

# Foreword

The 2012 Trade Policy Agenda and 2011 Annual Report of the President of the United States on the Trade Agreements Program are submitted to the Congress pursuant to Section 163 of the Trade Act of 1974, as amended (19 U.S.C. 2213). Chapter II and Annex II of this document meet the requirements of Sections 122 and 124 of the Uruguay Round Agreements Act with respect to the World Trade Organization. In addition, the report also includes an annex listing trade agreements entered into by the United States since 1984. Trade data for 2011, where listed, are annualized based on January to November data. Services data by country are only available through 2009.

The Office of the United States Trade Representative (USTR) is responsible for the preparation of this report. U.S. Trade Representative Ron Kirk gratefully acknowledges in particular the contributions of Deputy U.S. Trade Representatives Demetrios Marantis, Michael Punke, and Miriam Sapiro; USTR General Counsel Timothy Reif; Chief of Staff Lisa Garcia; and Assistant USTR for Public/Media Affairs Carol Guthrie, Senior Policy Advisor Holly Smith, Senior Advisor David Roth, and Director of Speechwriting Jeremy Sturchio. Thanks are extended to partner Executive Branch agencies, including the Environmental Protection Agency and the Departments of Agriculture, Commerce, Health and Human Services, Justice, Labor, State, and Treasury. Ambassador Kirk would also like to thank Kimberly Ehrman, Carolyn Esko, and Asa Reynolds for their contributions.

March 2012



## LIST OF FREQUENTLY USED ACRONYMS

AD.....	Antidumping
AGOA.....	African Growth and Opportunity Act
APEC.....	Asia Pacific Economic Cooperation
ASEAN.....	Association of Southeast Asian Nations
ATC.....	Agreement on Textiles and Clothing
ATPA.....	Andean Trade Preferences Act
ATPDEA.....	Andean Trade Promotion & Drug Eradication Act
BIA.....	Built-In Agenda
BIT.....	Bilateral Investment Treaty
BOP.....	Balance of Payments
CACM.....	Central American Common Market
CAFTA.....	Central American Free Trade Area
CARICOM.....	Caribbean Common Market
CBERA.....	Caribbean Basin Economic Recovery Act
CBI.....	Caribbean Basin Initiative
CFTA.....	Canada Free Trade Agreement
CITEL.....	Telecommunications division of the OAS
COMESA.....	Common Market for Eastern & Southern Africa
CTE.....	Committee on Trade and the Environment
CTG.....	Council for Trade in Goods
CVD.....	Countervailing Duty
DDA.....	Doha Development Agenda
DSB.....	Dispute Settlement Body
EAI.....	Enterprise for ASEAN Initiative
DSU.....	Dispute Settlement Understanding
EU.....	European Union
EFTA.....	European Free Trade Association
FTAA.....	Free Trade Area of the Americas
FOIA.....	Freedom of Information Act
GATT.....	General Agreement on Tariffs and Trade
GATS.....	General Agreements on Trade in Services
GDP.....	Gross Domestic Product
GEC.....	Global Electronic Commerce
GSP.....	Generalized System of Preferences
GPA.....	Government Procurement Agreement
IFI.....	International Financial Institution
IPR.....	Intellectual Property Rights
ITA.....	Information Technology Agreement
LDBDC.....	Least-Developed Beneficiary Developing Country
MAI.....	Multilateral Agreement on Investment
MEFTA.....	Middle East Free Trade Area

MERCOSUL/MERCOSUR.....	Southern Common Market
MFA.....	Multifiber Arrangement
MFN.....	Most Favored Nation
MOSS.....	Market-Oriented, Sector-Selective
MOU.....	Memorandum of Understanding
MRA.....	Mutual Recognition Agreement
NAFTA.....	North American Free Trade Agreement
NEC.....	National Economic Council
NIS.....	Newly Independent States
NSC.....	National Security Council
NTR.....	Normal Trade Relations
OAS.....	Organization of American States
OECD.....	Organization for Economic Cooperation and Development
OPIC.....	Overseas Private Investment Corporation
PNTR.....	Permanent Normal Trade Relations
ROU.....	Record of Understanding
SACU.....	Southern African Customs Union
SADC.....	Southern African Development Community
SME.....	Small and Medium Size Enterprise
SPS.....	Sanitary and Phytosanitary Measures
SRM.....	Specified Risk Material
TAA.....	Trade Adjustment Assistance
TABD.....	Trans-Atlantic Business Dialogue
TACD.....	Trans-Atlantic Consumer Dialogue
TAEVD.....	Trans-Atlantic Environment Dialogue
TALD.....	Trans-Atlantic Labor Dialogue
TBT.....	Technical Barriers to Trade
TEP.....	Transatlantic Economic Partnership
TIFA.....	Trade & Investment Framework Agreement
TPRG.....	Trade Policy Review Group
TPSC.....	Trade Policy Staff Committee
TRIMS.....	Trade-Related Investment Measures
TRIPS.....	Trade-Related Intellectual Property Rights
UAE.....	United Arab Emirates
UNCTAD.....	United Nations Conference on Trade & Development
UNDP.....	United Nations Development Program
URAA.....	Uruguay Round Agreements Act
USDA.....	U.S. Department of Agriculture
USITC.....	U.S. International Trade Commission
USTR.....	United States Trade Representative
VRA.....	Voluntary Restraint Agreement
WAEMU.....	West African Economic & Monetary Union
WB.....	World Bank
WTO.....	World Trade Organization

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**ANNEX I**

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**THE PRESIDENT'S 2012 TRADE POLICY  
AGENDA**



# I. THE PRESIDENT'S TRADE AGENDA

## Advancing Trade to Support American Jobs

Under President Obama's leadership, the United States' trade policy supports American jobs by opening markets and creating opportunities for U.S. farmers, ranchers, manufacturers, and service providers to export more "Made in America" products to customers around the world. The Obama Administration rigorously enforces U.S. trade rights, insisting that countries fulfill their commitments and act according to the rules prescribed under our agreements. We work to strengthen the rules-based international trading system, to build better markets for U.S. exports, and to share the benefits of trade more broadly. These efforts are bringing U.S. trade policy into greater balance with the concerns and aspirations of the American people, attracting and maintaining the jobs and industries of the 21st century here on our shores.

On behalf of American businesses, workers, farmers, and families, in 2011 we secured congressional approval of market-opening trade agreements with Korea, Colombia, and Panama, renewal of trade preference programs that benefit U.S. businesses and consumers through cost savings on goods from developing countries, and the strengthening of Trade Adjustment Assistance to support American workers and farmers transitioning to new jobs. We won World Trade Organization (WTO) rulings against more than \$18 billion in European Union (EU) subsidies for Airbus – the largest case heard by the WTO to date – and worked to hold China accountable for its trade commitments, including by bringing a new WTO dispute against Chinese antidumping duties on chicken broiler products. We achieved the broad outlines of an ambitious Trans-Pacific Partnership (TPP) agreement that will tackle 21st century trade issues while further opening Asia-Pacific markets to American producers of goods and services. We also hosted a watershed year in the Asia-Pacific Economic Cooperation (APEC) forum, securing concrete commitments from 20 other Asia-Pacific economies that will advance our trade and investment interests and support jobs for workers in the United States and around the Pacific Rim. We engaged with Russia and other WTO Members to conclude 18 years of accession negotiations and invite Russia, the largest country still outside the rules-based WTO system, to join the WTO. We launched the U.S.-EU High-Level Working Group on Jobs and Growth (HLWG), an avenue for identifying new ways of strengthening our economic relationship with Europe. With trading partners in the Middle East and Africa we began building new bilateral and regional approaches to promoting additional economic growth through the removal of barriers to regional trade and investment. These successes and others advanced the goals of the President's National Export Initiative (NEI) and enabled additional job-supporting two-way trade.

President Obama is determined to ensure that trade continues to contribute to the creation of better jobs for more Americans. Speaking at the APEC 2011 Economic Leaders' Summit in Honolulu, President Obama said: "the single greatest challenge for the United States right now, and my highest priority as President, is creating jobs and putting Americans back to work. And one of the best ways to do that is to increase our trade and exports with other nations. Ninety-five percent of the world's consumers are beyond our borders. I want them to be buying goods with three words stamped on them: 'Made in America.' So I have been doing everything I can to make sure that the United States is competing aggressively for the jobs and the markets of the future."

The President's Trade Policy Agenda for 2012 offers a survey of how the Administration will continue to support American jobs through exports and two-way trade, through enforcement of U.S. rights in a strong, rules-based trading system, and through bolstered international trade relationships. It outlines

how we will partner with developing countries to fight poverty and expand opportunity, and how we will reflect and uphold American values in trade policy. The complex challenges facing the American economy, including U.S. businesses and workers, will demand our highest ambition and our most creative ideas to help Americans compete and win through trade.

## **Our Trade Policy Priorities**

### **I. Sustain American Economic Growth through Expansion of Job-Supporting U.S. Exports**

U.S. businesses and families clearly benefit from two-way trade that supports American jobs. In 2010 – the latest year for which data is available – every \$1 billion in U.S. goods exports supported more than an estimated 6,000 American jobs, and every \$1 billion of U.S. services exports supported more than an estimated 4,500 American jobs. Agricultural exports supported an estimated nearly one million American jobs on and off the farm. Export-supported jobs are the jobs Americans want and need: those supported by U.S. exports of goods pay an estimated 13 to 18 percent more than the national average. And U.S. service providers are competing globally in sectors from education to engineering to energy and environmental services, just to name a few. The United States is also a leader in its participation in global supply chains; more than half of U.S. imports provide inputs to value-added U.S. production, which employs millions of Americans.

In 2012, the Obama Administration will continue to focus on increasing American exports and ensuring that trade contributes to job-supporting economic growth as U.S. companies, workers, farmers, and ranchers create, grow, manufacture, and provide more products that the rest of the world wants to buy.

#### *Advance President Obama's National Export Initiative*

Two years after President Obama launched the National Export Initiative (NEI) in his 2010 State of the Union Address, this Administration-wide effort to double exports by the end of 2014 is succeeding. In 2011, overall U.S. goods and services exports exceeded \$2.1 trillion, which represents a 33.5 percent increase over 2009. Export gains were reflected across all major sectors in 2011: services exports were up 19.7 percent over 2009; manufacturing exports were up 33.4 percent; and agricultural exports were up 38.6 percent. Overall U.S. exports of goods and services have increased at an annualized rate of 15.6 percent when compared to 2009 – a pace greater than the 15 percent required annually to meet the President's goal. Such strong results are particularly significant considering that the U.S. economy and global markets faced substantial economic headwinds last year.

In 2012, the Administration will actively pursue market-opening measures that continue to advance the NEI. We will continue to implement the 70 NEI recommendations outlined by the Export Promotion Cabinet in its September 2010 NEI Report to the President. Our ongoing interagency NEI implementation work is focused on: 1) improving trade advocacy and export promotion efforts; 2) increasing access to credit, especially for small and medium-sized businesses; 3) removing barriers to the sale of U.S. goods and services abroad; 4) robustly enforcing trade rules; and 5) pursuing policies at the global level to promote strong, sustainable, and balanced growth. Building upon the comprehensive interagency National Export Strategy to Congress delivered by the Cabinet in June 2011, the Administration will report later in 2012 on the full array of NEI implementation activities, including on Government-wide metrics to measure ongoing NEI progress.

Helping U.S. small businesses become more involved in exporting is a major NEI priority. Studies show that U.S. small businesses who export grow faster, pay higher wages, and hire more quickly than those that do not. In 2012, Administration outreach to small businesses, as well as women-owned and minority-owned firms, will expand. In the Trans-Pacific Partnership negotiations, we are working with our partners to develop specific commitments to help small businesses participate more actively in regional trade. Through APEC, we will continue to work to address top barriers facing small businesses trading in the region, such as by making it easier to access basic customs documentation and to enhance participation by small businesses in global production chains. With European Union partners, we will utilize our new Best Practices Exchanges to reduce transatlantic barriers to trade for small businesses. And with our trade agreement partners, we are working to develop ways for small businesses to take greater advantage of the economic opportunities created by these agreements.

### *Implement Trade Agreements with Korea, Colombia, and Panama*

From day one, the Obama Administration has insisted on higher standards for trade agreements, and in 2011 won approval of long-awaited pacts with Korea, Colombia, and Panama after taking steps to make the agreements better serve American workers and businesses, and better reflect our values. This proactive approach, taken in close consultation with Congress and American stakeholders, yielded unprecedented results: new opportunities in Korea that will provide important new export opportunities for the U.S. auto industry, groundbreaking commitments from Colombia on labor rights and protections, and improvements on labor and tax transparency in Panama.

In 2012, the Administration is working to secure swift entry into force and implementation of these trade agreements to quickly enhance American competitiveness in these markets and put more Americans to work on factory floors and farms and at firms across the country. We are coordinating closely with Congress, stakeholders, and the governments of Korea, Colombia, and Panama to ensure that the provisions specified in the agreements and related measures are met. These efforts are proceeding with a strong sense of urgency from the United States because we are eager to help American businesses, workers, and families seize all of the job-supporting opportunities in these improved trade agreements as quickly as possible.

The most economically significant U.S. trade agreement to be approved in 17 years, with legislation receiving the highest affirmative recorded vote in the U.S. Senate on a trade pact, the United States-Korea trade agreement is expected to increase U.S. goods exports by an estimated \$11 billion based on tariff cuts alone, and support at least an estimated 70,000 jobs in America once it is fully implemented. The additional automotive commitments agreed to in 2010 will level the playing field for U.S. automotive companies and workers, by addressing ways Korea's system of automotive safety standards have served as a barrier to U.S. exports, increasing regulatory transparency, and establishing a special motor vehicle safeguard to ensure that the American autoworkers do not suffer from potential harmful surges in Korean auto imports due to this agreement. Adjustments made to auto and truck tariffs will give U.S. auto companies and American workers the opportunity to increase sales in Korea before U.S. tariffs on Korean autos come down. The agreement will also create new opportunities for even more U.S. exports as it opens South Korea's \$580 billion services market to more American companies – supporting additional jobs for American workers in service sectors such as express delivery, engineering, education, health care, and professional services.

Once fully implemented, the United States-Colombia trade agreement is expected to increase U.S. goods exports by over \$1 billion dollars annually and support thousands of additional American jobs. At the same time, to assess progress in the continued implementation of the Colombia Action Plan Related to

Labor Rights, during 2012 the Administration will maintain intensive engagement with the Colombian government in support of its efforts to provide better protection of workers' rights in Colombia, to prevent violence against unionists, and to ensure the prosecution of perpetrators of such violence.

The Administration also secured strong support from Congress on legislation approving the United States-Panama trade agreement after working with stakeholders and the Government of Panama to address concerns related to tax transparency and labor rights. Once fully implemented, the United States-Panama agreement will remove barriers to U.S. exporters, investors, and service providers doing business between the United States and Panama.

### *Build a Bold and Ambitious Trans-Pacific Partnership*

The Trans-Pacific Partnership is a bold initiative through which the Obama Administration is advancing the United States' multifaceted trade and investment interests in the dynamic Asia-Pacific region, where experts estimate that economies will grow faster than the world average through 2016. Today, we are negotiating an ambitious 21st-century regional trade agreement with like-minded partners including Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam.

Building on the broad outlines announced last November in Honolulu, in 2012 the United States will seek to conclude a landmark TPP agreement. We will also decide with TPP partners on the entry of additional countries that have expressed interest in joining the negotiations, including Canada, Japan, and Mexico. In ongoing bilateral consultations with these potential partners, the United States continues to make clear that any new participants must be able to meet the high standards agreed by all TPP negotiating partners and be prepared to address specific issues of concern.

As we continue our close consultation with the U.S. Congress toward negotiating outcomes and new partners, the Obama Administration will explore issues regarding additional trade promotion authority necessary to approve the TPP and future trade agreements.

Through the TPP, the Administration is seeking to boost U.S. economic growth and support the creation and retention of high-quality American jobs. In 2010, U.S. goods exports to our eight other TPP negotiating partners collectively totaled \$89 billion, which supported an estimated 500,000 jobs in America. We seek to strengthen these robust trade relationships and foster additional job-supporting export opportunities by enhancing trade and investment among TPP countries. To date, TPP negotiations have made substantial progress toward a regional agreement and toward establishing the most credible pathway for an overall Free Trade Area of the Asia-Pacific, which has the potential to support further additional U.S. jobs.

Participants in the TPP negotiations are also addressing 21st-century trade issues, including many that have not been addressed in previous trade agreements: cross-cutting issues like increasing regulatory coherence, integrating small- and medium-sized exporters more fully into regional trade, and promoting development. TPP participants are also seeking to enhance supply chain connectivity, competitiveness, and business facilitation, and to promote the growth of the digital economy by ensuring the free flow of cross-border data and related services. TPP negotiating partners are also considering new ways to address enhanced food safety, environmental protection and conservation, and state-owned enterprises. These efforts, along with commitments to achieve high standards for market access across all major sectors, put TPP in the vanguard of the Administration's efforts to advance forward-thinking, comprehensive trade policy that supports additional U.S. exports and jobs.

## *Lead Efforts to Open Markets through the World Trade Organization*

An original member of the WTO, the United States is committed to preserving and enhancing the WTO's irreplaceable role as the primary forum for multilateral trade liberalization, for the development and enforcement of global trade rules, and as a key bulwark against protectionism.

As the WTO welcomes new members this year – most notably Russia, whose accession negotiations the United States helped to conclude in 2011— the Obama Administration will work with Congress to secure legislation ending application of the Jackson-Vanik Amendment and authorizing the President to extend permanent normal trade relations status to Russia as soon as possible. This step is necessary to make available to U.S. companies and workers the many WTO commitments that we secured for improved access to Russia's large and growing market for U.S. exports of agricultural and manufactured goods and services, and for improved protection and enforcement of intellectual property rights (IPR). For example, U.S. farmers, ranchers, and agricultural producers stand to benefit from additional market access under tariff-rate quotas (TRQ) for exports of American beef, pork, and poultry to Russia. Timely passage of this legislation is essential to ensure that American firms and American exporters enjoy the same job-supporting benefits of Russia's membership in the WTO rules-based system as our international competitors.

In 2012, the United States will also continue to contribute constructively and creatively to the effective functioning of the WTO. Having joined other WTO Members in acknowledging that the Doha Round of multilateral negotiations is at an impasse, the Obama Administration will exercise its leadership in turning the page toward fresh, credible approaches to market-opening trade negotiations in the WTO.

Now, we are seeking to create momentum for market-opening measures that present significant opportunities for U.S. producers and consumers, and strengthen the WTO's credibility as a negotiating organization. We remain open to pursuing elements of the Doha Round where there are reasonable prospects for producing such results, but we believe it is essential also to foster dialogue on forging productive paths in other aspects of the WTO's mandate. As these discussions advance, it remains particularly important to focus on the responsibilities of emerging economies to make contributions commensurate with their advancing roles in global trade.

The United States is convinced that the WTO's negotiating arm can and must become strong again. Witness the landmark 2011 agreement to revise the text of the WTO Government Procurement Agreement (GPA) and expand the procurement that it covers, which was successfully concluded last year. The revised GPA presents suppliers in the United States with new opportunities to support more American jobs through broader, deeper access to government procurement of goods and services in many partner economies. It also provides a strong foundation for China to accelerate its accession to the GPA, which remains a priority for the United States.

The Administration continues to adhere strongly to the precept that trade liberalization at the multilateral level holds the highest potential for securing wide-ranging market-opening outcomes while at the same time advancing trade as an economic engine for global development. However, within the WTO and outside it, we will complement multilateral approaches with discussions at the plurilateral, regional, and bilateral levels to build consensus for and commitments to market-opening agreements in many areas critical to the growth of trade-supported U.S. jobs.

As we continue to lead in the rebuilding of the WTO's negotiating mission, in 2012 the United States also will continue to vigorously support and revitalize the valuable, day-to-day work carried out by the WTO's

Committees, Working Groups, and its dispute settlement mechanism for the purpose of maintaining and enforcing the commitments to open markets in the WTO agreement, and retaining or realizing the jobs that market access may hold.

### *Expand Trade Opportunities across All Major Sectors*

In 2012, the Administration will be considering potential pathways for trade liberalization in major sectors where U.S. producers are highly competitive, so that increased U.S. exports will support the maximum number of additional well-paying American jobs.

America's manufacturing sector is the largest contributor to U.S. exports. In 2011, the United States exported over \$1.1 trillion of manufactured goods, which accounted for 77 percent of all U.S. goods exports and 54 percent of U.S. total exports. Increased business investment and U.S. exports reflects a recent resurgence of American manufacturing that is helping put more people back to work in the United States. In the past two years, 334,000 manufacturing jobs have been created in America, while U.S. manufacturing production has increased by about 5.7 percent on an annualized basis since its low in June 2009, its fastest pace in a decade. To support these positive trends, the Administration is constantly working to open markets and to provide a level playing field for American manufacturers competing around the world. For example, this year, expected implementation and entry into force of the United States-Korea trade agreement will present important new export opportunities for the American automobile industry, which has accounted for 23.2 percent of the increase in manufacturing industrial production since the U.S. economic recovery began.

America's services sector employs 80 percent of our country's private sector workforce. Expanding market access opportunities for U.S. service suppliers will unquestionably pay dividends to U.S. workers. U.S. businesses both small and large are leading providers of a wide range of services sought by international customers, particularly infrastructure business services such as financial services, information communication technology (ICT) services, distribution, express delivery and logistics, energy and environmental services. Removing barriers to the delivery of these vital infrastructure service sectors in major emerging markets has been and will remain the focus of the Administration in all of its services trade initiatives. In 2012, the Administration will intensify its efforts through regional initiatives such as the TPP; bilateral engagement with major markets like the EU, China, India and Brazil; and by exploring plurilateral options with more progressive WTO members. The administration will also continue its efforts to address new trade issues arising as a result of technological advances, such as restrictions to data flows and other requirements that limit the access of U.S. service suppliers to key global markets.

Closely related to services are the Administration's priorities relating to investment. The latest available trade data from U.S.-based multinational firms in 2009 indicates that 55 percent of U.S. exports flow from firms that invest abroad, and 37 percent of these exports go directly to those firms' overseas affiliates. These firms employ 23 million Americans and pay compensation 19 percent higher than the U.S. private sector average. In 2012, the Administration will work to conclude the Model Bilateral Investment Treaty (Model BIT) review, with the objective of producing an updated model that preserves high-standard investor protections without compromising governments' ability to regulate in the public interest, and address the challenges posed by state-owned enterprises or other entities that receive preferential treatment from their governments, as well as the distortions created by indigenous innovation policies. We also seek a Model BIT that enhances transparency and public participation, and strengthens obligations relating to labor rights and environmental protection. Securing an updated Model BIT will enable the United States to re-engage BIT negotiations with partners such as China, India, and Mauritius, and to consider additional BIT negotiations with other potential partners, such as Russia and the East

African Community (EAC). Advancing BIT negotiations will allow the Administration to address important outstanding concerns and help to secure a more level playing field for U.S. investors in these and other key markets.

In 2011, the United States exported \$144 billion of agricultural goods globally. In 2012, the swift entry into force and implementation of trade agreements with Korea, Colombia, and Panama will boost combined U.S. agricultural exports by an estimated \$2.3 billion annually, which will support additional American jobs. Furthermore, once the United States-Korea trade agreement enters into force, the Obama Administration intends to request consultations under the 2008 United States-Korea beef protocol to discuss its full application.

Indeed, we will support jobs for American farmers, ranchers, and agribusinesses and their workers worldwide by insisting that scientific standards be applied globally to food and agricultural trade. Promoting the use of international standards for risk assessments and regulatory approaches is critical for U.S. agricultural trade as well as helping to increase agricultural productivity and sustainability worldwide. We will also pursue equivalency recognition of trade in organic food products with key export market partners, and continue to support science-based and transparent regulations that facilitate trade in agricultural products derived from modern biotechnology. The latter represent an estimated one-third of the total value of U.S. agricultural exports.

Congress created the Generalized System of Preferences (GSP) program in the Trade Act of 1974 to help developing countries expand their economies by allowing certain goods to be imported to the United States duty-free. The GSP program aids U.S. manufacturing by lowering the cost of imported goods used as inputs. In 2011, the Administration worked with Congress to pass legislation reauthorizing the GSP program through July 31, 2013, and retroactively applying its benefits for eligible products that entered the United States on or after January 1, 2011. In 2012, the Obama Administration intends to seek to ensure that the GSP program effectively responds to the needs of the world's developing countries along with U.S. businesses and consumers. Options that take into account the growing competitiveness of many emerging market GSP beneficiaries may be considered for future possible reform of the GSP program. We will also ensure beneficiaries continue to comply with all eligibility criteria, including through careful monitoring and evaluation of labor conditions in GSP beneficiary countries.

#### *Build Better Export Markets through Regional Economic Integration*

To build better markets for U.S. exports and extend the job-supporting benefits of trade more broadly, the United States is working with partners around the world to remove barriers to trade and enhance economic integration on a regional basis.

In 2011, the Administration began to explore with our trading partners creative approaches to fostering increased regional trade and investment integration worldwide, not only through the Trans-Pacific Partnership and across Asia, but also with the European Union and in response to historic transitions and changing conditions in areas including the Middle East and North Africa (MENA), sub-Saharan Africa, and Central America and the Dominican Republic.

This year, the Administration will engage with the EU through a High-Level Working Group on Jobs and Growth to deepen and enhance our strong transatlantic trade and investment relationship, which sustains several million jobs in the United States. Together with our EU partners, we will seek to identify new opportunities to enhance international competitiveness and job creation in our countries. We will consider options to reduce or eliminate conventional barriers to trade in goods, such as tariffs and tariff-

rate quotas, as well as measures to reduce, eliminate, or prevent barriers trade in services and investment. We will also examine ways to reduce, eliminate, or prevent unnecessary non-tariff barriers to trade in all categories, and to enhance the compatibility of regulations and standards. In addition, together we will seek enhanced cooperation for the development of rules and principles on global issues of common concern and also for the achievement of shared economic goals relating to third countries.

The United States will work with regional partners to develop a Trade and Investment Partnership Initiative in the Middle East and North Africa. This initiative can include a broad set of initiatives, including agreements, where appropriate, designed to increase job-supporting trade and investment between the United States and the region, as well as within the region. Our goal is to focus on securing and implementing near term measures and to build on existing agreements to promote greater integration of MENA markets with U.S. and European markets. Our efforts can open the door for those countries that adopt high standards of reform and trade liberalization to construct a regional trade arrangement. Where appropriate, we will work together with the EU in this effort to provide capacity building and technical support. This initiative will build on specific steps taken in 2011 and early 2012, including an agreement to develop a bilateral Action Plan with Egypt and the reinvigoration of a Trade and Investment Framework Agreement (TIFA) program of cooperation with Tunisia.

The Administration will also seek to make additional progress with countries in sub-Saharan Africa to facilitate regional economic integration. We will actively advance U.S. Trade and Investment Framework Agreements (TIFAs) with African regional economic communities (RECs) including, among others, the West African Economic and Monetary Union (WAEMU) and the Common Market for Eastern and Southern Africa (COMESA). Providing technical assistance and other support, we will bolster ongoing efforts in Africa to achieve free trade areas covering three RECs (the “Tripartite”) and the Southern African Customs Union (SACU) through our Trade, Investment, and Development Cooperation Agreement (TIDCA), as well as a Continent-wide Free Trade Agreement (FTA). We will also build on the Administration’s successful efforts last year to secure ratification of the United States-Rwanda Bilateral Investment Treaty (BIT), by working with five East African Community (EAC) countries – Burundi, Kenya, Rwanda, Tanzania, and Uganda – to negotiate a U.S.-EAC regional investment treaty as part of a new U.S.-EAC trade and investment initiative. This initiative could possibly provide building blocks for a more comprehensive U.S.-EAC trade agreement or bilateral investment agreement in the future, and may serve as a model for U.S. engagement with other African regional economic communities.

The Administration also will continue to work with Congress to secure implementing legislation for a February 2011 agreement on technical corrections to the textile and apparel rules of origin in the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR). These modifications will promote greater use of regional inputs in textile and apparel trade between the United States and Central America and the Dominican Republic that will help advance American and regional jobs and export opportunities. These changes will also enhance the benefits of the first-ever CAFTA-DR sourcing database that was created last year to facilitate cross-border industry linkages and enable a vibrant regional supply chain for textiles and apparel.

The United States will work with members of the Asia-Pacific Economic Cooperation (APEC) forum to ensure implementation of commitments that APEC Leaders made during the successful 2011 U.S. host year that will advance U.S. trade and investment interests in the Asia-Pacific region. These include commitments regarding environmental goods and services, as well as pledges to ensure market-driven, non-discriminatory innovation policies that prevent the emergence of barriers to U.S. technology. We will also work with APEC members to improve the regulatory environment in the region for U.S.

exporters; to streamline import procedures for energy-efficient test vehicles; and to facilitate trade in remanufactured goods by ensuring that they are treated “like new” at the border. Our APEC work will also include implementation of commitments to establish commercially useful *de minimis* values that will exempt low-value shipments from duties or taxes; and to break down barriers to small business trading in the region, including by promoting small business engagement in global production chains through regional trade agreements. We will also work through a permanent Experts Group which has been charged with developing additional APEC activities to combat illegal logging and associated trade in illegally-harvested forest products, and we will work to ensure the success of a Global Food Safety Partnership at the World Bank focused on strengthening food safety collaboration globally.

After intensified engagement in 2011 under a regional Trade and Investment Framework Agreement (TIFA), in 2012 the United States hopes to advance initiatives with the Association of Southeast Asian Nations (ASEAN) related to digital connectivity, health care services, agribusiness, and consumer products, all to accelerate the flow of U.S. exports to the region. We will also seek to support ASEAN integration, which will enhance the efficiency and competitiveness of U.S. firms.

### *Grow and Sustain Innovation Economy Jobs*

U.S. high-tech companies, entrepreneurs, and workers are among the most innovative and competitive in the world. According to the U.S. Chamber of Commerce an estimated 19 million Americans are employed in IP-intensive industries. Promoting trade policy that keeps pace with 21st century innovation can support the growth of well-paying IP trade-related jobs in the United States.

Among the United States’ most internationally competitive IP-intensive industries are those related to information technology (IT) products. Additional American jobs are likely to depend on IT trade in the future as IT products contribute to a growing nexus between goods and services. In 2012, the Administration will work with key trading partners and stakeholders to ensure that IT-related trade rules continue to facilitate the growth of a robust IT sector and remain relevant to evolving technology and commercial needs. Central to these efforts will be laying the groundwork to follow up on the APEC Leaders Declaration in Honolulu, which instructed APEC economies to play a leadership role in launching negotiations to expand the product scope of the highly successful WTO Information Technology Agreement (ITA), which currently covers products totaling \$4 trillion in annual trade.

The Administration will seek to build on the innovation policy successes of APEC 2011 by working with 2012 APEC host Russia and other member economies to produce more concrete results including an ambitious list of environmental goods on which APEC members will reduce tariffs to five percent or less by 2015, and to eliminate non-tariff measures, including local content requirements, that distort trade and investment in these products and services. These commitments should significantly increase the dissemination of cutting-edge environmental technologies regionally and, when fully implemented, will offer substantial new market access opportunities for U.S. exporters. We will also continue discussions with like-minded trading partners around the world, including through the TPP, to explore ways to further liberalize trade in environmental goods and services.

In addition to building a modern legal infrastructure to protect intellectual property rights around the world, we must ensure effective enforcement of IP rights to maintain markets for job-supporting exports of products and services embodying American creativity and innovation. Our IP-intensive exports include not only our advanced business software and popular films, music, books and video games, but also an endless variety of innovative U.S. manufactured goods and trusted brands spanning every sector

that benefits from stable protection for and enforcement of patents, copyrights, trademarks, and other forms of intellectual property.

In 2012, the United States will advance a robust intellectual property chapter in the TPP negotiations to foster state-of-the-art protection and strong enforcement of IP rights in the 21<sup>st</sup> century, remaining wholly consistent with our goals of protecting public health and promoting access to medicines.

Before the trade agreements with Korea, Colombia, and Panama take effect, we will also work with these governments to ensure they have in place the laws and regulations necessary to meet their intellectual property commitments under the agreements.

Through the “Special 301” process of reporting on intellectual property protection and enforcement, and through bilateral engagement, we will continue to crack down on piracy and counterfeiting, encourage the removal of infringing products from both Internet and physical markets, and press for both strong civil remedies and the prosecution of, and deterrent penalties against, criminal activities. We will at the same time seek greater market access so that legitimate U.S. exports of IP-intensive products can reach global consumers.

The Administration will also continue to work in 2012 with several trading partners listed in the “Special 301” report to resolve intellectual property rights issues of concern, including through the development of action plans with Thailand and the Philippines, for example. This follows on the first-ever open invitation in the 2011 report for listed countries to develop such action plans. Furthermore, the Administration has enhanced the Special 301 process through Out-of-Cycle Reviews of Notorious Markets. Last year, the first and second set of these separate reports identified more than 30 Internet and physical markets exemplifying key challenges in the global struggle against job-stealing piracy and counterfeiting. Some identified markets and local officials curtailed distribution of pirated and/or counterfeit goods. Leading Chinese website Baidu, for example, reached a precedent-setting licensing agreement with U.S. and international rights holders in the recording industry. Hong Kong customs officials removed infringing goods from the popular open-air Ladies Market. And the Savelovskiy Market in Russia implemented an action plan to stop the distribution of infringing goods.

In addition to a more proactive stance with Special 301 countries, 2011 saw the realization of many of the Administration’s efforts to defend U.S. intellectual property in international markets and on the Internet. These include the signing by eight countries of the landmark Anti-Counterfeiting Trade Agreement (ACTA), which will further strengthen global IPR enforcement and which 23 European Union member states signed on January 26, 2012.

## **II. Enforce U.S. Rights in a Strong, Rules-Based Trading System**

Insistence on America’s rights in the global trading system produces real, job-supporting results for American firms and working families. For this reason, robust trade enforcement across the spectrum of goods and services is a central pillar of the Obama Administration’s trade policy. As evidenced by our work in intellectual property rights, we use a variety of tools including monitoring and reporting, dialogue, and direct negotiation, to break down tariff and non-tariff barriers to U.S. exports. And we do not hesitate to act when direct enforcement action is appropriate to eliminate trade irritants.

In 2012, the Administration will continue to deploy creative and effective enforcement strategies to ensure that American producers can compete successfully in world markets where intellectual property is

protected, where agricultural and industrial regulations are based on science, and where transparent rules and regulations are applied without discrimination.

To this end, as the President announced during his State of the Union address on January 24, 2012, we will deploy a new Interagency Trade Enforcement Center (ITEC). The ITEC, under the purview of the Office of the United States Trade Representative (USTR), will bring a new “whole-of-government” approach to addressing unfair trade practices and will strengthen U.S. capacity to resolve foreign trade barriers through more robust enforcement of U.S. rights under international trade agreements, and enforcement of domestic trade laws. By strengthening the Federal Government’s capacity to conduct enforcement actions, the Administration will be able to better enhance market access for U.S. exporters to ensure that U.S. workers, businesses, farmers, and ranchers receive the maximum benefit from our international trade agreements.

The Administration’s enforcement priorities will be appropriately targeted to address the most commercially-significant challenges facing U.S. workers and businesses, as well as emerging issues that have important implications for the future of the rules-based global trading system.

#### *Enforce and Uphold Obligations at the World Trade Organization*

For nearly two decades, the WTO dispute settlement system has proved valuable to the United States as a unique venue for the discussion and adjudication of disputes with our trading partners. In 2012, we will continue vigilant trade enforcement efforts at the WTO to help preserve and support American jobs threatened by WTO-inconsistent practices, whether by China, the EU, or other global partners.

Several WTO cases addressing a wide range of trade concerns are now pending in various stages of dispute settlement. In addition to pursuing these cases vigorously in 2012, the Obama Administration will bring additional cases – regarding practices of China and other WTO trading partners – as appropriate to enforce WTO commitments.

#### *Hold China Accountable for WTO Commitments*

In January 2012, the United States won a significant victory when the WTO’s Appellate Body upheld a July 2011 decision by a WTO panel and found in favor of U.S. claims that China’s export restraints – in particular, export duties and quotas – on a number of industrial raw materials violate China’s WTO obligations. These export restraints skew the playing field against the United States in the production and export of numerous processed steel, aluminum, and chemical products, and a wide range of further processed products. The export restraints artificially increase world prices for these raw material inputs while artificially lowering input prices for Chinese producers. This enables China’s domestic downstream producers to produce lower-priced products from the raw materials, creating significant advantages for China’s producers when competing against U.S. producers both in China’s market and other countries’ markets. It can also create substantial pressure on foreign manufacturers to move their operations and technologies to China. Once the Appellate Body and panel reports are adopted by the WTO, the United States and its co-complainants, the EU and Mexico, will engage China on China’s plans to bring its measures into compliance with WTO rules.

The United States is also working to secure a level playing field in China for suppliers of electronic payment services (EPS), as it participates in an ongoing WTO dispute involving China’s restrictions on foreign suppliers of EPS for card-based transactions. EPS are essential for the processing of the many millions of payment card transactions that occur every day in China. But China effectively blocks foreign

suppliers of EPS, including American companies, from participating in China's market. After previously requested consultations failed to resolve U.S. concerns, the United States decided to move forward last year by requesting the establishment of a panel. Proceedings before the panel have now been completed, and the panel is scheduled to issue its decision in the coming months.

In 2012, WTO obligations with regard to the imposition of antidumping and countervailing duties will continue to be the subject of dispute settlement proceedings between the United States and China. This year, we will pursue a key concern by submitting briefs and participating in oral arguments as part of a WTO dispute settlement proceeding requested by the United States in December 2011 regarding China's apparent failure to abide by its obligations in imposing antidumping and countervailing duties on chicken broiler products from the United States. Since the imposition of duties, U.S. exports to China are down approximately 90 percent. The practical effect of the duties has been to severely curtail these U.S. exports. This case makes clear that the United States will not permit China to threaten American agriculture jobs by misusing antidumping and countervailing duties to protect its market.

The United States will also continue to pursue its challenge to anti-dumping and countervailing duties on hundreds of millions of dollars' worth of American steel exports to China: China's duties have raised prices and reduced U.S. steel exports to China's large and growing steel market. The United States sought the establishment of the panel after requested consultations last year failed to resolve U.S. concerns. This case remains an enforcement priority, as it makes clear that the United States will act to ensure that China does not misuse antidumping and countervailing duties to unfairly affect sales by American businesses and American steelworkers' jobs.

The United States will continue to assess additional duties on imports of tires from China, at a rate of 25 percent until September 25, 2012, when those duties are scheduled to end. The United States successfully defended its right under U.S. and international law to impose the duties, which have helped to support U.S. tire industry jobs. In 2011, both a WTO panel and the WTO Appellate Body rejected all of China's claims against duties imposed by President Obama in September 2009 pursuant to section 421 of the Trade Act of 1974, which implemented the transitional safeguard in China's Protocol of Accession to the WTO.

#### *Secure a Level Playing Field Under WTO Rules with the EU and Other Trading Partners*

The United States will be working in 2012 to ensure that the EU complies with the WTO Appellate Body's decision in May 2011 that upheld that more than \$18 billion in subsidies conferred on Airbus by the EU and member countries were illegal, hurting the U.S. aerospace industry and its workers through lost sales and lost market share in major markets. Once implemented, this decision should lead to a more level playing field for Boeing and its many small business suppliers across America. Well-paying jobs for U.S. workers from Washington State to Kansas and South Carolina are affected by whether the EU complies with this definitive ruling. The United States remains prepared to engage in any meaningful efforts, through formal consultations and otherwise, that will lead to the goal of ending subsidized financing at the earliest possible date.

In a separate but related case, the United States will continue to defend vigorously its position against the EU's assertion that the United States provided almost \$20 billion in subsidies to Boeing. While a WTO Panel rejected most of the EU claims, the EU has appealed several issues it had lost and the United States has appealed the Panel's findings with regard to the remaining \$2.7 billion, which consists primarily of aeronautics research conducted by NASA.

Also this year, the United States will seek prompt implementation of a WTO ruling won in December 2011, rejecting market access barriers to imported distilled spirits in the Philippines market, so that American producers and workers are no longer penalized by a discriminatory tax regime that taxes imported distilled spirits, such as whiskey and gin, at significantly higher rates than domestic distilled spirits.

The United States will also continue where appropriate in 2012 to take other actions that reflect our support for the rules-based system of the WTO. For example, the United States continues to work on the resolution of a handful of longstanding disputes, such as on the “zeroing” issues and other matters. The United States also will continue to work with Brazil under the 2010 Framework Agreement toward resolution of the WTO *Cotton* dispute, concerning certain U.S. agricultural subsidies. While the Framework is in place, Brazil has agreed not to proceed with WTO-authorized retaliation in this dispute. Under the Framework, Brazil and the United States met four times in 2011, and meetings will continue in 2012.

#### *Address Concerns and Enhance Transparency and Trade through the Rules-Based System of the WTO*

Complementing the WTO’s dispute settlement system, the day-to-day work of the Standing Committees offers avenues for monitoring implementation of WTO commitments, raising specific trade concerns, and resolving enforcement issues that threaten to lead to litigation. This year, the United States will continue to effectively utilize the WTO Committee system to enhance transparency, combat protectionism, and engage in dialogue with WTO Members about evolving global trade challenges and key concerns affecting U.S. commercial interests. In the view of the United States, the WTO’s network of committees can play a vital role in exploring emerging challenges surrounding issues such as regional trade agreements, export restrictions, food security, and governmental involvement in commercial activities. For instance, in addition to its work on transparency, the WTO SPS Committee will continue its work in 2012 on *ad hoc* consultations and private standards to help countries facilitate trade. WTO Members will also further consider and address key concerns raised last year through the Standing Committees.

In October 2011, the United States utilized a rarely-used provision of the WTO Subsidies Agreement for the first time to “counter-notify” hundreds of subsidies that China and India had failed to report to the WTO for many years. Specifically, the Administration submitted to the WTO specific information it discovered regarding more than 200 subsidy programs in China and 50 subsidy programs in India. These efforts are holding China and India accountable for their WTO commitments and increasing the transparency of the Chinese and Indian subsidy regimes. They also enable U.S. industries and workers – and all WTO members – to assess more readily the impact of Chinese and Indian subsidies and to make better informed decisions about potential actions to address subsidized imports.

Given the increasing number of regional and preferential trade agreements, the United States strongly supports transparency mechanisms under the Committee on Regional Trade Agreements and the Committee on Trade and Development. These transparency mechanisms provide WTO Members with detailed information on Members’ regional and preferential trade agreements, respectively, as well as a forum for asking questions and receiving written replies on the agreements and their compliance with WTO obligations.

### *Exercise Rights under U.S. Trade Agreements*

Outside the WTO, in 2012, the Administration will actively monitor and enforce commitments in our bilateral, plurilateral, and regional trade agreements to maintain a level playing field and uphold key commitments to protect labor rights and the environment.

For example, to ensure fair trade in lumber well into the future, the United States and Canada agreed in January 2012 to extend the Softwood Lumber Agreement (SLA) for two years, through October 12, 2015. At the same time, the United States will continue to promote and defend U.S. interests vigorously under the SLA to ensure a level playing field for U.S. softwood lumber products and the communities whose jobs depend on them. In 2011, the United States prevailed in a dispute under the SLA, resulting in compensatory export measures that benefit American workers in the U.S. lumber industry. Specifically, a tribunal found that certain provincial assistance programs in Quebec and Ontario provide benefits to the Canadian softwood lumber industry in breach of the SLA, and Canada has imposed additional export charges to compensate for this breach. The United States also moved forward in a separate dispute under the SLA in January 2011, when it requested arbitration with Canada over the apparent under-pricing of public timber in the Interior region of British Columbia. Providing high-quality public timber to softwood lumber producers for salvage rates appears to constitute a breach of the SLA. This proceeding will continue in 2012.

Under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), the United States this year will also continue to seek to address Guatemala's apparent failure to effectively enforce its labor laws as part of the first labor case the United States has ever brought under a trade agreement. The Administration broke new ground last year when it requested the establishment of an arbitral panel pursuant to the CAFTA-DR for Guatemala's apparent failure to effectively enforce its labor laws. This enforcement action reflects the Administration's steadfast determination to protect the rights of workers in America and abroad, and to provide a level playing field for workers here at home.

### **III. Build and Bolster International Trade Relationships**

The United States is eager to do business with trading partners around the world on the basis of mutual accountability and shared ambition for economic growth. In 2012, the United States will engage with trading partners to pursue market-opening, job-supporting objectives through bilateral and regional mechanisms.

#### *China*

President Obama has stated that the United States “[welcomes] the peaceful rise of China. It is in America's interests to see China succeed in lifting hundreds of millions of people out of poverty.” Indeed, U.S. exports to China continue to grow at a rate unmatched in any other major market – since China joined the WTO in 2001, U.S. goods exports, including semiconductors, aircraft, and chemicals, have quintupled; agriculture exports, led by soybeans and cotton, are up 900 percent; and services exports are up over 300 percent, on growing sales of education services, as well as business, professional, and technical services.

Furthermore, because U.S. exporters need a level playing field in China, the President has emphasized the importance of ensuring that “China can be a source of stability and help to underwrite international norms and codes of conduct.”

Given the importance of this growing trade relationship, the United States will use all available tools in 2012 to ensure that China engages in fair play on trade and that U.S. exporters have a fair shot to compete in China. In addition to enforcement efforts that aim to end discriminatory policies and unfair subsidies, we will also continue to press China to open investment opportunities, to complete negotiations to join the WTO Government Procurement Agreement by offering comprehensive coverage of its procurement, and to increase transparency and eliminate market access barriers in areas ranging from agricultural goods to services.

This year, the Administration will also seek China's complete implementation of its commitments to strengthen IPR protection and enforcement, including eliminating the use of illegal software by Chinese government entities. Likewise, focus will remain on ensuring an end to discriminatory "indigenous innovation" policies, as the Administration continues its efforts to protect the value of U.S. intellectual property and technology in China and support IP-related American jobs here at home.

During President Hu's state visit in January and at the 2011 Strategic & Economic Dialogue (S&ED), the Administration made progress on both innovation policy and intellectual property enforcement, gaining China's commitment to delink innovation policy from the provision of government procurement preferences and to take strengthened measures to weed out illegal software use. At the November 2011 Joint Commission on Commerce and Trade (JCCT) plenary meeting, China made further progress, announcing a legally binding State Council measure to implement the key innovation "delinking" commitment, and agreed to intensify its efforts on software legalization, including extending enforcement to all types of software, and engaging in additional work with state-owned enterprises. More broadly, China agreed that its Vice Premier would lead all IP enforcement work, using a stronger coordination structure. To be sure, much work must be done in 2012 – a study by the Business Software Alliance showed the commercial value of pirated software in China exceeded \$7.7 billion in 2010.

The Administration will also seek timely and thorough implementation of Chinese commitments: not to require foreign automakers to transfer technology to Chinese enterprises or establish Chinese brands in order to invest and sell electric vehicles in China; to make foreign-invested enterprises eligible on an equal basis for incentive programs for electric vehicles, ensuring these programs meet WTO rules; and to issue a domestic measure requiring all proposed trade- and economic-related administrative regulations and rules, subject to limited exceptions, to be published on the website of the Legislative Affairs Office of China's State Council for a public comment period of at least 30 days from the date of publication.

Finally, the Administration will also work to resume BIT negotiations with China once the Model BIT review process concludes.

### *Japan*

Throughout 2012, the United States will work with Japan to advance bilateral cooperation and to reduce regulatory and other barriers to trade. Our bilateral efforts will build on progress achieved in 2011 through the Economic Harmonization Initiative (EHI), which aims to contribute to economic growth through cooperation to harmonize our approaches in ways that facilitate trade, address business climate and individual issues, and advance coordination on regional issues of common interest. As we consider Japan's expression of possible interest in joining the TPP negotiations, the Administration will work closely with Congress and stakeholders to assess Japan's readiness to adhere to the high standards and rules we expect in the TPP as well as to address specific issues of concern. Ongoing consultations and close coordination will drive sustained engagement throughout the year.

## *India*

In 2012, the Administration will work with India to advance action on key trade and investment items that will yield improved market access in the near term. These efforts will be accompanied by an outreach program to select Indian states in recognition of their importance in setting trade and investment policy in India. The Administration will simultaneously be working with select U.S. states, starting with California, to boost their commercial presence in the Indian market. Finally, we will make greater use of our United States-India Private Sector Advisory Group (PSAG) in identifying ways to better engage the Indian Government and improve the trade and investment climate for U.S. commerce with India. We will seek commercially meaningful results, such as those accomplished in 2011, including India's lowering or eliminating tariffs on several products including pistachios, cranberries, sun-dried dark raisins, aviation parts, and certain medical devices, and the elimination of cotton export restraints that had been in place since 2010. With respect to all these activities, the United States-India Trade Policy Forum will continue to be the primary mechanism to facilitate engagement with the Government of India on trade and investment issues and to contribute to progress reducing barriers faced by U.S. goods and services. We will also seek to accelerate BIT negotiations with India once the Model BIT review process has been completed.

## *Southeast Asia*

Bilateral work will continue with trading partners in Southeast Asia on key trade and investment issues. We will build on 2011 successes such as the conclusion of a trade facilitation and customs administration agreement with the Philippines that includes specific commitments to simplify customs procedures and increase transparency of customs administration – steps that can help prepare the Philippines in the event they consider possibly joining the TPP – and the resolution with Indonesia of a significant disruption in U.S. movie exports that had resulted from several new import regulations in Indonesia.

## *Europe*

The U.S.-EU High-Level Working Group on Jobs and Growth, which was established by President Obama and EU leaders in November 2011, will be the primary vehicle for assessment of ways to boost the United States' trade and investment relationship with the EU in 2012. With extensive input from private sector stakeholders, we will assess the potential economic value and feasibility of various initiatives relating to trade in goods and services, transatlantic investment, and the reduction and elimination of non-tariff barriers.

Even under challenging market conditions and amidst ongoing trade disputes, U.S.-EU dialogue and cooperation are critical to providing regional and global leadership on important trade and investment issues. We will build on work done in 2011 as we continue to develop cooperative approaches to issues such as information and communication technology services, promoting open investment climates, and regulatory principles and best practices, as well as assisting developing countries to shape their trade and investment environments.

The Administration also looks forward to working with the EU this year to implement the second phase of a Memorandum of Understanding regarding U.S. beef exports to the EU, advancing a landmark 2009 agreement that has already more than doubled U.S. beef exports to EU member countries.

### *Sub-Saharan Africa*

In 2012, the Administration will continue to strengthen U.S. economic engagement with countries throughout sub-Saharan Africa using all available trade and investment tools. As part of our comprehensive efforts to increase utilization and effectiveness of U.S. trade preference programs, we will work with Congress to enact legislation on urgent African Growth and Opportunity Act (AGOA) priorities, including the extension of AGOA's third-country fabric provision to 2015 and the addition of South Sudan as a potentially AGOA-eligible country. At the same time, we will work with Congress and AGOA partners toward defining and achieving a seamless renewal of AGOA beyond 2015. The United States also looks forward to hosting the 11<sup>th</sup> annual U.S.-Sub-Saharan Africa Trade and Economic Cooperation Forum (AGOA Forum) in 2012 with an active agenda focused on these and other critical issues.

In addition, the Administration will work with Congress to expand duty-free-quota-free treatment for imports of Upland cotton grown in least developed countries (LDCs). We will extend the successful West Africa Cotton Improvement Program (WACIP), which provides technical assistance for West African cotton-producing countries, including Benin, Burkina Faso, Chad, and Mali. We will also work with African partners to fully deploy the African Trade and Competitiveness Enhancement (ACTE) Initiative, investing up to \$120 million over four years to help Africans produce and export their products both regionally and globally, including to the United States under AGOA. Announced at the 2011 AGOA Forum in Lusaka, Zambia, ACTE will focus more sharply the work of USAID's Regional African Trade Hubs in Ghana, Senegal, Botswana, and Kenya to support the expansion of both U.S.-African and intra-African trade.

Completion of the Model BIT review will facilitate re-invigorated BIT negotiations with Mauritius, and present the potential to explore a possible regional investment treaty with the East African Community. Through our new trade and investment initiative with the EAC we will also consider the creation of trade enhancing agreements in areas such as trade facilitation and the development of stronger commercial engagement between the United States and the EAC.

We will also advance our TIFAs with key countries: Angola, Ghana, Liberia, Mauritius, Mozambique, Nigeria, Rwanda, and South Africa; and regionally with EAC, COMESA, SACU, and WAEMU.

### *The Middle East and North Africa*

In response to developments in the Middle East and North Africa, the Administration announced in May 2011 an effort to promote common interests in enhancing regional and economic integration with trading partners across the region to develop a Trade and Investment Partnership Initiative. As part of this initiative, we plan to focus on securing and implementing near term measures and to build on existing agreements and encourage partners to adopt certain reforms that may lead to the construction of a regional trade arrangement. Our plans include working with Egypt to develop a bilateral Action Plan and reinvigorating our Trade and Investment Framework Agreement (TIFA) with Tunisia.

Along with this initiative, in 2012, we will also work with member states of the Gulf Cooperation Council (GCC) to pursue trade and investment opportunities on a regional basis and address existing trade and investment impediments in the Gulf region that must be considered comprehensively.

At the same time, the United States will work closely with our existing trade agreement partners in the region – Israel, Jordan, Morocco, Bahrain, and Oman – to improve implementation of those trade

agreements through vigorous enforcement of obligations and promotion of the use of these agreements by U.S. firms. The United States will also pursue negotiation of a new U.S.-Israel Agreement on Trade in Agricultural Products.

Our efforts support the President's overall vision for the MENA region to assist nations that commit to transition to democracy, while at the same time broadening economic opportunity in support of jobs.

### *The Americas*

In 2012, the Administration will work closely with Canada and Mexico to deepen our partnerships, respectively and collectively, and to address challenges constructively. For example, the Administration will work with both Canada and Mexico to strengthen protection and enforcement of IP rights by modernizing outdated laws and regulations, stopping counterfeit goods at our shared borders, and partnering internationally to fight IP theft, among other steps.

On a bilateral basis with Canada, the United States will ensure full implementation of commitments undertaken in the Beyond the Border (BTB) Action Plan and the Regulatory Cooperation Council (RCC) Action Plan. Launched last year by President Obama and Prime Minister Harper, these complementary programs promote transparency, efficiency, and the free and secure flow of commerce across U.S.-Canadian borders. We will also explore opportunities to enhance reciprocal government procurement opportunities and identify and pursue additional regulatory cooperation efforts.

With Mexico, the United States will work collaboratively to share information about proposed regulations and identify those regulations that might impede U.S. exports and North American competitiveness. These efforts will build on progress made last year as the United States signed a mutual recognition agreement (MRA) with Mexico to ease burdens on U.S. companies, especially smaller manufacturers, seeking to export telecommunications products to Mexico.

As we consider Canada's and Mexico's expressions of interest in joining the regional TPP negotiations, the Administration will work closely with Congress and stakeholders to assess Canada's and Mexico's readiness to adhere to the high standards and rules we expect in the TPP as well as to address individual issues.

In 2012, the United States will meet with Brazil for the first time under a new Agreement on Trade and Economic Cooperation (ATEC) that was signed during President Obama's trip to Brazil last year. The ATEC represents a significant achievement and establishes an effective mechanism for managing the bilateral trade relationship with Brazil. It will facilitate the expansion of our direct trade and investment relationship on issues including innovation, trade facilitation, agriculture, and technical barriers to trade, and it may also become a foundation for cooperation in other trade forums on issues of mutual concern. These issues are critical to helping the United States and Brazil further enhance a trade relationship that was \$80 billion in 2010 and is likely to expand in the future.

The United States has free trade agreements with Chile and Peru, which are both participating in the TPP negotiations. In 2012, the Administration expects to make continued progress with Chile on agriculture, trade and investment issues, and intellectual property rights.

The Administration will continue to work closely with the Government of Peru in 2012 as it develops detailed regulations to implement its new Forestry and Wildlife Law and move forward with implementation of its commitments under the Forest Sector Annex of the United States-Peru Trade

Promotion Agreement (PTPA). In a major step forward for environmental protection, the Administration worked closely with the Government of Peru to facilitate passage of this comprehensive historic forest sector reform legislation, its new Forestry and Wildlife Law, in July 2011. Additionally, the Interagency Committee on Timber Imports from Peru convened to adopt procedures aimed at facilitating its response to any potential shipments from Peru of illegally-harvested forest products.

In 2012, we will continue to pursue dialogue to identify areas of concern and opportunities for increased trade with other Western Hemisphere countries. With Paraguay, for example, we have extended a Memorandum of Understanding (MOU) on Intellectual Property Rights while we seek a renewal of the MOU, along with a side letter identifying specific priority areas to be addressed by Paraguay.

Trade between the United States and Central America and the Caribbean continues to grow. In 2012, the Administration will work to deepen trade relationships with CAFTA-DR partners and address outstanding issues. The Administration will also seek to complete negotiations on a revised, high-standard Trade and Investment Framework Agreement (TIFA) with the Caribbean Community (CARICOM). We will also engage the Caribbean through the implementation of the Caribbean Basin Initiative to foster the active participation of beneficiary countries and dependent territories in the region in various initiatives to promote trade liberalization.

#### **IV. Partner with Developing Countries to Fight Poverty and Expand Opportunity**

To support additional American jobs through trade, we must continue building better markets for U.S. exports. Providing economic opportunities in some of the world's poorest countries can have ancillary effects that may increase the probability of changing societies through peaceful, democratic means. Reducing violence and corruption can improve the business climate and contribute to the growth of middle-class consumers in developing countries.

In 2012, the Administration will work closely with Congress to consider the future of GSP and other trade preference programs. The United States will also increase assistance to LDCs to help increase their utilization of the tariff preferences available to them under GSP, AGOA, and the other preference programs, in recognition of the fact that these programs work best when paired together with effective assistance to help developing countries build up their capacity to trade.

As one of the largest bilateral providers of trade capacity building assistance worldwide, the United States has consistently supported the WTO's Aid for Trade initiative and the Enhanced Integrated Framework. In 2012, we will help lead efforts at the WTO to assist developing countries, and in particular LDCs, to become better integrated into global trade. Through efforts such as the ACTE initiative in sub-Saharan Africa, we will also focus on improving the effectiveness of our bilateral trade capacity building mechanisms. Given that the most significant global trade barriers are between developing countries, the United States will also continue to promote market opening across developing countries, as well as regional integration, to promote new trade flows.

Trade is a key component in achieving the broad-based economic growth necessary to drive development, economic growth, and recovery in countries transitioning away from conflict and natural disasters. In 2012, the Administration will continue to assist transitions toward increased trade and investment in Iraq and Afghanistan, and we will seek additional ways to foster strong trade and economic partnerships with Pakistan. These efforts will build on progress made in 2011 to strengthen local economies and export markets through trade expansion initiatives, such as those that have helped Afghanistan develop additional trade capacity for women-owned businesses in handicrafts and apparel. Additionally, in

partnership with Haiti and stakeholders, the Administration will continue to promote the Plus One for Haiti Initiative and focus attention on the opportunities provided by the Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE II) Act.

This Administration has put a special emphasis on expanding economic opportunity for women around the world. In 2012, the Administration will work with APEC partners to facilitate implementation of commitments made at 2011's first-ever APEC Women in the Economy Summit to improve women's access to financing and markets, to help women-owned firms compete, and to foster women in leadership positions. We will seek to include a similar focus on the agenda for the Summit of the Americas to be held in Colombia.

The United States also recognizes the critical role that the private sector and non-governmental organizations are playing in helping to address challenges and spur economic growth in developing countries. In 2012, the Administration will continue to develop and support innovative public-private partnerships that bring together important actors and combined resources to address development challenges. Our work will build on the kind of progress made last year through APEC to achieve the first Global Food Safety Fund for capacity building. To be managed by the World Bank, the Fund will leverage the tripartite approach pioneered in APEC that enlists a wide range of stakeholders in training programs designed to enhance food safety and to facilitate trade. We look forward to supporting the Fund and sharing best practices to multiply success with partners around the world.

## **V. Promote Inclusive Trade Policy that Upholds American Values**

Support for the Obama Administration's active trade agenda – including for the trade agreements with Korea, Colombia, and Panama as well as U.S. participation in the WTO – has been built through extensive outreach to U.S. industry leaders, entrepreneurs, farmers, ranchers, small business owners, workers, state and local government officials, and advocates for labor rights, environmental protection, and public health, among other issues. Constant coordination with Congress has also been vital. In 2012, this dialogue will continue as the Administration seeks input widely regarding rapidly advancing TPP negotiations, and the important challenges and opportunities involved with potential new entrants that have expressed interest in possibly joining TPP. We will continue to invite stakeholders to receive briefings and make presentations as they did last year during TPP negotiating rounds in Chicago, Chile, Singapore, Vietnam, and Peru. The Administration will also continue close consultation with Congress to develop U.S. negotiating positions, including on issues related to labor rights, environmental protections, state-owned enterprises, agriculture, and market-driven innovation policies, among others.

In 2012, we will utilize trade policy advisory bodies to pursue even more dynamic and responsible trade measures that will support American jobs by responding more directly to the needs of U.S. agricultural producers and workers. These bodies were strengthened in 2011 as seven agricultural advisory committees that advise USTR and the U.S. Department of Agriculture (USDA) on trade matters were reconstituted to include 72 first-time members representing a diverse range of stakeholder interests including farmers, ranchers, agribusiness, state government, and public health groups. The Labor Advisory Committee on Trade Policy and Negotiations was expanded to include representatives from a broader range of labor organizations, strengthening the voice of American workers in shaping U.S. trade policy.

To promote robust and inclusive dialogue with the American people and support an active trade agenda in 2012, the Administration will continue to develop and deploy innovative communications tools that

enable the American people to stay informed about and take better advantage of job-supporting commercial opportunities.

One such effort to support U.S. commercial growth is SelectUSA. Established by Executive Order of the President in June, 2011, SelectUSA is a U.S. government-wide initiative to attract, retain, and expand business investment in the United States to support economic growth and job creation. SelectUSA serves as an information clearinghouse, ombudsman, advocate, and policy expert for firms, economic development organizations, and other stakeholders seeking to grow business investment in the United States. SelectUSA works on behalf of the entire nation and exercises strict geographic neutrality.

The U.S. Government will also unveil a new website to assist businesses in the United States called BusinessUSA. BusinessUSA will consolidate information and services from across the government into a single, integrated network for American business owners and entrepreneurs that want to begin or increase exporting. And we will continue to develop the FTA Tariff Tool, a free online tool launched in 2011, which helps more small businesses take better advantage of tariff reduction and elimination under U.S. trade agreements.

Thanks to the input of Congress, the public, and our advisory groups, the Administration's trade policy will continue to reflect heightened concern for workers not only in the United States, but worldwide. In 2012, in addition to implementing the Colombia Action Plan Related to Labor Rights, we will also monitor the labor provisions of existing trade agreements and promote labor rights internationally. In particular, we will review GSP country practices petitions related to worker rights issues in Bangladesh, Georgia, Niger, Philippines, Sri Lanka and Uzbekistan. We also will work to strengthen engagement on labor rights through new and existing TIFAs, with particular focus on using those trade frameworks to improve respect for the fundamental labor rights and effective enforcement of labor law. In each of these cases, our goal will be to assist countries to resolve the labor concerns that have been raised so that workers are able to exercise their legitimate rights.

This Administration will also press the case in 2012 that trade agreements can and should be part of the solution to urgent international environmental challenges. In a world more interconnected than ever before, we see trade's potential to drive both higher standards of environmental protection and cooperative efforts to conserve living resources while we create job-supporting opportunities for our entrepreneurs, companies, and workers. In 2012, we will advance wide-ranging efforts to combine market-opening trade with environmental protection, including efforts in the WTO to engage on trade and climate change issues; negotiations in TPP to eliminate barriers to environmental goods and services, deter illegal wildlife and wild plant trade, and prohibit harmful fish subsidies; results in APEC on reducing tariffs on environmental goods and illegal logging; and initiatives for addressing concerns with trade in electronic waste. As we implement trade agreements with Korea, Colombia, and Panama, we will ensure that the strong environmental provisions in those agreements are consistently applied in ways that conserve and protect the environment and natural resources.

U.S. trade policy will continue to respect the right of governments to regulate in the public interest, including in the interest of public health. The Administration has consistently affirmed the United States' commitment to preserving developing countries' ability to protect public health and promote access to medicines for all consistent with the principles laid out in the WTO Doha Declaration on the TRIPS Agreement and Public Health. This year, we will seek to advance proposals in the TPP negotiations to promote access to the latest life-saving medicines. These proposals were the product of a new strategic initiative, Trade Enhancing Access to Medicines (TEAM), which is designed to deploy the tools of trade policy to promote trade in, and reduce obstacles to accessing, both innovative and generic medicines,

while supporting the innovation and intellectual property protection that is vital to developing new medicines and achieving other medical breakthroughs.

Here at home, the Obama Administration will also maintain a balanced approach to trade, seeking wherever possible to limit the impact of dislocations and to support new jobs for workers in transition through TAA and other U.S. workforce programs. In 2012, the Administration will rigorously implement reforms and administer the newly strengthened and reauthorized TAA programs efficiently so that workers in America's agriculture, services, and manufacturing sectors are able to secure jobs in growing industries.

## **Conclusion**

American businesses, workers, farmers, ranchers, manufacturers, and service providers deserve a level playing field on which to compete and sell Made-in-America products around the globe. The Obama Administration has built broad support for trade that truly opens markets, serves the American people as both producers and consumers, and is consistent with U.S. values.

Now the path is clear for continued progress on critical initiatives to increase U.S. exports and support American jobs. The Administration looks forward to vigorous engagement in 2012 with the American people, with Congress, and with our global trading partners to increase trade and exports by job-creating U.S. businesses of every size, bringing trade's benefits home to America's working families.

**Ambassador Ron Kirk**  
**United States Trade Representative**  
**March 1, 2012**

**2011 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 2011 and the work anticipated for 2012, including efforts to find new paths for the Doha Development Agenda (DDA) and to revitalize the WTO's negotiating functions. 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. In 2011, WTO Members worked hard, and in good faith, to find ways forward in a negotiation characterized by significant substantive gaps between Members across the broad scope of the DDA. Early 2011 saw the work of the negotiating groups revitalized, following G20 Leader direction at a meeting in Seoul, Korea for negotiators to "intensify and expand" engagement across the board. Various configurations of senior official meetings, outside the formal negotiating groups, were also convened in 2011 in an effort to bring a successful conclusion to the Doha Round, or at least a subset of Doha negotiations that might benefit the poorest countries. But by the end of the year, at the WTO's Eighth Ministerial Conference in Geneva, Switzerland 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. Throughout 2011, the United States maintained that the DDA's vision of more open markets and improved rules remains relevant and important, but also emphasized that an honest assessment of the difficulties confronting the Round was essential to finding more productive ways forward for the WTO's negotiation function.

Against the backdrop of difficulty in the DDA, the WTO continued to demonstrate its considerable value through the day-to-day work of its 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.

## **B. The Doha Development Agenda under the Trade Negotiations Committee**

The DDA was launched in Doha, Qatar in November 2001, at the Fourth WTO Ministerial Conference, where Ministers provided a mandate for negotiations on a range of subjects and 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 in cooperation with the WTO General Council. The WTO Director General serves as Chairman of the TNC and worked closely with the 2011 Chairman of the General Council, Ambassador Yonov Frederick Agah of Nigeria. Through formal and informal processes, the Chairman, along with the WTO Director General, plays a central role in steering efforts toward progress on the DDA. (*Annex II identifies the various negotiating groups and special bodies responsible for the negotiations, some of which are the responsibility of the WTO General Council.*)

In 2011, WTO Members continued efforts begun the previous year to meet intensively in a variety of formations – a so-called “cocktail approach” – to attempt to narrow substantive differences over the core question of whether negotiators could secure meaningful new market access in agriculture, industrial goods, and services in order to fulfill the DDA's promise of creating new economic opportunities and contributing to global development and growth. The United States and other Members continued to focus on the responsibilities of advanced developing countries such as China, Brazil, and India to contribute meaningfully to solid market access outcomes. These large WTO Members occupy very different positions in the global economy than they did at the launch of the DDA 10 years ago. With their new level of influence in global trade, each needs to take on an increased level of responsibility, making the trade liberalizing decisions that benefit not only their individual economic interests, but also promote global economic growth and development.

On April 21, 2011, WTO Director General Pascal Lamy, in his capacity as Chair of the Trade Negotiations Committee, circulated a package of reports and other documents summarizing the state of play in each of the areas of the DDA negotiating mandate, including negotiating texts in some cases. This “Easter Package” of texts provided a useful snap shot of the status of the DDA negotiations after nearly 10 years of work. While the reports indicated a narrowing of differences in some areas of the negotiation, they also revealed significant substantive gaps in others, notably those related to the market access dimensions of the DDA in agriculture, industrial goods, and services.

Engagement through bilateral and small group contacts in the early months of 2011 demonstrated that a narrowing of gaps on the core market access elements of the DDA was not taking place, making clear that the full DDA could not be concluded by the end of the year. In June and July, officials in Geneva explored possibilities for developing a “small package” of outcomes of particular interest to least developed country (LDC) Members of the WTO. However, the search for acceptable balance within such

a package proved as elusive as finding a balance of commitments for the broader DDA single undertaking. Throughout this process, the United States maintained that a small package of outcomes of interest to LDCs would work only if all major Members contributed to such outcomes. As it became apparent that this was not possible, this effort was suspended in late July.

