedures, Indonesia's import licensing regime, and Ukraine's notification under Article XXVIII of the GATT 1994.

Prospects for 2013

The CTG will continue to be the focal point for discussing agreements in the WTO dealing with trade in goods. Waiver requests and goods-specific market access concerns are likely to continue to be prominent issues on the CTG agenda.

1. Committee on Agriculture

Status

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

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

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

Major Issues in 2012

The Committee held four formal meetings, in March, June, September, and November 2012, to review progress on the implementation of commitments negotiated in the Uruguay Round. At the meetings, Members undertook reviews based on notifications by Members in the areas of market access, domestic support, export subsidies, export prohibitions and restrictions, and general matters relevant to the implementation of commitments.

In total, 170 notifications were subject to review during 2012. The United States participated actively in the review process and raised specific issues concerning the operation of Members' agricultural policies. For example, the United States regularly raised points with respect to domestic support in many countries, including Brazil, Canada, China, Costa Rica, Dominican Republic, the EU, India, Indonesia, and Thailand. The United States encouraged countries including Brazil, China, and India to bring their domestic support notifications up to date. In addition, the United States used the review process to question Brazil's Program for Product Flow (PEP – *Prêmio para Escoamento do Produto)* for rice, Thailand's rice support program, China's cotton reserves purchasing program, and India's wheat export policy. The United States continued to raise concerns regarding Costa Rica exceeding its bound Aggregate Measurement of Support (AMS) limits. The United States raised questions with respect to Japan and Korea's notifications on special safeguards. Points were also raised regarding Canada, Costa Rica, and the EU's export subsidy notifications. The United States also used the review process to raise concerns regarding trade distorting practices such as import licensing regulations and quantitative import restrictions in Indonesia and Ecuador; Egypt's import ban on cotton; and export prohibitions and restrictions by various countries, including India on cotton.

During 2012, the Committee addressed a number of other issues related to the implementation of the Agriculture Agreement, such as: (1) review of Members' notifications on tariff-rate quotas (TRQs) in accordance with the General Council's decision[5] regarding the administration of TRQ regimes in a transparent, equitable, and nondiscriminatory manner; (2) development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees, or insurance programs pursuant to Article 10.2 of the Agriculture Agreement, taking into account the effect of such disciplines on NFIDCs; (3) annual monitoring of the follow up to the Marrakesh NFIDC Decision on food aid of April 15, 1994; and (4) annual consultations, under Article 18.5 of the Agriculture Agreement, concerning Members' participation in the normal growth of world trade in agricultural products within the framework of commitments on export subsidies.

The Committee is developing an electronic archiving system for formal questions and responses raised in the Committee. As Members indicated that the rules and disciplines on domestic support are crucial to

[5] WT/L/384 General Council - Implementation-Related Issues and Concerns - Decision of 15 December 2000.

the world agricultural trading system, the United States submitted two documents to engage and continue the Committee's work on improving the timeliness and transparency of domestic support notifications.

Prospects for 2013

The United States will continue to make full use of the Committee to ensure transparency through timely notification by Members and to enhance enforcement of Uruguay Round commitments as they relate to export subsidies, market access, domestic support, and trade distorting practices of WTO Members. The United States will continue to work closely with the Committee Chair and Secretariat to find ways to improve the timeliness and completeness of notifications and to increase the effectiveness of the Committee overall. In addition, the Committee will continue to monitor and analyze the impact of the possible negative effects of the reform process on LDCs and NFIDCs in accordance with the Agriculture Agreement.

2. Committee on Market Access

Status

In January 1995, WTO Members established the Committee on Market Access (MA Committee), which is responsible for the implementation of concessions related to tariffs and non-tariff measures that are not explicitly covered by another WTO body, as well as for verification of new concessions on market access in the goods area. The Committee reports to the WTO Council on Trade in Goods.

Major Issues in 2012

The MA Committee held two formal meetings in April and October 2012, and four informal sessions or consultations, to discuss the following topics: (1) ongoing and future work on WTO Members' tariff schedules to reflect changes to the Harmonized System (HS) tariff nomenclature and any other tariff modifications; (2) the WTO Integrated Data Base (IDB) and Consolidated Tariff Schedules (CTS) database; (3) the procedures for Member notifications of quantitative restrictions (QRs); and (4) other market access issues as raised by Members.

Updates to the HS nomenclature: The MA Committee examines issues related to the transposition and renegotiation of the schedules of Members that adopted the HS in the years following its introduction on January 1, 1988. Since then, the World Customs Organization has amended the HS tariff classification system relating to tariff nomenclature in 1996, 2002, and 2007, and again in 2012. Using agreed examination procedures, WTO Members have the right to object to modifications in another Member's tariff schedule that result from changes in the HS nomenclature, if such modifications affect the Member's bound tariff commitments. Members may pursue unresolved objections under Article XXVIII of GATT 1994.

The MA Committee continued its work concerning the introduction and verification of HS2002 changes to Members' WTO tariff schedules. Throughout the year, the United States worked closely with other Members and the WTO Secretariat to ensure all Members' bound tariff commitments are properly reflected in their updated schedule. To date, the HS2002 files for 103 Members – including the United States – have been certified, with only 15 files outstanding.

In 2011, the MA Committee agreed to commence work on the introduction and verification of HS 2007 changes to bound tariff schedules. The United States submitted its draft HS2007 transposition file to the WTO Secretariat according to the March 31, 2012 submission deadline established by the General

Council. The first multilateral review of 26 files under the HS2007 procedures was held at an informal Committee meeting in December 2012. The multilateral verification process in the Committee will be ongoing through 2013.

Concerning the HS2012 nomenclature changes, the General Council approved procedures (WT/L/831) to introduce those changes to schedules of concessions using the CTS database. However, that work will not commence for some time, as the Committee has only recently begun the process to update Members' bound commitments into HS2007 nomenclature. This lag can create difficulties in determining whether Members' MFN duties – to be applied in HS2012 nomenclature beginning January 1, 2012 – are consistent with their WTO bound commitments. The United States was the first WTO Member to submit its bound tariff schedule in HS2012 nomenclature to the WTO Secretariat, in September 2012.

Integrated Data Base (IDB): Members are required to notify information on annual tariffs and trade data, linked at the level of tariff lines, to the IDB as a result of a General Council Decision adopted in July 1997. On the tariff side, the IDB contains MFN current bound duties and MFN current applied duties. Additional information covering preferential duties is also included if provided by Members. On the trade side, it contains value and quantity data on imports by country of origin by tariff line. The WTO Secretariat periodically reports on the status of Member submissions to the IDB, the most recent of which can be found in WTO document G/MA/IDB/2/Rev.36. The United States notifies this data in a timely fashion every year. However, several Members are not up to date in their submissions. The public can access tariff and trade data notified to the IDB through the WTO's Tariff Online Analysis (TAO) facility at https://tariffanalysis.wto.org. The WTO Secretariat is also currently working to integrate into the IDB historical tariff and import information for 29 countries covering years 1988 to 1995.

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

Notification Procedures for QRs: On December 1, 1995, the Council for Trade in Goods adopted a Decision on Notification Procedures for Quantitative Restrictions, which provides that WTO Members should make complete notifications of the QRs which they maintain at two year intervals thereafter, and shall notify changes to their QRs when these changes occur.

In an effort to improve timeliness and completeness of QR notifications, and to reduce duplication of notifications made to other WTO Committees, the MA Committee approved revised notification procedures for QRs, and a Decision establishing these procedures was adopted by the Council for Trade in Goods in June 2012 (G/L/59/Rev.1). The United States submitted a QR notification in accordance with the decision in October 2012. This submission can be found in WTO document G/MA/QR/N/USA/1. Several other Members have also submitted notifications on QRs, including the Russian Federation, Hong Kong, Costa Rica, Turkey, Ukraine, Thailand, Korea, Australia, New Zealand, Macao China, and Canada.

Other Market Access Issues: At the October meeting, the Committee took note of market access concerns with respect to Ukraine's notification to renegotiate tariff concessions on over 350 tariff lines under GATT Article XXVIII. Twenty-two delegations (covering 57 WTO Members) – including the United States – expressed concerns.

The Committee also approved procedures for the derestriction of negotiating material of the Dillon Round and some negotiating material of the four earlier GATT rounds. The procedures are almost identical to those used by the WTO General Council to derestrict GATT 1947 restricted documents.

Prospects for 2013

The ongoing work program of the MA Committee, while highly technical, aims to ensure that all WTO Members' schedules of bound tariff commitments are up to date and available in electronic spreadsheet format. The Committee will continue to explore technical assistance needs related to data submissions, work to finalize Members' amended schedules based on the HS2002 amendments, and accelerate work on the transposition of Members' tariff schedules to HS2007.

3. Committee on the Application of Sanitary and Phytosanitary Measures

Status

The Committee on the Application of Sanitary and Phytosanitary Measures (the SPS Committee) provides a forum for the implementation and administration of the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement), consultation on Members' existing and proposed SPS measures, technical assistance, other informational exchanges, and the participation of the international standard setting bodies recognized in the SPS Agreement. These international standard setting bodies are: for food safety, the Codex Alimentarius Commission (Codex); for animal health, the World Organization for Animal Health (OIE); and for plant health, the International Plant Protection Convention (IPPC).

The SPS Committee also discusses specific provisions of the SPS Agreement. These discussions provide an opportunity to develop procedures to assist Members in meeting specific SPS obligations. For example, the SPS Committee has issued procedures or guidelines regarding: notification of SPS measures; the "consistency" provisions under Article 5.5 of the SPS Agreement; equivalence; transparency regarding the provisions for S&D; and regionalization. Participation in the SPS Committee, which operates by consensus, is open to all WTO Members. Governments negotiating accession to the WTO may attend Committee meetings as observers. In addition, representatives from a number of international organizations attend Committee meetings as observers on an *ad hoc* meeting by meeting basis, including: the Food and Agriculture Organization (FAO); the World Health Organization (WHO); Codex; the IPPC; the OIE; the International Trade Center; the Inter-American Institute for Cooperation on Agriculture (IICA); and the World Bank.

Major Issues in 2012

In 2012, the SPS Committee held meetings in March, July, and October. In these meetings, Members exchanged views regarding the implementation of SPS Agreement provisions with respect to transparency, equivalence, and regionalization, including their efforts to declare areas of their country free from specified pests and diseases.

The United States views these exchanges as positive developments, as they demonstrate a growing familiarity with the provisions of the SPS Agreement and increased recognition of the value of the SPS Committee as a forum for Members to discuss SPS related trade issues. Many Members, including the United States, utilized these meetings to raise concerns regarding new and existing SPS measures of other Members. In 2012, the United States raised a number of concerns with measures imposed by other Members, including Vietnam's restriction on offals, Indonesia's restrictions on meat, and bans imposed by

several Members on the use of a growth additive in cattle and swine. Further, the United States, with a view to transparency, informed the SPS Committee of U.S. measures, both new and proposed.

The Committee also continued work on the issuance of guidance regarding *ad hoc* consultations under Article 12.2 of the Agreement, as well as the use and development of international standards, guidelines, and recommendations by Codex, OIE, and IPPC. In October 2012, the WTO SPS Committee held a workshop on transparency for all Members.

Other important issues before the SPS Committee included private and commercial standards, along with various specific trade concerns and notifications.

Private and Commercial Standards: In 2012, the Committee began work on a number of possible actions related to the issue of private and commercial standards. The possible actions discussed included supporting the work of the three international standard setting bodies referenced in the SPS Agreement (Codex, OIE, and IPPC), various avenues to promote the exchange of information among Members and these bodies, and defining private and commercial standards. The Committee will only take action if there is agreement of all Members to do so. The United remains quite concerned about whether defining private and commercial standards is an appropriate issue to which the SPS Committee should be devoting resources and continues to work with the Committee and other Members to address that concern.

Notifications: Because it is critical for trading partners to know and understand each other's laws and regulations, the SPS notification process, with the Committee's consistent encouragement, is becoming an increasingly important mechanism in the facilitation of international trade. The process also provides a means for Members to report on determinations of equivalence and S&D. The United States made 183 SPS notifications to the WTO Secretariat in 2012, and submitted comments on 119 SPS measures notified by other Members.

Prospects for 2013

The SPS Committee will hold three meetings in 2013 with informal sessions anticipated to be held in advance of each meeting. The Committee has a standing agenda for meetings that can be amended to accommodate new or special issues. The SPS Committee will continue to monitor Members' implementation activities, and the discussion of specific trade concerns will continue to be an important part of the Committee's activities, including exchanges on bovine spongiform encephalopathy (BSE), avian influenza, food safety measures, and technical assistance.

In 2013, the Committee will work on priorities identified during the Second and Third Reviews of the Operation and Implementation of the SPS Agreement. The United States anticipates that the SPS Committee will continue discussions on the issuance of guidelines regarding *ad hoc* consultations under Article 12.2 of the Agreement, as well as on how to improve cooperation and coordination with Codex, OIE, and IPPC. In addition, the Committee will continue to monitor the use and development of international standards, guidelines, and recommendations by those three bodies.

4. Committee on Trade-Related Investment Measures

Status

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

on QRs set out in Article XI:1 of the GATT 1994. The TRIMS Agreement requires the elimination of certain measures imposing requirements on, or linking advantages to, certain actions of foreign investors, such as measures that require, or provide benefits for, the use of local inputs ("local content requirements") or measures that restrict a firm's imports to an amount related to the quantity of its exports or of its foreign exchange earnings ("trade balancing requirements"). The Agreement includes an illustrative list of measures that are inconsistent with Articles III:4 and XI:1 of the GATT 1994.

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

Major Issues in 2012

The TRIMS Committee held two formal meetings during 2012, in May and October, during which the United States and other Members continued to discuss particular local content measures of concern to the United States. The United States explored these concerns through written questions to seek a better understanding of a variety of potentially trade-distortive local content requirements. For example, the United States, joined by Japan and the European Union, continued to raise questions about possible local content requirements in Indonesia's measures pertaining to mineral and coal mining and oil and gas exploration, noting that it had raised these concerns every year since 2009. The United States posed further follow-up questions to Indonesia in document G/TRIMS/W/108. The United States, Japan, and the European Union also raised questions about possible local content requirements in India for participation in certain solar power projects. A second set of factual questions from the United States are contained in WTO document G/TRIMS/W/106. The United States, the European Union, Japan, and Canada also continued to press Nigeria to respond to earlier questions on possible local content requirements in measures pertaining to the oil and gas industry. The questions from the United States are contained in WTO document G/TRIMS/W/89. Nigeria did not provide a substantive response during the meeting. Finally, the United States, the European Union and Japan posed questions to Indonesia regarding potential TRIMS concerns in the telecommunications sector, an issue that was raised in the Committee in 2009 and 2010. The latest questions on this issue from Japan are contained in WTO document G/TRIMS/W/86.

In addition to these previously-raised issues, Members highlighted new local content issues during 2012. The United States and Japan pointed to certain local content requirements for telecommunications contained in the results of a bidding process on rights to use specific radio frequencies to provide commercial mobile radio services. The United States posed formal written questions to Brazil in document G/TRIMS/W/93, and Brazil provided responses in document G/TRIMS/W/99. The United States posed follow-up questions in document G/TRIMS/W/107. The United States also raised the issue of preferences to domestically manufactured electronic goods in India, under a February 10, 2012 policy notice published by India's Department of Information Technology (DIT). The United States raised questions about this measure in the May 2012 meeting of the TRIMS committee, and in document G/TRIMS/W/94. India responded to those questions in document G/TRIMS/W/97. The United States posed follow-up questions in document G/TRIMS/W/105, and again raised the issue in the October 2012 meeting of the committee.

Other Members also raised local content measures. In the October 2012 meeting of the committee, Australia and the European Union expressed concern about certain tax preferences for domestically manufactured automobiles in Brazil. They posed written questions about these measures in document G/TRIMS/W/110. The European Union also raised questions in document G/TRIMS/W/109 about

certain local content provisions contained in amendments to Ukraine's Law on Electricity to promote the generation of electricity from renewable resources. This issue was discussed in the October 2012 meeting of the committee.

With the expiration of the transitional review mechanism pursuant to paragraph 18 of the protocol of accession of the People's Republic of China to the World Trade Organization, the United States raised one issue that had previously been addressed under that mechanism during the regular work of the Committee. Specifically, the United States drew Members' attention to certain investment measures in the steel sector. The United States filed written questions for China in document G/TRIMS/W/103, and discussed the matter further during the October 2012 meeting of the committee. The United States noted that some of China's laws and regulations, although revised after accession to the WTO, seemingly continued to encourage technology transfer or the use of local content in an inappropriate manner. Even when laws and regulations have not expressly required it, enterprises from the United States and other Members have continually reported that some Chinese government officials, who would typically retain a high degree of discretion when reviewing investment applications, still considered factors such as technology transfer and local content when deciding whether to approve an investment. These concerns were shared by Australia, the European Union and Japan.

Finally, having acceded to the WTO in August of 2012, the Russian Federation filed its required notification under Article 6.2 of the TRIMS Agreement identifying the names of publications in which TRIMs might be found. The United States noted that it was also looking forward to reviewing the anticipated notification of the Russian Federation under Article 5.1 of the Agreement pursuant to the "Timeline for Submission of Notifications" contained in Table 38 of the Report on the Working Party on the Accession of the Russian Federation.

Prospects for 2013

The United States will continue to engage other Members in efforts to promote compliance with the TRIMS Agreement.

5. Committee on Subsidies and Countervailing Measures

Status

The Agreement on Subsidies and Countervailing Measures (the SCM Agreement) provides rules and disciplines for the use of government subsidies and the application of remedies – through either WTO dispute settlement or countervailing duty (CVD) action taken by individual WTO Members – to address subsidized trade that causes harmful commercial effects. Subsidies contingent upon export performance or the use of domestic over imported goods are prohibited. All other subsidies are permitted but are actionable (through CVD or WTO dispute settlement actions) if they are (i) "specific", *i.e.*, limited to a firm, industry, or group thereof within the territory of a WTO Member, and (ii) found to cause adverse trade effects, such as material injury to a domestic industry or serious prejudice to the trade interests of another Member.

Major Issues in 2012

The Committee on Subsidies and Countervailing Measures (the SCM Committee) held two regular meetings and two special meetings in 2012, in April and October. The Committee continued to review the consistency of Members' domestic laws, regulations, and actions with the SCM Agreement's requirements, as well as Members' notifications of their subsidy programs to the SCM Committee. Other

items addressed in the course of the year included: the U.S. "counter notification" of unreported subsidy programs in China and India; submission by the United States of questions to China under Article 25.8 of the SCM Agreement; examination of ways to improve the timeliness and completeness of subsidy notifications; the "export competitiveness" of India's textile and apparel sector; review and approval of specific export subsidy program extension requests for certain small economy developing country Members; filling two openings on the five-member Permanent Group of Experts; and updating the eligibility threshold for developing countries to provide export subsidies under Annex VII(b) of the SCM Agreement. Further information on these various activities is provided below.

Review and Discussion of Notifications: Throughout the year, Members submitted notifications of: (1) new or amended CVD legislation and regulations; (2) CVD investigations initiated and decisions taken; and (3) Members' subsidy programs. Notifications of CVD legislation and actions, as well as subsidy notifications, were reviewed and discussed by the SCM Committee at its April and October meetings.

In reviewing notified CVD legislation and subsidies, SCM Committee procedures provide for the exchange in advance of written questions and answers in order to clarify the operation of the notified measures and their relationship to the obligations of the SCM Agreement. As of the end of 2012, 99 WTO Members (counting the European Union as a single Member) have notified their CVD legislation or lack thereof; 31 Members have so far failed to make a legislative notification.[6] In 2012, the SCM Committee reviewed notifications of new or amended CVD laws and regulations from the United States, Tonga, Burkina Faso, Australia, Brazil, Indonesia, Nepal and Pakistan.[7]

As for CVD measures, eight Members notified CVD actions they took during the latter half of 2011, and eight Members notified actions they took in the first half of 2012. Specifically, the SCM Committee reviewed actions taken by several Members, including Australia, Brazil, Canada, China, the EU, Mexico, Pakistan, Peru, and the United States.

In 2012, the SCM Committee examined new and full subsidy notifications: 29 from 2011 and one from 2009. Included in the review of 2011 new and full notifications was the notification of the United States. The United States submitted questions to China on its 2009 new and full notification which have not yet been answered. Unfortunately, numerous Members have yet to make even an initial subsidy notification to the WTO, although many of them are least-developed country Members.

Counter notifications: Under Article 25.1 of the SCM Agreement, Members are obligated to regularly provide a subsidy notification to the SCM Committee. Prior to October 2011, China had only submitted a single subsidy notification in 2006 (covering the years 2001 – 2004). India submitted a subsidies notification in 2010 – that only included three programs – after not providing any notification for ten years. The United States and other Members have repeatedly expressed deep concern about the notification record of China and India (among others). During the 2010 fall meeting of the SCM Committee, the United States foreshadowed potential resort to the counter notification mechanism under Article 25.10 of the SCM Agreement. This provision states that when a Member fails to notify a subsidy, any other Member may bring the matter to the attention of the Member failing to notify.

Pursuant to Article 25.10, the United States filed counter notifications in October 2011 with respect to over 200 unreported subsidy programs in China and 50 unreported subsidy programs in India – the first

[6] These 99 notifications do not include notifications submitted by Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, the Slovak Republic and Slovenia before these Members acceded to the European Communities.

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

counter notifications ever filed by the United States. While China submitted its second subsidy notification (covering 2005 – 2008) shortly after the U.S. counter notification, it covered very few of the subsidy programs referenced in the U.S. counter notification. At the April 2012 meeting of the Committee, the United States brought these matters to the notice of the SCM Committee under the provisions of Article 25.10. In May, India submitted a supplemental subsidy notification covering certain fishery programs, including programs at the sub-central level. However, none of the programs in the supplemental notification were those referenced by the U.S. counter notification of programs in India. At the November meeting of the SCM Committee, the United States continued to press China and India to notify the outstanding programs identified in the U.S. counter notifications.

Submission of Article 25.8 questions: Article 25.8 of the Agreement provides: "Any Member may, at any time, make a written request for information on the nature and extent of any subsidy granted or maintained by another Member (including any subsidy referred to in Part IV), or for an explanation of the reasons for which a specific measure has been considered as not subject to the requirement of notification". Because China's two notifications to date have been significantly incomplete (*e.g.*, only central government-level programs have been notified) and late (*e.g.*, the notification filed in 2011 only covered up through 2008), the United States submitted extensive, detailed questions to China covering a wide range of subsidy programs in numerous sectors that appear should have been notified. Under Article 25.9, China is obligated to provide a response "as quickly as possible and in a comprehensive manner".

Notification Improvements: In March 2009, the Chairman of the Trade Policy Review Body, acting through the Chairman of the General Council, requested that all committees discuss "ways to improve the timeliness and completeness of notifications and other information flows on trade measures." The United States fully supported the continuation of this initiative in 2012 in light of Members' poor record in meeting their subsidy notification obligations. In 2010, the United States took the initiative under this agenda item to review the subsidy notification record of several large exporters in failing to provide complete and timely subsidy notifications. Of primary concern in this regard was China. The United States continues to devote significant time and resources to researching, monitoring, and analyzing China's subsidy practices. These efforts helped to identify the very significant omissions in the two subsidy notifications submitted by China to date and lay the groundwork for the further pursuit of these issues in the context of the SCM Committee's work and other fora.

In 2011, the United States submitted a specific proposal under Article 25.8 of the SCM Agreement to strengthen and improve the notification procedures of the SCM Committee. As noted above, under Article 25.8, any Member may make a written request for information on the nature and extent of a subsidy subject to the requirement of notification. Under Article 25.9, Members that receive such a request must provide such information "as quickly as possible and in a comprehensive manner". Unfortunately, many requests under Article 25.8 have not been answered or are only partially answered orally after significant delay. To address this problem, the United States proposed that the SCM Committee establish deadlines for the submission of written answers to Article 25.8 questions and include all unanswered Article 25.8 questions on the bi-annual agendas of the SCM Committee until the questions are answered.[8] In 2012, the Committee continued to examine the U.S. proposal. Many countries supported the proposal; while several other countries, such as China, India, and South Africa, voiced concerns. Work will continue on the U.S. proposal in 2013.

The "export competitiveness" of India's textile and apparel sector: Under the SCM Agreement, developing countries receive S&D treatment with respect to certain subsidy disciplines under Article 27.

[8] G/SCM/W/555; 21 October 2011.

For developing countries listed in Annex VII of the SCM Agreement, which includes India, the general prohibition on export subsidies does not apply until: (1) per capita GNP reaches a designated threshold of $1,000 per annum or (2) eight years after the country achieves "export competitiveness" for a particular product. Article 27.6 of the SCM Agreement defines export competitiveness as the point when an exported product reaches a share of 3.25 percent of world trade for two consecutive calendar years. Export competitiveness is determined to exist either via notification by the Annex VII developing country having reached export competitiveness or on the basis of a computation undertaken by the WTO SCM Committee Secretariat at the request of any Member.

In February 2010, the United States formally requested the Secretariat, pursuant to Article 27.6 of the SCM Agreement, to compute the export competitiveness of India's textile and apparel sector. The Secretariat submitted its results to the Committee in March 2010. The calculations appear to support the conclusion that India has reached export competitiveness in the textile and apparel sector. In light of the Secretariat's calculations, the United States has pressed India to identify the current export subsidy programs that benefit the textile and apparel sector and commit to a phase-out schedule to end all such programs to the extent they benefit the textile and apparel sector. In response, India has raised certain technical questions as to the appropriate definition of "product" and the precise starting point of the phase-out period under Articles 27.5 and 27.6. The United States will continue to pursue this issue.

Extension of the transition period for the phase out of export subsidies: Under the SCM Agreement, most developing country Members were obligated to eliminate their export subsidies by December 31, 2002. To address the concerns of certain small economies, a special procedure within the context of Article 27.4 of the SCM Agreement was adopted at the 2001 Doha Ministerial Conference to provide for facilitated annual extensions of the time available to eliminate certain notified export subsidies.[9] In 2007, the General Council, acting on an SCM Committee recommendation, decided to extend the application of the special procedure. An important outcome of these negotiations, insisted upon by the United States and other developed and developing countries, was that the beneficiaries must eliminate all export subsidy programs no later than 2015, and that they will have no recourse to further extensions beyond 2015.

Pursuant to the General Council's decision, beneficiary Members are obligated to meet certain transparency and standstill requirements each year. At its October 2012 meeting, the SCM Committee conducted a review of the transparency and standstill requirements in the General Council's decision and agreed to continue the requested extensions of the transition period for calendar year 2013. This was the last extension to be given under the General Council decision. The final two-year phase-out period (2014-2015) is provided for in Article 27.4 of the SCM Agreement and shall end no later than December 31, 2015.

Permanent Group of Experts: Article 24 of the SCM Agreement directs the SCM Committee to establish a Permanent Group of Experts (PGE), "composed of five independent persons, highly qualified in the fields of subsidies and trade relations." The SCM Agreement articulates three possible roles for the PGE: (i) to provide, at the request of a dispute settlement panel, a binding ruling on whether a particular practice brought before that panel constitutes a prohibited subsidy, within the meaning of Article 3 of the SCM Agreement; (ii) to provide, at the request of the SCM Committee, an advisory opinion on the existence and nature of any subsidy; and (iii) to provide, at the request of a Member, a "confidential" advisory opinion on the nature of any subsidy proposed to be introduced or currently maintained by that Member. To date, the PGE has not yet been called upon to perform any of the aforementioned duties.

[9] Antigua and Barbuda, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Jamaica, Jordan, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Uruguay have made yearly requests since 2002 under these special procedures.

Article 24 of the SCM Agreement further provides for the SCM Committee to elect the experts to the PGE, with one of the five experts being replaced every year.

As noted in last year's report, a consensus could not be reached as to a replacement for Dr. Manzoor Ahmad (Pakistan), whose term expired in 2011. Consequently, at the beginning of 2012, the Permanent Group of Experts had only four members, Mr. Zhang Yuqing (China); Mr. Jeffrey A. May (United States); Mr. Gérard Depayre (EU) and Mr. Akio Shimizu (Japan). At the regular meeting held in April 2012, the Committee elected Mr. Zhang Yuqing to replace Dr. Manzoor as from Spring 2011 and Mr. Welber Barral (Brazil) to replace Mr. Zhang Yuqing as from Spring 2012 as members of the PGE. Therefore, at the end of 2012, the five members of the PGE were: Mr. Jeffrey A. May (until Spring 2013); Mr. Gérard Depayre (until Spring 2014); Mr. Akio Shimizu (until Spring 2015); Mr. Zhang Yuqing (until Spring 2016) and Mr. Welber Barral (until Spring 2017).

The Methodology for Annex VII (b) of the SCM Agreement: Annex VII of the SCM Agreement identifies certain lesser developed country Members that are eligible for particular S&D. Specifically, the export subsidies of these Members are not prohibited, and therefore, are not actionable as prohibited subsidies under the dispute settlement process. The Members identified in Annex VII include those WTO Members designated by the United Nations as "least-developed countries" (Annex VII(a)) as well as countries that had, at the time of the negotiation of the Agreement, a per capita GNP under $1,000 per annum and are specifically listed in Annex VII(b).[10] A country automatically "graduates" from Annex VII (b) status when its per capita GNP rises above the $1,000 threshold. At the Fourth Ministerial Conference, decisions were made, which, *inter alia*, led to the adoption of an approach to calculate the $1,000 threshold in constant 1990 dollars and to require that a Member be above this threshold for three consecutive years before graduation. The WTO Secretariat updated these calculations in 2012.[11]

Prospects for 2013

In 2013, the United States expects to review China's answers to the United States' outstanding questions on China's 2009 new and full subsidy notification, as well as the questions submitted under Article 25.8, and will focus on those programs not notified, particularly those that may be prohibited under the SCM Agreement and those administered at the provincial and local levels. The United States will press China and India to notify the outstanding programs included in the U.S. counter notifications. Furthermore, the United States will continue to seek to engage India bilaterally to commit to a phase out of its export subsidy programs to the extent that they benefit the textile and apparel sector. More generally, the SCM Committee will continue to work in 2013 to improve the timeliness and completeness of Members' subsidy notifications and, in particular, will continue to discuss the proposal made by the United States to improve and strengthen the SCM Committee's procedures under Article 25.8 of the SCM Agreement. Finally, the United States will likely submit its next subsidies notification to the SCM Committee in 2013, covering fiscal years 2011 and 2012.

[10] Members identified in Annex VII(b) are: Bolivia, Cameroon, Congo, Cote d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka, and Zimbabwe. In recognition of the technical error made in the final compilation of this list and pursuant to a General Council decision, Honduras was formally added to Annex VII(b) on January 20, 2001.
[11] See G/SCM/110/Add.9.

6. Committee on Customs Valuation

Status

The purpose of the Agreement on the Implementation of GATT Article VII (known as the WTO Agreement on Customs Valuation, referred to herein as the "Valuation Agreement") is to ensure that determinations of the customs value for the application of duty rates to imported goods are conducted in a neutral and uniform manner, precluding the use of arbitrary or fictitious customs values. Adherence to the Agreement is important for U.S. exporters, particularly to ensure that market access opportunities achieved through tariff reductions are not negated by unwarranted and unreasonable "uplifts" in the customs value of goods to which tariffs are applied. The use of arbitrary and inappropriate "uplifts" in the valuation of goods by importing countries when applying tariffs can result in an unwarranted doubling or tripling of effective duties.

Major Issues in 2012

The Valuation Agreement is administered by the Committee on Customs Valuation (the Customs Valuation Committee), which held two formal meetings in 2012. The Agreement established a Technical Committee on Customs Valuation under the auspices of the World Customs Organization (WCO), with a view to ensuring, at the technical level, uniformity in interpretation and application of the Valuation Agreement. The Technical Committee also held two meetings in 2012.

In accordance with a 1999 recommendation of the WTO Working Party on Preshipment Inspection that was adopted by the General Council, the Customs Valuation Committee continued to provide a forum for reviewing the operation of various Members' preshipment inspection regimes and the implementation of the WTO Agreement on Preshipment Inspection.

The use of minimum import prices, a practice inconsistent with the provisions of the Agreement, continues to diminish, and no Members currently maintain the special and differential reservation concerning the use of minimum values. The United States has used the Customs Valuation Committee as an important forum for addressing concerns on behalf of U.S. exporters across all sectors – including agriculture, automotive, textile, steel, and information technology – that have experienced difficulties related to the conduct of customs valuation regimes, as well as preshipment inspection regimes, outside of the disciplines set forth under the Agreements.

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

An important part of the Customs Valuation Committee's work is the examination of implementing customs valuation legislation. As of December 2012, 89 Members had notified their national legislation on customs valuation (these figures do not include the 27 individual EU Members). In addition, 60 Members have notified the checklist of issues. Some 41 Members have not yet made any notification of their national legislation on customs valuation. At the Committee's May and October 2012 meetings, the Committee undertook its examination of the customs valuation legislation of Bahrain, Belize, Cambodia,

Cape Verde, China, Costa Rica, Ecuador, Nigeria, Rwanda, St. Vincent and the Grenadines, Thailand, Tunisia, and Ukraine. The Committee also looked at first time notifications by Nicaragua and the Russian Federation. With the exception of Thailand, whose review the Committee agreed to conclude, the Committee's examination of these Members' customs valuation legislation will continue in 2013.

Working with information provided by U.S. exporters, the United States played a leading role in these examinations, submitting in some cases a series of detailed questions as well as suggestions toward improved implementation. In addition to raising questions for Members whose customs valuation legislation is under examination, the United States also repeated its request that Indonesia notify its preshipment inspection program to the Committee.

The Customs Valuation Committee's work throughout 2012 continued to reflect a cooperative focus among all Members to ensure appropriate implementation of the Valuation Agreement. The Committee took note of technical assistance activities carried out by the Secretariat of the World Customs Organization (WCO) and its Members, related to customs valuation. The Committee also noted that technical assistance in the area of customs valuation is now incorporated into the WTO-wide technical assistance program, which encompasses regional activities on market access issues, including customs valuation.

Prospects for 2013

The Customs Valuation Committee's work in 2013 will include reviewing the relevant implementing legislation and regulations notified by Members, along with addressing any further requests by other Members concerning implementation deadlines. The Committee will monitor progress by Members with regard to their respective work programs that were included in the decisions granting transitional reservations or extensions of time for implementation. In this regard, the Committee will continue to provide a forum for sustained focus on issues arising from practices of all Members that have implemented the Valuation Agreement, to ensure that such Members' customs valuation regimes do not utilize arbitrary or fictitious values, such as through the use of minimum import prices. Finally, the Committee will continue to address technical assistance issues as a matter of high priority.

7. Committee on Rules of Origin

Status

The objective of the Agreement on Rules of Origin (the ROO Agreement) is to increase transparency, predictability, and consistency in both the preparation and application of rules of origin. The ROO Agreement provides important disciplines for conducting preferential and nonpreferential origin regimes, such as the obligation to provide binding origin rulings upon request to traders within 150 days of that request. In addition to setting forth disciplines related to the administration of rules of origin, the ROO Agreement provides for a work program leading to the multilateral harmonization of rules of origin used for non-preferential trade. The Harmonization Work Programme (HWP) is more complex than initially envisioned under the Agreement, which originally provided for the work to be completed within three years after its commencement in July 1995. This work program continued throughout 2012 and will continue into 2013.

The ROO Agreement is administered by the Committee on Rules of Origin (the ROO Committee), which met formally twice in 2012 and held informal consultations throughout the year. The Committee also serves as a forum to exchange views on notifications by Members concerning their national rules of origin, along with those relevant judicial decisions and administrative rulings of general application. The

ROO Agreement also established a Technical Committee on Rules of Origin with the World Customs Organization to assist in the HWP.

Major Issues in 2012

As of December 2012, 85 Members have notified the WTO concerning nonpreferential rules of origin. In these notifications, 42 Members notified that they apply nonpreferential rules of origin, and 43 Members notified that they did not have a nonpreferential rule of origin regime. Forty-four Members have not notified nonpreferential rules of origin.

Virtually all WTO Members have notified the WTO that they apply preferential rules of origin either to the ROO Committee or other WTO bodies. Six Members have notified that they did not have preferential rules of origin.

Virtually all issues and problems cited by U.S. exporters as arising under the origin regimes of U.S. trading partners arise from administrative practices that are not transparent, allow discrimination, and lack predictability. Substantial attention has been given to the implementation of the ROO Agreement's important disciplines related to transparency, which constitute internationally recognized "best customs practices."

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

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

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

In addition to the June and November 2012 formal meetings, the ROO Committee conducted informal consultations related to the HWP negotiations. The Committee's work in 2012 proceeded in response to the July 28, 2006 General Council extension of the deadline for completion of work on the 94 core policy issues. The General Council then agreed that following resolution of the core policy issues, the Committee would complete its remaining work on the HWP by December 2007. Notwithstanding this deadline, the HWP has not been completed.

While the ROO Committee made some progress towards fulfilling the mandate of the ROO Agreement to establish harmonized nonpreferential rules of origin, the Committee is still grappling with a number of fundamental issues, including many product specific rules for agricultural and industrial goods, and the

scope of the prospective obligation to apply equally for all purposes the harmonized nonpreferential rules of origin.

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

Because of the impasse among Members on: (i) the product specific rules related to the 94 core policy issues; (ii) the absence of a common understanding of the scope of the prospective obligation to apply equally for all purposes the harmonized nonpreferential rules of origin; and (iii) the growing concern among Members that the final result of the HWP negotiations would not be consistent with the objectives of the HWP set forth in Article 9 of the ROO Agreement, the General Council recognized that its guidance was needed on how to resolve these issues. In 2007, the General Council endorsed the recommendation of the ROO Committee that substantive work on these issues be suspended until the ROO Committee receives the necessary guidance from the General Council on how to reconcile the differences among Members on the aforementioned issues. The General Council also agreed with the recommendation of the Chair of the ROO Committee that the Committee would continue its work with a view to resolving all technical issues and report periodically to the General Council on its efforts in this regard.

In the two 2012 ROO Committee meetings, the Members focused on the technical issues, including the technical aspects of the overall architecture that would be used for applying the rules of origin. A new Chair (China) was elected. In addition, the ROO Committee initiated the transposition of draft harmonized rules of origin (originally negotiated in the 1996 version of the Harmonized System or HS) into more recent versions of the HS nomenclature. The ROO Committee started the review of the first two stages of that work, specifically the transposition of draft rules into the 2002 and 2007 versions of the HS nomenclature. One Member also introduced a proposal for a technical workshop on rules of origin and labeling requirements, to be organized in 2013.

Prospects for 2013

Further progress in the HWP will remain contingent on achieving appropriate resolution of the "core policy issues," reaching a consensus on the scope of the prospective obligation to apply equally for all purposes of the harmonized nonpreferential rules of origin, and achieving a result that is consistent with the objectives set forth in Article 9 of the ROO Agreement. In accordance with the decision taken by the General Council in July 2007, and subject to further guidance from the General Council in the future, the ROO Committee will continue to focus on technical issues, including the technical aspects of the overall architecture of the HWP product specific rules, through informal consultations. The Committee will also continue to review the work done by the Secretariat on the transposition of the current HWP to more recent versions of the HS nomenclature. The ROO Committee will continue to report periodically to the General Council on its progress in resolving these technical issues.

8. Committee on Technical Barriers to Trade

Status

The Agreement on Technical Barriers to Trade (the TBT Agreement) establishes rules and procedures regarding the development, adoption, and application of voluntary standards and mandatory technical regulations for products and the procedures (such as testing or certification) used to determine whether a particular product meets such voluntary standards or technical regulations. One of the main objectives of

the TBT Agreement is to prevent the use of regulations as unnecessary barriers to trade while ensuring that Members retain the right to regulate, *inter alia*, for the protection of health, safety, or the environment, at the levels they consider appropriate.

The TBT Agreement applies to industrial as well as agricultural products, although it does not apply to SPS measures or specifications for government procurement, which are covered under separate agreements. TBT Agreement rules help to distinguish legitimate standards, conformity assessment procedures, and technical regulations from protectionist measures and other measures that act as unnecessary obstacles to trade. For example, the TBT Agreement requires Members to apply standards, technical regulations, and conformity assessment procedures in a nondiscriminatory fashion and, in particular, requires that technical regulations be no more trade restrictive than necessary to meet a legitimate objective and based on relevant international standards, except where international standards would be ineffective or inappropriate to meet a legitimate objective.

The Committee on Technical Barriers to Trade (the TBT Committee)[12] serves as a forum for consultation on issues associated with implementing and administering the TBT Agreement. The TBT Committee is composed of representatives of each WTO Member and provides an opportunity for Members to discuss concerns about specific standards, technical regulations, and conformity assessment procedures that a Member proposes or maintains. The TBT Committee also allows Members to discuss systemic issues affecting implementation of the TBT Agreement (*e.g.*, transparency, use of good regulatory practices, regulatory cooperation), and to exchange information on Members' practices related to implementing the TBT Agreement and relevant international developments.

Transparency and Availability of WTO/TBT Documents: The TBT Agreement requires each Member to establish a central contact point, known as an inquiry point, which is responsible for responding to requests for information on its standards, technical requirements, and conformity assessment procedures, or making the appropriate referral. The TBT Agreement also requires Members to notify proposed technical regulations and conformity assessment procedures and to take comments received from other Members into account. These obligations provide a key benefit to the public. Through the U.S. Government's implementation of these obligations, the public is able to obtain information on proposed technical regulations and conformity assessment procedures of other WTO Members, and to provide written comments for consideration on those proposals before they are finalized.

The National Institute of Standards and Technology (NIST) serves as the U.S. inquiry point for purposes of the TBT Agreement. (NIST can be contacted via email at: ncsci@nist.gov or notifyus@nist.gov; or via the internet at: http://www.nist.gov/ncsci or http://www.nist.gov/notifyus.) NIST maintains a reference collection of standards, specifications, test methods, codes, and recommended practices. This reference material includes U.S. Government agencies' technical regulations and conformity assessment

[12] Participation in the Committee is open to all WTO Members. Certain non-WTO Member governments also participate, in accordance with guidance agreed on by the General Council. Representatives of a number of organizations were invited to attend meetings of the Committee as observers: the International Monetary Fund (IMF), the United Nations Conference on Trade and Development (UNCTAD); the International Trade Center (ITC); the International Organization for Standardization (ISO); the International Electrotechnical Commission (IEC); the Food and Agriculture Organization (FAO); the World Health Organization (WHO); the FAO/WHO Codex Alimentarius Commission; the International Office of Epizootics (OIE); the Organization for Economic Cooperation and Development (OECD); the UN Economic Commission for Europe (UN/ECE); and the World Bank. The International Organization of Legal Metrology (OIML), the *Bureau International des Poids et Mesures* (BIPM), the United Nations Industrial Development Organization (UNIDO), the Latin American Integration Association (ALADI), the European Free Trade Association (EFTA), the International Telecommunications Union (ITU), the Southern African Development Community (SADC), and the African, Caribbean and Pacific Group of States (ACP) have been granted observer status on an *ad hoc* basis.

procedures, and standards of nongovernmental standardizing bodies. The inquiry point responds to requests for information concerning Federal and State standards, technical regulations, and conformity assessment procedures, as well as voluntary standards and conformity assessment procedures developed or adopted by nongovernmental bodies. Upon request, NIST will provide copies of notifications of proposed technical regulations and conformity assessment procedures that other Members have made under the TBT Agreement, as well as contact information for other Members' TBT inquiry points. NIST maintains the "Notify U.S. Service" through which U.S. entities receive, via e-mail, notifications of drafts or changes to domestic and foreign technical regulations and conformity assessment procedures for manufactured products. U.S. entities can access the services through the website https://tsapps.nist.gov/notifyus/data/index/index.cfm. NIST refers requests for information concerning SPS measures to the U.S. Department of Agriculture, which is the U.S. inquiry point pursuant to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

A number of documents relating to the work of the TBT Committee are available to the public directly from the WTO website: http://www.wto.org. TBT Committee documents are indicated by the symbols, "G/TBT/..." Notifications by Members of proposed technical regulations and conformity assessment procedures that are available for comment are issued as: G/TBT/N (the "N" stands for "notification")/USA (which in this case stands for the United States of America; three letter symbols will be used to designate the WTO Member originating the notification)/X (where "x" will indicate the numerical sequence for that Member).[13] Parties in the United States interested in submitting comments to foreign governments on their proposals should contact the U.S. inquiry point, as discussed above. As a general rule, written information that the United States provides to the TBT Committee is submitted on an "unrestricted" basis and is available to the public on the WTO website. The WTO Secretariat has expanded the information it provides on its "technical barriers to trade" website that is available to the public, including summaries of meetings, agendas, workshops, technical assistance, and key documents.

The opportunity provided by the TBT Agreement for interested parties in the United States to influence the development of proposed technical regulations and conformity assessment procedures being developed by other Members by allowing them to provide written comments on drafts and submit them through the U.S. inquiry point helps to prevent the establishment of technical barriers to trade. The TBT Agreement has functioned well in this regard, although discussions on how to improve its operation occur as part of the triennial review process *(see below)*. Disciplines and obligations, such as the prohibition on discrimination and the requirement that technical regulations not be more trade restrictive than necessary to fulfill legitimate regulatory objectives, have been useful in evaluating potential trade barriers and in seeking ways to address them.

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

Article 15.4 of the TBT Agreement requires the Committee to review the operation and implementation of the TBT Agreement every three years. Six such reviews have now been completed (G/TBT/5, G/TBT/9, G/TBT/13, G/TBT/19, G/TBT/26, and G/TBT/32). From the U.S. perspective, a key benefit of these reviews is that they prompt WTO Members to review and discuss all of the provisions of the TBT Agreement, which facilitates a common understanding of Members' rights and obligations. The reviews have also prompted the Committee to host workshops on various topics of interest, including technical

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

assistance, conformity assessment, labeling, good regulatory practice, international standards, and regulatory cooperation.

Major Issues in 2012

The TBT Committee met three times in 2012, March (G/TBT/M/56), June (G/TBT/M/57), and November (G/TBT/M/58). At some of these meetings, Members made statements informing the Committee of measures they had taken to implement the TBT Agreement and to administer measures in compliance with the Agreement. Members also used Committee meetings to raise concerns about specific technical regulations, standards, or conformity assessment procedures that have been proposed or adopted by other Members. Measures garnering significant Committee attention included proposed tobacco measures from Australia and Brazil; regulations for EU REACH (Registration, Evaluation, Authorization, and Restriction of Chemicals); the continued development of China specific standards in the information technology sphere; Korea's cosmetics measures; Turkey's measures on medical devices and pharmaceuticals; Vietnam's conformity assessment procedures for cosmetics, mobile phones, and alcoholic beverages; and India's testing and certification requirements for telecommunications products.

In 2012, the Committee continued its exchange of experiences on good regulatory practice, conformity assessment procedures, transparency, technical assistance, international standards, and S&D treatment. In November, the Committee agreed to several recommendations to take forward further work in these areas under the Sixth Triennial Review (G/TBT/32).

At its March 2012 meeting, the TBT Committee adopted the Sixteenth Annual Review of the Implementation and Operation of the TBT Agreement under Article 15.3 (G/TBT/31). The WTO Secretariat also updated the relevant lists of standardizing bodies that have accepted the Code of Good Practice for the Preparation, Adoption, and Application of Standards set out in Annex 3 of the Agreement (G/TBT/CS/1/Add.16 and G/TBT/CS/2/Rev.18).

During the 2012 meetings of the TBT Committee, representatives of observers to the Committee, including Codex, IEC, ISO, ITC, OECD, UNECE, and ITU updated the Committee on their activities relevant to its work, including on technical assistance.

Prospects for 2013

The TBT Committee will continue to monitor Members' implementation of the TBT Agreement. In 2013, U.S. priorities will continue to focus on resolving specific trade concerns, as well as furthering the outcomes generated by the Sixth Triennial Review of the Operation and Implementation of the TBT Agreement. In this regard, among the U.S. priorities for the Committee in 2013 will be to identify a list of mechanisms and principles of good regulatory practices to guide Members in implementing the TBT Agreement more efficiently and effectively. In addition, the United States will focus on increasing transparency in standard setting through review of the implementation by Members of the Code of Good Practice (Annex 3 of the Agreement). Lastly, the United States will support the Committee's work to inform Members on the choice and design of conformity assessment procedures.

9. Committee on Antidumping Practices

Status

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Antidumping Agreement) sets forth detailed rules and disciplines prescribing the manner and basis

on which Members may take action to offset the injurious dumping of products imported from another Member. Implementation of the Antidumping Agreement is overseen by the Committee on Antidumping Practices (the Antidumping Committee), which operates in conjunction with two subsidiary bodies, the Working Group on Implementation (formerly the *Ad Hoc* Group on Implementation), and the Informal Group on Anticircumvention.

The Antidumping Committee is an important venue for reviewing Members' compliance with the detailed provisions in the Antidumping Agreement, improving mutual understanding of those provisions, and providing opportunities to exchange views and experiences with respect to Members' application of antidumping remedies.

The Working Group on Implementation (the Working Group) is an active body which focuses on practical issues and concerns relating to implementation. The activities of the Working Group permit Members to develop a better understanding of their respective policies and practices for implementing the provisions of the Antidumping Agreement based on papers submitted by Members on specific topics. Where possible, the Working Group endeavors to develop draft recommendations on the topics it discusses, which it forwards to the Antidumping Committee for consideration. To date, the Antidumping Committee has adopted Working Group recommendations on the following five antidumping topics: (1) the period of data collection for antidumping investigations; (2) the timing of notifications under Article 5.5; (3) the contents of preliminary determinations; (4) the time period to be considered in making a determination of negligible imports for purposes of Article 5.8; and (5) an indicative list of elements relevant to a decision on a request for extension of time to provide information pursuant to Articles 6.1 and 6.1.1.

The Working Group has drawn a high level of participation by Members, and in particular, by capital-based experts and officials of antidumping administering authorities. Since the inception of the Working Group, the United States has submitted papers on most topics and has been an active participant at all meetings. While not a negotiating forum in either a technical or formal sense, the Working Group serves an important role in promoting improved understanding of the Antidumping Agreement's provisions and exploring options for improving practices among antidumping administrators.

At Marrakesh in 1994, Ministers adopted a Decision on Anticircumvention, directing the Antidumping Committee to develop rules to address the problem of circumvention of antidumping measures. In 1997, the Antidumping Committee agreed upon a framework for discussing this important topic and established the Informal Group on Anticircumvention (the Informal Group). Many Members, including the United States, recognize the importance of using the Informal Group to pursue the 1994 decision by Ministers.

Major Issues in 2012

In 2012, the Antidumping Committee held meetings in April and October. At its meetings, the Antidumping Committee focused on implementation of the Antidumping Agreement, in particular, by continuing its review of Members' antidumping legislation. The Antidumping Committee also reviewed reports required of Members that provide information as to preliminary and final antidumping measures and actions taken over the preceding six months.

The following is a list of the more significant activities that the Antidumping Committee, the Working Group, and the Informal Group undertook in 2012.

Notification and Review of Antidumping Legislation: To date, 74 Members have notified that they currently have antidumping legislation in place, and 35 Members have notified that they maintain no such legislation. In 2012, the Antidumping Committee reviewed new notifications of antidumping legislation

and/or regulations submitted by Australia, Brazil, Ecuador, India, Indonesia, Nepal, Pakistan, Togo, and the United States. In addition, the Russian Federation has notified its antidumping legislation for review by Members, and that review will be undertaken as part of the April 2013 Antidumping Committee meeting. Several Members, including the United States, were active in formulating written questions and in making follow up inquiries at Antidumping Committee meetings.

Notification and Review of Antidumping Actions: In 2012, 32 Members notified that they had taken antidumping actions during the latter half of 2011, whereas 34 Members did so with respect to the first half of 2012. Members identified these actions, as well as outstanding antidumping measures currently maintained by Members, in semi-annual reports submitted for the Antidumping Committee's review and discussion. The semi-annual reports for the second half of 2011 were issued in document series "G/ADP/N/223/…," and the semi-annual reports for the first half of 2012 were issued in document series "G/ADP/N/230/…" At its April and October 2012 meetings, the Antidumping Committee reviewed Members' notifications of preliminary and final actions pursuant to Article 16.4 of the Antidumping Agreement.

Working Group on Implementation: The Working Group held meetings in April and October 2012. Beginning in 2003, the Working Group has held discussions on several agreed topics, including: (1) export prices to third countries vs. constructed value under Article 2.2 of the Antidumping Agreement; (2) foreign exchange fluctuations under Article 2.4.1; (3) conduct of verifications under Article 6.7; (4) judicial, arbitral, or administrative reviews under Article 13; and (5) price undercutting by dumped imports. In 2009, the Working Group agreed to include the following additional topics for discussion: (1) constructed export prices; (2) other known causes of injury; (3) threat of material injury; (4) accuracy and adequacy of evidence to justify the initiation of an investigation; and (5) the determination of the likelihood of continuation or recurrence of dumping and injury in sunset reviews. The discussions in the Working Group on all of these topics have focused on submissions by Members describing their own practices.

For the April 2012 meeting, three papers were discussed: two submitted by Colombia – one on other known causes of injury and the other on sunset reviews – and a third paper submitted by New Zealand on the adequacy and accuracy test. Several Members, including the United States, posed questions on the papers discussed.

For the October 2012 meeting, no new papers were submitted for discussion.

Informal Group on Anticircumvention: In 2012, the Informal Group held meetings in April and October. There were no new papers submitted for discussion in 2012. Members did not actively engage in discussions on what constitutes circumvention, what is being done by Members confronted with what they consider to be circumvention, or to what extent circumvention can be dealt with under the relevant WTO rules. Nevertheless, it was agreed that the Informal Group should continue to meet in the future to provide a forum to discuss such topics, as Members deem appropriate.

Prospects for 2013

Work will proceed in 2013 on the areas that the Antidumping Committee and the Working Group addressed this past year, and the Informal Group will continue to meet on relevant topics as the Members deem appropriate. The Antidumping Committee will pursue its review of Members' notifications of antidumping legislation, and Members will continue to have the opportunity to submit additional questions concerning previously reviewed notifications. This ongoing review process in the Antidumping Committee is important for ensuring that Members' antidumping laws are properly drafted and implemented, thereby contributing to a well-functioning, rules-based trading system. Since notifications

of antidumping legislation are not restricted documents, U.S. exporters will continue to enjoy access to information about the antidumping laws of other Members that should assist them in better understanding the operation of such laws and in taking them into account in commercial planning.

The preparation by Members and review in the Antidumping Committee of semi-annual reports and reports of preliminary and final antidumping actions will also continue in 2013. The semi-annual reports are accessible to the general public from the WTO website. This transparency promotes improved public knowledge and appreciation of the trends and focus of all WTO Members' antidumping actions.

Discussions in the Working Group on Implementation will continue to play an important role, as more Members enact antidumping laws and begin to apply them. There has been a sharp and widespread interest in clarifying the many complex provisions of the Antidumping Agreement. Tackling these issues in a serious manner will require the involvement of the Working Group, which is the forum best suited to provide the necessary technical and administrative expertise. For these reasons, the United States will continue to use the Working Group to learn in greater detail about other Members' administration of their antidumping laws, especially as that forum provides opportunities to discuss, not only the laws as written, but also the operational practices that Members employ to implement them. In 2013, the Working Group will continue its discussion of topics that it has been discussing for several years, and recently added topics, as described in the last section.

The work of the Informal Group on Anticircumvention will also continue in 2013, according to the framework for discussion on which Members have agreed.

10. Committee on Import Licensing

Status

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

Major Issues in 2012

In 2012, the Import Licensing Committee held its meetings in April and October. In accordance with Articles 1.4(a), 5.4, and 8.2(b) of the Agreement and procedures agreed to by the Committee, all Members, upon membership to the WTO must notify the sources of the information pertaining to their laws, regulations, and administrative procedures relevant to import licensing. Any subsequent changes to these laws, regulations, and administrative procedures must also be published and notified. Since the entry into force of the WTO Agreement, 102 Members[14] have notified the Committee of their legislation

[14] The European Union and its Member States counted as one Member.

and/or publications under these provisions. During 2012, the Committee received 16 notifications from the following 16 Members: Albania; Ecuador; the European Union; Georgia; Israel; Liechtenstein; Macao China; Malawi; Morocco; Nicaragua; the Russian Federation; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Switzerland; Trinidad and Tobago; Turkey; and Vietnam.

With regard to notifications of new import licensing procedures or changes in such procedures (required by Articles 5.1-5.4 of the Agreement), the Committee received 20 notifications from 10 Members in 2012: Argentina, the European Union, Indonesia, Israel, Kuwait, Malawi, Malaysia, Morocco, Thailand, and Vietnam. Since the entry into force of the WTO Agreement, 40 Members have submitted notifications under these provisions.

Article 7.3 of the Import Licensing Agreement requires all Members to provide prompt replies to the annual Questionnaire on Import Licensing Procedures; Committee procedures set a deadline of September 30 each year. While not all Members provide responses every year, since the entry into force of the WTO Agreement, 104 Members have made notifications under this provision. The number of Members submitting annual notifications has increased from 11 Members in 1995 when the WTO was established to 37 Members in 2012. All of these notifications, including the U.S. responses to the Questionnaire on Import Licensing Procedures, may be found in document series G/LIC/N/3/- (http://docsonline.wto.org/gen_home.asp).

During 2012, five Members submitted, for the first time, notifications to the Committee under various Articles of the Agreement: under Articles 1.4(a) Vietnam; under Article 5 Morocco and Kuwait; and, under Article 7.3 Nepal and Paraguay.

The United States remained one of the most active members of the Import Licensing Committee in 2012, using the forum to gather information and to discuss import licensing measures applied to its trade by other Members. U.S. submissions to the Committee in 2012 included the response to the annual Questionnaire (G/LIC/N/3/USA/9). The United States also focused its presentations on the continuing problems with Argentina's import licensing policies and procedures. The United States, together with the delegations of Australia, the European Union, Japan, Korea, Norway, and Turkey, co-sponsored an agenda item for the April 2012 Committee meeting relating to shared concerns about Argentina's import licensing practices. This agenda item served to supplement the joint statement of concerns delivered by Deputy United States Trade Representative, Ambassador Michael Punke, on behalf of Australia, Costa Rica, the European Union, Israel, Japan, Korea, Mexico, New Zealand, Norway, Panama, Switzerland, Chinese Taipei, Thailand, Turkey, and the United States at a meeting of the Goods Council in March 2012. At the Import Licensing Committee, Thailand, New Zealand, Costa Rica, Colombia, Canada, Peru, Chinese Taipei and Switzerland echoed the U.S. concerns. The United States, along with the European Union and Japan, has since requested the establishment of a dispute settlement panel to examine Argentina's import restrictions, including import licensing.

Through its interventions, the United States also continued to question India, Indonesia, and Vietnam concerning the basis for, and operation of, their licensing practices and to press them for adequate responses to requests for information that had not yet been provided. Questions on these issues were submitted in writing by the United States and other Members.

Notifications and Other Documentation: The United States continues to work within the Committee to streamline documentation in an effort to enhance Members' ability to comply with the Agreement's notification requirements. In so doing, transparency remains the primary goal.

Prospects for 2013

The administration of import licensing continues to be a significant topic of discussion in the day to day implementation of Members' WTO obligations. The use of such measures to monitor and to regulate imports has increased, especially in light of global economic circumstances. The United States will continue to advocate for increased efforts to provide transparency, proper use of import licensing procedures, and insurance that licensing procedures do not, in themselves, restrict imports in a manner not consistent with WTO provisions. Licensing continues to be a factor in the administration of tariff-rate quotas and the application of safeguard measures, technical regulations, and sanitary and phytosanitary requirements applied to imports as well. The proliferation of import licensing requirements raises additional concerns, as many such requirements appear to be administered in a manner that restricts trade. The Import Licensing Committee will continue to be the point of first multilateral contact in the WTO for Members with complaints or questions on the licensing regimes of other Members, and as a forum for discussion and review.

11. Committee on Safeguards

Status

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

The Safeguards Agreement incorporates into WTO rules many of the concepts embodied in U.S. safeguards law (section 201 of the Trade Act of 1974, as amended). Among its key provisions, the Safeguards Agreement: requires a transparent, public process for making injury determinations; sets out clearer definitions of the criteria for injury determinations; requires that safeguard measures be steadily liberalized over their duration; establishes maximum periods for safeguard actions; requires a review no later than the midterm of any measure with a duration exceeding three years; allows safeguard actions to be taken for three years, without the requirement of compensation or the possibility of retaliation; and prohibits so-called "grey area" measures, such as voluntary restraint agreements and orderly marketing agreements.

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

Major Issues in 2012

During its two regular meetings in April and October 2012, the Safeguards Committee continued its review of Members' laws, regulations, and administrative procedures, based on notifications required under Article 12.6 of the Safeguards Agreement. The Committee reviewed the national legislation of

Ecuador, India, Indonesia, and Togo. In addition, the Russian Federation had notified its safeguard legislation for review by Members, the review of which will be undertaken as part of the April 2013 Safeguards Committee meeting.

The Safeguards Committee reviewed Article 12.1(a) notifications regarding the initiation of a safeguard investigatory process relating to serious injury or threat thereof and the reasons for it, or the initiation of a review process relating to the extension of an existing measure, from the following Members: Brazil on Fine or Table Wine; Chile on Maize Otherwise Worked; Costa Rica on Pounded Rice; Egypt on Cotton Textile and Mixed Cotton Textile, with a separate initiation on Cotton Yarn, and Polypropylene; India on Dioctyl Phthalate; Indonesia on Conveyor Belts or Belting, Articles of Finished Casing and Tubing, Mackerel, and Wheat Flour; Jordan on Bars and Rods of Iron and Steel; Morocco on Certain Bars and Rods of Iron and Steel; and the Russian Federation on Combine Harvesters, Tableware and Kitchenware of Porcelain, and Woven Fabrics of Man-made Fiber and Filaments.

The Safeguards Committee reviewed Article 12.1(b) notifications, regarding a finding of serious injury or threat thereof caused by increased imports from the following Members: Chile on Maize Otherwise Worked; Egypt on Cotton Yarn; India on Phthalic Anhydride; Indonesia on Tarpaulins, Awnings, and Sunblinds of Synthetic Fibers, Mackerel, Conveyor Belts or Belting, and Articles of Iron or Steel Wire; Israel on Glass Wool and Rock Wool; the Philippines on Steel Angle Bar and Testliner Board; Turkey on Spectacle Frames, Travel Goods, Handbags, and Similar Containers, and Polyethylene Terephthalate; and Ukraine on Casing and Pump-Compressor Seamless Steel Pipes.

The Safeguards Committee reviewed Article 12.1(c) notifications regarding a decision to apply or extend a safeguard measure from the following Members: the Dominican Republic on Certain Sports and Other Socks; Egypt on Cotton Yarn; Indonesia on Tarpaulins, Awnings, and Sunblinds of Synthetic Fibers, Mackerel, Conveyor Belts or Belting, and Articles of Iron and Steel Wire; Jordan on Ceramic Tiles; the Philippines on Float Glass and Testliner Board, Steel Angle Bars, and Ceramic Floor and Wall Tiles; Turkey on Spectacle Frames Cotton Yarn, Travel Goods, Handbags, and Similar Containers, Certain Electrical Appliances, Polyethylene Terephthalate, Matches, Motorcycles, and Footwear; and Ukraine on Casing and Pump-Compressor Seamless Steel Pipes.

The Safeguards Committee reviewed Article 12.4 notifications regarding the application of a provisional safeguard measure from the following Members: Chile on Maize Otherwise Worked; Egypt on Cotton Textile and Mixed Cotton Textile, and separately on Cotton Yarn, and Polypropylene; and India on Phthalic Anhydride.

The Safeguards Committee received notifications of the termination of a safeguard investigation with no definitive safeguard measure imposed, or the expiration or termination of a definitive safeguard measure, from the following Members: Egypt on Cotton Textile and Mixed Cotton Textile; Jordan on Ceramic Tiles; Mexico on Steel Tubes; Indonesia on Conveyor Belts or Belting; and Ukraine on Certain Products of Crude Oil Processing.

A written request for consultations under Article 13.1(b) of the Safeguards Agreement was submitted by Colombia regarding measures taken by Ecuador during a specific safeguards investigation on windshields. This was the first time that a Member has submitted that an action be taken under Article 13.1(b). A factual report was presented by the Committee Chair and discussed informally by the Committee. The Chair then sent a report on her own responsibility to the Council for Trade in Goods.