The final months of 2011 were dominated by preparations for the Eighth Ministerial Conference of the WTO (MC8) held on December 15-17. At their meeting in Cannes, France on November 4, G20 Leaders outlined expectations for MC8 by noting that “we will not complete the DDA if we continue to conduct negotiations as we have in the past.” The Leaders expressed determination to “pursue in 2012 fresh, credible approaches to furthering negotiations, including the issues of concern for Least Developed Countries and, where they can bear fruit, the remaining elements of the DDA mandate.” At MC8, WTO Ministers held extensive talks on the problems confronting the DDA and its future direction. As expressed in the summary issued by the Chairman of the Conference, Ministers stressed that “they will intensify their efforts to look into ways that may allow Members to overcome the most critical and fundamental stalemates in the areas where multilateral convergence has proven to be especially challenging.”

Beyond their discussion of the DDA, Ministers extensively explored a range of issues at the MC8 concerning the importance of the multilateral trading system and the relationship between trade and development. The Ministerial Conference was also, notably, the occasion for formally inviting the Russian Federation, Samoa, and Montenegro to join the WTO based on the results of their respective accession negotiations. In addition, Members who are signatories of the plurilateral Agreement on Government Procurement agreed on a revision of that agreement, culminating over 10 years of negotiations.

## **Prospects for 2012**

The United States finds considerable value in the honest assessment that was produced regarding the DDA as of the end of 2011. The recognition that the paths pursued in the negotiation to date have not led in fruitful directions should enable fresh thinking about how the critical negotiating function of the WTO can achieve more satisfactory results in the future. During 2012, the United States will be engaging with other Members to explore innovative approaches – within, and potentially beyond, the Doha mandate – that will help to advance a vision of more open markets and trading opportunities, as well as improved trade rules.

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.

## **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 2011**

In early 2011, the United States continued to lead the effort to move the DDA agriculture negotiations towards a successful agreement and to rally other WTO Members to stay focused on achieving an ambitious market-opening outcome that would yield meaningful new trade flows.

Ambassador David Walker, the Chair of the Agriculture Negotiations until mid-2011, held several meetings in various formal and informal settings to advance work on technical and substantive issues. Early engagement focused on preparing Members’ schedules of commitments on domestic support, export subsidies, and market access. Few negotiating proposals emerged in early 2011. However, the possibility for new Chair texts prompted some Members in late spring to propose new negotiating proposals relating to: flexibilities in pillars of domestic support and export competition for small and vulnerable economies (SVEs); an SVEs proposal to apply special safeguard mechanism (SSM) modalities; an SSM proposal for countries with low tariff bindings; and a proposal from net-food importing developing countries (NFIDCs) to curb food export restrictions to improve food security. The Chair held various consultations allowing such proposals to be presented, but little discussion among Members ensued.

The U.S. Ambassador to the WTO, Ambassador Michael Punke, urged Members to approach the overall Doha negotiations with a new and necessary realism. Throughout 2011, U.S. negotiators undertook discussions at various levels (technical and political) and in various formats (bilateral and small group) to determine Members’ will to move negotiations forward.

As it became more apparent that a full DDA outcome would not be possible in 2011, the United States also engaged in a negotiation discussion around a possible smaller package. This discussion focused, in particular, on what might be achieved in 2011 (*i.e.*, an “early harvest”) for least developed countries (LDCs). Many suggestions for an LDC early harvest included cotton market access and standstill commitments for domestic support. Reaching agreement on a smaller package, separate from Doha’s single undertaking, proved difficult and the United States and other Members failed to reach agreement on a common set of early harvest issues intended for potential delivery at the December Ministerial Conference.

In November, Members confirmed the election of Ambassador John Adank of New Zealand as the next Chair of the Agriculture Negotiations Special Session.

### **Prospects for 2012**

After taking the necessary steps to assess the potential to conclude the DDA, Members in 2012 will 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 2012 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. The United States joined in co-sponsoring requests in the following areas: accounting, architectural, engineering, and integrated engineering services; audiovisual services; computer and related services; construction and related engineering services; distribution services; private education services; energy services; environmental services; financial services; legal services; Mode 3 (commercial presence); postal/courier services including express delivery; and telecommunications services.

### **Major Issues in 2011**

The Council was relatively inactive during 2011, as the lack of general progress under the DDA affected the level of engagement on services. Members did succeed in reaching consensus on a waiver from the most favored nation obligation that would benefit least developed countries.

Overall, progress to date in the negotiations has been incremental, such that considerably more work will be needed to achieve a positive outcome. The United States continues to believe that a high level of ambition for services liberalization is necessary, particularly from the major emerging markets. The United States also advocates liberalization in such key areas as: information and communications technology services; distribution and express delivery; energy and environmental services; professional services; and financial services.

### **Prospects for 2012**

Progress in 2012 will depend on the broader question of how the overall negotiations will proceed. The United States remains willing to pursue new ideas and approaches for achieving a successful outcome to the services negotiations.

### 3. Negotiating Group on Non-Agricultural Market Access

#### Status

The United States 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<sup>1</sup> 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.<sup>2</sup> 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 2011

Since July 2008, the United States has sought to engage with key players to explore ways of adding market access ambition in NAMA through multilateral sectoral tariff liberalization (sectors), targeted bilateral tariff requests, and proposals to reduce or eliminate non-tariff barriers.

On tariffs, U.S. negotiators indicated the flexibility to consider alternative sectoral liberalization options short of a strict “zero-for-zero” approach, while also allowing important developing country sensitivities to be addressed. In 2011, U.S. and Chinese negotiators engaged in detailed discussions of possible approaches to sectoral liberalization. However, China's suggested approach would increase the existing tariff imbalance, further tilting the package against the United States. China also made clear that it does not intend to make further tariff cuts on U.S. export priorities in the key sectors where the United States needs to demonstrate market access gains. In 2011, India and Brazil did not engage in a meaningful way to find a way forward on sectoral liberalization, or the NAMA market access package in general.

The United States co-sponsors sectoral liberalization initiatives for:

- Chemicals
- Electronics/Electrical Products
- Industrial Machinery
- Forest Products
- Health Care Products (Pharmaceuticals & Medical Equipment)
- Gems & Jewelry
- Sports Equipment

In parallel, USTR also sought to make progress by engaging in a bilateral request/offer process with China, India, and Brazil, and sought feedback on the U.S. requests of these major global producers and exporters to match commitments that the United States and other major economies implemented in the Uruguay Round over fifteen years ago. However, these attempts to engage in real “give-and-take

<sup>1</sup> WTO, International Trade Statistics 2011.

<sup>2</sup> WTO document WT/COMTD/W/143/Rev.4.

dialogue” has yielded little to no genuine traction. All three countries reject the notion that their growth and increasing influence in the global economy entails a responsibility to make a greater contribution, and remain unwilling to discuss additional market opening commitments in NAMA.

In 2011, the Negotiating Group on NAMA focused primarily on advancing the agenda on non-tariff barriers (NTBs), which are an integral and important component of the NAMA negotiations. In line with the Hong Kong Ministerial Declaration, WTO Members continued to consider how NTBs could be addressed horizontally across all sectors, vertically within a single sector, and through a bilateral request/offer process. The United States sponsors NTB proposals on automobiles and automotive products (with Canada); electronics; textiles, apparel, footwear, and travel goods labeling (with the EU, Mauritius, Sri Lanka, and Ukraine); remanufactured goods (with Japan and Switzerland); and transparency in export licensing (with Japan, Chinese Taipei, the Republic of Korea, Ukraine, Chile, and Costa Rica).

Work throughout the year focused on priority NTB proposals agreed by Senior Officials in June 2008 and reflected in the NAMA Chair’s texts of both July and December 2008, and in the Chair’s working document of April 2011. These proposals include automobiles and automotive products, electronics, textiles labeling, remanufactured goods, the “horizontal mechanism” (an additional procedure Members could use after the Round to address NTBs), chemicals, and transparency. With respect to the automobiles, electronics, textiles labeling, and chemicals proposals, the Negotiating Group also focused considerable attention on cross-cutting issues related to international standards and regulatory transparency. The Negotiating Group met in January, February, March, April, June, July, and October 2011. Members engaged in substantive discussion, provided further background documents to support positions, and participated in Chair-led small group drafting sessions on textiles labeling, transparency, remanufacturing, and the “horizontal mechanism.” In March, the United States tabled a paper detailing its position on international standards – an issue on which the United States and the EU have significantly differing views. Throughout the year, Members engaged in detailed technical discussions – both within the negotiating group and domestically with experts and industries – to gain a better understanding on the substance of the proposals and to work towards consensus on them. The United States continues to engage fully in these discussions and remains a major proponent of eliminating or reducing NTBs in the DDA.

### **Prospects for 2012**

In 2012, the United States intends to work with other WTO Members to pursue fresh and credible approaches to meaningful multilateral tariff liberalization. The United States will also continue efforts to advance a robust outcome on non-tariff barriers that result in real disciplines and paths forward to resolve NTBs across broad areas of U.S. production and exports.

## **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.

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.<sup>3</sup> 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, at an informal General Council meeting on October 21, 2011, it was noted that a consensus had been reached regarding the selection of Ambassador Wayne McCook (Jamaica) 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 112 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 2011**

### *Antidumping:*

The Rules Group met during each of the first three months of 2011, with the goal of the Chair being able to issue revised texts shortly after the end of the first quarter of the year. As part of the process, the Chair formed small “contact” groups of Members to discuss and seek resolution of the most difficult issues, namely: anticircumvention, the lesser duty rule, the public interest test, sunset reviews, and zeroing. For the most part, Members were constructively engaged in the process, though Members took few new positions. As noted above, while the Chair issued a revised draft text in April 2011, it only reflected technical changes to previously unbracketed provisions and contained the same bracketed issues as the Chair’s 2008 draft text.

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<sup>3</sup> TN/RL/W/252, TN/RL/253, TN/RL/W/254, all dated April 21, 2011.

A group calling itself the Friends of Antidumping (or FANs<sup>4</sup>) has been very active in the antidumping area since the beginning of the negotiations, and has generally sought to impose limitations on the use of antidumping remedies. The FANs group has submitted proposals on a variety of issues, some of which are reflected in the Chair's 2011 text and others that are not. Those that are not reflected in the text include: increasing the standing threshold from 25 percent to 50 percent of domestic production; increasing the *de minimis* dumping margin standard from 2 percent to 5 percent; increasing the negligible imports threshold for injury purposes by calculating import volumes as a percentage of total domestic consumption rather than import share; including a public interest test; including a mandatory lesser duty rule; and requiring authorities to "separate and distinguish" the effects of dumped imports versus other factors (such as non-dumped imports) for causation of injury purposes. The United States is strongly opposed to each of these proposals.

The United States has continued working to build support among Members for proposals it had previously submitted, including those on issues such as offsets for nondumped comparisons (or "zeroing"), injury causation, anticircumvention, new shipper reviews, facts available, and the definition of domestic industry for perishable and seasonal agricultural products, as well as a number of proposals aimed at improving transparency and due process in antidumping proceedings.

#### *Subsidies/CVD:*

Throughout the discussions in 2011, the United States continued to press for a strengthening of the current general subsidy disciplines, consistent with the Doha Rules negotiating mandate to clarify and improve the rules and address trade-distorting practices. As in the antidumping negotiations, the Chair formed small contact groups to discuss and seek resolution of the most difficult issues, namely: certain financing by loss-making institutions, export credits, regulated pricing, and countervail procedures. The Chair also selected Friends of the Chair to address the issues of a redefinition of "export competitiveness," facts available, and tax and duty rebate schemes. Although Members constructively engaged, little progress was achieved on these issues. Several new or renewed proposals were also made in the beginning of 2011. These included export financing benchmarks for developing country Members, countervail procedures, tax and duty rebate schemes, Annex VII graduation and presumption of serious prejudice. Due to time constraints, the Rules Group was unable to explore the degree to which convergence could be achieved regarding these proposals. As to the transposition of possible changes in the antidumping provisions to their counterpart countervailing duty provisions, insufficient discussion occurred in 2011 to achieve convergence on specific language.

#### *Fisheries Subsidies:*

In 2011, the United States and the close Friends of Fish (Australia, Argentina, Chile, New Zealand, and Norway) continued to push for a strong level of ambition, including a broad prohibition on subsidies, while Japan, China, Canada, Korea, Chinese Taipei, and the European Union continued to call into question the scope of the prohibition, stressing that not all subsidies contribute to overcapacity and overfishing. Developing country Members also continued to emphasize special and differential treatment (SDT) exceptions and several proposals were introduced and considered in 2011 that focused on such exceptions.

The most significant text proposals in 2011 were from: Japan, seeking to reverse the course of the negotiation by weakening the prohibition on subsidies and focusing disciplines solely on fisheries

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<sup>4</sup> The FANs group is comprised of Brazil, Chile, Colombia, Costa Rica, Hong Kong China, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Chinese Taipei, Thailand, and Turkey.

management; the Small Vulnerable Economies (SVEs), advocating for additional carve-outs for developing country Members with small shares of world trade and global marine wild capture production; Canada, proposing the addition of a *de minimis* exception permitting a certain percentage of support to fishing activities within a Member's national jurisdiction, providing a larger *de minimis* percentage for developing country Members; and Argentina, Chile, Egypt and Uruguay, proposing exceptions for developing countries that are based on sustainability and the existence of underexploited or unexploited fisheries within a Member's exclusive economic zone. There were several additional proposals, all focused on special carve-outs from the prohibition on subsidies, whether SDT or general exceptions. During the intensification of negotiations in the beginning of the year, the Chair established contact groups to address the issues of high seas subsidy disciplines, income support, artisanal/small scale fishing and fuel subsidies, as well as Friends of the Chair to examine fisheries management and reciprocal access arrangements in exclusive economic zones.

#### *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 (RNG) initiated a review of the operation of the RTA Transparency Mechanism, and the RNG 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 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 “dually 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<sup>5</sup> 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.

#### **Prospects for 2012**

In 2012, 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. The next meeting of the Negotiating Group on Rules is being scheduled during the week of February 27, 2012. We expect that this meeting will take place solely for the purpose of installing the new Chair, Ambassador Wayne McCook.

On RTAs, the United States will advocate for increased transparency and strong substantive standards for RTAs that support and advance the multilateral trading system. The transparency mechanism will continue to be applied in the consideration of additional RTAs, and the initial substantive review of the mechanism, as foreseen by the Chair of the General Council, will also continue.

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<sup>5</sup> TN/RL/W/248, January 24, 2011

## **5. Negotiating Group on Trade Facilitation**

### **Status**

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

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

### **Major Issues in 2011**

The work of the Negotiating Group on Trade Facilitation (NGTF) continued to have as its hallmark in 2011 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 Members representing significant emerging markets, including India, Brazil, Malaysia, and China, which by working closely with the United States and other Members, has helped to steer the negotiations forward in a practical, problem-solving manner. The “Colorado Group,” consisting of the United States, Australia, Canada, Chile, Colombia, Costa Rica, the EU, Hong Kong China, Japan, Korea, New Zealand, Norway, Paraguay, Singapore, and Switzerland, also continued to play a valuable role in the negotiations.

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, Jordan, 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 2011 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 2011, 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. In particular, Chair-appointed delegate facilitators convened small group and open ended meetings on virtually every working day of the first three months of the year, and several times a week over the next three months. The NGTF met in plenary sessions in February, April, June, July, September, and November to capture progress achieved through the small group and facilitator-led work and to further refine the text. As a result, Members reduced by well over half of the number of brackets (reflecting open issues) in the text. Less progress was achieved in the second half of the year as Members evaluated the overall course of the Doha Round.

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 U.S. 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, such as through the Uganda-United States proposal to eliminate consularization requirements. Likewise the draft consolidated negotiating text includes draft provisions on transit procedures and customs cooperation, and establishing disciplines on customs penalties originally proposed by the United States.

During 2011, 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 also 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 intensive negotiating sessions of the first half of 2011 made significant progress in closing gaps on the implementation provisions of the draft text and in creating a coherent text that has helped to focus discussion on these “special and differential treatment” provisions. In addition, the November 2011 NGTF meeting featured a two day workshop on implementation issues that included presentations on current and planned assistance. The presentation by the U.S. Agency for International Development (USAID) on its Partnership for Trade Facilitation (PTF) was particularly well received. The PTF is a new program specifically tailored to implementation of the provisions of the NGTF negotiating text.

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 submitted. The Member assessments 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 future new commitments in this area. This realization led to broad developed and developing country Member alliances on some of the proposals, such as the U.S. joint proposal with Uganda calling for elimination of consularization formalities and fees. 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. U.S. Customs and Border Protection hosted one such regional workshop for English speaking Caribbean states in San Juan, Puerto Rico in November 2010.

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 2012**

In 2012, 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 aspects on the Doha negotiations – such as trade facilitation – where there are indications that continued progress is possible. 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 special and differential treatment 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 2011**

Recognizing the TNC Chair's guidance to negotiating groups to intensify their work, with a view to developing draft texts in all areas of the Doha mandate by mid-2011, the CTESS met frequently during the first half of the year. The CTESS Chair, Ambassador Manuel Teehankee of the Philippines, held many small group consultations focused on potential outcomes across the above DDA trade and environment areas.

As part of the “Easter Package,” the CTESS Chair issued an extensive, detailed report on the Doha trade and environment negotiations (TN/TE/20), which includes a summary of the negotiations in each mandated area. While the Chair’s report illustrates the progress made to date, it also reveals the deep divergences in Members’ positions, particularly with respect to liberalizing trade in environmental goods.

#### *Multilateral Environmental Agreements (MEAs):*

Significant progress was made under DDA paragraphs 31(i) and (ii), due in large part to U.S. leadership early in the year. The Chair’s report contains a draft “Ministerial Decision on Trade and Environment” covering both DDA paragraphs 31(i) and (ii), which is based on a proposal put forward by the United States (TN/TE/W/78), and later joined by Australia and Mexico. The text seeks to establish a practical result in the negotiations and provide for enhanced cooperation and mutual supportiveness between the WTO and MEAs containing specific trade obligations, including increased opportunities for those MEA secretariats to participate in relevant WTO work. While the Chair’s draft text was widely supported, there were remaining differences in limited areas (*i.e.*, dispute settlement and capacity building), which are clearly outlined in the Chair’s report.

#### *Environmental Goods:*

While the Chair’s report illustrates the extensive work that has been done to advance the environmental goods negotiations, it also demonstrates the difficulties and divisions that have thwarted meaningful progress over the years. For example, there has been no agreement on product coverage, or the depth of tariff cuts, with some Members continuing to advocate for formula style cuts that would not have any practical impact on the tariff rate applied at the border. There also continue to be disagreements about special and differential treatment for developing country Members, particularly given the fact that certain developing countries have become some of the world’s largest producers and exporters of environmental goods during the course of the negotiations. The United States has been a leading advocate for ambitious results in these negotiations that would eliminate tariffs and non-tariff barriers to environmental goods trade, and continues to believe that by lowering the cost of important green technologies, we can increase their deployment and better protect our environment. We will continue to work to liberalize trade in environmental goods in the WTO and other fora, including APEC and our FTAs.

#### **Prospects for 2012**

The United States remains fully committed to the WTO and to a positive trade and environment agenda; however, given the deep substantive divergences that are proving 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.

## **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-SS) 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 2011**

The DSB-SS met eight times during 2011 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 2011, Members continued their discussions in light of the Chair's text. In particular, the Chair continued a more intensive process, in which delegations engaged on the basis of the comments received in the previous phase.

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 2012**

In 2012, Members will continue to work to complete the review of the DSU. Members will be meeting a number of times over the course of 2012.

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

### **Status**

With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council) on the implementation of Article 23.4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), Ministers agreed at the 2001 Doha Ministerial Conference to negotiate the establishment of a multilateral system of notification and registration of geographical indications (GIs) for wines and spirits. At the 2005 Hong Kong Ministerial Conference, Ministers agreed to intensify their work in order to complete these negotiations within the overall 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 2011**

The TRIPS Council Special Session held one formal meeting in 2011, and many informal consultations. During that time, although there was no significant shift in WTO Members' positions on the core issues, the sharp differences between competing proposals became more apparent. 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) special and differential treatment; 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, during 2011, this proposal 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.

### **Prospects for 2012**

Developments in the Special Session in 2012 are tied to progress in the Doha Round. 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 on the part of the EU, so the negotiations can be completed.

## **9. Committee on Trade and Development, Special Session**

### **Status**

The Special Session of the Committee on Trade and Development (CTD-SS) was established by the TNC in February 2002, to fulfill the Doha Round mandate to review all special and differential treatment (S&D) provisions "with a view to strengthening them and making them more precise, effective, and operational." Under existing S&D provisions, Members provide developing country Members with technical assistance and transitional arrangements toward implementation of 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 Members have taken no action to adopt them since that time.

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.

With respect to the remaining proposals still under consideration in the CTD-SS, Members have focused their text based discussions on 6 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 and Article 3.5 of the Agreement on Import Licensing.

### **Major Issues in 2011**

The Special Session held three formal meetings in January, March, and July 2011 and a large number of informal plurilateral consultations. The meetings involved intensive negotiations and engagement on language in the six ASPs and on a Chair’s text for an MM.

While discussion on the ASPs proceeded in a constructive manner in 2011, Members remained far from developing any common understanding and have not been able to bridge remaining gaps in their divergent positions. On the Category II proposals, the relevant Committee Chairs reported that there has not been much progress in negotiations on these proposals. This is largely due to the fact that the issues raised in most of the proposals form an integral part of the ongoing work in the respective negotiating bodies.

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. After intensive consultations, a Chair’s revised text (Rev.4) was issued in January, followed by an Addendum in

February. With the consent of the Members, all consultations thereafter were based on the Rev.4 Addendum. 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.

### **Prospects for 2012**

In 2012, work will continue on the remaining ASPs and on the underlying issues inherent in them. As in 2011, much of the practical work on S&D in 2012 is likely to take place in the other Negotiating Groups, for example the Negotiating Groups on Agriculture, Non-Agricultural Market Access, Services, and Trade Facilitation. Discussions will also continue in the CTD-SS toward a mechanism to monitor implementation of S&D provisions.

## **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 2011**

The WGTDF held two formal meetings in 2011. The first meeting was held on May 10, 2011. During this meeting, Members examined the progress made by the WTO in implementing the mandate granted by the G20 Summit in Seoul with respect to possible actions and recommendations to improve access of low income countries to affordable trade finance. The discussion on trade finance also centered on a WTO Secretariat summary of the WTO hosted Expert Group on Trade Finance that met on March 24, 2011, a short information note on the importance of trade finance programs in favor of low income countries submitted by the International Finance Corporation of the World Bank, and an International Chamber of Commerce submission on the financing of value-added chains. Also during this meeting, Members discussed a submission by Brazil on a proposed work program related to exchange rates and trade.

The second meeting of the WGTDF was held on October 24, 2011. During this meeting, the WTO Secretariat presented a literature review on the relationship between exchange rates and trade. The discussion focused on the direct and indirect effects of exchange rate volatility and misalignments on global, regional, and sector trade flows. Members also considered a proposal from Brazil to hold a seminar on the relationship between exchange rates and trade, which Members accepted. Members also discussed the ongoing work on trade finance aimed at improving the availability of trade in low income countries, including a report provided by the WTO Secretariat on the initiatives of the WTO Director General in this area.

### **Prospects for 2012**

In 2012, the WGTDF will continue to proceed with the work program on the relationship between exchange rates and trade by holding a seminar on the topic in the first quarter of 2012. There continues to be some debate on whether the WGTDF will examine WTO rules as they relate to exchange rates. 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 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 four times in 2011, 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 2011**

During 2011, the OECD Secretariat made a presentation to the working group on its study entitled *Technology Transfer and STI Cooperation to address Global Challenges* that highlighted the importance of maintaining an open and nondiscriminatory investment regime and regulatory framework to encourage technology transfer. The Director General of the World Intellectual Property Organization made a presentation on the work that his organization had undertaken in the area of innovation and technology transfer including development of training modules for developing countries, to ensure that countries had access to and understood the available data and information embedded in patents. These presentations were lightly attended and generated little follow on discussion.

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 2011, 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 and has requested more information, since 2008 proponents have neither elaborated on these proposals, nor addressed questions posed by the United States and other WTO Members.

### **Prospects for 2012**

No WGTTT meetings have been scheduled yet for 2012. During 2012, Members may make presentations on their national experience with technology transfer. The working group will also welcome additional presentations by outside organizations and will continue its examination of issues raised in previously submitted proposals.

## **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 2011**

Several informal sessions of the Work Program were held in 2011 to review submissions from the United States and other Members. In addition to advocating successfully for the extension of the customs duties moratorium, the United States outlined specific areas where liberalized trade would be of particular benefit to Members, such as the robust global market for mobile application downloads and the evolving market of remote computing, popularly known as cloud computing.

### **Prospects for 2012**

The renewed interest in the Electronic Commerce Work Program, coupled with specific proposals from Members, including the United States, indicate that the U.S. goal of ensuring that trade rules remain relevant to electronic commerce has broad support. The United States will continue to work with Members to maintain a liberal trade environment for electronically traded goods and services, including *inter alia*, mobile applications and cloud computing. Members have agreed to have the General Council hold periodic reviews based on reports submitted by the WTO bodies entrusted with the implementation of the Work Program. The General Council will assess the Work Program progress, and consider any recommendations at the next Ministerial Conference.

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

Four major bodies report directly to the General Council: the Council for Trade in Goods, the Council for Trade in Services, the Council for Trade-Related Aspects of Intellectual Property Rights, and the Trade Negotiations Committee. In addition, the Committee on Trade and Environment, the Committee on Trade and Development, the Committee on Balance of Payments Restrictions, the Committee on Budget, Finance and Administration, and the Committee on Regional Trade Agreements report directly to the General Council. The Working Groups established at the First Ministerial Conference in Singapore in 1996 to examine investment, trade and competition policy, and transparency in government procurement also report directly to the General Council, although these groups have been inactive since the Cancun Ministerial Conference in 2003. A number of subsidiary bodies report to the General Council through the Council for Trade in Goods or the Council for Trade in Services. The Doha Ministerial Declaration approved a number of new work programs and working groups which have been given mandates to report to the General Council, such as the Working Group on Trade, Debt, and Finance and the Working Group on Trade and Transfer of Technology. These mandates are part of DDA, and 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 2011, the Chairman of the General Council, together with the Director General, conducted informal consultations with both the Heads of Delegation of the entire WTO Membership and a wide variety of smaller groupings. These consultations were convened with a view towards making progress in the DDA, as well as towards resolving outstanding issues on the General Council's agenda. In 2011, the main focus of work in the DDA negotiations was in the individual negotiating groups and smaller Ambassador-led groups. Reports on those groups are set out in other sections of this chapter.

### Major Issues in 2011

Ambassador Frederick Agah of Nigeria served as Chairman of the General Council in 2011. In addition to work on the DDA, activities of the General Council in 2011 included:

*China's Transitional Review:* The General Council conducted its final review of China's implementation of the WTO Agreement and the provisions of China's Protocol of Accession. In so doing, the General Council considered a communication from China (WT/GC/136), which provided information required under Sections I and III of Annex 1A of the Protocol of Accession, as well as reports of the subsidiary bodies on their respective reviews (G/L/977, S/C/37, IP/C/60, WT/BOP/R/103 and G/TBT/30).

*Accessions and Observerships:* The General Council adopted the report of the Working Party for Vanuatu's accession to the WTO. New chairmen were appointed to the Working Parties established to examine the accession requests of the Algeria, the Bahamas, Lao PDR, and Samoa.

*Waivers of Obligations:* The General Council adopted a waiver for Cape Verde on the implementation of Article VII of GATT 1994 and of the Agreement on Customs Valuation. It also adopted waivers in connection with the introduction of HS2002, HS2007 and HS2012 changes into Members' WTO schedules of tariff concessions. The Council extended Canada's current waiver for CARIBCAN and the European Union's current waiver to apply preferential treatment to the Western Balkans. 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.

*Eighth Ministerial Conference:* The General Council had detailed discussions throughout the year to plan for the Eighth Ministerial Conference, held from December 15-17, 2011 in Geneva, Switzerland.

### **Prospects for 2012**

In addition to its management of the WTO and oversight of implementation of the WTO Agreements, the General Council will continue to closely monitor work on all aspects of the DDA negotiations.

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

### **Status**

The WTO Council for Trade in Goods (CTG) oversees the activities of 12 committees (Agriculture, Antidumping Practices, Customs Valuation, Import Licensing Procedures, Information Technology, Market Access, Rules of Origin, Safeguards, Sanitary and Phytosanitary Measures, Subsidies and Countervailing Measures, Technical Barriers to Trade, and Trade-related Investment Measures) and the Working Party on State Trading Enterprises.

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

### **Major Issues in 2011**

In 2011, the CTG held four formal meetings, in January, March, May, and November. As the central oversight body in the WTO for all agreements related to trade in goods, the CTG devoted its attention primarily to providing formal approval of decisions and recommendations proposed by its subsidiary bodies. The CTG also served as a forum for airing complaints regarding actions that individual Members had taken with respect to the operation of goods related WTO Agreements. In addition, two major issues were debated extensively in the CTG in 2011:

*Waivers:* The CTG approved several requests for waivers related to the implementation of the Harmonized Tariff System and renegotiation of tariff schedules. The CTG also continued to consider, but

did not approve, a request by the EU for a waiver on additional autonomous preferences granted by the EU to Pakistan. The CTG will revert to this issue in 2012 following consultations between the EU and those Members who have expressed concerns.

*Market Access Complaints:* As noted, the CTG serves as a forum for airing complaints regarding actions that individual Members take with respect to the operation of goods related WTO Agreements. Concerns discussed by Members, including the United States, related, *inter alia*, to changes in Ecuador's tariff system, import licensing measures and procedures by Argentina, and measures by Argentina affecting imports of food products.

## **Prospects for 2012**

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 complaints 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 least developed countries (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 2011**

The Committee held four formal meetings, in March, June, September, and November 2011, 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, 178 notifications were subject to review during 2011. 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 several

countries, including Brazil, Canada, China, the EU, India, Japan, 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, and China's cotton reserves purchasing program. The United States continued to raise concerns about Costa Rica exceeding its bound Aggregate Measurement of Support (AMS) limit and Argentina's actions against imports of processed agricultural products. The United States used the review process to raise concerns regarding export prohibitions and restrictions by various countries, including India on cotton and Ukraine on barley, corn, and wheat.

During 2011, the Committee addressed a number of other issues related to the implementation of the Agriculture Agreement, such as: (1) development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees, or insurance programs pursuant to Article 10.2 of the Agriculture Agreement, taking into account the effect of such disciplines on NFIDCs; (2) review of Members' notifications on tariff-rate quotas (TRQs) in accordance with the General Council's decision<sup>6</sup> regarding the administration of TRQ regimes in a transparent, equitable, and nondiscriminatory manner; (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 continued to work to improve the timeliness and completeness of notifications and has progressed in developing an electronic archiving system for formal questions and responses raised in the Committee.

### **Prospects for 2012**

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, or trade distorting practices by 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 2011**

The MA Committee held two formal meetings, in May and October 2011, and four informal sessions or consultations, to discuss the following topics: (1) ongoing and future work on WTO Members' tariff

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<sup>6</sup> WT/L/384 General Council - Implementation-Related Issues and Concerns - Decision of 15 December 2000.

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; and (4) other market access issues as raised by Members. The Committee also conducted the final Transitional Review of China's implementation of its WTO accession commitments.

*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, 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 majority of Members have completed the process of implementing HS 1996 changes. A longstanding issue regarding Argentina's schedule was resolved, and now only three Member HS 1996 schedules remain uncertified.

The MA Committee continued its work concerning the introduction and verification of HS 2002 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. The HS 2002 file for the United States was formally certified in February 2011 – to date, the HS2002 files for 100 Members have been certified. In December 2010, the WTO General Council adopted an amendment to the HS 2002 certification procedures to remove an unintended hurdle that was delaying the certification for a number of pending files that had been approved by the Committee. This amendment will help expedite the certification of the remaining Member files.

The Committee had previously agreed to delay the work on the HS 2007 transposition exercise to avoid duplicating transposition work that would have been done with respect to DDA schedules. However, given the lack of progress in the DDA negotiations, the MA Committee agreed at its formal meeting in May 2011 that the Secretariat should resume work on the HS 2007 transposition exercise, and the General Council established a deadline of March 31, 2012 for Members who decide to undertake their own transposition to submit their draft schedules to the Secretariat.

Concerning the HS 2012 nomenclature changes, the Committee approved the procedure to introduce those changes to schedules of concessions using the CTS database (JOB/MA/98/Rev.1). However, that work will not commence for some time, as the Committee is only now beginning work to update Members' bound commitments into HS 2007 nomenclature. This lag can create difficulties in determining whether Members' MFN duties – to be applied in HS 2012 nomenclature beginning January 1, 2012 – are consistent with their WTO bound commitments.

*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.34. The United States provides this data in a timely fashion every year. However, several Members are not up to date in their submissions. For instance, China has yet to notify its 2010 and 2011 import tariff schedules, and India has not yet notified its 2009

and 2011 import tariff schedules or import data since 2008. The public can access tariff and trade data notified to the IDB through the WTO's Tariff Online Analysis facility at <https://tariffanalysis.wto.org>.

*Consolidated Tariff Schedules (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 Quantitative Restrictions:* 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 quantitative restrictions (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 Committee considered several versions of a draft proposal to update the 1995 QR Decision. The proposed changes include updating the format for Members' notifications, and including the notifications in a new searchable database accessible to all Members (under the current practice, Members' QR notifications are available upon request). At the formal meeting in October, one Member blocked consensus on a draft QR decision, reverting discussion to the next Committee meeting in 2012.

*Other Market Access Issues:* At the October meeting, the Committee took note of market access concerns with respect to Brazil's 30 percent increase in the industrial products tax on imported cars that do not meet local content requirements, along with certain production and investment requirements. Several Members, including Japan, Korea, the United States, Australia, and the European Union expressed concern about the Brazilian measure.

*China Transitional Review:* In October 2011, the MA Committee conducted the ninth and final review of China's implementation of its WTO commitments on market access. The United States, with support from other WTO Members, raised questions and concerns regarding China's implementation in the areas of export restraints on raw materials, value-added tax exemptions, and industrial policies that discriminate against imported goods.

## **Prospects for 2012**

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 and to finalize Members' amended schedules based on the HS 2002 amendments. The Committee will commence work on the transposition of Members' tariff schedules to HS 2007. In addition, the MA Committee will revisit the draft decision for updating the notification procedures for quantitative restrictions.

### **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 special and differential treatment; and regionalization. Participation in the SPS Committee, which operates by consensus, is open to all WTO Members. Governments engaged in negotiating their 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); the Codex Alimentarius Commission; the IPPC; the OIE; the International Trade Center; the Inter-American Institute for Cooperation on Agriculture (IICA); and the World Bank.

#### **Major Issues in 2011**

In 2011, the SPS Committee held meetings in March, June, 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 2011, the United States raised a number of concerns with measures imposed by other Members, including India's avian influenza restrictions, Turkey's restrictions on agricultural biotechnology, Philippine restrictions on imported fresh meat, and bans imposed by several members on the use of the growth additive ractopamine in swine. Further, the United States, with a view to transparency, informed the SPS Committee of various U.S. measures, both new and proposed, such as the U.S. Food and Drug Administration's implementation of the new Food Safety Modernization Act.

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 2011, the WTO SPS Committee held a workshop promoting improved coordination between the WTO SPS Committee and these three international standard setting bodies.

In October, the Committee completed its ninth and final review of China's implementation of its SPS Agreement obligations as provided for in China's WTO Accession Protocol.

Other important issues before the SPS Committee included private and commercial standard, along with notifications.

*Private and Commercial Standards:* In 2011, a working group of the Committee finalized a number of possible actions related to the issue of private and commercial standards to refer to the Committee for consideration. The possible actions discussed were provided by individual members of this working group, including the United States. In March 2011, the working group sent the full Committee a list of possible actions for consideration, including supporting the work of the three international standard setting bodies referenced in the SPS Agreement (OIE, IPPC, and Codex), various avenues to promote the exchange of information among Members and these bodies, and defining private and commercial standards. The full Committee is currently discussing whether it should take up any of the possible actions. The Committee has agreed that action will only be taken if there is consensus among all Members to do so.

The United States continues to monitor this issue closely and 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 special and differential treatment. The United States made 214 SPS notifications to the WTO Secretariat through December 7, 2011, and submitted comments on 133 SPS measures notified by other Members.

## **Prospects for 2012**

The SPS Committee will hold three meetings in 2012 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 2012, 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 quantitative restrictions set out in Article XI:1 of the GATT 1994. The TRIMS Agreement requires the elimination of certain measures imposing requirements on, or linking advantages to, certain actions of foreign investors, such as measures that require, or provide benefits for, the 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 2011**

The TRIMS Committee held one formal meeting during 2011, in October. During this meeting the United States and other Members raised concerns about certain local content requirements; these concerns were provided as written submissions to the committee. The United States, joined by Japan and the European Union, raised questions about possible local content requirements in Indonesia’s measures pertaining to mineral and coal mining, noting that it had previously raised these concerns during 2009 and 2010. These questions are contained in WTO document G/TRIMS/W/88 (September 21, 2011). Indonesia stated that while a Presidential Decree had stressed the need to maximize the use of local goods and services, any such requirement was subject to availability of suitable local inputs as well as negotiation with the investor. Indonesia undertook to provide the committee with further information on the measures in question. 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. The questions from the United States are contained in WTO document G/TRIMS/W/87 (September 21, 2011). India asserted that the projects in question constituted government procurement not covered by the TRIMS Agreement, and that no advantage was contingent on the use of local content. India’s replies to those questions are contained in WTO document G/TRIMS/W/91 (October 4, 2011), and are under review by USTR. The United States, the European Union, Japan, and Canada also posed questions to Nigeria 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 (September 21, 2011). Nigeria did not provide a substantive response during the meeting, but undertook to provide a response in writing before the next meeting of the Committee. Finally, 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 (September 22, 2011). The United States shared its ongoing concerns about this issue as well. Indonesia said that it would provide written responses to these questions at a later date.

During the October meeting, the TRIMS committee also conducted its final review of trade-related investment measures in China under 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. Ongoing concerns about TRIMS in China were raised by the United States, Japan, Mexico, and the European Union. The United States noted that even though China had taken many impressive steps to reform its economy since joining the WTO ten years ago, the overall picture remained complex, and the United States had ongoing concerns pertinent to the TRIMS Agreement in various industries, such as automobiles (including so called “new energy vehicles”) and steel, as well as more generalized concerns

about local content requirements and transparency. The relevant statements of the United States and other Members are reflected in WTO document G/TRIMS/M/31 (November 10, 2011).

As part of the review of the special and differential treatment provisions, the TRIMS Committee continued to consider several TRIMS related proposals submitted by a group of Members from Africa. Although these proposals remain on the agenda of the TRIMS Committee, there has been little movement toward consensus on these issues. As in prior years, notwithstanding invitation from the Chairperson, no Members took the floor to advance a substantive discussion of these proposals during the 2011 meeting.

### **Prospects for 2012**

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 2011**

The Committee on Subsidies and Countervailing Measures (the SCM Committee) held two regular meetings and two special meetings in 2011, in May 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; the Transitional Review Mechanism for China; 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 an opening 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 May 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 2011, 97 WTO Members (counting the European Union as a single Member) have notified their CVD legislation or lack thereof; 29 Members have so far failed to make a legislative notification.<sup>7</sup> In 2011, the SCM Committee reviewed notifications of new or amended CVD laws and regulations from Brazil, Ecuador, Gabon, Japan, Kuwait, Oman, and Togo.<sup>8</sup>

As for CVD measures, six Members notified CVD actions they took during the latter half of 2010, and six Members notified actions they took in the first half of 2011. Specifically, the SCM Committee reviewed actions taken by several Members, including Australia, Canada, China, the EU, Mexico, Peru, and the United States.

In 2011, the SCM Committee examined new and full subsidy notifications: 16 from 2009, 1 from 2007 and 1 from 2005. 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 to 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 with respect to over 200 unreported subsidy programs in China and 50 unreported subsidy programs in India – the first counter notifications ever filed by the United States. While China submitted its second subsidy notification (covering 2005 to 2008) shortly after the U.S. counter notification, it covered very few of the subsidy programs in the U.S. counter notification. If the subsidies in the counter notifications are not notified, the United States may bring the matters to the notice of the SCM Committee under the provisions of Article 25.10.

*China's Transitional Review Mechanism:* At the October meeting, the SCM Committee held its ninth and final review of the implementation of China's commitments relating to subsidies, countervailing duties and pricing policies, pursuant to the People's Republic of China Protocol of Accession Transitional Review Mechanism. In its statement to the SCM Committee, the United States emphasized the troubling trend in China toward increased state intervention in the economy; industrial policies designed to promote or protect domestic industries and state owned enterprises, including the use of prohibited subsidies across a wide spectrum of industries that resulted in several dispute settlement proceedings; maintenance of an opaque subsidies regime; failure to submit timely subsidy notifications to the SCM Committee, and failure to notify all relevant subsidy programs, such as subsidies provided by sub-central governments and state owned banks; and, the need to be more fully transparent and procedurally fair to all parties in countervailing duty proceedings administered by the Chinese authorities.

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<sup>7</sup> These 97 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.

<sup>8</sup> 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.

*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 2011 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 has devoted significant time and resources to researching, monitoring, and analyzing China’s subsidy practices, which 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. 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.<sup>9</sup> Work on this proposal will continue in 2012.

*The “export competitiveness” of India’s textile and apparel sector:* Under the SCM Agreement, developing countries receive special and differential treatment with respect to certain subsidy disciplines under Article 27. 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) 8 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 2 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

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<sup>9</sup> G/SCM/W/555 (October 21, 2011).

annual extensions of the time available to eliminate certain notified export subsidies.<sup>10</sup> 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 2011 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 2012.

*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. 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.

At the beginning of 2010, the Permanent Group of Experts had five members: Dr. Manzoor Ahmad (Pakistan); Mr. Asger Petersen (Denmark); Dr. Chang-fa Lo (Chinese Taipei); Mr. Zhang Yuqing (China); Mr. Jeffrey A. May (United States), and Mr. Akio Shimizu (Japan). Dr. Manzoor's term ended in Spring 2011. One candidate was proposed by Australia for this position. However, a consensus could not be reached on filling the opening. The SCM Committee Chairman is continuing informal consultations with a view towards finding a candidate to replace Dr. Manzoor.

*The Methodology for Annex VII (b) of the SCM Agreement:* Annex VII of the SCM Agreement identifies certain lesser developed country Members that are eligible for particular special and differential treatment. Specifically, the export subsidies of these Members are not prohibited, and, therefore, are not actionable as prohibited subsidies under the dispute settlement process. The Members identified in Annex VII include those WTO Members designated by the United Nations as "least-developed countries" (Annex VII(a)) as well as countries that had, at the time of the negotiation of the Agreement, a per capita GNP under \$1,000 per annum and are specifically listed in Annex VII(b).<sup>11</sup> 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

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<sup>10</sup> 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.

<sup>11</sup> 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.

threshold for 3 consecutive years before graduation. The WTO Secretariat updated these calculations in 2011.<sup>12</sup>

### **Prospects for 2012**

In 2012, the United States will closely examine China's most recent subsidy notification 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. If China and India do not notify the programs included in the U.S. counter notifications, the United States may bring the matter to the attention of the SCM Committee. Furthermore, the United States will 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 2012 to improve the timeliness and completeness of Members' subsidy notifications and, in particular, will examine 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 SCM Committee will likely examine the U.S. subsidy notification submitted in 2011, covering fiscal years 2009 and 2010.<sup>13</sup>

## **6. Committee on Customs Valuation**

### **Status**

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

### **Major Issues in 2011**

The Valuation Agreement is administered by the Committee on Customs Valuation (the Customs Valuation Committee), which held two formal meetings in 2011. 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 2011.

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

The use of minimum import prices, a practice inconsistent with the provisions of the Agreement, continues to diminish as more developing country Members undertake full implementation of the Agreement. The United States has used the Customs Valuation Committee as an important forum for

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<sup>12</sup> See G/SCM/110/Add.8.

<sup>13</sup> G/SCM/N/220/USA (October 19, 2011).

addressing concerns on behalf of U.S. exporters across all sectors – including agriculture, automotive, textile, steel, and information technology products – that have experienced difficulties related to the conduct of customs valuation regimes outside of the disciplines set forth under the Agreement.

Achieving universal adherence to the Valuation Agreement in the Uruguay Round was an important objective of the United States. The Agreement was initially negotiated in the Tokyo Round, but its acceptance was voluntary until mandated as part of membership in the WTO. A proper valuation methodology under the Agreement, avoiding arbitrary determinations or officially established minimum import prices, 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 legislation. As of December 2011, 87 Members had notified their national legislation on customs valuation (this figure does not include the 27 individual EU Members); 39 Members have not yet notified their national legislation on customs valuation. At the Committee's May and November 2011 meetings, the Committee undertook its examination of the custom valuation legislation of Bahrain, Belize, Cambodia, China, Costa Rica, Nigeria, St. Vincent and the Grenadines, Thailand, Tunisia, and Ukraine. The Committee's examination of these Members' customs valuation legislation will continue in 2011.

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

In 2011, the Customs Valuation Committee concluded China's Tenth Transitional Review in accordance with the Protocol of Accession of the People's Republic of China to the WTO. During the 2011 review, the United States again sought clarifications about China's use of reference pricing, and noted concerns regarding China's valuation procedures for wood and software.

The Customs Valuation Committee's work throughout 2011 continued to reflect a cooperative focus among all Members toward practical methods to address the specific problems of individual Members. As part of its problem solving approach, the Committee continued to take an active role in exploring how best to ensure effective technical assistance, including with regard to meeting post implementation needs of developing country Members.

### **Prospects for 2012**

The Customs Valuation Committee's work in 2012 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 2011 and will continue into 2012.

The ROO Agreement is administered by the Committee on Rules of Origin (the ROO Committee), which met formally twice in 2011 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 2011**

As of November 2011, 83 Members have notified the WTO concerning nonpreferential rules of origin. In these notifications, 40 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.

One hundred twenty-six Members have notified the WTO concerning preferential rules of origin, of which 82 notified their preferential rules of origin and 6 notified that they did not have preferential rules of origin. Thirty-five Members have notified preferential rules of origin to other WTO bodies.

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), U.S. Department of Commerce, and the U.S. Department of Agriculture.

In addition to the March and October 2011 formal meetings, the ROO Committee conducted informal consultations related to the HWP negotiations. The Committee's work in 2011 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 ROO for agricultural and industrial goods, and the scope of the prospective obligation to apply equally for all purposes the harmonized nonpreferential ROO.

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 ROO.

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 ROO; and (iii) the growing concern among Members that the final result of the HWP negotiations would not produce a result consistent with the objectives of the HWP set forth in Article 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 2011 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 (Kenya) was elected, and Members agreed that the WTO Secretariat would initiate the work to transpose the results of the HWP to a more recent version of the HS nomenclature, with a view to concluding that work as soon as possible.

### **Prospects for 2012**

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 Agreement on Rules of Origin. In accordance with the decision

taken by the General Council in July 2007, and subject to further guidance from the General Council in 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 review the work done by the Secretariat on the transposition of the current HWP to a more recent version 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 Sanitary and Phytosanitary (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)<sup>14</sup> 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.

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<sup>14</sup> 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 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.

*Transparency and Availability of WTO/TBT Documents:* A key benefit to the public resulting from the TBT Agreement is the ability to obtain information on proposed technical regulations, standards and conformity assessment procedures, and to provide written comments for consideration on those proposals before they are finalized. Each Member is also required 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 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](mailto:ncsci@nist.gov) or [notifyus@nist.gov](mailto: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 procedures, and standards of non-governmental 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 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).<sup>15</sup> 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. Minutes of the TBT Committee meetings are issued as "G/TBT/M/..." (followed by a number). Member submissions (e.g., statements, informational documents, proposals) and other working documents of the Committee are issued as "G/TBT/W/..." (followed by a number). Decisions and recommendations adopted by the TBT Committee are contained in G/TBT/1/Rev.9. 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.

Under the Marrakesh Agreement establishing the WTO, all Members assumed responsibility for compliance with the TBT Agreement. The expansion of the TBT Agreement to all Members as a result of the Uruguay Round negotiations was significant, and resulted in new obligations for many Members.<sup>16</sup>

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<sup>15</sup> Before 2000, the numbering of notifications of proposed technical regulations and conformity assessment procedures read: "G/TBT/Notif./..." (followed by a number).

<sup>16</sup> A more limited predecessor to the TBT Agreement known as the Standards Code existed as a result of the Tokyo Round.

For example, the TBT Agreement provides an opportunity 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. Among other things, this opportunity helps to prevent the establishment of technical barriers to trade. The TBT Agreement has functioned well in this regard, although discussions on how to improve 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. Five such reviews have now been completed (G/TBT/5, G/TBT/9, G/TBT/13, G/TBT/19, and G/TBT/26). From the U.S. perspective, a key benefit of these reviews is that they prompt WTO Members to review and discuss all of the provisions of the TBT Agreement, which facilitates a common understanding of Members' rights and obligations. The reviews have also prompted the Committee to host workshops on various topics of interest, including technical assistance, conformity assessment, labeling, good regulatory practice, international standards, and regulatory cooperation.

### **Major Issues in 2011**

The TBT Committee met three times in 2011, March (G/TBT/M/53), June (G/TBT/M/54), and November (G/TBT/M/55, forthcoming). 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 proposed or adopted by other Members. The number of new specific trade concerns with regard to Members' implementation and administration of the TBT Agreement that were brought to the attention of the TBT Committee was approximately 43 in 2011 (up from 29 in 2010). Measures garnering significant Committee attention included EU REACH (Registration, Evaluation, Authorization, and Restriction of Chemicals); proposed tobacco measures from Australia and Brazil; the continued development of China specific standards in the information technology sphere; Korean cosmetics measures; Turkey's measures on medical devices and pharmaceuticals; Mexico's energy efficiency labeling requirements; Vietnam's conformity assessment procedures for cosmetics, mobile phones, and alcoholic beverages; and India's testing and certification requirements for telecommunications products.

In 2011, the Committee continued its exchange of experiences on good regulatory practice, conformity assessment procedures, transparency, technical assistance, international standards, and special and differential treatment, and held a workshop on regulatory cooperation in November 2011 at which the United States and the European Union made a joint presentation on United States-European Union regulatory cooperation efforts.

At its March 2011 meeting, the TBT Committee adopted the Sixteenth Annual Review of the Implementation and Operation of the TBT Agreement under Article 15.3 (G/TBT/29 and Corr.1). 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.15 and G/TBT/CS/2/Rev.17).

During the 2011 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. ILAC and IAF, which are not observers to the Committee, also made a joint presentation to the Committee on their work in the field of accreditation.

## **Prospects for 2012**

The TBT Committee will continue to monitor Members' implementation of the TBT Agreement. The number of new specific trade concerns raised in the Committee appears to be increasing. In 2011, the United States raised a large percentage of the new specific trade concerns. This could be a result of U.S. stakeholders having a greater appreciation for the effectiveness of raising issues in the Committee as a tool for resolving such issues and bringing a larger number of potential issues to USTR's attention. In 2012, U.S. priorities will continue to focus on resolving these specific trade concerns, as well as obtaining a favorable outcome in the Sixth Triennial Review of the Operation and Implementation of the TBT Agreement. Among U.S. priorities for the Sixth Review are reviewing how Members are implementing the TBT Agreement through: *e.g.*, the use of good regulatory practices, enhanced transparency, and developing mechanisms for internal coordination; encouraging Members to notify their measures more frequently; encouraging Members to use the TBT Committee Decision on Principles for the Development of International Standards and discussing the Committee Decision's development dimension; and highlighting the need to consider available scientific and technical information and the intended end uses of products when regulating.

## **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 2011**

In 2011, the Antidumping Committee held meetings in May 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 2011.

*Notification and Review of Antidumping Legislation:* To date, 73 Members have notified that they currently have antidumping legislation in place, and 33 Members have notified that they maintain no such legislation. In 2011, the Antidumping Committee reviewed new notifications of antidumping legislation and/or regulations submitted by Brazil, Ecuador, Gabon, Japan, Korea, Kuwait, and Oman. 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 2011, 34 Members notified that they had taken antidumping actions during the latter half of 2010, whereas 33 Members did so with respect to the first half of 2011. 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 2010 were issued in document series "G/ADP/N/209/..." and the semi-annual reports for the first half of 2011 were issued in document series "G/ADP/N/216/..." At its May and October 2011 meetings, the Antidumping Committee reviewed Members' notifications of preliminary and final actions pursuant to Article 16.4 of the Antidumping Agreement.

*China Transitional Review:* At its October 2011 meeting, the Antidumping Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its ninth and final Transitional Review with respect to China's implementation of the Antidumping Agreement. The United States statement noted that while there have been numerous improvements in China's antidumping practice, transparency, procedural fairness, and injury determinations needed to be improved upon. It

was also observed that China has yet to issue regulations governing the conduct of sunset reviews, resulting in uncertainty as to whether China's reviews were being conducted according to the standards of the Antidumping Agreement.

*Working Group on Implementation:* The Working Group held meetings in May and October 2011. 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 review. The discussions in the Working Group on all of these topics have focused on submissions by Members describing their own practices.

For the May 2011 meeting, three papers were discussed: two submitted by Egypt, one on constructed export price and the other on the accuracy and adequacy test for initiation, and a third paper submitted by Turkey, also on the adequacy and accuracy test. For the October 2011 meeting, six new papers were discussed. The first paper was submitted by South Africa on constructed export price, the second was submitted by Colombia on other known causes of injury, the third and fourth papers were submitted by South Africa and Colombia and pertained to the accuracy and adequacy test, while the fifth and sixth papers related to sunset reviews and were submitted by Pakistan and Colombia. Several Members, including the United States, posed questions on the papers discussed.

*Informal Group on Anticircumvention:* In 2011, the Informal Group held meetings in May and October. There were no new papers submitted for discussion in 2011. 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 2012**

Work will proceed in 2012 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 2012. The semi-annual reports are accessible to the general public from the WTO website, in keeping with the objectives of the Uruguay Round Agreements Act. 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 2012, the Working Group will continue its discussion of topics that it has been discussing for several years: (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) the determination of significant price undercutting by dumped imports. In addition, the Group will also continue to discuss the following recently added topics: (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 work of the Informal Group on Anticircumvention will also continue in 2012, according to the framework for discussion on which Members 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 these 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.

Since the accession of China to the WTO in December 2001, in each year except 2010, the Committee also has conducted an annual review of China's compliance with accession commitments in the area of import licensing as part of the Transitional Review Mechanism (TRM) provided for in China's Protocol of Accession. Similar reviews of other aspects of China's trade regime take place during the fall meetings of the fifteen other WTO committees and councils, and the reports of all these reviews are transmitted to the December General Council for a consolidated overall Transitional Review. Pursuant to China's Protocol of Accession, the 2011 review was its last.

*Background:* The Import Licensing Agreement sets out rules for all Members that use import licensing systems to regulate their trade and includes guidelines for what constitutes a fair and non-discriminatory application of such procedures. Its provisions are intended to set a standard for Members' import licensing regimes that guards against unreasonable requirements or delays that may serve to protect domestic goods from imported similar goods in a manner inconsistent with the GATT 1994. The

obligations of the Agreement are intended to ensure that the use of import licensing procedures does not create in itself an additional barrier to trade that goes beyond the policy measures that the import licensing requirements are intended to implement. The Agreement does not directly address the WTO consistency of the underlying policy measures (the Import Licensing Agreement's provisions discipline licensing procedures), and Members are required to have WTO justification for any licensing requirements established. The notification requirements and the system of regular Committee reviews established by the Agreement seek to increase the transparency and predictability of Members' licensing regimes.

The Agreement covers both automatic licensing systems, which are intended only to monitor imports, not regulate them, and nonautomatic licensing systems, under which certain substantive conditions must be met before a license is issued. Governments often use nonautomatic licensing to administer import restrictions such as quotas, tariff-rate quotas (TRQs), or to administer safety or other requirements (*e.g.*, for hazardous goods, armaments, antiquities). Requirements for permissions to import that act like import licenses, such as certification of standards and sanitary and technical regulations, are also subject to the rules of the Import Licensing Agreement.

### **Major Issues in 2011**

At its meetings in April and October 2011, the Import Licensing Committee reviewed 93 new submissions from 52 Members,<sup>17</sup> including initial or revised notifications, completed questionnaires on procedures, and questions and replies to questions. This count increased significantly from 2010, making it an exceptionally active year for the Committee. Five additional Members, Angola, Central African Republic, Cambodia, Tonga, and Vietnam, notified licensing practices to the Committee for review at the April and October meetings, reducing to 15 (out of 153) the Members that have never submitted a notification to the Committee, *i.e.*, about 10 percent.<sup>18</sup> Nevertheless, the Chairperson and some Committee Members continued to express concern that even participating Members are not submitting required annual notifications (Article 7.3) with the frequency required by the Import Licensing Agreement (*e.g.*, eleven Members that had notified in 2010 did not do so in 2011). The Committee Chairperson also reminded Members that notifications were required, even if only to report that no import licensing system existed and that the WTO Secretariat was prepared to assist Members in developing their submissions. He encouraged Members to renew their efforts towards full and complete compliance with notification obligations and to consult the WTO Secretariat if assistance was required.

The United States remained one of the most active members of the Import Licensing Committee, using the forum to gather information and to discuss import licensing measures applied to its trade by other Members. U.S. submissions to the Committee in 2011 included its response to the Questionnaire (G/LIC/N/3/USA/8) and copies of the legislation authorizing U.S. licensing systems (G/LIC/N/1/USA/7). At the April meeting, the United States focused its presentations on the continuing problems with Argentina's import licensing policies and procedures, and the United States joined the EU, Japan, Switzerland, and Turkey at the October meeting with a joint statement of concern. Through its interventions, the United States also continued to press India, Indonesia, Turkey, and Vietnam concerning

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<sup>17</sup> The Members submitting notifications or questions or responses during 2011 were: Albania, Angola, Argentina, Australia, Brazil, Burkina Faso, Cambodia, Canada, Cape Verde, Central African Republic, Chile, China, Colombia, Costa Rica, Croatia, Dominican Republic, European Communities, Gambia, Honduras, Hong Kong, India, Indonesia, Jamaica, Japan, Korea, Lesotho, Macao, Former Yugoslav Republic of Macedonia, Madagascar, Malawi, Malaysia, Morocco, Nicaragua, Norway, Paraguay, Peru, the Philippines, Qatar, Saudi Arabia, Senegal, Switzerland, Chinese Taipei, Thailand, Togo, Tonga, Turkey, Tunisia, Ukraine, the United States, Uruguay, and Vietnam.

<sup>18</sup> The Members that have never submitted a notification to this Committee are Belize, Botswana, Congo, Djibouti, Egypt, Guinea, Guinea Bissau, Mauritania, Mozambique, Myanmar, Nepal, St. Vincent & the Grenadines, Sierra Leone, Solomon Islands, and Tanzania.

the basis for, and operation of, their licensing practices and where adequate responses to requests for information had not yet been provided. Questions on these points were submitted in writing by the United States and other delegations.

*Notifications and Other Documentation:* The United States is also in the forefront of efforts within the Committee to simplify existing notification procedures (e.g., development of a simplified notification for import licensing systems that had not changed since the previous annual submission, and defined formats for the various notifications to help delegations assemble the necessary information); to move the notification process and access to documents and supporting documentation from “hard copy” to electronic media; and to intensify use of timely messages from the Chairperson and of the Trade Policy Review process to remind Members of missing notifications. Members began using the simplified electronic formats on a voluntary basis during 2011. Starting in 2012, the WTO Secretariat intends to provide document distribution at Committee meetings in CD-ROM format as well as “hard copy.”

*Argentina:* As a result of longstanding concerns with Argentina’s import licensing procedures and continuing reports from exporters and press sources indicating that Argentina is using its import licensing procedures to restrict imports of goods, the United States and four other Members (the EU, Japan, Switzerland, and Turkey) made a joint statement to the October session of the Committee to maintain multilateral pressure on Argentina to deal with these concerns. The joint statement noted that industry reports continuing long delays in issuing import licenses, with some importers waiting as long as six months to obtain the necessary import licenses. Other applications are left pending indefinitely, until a company makes an unofficial commitment to the Ministry of Industry to either invest domestically in Argentina, or increase its exports from Argentina. Only after such commitments are made are companies able to import their goods. In addition, selected import categories have been routinely denied necessary permits for circulation in the domestic market without due process or any explanation. There are also concerns that Argentina’s import licensing system lacks transparency and that decisions appear to be made in an arbitrary fashion. The United States noted separately that affected companies fear retaliation if they complain. Products affected include tires, toys, footwear, textiles and apparel, home appliances, tractors, machinery, automobiles and auto parts, and air conditioners. In addition to the joint statement made at the October meeting, complaints and concerns have been raised over the past three years either in the Committee or in the Council on Trade in Goods by Canada, Colombia, China, the EU, Japan, Mexico, Peru, Switzerland, and Turkey.

Argentina has continually denied that its measures are restrictive or that the delays reported by Members exist, asserting that all processing times are in line with the Agreement. At the October meeting, Argentina also maintained that the measures are “automatic licenses” imposed only to “monitor” trade, but did not explain why the regime operated in a nonautomatic fashion, and it also did not explain what necessary measure the requirements were designed to implement. When pressed, Argentina made reference to technical regulations and to the impact of the economic crisis on trade.

The joint statement in October expressed exasperation at the unwillingness of Argentina to adequately address the concerns that had been raised extensively by Members, notwithstanding reports and Members’ statements that Argentina was using import licensing as a trade balancing measure specifically intended to discourage imports. Until this meeting, Argentina had not notified the measures. In its notification, Argentina indicated that these requirements are “provisional,” but no information has been given as to when they might be repealed. Since Argentina had not provided a clear explanation for these measures as of the October meeting, Members continued to request information and to note that Argentina’s statements were not responsive. In addition, although Argentina claimed to have established an online system to consider import licensing applications, importers had problems accessing it and the information given was not useful. Members urged Argentina to bring its regime into full compliance with its WTO obligations.

## **Last Transitional Review of the Accession of the People's Republic of China**

At its October meeting, the Committee conducted its last annual Transitional Review of China's implementation of its WTO accession commitments in the area of import licensing procedures. The TRM was created especially for China because China had not revised all of its trade-related laws and regulations to become WTO compatible at the time it acceded. The annual TRM meetings therefore provided Members with opportunities to review with China, in a multilateral setting, the efforts that China had taken to implement specific commitments made in its Protocol of Accession as well as China's efforts to comply with the obligations that it had taken on under the many agreements that make up the WTO Agreement.

This year, the United States shared its observations on the operation of the TRM and on China's participation in the WTO during the first 10 years of its Membership. The U.S. representative observed that, for the first five years of China's WTO membership, the transitional reviews focused predominantly on the scheduled phase in of key commitments that China had made in its Protocol of Accession. However, once that phase in period ended, and China could no longer be considered a new WTO Member, the focus of the TRM shifted. At that point, the United States noted that the transitional reviews focused more on China's adherence to the range of WTO rules that apply to all Members. Praising China for its legal implementation of WTO requirements for import licensing systems, the United States also noted that the overall picture remains complex, given a trend toward increased state intervention in the economy in recent years. Specifically in the area of import licensing, China had imposed new requirements that had a very negative impact on trade. A variety of specific compliance issues vis-à-vis import licensing requirements continued to arise over the years, raising questions about China's commitment to implementation of the Import Licensing Agreement. The right to import certain raw materials (iron ore) had been restricted through licensing, and for several years, China's regulatory authorities had been administering inspection related requirements for agricultural products in an arbitrary manner. The U.S. representative noted that, notwithstanding the expiration of the TRM, the United States would continue to engage China, both in the WTO and bilaterally, until these problems have been resolved.

China expressed its desire to engage effectively in the future through the dialogue of the regular Committee work, but would not respond comprehensively to the U.S. statement as there were no advance questions in writing. China claimed its import licenses on iron ore were automatic and for statistical purposes only. Other delegations did not raise any questions when the Committee conducted the review.

### **Prospects for 2012**

The administration of import licensing continues to be a significant topic of discussion in the context of the DDA, as well as in the day to day implementation of current obligations. The use of such measures to monitor and to regulate imports clearly has increased as a result of the global economic crisis. Under these circumstances, it becomes more critical that Members increase their efforts to provide transparency, use import licensing procedures properly, and ensure that licensing procedures do not, in themselves, restrict imports in a manner not consistent with WTO provisions. Licensing continues to be a factor in the administration of TRQs and the application of safeguard measures, technical regulations, and sanitary and phytosanitary requirements applied to imports as well. The proliferation of automatic licensing requirements (or non-automatic measures labeled as "automatic") 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.

In light of these factors, efforts to revise the current notification system to make it more effective as well as timely will continue in 2012, as will the effort to move away from “hard copy” distribution of documents and access to Members’ licensing documentation in favor of use of electronic media. The Committee will continue to encourage enhanced compliance with the notification and other transparency requirements of the Import Licensing Agreement, to assess Members’ acceptance of the simplified and standardized formats for notifications and questionnaires, and to secure initial submissions by the 15 Members that have never provided notifications.

Finally, the United States and other affected WTO Members will continue to raise concerns with Argentina during 2012, both in the Committee and in other WTO fora, regarding its extensive use of nonautomatic and nontransparent import licensing systems until the concerns have been addressed.

## **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 2011**

During its two regular meetings in April and October 2011, 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 Chile, Ecuador, the European Union, Gabon, Kuwait, and Oman.

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: India on N1, 3-Dimethyl Butyl-N Phenyl Paraphenylenediamine and on phthalic anhydride; Indonesia on articles of iron or steel wire; tarpaulins, awnings and sunblinds of synthetic fibers; and polypropylene in granule form; Israel on glass wool and rock wool; Kyrgyz Republic on poultry eggs; Malaysia on hot rolled coils; Thailand on glass block; Turkey on cotton yarn and polyethylene terephthalate; and Ukraine on cooling and refrigerating equipment, crude oil processing products, ferromanganese and ferrosilicomanganese, motor cars, and mineral or chemical fertilizers.

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: the Dominican Republic on certain sports and other socks; Ecuador on windshields; India on N1, 3-Dimethyl Butyl-N Phenyl Paraphenylenediamine and phthalic anhydride; Indonesia on cotton yarn, stranded wire, ropes, and cables (excluding locked coil, flattened strands, and non-rotating wire ropes), certain wire of iron/non-alloy steel (plated with zinc), certain wire of iron non-alloy steel, bleached and unbleached woven cotton, and tarpaulins from synthetic fibers (apart from awnings and sunblinds); the Philippines on testliner board; Thailand on glass block; Turkey on polyethylene terephthalate; and Ukraine on matches.

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; Ecuador on windshields; India on N1, 3-Dimethyl Butyl-N Phenyl Paraphenylenediamine; Indonesia on cotton yarn, stranded wire, ropes, and cables (excluding locked coil, flattened strands, and non-rotating wire ropes), certain wire of iron/non-alloy steel (plated with zinc), certain wire of iron non-alloy steel, and bleached and unbleached woven cotton; the Philippines on testliner board; Thailand on glass block; Turkey on polyethylene terephthalate and Ukraine on matches.

The Safeguards Committee reviewed Article 12.4 notifications regarding the application of a provisional safeguard measure from the following Members: India on phthalic anhydride; Thailand on glass block; Turkey on cotton yard, spectacle frames, and on travel goods, handbags, and similar containers.

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: the European Union on wireless wide area networking modems; Indonesia on polypropylene in granule form; Malaysia on hot rolled coils; Morocco on machine made carpets; Ukraine on cooling and refrigerating equipment, ferromanganese, and mineral or chemical fertilizers.

### **Prospects for 2012**

The Safeguards Committee's work in 2012 will continue to focus on the review of safeguard actions that have been notified to the Committee and on the review of notifications of any new or amended safeguards legislation.

## **12. Working Party on State Trading Enterprises**

### **Status**

Article XVII of the GATT 1994 requires Members, *inter alia*, to ensure that state trading enterprises (STEs), as defined in that Article, act in a manner consistent with the general principle of 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.

### **Major Issues in 2011**

The WP-STE held one formal meeting on October 27, 2011. The formal meeting reviewed Member STE notifications from Bahrain, Egypt, Japan, Korea, Saudi Arabia, Moldova, New Zealand, and Nigeria. During the meeting, Australia posed written questions relating to the notifications of Bahrain and Korea. Australia also posed questions to Brazil and China regarding their failure to notify. Brazil recognized that it has a pending notification, but is still determining whether to maintain an STE. China stated that it had submitted notifications through 2003, and was working on notifications for 2004 onwards. The EU also posed questions to Japan and New Zealand. Japan and Korea have submitted responses to some of the questions posed. The questions sought clarification on scope of the STEs, whether reforms were being contemplated to any of the STEs, and additional detail on how the STEs are administered.

### **Prospects for 2012**

The WP-STE is scheduled to meet in October 2012. 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. Informal consultations will be held prior to June 30, 2012 to review the frequency of notifications and to determine the appropriate periodicity of notifications.

## **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 in order 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 2011**

In 2011, the TRIPS Council held three formal meetings. In addition to its continued work reviewing the implementation of the Agreement, the TRIPS Council's activities in 2011 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 considered issues related to the Anti-Counterfeiting Trade Agreement (ACTA).