At the Committee meeting in April, Cuba, Ecuador, and Turkey submitted a joint paper on the surveillance function they believe is envisioned by Article 13.1(b) of the Safeguards Agreement. Several

Members, including the United States, made interventions regarding the joint paper. The Committee took note of the statements made.

At the Committee meeting in October, a new ten-delegation group of WTO Members – the Friends of Safeguards Procedures (FSP) – introduced a working document[15] for Committee consideration and discussion. The FSP was originally organized by the United States and consists of Australia, Canada, the European Union, Japan, Korea, New Zealand, Norway, Taiwan, Singapore, and the United States. The group originally came together to develop a way to address systemic issues relating to safeguard investigations, such as transparency and due process. The increase in safeguard actions in recent years has heightened the group's concerns. The working paper identified five specific areas of concern: (1) imposition of provisional measures without clear evidence, (2) lack of rationale and consistency in the data examined during the investigation, (3) suspension of safeguard measures instead of their termination as envisaged in the Safeguards Agreement, (4) untimely notifications to the Committee, and (5) unwarranted safeguard investigations. The FSP called on all Members to work together to deal with these systemic issues. Several Members made positive interventions related to the working document and the United States encouraged the Committee to continue to take up this issue in future meetings.

Prospects for 2013

The Safeguards Committee's work in 2013 will continue to focus on the review of safeguard actions that have been notified to the Committee and on the review of notifications of any new or amended safeguards legislation. The United States will also work on its own, as well as with the FSP, to continue to address the systemic issues raised in the FSP working document, and identify additional areas of concern as they arise.

12. Working Party on State Trading Enterprises

Status

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

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

[15] See G/SG/W/226.

Major Issues in 2012

The WP-STE held two formal meetings on June 8 and October 27, 2012. At the June 8 meeting, Members discussed the issue of frequency of notifications and agreed to extend indefinitely the decision to allow for biennial, rather than annual, notifications by Members of their STEs.

The October formal meeting reviewed Member STE notifications from Australia, Canada, Chile, Colombia, European Union, Japan, Korea, New Zealand, Switzerland, Chinese Taipei, Turkey, Ukraine, United States, and Uruguay. During the meeting, Australia posed questions relating to the notification of Japan. Both Australia and the United States noted the problem of failures to notify and suggested the Working Party undertake efforts to improve notifications. India submitted its notification in December, after the Working Party meeting.

Prospects for 2013

The WP-STE is scheduled to meet in October 2013. The WP-STE will continue its review of new notifications and its examination of how to improve Member compliance with STE notification obligations to enhance transparency of STEs.

F. Council on Trade-Related Aspects of Intellectual Property Rights

Status

The WTO Council for Trade-Related Aspects of Intellectual Property Rights (the TRIPS Council) monitors implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), provides a forum in which WTO Members can consult on intellectual property matters, and carries out the specific responsibilities assigned to the Council in the TRIPS Agreement. The TRIPS Agreement sets minimum standards of protection for copyrights and related rights, trademarks, geographical indications (GIs), industrial designs, patents, integrated circuit layout designs, and undisclosed information. The TRIPS Agreement also establishes minimum standards for the enforcement of intellectual property rights (IPR) through civil actions for infringement, actions at the border and, at least with respect to copyright piracy and trademark counterfeiting, in criminal actions.

The TRIPS Agreement is important to U.S. interests and has yielded significant benefits for U.S. industries and individuals, from those engaged in the pharmaceutical, agricultural, chemical, and biotechnology industries to those producing motion pictures, sound recordings, software, books, magazines, and consumer goods.

Developed Members were required to fully implement the obligations of the TRIPS Agreement by January 1, 1996, and developing country Members generally had to achieve full implementation by January 1, 2000. Least developed country (LDC) Members have had their deadline for full implementation of the TRIPS Agreement extended to July 1, 2013, as part of a package that also requires them to provide information on their priority needs for technical assistance to facilitate TRIPS Agreement implementation. This action is without prejudice to the existing extension, based on a proposal made by the United States at the Doha Ministerial Conference, of the transition period for LDC Members to implement or apply Sections 5 and 7 of Part II of the TRIPS Agreement with respect to pharmaceutical products, or to enforce rights with respect to such products, until January 1, 2016. In 2002, the WTO General Council, on the recommendation of the TRIPS Council, similarly waived until 2016 the obligation for LDC Members to provide exclusive marketing rights for certain pharmaceutical products if those Members did not provide product patent protection for pharmaceutical inventions.

Major Issues in 2012

In 2012, the TRIPS Council held three formal meetings. In addition to its continuing work on reviewing the implementation of the Agreement, the TRIPS Council's activities in 2012 focused on the relationship of the TRIPS Agreement to the Convention on Biological Diversity, and on ongoing consideration of issues addressed in the Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health. In addition, the TRIPS Council discussed IP and innovation, securing supply chains from counterfeit goods, and the Anti-Counterfeiting Trade Agreement (ACTA), under agenda items sponsored by the United States.

Intellectual Property (IP) and Innovation: At the November TRIPS Council meeting, the United States and Brazil co-sponsored an agenda item on IP and innovation, in which WTO Members exchanged views on national innovation strategies and the role intellectual property protection plays in fostering innovation, with the goal of providing stable and predictable environments to promote and benefit from that innovation. Fifteen developed, developing, and least-developed WTO Members– Australia, Brazil, Canada, Chile, China, Chinese Taipei, the EU, Japan, Korea, Mexico, New Zealand, Peru, Switzerland, Tanzania, United States and two international organizations, OAPI (African Intellectual Property Organization), and the World Intellectual Property Organization – intervened to describe the contributions of IP protection to innovation. Several WTO Members provided details on specific national IP policies designed to promote and commercialize innovation.

Securing Supply Chains Against Counterfeit Goods: The United States sponsored an agenda item on securing supply chains against counterfeit goods at the June TRIPS Council meeting, and submitted a paper on that subject as the basis for discussion (see IP/C/W/570). Members had a constructive exchange of views on the nature and scope of the counterfeiting problem, including with respect to the negative economic consequences that counterfeit goods cause and the serious threat to the health and safety of consumers such goods impose. Members also discussed mechanisms to further secure supply chains, including risk modelling by customs authorities, reviewing of government procurement processes, and developing innovative technologies for consumers to identify counterfeit goods.

Enforcement Trends: At the request of Australia, Canada, the EU, Korea, Japan, New Zealand, Singapore, Switzerland, and the United States, the enforcement of intellectual property rights was added to the agenda for the February TRIPS Council meeting. The TRIPS Council had a fruitful discussion on IPR enforcement issues, including on ACTA. The United States and the other cosponsors of this agenda item answered questions raised by WTO Members about particular provisions of the Agreement and addressed several misconceptions about the nature and scope of the text.

Review of Developing Country Members' TRIPS Implementation: During 2012, the TRIPS Council continued to conduct ongoing reviews of developing country Members' and newly acceded Members' implementation of the TRIPS Agreement, and to provide assistance to developing country Members in implementing the Agreement. The United States continued to press for full implementation of the TRIPS Agreement by developing country Members, and participated actively during the reviews of legislation by highlighting specific concerns regarding individual Members' implementation of the Agreement's obligations. While ongoing reviews continued, the TRIPS Council did not undertake any new reviews of implementing legislation.

Intellectual Property and Access to Medicines: The August 30, 2003 solution (the General Council Decision on "Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health," in light of the statement read out by the General Council Chairperson) continues to apply to each Member until the formal amendment to the TRIPS Agreement replacing its provisions takes effect for that Member. The amendment text adopted by the General Council in December 2005, and the

statement by the Chairperson, preserve all substantive aspects of the August 30, 2003 solution and do not alter the substance of the previously agreed to solution. The United States was the first Member to submit its acceptance of the amendment to the WTO. As of December 20, 2012, a total of 45 Members had accepted the amendment, which will enter into force for those Members that have accepted it upon its acceptance by two thirds of the membership of the WTO.

TRIPS-related WTO Dispute Settlement Cases: In April 2007, the United States initiated WTO dispute settlement proceedings over deficiencies in China's legal regime for the protection and enforcement of IPR by requesting consultations with China. On September 25, 2007, the WTO Dispute Settlement Body (DSB) established a panel to consider the dispute.

The panel circulated its report on January 26, 2009. The panel found that China's denial of copyright protection to works that do not meet China's content review standards is inconsistent with the TRIPS Agreement. The panel also found it inconsistent with the TRIPS Agreement for China to provide for simple removal of an infringing trademark as the only precondition for the sale at public auction of counterfeit goods seized by Chinese customs authorities.

With respect to the U.S. claim regarding thresholds in China's law that must be met in order for certain acts of trademark counterfeiting and copyright piracy to be subject to criminal procedures and penalties, the panel clarified that China must provide for criminal procedures and penalties to be applied to willful trademark counterfeiting and copyright piracy on a commercial scale. The panel agreed with the United States that Article 61 of the TRIPS Agreement requires China not to set its thresholds for prosecution of piracy and counterfeiting so high as to ignore the realities of the commercial marketplace. The Panel did find, however, that it needed more evidence in order to decide whether the actual thresholds for prosecution in China's criminal law are so high as to allow commercial scale counterfeiting and piracy to occur without the possibility of criminal prosecution.

The DSB adopted the panel report on March 20, 2009. On April 15, 2009, China notified the DSB that China intends to implement the recommendations and rulings of the DSB in this dispute, and stated it would need a reasonable period of time for implementation. On June 29, 2009, the United States and China notified the DSB that they had agreed on a one year period of time for implementation, which ended on March 20, 2010. In 2011, the United States monitored China's compliance with the 2009 DSB recommendations and rulings.

During 2012, the United States continued to monitor EU compliance with a 2005 ruling of the DSB that the EU's regulation on food related GIs is inconsistent with the EU's obligations under the TRIPS Agreement and the GATT 1994. The United States has raised certain questions and concerns with regard to the revised EU regulation and its compliance with the DSB findings and recommendations, and continues to monitor implementation in this dispute.

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

Geographical Indications (GI): The Doha Declaration directed the TRIPS Council to discuss "issues related to extension" of the level of protection provided under Article 23 of the TRIPS Agreement to GIs for products other than wines and spirits, and to report to the Trade Negotiations Committee (TNC) by the end of 2002 for appropriate action. Because no consensus could be reached in the TRIPS Council on how the Chairperson should report to the TNC on the issues related to the extension of Article 23 level protection to GIs for products other than wines and spirits, and in light of the strong divergence of positions on the way forward on GIs and other implementation issues, the TNC Chairperson closed the discussion by saying he would consult further with Members. At the December 2005 Hong Kong

Ministerial Conference, the Ministers directed the Director General to continue his consultative process on all outstanding implementation issues, including on extension of Article 23 level protection to GIs for products other than wines and spirits.

In 2012, the Director General did not hold any consultations on the extension issue. While some WTO Members seek to conduct negotiations in the TRIPS Council Special Session on whether to include other non-wine or spirit GIs, the United States and its allies on this issue continue to oppose any expansion of the Article 24.3 mandate in the Special Session to include negotiations on extension.

Review of Article 27.3(b), Relationship Between the TRIPS Agreement and the Convention on Biological Diversity, and Protection of Traditional Knowledge and Folklore: As called for in the TRIPS Agreement, the TRIPS Council initiated a review of Article 27.3(b) of the TRIPS Agreement (permitting Members to exclude from patentability plants and animals and biological processes used for the production of plants and animals). The Doha Declaration directs the TRIPS Council, in pursuing its work program under the review of Article 27.3(b), to examine, *inter alia*, the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) and the protection of traditional knowledge and folklore. Consideration of this set of issues also continues to be guided by the direction of Ministers in the Hong Kong Declaration, that all implementation issues (including the relationship of the TRIPS Agreement and the CBD) should be the subject of consultations facilitated by the WTO Director General. Furthermore, Ministers agreed that work would continue in the TRIPS Council on this issue.

A number of developing country Members continue to advocate for amending the patent provisions of the TRIPS Agreement to require disclosure of the source of the genetic resource or traditional knowledge, as well as evidence of prior informed consent to obtain the genetic resource and adequate benefit sharing with the custodian community or country of the genetic resource in order to obtain a patent. In 2006, a group of developing country Members submitted draft text for such an amendment to the TRIPS Agreement. There is, however, no consensus in the TRIPS Council that an amendment should be pursued. In 2012, the Director General did not hold consultations with Members on this issue.

Technical Cooperation and Capacity Building: As in each past year, the United States and other Members provided reports on their activities in connection with technical cooperation and capacity building for consideration at the November TRIPS Council meeting (see IP/C/W/582/Add.6). Priority needs reports submitted by LDCs were discussed in the TRIPS Council as well as in informal consultations.

Implementation of Article 66.2: Article 66.2 of the TRIPS Agreement requires developed country Members to provide incentives for enterprises and institutions in their territories to promote and encourage technology transfer to least developed country Members in order to enable them to create a sound and viable technological base. This provision was reaffirmed in the Doha Decision on Implementation related Issues and Concerns, and the TRIPS Council was directed to put in place a mechanism for ensuring monitoring and full implementation of the obligation. Developed country Members are required to provide detailed reports every third year, with annual updates, on these incentives. In November 2012, the United States provided an updated report on specific U.S. Government institutions and incentives, as required (see IP/C/W/580/Add.6).

Implementation of the TRIPS Agreement by LDCs: In November 2012, Haiti, on behalf of LDC Members, submitted a request to the TRIPS Council to extend the TRIPS Agreement transition period (see IP/C/W/583).

Non-Violation and Situation Complaints: The Chairman of the TRIPS Council held consultations with Members on how to advance discussions regarding the moratorium on non-violation and situation

complaints, which was extended for an additional two years at the Eighth Session of the Ministerial Conference held in December 2011. At the request of Members, the Secretariat also updated its Summary Note of the points raised by Members in the substantive discussion of this agenda item to date (see IP/C/W/349/Rev.2).

Australian Plain Packaging Legislation: In February 2012, Members discussed whether Australia's proposed legislation requiring plain packaging of tobacco products was a necessary measure to protect public health or, if not, was inconsistent with the TRIPS Agreement provisions on trademark protection. Cuba, El Salvador, Honduras, Nicaragua, Nigeria, the Ukraine, and Uruguay spoke out against the plain packaging legislation, saying that it would have a severely adverse impact upon developing countries and their intellectual property rights. Some questioned the scientific basis for Australia's decision making. Norway, New Zealand, and Switzerland supported Australia's right to protect public health and plain packaging as a means to protect public health. Brazil, China, India, and the European Union were also supportive of WTO Members' rights to take measures to protect public health, noting that an appropriate balance with the need to respect intellectual property rights may be necessary.

Prospects for 2013

In 2013, the TRIPS Council will continue to focus on its built-in agenda and the additional mandates established in the Doha Declaration, including possibly issues related to the LDC transition period for implementing the TRIPS Agreement, the extension of Article 23 level protection for GIs for products other than wines and spirits, on the relationship between the TRIPS Agreement and the CBD, and on traditional knowledge and folklore, as well as enforcement and other relevant new developments.

U.S. objectives for 2013 continue to be to:

- resolve differences through consultations and use of dispute settlement procedures, where appropriate;
- continue efforts to ensure that developing country Members fully implement the TRIPS Agreement;
- engage in constructive dialogue regarding the technical assistance and capacity related needs of developing countries, and especially LDCs, in connection with TRIPS Agreement implementation;
- continue to encourage a fact-based discussion within the TRIPS Council on enforcement and other provisions of the TRIPS Agreement; and
- ensure that provisions of the TRIPS Agreement are not weakened.

G. Council for Trade in Services

Status

The General Agreement for Trade in Services (GATS) is the first multilateral, legally enforceable agreement covering trade in services, and investment in the services sector. It is designed to reduce or eliminate governmental measures that prevent services from being freely supplied across national borders or that discriminate against locally established services firms with foreign ownership. The GATS provides a legal framework for addressing barriers to trade and investment in services. It includes specific commitments by WTO Members to restrict their use of those barriers and provides a forum for further negotiations to open services markets around the world. These commitments are contained in Member schedules, similar to the Member schedules for tariffs.

The Council for Trade in Services (CTS) oversees implementation of the GATS and reports to the General Council. In addition, the CTS is responsible for a technical review of GATS Article XX.2 provisions; waivers from specific commitments pursuant to paragraphs 3 and 4 of Article IX of the Marrakesh Agreement Establishing the WTO; a periodic review of developments in the air transport sector; the transitional review mechanism under Section 18 of the Protocol on the Accession of the People's Republic of China; implementation of GATS Article VII; the MFN review; and notifications made to the General Council pursuant to GATS Articles III.3, V.5, V.7, and VII.4. Other bodies that report to the CTS include: the Committee on Specific Commitments, the Committee on Trade in Financial Services, the Working Party on Domestic Regulation, and the Working Party on GATS Rules.

Major Issues in 2012

The CTS met in March, June, October, and December 2012. The CTS appointed the Ambassador from Sweden as its new Chairperson in March.

The CTS received a number of notifications pursuant to GATS Article III:3 (transparency) and GATS Article V:7 (economic integration). India raised specific questions related to certain definitions and U.S. obligations on temporary entry with regard to the U.S. notifications on our agreements with Korea, Panama and Peru.

During 2012, the CTS discussed issues related to Information, Communication, and Technology (ICT) and electronic commerce. These issues were raised by the United States in communications initially submitted in 2011.

The United States continued its lead role in this area, urging Members to take up a more detailed discussion of the ICT principles and its paper on cloud computing and mobile applications, including the possibility of a workshop on these issues. The European Union and Australia also submitted new papers on ICT principles, further invigorating the discussion over the course of the year. In March, the Australian delegation also held a symposium on international mobile roaming (IMR).

At the request of Jamaica, the CTS reopened the Fifth Protocol to the GATS relating to financial services, for their acceptance. The Protocol entered into force for Jamaica on December 4, 2012. Brazil remains the only Member not to have accepted the Protocol. In addition, Australia continued to raise concerns related to the entry into force of the EC 25 schedule of commitments pursuant to GATS Article XXI and the procedures outlined in S/L/80 and S/L/84. Finally, the United States and other Members involved in the possible negotiation of an International Services Agreement (ISA) provided updates on the progress of those discussions for transparency purposes.

Prospects for 2013

The CTS will continue discussions related to its mandated reviews and various notifications related to GATS implementation, as well as other topics raised by Members. In particularly, Members may continue work on e-commerce through a workshop dedicated to specific issues of interest.

1. Committee on Trade in Financial Services

Status

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

Major Issues in 2012

The CTFS met in March, June, October, and December 2012. During the March 2012 meeting, the Committee elected the delegate from Germany as the new Chairperson.

Members continued to urge Brazil and Jamaica to take the necessary steps to accept the Fifth Protocol to the GATS. In accepting the protocol, financial services commitments made in 1994 would be replaced by those agreed during the 1995-1997 extended negotiations on financial services. All other Members have accepted the protocol. In October 2012, Jamaica notified Members that it had accepted the Fifth Protocol to the GATS. The Chair invited the other Members to provide information on the status of their domestic ratification efforts. Brazil reported no progress.

In June 2012, the CTFS held a workshop on trade in financial services and development. Members continue to explore the relationship between financial services trade and development in the Committee. Members may raise additional relevant topics for discussion, to be supported by the Secretariat. Similarly, Members also took up classification issues to enable a better understanding of specific commitments in financial services. Further work in this area will be driven by Member proposals.

The Committee considered a proposal from Ecuador to hold a dedicated discussion on macroprudential regulation. At the December meeting, Members agreed to hold a dedicated discussion within the Committee whereby members could share experiences with such regulation.

Prospects for 2013

The CTFS will continue to use its broad and flexible mandate to discuss various issues, including ratification of existing commitments as well as market access and regulatory issues, such as organization of the dedicated discussion based on Ecuador's proposal on macroprudential regulation. Discussions will continue on classification issues and will likely also continue regarding trade in financial services and development.

2. Working Party on Domestic Regulation

Status

The Working Party on Domestic Regulation addresses issues concerning licenses and other procedures for obtaining authorization to supply services. GATS Article VI:4 on Domestic Regulation provides for Members to develop any necessary disciplines relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures. A Ministerial Decision assigned priority to the professional services sector and Members subsequently established the Working Party on Professional Services (WPPS). In May 1997, the WPPS developed Guidelines for the Negotiation of Mutual Recognition Agreements in the Accountancy Sector, adopted by the WTO. The WPPS completed Disciplines on Domestic Regulation in the Accountancy Sector in December 1998, although their full implementation is suspended pending completion of the ongoing round of services negotiations. The text of these disciplines is found in WTO document S/L/64 (December 17, 1998).

In May 1999, the CTS established a new Working Party on Domestic Regulation (WPDR) which took on the work of the predecessor WPPS and its existing mandate. The WPDR is charged with determining whether any new disciplines are deemed necessary beyond those negotiated for the accountancy sector. At the December 2005 Hong Kong Ministerial Conference, Ministers directed the WPDR to develop disciplines on domestic regulation pursuant to the mandate under Article VI:4 of the GATS before the end

of the current round of negotiations. In April, in parallel with a slowdown in negotiations of market access in services, the Chairperson suspended the intensified work on domestic regulations. The Chairperson issued a status report reflecting the state of the negotiations, including an annex capturing the variety of textual proposals for disciplines under discussion as of that time (S/WPDR/W/45 (April 14, 2011)).

Major Issues in 2012

After April 2011 there was a significant slowdown in work in the WPDR, and that slower pace continued through 2012. In response to a proposal by Canada, in November 2011 Members submitted factual questions relating to practices on granting licenses and determinations of qualification. Discussions during 2012 focused on those factual questions, and comparing the variety of practices in different members. In June 2012 the WTO Secretariat prepared a note on "Regulatory issues in sectors and modes of supply" (circulated as WTO document S/WPDR/W/48). This Note is a wide-ranging discussion of "the regulatory environment and trends affecting sectors and modes, [highlighting] where relevant, issues that may have a particular bearing on trade in services." It is not intended to be a summary of the practices of WTO Members. To date, there has been no discussion of this Secretariat Note.

The United States continues to take the view that any horizontal disciplines must respect the right of WTO Members to regulate, as recognized by the GATS, in a manner which meets the legitimate policy objectives of national and subnational regulatory authorities. The United States' focus remains on the development of horizontal disciplines for regulatory transparency in the procedures used for granting authorization to supply services.

Prospects for 2013

During 2013, we expect that the WPDR will continue to focus on broad thematic questions submitted by Members, as well as discussion of the Note prepared by the WTO Secretariat on regulatory issues.

3. Working Party on GATS Rules

Status

The Working Party on GATS Rules (WPGR) provides a forum to discuss the possibility of new disciplines on emergency safeguard measures, government procurement, and subsidies in the context of the GATS in accordance with the Doha Work Program resulting from the Hong Kong Ministerial Conference in December 2005. That program called for Members to intensify their efforts to conclude the negotiations on rulemaking under GATS Articles X (emergency safeguard mechanism), Article XIII (government procurement), and Article XV (subsidies).

Major Issues in 2012

There was little activity in the WPGR during 2012, reflecting the overall slowdown in negotiations at the WTO. Proponents of an emergency safeguard measure (ESM) continued to take the view that, with the general slowdown in the services negotiations, they considered that the WPGR was entering into "a period of reflection" on the ESM issue. On government procurement of services, the EU continued to urge Members to begin discussions of possible benefits of opening procurement markets, procedural rules, S&D treatment, the relationship to the plurilateral Government Procurement Agreement (GPA), and most-favored nation application. However, there was little engagement on this topic. Finally, with respect to subsidies, the WPGR continued to face an impasse among Members on next steps for

advancing this issue. Some Members, particularly Switzerland, argued that Members should begin negotiations on specific disciplines on subsidies. The United States, however, joined by several other members argued that it was premature to develop such disciplines, because the WPGR had been presented with no examples of practical trade problems with respect to subsidies in services; indeed, the United States in 2010 proposed a series of questions designed to elicit such specific concerns (contained in document S/WPGR/W/59) and had not received a single response. Absent such a factual basis, Members had no guidance on the problems any disciplines should address.

Prospects for 2013

Future work in the WPGR is likely to slow further. Members seem to be in agreement that, in light of this slowdown, there seems to be little purpose served in holding formal meetings of the working group. The WPGR may turn its focus to technical issues such as improving statistical information which may be used to demonstrate a surge in imports which could warrant an ESM and encouraging further submissions to the information exchange on subsidies.

4. Committee on Specific Commitments

Status

The Committee on Specific Commitments (CSC) examines ways to improve the technical accuracy of scheduling commitments, primarily in preparation for the GATS negotiations, and oversees the application of the procedures for the modification of schedules under GATS Article XXI. The CSC also oversees implementation of commitments in Members' schedules in sectors for which there is no sectoral body, which is currently the case for all sectors except financial services. As a result of the impasse in the overall Doha Round negotiations, the CSC has focused its efforts on ways to improve the classification of services, so that scheduled commitments reflect the service activity, particularly with regard to new or evolving services.

Major Issues in 2012

The CSC held meetings in March, June, October, and December 2012. During the March meeting, the CSC also elected the delegate from Argentina as its new Chairperson.

The CSC resumed its ongoing discussion of classification issues in various sectors, including audiovisual distribution, express delivery, legal, and maritime transport services. The Secretariat has prepared a compilation of these issues to facilitate Members discussions. In addition, Members reviewed the procedures for the modification of schedules under GATS Article XXI, based on a communication from Australia.

Prospects for 2013

Work will continue on technical issues and any other issues that Members raise.

H. Dispute Settlement Understanding

Status

The Understanding on Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding or DSU), which is annexed to the WTO Agreement, provides a mechanism to settle

disputes under the Uruguay Round Agreements. Thus, it is key to the enforcement of U.S. rights under these Agreements.

The DSU is administered by the Dispute Settlement Body (DSB), which consists of representatives of the entire membership of the WTO, and is empowered to establish dispute settlement panels, adopt panel and Appellate Body reports, oversee the implementation of panel recommendations adopted by the DSB, and authorize retaliation. The DSB makes all its decisions by consensus unless the WTO Agreement provides otherwise.

Major Issues in 2012

The DSB met 18 times in 2012 to oversee disputes and to address responsibilities such as appointing members to the Appellate Body and approving additions to the roster of governmental and nongovernmental panelists.

Roster of Governmental and Non-Governmental Panelists: Article 8 of the DSU makes it clear that panelists may be drawn from either the public or private sector and must be "well-qualified," such as persons who have served on or presented a case to a panel, represented a government in the WTO or the GATT, served with the Secretariat, taught or published in the international trade field, or served as a senior trade policy official. Since 1985, the Secretariat has maintained a roster of nongovernmental experts for GATT 1947 dispute settlement, which has been available for use by parties in selecting panelists. In 1995, the DSB agreed on procedures for renewing and maintaining the roster, and expanding it to include governmental experts. In response to a U.S. proposal, the DSB also adopted standards increasing and systematizing the information submitted by roster candidates. These modifications aid in evaluating candidates' qualifications and encouraging the appointment of well qualified candidates who have expertise in the subject matters of the Uruguay Round Agreements. In 2012, the DSB approved by consensus a number of additional names for the roster. The United States scrutinized the credentials of these candidates to assure the quality of the roster.

Pursuant to the requirements of the Uruguay Round Agreements Act (URAA), the present WTO panel roster appears in the background information in Annex II. The list in the roster notes the areas of expertise of each roster member (goods, services, and/or TRIPS).

Rules of Conduct for the DSU: The DSB completed work on a code of ethical conduct for WTO dispute settlement and, on December 3, 1996, adopted the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes. A copy of the Rules of Conduct was printed in the Annual Report for 1996 and is available on the WTO and USTR websites. There were no changes in these Rules in 2012.

The Rules of Conduct elaborate on the ethical standards built into the DSU to maintain the integrity, impartiality, and confidentiality of proceedings conducted under the DSU. The Rules of Conduct require all individuals called upon to participate in dispute settlement proceedings to disclose direct or indirect conflicts of interest prior to their involvement in the proceedings, and to conduct themselves during their involvement in the proceedings so as to avoid such conflicts.

The Rules of Conduct also provide parties an opportunity to address potential material violations of these ethical standards. The coverage of the Rules of Conduct exceeds the goals established by the U.S. Congress in section 123(c) of the URAA, which directed USTR to seek conflict of interest rules applicable to persons serving on panels and members of the Appellate Body. The Rules of Conduct cover not only panelists and Appellate Body members, but also: (1) arbitrators; (2) experts participating in the dispute settlement mechanism (*e.g.*, the Permanent Group of Experts under the SCM Agreement); (3)

members of the WTO Secretariat assisting a panel or assisting in a formal arbitration proceeding; (4) the Chair of the Textile Monitoring Body (TMB) and other members of the TMB Secretariat assisting the TMB in formulating recommendations, findings, or observations under the Agreement on Textiles and Clothing; and (5) the support staff of the Appellate Body.

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

Appellate Body: Pursuant to the DSU, the DSB appoints seven persons to serve on an Appellate Body, which is to be a standing body with members serving four year terms, except for three initial appointees determined by lot whose terms expired at the end of two years. At its first meeting on February 10, 1995, the DSB formally established the Appellate Body, and agreed to arrangements for selecting its members and staff. The DSB also agreed that Appellate Body members would serve on a part-time basis, and sit periodically in Geneva. The original seven Appellate Body members were Mr. James Bacchus of the United States, Mr. Christopher Beeby of New Zealand, Mr. Claus-Dieter Ehlermann of Germany, Mr. Said El-Naggar of Egypt, Mr. Florentino Feliciano of the Philippines, Mr. Julio Lacarte-Muró of Uruguay, and Mr. Mitsuo Matsushita of Japan. On June 25, 1997, it was determined by lot that the terms of Messrs. Ehlermann, Feliciano, and Lacarte-Muró would expire in December 1997. The DSB agreed on the same date to reappoint them for a final term of four years commencing on 11 December 1997. At its meeting held on October 27, 1999 and November 3, 1999, the DSB agreed to renew the terms of Messrs. Bacchus and Beeby for a final term of four years, commencing on December 11, 1999, and to extend the terms of Mr. El-Naggar and Mr. Matsushita until the end of March 2000. On April 7, 2000, the DSB agreed to appoint Mr. Georges Michel Abi-Saab of Egypt and Mr. A.V. Ganesan of India to a term of four years commencing on June 1, 2000. On May 25, 2000, the DSB agreed to the appointment of Mr. Yasuhei Taniguchi of Japan to serve through December 10, 2003, the remainder of the term of Mr. Beeby, who passed away on March 19, 2000. On September 25, 2001, the DSB agreed to appoint Mr. Luiz Olavo Baptista of Brazil, Mr. John S. Lockhart of Australia, and Mr. Giorgio Sacerdoti of Italy to a term of four years commencing on December 11, 2001. On November 7, 2003, the DSB agreed to appoint Ms. Merit Janow of the United States to a term of four years commencing on December 11, 2003, to reappoint Mr. Taniguchi for a final term of four years commencing on December 11, 2003, and to reappoint Mr. Abi-Saab and Mr. Ganesan for a final term of four years commencing on June 1, 2004. On September 27, 2005, the DSB agreed to reappoint Mr. Baptista, Mr. Lockhart, and Mr. Sacerdoti for a final term of four years commencing on December 12, 2005. On July 31, 2006, the DSB agreed to the appointment of Mr. David Unterhalter of South Africa to serve through December 11, 2009, the remainder of the term of Mr. Lockhart, who passed away on January 13, 2006. At its meeting held on November 19 and 27, 2007, the DSB agreed to appoint Ms. Lilia R. Bautista of the Philippines and Ms. Jennifer Hillman of the United States as members of the Appellate Body for four years commencing on December 11, 2007, and to appoint Mr. Shotaro Oshima of Japan and Ms. Yuejiao Zhang of China as members of the Appellate Body for four years commencing on June 1, 2008. On November 12, 2008, Mr. Baptista notified the DSB that he was resigning for health reasons, effective in 90 days. On December 22, 2008, the DSB decided to deem the term of the position to which Mr. Baptista was appointed to expire on June 30, 1999, and to fill the position previously held by Mr. Baptista for a four-year term. On June 19, 2009, the DSB agreed to appoint Mr. Ricardo Ramírez Hernández of Mexico as a member of the Appellate Body for four years commencing on July 1, 2009, to appoint Mr. Peter Van den Bossche of Belgium as a member of the Appellate Body for four years commencing on December 12, 2009, and to reappoint Mr. Unterhalter for a final term of four years commencing on December 12, 2009. On November 18, 2011, the DSB agreed to appoint Mr. Thomas Graham of the United States and Mr. Ujal Bhatia of India as members of the Appellate Body for four years commencing on December 11,

2011. On May 24, 2012, the DSB agreed to appoint Mr. Seung Wha Chang of Korea as a member of the Appellate Body for four years commencing on June 1, 2012. *(The names and biographical data for the Appellate Body members during 2012 are included in Annex II of this report.)*

The Appellate Body has also adopted Working Procedures for Appellate Review. On February 28, 1997, the Appellate Body issued a revision of the Working Procedures, providing for a two year term for the first Chairperson, and one year terms for subsequent Chairpersons. In 2001, the Appellate Body amended its working procedures to provide for no more than two consecutive terms for a Chairperson. Mr. Lacarte-Muró, the first Chairperson, served until February 7, 1998; Mr. Beeby served as Chairperson from February 7, 1998 to February 6, 1999; Mr. El-Naggar served as Chairperson from February 7, 1999 to February 6, 2000; Mr. Feliciano served as Chairperson from February 7, 2000 to February 6, 2001; Mr. Ehlermann served as Chairperson from February 7, 2001 to December 10, 2001; Mr. Bacchus served as Chairperson from December 15, 2001 to December 10, 2003; Mr. Abi-Saab served as Chairperson from December 13, 2003 to December 12, 2004; Mr. Taniguchi served as Chairperson from December 17, 2004 to December 16, 2005; Mr. Ganesan served as Chairperson from December 17, 2005 to December 16, 2006; Mr. Sacerdoti served as Chairperson from December 17, 2006 to December 17, 2007; Mr. Baptista served as Chairperson from December 18, 2007, to December 17, 2008; Mr. Unterhalter served as Chairperson from December 18, 2008 to December 16, 2010; Ms. Bautista served as Chairperson from December 17, 2010 to June 14, 2011; Ms. Hillman served as Chairperson from June 15, 2011 until December 10, 2011; and Ms. Zhang served as Chairperson from December 11, 2011 to December 31, 2012.