*China:* During 2011, the Transitional Review (or Transitional Review Mechanism (TRM)) under Section 18 of the Protocol on the Accession of the People's Republic of China was completed. As part of that review, the United States addressed four general topics: implementation; enforcement; the "Special Campaign," and "indigenous innovation" programs. The United States explained that since China's accession to the WTO, China has put in place a framework of laws and regulations aimed at protecting the IPR of domestic and foreign right holders, as required by the TRIPS Agreement. However, some critical reforms are still needed, including further improvement to China's measures for the protection of copyrights and trademarks in the context of the Internet, and correction of continuing deficiencies in China's criminal IPR enforcement measures. In addition, China has not provided remuneration to authors for the broadcast of their works that occurred between 2001 and 2009, when China finally set forth default licensing rates for broadcasting recorded works. Additionally, the United States noted that it continues to have concerns about the extent to which China provides effective protection against unfair commercial use, as well as unauthorized disclosure of undisclosed tests or other data generated to obtain marketing approval for pharmaceutical products.

The United States noted that while many of China's laws have been extensively revised to better reflect international standards for IPR protection, the inability or lack of political will in China to enforce these laws effectively, and to deter continued IPR theft, has led to sustained and unacceptably high levels of counterfeiting and piracy, in particular to increasingly frequent and large scale infringement of IPR over the Internet, and to one of the highest rates of software piracy in the region. This situation has had severe adverse effects in the United States and third country markets. In addition to noting the need for

significant further progress in fighting counterfeiting and piracy, the United States also noted that effective enforcement of IPR in China also requires additional steps to enforce patents, trade secrets, and other IPR. The United States also called attention to the enforcement implications of a range of challenges affecting patent quality in China. Patents that are of low quality or unexamined, or both, can pose obstacles to Chinese and foreign innovators who seek to protect and enforce rights in legitimate inventions. Effective enforcement of patents, as well as trade secrets, is not only key to the success of foreign companies, it is an essential part of the business climate needed to support investment from the kind of innovative industries that China hopes to attract and build.

The United States stated that it was encouraged by China's "Special Campaign on Combating IPR Infringement and Manufacture and Sales of Counterfeiting and Shoddy Commodities" (Special Campaign), and that it believes that the new coordination and leadership structure developed for the Special Campaign has enhanced the effectiveness of IPR enforcement during the period of the Special Campaign.

China's goal of becoming an innovative society by fostering "indigenous innovation" has created a troubling trend toward the implementation, formally and informally, of discriminatory policies aimed at coercing technology transfer. The United States recognized the critical role of innovation in development and in improving living standards in the United States and China. However, the United States expressed concerns to China regarding its innovation related policies and other industrial policies that discriminate against or otherwise disadvantage U.S. exports or U.S. investors and their investments. The United States encouraged China to adopt policies that eliminate improper government intervention in intellectual property licensing and other lawful contractual business arrangements, including in connection with standards setting, and that welcome imported products and services and foreign investments without ownership and other restrictions in China, irrespective of where the relevant intellectual property is owned or has been developed.

*Review of Developing Country Members' TRIPS Implementation:* During 2011, 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 13, 2011, a total of 41 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 2011, 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:* 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 2011, and consistent with this mandate, the Director General held a number of such consultations with Members on the issue of extension. During these consultations, the United States and many likeminded Members maintained the position that the *demandeurs* had not established that the protection provided GIs for products other than wines and spirits was inadequate, and thus proposals for expanding GI protection were unwarranted. The United States and other Members noted that the administrative costs and burdens of proposals to expand protection would be considerable for those Members that did not have

a longstanding statutory regime for the protection of GIs, that the benefits accruing to those few Members that have longstanding statutory regimes for the protection of GIs would represent a windfall, and that other Members with few or no GIs would receive no counterbalancing benefits. While willing to continue the dialogue in the TRIPS Council, the United States believes that discussion of the issues has been exhaustive and that no consensus has emerged with regard to extension of Article 23 level protection to products other than wines and spirits. The United States and other Members have also steadfastly resisted efforts by some Members to obtain new GI protections in the WTO agriculture negotiations.

*Review of Article 27.3(b), Relationship Between 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 2011, the Director General held a number of consultations with Members on this issue. The United States, with support from other Members, continues to maintain that there is no conflict between the TRIPS Agreement and the CBD, that an amendment to the TRIPS Agreement is neither necessary nor appropriate, and that shared objectives with respect to genetic resources and traditional knowledge (such as prior informed consent and effective access and benefit sharing arrangements) can best be achieved through mechanisms outside of the patent system. The United States has also advocated for a discussion in the TRIPS Council that is fact based and focused on national experiences in areas such as access and benefit sharing, and prior informed consent.

*Technical Cooperation and Capacity Building:* As in each past year, the United States and other Members provided reports on their activities in connection with technical cooperation and capacity building (see IP/C/W/560/Add.6). One LDC Member (Senegal, see IP/C/W/555) submitted information on its priority needs with regard to technical cooperation related to its implementation of the TRIPS Agreement in 2011. 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 October 2011, the United States provided an updated report on specific U.S. Government institutions and incentives, as required (see IP/C/W/558/Add.6).

*Implementation of the TRIPS Agreement by LDCs:* In 2011, Ministers at the Eighth Session of the WTO Ministerial Conference, on the recommendation of the TRIPS Council and the WTO General Council, invited the TRIPS Council to give full consideration to a duly motivated request from LDC Members for an extension of their transition period.

*Non-Violation and Situation Complaints:* The TRIPS Council agreed to recommend to Ministers at the Eighth Session of the Ministerial Conference that the moratorium on non-violation and situation complaints (WT/L/783) be extended for another two years. Ministers agreed to extend the moratorium for another two years.

*Australian Plain Packaging Legislation:* In June 2011, at the request of the Dominican Republic, and in October 2011, at the request of Ukraine, 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.

*Enforcement Trends:* At the request of Australia, Canada, the European Union, Korea, Japan, New Zealand, Singapore, Switzerland, and the United States, the enforcement of intellectual property rights was added to the agenda for the October TRIPS Council meeting. Brazil, Cuba, China, Indonesia, India, and Pakistan, among other WTO Members, objected to this item being a standalone agenda item. Following consultations with the Chairman of the TRIPS Council, this item was added to the meeting's agenda. The TRIPS Council had a fruitful discussion on enforcement, including on the scope and provisions of the Anti-Counterfeiting Trade Agreement.

## **Prospects for 2012**

In 2012, 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 2012 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.

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

### **Major Issues in 2011**

The CTS met in March, May, June, September, and November 2011. The CTS appointed the Ambassador from Indonesia 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). Bahrain, Colombia, Japan, Switzerland, Togo, and the United States made notifications under GATS Article III.3. Notifications pursuant to GATS Article V:7 were made by Colombia and Mexico; India; China and Chile; China and Hong Kong, China; China and Macao, China; Hong Kong, China and New Zealand; Korea and Brunei Darussalam; Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam; the EU and Korea; Guatemala and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu; India and Malaysia; Colombia, Liechtenstein, and Switzerland; and India and Japan. During 2011, the CTS continued its discussion of the Secretariat's updated Background Notes, addressing engineering services and services statistics. These Background Notes on services sectors and modes of supply were originally produced in 1998 for informational reference by Members. The Secretariat began updating these notes in 2008 at the request of the CTS. The Council also took up a Swiss communication on small and medium sized enterprises (SMEs) and employment during its September meeting, during which many Members shared information regarding the impact of SMEs in their respective economies. At its April 2010 meeting, the CTS agreed to start the third review of GATS Article II (MFN) exemptions during the year. The first dedicated

review session took place in November 2010, where Members discussed MFN exemptions related to all sectors (horizontal exemptions); business services; communication services; construction and related engineering services; and distribution services. The CTS continued the review during a dedicated session in March 2011 and as an agenda item in May 2011. During the March meeting Members discussed MFN exemptions for educational services; financial services, health-related and social services; tourism and travel-related services; recreational, cultural and sporting services; and transport services. Members agreed that the next review of Article II exemptions will take place no later than 2016.

The United States played a lead role in pursuing information and communication technology services in the CTS. In March, the United States, Australia, and Norway tabled a proposal for a workshop on international mobile roaming and the applicability of the GATS. The Secretariat produced a background note on the issue, and the CTS held a dedicated discussion on the topic at its June meeting. In addition, at the request of the United States and after discussion among Members, the Chair of the Council produced a report for the General Council on the CTS' discussions of the Work Program on Electronic Commerce. Finally, at its September meeting, the CTS took up a communication from the United States and the European Union entitled, "Contribution to the Work Programme on Electronic Commerce," and a communication from the United States entitled "Work Program on Electronic Commerce: Ensuring that trade rules support innovative advances in computer applications and platforms, such as mobile applications and the provision of cloud computing services."

At the request of the Philippines, the CTS reopened the Fifth Protocol to the GATS relating to financial services, for their acceptance. The Protocol entered into force for the Philippines on March 1, 2011. 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.

## **Prospects for 2012**

The CTS will continue discussions related to its mandated reviews and various notifications related to GATS implementation.

## **1. Committee on Trade in Financial Services**

### **Status**

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

### **Major Issues in 2011**

The CTFS met in March, May, June, September, and October 2011. During the March 2011 meeting, the Committee elected the delegate from China as the new Chairperson.

Members continued to urge Brazil, Jamaica, and the Philippines 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 1995-97 extended negotiations on financial services. All other Members have accepted the protocol. In March 2011, the Philippines 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 and Jamaica reported no progress.

The Committee continued to consider a communication from China, submitted in 2010, to have the Committee examine trade in financial services and development. In the course of those discussions, Members exchanged views and experiences with trade in the financial services sector and its role in promoting economic growth and development. In addition, the Committee reviewed a Secretariat Background Note that contained a literature review on the topic. Based on the interest of Members, it was decided that the CTFS would organize a workshop in 2012 on the topic. The Committee also examined issues related to classification of financial services based on a background paper prepared by the Secretariat.

At the March 2011 meeting, the Committee discussed a communication from Barbados which suggested potential amendments to the GATS in light of issues arising from the financial crisis. While the Committee took note of the statements made on the submission, no subsequent discussion on the issue occurred in the Committee in 2011. At the October 2011 meeting, the Committee reviewed a proposal by Ecuador to further work on regulatory measures in financial services. Ecuador sought support for a statement on the matter to be included in the Ministerial Declaration at the MC8. While not successful, Ecuador may continue to pursue this issue within the Committee.

### **Prospects for 2012**

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 further consideration of China's communication on trade in financial services and development. Such consideration will include a workshop on the issue in 2012. Discussions will continue on classification issues and will likely also continue on the ideas contained in Ecuador's submission.

## **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.

## **Major Issues in 2011**

The WPDR held five formal meetings during 2011. In April 2011, the WPDR decided to retain the delegate from Pakistan as its chairperson for an additional year. During 2011, the WPDR based its discussions on a March 2010 annotated version of the draft chairman's text (referred to as the Chairperson's "informal note") from 2009. The new annotated version highlighted Members' divergent views on issues. In accordance with instructions from the WTO General Council, during the first quarter of 2011, the WPDR intensified its engagement in an effort to produce a new draft text. Important progress was made during this period in moving toward consensus in areas of interest to the United States, including transparency and due process in the process for granting licenses to provide services. However, in other areas, views of WTO Members remained widely divergent, including with respect to proposals for a "necessity test" in the disciplines, which may in the view of a number of delegations undermine Members' right to regulate. 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)).

Since April, progress in the WPDR has slowed considerably. In September, in response to a proposal by Canada, the Chairperson called on Members to propose questions for discussion on the various topics relevant to services licensing. The WPDR held a discussion in November to address submitted questions pertaining to licensing. The discussion focused on the circumstances under which WTO Members solicit comments from private parties on proposed changes to legal measures concerning authorization to supply services.

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 2012**

During 2012, we expect that the WPDR will continue to focus on broad thematic questions submitted by Members.

## **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 2011**

The WPGR held formal meetings in February, April, June, September, and November 2011. The WPGR resumed ongoing discussions of emergency safeguard measures, government procurement, and subsidies. During its April meeting, the WPGR also elected the delegate from New Zealand as its new Chairperson.

Regarding emergency safeguard measures (ESM), Members continued discussions on the basis of an informal communication from a group of ASEAN Members that proposed legal language establishing rules for the use of emergency safeguard measures in services. During 2011, there was very little discussion on this issue within the Working Party. To the extent there was a substantive issue raised, the United States and other Members continue to question the desirability and feasibility of any such measures. Proponents of an ESM explained 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, but that they anticipated engaging in further discussions on issues such as statistical information which might be necessary to support an ESM.

On government procurement of services, delegations continued their discussion of a proposal by the EU regarding a legal text for an Annex to the GATS. Members exchanged views on this proposal, and raised issues relating to possible benefits of opening procurement markets, procedural rules, special and differential treatment, the relationship to the plurilateral Government Procurement Agreement (GPA), and most-favored nation application. Several informal meetings were held in conjunction with GPA negotiators in order to compare the GPA process with developments in the WPGR. The United States continues to engage on this issue, but has questioned the need for a government procurement annex to the GATS in light of the fact that the Agreement on Government Procurement already covers services.

With respect to subsidies, Members continued their discussion of the exchange of information on subsidies which had been undertaken in 2010. Discussion also focused on a submission by India, Chile, and Mexico (contained in document JOB/SERV/37 dated January 24, 2011) which 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. The United States pointed out that no Member had identified any 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 2012**

Future work in the WPGR is likely to slow in light of the general slowdown in services negotiations. 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. The CSC also works 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 2011**

The CSC held meetings in March, May, June, September, and November 2011. The CSC resumed previous discussion of classification and scheduling issues and the relationship between old and new commitments. During the May meeting, the CSC also elected the delegate from Austria as its new Chairperson.

*Classification:* Members continued to engage in informal discussions on classification issues stemming from the updated background notes. The Secretariat has prepared a compilation of these issues to facilitate Members discussions. During the year, Members discussed classification issues relating to telecommunication services, audiovisual services, and environmental services.

*Scheduling issues:* The Committee examined scheduling issues with regard to economic needs tests (ENTs). Delegations considered several questions relating to ENTs and Mode 4. The CSC will continue its discussions of scheduling issues.

*Relationship between old and new commitments:* Members discussed procedural issues related to verification at the close of the services negotiations based on the Secretariat's informal note, "Roadmap for the Verification Exercise."

### **Prospects for 2012**

Work will continue on technical issues and 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.

### **Major Issues in 2011**

The DSB met 19 times in 2011 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 2011, 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 2011.

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 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) support staff of the Appellate Body.

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

*Appellate Body:* The DSU requires the DSB to appoint seven persons to serve on an Appellate Body, which is to be a standing body with members serving four year terms, except for three initial appointees determined by lot whose terms expired at the end of two years. At its first meeting on February 10, 1995, the DSB formally established the Appellate Body, and agreed to arrangements for selecting its members and staff. They also agreed that Appellate Body members would serve on a part time basis, and sit periodically in Geneva. The original seven Appellate Body members 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. (*The names and biographical data for the Appellate Body members during 2011 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; and Ms. Hillman served as Chairperson from June 15, 2011 until December 10, 2011.

In 2011, the Appellate Body issued six reports, on China's challenge to certain U.S. antidumping and countervailing duties; the U.S. challenge to EU subsidies to Airbus; the Philippines' challenge to Thailand's customs and fiscal measures on cigarettes; China's challenge to the EU's antidumping duties on fasteners; China's challenge to the U.S. safeguard action on tires; and the U.S. and EU challenges to the Philippines' taxes on distilled spirits. In each case, the United States participated as either a party or as a third party.

*Dispute Settlement Activity in 2011:* During the DSB's first 16 years in operation, WTO Members filed 427 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, and 8 in 2011). During that period, the United States filed 99 complaints against other Members' measures and received 137 complaints on U.S. measures. Several of these complaints involved the same issues as other complaints (4 U.S. complaints against others and 27 complaints against the United States). A number of disputes commenced in earlier years remained active in 2011. 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 2012**

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 2012, 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 2012.

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

In 2011, 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 2011 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.

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

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

Specifically, the United States is concerned that certain Chinese measures: (1) restrict trading rights (such as the right to import goods into China) with respect to imported films for theatrical release, audiovisual

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

The United States and China held consultations on June 5-6, 2007 and July 31, 2007, but they did not resolve the dispute. On October 10, 2007, the United States requested the establishment of a panel, and on November 27, 2007, a panel was established. 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. The United States is working with China on its implementation of the DSB recommendations and rulings in this dispute.

#### *China – Measures Relating to the Exportation of Various Raw Materials (WT/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.

Specifically, the United States is concerned that certain Chinese measures: (1) impose quantitative restrictions 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; (2) impose export duties on several raw materials; and (3) impose other export restraints including export licensing restrictions, minimum export price requirements, and requirements to pay certain charges before certain products can be exported. The United States also challenges China's failure to publish relevant measures, including those pertaining to the administration of its export quotas. 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 and China held consultations on July 30 and September 1-2, 2009, but did not resolve the dispute. The European Communities and Mexico have also requested and held consultations with China on these measures.

On November 19, 2009, the European Communities 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 met with the parties and third parties on August 31-September 2, 2010 and met again with the parties on November 22-23. 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.

China filed a notice of appeal on August 31, 2011. The Appellate Body is scheduled to provide its report at the end of January 2012.

*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 appear to violate numerous WTO requirements. Specifically, the United States is concerned that China initiated both investigations 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; failed to provide nonconfidential summaries of Chinese submissions; and included U.S. Federal and State programs that were not identified in the notice of initiation of the CVD investigation.

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, and in May 2011 a panel was

established. 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, and the panel is scheduled to issue its decision in 2012.

*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 involve the services through which 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, are processed and through which transfers of funds between institutions participating in the transactions are managed and facilitated.

China undertook both market access and national treatment commitments with respect to electronic payment services, as set out in its Schedule of Specific Commitments on Services. Despite those commitments, China appears to impose market access restrictions and requirements on services suppliers of other Members seeking to supply EPS in China. It appears that China UnionPay (CUP), a Chinese entity, is the only entity that China permits to supply EPS for payment card transactions denominated and paid in Renminbi (RMB) in China. In addition, China also requires all payment card processing devices at merchant locations to be compatible with CUP's system, and that all payment cards, including "dual currency" cards, issued in China for transactions denominated and paid in RMB, bear the CUP logo. These and other requirements and restrictions maintained by China appear to be inconsistent with China's market access commitments and to accord less favorable treatment to EPS suppliers of other WTO Members than to Chinese suppliers of these services.

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.

*China – Subsidies on Wind Power Equipment (DS 419):*

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 appears to provide subsidies that are prohibited under WTO rules because the grants awarded under the program seem to be 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 address 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. (*For further information on the Section 301 investigation, see Chapter V.B.1.*)

*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.

Discussions between the United States and the European Union resulted in the conclusion of a Memorandum of Understanding ("Beef MOU") on May 13, 2009. The Beef MOU provides for increased, duty free access to the EU market for beef produced without certain growth promoting hormones and maintains increased duties on a reduced list of EU products. Under the terms of the Beef MOU, after three years, duty free access to the EU market for beef produced without certain growth promoting hormones may increase and the application of all remaining increased duties imposed on EU

products may be suspended. The Beef MOU also suspends further litigation in the *EU – Hormones* compliance proceeding until at least February 3, 2011.

*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 Luxembourg) 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 intends to implement the recommendations and rulings of the DSB in these disputes, and stated that it would need a reasonable period of time for implementation. On June 21, 2006, the United States, Argentina, and Canada notified the DSB that they had agreed with the EU on a one year period of time for implementation, to end on November 21, 2007. On November 21, 2007, the United States, Argentina, and Canada notified the DSB that they had agreed with the EU to extend the implementation period to January 11, 2008.

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.

*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 remains concerned that certain products at issue may still be subject to duties and 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.

*Philippines – Taxes on Distilled Spirits (DS403):*

On January 14, 2010, the United States requested consultations regarding Philippine excise taxes on distilled spirits. The Philippines taxes distilled spirits at rates that differ depending on the product from which the spirit is distilled. The Philippines taxes 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 are 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 appear not to tax similarly those distilled spirits that are imported compared to directly competitive or substitutable domestic distilled spirits, and the taxes appear to be applied in a way that affords protection to the domestic products. In addition, the taxes appear to subject imported distilled spirits to internal taxes in excess of those applied to like domestic products. Accordingly, the tax treatment of distilled spirits appears inconsistent with Article III:2 of the GATT 1994. Consultations were held on February 23, 2010, but these failed to resolve the dispute. On March 26, 2010, the United States 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 are 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.

*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.

#### **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 Phuangrath and Ms. Lidia di Vico, Members. On February 28, 2001, the panel circulated its report, in which it rejected most of Japan's claims, but found that, *inter alia*, particular aspects of the antidumping duty calculation, as well as one aspect of the U.S. antidumping duty law, were inconsistent with the WTO Antidumping Agreement. On April 25, 2001, the United States filed a notice of appeal on certain issues in the panel report.

The Appellate Body report was issued on July 24, 2001, reversing in part and affirming in part. The reports were adopted on August 23, 2001. Pursuant to a February 19, 2002 arbitral award, the United States was given 15 months, or until November 23, 2002, to implement the DSB's recommendations and rulings. On November 22, 2002, the 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 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.

#### *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 during 2011.

*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." On September 7, 2011, the EU and the United States jointly requested the Arbitrator to suspend its work for a further period of four months and two days. On the basis of this request, the Arbitrator decided to suspend its work. Absent any "contrary written communication" from the EU within that period, the suspension will be automatically terminated and the work of the Arbitrator will resume on January 9, 2012.

The U.S. Department of Commerce (Commerce) has taken the initial step to comply with WTO findings against zeroing in antidumping administrative reviews. Commerce's proposed solution was published in the *Federal Register* on December 28, 2010. The proposal is to be implemented under Section 123 of the

Uruguay Round Agreement Act, which requires that USTR and Commerce request and receive comments from interested parties and the U.S. Congress before any final action is implemented.

*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 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 three further extensions of the suspension of the Arbitrator's work. Pursuant to these requests by the parties, the Arbitrator has continued the suspension of its work. The suspension will be automatically terminated and the work of the Arbitrator will resume on January 9, 2012, unless Japan submits a written communication to the contrary to the Arbitrator by January 8, 2012.

Commerce has taken the initial step to comply with WTO findings against zeroing in antidumping administrative reviews. Commerce's proposed solution was published in the *Federal Register* on December 28, 2010. The proposal is to be implemented under Section 123 of the Uruguay Round Agreement Act, which requires that USTR and Commerce request and receive comments from interested parties and the U.S. Congress before any final action is implemented.

*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.

Commerce has taken the initial step to comply with WTO findings against zeroing in antidumping administrative reviews. Commerce's proposed solution was published in the *Federal Register* on December 28, 2010. The proposal is to be implemented under Section 123 of the Uruguay Round Agreement Act, which requires that USTR and Commerce request and receive comments from interested parties and the U.S. Congress before any final action is implemented.

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

On October 2, 2006, the EU requested consultations with respect to Commerce's alleged use of "zeroing" in 4 antidumping investigations, 35 administrative reviews, and 1 sunset review involving certain products from the EU, as well as Commerce's alleged use of a "zeroing" methodology in determining the dumping margin in reviews. The EU claims these alleged measures breach several provisions of the Antidumping Agreement, the GATT 1994, and the WTO Agreement. Consultations were held on November 14, 2006 and February 28, 2007. On May 10, 2007, the European Communities requested the establishment of a panel. At its meeting on June 4, 2007, the DSB established a panel. On July 6, 2007, the Director General composed the panel as follows: Mr. Faizullah Khilji, Chair; and Ms. Lilia R. Bautista and Mr. Michael Mulgrew, Members. Following the resignation on November 8, 2007 of Ms. Lilia R. Bautista as a Member of the panel, the United States and the 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 has taken the initial step to comply with WTO findings against zeroing in antidumping administrative reviews. Commerce's proposed solution was published in the *Federal Register* on December 28, 2010. The proposal is to be implemented under Section 123 of the Uruguay Round Agreement Act, which requires that USTR and Commerce request and receive comments from interested parties and the U.S. Congress before any final action is implemented.

*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.

*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.

*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 challenges 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 alleges 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 alleges 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 Director-General composed the panel as follows: Mr. Mario Matus, Chair; and Mr. Franz Perrez and Mr. Sivakant Tiwari, members. Following the death of Mr. Tiwari on July 26, 2010, the United States and Mexico agreed on a new panel member on August 12, 2010, Ms. Mary Elizabeth Chelliah. Mexico submitted its first and second written submissions on February 26, 2010 and December 1, 2010 respectively, and the United States submitted its first and second written submission on April 12, 2010 and December 1, 2010 respectively. Panel meetings were held October 18-20, 2010 and December 16-17, 2010. The final panel report was circulated to Members on September 15, 2011.

*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.

On 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.

*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. Under the Technical Barriers to Trade (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 also found that the Vilsack Letter breaches GATT Article X:3 because it does not constitute a reasonable administration of the COOL measure.

*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.

*United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China (DS399):*

On September 14, 2009, China requested consultations with respect to the imposition of additional duties on imports of certain passenger vehicle and light truck tires from China under section 421 of the Trade Act of 1974, as amended, and section 16 of the Protocol on the Accession of the People’s Republic of China (Protocol of Accession). China alleges that the additional tariffs are inconsistent with the GATT 1994, the Agreement on Safeguards, and the Protocol of Accession. China alleges that various elements of USITC’s determination regarding market disruption are inconsistent with the Protocol of Accession. In addition, China alleges that the level and duration of the additional tariffs are inconsistent with the Protocol of Accession. Finally, China alleges that the Section 421 definition of “significant cause” is in and of itself inconsistent with the Protocol of Accession.

The United States held consultations with China on November 9, 2009. On December 9, 2009, China filed a request for establishment of a panel. On January 19, 2010, the DSB established a panel at China’s request. On March 12, 2010, the Director General composed the panel as follows: Prof. Celso Lafer, Chair; and Prof. Donald M. McRae and Mr. Luis M. Catibayan, Members. The Panel met with the parties on June 1-2, 2010 and July 20-21, 2010. The Panel circulated its report on December 13, 2010. The Panel found that, in imposing the additional duties, the United States had not failed to comply with its obligations under section 16 of the Protocol and Articles I:1 and II:1 of the GATT 1994.

On May 24, 2011, China filed a notice of appeal with respect to the panel’s findings regarding the USITC’s determination. The Appellate Body upheld all of the panel’s findings in a report circulated on September 5, 2011.

*United States – Use of Zeroing in Antidumping Measures Involving Products from Korea (DS402):*

On November 24, 2009, South Korea requested consultations regarding the final and amended determinations and antidumping duty order with respect to stainless steel plate in coils from South Korea, the final and amended determinations and antidumping duty order with respect to stainless steel sheet and strip in coils from South Korea, and the final determination and antidumping duty order with respect to diamond sawblades and parts thereof from South Korea. South Korea challenges what it describes as the use by the U.S. Department of Commerce of “the practice of ‘zeroing’ negative dumping margins in calculating overall weighted average margins of dumping” in the investigations in those cases. South Korea claims that the U.S. Department of Commerce’s “use of the practice of zeroing” in those investigations is inconsistent with the obligations of the United States under Article 2.4.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*.

On April 8, 2010, South Korea requested the establishment of a panel. The DSB established the panel on May 18, 2010. On July 8, 2010, the parties agreed to compose the panel as follows: Mr. Alberto Dumont, Chair; and Ms. Enie Neri de Ross and Mr. Ernesto Fernandez, Members. The Panel met with the parties on October 5, 2010 and met with the parties and third parties on October 5, 2010. The panel’s final report was circulated to Members on January 18, 2011. The panel found that the United States acted inconsistently with its WTO obligations when it applied the zeroing methodology in the challenged investigations.

On February 24, 2011, the DSB adopted its recommendations and rulings in this dispute. At the following DSB meeting, on March 25, 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 South Korea agreed that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB with respect to the *Diamond Sawblades and Parts Thereof from Korea* investigation would end on October 24, 2011, and that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB with respect to the *Stainless Steel Plate in Coils from Korea* and *Stainless Steel Sheet and Strip in Coils from Korea* investigations would end on November 24, 2011. The U.S. Department of Commerce completed a Section 129 determination for each of the investigations, recalculating the margins of dumping without “zeroing,” and implemented the determination with respect to diamond sawblades and parts thereof effective October 24, 2011, and with respect to stainless steel plate in coils and stainless steel sheet and coils effective November 16, 2011. At the DSB meeting on December 19, 2011, the United States informed the DSB that it had complied with the recommendations and rulings.

*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.

*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*. The DSB established a panel on October 25, 2011.

*United States – Anti-dumping Duty Measures Regarding Imports of Stainless Steel Sheet and Strip in Coils from Italy (DS424)*:

On April 1, 2011, the EU requested consultations with the United States regarding the calculation of dumping margins on stainless steel sheet and strip in coils in the dumping investigation of Italian company *ThyssenKrupp Acciai Speciali Terni S.p.A.* Specifically, the EU requested consultations regarding the impact of an alleged arithmetic error and the application of the “zeroing methodology” by the Commerce during the following Commerce proceedings: the original investigation of July 1999; the Section 129 proceeding of September 2007; the Ministerial Error Determination of October 2007; and the second sunset review of December 2010. The European Union argued that those proceedings were inconsistent with the obligations of the United States under Articles 2, 5.8, 6.8, 9.3, 11.1, 11.2, and 11.3 of the Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement) and Article VI:2 of the GATT 1994.

The European Union and the United States held consultations on May 11, 2011. On July 8, the U.S. International Trade Commission (ITC) voted to sunset the antidumping duty orders at issue. As a result of the ITC’s determination, the existing orders on the relevant products were revoked.

## **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’ observance of WTO provisions and to contribute to the smoother functioning of the multilateral trading system. Moreover, the review mechanism serves as a valuable resource for improving the transparency of Members’ trade and investment regimes. Members continue to value the review process, because it informs each government’s own trade policy formulation and coordination.

The Member under review works closely with the WTO Secretariat to provide 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.”

Increasingly, TPRs of least developed country (LDC) Members 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 2011**

During 2011, the TPRB reviewed the trade regimes of Australia, Canada, Ecuador, European Union, Guinea Conakry, India, Jamaica, Japan, Mauritania, Nigeria, Paraguay, Thailand, and Zimbabwe. In addition in 2011, Cambodia, one of the first LDCs to complete the WTO accession process, engaged in its first TPR.

Since its formation in 1998 to the end of 2011, the TPRB has conducted 338 reviews. The reviews have covered 141 of 153 Members, representing some 89 percent of world trade and 96 percent of the trade of WTO Members. Of the 32 LDC Members of the WTO, the TPRB had reviewed 29 by the end of 2011.

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 2011. 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 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 2012**

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 2012, the proposed program of reviews is the United States, China, Bangladesh, Colombia, Côte d'Ivoire, East African Community (Kenya, Tanzania, Uganda, Burundi, Rwanda), Guinea Bissau, Iceland, Israel, the Kingdom of Saudi Arabia, Kuwait, Nepal, Nicaragua, Norway, South Korea, the Philippines, Singapore, Trinidad and Tobago, Togo, Turkey, the United Arab Emirates, and Uruguay.

## **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 those that are subject to specific negotiating mandates that are being taken up by the Committee on Trade and Environment Special Session (CTESS). *(For additional information, see Chapter II.B.6.)*

#### **Major Issues in 2011**

In 2011, the Committee on Trade and Environment in Regular Session (CTE) met three times under the Chairmanship of Ambassador Hiswani Harun (Malaysia) – on June 27 (informal meeting); July 6 (formal meeting); and November 25 (formal and informal meetings).

As noted above, the work of the CTE was organized in accordance with the mandate established in the Doha Ministerial Declaration, Paragraphs 32, 33 and 51. Under Paragraph 32, work was conducted on environmental requirements and market access issues (Paragraph 32(i)) and labelling requirements for environmental purposes (Paragraph 32(iii)). Most of the discussion focused on carbon footprinting, greenhouse gas (GHG) accounting methodologies, and related activities and labeling schemes. Several delegations shared their experiences developing GHG accounting methodologies and/or complying with such methodologies and related schemes. 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).

Singapore introduced a paper entitled “Promoting Mutual Supportiveness between Trade and Climate Change Mitigation Actions: Carbon-Related Border Tax Adjustments.”<sup>19</sup> Singapore clarified that the objective of the paper was to facilitate dialogue to promote the mutual supportiveness between trade rules and climate measures, while ensuring the consistency of climate initiatives with WTO rules. Some Members were supportive of a dialogue on these issues under the CTE, while some other Members expressed concerns on the appropriateness of the CTE as a forum to discuss climate change related issues.

As in the past, the CTE received information on the current developments in Multilateral Environmental Agreements (MEAs), including an update from the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC) on the continuing negotiations. The Secretariat of the Convention on Biological Diversity (CBD) briefed the CTE on its latest activities to implement pertinent decisions of the tenth meeting of the Conference of the Parties to the Convention, including a presentation of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. In addition, the Secretary General of the 2012 United Nations Conference on Sustainable Development (UNCSD) briefed the CTE on the current developments in the Rio+20 process.

### **Prospects for 2012**

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 Least Developed Countries (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

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<sup>19</sup> “Promoting Mutual Supportiveness between Trade and Climate Change Mitigation Actions: Carbon-Related Border Tax Adjustments,” Communication from Singapore, WT/CTE/W/248, circulated on March 30, 2011.

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 2011**

The CTD in Regular Session held three formal sessions in March, June, and November 2011. Activities of the CTD and its subsidiary bodies in 2011 included:

- *Technical Cooperation and Training:* The Committee took note of the Annual Report on Technical Assistance and Training, January 1 to December 31 2010 (WT/COMTD/W/178), and of the Technical Cooperation Audit Report for 2010 (WT/COMTD/W/177 and WT/COMTD/W/177/Corr.1). The Biennial Technical Assistance and Training Plan for 2012 and 2013 (WT/COMTD/W/180) was also adopted.
- *Notifications Regarding Market Access for Developing and Least Developed Countries:* In 2011, notifications under the Enabling Clause concerning Generalized System of Preferences (GSP) schemes were made by the EU (WT/COMTD/N/4/Add.5), Japan (WT/COMTD/N/2/Add.15), and Switzerland (WT/COMTD/N/7/Add.4). Notifications were also made to the CTD concerning India's Duty Free Tariff Preference Scheme for LDCs (WT/COMTD/N/38), China's duty free treatment for LDCs (WT/COMTD/N/39 and WT/COMTD/N/39/Add.1), and Chinese Taipei's duty free treatment for LDCs (WT/COMTD/N/40). Members also considered issues relating to the notification status of the Gulf Cooperation Council (GCC) Customs Union.
- *Dedicated Session on Regional Trade Agreements:* There were no formal sessions of the CTD Dedicated Session on RTAs in 2011 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). In 2011, the Committee agreed to a number of modalities to implement the Transparency Mechanism, and as part of these modalities, a standard format for the notification of PTAs to the CTD was adopted (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 one meeting in October 2011, where the Secretariat presented an updated compilation paper of the small economies' negotiating proposals to assist the Dedicated Session with its monitoring role (WT/COMTD/SE/W/22/Rev.6). Members took note of this paper.
- *Aid for Trade:* The CTD held four sessions on Aid for Trade in 2011, in February, April, June, 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. Various international institutions, including the development banks and the United Nations, as well as various Members, provided updates on their activities related to Aid for Trade. Two dedicated thematic workshops were held under the CTD on Aid for Trade and Small, Vulnerable Economies, and Aid for Trade Case Stories. The Third Global Review of Aid for Trade took place on July 18-19, 2011. The case stories and questionnaires submitted by donor countries, partner countries, multilateral development banks, and other Aid for Trade participants, which were called for by the WTO Secretariat and compiled and analyzed by the OECD, provided input into the Global Review. The Third Global Review provided an opportunity to evaluate progress since the Second Global Review and highlighted that concrete positive results had been achieved. Areas of focus included evaluating the impact of Aid for Trade, food security, trade facilitation, the role of the private sector, and regional trade integration. A report of the Third Global Review is reproduced in document WT/COMTD/AFT/W/28. The Secretariat also worked with Members to develop an Aid for Trade Work Program covering the period 2012-13. The new Work Program is focused around five main headings: resource mobilization, mainstreaming, regional dimension, private sector, and monitoring and evaluation of implementation and development effectiveness.
- *LDC Subcommittee:* The Subcommittee held five meetings in 2011, where it mainly focused on the implementation of the WTO Work Program for LDCs adopted by Members in 2002. The subjects discussed included: market access for LDCs; trade-related technical assistance and capacity building initiatives for LDCs; accession of LDCs to the WTO; the Fourth United Nations Conference on LDCs; a proposal of the LDC Group concerning the establishment of a Work Program on Post Accession for the recently acceded LDCs; and preparations for the Eighth Ministerial Conference of the WTO.
- *Other CTD Issues:* In order to assist the Committee with its work on developing countries, the Secretariat prepared a paper on the Participation of Developing Economies in the Global Trading System (WT/COMTD/W/181), which was reviewed by Members. Additionally, the Joint Advisory Group (JAG) on the International Trade Centre, UNCTAD, and the WTO provided a report to the CTD on its 43rd Session (ITC/AG/(XLIV)/238).

## **Prospects for 2012**

The CTD is expected to continue to monitor developments as they relate to issues of concern to developing country Members, including those related to technical assistance. Interest in market access is expected to continue. In this vein, the CTD will 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 2011**

The Committee on Balance-of-Payments Restrictions met on October 21, 2011 to hold its ninth and final annual review under China's Transitional Review Mechanism according to paragraph 18 of China's Protocol of Accession. The representative of China stated that as in the past ten years, China has taken no trade restrictive measures for balance of payments reasons. He added that his delegation would continue to participate constructively in the work of the Committee.

#### **Prospects for 2012**

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 2012 budget, the U.S. assessed contribution is 12.191 percent of the total budget assessment, or Swiss Francs (CHF) 23,687,113 (about

\$24.8 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 2011

Activities of the Committee in 2011 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 2012 amounted to CHF 196 million, including CHF 190 million for the WTO Secretariat and CHF 6 million for the Appellate Body and its Secretariat. 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 2011, the Committee reviewed and made proposals to approve the payment plans proposed by three Members (Burundi, the Democratic Republic of the Congo, and the Islamic Republic of Mauritania) which are subject to Administrative Measures<sup>20</sup> and which had arrears of contributions for periods of up to 33 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 November 1, 2011, the number of Members subject to Administrative Measures had been reduced to 12. In 2011, the Working Group on Administrative Measures also continued to review the implementation of Administrative Measures and to work on a proposal to revise the current set of Administrative Measures.

*WTO Facilities:* The renovation project of the Centre William Rappard is on schedule and a total of 403 offices were renovated in the South and North Wings during 2011. Around 270 staff are scheduled to move from the temporary annex building located at the Chemin des Mines to the Centre William Rappard in 2012. The construction of the South Courtyard Conference Centre and the Atrium is also proceeding on schedule. An informal opening of the meeting rooms located in the South Courtyard took place during the WTO Public Forum in September 2011. Also, the construction of a new administrative building that has 300 offices, as well as an underground garage with 200 spaces, has started and should be completed by December 2012. Technical discussions regarding the security perimeter project for the WTO single site also took place in 2011.

*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 2011, the Committee also authorized the funding of five projects: common area and WTO Institute for Training and Technical Cooperation furniture, archive rooms, the signage system, and catering facilities in the Centre William Rappard.

*Human Resource Matters:* In accordance with the WTO salary adjustment methodology, the Director General decided to apply a 1 percent negative adjustment to the WTO salary scale and to freeze salaries for WTO 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. A new performance award system was

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<sup>20</sup> 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.

implemented in 2011. The promotion of staff diversity remained a key issue for the Secretariat and the Committee.

## **Prospects for 2012**

The Budget Committee will continue to monitor the financial and budgetary situation of the WTO on an ongoing basis. The Budget Committee will actively work with the Director General on the progress of, and any and all financial requirements incurred for, the planned new facility renovation and relocation for the WTO. 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 regional agreements to which Members are party.

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

GATT Article XXIV is the principal provision governing Free Trade Areas (FTAs; alternate acronym applies solely to this section), 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 most-favored nation treatment, if certain requirements are met. With respect to goods, tariffs and other restrictions on trade must be eliminated on substantially all trade between the parties. In addition, duties and commercial measures applied to third countries upon the formation of an FTA or CU must not be higher or more restrictive than was the case before the agreement. If, in forming a CU, a Member exceeds its WTO bound rates, it must so notify the WTO in order to negotiate, with other Members, compensation in the form of market access concessions. Finally, while interim agreements leading to FTAs or CUs are permissible, transition periods to full FTAs or CUs should exceed 10 years only in exceptional cases.

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

## Major Issues in 2011

As of November 15, 2011, 390 RTAs have been notified to the GATT or WTO, of which 211 are in force (122 covering goods only, 1 covering services only, and 88 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, on its own responsibility and in full consultation with the parties, of a factual presentation of RTAs to assist Members in their consideration of a notified RTA; timeframes associated with the consideration of RTAs; provisions regarding subsequent notification and reporting of notified RTAs; technical support for developing countries; and the distribution of work between the CRTA – entrusted to implement the mechanism *vis-à-vis* RTAs falling under Article XXIV of GATT 1994 and 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.

In the years prior to the adoption of the transparency mechanism, the CRTA had completed the examination of a total of 67 agreements, of which 46 dealt with trade in goods and 21 with trade in services. Since the implementation of the transparency mechanism in 2007, 112 agreements have been examined (18 in 2011). Of these agreements, 108 have been reviewed in the CRTA and 4 in the CTD. None of the four CTD agreements were examined in 2011.

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 2011, the Committee discussed two proposals regarding possible work on the systemic implications of RTAs and their effect on the multilateral system. These proposals, including one from the United States tabled in November 2010 (WT/REG/W/59), will be discussed further in 2012.

## Prospects for 2012

Four sessions of the Committee on Regional Trade Agreements are expected to be held in 2012.

## 6. Accessions to the World Trade Organization

### Status

Significant progress was made on WTO accessions as a number of applicants intensified efforts in 2011 to complete their accession negotiations with WTO Members. Montenegro, Russia, Samoa, and Vanuatu completed their accession negotiations, reducing the number of applicants still negotiating for accession to twenty-six.<sup>21</sup> Kazakhstan and Serbia made considerable progress in market access negotiations and in efforts to implement WTO provisions. Laos, a least developed country, completed market access

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<sup>21</sup> Accession Working Parties have been established for Afghanistan\*, Algeria, Andorra, Azerbaijan, Bahamas, Belarus, Bhutan\*, Bosnia and Herzegovina, Comoros\*, Equatorial Guinea\*, Ethiopia\*, Iran, Iraq, Kazakhstan, Laos\*, Lebanon, Liberia\*, Libya, Sao Tome and Principe\*, Serbia, Seychelles, Sudan\*, Tajikistan, Uzbekistan, and Yemen\* (the 10 countries marked with an asterisk are LDCs).

negotiations with all but one Working Party Member and provided its action plans for implementation. Work on these three accessions is well advanced; along with that of Bosnia and Herzegovina, and all are working to complete their respective accession negotiations in 2012. Yemen's good progress towards completion of its accession negotiations slowed dramatically in 2011 due to domestic political developments.

During 2011, formal or informal Working Party (WP) meetings were convened for Afghanistan, Bosnia and Herzegovina, Ethiopia, Laos, Montenegro, Russia, Samoa, Serbia, Tajikistan, and Vanuatu. Additionally, Chair's consultations, similar to informal WP meetings, were convened for Samoa, Russia, and Vanuatu. Market access negotiations and bilateral consultations on other issues also took place at the time of these meetings and consultations. Azerbaijan, the Bahamas, and Seychelles expect to resume WP meetings in 2012, based on work since their last WP meetings in late 2010. The Working Party on the accession of Kazakhstan did not meet in 2010 or 2011. However, bilateral work continued, and Kazakhstan focused its efforts on market access negotiations and on ensuring that relevant parts of its WTO implementing legislation that were part of the legal basis of its Customs Union (CU) with Russia and Belarus, were consistent with WTO provisions. WP meetings in 2012 are contemplated, which would be based on a revised draft WP report and other documents addressing the changes that have occurred in Kazakhstan's trade regime based on its CU membership. In December, Iran submitted its responses to Members' questions on the Memorandum on the Foreign Trade Regime (MFTR), which had been circulated in late 2009. Liberia submitted its MFTR and received Members' questions.

Five of the remaining 26 current applicants for WTO accession (Comoros, Equatorial Guinea, Libya, Sao Tome and Principe, and Syria) have not yet submitted their MFTRs, the action necessary to actually begin accession negotiations. Working Parties and bilateral negotiations with eight other applicants – Algeria, Andorra, Belarus, Bhutan, Iraq, Lebanon, Sudan, and Uzbekistan – remained dormant in 2011. The chart included in Annex II reports the current status of each accession negotiation.

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 observer status in 2011.

#### *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. WP meetings normally 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.<sup>22</sup>

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.<sup>23</sup> 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.

*LDC Accessions:* WTO Members are committed to facilitating the accession processes of least developed countries (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. These guidelines ask WTO Members to exercise restraint in seeking market access concessions and to allow the LDC applicants transition periods for the implementation of WTO Agreements. The United States and other developed country WTO Members have strongly supported the 2002 General Council Decision on LDC Accessions, strictly adhering to the guidelines in formulating more flexible negotiating positions on market access and WTO implementation commitments for LDCs since its implementation in 2002. The guidelines in the Decision also have worked well in encouraging the provision of technical assistance to LDCs, thus ensuring that LDCs are better prepared for the responsibilities of WTO Membership and in general facilitating their integration into the multilateral trading system. The accession process has become a tool for economic development, incorporating the applicant’s own development program and schedule for receiving

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<sup>22</sup> 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.

<sup>23</sup> The Working Party decision 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 approve the terms of accession by consensus.

technical assistance in an action plan for progressive implementation of WTO rules. The market access schedules and protocols of accession developed under these guidelines have reflected the need to address realistically these countries' real trade capacity deficiencies and the difficulties they face in achieving normal WTO accession objectives.

*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 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 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 2011 include: Afghanistan, Azerbaijan, Ethiopia, Iraq, Laos, and Liberia. In addition, a U.S. funded WTO expert resident in Bishkek provided resident WTO accession assistance to Kazakhstan and Tajikistan through September 2011, as well as post-accession assistance to the Kyrgyz Republic. Among current accession applicants, Algeria, Belarus, Bosnia and Herzegovina, Serbia, and Uzbekistan also received U.S. technical assistance earlier in their accession processes.

### **Major Issues in 2011**

During 2011, four countries completed their accession negotiations: Montenegro, Russia, Samoa, and Vanuatu. The terms for Vanuatu's accession were approved by the General Council on October 26, 2011. The accession packages of the other three countries were approved by Ministers at the Eighth Ministerial Conference, December 15-17, 2011. The United States expects that all four countries will complete their respective domestic procedures to accept the terms of accession and become Members before the end of 2012.

#### *Russia:*

Russia is the largest economy still not a Member of the WTO and its pending accession is an historic event. Throughout 2011, along with the EU and the WTO Secretariat, the United States worked with Russia to resolve remaining issues. The terms of accession accepted include bound tariffs for all goods with an average rate of approximately 7 percent on industrial goods after the commitments are fully implemented, and approximately 11 percent on agricultural goods. Russia's services schedule is comprehensive, granting nondiscriminatory access to WTO Members' service suppliers in almost every sector. In addition, Russia has substantially revised its trade regime to implement WTO obligations, including in the areas of customs fees and valuation, import and export restrictions, technical barriers to

trade, sanitary and phytosanitary measures, trade remedies, and intellectual property rights protection, as well as to provide for the significant liberalization of market access for goods and services. Existing investment incentives that are inconsistent with WTO provisions will be brought into conformity no later than July 2018.

The United States has strongly supported Russia's accession bid from its inception in May 1993, providing technical assistance at the beginning of the negotiations and leadership in the Working Party to facilitate completion of the work. But while the terms of Russia's accession reflect significant U.S. participation in the negotiating process, Russia's commitments also reflect its own trade policy reforms and the decision to align the WTO accession process in support of its longer term objectives within the CU with Kazakhstan and Belarus, *e.g.*, Russia's tariff liberalizing commitments will be incorporated in the CU common external tariff and the CU Parties, including Russia, have pledged to observe WTO provisions in applying CU legal acts in areas covered by the WTO. Russia's WTO participation will mark the beginning of a new era in the economic relationship between our two countries, and promises expanding economic opportunities and cooperation.

Since the United States continues to apply the "Jackson-Vanik" amendment to Russia which includes conditions on providing most favored nation tariff treatment, the United States invoked the "nonapplication" provisions of the WTO Agreement. Russia also invoked nonapplication *vis-à-vis* the United States. Enacting legislation to end application of Jackson-Vanik to Russia is a key legislative priority for the Administration, so that U.S. companies and workers can compete on a level playing field in Russia with companies of other WTO Members. The Administration expects that, upon enactment of such legislation, the United States and Russia would each immediately withdraw their notice of non-application, enabling full WTO relations between the two countries.

#### *Montenegro:*

Montenegro's accession negotiations were substantially completed at the end of 2008, but market access negotiations with one WTO Member delayed final approval of the terms for accession until late 2011. During the accession negotiations, Montenegro substantially revised the legal basis for its trade regime to bring it into conformity with WTO provisions. Montenegro's GATT Schedule of tariff commitments includes participation in all the sectoral tariff arrangements, and, as part of its sectoral commitments, Montenegro will join the Agreement on Information Technology prior to accession. Services commitments are also comprehensive.

#### *Kazakhstan:*

During 2011, Kazakhstan continued its efforts to complete bilateral negotiations on market access for goods and services, concluding negotiations with the United States and the European Union, and making good progress towards reaching agreement with the few remaining WTO Members negotiating bilateral market access commitments. In a series of bilateral meetings and video conferences, the United States and Kazakhstan completed bilateral negotiations on goods in 2010 and services in 2011. Discussions also continued in 2011 on key multilateral issues, *e.g.*, intellectual property protection, sanitary and phytosanitary measures, import licensing procedures for goods with encryption, and changes to Kazakhstan's legal framework for implementing WTO provisions in light of its membership in a Customs Union with Russia and Belarus. Bilateral discussions on difficult outstanding issues, *e.g.*, local content requirements in investment contracts and purchases by state owned enterprises, the provision of trading rights, and the operation of state owned and state controlled enterprises, and the rest of the issues in the WP report, will continue in 2012. The next meeting of its WP is planned for spring 2012, after the updated and revised draft report is circulated.

### *Serbia:*

In 2011, Serbia continued to make good progress in both market access negotiations and multilateral review of its trade regime. Its eleventh WP meeting convened in September 2011, and bilateral negotiations on goods and services with the United States are well advanced, with only resolution of agricultural items pending. As of the end of 2011, Serbia also was still negotiating bilaterally with China, Ecuador, El Salvador, Panama, Switzerland, and Ukraine. The WP review of Serbia's trade regime is nearly completed, based on comprehensive comments and drafting suggestions submitted by the United States and other WTO Members after the September WP meeting. WP Members also reviewed new draft legislation in 2011, but Serbia still needs to complete adoption of laws and regulations to implement WTO provisions. For example, Serbia must modify its highly problematic law banning trade in any products containing genetically modified organisms in order to bring it into line with WTO rules. In addition, WP Members need Serbia's revised legislative action plan laying out legislative implementation to date and what is left.

### **Developments in LDC Accessions**

During 2011, LDC accession applicants actively negotiating with WTO Members included Afghanistan, Ethiopia, Laos, Samoa, and Vanuatu, all having at least one formal or informal WP meeting during the year. Negotiations with Samoa and Vanuatu were concluded. Laos' accession negotiations are well advanced, and with sustained effort completion of its negotiations in 2012 is possible. Afghanistan and Ethiopia are continuing their efforts, with U.S. technical assistance, to develop the legislation and institutions necessary for the implementation of WTO provisions. Both are expected to have WP meetings in 2012. Liberia submitted initial documentation and also will likely have a first meeting of its WP in 2012.

During 2011, WTO Members and the Secretariat endeavored to respond to the concerns of developing country and LDC Members and accession applicants about the current accession process, in particular in the area of transparency and the application of the 2002 General Council Decision on LDC Accessions. Discussions on these issues continued in various WTO fora throughout the year. Notwithstanding the progress made by LDCs in their respective accession negotiations during 2011, LDCs and some other developing country accession applicants and some Members continued to express concern that the accession process applied to LDCs was too onerous given their resource limitations and not in line with their development needs. In order to respond to these concerns, the Ministers at the Eighth Ministerial Conference directed the Sub-Committee on LDCs to develop recommendations to further strengthen, streamline and operationalize the 2002 Declaration on LDC Accessions, *inter alia*, including benchmarks, in particular in the area of goods, which take into account the level of commitments undertaken by existing LDC Members. They suggested that benchmarks in the area of services commitments should also be explored. Members will report to the General Council by July 2012 on their progress.

### *Samoa:*

Samoa completed its accession negotiations during 2011. Throughout the year, Samoa met informally with a core group of interested Members to resolve remaining nontariff barrier issues and provide legislative drafts on remaining issues. Technical assistance visits by the WTO Secretariat, additional assistance from Australia and New Zealand on legislative drafting and training provided the basis for completing negotiations in October, and achieving final approval of the accession package in December 2011. Samoa extensively revised its domestic legislation to implement WTO provisions, taking short transitions permitted for LDCs to complete implementation in the areas of existing nontariff barriers, customs valuation, sanitary and phytosanitary measures, and intellectual property protection. Samoa bound all of its tariffs and also pledged to bind nontariff charges and fees on imports at zero. The average

final bound tariff rate on agricultural imports is less than 26 percent *ad valorem*, and less than 21 percent for nonagricultural goods. Only alcohol and tobacco products are bound at rates over 35 percent and certain turkey parts known as turkey tails will have a bound rate of 100 percent *ad valorem* once the current sales prohibition is lifted and a WTO consistent method of regulating these products is established. Services commitments covered a large number of sectors, including a number of U.S. priorities: *e.g.*, financial services; basic and value added telecommunications services; express courier services; and professional services. The results achieved are substantial for a country at Samoa's low level of economic development and resources.

#### *Vanuatu:*

Vanuatu originally completed negotiations with WTO Members in 2001, but decided at that time that its WP not submit the accession package and terms of accession to the Ministerial Conference for approval. Since late 2008, Vanuatu has worked with interested WTO Members (the United States, the EU, Australia, and New Zealand) to update its accession package and to revise its offer on trade in services. This updated package was approved by WTO Members (including the 13 new WTO Members joining since 2001) at the October 2011 General Council. Vanuatu agreed to comprehensive bindings and to eliminate nontariff charges on imports. Vanuatu has fully implemented virtually all aspects of WTO rules and its WTO tariff bindings average only 8 percent to 10 percent higher than its applied tariffs. Vanuatu also undertook commitments to bind at zero tariffs in a number of U.S. priority sectors (*e.g.*, pharmaceuticals and other chemicals, medical equipment, information technology equipment, and civil aircraft.) On agriculture, U.S. priority items are bound at the applied rate and are focused on items actually in trade, *i.e.*, prepared foods, sauces, and other foodstuffs. Tariffs on other U.S. priority products were bound at Vanuatu's applied tariff rate. Services commitments covered a large number of sectors, including a number of U.S. priorities: *e.g.*, financial services; basic and value added telecommunications services; express courier services; and professional services. The results achieved are substantial for a country at Vanuatu's level of economic development and resources.

#### *Laos:*

Laos' seventh WP meeting was held in June 2011 to review a revised factual summary and assess what issues were remaining. Based on comments and drafting suggestions by the United States and other WTO Members, the Secretariat should be able to issue a draft Working Party report for negotiation at the next WP meeting. Bilateral market access negotiations also were held in Geneva on the margins of the WP meeting and again in December 2011. The United States completed bilateral negotiations on market access negotiations for both goods and services with Laos at that time and also addressed the interrelationship between Laos' WTO commitments and the provisions of our Bilateral Trade Agreement. The next WP meeting likely will be convened in 2012 and, with sustained effort, Laos has an opportunity to complete its accession negotiations in 2012.

#### *Yemen:*

Yemen made significant progress in its WTO accession negotiations in 2010, but domestic political developments in early 2011 made further progress difficult. Yemen had no WP meetings in 2011, and bilateral work with the United States has slowed until the situation in Yemen stabilizes.

### **Prospects for 2012**

At the end of 2011, the remaining 26 applicants for accession were evenly split between those that are actively negotiating WTO Membership, and those that are not. For the 13 active negotiations, the prospects for completing additional accession negotiations in 2012 are quite good for Kazakhstan, Laos,

and Serbia. Yemen and Bosnia and Herzegovina could make significant progress as well, if domestic political conditions improve sufficiently to permit it. Other active accessions, but at an early stage of progress, include Afghanistan, Azerbaijan, the Bahamas, Ethiopia, Seychelles, and Tajikistan. These applicants will continue negotiations bilaterally and in their Working Parties during 2012, depending on the timing and the quality of market access offers and on tangible progress on legislation. Belarus, which hasn't had a Working Party meeting since 2005, is likely to resume its accession process based on a revised and updated factual summary of the new information it provided during 2010 and 2011. Liberia, a recent applicant, is also poised to convene its Working Party for the first time in 2012.

Efforts in recent years to advance the accessions of LDCs appear to be succeeding, and in 2012 there will be a special focus by Members on completing negotiations with Laos and possibly Yemen. There will be additional efforts to intensify work with other negotiating LDCs, *i.e.*, Afghanistan, Ethiopia, and Liberia, as well as intensified monitoring of the application of the Decision on LDC Accessions and negotiations to strengthen, streamline, and operationalize its provisions.

## **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.<sup>24</sup>

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 31 Signatories to the Aircraft Agreement: Albania, Canada, the EU<sup>25</sup> (the following 20 EU Member States are also Signatories to the Aircraft Agreement in their own right: Austria, 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, 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, Saudi Arabia, Singapore, Sri Lanka, Trinidad and Tobago, Tunisia, Turkey, and Ukraine. In addition, the Russian Federation is an observer. The IMF and UNCTAD are also observers.

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<sup>24</sup> 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](http://www.wto.org/english/tratop_e/civair_e/civair_e.htm).

<sup>25</sup> 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.

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 2011**

The Aircraft Committee held one regular meeting on November 11, 2011. At this meeting, the Committee elected Mr. Robert Jui-song Fang of Chinese Taipei as its new Chair and 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 2012**

The Aircraft Committee agreed to hold its next regular meeting on November 8, 2012. 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: 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).

Armenia submitted its application for accession and initial coverage offer in September 2009. The WTO Committee on Government Procurement (Committee) approved Armenia’s accession to the GPA in December 2010. On March 9, 2011, the Committee confirmed that Armenia had met the terms and conditions for its accession, specifically with respect to its national legislation and that it could, therefore, proceed to deposit its instrument of accession to the GPA. On August 16, 2011, Armenia deposited its instrument of accession with the Director General of the WTO and became a GPA Party on September 15, 2011.

As of the end of 2011, nine Members were in the process of acceding to the GPA: Albania; China; Georgia; Jordan; Kyrgyz Republic; Moldova; Oman; Panama; and Ukraine. Four additional Members have provisions in their respective Protocols of Accession to the WTO or Working Party reports regarding accession to the GPA: Croatia; the Former Yugoslav Republic of Macedonia; Mongolia; Saudi Arabia; and Ukraine. Most recently, a commitment regarding GPA accession has been included in the Report of the Working Party on the WTO Accession of Russia, which was adopted by the Working Party, on an *ad referendum* basis, on November 10, 2011.

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.

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 continued in 2011. 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 any further progress in 2011. Moldova, which had commenced its accession in November 2008, requested in May 2009 that further active consideration of its accession be deferred until its government completed a reorganization. There were no developments in 2011.

Ukraine commenced its accession to the GPA on February 9, 2011 with the submission of its application for accession. Subsequently, on August 2, 2011, Ukraine submitted its Replies to the Checklist of Issues.

Twenty-two 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; Jordan; Kyrgyz Republic; Moldova; Mongolia; New Zealand; Oman; Panama; Saudi Arabia; Sri Lanka; Turkey; and Ukraine. Four intergovernmental organizations (IMF, International Trade Centre, OECD, and UNCTAD) also have observer status.

Article XXIV:7 of the GPA calls for the Parties to undertake further negotiations to improve the Agreement and to expand the procurement that they cover under the GPA. In December 2006, the GPA Committee reached provisional agreement on a substantial revision of the text, with the exception of the Final Provisions, subject to a legal check and to a mutually satisfactory outcome in the coverage negotiations. The new GPA text will be used as the basis for negotiations with countries in the process of acceding to the GPA. The legal check of Articles I through XXI of the revised text was completed in 2007. In 2010, the Committee completed verification of the linguistic consistency of the English, French, and Spanish texts of the revision of the GPA, and in December 2010 approved public release of an updated version of the revised text.

On December 15, 2011, the Parties meeting at the Minister level adopted a decision approving the outcome of the negotiations under Article XXIV:7. The outcome included the revised text and expansion of procurement covered under the GPA. As part of the GPA package, the Parties developed a set of Future Work Programs to be undertaken by the Committee following the entry into force of the revised Agreement. These include programs related to: (i) the treatment of small and medium sized enterprises

(SMEs); (ii) sustainable procurement; (iii) the collection and dissemination of statistical data; (iv) exclusions and restrictions in Parties' Annexes; and (v) safety standards in international procurement. The 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.

### **Major Issues in 2011**

Armenia became the 42nd WTO Member to become a Party to the GPA in September 2011. The Ukraine commenced its GPA accession in February 2011.

During 2011, the GPA Committee held five meetings (in March, May, September, October, and December) during which Parties completed the negotiations on both coverage and text related issues. The Committee developed several Future Work Programs to address issues that have arisen in the GPA negotiations. The Committee has also developed a decision relating to the use of electronic means to fulfill notification requirements under Article XXII of the revised Agreement and to facilitate notification of rectifications under Article XIX of the revised Agreement.

The GPA Committee held discussions at informal meetings on China, Jordan, and Ukraine's accessions to the GPA.

### **Prospects for 2012**

The GPA Committee will complete the final verification and legal review of the various elements of the revision that was approved in December 2011 during the first quarter of 2012. The Committee will adopt the elements of the GPA revision no later than March 30, 2012. The revised GPA will then be subject to approval by each of the GPA Parties. The revised GPA will enter into force when two thirds of the 15 GPA Parties have accepted it.

## **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),<sup>26</sup> among which are to review the current product coverage with a view to incorporate additional products, and to consider any divergence among them 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 technology products including computers and computer peripheral equipment, electronic components including semiconductors, computer software, telecommunications equipment, semiconductor manufacturing equipment, and computer based analytical instruments. There are currently 73 participants<sup>27</sup> of the ITA. Of these current Members, Panama

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<sup>26</sup> More formally known as the "WTO Ministerial Declaration on Trade in Information Technology Products" (WT/MIN(96)/16).

<sup>27</sup> Current ITA participants are: Albania; Australia; Bahrain; Canada; China; 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,

submitted its formal modification and rectification of its schedule reflecting its commitments to the ITA Committee in the summer of 2011. However, Morocco has not yet submitted the formal documentation to implement its ITA Commitments.

On October 24, 2011, ITA Participants welcomed Russia's announcement of its intention to join the ITA as part of its WTO accession package. Russia's commitment to join the ITA was reflected in its WTO Working Party Report. In addition, on November 24, 2011, Colombia indicated its intention to join the ITA, and submitted a draft ITA schedule of ITA commitments to the WTO. Upon verification, Colombia will become the 74th Participant of the ITA. Joining the ITA is a commitment Colombia made to the United States as part of the United States-Colombia Free Trade Agreement.

### **Major Issues in 2011**

The ITA Committee held two formal meetings in 2011, on May 24 and October 24,<sup>28</sup> and four informal committee meetings or consultations. Throughout the year, ITA participants continued their discussion of classification divergences on certain ITA products, which is 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 2012.

The review of "product coverage" under the ITA is a standing agenda item for each ITA Committee meeting. The EU has continued to promote its 2008 proposal for a "review" of the ITA, though it is clear that it has garnered little support from the Committee; several countries, including the United States, continued to raise significant questions and concerns about the specific elements of the EU proposal. However, many ITA Participants have expressed interest in expanding the product coverage under the ITA. The Committee Chair encouraged agreement Participants to continue informal discussions about product coverage in 2012.

Throughout the year, the United States has been closely monitoring the EU's compliance with the WTO dispute settlement panel report in the dispute brought by the United States, Japan, and Chinese Taipei regarding the European Union's tariff treatment of certain information technology products. The report, adopted in September 2010, upheld the complainants' position as to all three products at issue in the dispute and rejected the EU's assertion that ITA obligations are limited to so-called Attachment A commitments and that products are no longer covered by the ITA and can be subjected to duties when they incorporate new technologies or features. The United States agreed on a reasonable period of time for the European Union to comply with the recommendations and rulings of the WTO, which expired in June 2011. However, while the EU took some steps to bring its measures into compliance, the United States remains concerned that certain products at issue in the case may still be subject to duties and has continued to engage with the EU to address the remaining concerns. (*For additional information, see Chapter II.H.*)

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China; Malaysia; Mauritius; Moldova; 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.

<sup>28</sup> The minutes of these Committee meetings are contained in WTO documents G/IT/M/53 and G/IT/M/54 (not yet released).

## **Prospects for 2012**

There has been renewed interest among ITA Participants to pursue a new negotiation to expand the scope of the agreement, particularly following the successful Panel Decision against the EU for wrongfully charging duties on certain ITA products. At the APEC Leaders Summit in Honolulu in November 2011, APEC Leaders agreed to play a leadership role in launching negotiations to expand the product coverage and membership of the ITA. Since the ITA was signed in 1996, the global information and communications technology (ICT) sector has experienced an innovation revolution, with countless new ICT and electronics products entering the market. Expanding the product scope 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.

The next meeting of the ITA Committee will be held in the second quarter of 2012. In addition, the ITA Committee has agreed to hold a symposium in the second quarter of 2012 to commemorate the 15th anniversary of the ITA. The symposium will bring together stakeholders from governments, global industry, and other organizations to discuss the state of the information technology sector, policy tools to address those challenges, and ways to build on the successes of the ITA.

# III. BILATERAL AND REGIONAL NEGOTIATIONS AND AGREEMENTS

## A. Free Trade Agreements

### 1. Australia

The United States-Australia Free Trade Agreement (FTA) entered into force on January 1, 2005. U.S. two-way goods and services trade with Australia was an estimated \$56 billion in 2011, up 73 percent since 2004, the year before the FTA entered into force. U.S. goods exports were \$24 billion in 2011, up 71 percent from 2004, and U.S. goods imports were \$10 billion, up 34 percent from 2004. The United States had a \$14 billion goods trade surplus, and a \$10 billion services trade surplus with Australia in 2011.

Agricultural trade between the United States and Australia continued to grow in 2011, with U.S. agriculture exports to Australia reaching \$1.2 billion. Under the FTA, the two countries established working groups aimed at promoting closer cooperation between them in this sector and creating fora for discussing agricultural and sanitary and phytosanitary issues. The working groups met in April 2011 to address specific bilateral animal and plant health matters with a view to facilitating agricultural trade. The next working group meeting will be held in early 2012.

In 2011, the United States and Australia continued to closely monitor FTA implementation and discuss a range of FTA issues. The two sides worked to further deepen the trade and investment relationship in the Trans-Pacific Partnership as well as through WTO and APEC initiatives.

### 2. Bahrain

The United States-Bahrain Free Trade Agreement, which entered into force on August 1, 2006, generates export opportunities for the United States, creating jobs for U.S. farmers and workers. On the first day the agreement took effect, 100 percent of the two-way trade in industrial and consumer products began to flow without tariffs. In addition, Bahrain opened its services market wider than any previous FTA partner, creating important new opportunities for U.S. financial service providers and companies that offer telecommunications, audiovisual, express delivery, distribution, healthcare, architecture, and engineering services. The United States-Bahrain Bilateral Investment Treaty (BIT), which took effect in May 2001, covers investment issues between the two countries.

The central oversight body for the Agreement is the United States-Bahrain Joint Committee (JC), chaired jointly by USTR and Bahrain's Ministry of Industry and Commerce. Dates for the third meeting of the JC have not yet been set, but when scheduled, officials of the two governments expect to discuss a broad range of trade issues, including efforts to increase bilateral trade and investment levels, possible cooperation in the broader MENA region, and additional cooperative efforts related to labor rights and environmental protection.

In April 2011, the American Federation of Labor and Congress of Industrial Organizations filed a submission with the U.S. Department of Labor alleging that the government of Bahrain took certain actions related to the protests in February and March that, if substantiated, would be inconsistent with Bahrain's commitments under the FTA Labor Chapter. In June, the Department of Labor accepted the submission for review. In December, the Department of Labor extended the timeframe for its review. At

the end of the review, expected in early 2012, the Department of Labor will issue a public report on its findings.

### **3. Central America and the Dominican Republic**

#### **a. Overview**

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic. The CAFTA-DR is the first free trade agreement between the United States and a group of developing economies. This agreement is creating new economic opportunities by eliminating tariffs, opening markets, reducing barriers to services, and promoting transparency. It is facilitating trade and investment among the seven countries and furthering regional integration.

Central America and the Dominican Republic represent the third largest U.S. goods export market in Latin America, behind Mexico and Brazil. U.S. goods exports to the CAFTA-DR countries were valued at \$30.5 billion in 2011. Combined total two-way trade in 2011 between the United States and Central America and the Dominican Republic was \$58.7 billion.

The agreement entered into force for the United States and El Salvador, Guatemala, Honduras, and Nicaragua during 2006, for the Dominican Republic on March 1, 2007, and for Costa Rica on January 1, 2009. With the addition of Costa Rica, the CAFTA-DR is in force for all seven countries that signed the Agreement.

The inaugural meeting of the CAFTA-DR Free Trade Commission (FTC) took place on February 22-23, 2011 in El Salvador. Trade Ministers reviewed implementation of the CAFTA-DR and took several important actions to expand the benefits and strengthen the operation of the Agreement.

#### **b. Elements of the CAFTA-DR**

##### **i. Operation of the Agreement:**

The central oversight body for the CAFTA-DR is the Free Trade Commission, comprised of the U.S. Trade Representative and the trade ministers of the other CAFTA-DR Parties or their designees. The FTC is responsible for supervising the implementation and operation of the agreement. On February 22-23, 2011, the FTC met for the first time in El Salvador. Trade Ministers reviewed implementation of the CAFTA-DR and took several important actions to expand the benefits and strengthen the operation of the Agreement, as noted below.

At its inaugural meeting, the FTC endorsed a CAFTA-DR Trade Facilitation Initiative to enhance regional integration and competitiveness, expand and broaden the benefits of trade under the Agreement, and support jobs, with special attention to promoting greater participation by small and medium sized business. With input from the private sector and the support of the InterAmerican Development Bank, the CAFTA-DR countries will identify challenges to the efficient flow of trade in the region and policies and best practices to address them. Among several initiatives, the Ministers released “Frequently Asked Questions about Opportunities for Small Businesses to Export in the CAFTA-DR Region,” providing answers to questions for firms that want to expand their business by taking advantage of the CAFTA-DR Agreement and expand their export markets.

The Ministers also received reports on the work of the CAFTA-DR Labor Council, the Environmental Council, and the Trade Capacity Building Committee, and they reviewed the work of the technical committees and advanced implementation issues (*see subsection v, Other Implementation Matters, below, for more technical details*).

On October 27, 2011, CAFTA-DR Vice Ministers met in Washington, D.C. to follow up on issues raised at the February FTC meeting. They agreed to host a Trade Facilitation Dialogue in Miami on January 23-24, 2012, for the region's top trade officials and leading private sector representatives to exchange views.

## **ii. Labor:**

Ongoing labor capacity building activities are supporting efforts to improve the enforcement of labor laws in the CAFTA-DR countries. In particular, U.S. Government assistance focuses on strengthening and modernizing the labor ministries and justice systems in the CAFTA-DR countries and promoting a culture of compliance with labor laws in each CAFTA-DR country.

In August 2011, the United States invoked arbitration against the government of Guatemala under the CAFTA-DR for the government of Guatemala's apparent failure to effectively enforce its labor laws in contravention of its CAFTA-DR obligations. This is the first time the United States has taken such action on a labor matter under an FTA. Prior to taking this action, in July 2010, the U.S. Trade Representative and the U.S. Secretary of Labor requested consultations with Guatemala under the CAFTA-DR concerning Guatemala's apparent failures to effectively enforce its labor laws related to the right of association, the right to organize and bargain collectively, and acceptable conditions of work. The request for consultations followed a submission filed with the U.S. Department of Labor in April 2008 by the American Federation of Labor and Congress of Industrial Organization and several Guatemalan unions, alleging that the government of Guatemala was failing to effectively enforce its labor laws. The Department of Labor published a report in January 2009, which found systemic weaknesses in Guatemala's labor law enforcement. Despite extensive bilateral engagement and a meeting of the FTC pursuant to the dispute settlement chapter of the CAFTA-DR, the government of Guatemala did not take effective steps to address these systemic weaknesses, leading to the request for an arbitral panel.

In July 2010, the International Longshore and Warehouse Union (ILWU) and two Costa Rican worker organizations filed a submission with the U.S. Department of Labor alleging that the government of Costa Rica is failing to effectively enforce its labor laws. Due to developments after the submission was filed, including a Constitutional Court ruling in Costa Rica related to the issues raised in the submission, the U.S. Department of Labor extended until April 2011 the time to consider whether to accept the submission for review. The ILWU withdrew its submission on April 13, 2011 and the U.S. Department of Labor closed the review.

## **iii. Environment:**

U.S. Government assistance for environment capacity building programs and activities in Central America and the Dominican Republic continued in 2011. Capacity building focused on compliance with specific CAFTA-DR environment chapter obligations, strengthening of environmental laws and enforcement, biodiversity conservation, including through market-based approaches, and improving private sector environmental performance. Public outreach efforts continued in 2011. The Secretariat for Environmental Matters ("Secretariat"), established in 2006 in accordance with the CAFTA-DR, received several new submissions from the public in 2011 on a range of environmental concerns. The Secretariat made progress on improving the timeliness for its review of public submissions. The CAFTA-DR Environment Affairs Council contact points met twice in 2011 to discuss priorities for environmental capacity building programming and to prepare for and follow up on the January 2011 Environmental

Affairs Council (EAC) meeting. During the January 2011 EAC meeting, Council Members highlighted their government's successes with respect to implementation of obligations under the environment chapter, as well as accomplishments under the parallel environmental cooperation agreement, and they prepared a report on their work that was delivered to the Free Trade Commission meeting on February 22-23, 2011.

#### **iv. Trade Capacity Building:**

Trade Capacity Building (TCB) programs and planning continued throughout 2011 with the U.S. Trade Representative, along with the U.S. Agency for International Development (USAID) and other donors, such as the U.S. Department of Agriculture, meeting in the full Trade Capacity Building Committee established under the agreement, as well as bilaterally with each of the CAFTA-DR partner countries. Discussions focused on the prioritization of CAFTA-DR partners' trade capacity building objectives, including successful implementation and full utilization of the opportunities created by the CAFTA-DR, with a special emphasis on sanitary and phytosanitary (SPS) and trade facilitation activities.

USAID announced the initiation of new regional programs addressing customs, trade facilitation and SPS activities. The U.S. Department of Commerce initiated a series of customs modernization workshops that will be held throughout the region in 2012. In support of the CAFTA-DR FTC's *Trade Facilitation Initiative* and the recommendations of the CAFTA-DR Committee on Technical Barriers to Trade and the Committee on Trade in Goods, USTR organized a standards workshop for CAFTA-DR countries in December of 2011 and started planning and organizing a customs workshop focusing on improved implementation of the Agreement to take place in early in 2012. Finally, USAID, together with assistance from the U.S. Department of State and the Higher Education and Development organization, will extend a program that began with the establishment of several small business development centers (SBDCs) in El Salvador, to create a network of SBDCs throughout the region. USTR, the U.S. Department of State, the Small Business Administration, and other agencies, are working with various partner organizations, including multilateral institutions and universities, to connect U.S. and regional SBDCs in order to help our SMEs take better advantage of trade opportunities.

#### **v. Other Implementation Matters:**

As noted above, during 2011, several technical meetings were held to review and advance implementation matters under the agreement. At its February 22-23 meeting, the FTC adopted various decisions to strengthen implementation. The FTC adopted model rules of procedure and a code of conduct for dispute settlement and rosters of dispute settlement panelists, which bolster implementation and enforcement of the Agreement. Ministers also decided on a number of changes to the Agreement's rules of origin for textile and apparel goods to enhance the competitiveness of the region's textiles sector through regional sourcing and integration. In addition, as called for in the Agreement, they agreed to increase the cumulation limits, which allow specific quantities of designated apparel products to enter the United States from Central America and the Dominican Republic containing inputs from Mexico and potentially Canada, in order to encourage greater integration of regional production. These changes in textiles and apparel were in addition to other important changes to the Agreement's textiles provisions implemented by the CAFTA-DR Parties on August 15, 2008, including changing the rules of origin to ensure that pocket fabric in apparel is sourced from the United States or another CAFTA-DR Party. The Parties also implemented a reciprocal textile input sourcing rule with Mexico. Under this rule, Mexico will provide duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. input, and the United States will provide reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican input.

Further, in February 2011, the FTC endorsed the CAFTA-DR Textiles Sourcing Database, to facilitate regional sourcing and encourage a vibrant textile and apparel supply chain in the region. In addition, the FTC established the Committees on Agricultural Trade and Sanitary and Phytosanitary Matters as required by the Agreement.

Subsequently, as agreed at the October 27, 2011 Vice Ministers' meeting, an FTC decision established Common Guidelines for application and interpretation of the rules of origin under CAFTA-DR. Work with CAFTA-DR partners to update the product-specific rules of origin to reflect changes to the Harmonized System will further facilitate traders' appropriate claims and customs administrations' application of the Agreement's rules of origin. In addition, technical experts in the Technical Barriers to Trade Committee met in December 2011.

The United States also continued to work closely with its CAFTA-DR partners on bilateral matters related to the Agreement, with a particular focus on ensuring that its partners properly implement the Agreement. For example, the U.S. Government worked with several CAFTA-DR partners on implementation of agricultural trade matters such as administration of tariff-rate quotas and SPS issues. The U.S. Government also worked with the government of Costa Rica to review and support its market opening for wireless mobile and satellite internet services.

## **4. Chile**

### **a. Overview**

The United States-Chile Free Trade Agreement entered into force on January 1, 2004.

The United States-Chile FTA eliminates tariffs and opens markets, reduces barriers for trade in services, provides protection for intellectual property, ensures regulatory transparency, guarantees non-discrimination in the trade of digital products, commits the Parties to maintain competition laws that prohibit anticompetitive business conduct, and requires effective labor and environmental enforcement. In 2011, U.S. goods exports to Chile increased by an estimated 44 percent to \$15.7 billion, while U.S. goods imports from Chile increased by 33 percent to \$9.3 billion.

### **b. Elements of the United States-Chile FTA**

#### **i. Operation of the Agreement**

The central oversight body for the FTA is the United States-Chile Free Trade Commission (FTC), comprised of the U.S. Trade Representative and the Chilean Director General of International Economic Affairs or their designees. The FTC held its seventh meeting on August 2, 2011, during which the two governments evaluated progress on the implementation and operation of the FTA during 2010. The Parties also exchanged letters to liberalize the rules of origin of a broad range of products, covering \$1.4 billion dollars in trade, and held a meeting to discuss how to further enhance the ability of small and medium enterprises (SMEs) to capitalize on the benefits of the United States-Chile FTA.

#### **ii. Labor**

The FTA establishes a cooperative mechanism to promote respect for the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work, and compliance with ILO Convention 182 on the Worst Forms of Child Labor. The U.S. Department of Labor and the Chilean Ministry of Labor

continue to exchange information on occupational safety and health and social protections related to employment.

### **iii. Environment**

At the August 2, 2011 Free Trade Commission Meeting, Chile provided an update on changes to Chilean environmental legislation that led to the establishment of several new entities, including the Ministry of Environment (responsible for the development of environmental policy), the Superintendency of Environment (enforcement body), and the Environmental Evaluation Service (responsible for the management of environmental evaluations and assessments).

The U.S. State Department led implementation of the United States-Chile Environmental Cooperation Agreement. In 2011, several agencies carried out a range of cooperative activities with Chile under the Cooperation Agreement, including training for Chilean Supreme Court justices in adjudicating environmental enforcement cases, and development and dissemination of a guide for public access to environmental information.

The Parties plan to hold an Environmental Affairs Council meeting in Chile in 2012.

### **iv. Intellectual Property Rights**

Chile remained on the Priority Watch List in 2011. The United States continues to engage in discussions with Chile concerning the implementation of Chile's IPR commitments under the FTA. Chile took positive steps in 2010 and 2011 to implement its outstanding intellectual property obligations under the FTA, including by acceding to the Trademark Law Treaty and the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels Convention). Chile also is taking steps to accede to the International Convention for the Protection of New Varieties of Plants (UPOV-91). However, Chile must still take steps to provide an effective system for addressing patent issues expeditiously in connection with applications to market pharmaceutical products, and to provide protections against the circumvention of technological protection measures. Chile must also provide protections for encrypted program-carrying satellite signals; ensure that administrative and judicial procedures and deterrent remedies are made available to rights holders; and amend its Internet service provider liability regime to permit effective action against acts of infringement of copyrights and related rights.

## **5. Israel**

The United States-Israel Free Trade Agreement is the United States' first FTA. It entered into force in 1985 and continues to serve as the foundation for expanding trade and investment between the United States and Israel by reducing barriers and promoting regulatory transparency. From 2010 to 2011, U.S. goods exports to Israel rose by an estimated 25.6 percent, to \$14.2 billion.

The central oversight body for the FTA is the United States-Israel Joint Committee (JC). In December 2009, the JC met to exchange views on issues and concerns, including, among others, concerns related to agricultural market access, telecommunications, and government procurement. As a follow-up to that meeting, in August 2011, the United States and Israel finalized a work plan that addresses the remaining barriers to bilateral trade, including in the areas of agriculture and services. As initial steps under the work plan, the two sides agreed to pursue negotiations towards implementation of a Mutual Recognition Agreement for assessing conformity in telecommunications equipment and to facilitate trade by reviewing existing customs procedures and regulations. The two sides also made progress on a number of market

access issues related to standards, customs classification, and technical regulations. Both sides agreed to continue the dialogue through the United States-Israel JC meetings.

Recognizing in the 1990s that the FTA had inadequately liberalized bilateral agriculture trade, the United States and Israel concluded an Agreement Concerning Certain Aspects of Trade in Agricultural Products (ATAP), which provided for duty-free or other preferential treatment of certain agricultural products. The 1996 agreement was extended through 2003, and a new agreement was concluded in 2004. While this Agreement originally extended through 2008, it has been extended annually since then. In December 2011, the two sides agreed to extend that agreement through December 31, 2012.

In June 2011, in order to facilitate improved agricultural access, USTR proposed, and the Israelis ultimately agreed to, a work plan that identifies actions to be taken by the United States and Israel to negotiate a successor to the 2004 ATAP, which would result in significant improvements for U.S. agriculture exports to Israel. The Working Group on Agriculture agreed to meet in early 2012 to continue negotiations.

Despite the impasse over agricultural trade, technical experts from the United States and Israel worked together to resolve some existing agricultural trade concerns during 2011. Israel continued to work to resolve customs questions on the transshipment of fresh food products. However, many technical barriers still remain for U.S. agricultural products' entry into the Israeli market.

In connection with the 2009 Special 301 out-of-cycle review, the United States and Israel reached an understanding on February 18, 2010, regarding several longstanding issues with respect to Israel's IPR regime for pharmaceutical products. As part of that understanding, Israel committed to strengthen its laws on pharmaceutical test data and patent term extension, and to publish patent applications promptly after the expiration of eighteen months from the time an application is filed. The United States agreed to move Israel to the 301 Watch List once Israel submitted appropriate legislation, and to remove Israel from all Special 301 lists once the government enacted legislation that implemented Israel's obligations fully. Israel enacted legislation regarding data protection, and it has advised that it will submit legislation regarding patent term extension and patent publication.

## **6. Jordan**

In 2011, the United States and Jordan continued to benefit from their economic partnership. A key element of this relationship is the United States-Jordan Free Trade Agreement, which entered into force on December 17, 2001, and was implemented fully on January 1, 2010. In addition, the Qualifying Industrial Zones (QIZs), established by the U.S. Congress in 1996, allow products to enter the United States duty free if manufactured in Jordan, Egypt, or the West Bank and Gaza, with a specified amount of Israeli content. The program has succeeded in stimulating significant business cooperation between Jordan and Israel.

Together these measures have played a significant role in boosting overall United States-Jordanian economic ties. U.S. goods exports were an estimated \$1.4 billion in 2011, up 22 percent from 2010. QIZ products still account for more than half of Jordanian exports to the United States, but the QIZ share is declining relative to total products shipped under the FTA. This shift toward exporting products manufactured outside of the QIZs demonstrates the important role the FTA plays in helping Jordan diversify its economy.

The United States-Jordan FTA has expanded the trade relationship between the two countries by reducing barriers for services, providing cutting edge protection for intellectual property, ensuring regulatory

transparency, and requiring effective labor and environmental enforcement. In June 2010, the two sides crafted a plan of action, pursuant to the 2009 meeting of the JC charged with administering the FTA. Under this strategy, officials committed to explore ways to intensify cooperation in the areas of customs, agriculture, intellectual property rights, labor, the environment, and technical assistance.

As one example, USTR led a mission to Jordan in October 2011 to address labor issues. During the visit, U.S. Government officials from USTR, the Department of Labor, and the Department of State held extensive meetings with Jordanian government officials, and also met with representatives from labor unions and worker rights advocates, as well as business groups. During the mission, U.S. officials visited factories located in QIZs to monitor working conditions and urge the government of Jordan to continue making improvements on labor rights issues, especially with regard to migrant workers in apparel factories. To support this effort, the United States and Jordan are funding an International Labor Organization (ILO) Better Work program, which is observing working conditions in garment factories and issuing public reports. The project was launched in 2008 and the ILO began monitoring activities in QIZ factories in 2009.

## **7. Morocco**

The United States-Morocco Free Trade Agreement entered into force on January 1, 2006. The FTA is a comprehensive agreement that is an important part of the effort to promote a more open and prosperous society. It supports the significant economic and political reforms that are underway in Morocco and provides improved commercial and market opportunities for U.S. exports to Morocco by reducing and eliminating trade barriers.

Since the entry into force of the FTA, the U.S. goods trade surplus with Morocco has risen to \$1.6 billion in 2011, up from \$35 million in 2005 (the year prior to entry into force). U.S. goods exports in 2011 were \$2.7 billion, up 37 percent from the previous year. Corresponding U.S. imports from Morocco were \$1.0 billion, up 49 percent from 2010.

The Joint Committee (JC) established by the FTA last met in November 2009. The next JC meeting is expected to be held in the first part of 2012. In October 2010, the United States and Morocco agreed to develop an action plan for activities to pursue in advance of the next JC meeting. Pursuant to the action plan, in 2011, the two sides negotiated and concluded a Customs Mutual Assistance Agreement. In 2011, Morocco also announced it had formally acceded to the WIPO Internet Treaties, implementing a commitment it made in the context of the FTA. The two sides also resumed their discussions regarding Morocco's tariff-rate quotas on wheat established under the FTA; the United States continues to have concerns about administration of these tariff-rate quotas.

In May 2010, the United States and Morocco convened the first meeting of the Subcommittee on Labor Affairs created under the FTA. The Subcommittee agreed to a series of cooperative labor activities to improve enforcement of Morocco's labor laws, including training for labor inspectors on mediation of workplace disputes. In 2011, the Department of Labor provided funding for the U.S. Federal Mediation and Conciliation Service (FMCS) to develop and deliver a series of training modules for labor inspectors on mediation techniques. In September 2011, FMCS trained labor inspectors in Casablanca, Marrakesh, Rabat, and Tangiers.

In 2011, Morocco and the United States continued their strong collaboration on environmental cooperation efforts. The U.S. Department of the Interior provided technical assistance to train Moroccan customs officials on the enforcement of the Convention on International Trade in Endangered Species (CITES). The U.S. Forest Service provided rangeland management training to Moroccan officials and

supported the establishment of a Rangeland Management School in the Middle Atlas Mountains to help protect Morocco's primary water source. Tourism is a key sector of the Moroccan economy, and the U.S. Department of the Interior, the Moroccan Ministry of Tourism, and the United Nations Global Sustainable Tourism Council implemented a Sustainable Tourism Criteria Ratings Program in Morocco. Additionally, the World Environment Center, in collaboration with the Moroccan Cleaner Production Center, began work with more than 20 small and medium sized enterprises to increase energy efficiency and establish cleaner production methods in the food canning sector in Morocco. In December 2011, the two sides discussed strengthening their trade-related environmental cooperation and agreed to focus on green economy issues in developing future environmental collaboration activities that will support Morocco's implementation of the environment chapter of the FTA.

## **8. North American Free Trade Agreement**

### **a. Overview**

On January 1, 1994, the North American Free Trade Agreement between the United States, Canada, and Mexico (NAFTA) entered into force. All remaining duties and quantitative restrictions were eliminated, as scheduled, on January 1, 2008. The NAFTA created the world's largest free trade area, which now links 457 million people producing roughly \$18 trillion worth of goods and services.

Trade between the United States and its NAFTA partners has soared since the agreement entered into force. U.S. two-way goods trade with Canada and Mexico exceeds U.S. goods trade with the European Union and Japan combined. U.S. goods exports to the NAFTA partners have more than tripled between 1993 and 2011, from \$142 billion to an estimated \$480 billion.

By dismantling barriers, the NAFTA has led to increased trade and investment, growth in employment, and enhanced competitiveness. From 1993 to 2010, cumulative foreign direct investment (stock) in the NAFTA countries has increased by over \$3.4 trillion. Increased investment has brought better paying jobs, as well as lower costs and more choices for consumers and producers.

The NAFTA was also the first U.S. FTA to link free trade with obligations to protect labor rights and the environment. In connection with the NAFTA, the United States and Mexico also agreed to fund a development bank to address environmental infrastructure needs along the U.S.-Mexico border.

### **b. Elements of NAFTA**

#### **i. Operation of the Agreement:**

The NAFTA's central oversight body is the NAFTA Free Trade Commission (FTC), comprised of the U.S. Trade Representative, the Canadian Minister for International Trade, and the Mexican Secretary of Economy or their designees. The FTC is responsible for overseeing implementation and elaboration of the NAFTA and for dispute settlement.

The FTC held its most recent annual meeting in January 2011, in Mexico City. At the meeting, the FTC agreed to ask the relevant NAFTA committees to continue their work to identify areas where unnecessary regulatory differences can be eliminated. Following the FTC meeting, the United States continued work through its bilateral regulatory cooperation frameworks with Canada and Mexico. The FTC initialed the basic terms of two bilateral mutual recognition agreements that will establish procedures for accepting test results from laboratories or testing facilities in the territory of another NAFTA country for use in the conformity assessment of telecommunications equipment. The United States and Mexico signed their

bilateral agreement in May; Canada and Mexico signed a similar bilateral agreement in November 2011. Deputy trade ministers met in September 2011, to assess progress on the NAFTA workplan and to prepare for the next FTC meeting in 2012.

#### **ii. NAFTA and Labor:**

The North American Agreement on Labor Cooperation (NAALC), a supplemental agreement to the NAFTA, promotes effective enforcement of domestic labor laws and fosters transparency in their administration. The NAALC established a trinational Commission for Labor Cooperation, comprised of a Ministerial Council and an administrative Secretariat. In addition, each NAFTA Party has established a National Administrative Office (NAO) within its Labor Ministry to serve as a contact point with the other Parties and the Secretariat, to provide publicly available information to the Secretariat and the other NAOs, and to provide for the submission and review of public communications on labor law matters. The NAOs, together with the Secretariat, also carry out the Council's Cooperative Activities program.

In 2011, The NAOs from the three NAFTA countries released a report, "Migrant Worker Rights in North America." In addition, the U.S. Department of Labor has expanded a bilateral program with Mexico to inform migrant workers in the United States of their rights.

#### **iii. NAFTA and the Environment:**

In 2011, the Parties continued their efforts to ensure that trade liberalization and efforts to protect the environment are mutually supportive. The FTC's *ad hoc* working group of senior trade officials initiated work on enhancing the working relationship between the FTC and the North American Commission for Environmental Cooperation (CEC) across relevant North American trade and environment issues. The CEC also continued its work on these issues through the implementation of its 2011 Operating Plan. (*See Chapter IV.A. for additional information*)

In November 1993, Mexico and the United States agreed on arrangements to help border communities with environmental infrastructure projects in furtherance of the goals of the NAFTA and the North American Agreement on Environmental Cooperation. The Border Environment Cooperation Commission (BECC) and the North American Development Bank (NADB) are working with communities throughout the United States-Mexico border region to address their environmental infrastructure needs. As of September 30, 2011, the NADB had contracted a total of \$1.5 billion in loans and/or grant resources to partially finance 169 infrastructure projects certified by the BECC with an estimated cost of \$3.8 billion.

## **9. Oman**

The United States-Oman Free Trade Agreement, which entered into force on January 1, 2009, complements existing FTAs to promote economic reform and openness in this region. Implementation of the obligations contained in the comprehensive agreement will generate export opportunities for U.S. goods and services providers, solidify Oman's trade and investment liberalization efforts, and strengthen intellectual property rights protection and enforcement.

The central oversight body for the FTA is the United States-Oman Joint Committee (JC), chaired jointly by USTR and Oman's Ministry of Commerce and Industry. The second meeting of the JC is expected to take place in the first quarter of 2012. The two governments expect to discuss a broad range of trade issues, including efforts to increase bilateral trade and investment levels, possible cooperation in the

broader MENA region, and additional cooperative efforts related to labor rights and environmental protection.

## **10. Peru**

### **a. Overview**

The United States-Peru Trade Promotion Agreement (PTPA) entered into force on February 1, 2009.

The United States' two-way goods trade with Peru was an estimated \$14.7 billion in 2011, with U.S. goods exports to Peru totaling \$8.4 billion.

The PTPA eliminates tariffs and removes barriers to U.S. services, provides a secure, predictable legal framework for investors, and strengthens protection for intellectual property, workers, and the environment. The PTPA is the first agreement in force that incorporates groundbreaking provisions concerning the protection of the environment and labor rights that were included as part of the May 10, 2007 bipartisan Congressional-Executive agreement on trade.

### **b. Elements of the PTPA**

#### **i. Operation of the Agreement**

The PTPA's central oversight body is the United States-Peru Free Trade Commission (FTC), comprised of the U.S. Trade Representative and the Peruvian Minister of Foreign Trade and Tourism or their designees. The FTC is responsible for overseeing implementation and elaboration of the PTPA. The second FTC was convened on July 13, 2011 in Lima, Peru. At the FTC meeting, officials discussed bilateral trade and investment and economic issues of mutual interest, as well as the administration of the PTPA. Both governments acknowledged the progress over the last year to implement the commitments under the Agreement, and discussed a plan to effectively monitor implementation of, and compliance with, environmental and labor obligations. Officials also discussed intellectual property, remanufactured goods, and agricultural biotechnology. Additionally, the Parties held the first meeting of the small and medium sized enterprises (SMEs) working group and discussed how to further enhance the ability of SMEs to capitalize on the benefits of the PTPA. The Commission agreed to hold the third meeting of the FTC in the United States in 2012.

#### **ii. Labor**

USTR continues to engage with the government of Peru to review progress on the implementation of the PTPA's labor provisions. With trade capacity building funds, USAID is implementing programs to improve the enforcement capacity of the Peruvian Ministry of Labor and to strengthen worker organizations and educate workers on their labor rights.

On December 29, 2010, the U.S. Department of Labor received a public submission from the Peruvian National Union of Tax Administration Workers under the PTPA Labor Chapter. The submission alleges that the GOP has failed to live up to its commitments under Article 17.2.1 of the PTPA by not effectively recognizing the right to collective bargaining at the National Superintendency of Tax Administration. The U.S. Department of Labor accepted the submission for review on July 25, 2011, and is currently in the process of drafting a report that summarizes the proceedings and provides any findings and recommendations, including whether the United States should request consultations with Peru under the PTPA.

### **iii. Environment**

The Parties have continued their work to ensure the proper implementation of environmental obligations under the PTPA Environment Chapter and the Annex on Forest Sector Governance. Peru had an additional 18 months from entry into force of the PTPA to implement some of the obligations under the Forest Sector Annex. Since ratification of the PTPA in December 2007, Peru has made changes to its legal and regulatory regimes to implement its environmental obligations. For example, with extensive participation from the United States, Peru amended its Criminal Code to increase penalties for forest, wildlife, and environmental crimes. Peru also created a Ministry of Environment and a separate, independent entity to supervise forestry resources (OSINFOR).

A major advancement in full implementation of Peru's environmental obligations was achieved in July 2011, when President Alan Garcia signed a new Forestry and Wildlife Law. Peru is currently working on the implementing regulations which should bring the Law into force in 2012.

On April 27, 2011, the United States and Peru convened the second meeting of the Environmental Affairs Council (EAC). At the EAC meeting, officials discussed implementation of the PTPA's Environment Chapter and Annex on Forest Sector Governance, and how to ensure proper monitoring of, implementation of, and compliance with, the Chapter and Annex obligations. Both governments acknowledged the progress and collaborative work that has taken place since entry into force of the PTPA. A public session of the EAC was held where representatives of the U.S. Trade and Environment Policy Advisory Committee as well as other stakeholders exchanged views with USTR and other Federal agency officials about implementation of the Environment Chapter.

On April 27, 2011 and July 14, 2011, the two governments convened the second and third meetings of the United States-Peru Forest Sector Subcommittee in Washington, DC and Lima, Peru, respectively. The Subcommittee serves as a forum for the Parties to exchange views and share information on any matter arising under the PTPA's Annex on Forest Sector Governance. The Parties agreed to continue working together to ensure that Peru completes the necessary steps to fully implement its obligations under the Annex. Additionally, both meetings of the Subcommittee included a public session for civil society and other stakeholders. The sessions provided stakeholders with an opportunity to raise concerns, suggest items to be addressed in future meetings, and provide advice on issues related to implementation of the Annex.

### **iv. Trade Capacity Building**

The Committee on Trade Capacity Building held its first meeting in March 2009 in Lima, Peru. This Committee is charged with seeking the prioritization and coordination of assistance to support effective implementation of the PTPA and to adjust to more liberalized trade. To this end, Peru presented a preliminary national trade capacity building strategy to address these objectives, highlighting areas such as telecommunications, intellectual property and agricultural standards. USAID worked closely with its Peruvian counterparts to design activities that respond directly to these objectives. USAID launched a trade capacity building project in July 2010 that involves working with several Peruvian ministries and agencies to assist with the implementation of the PTPA and facilitate trade. Among other activities, the program addresses labor, intellectual property, trade facilitation, telecommunications, the environment, and sanitary and phytosanitary matters. These activities continued through 2011 and are already showing results. Simplified customs procedures are yielding cost and savings results, as has a website on administrative procedures under a project to simplify operating license procedures in twenty municipalities. Among other things, the project conducted a forum on counterfeit medication and

prevention measures, and produced studies on telecommunications implementation and regulatory weaknesses. The Committee plans to have its next meeting in 2012.

## **11. Singapore**

The United States-Singapore Free Trade Agreement (FTA) has been in force since January 1, 2004. Two-way goods trade with Singapore totaled \$49.1 billion in 2011, up 55 percent from 2003 (the year before the FTA's entry into force). U.S. goods exports were \$31.7 billion, up 91 percent from 2003, and U.S. goods imports were \$17.4 billion, up 15 percent from 2003. In 2011, the United States had an estimated \$14.3 billion trade surplus in goods, and \$6.1 billion trade surplus in services with Singapore.

The United States and Singapore held regular consultations throughout 2011 and have scheduled the seventh annual FTA review for early 2012. During the ongoing consultations, the two governments agreed that implementation remains on track, and focused their discussions on ways to deepen the bilateral relationship. In 2011, the two sides discussed a range of issues covered by the FTA, including trade in textiles and apparel, restrictions on imports of U.S. beef, protection of intellectual property rights, and new requirements for pay television companies to cross-carry content from competing providers.

The two sides also discussed their continued environmental cooperation efforts. In mid-2011, a team from the National Environment Agency of Singapore participated in a study tour hosted by the U.S. Environmental Protection Agency to exchange ideas regarding the latest advances in air quality monitoring, modeling, and forecasting. Later in the year, representatives from Singapore participated in an economy, energy, and environment study tour where they interacted with officials from the Environmental Protection Agency, the Department of Commerce, the Department of Energy, the Department of Labor, and the Small Business Administration. During the workshop, government officials shared innovative policies and programs that promote cleaner production and energy efficiency, particularly within the private sector.

The two countries took advantage of opportunities during the year to discuss issues and areas of ongoing labor cooperation. In addition to engagement with Singapore through the negotiations of the labor provisions of the Trans-Pacific Partnership Agreement, labor officials from both governments continued their collaboration on areas in which Singapore's Ministry of Labor has expressed an interest. For example, the U.S. Department of Labor facilitated a visit to Singapore by an expert from the Federal Mediation and Conciliation Service, to discuss the U.S. system for mediating collective bargaining disputes and improving labor management relations.

## **B. Other Bilateral and Regional Initiatives**

### **1. The Americas**

The United States continues to implement, enforce, and benefit from four FTAs with the following countries in the Americas: Canada and Mexico under the NAFTA; Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua under the CAFTA-DR; Chile; and Peru. Highlights of USTR's FTA focused activity in this region during 2011 included: successful FTC meetings under the United States-Peru Trade Promotion Agreement; the United States-Chile FTC; the NAFTA, the first and successful CAFTA-DR FTC meeting and two CAFTA-DR Vice Ministerial meetings; and other ongoing efforts to manage implementation issues with our FTA partners. During 2011, USTR placed additional emphasis on implementation of the labor and environment commitments under these FTAs. (*Further details on USTR's implementation and enforcement activities associated with these FTAs can be found in Chapter III. A.*)

### **a. Congressionally Approved Free Trade Agreements**

On October 12, 2011, Congress passed, and on October 21, 2011, President Obama signed into law legislation approving the United States-Colombia Trade Promotion Agreement (the “Agreement”), securing a commercial partnership with a key ally whose economy is the third largest in the Central and South American region. Bipartisan support for the Agreement in the U.S. Congress was made possible by the efforts of the Obama Administration and the Colombian government to address a number of labor concerns. These concerns included insufficient protection of labor rights under Colombian laws and regulations, violence against Colombian labor activists and union members, and inadequate efforts to bring to justice those responsible for such violence. The Colombian Action Plan Related to Labor Rights announced on April 7, 2011, called for major, swift, and concrete steps by the Colombian government, most of which it has since taken. In addition, successful implementation of key elements of the Action Plan is a precondition for the Agreement to enter into force. To assess progress in implementing the Action Plan, the U.S. and Colombian governments will maintain intensive engagement at both technical and senior levels. The U.S. Government has begun cooperative work with the Colombian government to ensure that Colombia is in compliance with those obligations of the Agreement that will take effect on the day the Agreement enters into force.

Also on October 12, 2011, Congress passed, and on October 21, 2011, President Obama signed into law legislation approving the United States-Panama Trade Promotion Agreement (the “Agreement”). The bipartisan support for the Agreement was made possible by the efforts of the Obama Administration and the Panamanian government to address a number of issues relating to its tax and labor regimes. On labor, Panama undertook a series of administrative actions beginning in 2009 to further strengthen its labor laws and labor enforcement in the areas of subcontracting, temporary workers, employer interference with unions, bargaining with non-union workers, strikes in essential services, and labor rights in the maritime sector. In 2011, Panama reformed its labor laws to eliminate restrictions on collective bargaining for companies less than two years old and eliminated restrictions on collective bargaining and exemptions allowing for the use of temporary workers in the Barú Special Economic Zone and the Export Processing Zones. In terms of its tax regime, Panama has entered into a Tax Information Exchange Agreement with the United States, which enables Panama to provide the U.S. Government with the information it needs to enforce U.S. tax laws with respect to Panamanian business entities and financial accounts. Panama has also concluded tax treaties with a number of other countries. The U.S. Government has begun cooperative work with the Panamanian government on implementing the Agreement, reviewing the relevant laws and regulations to ensure that Panama is in compliance with those obligations of the Agreement that will take effect on the day the Agreement enters into force.

### **b. Trade and Investment Framework Agreements and other Bilateral Trade Mechanisms**

USTR chaired bilateral meetings with non-FTA partners in the Americas to discuss market opening opportunities, including improved access for small and medium-sized businesses, and resolving trade issues with those governments. During 2011, USTR met with the government of Paraguay under the United States-Paraguay Joint Commission on Trade and Investment and with the government of Uruguay under the United States-Uruguay Trade and Investment Agreement (TIFA) and made progress toward solving outstanding trade problems and creating more comprehensive trade policy dialogues. Highlights included:

- The United States exchanged ideas with the government of Paraguay on a number of bilateral issues of mutual interest at an October 12-13, 2011 United States-Paraguay Joint Commission on Trade and Investment meeting in Washington. The United States and Paraguay discussed ongoing work under a bilateral Memorandum of Understanding (MOU) on intellectual property

rights issues, which enumerates Paraguay's commitments to implement institutional and legal reforms and to strengthen intellectual property rights enforcement and prosecution. The previous MOU was scheduled to terminate at the end of 2011; however, through an exchange of letters, the U.S. and Paraguayan governments extended it through April 2012. Talks are underway to extend the MOU for several years past April 2012.

- At an October 31, 2011 meeting in Washington of the United States-Uruguay Trade and Investment Council under the TIFA, the United States exchanged ideas with Uruguay on a variety of bilateral economic topics, including sanitary and phytosanitary issues affecting trade in agricultural goods, intellectual property protection, and continued implementation of two TIFA protocols on trade facilitation and public participation in trade and environment.

### **c. Other Priority Work**

The United States continued its engagement with other countries in the region aimed at fostering bilateral trade relations and resolving trade problems during 2011. Highlights of USTR's other priority activities in the region include:

#### *Mexico:*

- In May 2010, President Obama and Mexican President Calderón agreed to create a High Level Regulatory Cooperation Council (HLRCC), which would work to “increase regulatory transparency, provide early warning of regulations with potential bilateral effects, strengthen the analytic basis of regulations, and help make regulations more compatible.” The HLRCC met in August 2011 to develop its work plan.
- USTR worked with the U.S. Department of Transportation to resolve the longstanding dispute with Mexico concerning cross-border trucking services. As a result of these efforts, in 2011 Mexico first reduced, and then suspended in full, retaliatory duties on an array of U.S. products such as apples, certain pork products, and personal care goods. Mexico's retaliatory tariffs had been in place since 2009.

#### *Canada:*

- In February 2011, U.S. President Barack Obama and Canadian Prime Minister Stephen Harper announced two initiatives to ensure that the vital economic partnership between the United States and Canada continues to be a cornerstone of our economic competitiveness and security. Since the leaders' announcement, representatives from across the United States government worked with their Canadian counterparts to formulate the Beyond the Border (BTB) Action Plan and the Regulatory Cooperation Council (RCC) Action Plan, both of which were released in December 2011. Together, these initiatives will build on well-established bilateral cooperation on trade, investment, emergency preparedness, security, and defense.
- The United States encouraged Canada to make the enactment of copyright legislation that addresses the challenges of piracy over the Internet, including by fully implementing the WIPO Internet Treaties, a priority for its new government. The United States continues to encourage Canada to provide for deterrent level sentences to be imposed for IPR violations, as well as to strengthen enforcement efforts, including at the border. Canada should provide its customs officials with *ex officio* authority to stop the transit of counterfeit and pirated products through its territory. U.S. stakeholders have also expressed strong concerns about Canada's administrative

process for reviewing the regulatory approval of pharmaceutical products, as well as limitations in Canada's trademark regime.

- In 2011, the United States and Canada entered into discussions on the extension of the 2006 Softwood Lumber Agreement (SLA). Article XVIII of the SLA provided that the SLA would remain in force until 2013, unless extended for two years by agreement of the Parties. On January 23, 2012, the United States and Canada signed a two-year extension of the SLA, so that the SLA will be in effect through October 12, 2015.
- The United States continues to enforce the SLA:
  - In 2009, an LCIA tribunal upheld U.S. claims that Canada failed to calculate export quotas properly and determined that in order to compensate for the breach, CN \$68.26 million (CN \$63.9 million, plus CN \$4.36 million in interest) should be collected through the imposition of an additional 10 percent export charge, based upon the value of the merchandise, on exports of softwood lumber to the United States. This amount was collected in June 2011.
  - In 2008, the United States requested arbitration over several provincial assistance programs that appeared to provide subsidies to Canadian producers in circumvention of the SLA. In 2011, an LCIA tribunal found that certain provincial programs in Quebec and Ontario breached Canada's obligations under the SLA. This finding resulted in the imposition of an additional 0.1 percent export charge on softwood lumber products from Ontario, and a 2.6 percent export charge on softwood lumber products from Quebec. The additional charges are expected to result in the collections of \$1.56 million and \$57.84 million, respectively. The additional duties began to be collected in March 2011.
  - In January 2011, the United States commenced a third arbitration under the SLA seeking compensatory adjustments for the under pricing of timber harvested from public lands in the interior region of British Columbia. The hearing in this arbitration is scheduled for the last week of February 2012.
  - As a result of the 1998 United States-Canada Record of Understanding on Agricultural Matters, the United States-Canada Consultative Committee on Agriculture (CCA) and the Province/State Advisory Group were formed in 1999 to strengthen bilateral agricultural trade relations and to facilitate discussion and cooperation on matters related to agriculture. The CCA met in May 2011, and December 2011 to reinforce the close working relationship between the two governments and their respective agricultural sectors.
  - The United States has had longstanding concerns about the monopolistic marketing practices of the Canadian Wheat Board. In December 2011, Canada passed the *Marketing Freedom for Grain Farmers Act*, which is designed to transition the Canadian Wheat Board from a crown corporation to a commercial entity over a period of five years.

#### *Brazil:*

- In June 2010, the United States and Brazil signed a framework agreement to avert the imposition of countermeasures of more than \$800 million on U.S. goods, services and intellectual property rights stemming from WTO rulings against certain U.S. domestic cotton support programs and export credit guarantees. The Framework outlines a way forward for the United States and Brazil to work towards a permanent resolution of these longstanding issues.

The United States and Brazil met quarterly in 2011 under the Framework. *(See Chapter II.H.b. for additional information)*

- In March 2011, Ambassador Kirk accompanied President Obama on an official visit to Brazil to meet with newly elected President Dilma Rousseff and key members of her Administration. Presidents Obama and Rousseff highlighted the existing strong bilateral ties between the United States and Brazil, and discussed topics of bilateral, regional and global interest. They also agreed to expand cooperation in several areas, including trade and investment. Ambassador Kirk and Brazilian Minister of Foreign Relations Antonio Patriota signed the Agreement on Trade and Economic Cooperation, which creates a new bilateral trade dialogue with Brazil that provides a framework to deepen our cooperation on a number of issues of mutual concern, including innovation, trade facilitation, and technical barriers to trade. This agreement represents a significant achievement and is expected to expand our trade and investment relationship and become a foundation for cooperation in other trade fora.

*Costa Rica:*

- Costa Rica opened its market for mobile phone services, issuing licenses to two companies to compete with the former state-owned monopoly, in a much-anticipated breakthrough achievement required under the CAFTA-DR Agreement. This market opening also generates new opportunities for U.S. exports and employment by U.S. cell tower companies operating in Costa Rica.

## **2. Europe and the Middle East**

USTR's Office of Europe and the Middle East coordinates policy towards, and manages bilateral trade relations with, the European Union (EU) and its 27 Member States, non-EU European countries, Russia and certain of its neighbors, the Middle East, and North Africa. Priority activities in 2011 included: building initiatives in the Middle East and North Africa (MENA) to support ongoing political and economic reforms and trade and investment integration, including through the implementation of FTAs, BITs, and TIFAs; strengthening United States-EU trade relations to promote shared interests while addressing chronic and emerging EU barriers to U.S. exports; integrating Russia and other countries into the global trade community through completing negotiations for membership in the WTO; and working with countries wherever possible, through TIFAs and other arrangements, to resolve trade concerns, expand trade and investment opportunities, and foster commercial and trade policies grounded in the rule of law.

### **a. New Approaches to Engagement with the Middle East and North Africa**

The revolutions and other changes that swept through MENA in 2011 prompted a comprehensive reevaluation of U.S. trade and investment policies toward this critical part of the world. In response to these events, USTR coordinated with other Federal agencies, outside experts, and stakeholders in both the United States and MENA partner countries to develop a trade and investment initiative to spur job growth and enhance regional trade. To pursue this initiative, USTR re-launched its TIFA with Tunisia, setting up specific working groups to develop the means of increasing trade and investment, and pursued similar initiatives with Egypt. USTR is also working in collaboration with EU and MENA trading partners to promote common interests in the stability and prosperity of the region.

The United States continued to implement, monitor, and enforce its FTAs with Bahrain, Jordan, Israel, Morocco, and Oman, which have produced export gains for U.S. producers. (*See Chapter III.A. for additional information*)

In 2011, USTR led several bilateral meetings under these frameworks, achieving notable progress toward solving outstanding trade issues and fostering effective trade dialogues with partner countries. The dramatic developments in certain countries in the region, most notably Egypt, Tunisia, and Libya, have provided new opportunities for engagement. In 2011, USTR revived its TIFA consultations with Tunisia under the new Tunisian government.

The United States has increased its engagement with the Gulf Cooperation Council (GCC) and its six member states (Saudi Arabia, United Arab Emirates, Bahrain, Oman, Qatar, and Kuwait), as the GCC continues to develop as a regional organization, aiming to harmonize standards, import regulations, and conformity assessment systems affecting U.S. trade.

### **b. Deepening U.S.-EU Trade Relations**

The U.S. trade and investment relationship with the EU is the largest and most complex economic relationship in the world. Transatlantic trade flows (goods and services trade plus earnings and payments on investment) averaged \$4 billion each day through the first three quarters of 2011. The total stock of transatlantic investment exceeded \$3 trillion in 2010. These enormous trade and investment flows are a key pillar of prosperity in the United States and Europe, and countries around the world benefit from access to the markets, capital, and innovations of the transatlantic economy.

In 2011, USTR and other agencies interacted extensively with counterparts in the major EU governing institutions (the European Commission, the European Parliament, and the European Council) and with EU Member State governments on a number of trade policy priorities:

- *Launching of High Level Working Group on Jobs and Growth:* During their November 28 Summit meeting, President Obama and EU leaders established a High Level Working Group on Jobs and Growth (HLWG) that will identify and assess options for generating new transatlantic trade and investment in support of increased exports and jobs. The HLWG will be co-chaired by U.S. Trade Representative Ron Kirk and European Union Trade Commissioner Karel De Gucht. It will report to U.S. and EU leaders on its conclusions and recommendations throughout 2012.
- *Intellectual Property:* USTR engaged the EU on several important IPR issues during 2011, including identifying shared goals and strategies for promoting strong IPR protection and enforcement in key third country markets and international organizations. The United States and the EU worked closely together to bring the Anti-Counterfeiting Trade Agreement (ACTA) to conclusion, with the United States signing, and the European Commission obtaining authorization to sign, the Agreement in 2011. Through a variety of bilateral, plurilateral, and multilateral initiatives, the United States continued to promote and protect access to foreign markets for U.S. producers whose products use trademarks and generic terms, working to avoid problems created by the EU's expansive approach to its "geographical indications" system of providing intellectual property protection for agricultural and food products. USTR also led engagement aimed at promoting strong IPR protection and enforcement throughout Europe, including in the Czech Republic, Hungary, and Poland (three countries that were taken off the Special 301 Watch List in 2010) and through the strong regulatory measures to combat piracy on the Internet adopted in Italy and Spain.

- *Science-Based Regulation:* USTR and the U.S. Mission to the EU played an important role in informing the debate around EU legislation that could have banned the import or sale of food products derived from cloned livestock or their conventionally reproduced offspring, which would have caused severe damage to United States-EU farm trade. USTR also continued to lead U.S. engagement with the EU, both in Brussels and in meetings of the WTO Dispute Settlement Body, over regulations restricting imports of several major U.S. food and agricultural products, including products of agricultural biotechnology. (*See Chapter V.A. for additional information*)
- *Enlargement Compensation Negotiations:* The United States and the EU concluded long running negotiations under WTO rules regarding tariff compensation owed by the EU to the United States in connection with the enlargement in 2007 of the EU to include Bulgaria and Romania. Adoption of the resulting agreement by the two parties remained pending at the end of 2011.
- *Joint Efforts on Shared Concerns in Third Country Markets:* The United States and the EU collaborated during 2011 on the development and implementation of joint strategies to address market access and other trade-related problems of common concern in major emerging markets and other countries, including China, Russia, Japan, and Ukraine.
- *Joint U.S.-EU Promotion of Trade- and Investment-Related Reforms/Best Practices:* In 2011, the United States and the EU explored new avenues for cooperation in promoting trade and investment related reforms in the Middle East and North Africa. Initial areas of focus included support for small and medium sized enterprises (SMEs), regional integration, and trade facilitation. The United States and the EU also worked together to promote the April 2011 Trade Principles for Information Communication Technologies Services Trade in the WTO Committee on Trade in Services and in bilateral engagements with third countries.
- *Transatlantic Economic Council (TEC):* Under the TEC umbrella, USTR and other agencies collaborated with the EU during 2011 on several initiatives, including agreeing on a set of regulatory best practices aimed at reducing non-tariff barriers to trade; implementing a work plan on trade and other policy issues influencing access to industrial raw materials; and conducting two major exchanges on “best practices” for SMEs and their participation in international trade. A United States-EU Investment Working Group, which will look at bilateral and third-country investment issues, was launched during the summer and met for the first time in October 2011. During its November 29, 2011 meeting, the TEC reviewed progress on these initiatives and launched several other cooperative initiatives that have the potential to reduce existing non-tariff barriers (NTBs) or preempt future ones. The TEC agreed to establish a new dialogue on nanotechnology, aimed at preventing the adoption of unnecessarily divergent regulations and standards which could damage trade in this critical emerging sector. It launched an unprecedented effort to promote regulatory and standards cooperation in the emerging electric vehicles sector.

### **c. Recent Successes and New Challenges in the United States-Russia Trade Relationship**

In November 2011, culminating 18 years of negotiations, Russia concluded its negotiations on acceding to the WTO. On December 16, the WTO Ministerial Conference adopted the terms and conditions of Russia’s accession and extended an invitation to Russia to join the WTO. Russia will now undertake its domestic legislative procedures to ratify the package. Thirty days after it informs the WTO that it has completed that process, it will become a WTO Member. The steps Russia has taken in these negotiations, and will take as a WTO Member, will improve the environment for trading with, and investing in, Russia. Russia is undertaking enforceable market access commitments that will increase opportunities for U.S.

exporters of goods and services. In addition, Russia will be required to apply its trade regime consistent with WTO rules, and the United States will have access to the WTO's dispute settlement procedures to enforce those rules. The increased transparency and predictability that comes with Russia's WTO accession will also enhance Russia's investment environment. (*See Chapter II.K.6 for more information*)

Throughout 2011, USTR also worked directly with its counterparts in the Russian government to advance the bilateral trade and investment relationship. USTR promoted the full implementation of several bilateral agreements, dating from November 2006, covering such areas as the inspection of meat processing facilities, protection of IPR, and import licensing for products with cryptographic capabilities. USTR also opposed protectionist measures introduced by Russia's government, such as unjustified sanitary and phytosanitary (SPS) restrictions, more restrictive tariff-rate quotas, and higher tariffs on a range of U.S. agricultural exports. The United States has also continued to monitor the implementation of the Russia-Kazakhstan-Belarus Customs Union, and its planned evolution into the Common Economic Space.

The United States continued to raise concerns about Russia's need for enhanced protection of IPR, particularly in the area of piracy on the Internet. The Bilateral Intellectual Property Rights Working Group, established under the 2006 agreement between the U.S. and Russian governments, continued to be a forum for constructive and dynamic dialogue. In addition, USTR officials participated in meetings of various working groups established under the United States-Russia Bilateral Presidential Commission.

#### **d. Other Priority Trade Activities**

Formal trade and investment agreements provide the context for much of U.S. trade and investment policy engagement in Europe, the Middle East, and North Africa. However, the United States also engages with key countries and regions outside of these established frameworks to promote enhanced trade and investment ties, increased U.S. exports, the development of intraregional economic ties, and WTO accession. (*See Chapter II.K.6. for more information*) Notable activities in 2011 included:

- *Turkey:* U.S. bilateral economic ties with Turkey have grown steadily over the last 15 years. However, there is additional room for growth in trade given Turkey's continuing development as a market, as well as its emerging role as a regional business hub. Recognizing Turkey's importance as a trading partner, USTR and the U.S. Department of Commerce co-chair U.S. Government participation in a new forum for engagement on economic and trade issues, the Framework for Strategic Economic and Commercial Cooperation (FSECC). The FSECC aims to reduce barriers to bilateral trade and investment, create opportunities for U.S. workers, farmers, and firms, and otherwise enhance bilateral economic cooperation. The first formal ministerial level meeting of the FSECC co-chairs occurred in October 2010. The United States and Turkey focused their successful TIFA meeting in 2011 on efforts to resolve outstanding issues and foster new channels of cooperation in preparation for the next meeting of the FSECC, envisioned for early 2012.
- *Ukraine:* The United States engaged with the government of Ukraine to oppose the imposition of restrictions on exports of grain that harmed U.S. grain traders. The United States also continued to work with the government of Ukraine to improve the protection and enforcement of intellectual property rights, and to address concerns with the administration of Ukraine's customs regime.
- *Southeastern Europe:* In 2011, the United States continued to engage the countries of this region on a variety of trade issues, including WTO accession, U.S. preference programs, and IPR protection. In December, USTR hosted the Economy Minister of Serbia for a discussion that

focused on WTO accession and ways to promote increased bilateral trade between the United States and Serbia.

### **3. Japan, Korea, and the Asia-Pacific Economic Cooperation Forum**

#### **a. Japan**

##### *United States-Japan Trade Relations:*

The United States continued to engage Japan on a broad array of trade and trade-related issues throughout 2011, with the goal of expanding access to Japan's market. The United States and Japan launched the United States-Japan Economic Harmonization Initiative (EHI) as a forum for bilateral engagement on trade and economic issues. The EHI aims to contribute to economic growth through steps to harmonize regulatory and other approaches that help facilitate trade, address individual trade and business environment-related issues, and promote closer coordination on regional issues of common interest. The EHI complements the ongoing work of the United States-Japan Trade Forum, which met in January 2011 to discuss a range of bilateral issues and trade policy issues.

Through the EHI, Japan reported a range of important new measures taken during 2011 that help improve access for U.S. products and services to the Japanese market, including in sectors such as telecommunications, distribution, automobiles, and medical devices and pharmaceuticals, as well as on cross-cutting issues such as further strengthening intellectual property protection. The United States and Japan also worked on jointly developing a set of non-binding trade-related principles for information and communication technology (ICT) services. The principles, if widely adopted among other countries, will support the global development of ICT services, including Internet and other network-based applications that are critical to innovative electronic commerce, Internet search and advertising, data storage, and other services.

The United States continued to urge full resolution of longstanding bilateral irritants, including restricted access for U.S. beef, lack of a level playing field between Japan Post and private companies in the banking, insurance, and express delivery sectors, and limited access for U.S. automobiles.

The United States welcomed Prime Minister Noda's November 11, 2011 expression of Japan's intention to begin consultations with Trans-Pacific Partnership (TPP) countries towards joining the TPP negotiations. Following this announcement, USTR began close consultations with the U.S. Congress and domestic stakeholders, and sought public comments through a *Federal Register* notice. These steps started the process of assessing Japan's readiness to meet the TPP's high standards for liberalizing trade and to address specific issues of concern to the United States regarding barriers to agriculture, services, and manufacturing trade, including non-tariff measures.

In addition, the United States also worked closely with Japan to address shared trade concerns, including those in third country markets, bilaterally and multilaterally. The United States and Japan cooperated to conclude negotiations for the Anti-Counterfeiting Trade Agreement (ACTA), which eight ACTA negotiating partners signed on October 1, 2011. The ACTA will strengthen the international legal framework for effectively combating global proliferation of commercial scale counterfeiting and piracy, and deepen international cooperation to promote strong intellectual property rights (IPR) enforcement practices.

## **b. Republic of Korea**

### *U.S.-Korea Trade Agreement:*

In 2011, following an agreement in December 2010 that resolved outstanding issues, the Administration continued to build on extensive consultations with Members of the U.S. Congress and other stakeholders to produce strong bipartisan support for the United States-Korea (KORUS) trade agreement. On October 12, 2011, Congress passed legislation approving KORUS, and on October 21, 2011, President Obama signed the legislation into law. Shortly thereafter, on November 22, 2011, Korea's National Assembly also approved the agreement. Once it enters into force, the KORUS trade agreement will provide preferential access for U.S. businesses, farmers, ranchers, services providers, and workers to what is now the United States' seventh largest export market, help solidify the two countries' long-standing alliance, and underscore the U.S. commitment to, and engagement in, the Asia-Pacific region. The KORUS trade agreement will strengthen and expand ties with an important strategic partner in Asia, and is expected to increase annual exports of American goods by up to \$11 billion, supporting 70,000 American jobs from goods exports alone. The agreement provides for the elimination of tariffs on over 95 percent of industrial and consumer goods within 5 years and on nearly two-thirds of U.S. agricultural exports immediately, and will level the playing field and enhance market access for U.S. exporters, including those in the automotive sector.

In December 2011, the United States and Korea began to review both countries' laws and regulations in order to ensure that each country complies with its respective obligations under the agreement. Once this review process has successfully concluded and the agreement enters into force, USTR will monitor Korea's compliance with its obligations, and will actively enforce U.S. rights under the agreement.

### *United States-Korea Trade Relations:*

In addition to USTR's regular interaction with counterparts in the Korean government, formally scheduled bilateral trade consultation meetings are held to address bilateral trade issues as they emerge. These meetings, which USTR leads, and in which other U.S. international economic agencies participate, serve as the primary forum for discussing and resolving trade-related issues, and are augmented by a broad range of senior level policy discussions. In 2011, the United States and Korea held bilateral trade consultations on two occasions, in May and September, in which they discussed a number of bilateral trade issues, including measures to enhance copyright protection and to improve transparency for labeling electronic products.

Since Korea reopened its market to imports of U.S. beef in June 2008, it has provided important market access for U.S. beef and beef products from animals less than 30 months of age. From January through November 2011, U.S. exports of beef and beef products to Korea reached nearly \$618 million, making Korea the fourth largest U.S. beef export market.

The United States and Korea also cooperated extensively in a wide range of multilateral fora to advance opening markets. Korea was one of eight participants to join in efforts to strengthen international intellectual property rights (IPR) enforcement in negotiating the ACTA, signed on October 1, 2011. The ACTA will strengthen the international legal framework for effectively combating global proliferation of commercial-scale counterfeiting and piracy and deepen international cooperation to promote strong IPR enforcement practices. In APEC, the two economies worked together closely to achieve significant and concrete outcomes on a variety of initiatives to strengthen regional economic integration in the Asia-Pacific, including to address tariff and non-tariff barriers for environmental goods and services, and to strengthen good regulatory practices.

## c. APEC

### Overview

Since it was founded in 1989, the Asia-Pacific Economic Cooperation (APEC) forum has been instrumental in promoting regional and global trade and investment. In 2011, the United States hosted APEC for the first time since 1993, providing a unique opportunity to reduce barriers to U.S. exports and to more closely link our economy with the dynamic Asia-Pacific region. As host, the United States identified priority areas for APEC work in 2011: strengthening regional economic integration and expanding trade; promoting green growth; and advancing regulatory convergence and cooperation. In Honolulu, Hawaii, APEC Leaders committed to a series of practical, ambitious actions in these areas with the ultimate goal of achieving a seamless regional economy that will create more jobs, and expand opportunities for U.S. exporters, services providers, and workers, providing greater economic growth across the region.

In 2010, the 21 APEC member economies collectively accounted for 44 percent of world trade and 55 percent of global GDP. In 2011, United States-APEC total trade in goods was an estimated \$2.3 trillion. Total trade in services was \$317 billion in 2010 (latest data available). The significant volume of U.S. trade in the Asia-Pacific region underscores the importance of the region as a market for U.S. exports.

### 2011 Activities

*Strengthening Regional Economic Integration and Expanding Trade:* Supporting the President's goal of doubling exports in five years, the United States, as host of APEC in 2011, was able to gain agreement to reduce barriers to trade and investment in a number of areas. APEC Leaders agreed to address next-generation trade and investment issues, including through trade agreements and a free trade area of the Asia-Pacific. Specifically, APEC Leaders agreed to advance a set of policies to promote effective, non-discriminatory, and market driven innovation policy to establish a model for innovation in the region and prevent barriers from emerging to trade and investment in U.S. technology products and services in Asia-Pacific markets. APEC Leaders also agreed on areas of cooperation that could be included in our trade agreements to promote the participation of SMEs in global production chains. APEC Leaders also agreed to implement the APEC Cross Border Privacy Rules System to reduce barriers to information flows, enhance consumer privacy, and promote interoperability across regional data privacy regimes. APEC Leaders committed to show leadership to launch negotiations to expand the product scope and membership of the WTO Information Technology Agreement, which could create significant market enhancing opportunities for U.S. high technology companies.

To reduce the time, costs, and uncertainty of moving goods throughout the region, APEC economies agreed to establish commercially useful *de minimis* values that will result in the exemption of low value shipments from customs duties or taxes and that will further streamline entry documentation requirements. Some economies took the additional step of committing to establish *de minimis* values of at least \$100 for shipments entering their economies through a "pathfinder" commitment. APEC Leaders also placed greater emphasis on helping SMEs in 2011 by agreeing to undertake a set of specific actions to address top barriers facing small businesses in trading in the region. These actions will provide direct and practical benefits to small businesses, including by making it easier to register intellectual property, identify customs documentation requirements, and take advantage of preferential tariff rates through trade agreements. Building on APEC's tradition of promoting effective intellectual property rights protection and enforcement in the region, APEC Ministers adopted guidelines for effective intellectual property enforcement at the border and effective practices to address unauthorized camcording, which is the major source of pirated motion pictures world-wide. To improve food security, APEC Leaders reaffirmed their

commitment to a standstill on export restrictions. APEC also established the Policy Partnership on Food Security to further integrate the private sector into APEC's work to enhance food security in the region.

*Promoting Green Growth:* One of the Administration's top priorities as host of APEC this year was to promote green growth in concrete and practical ways that will foster environmental protection, create new jobs, and new export opportunities for our environmental businesses. When APEC Leaders met in Honolulu, they agreed to take several important and meaningful steps to advance green growth. Leaders committed to reduce applied tariffs on environmental goods to five percent or less by 2015, and to work in 2012 to develop a list of environmental goods on which tariffs will be cut. Economies also agreed to eliminate local content requirements that distort environmental goods and services trade, and refrain from imposing new ones. Finally, APEC Leaders made commitments related to transparency in government support and procurement policies, regulatory coherence, and duty free treatment of environmental goods in FTAs. Together, these commitments will lower the costs of the environmental goods and services in the region that are needed to reduce pollution, provide safe drinking water, and combat climate change.

APEC also agreed to increase transparency in the treatment of remanufactured goods and establish a "pathfinder" commitment to treat remanufactured goods like new goods, streamline procedures for the temporary importation of energy-efficient test vehicles, work to implement appropriate measures to prohibit trade in illegally harvested forest products, and establish an experts group to combat illegal logging and associated trade.

*Advancing Regulatory Convergence and Cooperation:* Building on efforts in the United States to improve the quality of regulations in order to boost productivity and job creation, while also protecting the environment and ensuring public health and safety, APEC Leaders committed to improve the quality of the regulatory environment in APEC economies. Specifically, they agreed to take steps by 2013 to implement good regulatory practices, including ensuring internal coordination of regulatory work, assessing regulatory impacts, and conducting public consultations. In addition, the United States and its partners undertook work in 2011 to prevent technical barriers to trade-related to emerging green technologies, including smart grid interoperability standards, green buildings, and solar technologies. To strengthen food safety systems and facilitate trade, an innovative public-private partnership was launched to create a Global Food Safety Fund at the World Bank to strengthen food safety collaboration.

Finally, APEC members agreed to promote regulatory convergence and cooperation in key sectors. APEC continued its work to assist implementation of the Globally Harmonized System of Classification and Labeling of Chemicals, and clarify aspects of implementation of the EU's regulation on Registration, Evaluation, Authorization, and Restriction of Chemicals. APEC also reached agreement on a strategic framework outlining a multiyear program of activities for achieving regulatory convergence for medical products by 2020, agreed to adopt measures to ensure transparency and stakeholder consultation in regulatory and health policy processes, launched work to address the growing problem of hospital acquired infections, and developed an Action Plan to reduce the economic burden of non-communicable disease through sharing of best practices and the establishment of innovative public-private partnerships. APEC agreed to expand the innovative Services Trade Access Requirements Database as a valuable tool for businesses to acquire information on regulatory requirements for a range of service sectors in APEC economies. APEC agreed to reduce unnecessary testing and to streamline paperwork associated with official certification requirements related to wine trade. Lastly, APEC committed to promote and adopt regulatory approaches that are transparent, science-based, consistent with international obligations, and to take into account, where appropriate, existing international standards with respect to innovative agricultural technologies.

*Supporting the Multilateral Trading System and Resisting Protectionism:* In 2011, APEC Leaders and Ministers issued strong statements of support for the underlying institutional strength and value of the

rules-based multilateral trading system embodied in the WTO. They also emphasized collective concerns regarding the impasse confronting the Doha Development Agenda (DDA), and agreed to look for fresh and credible approaches to the ultimate conclusion of the DDA. Leaders and Ministers also reaffirmed their commitment to keep markets open and avoid all forms of protectionism, as well as their commitment to refrain from raising new barriers to trade and investment through the end of 2015.

## **4. China, Hong Kong, and Taiwan**

### **a. China**

See 2011 USTR Report to Congress on China's WTO Compliance:  
[http://www.ustr.gov/webfm\\_send/3189](http://www.ustr.gov/webfm_send/3189)

### **b. U.S.-Hong Kong Trade Relations**

The United States continued its efforts to expand trade with Hong Kong, a Special Administrative Region of the People's Republic of China. The United States continued to press Hong Kong to open its market to U.S. beef and beef products, which have been restricted since December 2003. Hong Kong's market is currently open to deboned beef from animals less than 30 months of age. Hong Kong authorities conducted a verification visit to beef processing facilities in the United States in October 2009 and prepared a report based on their findings in August 2010. The United States will continue to engage with Hong Kong to establish science-based access for U.S. beef and beef products in 2012.

### **c. U.S.-Taiwan Trade Relations**

During 2011, the United States worked to expand opportunities for U.S. exports to Taiwan. Working level officials engaged Taiwan throughout the year under the United States-Taiwan Bilateral Trade and Investment Framework Agreement (TIFA) process on the range of issues affecting bilateral trade and investment ties. Despite these efforts, continuing concerns regarding Taiwan's shortcomings in meeting its bilateral obligations and additional concerns about whether certain of Taiwan's sanitary and phytosanitary measures are based on science made it impossible to hold a high-level meeting of the TIFA Council on Trade and Investment. Rebuilding confidence in Taiwan as a reliable trading partner will be critical to reenergizing the TIFA process, and the United States will engage Taiwan closely in 2012 to seek resolution of the high-priority policy concerns that have undermined our trade dialogue in recent years.

The United States continues to press Taiwan to address a number of U.S. concerns regarding Taiwan's sanitary and phytosanitary measures. Taiwan maintains a ban on the use of ractopamine, a feed additive that improves feed efficiency, increases meat yield, and reduces waste. Ractopamine is approved for use in the United States and many other countries. This restriction continues to cause disruption to U.S. exports of beef and pork to Taiwan, even though Taiwan's own risk assessment determined that there is no health risk associated with the use of ractopamine. In 2007, after Taiwan had found that there is no health risk and notified the WTO of its intention to establish a maximum residue level (MRL) for ractopamine, other factors, including pressure from domestic political constituencies, appear to have caused Taiwan not to move forward with implementing science-based measures. More broadly, Taiwan's failure to adopt internationally established pesticide and other agrochemical MRLs, or develop its own science-based MRLs in a timely manner, has resulted in rejections of various U.S. agricultural products, including fresh fruits and vegetables, grains, and oilseeds. Taiwan has made progress in reducing the backlog of MRL applications, but imports of U.S. agricultural products remain at risk of rejection for pesticides and other agrochemicals approved and widely used in the United States and internationally that

have not yet been reviewed and approved in Taiwan. The United States will continue to work closely with Taiwan in 2012 to resolve these systemic concerns.

The United States continued its efforts to encourage Taiwan to provide market access for the full range of U.S. beef and beef products in a manner consistent with World Organization for Animal Health (OIE) guidelines for Bovine Spongiform Encephalopathy (BSE), as well as with Taiwan's own risk assessment, which found that U.S. beef is safe. The United States continued to press Taiwan to comply fully with the science-based and OIE-consistent 2009 bilateral protocol that would have provided full market access for U.S. beef and beef products. On January 5, 2010, Taiwan's Legislative Yuan (LY) approved an amendment to Taiwan's Food Sanitation Act that had the effect of banning the import of ground beef and certain offals from the United States. This ban is inconsistent with Taiwan's obligations under the protocol. Taiwan authorities have also implemented a range of administrative measures that have disrupted trade and created uncertainty in the market. In particular, disruptions have occurred because of Taiwan authorities' failure to adhere to predictable inspection and testing practices that are appropriately focused on legitimate food safety concerns. The United States has made some progress in working with Taiwan to eliminate certain of these problematic administrative measures, but serious concerns remain. USTR will continue to press Taiwan to act in a manner consistent with science, as well as its obligations under the bilateral protocol, and to refrain from taking measures that overly burden trade in beef and beef products.

The United States also continued to engage Taiwan on issues related to fulfilling Taiwan's WTO Country Specific Quota (CSQ) for importation of U.S. rice, expressing concerns that Taiwan's ceiling price mechanism was non-transparent and causing unnecessary trade disruptions. In 2007 and 2008, public sector rice tenders for U.S. rice repeatedly failed due to Taiwan's ceiling price mechanism. Throughout 2009 and 2010, the United States worked with Taiwan to seek improvements to the rice import system, and to address the shortfalls in Taiwan's procurement of U.S. rice in 2007 and 2008. As a result of these efforts, it appears that Taiwan successfully filled the U.S. country specific tenders in 2009, 2010 and 2011. However, Taiwan has still not taken steps to address the shortfall in 2007 and 2008, and the United States continues to have concerns about the ceiling price mechanism.