In 2012, the Appellate Body issued six reports, on a challenge by the United States, the EU, and Mexico to China's export restrictions on certain raw materials; the EU's challenge to measures affecting trade in large civil aircraft; Indonesia's challenge to U.S. measures affecting the production and sale of clove cigarettes; Mexico's challenge to U.S. measures concerning the importation, marketing, and sale of tuna products; Canada and Mexico's challenges to U.S. country of origin labeling requirements on beef and pork products; and the U.S. challenge to China's antidumping duties on grain oriented flat-rolled electrical steel. In each dispute, the United States participated as a party.

Dispute Settlement Activity in 2012: During the DSB's first 17 years in operation, WTO Members filed 454 requests for consultations (22 in 1995, 42 in 1996, 46 in 1997, 44 in 1998, 31 in 1999, 30 in 2000, 27 in 2001, 37 in 2002, 26 in 2003, 19 in 2004, 11 in 2005, 20 in 2006, 14 in 2007, 19 in 2008, 14 in 2009, 17 in 2010, 8 in 2011, and 27 in 2012). During that period, the United States filed 104 complaints against other Members' measures and received 143 complaints on U.S. measures. Several of these complaints involved the same issues as other complaints (6 U.S. complaints against others and 27 complaints against the United States). A number of disputes commenced in earlier years remained active in 2012. What follows is a description of those disputes in which the United States was a complainant, defendant, or third party during the past year.

Prospects for 2013

While there were improvements to the multilateral trading system's dispute settlement system as a result of the Uruguay Round, there is still room for improvement. Accordingly, the United States has used the opportunity of the ongoing review to seek improvements in its operation, including greater transparency. In 2013, we expect the DSB to continue to focus on the administration of the dispute settlement process in the context of individual disputes. Experience gained with the DSU will be incorporated into the U.S. litigation and negotiation strategy for enforcing U.S. WTO rights, as well as the U.S. position on DSU reform. Participants will continue to consider reform proposals in 2013.

a. Disputes Brought by the United States

In 2012, the United States continued to be one of the most active participants in the WTO dispute settlement process. This section includes brief summaries of dispute settlement activity in 2012 where the United States was a complainant. As demonstrated by these summaries, the WTO dispute settlement process has proven to be an effective tool in combating barriers to U.S. exports. Indeed, in a number of cases the United States has been able to achieve satisfactory outcomes by invoking the consultation provisions of the dispute settlement procedures, without recourse to formal panel proceedings.

Argentina — Measures Affecting the Importation of Goods (DS444):

On August 21, 2012, the United States requested consultations with Argentina regarding certain measures affecting the importation of goods into Argentina. These measures include the broad use of non-transparent and discretionary import licensing requirements that have the effect of restricting U.S. exports as well as burdensome trade balancing commitments that Argentina requires as a condition for authorization to import goods.

Since 2008, Argentina has greatly expanded the list of products subject to non-automatic import licensing requirements. Import licenses are required for approximately 600 eight-digit tariff lines in Argentina's goods schedule. In February 2012, Argentina adopted an additional licensing requirement that applies to all imports of goods into the country. The affected products include, but are not limited to, laptops, home appliances, air conditioners, tractors, machinery and tools, autos and auto parts, agricultural products, plastics, chemicals, tires, toys, footwear, textiles and apparel, luggage, bicycles and paper products. In conjunction with these licensing requirements, Argentina has adopted informal trade balancing requirements and other schemes, whereby companies seeking to obtain authorization to import products must agree to export goods of an equal or greater value, make investments in Argentina, lower prices of imported goods, and/or refrain from repatriating profits.

Through these measures, Argentina appears to have acted inconsistently with its WTO obligations. In particular, the measures appear to be inconsistent with Article XI:1 of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), which generally prohibits restrictions on imports of goods, including those made effective through import licenses. The measures also appear to breach various provisions of the *Agreement on Import Licensing Procedures*, which contains requirements related to the administrative procedures used to implement import licensing regimes.

The United States and Argentina held consultations on September 20-21, 2012, but these consultations failed to resolve the dispute. On December 17, 2012, the United States requested the WTO to establish a dispute settlement panel to examine Argentina's import restrictions. The European Union and Japan have also requested the establishment of panels to examine these measures.

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

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

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

The United States and China held consultations on June 5-6, 2007 and July 31, 2007, but they did not resolve the dispute. On October 10, 2007, the United States requested the establishment of a panel, and on November 27, 2007, a panel was established. On March 27, 2008, the Director General composed the panel as follows: Mr. Florentino P. Feliciano, Chair; and Mr. Juan Antonio Dorantes and Mr. Christian Häberli, Members.

The report of the panel was circulated to WTO Members and made public on August 12, 2009. In the final report, the panel made three critical sets of findings. First, the panel found that China's restrictions on foreign invested enterprises (and in some cases foreign individuals) from importing films for theatrical release, audiovisual home entertainment products, sound recordings, and publications are inconsistent with China's trading rights commitments as set forth in China's protocol of accession to the WTO. The panel also found that China's restrictions on the right to import these products are not justified by Article XX(a) of the GATT 1994. Second, the panel found that China's prohibitions and discriminatory restrictions on foreign owned or controlled enterprises seeking to distribute publications and audiovisual home entertainment products and sound recordings over the Internet are inconsistent with China's obligations under the GATS. Third, the panel also found that China's treatment of imported publications is inconsistent with the national treatment obligation in Article III:4 of the GATT 1994.

In September 2009, China filed a notice of appeal to the WTO Appellate Body, appealing certain of the panel's findings. First, China contended that its restrictions on importation of the products at issue are justified by an exception related to the protection of public morals. Second, China claimed that while it had made commitments to allow foreign enterprises to partner in joint ventures with Chinese enterprises to distribute music, those commitments did not cover the electronic distribution of music. Third, and finally, China claimed that its import restrictions on films for theatrical release and certain types of sound recordings and DVDs were not inconsistent with China's commitments related to the right to import because those products were not goods and therefore were not subject to those commitments. The United States filed a cross appeal on one aspect of the panel's analysis of China's defense under GATT Article XX(a). On December 21, 2009, the Appellate Body issued its report. The Appellate Body rejected each of China's claims on appeal. The Appellate Body also found that the Panel had erred in the aspect of the analysis that the United States had appealed. The DSB adopted the Appellate Body and panel reports on January 19, 2010. On July 12, 2010, the United States and China notified the DSB that they had agreed on a 14 month period of time for implementation, to end on March 19, 2011.

China subsequently issued several revised measures, and repealed other measures, relating to the market access restrictions on books, newspapers, journals, DVDs and music. As China acknowledged, however, it did not issue any measures addressing theatrical films. Instead, China proposed bilateral discussions with the United States in order to seek an alternative solution. The United States and China reached agreement in February 2012 on a Memorandum of Understanding (MOU) providing for substantial increases in the number of foreign films imported and distributed in China each year and substantial additional revenue for foreign film producers. The MOU will be reviewed after five years in order to discuss additional compensation for the U.S. side.

China – Measures Relating to the Exportation of Various Raw Materials (DS394):

On June 23, 2009, the United States requested consultations with China regarding China's export restraints on a number of important raw materials. The materials at issue are: bauxite, coke, fluorspar, magnesium, manganese, silicon metal, silicon carbide, yellow phosphorus, and zinc. These materials are inputs for numerous downstream products in the steel, aluminum, and chemical sectors.

The United States challenged China's export restraints on these raw materials as inconsistent with several WTO provisions, including provisions in the *General Agreement on Tariffs and Trade 1994*, as well as specific commitments made by China in its WTO accession agreement. Specifically, the United States challenged certain Chinese measures that impose: (1) QRs in the form of quotas on exports of bauxite, coke, fluorspar, silicon carbide, and zinc ores and concentrates, as well as certain intermediate products incorporating some of these inputs; and (2) export duties on several raw materials. The United States also challenged other related export restraints, including export licensing restrictions, minimum export price requirements, and requirements to pay certain charges before certain products can be exported, as well as China's failure to publish relevant measures.

The United States and China held consultations on July 30 and September 1-2, 2009, but did not resolve the dispute. The European Union and Mexico also requested and held consultations with China on these measures.

On November 19, 2009, the European Union and Mexico joined the United States in requesting the establishment of a panel, and on December 21, 2009, the WTO Dispute Settlement Body established a single panel to examine all three complaints. On March 29, 2010, the Director General composed the panel as follows: Mr. Elbio Rosselli, Chair; Ms. Dell Higgie and Mr. Nugroho Wisnumurti, Members. The panel's final report was circulated to Members on July 5, 2011. The panel found that the export duties and export quotas that China maintains on various forms of bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, and zinc constitute a breach of WTO rules and that China failed to justify those measures as legitimate conservation measures, environmental protection measures, or short supply measures. The panel also found that China's imposition of minimum export price, export licensing, and export quota administration requirements on these materials, as well as China's failure to publish certain measures related to these requirements, is inconsistent with WTO rules.

On January 30, 2012, the Appellate Body issued a report affirming the panel's findings on all significant claims. In particular, the Appellate Body confirmed that: China may not seek to justify its imposition of export duties as environmental or conservation measures; China failed to demonstrate that certain of its export quotas were justified as measures for preventing or relieving a critical shortage; and the Panel correctly made recommendations for China to bring its measures into conformity with its WTO obligations. The Appellate Body also found that the Panel erred in making findings related to licensing and administration claims, declaring those findings moot and in its legal interpretation of one element of the exception set forth in Article XX(g) of the GATT 1994.

The DSB adopted the Appellate Body report, and the panel report as modified by the Appellate Body report, on February 22, 2012. The United States, the European Union, Mexico, and China agreed that China would have until December 31, 2012, to comply with the rulings and recommendations.

China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States (DS414):

On September 15, 2010, the United States filed a request for consultations regarding China's imposition of antidumping (AD) duties and countervailing duties (CVD) on imports of grain oriented flat rolled electrical steel (GOES) from the United States.

In June 2009, China's Ministry of Commerce (MOFCOM) initiated two investigations on GOES from the United States. On April 10, 2010, based on determinations that American steel had been dumped into their market and subsidized, MOFCOM imposed antidumping duties ranging from 7.8 percent to 64.8 percent and countervailing duties ranging from 11.7 percent and 44.6 percent.

China's antidumping and subsidy determinations in the GOES investigations appeared to violate numerous WTO requirements. Specifically, the United States was concerned, *inter alia*, that China initiated the countervailing duty investigation without sufficient evidence; failed to objectively examine the evidence; failed to disclose "essential facts" underlying its conclusions; failed to provide an adequate explanation of its calculations and legal conclusions; improperly used investigative procedures; and failed to provide non-confidential summaries of Chinese submissions.

The United States and China held consultations on November 1, 2010, but did not resolve the dispute. In March 2011, the United States requested the establishment of a panel. In May 2011, the DSB established a panel. On May 10, 2011, the panel was composed by the agreement of the parties, as follows: Mr. John Adank, Chair; and Mr. Anthony Abad and Mr. Jan Heukelman, Members. Hearings before the Panel took place in September and December 2011.

In June 2012, the Panel issued its report, upholding U.S. claims that China had breached a number of substantive and procedural obligations under the WTO Agreement in imposing AD and CVD duties on GOES from the United States. The Panel found that China initiated the countervailing duty investigation with respect to several alleged programs based on insufficient evidence, failed to provide non-confidential summaries of submissions containing confidential information, calculated the subsidy rates for U.S. companies in a manner unsupported by the facts, calculated the "all others" subsidy rate and dumping margin without a factual basis, failed to disclose essential facts and failed to explain the calculation of the "all others" subsidy rate and dumping margin, and made unsupported findings that U.S. exports caused injury to China's domestic industry.

In July 2012, China filed a notice of appeal challenging certain aspects of the panel report. The Appellate Body held a hearing in August 2012. In October 2012, the Appellate Body issued its report, and rejected all of China's claims on appeal.

In November 2012, the Dispute Settlement Body adopted the panel and Appellate Body reports. The same month, China announced its intention to implement the DSB recommendations and rulings in the dispute, and stated that it would need a reasonable period of time in which to do so.

China – Certain Measures Affecting Electronic Payment Services (DS413):

On September 15, 2010, the United States requested consultations with China concerning issues relating to certain restrictions and requirements maintained by China pertaining to electronic payment services (EPS) for payment card transactions and the suppliers of those services. EPS enable transactions involving credit card, debit card, charge card, check card, automated teller machine (ATM) card, prepaid card, or other similar card or money transmission product, and manage and facilitate the transfers of funds between institutions participating in such card-based electronic payment transactions.

EPS provide the essential architecture for card-based electronic payment transactions, and EPS are supplied through complex electronic networks that streamline and process transactions and offer an efficient and reliable means to facilitate the movement of funds from the cardholders purchasing goods or services to the individuals or businesses that supply them. EPS consist of a network, rules and procedures, and operating system that allow cardholders' banks to pay merchants' banks the amounts they are owed. EPS suppliers receive, check and transmit the information that processors need to conduct the transactions. The rules and procedures established by the EPS supplier give the payment system stability and integrity, and enable net payment flows among the institutions involved in card-based electronic transactions. The best known EPS suppliers are credit and debit card companies based in the United States.

China instituted and maintains measures that operate to block foreign EPS suppliers, including U.S. suppliers, from supplying these services, and that discriminate against foreign suppliers at every stage of a card-based electronic payment transaction. The United States challenged China's measures affecting EPS suppliers as inconsistent with China's national treatment and market access commitments under the WTO's General Agreement on Trade in Services (GATS).

The United States and China held consultations on October 27 and 28, 2010, but these consultations did not resolve the dispute. The United States requested the establishment of a panel on February 11, 2011. On March 25, 2011, the DSB established a panel to consider the claims of the United States. On July 4, 2011, the Director General composed the panel as follows: Mr. Virachai Plasai, Chair; and Ms. Elaine Feldman and Mr. Martín Redrado, Members. The panel held its meetings with the parties on October 26-27, 2011, and December 13-14, 2011.

The Panel issued its report to the Parties on May 25, 2012. The Panel Report was circulated to the WTO Membership on July 16, 2012. China did not appeal the Panel's findings, and the Panel Report was adopted by the DSB on August 31, 2012.

The United States prevailed on significant threshold issues, including:

- EPS is a single service (or EPS are integrated services) and each element of EPS is necessary for a payment card transaction to occur.

- EPS is properly classified under the same subsector, item (viii) of the GATS Annex on Financial Services, which appears as subsector (d) of China's Schedule ("All payment and money transmission services, including credit, charge, and debit cards…") as the United States argued, and no element of EPS is classified as falling in item xiv of the GATS Annex on Financial services ("settlement and clearing of financial assets, including securities, derivative products, and other negotiable instruments"), as China argued and for which China has no WTO commitments.

- In addition to the "four-party" model of EPS (*e.g.*, Visa and MasterCard), the "three-party" model (*e.g.*, American Express) and other variations, and third party issuer processor and merchant processors also are covered by subsector (d) of China's Schedule.

With respect to the U.S. GATS national treatment claims, the Panel found the following violations:

- China imposes requirements on issuers of payment cards that payment cards issued in China bear the "Yin Lian/UnionPay logo," and furthermore, through these, China requires issuers to become members of the CUP network, and that the cards they issue in China meet certain uniform

business specifications and technical standards, and that these requirements fail to accord to services and service suppliers of any other Member treatment no less favorable than China accords to its own like services and service suppliers;

- China imposes requirements that all terminals (ATMs, merchant processing devices, and point of sale (POS) terminals) in China that are part of the national card inter-bank processing network be capable of accepting all payment cards bearing the Yin Lian/UnionPay logo, and that these requirements fail to accord to services and service suppliers of any other Member treatment no less favorable than China accords to its own like services and service suppliers;

- China imposes requirements on acquirers (those institutions that acquire payment card transactions and that maintain relationships with merchants) to post the Yin Lian/UnionPay logo, and furthermore, China imposes requirements that acquirers join the CUP network and comply with uniform business standards and technical specifications of inter-bank interoperability, and that terminal equipment operated or provided by acquirers be capable of accepting bank cards bearing the Yin Lian/UnionPay logo, and that these requirements fail to accord to services and service suppliers of any other Member treatment no less favorable than China accords to its own like services and service suppliers;

With respect to the U.S. GATS market access claims, the Panel found that China's requirements related to certain Hong Kong and Macao transactions are inconsistent with Article XVI:2(a) of the GATS because, contrary to China's Sector 7.B(d) mode 3 market access commitments, China maintains a limitation on the number of service suppliers in the form of a monopoly.

The United States and China agreed that a reasonable period of time for China to implement the DSB recommendations and rulings would be 11 months from the date of adoption of the recommendations and rulings, that is, until July 31, 2013.

China – Subsidies on Wind Power Equipment (DS419):

On December 22, 2010, the United States requested consultations with China concerning a program known as the Wind Power Equipment Fund. Under this program, China appeared to provide subsidies that were prohibited under WTO rules because the grants awarded under the program were contingent on Chinese wind power equipment manufacturers using parts and components made in China, rather than foreign made parts and components. The United States also included in its consultations request transparency-related claims, which addressed China's failure to comply with its obligation to notify the subsidies at issue under the WTO's Agreement on Subsidies and Countervailing Measures, and China's failure to translate the measure into one or more of the official languages of the WTO under China's Protocol of Accession. On December 31, 2010, China accepted the request for consultations.

The United States and China held consultations in February 2011. Following consultations, China issued a notice invalidating the measures that had created the program providing the challenged subsidies.

This case arose out of an investigation initiated in response to a petition filed by the United Steelworkers (USW) under section 301 of the Trade Act of 1974, as amended.

China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum (DS431)

On March 13, 2012, the United States requested consultations with China regarding China's export restraints on rare earths, tungsten and molybdenum. These materials are vital inputs in the manufacture of electronics, automobiles, steel, petroleum products, and a variety of chemicals that are used to produce

both everyday items and highly sophisticated, technologically advanced products, such as hybrid vehicle batteries, wind turbines and energy efficient lighting.

Specifically, the United States is concerned that certain Chinese measures: (1) impose QRs in the form of quotas on exports of rare earth, tungsten and molybdenum ores and concentrates, as well as certain intermediate products incorporating some of these inputs; (2) impose export duties on rare earths, tungsten and molybdenum; and (3) impose other export restraints including prior export performance and minimum capital requirements. The measures at issue appear to be inconsistent with several WTO provisions, including provisions in the *General Agreement on Tariffs and Trade 1994*, as well as specific commitments made by China in its WTO accession agreement.

The United States, together with the European Union and Japan, held consultations with China on April 25-26, 2012, but the consultations did not resolve the dispute.

On June 29, 2012, the European Union and Japan joined the United States in requesting the establishment of a panel, and on July 23, 2012, the WTO Dispute Settlement Body established a single panel to examine all three complaints. On September 24, 2012, 2012, the Director General composed the panel as follows: Mr. Nacer Benjelloun-Touimi, Chair; Mr. Hugo Cayrús and Mr. Darlington Mwape.

China — Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States (DS440)

On July 5, 2012, the United States filed a request for consultations regarding China's imposition of antidumping (AD) duties and countervailing duties (CVD) on imports of certain automobiles from the United States.

In November 2009, China's Ministry of Commerce (MOFCOM) had initiated two investigations on certain automobiles from the United States. On December 14, 2011, based on affirmative determinations of injurious dumping and subsidization with respect to certain American-made automobiles, MOFCOM imposed antidumping duties ranging from 2.0 percent to 21.5 percent and countervailing duties ranging from 6.2 percent to 12.9 percent.

China's dumping and subsidy determinations in the autos investigations appear to breach numerous WTO obligations. Specifically, the United States is concerned that China failed to objectively examine the evidence, and made unsupported findings of injury to China's domestic industry. In addition, China failed to disclose "essential facts" underlying its conclusions, failed to provide an adequate explanation of its conclusions, improperly used investigative procedures, and failed to provide non-confidential summaries of Chinese submissions.

The United States and China held consultations on August 23, 2012, but did not resolve the dispute. In September 2012, the United States requested the establishment of a panel, and in October 2012 the DSB established a panel.

China — Certain Measures Affecting the Automobile and Automobile-Parts Industries (DS450):

On September 17, 2012, the United States requested consultations with China concerning China's auto and auto parts "export base" program. Under this program, China appears to provide extensive subsidies to auto and auto-parts exporting enterprises located in designated regions known as "export bases." It appears that China is providing these subsidies in contravention of its obligation under Article 3 of the *Agreement on Subsidies and Countervailing Measures* (Subsidies Agreement), which prohibits the provision of subsidies contingent upon export performance. China also appears to have failed to comply

with various transparency related obligations, including its obligation to notify the challenged subsidies as required by the Subsidies Agreement, and to publish the measures at issue in an official journal and to translate the measures into one or more of the official languages of the WTO as required by China's Protocol of Accession.

The United States and China held consultations in November 2012, but the dispute remains unresolved.

European Union – Measures concerning meat and meat products (hormones) (DS26, 48):

The United States and Canada challenged the EU ban on imports of meat from animals to which any of six hormones for growth promotional purposes had been administered. The panel found that the EU ban is inconsistent with the EU's obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), and that the ban is not based on science, a risk assessment, or relevant international standards.

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

Because the EU did not comply with the recommendations and rulings of the DSB by May 13, 1999, the final date of its compliance period as set by arbitration, the United States sought WTO authorization to suspend concessions with respect to certain products of the EU. The value of the suspension of concessions represents an estimate of the annual harm to U.S. exports resulting from the EU's failure to lift its ban on imports of U.S. meat. The EU exercised its right to request arbitration concerning the amount of the suspension. On July 12, 1999, the arbitrators determined the level of suspension to be $116.8 million. On July 26, 1999, the DSB authorized the United States to suspend such concessions and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of $116.8 million. On May 26, 2000, USTR announced that it was considering changes to that list of EU products, but did not make any changes.

On November 3, 2003, the EU notified the WTO that it had amended its hormones ban. As discussed below (DS320), on November 8, 2004, the EU requested consultations with respect to "the United States' continued suspension of concessions and other obligations under the covered agreements" in the EU – Hormones dispute. The Appellate Body issued its report in the *U.S. – Continued Suspension* (WT/DS320) dispute on October 16, 2008.

On October 31, 2008, USTR again announced that it was considering changes to the list of EU products on which 100 percent *ad valorem* duties had been imposed in 1999. A modified list of EU products was announced by USTR on January 15, 2009.

On December 22, 2008, the EU requested consultations with the United States and Canada pursuant to Articles 4 and 21.5 of the DSU, regarding the EU's implementation of the DSB's recommendations and rulings in the EU–Hormones dispute. In its consultations request, the EU stated that it considered that it has brought into compliance the measures found inconsistent in EU–Hormones by, among other things, adopting its revised ban in 2003. Consultations took place in February 2009.

Pursuant to the MOU, further litigation in the EU–Hormones compliance proceeding has been suspended.

The initial phase outlined in the Beef MOU ran from August 2009 through August 2012. During phase 1,

the EU provided increased, duty-free access to the EU market for U.S. beef produced without certain growth promoting hormones. The United States was permitted to maintain increased duties on a reduced list of EU products.

In August 2012 the United States and the EU, by mutual agreement, entered into phase 2 of the Beef MOU. In accordance with its phase 2 obligations, the EU increased the amount of duty free access to the EU market for U.S. beef produced without certain growth promoting hormones. Consistent with its phase 2 obligations, the United States is no longer applying increased duties on EU products.

European Union – Measures affecting the approval and marketing of biotechnology products (DS291):

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

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

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

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

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

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

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

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

On January 17, 2008, the United States submitted a request for authorization to suspend concessions and other obligations with respect to the EU under the covered agreements at an annual level equivalent to the annual level of nullification or impairment of benefits accruing to the United States resulting from the EU's failure to bring measures concerning the approval and marketing of biotechnology products into compliance with the recommendations and rulings of the DSB. On February 6, 2008, the European Union requested arbitration under Article 22.6 of the DSU, claiming that the level of suspension proposed by the United States was not equivalent to the level of nullification or impairment. The European Union and the United States mutually agreed to suspend the Article 22.6 arbitration proceedings as of February 18, 2008. The United States may request resumption of the proceedings following a finding by the DSB that the EU has not complied with the recommendations and rulings of the DSB.

Subsequent to the suspension of the Article 22.6 proceeding, the United States has been monitoring EU developments, and has been engaged with the EU in discussions with the goal of normalizing trade in biotechnology products.

European Union – Subsidies on large civil aircraft (DS316):

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

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

On October 17, 2005, the Deputy Director General composed the panel as follows: Mr. Carlos Pérez del Castillo, Chair; and Mr. John Adank and Mr. Thinus Jacobsz, Members. The panel met with the parties on March 20-21 and July 25-26, 2007, and met with the parties and third parties on July 24, 2007. The panel granted the parties' request to hold part of its meetings with the parties in public session. This portion of the panel's meetings was videotaped, and reviewed by the parties to ensure that business confidential information had not been disclosed, before being shown in public on March 22 and July 27, 2007.

The Panel issued its report on June 30, 2010. It agreed with the United States that the disputed measures of the European Union, France, Germany, Spain, and the United Kingdom were inconsistent with the SCM Agreement. In particular:

- Every instance of "launch aid" provided to Airbus was a subsidy because in each case, the terms charged for this unique low interest, success dependent financing were more favorable than were available in the market.

- Some of the launch aid provided for the A380, Airbus's newest and largest aircraft, was contingent on exports and, therefore, a prohibited subsidy.

- Several instances in which German and French government entities created infrastructure for Airbus were subsidies because the infrastructure was not general, and the price charged to Airbus for use resulted in less than adequate remuneration to the government.

- Several government equity infusions into the Airbus companies were subsidies because they were on more favorable terms than available in the market.

- Several EU and Member State research programs provided grants to Airbus to develop technologies used in its aircraft.

- These subsidies caused adverse effects to the interests of the United States in the form of lost sales, displacement of U.S. imports into the EU market, and displacement of U.S. exports into the markets of Australia, Brazil, China, Chinese Taipei, Korea, Mexico, and Singapore.

The EU filed a notice of appeal on July 21, 2010. The WTO Appellate Body conducted an initial hearing on August 3, 2010 to discuss procedural issues related to the need to protect business confidential information and highly sensitive business information and issued additional working procedures to that end on August 10, 2010. The Appellate Body held two hearings on the issues raised in the EU's appeal of the Panel's findings of WTO inconsistent subsidization of Airbus. The first hearing, held November 11-17, 2010, addressed issues associated with the main subsidy to Airbus, launch aid, and the other subsidies challenged by the United States. The second hearing, held December 9-14, 2010, focused on the Panel's findings that the European subsidies caused serious prejudice to the interests of the United States in the form of lost sales and declining market share in the European Union and other third country markets. On May 18, 2011, the Appellate Body issued its report. The Appellate Body affirmed the panel's central findings that European government launch aid had been used to support the creation of every model of large civil aircraft produced by Airbus. The Appellate Body also confirmed that launch aid and other challenged subsidies to Airbus have directly resulted in Boeing losing sales involving purchases of Airbus aircraft by easyJet, Air Berlin, Czech Airlines, Air Asia, Iberia, South African Airways, Thai Airways International, Singapore Airlines, Emirates Airlines, and Qantas – and lost market share, with Airbus gaining market share in the European Union and in third country markets, including China and South Korea, at the expense of Boeing. The Appellate Body also found that the panel applied the wrong standard for evaluating whether subsidies are export subsidies, and that the panel record did not have enough information to allow application of the correct standard.

On December 1, 2011, the EU provided a notification in which it claimed to have complied with the DSB recommendations and rulings. On December 9, 2011, the United States requested consultations regarding the notification and also requested authorization from the DSB to impose countermeasures. The United States and the EU held consultations on January 13, 2012. On March 30, 2012, in light of the parties' disagreement over whether the EU had complied with the DSB's recommendations and rulings, the United States requested that the DSB refer the matter to the original panel pursuant to Article 21.5 of the DSU. The DSB did so at a meeting held on April 13, 2012. On April 25, 2012, the compliance panel was composed with the members of the original panel: Mr. Carlos Pérez del Castillo, Chair; Mr. John Adank and Mr. Thinus Jacobsz, Members.

On December 22, 2011, the EU objected to the level of suspension of concessions requested by the United States, and the matter was referred to arbitration pursuant to Article 22.6 of the DSU. On January 19, 2012, the United States and the EU requested that the arbitration be suspended pending the conclusion of the compliance proceeding.

European Union – Regime for the importation, sale, and distribution of bananas – Recourse to Article 21.5 of the DSU by the United States (WT/DS27):

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

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

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

The panel issued its report on May 19, 2008. The panel agreed with the United States that the EU's regime was inconsistent with the EU's obligations under Articles I:1, XIII:1, and XIII:2 of the GATT 1994, and that the EU had failed to implement the recommendations and rulings of the DSB.

On August 28, 2008, the EU filed a notice of appeal. The Appellate Body granted a joint request by the parties to open its hearing to the public, and the public was able to observe the hearing via a closed circuit television broadcast. The Appellate Body issued its report on November 26, 2008. The Appellate Body found that the EU had failed to bring itself into compliance with the recommendations and rulings of the DSB. In particular, the Appellate Body rejected all of the EU's procedural arguments alleging the United States was barred from bringing the compliance proceeding and agreed with the panel that the EU's duty-free tariff-rate quota reserved only for some countries was inconsistent with Article XIII of the GATT 1994. The panel in this dispute had also found that the EU's banana import regime was in violation of GATT Article I. The EU did not appeal that finding. The DSB adopted the Appellate Body report on December 22, 2008.

On December 15, 2009, the United States and the EU initialed an agreement designed to lead to settlement of the dispute. In the agreement, the EU undertakes not to reintroduce measures that discriminate among bananas distributors based on the ownership or control of the distributor or the source of the bananas, and to maintain a nondiscriminatory, tariff only regime for the importation of bananas.

The United States-European Union agreement complements an agreement initialed on the same date between the EU and several Latin American banana supplying countries (the GATB). That agreement provides for staged EU tariff cuts that will bring the EU into compliance with its obligations under the WTO Agreement. The GATB was signed on May 31, 2010, and the United States-European Union agreement was signed on June 8, 2010. The agreements will enter into force following completion of certain domestic procedures. Upon entry into force, the EU will need to request formal WTO certification of its new tariffs on bananas. The GATB provides that once the certification process is concluded, the EU and the Latin American signatories to the GATB will settle their disputes and claims. Once that has occurred, the United States will also settle its dispute with the European Union.