Intellectual property rights protection and enforcement also continue to be important issues in the United States-Taiwan trade relationship. The United States recognizes Taiwan's continuing efforts to improve enforcement of IPR and has continued to deepen bilateral cooperation activities with Taiwan on these issues. In 2011, the United States provided training to Taiwan patent examiners and conducted other capacity building and information exchange activities. In April 2009, the LY amended the Taiwan Copyright Law to require Internet service providers (ISPs) to undertake specific and effective notice and takedown actions against online infringers, to avoid certain forms of liability for the infringing activities of users on their networks. The United States will continue to engage Taiwan on implementation of its ISP liability legislation, as ISPs and rights holders have been working to finalize an effective Code of Conduct to implement the notice and takedown provisions. Some music rights holders have expressed concerns about amendments passed in January 2010 to the Copyright Act and the Copyright Collective Management Organization Act. These amendments grant the Taiwan Intellectual Property Office the power to set royalty rates if a commercial arrangement cannot be reached. They also ban rights holders or collective management organizations from using commissioned agents to collect licensing fees, although this is a common and well-accepted industry practice. The theft and unauthorized transfer of proprietary technology by company employees to mainland Chinese competitors has raised concerns about the effectiveness of Taiwan's industrial espionage laws. The U.S. Government will continue discussions of these concerns with Taiwan in 2012.

Taiwan acceded to the WTO Agreement on Government Procurement (GPA) in July 2009. Taiwan estimates that 2,300 procurement contracts covered by the GPA awarded in 2010 have a total value of

approximately \$8.2 billion; of which 392 of these contracts valued at \$1.5 billion went to GPA members, including 162 contracts worth \$460 million to U.S. firms. While foreign companies have already begun to benefit from increased access to Taiwan's government procurement market, and Taiwan has made many important reforms, some U.S. companies have raised concerns relating to the transparency of Taiwan's procurement process, contract terms and conditions, as well as licensing and liability issues. The United States will continue to work closely with Taiwan on implementing international best practices in government procurement as Taiwan implements its obligations under the GPA.

The United States has also continued to engage Taiwan on concerns raised by the pharmaceutical and medical device industries that Taiwan's procedures for medical product pricing and reimbursement fail to adequately recognize the value of innovative medical products for patients in Taiwan. The United States encourages Taiwan to continue to engage in collaborative consultations with relevant stakeholders to consider improving such policies in order to better facilitate the development of innovative products and improve patients' access to such products. Taiwan enacted a number of reforms to their national health insurance system on January 7, 2011, and the United States will engage closely with Taiwan authorities as these reforms are implemented, to assess their potential impact on U.S. pharmaceutical and medical device manufacturers.

## **5. Southeast Asia and the Pacific**

### **a. Free Trade Agreements**

The United States continued to implement, monitor, and enforce its FTAs with Singapore and Australia. Both of these agreements have led to significant increases in U.S. exports to these countries. (*See Chapter III.A. for additional information*)

### **b. Trans-Pacific Partnership**

In December 2009, the United States announced its intention to enter into negotiations of the TPP, a high standard, Asia-Pacific trade agreement. The agreement is intended to create a platform for economic integration across the Asia-Pacific region, advance U.S. economic interests with the fastest growing economies in the world, and expand U.S. exports, which are critical to U.S. economic growth and the creation and retention of high paying, high quality jobs in the United States.

Six formal rounds of TPP negotiations were held in 2011. The United States and its eight TPP negotiating partners – Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam – continued their work to craft an agreement that addresses new and emerging trade issues and 21st century challenges. When completed, the TPP is expected to include provisions on cross-cutting issues not included in previous trade agreements such as: promoting connectivity to deepen the links of U.S. companies to the emerging production and distribution networks in the Asia-Pacific region; making the regulatory systems of TPP countries more compatible so U.S. companies can operate more seamlessly in TPP markets; and helping small and medium sized enterprises, which are a key source of innovation and job creation, participate more actively in international trade.

On November 12, 2011, the Leaders of the TPP countries met in Honolulu, Hawaii and announced their agreement on the broad outlines of the TPP Agreement. In their joint statement marking this milestone, the TPP leaders reaffirmed their commitment to finalizing a comprehensive, next-generation agreement that will enhance the competitiveness of all the TPP countries, and serve as a model for future free trade agreements. To that end, the TPP leaders committed to dedicate the necessary resources to complete the agreement as soon as possible.

The United States and its negotiating partners share a vision for the TPP that is predicated on the long term objective of expanding the group to additional countries across the Asia-Pacific region. At the APEC Leaders Summit in November 2011, Japan, Canada, and Mexico formally announced their interest in joining the TPP negotiations. The United States and other TPP countries welcomed their interest, and conveyed that potential new entrants must be able to meet the high standards agreed by all TPP negotiating partners, as well as to address a range of U.S. priorities. The Administration invited comments from the public on these potential new negotiating partners, and will begin engaging with these countries in 2012, in close consultation with the U.S. Congress and domestic stakeholders.

The Administration continued to consult closely with the U.S. Congress on all elements of the TPP negotiations in order to develop negotiating objectives consistent with both Administration and Congressional priorities and objectives. We will continue to work collaboratively with the U.S. Congress as the negotiations progress to ensure that our negotiating objectives best advance U.S. economic priorities, including enhancing economic growth and creating and retaining U.S. jobs.

### **c. Managing U.S.-Southeast Asia and Pacific Trade Relations**

Throughout 2011, the United States engaged bilaterally, regionally, and multilaterally to improve and expand our trade and investment relations with Southeast Asian and Pacific countries. In addition to meeting bilaterally under our Trade and Investment Framework Agreements (TIFAs) and other trade dialogues, the United States worked with countries of the Association of Southeast Asian Nations (ASEAN) to advance our discussions under the United States-ASEAN TIFA and to coordinate positions and approaches at APEC, the WTO, and other trade and investment forums.

During 2011, the United States held numerous high-level meetings, TIFA dialogues, and other bilateral exchanges with Southeast Asia and Pacific countries, including Brunei Darussalam, Cambodia, Indonesia, Malaysia, the Philippines, Thailand, and Vietnam. The United States sought in these meetings to resolve trade issues in such areas as customs, intellectual property protection and enforcement, market access for industrial and agricultural products, regulatory and other non-tariff barriers facing U.S. manufacturers and service suppliers, and other trade-related issues, including worker rights and protections. The United States also used these consultations to work with our trading partners in the region to monitor implementation of their WTO commitments and to coordinate economic assistance projects to support their implementation and reform efforts. The United States also used these meetings to discuss the potential interest of several countries, including the Philippines and Thailand, in potentially joining the Trans-Pacific Partnership (TPP), as well as to coordinate on ASEAN, APEC and other regional and multilateral issues.

In November, the United States and the Philippines signed a (customs administration and trade facilitation agreement), including specific commitments on simplified customs procedures and transparency of customs administration, demonstrating our countries' commitment to expanding our bilateral trade. The United States continued to work closely with the government of Laos to monitor progress and support the implementation of the United States-Laos Bilateral Trade Agreement, and to support Laos' ongoing negotiations to join the WTO.

### **d. The U.S.-ASEAN Trade and Investment Framework Arrangement**

With robust economies and a total population of about 600 million people, the 10 member countries of ASEAN represent a large and growing market for U.S. traders and investors. U.S. trade with the region continued to expand in 2011, with U.S. goods exports up 10 percent, and imports up 11 percent. The

ASEAN countries collectively are the fourth largest U.S. goods export market and fourth largest two-way goods trading partner.

The United States and ASEAN members concluded a TIFA in August 2006, and since then have been working to build upon already strong trade and investment ties to further enhance their economic relationship as well as promote ASEAN regional economic integration. In 2011, the United States and the ASEAN countries launched a new work program which builds on ongoing dialogues on trade facilitation, trade and the environment, trade finance, and standards, and introduces two new initiatives related to digital connectivity and the health care services sector. The United States and the ASEAN countries also agreed to organize a second road show of the ASEAN ministers to key U.S. cities, as well as a United States-ASEAN Business Forum in the ASEAN region in 2012 to expand commercial linkages and improve United States-ASEAN economic relations.

## **6. Sub-Saharan Africa**

### **a. Trade and Investment Relations**

For the last 11 years, the African Growth and Opportunity Act (AGOA), enacted in 2000, has been the cornerstone of the United States' engagement with sub-Saharan Africa on trade and investment. By providing duty-free entry into the United States for almost all products of beneficiary countries, AGOA has helped to expand and diversify two-way trade between the United States and sub-Saharan Africa, and helped to foster an improved business environment in many sub-Saharan African countries. As a result of a 2011 out-of-cycle review of Guinea, Niger, and Cote d'Ivoire, and the regular 2011 annual review of country eligibility, President Obama designated 40 sub-Saharan African countries to be eligible for AGOA benefits in 2012.

### **b. EAC Trade and Investment Partnership**

During the 2011 AGOA Forum in June in Lusaka, Zambia, U.S. Trade Representative Ambassador Ron Kirk proposed a new partnership between the United States and the East African Community (EAC) that would include the exploration of a regional investment treaty, creation of trade enhancing agreements in areas such as trade facilitation, and the development of stronger commercial engagement between the United States and the EAC. In November 2011, USTR led a U.S. delegation to Arusha, Tanzania, to discuss the United States' proposal and solicit views from the EAC.

The EAC Partner States include Burundi, Kenya, Rwanda, Tanzania, and Uganda. Total two-way goods trade between the United States and the EAC was an estimated \$1.5 billion in 2011, with \$955 million in U.S. goods exports and U.S. goods imports totaling \$535 million. Kenya was by far the United States' top trading partner within the EAC with two-way goods trade totaling \$829 million, followed by Tanzania with \$319 million, Rwanda with \$156 million, Uganda with \$143 million, and Burundi with \$48 million. Top U.S. exports to EAC countries were aircraft, machinery, and wheat. Top imports included apparel, coffee, nuts, and semi-precious stones.

### **c. Trade and Investment Framework Agreements**

The United States has Trade and Investment Framework Agreements with the following 11 countries or regional economic communities in sub-Saharan Africa: Angola, Ghana, Liberia, Mauritius, Mozambique,

Nigeria, Rwanda, South Africa, the Common Market for Eastern and Southern Africa (COMESA),<sup>29</sup> the EAC,<sup>30</sup> and the West African Economic and Monetary Union (also known by its French acronym, UEMOA).<sup>31</sup> USTR leads interagency discussions with TIFA partners on a wide range of trade and investment related issues. In addition to high-level Council on Trade and Investment (TIFA Council) meetings, which are held every one to two years, there is an ongoing dialogue with all TIFA partners that may include periodic working level meetings and digital video conferences on the implementation of the TIFA work plans. In 2011, the United States participated in four Council meetings with Liberia, Rwanda, South Africa, and COMESA.

#### **d. Liberia**

In August 2011, U.S. and Liberian officials met in Washington, D.C. to review progress in deepening the trade and investment relations under the TIFA. This was the third meeting of the U.S.-Liberian TIFA Council, which provides a high-level forum for advancing cooperation on bilateral trade and investment issues.

Deputy U.S. Trade Representative Demetrios Marantis and Liberian Minister of Commerce and Industry Miata Beysolow co-chaired the meeting, which examined the two governments' work together on a number of trade-related issues, including implementation of AGOA, trade capacity building, export diversification, trade and investment promotion, infrastructure issues, and Liberia's accession into the WTO.

In 2011, two-way goods trade between the United States and Liberia was \$323 million. U.S. goods exports to Liberia totaled \$193 million in 2011, up 1 percent from 2010. Top U.S. exports were vehicles, cereals, machinery, medical instruments, and iron and steel products. U.S. imports from Liberia totaled \$130 million, up 1 percent from 2010. Top imports from Liberia were rubber, wood, and art and antiques.

#### **e. Rwanda**

In December 2011, the U.S.-Rwanda bilateral investment treaty went into effect when U.S. Trade Representative Ron Kirk and Rwandan Minister of Trade and Industry François Kanimba exchanged treaty instruments of ratification, signed by President Obama and Rwandan Prime Minister Damien Habumuremyi.

Deputy U.S. Trade Representative Demetrios Marantis co-chaired the fourth meeting of the United States-Rwanda TIFA Council with Minister Kanimba in December 2011. The United States and Rwanda signed the TIFA and established the TIFA Council in June 2006. The TIFA Council meeting examined the two governments' joint work on a number of trade-related issues, including implementation of AGOA, agricultural trade and cooperation, export diversification, infrastructure issues, and Rwanda's progress towards regional integration within the EAC.

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<sup>29</sup> COMESA members are Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe.

<sup>30</sup> EAC members are Burundi, Kenya, Rwanda, Tanzania, and Uganda.

<sup>31</sup> UEMOA members are Benin, Burkina Faso, Cote d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo.

Total two-way goods trade between the United States and Rwanda totaled \$156 million in 2011. U.S. goods exports to Rwanda were \$122.1 million, and U.S. goods imports from Rwanda totaled \$33.7 million. Top U.S. exports in 2011 were aircraft, pharmaceutical products, and machinery. Coffee comprised over 89 percent of U.S. imports from Rwanda in 2010. Other leading imports from Rwanda were pectates and baskets.

#### **f. South Africa**

In June 2011, Deputy U.S. Trade Representative Demetrios Marantis co-chaired, with South African Trade and Industry Minister Rob Davies, a meeting in Pretoria, South Africa under the auspices of the United States-South Africa TIFA Council. At the meeting, senior government officials discussed a full range of trade issues, including AGOA, the National Export Initiative, trade impediments, investment challenges, intellectual property rights, transportation issues, and regional integration. Following the TIFA meeting, Ambassador Marantis and Minister Davies met with U.S. and South African private sector executives on their interests and concerns relating to U.S.-South Africa bilateral trade and investment.

The United States-South Africa TIFA was signed on February 18, 1999. The TIFA established the TIFA Council, a high-level forum for consultative discussions on trade and investment related issues. The TIFA was active for a few years but was effectively put on hold, by mutual consent, when the United States-Southern African Customs Union (SACU) free trade agreement negotiations began in 2003, and had been inactive since then. In 2010, both sides agreed to reinvigorate the existing TIFA to enhance cooperation and regularize engagement on key bilateral trade and investment issues.

Total two-way goods trade between South Africa and the United States was valued at \$16.9 billion in 2010. U.S. exports to South Africa grew to \$7.3 billion in 2011, up 31 percent from 2010. Primary exports included machinery, vehicles and parts, precious stones, and electrical machinery. U.S. imports from South Africa reached \$9.6 billion in 2011, a 17 percent increase from 2010. Primary imports included precious stones and metals, vehicles and parts, and iron and steel. Of total U.S. imports from South Africa during the first 11 months of 2011, \$3.4 billion entered duty-free under AGOA/GSP, an increase from \$3.1 billion in 2010. The primary goods imported under AGOA/GSP were vehicles and parts, iron and steel, and inorganic chemicals.

#### **g. Common Market for Eastern and Southern Africa (COMESA)**

In September 2011, U.S. Trade Representative Ron Kirk co-chaired the seventh meeting of the United States-COMESA TIFA Council with COMESA Secretary General Sindiso Ngwenya. The TIFA Council meeting examined a number of trade-related issues, including implementation of AGOA, agricultural trade and cooperation, export diversification, intellectual property rights, infrastructure issues, and COMESA's progress towards regional integration. Following the government-to-government meeting, Deputy U.S. Trade Representative Demetrios Marantis co-chaired, with senior officials from the U.S. Government, COMESA and its member states, as well as representatives from the U.S. business community, including the Corporate Council on Africa, a roundtable discussion on advancing regional integration in Africa.

COMESA is the largest regional economic organization in Africa. Total two-way goods trade between the United States and COMESA countries was \$13.6 billion in 2011, with U.S. exports totaling \$9.1 billion, a 3 percent increase from 2010. U.S. imports from the COMESA region totaled \$4.5 billion in 2011, a 26 percent decrease from 2010. Egypt was the United States' top COMESA trading partner last year, with two-way trade between the countries totaling \$8.6 billion. Top U.S. exports to COMESA countries in 2010 were cereals, aircraft, machinery, and vehicles. Top imports were oil, apparel, and fertilizers.

## **7. South and Central Asia**

### **a. Advancing the United States-India Trade and Investment Relationship**

The United States-India Trade Policy Forum (TPF), created in 2005, serves as the principal bilateral forum for discussing trade and investment issues. Following a review by each government of ways to strengthen this forum, and building on steps taken in the preceding year, Ambassador Kirk and Indian Minister for Commerce and Industry Anand Sharma agreed in 2011 to revise the structure of the TPF to facilitate progress on trade and investment issues of interest to each country. The new, streamlined structure reflects recognition that key issues on the bilateral agenda increasingly cover more than one of the traditional categories of trade policy (such as goods, services, and intellectual property), and will help facilitate solutions that require the active engagement of multiple government agencies in each country. In the course of several meetings over 2011, Ambassador Kirk and Minister Sharma reaffirmed their commitment to the revised TPF as a vehicle for producing meaningful outcomes for stakeholders in both countries. Sustained constructive engagement with the government of India during 2011 contributed to lower tariffs for certain U.S. agricultural exports, removal of a ban on the export of cotton from India, renewed technical discussions on a Bilateral Investment Treaty, and significant revision of burdensome telecommunications security regulations that failed to meet India's stated security objectives.

### **b. Contributing to Regional Stability**

In support of top national security objectives in Afghanistan, Pakistan, and Iraq, in 2011, USTR strengthened engagement with all three countries as part of a broader effort to boost trade, employment, and sustainable development. USTR participated in the Trade and Investment Framework Agreement meeting with Afghanistan on December 11, 2011, which included a session with the private sector. The United States and Afghanistan agreed to create two committees under the TIFA focused on the empowerment of women and women entrepreneurs and on transparency and promoting public participation in decision-making. Both sides expressed an eagerness to begin work on this important initiative as soon as possible. The United States also expressed its support for Afghanistan's goal of acceding to the World Trade Organization as soon as possible.

In September 2011, USTR participated in the United States-Pakistan TIFA Council Meeting in Islamabad, Pakistan. USTR led a delegation of other U.S. Government agencies to Lahore, Pakistan where they met with private sector representatives and visited the Pakistan Institute of Fashion Design, to see firsthand how Pakistan is reforming its textiles and apparel sector. Working with other U.S. agencies, USTR participated in trilateral and other high level meetings with officials from Afghanistan, Iraq, and Pakistan. Key highlights from 2011 included:

- USTR and other agencies continued to seek passage of trade preference legislation, including Reconstruction Opportunity Zone (ROZ) legislation to provide duty-free benefits for certain products exported to the United States from Afghanistan and critical border areas of Pakistan. USTR also led discussions on how Afghanistan, Pakistan, and Iraq could increase use of existing trade benefits under the U.S. Generalized System of Preferences (GSP) program.
- USTR supported the implementation of the Afghanistan and Pakistan Transit Trade Agreement, and encouraged both sides to promptly resolve issues causing trade bottlenecks.
- Pakistan and the United States agreed to intensify engagement on trade and investment issues by focusing on addressing intellectual property protection issues as identified in USTR's 2011

Special 301 Report, and assisting women-owned businesses in Pakistan in order to empower this important sector of the economy.

- The United States agreed to continue its technical and advisory support for the accessions of Afghanistan and Iraq to the WTO.

### **c. Promoting National Reconciliation and Lasting Peace in Sri Lanka**

The United States and the government of Sri Lanka held the ninth TIFA Council Meeting in Washington, D.C. in November 2011. It was the third meeting of the TIFA Council since Sri Lanka's civil war ended in May 2009. The United States and Sri Lanka discussed market access and investment climate concerns, supporting war widows displaced by the civil war, and initiated capacity building initiatives on intellectual property rights and the U.S. GSP program.

### **d. Advancing U.S. Engagement with Central Asia**

USTR supported the Administration's strategy towards Central Asia by hosting the United States-Central Asia TIFA Council meeting in Washington, D.C. in September 2011, in order to bolster cooperation with the Central Asian countries of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan in support of U.S. operations in Afghanistan (which participates in the TIFA as an observer), and to strengthen and diversify U.S.-Central Asia trade relations more broadly. The United States launched bilateral dialogues with each Central Asia TIFA partner to focus on country-specific issues, and the TIFA members agreed to establish a new mid-year meeting of a TIFA working group. The next Central Asia TIFA meeting will be held in 2012. The Parties hope to hold the meeting in the region.

The United States also participated in three bilateral meetings with Kazakhstani authorities to continue negotiations on rules and market access commitments for Kazakhstan's accession to the WTO. These negotiations resulted in a bilateral market access agreement on services with Kazakhstan in September 2011. USTR also reviewed Kazakhstan's efforts to bring its trade and investment regime into compliance with WTO rules in a number of areas including intellectual property, sanitary and phytosanitary measures impeding agricultural trade, and the operation of Kazakhstan's state-owned or state-controlled enterprises. Kazakhstan's customs union with Russia and Belarus was also discussed, including U.S. concerns about higher duties adopted by Kazakhstan under the common external tariff of the customs union, which entered into force on January 1, 2010. (*See also WTO accessions*).

### **e. Improving Trade and Investment Relations with Nepal**

On April 15, 2011 the United States and Nepal signed a TIFA and held the first TIFA Council Meeting. Both sides expressed interest in finding ways to improve the trade and investment relationship. Discussions included ways in which Nepal could better utilize the U.S. GSP program as well as reforms Nepal was undertaking with a view to creating a more favorable investment climate. Nepal asked for assistance in a number of sectors and the United States agreed to discuss ways in which it could provide technical assistance. USTR highlighted its concerns with Nepal's investment laws and policies and encouraged Nepal to undertake reforms to make it easier for investors to understand what is required to do business there. The next TIFA Council meeting will be held in Nepal later in 2012.



# IV. OTHER TRADE ACTIVITIES

## A. Trade and the Environment

During the course of 2011, the Administration accomplished unprecedented results on environment and trade matters across multiple fronts, including through multilateral, regional, and bilateral trade initiatives. On the multilateral front, the United States continued to push for strong agreements under the WTO Doha Development Agenda (DDA) negotiations to discipline harmful fisheries subsidies and eliminate barriers to trade in environmental technologies and services, including clean energy technologies. The United States defined and achieved a robust agenda on green growth in APEC during the U.S.-host year, including agreement of APEC economies to lower applied tariffs on environmental goods to no more than five percent by 2015 and eliminate local content requirements. APEC members also agreed to establish an Experts Group on Illegal Logging and Associated Trade and to work to implement measures to prohibit trade in illegally harvested forest products. Additionally, in the TPP negotiations the United States made first-ever proposals on a conservation framework, and pressed for an ambitious package on environmental goods and services. The Administration continued to prioritize implementation of the free trade agreements currently in force, and to prepare for implementation of the environment provisions of the agreements with Korea, Colombia, and Panama. In keeping with the increased integration of environmental considerations across multiple multilateral, regional, and bilateral fronts, this report includes a detailed assessment of recent developments on trade and environment in specific sections devoted to these various fora.

### 1. Multilateral Fora

As described in more detail in the WTO section of this report, the United States has been active on all aspects of the DDA trade and environment agenda. In particular, the United States has worked closely with other countries to explore approaches for taking early action to liberalize trade in environmental goods and services, and to develop stronger disciplines on fisheries subsidies that contribute significantly to global overcapacity and overfishing. The Administration also has sought to orient activities in the OECD Joint Working Party on Trade and Environment to focus on value-added contributions to ongoing WTO work, as well as strong analytical research on the interface between trade and climate change policies.

USTR continues to participate in formulating and carrying out U.S. policy regarding various multilateral environmental agreements (MEA) to enhance compatibility between those activities and U.S. trade policy. Examples include the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the International Commission for the Conservation of Atlantic Tuna, International Maritime Organization conventions, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Convention on Biological Diversity and the Cartagena Protocol on Biosafety, and the Stockholm Convention on Persistent Organic Pollutants. USTR also participates in ongoing MEA negotiations, such as the United Nations Environment Program negotiations to develop a legally binding agreement on mercury, and the United Nations Framework Convention on Climate Change (UNFCCC) negotiations, and has participated actively in the Rio+20 process.

USTR has been particularly active in two international commodity agreements to identify and pursue opportunities to facilitate increased international trade and sustainable development. In the International Tropical Timber Organization (ITTO), USTR has led Administration efforts to promote increased market transparency, and to provide support for capacity building projects to facilitate tropical timber trade in the

context of sustainable management of tropical forests. In the International Coffee Organization (ICO), USTR has led Administration efforts to ensure strong implementation of the new agreement (International Coffee Agreement 2007). The new agreement promotes development of a sustainable coffee sector in economic, social, and environmental terms, and contributes to this goal through new features such as Consultative Forum on Coffee Sector Finance, which addresses challenges faced by small and medium-scale farmers in accessing credit and managing risk.

## **2. Bilateral and Regional Activities**

USTR ensured strong results on green growth and trade during 2011, when the United States hosted APEC. In November, APEC Leaders agreed to reduce their applied tariffs on environmental goods to no more than five percent by 2015 and committed to strong action to eliminate local content requirements and avoid trade-distortive subsidies and government procurement practices with respect to environmental goods and services. These commitments in APEC should provide momentum to other key initiatives to liberalize trade in environmental technologies, including in the TPP and the WTO. Additionally, USTR took the lead in securing agreement among APEC trade ministers to establish an Experts Group on Illegal Logging and Associated Trade, and the subsequent agreement of APEC Leaders in Honolulu to work to implement measures to prohibit trade in illegally-harvested forest products. These results build on the USTR initiative in recent years to develop an Asia-Pacific Regional Dialogue on Promoting Trade in Legally-Harvested Forest Products.

USTR also submitted a comprehensive set of environment proposals in the TPP negotiations. These proposals include strong commitments to ensure robust public participation, core obligations that reflect the May 10, 2007 bipartisan Congressional-Executive agreement on trade, ground-breaking provisions on conservation of wildlife and wild plant species, including disciplines on harmful fisheries subsidies, and dispute settlement provisions. Together, these U.S. proposals offer the opportunity to forge a new high standard for environmental provisions in trade agreements.

USTR was active during 2011 in monitoring implementation of environment provisions in free trade agreement (FTAs). In particular, USTR worked closely with Peru to advance implementation of the Annex on Forest Sector Governance under the United States-Peru Trade Promotion Agreement. As a result, Peru signed into law historic forestry reform legislation in July 2011 and now is in the process of developing detailed regulations for its implementation. Additionally, USTR convened the Interagency Committee on Timber Imports from Peru, which has authority to request Peruvian authorities to conduct verifications of timber shipments and to direct the U.S. Customs Service to deny entry for any shipments that may contain illegally-harvested forest products.

## **3. The North American Free Trade Agreement**

The Administration continues to work closely with Canada and Mexico to ensure that trade and environment policies in each of the three countries are implemented in a manner that is mutually supportive. In 2011, USTR led efforts to improve cooperation between the NAFTA Free Trade Commission (FTC) and the Commission for Environmental Cooperation (CEC) on these issues. These efforts included the senior-level Joint *Ad Hoc* Working Group (JAWG) moving forward to develop a detailed work-plan in areas such as trade in used electronics and electronic waste. The JAWG has been charged by the FTC with finding new opportunities to interact with the CEC.

## **B. Trade and Labor**

The Administration's trade policy agenda includes a strong commitment to ensuring that workers and their families in America and around the world benefit from trade. The Administration has continued its efforts to enhance U.S. Government engagement with trade partners to improve respect for labor rights and to increase monitoring and enforcement of trade agreement labor provisions. In 2011, the Administration requested the establishment of an arbitral panel against Guatemala under Chapter 20 (Dispute Settlement) of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) for apparent violations of labor rights obligations. This is the first time that the United States has taken such action under a trade agreement and makes clear that the Administration will act when an FTA partner fails to meet its labor obligations. The Administration has continued its effort to engage trade partners on labor rights through the formal mechanisms of trade agreements and other means. Labor issues were high on the agenda of commission meetings under existing FTAs, as well as meetings of TIFAs and multilateral fora.

As an essential component of the Administration's trade agenda, President Obama signed into law renewal of the Trade Adjustment Assistance (TAA) programs to assist workers adversely affected by global competition. The renewal of TAA preserves the key goals of the 2009 TAA program reforms, such as covering service workers and workers whose jobs shift to China, India, and other countries. It helps ensure that American workers affected by global competition are given the best opportunity to acquire skills and credentials to get good jobs. *(For additional information, see Chapter V.B.7.)*

### **1. Multilateral and Regional Fora**

In the Ministerial Declaration adopted during the WTO Ministerial Conference in Singapore (1996), and reaffirmed in Ministerial Declarations adopted during Ministerial Conferences in Doha (2001) and Hong Kong (2005), the WTO Members renewed their commitment to the observance of internationally recognized core labor standards and took note of collaboration between the WTO and International Labor Organization (ILO) Secretariats. In September 2011, the WTO and the ILO jointly released "Making Globalization Socially Sustainable." The publication summarizes knowledge on themes related to the social dimension of globalization through contributions by academic experts who analyze the various channels through which globalization affects jobs and wages. *(For additional information, visit [http://www.wto.org/english/res\\_e/publications\\_e/glob\\_soc\\_sus\\_e.htm](http://www.wto.org/english/res_e/publications_e/glob_soc_sus_e.htm).)*

The Administration has continued to promote the discussion of labor rights as one of the topics relevant to the effort to strengthen economic integration and to build high quality trade agreements in the Asia-Pacific region. As Asia Pacific Economic Cooperation (APEC) host for 2011, the United States supported inclusion by APEC economies of labor and social issues in next generation trade agreements. Additionally, discussion of labor rights issues took place in the APEC Committee on Trade and Investment and among APEC labor and human resource development agencies. *(For additional information on APEC, see Chapter III.B.3.)*

The Inter-American Conference of Ministers of Labor (IACML) is a meeting of the Western Hemisphere's labor ministers, held approximately every two years under the auspices of the Organization of American States to promote hemispheric cooperation on labor issues. The IACML responds to the labor mandates agreed to by heads of state in the Summit of the Americas process. *(For additional information on the IACML, visit [http://www.sedi.oas.org/ddse/english/cpo\\_trab.asp](http://www.sedi.oas.org/ddse/english/cpo_trab.asp).)*

At the Seventeenth IACML, held in San Salvador, El Salvador in October 2011, labor ministers unanimously adopted a Declaration and Plan of Action focused on "advancing economic and social

recovery with sustainable development, decent work, and social inclusion.” Labor ministers also endorsed a two year Plan of Action that, among other things, established a working group chaired by Brazil and co-chaired by the United States and the Dominican Republic on “Sustainable Development with Decent Work for a new era of Social Justice.” The working group’s responsibilities over the next two years will include addressing the labor dimension of globalization, regional integration processes and free trade agreements.

## 2. Bilateral Agreements and Preference Programs

### a. FTAs

U.S. FTAs contain obligations concerning the consistency of each party’s labor laws with international standards (with recent FTAs obligating each party to implement in its law and practice the fundamental labor rights as stated in the 1998 ILO Declaration on Fundamental Principles and Rights at Work), not to fail to effectively enforce its labor laws, and not to waive or derogate from those laws in a manner affecting trade or investment. Additionally, the labor provisions obligate each party to designate an office within its labor ministry to serve as a contact point for purposes of the labor chapter and create labor cooperation and capacity building mechanisms through which the parties will work together to enhance opportunities to improve labor standards. The Office of Trade and Labor Affairs (OTLA) in the Bureau of International Labor Affairs (ILAB) of the U.S. Department of Labor, in consultation with USTR, serves as the contact point for purposes of administering responsibilities under the labor provisions of free trade agreements and the North American Agreement on Labor Cooperation, including the labor cooperation mechanisms. *(For additional information on OTLA, its procedures, and the process for filing a submission, visit <http://www.dol.gov/ILAB/programs/otla/index.htm> and <http://www.dol.gov/ilab/programs/otla/proceduralguidelines.htm>. The Procedural Guidelines are also available in Arabic, French, and Spanish.)*

USTR engages our FTA partners on labor issues as part of our ongoing monitoring and implementation of U.S. trade agreements. As part of USTR’s engagement in 2011, labor rights issues were on the agenda for numerous meetings with FTA countries, including free trade commission meetings held with the CAFTA-DR countries, Peru, Chile, and Singapore. USTR also directly engaged governments on labor rights matters, including leading an interagency mission to Jordan in response to concerns about the treatment of workers in qualifying industrial zone factories, and technical cooperation efforts in Central America, Morocco, Oman, Bahrain, and Peru. *(For additional information, see Chapter III.A.)*

In 2011, the Administration announced a Colombian Action Plan Related to Labor Rights, under which Colombia committed to take action to improve protection of labor rights, prevention of violence against trade unionists, and prosecution of perpetrators of such violence. Throughout the year, the Colombian government took steps to meet the numerous milestones to date in the Action Plan, which in large measure consisted of putting resources and legal tools in place to better protect labor rights. The Administration continues to work with Colombia to further these efforts. *(For additional information, see Chapter III.A and visit <http://www.ustr.gov/uscolombiatpa/labor>.)* Also in 2011, Panama amended legislation and implemented administrative decrees and ministerial resolutions to strengthen its labor laws and enforcement. The Administration continues to work with Panama to further these efforts. *(For additional information, see Chapter III.A and visit [http://www.whitehouse.gov/sites/default/files/panama\\_trade\\_agreement\\_labor.pdf](http://www.whitehouse.gov/sites/default/files/panama_trade_agreement_labor.pdf).)*

In 2011, the Administration requested the establishment of an arbitral panel against Guatemala under Chapter 20 (Dispute Settlement) of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) for apparent violations of labor rights obligations. This is the first time the

United States has taken such action on a labor matter under an FTA. *(For additional information see Chapter III.A.3 and visit <http://www.ustr.gov/trade-topics/labor/bilateral-and-regional-trade-agreements/guatemala-submission-under-cafta-dr>.)*

#### **b. Other Bilateral Agreements and Preference Programs**

President Obama certified to the U.S. Congress in October 2009 that Haiti met the necessary requirements to continue duty-free treatment for certain Haitian-made apparel and other articles under the Haitian Hemispheric Opportunity through the Partnership Encouragement Act of 2008 (HOPE II). Pursuant to the requirements of the HOPE II, Haiti established an independent labor ombudsman's office and a Technical Assistance Improvement and Compliance Needs Assessment and Remediation (TAICNAR) program, which is implemented through a Department of Labor-funded ILO Better Work program. The TAICNAR program, more commonly known as Better Work Haiti, assesses factory compliance with national laws and international standards relating to core labor rights and conditions of work and ensures that producers that wish to be eligible for duty-free treatment participate in the program. Significant progress has been made in implementing the TAICNAR program, including the provision of factory assessments and remediation assistance for all companies that produce HOPE II-eligible apparel. Consistent with the requirements of HOPE II, the ILO issued public reports on factory compliance in April 2011 and October 2011. USTR continues to work closely with the government of Haiti, the ILO, and other U.S. Government agencies on implementation of the program, and participated in an interagency trip led by the Department of Labor in November 2011 to monitor factories' compliance with core labor standards. *(For additional information, view the 2011 USTR Annual Report on the Implementation of the TAICNAR program at [http://www.ustr.gov/webfm\\_send/2956](http://www.ustr.gov/webfm_send/2956) and the ILO Biannual reports at <http://www.betterwork.org>.)*

U.S. trade preference programs, including the African Growth and Opportunity Act (AGOA), the Andean Trade Preference Act (ATPA), the Caribbean Basin Trade Preferences Act, and the Generalized System of Preferences (GSP), require the application of statutory eligibility criteria pertaining to worker rights. In 2011, the Administration accepted for review a GSP worker rights-related petition concerning Georgia. Five other previously accepted worker rights-related petitions remained under review as part of the 2011 GSP Annual Review process, concerning Bangladesh, Niger, the Philippines, Sri Lanka, and Uzbekistan. In 2011, USTR and other U.S. Government officials continued to engage with these governments through U.S. embassies in those countries, their embassies in Washington, D.C., and other bilateral fora to monitor progress and press for action to address the problems cited in the petitions. Although GSP expired on December 31, 2010 and was not renewed until October 2011, the review of whether these countries are meeting the GSP worker rights criteria continued throughout 2011. An ATPA petition concerning worker rights in Ecuador was filed in 2005 and review of practices in that country continued in 2011. Additionally, the Administration continues to consider whether to accept for review a GSP worker rights-related petition filed in 2008 concerning Iraq.

The United States and China committed to a dialogue on labor issues in 2009 during the first United States-China Strategic and Economic Dialogue (S&ED). The second meeting of the labor dialogue took place in Washington, D.C. in May 2011, at which government representatives discussed various labor rights issues including worker rights, labor law enforcement, and social safety net programs. As part of the 2011 S&ED outcomes, the United States and China agreed to continue the labor dialogue on an annual basis; China will host the next meeting in 2012.

USTR continued to seek progress by the government of Vietnam on providing freedom of association and collective bargaining rights in conformity with internationally recognized standards, in particular with a view to the Trans-Pacific Partnership (TPP) negotiations. In conjunction with these efforts, USTR

participated in the United States-Vietnam Human Rights Dialogue led by the U.S. Department of State, and a Labor Dialogue led by the U.S. Department of Labor in November 2011. In both of these Dialogues, officials from the two governments discussed internationally recognized labor rights and Vietnam's labor reform efforts. Additionally, USTR conducted a seminar in June 2011 with Vietnamese government officials in Hanoi, Vietnam, at which internationally recognized labor rights were discussed with government, trade union, and business representatives.

USTR also engaged with several other countries on labor issues in the context of Trade and Investment Framework Agreement (TIFA) meetings and other bilateral trade mechanisms. Most notably, the United States discussed labor rights issues during TIFA meetings with five Central Asia countries, the Philippines, and Pakistan in September 2011, Sri Lanka in November 2011, and Rwanda in December 2011. Also, the United States and Nepal concluded a TIFA in April 2011 that recognizes the importance of adopting and maintaining in laws and practices the ILO fundamental labor rights and ensuring the effective enforcement of labor laws.

## **C. Small and Medium-Sized Business Initiative**

In October 2009, Ambassador Ron Kirk announced a new USTR initiative aimed at increasing exports by U.S. small and medium sized enterprises (SMEs). In the past two years, USTR has expanded efforts to ensure the specific export challenges and priorities of SMEs and their workers are reflected in our trade policy and enforcement activities. During 2011, USTR engaged on an interagency basis and with trading partners to develop and implement new initiatives that support small business exports.

This agency effort also supports the goals of the Administration's National Export Initiative (NEI) to double U.S. exports by the end of 2014 to support millions of American jobs. The NEI highlights priority attention to expanding SME exports.

U.S. small businesses are key engines for our economic growth, jobs, and innovation. SMEs that export tend to grow faster, add jobs faster, and pay higher wages than SMEs that serve purely domestic markets. Recent studies by the U.S. International Trade Commission (USITC), requested by USTR, reveal that SMEs play a larger role in the export economy than is suggested by traditional trade statistics, with direct and indirect exports by U.S. SMEs supporting about four million jobs in the United States while accounting for over 40 percent of the total value of U.S. exports of goods and services. There are some 30 million SMEs in the United States, but currently, only a small fraction of these companies export goods or services, and most export only one product or service to one foreign country. USTR is working to further unleash the export potential of American small businesses.

USTR is focused on making trade work to the benefit of American small businesses, helping them increase their sales to customers abroad, and thus create jobs at home. USTR does this by negotiating with foreign governments to open their markets, reducing trade barriers, and enforcing our existing trade agreements to ensure a level playing field for American workers and businesses of all sizes. Agency-wide, USTR is working to better integrate specific SME issues and priorities into our trade policy development and implementation, increase our outreach to small businesses around the country, and expand our collaboration and coordination with our interagency colleagues.

In 2011, USTR undertook significant actions in continued support of our SME objectives.

## **1. USTR SME-Related Trade Policy Activities**

Under the SME initiative, USTR's small business office and geographic and functional offices are developing initiatives and advancing efforts to enhance activities that could benefit SMEs. Several key aspects of USTR's trade policy agenda have particular potential to help SMEs boost exports. These include enhancing trade facilitation work, strengthening and enforcing intellectual property rights, and targeting services barriers that are especially difficult for SMEs, such as requirements for staffing an office in each country to which companies wish to export. USTR is also exploring ways to simplify government procurement rules. Tariff barriers, burdensome customs procedures, discriminatory or arbitrary standards, and lack of transparency relating to relevant regulations in foreign markets present particular challenges for our SMEs in selling abroad.

The ability to address SME concerns through the fact finding and consultation mechanisms built into our bilateral and regional trade agreements and dialogues is an important asset for USTR. For example:

- As USTR moves forward with negotiations to expand U.S. trade in the Asia-Pacific through the Trans-Pacific Partnership (TPP), USTR designated a point person for SME issues. We are working with our trade partners to develop specific TPP provisions to help small businesses participate more actively in regional trade.
- In 2011, with the United States as host of the Asia Pacific Economic Cooperation (APEC) forum, APEC economies agreed to undertake specific and practical actions to address top barriers facing small businesses in trading in the region, such as by making it easier to access basic customs documentation and to register intellectual property, and to enhance SME's participation in global production chains through free trade agreements.
- Under the Transatlantic Economic Council (TEC), the United States and the European Union launched the first-ever SME Best Practices Exchanges in Brussels, in June 2011, and Washington DC, in October 2011, with small business stakeholders from both sides of the Atlantic. The parties agreed to develop interagency cooperative activities that will help SMEs engage in transatlantic trade.
- With respect to FTA partners in the Western Hemisphere, USTR is working with the U.S. Small Business Administration (SBA) and other agencies to expand the U.S. Small Business Development Center model to help build small business partnerships and trade opportunities in the region. USTR is also working to enhance trade facilitation with regional partners and further reduce trade barriers to benefit SME exporters.

## **2. USTR Interagency SME Activities**

On an interagency basis, USTR's Small Business, Market Access, and Industrial Competitiveness office participates in the Trade Promotion Coordinating Committee's (TPCC) Small Business Working Group, collaborating with agencies including the U.S. Department of Commerce, the Small Business Administration (SBA), the U.S. Export-Import Bank, the U.S. Department of Agriculture, and others across the government to promote small business exports, and connect SMEs to trade information and resources to help them begin or expand their exports and take advantage of existing trade agreements.

In 2011, USTR's Small Business office was designated as Co-Chair of the TPCC SME Task Force on connecting SMEs to international trade opportunities. Partnering under the Task Force, in March 2011, USTR, the U.S. Department of Commerce and the SBA launched the FTA Tariff Tool. Developed under

the NEI, this new, free, online tool (<http://export.gov/FTA/ftatarifftool/index.asp>) can help more small businesses take better advantage of the reduction and elimination of tariffs under U.S. FTAs. Exporters now have an online resource that streamlines tariff information for 85 percent of goods going to 20 markets with which the United States has negotiated trade agreements. This information has never before been available free of charge online in one searchable database. The website also contains an instructional video and quick start guide. This new tool makes it easier for small businesses to grow and prosper through exports.

### **3. USTR's SME Outreach and Consultations**

Throughout 2011, Ambassador Kirk and senior USTR staff actively participated in numerous events around the country to hear directly from local small businesses, workers, and other stakeholders about the trade opportunities and challenges they face. Ambassador Kirk's meetings with SME exporters and community leaders to discuss the potential to grow their exports and take advantage of market openings abroad are highlighted on USTR's website and blog. The Small Business section of USTR's website also includes helpful links, fact sheets, and resources for SMEs, including new short brochures for SMEs in English and Spanish with "Frequently Asked Questions" about opportunities to export to FTA partners in the hemisphere, and new blogs, which highlight small business export success stories around the country and USTR trade policy efforts supporting small business. On an interagency basis, USTR is working with the TPCC to improve trade information relevant for SMEs and highlight interagency programs to assist SMEs with their individual export needs on the government's one-stop export platform (<http://www.export.gov>).

USTR staff regularly consult with the Industry Trade Advisory Committee for Small and Minority Business to seek its advice and input on U.S. trade policy negotiations and initiatives, and meet frequently with individual SMEs and associations representing SME members on specific issues.

In 2011, USTR's Small Business office also spoke at several SME events around the country, including at National Small Business Week, the Association of Small Business Development Centers annual conference, and the NEI New Markets New Jobs Tour, as well as trade events aimed at apprising small businesses of international trade opportunities and encouraging them to begin or expand their exports.

### **D. Anti-Counterfeiting Trade Agreement**

On October 1, 2011, the United States and seven other countries signed the Anti-Counterfeiting Trade Agreement (ACTA) at a ceremony in Tokyo, marking an important step forward in the international fight against trademark counterfeiting and copyright piracy. The ACTA is an important new tool to fight the global growth in counterfeiting and piracy, which threatens jobs that depend on innovation, including those in the United States.

The ACTA effort, launched in October 2007, brings together a number of countries that are prepared to embrace strong intellectual property rights (IPR) enforcement through a new agreement calling for cooperation, strong enforcement practices, and a strong legal framework for IPR enforcement.

ACTA signatories are Australia, Canada, Japan, Korea, Morocco, New Zealand, Singapore, and the United States. The European Union (with its 27 Member States), signed the Agreement on January 26, 2012. Mexico and Switzerland are expected to sign the agreement in the near future. For those who have already signed, the next step towards bringing the ACTA into force is to deposit instruments of ratification, acceptance, or approval. The ACTA will enter into force for those signatories thirty days following the deposit of the sixth such instrument.

Consistent with the Obama Administration's emphasis on intellectual property enforcement, the ACTA intensifies efforts against the global proliferation of commercial-scale counterfeiting and piracy in the 21st century. The ACTA includes innovative provisions to deepen international cooperation and to promote strong enforcement practices, and will ultimately help sustain American jobs in innovative and creative industries.

Some of the ACTA's key features include commitments to:

- support and enhance approaches to criminal enforcement through stronger requirements for criminal remedies, by highlighting the importance of combating unlawful camcording in theaters, and by emphasizing the seizure and destruction of fake goods, the seizure of the equipment and materials used in their manufacture, and the recovery of criminal proceeds;
- combat piracy over the Internet through a balanced framework that addresses the widespread distribution of pirated copyrighted works while preserving fundamental principles such as freedom of expression, fair process, and privacy;
- provide customs authorities with the ability to act against import and export shipments as well as to cooperate on in-transit shipments;
- strengthen civil enforcement provisions dealing with damages, provisional measures, recovery of costs and attorneys' fees, and destruction of infringing goods;
- create cooperation and information-sharing mechanisms among ACTA Parties to assist in enforcement efforts; and
- promote strong enforcement practices that lead to the meaningful implementation of laws on the books.

## **E. Import Food Safety**

On March 14, 2009, President Obama announced the creation of the Food Safety Working Group to advise him on how to strengthen the U.S. food safety system. The Working Group, chaired by the Secretaries of the U.S. Department of Health and Human Services and the U.S. Department of Agriculture, brings together cabinet secretaries and senior officials to foster coordination throughout the Federal Government on a new, public health focused, approach to food safety based on three core principles: (1) prioritizing prevention; (2) strengthening surveillance and enforcement; and (3) improving response and recovery. USTR has been an active member of the Food Safety Working Group providing guidance on various recommendations and initiatives while ensuring compliance with international trade obligations.

Since its creation, the Food Safety Working Group has served as a mechanism to address cross-cutting food safety issues. In July 2009, the Food Safety Working Group announced key findings on how to upgrade the U.S. food safety system. In 2010, the Obama Administration took steps to reduce the prevalence of *E. coli*, implemented new standards to reduce exposure to *Campylobacter*, and issued a rule to control *Salmonella* contamination.

Most recently, the Obama Administration worked with the U.S. Congress to enact the historic FDA Food Safety Modernization Act. This legislation, which was signed into law on January 4, 2011, includes

numerous provisions to strengthen the U.S. food safety system for both domestic and imported products. Some of the new programs that will help ensure the safety of U.S. imports include the creation of a food supplier verification program and the authority to refuse admission to imported food if the foreign facility or country refuses to allow an FDA inspection consistent with the FDA's ability to inspect domestic facilities for safety.

In addition to active participation in the Food Safety Working Group's activities and the earlier Import Safety Working Group, USTR has continued to address the safety of imported products through its work on sanitary and phytosanitary (SPS) issues. An integral part of U.S. FTAs are chapters concerning SPS measures. Each SPS chapter has among its stated objectives the protection of human, animal, and plant life or health. These chapters, among other things, establish standing committees of the parties to the FTA to enhance cooperation and consultation on SPS matters and improve the parties' understanding of each other's SPS requirements, as well as to identify appropriate areas for capacity building and technical assistance. The ongoing TPP negotiations provide the United States with an opportunity to broker a 21st century trade agreement with the world's most dynamic economies to create and retain jobs in the United States. Specifically in the SPS Chapter, we aim to resolve specific SPS-related trade concerns and strengthen commitments to meeting important international obligations by enhancing the transparency and science provisions in the agreement.

The U.S. Government's participation in the APEC Food Safety Cooperation Forum (FSCF) and U.S. leadership in setting up the public-private Partnership Training Institute Network (PTIN) for building food safety capacity emphasizes the importance placed on investing in the strengthening the food safety systems of U.S. trading partners in the Asia Pacific region. In 2011, the United States was the host economy for APEC, and a full suite of food safety activities were held in conjunction with the APEC Senior Officials Meeting in Big Sky, Montana in May. These included a workshop on food safety incident management, the third meeting of FSCF regulators, as well as a roundtable with public and private sector stakeholders from the APEC economies. These stakeholders provided critically important assessments of existing food safety capacity issues, which were used to establish priorities for capacity building activities through 2013. Also in 2011, the FSCF PTIN began work on improving laboratory proficiency in the region through a survey of national laboratories and a workshop organized in Bangkok, Thailand in August 2011. The first replicable training modules on supply chain management were also completed in 2011. Additional work on building laboratory proficiency and reducing unnecessary export certificates is planned for early 2012.

The collaborative model involving industry, academic, and government officials for strengthening food safety systems pioneered in APEC has been so successful that it is now being used as a model for global capacity building on food safety. The APEC FSCF and the World Bank signed a memorandum of understanding on food safety capacity building in May 2011. The World Bank subsequently announced the creation of a global multi-donor partnership for food safety at the APEC Leader's meeting in November 2011 with initial private sector and US government contributions totaling \$1 million. The fund is expected to grow to \$15 million. These efforts to deliver technical training and promote use of best practices in food safety will increase the capacity of APEC and other economies to regulate food safety consistent with international standards and further the adoption of science and risk-based approaches that will improve public health while also facilitating trade.

The WTO Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) Committees provide an important forum for the United States to exchange information with its trading partners on countries' respective health and safety requirements, and address concerns about their implementation. These capacity building efforts provide an opportunity for the United States to work with its trading partners to ensure that SPS and product safety requirements are based on the best available scientific and technical information and in accordance with their health and safety objectives.

Strong intellectual property rights (IPR) enforcement also plays an essential role in the protection of public health and safety. In this area, USTR, with the help of other Federal agencies, works with U.S. trading partners to address product counterfeiting by promoting stronger IPR laws and law enforcement around the world, for example, through efforts to negotiate an ACTA. (*For additional information, see Chapter IV.D.*)

## **F. Organization for Economic Cooperation and Development**

Thirty-four democracies in Europe, the Americas, Middle East, and the Pacific Rim comprise the Organization for Economic Cooperation and Development (OECD), established in 1961 and headquartered in Paris. The OECD is a grouping of economically significant countries and serves as a policy forum covering a broad spectrum of economic, social, and scientific areas, from macroeconomic analysis to education to biotechnology. The OECD helps countries, both OECD members and non-members, reap the benefits and confront the challenges of a global economy by promoting economic growth, free markets, and efficient use of resources. Each substantive area is covered by a committee of member government officials, supported by Secretariat staff. The emphasis is on discussion and peer review, rather than negotiation, although some OECD instruments are legally binding, such as the Anti-Bribery Convention. Most OECD decisions require consensus among member governments. In the past, analysis of issues in the OECD often has been instrumental in forging a consensus among OECD countries to pursue specific negotiating goals in other international fora, such as the WTO.

The United States has a longstanding interest in trade issues undertaken by the OECD. The like-mindedness of the OECD's membership on the core values of democratic institutions, the rule of law, and open markets uniquely positions the OECD to serve as a valuable policy forum for addressing the opportunities and challenges of the global economy and multilateral trading system. On trade and trade policy, the OECD engages in meaningful research, provides a forum where OECD members can discuss complex and sometimes difficult issues, and communicate to the wider public the benefits that trade and open economies generate. Through its multi-disciplinary approach, the OECD offers a distinct advantage in addressing the complex economic effects of trade liberalization.

OECD efforts advance our understanding of how trade openness can bolster economies in member countries as well as in the major emerging and other non-member countries, including through economic modeling that illustrates the effects of trade liberalization on GDP, growth and employment. In recent years, OECD research on the importance of imports in helping firms to cut costs and improve efficiency has advanced understanding of why imports, and not only exports, matter to the health of an economy. The Organization is also active in warning against the dangers of protectionist measures. OECD analysis has helped to identify which policies, among the wide range of measures taken in response to the recent economic crisis, are most supportive of trade, growth and employment.

### **1. Trade Committee Work Program**

In 2011, the OECD Trade Committee, its subsidiary Working Party, and its joint working groups on environment and agriculture, continued to address a number of issues of significance to the multilateral trading system. The Trade Committee met in May and November 2011, and its Working Party met in March, June, October, and December. Members asked the Secretariat to focus its analytical resources on work that would advocate freer trade and deepen understanding of the rationale for progressive trade liberalization in a rules-based environment. Significant attention was paid to the areas of trade and jobs, supply chains, services trade, trade in industrial commodities, and export credits. The Trade Homepage

on the OECD website (<http://www.oecd.org/trade>) contains up-to-date information on published analytical work and other trade-related activities.

Several major analytical pieces were developed or completed under the Trade Committee during 2011. These included:

- Wage Implications of Trade Liberalisation: Evidence for Effective Policy Formation (October 2011), Susan Stone and Ricardo Cavazos Cepeda
- Comparative Advantage and Trade Performance: Policy Implications (October 2011), Przemyslaw Kowalski
- To What Extent Do Exchange Rates and their Volatility Affect Trade? (October 2011), Marilyn Huchet-Bourdon and Jane Korinek
- Trade Facilitation Indicators: The Impact on Trade Costs (September 2011), Evdokia Moïsé, Thomas Orliac and Peter Minor
- Trade in Tasks (August 2011), Rainer Lanz, Sébastien Miroudot and Hildegunn Nordås
- Estimating the Constraints to Trade of Developing Countries (July 2011), Jean-Jacques Hallaert, Ricardo Cavazos Cepeda and Gimin Kang
- Trade in Information and Communications Technology and its Contribution to Trade and Innovation (June 2011), Nobuo Kiriyama
- Intra-Firm Trade: Patterns, Determinants and Policy Implications (June 2011), Sébastien Miroudot and Rainer Lanz
- Trade and Innovation: Pharmaceuticals (April 2011), Nobuo Kiriyama
- The Political Economy of Services in Regional Trade Agreements (April 2011), Craig VanGrasstek
- Transparency Mechanisms and Non-Tariff Measures: Case Studies (April 2011), Evdokia Moïsé
- Dynamic Gains from Trade: The Role of Intermediate Inputs and Equipment Imports (March 2011), Susan Stone and Ben Shepherd
- The Role of Factor Content in Trade (March 2011), Susan Stone, Ricardo Cavazos and Anna Jankowska
- To What Extent Are High-Quality Logistics Services Trade Facilitating? (March 2011), Jane Korinek and Patricia Sourdin
- The Impact of Trade Liberalisation on Jobs and Growth (February 2011), Philippa Dee, Joseph Francois, Miriam Manchin, Hanna Norberg, Hildegunn Kyvik Nordås and Frank van Tongeren

The Trade Committee continued its work developing the Services Trade Restrictiveness Index (STRI), a tool to measure the restrictiveness of barriers affecting trade in services. During 2011, the STRI Steering Group reviewed Secretariat and member country inputs for populating the STRI dataset, and a series of services experts meetings took place to review specific sectors. Consultations with non-members also took place, and there is an active effort to include non-member data in the STRI to ensure that it is a comprehensive tool for trade policy experts.

The OECD Ministerial Council Meeting and 50th Anniversary took place May 25-26, 2011 in Paris. U.S. Trade Representative Ambassador Ron Kirk chaired the Trade Session which focused on trade and jobs and included OECD Members, Enhanced Engagement Partners, accession candidate Russia, and Trade Committee observers Argentina and Hong Kong. Participants underscored the importance of trade for job creation, but regretted that efforts to conclude the Doha Development Agenda were stalled. U.S. Delegate Ambassador Miriam Sapiro noted that maintaining open markets had led to an increase of 17 percent in U.S. exports, but also noted the importance of helping workers adversely affected by trade liberalization. She encouraged a “hard-nosed” discussion of what needed to be done to move the DDA

forward. Members expressed support for the OECD International Collaborative Initiative on Trade and Employment (ICITE) and the STRI.

## **2. Trade Committee Dialogue with Non-OECD Members**

The OECD conducts wide-ranging activities to reach out to non-member countries and to business and civil society, in particular through its series of workshops and “Global Forum” events held around the world each year. Non-members may participate as observers of committees when members believe that participation will be mutually beneficial. Brazil, China, India, Indonesia, and South Africa participate to varying degrees in OECD activities through the Enhanced Engagement program which seeks to establish a more structured and coherent partnership, based on mutual interest, with these five major economies. Argentina, Brazil, and Hong Kong (China) are regular observers to the Trade Committee and its Working Party. The OECD also carries out a number of regional and bilateral cooperation programs with non-members.

The OECD Trade Committee continued its contacts with non-member countries in line with its December 2010 Global Relations Strategy. Enhanced Engagement and G-20 countries were invited to participate in special sessions of the May and November 2011 Trade Committee discussions related to trade and jobs, services trade, food security, trade and development, and trade in commodities. This engagement facilitated discussions promoting the functioning and deepening of the multilateral trading system and increasing transparency of trade policies. Russia, the only accession candidate to the OECD, also continued trade-related work on its OECD accession process throughout 2011.

On September 20, 2011, USTR hosted a presentation and discussion in Washington, D.C. of new projects currently under development by the OECD Trade Committee concerning services trade, and raw materials policies and markets. The Director of the OECD Directorate of Trade and Agriculture, provided information to Washington-based Embassy representatives on the OECD Trade Committee’s efforts to create a STRI as well as to enhance transparency in raw materials policies and markets. Participants engaged in a cross-cutting discussion of issues related to these topics.

The OECD Global Forum on Trade took place on November 8-9, 2011 in Paris, and focused on “trade, jobs and inclusive growth.” The forum presented work under the OECD-led ICITE, a project that brings together 10 international organizations in an effort to deepen our understanding of the linkages between trade and jobs, and to develop policy-relevant conclusions. Keynote speaker Jagdish Bhagwati spoke about trade and its essential role in economic recovery. Other speakers discussed how trade can contribute to better working conditions and higher wages, the interplay between regional trade integration and growth, different means of providing assistance to displaced workers, the need to better communicate the benefits of trade, and that job flexibility, social policies and technological innovation are necessary to ensure that workers displaced by trade can find employment. There was broad agreement among forum participants that trade leads to growth in the long term, but some divergent views on how to deal with labor disruptions that may occur in the short run.

In addition, the Trade Committee continued its dialogue with civil society and discussed aspects of its work and issues of concern with representatives of civil society, including members of the OECD’s Business and Industry Advisory Council and Trade Union Advisory Council.

## **3. Other OECD Work Related to Trade**

Representatives of the OECD member countries meet in specialized committees to advance ideas and review progress in specific policy areas, such as economics, trade, science, employment, education, or

financial markets. There are about 200 committees, working groups and expert groups. Additional information on OECD activities and publications related to trade can be found on the following OECD websites:

- Trade: [www.oecd.org/trade](http://www.oecd.org/trade)
- Trade and development: [www.oecd.org/trade/dev](http://www.oecd.org/trade/dev)
- Trade and environment: [www.oecd.org/trade/env](http://www.oecd.org/trade/env)
- Trade facilitation: [www.oecd.org/trade/facilitation](http://www.oecd.org/trade/facilitation)
- Agricultural trade: [www.oecd.org/agriculture/trade](http://www.oecd.org/agriculture/trade)
- Services trade: [www.oecd.org/trade/services](http://www.oecd.org/trade/services)
- Anti-Bribery Convention: [www.oecd.org/corruption](http://www.oecd.org/corruption)
- Export credits: [www.oecd.org/trade/xcred](http://www.oecd.org/trade/xcred)
- Employment, Labor and Social Affairs: [www.oecd.org/els](http://www.oecd.org/els)
- Fisheries: [www.oecd.org/fisheries](http://www.oecd.org/fisheries)
- Regulatory Reform: [www.oecd.org/regreform](http://www.oecd.org/regreform)
- Steel: [www.oecd.org/sti/steel](http://www.oecd.org/sti/steel)

# V. TRADE ENFORCEMENT ACTIVITIES

## A. Enforcing U.S. Trade Agreements

### 1. Overview

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

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

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

To ensure the enforcement of WTO agreements, the United States has been one of the world's most frequent users of WTO dispute settlement procedures. Since the establishment of the WTO in 1994, the United States has filed 99 complaints at the WTO, thus far successfully concluding 65 of them by settling 28 cases favorably and prevailing in 37 others through litigation before WTO panels and the Appellate Body. The United States has obtained favorable settlements and favorable rulings in virtually all sectors, including manufacturing, intellectual property, agriculture, and services. These cases cover a number of WTO agreements—involving rules on trade in goods, trade in services, and intellectual property protection—and affect a wide range of sectors of the U.S. economy.

### **a. Satisfactory settlements**

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

The United States has been able to achieve this preferred result in 28 cases concluded so far, involving: Argentina's protection and enforcement of patents; Australia's ban on salmon imports; Belgium's duties on rice imports; Brazil's automotive investment measures; Brazil's patent law; Canada's antidumping and countervailing duty investigation on corn; China's value added tax; China's prohibited subsidies; China's treatment of foreign financial information suppliers; China's government support tied to promotion of Chinese brand names abroad; China's subsidies for so-called Famous Brands; Denmark's civil procedures for intellectual property enforcement; Egypt's apparel tariffs; the EU's market access for grains; an EU import surcharge on corn gluten feed; Greece's protection of copyrighted motion pictures and television programs; Hungary's agricultural export subsidies; Ireland's protection of copyrights; Japan's protection of sound recordings; Korea's shelf-life standards for beef and pork; Mexico's restrictions on hog imports; Pakistan's protection of patents; the Philippines' market access for pork and poultry; the Philippines' automotive regime; Portugal's protection of patents; Romania's customs valuation regime; Sweden's enforcement of intellectual property rights; and Turkey's box office taxes on motion pictures.

### **b. Litigation successes**

When U.S. trading partners have not been willing to negotiate settlements, the United States has pursued its cases to conclusion, prevailing in 37 cases to date. In 2011, the United States prevailed in a case involving the EU's subsidies to Airbus for large civil aircraft and the Philippines' discriminatory taxation of imported distilled spirits. Also, in 2011, following dispute settlement consultations, China ended its wind power equipment subsidies. In prior years, the United States prevailed in cases involving: Argentina's tax and duties on textiles, apparel, and footwear; Australia's export subsidies on automotive leather; Canada's barriers to the sale and distribution of magazines; Canada's export subsidies and an import barrier on dairy products; Canada's law protecting patents; China's charges on imported automobile parts; China's measures restricting trading rights and distribution services for certain publications and audiovisual entertainment products; China's enforcement and protection of intellectual property rights; the EU's import barriers on bananas (including a subsequent compliance proceeding); the EU's ban on imports of beef; the EU's regime for protecting geographical indications; the EU's moratorium on biotechnology products; the EU's non-uniform classification of LCD monitors; the EU's tariff treatment of certain information technology products; India's import bans and other restrictions on 2,700 items; India's protection of patents on pharmaceuticals and agricultural chemicals; India's and Indonesia's discriminatory measures on imports of U.S. automobiles; Japan's import restrictions for different varieties of fruit purportedly to protect against the codling moth pest; Japan's barriers to apple imports allegedly to guard against the fire blight disease; Japan's and South Korea's discriminatory taxes on distilled spirits; South Korea's restrictions on beef imports; Mexico's antidumping duties on high fructose corn syrup; Mexico's telecommunications barriers; Mexico's antidumping duties on rice; Mexico's discriminatory soft drink tax; and Turkey's measures affecting the importation of rice.

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

## **2. WTO Dispute Settlement**

U.S. enforcement successes in 2011 include Appellate Body rulings against more than \$18 billion in subsidies conferred on Airbus by the EU, France, Germany, Spain, and the UK—the largest case heard by the WTO to date—as well as against the Philippines’ discriminatory tax regime for distilled spirits. In addition, the United States obtained from the Appellate Body an important victory in a dispute brought by China against additional duties imposed by the United States on imports of Chinese tires under the transitional safeguard mechanism included in China’s Protocol of Accession to the WTO. Also in 2011, China ended certain wind power equipment subsidies following the initiation of a dispute by the United States.

The United States launched one new WTO dispute in 2011, requesting WTO consultations with China regarding China’s imposition of antidumping duties and countervailing duties on imports of chicken broiler products from the United States. Other ongoing enforcement actions include disputes involving the EU’s ban on the importation and marketing of U.S. poultry; China’s procedures and final determinations in its antidumping and countervailing duty investigations of grain oriented flat-rolled electrical steel from the United States; Chinese measures affecting electronic payment services (EPS); China’s subsidies on wind power equipment; and China’s export quotas and export tariffs on various raw materials.

The cases described in Chapter II of this report further demonstrate the importance of the WTO dispute settlement process in opening foreign markets and securing other countries’ compliance with their WTO obligations. Further information on WTO disputes to which the United States is a party is available on the USTR website: <http://www.ustr.gov/trade-topics/enforcement/overview-dispute-settlement-matters>.

## **3. Other Monitoring and Enforcement Activities**

### **a. Subsidies Enforcement**

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

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

Subsidies Agreement. The IA's Subsidies Enforcement Office (SEO) is the specific office charged with carrying out these duties.

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

During 2011, USTR and IA staff have handled numerous inquiries and met with representatives of U.S. industries concerned with the subsidization of foreign competitors. These efforts continue to be importantly enhanced by IA officers stationed overseas (*e.g.*, in China), who help gather, clarify, and check the accuracy of information concerning foreign subsidy practices. For instance, IA officers enhanced efforts with respect to China's subsidies on wind power equipment, which China ended in 2011 following dispute settlement consultation. State Department officials at posts where IA staff are not present have also handled such inquiries.

The SEO's electronic subsidies database continues to fulfill the goal of providing the U.S. trading community with a centralized location to obtain information about the remedies available under the Subsidies Agreement and much of the information that is needed to develop a countervailing duty case or a WTO subsidies complaint. The website (<http://eset.trade.gov>) includes foreign governments' subsidies notifications made to the WTO, an overview of the SEO, helpful links, and an easily navigable tool that provides information about each subsidy program investigated by Commerce in CVD cases since 1980. This database is frequently updated, making information on subsidy programs quickly available to the public.

#### **b. Monitoring and Challenging Foreign Antidumping, Countervailing Duty and Safeguard Actions**

The WTO Agreement on Implementation of Article VI (Antidumping Agreement) and the WTO Agreement on Subsidies and Countervailing Measures permit WTO Members to impose antidumping (AD) or CVDs to offset injurious dumping or subsidization of products exported from one Member to another. The United States actively participates in ongoing AD and CVD cases conducted by foreign countries in order to safeguard the interests of U.S. industry and to ensure that Members abide by their WTO obligations in conducting such proceedings. The United States also closely monitors antidumping and countervailing duty proceedings initiated against U.S. exporters to ensure that foreign antidumping and countervailing duty actions are administered fairly and in full compliance with WTO rules.

To this end, the United States works closely with U.S. companies affected by foreign countries' AD and CVD investigations in an effort to help them better understand Members' AD and CVD systems. The United States also advocates on their behalf in connection with ongoing investigations, with the goal of obtaining fair and objective treatment for them consistent with the WTO Agreements. In addition, with regard to CVD cases, the United States provides extensive information in response to questions from foreign governments regarding the subsidy allegations at issue in a particular case.

Further, IA tracks foreign AD and CVD actions, as well as safeguard actions involving U.S. exporters, enabling U.S. companies and U.S. Government agencies to monitor other Members' administration of such actions. Information about foreign trade remedy actions affecting U.S. exports is accessible to the

public via IA's website at <http://ia.ita.doc.gov/trcs/index.html>. The stationing of IA officers to certain overseas locations and close contacts with U.S. government officers stationed in embassies worldwide has contributed to the Administration's efforts to monitor the application of foreign trade remedy laws with respect to U.S. exports.

During the past year, several trade remedy proceedings involving exports from the United States were closely monitored, or challenged at the WTO, including: Argentina's investigations of coated paper and polyvinyl chloride; Australia's investigation of structural timber; Brazil's investigations of light weight coated paper, n-butanol, and toluene diisocyanate; Canada's expiry review of copper pipe fittings and whole potatoes; China's investigations of automobiles, caprolactam, broiler chicken products, coated bleached folding board, distillers' dried grains, grain-oriented flat-rolled electrical steel, optical fiber, and photographic paper; the European Union's investigations involving vinyl acetate and bioethanol and a circumvention review of the order involving biodiesel; Honduras' investigation of latex paint; India's investigations of certain rubber chemicals, polypropylene, rolled stainless steel and soda ash; Mexico's investigation of chicken; Panama's investigation of latex paint; and, South Africa's expiry review of chicken products. IA personnel have also participated in technical exchanges with the administering authorities of Australia, Brazil, China, the European Union, and Vietnam to obtain a better understanding of these countries' administration of trade remedy laws and compliance with WTO obligations.

Members must notify, on an ongoing basis and without delay, their preliminary and final determinations to the WTO. Twice a year, WTO Members must also notify the WTO of all AD and CVD actions they have taken during the preceding six-month period. The actions are identified in semiannual reports submitted for discussion in meetings of the relevant WTO committees. Finally, Members are required to notify the WTO of changes in their AD and CVD laws and regulations. These notifications are accessible through the USTR and IA website links to the WTO's website.

#### **4. Initiatives to Address Foreign Standards and SPS Barriers**

In July 2009, Ambassador Ron Kirk announced on behalf of the Obama Administration its intention to make enforcement of trade agreements a centerpiece of U.S. trade policy. Specifically, the Administration will deploy resources more effectively to identify and confront unnecessary or unjustified barriers stemming from sanitary and phytosanitary (SPS) measures as well as technical regulations, standards, and conformity assessment procedures (standards-related measures) that restrict U.S. exports of safe, high quality products. SPS measures, technical regulations, and standards serve a vital role in safeguarding countries and their people, including protecting lives, health, safety, and the environment. Conformity assessment procedures are normal, legitimate day-to-day activities that contribute, *inter alia*, to increasing confidence between trading partners by ensuring that products traded internationally comply with underlying standards and technical requirements. However, it is important that SPS and standards-related measures do not act as discriminatory or otherwise unwarranted restrictions on market access for U.S. exports. For this reason, U.S. trade agreements provide that, although countries may adopt SPS and standards-related measures to meet legitimate objectives such as the protection of health and safety as well as the environment, the measures they adopt in pursuit of such objectives must not act as unnecessary obstacles to trade. Stepped up monitoring of trading partners' practices and increased engagement with them can help ensure that U.S. trading partners are complying with their obligations and can help facilitate trade in safe, high quality U.S. products.

As part of this intensified effort to identify and eliminate or alleviate such barriers, in March 2010 USTR published two new reports, the Report on Technical Barriers to Trade (TBT) and the Report on Sanitary and Phytosanitary Measures. Both of these reports serve as tools to bring greater attention and focus to addressing SPS and standards-related measures that may be inconsistent with international trade

agreements to which the United States is a party or that otherwise act as significant barriers to U.S. exports and thereby support efforts to gain market access for American farmers, ranchers, and businesses. The second annual report on TBT and SPS was published in March 2011. These annual reports are based on assessments from other government agencies, including from commercial, agricultural, and foreign service officers stationed abroad, and submissions from industry and other interested stakeholders.

These reports also describe the actions that the United States has taken to address the specific trade concerns identified through these efforts, as well as ongoing processes for monitoring SPS and standards-related actions that affect trade. USTR's activities in the WTO SPS Committee and the WTO TBT Committee are at the forefront of these efforts. (*For additional information, see Chapter II.E.3 and Chapter II.E.8.*) USTR also engages on these issues through, *inter alia*, mechanisms established by free trade agreements, such as NAFTA, and through other regional and multilateral organizations, such as APEC and the OECD.

USTR will issue new, up-to-date TBT and SPS Reports in 2012 to continue to highlight the increasingly critical nature of these issues to U.S. trade policy, to identify and call attention to problems resolved during 2011, in part as models for resolving ongoing issues, and to signal new or existing areas in which more progress needs to be made. These updates, and the actions highlighted therein will be based in part on the input USTR receives from stakeholders. In October 2011, USTR issued a *Federal Register* Notice requesting producers, growers, industry, and other members of the public to submit views on SPS and standards-related measures that act as significant barriers to U.S. exports.

## **B. U.S. Trade Laws**

### **1. Section 301**

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

#### **a. Operation of the Statute**

The Section 301 provisions of the Trade Act provide a domestic procedure whereby interested persons may petition the USTR to investigate a foreign government act, policy, or practice that may be burdening or restricting U.S. commerce and take appropriate action. USTR also may self-initiate an investigation.

In each investigation, USTR must seek consultations with the foreign government, whose acts, policies, or practices are under investigation. If the consultations do not result in a settlement and the investigation involves a trade agreement, Section 303 of the Trade Act requires USTR to use the dispute settlement procedures that are available under that agreement. Section 304 of the Trade Act requires USTR to determine whether the acts, policies, or practices in question deny U.S. rights under a trade agreement or whether they are unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce. If the acts, policies, or practices are determined to violate a trade agreement or to be unjustifiable, USTR must take action. If they are determined to be unreasonable or discriminatory and to burden or restrict U.S. commerce, USTR must determine whether action is appropriate and if so, what action to take.

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

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

#### **b. Developments during 2011**

During 2011, USTR received three petitions requesting the initiation of investigations. In addition, there were developments relating to the Section 301 investigations described in parts c and d below.

The first petition, filed in March 2011, alleged that acts, policies, and practices of the government of Germany regarding requirements for access to the German bar aptitude examination: (1) breach the national treatment obligations of the Treaty of Friendship, Commerce, and Navigation Between the United States and the Federal Republic of Germany (FCN Treaty); (2) breach the most favored nation obligations of the FCN Treaty; and (3) constitute unreasonable and discriminatory treatment of U.S. citizens. USTR decided not to initiate an investigation in response to the petition on several grounds, including that the petition failed to include sufficient information on burdens or restrictions on U.S. commerce arising from the alleged requirements for access to the German bar aptitude examination.

The second petition, filed in May 2011, alleged that the government of the Dominican Republic expropriated property without adequate compensation, resulting in: (1) an alleged breach of the Dominican Republic's obligations under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) and (2) otherwise unreasonable and discriminatory treatment. USTR decided not to initiate an investigation in response to the petition on several grounds, including that the petition addressed the alleged expropriation of property not owned by a U.S. investor.

The third petition, also filed in May 2011, addressed alleged conduct of the government of Israel during the negotiation in the 1980s of the United States-Israel Free Trade Agreement, and alleged that this conduct resulted in economic harm to a range of U.S. industries. USTR decided not to initiate an investigation in response to the petition on the grounds: (1) that the petitioner lacked standing; and (2) that the petition failed to allege the existence of any act, policy, or practice of the government of Israel that might be actionable under Section 301.

#### **c. China – Acts, Policies and Practices Affecting Trade and Investment in Green Technology**

On September 9, 2010, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO CLC (“USW”) filed a petition under Section 302 of the Trade Act of 1974 addressed to China's acts, policies, and practices affecting trade and investment in green technologies. The petition covered: export restraints on rare earth minerals, tungsten, and antimony; allegedly prohibited subsidies contingent on export performance, or on the use of domestic over imported goods, affecting a variety of products, including wind turbines; discrimination against foreign companies and goods, including with respect to wind and solar power projects; technology transfer as a requirement for approval of foreign investments in China; and domestic subsidy programs that are allegedly causing serious prejudice to U.S. interests, including subsidies supporting renewable energy industries. The petition alleged that China's acts, policies, and practices violate China's WTO

commitments under the GATT 1994, under the Subsidies and Countervailing Measures Agreement (SCM Agreement), and under China's Protocol of Accession to the WTO.

On October 15, 2010, USTR initiated an investigation under Section 302 of the Trade Act with respect to the acts, policies, and practices of China identified in the petition. Pursuant to Section 303(b) of the Trade Act, USTR decided to delay for up to 90 days the request for consultations with the government of China for the purpose of verifying and improving the petition. During the period of delay provided for under Section 303(b), USTR sought information and advice from the petitioner and the appropriate committees established pursuant to Section 135 of the Trade Act. The U.S. Trade Representative took account of this information and advice, as well as public comments submitted in response to the notice of initiation, in improving and verifying the petition during the delay period.

As a result of those efforts, USTR verified and improved claims involving subsidies provided by China on wind power equipment under its Wind Power Equipment Fund. In particular, USTR verified that China's Wind Power Equipment Fund provides grants that appear to be contingent on the use of domestic over imported wind power equipment, and thus appears to be a prohibited subsidy that is inconsistent with China's obligations under Article 3 of the SCM Agreement. In addition, as it appears that China has neither made available a translation of the measure into a WTO official language nor notified it to the WTO, China appears to have failed to comply with its transparency obligations under the WTO Agreement. Accordingly, on December 22, 2010, the United States requested WTO dispute settlement consultations regarding China's Wind Power Equipment Fund.

USTR was not able to verify and improve claims with respect to the remaining acts, policies, and practices covered in the USW petition. Those matters were not included in the request for consultations and were not continued in the investigation under Section 302(b). However, USTR continues to have serious concerns with these acts, policies and practices and their effects on U.S. workers and businesses and will continue to work with the petitioner and other stakeholders to develop additional information and effective means for addressing these matters.

In February 2011, the United States and China held consultations with regard to the issues raised in the December 2010 request. Following the consultations, China issued a notice invalidating the measures that had created Wind Power Equipment Fund. (*For additional information on the WTO dispute involving China's Wind Power Equipment Fund, see Chapter II.H.a.*)

#### **d. European Communities – Measures Concerning Meat and Meat Products (Hormones)**

A directive of the European Communities (EC or European Union (EU) as of December 2009) prohibits the import into the EU of animals and meat from animals to which certain hormones have been administered (the "hormone ban"). This measure has the effect of banning most imports of beef and beef products from the United States. A WTO panel and the Appellate Body found that the hormone ban was inconsistent with the EU's WTO obligations because the ban was not based on scientific evidence, a risk assessment, or relevant international standards. Under WTO procedures, the EC was to have come into compliance with its obligations by May 13, 1999, but it failed to do so. Accordingly, in May 1999, the United States requested authorization from the Dispute Settlement Body (DSB) to suspend the application to the EC, and Member States thereof, of tariff concessions and related obligations under the GATT 1994. The EC did not contest that it had failed to comply with its WTO obligations, but it objected to the level of suspension proposed by the United States.

On July 12, 1999, WTO arbitrators determined that the level of nullification or impairment suffered by the United States as a result of the EC's WTO inconsistent hormone ban was \$116.8 million per year. Accordingly, on July 26, 1999, the DSB authorized the United States to suspend the application to the EC

and its Member States of tariff concessions and related obligations under the GATT 1994 covering trade up to \$116.8 million per year. In a notice published in the *Federal Register* in July 1999, USTR announced that the United States was exercising this authorization by using authority under Section 301 to impose 100 percent *ad valorem* duties on a list of certain products (the “retaliation list”) of certain EC Member States.

In February 2005, a WTO panel was established to consider the EC’s claims that it had brought its hormone ban into compliance with the EC’s WTO obligations and that the increased duties imposed by the United States were no longer covered by the DSB authorization. The WTO panel concluded its work in 2008, and the panel report was appealed to the WTO Appellate Body. In October 2008, the Appellate Body confirmed that the July 1999 DSB authorization to the United States to suspend the application of tariff concessions and related obligations remained in effect.

Section 307(c) of the Trade Act provides for USTR to conduct a review of a Section 301 action four years after the action was taken. During 2008, the U.S. Court of International Trade held that USTR must also conduct a Section 307(c) review eight years after the action was taken. Accordingly, in a remand from the U.S. Court of International Trade, USTR proceeded to conduct such a review.

In January 2009, USTR announced the results of the Section 307(c) review and reported the results of the remand proceeding to the U.S. Court of International Trade. USTR decided to modify the action taken in July 1999 by: (1) removing some products from the list of products subject to 100 percent *ad valorem* duties since July 1999; (2) imposing 100 percent *ad valorem* duties on some new products from certain EC member States; (3) modifying the coverage with respect to particular EC member States; and (4) raising the level of duties on one of the products that was being maintained on the product list. The trade value of the products subject to the modified action continued not to exceed the \$116.8 million per year level authorized by the WTO in July 1999. The effective date of the modifications was to be March 23, 2009.

In March 2009, USTR decided to delay the effective date of the additional duties (items two through four above) imposed under the January 2009 modifications in order to allow additional time for reaching an agreement with the EC that would provide benefits to the U.S. beef industry. The effective date of the removal of duties under the January modifications remained March 23, 2009. Accordingly, subsequent to March 23, 2009, the additional duties put in place in July 1999 remained in place on a reduced list of products.

In May 2009, the United States and the EC announced the signing of a Memorandum of Understanding (MOU) in the EC-Beef Hormones dispute. Under the first phase of the MOU, the EC is obligated to open a new beef tariff-rate quota (TRQ) for beef not produced with certain growth-promoting hormones in the amount of 20,000 metric tons at zero rate of duty. The United States in turn is obligated not to increase additional duties above those in effect as of March 23, 2009. The first phase of the MOU concludes on August 3, 2012. Under a possible second phase of the MOU, the EU would expand the beef TRQ to 45,000 metric tons, and the United States would suspend all additional duties imposed in connection with the Beef Hormones dispute.

In June 2009, the U.S. Court of International Trade rejected the USTR’s January 2009 results of the remand proceeding. The United States appealed the U.S. Court of International Trade decision to the U.S. Court of Appeals for the Federal Circuit.

In August 2009, the EC opened the new beef TRQ, and USTR published a notice seeking comments on the actions necessary to implement U.S. obligations under the first phase of the MOU and to pursue additional market access under subsequent phases of the MOU.

In September 2009, after consideration of the comments received in response to the August notice, USTR took action under Section 301 necessary to implement U.S. obligations under the first phase of the MOU and to pursue additional market access under subsequent phases of the MOU. In particular, the USTR terminated the additional duties that were announced in January 2009 but had been delayed up to that time and had never entered into force. The USTR's September 2009 action left in place the additional duties that had been in effect since March 23, 2009 on a reduced list of products.

In October 2010, the U.S. Court of Appeals for the Federal Circuit affirmed the June 2009 decision of the U.S. Court of International Trade.

In May 2011, USTR decided to respond to the court decision by terminating the remaining additional duties in advance of the August 2012 start date of the possible second phase of the MOU. The United States continues to have an authorization from the WTO DSB, and the right under the MOU, to suspend concessions on EU products. USTR determined not to take steps at this time to exercise these rights: (1) because the MOU is operating successfully by providing increased market access to U.S. beef producers; (2) in light of the fact that all additional duties would have to be removed in August 2012 under the possible second phase of the MOU; and (3) in order to encourage continued cooperation under the MOU. USTR will continue to monitor EU implementation of the MOU and other developments affecting market access for U.S. beef products. If EU implementation and other developments do not proceed as contemplated, USTR will consider additional actions under Section 301 of the Trade Act.

## **2. Special 301**

Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act (enacted in 1994), USTR must identify those countries that deny adequate and effective protection for intellectual property rights (IPR) or deny fair and equitable market access for persons that rely on intellectual property protection. Countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are designated as "Priority Foreign Countries," unless those countries are entering into good faith negotiations, or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of IPR. Priority Foreign Countries are subject to an investigation under the Section 301 provisions of the Trade Act of 1974, unless USTR determines that the investigation would be detrimental to U.S. economic interests.

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

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

The Special 301 list not only indicates those trading partners whose intellectual property protection and enforcement regimes most concern the United States, but also alerts firms considering trade or investment relationships with such countries that their intellectual property rights may not be adequately protected.

### **a. 2011 Special 301 Review Announcements**

On May 2, 2011, the United States announced the results of the 2011 Special 301 annual review. The 2011 report reflects the Obama Administration's resolve to encourage and help maintain effective IPR protection and enforcement worldwide. It identifies a wide range of serious concerns, from troubling "indigenous innovation" policies that may unfairly disadvantage U.S. rights holders in China, to the continuing challenges of Internet piracy in countries such as Canada, Spain, Italy, and Russia, and the ongoing systemic IPR enforcement challenges in many countries around the world. Positive accomplishments recognized in the 2011 report included completion of the Anti-Counterfeiting Trade Agreement negotiations, enactment of legislation granting *ex officio* authority to Mexican law enforcement officials, enactment of legislation to address unauthorized camcording of motion pictures in theaters in the Philippines, enactment of four pieces of IPR legislation by Russia (which addressed the legislative commitments made in the 2006 Bilateral Agreement on Protection and Enforcement of Intellectual Property Rights), and passage of legislation in Spain that will provide a mechanism for rights holders to remove or block access to infringing content online. In addition, in the 2011 Special 301 Report, USTR invited any trading partner appearing on the Priority Watch List or Watch List to work with the United States to develop a mutually agreed action plan designed to lead to that trading partner's removal from the relevant list.

The 2011 Special 301 review process examined IPR protection and enforcement in 77 countries. Following extensive research and analysis, USTR designated the 42 countries below as follows:

- Priority Watch List: Algeria, Argentina, Canada, Chile, China, India, Israel, Indonesia, Pakistan, Russia, Thailand, Venezuela.
- Watch List: Belarus, Bolivia, Brazil, Brunei, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, Finland, Greece, Guatemala, Italy, Jamaica, Kuwait, Lebanon, Malaysia, Mexico, Norway, Peru, Philippines, Romania, Spain, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan, Vietnam.
- Section 306 Monitoring: Paraguay.

USTR also announced that it would conduct an out-of-cycle review of Italy to monitor progress on IPR protection and enforcement, in particular in the area of piracy over the Internet.

USTR continued its enhanced approach to public engagement activities in this year's Special 301 process. These activities are designed to ensure that Special 301 decisions are based on a robust understanding of complicated intellectual property issues, and to help facilitate a sound, well-balanced assessment of IPR protection and enforcement in particular trading partners. USTR requested written submissions from the public through a notice published in the *Federal Register* on December 30, 2010. The 2011 review yielded 49 comments from interested parties, which are available to the public online at <http://www.regulations.gov>, docket number USTR-2010-0037. Further, on March 2, 2011, USTR conducted a public hearing in which interested persons testified before the interagency Special 301 subcommittee. The hearing included testimony from 17 witnesses, ranging from foreign governments to industry representatives to non-governmental organizations. A transcript of the hearing is available at <http://www.ustr.gov>.

USTR has identified notorious markets in the Special 301 Report since 2006. In 2010, USTR announced that it would begin to publish the Notorious Markets List separately from the Special 301 Report, as an "Out-of-Cycle Review of Notorious Markets," in order to increase public awareness and guide related

enforcement efforts. Notorious Markets are marketplaces that have been the subject of enforcement action or that may merit further investigation for possible intellectual property rights infringements.

The first Notorious Markets List was published in February 2011, and identified concerns with markets such as the China-based Baidu, which exemplified the problem of online services providing links to online locations containing allegedly infringing materials. The second Notorious Markets List, published in December 2011, highlighted positive action by certain markets identified in the February 2011 list, while also identifying concerns with other markets. The markets in which such positive developments occurred included Baidu, which entered into a landmark licensing agreement with U.S. and other rights holders from the recording industry, and the Ladies Market in Hong Kong, where local customs officials took action to remove allegedly infringing goods from the premises. Additionally, officials at the Savelovskiy Market in Russia implemented an action plan to stop the distribution of infringing goods. Based on these positive developments, these three markets were removed from the December 2011 Notorious Markets List.

### **3. Section 1377 Review of Telecommunications Agreements**

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

The 2011 Section 1377 Review focused on a range of concerns, including: increases in fixed and mobile call termination rates in Ghana, Jamaica, Tonga; problems relating to access to major supplier networks in Chile, Germany, India, and Mexico; issues relating to licensing, transparency and regulatory requirements in China, Costa Rica, and India, and issues affecting the telecommunications equipment trade in Brazil, Chile, China, Costa Rica, India, Israel, and Mexico.

### **4. Antidumping Actions**

Under the antidumping law, duties are imposed on imported merchandise when the U.S. Department of Commerce (Commerce) determines that the merchandise is being dumped (sold at “less than fair value”) and the U.S. International Trade Commission (USITC) determines that there is material injury or threat of material injury to the domestic industry, or material retardation of the establishment of an industry, “by reason of” those imports. The antidumping law’s provisions are incorporated in Title VII of the Tariff Act of 1930 and have been substantially amended by the Trade Agreements Act of 1979, the Trade and Tariff Act of 1984, the Trade and Competitiveness Act of 1988, and the 1994 Uruguay Round Agreements Act.

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

After initiation, the USITC decides, generally within 45 days of the filing of the petition, whether there is a “reasonable indication” of material injury or threat of material injury to a domestic industry, or material retardation of an industry’s establishment, “by reason of” the allegedly dumped imports. If this

preliminary injury determination by the USITC is negative, the investigation is terminated and no duties are imposed; if it is affirmative, Commerce will make preliminary and final determinations concerning the allegedly dumped sales into the U.S. market. If Commerce's preliminary determination is affirmative, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries and require importers to post a bond or cash deposit equal to the estimated weighted-average dumping margin.

If Commerce's final determination regarding dumping is negative, the investigation is terminated and no duties are imposed. If affirmative, the USITC makes a final injury determination. If the USITC determines that there is material injury or threat of material injury, or material retardation of an industry's establishment, by reason of the dumped imports, an antidumping order is issued. U.S. Customs and Borders Protection (CBP) collects antidumping duties on imported goods. If the USITC's final injury determination is negative, the investigation is terminated and the cash deposits are refunded or the bonds posted are released.

Upon request of an interested party, Commerce conducts annual reviews of dumping margins pursuant to Section 751 of the Tariff Act of 1930. Section 751 also provides for Commerce and USITC review in cases of changed circumstances and periodic review in conformity with the five-year "sunset" provisions of the U.S. antidumping law and the WTO Antidumping Agreement.

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

The United States initiated 15 antidumping investigations in 2011 and imposed 5 antidumping orders.

## **5. Countervailing Duty Actions**

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

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

On December 19, 2011, the U.S. Court of Appeals for the Federal Circuit handed down its decision in *GPX International Tire Corp. v. United States* (GPX). The GPX decision holds that the U.S. Department of Commerce may not apply countervailing duties to merchandise from any country that Commerce has

found to be a nonmarket economy country for purposes of the antidumping law. If this decision becomes final it is likely to lead to: (1) the revocation of numerous countervailing duty orders against China and Vietnam; and (2) the inability of the U.S. Department of Commerce to initiate and/or conduct new countervailing duty investigations against nonmarket economy countries.

Commerce Department Secretary Bryson and U.S. Trade Representative Kirk have publicly called for the passage of legislation as quickly as possible clarifying that the CVD law can be applied to subsidized goods from nonmarket economy countries. They have made clear that the matter is urgent, and indicated that they are prepared to work with Congress to enact this legislation swiftly. Discussions are ongoing about the most appropriate legislative proposal. Commerce, working through the U.S. Department of Justice, has also sought and received an extension of time until March 2, 2012, to request a rehearing by the full court of the GPX decision. In short, the Administration is pursuing all avenues to address this unfortunate court ruling.

The United States initiated nine CVD investigations and imposed three new CVD orders in 2011.

## **6. Other Import Practices**

### **a. Section 337**

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

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

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

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

In 2011, the USITC instituted 68 new Section 337 investigations, and one new enforcement proceeding. During the year, the USITC issued 7 general exclusion orders, 7 limited exclusion orders, and 29 cease and desist orders covering imports, as follows: *Certain Inkjet Ink Supplies and Components Thereof*, No. 337-TA-691 (a general exclusion order and a cease and desist order); *Certain Automotive Vehicles and Designs Therefore*, 337-TA-722 (a limited exclusion order and two cease and desist orders); *Certain MEMS Devices and Products Containing Same*, 337-TA-700 (a limited exclusion order); *Certain Foam Footwear*, 337-TA-567 (a general exclusion order and three cease and desist orders); *Certain Birthing Simulators and Associated Systems* (a limited exclusion order and a cease and desist order); *Certain Coaxial Cable Connectors and Components Thereof and Products Containing the Same*, 337-TA-650 (a general exclusion order and a limited exclusion order); *Certain Toner Cartridges and Components Thereof*, 337-TA-740 (a general exclusion order and 19 cease and desist orders); *Certain Radio Control Hobby Transmitters and Receivers and Products Containing Same*, 337-TA-763 (a limited exclusion order); *Certain Inkjet Ink Cartridges with Printheads and Components Thereof*, 337-TA-723 (a general exclusion order); *Certain Biometric Scanning Devices, Components Thereof, Associated Software, and Products Containing the Same*, 337-TA-720 (a limited exclusion order and a cease and desist order); *Certain Inkjet Ink Supplies and Components Thereof*, 337-TA-730 (a general exclusion order); *Certain Electronic Paper Towel Dispensing Devices and Components Thereof*, 337-TA-718 (a general exclusion order and two cease and desist orders).

#### **b. Section 201**

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

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

As of January 1, 2012, the United States had no measures in place under Section 201. The United States did not impose any Section 201 measures during 2011, and did not commence any safeguard investigations.

### **c. Section 421**

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

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

China's terms of accession also permit a WTO Member to limit imports where a China-specific safeguard measure imposed by another Member causes or threatens to cause significant diversions of trade into the first Member's market. The trade diversion provision is implemented in U.S. law by Section 422 of the Trade Act of 1974, as amended.

In April 2009, the United Steelworkers Union filed a petition under Section 421 with respect to certain passenger vehicle and light truck tires. On September 11, 2009, following an affirmative market disruption finding by the USITC, the President issued a determination imposing additional duties on such tires for a period of three years. The additional duties, which went into effect on September 26, 2009, were set at 35 percent *ad valorem* for the first year, 30 percent *ad valorem* for the second year, and 25 percent *ad valorem* for the third year. The duties are set to expire on September 25, 2012.

On September 14, 2009, China requested consultations with the United States in the WTO with respect to the imposition of the additional duties. China alleged that the additional duties imposed by the President were inconsistent with GATT 1994, the Agreement on Safeguards and China's Protocol of Accession. China also alleged that the USITC's determination of market disruption was inconsistent with the Protocol of Accession. In addition, China alleged that the level and duration of the duties were inconsistent with the Protocol of Accession. Finally, China alleged that the section 421 definition of "significant cause" was in and of itself inconsistent with the Protocol of Accession. The WTO established a panel in January 2010 to hear this dispute. In a report circulated on December 13, 2010, the panel found in favor of the United States with respect to all of China's claims. China appealed with respect to the panel's findings regarding the USITC's determination. The Appellate Body upheld all of the panel's findings in a report circulated on September 5, 2011.

## **7. Trade Adjustment Assistance**

### **a. Overview and Assistance for Workers**

The Trade Adjustment Assistance for Workers (TAA), Alternative Trade Adjustment Assistance (ATAA), and Reemployment Trade Adjustment Assistance (RTAA) programs are authorized under Title II of the Trade Act of 1974, as amended. These programs, collectively referred to as Trade Adjustment Assistance (TAA), provide assistance to workers who have been adversely affected by foreign trade.

On February 17, 2009, President Obama signed into law the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA), as part of the American Recovery and Reinvestment Act of 2009. The TGAAA reauthorized TAA; expanded TAA coverage to more workers, including workers in the service sector; expanded benefits to workers whose jobs have been outsourced to foreign countries; improved workers' training options; and increased the affordability of health insurance premiums. The reauthorization also expanded the scope of the TAA programs to better assist adversely affected workers in finding new employment. It authorized funding for employment and case management services and encouraged the type of long-term training necessary for jobs in the 21st century economy through an extension of income support, an increase in the cap for training funding, and access to training for adversely affected incumbent workers. The TGAAA lapsed on February 12, 2011. On October 21, 2011, President Obama signed the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), which preserves the key goals of the 2009 program – such as covering service workers and workers whose jobs shift to China, India, and all countries – to ensure workers harmed by trade have the best opportunity to acquire skills and credentials to get good jobs. Consistent with the overarching focus of all Federal programs at this time, this agreement contains several provisions designed to ensure that the program delivers necessary services in a way that is more efficient and cost effective. The passage of these critical elements of TAA will give trade-affected workers the best opportunity to retrain and retool for the 21st century economy to get good jobs that keep them in the middle class.

The TAA program currently offers the following services to eligible workers: training; weekly income support; out-of-area job search and relocation allowances; case management and employment services; assistance with payments for health insurance coverage through the utilization of the Health Coverage Tax Credit (HCTC); and wage insurance for some older workers. In FY 2011, \$704,005,680 was allocated to state governments to fund and administer TAA benefits.

For a worker to be eligible to apply for TAA, the worker must be part of a group of workers that is the subject of a petition filed with the U.S. Department of Labor. Three workers of a company, a company official, a union or other duly authorized representative, or a One-Stop Career Center operator or One-Stop partner may file that petition with the Department of Labor. In response to the filing, the Department of Labor institutes an investigation to determine whether foreign trade was an important cause of the workers' job loss or threat of job loss. If the Department of Labor determines that the workers meet the statutory criteria for group certification of eligibility for the workers in the group to apply for TAA, the Department of Labor grants the petition and issues a certification.

The Department of Labor administers the TAA program through the Employment and Training Administration (ETA), with states acting as agents of the United States in administering TAA benefits for members of TAA-certified worker groups. Once covered by a certification, individual workers apply for benefits and services through the One-Stop delivery system. Local One-Stop Career Centers can be found on the Internet at <http://www.servicelocator.org> or by calling 1-877-US2-JOBS. Most benefits and services have specific individual eligibility criteria that must be met, such as previous work history, unemployment insurance eligibility, and individual skill levels.

The 2011 TAAEA restores nearly all of the eligibility expansions contained in the 2009 TGAAA, including coverage of service sector workers, as well as workers who lose their jobs due to shifts in production to countries that do not have free trade agreements with the United States. The 2011 amendments apply retroactively so workers who were denied benefits because of the expiration of the 2009 reforms will again be fully eligible for the TAA program. As a result, there is nothing workers need to do as these investigations will automatically be “re-opened” to revisit eligibility criteria under the 2011 TAAEA. The 2011 reauthorization ensures workers harmed by trade have the opportunity to acquire skills and credentials to get good jobs that keep them in the middle class.

ETA eliminated the backlog of petitions received under the 2009 amendments in the third quarter of Fiscal Year 2011. In total, the Department of Labor issued 1,116 certifications in FY 2011 and an estimated 98,515 workers were eligible for TAA benefits compared to 2,810 certifications in FY 2010 where 287,061 workers were TAA eligible. ETA received 1,379 petition filings in FY 2011 compared to 2,573 petitions filed in FY 2010. The decline in the number of workers eligible can be attributed to the 2002 program reversion on February 13, 2011 whereby service workers were no longer eligible for TAA benefits.

#### **b. Trade Adjustment Assistance for Farmers**

On February 17, 2009, the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) reauthorized and modified the Trade Adjustment Assistance (TAA) for Farmers program. The legislation provided \$90 million per year for Fiscal Years (FY) 2009-2010 and \$22.5 million for the first quarter of FY 2011.

Under the program, the U.S. Department of Agriculture provides training and cash benefits to eligible producers of raw agricultural commodities and fishermen whose operations have been hurt by import competition. The program provides training specifically tailored to the needs of farmers and fishermen, enabling them to more effectively compete with similar imported products. The training is intended to offer producers an opportunity to improve their production, consider different marketing opportunities, and evaluate alternative enterprises.

Program benefits include an orientation workshop, a minimum of 12 hours of online or in-person training on the development of business plans, and cash payments to implement the business plans. Eligible producers who complete an approved, initial and long-term business plan are entitled to receive cash payments. A producer may not receive more than \$12,000 and must complete the program within 36 months from when their respective petition is certified.

During FY 2009, the Foreign Agricultural Service (FAS) established the program's regulations, training components, and the software system used for administering the petition, application, and payment phases. In FY 2010, FAS certified petitions filed by U.S. asparagus and catfish producers, both nationwide, and by U.S. shrimp producers in the Gulf and South Atlantic regions. In all, 4,525 producers in FY 2010 were approved for training and cash benefits. Under the FY 2011 program, the FAS certified petitions filed by blueberry producers in Maine, lobster producers in the Northeast region, and shrimp producers in Alaska and the Gulf and South Atlantic regions. A total of 5,712 producers in FY 2011 were approved for training and cash benefits.

To date, the programs in FY 2010 and FY 2011 have provided training to nearly 10,000 asparagus, blueberry, catfish, lobster, and shrimp producers and have paid more than \$37 million in cash benefits.

Initially expected to expire on December 31, 2010, the FY 2009 TAA for Farmers Program was extended until February 12, 2011, after President Obama signed the Omnibus Trade Act on December 29, 2010. However, given the statutory requirement of a 90-day application period, the six-week life of the new appropriation precluded the announcement of a new program. The FY 2009 program officially expired on February 12, 2011, but funding and operations for it remain intact and allow all approved applicants to continue to receive payments and complete their training until September 2013.

On October 12, 2011, Congress passed the Trade Adjustment Assistance Extension Act of 2011 when it reauthorized the Generalized System of Preferences. The legislation, signed into law on October 21, 2011, reauthorized the TAA for Farmers Program through the first quarter of FY 2014. However, neither the House of Representatives nor Senate bills provided appropriated funding for the TAA for Farmers Program.

### **c. Assistance for Firms and Industries**

The U.S. Economic Development Administration's (EDA) Trade Adjustment Assistance for Firms Program (the TAAF Program) is authorized by chapters 3 and 5 of title II of the Trade Act of 1974, as amended (19 U.S.C. § 2341 et seq.) (Trade Act). Public Law 93-618, as amended, provides for trade adjustment assistance for firms and industries (19 USC §§2341-2355; 2391). Section 233 of Public Law 112-40 authorizes the TAAF Program through December 31, 2014.

The TAAF Program provides technical assistance to manufacturers and service firms affected by import competition to help firms develop and implement projects to regain global competitiveness. Import-impacted U.S. manufacturing, production, and service firms can receive matching funds for projects that expand markets, strengthen operations and increase competitiveness. The program provides assistance in the development of business recovery plans known as Adjustment Proposals. To be certified for the TAAF Program, a firm must show that an increase in imports of like or directly competitive articles contributed importantly to the decline in sales or production and to the separation or threat of separation of a significant portion of the firm's workers.

The Secretary of the U.S. Department of Commerce is responsible for administering the TAAF Program and has delegated the statutory authority and responsibility under the Trade Act to the Department of Commerce's Economic Development Administration (EDA). The TAAF Program supports a national network of 11 non-profit or university-affiliated Trade Adjustment Assistance Centers (TAACs) to help U.S. manufacturing, production, and service firms in all 50 States, the District of Columbia and the Commonwealth of Puerto Rico. Firms work with the TAACs to apply for certification of eligibility for TAAF assistance, and prepare and implement strategies to guide their economic recovery.

In FY 2011, EDA awarded a total of \$15,415,300 in TAAF Program funds. Firms participating in the program contributed \$7.9 million towards the development and implementation of Adjustment Proposals. In FY2011, EDA certified 149 petitions for eligibility, a 55 percent decrease compared to the previous year, and approved 183 Adjustment Proposals, a 31 percent decrease compared to the previous year.

The U.S. Economic Development Administration's regulations implementing the TAAF Program are codified at 13 CFR Part 315 and may be accessed via EDA's Internet website at: <http://www.eda.gov/InvestmentsGrants/Lawsreg.xml>. Additional information on the TAAF Program (including eligibility criteria and application process) is available at <http://www.eda.gov/TAAF>.

## **8. United States Preference Programs**

### **a. Overview**

The United States has a number of programs designed to encourage economic development in lower income countries by offering preferential duty-free U.S. market access to imports from countries covered by these programs. Individual countries may be covered by more than one preferential market access program, with the opportunity for exporters to choose among programs when seeking preferential access to the U.S. market. The extent to which developing countries take advantage of the preferential access provided under U.S. trade law is measured by the total value of imports (for consumption) receiving preferential market access under any one of the individual programs. Such U.S. imports totaled an estimated \$72 billion in the first 11 months of 2011, up 0.2 percent (\$143 million) from the same period in 2010. This compares to an overall 16 percent increase for U.S. total goods imports for consumption from the world over the same period. The slight increase is likely attributable in part to the lapse in

authorization of the Generalized System of Preferences (GSP) and Andean Trade Preference Act (ATPA) programs from January through October of 2011. For more information on developments related to the lapse in authorization of GSP and ATPA see the program-specific sections below.

As a share of total U.S. goods imports for consumption, these preferential imports decreased from 4.1 percent in 2010 to 3.6 percent in the first 11 months of 2011. Again, the decrease would appear to be attributable in part to the lapse in GSP and ATPA authorization through much of 2011. Each program's respective share of total U.S. preferential imports in the first 11 months of 2011 was as follows: African Growth Opportunity Act (AGOA), excluding GSP, 67 percent; GSP, 24 percent; ATPA, 5 percent; and Caribbean Basin Initiative (CBI) and Caribbean Basin Trade and Partnership Act (CBTPA), 5 percent. Trade under AGOA and CBI/CBTPA which were in effect for the entire period increased in 2011, while trade under GSP and ATPA decreased.

## **b. Generalized System of Preferences**

### *History and Purposes:*

The U.S. Generalized System of Preferences (GSP) program was initially authorized under the Trade Act of 1974 (19 U.S.C. §§ 2461 et seq.) for a 10 year period, beginning on January 1, 1976. The U.S. Congress has extended the program 12 times, most recently in October 2011. The GSP program lapsed from January 1, 2011 through November 3, 2011. During this time, products that would otherwise have been eligible for duty-free treatment under GSP were subject to the most favored nation rate. On October 21, 2011, President Obama signed legislation to reauthorize the GSP program through July 31, 2013, with benefits retroactive to January 1, 2011.

The GSP program is designed to promote economic growth in the developing world by providing preferential duty-free entry for up to 4,880 products from 129<sup>32</sup> designated beneficiary countries and territories. Duty-free treatment under the GSP program is not available for products that the President determines to be import-sensitive or that the statute excludes from the program. An underlying principle of the GSP program is that the creation of trade opportunities for developing countries is an effective way of encouraging broad-based economic development and an important means of sustaining momentum for their economic reform and liberalization. The GSP program also helps to provide U.S. companies with market access to inputs from beneficiary countries on generally the same terms that are available to competitors in other developed countries that grant similar trade preferences.

### *Beneficiaries:*

There are 2 types of GSP beneficiaries: those that are eligible to export approximately 3,450 products duty-free into the United States and those for which, in 1996, Congress authorized additional GSP benefits because they are "least-developed" beneficiary developing countries.<sup>33</sup> Subsequently, these countries were given the opportunity to export an additional 1,430 products to the United States duty-free. As of January 1, 2012, there were 42 least developed beneficiary developing countries (LDBDCs) of the GSP program.

Croatia and Equatorial Guinea were removed from GSP eligibility as of January 1, 2011, after a transition period, because their respective gross national income per capita exceeded statutory thresholds.

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<sup>32</sup> As of January 1, 2012.

<sup>33</sup> In practice, these are countries that are on the United Nations list of least-developed countries.

Through various mechanisms, the GSP program requires beneficiaries to: (1) eliminate or reduce significant barriers to trade in goods, services, and investment; (2) take steps to afford workers internationally recognized worker rights; and (3) provide adequate and effective intellectual property rights protection and enforcement. U.S. industry has noted that a country's participation in the GSP program helps to promote a business and investment environment that benefits U.S. investors as well as the beneficiary countries.

#### *Eligible Products:*

The list of GSP-eligible products from all beneficiaries includes most non-sensitive dutiable manufactures and semi-manufactures and selected agricultural, fishery, and primary industrial products that are not otherwise duty-free. The statute precludes certain import-sensitive articles from receiving GSP treatment, including most non-silk textiles and apparel, watches, footwear, handbags, luggage, flat goods, work gloves, and certain leather apparel. The products that receive preferential market access only when imported from least-developed beneficiaries include petroleum, certain chemicals and plastics, animal and plant products, prepared food, beverages, rum, and tobacco products.

Although GSP benefits for textiles and apparel are limited, certain handmade folkloric products are eligible for GSP treatment. The United States has entered into agreements providing for certification and GSP eligibility of certain handmade, folkloric products with 16 beneficiary countries: Afghanistan, Argentina, Botswana, Cambodia, Colombia, Egypt, Jordan, Mongolia, Nepal, Pakistan, Paraguay, Thailand, Timor-Leste, Tunisia, Turkey, and Uruguay. Such agreements provide the basis for extending duty-free treatment to exports produced primarily by women and the poorest, often rural, residents of beneficiary countries.

#### *Program Results:*

*Value of Trade Entering the United States under the GSP program:* The value of U.S. imports claimed under the GSP program in the first 11 months of 2011 was approximately \$16.9 billion, a 19 percent decrease compared to the same period in 2010.<sup>34</sup> By comparison, total U.S. imports from GSP beneficiary countries increased by 23 percent over the same period. The decrease in GSP imports was likely attributable in part to the lapse in GSP authorization from January through early November 2011, which may have led some U.S. importers to seek alternative sources for previously GSP-eligible products. The graduation of Equatorial Guinea from the GSP program may also have been a factor in the decrease in GSP trade. In 2010, Equatorial Guinea accounted for nearly six percent of GSP imports, almost exclusively in petroleum products.

Top U.S. imports under the GSP program in 2011 (at the four-digit Harmonized Tariff Schedule (HTS) of the United States level), by trade value, were crude petroleum oils and oils from bituminous minerals (which are eligible for duty-free import only from LDBDCs), jewelry of precious metal, ferroalloys, motor vehicle parts, pneumatic tires, certain aluminum products, certain wires and cables, electric motors and generators, monumental or building stone, certain transmission parts bearing housings and gears, food preparations, and sugar.

In 2011 (through November), based on trade value, the top five GSP beneficiary developing country (BDC) suppliers were: (1) Thailand; (2) India; (3) Brazil; (4) Indonesia; and (5) South Africa. Ten of the

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<sup>34</sup> GSP trades figures are available for the whole of 2011, even though the program lapsed, because U.S. Customs and Border Protection had advised U.S. importers to continue to enter the special program indicator for GSP on entry documentation forms so as to facilitate the processing of refunds of duties paid in the event that Congress reauthorized the program retroactively, which it did.

top 50 GSP BDCs in 2011 were LDBDCs. In order of GSP trade value, these were Angola, Yemen, Chad, Bangladesh, Cambodia, Malawi, Nepal, Ethiopia, Uganda, and Madagascar.

*The GSP Program's Contribution to Economic Development in Developing Nations:* The GSP program helps countries diversify and expand their exports, an important developmental goal. The 2011 data on exports to the United States indicates that some beneficiaries have made progress in diversifying and expanding their exports to the United States under the GSP program. Among the countries with significant increases in GSP trade in 2011 were the Philippines, Georgia, Namibia, Armenia, Paraguay, and Mongolia. Among the countries for which GSP trade expanded into new product areas were Paraguay (seeds for sowing; wood doors; plastic articles; vacuum flasks), Kazakhstan (zinc; bronze; chromium products; wheat gluten for animal feed; caviar), and Nepal (wood doors; wood builders' joinery; pasta; dried peas; fur headwear). Diversification of exports under GSP also enhances the productive capacity and competitiveness of beneficiary countries with respect to their exports to markets other than the United States.

*Efforts to promote wider distribution of the use of GSP benefits among beneficiaries:* As directed by Congress, the Administration has sought to broaden the use of the GSP program's benefits among beneficiary countries. GSP outreach activities were limited in 2011 because of the lapse in GSP authorization for much of the year. However, with the reauthorization of GSP in October 2011, planning began in late 2011 for GSP outreach efforts in 2012 in several countries, including Egypt and Tunisia. For additional details and multiple-language GSP guides and country-specific analyses, go to "GSP-in-Use: Country-Specific Information" under "Generalized System of Preferences" on the USTR web site at the link below.

*Benefits to the U.S. Economy:* The GSP program helps not only beneficiary developing countries, but also U.S. businesses and families. The program is a significant source of imports and products for U.S. businesses, including small and medium-sized companies. The GSP program also helps reduce costs for U.S. manufacturers that utilize inputs that are not produced or available domestically, thereby helping to improve the competitiveness of U.S. manufacturing.

#### *Annual Reviews:*

An important attribute of the GSP program is its ability to adapt, product by product, to shifting market conditions; to the changing needs of producers, workers, exporters, importers, and consumers; and to concerns about individual beneficiaries' conformity with the statutory criteria for eligibility. Detailed information on elements of each Annual Review is available on the GSP Program Information Page on the USTR website at <http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp>.

#### *2010 GSP Annual Review:*

Because of the lapse in GSP authorization through much of 2011, some activities and actions related to the review of country practices and product petitions accepted as part of the 2010 GSP Annual Review were suspended. When the program was reauthorized in October 2011, the review of these petitions resumed in earnest, except for petitions seeking waivers of competitive need limitations (CNLs). USTR announced in a *Federal Register* notice on November 1, 2011 that, in view of the lapse in authorization of the GSP program through most of 2011, no actions would be taken with respect to CNLs based on 2010 trade data, including no CNL-related removals of products from GSP eligibility and no redesignations of products currently subject to CNLs. CNL waiver petitions accepted for review in December 2010 were dismissed.

On December 29, 2011, USTR announced the outcome of the two GSP product petitions accepted for the 2010 Annual Review. Based on the Trade Policy Staff Committee's review of these petitions, President Obama determined that one product – certain non-down sleeping bags (HTS 94043080) – should be removed from eligibility for duty-free treatment under GSP, effective January 1, 2012, because it is import-sensitive in the context of GSP. A petition to remove GSP duty-free treatment for two types of self-adhesive plastic tape (HTS 3919.10.20 and 3919.90.50) for Indonesia only was denied.

As part of the GSP 2010 Annual Review, the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) also considered several petitions to withdraw or limit a country's GSP benefits for not meeting certain GSP eligibility criteria. On November 1, 2011, the TPSC announced that it had accepted for review a new country practices petition related to worker rights in Georgia. A public hearing was held in January 2012 on this petition and several other outstanding petitions accepted in previous years related to worker rights or child labor concerns in Bangladesh, Niger, the Philippines, Sri Lanka, and Uzbekistan. Other outstanding country practices petitions that remained under active review at year's end included petitions on Lebanon, Russia, and Uzbekistan with respect to IPR protection and two petitions relating to non-payment of arbitral awards by Argentina. A petition on worker rights in Iraq received during the 2008 review also remained under consideration. For a complete list of the country practice petitions that remained under review as of December 31, 2011, go to [http://www.ustr.gov/webfm\\_send/3218](http://www.ustr.gov/webfm_send/3218).

#### *2011 GSP Annual Review:*

On November 1, 2011, a notice was published in the *Federal Register* launching the 2011 GSP Annual Review. An announcement will be made in early 2012 on which product, country practices, and CNL waiver petitions will be accepted for formal review.

### **c. The African Growth and Opportunity Act**

The African Growth and Opportunity Act (AGOA), enacted in 2000, is a key element of U.S. economic policy in Africa, providing eligible sub-Saharan African countries with duty-free access to the U.S. market for over 1,800 products beyond those eligible under the GSP program. The additional products include value-added agricultural and manufactured goods such as processed food products, apparel, and footwear. In 2011, 40 sub-Saharan African countries were eligible for AGOA benefits. About 94 percent of U.S. imports from these countries entered the United States duty-free in 2011.

AGOA requires the President to determine annually which of the sub-Saharan African countries listed in the Act are eligible to receive benefits under the Act. His decisions are supported by an annual interagency review, chaired by USTR, that examines whether each country already eligible for AGOA has met the eligibility criteria, or whether circumstances in ineligible countries have improved sufficiently to warrant their designation as an AGOA beneficiary country. The AGOA eligibility criteria include, among others, establishing or making continual progress in establishing a market-based economy, rule of law, poverty-reduction policies, a system to combat corruption and bribery, and protection of internationally recognized worker rights. The Act also requires that eligible countries do not engage in activities that undermine U.S. national security or foreign policy interests, or engage in gross violations of international human rights. The annual review takes into account information drawn from U.S. Government agencies, the private sector, civil society, and prospective beneficiary governments. Through the AGOA eligibility review process, the annual AGOA Forum meeting (*see below*), and ongoing dialogue with AGOA partners, AGOA provides incentives to promote economic and political reform as well as trade expansion in AGOA-eligible countries. During 2011, there were two reviews – an out-of-cycle review of Cote d'Ivoire, Guinea and Niger which resulted in their becoming eligible for AGOA benefits effective October 25, 2011, and the annual review that resulted in a recommendation that 40 countries (including Cote d'Ivoire, Guinea, and Niger) be eligible for AGOA benefits in 2012.

The United States-Sub-Saharan Africa Trade and Economic Cooperation Forum, informally known as the “AGOA Forum,” is an annual ministerial-level meeting with AGOA-eligible countries. The tenth meeting of the AGOA Forum was held in June 2011 in Lusaka, Zambia. Ambassador Ron Kirk and Deputy U.S. Trade Representative Demetrios Marantis participated in the 2011 Forum, along with senior officials from more than a dozen U.S. Government agencies. They met with numerous African trade ministers, leaders of African regional economic organizations, and representatives of the African and American private sectors and civil society to discuss issues and strategies for advancing trade, investment, and economic development in Africa as well as ways to increase two-way U.S.-African trade.

During the AGOA Forum, Ambassador Kirk announced a new trade capacity building initiative, the African Competitiveness and Trade Expansion Initiative (ACTE). This initiative is intended to expand both U.S.-African and intra-African trade. Through the ACTE, the United States committed to provide up to \$120 million over four years to intensify and focus more sharply the work of the USAID-funded Regional African Trade Hubs in Ghana, Senegal, Botswana, and Kenya. The Trade Hubs help African producers tackle cross-cutting problems in finance, transport, governance, business environment, and telecommunications and produce more value-added products for export to the United States under AGOA.

Ambassador Ron Kirk also advanced the United States-Tanzania dialogue on trade and investment issues during a visit in June 2011 to Tanzania. Through a number of U.S. initiatives – including the Millennium Challenge Account and the Partnership for Growth – Tanzania has been identified as a major U.S. partner and leader in the region.

AGOA and related GSP imports from AGOA-eligible countries were valued at \$49.9 billion for the first 11 months of 2011, up 24 percent from the corresponding period in 2010. Petroleum products continued to account for the largest portion of AGOA/GSP imports. The leading non-oil imports under AGOA/GSP in 2011 included apparel, vehicles and parts, ferroalloys, citrus, wine, chemicals, nuts, cocoa powder, essential oils, cut flowers, and fruit juices. The leading AGOA/GSP beneficiary countries were Nigeria, Angola, South Africa, Chad, and the Republic of the Congo.

#### **d. Andean Trade Preference Act**

The Andean Trade Preference Act (ATPA) was enacted in 1991 to promote broad-based economic development, diversify exports, and combat drug trafficking by providing sustainable economic alternatives to drug-crop production in Bolivia, Colombia, Ecuador, and Peru. In 2002, the Andean Trade Promotion and Drug Eradication Act (ATPDEA) amended the ATPA to provide duty-free treatment for a number of products previously excluded under the original ATPA program. The most significant expansion of benefits was in the apparel sector. Bolivia’s eligibility for benefits was suspended effective December 2008. Further, in accordance with the statute, since the President did not determine that Bolivia satisfied the program’s eligibility requirements in his June 30, 2009 report to Congress, no benefits remain in effect under the program for Bolivia.

In December 2010 Congress removed Peru’s beneficiary status under the ATPA effective January 1, 2011, which left only Colombia and Ecuador in the program. Peru had become a free trade agreement partner of the United States. The same legislation extended the ATPA through February 12, 2011, after which the program lapsed. However, in October 2011 Congress voted to restore ATPA benefits retroactively to February 13, 2011, and to extend the program until July 31, 2013. Colombia will cease to be an ATPA beneficiary country when the U.S.-Colombia Trade Promotion Agreement enters into force.

#### **e. Caribbean Basin Initiative**

During 2011, the Caribbean Basin Economic Recovery Act (CBERA) and the United States-Caribbean Basin Trade Partnership Act (CBTPA) trade programs, collectively known as the CBI, remained a vital element in U.S. economic relations with its neighbors in Central America and the Caribbean. The CBI provides beneficiary countries and territories with duty-free access to the U.S. market. Current beneficiary countries are: Antigua and Barbuda, Aruba, the Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic. When the CAFTA-DR entered into force for each of these countries, the country ceased to be designated as a CBERA and CBTPA beneficiary. The CAFTA-DR entered into force for Costa Rica on January 1, 2009 and is now in force for all seven countries.

Since its inception, the CBI has helped beneficiaries diversify their exports. In conjunction with economic reform and trade liberalization by beneficiary countries, the trade benefits of CBI have contributed to their economic growth. In December 2011, USTR submitted its biannual report to Congress on the operation of the CBERA. The report can be found on the USTR website, [www.ustr.gov](http://www.ustr.gov).



# VI. TRADE POLICY DEVELOPMENT

## A. Trade Capacity Building (“Aid for Trade”)

On September 22, 2010, President Obama released his strategy for development. The President’s approach to global development addresses the new strategic context faced by the United States through the following three pillars:

- A policy focused on sustainable development outcomes that places a premium on broad-based economic growth, democratic governance, game-changing innovations, and sustainable systems for meeting basic human needs;
- A new operational model that positions the United States to be a more effective partner and to leverage our leadership; and
- A modern architecture that elevates development and harnesses development capabilities spread across government in support of common objectives – including a deliberate effort to leverage the engagement of and collaboration with other donors, foundations, the private sector, and NGOs – not just at the project level, but systemically.

USTR participated actively in the preparation of this strategy, and will remain active in its implementation. USTR has continued to work closely with the Department of State, USAID, MCC, USDA, and other USG agencies to support countries in their capacity to trade, as described in this section.

Trade policy and development assistance are key tools that together can help alleviate poverty and improve opportunities. Through “aid for trade,” the United States focuses on giving countries, particularly the least trade-active, the training and technical assistance needed to: make decisions about the benefits of trade arrangements and reforms; implement their obligations to bring certainty to their trade regimes; and enhance such countries’ ability to take advantage of the opportunities of the multilateral trading system and to compete in a global economy. Accordingly, U.S. assistance addresses a broad range of issues so that communities, rural areas, and small businesses, including female entrepreneurs, benefit from ambitious reforms in trade rules that are being negotiated in the WTO and in other trade agreements.

An important element of this work involves coordinating U.S. Government technical assistance activities with those of the international institutions in order to identify and take advantage of donor complementarities in programming and to avoid duplication. Such institutions include the WTO, the World Bank, the IMF, the regional development banks, the United Nations, and others. The United States, led by USTR at the WTO and by the Treasury Department at the international financial institutions, works in partnership with institutions and other donors to ensure that, where appropriate, trade-related assistance is an integral component of development programs tailored to the circumstances within each developing country.

The United States’ efforts build on its longstanding commitment to help partner countries benefit from the opportunities provided by the global trading system, both through bilateral U.S. assistance and through multilateral institutions. U.S. bilateral assistance includes programs such as targeted assistance for developing countries participating in U.S. preference programs; coordination of assistance through Trade and Investment Framework Agreements (TIFAs); trade capacity building (TCB) working groups that are integral elements of negotiations to conclude Free Trade Agreements (FTAs); and Committees on TCB

created to aid in the negotiation and or implementation of a number of FTAs, including the FTAs with the Dominican Republic and Central America, Colombia, Panama, and Peru, and for some partners in the ongoing Trans-Pacific Partnership negotiations. The United States also provides bilateral assistance to developing countries to enable them to work with the private sector and non-governmental organizations to transition to a more open economy, to prepare for WTO negotiations, and to implement their trade obligations. Multilaterally, the United States has supported and will continue to support trade-specific assistance mechanisms like the Enhanced Integrated Framework for Trade-Related Assistance to Least-Developed Countries and the WTO's Global Trust Fund for Trade-Related Technical Assistance.

## **1. The Enhanced Integrated Framework**

The Enhanced Integrated Framework for Trade-Related Assistance to Least-Developed Countries (EIF) is a multi-organization, multi-donor program that operates as a coordination mechanism for trade-related assistance to least-developed countries (LDCs) with the overall objective of integrating trade into national development plans. Participating organizations include the WTO, World Bank, IMF, UNCTAD, UNDP, UNIDO, and the International Trade Center. The mechanism incorporates a country-specific diagnostic assessment and action plan formulated by one of the international organizations in cooperation with the participating LDC. The action plan, consisting of needs identified by the diagnostic assessment, is offered to multilateral and bilateral donors. Project design and implementation can be accomplished through the resources of the EIF Trust Fund or through multilateral or bilateral donor programs in the field (as the United States does through its development assistance programs). The EIF is exclusively for LDCs, with the goal of getting the least trade-active more involved. Of the 49 LDCs, 47 have joined the EIF. The EIF is supported by 22 donors. Institutionally, the EIF is overseen by a Board of Directors, composed of donor countries, least-developed countries, and participating international organizations. The EIF Secretariat, led by an executive director, is responsible for programmatic implementation, while the EIF Trust Fund Manager is responsible for financial aspects of the program.

The United States supports the EIF primarily through complementary bilateral assistance to EIF participating countries. USAID bilateral assistance to LDC participants supports initiatives both to integrate trade into national economic and development strategies and to address high priority capacity building needs designed to accelerate integration into the global trading system.

## **2. World Trade Organization-Related U.S. Trade-Related Assistance**

International trade can play a major role in the promotion of economic growth and the alleviation of poverty. The WTO's Doha Development Agenda (DDA) recognizes that TCB can facilitate more effective integration of developing countries into the international trading system and enable them to benefit further from global trade. The United States provides leadership in promoting trade and economic growth in developing countries through a wide range of TCB activities. The United States also directly supports the WTO's trade-related technical assistance.

### **a. Global Trust Fund**

The United States supports the trade-related assistance activities of the WTO Secretariat through voluntary contributions to the DDA Global Trust Fund. With an additional contribution of \$1.2 million in 2011, total U.S. contributions to the WTO have amounted to more than \$11 million since the launch of DDA negotiations.

## **b. WTO's Aid for Trade Initiative**

The WTO's 2005 Hong Kong Declaration created a new WTO framework in which to discuss and prioritize Aid for Trade. In 2006, the Aid for Trade Task Force was created to operationalize aid for trade efforts and offer recommendations to improve the efficacy and efficiency of these efforts among WTO Members and other international organizations. The United States continues to be an active partner in the Aid for Trade discussion.

The Third Global Review of Aid for Trade was held at the WTO on July 18-19, 2011. Of particular focus was the WTO-led exercise of monitoring and evaluating the impact of Aid for Trade. This exercise involved submission of over 260 case stories by participants in Aid for Trade, including donor countries, partner countries, and multilateral development banks. Members, multilateral development banks, and others also submitted responses to the WTO's Aid for Trade questionnaires. These materials contributed to a strong takeaway message that the Aid for Trade initiative has produced results in terms of providing a political impetus for donor countries to scale up trade-related assistance and in terms of building developing countries' capacity to trade. Another area of focus at the Third Global Review was increasing private sector participation in Aid for Trade. Eric Postel, USAID Assistant Administrator for Economic Growth, Agriculture, and Trade, participated on two panels relating to the impacts of Aid for Trade and African regional integration. Following this Global Review, the WTO Secretariat worked with Members to develop an Aid for Trade Work Program for 2012-13. Under this new Work Program, Members will continue to work actively on improving the scope and effectiveness of Aid for Trade.

## **c. WTO and Trade Facilitation**

The United States has provided substantial assistance over the years in the areas of customs and trade facilitation. More recently, U.S. support for building trade and development corridors in Africa, including through the U.S. Government's Global Hunger and Food Security Initiative, is increasing. Through this assistance, the United States has supported the WTO Doha discussions by providing assistance to developing countries that seek help in responding to the regulatory proposals made by members in the Negotiating Group on Trade Facilitation. In November 2011, the United States announced the Partnership for Trade Facilitation, a new, flexible funding mechanism that will support developing countries' efforts to implement provisions of the WTO trade facilitation agreement currently under negotiation.

## **d. WTO Accession**

The United States provides technical support to countries that are in the process of acceding to the WTO. In 2011, WTO accession support was provided to several countries, including Afghanistan, Azerbaijan, Ethiopia, Iraq, Kyrgyzstan, Laos, Lebanon, and Serbia.

# **3. TCB Initiatives for Africa**

Through bilateral and multilateral channels, the United States has invested more than \$3.3 billion in trade-related projects in sub-Saharan Africa since 2001 to spur economic growth and fight poverty.

## **a. African Global Competitiveness Initiative**

The centerpiece of U.S. support for building trade capacity in Africa for the past five years was the \$200 million African Global Competitiveness Initiative (AGCI). The program expired September 30, 2010. The primary focus of AGCI was to help expand African trade and investment with the United States, with

other international trading partners, and regionally within Africa through improving the competitiveness of sub-Saharan African enterprises. AGCI's objectives were to: (1) improve the business climate for private sector-led trade and investment; (2) strengthen the knowledge and skills of sub-Saharan African private sector enterprises to take advantage of market opportunities; (3) increase access to financial services for trade and investment; and (4) facilitate investments in infrastructure.

A major focus of AGCI programs was to help African countries make the most of the trade opportunities available under the African Growth and Opportunity Act (AGOA) preference program. (*For additional information, see Chapter V.B.8.c.*) AGCI supported AGOA through programs carried out by three USAID-funded Regional Hubs for Global Competitiveness – in Botswana, Kenya, and Ghana – as well as through programs carried out by USAID bilateral missions.

Through 2010, AGCI trade and investment programs facilitated over \$178 million in AGOA exports, provided export capacity building assistance to over 234,000 firms, and trained nearly 660,000 Africans in trade capacity building. These results reflect a strategic emphasis by the U.S. Government on providing marketing assistance to African exporters at major international trade shows. Under an agreement with USAID, USDA addressed sanitary and phytosanitary issues as a part of the AGCI program, focusing specifically on the areas of food safety and plant and animal health. Additionally, the U.S. Department of Commerce's Commercial Law Development Program worked to improve protection of intellectual property rights.

#### **b. Africa Competitiveness and Trade Expansion Initiative**

In June 2011, the United States reinforced its long-standing commitment to trade capacity building in sub-Saharan Africa by announcing the new African Competitiveness and Trade Expansion (ACTE) Initiative, a successor to AGCI. This initiative will provide up to \$120 million over 4 years to improve Africa's capacity to produce and export competitive, value-added products, including those that can enter the United States duty-free under AGOA, and to address supply-side constraints that impede African trade. ACTE will continue to support the work of three regional trade hubs and will help to drive economic development in African countries, and enhance trade opportunities among Africans and Americans alike.

#### **c. Assistance to West African Cotton Producers**

Since 2005, the United States has mobilized its development agencies to help the West African countries of Benin, Burkina Faso, Chad, Mali, and Senegal to address obstacles they face in the cotton sector. The MCC, USAID, USDA, and the U.S. Trade and Development Agency continued to work with these nations as they sought to develop a coherent long-term development strategy to improve prospects in the cotton sector. Elements of such a strategy include improved productivity, domestic reforms, and other key issues. The United States will continue to coordinate with the WTO, World Bank, the African Development Bank, and others as part of the multilateral effort to address the development aspects of cotton. This includes active participation in the WTO Secretariat's periodic meetings with donors and recipient countries to discuss the development and reform aspects of cotton.

The centerpiece of U.S. assistance to the cotton sector in West Africa is USAID's West Africa Cotton Improvement Program (WACIP). The program is aimed at helping to improve the production and marketing of cotton in five countries: Benin, Burkina Faso, Chad, Mali, and Senegal. The WACIP is designed to help achieve the following objectives: (1) reduce soil degradation and expand the use of good agricultural practices; (2) strengthen private agricultural organizations; (3) establish a West African regional training program for ginners; (4) improve the quality of West African cotton through better classification of seed cotton and lint; (5) improve linkages between U.S. and West African research

organizations involved with cotton; (6) improve the enabling environment for agricultural biotechnology; and (7) assist with policy/institutional reform.

A key element of the WACIP program is the identification of specific policy priorities through National Advisory Committees. Composed of stakeholders in each country, these committees undertook work to identify the specific projects that would yield the assistance and results sought by participants and these projects have been the basis of WACIP's work. In 2010, WACIP was extended to April 2012. In December 2011, the U.S. Government announced that it would continue cotton-related trade capacity building to these four West African countries, providing up to \$16 million over 4 years subject to the outcome of the U.S. budget process.

The U.S. Government also provides complementary support to the cotton sector through other programs. MCC is implementing compacts with Benin (\$307 million), Burkina Faso (\$481 million), Mali (\$460 million), and Senegal (\$540 million).

#### **4. Free Trade Agreement Negotiations**

Although the WTO programs and the EIF are high priorities, they are only part of the U.S. TCB effort. In order to help U.S. FTA partners participate in negotiations, implement commitments, and benefit over the long-term, USTR has created TCB working groups in FTA negotiations with developing countries and Committees on TCB to prioritize and coordinate TCB activities during the transition and implementation periods once an FTA enters into force. USAID and USDA, their field missions, and a number of other U.S. Government assistance providers actively participate in these working groups and committees so that TCB needs identified can be quickly and efficiently incorporated into ongoing regional and country assistance programs. The Committees on TCB also invite non-governmental organizations, representatives from the private sector, and international institutions to join in building the trade capacity of the countries in each region. Trade capacity building is a fundamental feature of bilateral cooperation in support of the CAFTA-DR and the United States-Peru Trade Promotion Agreement. USTR also works closely with the Department of State and other agencies to track and guide the delivery of TCB assistance to Jordan, Morocco, Bahrain, and Oman.

##### **a. Dominican Republic-Central America-United States Free Trade Agreement**

The CAFTA-DR established a Committee on TCB. The CAFTA-DR was signed in 2004 and went into force for all countries except Costa Rica during 2006 and 2007, and for Costa Rica in 2009. The Committee on TCB has convened formally five times: in Guatemala City, Guatemala in February 2007; in Washington, D.C. in November 2007, October 2010, and October 2011; and in Santo Domingo, Dominican Republic in November 2008. These meetings were attended by representatives of each of the CAFTA-DR Parties and by the Inter-American Development Bank (IDB), and, as appropriate, by the Organization of American States (OAS), the Economic Commission for Latin America and the Caribbean (ECLAC), the *Organismo Internacional Regional de Sanidad Agropecuaria* (OIRSA), and by the World Bank. The meetings provided the opportunity for the Committee to review updates of recipient Parties' trade capacity building strategies and priorities, as well as the trade capacity building activities of U.S. donor agencies and the international institutions. They also provided an opportunity for in-depth discussions of particular assistance areas, such as rural development and sanitary and phytosanitary assistance.

Programs have included a range of activities aimed at streamlining customs procedures for importers and exporters, many of which directly support implementation of the FTA. Software for a virtual single window for imports was developed and/or strengthened in Nicaragua, Honduras, and El Salvador. New

rules of origin were implemented in a harmonized fashion. Implementation of risk based selection criteria has reduced the clearance time for goods. U.S. sanitary and phytosanitary TCB helped to enable farmers and small and medium-sized rural enterprises to benefit from the agreement. As a result of SPS assistance, laboratories in the region have achieved international certifications, U.S. detentions due to labeling deficiencies have dropped from 68 percent regionally to less than 10 percent, and an estimated \$135 million of increased meat, dairy and vegetable exports to the United States were generated.

#### **b. United States-Peru Trade Promotion Agreement**

The United States-Peru Trade Promotion Agreement (PTPA) entered into force on February 1, 2009. Like the CAFTA-DR, the PTPA includes a provision that creates a Committee on TCB to build on work done during the negotiations by the TCB working group. The purpose of the Committee is to assist Peru in refining and implementing its national TCB strategy, as well as to foster assistance to promote economic growth, reduce poverty, and adjust to liberalized trade. The Committee met in March 2009 in Peru. Peru presented a preliminary national trade capacity building strategy to address several specific objectives relating to implementation of the PTPA, highlighting areas such as telecommunications, intellectual property and agricultural standards. USAID/Peru is working closely with its Peruvian government counterparts to ensure that activities respond directly to Peru's trade capacity needs. To that end, in December 2009, USAID and USDA, along with Peruvian government agencies and universities, began working together to strengthen Peru's agricultural sector through targeted capacity building in the areas of SPS regulatory and surveillance systems, agricultural research, and agricultural education.

Additionally, USAID launched a trade capacity building project in July of 2010 in which it will work with several Peruvian ministries and agencies to assist with the implementation of the PTPA and facilitate trade across a wide range of sectors. The first of these activities will focus, *inter alia*, on the following: implementation of the labor and intellectual property provisions; strengthening intellectual property enforcement training, patent processes and capacity to evaluate drug applications; and improving customs operations to both comply with the PTPA and facilitate trade. In addition, the United States is committed to providing support to assist Peru on implementing its obligations under the environmental provisions of the PTPA, including its obligations under the annex on forest sector governance. This support is contemplated under the United States-Peru Environmental Cooperation Agreement, an agreement concluded in conjunction with the PTPA, and involves several ongoing projects in the region.

#### **c. United States-Colombia and United States-Panama Trade Promotion Agreements**

In November 2006, the United States and Colombia signed the United States-Colombia Trade Promotion Agreement, which was approved by Congress on October 12, 2011. On June 28, 2007, the United States and Panama signed the United States-Panama Trade Promotion Agreement, which was also approved by Congress on October 12, 2011. As with the PTPA, each of these two agreements provides for the creation of a Committee on TCB to build upon the progress made by the preceding TCB working groups on economic assistance and poverty alleviation.