European Communities – Tariff Treatment of Certain Information Technology Products (WT/DS375):

On May 28, 2008, the United States requested consultations with the European Union and its Member States regarding the tariff treatment accorded to set top boxes with a communication function, flat panel displays, "input or output units," and facsimile machines. The United States was concerned that certain EU measures appear to have resulted in the imposition of duties on these products. As a result of the Information Technology Agreement, the EU and its Member States, in their Schedules of Concessions to the GATT 1994, committed to provide duty-free treatment for these products.

The measures in question appeared to be inconsistent with the obligations of the EU and its Member States under Articles II:1(a) and II:1(b) of the GATT 1994. In addition, certain of the actions taken by the EU with respect to set top boxes appeared to be inconsistent with the EU's obligations under GATT 1994 Articles X:1 and X:2.

Japan and Chinese Taipei (on May 28, 2008, and June 12, 2008, respectively) also filed requests for consultations with the EU and its Member States on these measures. On August 18, the United States, Japan, and Chinese Taipei jointly requested the establishment of a panel. A panel was established at the meeting of the DSB on September 23, 2008. On January 22, 2009, the Director General composed the panel as follows: Mr. Wilhelm Meier, Chair; and Mr. David Evans and Ms. Valerie Hughes, Members.

The panel met with the parties on May 12 and 14, 2009 and on July 9, 2009, and met with the parties and third parties on May 13, 2009. Pursuant to the parties' request, the meetings with the parties, as well as a portion of the third party session, were open for public observation.

The panel issued its report on August 16, 2010. The panel agreed with the United States with respect to all three products at issue, finding that the EU measures result in the imposition of duties on products that are entitled to duty-free treatment under the EU's schedule of concessions and are inconsistent with GATT Article II:1(a) and (b). In addition, the Panel agreed with the United States that the EU's failure to promptly publish its Explanatory Note on set top boxes and its enforcement of an April 2007 set top box measure before its official publication were inconsistent with GATT Article X:1 and X:2, respectively.

The report was adopted at the meeting of the DSB on September 21, 2010. On October 13, 2010, the EU informed the Chairman of the DSB that it intended to implement the recommendations and rulings of the DSB and would need a reasonable period of time to do so. On December 20, 2010, the United States and the EU notified the DSB that they had agreed on a nine month and nine day period of time for implementation, to end on June 30, 2011. While the EU took some steps to bring its measures into compliance as of June 30, 2011, the United States remained concerned that certain products at issue would still be subject to duties. The United States has continued to engage with the EU to address the remaining concerns.

European Communities – Certain Measures Affecting Poultry Meat and Poultry Meat Products from the United States (DS389):

On January 16, 2009, the United States requested consultations regarding certain EU measures that prohibit the import of poultry meat and poultry meat products that have been processed with chemical treatments designed to reduce the amount of microbes on poultry meat, unless such pathogen reduction treatments (PRTs) have been approved. The EU further prohibits the marketing of poultry meat and poultry meat products if they have been processed with PRTs. In December 2008, the EU formally rejected the approval of four PRTs whose approval had been requested by the United States, despite the fact that EU scientists have repeatedly concluded that poultry meat and poultry meat products treated with any of these four PRTs does not present a health risk to European consumers. The EU's maintenance of its import ban and marketing regulation against PRT poultry appears to be inconsistent with its obligations under the SPS Agreement, the Agreement on Agriculture, the GATT 1994, and the Technical Barriers to Trade (TBT) Agreement. Consultations were held on February 11, 2009, but those consultations failed to resolve the dispute. The United States requested the establishment of a panel on October 8, 2009, and the DSB established a panel on November 19, 2009.

India — Measures Concerning the Importation of Certain Agricultural Products from the United States (DS430)

On March 6, 2012, the United States requested consultations with India regarding its import prohibitions on various agricultural products from the United States. India asserts these import prohibitions are necessary to prevent the entry of avian influenza into India. However, the United States has not had an outbreak of highly pathogenic avian influenza ("HPAI") since 2004. With respect to low pathogenic avian influenza ("LPAI"), the only kind of avian influenza found in the United States since 2004, international standards do not support the imposition of import prohibitions, including the type maintained by India.

The United States and India held consultations on April 16-17, 2012, but were unable to resolve the dispute. The United States requested the establishment of a WTO panel on May 24, 2012. At its meeting on June 25, 2012, the WTO dispute settlement body established a panel.

Philippines – Taxes on Distilled Spirits (DS403):

On January 14, 2010, the United States requested consultations regarding Philippine excise taxes on distilled spirits. The Philippines has taxed distilled spirits at rates that differ depending on the product from which the spirit is distilled. The Philippines taxed distilled spirits made from certain materials that are typically produced in the Philippines, such as sugar and palm, at a low rate (*e.g.*, 13.59 pesos per proof liter in 2009). Other distilled spirits have been taxed at significantly higher rates (from approximately 10 to 40 times higher) than the low rate applied to domestic products. The Philippine taxes on distilled spirits appeared not to tax similarly those distilled spirits that are imported compared to directly competitive or substitutable domestic distilled spirits, and the taxes appeared to be applied in a way that affords protection to the domestic products. In addition, the taxes appeared to subject imported distilled spirits to internal taxes in excess of those applied to like domestic products. Accordingly, the tax treatment of distilled spirits appeared inconsistent with Article III:2 of the GATT 1994. After consultations failed to resolve the dispute, the United States, on March 26, 2010, requested the establishment of a panel. At its meeting on April 20, 2010, the DSB established a panel and agreed that, as provided in Article 9.1 of the DSU in respect of multiple complainants, the panel established on January 19, 2010 to examine the complaint by the European Union (DS396) on the same measures, would also examine the U.S. complaint. The Director General composed the panel on July 5, 2010.

The United States and the European Union filed their respective first written submissions on September 2, 2010. The first meeting of the panel took place on November 17-18, 2010. The second meeting of the panel took place on February 9, 2011. The panel circulated its final report on August 15, 2011. The panel found that the Philippine excise taxes were inconsistent with the first and second sentences of Article III:2 of the GATT 1994.

The Philippines filed a notice of appeal on September 23, 2011. The Appellate Body hearing was held on October 25-26, 2011. The Appellate Body report was issued December 21, 2011. It confirmed the Panel's findings that the Philippine taxes were inconsistent with the first and second sentences of Article III:2 of GATT 1994.

On April 20, 2012, the United States, the European Union, and the Philippines agreed on a reasonable period of time for implementation of the recommendations and rulings in the dispute, ending on March 8, 2013.

During 2012, the Philippine Congress considered proposals to change the tax system on distilled spirits. On June 5, the Philippine House of Representatives passed a bill that included reform of the taxation system for distilled spirits, and the Senate followed suit with its own bill on November 20, 2012. The proposals were reconciled through a bicameral process, and approved by the full Philippine Congress. The reforms were signed into law on December 20, 2012.

Under the new system, which is scheduled to go into effect January 1, 2013, the raw materials requirement that was the basis for discrimination will be removed. All distilled spirits will subject to a two part tax: a 20 peso tax by proof, and an additional *ad valorem* tax of 15 percent by value in the first two years, rising to 20 percent on January 1, 2015. The specific tax of 20 pesos will increase 4 percent every year after 2015. The United States will review the implementation of the new tax system to evaluate whether the Philippines has fully implemented the recommendations and rulings in the dispute.

China – Countervailing and Anti-Dumping Duties on Chicken Broiler Products from the United States (DS427):

On September 20, 2011, the United States filed a request for consultations regarding China's imposition of antidumping (AD) duties and countervailing duties (CVD) on imports of chicken broiler products from the United States.

On September 27, 2009, China's Ministry of Commerce (MOFCOM) initiated antidumping and countervailing duty investigations of imports of chicken broiler products from the United States. On September 26, 2010 and August 30, 2010, China imposed antidumping and countervailing duties, respectively. In the antidumping investigation, China imposed dumping duties ranging from 50.3 percent to 53.4 percent for the participating U.S. producers and exporters, and set an "all others" rate of 105.4 percent. In the countervailing duty investigation, China imposed countervailing duties between 4.0 percent and 12.5 percent for the participating U.S. producers and exporters and an "all others" rate of 30.3 percent.

In levying the antidumping and countervailing duties, China appears to have acted inconsistently with numerous WTO obligations. In particular, the United States is concerned that Chinese authorities failed to abide by applicable procedures and legal standards, including by finding injury to China's domestic industry without objectively examining the evidence, by improperly calculating dumping margins and subsidization rates, and by failing to adhere to various transparency and due process requirements.

The United States and China held consultations on October 28, 2011, but were unable to resolve the dispute. On December 8, 2011, the United States requested the establishment of a panel.

The United States and China filed their first written submissions on June 27, 2012 and August 7, 2012 respectively. The first meeting of the panel took place on September 27-28, 2012. The parties filed their second submissions on November 2, 2012. The second meeting of the panel took place on December 4-5, 2012.

b. Disputes Brought Against the United States

Section 124 of the URAA requires, *inter alia*, that the Annual Report on the WTO describe, for the preceding fiscal year of the WTO: each proceeding before a panel or the Appellate Body that was initiated during that fiscal year regarding Federal or State law, the status of the proceeding, and the matter at issue; and each report issued by a panel or the Appellate Body in a dispute settlement proceeding regarding Federal or State law. This section includes summaries of dispute settlement activity in 2011 in which the United States was a responding party.

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

As amended in 1998 by the Fairness in Music Licensing Act, section 110(5) of the U.S. Copyright Act exempts certain retail and restaurant establishments that play radio or television music from paying royalties to songwriters and music publishers. The European Union claimed that, as a result of this exception, the United States was in violation of its TRIPS obligations. Consultations with the EU took place on March 2, 1999. A panel on this matter was established on May 26, 1999. On August 6, 1999, the Director General composed the panel as follows: Ms. Carmen Luz Guarda, Chair; and Mr. Arumugamangalam V. Ganesan and Mr. Ian F. Sheppard, Members. The panel issued its final report on June 15, 2000 and found that one of the two exemptions provided by section 110(5) is inconsistent with the U.S. WTO obligations. The panel report was adopted by the DSB on July 27, 2000, and the United States has informed the DSB of its intention to respect its WTO obligations. On October 23, 2000, the European Union requested arbitration to determine the period of time to be given the United States to implement the panel's recommendation. By mutual agreement of the parties, Mr. J. Lacarte-Muró was appointed to serve as arbitrator. He determined that the deadline for implementation should be July 27, 2001. On July 24, 2001, the DSB approved a U.S. proposal to extend the deadline until the earlier of the end of the then current session of the U.S. Congress or December 31, 2001.

On July 23, 2001, the United States and the European Union requested arbitration to determine the level of nullification or impairment of benefits to the EU as a result of section 110(5)(B). In a decision circulated to WTO Members on November 9, 2001, the arbitrators determined that the value of the benefits lost to the EU in this case was $1.1 million per year. On January 7, 2002, the European Union sought authorization from the DSB to suspend its obligations vis-à-vis the United States. The United States objected to the details of the European Union request, thereby causing the matter to be referred to arbitration.

However, because the United States and the European Union had been engaged in discussions to find a mutually acceptable resolution of the dispute, the arbitrators suspended the proceeding pursuant to a joint request by the parties filed on February 26, 2002.

On June 23, 2003, the United States and the European Union notified the WTO of a mutually satisfactory temporary arrangement regarding the dispute. Pursuant to this arrangement, the United States made a lump sum payment of $3.3 million to the European Union, to a fund established to finance activities of general interest to music copyright holders, in particular awareness raising campaigns at the national and

international level and activities to combat piracy in the digital network. The arrangement covered a three year period, which ended on December 21, 2004.

United States – Section 211 Omnibus Appropriations Act (DS176):

Section 211 addresses the ability to register or enforce, without the consent of previous owners, trademarks or trade names associated with businesses confiscated without compensation by the Cuban government. The EU questioned the consistency of Section 211 with the TRIPS Agreement and requested consultations on July 7, 1999. Consultations were held September 13 and December 13, 1999. On June 30, 2000, the EU requested a panel. A panel was established on September 26, 2000, and at the request of the EU, the WTO Director General composed the panel on October 26, 2000. The Director General composed the panel as follows: Mr. Wade Armstrong, Chair; and Mr. François Dessemontet and Mr. Armand de Mestral, Members. The panel report was circulated on August 6, 2001, rejecting 13 of the EU's 14 claims and finding that, in most respects, section 211 is not inconsistent with the obligations of the United States under the TRIPS Agreement. The EU appealed the decision on October 4, 2001. The Appellate Body issued its report on January 2, 2002.

The Appellate Body reversed the panel's one finding against the United States and upheld the panel's favorable findings that WTO Members are entitled to determine trademark and trade name ownership criteria. The Appellate Body found certain instances, however, in which section 211 might breach the national treatment and most favored nation obligations of the TRIPS Agreement. The panel and Appellate Body reports were adopted on February 1, 2002, and the United States informed the DSB of its intention to implement the recommendations and rulings. The reasonable period of time for implementation ended on June 30, 2005. On June 30, 2005, the United States and the European Union agreed that the European Union would not request authorization to suspend concessions at that time and that the United States would not object to a future request on grounds of lack of timeliness.

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

Japan alleged that the preliminary and final determinations of the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (USITC) in their antidumping investigations of certain hot rolled steel products from Japan, issued on November 25 and 30, 1998, February 12, 1999, April 28, 1999, and June 23, 1999, were erroneous and based on deficient procedures under the U.S. Tariff Act of 1930 and related regulations. Japan claimed that these procedures and regulations violate the GATT 1994, as well as the Antidumping Agreement and the Agreement Establishing the WTO. Consultations were held on January 13, 2000, and a panel was established on March 20, 2000. In May 2000, the Director General composed the panel as follows: Mr. Harsha V. Singh, Chair; and Mr. Yanyong Phuangrach and Ms. Lidia di Vico, Members. On February 28, 2001, the panel circulated its report, in which it rejected most of Japan's claims, but found that, *inter alia*, particular aspects of the antidumping duty calculation, as well as one aspect of the U.S. antidumping duty law, were inconsistent with the WTO Antidumping Agreement. On April 25, 2001, the United States filed a notice of appeal on certain issues in the panel report.

The Appellate Body report was issued on July 24, 2001, reversing in part and affirming in part. The reports were adopted on August 23, 2001. Pursuant to a February 19, 2002 arbitral award, the United States was given 15 months, or until November 23, 2002, to implement the DSB's recommendations and rulings. On November 22, 2002, the U.S. Department of Commerce issued a new final determination in the hot rolled steel antidumping duty investigation, which implemented the recommendations and rulings of the DSB with respect to the calculation of antidumping margins in that investigation. The reasonable period of time ended on July 31, 2005. With respect to the outstanding implementation issue, on July 7, 2005, the United States and Japan agreed that Japan would not request authorization to suspend

concessions at that time and that the United States would not object to a future request on grounds of lack of timeliness.

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

On December 21, 2000, Australia, Brazil, Chile, the EU, India, Indonesia, Japan, South Korea, and Thailand requested consultations with the United States regarding the Continued Dumping and Subsidy Offset Act of 2000 (19 U.S.C. § 754), which amended Title VII of the Tariff Act of 1930 to transfer import duties collected under U.S. antidumping and countervailing duty orders from the U.S. Treasury to the companies that filed the antidumping and countervailing duty petitions. Consultations were held on February 6, 2001. On May 21, 2001, Canada and Mexico also requested consultations on the same matter, which were held on June 29, 2001. On July 12, 2001, the original nine complaining parties requested the establishment of a panel, which was established on August 23, 2001. On September 10, 2001, a panel was established at the request of Canada and Mexico, and all complaints were consolidated into one panel. The panel was composed of: Mr. Luzius Wasescha, Chair; and Mr. Maamoun Abdel-Fattah and Mr. William Falconer, Members.

The panel issued its report on September 2, 2002, finding against the United States on three of the five principal claims brought by the complaining parties. Specifically, the panel found that the CDSOA constitutes a specific action against dumping and subsidies and, therefore, is inconsistent with the WTO Antidumping and SCM Agreements as well as Article VI of the GATT 1994. The panel also found that the CDSOA distorts the standing determination conducted by Commerce and, therefore, is inconsistent with the standing provisions in the Antidumping and SCM Agreements. The United States prevailed against the complainants' claims under the Antidumping and SCM Agreements that the CDSOA distorts Commerce's consideration of price undertakings (agreements to settle antidumping and countervailing duty investigations). The panel also rejected Mexico's actionable subsidy claim brought under the SCM Agreement. Finally, the panel rejected the complainants' claims under Article X:3 of the GATT, Article 15 of the Antidumping Agreement, and Articles 4.10 and 7.9 of the SCM Agreement. The United States appealed the panel's adverse findings on October 1, 2002.

The Appellate Body issued its report on January 16, 2003, upholding the panel's finding that the CDSOA is an impermissible action against dumping and subsidies, but reversing the panel's finding on standing. The DSB adopted the panel and Appellate Body reports on January 27, 2003. At the meeting, the United States stated its intention to implement the DSB recommendations and rulings. On March 14, 2003, the complaining parties requested arbitration to determine a reasonable period of time for U.S. implementation. On June 13, 2003, the arbitrator determined that this period would end on December 27, 2003. On June 19, 2003, legislation to bring the Continued Dumping and Subsidy Offset Act into conformity with U.S. obligations under the Antidumping Agreement, the SCM Agreement, and the GATT of 1994 was introduced in the U.S. Senate (S. 1299).

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

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

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

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

Since 2007, only the EU and Japan have maintained retaliatory measures against the United States in connection with this dispute. On April 17, 2007, the EU announced that it would renew its retaliatory measure as of May 1, 2007, adding 32 more products to the 2006 list. The EU renewed its retaliatory measure again on April 3, 2008, removing 30 products from the 2007 list. On May 1, 2009, the EU renewed its 15 percent retaliatory measure, but removed 14 tariff headings from its retaliation list. On April 22, 2010, the EU announced that it would add 19 tariff items to the list of products subject to its 15 percent retaliatory measure. On April 8, 2011, the EU notified the WTO that it would remove 30 products from its retaliation list and apply a 15 percent retaliatory duty to a total value of trade that does not exceed $9.96 million. On April 11, 2012, the EU announced it would renew its retaliatory measure, maintaining unchanged the list of products subject to retaliation, but at a reduced rate of 6 percent covering, over one year, a total value of trade not exceeding $3.24 million.

On September 1, 2007, Japan once again renewed its retaliatory duties. On August 22, 2008, Japan announced that it would renew its retaliatory duties, but those duties would cover only ball bearings and tapered roller bearings, in contrast to the list of 15 products covered in the previous year. Effective September 1, 2009, Japan maintained its retaliatory duties on the same 2 products from the United States, but at a reduced rate of 9.6 percent. On August 25, 2010, Japan notified the WTO that it would maintain its retaliatory duties on the same two products but at a reduced rate of 4.1 percent. On August 26, 2011, Japan notified the WTO that it would maintain its retaliatory duties on the same two products, but at a reduced rate of 1.7 percent covering, over one year, a total value of trade that does not exceed $3.62 million. On August 23, 2012, Japan announced it would renew its retaliatory duties on tapered roller bearings at a rate of 4.0 percent covering, over one year, a total value of trade not exceeding $1.4 million.

United States – Subsidies on upland cotton (DS267):

On September 27, 2002, Brazil requested WTO consultations pursuant to Articles 4.1, 7.1, and 30 of the SCM Agreement, Article 19 of the Antidumping Agreement, and Article 4 of the DSU. The Brazilian

consultation request on U.S. support measures that benefit upland cotton claimed that these alleged subsidies and measures are inconsistent with U.S. commitments and obligations under the SCM Agreement, the Agreement on Agriculture, and the GATT 1994. Consultations were held on December 3, 4, and 19, 2002, and January 17, 2003.

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

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

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

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

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

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

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

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

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

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

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

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

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

The United States appealed the compliance panel's adverse findings on February 12, 2008. Brazil filed its notice of other appeal on February 25, 2008.

The Appellate Body issued its report on June 2, 2008, in which it:

- upheld the compliance panel's finding that U.S. marketing loan and countercyclical payments cause significant price suppression in the market for upland cotton, thereby constituting present serious prejudice to Brazil;

- while agreeing with the United States that the compliance panel erred in dismissing U.S. Government budgetary data showing that U.S. export credit guarantee programs operate at a profit, nonetheless upheld the compliance panel's ultimate finding that GSM 102 export credit

guarantees with respect to unscheduled products and certain scheduled products (rice, pig meat, and poultry meat) were prohibited export subsidies; and

- upheld the compliance panel's finding that Brazil's claims as to marketing loan and countercyclical payments made after September 21, 2005, and Brazil's claims as to GSM 102 guarantees for exports of pig meat and poultry meat, were within the scope of the compliance proceeding.

The DSB adopted the Appellate Body report, and the panel report, as modified by the Appellate Body report, on June 20, 2008.

Brazil requested resumption of the arbitration process on August 25, 2008. On October 1, 2008, the United States and Brazil agreed that the arbitration would be carried out by the following individuals: Mr. Eduardo Pérez-Motta, Chair; and Mr. Alan Matthews and Mr. Daniel Moulis, Members. The meetings with the Arbitrators were held March 2-4, 2009.

The Arbitrators issued their awards on August 31, 2009. They issued one award concerning U.S. subsidies found to cause serious prejudice to Brazil's interests (marketing loan and countercyclical payments for cotton) and another award concerning U.S. subsidies found to be prohibited export subsidies (export credit guarantees under the GSM 102 program for a range of agricultural products, plus the repealed "Step 2" program for cotton).

The Arbitrators found that Brazil may impose countermeasures against U.S. trade:

1) for marketing loan and countercyclical payments for cotton, in an annual fixed amount of $147.3 million; and

2) for export credit guarantees under the GSM 102 program, in an annual amount that may change each year based on a formula.

The Arbitrators rejected Brazil's request for countermeasures for the Step 2 program.

The Arbitrators also found that, in the event that the total level of countermeasures that Brazil would be entitled to in a given year should increase to a level that would exceed a threshold based on a subset of Brazil's consumer goods imports from the United States, then Brazil would also be entitled to suspend certain obligations under the TRIPS Agreement and/or the GATS with respect to any amount of permissible countermeasures applied in excess of that figure.

On November 19, 2009, the WTO DSB granted Brazil authorization to suspend the application to the United States of concessions or other obligations consistent with the Arbitrators' awards.

On April 6, 2010, the United States and Brazil reached agreement on certain steps to help make progress in the dispute. Pursuant to this agreement, on April 20, 2010, the United States and Brazil signed a Memorandum of Understanding (MOU) establishing a fund of approximately $147.3 million per year on a *pro rata* basis to provide technical assistance and capacity building. The fund is scheduled to continue until the next Farm Bill or a mutually agreed solution to the Cotton dispute is reached. The MOU also provides that the United States may end the fund if Brazil imposes countermeasures.

With the conclusion of the MOU, Brazil announced that countermeasures would not be imposed for at least 60 days from signature of the MOU. During this period, the United States and Brazil negotiated a framework regarding the Cotton dispute. On June 17, 2010, Brazil approved the framework that the

governments had negotiated, and on June 21, it announced that it would not impose countermeasures as long as the framework remained in effect. The framework includes elements on cotton support, the GSM-102 program, and further discussion between the United States and Brazil.

Brazil and the United States met for the first discussions under the framework on October 20, 2010. They held discussions under the framework four times in both 2011 and 2012. During the meetings, the United States and Brazil discussed issues identified in the June 2010 Framework as part of the ongoing bilateral work program, including the GSM-102 export credit guarantee program and domestic support programs for upland cotton. They also discussed the technical assistance and capacity building fund the parties established in the Memorandum of Understanding in April 2010.

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

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

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

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

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

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

On May 4, 2007, the United States initiated the procedure provided for under Article XXI of the GATS to modify the schedule of U.S. commitments so as to reflect the original U.S. intent of excluding gambling and betting services.

The DSB adopted the report of the Article 21.5 panel on May 22, 2007. On June 21, 2007, Antigua submitted a request, pursuant to Article 22.2 of the DSU, for authorization from the DSB to suspend the application to the United States of concessions and related obligations of Antigua under the GATS and the TRIPS. On July 23, 2007, the United States referred this matter to arbitration under Article 22.6 of the DSU. The arbitration was carried out by the three panelists who served on the Article 21.5 panel.

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

During 2007 and early 2008, the United States reached agreement with every WTO Member, aside from Antigua, that had pursued a claim of interest in the GATS Article XXI process of modifying the U.S. schedule of GATS commitments so as to exclude gambling and betting services. Antigua and the United States have continued in their efforts to achieve a mutually agreeable resolution to this matter.

United States – Laws, regulations and methodology for calculating dumping margins ("zeroing") (DS294):

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

On July 9, 2007, the EU requested consultations with the United States concerning its compliance with the recommendations and rulings of the DSB. The EU and the United States held consultations on July 30, 2007. On September 13, 2007, the EU requested the establishment of a compliance panel, and on September 25, 2007, the panel was established. The following individuals were named by the Director General to serve as the panelists: Mr. Felipe Jaramillo, Chair; and Ms. Usha Dwarka-Canabady and Mr. Scott Gallacher, Members. Pursuant to a request by the parties, the panel agreed to open its meeting with the parties to public observation.

The panel circulated its report on December 17, 2008. The panel found that the use of zeroing in two administrative reviews involving the orders related to measures in the original dispute amounted to a failure to comply with the DSB rulings and recommendations if the reviews were concluded after the end of the reasonable period of time, even if the reviews involved entries that occurred before the end of the

reasonable period of time. The panel also found that the Section 129 determinations related to four original investigations in the original dispute violated Article 3 of the Antidumping Agreement because the U.S. International Trade Commission did not revisit its original injury determinations to account for the reduced volumes of dumped imports resulting from the exclusion of certain exporters from the orders as a result of the Section 129 determinations. Finally, the panel found that the continued application of the cash deposit rate from one of the administrative reviews in the original dispute to one company that had not requested a new administrative review amounted to a failure to comply with the DSB rulings and recommendations. However, the panel rejected the EU claims that the liquidation of entries at rates determined using zeroing before the end of the reasonable period of time amounts to a failure to comply, even if such liquidation occurs after the end of the reasonable period of time. With respect to an alleged clerical error, the panel also found that the EU was prevented from raising a claim in a compliance proceeding because it could have done so in the original dispute and did not. The panel rejected or declined to make findings with respect to the EU's other claims.

On February 13, 2009, the EU filed a notice of appeal. The United States filed a notice of other appeal on February 25, 2009. The Appellate Body granted a request by the parties to open its hearing to the public, and the public was able to observe the hearing, which was held on March 23-24, 2009, via a simultaneous closed circuit television broadcast.

The Appellate Body issued its report on May 14, 2009. The Appellate Body affirmed the panel's findings with respect to three administrative reviews and found two additional administrative reviews, as well as several sunset reviews that relied on margins calculated in proceedings found WTO inconsistent in the original dispute, to constitute failures to comply. The Appellate Body also indicated that, as a general matter, any use of zeroing in any proceeding completed after the end of the reasonable period of time, or in calculating any cash deposit applied after the end of the reasonable period of time, with respect to any of the antidumping orders for which an "as applied" finding was made in the original dispute, would constitute a failure to comply with the DSB recommendations and rulings. With respect to the alleged clerical error, the Appellate Body reversed, concluding that the relevance of the alleged clerical error to the Section 129 determination was factual rather than jurisdictional, but it did not complete the analysis. The Appellate Body also rejected a number of the EU's claims on appeal.

The DSB adopted the Appellate Body report, and the panel report, as modified by the Appellate Body report, on June 11, 2009.

In addition to the three orders covered by the original panel and Appellate Body findings that had been revoked by 2007, four additional orders were revoked due to sunset reviews, effective prior to the end of the reasonable period of time.

On January 29, 2010, the EU filed its request for authorization from the DSB to suspend the application of concessions or other obligations under the covered agreements pursuant to Article 22.2 of the DSU. On February 12, 2010, the United States filed its objection to the level of suspension of concessions or other obligations proposed by the European Union. The U.S. objection also claimed that the EU's proposal does not follow the principles and procedures set forth in the DSU. The U.S. objection automatically resulted in the matter being referred to this arbitration. The Arbitrator met with the Parties on May 20-21, 2010. This meeting was open to observation by all Members and the public. The Parties filed their last submission on July 20, 2010.

On September 7, 2010, the United States and European Union jointly requested the suspension of the arbitration. On September 8, 2010, the Arbitrator granted the joint request to suspend its work for a period limited to "12 months less 1 day." Prior to the resumption of the Arbitrator's work, the parties jointly requested on three occasions – September 7, 2011, January 13, 2012, and February 6, 2012 – that

the Arbitrator continue to suspend its work. On the basis of these requests, the Arbitrator decided to continue the suspension of its work until June 28, 2012

Commerce proposed a revision to its methodology for the calculation of weighted-average dumping margins and antidumping duty assessment rates in certain proceedings was published in the *Federal Register* on December 28, 2010. The proposal was made pursuant to Section 123 of the Uruguay Round Agreement Act (URAA), which requires that USTR and Commerce request and receive comments from interested parties and the U.S. Congress before any final action is implemented. In September 2011, USTR submitted a report to the House Ways and Means and Senate Finance Committees describing the proposed modification, the reasons for the modification, and a summary of the advice USTR had sought and obtained from relevant private sector advisory committees.

On February 6, 2012, the European Union and the United States informed the DSB of a Memorandum reached between them addressing the dispute. As a part of that resolution, the U.S. Department of Commerce published in the Federal Register its final modification to its methodology on February 14, 2012. On June 22, 2012, the United States and European Union jointly informed the Arbitrator that the EU had withdrawn its request for DSB authorization to suspend concessions under the covered agreements, and that the United States had withdrawn its objections to that request. On June 28, 2012, the Arbitrator concluded its work without issuing a report.

United States – Subsidies on large civil aircraft (DS317):

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

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

The EU requested establishment of a panel with regard to its second panel request on January 20, 2006. That panel was established on February 17, 2006. On December 8, 2006, the WTO issued notices changing the designation of this panel to DS353. The summary below of *United States – Subsidies on large civil aircraft (Second Complaint) (DS353)* discusses developments with regard to this panel.

United States – Measures relating to zeroing and sunset reviews (DS322):

On November 24, 2004, Japan requested consultations with respect to: (1) Commerce's alleged practice of "zeroing" in antidumping investigations, administrative reviews, sunset reviews, and in assessing the final antidumping duty liability on entries upon liquidation; (2) in sunset reviews of antidumping duty orders, Commerce's alleged irrefutable presumption of the likelihood of continuation or recurrence of dumping in certain factual situations; and (3) in sunset reviews, the waiver provisions of U.S. law. Japan claims that these alleged measures breach various provisions of the Antidumping Agreement and Article

VI of the GATT 1994. Consultations were held on December 20, 2004. Japan requested the establishment of a panel on February 4, 2005, and a panel was established on February 28, 2005. On April 15, 2005, the Director General composed the panel as follows: Mr. David Unterhalter, Chair; and Mr. Simon Farbenbloom and Mr. Jose Antonio Buencamino, Members.

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

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

On January 10, 2008, Japan requested DSB authorization to suspend concessions on the grounds that the United States had failed to implement the DSB's recommendations and rulings, and on January 18, 2008, the United States objected to the level of suspension and accordingly requested that the matter be referred to arbitration. On March 10, 2008, the United States and Japan informed the DSB that they had reached a sequencing agreement to suspend arbitration pending the completion of compliance proceedings. Pursuant to a joint request from the United States and Japan, the arbitration under Article 22.6 of the DSU was suspended on June 9, 2008.

On April 7, 2008, Japan requested the establishment of an Article 21.5 panel, which the DSB established at its meeting on April 18, 2008. On May 23, 2008, the parties agreed to the constitution of the compliance panel as follows: Mr. José Antonio Buencamino, Chair; and Mr. Simon Farbenbloom and Mr. Raúl León-Thorne, Members. The compliance panel agreed to open its meeting with the parties, as well as a portion of the meeting with the third parties, to observation by the public via closed circuit television broadcast, and the open meeting was held on November 4-5, 2008.

On April 24, 2009, the panel circulated its final report. The panel found that the United States failed to comply with the WTO's rulings because it liquidated, or would liquidate, after the deadline for compliance, antidumping duties with respect to five specific administrative reviews that used zeroing. The panel also found that the United States acted inconsistently with the Antidumping Agreement and the GATT 1994 by maintaining antidumping duties after the deadline with respect to four additional administrative reviews that were not part of the original WTO proceeding, and that the United States acted in violation of GATT Article II with respect to the collection of duties in excess of bound rates that occurred after the expiration of the reasonable period of time. The panel also found that the United States had failed to comply with the DSB's recommendations and rulings with respect to the use of "zeroing procedures" and the application of zeroing in one sunset review. Lastly, the panel found that Japan was

permitted to challenge the final results of an administrative review which were not in existence at the time of Japan's panel request.

On May 20, 2009, the United States filed a notice of appeal. The Appellate Body granted a request by the parties to open its hearing to the public, and the public was able to observe the hearing, which was held on June 29-30, 2009, via a simultaneous closed circuit television broadcast.

On August 18, 2009, the Appellate Body issued its report. The Appellate Body upheld the compliance panel on all issues that were appealed. Specifically, the Appellate Body affirmed the panel's findings that the United States failed to comply with respect to five administrative reviews. The Appellate Body also upheld the panel's finding of inconsistency with respect to four additional reviews that were not part of the original proceeding. Lastly, the Appellate Body affirmed the panel's finding that Japan could challenge the final results of an administrative review which were not in existence at the time of Japan's panel request, as well as the panel's finding that the United States had acted inconsistently with GATT Article II.

The DSB adopted the Appellate Body report, and the panel report, as modified by the Appellate Body report, on August 31, 2009.

On April 23, 2010, Japan filed its request to resume the arbitration under Article 22.6 of the DSU. In response to a joint request of the United States and Japan, on December 13, 2010, the Arbitrator issued a communication stating that it had decided to suspend its work. Since then, the parties have jointly requested four further extensions of the suspension of the Arbitrator's work. Pursuant to these requests by the parties, the Arbitrator agreed to continue the suspension of its work until August 21, 2012.

Commerce proposed a revision to its methodology for the calculation of weighted-average dumping margins and antidumping duty assessment rates in certain proceedings was published in the *Federal Register* on December 28, 2010. The proposal was made pursuant to Section 123 of the Uruguay Round Agreement Act (URAA), which requires that USTR and Commerce request and receive comments from interested parties and the U.S. Congress before any final action is implemented. In September 2011, USTR submitted a report to the House Ways and Means and Senate Finance Committees describing the proposed modification, the reasons for the modification, and a summary of the advice USTR had sought and obtained from relevant private sector advisory committees.

On February 6, 2012, the United States and Japan informed the DSB of a Memorandum reached between them addressing the dispute. As a part of that resolution, the U.S. Department of Commerce published in the Federal Register its final modification to its methodology on February 14, 2012. On August 3, 2012, the United States and Japan jointly informed the Arbitrator that Japan had withdrawn its request for DSB authorization to suspend concessions under the covered agreements, and that the United States had withdrawn its objections to that request. On August 14, 2012, the Arbitrator concluded its work without issuing a report.

United States – Final Antidumping Measures on Stainless Steel from Mexico (DS344):

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

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

On January 31, 2008 Mexico appealed the panel report with respect to the "as such" and "as applied" claims related to zeroing in administrative review. The Appellate Body issued its report on April 30, 2008. The Appellate Body reversed the panel's findings with respect to administrative reviews, finding that zeroing in administrative reviews is "as such" and "as applied" to the subject administrative reviews, inconsistent with Article VI:2 of the GATT 1994 and Article 9.3 of the Antidumping Agreement.

The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, on May 20, 2008. At the DSB meeting held on June 2, 2008, the United States notified its intention to comply with its WTO obligations and indicated it would need a reasonable period of time to do so.

On August 11, 2008, Mexico requested that the reasonable period of time be determined through arbitration pursuant to Article 21.3(c) of the DSU. On August 29, 2008, the Director General appointed Mr. Florentino P. Feliciano as the arbitrator. On October 31, 2008, the arbitrator issued his award, in which he decided that the reasonable period of time would be 11 months and 10 days, ending on April 30, 2009.

On May 18, 2009, the United States and Mexico entered into a sequencing agreement regarding any further proceedings in this dispute. On September 2, 2009, the United States held consultations with Mexico with respect to U.S. compliance with the recommendations and rulings of the DSB in this dispute. On September 7, 2010, Mexico requested the establishment of a compliance panel, and a panel was established on September 21, 2010. On May 13, 2011, the panel was composed by agreement of the parties as follows: Mr. Alberto Juan Dumont, Chair; and Mr. Greg Weppner and Ms. Leora Blumberg, Members.

Mexico submitted its first and second written submissions on July 1, 2011 and August 12, 2011, respectively, and the United States submitted its first and second written submission on July 22, 2011 and September 2, 2011, respectively. The Panel met with the Parties on October 4-5, 2011, and with the third parties on October 4, 2011. The proceeding is currently suspended based on a request from Mexico (and supported by the United States).

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

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

The panel met with the parties on January 29-30, 2008 and on April 22, 2008, and met with the parties and third parties on 30 January 2008. Pursuant to the parties' request, the meetings with the parties, as well as a portion of the third party session, were open for public observation.

The panel circulated its final report on October 1, 2008. The panel agreed with the United States that the European Union had improperly tried to challenge the continued application, or application, of antidumping duties in 18 cases; in addition, the panel agreed that the European Union had improperly tried to challenge four measures that were not final at the time of panel establishment. The panel, however, disagreed with the United States that 14 measures included in the EU's panel request, but not its consultations request, were outside the panel's terms of reference. The panel also found that the EU had not proved the use of zeroing in seven of 37 administrative reviews, and excluded those reviews from its findings. In addition, although the panel said it tended to agree with the United States and prior panel reports finding zeroing permissible in administrative reviews and that it found that the U.S. interpretation was "permissible," the panel nevertheless concluded that the United States acted inconsistently with the Antidumping Agreement and the GATT 1994 by using zeroing in 29 administrative reviews, eight sunset reviews, and 4 original investigations. In doing so, the panel said it felt constrained to follow prior Appellate Body reasoning, even though it expressed doubts about that reasoning.

On November 6, 2008, the EU filed a notice of appeal. The United States filed a notice of other appeal on November 18, 2008. The Appellate Body granted a request by the parties to open its hearing to the public, and the public was able to observe the hearing, which was held on December 11-12, 2008, via a simultaneous closed circuit television broadcast.

The Appellate Body issued its report on February 4, 2009. The Appellate Body affirmed the panel's finding that the use of zeroing in 29 administrative reviews was inconsistent with the Antidumping Agreement and the GATT 1994. The Appellate Body disagreed with the panel that the interpretation of the Antidumping Agreement advanced by the United States was a permissible one. Moreover, the Appellate Body affirmed the panel's finding that the 8 sunset reviews at issue were WTO inconsistent and also upheld the panel's ruling that 14 measures included in the EU's panel request, but not its consultations request, were properly within the panel's terms of reference. The Appellate Body reversed the panel's finding that the EU improperly challenged the application or continued application of antidumping duties in 18 broadly defined cases. However, the Appellate Body was only able to complete the analysis as to the continued application of duties in 4 of the 18 cases. The Appellate Body reversed the panel's finding that the EU had improperly challenged four preliminary determinations which were not final at the time of panel establishment. Nevertheless, the Appellate Body declined the EU's request to complete the analysis on these determinations and made no findings of inconsistency concerning them. Finally, the Appellate Body reversed the panel's finding that the EU had not proved the use of zeroing in seven of 37 administrative reviews. However, the Appellate Body declined to complete the analysis as to two of those seven reviews, and there are no findings concerning them. For five of the reviews, the Appellate Body found that the United States had acted inconsistently with the Antidumping Agreement and GATT 1994.

On February 19, 2009, the DSB adopted the recommendations and rulings in this dispute. At the following DSB meeting, on March 20, 2009, the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in connection with this matter. The United States and the EU agreed that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would end on December 19, 2009.

Commerce proposed a revision to its methodology for the calculation of weighted-average dumping margins and antidumping duty assessment rates in certain proceedings was published in the *Federal Register* on December 28, 2010. The proposal was made pursuant to Section 123 of the Uruguay Round

Agreement Act (URAA), which requires that USTR and Commerce request and receive comments from interested parties and the U.S. Congress before any final action is implemented. In September 2011, USTR submitted a report to the House Ways and Means and Senate Finance Committees describing the proposed modification, the reasons for the modification, and a summary of the advice USTR had sought and obtained from relevant private sector advisory committees.

On February 6, 2012, the European Union and the United States informed the DSB of a Memorandum reached between them addressing the dispute. As a part of that resolution, the U.S. Department of Commerce published in the Federal Register its final modification to its methodology on February 14, 2012.

United States – Subsidies on large civil aircraft (Second Complaint) (DS353):

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

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

On March 31, 2011, the panel circulated its report with the following findings:

Findings against the EU

- Most of the NASA research spending challenged by the EU did not go to Boeing.
- Most of the U.S. Department of Defense research payments to Boeing were not subsidies or did not cause adverse effects to Airbus.
- Treatment of patent rights under U.S. Government contracts is not a subsidy specific to the aircraft industry.
- Treatment of certain overhead expenses in U.S. Government contracts is not a subsidy.
- Washington State infrastructure and plant location incentives were not a subsidy or did not cause adverse effects.
- U.S. Department of Commerce research programs were not a subsidy specific to the aircraft industry.
- The U.S. Department of Labor payments to Edmonds Community College in Snohomish County, Washington, were not specific subsidies.
- Kansas and Illinois tax programs were not subsidies or did not cause adverse effects.
- The Foreign Sales Corporation/Extraterritorial Income tax measures were a WTO inconsistent subsidy, but as the United States removed the subsidy in 2006, there was no need for any further recommendation.

Findings against the United States

- NASA research programs conferred a subsidy to Boeing of $2.6 billion that caused adverse effects to Airbus.

- Tax programs and other incentives offered by the State of Washington and some of its municipalities conferred a subsidy of $16 million that caused adverse effects to Airbus.
- Certain types of research projects funded under the U.S. Department of Defense's Manufacturing Technology and Dual Use Science and Technology programs were a subsidy to Boeing of approximately $112 million that caused adverse effects to Airbus.

On April 1, 2011, the EU filed a notice of appeal on certain findings, and on April 28, 2011, the United States filed a notice of other appeal. The Appellate Body held hearings on August 16-19, 2011, and October 11-14, 2011. On March 12, 2012, the Appellate Body circulated its report with the following findings:

- The panel erred in its analysis of whether NASA and DoD research funding was a subsidy. However, the Appellate Body affirmed the panel's subsidy finding with regard to NASA research funding and DoD research funding through assistance instruments on other grounds. The Appellate Body declared the panel's findings with regard to DoD procurement contracts moot, but made no further findings.
- The panel correctly found that NASA and DoD rules regarding the allocation of patent rights were not, on their face, specific subsidies. The Appellate Body found that panel should have addressed the EU allegations of de facto specificity, but was unable to complete the panel's analysis of this issue.
- The panel correctly found that Washington state tax measures and industrial revenue bonds issued by the city of Wichita were subsidies.
- The panel erred in concluding that the WTO Dispute Settlement Body was not obligated to initiate information-gathering procedures requested by the EU, but this error did not require any modification in the panel's ultimate findings.
- The panel correctly concluded that NASA research funding and DoD funding of research through assistance instruments caused adverse effects to Airbus.
- The panel erred in analyzing the effects of the Wichita industrial revenue bonds separately from other tax measures. The Appellate Body grouped the Wichita measure with the other tax benefits.
- The panel erred in concluding that Washington state tax benefits, in tandem with FSC/ETI tax benefits, caused lost sales, lost market share, and price depression of the Airbus A320 and A340 product lines. The Appellate Body found that the evidence before it justified a finding of lost sales only in two instances, involving 50 A320 airplanes.

On March 23, 2012, the DSB adopted its recommendations and rulings in this dispute. At the following DSB meeting, on April 13, 2012, the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in connection with this matter. On September 23, 2012, the United States notified the DSB that it has brought the challenged measures into compliance with the recommendations and rulings of the DSB.

On September 25, 2012, the EU requested consultations regarding the U.S. notification. The United States and the EU held consultations on October 10, 2012. On October 11, 2012, the EU requested that the DSB refer the matter to the original panel pursuant to Article 21.5 of the DSU. The DSB did so at a meeting held on October 23, 2012. On October 30, 2012, the compliance panel was composed with the members of the original panel: Mr. Crawford Falconer, Chair; and Mr. Francisco Orrego Vicuña and Mr. Virachai Plasai, Members.

On September 27, 2012, the EU requested authorization from the DSB to impose countermeasures. On October 22, 2012, the United States objected to the level of suspension of concessions requested by the

EU, and the matter was referred to arbitration pursuant to Article 22.6 of the DSU. On November 27, 2012, the United States and the EU each requested that the arbitration be suspended pending the conclusion of the compliance proceeding.

United States – Definitive Antidumping and Countervailing Duties on Certain Products from China (China) (WT/DS379):

On September 19, 2008, the United States received from China a request for consultations pertaining to definitive antidumping and countervailing duties imposed by the United States pursuant to final antidumping and countervailing duty determinations and orders issued by the Commerce in investigations on circular welded carbon quality steel pipe, certain pneumatic off-the-road tires, light-walled rectangular pipe and tube, and laminated woven sacks. China claimed that these measures were inconsistent with U.S. commitments and obligations under the GATT 1994, the SCM Agreement, the Antidumping Agreement, and China's Protocol of Accession.

The United States and China held consultations on November 14, 2008. On December 9, 2008, China requested that the DSB establish a panel. The DSB did so at its meeting on January 20, 2009. On March 4, 2009, the Director General composed the panel as follows: Mr. David Walker, Chair; and Ms. Andrea Marie Brown and Mr. Thinus Jacobsz, Members. The panel held meetings with the parties on July 7-8 and November 11-12, 2009, and met with the parties and third parties on July 7, 2009.

The panel circulated its report on October 22, 2010. The panel found in favor of the United States in several respects, including that the concurrent application of antidumping duties calculated using a nonmarket economy (NME) methodology and countervailing duties to imports from China resulting from the investigations at issue was not inconsistent with the WTO obligations of the United States. The panel also made several other findings related to claims China advanced against countervailing duty determinations made by Commerce, including that Chinese state owned enterprises (SOEs) and state owned commercial banks (SOCBs) can be "public bodies" capable of providing financial contributions, that the United States did not act inconsistently with its WTO obligations by finding that the SOEs and SOCBs in question were "public bodies" in the investigations under review, and that Commerce correctly determined to use external benchmarks, rather than private prices in China, to measure the benefit of goods, loans, and land use rights provided by the government. On the other hand, it found that: Commerce's calculation of the benefit of government provided rubber and preferential lending was not consistent with U.S. WTO obligations, that, with respect to loans, Commerce's use of an annual average lending rate as a benchmark was impermissible, and on specificity, that the evidence on the record of the investigation did not support Commerce's determination that the government provision of land use rights was specific to companies within a particular industrial zone. Finally, the panel found that Commerce did not properly rely on facts available when making its subsidy determinations in two investigations. Consequently, the panel recommended that the United States bring the measures into conformity with the WTO agreements.

On December 1, 2010, China filed a notice of appeal of certain of the panel's findings. China contended that: (1) the panel erred in its interpretation and application of the term "public body" in Article 1 of the SCM Agreement; (2) the panel erred in its interpretation and application of Article 2 of the SCM Agreement regarding Commerce's specificity determinations; (3) the panel erred in its interpretation and application of Article 14(d) of the SCM Agreement and its finding that Commerce's determination to reject in country private prices as benchmarks for measuring the benefit of government provided hot rolled steel was not inconsistent with that provision was erroneous; (4) the panel erred in its interpretation and application of Article 14(b) of the SCM Agreement and its finding that the benchmark Commerce used to measure the benefit of government provided loans was not inconsistent with that provision was erroneous; and (5) the panel erred in concluding that the concurrent application to imports from China of

countervailing duties and antidumping duties calculated using an NME methodology was not inconsistent with the WTO obligations of the United States. The Appellate Body conducted an oral hearing on these issues on January 13-14, 2011.

The Appellate Body circulated its report on March 11, 2011. The Appellate Body reversed the panel's finding with respect to the concurrent application of antidumping duties calculated using a NME methodology and countervailing duties to imports from China, finding that the United States acted inconsistently with Article 19.3 of the SCM Agreement by failing to examine whether a "double remedy" arose from such concurrent application and by failing to avoid any such "double remedy." The Appellate Body also reversed the panel's finding with respect to the meaning of "public body" in Article 1.1(a)(1) of the SCM Agreement, finding that the term "public body" means an entity that possesses, exercises, or is vested with governmental authority. Using this definition, the Appellate Body completed the analysis and found that Commerce's public body determinations with respect to SOEs were inconsistent with Article 1.1(a)(1), while Commerce's public body determinations with respect to SOCBs were not inconsistent with Article 1.1(a)(1). The Appellate Body also upheld the panel's findings with respect to Commerce's use of external benchmarks and Commerce's specificity determinations.

On March 25, 2011, the DSB adopted its recommendations and rulings in this dispute. At the following DSB meeting, on April 21, 2011, the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in connection with this matter. The United States and China agreed that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would end on February 25, 2012. On January 17, 2012, the United States and China notified the DSB of their agreement to extend the RPT by 60 days, to expire on April 25, 2012.

On July 31, 2012, Commerce issued to interested parties final determinations pursuant to section 129(b)(2) of the URAA with respect to issues in this dispute. On August 21, 2012, USTR directed Commerce to implement its final determinations. On August 30, 2012, a notice was published in the Federal Register announcing the implementation of Commerce's final determinations, effective August 21, 2012. That notice can be found at 77 FR 52683. On August 31, 2012, the United States reported to the DSB that it has brought the measures at issue in this dispute into full compliance with the DSB recommendations and rulings.

United States – Measures Concerning the Importation, Marketing, and Sale of Tuna and Tuna Products (WT/DS381):

On October 24, 2008, Mexico requested consultations regarding U.S. dolphin-safe labeling provisions for tuna and tuna products. These provisions prohibit labeling tuna and tuna products as dolphin-safe if the tuna was caught by using purse-seine nets intentionally set on dolphins, a technique Mexico uses to catch tuna in the Eastern Tropical Pacific Ocean. Mexico challenged three U.S. measures: (1) the Dolphin Protection Consumer Information Act (19 U.S.C. § 1385); (2) certain dolphin-safe labeling regulations (50 C.F.R. §§ 216.91-92); and (3) the Ninth Circuit decision in Earth Island v. Hogarth, 494 F.3d. 757 (9th Cir. 2007). On April 20, 2009, at Mexico's request, the DSB established a WTO panel to examine these measures. Mexico alleged that these measures accord imports of tuna and tuna products from Mexico less favorable treatment than like products of national origin and like products originating in other countries and fail to immediately and unconditionally accord imports of tuna and tuna products from Mexico any advantage, favor, privilege, or immunity granted to like products in other countries. Mexico further alleged that the U.S. measures create unnecessary obstacles to trade, and are not based on relevant international standards. Mexico alleges that the U.S. measures are inconsistent with Articles I and III of the *General Agreement on Tariffs and Trade 1994* and Article 2 of the *Agreement on Technical Barriers to Trade*.

On December 14, 2009, the Panel was composed by the Director-General. The Panel issued its interim report on May 5, 2011, and its final report to the parties on July 8, 2011. The final report was circulated to Members and the public on September 15, 2011.

The Panel found the U.S. dolphin safe provisions are technical regulations within the meaning of Annex 1.1 of the TBT Agreement; not inconsistent with Article 2.1 of the TBT Agreement because they do not afford less favorable treatment to Mexican tuna products; inconsistent with Article 2.2. of the TBT Agreement because they are more trade restrictive than necessary to achieve their objectives; and not inconsistent with Article 2.4 of the TBT Agreement because the alternative measure put forth by Mexico would not be an effective means of achieving the objective of the U.S. measures. The Panel exercised judicial economy with respect to the GATT 1994 claims in light of its findings under Article 2.1 of the TBT Agreement.

The United States appealed aspects of the report on January 20, 2012, and Mexico appealed aspects of the report on January 25, 2012. The Appellate Body circulated its report on May 16, 2012. In its key findings, the Appellate Body rejected the U.S. appeal and upheld the Panel's finding that the measure at issue is a technical regulation; agreed with Mexico's appeal and overturned the Panel's finding that the U.S. measure is consistent with the national treatment provisions of Article 2.1 of the TBT Agreement; agreed with the U.S. appeal and overturned the Panel's finding that the measure at issue is more trade restrictive than necessary under Article 2.2 of the TBT Agreement; and agreed with the U.S. appeal and overturned the Panel's finding that the AIDCP is a relevant international standard within the meaning of Article 2.4 of the TBT Agreement.

On June 13, 2012, the DSB adopted the Appellate Body report, and the Panel report as modified by the Appellate Body report. On September 17, 2012, the United States and Mexico notified the DSB that they agreed on a reasonable period of time for the United States to implement the recommendations and rulings of the DSB, ending on July 13, 2013.

United States – Antidumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil (WT/DS382):

On November 27, 2008, the United States received from Brazil a request for consultations pertaining to definitive antidumping duties imposed by the United States pursuant to the final results issued by Commerce in the administrative review of the antidumping duty order on imports of certain orange juice from Brazil. Brazil complained that Commerce used "zeroing" in the first administrative review of the antidumping duty order on imports of orange juice. On May 22, 2009, the United States received a request for consultations from Brazil pertaining to the antidumping duty investigation on certain orange juice from Brazil, the second antidumping duty administrative review on certain orange juice from Brazil, and the "continued use of the US zeroing procedures ('model' or 'simple' zeroing) in successive antidumping proceedings."

Brazil claimed that the alleged use of "zeroing" in the investigation and first and second administrative reviews and "continued use of the U.S. 'zeroing procedures' in successive antidumping proceedings, in relation to the anti-dumping duty order issued in respect of imports of certain orange juice from Brazil" are inconsistent with Articles II:1(a), II:1(b), VI:1, and VI:2 of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), Articles 2.1, 2.4, 2.4.2, and 9.3 of the *Agreement on Implementation of Article VI of the GATT 1994*, and Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization.

August 20, 2009, Brazil requested the establishment of a panel. The DSB established the panel on September 25, 2009. On May 10, 2010, the Deputy Director General composed the panel as follows: Mr.

Miguel Rodriguez Mendoza, Chair; and Mr. Pierre Pettigrew and Mr. Reuben Pessah, Members. The panel met with the parties on July 15-16, 2010, and October 12, 2010, and met with the parties and third parties on July 16, 2010.

The panel circulated its report on March 25, 2011. The panel found that the United States acted inconsistently with the Antidumping Agreement by using "zeroing" in calculating certain margins of dumping in the first and second administrative reviews of the antidumping duty order on imports of certain orange juice from Brazil. The panel also found that the "continued use" of "zeroing" in proceedings under the orange juice antidumping duty order is inconsistent with the Antidumping Agreement.

On June 17, 2011, the DSB adopted its recommendations and rulings in this dispute. At that DSB meeting, the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in connection with this matter. The United States and Brazil agreed that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would end on March 17, 2012.

On February 14, 2012, the U.S. Department of Commerce published in the Federal Register, 77 FR 8101, a modification to its procedures in order to implement DSB recommendations and rulings regarding the use of "zeroing" in antidumping reviews. This modification addresses the findings in this dispute.

The U.S. Department of Commerce issued a notice on April 20, 2012, revoking the antidumping duty order on the products covered in this dispute, effective as of March 9, 2011.

United States – Certain Country of Origin Labeling (COOL) Requirements (Canada) (WT/DS384):

On December 1, 2008, Canada requested consultations with the United States regarding U.S. mandatory country of origin labeling (COOL) provisions. Canada requested supplemental consultations with the United States regarding this matter on May 7, 2009. Canada challenges the COOL provisions of the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security and Rural Investment Act of 2002* (2002 Farm Bill), and *Food, Conservation, and Energy Act, 2008* (2008 Farm Bill), the U.S. Department of Agriculture Interim Final Rule on COOL published on August 1, 2008 and on August 28, 2008, respectively, the U.S. Department of Agriculture Final Rule on COOL published on January 15, 2009, and a February 20, 2009 letter issued by the Secretary of Agriculture. These provisions relate to an obligation to inform consumers at the retail level of the country of origin of covered commodities, including beef and pork.

Canada alleges that the COOL requirements are inconsistent with the *General Agreement on Tariffs and Trade 1994*, Articles III:4, IX:2, IX:4, and X:3(a), the *Agreement on Technical Barriers to Trade*, Articles 2.1, 2.2, and 2.4, or in the alternative, the *Agreement on the Application of Sanitary and Phytosanitary Measures*, Articles 2, 5, and 7, and the *Agreement on Rules of Origin*, Articles 2(b), 2(c), 2(e), and 2(j). Canada asserts that these violations nullify or impair the benefits accruing to Canada under those Agreements and further appear to nullify or impair the benefits accruing to Canada in the sense of GATT 1994, Article XXIII:1(b).

Consultations were held on December 16, 2008, and supplemental consultations were held on June 5, 2009. On October 7, 2009, Canada requested the establishment of a panel, and on November 19, 2009, the DSB established a single panel to examine both this dispute and Mexico's dispute regarding COOL (see WT/DS386). On May 10, 2010, the Director General composed the panel as follows: Mr. Christian Häberli, Chair; and Mr. Manzoor Ahmad and Mr. Joao Magalhaes, Members.

The panel circulated its final report on November 18, 2011. The final report found that the COOL measure (the COOL statute and USDA's Final Rule together), in respect of muscle cut meat labels, breaches TBT Article 2.1 because it affords Canadian livestock less favorable treatment than it affords U.S. livestock. With respect to Article 2.2 of the TBT Agreement, the panel found that the objective of the COOL measure was to provide consumers with information about the origin of the meat products that they buy at the retail level, and that consumer information on origin is a legitimate objective that WTO Members, including the United States, are permitted to pursue with their measures. However, the panel found that the COOL measure breaches TBT Article 2.2 because it fails to fulfill its legitimate objective of providing consumer information on origin with respect to meat products. The panel also found that the Vilsack Letter breaches GATT Article X:3 because it does not constitute a reasonable administration of the COOL measure. On April 5, 2012, USDA withdrew the Vilsack Letter.

On March 23, 2012, the United States appealed the panel's findings on Article 2.1 and 2.2. On March 28, 2012, Canada appealed certain aspects of the panel's Article 2.2 analysis, the panel's failure to make a finding on its claim under Articles III:4 of the GATT 1994, and made a conditional appeal on its claim under Article XXIII:1(b) of the GATT 1994. The Appellate Body agreed with the United States that the panel's Article 2.2 analysis was insufficient. Moreover, the Appellate Body found that, due to the absence of relevant factual findings by the panel and the lack of sufficient undisputed facts on the record, the Appellate Body was unable to complete the analysis under Article 2.2, and Canada's claim must fail. With regard to Article 2.1, the Appellate Body upheld the panel's finding that the COOL measure was inconsistent with the national treatment obligation, albeit with different reasoning. The Appellate Body first upheld the panel's finding that COOL measure has a disparate impact on Canadian livestock. However, the Appellate Body reasoned that the analysis could not end there but that the panel should have analyzed whether the detrimental impact stemmed exclusively from a legitimate regulatory distinction. The Appellate Body found that the COOL measure did not as it imposes costs that are disproportionate to the information conveyed by the labels. Having upheld the panel's Article 2.1 finding, the Appellate body found it unnecessary to make findings on Canada's appeals under Articles III:4 and XXIII:1(b) of the GATT 1994.

On December 4, 2012, a WTO arbitrator determined that the reasonable period of time (RPT) for the United States to comply with the DSB recommendations and rulings is 10 months, meaning that the RPT ends on May 23, 2013.

United States – Certain Country of Origin Labeling (COOL) Requirements (Mexico) (WT/DS386):

On December 17, 2008, Mexico requested consultations regarding U.S. mandatory country of origin labeling (COOL) provisions. Mexico requested supplemental consultations with the United States regarding this matter on May 7, 2009. Mexico challenges the COOL provisions of the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security and Rural Investment Act of 2002* (2002 Farm Bill), and the *Food, Conservation, and Energy Act, 2008* (2008 Farm Bill), the U.S. Department of Agriculture ("USDA") Interim Final Rule on COOL published on August 1, 2008 and on August 28, 2008, respectively, the USDA Final Rule on COOL published on January 15, 2009, and a February 20, 2009 letter issued by the Secretary of Agriculture. These provisions relate to an obligation to inform consumers at the retail level of the country of origin of covered commodities, including beef and pork.
Mexico alleges that the U.S. measures are inconsistent with the GATT 1994, Articles III:4, IX:2, IX:4, and X:3(a), the *Agreement on Technical Barriers to Trade*, Articles 2.1, 2.2, 2.4, 12.1, and 12.3, or, in the alternative, the *Agreement on the Application of Sanitary and Phytosanitary Measures*, Articles 2, 5, and 7, and the *Agreement on Rules of Origin*, Articles 2(b), 2(c), 2(d), and 2(e). Additionally, Mexico asserts that these violations nullify or impair the benefits accruing to Mexico under those Agreements, and further appear to nullify or impair the benefits accruing to Mexico within the meaning of the GATT 1994, Article XXIII:1(b).

Consultations were held on February 27, 2009, and supplemental consultations were held on June 5, 2009. On October 9, 2009, Mexico requested the establishment of a panel in this dispute, and November 19, 2009, the DSB established a single panel to examine both this dispute and Canada's dispute regarding COOL (see WT/DS384). On May 10, 2010, the Director General composed the panel as follows: Mr. Christian Häberli, Chair; and Mr. Manzoor Ahmad and Mr. Joao Magalhaes, Members.

The panel circulated its final report on November 18, 2011. The final report found that the COOL measure (the COOL statute and USDA's Final Rule together), in respect of muscle cut meat labels, breaches TBT Article 2.1 because it affords Mexican livestock less favorable treatment than it affords U.S. livestock. Under TBT Article 2.2, the panel found that the objective of the COOL measure was to provide consumers with information about the origin of the meat products that they buy at the retail level, and that consumer information on origin is a legitimate objective that WTO Members, including the United States, are permitted to pursue with their measures. However, the panel found that the COOL measure breaches TBT Article 2.2 because it fails to fulfill its legitimate objective of providing consumer information on origin with respect to meat products.

The panel rejected Mexico's claim under TBT Article 2.4 that the United States was required to base origin under the COOL measure on the principle of substantial transformation, concluding that using this principle would be an ineffective and inappropriate means to fulfill the U.S. legitimate objective of providing consumers with information about the origin of the meat products they buy. The panel also rejected Mexico's claims under TBT Articles 12.1 and 12.3, concluding that the United States did not fail to take account of Mexico's needs as a developing country Member.

Finally, the panel found that the Vilsack Letter breaches GATT Article X:3 because it does not constitute a reasonable administration of the COOL measure. On April 5, 2012, USDA withdrew the Vilsack Letter.

On March 23, 2012, the United States appealed the panel's findings on Article 2.1 and 2.2. On March 28, 2012, Mexico appealed certain aspects of the panel's Article 2.2 analysis, and made a conditional appeal on its claims under Articles III:4 and XXIII:1(b) of the GATT 1994. The Appellate Body agreed with the United States that the panel's Article 2.2 analysis was insufficient. Moreover, the Appellate Body found that, due to the absence of relevant factual findings by the panel and the lack of sufficient undisputed facts on the record, the Appellate Body was unable to complete the analysis under Article 2.2, and Canada's claim must fail. With regard to Article 2.1, the Appellate Body upheld the panel's finding that the COOL measure was inconsistent with the national treatment obligation, albeit with different reasoning. The Appellate Body first upheld the panel's finding that the COOL measure has a disparate impact on Mexican livestock. However, the Appellate Body reasoned that the analysis could not end there but that the panel should have analyzed whether the detrimental impact stemmed exclusively from a legitimate regulatory distinction. The Appellate Body found that the COOL measure did not as it imposes costs that are disproportionate to the information conveyed by the labels. Having upheld the panel's Article 2.1 finding, the Appellate body found it unnecessary to make findings on Mexico's appeals under Articles III:4 and XXIII:1(b) of the GATT 1994.

On December 4, 2012, a WTO arbitrator determined that the reasonable period of time (RPT) for the United States to comply with the DSB recommendations and rulings is 10 months, meaning that the RPT ends on May 23, 2013.