## **B. Public Input and Transparency**

The Obama Administration has broadened opportunities for public input and increased the transparency of trade policy through initiatives carried out by USTR's Office of Intergovernmental Affairs and Public Engagement (IAPE). IAPE works with USTR's Office of Public and Media Affairs and with regional and functional offices across the agency to ensure that timely trade information is available to the public and disseminated widely. This is accomplished in part via USTR's interactive website; a weekly e-newsletter that is available through our homepage at <http://www.ustr.gov>; online posting of *Federal*

*Register* Notices soliciting public comment and input and publicizing Trade Policy Staff Committee (TPSC) public hearings; increasing transparency regarding specific policy initiatives; managing the agency's increased outreach and engagement with small and medium-sized businesses; meetings with a broad array of domestic stakeholders including, but not limited to, agriculture groups, industry groups, labor groups, small businesses, NGOs, universities, think tanks, and state and local governments; and speeches to associations and conferences around the country regarding trade. In addition to public outreach, IAPE is responsible for administering USTR's statutory advisory committee system created by Congress under the Trade Act of 1974 as amended, as well as facilitating formal consultations with state and local governments regarding trade issues which may impact them. Each of these elements is discussed in turn below.

## **1. Public Outreach**

### **a. Website and Weekly E-Newsletter**

Launched in June 2009, the redesigned USTR website at <http://www.ustr.gov> has expanded the trade dialogue through technology, fulfilling President Obama's commitment of a government that is transparent, participatory, and collaborative.

Through the USTR blog and site pages on geographical areas, trade agreements, and key trade issues, <http://www.ustr.gov> shares updated information about USTR's efforts to support job creation by opening markets and enforcing America's rights in the rules-based global trading system.

Interactive tools on the site allow the public to participate more fully in USTR's day-to-day operations. People can share their questions through the Ask the Ambassador feature, and see the Ambassador's reply. The Share Your Stories feature, where American companies describe how engaging in the global market place helps to keep their business competitive and creates jobs here at home, serves as a venue for sharing how trade impacts and benefits daily life. The Interactive Map details Ambassador Kirk's travel at home and abroad. It shows his efforts as he visits America's trading partners to gain market access for U.S. farmers, ranchers, manufacturers, workers, and services providers.

The public is invited to sign up on USTR's homepage to receive the weekly e-mail newsletter, which highlights USTR's efforts to engage the public, open markets and enforce trade agreements around the world. This is a useful tool for small businesses and stakeholders outside Washington, D.C. to stay informed about trade policy developments and new market opportunities. Currently the USTR newsletter distribution list contains over 10,000 individual e-mail addresses. In addition, USTR's first-ever enforcement newsletter was created to spotlight the Obama Administration's vigilant trade enforcement efforts.

### **b. *Federal Register* Notices Seeking Public Input/Comments Now Available Online for Inspection**

Throughout 2011, USTR has issued *Federal Register* Notices online to solicit public comment and has held public hearings at USTR regarding a wide array of trade policy initiatives. Public comments received in response to *Federal Register* Notices are available for inspection online at <http://www.regulations.gov>. Some examples of trade policy initiatives for which USTR has sought public comment this year include the following:

- *Trans-Pacific Partnership (TPP) Trade Agreement*: The United States has entered into negotiations on a TPP trade agreement with the objective of shaping a high-standard, broad-based regional agreement. USTR has sought and continues to seek public comments on all

elements of the agreement in order to develop U.S. negotiating positions as well as seeking comment on including additional countries to participate in the agreement. In 2011, USTR sought public comment on the potential participation in the TPP by Canada, Mexico, and Japan.

- *Generalized System of Preferences (GSP)*: An important aspect of the GSP program is its ability to adapt, product by product, to shifting market conditions, and to address concerns of producers, workers, exporters, importers, and consumers about beneficiaries' compliance with the program's eligibility criteria. Input and advice from the public is central to this process. In November 2011, as part of the 2011 GSP Annual Review, USTR informed the public that it was prepared to receive petitions to modify the list of products that are eligible for duty-free treatment under the program and to modify the status of certain GSP beneficiary developing countries because of country practices. USTR also solicited public comment on several country practices petitions that had been accepted for formal review in 2011 and earlier years.
- *Special 301 Out of Cycle Review of Notorious Markets*: In an effort to increase public awareness and guide related trade enforcement actions, USTR published in early 2011 the notorious market list separately from the annual Special 301 report (in which it has previously been included) for the first time. The notorious markets list is a list of Internet and physical markets outside the United States that have been the subject of enforcement action or that may merit further investigation for possible IPR infringements. Later in 2011 USTR once again requested comments and submissions from the public to help update the list of potential notorious markets that exist outside the United States and, after review of all submissions, published the revised notorious markets list at the end of 2011.

### **c. Policy Initiatives to Increase Transparency**

USTR continues to take steps in specific issue areas to increase transparency and augment opportunities for public input. For example:

- *Inclusion of stakeholders at Trans-Pacific Partnership Negotiations*: USTR created opportunities for the public to attend and meet with negotiators during the Chicago round of TPP negotiations. Stakeholder briefings provided an opportunity for the public to interact with negotiators from all of the participating countries and provide presentations on various trade issues, including public health, textiles, investment, labor and the environment.
- *Transparency and the Development of the Colombia Labor Action Plan*: USTR sought and received input from a broad range of stakeholders during the development and negotiation of an Action Plan related to Labor Rights in the context of the United States-Colombia Trade Promotion Agreement. On April 7, 2011, USTR released the text of the Action Plan, and worked closely with stakeholders to promote effective implementation of the plan. Subsequently, USTR cooperated with the government of Colombia to ensure that documents related to the milestones in the Action Plan were made public in a timely manner. As a result, the Colombian government created a special website where it published numerous laws, regulations, and administrative actions related to the Plan.

### **d. Open Door Policy**

USTR officials meet frequently with a broad array of stakeholder groups representing business, labor, environment, consumers, state and local governments, NGOs, think tanks, universities, and high schools

to discuss specific trade policy issues, subject to availability and scheduling. These meetings are coordinated by IAPE and, when likely to be of broader interest, are noted in the weekly e-newsletter.

## **2. The Trade Advisory Committee System**

The trade advisory committee system, established by the U.S. Congress in 1974, operates under the auspices of IAPE. The trade advisory committee system was created to ensure that U.S. trade policy and trade negotiating objectives adequately reflect U.S. public and private sector interests. The trade advisory committee system consists of 28 advisory committees, with a total membership of approximately 700 advisors. It includes committees representing sectors of industry, agriculture, labor, environment, state, and local interests. IAPE manages the system, in cooperation with other agencies, including the Departments of Agriculture, Commerce, and Labor, and the Environmental Protection Agency.

The trade advisory committees provide information and advice on U.S. negotiating objectives, the operation of trade agreements, and other matters arising in connection with the development, implementation, and administration of U.S. trade policy.

The system is arranged in 3 tiers: the President's Advisory Committee for Trade Policy and Negotiations (ACTPN); 5 policy advisory committees dealing with environment, labor, agriculture, Africa, and state and local issues; and 22 technical advisory committees in the areas of industry and agriculture. In 2004, the committees were streamlined and consolidated to better reflect the composition of the U.S. economy, in response to recommendations from the U.S. Government Accountability Office (GAO). Additional information on the advisory committees can be found on the USTR website at <http://www.ustr.gov/about-us/intergovernmental-affairs/advisory-committees>.

In cooperation with the other agencies served by the advisory committees, USTR has broadened the participation on committees to include a more diverse group of stakeholders, new voices, and fresh perspectives, and continues exploring ways to further expand representation while ensuring the committees remain effective. With the rechartering of many of the advisory committees, USTR has also implemented White House guidelines prohibiting registered lobbyists from serving on committees. This has created opportunities to bring an influx of new members who have continued to provide USTR with the critical and necessary advice it seeks as it creates, negotiates, and implements trade policy. This policy has also challenged USTR and the agencies that co-administer the advisory committees to think creatively and seek new resources to meet the needs of the committees.

Recommendations for candidates for committee membership are collected from a number of sources, including members of Congress, associations and organizations, publications, other Federal agencies, responses to *Federal Register* Notices, and self-nominated individuals who have demonstrated an interest in, and knowledge of, U.S. trade policy. Membership selection is based on qualifications, geography, and the needs of the specific committee to maintain a balance of the perspectives represented. Committee members are required to have a security clearance in order to serve and have access to confidential trade documents on a secure encrypted website. Committees meet regularly in Washington, D.C. to provide input and advice to USTR and other agencies. Members pay for their own travel and related expenses.

### **a. President's Advisory Committee on Trade Policy and Negotiations (ACTPN)**

The ACTPN consists of not more than 45 members who are broadly representative of the key economic sectors affected by trade. The President appoints ACTPN members to four-year terms not to exceed the duration of the charter. The ACTPN is the highest level committee in the system that examines U.S. trade policy and agreements from the broad context of the overall national interest.

Members of ACTPN are appointed to represent a variety of interests including non-Federal Governments, labor, industry, agriculture, small business, service industries, retailers, and consumer interests. A current roster of members and the interests they represent is available on the USTR website.

#### **b. Policy Advisory Committees**

Members of the five policy advisory committees are appointed by USTR or in conjunction with other Cabinet officers. The Intergovernmental Policy Advisory Committee (IGPAC) and the Trade Advisory Committee for Africa (TACA) are appointed and managed solely by USTR. Those policy advisory committees managed jointly with the Departments of Agriculture, Labor, and the Environmental Protection Agency are, respectively, the Agricultural Policy Advisory Committee (APAC), Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC), and the Trade and Environment Policy Advisory Committee (TEPAC). Each committee provides advice based upon the perspective of its specific area and its members are chosen to represent the diversity of interests in those areas. A list of all the members of the Committees and the diverse interests they represent is available on the USTR website.

##### *APAC:*

The Secretary of Agriculture and the U.S. Trade Representative appoint members jointly. APAC members are appointed to represent a broad spectrum of agricultural interests including the interests of farmers, processors, renderers, and retailers from diverse sectors of agriculture, including fruits and vegetables, livestock, dairy, and wine. Members serve at the discretion of the Secretary of Agriculture and the U.S. Trade Representative. The Committee consists of approximately 35 members.

##### *IGPAC:*

The IGPAC consists of approximately 35 members appointed from, and representative of, the various States and other non-Federal Governmental entities within the jurisdiction of the United States. These entities include, but are not limited to, the executive and legislative branches of state, county, and municipal governments. Members may hold elective or appointive office. Members are appointed by and serve at the discretion of the U.S. Trade Representative.

##### *LAC:*

The LAC consists of not more than 30 members from the U.S. labor community, appointed by the U.S. Trade Representative and the Secretary of Labor, acting jointly. Members represent unions from all sectors of the economy. Members are appointed by, and serve at the discretion of, the Secretary of Labor and the U.S. Trade Representative.

##### *TACA:*

TACA consists of not more than 30 members, including, but not limited to, representatives from industry, labor, investment, agriculture, services, non-profit development organizations, and other interests. The members of the Committee are appointed to be broadly representative of key sectors and groups with an interest in trade and development in sub-Saharan Africa, including non-profit organizations, producers, and retailers. Members of the committee are appointed by and serve at the discretion of the U.S. Trade Representative.

### *TEPAC:*

TEPAC consists of not more than 35 members, including, but not limited to, representatives from environmental interest groups, industry (including the environmental technology and environmental services industries), agriculture, services, non-Federal Governments, and other interests. The Committee is designed to be broadly representative of key sectors and groups of the economy with an interest in trade and environmental policy issues. Members of the Committee are appointed by and serve at the discretion of the U.S. Trade Representative.

### **c. Technical and Sectoral Committees**

The 22 technical and sectoral advisory committees are organized into 2 areas: agriculture and industry. Representatives are appointed jointly by the U.S. Trade Representative and the Secretaries of Agriculture and Commerce, respectively. Each sectoral or technical committee represents a specific sector, commodity group, or functional area and provides specific technical advice concerning the effect that trade policy decisions may have on its sector or issue.

#### *Agricultural Technical Advisory Committees (ATACs):*

There are six ATACs, focusing on the following products: Animals and Animal Products; Fruits and Vegetables; Grains, Feed, and Oilseeds; Processed Foods; Sweeteners and Sweetener Products; and Tobacco, Cotton, Peanuts, and Planting Seeds. Members of each Committee are appointed by and serve at the pleasure of the Secretary of Agriculture and the U.S. Trade Representative. Members must represent a U.S. entity with an interest in agricultural trade and should have expertise and knowledge of agricultural trade as it relates to policy and commodity-specific products. In appointing members to the committees, balance is achieved and maintained by assuring that the members appointed represent industries and other entities across the range of interests which will be directly affected by the trade policies of concern to the committee (for example, farm producers, farm and commodity organizations, processors, traders, and consumers). Geographical balance on each committee will also be sought. A list of all the members of the committees and the diverse interests they represent is available on the USTR website.

#### *Industry Trade Advisory Committees (ITACs):*

There are 16 industry trade advisory committees (ITACs). These committees are: Aerospace Equipment (ITAC 1); Automotive Equipment and Capital Goods (ITAC 2); Chemicals, Pharmaceuticals, Health/Science Products and Services (ITAC 3); Consumer Goods (ITAC 4); Distribution Services (ITAC 5); Energy and Energy Services (ITAC 6); Forest Products (ITAC 7); Information and Communication Technologies Services and Electronic Commerce (ITAC 8); Non-Ferrous Metals and Building Materials (ITAC 9); Services and Finance Industries (ITAC 10); Small and Minority Business (ITAC 11); Steel (ITAC 12); Textiles and Clothing (ITAC 13); Customs Matters and Trade Facilitation (ITAC 14); Intellectual Property Rights (ITAC 15); Standards and Technical Trade Barriers (ITAC 16).

The ITAC Committee of Chairs was established to coordinate the work of the 16 ITAC committees and advise the Secretary of Commerce and the U.S. Trade Representative concerning the trade matters of common interest to the 16 ITACs. Members of this committee are the elected chairs from each of the 16 ITACs.

Members of the ITACs are appointed jointly by the Secretary of Commerce and the U.S. Trade Representative and serve at their discretion. Committee members should have knowledge and experience in their industry and represent a U.S. entity that has an interest in trade matters related to the sectors or

subject matters of concern to the individual committees. In appointing members to the Committees, balance is achieved and maintained by assuring that the members appointed represent industries and other U.S. entities across the range of interests in that sector, commodity group, or functional area which will be directly affected by the trade policies of concern to the Committee. A list of all the members of the Committees and the diverse interests they represent is available on the USTR website (committees include exporters, importers, producers, and both small and large businesses).

### **3. State and Local Government Relations**

USTR maintains consultative procedures between Federal trade officials and state and local governments. USTR's Office of IAPE is designated as the "coordinator for state matters" and informs the states, on an ongoing basis, of trade-related matters that directly relate to, or that may have a direct effect on, them. U.S. territories may also participate in this process. IAPE also serves as a liaison point in the Executive Branch for state and local government and Federal agencies to transmit information to interested state and local governments, and relay advice and information from the states on trade-related matters. This is accomplished through a number of mechanisms, detailed below.

#### **a. State Point of Contact System and IGPAC**

For day-to-day communications, pursuant to the NAFTA and Uruguay Round implementing legislation and Statements of Administrative Action, USTR created a State Single Point of Contact (SPOC) system. The Governor's office in each state designates a single contact point to disseminate information received from USTR to relevant state and local offices and assist in relaying specific information and advice from the states to USTR on trade-related matters.

The SPOC network ensures that state governments are promptly informed of Administration trade initiatives so their companies and workers may take full advantage of increased foreign market access and reduced trade barriers. It also enables USTR to consult with states and localities directly on trade matters which may affect them. SPOCs regularly receive USTR press releases, *Federal Register* Notices, and other pertinent information. USTR convenes a regular monthly conference call for SPOCs and members of the Intergovernmental Policy Advisory Committee to keep state and local governments apprised of timely trade developments of interest.

IGPAC makes recommendations to USTR and the Administration on trade policy matters from the perspective of state and local governments. In 2011, IGPAC was briefed and consulted on trade priorities of interest to states and localities, including: Efforts to Pass Pending Trade Agreements with Colombia, Panama and South Korea; the Trans-Pacific Partnership; Russia's Accession to the WTO; Activities Related to the United States year-long hosting of meetings for the Asia Pacific Economic Cooperation (APEC) forum; the National Export Initiative; and other matters. IGPAC members are also invited to participate in monthly teleconference call briefings along with State Points of Contact. Specific issues of interest to IGPAC and SPOCs include new enforcement mechanisms for Technical Barriers to Trade and Sanitary and Phytosanitary measures, and foreign government challenges to state subsidies.

#### **b. Meetings of State and Local Associations and Local Chambers of Commerce**

USTR officials participate frequently in meetings of state and local government associations and local chambers of commerce to apprise them of relevant trade policy issues and solicit their views. For example, in June 2011, Ambassador Ron Kirk addressed the U.S. Conference of Mayors in Baltimore, Maryland. He has met with individual governors, mayors, and state legislators to discuss trade issues of interest to states and localities, as well as hosted the Intergovernmental Policy Advisory Committee at

USTR. Ambassador Kirk has also met with major local chambers of commerce to hear firsthand from local community officials and small businesses. USTR staff has met with the National Governors' Association, regional governors' associations, councils of state governments/state international development organizations, National Conference of State Legislatures, and other state commissions and organizations. USTR officials have addressed gatherings of state and local officials and port authorities as well as chambers of commerce around the country.

### **c. Consultations Regarding Specific Trade Issues**

USTR initiates consultations with particular states and localities on issues arising under the WTO and other U.S. trade agreements and frequently responds to requests for information from state and local governments. Topics of interest included the pending trade agreements with Colombia, Panama, and South Korea, negotiation of the Trans Pacific Partnership trade agreement, the application of the WTO Government Procurement Agreement, General Agreement on Trade in Services issues, enforcement of trade agreements, the NAFTA trucking issues, and consultations with individual states regarding specific anti-dumping and countervailing duty investigations.

## **C. Policy Coordination and Freedom of Information Act**

The U.S. Trade Representative has primary responsibility, with the advice of the interagency trade policy organization, for developing and coordinating the implementation of U.S. trade policy, including on commodity matters (for example, coffee and rubber) and, to the extent they are related to trade, direct investment matters. Under the Trade Expansion Act of 1962, Congress established an interagency trade policy mechanism to assist with the implementation of these responsibilities. This organization, as it has evolved, consists of three tiers of committees that constitute the principal mechanism for developing and coordinating U.S. Government positions on international trade and trade-related investment issues.

The Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC), administered and chaired by USTR, are the subcabinet interagency trade policy coordination groups that are central to this process. The TPSC is the first-line operating group, with representation at the senior civil servant level. Supporting the TPSC are more than 80 subcommittees responsible for specialized issues. The TPSC regularly seeks advice from the public on its policy decisions and negotiations through *Federal Register* Notices and public hearings. In 2011, the TPSC held public hearings on China's Compliance with its WTO Commitments (October 2011).

Through the interagency process, USTR requests input and analysis from members of the appropriate TPSC subcommittee or task force. The conclusions and recommendations of this group are then presented to the full TPSC and serve as the basis for reaching interagency consensus. If agreement is not reached in the TPSC, or if particularly significant policy questions are being considered, issues are referred to the TPRG (Deputy USTR/Under Secretary level) or to the Deputies Committee of the National Security Council/National Economic Council. Issues of the greatest importance move to the Principals Committee of the NSC/NEC for resolution by the Cabinet, with or without the President in attendance.

Member agencies of the TPSC and the TPRG consist of the Departments of Commerce, Agriculture, State, Treasury, Labor, Justice, Defense, Interior, Transportation, Energy, Health and Human Services, Homeland Security, the Environmental Protection Agency, the Office of Management and Budget, the Council of Economic Advisers, the Council on Environmental Quality, the International Development Cooperation Agency, the National Economic Council, and the National Security Council. The U.S. International Trade Commission is a non-voting member of the TPSC and an observer at TPRG meetings.

Representatives of other agencies also may be invited to attend meetings depending on the specific issues discussed. The Small Business Administration joined the TPSC/TPRG as a full member in March 2010.

Separate from its policy coordination function, the Office of the U.S. Trade Representative is subject to The Freedom of Information Act (FOIA). Details of the program are available on the USTR website at <http://www.ustr.gov/about-us/reading-room/freedom-information-act-foia>. USTR received 59 new FOIA requests last year and processed 58. USTR will continue to raise the bar as to responsiveness, efficiency, and transparency in the coming year.

# **ANNEX I**



# U.S. Trade in 2011

## I. 2011 Overview

U.S. trade (exports and imports of goods and services, and the receipt and payment of earnings on foreign investment)<sup>1</sup> increased by 13 percent in 2011 to a record \$6.1 trillion.<sup>2</sup> The strong growth in trade in both 2010 (up 16 percent) and 2011 was a marked contrast to the 21 percent decline in 2009. The economic recovery in the world also continued in 2011 with real GDP up 4 percent and real world trade up 7.5 percent.<sup>3</sup>

U.S. trade in goods and services increased by 14.6 percent in 2011 – U.S. trade of goods alone increased by 16.5 percent and U.S. trade of services increased by 8.3 percent. U.S. exports of goods and services are up by 15.0 percent in 2011. U.S. goods exports were up 17.0 percent and U.S. services exports were up 10.4 percent. U.S. imports of goods and services increased 14.3 percent in 2011. U.S. imports of goods increased by 16.1 percent and U.S. imports of services increased by 5.5 percent.

Over the past 9 quarters of recovery (from the 3rd quarter of 2009 to the 3rd quarter of 2011), U.S. real GDP is up 2.4 percent at an annual rate, and exports have contributed 1.2 percentage points to this growth. Over the twelve month period, December 2010 to November 2011, goods and services exports are 32.6 percent above the level of exports in 2009, growing at an annualized rate of 15.9 percent, a pace greater than the 15 percent required to achieve the President's goal of doubling exports by the end of 2014.

U.S. trade expansion over the past 41 years (1970 to 2011) was more rapid than the growth of the overall U.S. economy, in both nominal and real terms. In nominal terms, trade has grown at an average annual rate of 9.8 percent per year since 1970 compared to U.S. GDP whose average annual growth over the same period was 6.7 percent. In real terms, the average annual growth in trade was more than double the pace of GDP growth, 5.9 percent versus 2.8 percent. Through 2011, the value of U.S. trade increased dramatically from \$135 billion in 1970 to \$6.1 trillion in 2011 (figure 1).<sup>4</sup> As a share of the value of GDP, trade was up from 13 percent in 1970 to 41 percent in 2011 (figure 2), but was still below the record 42 percent reached in 2008.<sup>5</sup>

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<sup>1</sup> Earnings on foreign investment are considered trade because they are conceptually the payment made to foreign residents for the service rendered by the use of foreign capital. Beyond the overview section, however, this chapter deals with goods and services trade, excluding foreign investment earnings. All trade values are nominal unless otherwise indicated.

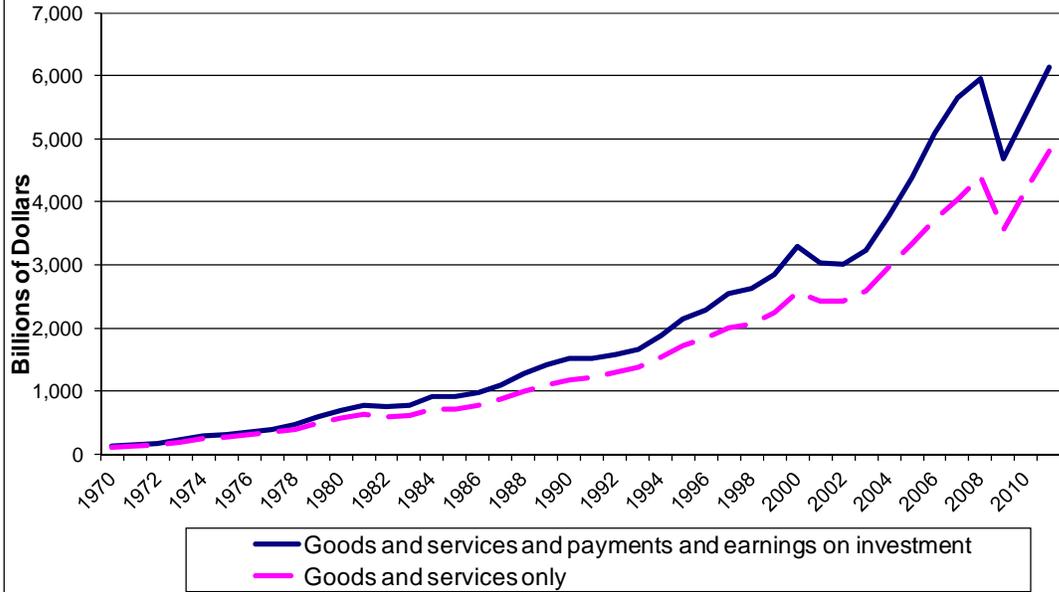
<sup>2</sup> In this Chapter, 2011 is estimated based on partial year data (January-November, or the first 3 quarters of 2011).

<sup>3</sup> According to the International Monetary Fund.

<sup>4</sup> Trade in goods and services alone has increased from \$116 billion in 1970 to \$4.8 trillion in 2011.

<sup>5</sup> For goods and services, excluding investment earnings and payments, U.S. trade represented a record 32 percent of the value of GDP in 2011, up from 11 percent in 1970.

**Figure 1:  
U.S. Trade Growth 1970-2011\***

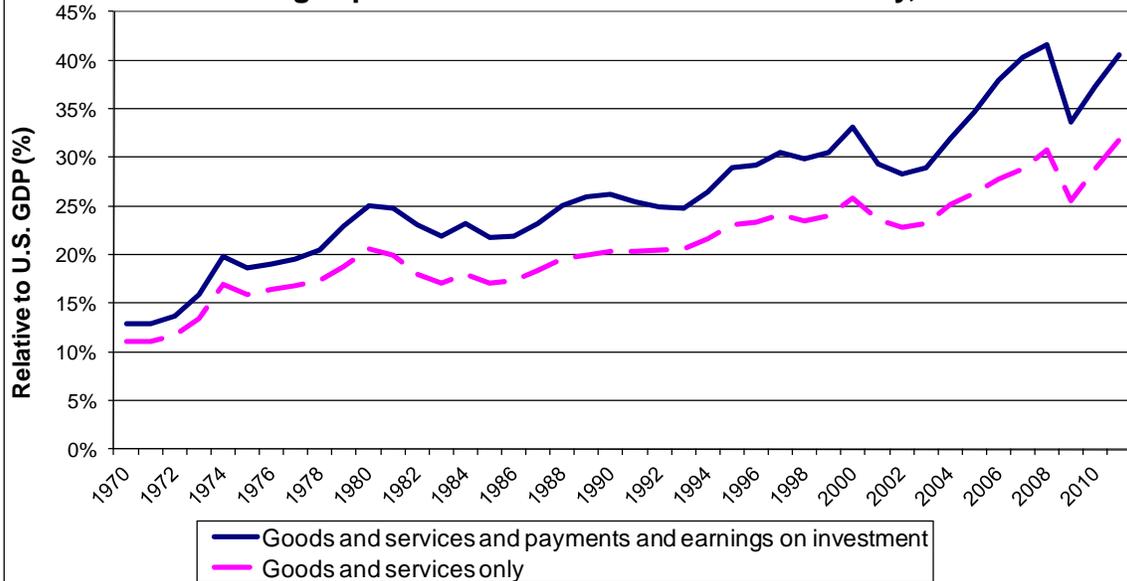


Total exports + imports

\* 2011 Annualized based on the first 3 quarters of 2011 data.

Source: U.S. Department of Commerce

**Figure 2:  
Growing Importance of Trade in the U.S. Economy, 1970-2011\***



Total exports + imports as a percentage of the value of U.S. GDP

\*2011 Annualized based on the first 3 quarters of 2011 data.

Source: U.S. Department of Commerce

The total deficit on goods and services trade (excluding earnings and payments on foreign investment) increased by approximately \$58 billion in 2011 to \$558 billion. However, the deficit was more than one-fourth lower than its pre-recession high of \$698 billion in 2008. As a share of GDP, the deficit increased from 3.4 percent of GDP in 2010 to approximately 3.7 percent of GDP in 2011, but was still below the 4.9 percent level recorded in 2008.

The U.S. deficit in goods trade alone increased by \$91 billion from \$646 billion in 2010 (4.4 percent of GDP) to \$738 billion in 2011 (4.9 percent of GDP), while the services trade surplus increased by \$35 billion, from \$146 billion in 2010 (1.0 percent of GDP) to \$181 billion in 2011 (1.2 percent of GDP).

## **II. Goods Trade**

### **A. Export Growth**

As with total trade, goods exports increased significantly in 2011, up 17 percent, to a record \$1.5 trillion, surpassing the previous pre-recession high in 2008 (*table 1 and figure 3*). Manufacturing exports, which accounted for 77 percent of total goods exports, were up 12.5 percent in 2011, while agriculture exports, which accounted for 10 percent of total goods exports, were up 20 percent in 2011. Advanced technology exports, a subset of manufacturing exports, accounted for 19 percent of total goods exports and were up 5 percent in 2011. U.S. goods exports increased for every major end-use category in 2011, with the largest increases in the industrial supplies and materials category, up 29 percent, and in the autos and auto parts and food, feeds, and beverages categories, each up 18 percent.

Since 2000, U.S. goods exports have increased over 95 percent. U.S. agricultural exports grew by 176 percent since 2000, over double the growth of manufacturing exports. U.S. advanced technology exports grew by 27 percent. Of the major end-use categories, exports of industrial supplies and materials (up 193 percent) led growth in the 2000-2011 timeframe over both the foods, feeds, and beverages category (up 166 percent) and the consumer goods category (up 98 percent). Of the more than half-trillion dollar increase in goods exports since 2000, capital goods and industrial supplies and materials each accounted for 33 percent of the increase, and consumer goods accounted for 12 percent.

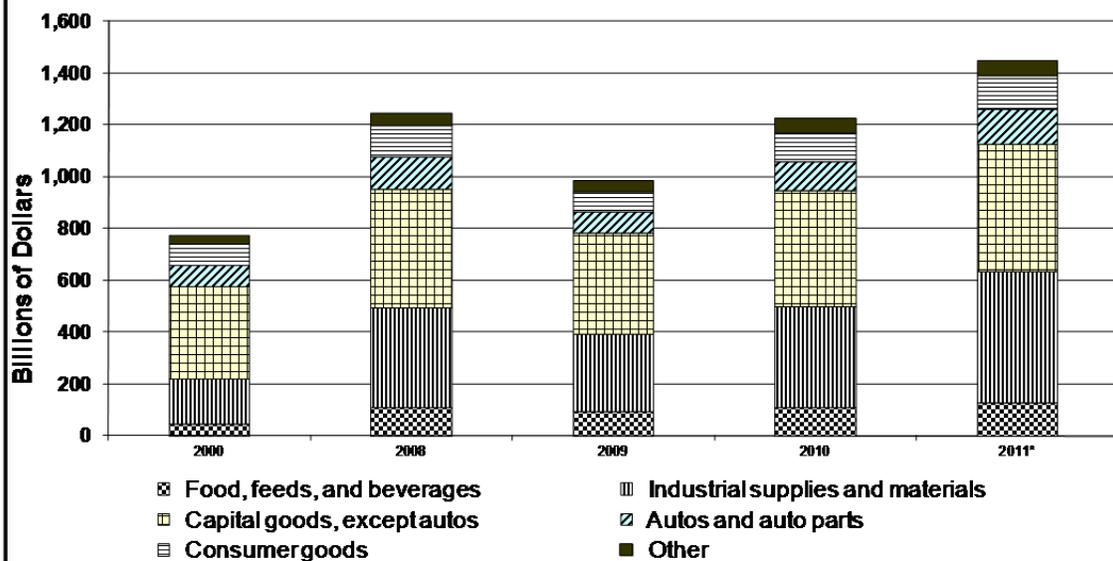
**Table 1**  
**U.S. Goods Exports**

Exports:	2000	2008	2009	2010	2011*	10-11*	08-11*	00-11*
	<i>Billions of Dollars</i>					<i>Percent Changes</i>		
<b>Total (BOP basis)</b>	772.0	1,307.5	1,069.5	1,288.7	1,508.0	17.0%	15.3%	95.3%
<b>Food, feeds, and beverages</b>	47.9	108.3	93.9	107.7	127.2	18.1%	17.4%	165.8%
<b>Industrial supplies and materials</b>	172.6	388.0	296.7	391.7	504.8	28.9%	30.1%	192.5%
<b>Capital goods, except autos</b>	356.9	457.7	390.5	446.6	493.5	10.5%	7.8%	38.3%
<b>Autos and auto parts</b>	80.4	121.5	81.7	112.0	132.6	18.4%	9.2%	65.0%
<b>Consumer goods</b>	89.4	161.3	150.0	165.9	177.1	6.7%	9.8%	98.1%
<b>Other</b>	34.8	50.7	43.2	54.3	55.1	1.5%	8.8%	58.6%
<b>Addendum: Agriculture</b>	52.1	118.2	98.7	119.3	143.7	20.4%	21.5%	176.0%
<b>Addendum: Manufacturing</b>	689.5	1,038.6	859.7	1,023.5	1,151.6	12.5%	10.9%	67.0%
<b>Addendum: Advanced Technology</b>	227.4	270.1	244.7	273.3	288.1	5.4%	6.6%	26.7%

\* Annualized based on January-November 2011 data.

Source: U.S. Department of Commerce, Balance of Payments basis for total, Census basis for sectors.

**Figure 3:**  
**U.S. Goods Exports**



\*2011 Annualized based on January-November 2011 data

Source: U.S. Department of Commerce

**Table 2**  
**U.S. Goods Exports to Selected Countries/Regions**

Exports to:	2000	2008	2009	2010	2011*	10-11*	08-11*	00-11*
	<i>Billions of Dollars</i>					<i>Percent Changes</i>		
Canada	178.9	261.2	204.7	249.1	281.6	13.1%	7.8%	57.4%
Mexico	111.3	151.2	128.9	163.5	199.1	21.8%	31.6%	78.8%
China	16.2	69.7	69.5	91.9	105.9	15.2%	51.8%	554.0%
Japan	64.9	65.1	51.1	60.5	66.9	10.5%	2.6%	3.0%
European Union (EU 27)	168.5	272.2	220.6	239.6	271.0	13.1%	-0.5%	60.8%
Asian Pacific Rim, except Japan and China	121.5	161.1	133.9	174.0	200.1	15.0%	24.2%	64.7%
Latin America, except Mexico	59.3	136.9	109.5	138.6	169.0	22.0%	23.4%	185.1%
Addendum: Industrial Countries**	432.7	637.5	511.7	589.1	668.0	13.4%	4.8%	54.4%
Addendum: Developing Countries**	349.2	650.0	544.3	689.2	822.2	19.3%	26.5%	135.5%
Addendum: FTA Countries	346.3	525.0	423.8	522.1	614.7	17.7%	17.1%	77.5%

\* Annualized based on January-November 2011 data.

\*\* As defined by the International Monetary Fund.

Source: U.S. Department of Commerce, Census basis.

In 2011, U.S. goods exports increased to all major markets specified above (*table 2*), ranging from a high of 22 percent to Latin America, excluding Mexico, to a low of 10.5 percent to Japan. U.S. goods exports to the 17 FTA countries grew by 17.7 percent in 2011, surpassing the 17.0 percent growth rate to the rest of the world.<sup>6</sup> Over the last year, U.S. goods exports increased by 19.3 percent to developing countries, and by 13.4 percent to industrial countries. Since 2000, U.S. goods exports to developing countries have grown almost three times as fast as U.S. goods exports to industrial countries, 135 percent compared to 54 percent. Due to this long-term higher-growth difference, the share of U.S. goods exports to developing countries have grown from 45 percent in 2000 to 55 percent in 2011.

## B. Import Growth

U.S. goods imports increased by 16 percent in 2011 to a record \$2.2 trillion (*table 3 and figure 4*). U.S. manufacturing imports, accounting for 72 percent of total goods imports, increased by 12 percent in 2011. Agriculture imports, accounting for 4 percent of total goods imports, increased by 21 percent, and advanced technology imports, accounting for 17 percent of total goods imports, increased by 9 percent in 2011.

<sup>6</sup> The 17 FTA countries currently entered into force accounted for 41 percent of total goods exports and 30 percent of total goods imports in 2011. These percentages would have increased to 45 percent for goods exports and 34 percent for goods imports if the additional FTAs (Korea, Colombia, and Panama), that have been passed by Congress but have not yet entered into force, are included.

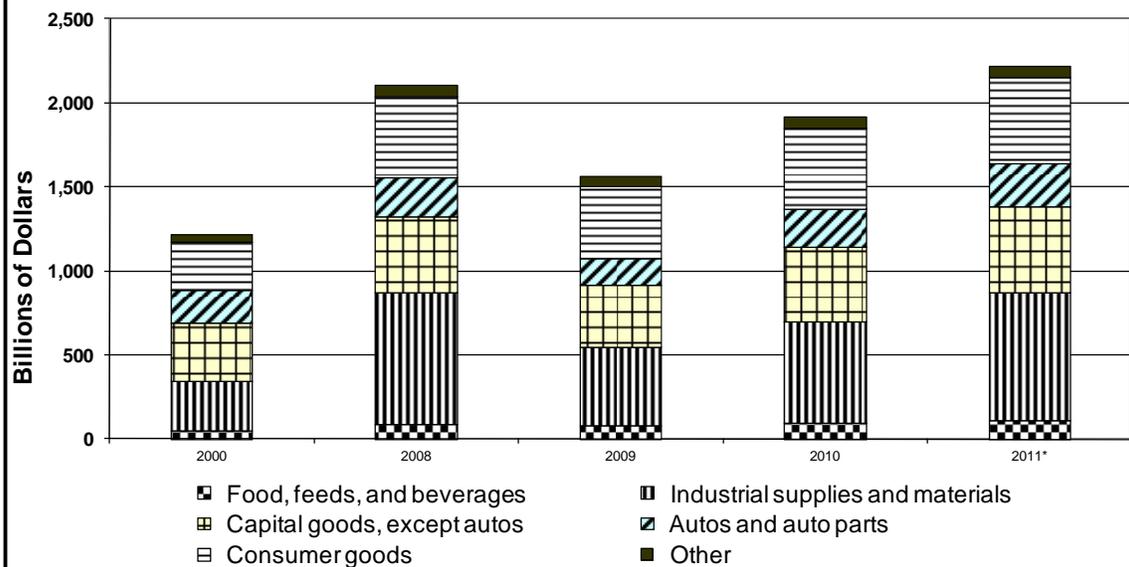
**Table 3**  
**U.S. Goods Imports**

	2000	2008	2009	2010	2011*	10-11*	08-11*	00-11*
<b>Imports:</b>	<i>Billions of Dollars</i>					<i>Percent Changes</i>		
<b>Total (BOP basis)</b>	1,226.7	2,137.6	1,575.4	1,934.6	2,246.5	16.1%	5.1%	83.1%
<b>Food, feeds, and beverages</b>	46.0	89.0	81.6	91.7	108.1	17.9%	21.5%	135.2%
<b>Industrial supplies and materials</b>	299.0	779.5	462.5	602.7	761.8	26.4%	-2.3%	154.8%
<b>Capital goods, except autos</b>	347.0	453.7	369.3	449.2	512.8	14.2%	13.0%	47.8%
<b>Autos and auto parts</b>	195.9	231.2	157.6	225.0	254.5	13.1%	10.0%	29.9%
<b>Consumer goods</b>	281.8	481.6	428.4	483.3	516.1	6.8%	7.2%	83.1%
<b>Other</b>	48.3	68.5	60.2	61.3	64.6	5.5%	-5.7%	33.7%
<b>Addendum: Agriculture</b>	39.2	80.7	71.8	82.0	99.6	21.4%	23.4%	154.1%
<b>Addendum: Manufacturing</b>	1,013.5	1,490.4	1,185.9	1,438.6	1,614.7	12.2%	8.3%	59.3%
<b>Addendum: Advanced Technology</b>	222.1	331.2	300.9	354.2	386.3	9.1%	16.6%	73.9%

\* Annualized based on January-November 2011 data.

Source: U.S. Department of Commerce, Balance of Payments basis for total, Census basis for sectors.

**Figure 4:**  
**U.S. Goods Imports**



\*2011 Annualized based on January-November 2011 data  
Source: U.S. Department of Commerce

Similar to U.S. goods exports, U.S. goods imports increased for every major end-use category in 2011, with increases ranging between 7 percent for the consumer goods category and 26 percent for the industrial supplies category. U.S. imports of petroleum increased by 31 percent to \$442 billion in 2011, while imports of non-petroleum imports increased by 13 percent.

U.S. goods imports have increased by 83 percent since 2000, lower than the 95 percent increase in goods exports. U.S. agriculture imports have more than doubled since 2000, while imports of advanced technology products and manufactured goods have increased by 74 percent and 59 percent, respectively. For the major end-use categories, U.S. imports of industrial supplies and materials led growth since 2000 (up 155 percent), followed by foods, feeds, and beverages (up 135 percent) and consumer goods (up 83 percent).

On a major country/region basis, the growth of U.S. goods imports in 2011 ranged between an increase of 7 percent from Japan and 33 percent from Latin America (excluding Mexico) (*table 4*). The slowdown in U.S. goods imports from Japan from 26 percent growth in 2010 to 7 percent growth in 2011 was due mostly to the effects from the earthquake and tsunami disaster in March 2011.

**Table 4**  
**U.S. Goods Imports from Selected Countries/Regions**

Imports from:	2000	2008	2009	2010	2011*	10-11*	08-11*	00-11*
	<i>Billions of Dollars</i>					<i>Percent Changes</i>		
Canada	230.8	339.5	226.2	277.6	317.7	14.4%	-6.4%	37.6%
Mexico	135.9	215.9	176.7	229.9	264.1	14.9%	22.3%	94.3%
China	100.0	337.8	296.4	364.9	400.3	9.7%	18.5%	300.2%
Japan	146.5	139.3	95.8	120.5	129.1	7.1%	-7.3%	-11.9%
European Union (EU27)	227.6	368.4	281.8	319.2	368.6	15.5%	0.0%	61.9%
Asian Pacific Rim, except Japan and China	171.5	176.9	140.8	168.4	190.6	13.2%	7.7%	11.1%
Latin America, except Mexico	73.3	160.0	108.1	130.9	173.9	32.9%	8.7%	137.1%
Addendum: Industrial Countries**	621.1	872.6	627.2	742.8	845.0	13.8%	-3.2%	36.0%
Addendum: Developing Countries**	596.9	1,231.1	932.4	1,170.4	1,372.6	17.3%	11.5%	130.0%
Addendum: FTA Countries	426.2	641.0	477.1	593.2	683.1	15.2%	6.6%	60.3%

\* Annualized based on January-November 2011 data.

\*\*As defined by the International Monetary Fund.

Source: U.S. Department of Commerce, Census basis.

U.S. imports from industrial countries increased by 14 percent in 2011, compared to the 17 percent increase in imports from developing countries. Since 2000, U.S. goods imports from developing countries have exhibited higher growth (almost 4 times as much) than that from industrial countries, 130 percent compared with 36 percent. Accordingly, the share of U.S. imports from developing countries has increased from 49 percent in 2000 to 61 percent in 2011.

### **III. Services Trade**

#### **A. Export Growth**

U.S. exports of services increased by 10 percent to a record \$606 billion in 2011 (*table 5 and figure 5*). U.S. services exports accounted for 29 percent of the level of U.S. goods and services exports in 2011.

All of the major services export categories exhibited increases in 2011, led by passenger fares (up 19 percent), royalties and licensing fees (up 13 percent), travel (up 12 percent), and other private services (up 9 percent).

U.S. services exports have increased by 112 percent over the past 11 years. Of the \$319 billion increase in U.S. services exports between 2000 and 2011, the other private services category accounted for 51 percent of the increase, while the royalties and licensing fees category accounted for 24 percent.

Detailed sectoral breakdowns for exports of the other private services category as well as exports to countries/regions are available only through 2010.

In 2010, 32 percent of U.S. exports of other private services were to business related parties (to a foreign parent or affiliate). The largest categories for U.S. exports of other private services to related and unrelated parties, in 2010 were: business, professional and technical services, \$126 billion; financial services, \$66 billion; and education, \$21 billion. The business, professional and technical services category were led by management and consulting services (\$31 billion), research and development and testing services (\$21 billion), computer and information services (\$14 billion), and the installation, maintenance, and repair of equipment (\$14 billion).

Canada was the largest purchaser of U.S. private services exports in 2010, accounting for 10 percent (\$51 billion) of total U.S. private services exports. The next 5 largest purchasers of U.S. private services exports in 2010 were: United Kingdom (\$49 billion), Japan (\$45 billion), Ireland (\$25 billion), Germany (\$24 billion), and Mexico (\$24 billion). Regionally, in 2010, the United States exported \$169 billion to the EU, \$126 billion to the Asia/Pacific region (\$60 billion excluding Japan and China), \$75 billion to NAFTA countries, and \$46 billion to Latin America (excluding Mexico).

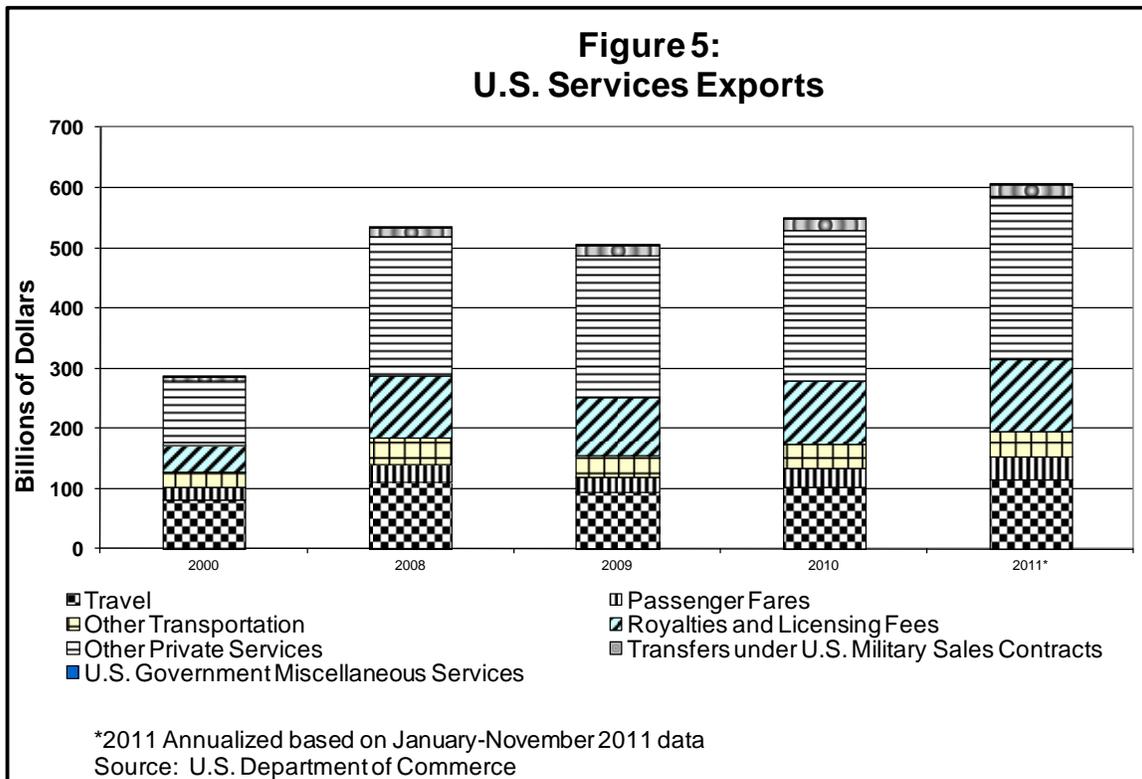
**Table 5**  
**U.S. Services Exports**

Exports:	2000	2008	2009	2010	2011*	10-11*	08-11*	00-11*
	<i>Billions of Dollars</i>					<i>Percent Changes</i>		
<b>Total (BOP basis)</b>	286.4	535.2	505.5	548.9	605.8	10.4%	13.2%	111.5%
<b>Travel</b>	82.4	110.4	94.2	103.5	115.8	11.9%	4.9%	40.6%
<b>Passenger Fares</b>	20.7	31.0	26.1	30.9	36.7	18.6%	18.5%	77.4%
<b>Other Transportation</b>	25.3	44.0	35.5	39.9	42.6	6.7%	-3.2%	68.3%
<b>Royalties and Licensing Fees</b>	43.2	102.1	97.2	105.6	119.5	13.2%	17.0%	176.5%
<b>Other Private Services</b>	107.9	232.0	234.9	250.3	272.3	8.8%	17.4%	152.3%
<b>Transfers under U.S. Military Sales Contracts</b>	6.1	14.7	16.6	17.5	17.7	1.2%	20.3%	190.6%
<b>U.S. Government Miscellaneous Services</b>	0.8	0.9	1.1	1.1	1.2	2.9%	23.7%	46.8%

\* Annualized based on January-November 2011 data.

Source: U.S. Department of Commerce, Balance of Payments basis.

**Figure 5:**  
**U.S. Services Exports**



## **B. Import Growth**

U.S. services imports increased by 6 percent to \$425 billion in 2011 (*table 6, figure 6*). This increase was less than the increase in services exports (up 10 percent), and nearly one third the rate of increase in goods imports (up 16 percent). The passenger fares category showed the largest increase in 2011, up 14 percent. U.S. services imports accounted for roughly 16 percent of the level of U.S. goods and services imports in 2011.

U.S. services imports in 2011 are up 94 percent since 2000, again lower than the growth in services exports during this same time period (up 112 percent). Of the \$206 billion growth in services imports since 2000, the other private services category accounted for 67 percent of the increase.

As with exports, detailed sectoral breakdowns for imports of other private services are available only through 2010.

In 2010, 38 percent of U.S. imports of other private services were from business related parties (from a foreign parent or affiliate). The largest categories for U.S. imports of other private services from related and unrelated parties in 2010 were: business professional and technical services, \$91 billion; insurance services, \$62 billion; and financial services, \$14 billion. The business, professional and technical services category was led by management, and consulting services (\$23 billion), computer and information services (\$19 billion), and research, development, and testing services (\$19 billion).

The United Kingdom remained our largest supplier of private services, accounting for 11 percent of total U.S. private services imports in 2010. The top 5 suppliers of U.S. private services imports in 2010 were: the United Kingdom (\$40 billion), Bermuda (\$32 billion), Canada (\$26 billion), Japan (\$24 billion), and Germany (\$22 billion). Regionally, the United States imported \$125 billion of services from the EU-27 in 2010, \$69 billion from the Asia/Pacific region (\$36 billion excluding Japan and China), \$39 billion from NAFTA, and \$21 billion from Latin America (excluding Mexico).

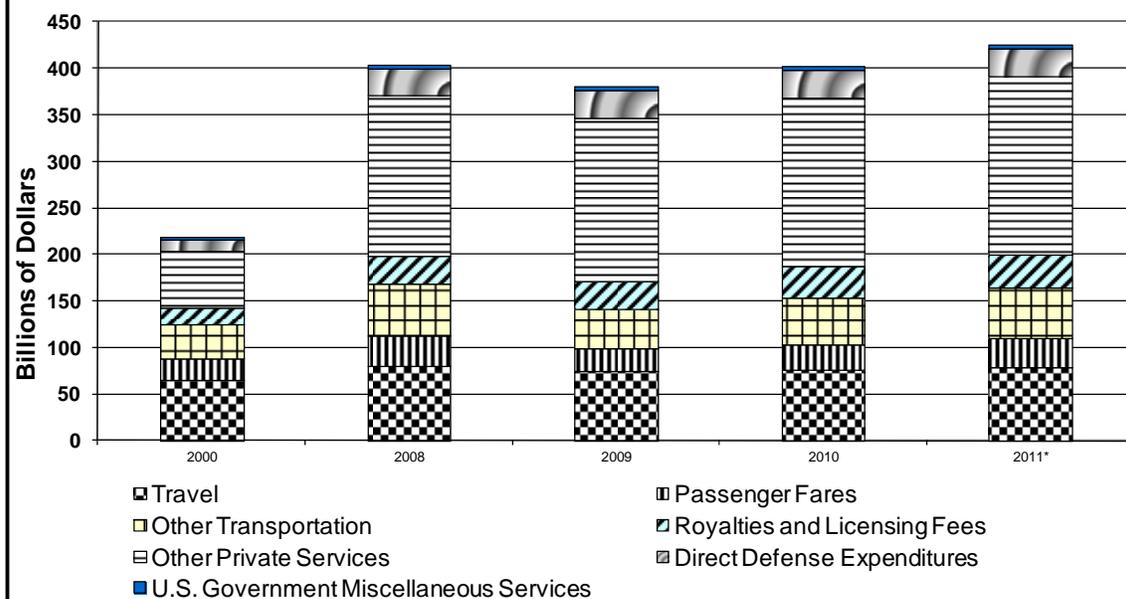
**Table 6**  
**U.S. Services Imports**

Imports:	2000	2008	2009	2010	2011*	10-11*	08-11*	00-11*
	<i>Billions of Dollars</i>					<i>Percent Changes</i>		
<b>Total (BOP basis)</b>	219.0	403.4	380.9	403.0	425.2	5.5%	5.4%	94.2%
<b>Travel</b>	64.7	80.5	74.1	75.5	79.2	4.9%	-1.6%	22.4%
<b>Passenger Fares</b>	24.3	31.8	25.1	27.3	31.2	14.2%	-2.1%	28.4%
<b>Other Transportation</b>	36.7	56.7	42.6	51.2	54.6	6.6%	-3.7%	48.7%
<b>Royalties and Licensing Fees</b>	16.5	29.6	29.8	33.5	35.6	6.3%	20.1%	116.0%
<b>Other Private Services</b>	61.2	172.5	174.3	180.6	190.6	5.5%	10.4%	211.3%
<b>Direct Defense Expenditures</b>	12.7	28.3	30.5	30.4	29.8	-2.0%	5.2%	134.6%
<b>U.S. Government Miscellaneous Services</b>	2.9	3.9	4.4	4.6	4.4	-5.0%	12.4%	52.3%

\* Annualized based on January-November 2011 data.

Source: U.S. Department of Commerce, Balance of Payments basis.

**Figure 6:**  
**U.S. Services Imports**



\*2011 Annualized based on January-November 2011 data

Source: U.S. Department of Commerce

#### IV. The U.S. Trade Deficit

In 2011, the U.S. goods and services deficit increased by 12 percent (\$58 billion) to a level of \$558 billion (*table 7*). However, it was still significantly lower, by 20 percent, than its level in 2008. The U.S. deficit in goods trade alone increased by \$92 billion to \$738 billion in 2011, while the U.S. surplus in services trade increased by \$35 billion to \$181 billion.

As a share of U.S. GDP, the goods and services trade deficit increased to 3.7 percent of GDP in 2011 from 3.4 percent of GDP in 2010, yet still below the 4.9 percent level in 2008 (*table 8*). The goods trade deficit increased from 4.4 percent of GDP in 2010 to 4.9 percent of GDP in 2011, while the services trade surplus increased from 1.0 percent of GDP in 2010 to 1.2 percent of GDP in 2011.

The increase in the overall deficit was due mostly to the increase in petroleum deficit. Moreover, the non-petroleum goods and services deficit actually decreased by approximately 2 percent in 2011. The U.S. deficit in petroleum accounted for approximately 58 percent of the overall goods and services trade deficit in 2011.

The regional distribution of the goods trade deficit for 2000, and 2008-2011 is shown in *table 9*.

<b>Table 7</b>					
<b>U.S. Trade Balances with the World</b>					
	<b>2000</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011*</b>
<b>Balance:</b>	<i>Billions of Dollars</i>				
<b>Goods and Services (BOP Basis)</b>	-387.2	-698.3	-381.3	-500.0	-557.9
<b>Goods (BOP Basis)</b>	-454.7	-830.1	-505.9	-645.9	-738.4
<b>Services (BOP Basis)</b>	67.5	131.8	124.6	145.8	180.5
* Annualized based on January-November 2011 data.					
Source: U.S. Department of Commerce					

<b>Table 8</b>					
<b>U.S. Trade Balances as a Share of GDP</b>					
	<b>2000</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011*</b>
<b>Share of GDP:</b>	<i>Percents</i>				
<b>Goods and Services (BOP Basis)</b>	-3.9	-4.9	-2.7	-3.4	-3.7
<b>Goods (BOP Basis)</b>	-4.6	-5.8	-3.6	-4.4	-4.9
<b>Services (BOP Basis)</b>	0.7	0.9	0.9	1.0	1.2
* Annualized based on January-November 2011 data.					
Source: U.S. Department of Commerce					

<b>Table 9</b>					
<b>U.S. Goods Trade Balances with Selected Countries/Regions</b>					
	<b>2000</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011*</b>
<b>Balance:</b>	<i>Billions of Dollars</i>				
<b>Canada</b>	-51.9	-78.3	-21.6	-28.5	-36.1
<b>Mexico</b>	-24.6	-64.7	-47.8	-66.4	-65.0
<b>China</b>	-83.8	-268.0	-226.9	-273.1	-294.4
<b>Japan</b>	-81.6	-74.1	-44.7	-60.1	-62.2
<b>European Union (EU27)</b>	-59.1	-96.2	-61.2	-79.6	-97.6
<b>Asian Pacific Rim, except Japan and China</b>	-50.0	-15.8	-6.9	5.6	9.5
<b>Latin America, except Mexico</b>	-14.1	-23.0	1.5	7.7	-4.9
<b>Addendum: Industrial Countries**</b>	-188.4	-235.1	-115.5	-153.7	-177.0
<b>Addendum: Developing Countries**</b>	-247.7	-581.1	-388.1	-481.2	-550.4
<b>Addendum: FTA Countries</b>	-79.9	-116.1	-53.4	-71.1	-68.5
* Annualized based on January-November 2011 data.					
** As defined by the International Monetary Fund					
Source: U.S. Department of Commerce					



## **ANNEX II**



## **Background Information on the WTO**

### ***Doha Development Agenda***

1. Doha Ministerial Declaration (see table)
2. Doha Declaration on the TRIPS Agreement and Public Health (see table)
3. Doha Declaration on Implementation-Related Issues and Concerns (see table)
4. Doha Work Program
5. Amendment of the TRIPS Agreement
6. Hong Kong Ministerial Declaration
7. U.S. Submissions to the WTO in Support of the Doha Development Agenda
8. WTO Affinity Groups in the DDA (see table)

### ***Institutional Issues***

1. Membership of the WTO
2. 2012 Budgets for the WTO
3. 2012 WTO Budget Contributions
4. Waivers Currently in Force
5. WTO Secretariat Personnel Statistics
6. WTO Accession Application and Status
7. Indicative List of Governmental and Non-Governmental Panelists
8. Appellate Body Membership
9. Where to Find More Information on the WTO

## DOHA DEVELOPMENT AGENDA

<b>Document Name</b>	<b>Document Number</b>
<u>Doha Ministerial Declaration</u>	WT/MIN(01)/DEC/1 (Nov. 20, 2001)
<u>Doha Declaration on the TRIPS Agreement and Public Health</u>	WT/MIN(01)/DEC/2 (Nov. 20, 2001)
<u>Doha Declaration on Implementation-Related Issues and Concerns</u>	WT/MIN(01)/17 (Nov. 20, 2001)
<u>Hong Kong Ministerial Declaration</u>	(WT/MIN(05)/DEC (Dec. 2, 2005)
<u>WTO Affinity Groups in the DDA</u>	N/A

**Doha Work Programme**

**Decision Adopted by the General Council on 1 August 2004**

1. The General Council reaffirms the Ministerial Declarations and Decisions adopted at Doha and the full commitment of all Members to give effect to them. The Council emphasizes Members' resolve to complete the Doha Work Programme fully and to conclude successfully the negotiations launched at Doha. Taking into account the Ministerial Statement adopted at Cancún on 14 September 2003, and the statements by the Council Chairman and the Director-General at the Council meeting of 15-16 December 2003, the Council takes note of the report by the Chairman of the Trade Negotiations Committee (TNC) and agrees to take action as follows:

**a. Agriculture:** the General Council adopts the framework set out in Annex A to this document.

**b. Cotton:** the General Council reaffirms the importance of the Sectoral Initiative on Cotton and takes note of the parameters set out in Annex A within which the trade-related aspects of this issue will be pursued in the agriculture negotiations. The General Council also attaches importance to the development aspects of the Cotton Initiative and wishes to stress the complementarity between the trade and development aspects. The Council takes note of the recent Workshop on Cotton in Cotonou on 23-24 March 2004 organized by the WTO Secretariat, and other bilateral and multilateral efforts to make progress on the development assistance aspects and instructs the Secretariat to continue to work with the development community and to provide the Council with periodic reports on relevant developments.

Members should work on related issues of development multilaterally with the international financial institutions, continue their bilateral programmes, and all developed countries are urged to participate. In this regard, the General Council instructs the Director General to consult with the relevant international organizations, including the Bretton Woods Institutions, the Food and Agriculture Organization and the International Trade Centre to direct effectively existing programmes and any additional resources towards development of the economies where cotton has vital importance.

**c. Non-agricultural Market Access:** the General Council adopts the framework set out in Annex B to this document.

**d. Development:**

**Principles:** development concerns form an integral part of the Doha Ministerial Declaration. The General Council rededicates and recommits Members to fulfilling the development dimension of the Doha Development Agenda, which places the needs and interests of

developing and least-developed countries at the heart of the Doha Work Programme. The Council reiterates the important role that enhanced market access, balanced rules, and well targeted, sustainably financed technical assistance and capacity building programmes can play in the economic development of these countries.

**Special and Differential Treatment:** the General Council reaffirms that provisions for special and differential (S&D) treatment are an integral part of the WTO Agreements. The Council recalls Ministers' decision in Doha to review all S&D treatment provisions with a view to strengthening them and making them more precise, effective and operational. The Council recognizes the progress that has been made so far. The Council instructs the Committee on Trade and Development in 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, by July 2005. The Council further instructs the Committee, within the parameters of the Doha mandate, to address all other outstanding work, including on the cross-cutting issues, the monitoring mechanism and the incorporation of S&D treatment into the architecture of WTO rules, as referred to in TN/CTD/7 and report, as appropriate, to the General Council.

The Council also instructs all WTO bodies to which proposals in Category II have been referred to expeditiously complete the consideration of these proposals and report to the General Council, with clear recommendations for a decision, as soon as possible and no later than July 2005. In doing so these bodies will ensure that, as far as possible, their meetings do not overlap so as to enable full and effective participation of developing countries in these discussions.

**Technical Assistance:** the General Council recognizes the progress that has been made since the Doha Ministerial Conference in expanding Trade-Related Technical Assistance (TRTA) to developing countries and low-income countries in transition. In furthering this effort the Council affirms that such countries, and in particular least-developed countries, should be provided with enhanced TRTA and capacity building, to increase their effective participation in the negotiations, to facilitate their implementation of WTO rules, and to enable them to adjust and diversify their economies. In this context the Council welcomes and further encourages the improved coordination with other agencies, including under the Integrated Framework for TRTA for the LDCs (IF) and the Joint Integrated Technical Assistance Programme (JITAP).

**Implementation:** concerning implementation-related issues, the General Council reaffirms the mandates Ministers gave in paragraph 12 of the Doha Ministerial Declaration and the Doha Decision on Implementation-Related Issues and Concerns, and renews Members' determination to find appropriate solutions to outstanding issues. The Council instructs the Trade Negotiations Committee, negotiating bodies and other WTO bodies concerned to redouble their efforts to find appropriate solutions as a priority. Without prejudice to the positions of Members, the Council requests the Director-General to continue with his consultative process on all outstanding implementation issues under paragraph 12(b) of the Doha Ministerial Declaration, including on issues related to the extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits, if need be by appointing Chairpersons of concerned WTO bodies as his Friends and/or by holding dedicated consultations. The Director-General shall report to the TNC and the General Council no later than May 2005. The Council shall review progress and take any appropriate action no later than July 2005.

**Other Development Issues:** in the ongoing market access negotiations, recognising the fundamental principles of the WTO and relevant provisions of GATT 1994, special attention shall be given to the specific trade and development related needs and concerns of developing countries, including capacity constraints. These particular concerns of developing countries, including relating to food security, rural development, livelihood,

preferences, commodities and net food imports, as well as prior unilateral liberalisation, should be taken into consideration, as appropriate, in the course of the Agriculture and NAMA negotiations. The trade-related issues identified for the fuller integration of small, vulnerable economies into the multilateral trading system, should also be addressed, without creating a sub-category of Members, as part of a work programme, as mandated in paragraph 35 of the Doha Ministerial Declaration.

**Least-Developed Countries:** the General Council reaffirms the commitments made at Doha concerning least-developed countries and renews its determination to fulfil these commitments. Members will continue to take due account of the concerns of least-developed countries in the negotiations. The Council confirms that nothing in this Decision shall detract in any way from the special provisions agreed by Members in respect of these countries.

**e. Services:** the General Council takes note of the report to the TNC by the Special Session of the Council for Trade in Services<sup>1</sup> and reaffirms Members' commitment to progress in this area of the negotiations in line with the Doha mandate. The Council adopts the recommendations agreed by the Special Session, set out in Annex C to this document, on the basis of which further progress in the services negotiations will be pursued. Revised offers should be tabled by May 2005.

**f. Other negotiating bodies:**

**Rules, Trade & Environment and TRIPS:** the General Council takes note of the reports to the TNC by the Negotiating Group on Rules and by the Special Sessions of the Committee on Trade and Environment and the TRIPS Council.<sup>2</sup> The Council reaffirms Members' commitment to progress in all of these areas of the negotiations in line with the Doha mandates.

**Dispute Settlement:** the General Council takes note of the report to the TNC by the Special Session of the Dispute Settlement Body<sup>3</sup> and reaffirms Members' commitment to progress in this area of the negotiations in line with the Doha mandate. The Council adopts the TNC's recommendation that work in the Special Session should continue on the basis set out by the Chairman of that body in his report to the TNC.

**g. Trade Facilitation:** taking note of the work done on trade facilitation by the Council for Trade in Goods under the mandate in paragraph 27 of the Doha Ministerial Declaration and the work carried out under the auspices of the General Council both prior to the Fifth Ministerial Conference and after its conclusion, the General Council decides by explicit consensus to commence negotiations on the basis of the modalities set out in Annex D to this document.

**Relationship between Trade and Investment, Interaction between Trade and Competition Policy and Transparency in Government Procurement:** the Council agrees that these issues, mentioned in the Doha Ministerial Declaration in paragraphs 20-22, 23-25 and 26 respectively, will not form part of the Work Programme set out in that Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round.

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<sup>1</sup> This report is contained in document TN/S/16.

<sup>2</sup> The reports to the TNC referenced in this paragraph are contained in the following documents: Negotiating Group on Rules - TN/RL/9; Special Session of the Committee on Trade and Environment - TN/TE/9; Special Session of the Council for TRIPS - TN/IP/10.

<sup>3</sup> This report is contained in document TN/DS/10.

**h. Other elements of the Work Programme:** the General Council reaffirms the high priority Ministers at Doha gave to those elements of the Work Programme which do not involve negotiations. Noting that a number of these issues are of particular interest to developing-country Members, the Council emphasizes its commitment to fulfil the mandates given by Ministers in all these areas. To this end, the General Council and other relevant bodies shall report in line with their Doha mandates to the Sixth Session of the Ministerial Conference. The moratoria covered by paragraph 11.1 of the Doha Ministerial Decision on Implementation-related Issues and Concerns and paragraph 34 of the Doha Ministerial Declaration are extended up to the Sixth Ministerial Conference.

2. The General Council agrees that this Decision and its Annexes shall not be used in any dispute settlement proceeding under the DSU and shall not be used for interpreting the existing WTO Agreements.

3. The General Council calls on all Members to redouble their efforts towards the conclusion of a balanced overall outcome of the Doha Development Agenda in fulfilment of the commitments Ministers took at Doha. The Council agrees to continue the negotiations launched at Doha beyond the timeframe set out in paragraph 45 of the Doha Declaration, leading to the Sixth Session of the Ministerial Conference. Recalling its decision of 21 October 2003 to accept the generous offer of the Government of Hong Kong, China to host the Sixth Session, the Council further agrees that this Session will be held in December 2005.

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## Annex A

### Framework for Establishing Modalities in Agriculture

1. The starting point for the current phase of the agriculture negotiations has been the mandate set out in Paragraph 13 of the Doha Ministerial Declaration. This in turn built on the long-term objective of the Agreement on Agriculture to establish a fair and market-oriented trading system through a programme of fundamental reform. The elements below offer the additional precision required at this stage of the negotiations and thus the basis for the negotiations of full modalities in the next phase. The level of ambition set by the Doha mandate will continue to be the basis for the negotiations on agriculture.

2. The final balance will be found only at the conclusion of these subsequent negotiations and within the Single Undertaking. To achieve this balance, the modalities to be developed will need to incorporate operationally effective and meaningful provisions for special and differential treatment for developing country Members. Agriculture is of critical importance to the economic development of developing country Members and they must be able to pursue agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns. Non-trade concerns, as referred to in Paragraph 13 of the Doha Declaration, will be taken into account.

3. The reforms in all three pillars form an interconnected whole and must be approached in a balanced and equitable manner.

4. The General Council recognizes the importance of cotton for a certain number of countries and its vital importance for developing countries, especially LDCs. It will be addressed ambitiously, expeditiously, and specifically, within the agriculture negotiations. The provisions of this framework provide a basis for this approach, as does the sectoral initiative on cotton. The Special Session of the Committee on Agriculture shall ensure appropriate prioritization of the cotton issue independently from other sectoral initiatives. A subcommittee on cotton will meet periodically and report to the Special Session of the Committee on Agriculture to review progress. Work shall encompass all trade-distorting policies affecting the sector in all three pillars of market access, domestic support, and export competition, as specified in the Doha text and this Framework text.