United States – Anti-dumping Measures on Certain Shrimp from Vietnam (DS404):

On February 1, 2010, the United States received from Vietnam a request for consultations pertaining to antidumping duties imposed by the United States pursuant to the final results issued by the U.S.

Department of Commerce (Commerce) in several administrative reviews of the antidumping duty order on imports of certain frozen and canned warm water shrimp from Vietnam. Vietnam claimed that certain actions by Commerce and U.S. Customs and Border Protection with respect to several administrative reviews and with respect to any ongoing or future administrative review or sunset review concerning this antidumping duty order, as well as various U.S. laws, regulations, administrative procedures, practices, and policies, both as such and as applied, are inconsistent with U.S. commitments and obligations under Articles I, II, VI:1 and VI:2 of the GATT 1994, Articles 1, 2.1, 2.4, 2.4.2, 6.8, 6.10, 9.1, 9.3, 9.4, 11.2, 11.3, 18.1, and 18.4 and Annex II of the Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement); Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization; and Vietnam's Protocol of Accession. Specifically, Vietnam complained that Commerce used "zeroing" in the administrative reviews of the antidumping duty order on imports of shrimp, Commerce failed to provide most Vietnamese respondents seeking a review an opportunity to demonstrate the absence of dumping by being permitted to participate in a review, and Commerce required companies to demonstrate their independence from government control and applied an adverse facts available rate to companies that failed to do so in all reviews.

The United States and Vietnam held consultations on March 23, 2010. On April 19, 2010, Vietnam requested that the DSB establish a panel. The DSB did so at its meeting on May 18, 2010. On July 26, 2010, the Director General composed the panel as follows: Mr. Mohammad Saeed, Chair; and Ms. Deborah Milstein and Mr. Iain Sanford, Members.

The panel held meetings with the parties on October 20-21 and December 14-15, 2010, and met with the parties and third parties on October 21, 2010.

The panel circulated its report on July 11, 2011. The panel found that the use of "zeroing" in the second and third administrative reviews of the shrimp antidumping order was inconsistent with Article 2.4 of the Antidumping Agreement, and the use of "zeroing" in administrative reviews is inconsistent "as such" with Article 9.3 of the Antidumping Agreement and Article VI:2 of the GATT 1994. The panel also found that the use of antidumping margins determined using "zeroing" to calculate the "all others" rate in the second and third administrative reviews was inconsistent with Article 9.4 of the Antidumping Agreement. The panel found that the application to the Vietnam-wide entity of an antidumping margin different from the "all others" rate was also inconsistent with Article 9.4 of the Antidumping Agreement. The panel rejected Vietnam's claim that Commerce's determination to limit the number of individually examined respondents was inconsistent with various provisions of the Antidumping Agreement, and the panel rejected Vietnam's claims relating to "continued use," finding those claims to be outside the panel's terms of reference.

Neither party appealed the panel's findings. On September 2, 2011, the DSB adopted its recommendations and rulings in this dispute. At the following DSB meeting, on September 27, 2011, the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in connection with this matter. The United States and Vietnam agreed that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would end on July 2, 2012.

United States – Measures Affecting the Production and Sale of Clove Cigarettes (DS406):

On April 7, 2010, the United States received a request for consultations from Indonesia regarding Section 907 of the 2009 *Federal Food, Drug, and Cosmetic Act*, as amended by the *Family Smoking Prevention and Tobacco Control Act*, which prohibits the production or sale in the United States of cigarettes with a characterizing flavour other than tobacco or menthol. Indonesia contends that the measure is inconsistent with the United States' WTO obligations in that it bans clove cigarettes. Specifically, Indonesia contends

that the measure is inconsistent with Article III:4 of the GATT 1994, as well as Articles 2.1, 2.2, 2.5, 2.8, 2.9, 2.10, 2.12, and 12.3 of the TBT Agreement.

Indonesia and the United States held consultations on May 13, 2010. On June 9, 2010, Indonesia requested the establishment of a panel. The DSB established the panel on July 20, 2010 and the Parties agreed to the composition of the panel on September 9, 2010, as follows: Mr. Ronald Saborío Soto, Chair; and Mr. Ichiro Araki and Mr. Hugo Cayrús, Members.

The panel met with the parties on December 13-14, 2010, met with the parties and third parties on December 14, 2010, and with the parties on February 15-16, 2011.

The panel circulated its report on June 24, 2011. The panel found the measure consistent with Articles 2.2, 2.5, 2.8, 2.9.3, and 12.3 of the TBT Agreement, and inconsistent with Articles 2.1, 2.9.2, and 2.12 of the TBT Agreement. The panel declined to make findings on Indonesia's claim that the measure was inconsistent with Article III:4 of the GATT 1994 and the related U.S. defense that the measure is justified under Article XX(b) of the GATT 1994.

The United States appealed the Panel Report's finding with respect to Article 2.1 of the TBT Agreement in January 2012, and a hearing was held in February. The WTO Appellate Body report affirmed the Panel Report's finding that the U.S. measure is inconsistent with Article 2.1 of the TBT Agreement.

With respect to Indonesia's claims concerning the U.S. process for adopting the ban, the Panel found in favor of the United States on all of these claims, with two exceptions. The Panel found that the United States should have notified the ban to the WTO prior to it becoming U.S. law and should have waited six months until enforcing the ban instead of the three months the law provided for. The United States appealed the latter finding, and the Appellate Body affirmed the Panel's finding.

The DSB adopted the Appellate Body and Panel Reports on April 24, 2012. At the following DSB meeting on May 24, 2012, the United States notified the DSB of its intention to implement the recommendations and rulings of the DSB. The United States and Indonesia agreed that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would end on July 24, 2013.

United States – Anti-dumping measures on corrosion-resistant carbon steel flat products from Korea (DS420):

On January 31, 2011, the Republic of Korea (Korea) requested consultations regarding various anti-dumping determinations made by the U.S. Department of Commerce (Commerce), including those made in administrative reviews and sunset determinations, regarding corrosion-resistant carbon steel flat products from Korea. Korea's request concerned Commerce's use of its "zeroing" methodology in these determinations. Korea's request for consultations described "zeroing" as the practice "by which transactions with negative dumping margins are treated as having margins equal to zero in determining dumping margins…."

On September 15, 2011, Korea requested the establishment of a panel. At the September 24, 2011 meeting of the Dispute Settlement Body (DSB), Korea withdrew the request for a panel from the agenda. On February 9, 2012, Korea again requested a panel. The request asserted that Commerce's use of "zeroing" in the referenced determinations was inconsistent with the obligations of the United States under Articles 9.3 and 11.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. The DSB established a panel on February 22, 2012. On June 12, 2012, prior

to the composition of the panel, Korea requested that panel proceedings be suspended in accordance with Article 12.12 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

United States – Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades from China (DS422):

On February 28, 2011, China requested consultations regarding the antidumping duty investigation, a number of antidumping administrative reviews, and the sunset review conducted by the U.S. Department of Commerce on certain frozen warmwater shrimp from China. China challenges what it describes as the use by Commerce of the "zeroing practice" whereby "negative margins or amounts of dumping . . . were put at zero" in those proceedings. On July 22, 2011, China requested additional consultations regarding the antidumping duty investigation conducted by Commerce on diamond sawblades and parts thereof from China, referring in particular to the use of what it calls "zeroing" in that proceeding. The United States and China held consultations on May 11, 2011 and September 8, 2011.

On October 13, 2011, China requested the establishment of a panel. In its panel request, China alleges that the use of zeroing by Commerce in the final less than fair value determinations and the antidumping duty orders on certain frozen warmwater shrimp from China and diamond sawblades and parts thereof from China are inconsistent with the obligations of the United States under the first sentence of Article 2.4.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("*Antidumping Agreement"*)*. The DSB established a panel on October 25, 2011 and the Parties agreed to the composition of the panel on December 21, 2011, as follows: Mr. Alberto Juan Dumont, Chair; and Mr. Ernesto Fernández and Ms. Stephanie Sin Far Lee, Members.

The panel circulated its report on June 8, 2012. The panel found the use of zeroing in the two final less than fair value determinations and the antidumping duty orders was inconsistent with Article 2.4.2 of the Antidumping Agreement.

Neither party appealed the panel's findings. On July 23, 2012, the DSB adopted its recommendations and rulings in this dispute. At that DSB meeting, the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in connection with this matter. The United States and China agreed that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would end on March 23, 2013.

United States — Anti-Dumping Measures on Certain Frozen Warmwater Shrimp from Vietnam (DS429)

On February 21, 2012, the United States received from Vietnam a request for consultations pertaining to antidumping duties imposed by the United States pursuant to the final results issued by the U.S. Department of Commerce (Commerce) in a number of administrative reviews and the sunset review of the antidumping duty order on imports of certain frozen and canned warm water shrimp from Vietnam. Vietnam claimed that certain actions by Commerce with respect to the administrative reviews identified, and with respect to any ongoing or future administrative review, as well as the sunset review concerning this antidumping duty order, as well as various U.S. laws, regulations, administrative procedures, practices, and policies, both as such and as applied, are inconsistent with U.S. commitments and obligations under Articles 1:1, VI: 1, VI:2, and X:3(a) of the GATT 1994; Articles 1, 2.1, 2.4, 2.4.2, 6, 9, 11, 17.6(i), and Annex II of the Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement); Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization; Articles 3.7, 19.1, 21.1, 21.3, and 21.5 of the DSU; and Vietnam's Protocol of Accession. Specifically, Vietnam complained that Commerce used "zeroing" in the administrative reviews of the antidumping duty order on imports of shrimp, Commerce failed to provide most Vietnamese respondents seeking a review an opportunity to demonstrate the absence of dumping by being permitted to participate

in a review, the treatment of the Vietnam-wide entity as a "single entity" and the application of adverse facts available to the entity, the use of dumping margins determined using a "zeroing" methodology in the final determination of the sunset review, and the use of WTO-inconsistent antidumping duty assessment rates applied to unliquidated entries that are assessed following a section 129 determination that implements an adverse DSB ruling.

The United States and Vietnam held consultations on March 28, 2012.

United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (DS436)

On April 24, 2012, India requested consultations concerning countervailing measures regarding certain hot-rolled carbon steel flat products from India. India challenges the Tariff Act of 1930, in particular sections 771(7)(G) and 776(b), as well as Title 19 of the Code of Federal Regulations, sections 351.308 and 351.511(a)(2)(i)-(iv). In addition, India challenges certain actions of the United States with respect to U.S. Department of Commerce countervailing duty determinations and the countervailing duty order related to certain hot-rolled carbon steel flat products from India, including determinations related to the original investigation, certain administrative reviews, and the five-year sunset review. India alleges inconsistencies with Articles I and IV of the GATT 1994 and Articles 1, 2, 10, 11, 12, 13, 14, 15, 19, 21, 22 and 32 of the SCM Agreement. The DSB established a panel to examine the matter on August 31, 2012.

United States — Countervailing Duty Measures on Certain Products from China (DS437)

On May 25, 2012, China requested consultations regarding numerous U.S. CVD determinations in which the U.S. Department of Commerce had determined that various Chinese state owned enterprises were "public bodies" under Article 1.1(a)(1) of the SCM Agreement, with a view towards extending the Appellate Body's analysis in DS394 (discussed above) to those determinations. Various other aspects of these investigations are being challenged as well, including but not limited to Commerce's calculation of benchmarks, determination of specificity of the subsidies, and use of facts available. Consultations were held in July 2012, and a panel was established in September 2012. The panel is expected to hear the case in spring 2013.

United States — Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina (DS447)

On August 30, 2012, Argentina requested consultations regarding the U.S. refusal thus far to grant import authorization to fresh bovine meat from Argentina. Currently, U.S. law prohibits the importation of fresh meat from Argentina, because the U.S. Department of Agriculture has not determined Argentina, or any of its components, to be a zone free of foot-and-mouth disease. At issue in this matter is the status of three applications by Argentina to the U.S. Department of Agriculture to revise its prohibition and permit the importation of fresh bovine meat. Consultations were held on October 18 and 19, 2012, in Geneva. Argentina submitted its request for establishment of a dispute settlement panel on December 6, 2012.

United States — Measures Affecting the Importation of Fresh Lemons (DS448)

On September 3, 2012, Argentina requested consultations regarding the U.S. failure thus far to grant import authorization for fresh lemons from Northwest Argentina. Consultations were held on October 17-18, 2012, in Geneva, Switzerland. Argentina submitted its request for establishment of a dispute settlement panel on December 6, 2012.

United States — Countervailing and Anti-dumping Measures on Certain Products from China (DS449)

On September 17, 2012, the United States received a request for consultations from China regarding Public Law 112-99 ("P.L. 112-99") and determinations and actions made by the U.S. Department of Commerce, the U.S. International Trade Commission and the U.S. Customs and Border Protection in connection with 31 joint antidumping (AD) and countervailing duty (CVD) proceedings. China alleges in its consultation request that the retroactive nature of Section 1 of P.L. 112-99 and the difference in effective dates between Sections 1 and 2 of P.L. 112-99 are violations of GATT Article X. China further alleges that the 31 AD and CVD proceedings initiated between November 20, 2006 and March 13, 2012 violate the United States' WTO obligations because the United States had no basis under domestic law to identify and avoid "double remedies" and U.S. authorities failed to "investigate and avoid double remedies."

China and the United States held consultations on November 5, 2012. On November 30, China requested the establishment of a panel.

I. Trade Policy Review Body

Status

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

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

TPRs of least developed country (LDC) Members often perform a technical assistance function, helping them improve their understanding of their trade policy structure's relationship with the WTO Agreements. The reviews have also enhanced these countries' understanding of the WTO Agreements, thereby better enabling them to comply and integrate into the multilateral trading system. In some cases, the reviews have spurred better interaction among government agencies. The reports' wide coverage of Members' policies also enables Members to identify any shortcomings in policy and specific areas where further technical assistance may be appropriate.

The TPRM requires Members, in between their reviews, to provide information on significant trade policy changes. The WTO Secretariat uses this and other information to prepare reports by the Director General on a regular basis on the trade and trade-related developments of Members and Observer

Governments. The reports are discussed at informal meetings of the TPRB. The Secretariat consolidates the information it collects and presents it in the Director General's Annual Report on Developments in the International Trading Environment.

Major Issues in 2012

During 2012, the TPRB reviewed the trade regimes of Bangladesh, Burundi, China, Colombia, Côte d'Ivoire, Guinea-Bissau, Iceland, Israel, Kenya, Korea, Kuwait, Nepal, Nicaragua, Norway, Philippines, Rwanda, Saudi Arabia, Singapore, Tanzania, Togo, Trinidad & Tobago, Turkey, United Arab Emirates, Uganda, and Uruguay. The trade policies of four members were reviewed for the first time in 2012, including Guinea-Bissau, Saudi Arabia, Kuwait, and Nepal. Additionally, in December 2012, the latest trade policy review of the United States took place, which occurs every two years.

Since its formation in 1998 to the end of 2012, the TPRB has conducted 364 reviews. The reviews have covered 145 of 157 Members, representing some 94 percent of world trade and 97 percent of the trade of WTO Members. Of the 33 LDC Members of the WTO, the TPRB had reviewed 31 by the end of 2012.

While each review highlights the specific issues and measures concerning the individual Member, certain common themes emerged during the course of the reviews conducted in 2012. These included:

- transparency in policy making and implementation;
- economic environment and trade liberalization;
- implementation of the WTO Agreements;
- regional trade agreements and their relationship with the multilateral trading system;
- tariff issues, including the differences between applied and bound rates;
- customs valuation and customs clearance procedures;
- the use of trade remedy measures such as antidumping and countervailing duties;
- technical regulations, and standards and their equivalence with international norms;
- sanitary and phytosanitary measures;
- intellectual property rights legislation and enforcement;
- government procurement policies and practices;
- trade-related investment policy issues;
- sectoral trade policy issues, particularly liberalization in agriculture and certain services sectors; and
- technical assistance in implementing the WTO Agreements and experience with Aid for Trade, and the Enhanced Integrated Framework.

Prospects for 2013

The TPRM continues to meet its transparency goals. It will continue to be an important tool for monitoring Members' compliance with WTO commitments and an effective forum in which to encourage Members to meet their obligations and to adopt further trade liberalizing measures. For 2013, the proposed program of reviews is Argentina, Brazil, CEMAC (Cameroon, Central African Republic, Chad, Republic of Congo, Gabon), Costa Rica, European Union, Indonesia, Japan, Kyrgyz Republic, Lichtenstein and Switzerland, Macao China, Mexico, the former Yugoslav Republic of Macedonia, Myanmar, Peru, Suriname, and Vietnam.

J. Other General Council Bodies/Activities

1. Committee on Trade and Environment

Status

The Committee on Trade and Environment (CTE) was created by the WTO General Council on January 31, 1995, pursuant to the Marrakesh Ministerial Decision on Trade and Environment. Since then, the CTE has discussed many important issues, with a focus on those identified in the Doha Declaration. These issues include: market access associated with environmental measures (Doha paragraph 32(i)); the TRIPS Agreement and the environment (Doha paragraph 32(ii)); labeling for environmental purposes (Doha paragraph 32(iii)); capacity-building and environmental reviews (Doha paragraph 33); and discussion of the environmental aspects of the Doha negotiations (Doha paragraph 51). These issues identified in the Doha Declaration are separate from the issues that are subject to specific negotiating mandates taken up by the Committee on Trade and Environment Special Session (CTESS). *(For additional information, see Chapter II.B.6.)*

Major Issues in 2012

In 2012, the CTE met once under the Chairmanship of Ambassador Krisda Piampongsant (Thailand) on 13 November 2012.

As noted above, the CTE's work was organized under the mandate established in the Doha Ministerial Declaration, Paragraphs 32, 33 and 51. Under Paragraph 32, the CTE conducted work on environmental requirements and market access issues (Paragraph 32(i)). Korea briefed the CTE on its recently adopted legislation to establish a national carbon emissions trading scheme. Norway shared information concerning its carbon tax on offshore operations on the Norwegian continental shelf. And the European Union presented a paper on "Combatting illegal, unreported and unregulated (IUU) fishing: Establishment of an EU system to prevent, deter and eliminate IUU fishing." No discussion took place under Paragraph 32(ii) (relevant provisions of the TRIPS Agreement); Paragraph 33 (technical assistance, capacity building and environmental reviews); and Paragraph 51 (developmental and environmental aspects of the negotiations). Delegates also discussed the results of the 2012 APEC Leaders meeting, where Leaders agreed on a list of 54 environmental goods, such as wind turbines and solar water heaters, on which they will reduce tariffs to 5 percent or less by 2015, consistent with their 2011 commitment.

In addition, the CTE organized a workshop on Environmental Technology Dissemination on 12 November 2012, and invited presentations from international organizations, such as OECD and UNCTAD, and from private sector representatives in the environmental technology sector. Workshop presentations are available on the WTO's website: http://wto.org/english/tratop_e/envir_e/wksp_envir_nov12_e/wksp_envir_nov12_e.htm.

Prospects for 2013

The United States is committed to using the CTE as the premier global forum for discussing trade and environment issues, and we will explore fresh and innovative approaches to the most challenging issues, including those related to trade and climate change.

2. Committee on Trade and Development

Status

The Committee on Trade and Development (CTD) was established in 1965 to strengthen the GATT 1947's role in the economic development of less developed GATT Contracting Parties. In the WTO, the CTD is a subsidiary body of the General Council. Since the Doha Development Round was launched, Members have established three additional subgroups of the CTD: a Subcommittee on LDCs; a Dedicated Session on Small Economies; and a Dedicated Session on Regional Trade Agreements (RTAs).

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

The CTD has been the primary forum for discussion of broad issues related to the nexus between trade and development, rather than the implementation or operation of a specific agreement. Since the initiation of the Doha Development Agenda (DDA), the CTD has intensified its work on issues related to trade and development. The CTD has focused on issues such as transparency in preferential trade agreements, expanding trade in products of interest to developing country Members, trade in commodities, the WTO's technical assistance and capacity building activities, and an overall assessment of the development aspects of the DDA and sustainable development goals. As directed in the 2005 Hong Kong Ministerial Declaration, the CTD also conducts annual reviews of steps taken by WTO Members to implement the decision on providing duty free, quota free (DFQF) market access to the LDC Members.

Work in the Sub-Committee on LDCs and the Dedicated Sessions on Small Economies and RTAs has included review of market access challenges related to exports of LDC Members, LDC accessions to the WTO, trade-related needs of small, vulnerable economies, including island and landlocked states, and review of Member RTAs notified under the Enabling Clause.

Major Issues in 2012

The CTD in Regular Session held three formal sessions in April, July, and November 2012. Activities of the CTD and its subsidiary bodies in 2012 included:

- *Focused Work on Trade and Development:* At MC8, Ministers "reaffirm[ed] that development is a core element of the WTO's work. They also reaffirm[ed] the positive link between trade and development and call[ed] for focused work in the Committee on Trade and Development." Throughout 2012, Members worked to identify areas of focused work in line with this mandate. A few Members, including Ecuador, submitted a proposal (WT/COMTD/W/189) to hold a workshop on development aspects of e-commerce, in particular as it relates to small and medium sized enterprises (SMEs). In addition, Australia and other Members submitted a proposal whereby Members would make "presentations in the CTD on individual Members' participation in the multilateral trading system and its effect on that Member's economic development." Some Members have expressed reservations about this proposal going forward, and it continues to be

discussed in the CTD. Additional proposals by a group of developing countries, including Ecuador, Africa Group, India, covering a range of items, continue to be under discussion.

- *Technical Cooperation and Training:* The Committee took note of the Annual Report on Technical Assistance and Training, January 1 to December 31, 2011 (WT/COMTD/W/186), and of the Technical Cooperation Audit Report for 2011 (WT/COMTD/W/187). The Secretariat also reported regularly on the implementation of the Biennial Technical Assistance and Training Plan for 2012 and 2013 (WT/COMTD/W/180).

- *Notifications Regarding Market Access for Developing and LDCs:* In 2012, notifications under the Enabling Clause concerning Generalized System of Preferences (GSP) schemes were made by Switzerland (WT/COMTD/N/7/ADD.5), and the United States (WT/COMTD/N/1/Add. 8). Notifications were also made to the CTD concerning Korea's Duty Free Tariff Preference Scheme for LDCs (WT/COMTD/N/12/Rev.1/Add.1). Members also considered issues relating to the notification status of the Gulf Cooperation Council (GCC) Customs Union, the India-ASEAN RTA, and the India-Korea RTA.

- *Dedicated Session on Regional Trade Agreements:* There were no formal sessions of the CTD Dedicated Session on RTAs in 2012 due to outstanding requests for Members to provide data to the Secretariat to produce the necessary documentation that would facilitate such meetings.

- *Transparency of Preferential Trading Arrangements (PTAs):* In December 2006, the General Council invited the CTD to review the transparency of GSP programs and other preferential agreements under its mandate, and in 2010, Members agreed upon a Transparency Mechanism for PTAs (WT/L/806). Pursuant to agreed-upon modalities for implementation of the Transparency Mechanism, several Members, including the United States, completed the standard format guide for the notification of PTAs (WT/COMTD/73).

- *Duty Free, Quota Free Market Access for LDCs Members:* The Decision taken at the Hong Kong Ministerial Conference on DFQF market access for LDCs remains a standing item on the CTD's agenda. A number of Members shared information on the steps they are taking to provide DFQF market access to LDCs' products, including in respect of preferential rules of origin. In this regard, China, the EU, India, Switzerland, and the United States provided information. At each of the formal meetings of the CTD, the LDCs called for an expeditious and faithful implementation of the Decision.

- *Dedicated Session on Small Economies:* The Dedicated Session on Small Economies held two meetings in July and November 2012. The July meeting included presentations by UNCTAD and the International Trade Center, on the issues of interest to Small Economies, including the impact of non-tariff measures on Small Economies. At the November meeting, the Small Economies, led by El Salvador, requested that the Secretariat undertake additional analysis in line with the Work Program on Small Economies and in preparation for the Ninth Ministerial in Bali.

- *Aid for Trade:* The CTD held three sessions on Aid for Trade in 2012, in May, July, and November. Work during these sessions focused on the five headings of the 2010-2011 Aid for Trade Work Program, namely resource mobilization, mainstreaming, implementation, monitoring and evaluation, and the private sector. In addition, three workshops were held on the relationship between Aid for Trade and other issues on the trade agenda, including green growth, services, and intellectual property. The Secretariat also worked with the OECD and with

Members on designing an Aid for Trade monitoring program to serve as the basis for discussions at the Fourth Global Review of Aid for Trade, scheduled to take place in July 2013.

- *LDC Subcommittee:* In addition to reaching agreement on new accession guidelines for LDCs, which are discussed in the Accessions section of this chapter, the Subcommittee also held two meetings in 2012, where it mainly focused on the implementation of the WTO Work Program for LDCs adopted by Members in 2002, including LDCs' request to update that Work Program. The subjects discussed included: market access for LDCs; trade-related technical assistance and capacity building initiatives for LDCs; and accession and post-accession issues for LDCs.

Prospects for 2013

The CTD is expected to continue to monitor developments as they relate to issues of concern to developing country Members. Interest in issues related to technical assistance and market access is expected to continue. Efforts to identify "focused work" are also expected to continue, especially in light of the need to show results at the upcoming ministerial in December 2013. In this vein, the CTD will review steps taken by Members to provide DFQF market access to the LDC Members in line with the Hong Kong Declaration, review the participation of developing country Members in the multilateral trading system, and in the LDC Subcommittee review market access for LDCs. The CTD will also continue its work on Aid for Trade in line with the work program for 2012-2013. In addition, the CTD's examination of RTAs between developing country Members will resume as new RTAs are notified to the WTO. Work will also continue on implementing the transparency mechanism for preferential trade agreements.

3. Committee on Balance-of-Payments Restrictions

Status

The Uruguay Round Understanding on Balance-of-Payments substantially strengthened GATT disciplines on balance-of-payments-related trade measures. Under the WTO Agreement, any Member imposing restrictions for balance-of-payments purposes must consult regularly with the Committee on Balance-of-Payments Restrictions to determine whether the use of such restrictions is necessary or desirable to address a Member's balance-of-payments difficulties. The Committee on Balance-of-Payments Restrictions works closely with the International Monetary Fund in conducting consultations. Full consultations involve examining a Member's trade restrictions and balance-of-payments situation, while simplified consultations provide for more general reviews. Full consultations are held when restrictive measures are introduced or modified, or at the request of a Member in view of improvements in its balance-of-payments.

Major Issues in 2012

The Committee on Balance-of-Payments Restrictions met on November 2, 2012 to elect its Chairman, and to hold its annual meeting and adopt its annual report which it sent to the General Council. No other meetings of the Committee were held in 2012.

Prospects for 2013

Should a Member resort to new balance-of-payments measures, WTO rules require a thorough program of consultation with the Committee on Balance-of-Payments Restrictions. The United States expects the

Committee to continue to ensure that balance-of-payments provisions are used as intended to address legitimate problems through the imposition of temporary, price-based measures.

4. Committee on Budget, Finance and Administration

Status

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

In the WTO, the assessed contribution of each Member is based on the share of that Member's trade in goods, services, and intellectual property. The United States, as the Member with the largest share of world trade, makes the largest contribution to the WTO budget. For the 2013 budget, the U.S. assessed contribution is 11.709 percent of the total budget assessment, or Swiss Francs (CHF) 22,891,095 (about $24.6 million). (*Details required by Section 124 of the Uruguay Round Agreements Act on the WTO's consolidated budget for 2011 are provided in Annex II.)*

Major Issues in 2012

Activities of the Committee in 2012 included:

WTO Budget: The adoption of the Biennium Budget 2012/2013 resulted in zero nominal growth for the 2012 budget and zero real growth for the 2013 budget. The budget adopted for 2013 amounted to CHF 197 million, including CHF 191 million for the WTO Secretariat and CHF 6 million for the Appellate Body and its Secretariat.

Members under Administrative Measures: In 2012, the Committee completed work on a revised set of Administrative Measures for Members in arrears that, *inter alia*, provides incentives for observers to meet their financial commitments. The Committee also reviewed and made proposals to approve the payment plans proposed by three Members (Chad, Djibouti, and Sierra Leone) which are subject to Administrative Measures[16] and which had arrears of contributions for periods of up to 15 years. The payment plans are intended to liquidate arrears on contributions over several years. The Secretariat has been working to reduce the number of Members under Administrative Measures, and as of December 14, 2011, the number of Members subject to Administrative Measures had been reduced to six.

WTO Facilities: The renovation project of the Centre William Rappard is on schedule to be concluded by the end of 2012. The construction of the South Courtyard Conference Centre and the Atrium was completed in the spring of 2012. In addition, the construction of a new administrative building that has 300 offices, as well as an underground garage with 200 spaces, has been completed and will be occupied by the end of 2012. Technical discussions regarding the security perimeter project for the WTO single site also took place in 2012, with work to begin in 2013.

[16] Administrative measures are actions established by the General Council against Members that are seriously in arrears. These actions range from not being able to put up candidates to chair WTO Committees to the loss of WTO technical assistance. Under the revised measures, in the case of observers, if their arrears become serious enough their accession negotiations will be suspended until they rectify the situation.

Members' Transition Operating Fund: The Members' Transition Operating Fund was established in 2008 to finance additional operating costs during the Building Project as well as final installation costs once the construction is completed. The Committee recommended the transfer of the credit balance from the Surplus account, amounting to approximately CHF 10.5 million at the end of 2010, to the Fund. In 2012, the Committee also authorized the funding of six projects for a total amount of CHF 13.7 million.

Human Resource Matters: In accordance with the WTO salary adjustment methodology, the Director General applied a 2.4 percent negative adjustment to the WTO salary scale, to freeze salaries for WTO staff and apply the revised scale to new staff. The main factor behind this negative movement was the drop in the value of the Euro against the Swiss franc in the benchmark comparator. The promotion of staff diversity remained a key issue for the Secretariat and the Committee.

Prospects for 2013

The Budget Committee will continue to monitor the financial and budgetary situation of the WTO on an ongoing basis and prepare the biennial budget for 2014/2015. It will also be regularly consulted and kept informed of all aspects concerning the finalization and implementation of security enhancements.

5. Committee on Regional Trade Agreements

Status

The Committee on Regional Trade Agreements (CRTA), a subsidiary body of the General Council, was established in early 1996 as a central body to oversee all bilateral and regional agreements to which Members are party. All of these agreements are known at the WTO as regional trade agreements (RTAs).

The CRTA is charged with conducting reviews of individual agreements, seeking ways to facilitate and improve the review process, implementing the biennial reporting requirements established in the Uruguay Round Agreements, and considering the systemic implications of such agreements and regional initiatives for the multilateral trading system. Prior to 1996, these reviews were typically conducted by a "working party" formed to review a specific agreement.

GATT Article XXIV is the principal provision governing Free Trade Areas (FTAs), Customs Unions (CUs), and interim agreements leading to an FTA or CU, concerning goods. Additionally, the 1979 Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries, commonly known as the "Enabling Clause," provides a basis for certain agreements between or among developing country Members, also concerning trade in goods. The Uruguay Round added three more provisions: the Understanding on the Interpretation of Article XXIV, which clarifies and enhances the requirements of Article XXIV of GATT 1994; and Articles V and Vbis of the General Agreement on Trade in Services (GATS), which govern services and labor markets economic integration agreements.

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

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

Major Issues in 2012

As of November 15, 2012, 412 RTAs have been notified to the GATT or WTO, of which 233 are in force (128 covering goods only, 1 covering services only, and 104 covering both goods and services).

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

Since the implementation of the transparency mechanism in 2007, 132 agreements, counting goods and services notifications separately, have been considered (20 in 2012). Of these agreements, 128 have been reviewed in the CRTA and four in the CTD.

Under the transparency mechanism, the WTO Secretariat was tasked to establish and maintain an updated electronic database on individual RTAs. The database was launched in January 2009 and includes extensive information, all of which is available to the public. The RTAs database may be accessed at: http://rtais.wto.org.

In 2012, the CRTA continued to discuss proposals regarding possible work on the systemic implications of RTAs and their effect on the multilateral system.

Prospects for 2013

Four sessions of the Committee on Regional Trade Agreements are foreseen for 2013.

6. Accessions to the World Trade Organization

Status

Significant progress was made on WTO accessions as a number of applicants intensified efforts in 2012 to complete their accession negotiations with WTO Members. The Lao Peoples Democratic Republic (Lao PDR) and the Republic of Tajikistan (Tajikistan) completed their accession negotiations after intensive bilateral and multilateral work, reducing the number of countries still negotiating for WTO

accession to twenty-four.[17] Montenegro, Russia, Samoa, and Vanuatu completed their ratification procedures and became WTO Members during 2012, bringing the total number of WTO Members to 157.

During 2012, twenty-five formal or informal Working Party (WP) meetings were convened for Afghanistan, Azerbaijan, Bosnia and Herzegovina, Ethiopia, Kazakhstan, Laos, Liberia, Serbia, Seychelles, Tajikistan, The Bahamas and Yemen. Additionally, twenty plurilateral meetings to address specific technical issues in the various accession negotiations (*e.g.*, in agricultural supports, SPS, TBT, or TRIMs) were convened for interested WTO Members. Market access negotiations and bilateral consultations on other issues also took place at the time of these meetings and consultations. Members and the WTO Secretariat also held nine Facilitation Meetings between Ukraine, Yemen and Lao PDR, respectively that successfully assisted these applicants to conclude their bilateral market access negotiations on goods.

Kazakhstan and Yemen made considerable progress in market access negotiations or in negotiations on terms to implement WTO provisions. Work on these two accessions, as well as on the accessions of Bosnia and Herzegovina and Serbia, is well advanced. Yemen's completion of its accession negotiations would have occurred in 2012 but for complications in the verification of its goods schedule. Liberia initiated its WP deliberations with a first meeting in July 2012. The Bahamas held its second WP meeting in June 2012 and initiated bilateral market access negotiations with initial offers on market access for goods and services, circulated in March 2012. Azerbaijan, Afghanistan, Ethiopia and Seychelles all advanced their accessions, both with WP meetings and bilateral negotiations on goods and services market access.

Five of the remaining 24 current applicants for WTO accession (Comoros, Equatorial Guinea, Libya, Sao Tome and Principe, and Syria) have not yet submitted a Memorandum on the Foreign Trade Regime (MFTR) describing their respective foreign trade regimes, the action necessary to actually begin accession negotiations. Working Parties and bilateral negotiations with five other applicants –Andorra, Bhutan, Iraq, Lebanon, and Sudan – remained dormant in 2012. While not officially dormant, there was no action with respect to Iran's accession process either. Algeria, Belarus, and Uzbekistan on the other hand, took steps in 2012 towards resuming their accession negotiations and WP meetings.

Palestine has requested permanent observer status in the General Council, but to date, no action has been taken on the application. There were no other requests for accession or observer status in 2012.

Background:

Countries and separate customs territories seeking to join the WTO must negotiate the terms of their accession with current Members, as provided for in Article XII of the WTO Agreement. The accession process, with its emphasis on the implementation of WTO provisions and the establishment of stable and predictable market access for goods and services, provides a proven framework for the adoption of policies and practices that encourage trade and investment and promote growth and development.

In a typical accession negotiation, an application is submitted to the WTO General Council, which establishes a "Working Party" composed of all interested WTO Members to review the applicant's trade regime and to conduct the negotiations. The next necessary action is for the applicant to provide its MFTR and respond to questions and comments on that document. After that, meetings of the Working

[17] Accession Working Parties have been established for Afghanistan*, Algeria, Andorra, Azerbaijan, Bahamas, Belarus, Bhutan*, Bosnia and Herzegovina, Comoros*, Equatorial Guinea*, Ethiopia*, Iran, Iraq, Kazakhstan, Lebanon, Liberia*, Libya, Sao Tome and Principe*, Serbia, Seychelles, Sudan*, Uzbekistan, and Yemen* (the 9 countries marked with an asterisk are LDCs).

Party are scheduled when there is sufficient new documentation or progress in WTO implementation to justify further discussion. The number of WP meetings, as well as the length of the negotiations, largely depends on the speed with which the applicant is prepared to address the identified issues and to complete the negotiations. Accession applicants also negotiate trade liberalizing specific commitments on market access for industrial and agricultural goods, as well as for services, based on requests from WP Members. Applicants also are expected to make necessary legislative changes to implement WTO institutional and regulatory requirements and to eliminate existing WTO inconsistent measures. Almost all "developed country" accession applicants, and many "developing country" accession applicants, take all of these actions on WTO rules prior to accession.[18]

At the conclusion of its work, the Working Party adopts the agreed results of the negotiations (the recommended "terms of accession" developed with WP Members in bilateral and multilateral negotiations) and transmits them with its recommendation for approval to the General Council or Ministerial Conference.[19] These terms, *i.e.*, the accession "package," consist of the Report of the Working Party and Protocol of Accession, consolidated schedules of specific commitments on market access for goods and services, and agriculture schedules that include commitments on export subsidies and domestic supports. After General Council or Ministerial Conference approval, accession applicants submit the package to their domestic authorities for acceptance (ratification). Thirty days after the WTO receives the applicant's instrument accepting the terms of accession, the applicant becomes a WTO Member.

The accession process requires attention and active engagement from both applicants and WTO Members. Undertaking accession negotiations is a serious decision for any country. Applicants already committed to economic reform, or that demonstrate a strong interest in using WTO provisions as the basis for their trade regimes, are usually the most successful in moving their accession towards completion (*e.g.*, by submitting usable documentation, market access offers, and legislation for WP review on a timely basis). Thus, the pace of the accession process generally depends on the applicant.

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

U.S. Leadership and Technical Assistance: As a matter of longstanding policy, the United States takes a leadership role in all aspects of the accessions, including in the bilateral, plurilateral, and multilateral negotiations. The objective is to ensure that new Members fully implement WTO provisions and to encourage trade liberalization in developing and transforming economies, as well as to use the opportunities provided in these negotiations to expand market access for U.S. exports. The United States also provides a broad range of technical assistance to countries seeking accession to the WTO to help them meet the requirements and challenges presented, both by the negotiations and the process of

[18] As outlined below, negotiations with applicants designated as "least developed" by the United Nations are subject to special procedures and guidelines, and do not, as a rule, fully implement WTO provisions prior to accession. Transitional periods may also be negotiated, if necessary, with developing or other applicants that request them and can justify their necessity.

[19] The Working Party decision to adopt the accession package is by "consensus," *i.e.*, without objection by any WP Member. While there are provisions in the WTO Agreement for the Ministerial Conference or General Council to approve accessions by an affirmative vote of two-thirds of all Members, in practice, the Ministerial Conference or General Council also approve the terms of accession by consensus.

implementing WTO provisions in their trade regimes. This assistance is provided through USAID, the U.S. Department of Agriculture, and the Commercial Law Development Program (CLDP) of the U.S. Department of Commerce.

This assistance can include short term technical expertise focused on specific issues (*e.g.*, customs procedures, intellectual property rights protection, or sanitary/phytosanitary and technical barriers to trade) and/or a WTO expert in residence in the acceding country or customs territory. A number of the WTO Members that have acceded since 1995 received technical assistance in their accession process from the United States, *e.g.*, Albania, Armenia, Bulgaria, Cape Verde, Croatia, Estonia, Georgia, Jordan, Kyrgyz Republic, Latvia, Lithuania, Macedonia, Moldova, Montenegro, Nepal, Russia, Ukraine, and Vietnam. Most of these countries had U.S.-provided resident experts for some portion of the accession process.

Current accession applicants for which the United States provided a resident expert or other technical assistance for the accession process during 2012 include: Afghanistan, Azerbaijan, Ethiopia, Lao PDR, Liberia, and Tajikistan. Among current accession applicants, Algeria, Belarus, Bosnia and Herzegovina, Iraq, Lebanon, Kazakhstan, Serbia, Uzbekistan and Yemen also received U.S. technical assistance earlier in their accession processes.

Major Issues in 2012

During 2012, the General Council approved the terms of accession of two countries: Lao PDR and Tajikistan, (on October 26 and December 10, respectively). Both plan to complete their respective domestic procedures to accept the terms of accession and become WTO Members before the end of 2013.

In December, the U.S. Congress removed Russia and Moldova from the coverage of title IV of the Trade Act of 1974, allowing the United States to have Permanent Normal Trade Relations (PNTR) with both countries, conforming to the provisions of Article 1 of the GATT 1994 (unconditional most-favored-nation treatment). As a consequence, the United State may now disinvoke nonapplication (Article XIII) of the WTO vis-à-vis both Russia and Moldova.

Kazakhstan:

During 2012, Kazakhstan made definitive progress towards completion of its WTO accession process. Market access negotiations were essentially completed for both goods and services, allowing for the development of consolidated schedules and their circulation for verification. During four meetings, WP Members developed the text of the revised and updated draft Working Party report, identifying outstanding multilateral issues for final discussion and resolution. These included agricultural supports and export subsidies, tax discrimination in favor of domestic agricultural goods, aspects of intellectual property protection, sanitary and phytosanitary measures, import licensing procedures for goods with encryption, and local content requirements in investment contracts and purchases by state owned enterprises. WP Members also initiated discussions for adjustments to the tariffs of the Common External Tariff intended to compensate for tariff commitments negotiated by Kazakhstan that would not be implemented in light of Kazakhstan's membership in the Customs Union with Russia and Belarus. In 2013, Kazakhstan will finalize its Protocol commitments in the draft Working Party report, complete its legislative implementation, and finalize goods and services commitments in its consolidated schedules, with a view to completing the accession process.

Serbia:

Serbia's twelfth WP meeting convened in March 2012, and bilateral negotiations on goods and services with the United States are well advanced. The WP review of Serbia's trade regime is nearing completion, based on comprehensive comments and drafting suggestions submitted by the United States and other WTO Members after the March WP meeting. However, given the advanced state of the negotiations, it is critical for Serbia to address the remaining issues with the enactment of necessary legislation to bring its trade regime into line with WTO rules. This must include modification of Serbia's highly problematic law banning trade in any products containing genetically modified organisms.

Bosnia and Herzegovina:

Bosnia and Herzegovina's tenth WP meeting convened in October 2012. Bilateral market access negotiations with the United States are well advanced, though more work is required on goods, in particular. The review of Bosnia and Herzegovina's trade regime in the Working Party is nearing completion, based on comprehensive comments and drafting suggestions submitted by the United States and other WTO Members after the October 2012 meeting.

Azerbaijan:

Azerbaijan's accession intensified in 2012, with two Working Party meetings and substantially revised goods and services offers. While much work remains, it is clear that 2013 could be a decisive year in efforts to complete the accession. Further progress in 2013 will depend on Azerbaijan's successful bridging of the last gaps in market access and movement towards resolution of the outstanding systemic issues (*e.g.*, in agricultural supports, taxes and fees on imports, local content requirements in state enterprise procurement, and removal of QRs, as well as towards full legislative implementation of WTO provisions.

Seychelles:

Seychelles third Working Party Meeting was held in July 2012. The next Working Party meeting will be held upon circulation of the necessary inputs. Bilateral market access negotiations are underway, on the basis of Seychelles' latest offers on market access for goods and services, circulated in the first half of 2012.

The Bahamas:

The accession of The Bahamas picked up speed during 2012. The second meeting of the Working Party was held in June 2012, and bilateral market access negotiations for goods and services are under way on the basis of initial offers circulated in March 2012. The next Working Party meeting will be held when The Bahamas circulates responses to comments and requests for information and additional documentation to WTO Members resulting from the June meeting.

Other Accessions:

Algeria and Belarus have been working with the WTO Secretariat since 2010 to prepare for the resumption of their WTO accession processes. In 2012, Algeria's WP Chairman held informal consultations with interested delegations, who requested updated documentation, including a revised draft Working Party report and circulation of updated legislation. The Chairman also undertook a visit to Algiers in November 2012 to drive home these points. In December, a delegation of senior Algerian trade officials visited Washington to review the status of its accession negotiations and prepare

for resumption of negotiations in 2013. Algeria also provided updated documentation to the WTO Secretariat. Also in November, the WTO Secretariat prepared an updated Factual Summary for Belarus on the basis of new and revised inputs submitted by Belarus since 2010. Provided both applicants complete their documentation submissions and provide revised offers on goods and services, they will resume Working Party deliberations in 2013. Uzbekistan has also requested resumption of its accession negotiations in 2013 based on updated documentation.

The chart included in Annex II reports the current status of each accession negotiation.

LDC Accessions

WTO Members are committed to facilitating the accession processes of LDCs and in making WTO accession more accessible to these applicants. The accession negotiations for all LDC accession applicants are guided by the simplified and streamlined procedures developed for these countries in response to the WTO General Council Decision on Accessions of Least Developed Countries (WT/L/508) established at the end of 2002.

In July 2012, the General Council adopted additional recommendations, developed in the Sub-Committee on LDCs, to further strengthen, streamline and operationalize the 2002 LDC Accession Guidelines. These recommendations, foreseen in the Decision adopted at the Eighth WTO Ministerial Conference[20], became an *addendum* to the 2002 LDC Accession Guidelines[21]. They include provisions under the following pillars: (i) Benchmarks on Goods; (ii) Benchmarks on Services; (iii) Transparency in Accession Negotiations; (iv) Special and Differential Treatment and Transition Periods; and, (v) Technical Assistance. Points (i) and (ii) establish that market access negotiations for the WTO accession of LDCs would be guided by special principles and benchmarks[22] more appropriate to the development level of LDC applicants. The transparency provisions confirm evolving practice in LDC accessions for the use of the good offices by the Chairperson of the Sub-Committee on LDCs, as well as the Chairpersons of the LDCs' Accession Working Parties to assist the conclusion of the accession process of LDCs. S&D treatment and technical assistance provisions of the additional recommendations also confirm the need for restraint and the broad use of transitional provisions when constructing market access commitments, Action Plans for transitional implementation of WTO provisions, and the need for enhanced technical assistance and capacity building in LDC accessions.

The United States and other developed country WTO Members support both the 2002 and the 2012 Decisions on LDC Accessions, adhering to the guidelines in formulating more flexible negotiating positions on market access and WTO implementation commitments for LDCs. The purpose of the guidelines is to ensure that LDCs are prepared for the responsibilities of WTO Membership by promoting use of technical assistance and structuring transitional periods with action plans, and in general facilitating LDC integration into the multilateral trading system. The 2012 additional provisions will continue to establish the WTO accession process for LDCs as a tool for economic development, incorporating the applicant's own development program and schedule for receiving technical assistance in an action plan for progressive implementation of WTO rules.

Developments in 2012: LDC accession applicants actively negotiating with WTO Members during 2012 included Afghanistan, Ethiopia, Lao PDR, Liberia and Yemen, all having at least one WP meeting during the year. Negotiations with Lao PDR were concluded in October with General Council approval of the terms of accession. Yemen's accession negotiations are substantially completed. Liberia's first Working

[20] WT/L/846
[21] WT/L/508
[22] WT/L/508/Add.1

Party meeting was held in July 2012, and Afghanistan and Ethiopia are continuing their accession efforts, all with significant U.S. technical assistance to develop the legislation and institutions necessary for the implementation of WTO provisions, and will likely continue progress in WP meetings in 2013.

Lao PDR:

Lao PDR engaged in three WP meetings during 2012, in March, July and September. Due to the significant work undertaken by Lao PDR to bring its trade regime in line with WTO rules, the Working Party approved Lao PDR's accession package on an *ad referendum* basis during the September meeting and forwarded the results to the WTO General Council for approval. The WTO General Council approved Lao PDR's terms of accession on October 26, 2012, and Lao PDR is seeking domestic ratification of the accession package. Under the accession package, Lao PDR specifies the amendments it has already enacted for a number of key laws to bring them into conformity with WTO provisions and agreed to eliminate by the date of accession a number of existing barriers to trade that are inconsistent with WTO rules. In some cases, Laos requested and received transition periods. A detailed schedule for full implementation of the WTO Agreement is included in the report of the Working Party. Lao PDR also undertook comprehensive market access commitments in agriculture, industrial goods, and in services. The overall results achieved are significant for a country at Lao PDR's low level of economic development, limited resources, land-locked status and low trade capacity.

Yemen:

The tenth Meeting of the Working Party was held in July 2012. Yemen continued to engage bilaterally with interested Members throughout 2012 to bring its trade regime in line with WTO rules and update its Draft Working Party Report. Yemen substantially concluded bilateral market access negotiations on goods and services during 2012, with the exception of tariff negotiations with Ukraine. At the July 2012 WTO General Council meeting, the Working Party Chair Mr. Hartmut Röben (Germany) and co-facilitators on this accession Ambassador Steffen Smidt (Denmark), and Ambassador Yi (China) reported that the outstanding bilateral market access negotiations on goods between Ukraine and Yemen had been concluded, but that the results were subject to a technical verification exercise. The verification exercise began in August 2012, but differences persist between Ukraine and Yemen. During the December 2012 WTO General Council meeting, Members urged Ukraine to take into account Yemen's status as an LDC, and demonstrate flexibility that will result in Yemen's accession early in 2013.

Ethiopia:

The second Meeting of the Working Party was held in April 2012. The next Working Party meeting will be held upon circulation of the necessary inputs. Bilateral market access negotiations are underway, on the basis of Ethiopia's initial offer on market access for goods, circulated in the first half of 2012. Ethiopia has not yet circulated an offer on market access for services.

Afghanistan:

Substantial progress was achieved, as Afghanistan provided legislation and analysis of its trade regime to WTO Members in two Working Party meetings during June and December 2012. Initial Market Access Offers on Goods and Services were circulated and negotiated in bilateral meetings with delegations on the margins of both WP meetings. An initial draft of Elements of a Working Party Report was circulated in November. The WTO Secretariat believes that definitive progress can be achieved in 2013, and has placed Afghanistan on its priority list for possible completion. Afghanistan has declared that it will be a WTO Member by the end of 2014, a goal supported by the United States.

Liberia:

Liberia's first WP meeting was held in July 2012, and Members reviewed its trade regime and provided questions and comments for written response. The next Meeting of the Working Party will be convened once Liberia submits its replies to Members questions and comments, as well as the Initial Offers on Goods and Services and other inputs. The Secretariat will prepare the first version of the Factual Summary of Points Raised, as soon as the relevant inputs are received.

Prospects for 2013

Prospects for further completed accessions in 2013 are good, *e.g.*, for Kazakhstan, Serbia, Bosnia and Herzegovina, Yemen and Afghanistan, a fact recognized by the WTO Secretariat in its annual report on accessions.[23] Azerbaijan and Ethiopia could make significant progress as well. Other active accessions, but at an early stage of progress, include The Bahamas, Seychelles, and Liberia. These applicants will continue negotiations bilaterally and in their Working Parties during 2013, depending on the timing and the quality of market access offers and on tangible progress on legislation. Based on their efforts during 2012, Belarus, Algeria, and perhaps Uzbekistan also could resume Working Party meetings in 2013. However, the divide between these applicants and the remaining eleven[24] has only deepened, as these other applicants are not, at this time, in a viable accession process, and have not been for over three years. This includes the five remaining LDC applicants, undermining efforts by the WTO to use the accession process to support development in these countries.

K. Plurilateral Agreements

1. Committee on Trade in Civil Aircraft

Status

The Agreement on Trade in Civil Aircraft (Aircraft Agreement) entered into force on January 1, 1980, and is one of two WTO plurilateral agreements (along with the Agreement on Government Procurement) that are in force only for those WTO Members that have accepted it.[25]

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

There are currently 32 Signatories to the Aircraft Agreement: Albania, Canada, the EU[26] (the following 20 EU Member States are also Signatories to the Aircraft Agreement in their own right: Austria,

[23] WT/L/19
[24] Andorra, Iran, Iraq, Lebanon, Libya and Syria; Comoros, Equatorial Guinea, Sao Tome and Principe, Bhutan, and Sudan (LDCs)
[25] Additional information on this agreement can be found on the WTO's website at: http://www.wto.org/english/tratop_e/civair_e/civair_e.htm.

Belgium, Bulgaria, Denmark, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Spain, Sweden, and the United Kingdom), Egypt, Georgia, Japan, Macao China, Montenegro, Norway, Switzerland, Chinese Taipei, and the United States. WTO Members with observer status in the Committee are: Argentina, Australia, Bangladesh, Brazil, Cameroon, China, Colombia, Gabon, Ghana, India, Indonesia, Israel, South Korea, Mauritius, Nigeria, Oman, the Russian Federation, Saudi Arabia, Singapore, Sri Lanka, Trinidad and Tobago, Tunisia, Turkey, and Ukraine. In addition, the IMF and UNCTAD are also observers.

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

Major Issues in 2012

The Aircraft Committee held one regular meeting on November 8, 2012. At this meeting, the Committee continued to discuss its work on the revision of the Product Coverage Annex to the Trade in Civil Aircraft Agreement in order to bring it into conformity with the 2007 Harmonized Commodity and Description System.

Prospects for 2013

The Aircraft Committee agreed to hold its next regular meeting on November 7, 2013. The United States will continue to encourage recently acceded WTO Members to become Signatories pursuant to their respective protocols of accession, and will continue to encourage current Committee observers and other WTO Members to become Signatories to the Aircraft Agreement.

2. Committee on Government Procurement

Status

The WTO Agreement on Government Procurement (GPA) is a "plurilateral" agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO's single undertaking and its membership is limited to WTO Members that specifically signed the GPA in Marrakesh or that have subsequently acceded to it. WTO Members are not required to join the GPA, but the United States strongly encourages all WTO Members to participate in this important agreement.

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

As of the end of 2012, ten Members were in the process of acceding to the GPA: Albania; China; Georgia; Jordan; Kyrgyz Republic; Moldova; New Zealand; Oman; Panama; and Ukraine. Six additional

[26] Currently comprising 27 Member States: Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden, and the United Kingdom.

Members have provisions in their respective Protocols of Accession to the WTO regarding accession to the GPA: Croatia; the Former Yugoslav Republic of Macedonia; Mongolia; Montenegro; the Russian Federation; and Saudi Arabia.

When China joined the WTO in 2001, it committed to commence negotiations to join the GPA "as soon as possible." In April 2006, China agreed in the Joint Committee on Commerce and Trade (JCCT) to submit its initial offer of coverage by the end of 2007. Based on these commitments, China submitted its application for accession to the GPA and its Initial Appendix I Offer on December 28, 2007. The United States submitted its Initial Request for improvements in China's Initial Offer in May 2008. In accordance with a commitment that China made at the United States-China Strategic and Economic Dialogue in July 2009, China submitted a report to the Committee on its plans for submission of a revised offer and the difficulties it has encountered in revising its offer. At the JCCT meeting in October 2009, China committed to table a revised offer in 2010. China submitted its first Revised Offer in July 2010. The United States submitted its Second Request for improvements in China's Revised Offer in September 2010. China also submitted its responses to the Checklist of Issues for Provision of Information Relating to Accession in September 2008. In April 2010, the United States submitted questions to China on its responses to the Checklist of Issues. China replied to U.S. questions in October 2010. At the JCCT meeting in December 2010, China committed to table a second revised offer in 2011. During President Hu's January 2011 visit to Washington, China expressly committed that its second revised offer would include subcentral entities. On November 30, 2011, China submitted its second revised offer, which included several subcentral entities. On July 3, 2012, the United States submitted its Third Request for improvements in China's offer. On November 29, 2012, China submitted its Third Revised Offer.

Jordan submitted its initial offer of coverage in 2002. It has submitted several revised offers, in response to requests by the United States and other GPA Parties for improvements. Negotiations on Jordan's accession did not make any progress in 2012.

The Kyrgyz Republic's accession to the GPA, which had been inactive since 2003, moved forward in 2009 when it submitted updated responses to the Checklist of Issues, but it did not make further progress in 2012.

Moldova applied for accession to the GPA in 2002, and submitted its initial offer in 2008. In September 2012, Moldova submitted a revised coverage offer.

In October 2012, New Zealand commenced its accession to the GPA with the submission of its application for accession, initial market access offer, and its replies to the Checklist of Issues.

Ukraine commenced its accession to the GPA in 2011 with the submission of its application for accession, and in August 2011, submitted its replies to the Checklist of Issues. In 2012, Ukraine updated the committee on its progress in bringing its domestic legislation into compliance with the GPA's requirements and its preparations of an initial offer.

With the addition of Indonesia, Malaysia, and Montenegro in 2012, 26 WTO Members, including those in the process of acceding to the GPA, have observer status in the GPA Committee: Albania; Argentina; Australia; Bahrain; Cameroon; Chile; China; Colombia; Croatia; Georgia; India; Indonesia; Jordan; Kyrgyz Republic; Malaysia; Moldova; Mongolia; Montenegro; New Zealand; Oman; Panama; Saudi Arabia; Sri Lanka; Turkey; Ukraine; and Vietnam. Four intergovernmental organizations (IMF, International Trade Centre, OECD, and UNCTAD) also have observer status.

On December 15, 2011, the GPA Parties reached agreement on the conclusion of negotiations, which had been conducted over more than a decade, to revise the GPA. The outcome included a revision of the text

of the GPA to streamline and clarify its obligations, to incorporate flexibilities that reflect modern procurement practices, and to facilitate its implementation. The revision also significantly expanded the procurement covered under the GPA. As part of the GPA package, the GPA Parties adopted a set of Future Work Programs to be undertaken by the GPA Committee following the entry into force of the revised Agreement. These include programs related to: (i) the treatment of small and medium sized enterprises; (ii) sustainable procurement; (iii) the collection and dissemination of statistical data; (iv) exclusions and restrictions in GPA Parties' Annexes; and (v) safety standards in international procurement. The GPA Committee has also approved a decision relating to the use of electronic means to fulfill notification requirements under Articles XIX and XXII of the revised Agreement.

In March 2012, the GPA Parties formally adopted the results of the revision of the GPA. The GPA Parties also agreed to undertake the necessary domestic approval procedures so that the revised Agreement could enter into force as soon as possible.

Major Issues in 2012

The GPA Committee adopted the results of the revision of the GPA. The revision will expand procurement opportunities for U.S. goods, services, and suppliers. The revised GPA will also facilitate understanding and implementation of the GPA text.

New Zealand commenced its GPA accession in October 2012, China submitted its third revised offer, and Moldova submitted a new revised offer, which re-invigorated its accession, which had been stalled for several years.

During 2012, the GPA Committee held four formal meetings (in March, July, October, and December) and four informal meetings, focused primarily on adoption of the revised GPA and entering it into force.

The GPA Committee held discussions at informal meetings on the accessions of China, Moldova, New Zealand, and Ukraine to the GPA.

Prospects for 2013

The GPA Committee will continue work to advance GPA accessions, in particular, of China, Jordan, Moldova, and New Zealand. The GPA Committee will also focus on completion of decisions on arbitration procedures and indicative criteria that are intended to facilitate the modification of GPA Parties' Annexes. The GPA Committee anticipates that the revised GPA will enter into force in 2013, as soon as two-thirds of the 15 GPA Parties have accepted it. When the revised GPA enters into force, the GPA Committee will commence work on the five Work Programs that were adopted as part of the overall package.

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

Status

The Committee of Participants on the Expansion of Trade in Information Technology Products ("the ITA Committee") was established to carry out the provisions of the Information Technology Agreement

(ITA)[27], among which are to review the current product coverage with a view to incorporate additional products, and to consider any divergence among ITA Participants in classifying ITA products. The Committee thus serves as the forum for meetings required under its procedures and collective consultations among the participants.

The ITA covers a wide range of information and communications technology (ICT) products including computers and computer peripheral equipment, electronic components including semiconductors, computer software, telecommunications equipment, semiconductor manufacturing equipment, and computer-based analytical instruments. In March 2012, Colombia joined the ITA as a result of a commitment under the United States-Colombia Trade Promotion Agreement. In May 2012, Montenegro joined the ITA as part of its WTO accession commitments, bringing the number of participants to 75.[28] Among these 75 ITA Participants, however, Morocco has not yet submitted the formal documentation to implement its ITA Commitments, and El Salvador has indicated that implementation would begin after the completion of domestic legal procedural requirements.

The Russian Federation committed to join the ITA upon its accession to the WTO. Russia submitted a draft schedule to the ITA Committee for verification in July. On August 8, the United States, together with the European Union, Japan, and Chinese Taipei submitted joint comments to the Russian Federation on the steps necessary for the Russian Federation to finalize its ITA schedule. On August 22, the Russian Federation formally acceded to the WTO, but has yet to take the final steps necessary to join the ITA. The United States continues to urge the Russian Federation to submit a revised schedule that addresses the concerns we raised with other Members. Once this happens, and the ITA Committee approves the file, the Russian Federation will be an ITA Member.

In September 2012, the Republic of Tajikistan informed the WTO Secretariat of its commitment to join the ITA upon its accession to the WTO and submitted its draft ITA schedule. The ITA Committee approved Tajikistan's ITA schedule in October, and the WTO General Council approved Tajikistan's WTO accession package in December 2012. Tajikistan will become a full member of the ITA when it becomes a WTO member, *i.e.*, 30 days after it ratifies its accession protocol.

Major Issues in 2012

The ITA Committee held two formal meetings in 2012, on May 15 and November 1.[29] To commemorate the occasion of the 15th anniversary of the ITA, the WTO Secretariat hosted a two day symposium event on May 14-15 open to all WTO members and observers, the private sector, IT industry representatives, academic experts, international inter-governmental organizations, NGOs and journalists.

Former USTR Ambassador Charlene Barshefsky delivered an opening keynote address calling on ITA Participants to begin negotiations to expand ITA product coverage. Several representatives from leading

[27] More formally known as the "WTO Ministerial Declaration on Trade in Information Technology Products" (WT/MIN(96)/16)

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

[29] The minutes of these Committee meetings are contained in WTO documents G/IT/M/55 and G/IT/M/56 (not yet released).

information technology companies made similar calls for expanding product coverage of the ITA to reflect technological development in the ICT sector. They further highlighted the transformative effect that the ITA has had on development, trade, global production chains, and the global economy in the 15 years since it entered into force.

At the formal ITA meeting of May 15, 2012 following the ITA symposium, there was a broad endorsement by ITA Participants to pursue expansion of ITA product coverage based on a concept paper tabled in early May by the United States, Canada, Costa Rica Korea, Japan, Malaysia, Singapore, and Chinese Taipei (Taiwan). As a result, a review of ITA product coverage was included as a regular agenda item of the Committee.

Following the May ITA Committee meeting, a group of 17 ITA Participants[30] – including the United States – convened informal technical discussions to develop a list of ICT products to propose for addition to ITA product coverage. In July, a draft "consolidated list" of products proposals was circulated to the WTO (JOB/IT/7/Rev.1). A second revision of this product list was circulated in December, reflecting the results of technical discussions convened by the 17 Members throughout the fall. This consolidated list is intended to serve as a basis for negotiations and to facilitate domestic consultations – it is not an agreed list, but rather a compilation of proposals tabled by at least one ITA Participant.

In addition to discussion of ITA product expansion, the ITA Committee continued to discuss classification divergences on certain ITA products aimed at eliminating differences in the way participants classify ITA products in their national tariff schedules. The ITA Committee considered a draft decision to endorse the classification of 18 ITA Attachment B items in the Harmonized System (HS) 1996 nomenclature. However, Members were unable to agree on the draft decision, or the other outstanding classification divergences, so work will continue in 2013.

The Committee also continued its deliberations on the Non-Tariff Measures (NTMs) Work Programme in 2013. With regard to its work on the EMC/EMI Pilot Project, the Committee took note that 28 ITA Members (including the EU as one Member) have provided survey responses to the Committee and encouraged those that had not provided the information to do so without any further delay. In considering ways to advance and expand its work on NTMs other than EMC/EMI, the Committee also heard reports and updates by participants on their contributions to work on NTMs, including in other bodies of the WTO and informally.

Prospects for 2013

Since the ITA was signed in 1996, the global ICT sector has experienced an innovation revolution, with countless new ICT and electronics products entering the market. Expanding the product scope of the ITA could help mitigate, or even eliminate, many of the classification divergences that exist among ITA Participants based on the current ITA coverage, specified in HS1996 tariff nomenclature. Based on progress to date, ITA Participants will intensify negotiations on a list of ICT goods to add to the ITA product coverage, both informally and within the ITA Committee.

The next meeting of the ITA Committee will be held in the first quarter of 2013.

[30] The ITA Participants actively involved in the technical discussions on ITA expansion as of December 2012 are: Australia, Canada, China, Costa Rica, the European Union, Hong Kong, Japan, Korea, Malaysia, New Zealand, Norway, the Philippines, Singapore, Switzerland, Chinese Taipei, Thailand, and the United States.