5. Coherence between trade and development aspects of the cotton issue will be pursued as set out in paragraph 1.b of the text to which this Framework is annexed.

#### **DOMESTIC SUPPORT**

6. The Doha Ministerial Declaration calls for "substantial reductions in trade-distorting domestic support". With a view to achieving these substantial reductions, the negotiations in this pillar will ensure the following:

- Special and differential treatment remains an integral component of domestic support. Modalities to be developed will include longer implementation periods and lower reduction coefficients for all types of trade-distorting domestic support and continued access to the provisions under Article 6.2.
- There will be a strong element of harmonisation in the reductions made by developed Members. Specifically, higher levels of permitted trade-distorting domestic support will be subject to deeper cuts.

- Each such Member will make a substantial reduction in the overall level of its trade-distorting support from bound levels.
- As well as this overall commitment, Final Bound Total AMS and permitted *de minimis* levels will be subject to substantial reductions and, in the case of the Blue Box, will be capped as specified in paragraph 15 in order to ensure results that are coherent with the long-term reform objective. Any clarification or development of rules and conditions to govern trade distorting support will take this into account.

***Overall Reduction: A Tiered Formula***

7. The overall base level of all trade-distorting domestic support, as measured by the Final Bound Total AMS plus permitted *de minimis* level and the level agreed in paragraph 8 below for Blue Box payments, will be reduced according to a tiered formula. Under this formula, Members having higher levels of trade-distorting domestic support will make greater overall reductions in order to achieve a harmonizing result. As the first instalment of the overall cut, in the first year and throughout the implementation period, the sum of all trade-distorting support will not exceed 80 per cent of the sum of Final Bound Total AMS plus permitted *de minimis* plus the Blue Box at the level determined in paragraph 15.

8. The following parameters will guide the further negotiation of this tiered formula:

- This commitment will apply as a minimum overall commitment. It will not be applied as a ceiling on reductions of overall trade-distorting domestic support, should the separate and complementary formulae to be developed for Total AMS, *de minimis* and Blue Box payments imply, when taken together, a deeper cut in overall trade-distorting domestic support for an individual Member.
- The base for measuring the Blue Box component will be the higher of existing Blue Box payments during a recent representative period to be agreed and the cap established in paragraph 15 below.

***Final Bound Total AMS: A Tiered Formula***

9. To achieve reductions with a harmonizing effect:

- Final Bound Total AMS will be reduced substantially, using a tiered approach.
- Members having higher Total AMS will make greater reductions.
- To prevent circumvention of the objective of the Agreement through transfers of unchanged domestic support between different support categories, product-specific AMSs will be capped at their respective average levels according to a methodology to be agreed.
- Substantial reductions in Final Bound Total AMS will result in reductions of some product-specific support.

10. Members may make greater than formula reductions in order to achieve the required level of cut in overall trade-distorting domestic support.

### ***De Minimis***

11. Reductions in *de minimis* will be negotiated taking into account the principle of special and differential treatment. Developing countries that allocate almost all *de minimis* support for subsistence and resource-poor farmers will be exempt.

12. Members may make greater than formula reductions in order to achieve the required level of cut in overall trade-distorting domestic support.

### ***Blue Box***

13. Members recognize the role of the Blue Box in promoting agricultural reforms. In this light, Article 6.5 will be reviewed so that Members may have recourse to the following measures:

- Direct payments under production-limiting programmes if:
  - such payments are based on fixed and unchanging areas and yields; or
  - such payments are made on 85% or less of a fixed and unchanging base level of production; or
  - livestock payments are made on a fixed and unchanging number of head.

Or

- Direct payments that do not require production if:
  - such payments are based on fixed and unchanging bases and yields; or
  - livestock payments made on a fixed and unchanging number of head; and
  - such payments are made on 85% or less of a fixed and unchanging base level of production.

14. The above criteria, along with additional criteria will be negotiated. Any such criteria will ensure that Blue Box payments are less trade-distorting than AMS measures, it being understood that:

- Any new criteria would need to take account of the balance of WTO rights and obligations.
- Any new criteria to be agreed will not have the perverse effect of undoing ongoing reforms.

15. Blue Box support will not exceed 5% of a Member's average total value of agricultural production during an historical period. The historical period will be established in the negotiations. This ceiling will apply to any actual or potential Blue Box user from the beginning of the implementation period. In cases where a Member has placed an exceptionally large percentage of its trade-distorting support in the Blue Box, some flexibility will be provided on a basis to be agreed to ensure that such a Member is not called upon to make a wholly disproportionate cut.

### ***Green Box***

16. Green Box criteria will be reviewed and clarified with a view to ensuring that Green Box measures have no, or at most minimal, trade-distorting effects or effects on production. Such a review and clarification will need to ensure that the basic concepts, principles and effectiveness of the Green Box remain and take due account of non-trade concerns. The improved obligations

for monitoring and surveillance of all new disciplines foreshadowed in paragraph 48 below will be particularly important with respect to the Green Box.

## **EXPORT COMPETITION**

17. The Doha Ministerial Declaration calls for "reduction of, with a view to phasing out, all forms of export subsidies". As an outcome of the negotiations, Members agree to establish detailed modalities ensuring the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect by a credible end date.

### ***End Point***

18. The following will be eliminated by the end date to be agreed:

- Export subsidies as scheduled.
- Export credits, export credit guarantees or insurance programmes with repayment periods beyond 180 days.
- Terms and conditions relating to export credits, export credit guarantees or insurance programmes with repayment periods of 180 days and below which are not in accordance with disciplines to be agreed. These disciplines will cover, *inter alia*, payment of interest, minimum interest rates, minimum premium requirements, and other elements which can constitute subsidies or otherwise distort trade.
- Trade distorting practices with respect to exporting STEs including eliminating export subsidies provided to or by them, government financing, and the underwriting of losses. The issue of the future use of monopoly powers will be subject to further negotiation.
- Provision of food aid that is not in conformity with operationally effective disciplines to be agreed. The objective of such disciplines will be to prevent commercial displacement. The role of international organizations as regards the provision of food aid by Members, including related humanitarian and developmental issues, will be addressed in the negotiations. The question of providing food aid exclusively in fully grant form will also be addressed in the negotiations.

19. Effective transparency provisions for paragraph 18 will be established. Such provisions, in accordance with standard WTO practice, will be consistent with commercial confidentiality considerations.

### ***Implementation***

20. Commitments and disciplines in paragraph 18 will be implemented according to a schedule and modalities to be agreed. Commitments will be implemented by annual instalments. Their phasing will take into account the need for some coherence with internal reform steps of Members.

21. The negotiation of the elements in paragraph 18 and their implementation will ensure equivalent and parallel commitments by Members.

### ***Special and Differential Treatment***

22. Developing country Members will benefit from longer implementation periods for the phasing out of all forms of export subsidies.

23. Developing countries will continue to benefit from special and differential treatment under the provisions of Article 9.4 of the Agreement on Agriculture for a reasonable period, to be negotiated, after the phasing out of all forms of export subsidies and implementation of all disciplines identified above are completed.

24. Members will ensure that the disciplines on export credits, export credit guarantees or insurance programs to be agreed will make appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries as provided for in paragraph 4 of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries. Improved obligations for monitoring and surveillance of all new disciplines as foreshadowed in paragraph 48 will be critically important in this regard. Provisions to be agreed in this respect must not undermine the commitments undertaken by Members under the obligations in paragraph 18 above.

25. STEs in developing country Members which enjoy special privileges to preserve domestic consumer price stability and to ensure food security will receive special consideration for maintaining monopoly status.

### ***Special Circumstances***

26. In exceptional circumstances, which cannot be adequately covered by food aid, commercial export credits or preferential international financing facilities, *ad hoc* temporary financing arrangements relating to exports to developing countries may be agreed by Members. Such agreements must not have the effect of undermining commitments undertaken by Members in paragraph 18 above, and will be based on criteria and consultation procedures to be established.

## **MARKET ACCESS**

27. The Doha Ministerial Declaration calls for "substantial improvements in market access". Members also agreed that special and differential treatment for developing Members would be an integral part of all elements in the negotiations.

### ***The Single Approach: a Tiered Formula***

28. To ensure that a single approach for developed and developing country Members meets all the objectives of the Doha mandate, tariff reductions will be made through a tiered formula that takes into account their different tariff structures.

29. To ensure that such a formula will lead to substantial trade expansion, the following principles will guide its further negotiation:

- Tariff reductions will be made from bound rates. Substantial overall tariff reductions will be achieved as a final result from negotiations.

- Each Member (other than LDCs) will make a contribution. Operationally effective special and differential provisions for developing country Members will be an integral part of all elements.
- Progressivity in tariff reductions will be achieved through deeper cuts in higher tariffs with flexibilities for sensitive products. Substantial improvements in market access will be achieved for all products.

30. The number of bands, the thresholds for defining the bands and the type of tariff reduction in each band remain under negotiation. The role of a tariff cap in a tiered formula with distinct treatment for sensitive products will be further evaluated.

### ***Sensitive Products***

#### Selection

31. Without undermining the overall objective of the tiered approach, Members may designate an appropriate number, to be negotiated, of tariff lines to be treated as sensitive, taking account of existing commitments for these products.

#### Treatment

32. The principle of ‘substantial improvement’ will apply to each product.

33. ‘Substantial improvement’ will be achieved through combinations of tariff quota commitments and tariff reductions applying to each product. However, balance in this negotiation will be found only if the final negotiated result also reflects the sensitivity of the product concerned.

34. Some MFN-based tariff quota expansion will be required for all such products. A base for such an expansion will be established, taking account of coherent and equitable criteria to be developed in the negotiations. In order not to undermine the objective of the tiered approach, for all such products, MFN based tariff quota expansion will be provided under specific rules to be negotiated taking into account deviations from the tariff formula.

### ***Other Elements***

35. Other elements that will give the flexibility required to reach a final balanced result include reduction or elimination of in-quota tariff rates, and operationally effective improvements in tariff quota administration for existing tariff quotas so as to enable Members, and particularly developing country Members, to fully benefit from the market access opportunities under tariff-rate quotas.

36. Tariff escalation will be addressed through a formula to be agreed.

37. The issue of tariff simplification remains under negotiation.

38. The question of the special agricultural safeguard (SSG) remains under negotiation.

### ***Special and Differential treatment***

39. Having regard to their rural development, food security and/or livelihood security needs, special and differential treatment for developing countries will be an integral part of all elements of the negotiation, including the tariff reduction formula, the number and treatment of sensitive products, expansion of tariff-rate quotas, and implementation period.

40. Proportionality will be achieved by requiring lesser tariff reduction commitments or tariff quota expansion commitments from developing country Members.

41. Developing country Members will have the flexibility to designate an appropriate number of products as Special Products, based on criteria of food security, livelihood security and rural development needs. These products will be eligible for more flexible treatment. The criteria and treatment of these products will be further specified during the negotiation phase and will recognize the fundamental importance of Special Products to developing countries.

42. A Special Safeguard Mechanism (SSM) will be established for use by developing country Members.

43. Full implementation of the long-standing commitment to achieve the fullest liberalisation of trade in tropical agricultural products and for products of particular importance to the diversification of production from the growing of illicit narcotic crops is overdue and will be addressed effectively in the market access negotiations.

44. The importance of long-standing preferences is fully recognised. The issue of preference erosion will be addressed. For the further consideration in this regard, paragraph 16 and other relevant provisions of TN/AG/W/1/Rev.1 will be used as a reference.

### **LEAST- DEVELOPED COUNTRIES**

45. Least-Developed Countries, which will have full access to all special and differential treatment provisions above, are not required to undertake reduction commitments. Developed Members, and developing country Members in a position to do so, should provide duty-free and quota-free market access for products originating from least-developed countries.

46. Work on cotton under all the pillars will reflect the vital importance of this sector to certain LDC Members and we will work to achieve ambitious results expeditiously.

### **RECENTLY ACCEDED MEMBERS**

47. The particular concerns of recently acceded Members will be effectively addressed through specific flexibility provisions.

### **MONITORING AND SURVEILLANCE**

48. Article 18 of the Agreement on Agriculture will be amended with a view to enhancing monitoring so as to effectively ensure full transparency, including through timely and complete notifications with respect to the commitments in market access, domestic support and export competition. The particular concerns of developing countries in this regard will be addressed.

### **OTHER ISSUES**

49. Issues of interest but not agreed: sectoral initiatives, differential export taxes, GIs.

50. Disciplines on export prohibitions and restrictions in Article 12.1 of the Agreement on Agriculture will be strengthened.

## Annex B

### Framework for Establishing Modalities in Market Access for Non-Agricultural Products

1. This Framework contains the initial elements for future work on modalities by the Negotiating Group on Market Access. Additional negotiations are required to reach agreement on the specifics of some of these elements. These relate to the formula, the issues concerning the treatment of unbound tariffs in indent two of paragraph 5, the flexibilities for developing-country participants, the issue of participation in the sectorial tariff component and the preferences. In order to finalize the modalities, the Negotiating Group is instructed to address these issues expeditiously in a manner consistent with the mandate of paragraph 16 of the Doha Ministerial Declaration and the overall balance therein.

2. We reaffirm that negotiations on market access for non-agricultural products shall aim to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. We also reaffirm the importance of special and differential treatment and less than full reciprocity in reduction commitments as integral parts of the modalities.

3. We acknowledge the substantial work undertaken by the Negotiating Group on Market Access and the progress towards achieving an agreement on negotiating modalities. We take note of the constructive dialogue on the Chair's Draft Elements of Modalities (TN/MA/W/35/Rev.1) and confirm our intention to use this document as a reference for the future work of the Negotiating Group. We instruct the Negotiating Group to continue its work, as mandated by paragraph 16 of the Doha Ministerial Declaration with its corresponding references to the relevant provisions of Article XXVIII *bis* of GATT 1994 and to the provisions cited in paragraph 50 of the Doha Ministerial Declaration, on the basis set out below.

4. We recognize that a formula approach is key to reducing tariffs, and reducing or eliminating tariff peaks, high tariffs, and tariff escalation. We agree that the Negotiating Group should continue its work on a non-linear formula applied on a line-by-line basis which shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments.

5. We further agree on the following elements regarding the formula:

- product coverage shall be comprehensive without *a priori* exclusions;
- tariff reductions or elimination shall commence from the bound rates after full implementation of current concessions; however, for unbound tariff lines, the basis for commencing the tariff reductions shall be [two] times the MFN applied rate in the base year;
- the base year for MFN applied tariff rates shall be 2001 (applicable rates on 14 November);
- credit shall be given for autonomous liberalization by developing countries provided that the tariff lines were bound on an MFN basis in the WTO since the conclusion of the Uruguay Round;
- all non-*ad valorem* duties shall be converted to *ad valorem* equivalents on the basis of a methodology to be determined and bound in *ad valorem* terms;

- negotiations shall commence on the basis of the HS96 or HS2002 nomenclature, with the results of the negotiations to be finalized in HS2002 nomenclature;
- the reference period for import data shall be 1999-2001.

6. We furthermore agree that, as an exception, participants with a binding coverage of non-agricultural tariff lines of less than [35] percent would be exempt from making tariff reductions through the formula. Instead, we expect them to bind [100] percent of non-agricultural tariff lines at an average level that does not exceed the overall average of bound tariffs for all developing countries after full implementation of current concessions.

7. We recognize that a sectorial tariff component, aiming at elimination or harmonization is another key element to achieving the objectives of paragraph 16 of the Doha Ministerial Declaration with regard to the reduction or elimination of tariffs, in particular on products of export interest to developing countries. We recognize that participation by all participants will be important to that effect. We therefore instruct the Negotiating Group to pursue its discussions on such a component, with a view to defining product coverage, participation, and adequate provisions of flexibility for developing-country participants.

8. We agree that developing-country participants shall have longer implementation periods for tariff reductions. In addition, they shall be given the following flexibility:

- a) applying less than formula cuts to up to [10] percent of the tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed [10] percent of the total value of a Member's imports; or
- b) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [5] percent of tariff lines provided they do not exceed [5] percent of the total value of a Member's imports.

We furthermore agree that this flexibility could not be used to exclude entire HS Chapters.

9. We agree that least-developed country participants shall not be required to apply the formula nor participate in the sectorial approach, however, as part of their contribution to this round of negotiations, they are expected to substantially increase their level of binding commitments.

10. Furthermore, in recognition of the need to enhance the integration of least-developed countries into the multilateral trading system and support the diversification of their production and export base, we call upon developed-country participants and other participants who so decide, to grant on an autonomous basis duty-free and quota-free market access for non-agricultural products originating from least-developed countries by the year [...].

11. We recognize that newly acceded Members shall have recourse to special provisions for tariff reductions in order to take into account their extensive market access commitments undertaken as part of their accession and that staged tariff reductions are still being implemented in many cases. We instruct the Negotiating Group to further elaborate on such provisions.

12. We agree that pending agreement on core modalities for tariffs, the possibilities of supplementary modalities such as zero-for-zero sector elimination, sectorial harmonization, and request & offer, should be kept open.

13. In addition, we ask developed-country participants and other participants who so decide to consider the elimination of low duties.

14. We recognize that NTBs are an integral and equally important part of these negotiations and instruct participants to intensify their work on NTBs. In particular, we encourage all participants to make notifications on NTBs by 31 October 2004 and to proceed with identification, examination, categorization, and ultimately negotiations on NTBs. We take note that the modalities for addressing NTBs in these negotiations could include request/offer, horizontal, or vertical approaches; and should fully take into account the principle of special and differential treatment for developing and least-developed country participants.

15. We recognize that appropriate studies and capacity building measures shall be an integral part of the modalities to be agreed. We also recognize the work that has already been undertaken in these areas and ask participants to continue to identify such issues to improve participation in the negotiations.

16. We recognize the challenges that may be faced by non-reciprocal preference beneficiary Members and those Members that are at present highly dependent on tariff revenue as a result of these negotiations on non-agricultural products. We instruct the Negotiating Group to take into consideration, in the course of its work, the particular needs that may arise for the Members concerned.

17. We furthermore encourage the Negotiating Group to work closely with the Committee on Trade and Environment in Special Session with a view to addressing the issue of non-agricultural environmental goods covered in paragraph 31 (iii) of the Doha Ministerial Declaration.

## Annex C

### Recommendations of the Special Session of the Council for Trade in Services

- (a) Members who have not yet submitted their initial offers must do so as soon as possible.
- (b) A date for the submission of a round of revised offers should be established as soon as feasible.
- (c) With a view to providing effective market access to all Members and in order to ensure a substantive outcome, Members shall strive to ensure a high quality of offers, particularly in sectors and modes of supply of export interest to developing countries, with special attention to be given to least-developed countries.
- (d) Members shall aim to achieve progressively higher levels of liberalization with no *a priori* exclusion of any service sector or mode of supply and shall give special attention to sectors and modes of supply of export interest to developing countries. Members note the interest of developing countries, as well as other Members, in Mode 4.
- (e) Members must intensify their efforts to conclude the negotiations on rule-making under GATS Articles VI:4, X, XIII and XV in accordance with their respective mandates and deadlines.
- (f) Targeted technical assistance should be provided with a view to enabling developing countries to participate effectively in the negotiations.
- (g) For the purpose of the Sixth Ministerial meeting, the Special Session of the Council for Trade in Services shall review progress in these negotiations and provide a full report to the Trade Negotiations Committee, including possible recommendations.

## Annex D

### Modalities for Negotiations on Trade Facilitation

1. 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.<sup>4</sup> 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.
2. The results of the negotiations shall take fully into account the principle of special and differential treatment for developing and least-developed countries. Members recognize that this principle should extend beyond the granting of traditional transition periods for implementing commitments. In particular, the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members. It is further agreed that those Members would not be obliged to undertake investments in infrastructure projects beyond their means.
3. Least-developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.
4. As an integral part of the negotiations, Members shall seek to identify their trade facilitation needs and priorities, particularly those of developing and least-developed countries, and shall also address the concerns of developing and least-developed countries related to cost implications of proposed measures.
5. It is recognized that the provision of technical assistance and support for capacity building is vital for developing and least-developed countries to enable them to fully participate in and benefit from the negotiations. Members, in particular developed countries, therefore commit themselves to adequately ensure such support and assistance during the negotiations.<sup>5</sup>
6. Support and assistance should also be provided to help developing and least-developed countries implement the commitments resulting from the negotiations, in accordance with their nature and scope. In this context, it is recognized that negotiations could lead to certain commitments whose implementation would require support for infrastructure development on the part of some Members. In these limited cases, developed-country Members will make every effort to ensure support and assistance directly related to the nature and scope of the commitments in order to allow implementation. It is understood, however, that in cases where required support and assistance for such infrastructure is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required. While every effort will be made to ensure the necessary support and assistance, it is understood that the commitments by developed countries to provide such support are not open-ended.

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<sup>4</sup> It is understood that this is without prejudice to the possible format of the final result of the negotiations and would allow consideration of various forms of outcomes.

<sup>5</sup> In connection with this paragraph, Members note that paragraph 38 of the Doha Ministerial Declaration addresses relevant technical assistance and capacity building concerns of Members.

7. Members agree to review the effectiveness of the support and assistance provided and its ability to support the implementation of the results of the negotiations.

8. In order to make technical assistance and capacity building more effective and operational and to ensure better coherence, Members shall invite relevant international organizations, including the IMF, OECD, UNCTAD, WCO and the World Bank to undertake a collaborative effort in this regard.

9. Due account shall be taken of the relevant work of the WCO and other relevant international organizations in this area.

10. Paragraphs 45-51 of the Doha Ministerial Declaration shall apply to these negotiations. At its first meeting after the July session of the General Council, the Trade Negotiations Committee shall establish a Negotiating Group on Trade Facilitation and appoint its Chair. The first meeting of the Negotiating Group shall agree on a work plan and schedule of meetings.

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**AMENDMENT OF THE TRIPS AGREEMENT**

*Decision of 6 December 2005*

The General Council;

*Having regard* to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");

*Conducting* the functions of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;

*Noting* the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) and, in particular, the instruction of the Ministerial Conference to the Council for TRIPS contained in paragraph 6 of the Declaration to find an expeditious solution to the problem of the difficulties that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face in making effective use of compulsory licensing under the TRIPS Agreement;

*Recognizing*, where eligible importing Members seek to obtain supplies under the system set out in the proposed amendment of the TRIPS Agreement, the importance of a rapid response to those needs consistent with the provisions of the proposed amendment of the TRIPS Agreement;

*Recalling* paragraph 11 of the General Council Decision of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health;

*Having considered* the proposal to amend the TRIPS Agreement submitted by the Council for TRIPS (IP/C/41);

*Noting* the consensus to submit this proposed amendment to the Members for acceptance;

*Decides* as follows:

1. The Protocol amending the TRIPS Agreement attached to this Decision is hereby adopted and submitted to the Members for acceptance.
  2. The Protocol shall be open for acceptance by Members until 1 December 2007 or such later date as may be decided by the Ministerial Conference.
  3. The Protocol shall take effect in accordance with the provisions of paragraph 3 of Article X of the WTO Agreement.
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## ATTACHMENT

### PROTOCOL AMENDING THE TRIPS AGREEMENT

*Members of the World Trade Organization;*

*Having regard* to the Decision of the General Council in document WT/L/641, adopted pursuant to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");

*Hereby agree* as follows:

- The Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement") shall, upon the entry into force of the Protocol pursuant to paragraph 4, be amended as set out in the Annex to this Protocol, by inserting Article 31*bis* after Article 31 and by inserting the Annex to the TRIPS Agreement after Article 73.
- Reservations may not be entered in respect of any of the provisions of this Protocol without the consent of the other Members.
- This Protocol shall be open for acceptance by Members until 1 December 2007 or such later date as may be decided by the Ministerial Conference.
- This Protocol shall enter into force in accordance with paragraph 3 of Article X of the WTO Agreement.
- This Protocol shall be deposited with the Director-General of the World Trade Organization who shall promptly furnish to each Member a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 3.
- This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

*Done* at Geneva this sixth day of December two thousand and five, in a single copy in the English, French and Spanish languages, each text being authentic.

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## **ANNEX TO THE PROTOCOL AMENDING THE TRIPS AGREEMENT**

### ***Article 31bis***

1. The obligations of an exporting Member under Article 31(f) shall not apply with respect to the grant by it of a compulsory licence to the extent necessary for the purposes of production of a pharmaceutical product(s) and its export to an eligible importing Member(s) in accordance with the terms set out in paragraph 2 of the Annex to this Agreement.

2. Where a compulsory licence is granted by an exporting Member under the system set out in this Article and the Annex to this Agreement, adequate remuneration pursuant to Article 31(h) shall be paid in that Member taking into account the economic value to the importing Member of the use that has been authorized in the exporting Member. Where a compulsory licence is granted for the same products in the eligible importing Member, the obligation of that Member under Article 31(h) shall not apply in respect of those products for which remuneration in accordance with the first sentence of this paragraph is paid in the exporting Member.

3. With a view to harnessing economies of scale for the purposes of enhancing purchasing power for, and facilitating the local production of, pharmaceutical products: where a developing or least-developed country WTO Member is a party to a regional trade agreement within the meaning of Article XXIV of the GATT 1994 and the Decision of 28 November 1979 on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries (L/4903), at least half of the current membership of which is made up of countries presently on the United Nations list of least-developed countries, the obligation of that Member under Article 31(f) shall not apply to the extent necessary to enable a pharmaceutical product produced or imported under a compulsory licence in that Member to be exported to the markets of those other developing or least-developed country parties to the regional trade agreement that share the health problem in question. It is understood that this will not prejudice the territorial nature of the patent rights in question.

4. Members shall not challenge any measures taken in conformity with the provisions of this Article and the Annex to this Agreement under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994.

5. This Article and the Annex to this Agreement are without prejudice to the rights, obligations and flexibilities that Members have under the provisions of this Agreement other than paragraphs (f) and (h) of Article 31, including those reaffirmed by the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2), and to their interpretation. They are also without prejudice to the extent to which pharmaceutical products produced under a compulsory licence can be exported under the provisions of Article 31(f).

## ANNEX TO THE TRIPS AGREEMENT

1. For the purposes of Article 31*bis* and this Annex:
  - (a) "pharmaceutical product" means any patented product, or product manufactured through a patented process, of the pharmaceutical sector needed to address the public health problems as recognized in paragraph 1 of the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2). It is understood that active ingredients necessary for its manufacture and diagnostic kits needed for its use would be included<sup>1</sup>;
  - (b) "eligible importing Member" means any least-developed country Member, and any other Member that has made a notification<sup>2</sup> to the Council for TRIPS of its intention to use the system set out in Article 31*bis* and this Annex ("system") as an importer, it being understood that a Member may notify at any time that it will use the system in whole or in a limited way, for example only in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. It is noted that some Members will not use the system as importing Members<sup>3</sup> and that some other Members have stated that, if they use the system, it would be in no more than situations of national emergency or other circumstances of extreme urgency;
  - (c) "exporting Member" means a Member using the system to produce pharmaceutical products for, and export them to, an eligible importing Member.
2. The terms referred to in paragraph 1 of Article 31*bis* are that:
  - (a) the eligible importing Member(s)<sup>4</sup> has made a notification<sup>2</sup> to the Council for TRIPS, that:
    - (i) specifies the names and expected quantities of the product(s) needed<sup>5</sup>;
    - (ii) confirms that the eligible importing Member in question, other than a least-developed country Member, has established that it has insufficient or no manufacturing capacities in the pharmaceutical sector for the product(s) in question in one of the ways set out in the Appendix to this Annex; and
    - (iii) confirms that, where a pharmaceutical product is patented in its territory, it has granted or intends to grant a compulsory licence in accordance

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<sup>1</sup> This subparagraph is without prejudice to subparagraph 1(b).

<sup>2</sup> It is understood that this notification does not need to be approved by a WTO body in order to use the system.

<sup>3</sup> Australia, Canada, the European Communities with, for the purposes of Article 31*bis* and this Annex, its member States, Iceland, Japan, New Zealand, Norway, Switzerland, and the United States.

<sup>4</sup> Joint notifications providing the information required under this subparagraph may be made by the regional organizations referred to in paragraph 3 of Article 31*bis* on behalf of eligible importing Members using the system that are parties to them, with the agreement of those parties.

<sup>5</sup> The notification will be made available publicly by the WTO Secretariat through a page on the WTO website dedicated to the system.

with Articles 31 and 31*bis* of this Agreement and the provisions of this Annex<sup>6</sup>;

- (b) the compulsory licence issued by the exporting Member under the system shall contain the following conditions:
- (i) only the amount necessary to meet the needs of the eligible importing Member(s) may be manufactured under the licence and the entirety of this production shall be exported to the Member(s) which has notified its needs to the Council for TRIPS;
  - (ii) products produced under the licence shall be clearly identified as being produced under the system through specific labelling or marking. Suppliers should distinguish such products through special packaging and/or special colouring/shaping of the products themselves, provided that such distinction is feasible and does not have a significant impact on price; and
  - (iii) before shipment begins, the licensee shall post on a website<sup>7</sup> the following information:
    - the quantities being supplied to each destination as referred to in indent (i) above; and
    - the distinguishing features of the product(s) referred to in indent (ii) above;
- (c) the exporting Member shall notify<sup>8</sup> the Council for TRIPS of the grant of the licence, including the conditions attached to it.<sup>9</sup> The information provided shall include the name and address of the licensee, the product(s) for which the licence has been granted, the quantity(ies) for which it has been granted, the country(ies) to which the product(s) is (are) to be supplied and the duration of the licence. The notification shall also indicate the address of the website referred to in subparagraph (b)(iii) above.

3. In order to ensure that the products imported under the system are used for the public health purposes underlying their importation, eligible importing Members shall take reasonable measures within their means, proportionate to their administrative capacities and to the risk of trade diversion to prevent re-exportation of the products that have actually been imported into their territories under the system. In the event that an eligible importing Member that is a developing country Member or a least-developed country Member experiences difficulty in implementing this provision, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in order to facilitate its implementation.

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<sup>6</sup> This subparagraph is without prejudice to Article 66.1 of this Agreement.

<sup>7</sup> The licensee may use for this purpose its own website or, with the assistance of the WTO Secretariat, the page on the WTO website dedicated to the system.

<sup>8</sup> It is understood that this notification does not need to be approved by a WTO body in order to use the system.

<sup>9</sup> The notification will be made available publicly by the WTO Secretariat through a page on the WTO website dedicated to the system.

4. Members shall ensure the availability of effective legal means to prevent the importation into, and sale in, their territories of products produced under the system and diverted to their markets inconsistently with its provisions, using the means already required to be available under this Agreement. If any Member considers that such measures are proving insufficient for this purpose, the matter may be reviewed in the Council for TRIPS at the request of that Member.

5. With a view to harnessing economies of scale for the purposes of enhancing purchasing power for, and facilitating the local production of, pharmaceutical products, it is recognized that the development of systems providing for the grant of regional patents to be applicable in the Members described in paragraph 3 of Article 31*bis* should be promoted. To this end, developed country Members undertake to provide technical cooperation in accordance with Article 67 of this Agreement, including in conjunction with other relevant intergovernmental organizations.

6. Members recognize the desirability of promoting the transfer of technology and capacity building in the pharmaceutical sector in order to overcome the problem faced by Members with insufficient or no manufacturing capacities in the pharmaceutical sector. To this end, eligible importing Members and exporting Members are encouraged to use the system in a way which would promote this objective. Members undertake to cooperate in paying special attention to the transfer of technology and capacity building in the pharmaceutical sector in the work to be undertaken pursuant to Article 66.2 of this Agreement, paragraph 7 of the Declaration on the TRIPS Agreement and Public Health and any other relevant work of the Council for TRIPS.

7. The Council for TRIPS shall review annually the functioning of the system with a view to ensuring its effective operation and shall annually report on its operation to the General Council.

## **APPENDIX TO THE ANNEX TO THE TRIPS AGREEMENT**

### Assessment of Manufacturing Capacities in the Pharmaceutical Sector

Least-developed country Members are deemed to have insufficient or no manufacturing capacities in the pharmaceutical sector.

For other eligible importing Members insufficient or no manufacturing capacities for the product(s) in question may be established in either of the following ways:

(i) the Member in question has established that it has no manufacturing capacity in the pharmaceutical sector;

or

(ii) where the Member has some manufacturing capacity in this sector, it has examined this capacity and found that, excluding any capacity owned or controlled by the patent owner, it is currently insufficient for the purposes of meeting its needs. When it is established that such capacity has become sufficient to meet the Member's needs, the system shall no longer apply.

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**U.S. SUBMISSIONS TO THE WTO IN SUPPORT  
OF THE DOHA DEVELOPMENT AGENDA**  
(WTO Document Symbol in Parentheses)

**Committee on Agriculture, Special Session**

- Export Competition, Market Access and Domestic Support (JOB(02)/122)
- Joint EC-US Paper on Agriculture (JOB(03)/157)
- Proposal for Tariff-Rate Quota Reform (G/AG/NG/W/58)
- Proposal for Comprehensive Long-Term Agricultural Trade Reform (G/AG/NG/W/15)
- Note on Domestic Support Reform (G/AG/NG/W/16)
- Tariff Quota Administration (JOB(06)/188)
- Domestic Support Simulations – Simulations (JOB(06)/186)
- Tariff Quota Administration - Communication by the United States (JOB(06)/184)
- Comments on Food Aid (JOB(06)/183)
- Agriculture Domestic Support Simulations – Simulations (JOB(06)/151)
- Applied Tariff Simulations - Agriculture - Summary of Results (JOB(06)/152)
- United States Communication on Special Products (JOB(06)/137)
- United States Communication on Export Credits, Export Credit Guarantees or Insurance Programs (JOB(06)/119)
- United States Communication on State Trading Export Enterprises (JOB(06)/79)
- United States Communication on Domestic Support - Annex 2 - Domestic Support: The Basis for Exemption from the Reduction Commitments (JOB(06)/80)
- United States' Communication on Food Aid (JOB(06)/78)
- Market Access Simulations – Simulations (JOB(06)/63)
- US Communication on US Product-Specific Blue Box Limits (JOB(08)/10)
- Elements of Special Products Modalities - Communication from Australia, Canada, Costa Rica, Malaysia, New Zealand, Paraguay, Thailand, United States and Uruguay (JOB(08)/24)
- Agriculture Templates – An Approach and Initial Thoughts on Base Data and Base Data Templates (JOB(09)/104)
- Agriculture Templates - Domestic Support Base Data Templates (JOB(09)/115)
- Agriculture Templates - Market Access Base Data Templates (JOB(09)/125)
- Agriculture Templates - Market Access Doha Development Agenda (DDA) Tariff-Rate Quotas (TRQs) Template (JOB(09)/172)

**Council on Trade in Services, Special Session**

- Framework for Negotiation (S/CSS/W/4)
- Proposals for Negotiation (JOB(00)/8376)
- Accounting Services (S/CSS/W/20)
- Audiovisual and Related Services (S/CSS/W/21)
- Distribution Services (S/CSS/W/22)
- Higher (Tertiary) Education, Adult Education and Training (S/CSS/W/23)
- Energy Services (S/CSS/W/24)
- Environmental Services (S/CSS/W/25)
- Express Delivery Services (S/CSS/W/26)
- Financial Services (S/CSS/W/27)
- Legal Services (S/CSS/W/28)
- Movement of Natural Persons (S/CSS/W/29)
- Market Access in Telecommunications and Complementary Services (S/CSS/W/30)

- Tourism and Hotels (S/CSS/W/31)
- Transparency in Domestic Regulation (S/CSS/W/102)
- Advertising and Related Services (S/CSS/W/100)
- Desirability of a Safeguard Mechanism for Services: Promoting Liberalization of Trade in Services (S/WPGR/W/37)
- Modalities for the Special Treatment For Least-Developed Country Members in the Negotiations on Trade In Services – JOB(03)/133
- U.S. Government Points of Contact in Least-Developed Country Members (JOB (03)/33)
- Proposed Guide for Scheduling Commitments on Energy Services in the WTO (JOB(03)/89)
- Small and Medium Sized Enterprises (TN/S/W/5)
- Initial Offer (TN/S/O/USA)
- An Assessment of Services Trade and Liberalization in the United States and Developing Economies (TN/S/W/12)
- Joint Statement on Market Access in Services (JOB(04)/176)
- U.S. Proposal for Transparency Disciplines in Domestic Regulation: Building on Existing International Disciplines and Proposals (JOB(04)/128)
- Communication from the United States: Horizontal Transparency Disciplines in Domestic Regulation (JOB(06)/182)
- Outline of the U.S. position on a Draft Consolidated Text in the WPDR (JOB(06)/223)
- Classification in the Telecommunications Sector under the WTO-GATS Framework (TN/S/W/35 and S/CSC/W/45)
- Guidelines for Scheduling Commitments Concerning Postal and Courier Services, including Express Delivery (TN/S/W/30)
- Joint Statement on Liberalization of Logistics Services (TN/S/W/34)
- Joint Statement on Legal Services (TN/S/W/37 and S/CSC/W/46)
- Legal Services – Objectives for Further Liberalisation and Limitations to be Removed (JOB(05)/276)
- Joint Statement on Liberalization of Construction and Related Engineering Services (JOB(05)/130)
- Joint Statement on Liberalization of Financial Services (JOB(05)/17)
- Working Toward a Productive Information Exchange (in the Working Party on GATS Rules) (JOB(05)/5)
- Statement on Services of Common Interest in the Energy Sector (JOB(06)/17)
- Implementation of the Modalities for the Special Treatment for Least-Developed Country Members in the Trade in Services Negotiations (JOB(06)/77)
- Revised Services Offer (TN/S/O/USA/Rev.1)
- Review of Progress in Telecommunications Services (JOB(07)/199)
- Review of Progress in Postal and Courier Services, including Express Delivery Collective Request (JOB(07)/200)

### **Negotiating Group on Market Access**

- Tariffs & Trade Data Needs Assessment (TN/MA/W/2)
- Negotiations on Environmental Goods (TN/MA/W/3 and TN/TE/W/8)
- Modalities Proposal (TN/MA/W/18)
- Proposal on Modalities for Addressing Non-Tariff Barriers (NTBs) (TN/MA/W/18/Add.1)
- Revenue Implications of Trade Liberalization (TN/MA/W/18/Add.2)
- Vertical NTB Modality (TN/MA/W/18/Add.3)
- Contribution on an Environmental Goods Modality (TN/TE/W/38) & (TN/MA/W/18/Add.5)
- Liberalizing Trade in Environmental Goods (TN/MA/W/3, TN/MA/W/18/Add.4, Add.5, and Add.7)
- Non-Tariff Barrier Notifications (TN/MA/W/46/Add.8)
- Non-Tariff Barrier Notifications – Revision (TN/MA/W/46/Add.8/Rev.1)

- Non-Agricultural Market Access: Modalities (TN/MA/W/44)
- Contribution by Canada, European Communities and United States, Non-Agricultural Market Access: Modalities (JOB(03)/163)
- Progress Report: Discussions on Forestry NTBs (TN/MA/W/48/Add.1)
- Negotiating NTBs Related to Remanufacturing and Refurbishing (TN/MA/W/18/Add.11)
- A View To Harmonize Textile, Apparel, and Footwear Labeling Requirements (TN/MA/W/18/Add.12)
- Progress Report: WTO NAMA Discussions on Autos NTBs (TN/MA/W/18/Add.9)
- Tariff Elimination in the Gems and Jewelry Sector (TN/MA/W/61)
- Tariff Liberalization in the Forest Products Sector (TN/MA/W/64)
- Tariff Elimination in the Electronics/Electrical Sector (TN/MA/W/59)
- Initial List of Environmental Goods (TN/MA/W/18/Add.7 or TN/TE/W/52)
- Treatment of Non Ad Valorem Technical Tariffs (TN/MA/W/18/Add.8)
- Tariff Liberalization in the Chemicals Sector (TN/MA/W/58)
- How to Create a Critical Mass Sectoral Initiative (TN/MA/W/55)
- U.S. Proposal on Negotiating NTBs Related to the Auto Sector (TN/MA/W/18/Add.6)
- Non-Tariff Barriers Building Codes and the Wood Products Sector (TN/MA/W/48)
- Non-Tariff Barriers – Requests (TN/MA/NTR/3)
- Tariff Elimination in the Electronics/Electrical Sector (TN/MA/W/69)
- Open Access to Enhanced Healthcare (JOB(06)/35)
- Progress Report: NTB Discussions Related to Remanufactured and Refurbished Goods (TN/MA/W/18/Add.10) and (TN/MA/W/18/Add.10/Corr.1)
- Tariff Liberalisation in the Forest Products Sector (TN/MA/W/75)
- Negotiating Text on Textiles, Apparel, Footwear and Travel Goods Labeling Requirements (TN/MA/W/18/Add.14)
- Tariff Liberalization in the Chemicals Sector (TN/MA/W/72)
- Progress Report: Sectoral Discussions on Tariff Elimination in the Chemicals Sector (TN/MA/W/18/Add.1)
- Tariff Elimination in the Electronics/Electrical Sector JOB(06)/85
- Negotiating Proposal on Tariff Liberalisation in the Forest Products Sector JOB(06)/128
- Market Access for Environmental Goods TN/MA/W/70
- Negotiating Proposal on Tariff Elimination in the Gems and Jewellery Sector TN/MA/W/61/Add.2
- Swiss Dual Proposal JOB(05)/36
- Analytical Contributions June 2005 JOB(05)/97
- Room Document for Simulation Presentation March 06. Actual doc # unknown.
- Negotiating Text on Liberalizing Trade in Remanufactured Goods (TN/MA/W/18/Add.15)
- Revised U.S. Negotiating Text on Liberalizing Trade in Remanufactured Goods (TN/MA/W/18/Add.16)
- Regulation of Remanufactured Goods: Answers to Frequently Asked Questions (JOB(07)/60)
- Non-Tariff Barriers – Requests (TN/MA/NTR/3/Add.2)
- Proposal for Modifications to "Ministerial Decision on Procedures for the Facilitation of Solutions to Non-Tariff Barriers" (TN/MA/W/88) NTBs (JOB(07)/145)
- Reducing Non-Tariff Barriers to Trade Related to Labeling of Textiles, Apparel, Footwear and Travel Goods – HS Classifications of Travel Goods (JOB(07)/59)
- Reducing Non-Tariff Barriers to Trade Related to Labelling of Textiles, Apparel, Footwear and Travel Goods - U.S. Responses to U.S. Questions (JOB(06)/266/Add.1)
- Non-Tariff Barriers to Trade Related to Textiles, Clothing and Footwear - U.S. answers to Questionnaire by the European Communities (JOB(07)/22)
- Communication from the European Communities and the United States on NTBs related to Textiles, Apparel, Footwear and Clothing (TN/MA/W/93)

- Negotiating Text on Liberalizing Trade in Remanufactured Goods (TN/MA/W/18/Add.16/Rev.1)
- Illustrative Examples of Remanufactured Goods (JOB(07)/224)
- Negotiating Text on Non-Tariff Barriers Pertaining to the Electrical Safety and Electromagnetic Compatibility (EMC) of Electronic Goods (TN/MA/W/105 Rev.1)
- Negotiating Protocol on Enhanced Transparency on Export Licensing (TN/MA/W/15/Add.4/Rev.1)
- Communication from the United States on Automotive NTBs (JOB(08)/39)
- Non Paper on “Committee-First” for the “Horizontal Mechanism”, TN/MA/W/106 of 9 May 2008 (JOB(08)/45)
- Agreement on Non-Tariff Barriers Pertaining to Standards, Technical Regulations, and Conformity Assessment Procedures for Automotive Products (JOB (08)/46)
- Sectoral Negotiations in Non-Agricultural Market Access (NAMA) (TN/MA/W/97/Rev.1)
- Joint paper on Revised Draft Modalities for Non-Agricultural Market Access (NAMA) (TN/MA/W/95)
- Communication from the European Communities and the United States for an Anti-Concentration Clause in NAMA (TN/MA/W/96)
- Tariff Elimination in the Sports Equipment Sector (TN/MA/W/85)
- Answers by the Co-sponsors to Questions from the Republic of Korea on Negotiating Text on Textiles, Apparel Footwear and Travel Goods Labeling (TN/MA/W/113)
- Answers to Frequently Asked Questions on Negotiating Text on Textiles, Apparel Footwear and Travel Goods Labeling (TN/MA/W/114)
- Answers by the Co-sponsors to Questions from Singapore on Negotiating Text on Textiles, Apparel Footwear and Travel Goods Labeling (TN/MA/W/116)
- Revised Negotiating Text on Textiles, Apparel Footwear and Travel Goods Labeling (TN/MA/W/93/Rev/1)
- Answers by the Co-sponsors to Questions from New Zealand, Switzerland, and China on Negotiating Text on Textiles, Apparel Footwear and Travel Goods Labeling (JOB(09)/162)
- Compendium of Questions and Answers on Negotiating Text on Textiles, Apparel Footwear and Travel Goods Labeling (TN/MA/W/123)
- Revised Negotiating Text on NTBs Pertaining to the Electrical Safety and Electromagnetic Compatibility of Electronic Goods (TN/MA/W/105/Rev.2)
- Answers to Questions from Singapore on U.S. Negotiating Text on NTBs Pertaining to the Electrical Safety and Electromagnetic Compatibility of Electronic Goods (TN/MA/W/115)
- Answers to Questions from Thailand on U.S. Negotiating Text on NTBs Pertaining to the Electrical Safety and Electromagnetic Compatibility of Electronic Goods (JOB(09)/37)
- Answers to Questions from Canada on U.S. Autos and Electronics NTBs Negotiating Texts (JOB(09)/157)
- Compendium of Questions and Answers on Agreement on NTBs Pertaining to the Electrical Safety and Electromagnetic Compatibility of Electronic Goods (TN/MA/W/125)
- Revised Agreement on Non-Tariff Barriers Pertaining to Standards, Technical Regulations, and Conformity Assessment Procedures for Automotive Products (TN/MA/W/120)
- Answers to Questions from Singapore on Agreement on Non-Tariff Barriers Pertaining to Standards, Technical Regulations, and Conformity Assessment Procedures for Automotive Products (TN/MA/W/121)
- Compendium of Questions and Answers on Agreement on Non-Tariff Barriers Pertaining to Standards, Technical Regulations, and Conformity Assessment Procedures for Automotive Products (TN/MA/W/126)
- Answers by the Co-sponsors to Questions from the Republic of Korea on the Ministerial Decision on Trade in Remanufactured Goods (TN/MA/W/112)
- Answers by the Co-sponsors to Questions from Singapore on the Ministerial Decision on Trade in Remanufactured Goods (TN/MA/W/117)

- Revised Negotiating Text on Liberalizing Trade in Remanufactured Goods (TN/MA/W/18/Add.16/Rev.3)
- Answers by the Co-sponsors to Questions from Malaysia on the Ministerial Decision on Trade in Remanufactured Goods (JOB(09)/155)
- Answer by the Co-sponsors to Questions from China on Remanufacturing (TN/MA/W/122)
- Compendium of Questions and Answers on Ministerial Decision on Trade in Remanufactured Goods (TN/MA/W/124)
- Report on 4 November 2009 Remanufacturing Workshops (JOB(09)/179)
- Revised Negotiating Text on Enhanced Transparency in Export Licensing (TN/MA/W/Add.4/Rev.4)
- Answers by the Co-sponsors to Questions from Malaysia on Negotiating Text on Enhanced Transparency in Export Licensing (JOB(09)/127)
- Compendium on Questions and Answers on Negotiating Text on Enhanced Transparency in Export Licensing (TN/MA/W/130)

### **Negotiating Group on Rules**

- Fisheries Subsidies -- Joint communication from the United States, Australia, Chile, Ecuador, Iceland, New Zealand, Peru, and the Philippines (TN/RL/W/3)
- Fisheries Subsidies (TN/RL/W/21)
- OECD Steel Paper (TN/RL/W/24)
- Questions on Papers Submitted to Rules Negotiating Group (TN/RL/W/25)
- Basic Concepts of the Trade Remedies Rules (TN/RL/W/27)
- Special and Differential Treatment and the Subsidies Agreement (TN/RL/W/33)
- Second Set of Questions from the United States on Papers Submitted to the Rules Negotiating Group (TN/RL/W/34)
- Investigatory Procedures Under The Antidumping and Subsidies Agreements (TN/RL/W/35)
- Communication From The United States Attaching A Communiqué From The Organization For Economic Cooperation And Development (OECD) (TN/RL/W/49)
- Circumvention (TN/RL/W/50)
- Replies To Questions Presented To The United States On Submission TN/RL/W/27 (TN/RL/W/53)
- Third Set Of Questions From The United States On Papers Submitted To The Rules Negotiating Group (TN/RL/W/54)
- Responses By The United States To Questions From Australia On Investigatory Procedures Under The Anti-Dumping And Subsidies Agreements (TN/RL/W/71)
- Identification Of Certain Major Issues Under The Anti-Dumping And Subsidies Agreements (TN/RL/W/72)
- Possible Approaches To Improved Disciplines On Fisheries Subsidies (TN/RL/W/77)
- Subsidies Disciplines Requiring Clarification And Improvement (TN/RL/W/78)
- Elements Of A Steel Subsidies Agreement (TN/RL/W/95)
- Identification of Additional Issues under the Anti-dumping and Subsidies Agreements (TN/RL/W/98)
- Fourth Set Of Questions From The United States On Papers Submitted To The Rules Negotiating Group (TN/RL/W/103)
- Further Issues Identified Under The Anti-Dumping And Subsidies Agreements For Discussion By the Negotiating Group On Rules (TN/RL/W/130)
- Replies to the Questions from India on TN/RL/W/35 (TN/RL/W/147)
- Three Issues Identified by the United States (TN/RL/W/153)
- Accrual of Interest (TN/RL/W/168)
- Additional Views on the Structure of the Fisheries Subsidies Negotiations (TN/RL/W/169)
- Fisheries Subsidies (TN/RL/W/196) (co-sponsored with Brazil, Chile, Colombia, Ecuador, Iceland, New Zealand, Pakistan and Peru)

- Offsets for Non-Dumped Comparisons (TN/RL/W/208)
- Allocation of Subsidy Benefits Over Time (TN/RL/GEN/4)
- Exchange Rates (TN/RL/W/GEN/5)
- New Shipper Reviews (TN/RL/GEN/11)
- Allocation Periods for Subsidy Benefits (TN/RL/GEN/12)
- Prompt Access to Non-Confidential Information (TN/RL/GEN/13)
- Conduct of Verifications (TN/RL/GEN/15)
- All-Others Rate (TN/RL/GEN/16)
- Expensing Versus Allocating Subsidy Benefits (TN/RL/GEN/17/Rev.1)
- Preliminary Determinations (TN/RL/GEN/25)
- Circumvention (TN/RL/GEN/29)
- Fisheries Subsidies – Programmes for Decommissioning of Vessels and Licence Retirement (TN/RL/GEN/41)
- Further Submission on When and How to Allocate Subsidy Benefits Over Time (TN/RL/GEN/45)
- Further Comments on Lesser Duty Proposals (TN/RL/GEN/58)
- Causation (TN/RL/GEN/59)
- Submission on Circumvention (TN/RL/GEN/71)
- Identification of Parties (TN/RL/GEN/89) (co-sponsored with Brazil)
- Access to Non-Confidential Information (TN/RL/GEN/90)
- New Shipper Reviews (TN/RL/GEN/91)
- Expanding the Prohibited “Red Light“ Subsidy Category (TN/RL/GEN/94)
- Further Submission on Facts Available (TN/RL/GEN/105)
- Circumvention (TN/RL/GEN/106)
- Exchange Rates (TN/RL/GEN/107)
- Disclosure of Essential Preliminary Legal and Factual Considerations (Mandatory Preliminary Determinations) (TN/RL/GEN/108)
- Fisheries Subsidies (TN/RL/GEN/127)
- Causation (TN/RL/GEN/128)
- Definition of Domestic Industry for Perishable, Seasonal Agricultural Products (TN/RL/GEN/129)
- Allocation and Expensing of Subsidies Benefits (TN/RL/GEN/130)
- Collection of Anti-Dumping Duties under Article 9.3 (TN/RL/GEN/131)
- Conduct of On-the-Spot Investigations (TN/RL/GEN/132)
- Disclosure of Calculations in Preliminary and Final Determinations (TN/RL/GEN/133)
- Fisheries Subsidies: Proposed New Disciplines (TN/RL/GEN/145)
- Expanding the Prohibited Red Light Subsidy Category – Draft Text (TN/RL/GEN/146)
- Proposal on Offsets for Non-Dumped Comparisons (TN/RL/GEN/147)
- Fisheries Subsidies (TN/RL/W/235) (co-sponsored with Australia and New Zealand)
- Fisheries Subsidies – Articles I.2, II, IV, and V (TN/RL/GEN/165)

### **Dispute Settlement Body, Special Session**

- Contribution of the United States to the Improvement of the Dispute Settlement Understanding of the WTO-Related to Transparency (TN/DS/W/13)
- Negotiations on Improvements And Clarifications of the Dispute Settlement Understanding on Improving Flexibility and Member Control in WTO Dispute Settlement (TN/DS/W/28)
- Further Contribution of The United States to The Improvement of The Dispute Settlement Understanding of the WTO Related to Transparency (TN/DS/W/46)
- Negotiations on Improvements and Clarifications of the Dispute Settlement Understanding on Improving Flexibility and Member Control in WTO Dispute Settlement, Joint communication from United States and Chile (TN/DS/W/52)

- Some Questions for Consideration on Item(f) (TN/DS/W/74)
- Contribution of the United States on Some Practical Considerations in Improving the Dispute Settlement Understanding of the WTO Related to Transparency and Open Meetings (TN/DS/W/79)
- Further Contribution of the United States on Improving Flexibility and Member Control in WTO Dispute Settlement (TN/DS/W/82)
- Further Contribution of the United States on Improving Flexibility and Member Control in WTO Dispute Settlement, Addendum (TN/DS/W/82/Add.1)
- Further Contribution of the United States on Improving Flexibility and Member Control in WTO Dispute Settlement, Addendum, Corrigendum (TN/DS/W/82/Add.1/Corr.1)
- Further Contribution of the United States to the Improvement of the Dispute Settlement Understanding of the WTO Related to Transparency - Revised Legal Drafting (TN/DS/W/86)
- Dispute Settlement Body - Special Session - Negotiations on Improvements and Clarifications of the Dispute Settlement Understanding - Further Contribution of the United States on Improving Flexibility and Member Control - Addendum (TN/DS/W/82/Add.2)
- Flexibility and Member Control - Revised Textual Proposal by Chile and the United States (TN/DS/W/89)

### **Trade Facilitation**

- Article VIII - Fees and Formalities (G/C/W/384)
- Article X - Publication and Administration (G/C/W/400)
- Integrated and Comprehensive Approach to Special and Differential Treatment (G/C/W/451)
- Communication on Trade Facilitation (JOB(04)/103)
- Introduction to Proposals by the United States of America (TN/TF/W/11)
- Advance Binding Rulings (TN/TF/W/12)
- Proposal on Transparency and Publication (TN/TF/W/13)
- Communication from the United States (TN/TF/W/14)
- Express Shipments (TN/TF/W/15)
- Release of Goods (TN/TF/W/21)
- Consularization - Proposal from Uganda and the United States (TN/TF/W/22)
- Multilateral Mechanism - Proposal from India and the United States (TN/TF/W/57)
- United States Assistance on Trade Facilitation (TN/TF/W/71)
- Communication from Australia, Canada and the United States - Draft Text on Advance Rulings (TN/TF/W/125)
- Communication from Uganda and the United States – Consularization (TN/TF/W/86 and Add.1)
- Communication from Uganda and the United States – Consularization (TN/TF/W/104)
- Communication from the United States - Express Shipments (TN/TF/W/91)
- Communication from Chile, Peru, and the United States - Internet Publication (TN/TF/W/89)
- Communication from Australia, Canada, and the United States - Common Elements of Advance Rulings (TN/TF/W/80)
- Communication from the United States – Draft Text on Internet Publication (TN/TF/W/145)
- Communication from the United States – Draft Text on Expedited Shipments (TN/TF/W/144 and Rev.1,2 &3)
- Communication from the United States United States – Assistance on Trade Facilitation (TN/TF/W/151)
- Communication From Australia, Canada, Turkey And The United States – Draft Text On Advance Rulings (TN/TF/W/153 and Rev.1)
- Communication From Uganda And The United States – Prohibiting Consularization Requirements: Fulfilling A Longstanding Trade Facilitation Objective (TN/TF/W/156)

- Communication from the United States – Transition Provisions for Developing and Least-Developed Country Members (TN/TF/W/166)
- Communication by the United States - Draft Text on Penalty Disciplines (TN/TF/W/169)

### **Committee on Trade and Environment, Regular and Special Session**

- Sub-Paragraph 31 (i) of the Doha Declaration – Relationship between existing WTO rules and specific trade obligations set out in Multilateral Environmental Agreements (MEAs) (TN/TE/W/20 and TN/TE/W/40)
- Sub-Paragraph 31 (ii) of the Doha Declaration - Procedures for information exchange between MEA Secretariats and relevant WTO committees and criteria for granting MEA observer status (TN/TE/W/5 and TN/TE/W/70)
- Sub-Paragraph 31(iii) of the Doha Declaration – Market access for environmental goods and services (TN/TE/W/8, TN/TE/W/34, TN/TE/W/38, TN/TE/W/52, TN/TE/W/64, TN/TE/W/65, JOB(06)140 and JOB(06)169, JOB(07)/54, and JOB(07)193)
- Paragraph 33 of the Doha Declaration (WT/CTE/W/227)

*Six dual submissions on Environmental Goods to the Committee on Trade and Environment Special Session and the Negotiating Group on Market Access are also listed under the Negotiating Group on Market Access.*

### **Council on TRIPS, Regular & Special Session**

- Questions and Answers: Comparison of Proposals (TN/IP/W/1)
- Issues for Discussion, Article 23.4 (TN/IP/W/2)
- Proposal for a Multilateral System of Registration and Protection of Geographic Indications for Wine & Spirits Based on Article 23.4 of the TRIPS Agreement (TN/IP/W/5)
- Multilateral System of Registration and Protection of Geographic Indications for Wine & Spirits (TN/IP/W/6)
- Paragraph 6 of the Doha Declaration on TRIPS and Public Health (IP/C/W/340)
- Second Submission on Paragraph 6 of the Doha Declaration on TRIPS and Public Health (IP/C/W/358)
- Implications of Article 23 Extension (IP/C/W/386)
- Moratorium to Address Needs of Developing and Least-Developed Members with No or Insufficient Manufacturing Capacities in the Pharmaceutical Sector (IP/C/W/396)
- Joint Proposal for a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits (TN/IP/W/9)
- Article 27.3(B), Relationship between the TRIPS Agreement and the CBD, and the Protection of Traditional Knowledge and Folklore (IP/C/W/434)
- Technology Transfer Practices of the U.S. National Cancer Institute's Departmental Therapeutics Program (IP/C/W/341)
- Access to Genetic Resources: Regime of the United States' National Parks (IP/C/W/393)
- Proposed Draft TRIPS Council Decision on the Establishment of a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits (TN/IP/W/10 and Add.1)
- Article 27.3(B), Relationship between the TRIPS Agreement and the CBD and the Protection of Traditional Knowledge and Folklore (IP/C/W/449)
- Comments on Implementation of the 30 August 2003 Agreement (Solution) on the TRIPS Agreement and Public Health (IP/C/W/444)
- Relationship between the Trips Agreement and the CBD, and the Protection of Traditional Knowledge and Folklore (IP/C/W/469)

### **Committee on Trade and Development, Special Session**

- Remarks on the Review of Special and Differential Treatment (TN/CTD/W/9)
- Monitoring Mechanism (TN/CTD/W/19)
- Approach to Agreement-Specific Proposals (TN/CTD/W/27)

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

- Capacity Building Questions (WT/WGTGP/W/34)
- Workplan Proposal (WT/WGTGP/W/35)
- Considerations Related to Enforcement of an Agreement on Transparency in Government Procurement (WT/WGTGP/W/38)

### **Work Program on Electronic Commerce**

- Work Program on Electronic Commerce (WT/GC/W/493/Rev.1)

### **Working Group on the Relationship between Trade and Investment**

- Covering FDI & Portfolio Investment in an Agreement (WT/WGTI/W/142)

### **Working Group on the Interaction between Trade and Competition Policy**

- Technical Assistance (WT/WGTCP/W/185)
- Hardcore Cartels (WT/WGTCP/W/203)
- Voluntary Cooperation (WT/WGTCP/W/204)
- Transparency & Non-discrimination (WT/WGTCP/W/218)
- Procedural Fairness (WT/WGTCP/W/219)
- The Benefits of Peer Review in the WTO Competition Context (WT/WGTCP/W/233)

*Updated: 28 Dec 2011*

## MEMBERSHIP OF THE WORLD TRADE ORGANIZATION

as of December 31, 2011 (153 Members)<sup>1</sup>

Government	Entry into Force/ Membership	Government	Entry into Force/ Membership
Albania	September 8, 2000	Dominican Republic	March 9, 1995
Angola	November 23, 1996	Ecuador	January 21, 1996
Antigua and Barbuda	January 1, 1995	Egypt	June 30, 1995
Argentina	January 1, 1995	El Salvador	May 7, 1995
Armenia	February 5, 2003	Estonia	November 13, 1999
Australia	January 1, 1995	European Union	January 1, 1995
Austria	January 1, 1995	Fiji	January 14, 1996
Bahrain	January 1, 1995	Finland	January 1, 1995
Bangladesh	January 1, 1995	France	January 1, 1995
Barbados	January 1, 1995	Gabon	January 1, 1995
Belgium	January 1, 1995	Georgia	June 14, 2000
Belize	January 1, 1995	Germany	January 1, 1995
Benin	February 22, 1996	Ghana	January 1, 1995
Bolivia	September 12, 1995	Greece	January 1, 1995
Botswana	May 31, 1995	Grenada	February 22, 1996
Brazil	January 1, 1995	Guatemala	July 21, 1995
Brunei Darussalam	January 1, 1995	Guinea	October 25, 1995
Bulgaria	December 1, 1996	Guinea Bissau	May 31, 1995
Burkina Faso	June 3, 1995	Guyana	January 1, 1995
Burundi	July 23, 1995	Haiti	January 30, 1996
Cambodia	October 12, 2004	Honduras	January 1, 1995
Cameroon	December 13, 1995	Hong Kong, China	January 1, 1995
Canada	January 1, 1995	Hungary	January 1, 1995
Cape Verde	July 23, 2008	Iceland	January 1, 1995
Central African Republic	May 31, 1995	India	January 1, 1995
Chad	October 19, 1996	Indonesia	January 1, 1995
Chile	January 1, 1995	Ireland	January 1, 1995
China	December 11, 2001	Israel	April 21, 1995
Colombia	April 30, 1995	Italy	January 1, 1995
Congo	March 27, 1997	Jamaica	March 9, 1995
Costa Rica	January 1, 1995	Japan	January 1, 1995
Côte d'Ivoire	January 1, 1995	Israel	April 21, 1995
Croatia	November 30, 2000	Italy	January 1, 1995
Cuba	April 20, 1995	Jamaica	March 9, 1995
Cyprus	July 30, 1995	Japan	January 1, 1995
Czech Republic	January 1, 1995	Jordan	April 11, 2000
Democratic Republic of the Congo	January 1, 1997	Kenya	January 1, 1995

<sup>1</sup> The accession packages of the Russian Federation, Montenegro, and Samoa were approved by the MC8 in December 2011, and that of Vanuatu was approved by the October 26, 2011 General Council. All four are securing acceptance of the package by their domestic authorities and will be WTO Members 30 days after notifying the WTO Secretariat of their acceptance.

Denmark	January 1, 1995	Korea, Republic of	January 1, 1995
Djibouti	May 31, 1995	Kuwait	January 1, 1995
Dominica	January 1, 1995	Kyrgyz Republic	December 20, 1998

**MEMBERSHIP OF THE WORLD TRADE ORGANIZATION (cont.)**

<b>Government</b>	<b>Entry into Force/ Membership</b>	<b>Government</b>	<b>Entry into Force/ Membership</b>
Latvia	February 10, 1999	Saint Kitts and Nevis	February 21, 1996
Lesotho	May 31, 1995	Saint Lucia	January 1, 1995
Liechtenstein	September 1, 1995	Saint Vincent and the Grenadines	January 1, 1995
Lithuania	May 31, 2001	Saudi Arabia	December 11, 2005
Luxembourg	January 1, 1995	Senegal	January 1, 1995
Macao, China	January 1, 1995	Sierra Leone	July 23, 1995
Macedonia	April 4, 2003	Singapore	January 1, 1995
Madagascar	November 17, 1995	Slovak Republic	January 1, 1995
Malawi	May 31, 1995	Slovenia	July 30, 1995
Malaysia	January 1, 1995	Solomon Islands	July 26, 1996
Maldives	May 31, 1995	South Africa	January 1, 1995
Mali	May 31, 1995	Spain	January 1, 1995
Malta	January 1, 1995	Sri Lanka	January 1, 1995
Mauritania	May 31, 1995	Suriname	January 1, 1995
Mauritius	January 1, 1995	Swaziland	January 1, 1995
Mexico	January 1, 1995	Sweden	January 1, 1995
Moldova	July 26, 2001	Switzerland	July 1, 1995
Mongolia	January 29, 1997	Taiwan (referred to in the WTO as Chinese Taipei)	January 1, 2002
Morocco	January 1, 1995	Tanzania	January 1, 1995
Mozambique	August 26, 1995	Thailand	January 1, 1995
Myanmar	January 1, 1995	The Gambia	October 23, 1996
Namibia	January 1, 1995	Togo	May 31, 1995
Nepal	April 23, 2004	Tonga	July 27, 2007
Netherlands - For the Kingdom in Europe and Netherlands Antilles	January 1, 1995	Trinidad and Tobago	March 1, 1995
New Zealand	January 1, 1995	Tunisia	March 29, 1995
Nicaragua	September 3, 1995	Turkey	March 26, 1995
Niger	December 13, 1996	Uganda	January 1, 1995
Nigeria	January 1, 1995	Ukraine	May 16, 2008
Norway	January 1, 1995	United Arab Emirates	April 10, 1996
Oman	November 9, 2000	United Kingdom	January 1, 1995
Pakistan	January 1, 1995	United States of America	January 1, 1995
Panama	September 6, 1997	Uruguay	January 1, 1995
Papua New Guinea	June 9, 1996	Venezuela	January 1, 1995
Paraguay	January 1, 1995	Vietnam	January 11, 2007
Peru	January 1, 1995	Zambia	January 1, 1995
Philippines	January 1, 1995	Zimbabwe	March 5, 1995
Poland	July 1, 1995		
Portugal	January 1, 1995		
Qatar	January 13, 1996		
Romania	January 1, 1995		
Rwanda	May 22, 1996		

2012-2013 PROPOSED REVISED CONSOLIDATED WTO BUDGET FOR  
THE WTO SECRETARIAT AND THE APPELLATE BODY AND ITS SECRETARIAT  
(in Swiss Francs)

Section	2011	Inc/Dec 2012	2012	Inc/Dec 2013	2013	Diff 2012	Diff 2013
<b>A</b>							
<b>Sect 1 Work Years</b>							
(a) Salary	89,084,300	276,300	89,360,600	678,300	90,038,900	0.31%	0.76%
(b) Pension	18,770,100	251,000	19,021,100	225,900	19,247,000	1.34%	1.19%
(c) Common Staff Costs	18,456,200	163,600	18,619,800	(121,900)	18,497,900	0.89%	-0.65%
<b>Sect 2 Temporary Assistance</b>	15,992,700	(822,200)	15,170,500	70,000	15,240,500	-5.14%	0.46%
<b>B</b>							
<b>Sect 3 Communications</b>							
(a) Telecommunications	506,500	167,500	674,000	0	674,000	33.07%	0.00%
(b) Postal Charges	1,280,000	(174,300)	1,105,700	(60,000)	1,045,700	-13.62%	-5.43%
<b>Sect 4 Building Facilities</b>							
(a) Rental	625,000	68,000	693,000	585,000	1,278,000	10.88%	84.42%
(b) Utilities	1,929,000	0	1,929,000	(170,000)	1,759,000	0.00%	-8.81%
(c) Maintenance and Insurance	1,312,000	380,000	1,692,000	(200,000)	1,492,000	28.96%	-11.82%
<b>Sect 5 Permanent Equipment</b>							
(a) Permanent Equipment	1,025,000	285,000	1,310,000	100,000	1,410,000	27.80%	7.63%
(b) Permanent Equipment Lease	64,000	(20,000)	44,000	0	44,000	-31.25%	0.00%
<b>Sect 6 Expendable</b>	<b>1,281,000</b>	<b>(80,000)</b>	<b>1,201,000</b>	<b>0</b>	<b>1,201,000</b>	<b>-6.25%</b>	<b>0.00%</b>
<b>Sect 7 Contractual Services</b>							
(a) Reproduction	1,620,600	(150,000)	1,470,600	(100,000)	1,370,600	-9.26%	-6.80%
(b) Office Automation	3,365,000	0	3,365,000	0	3,365,000	0.00%	0.00%
(c) Other	238,000	0	238,000	0	238,000	0.00%	0.00%
(d) Security Outsourcing	4,013,000	(50,000)	3,963,000	0	3,963,000	-1.25%	0.00%
<b>C</b>							
<b>Sect 8 Staff Overheads</b>							
(a) Training	1,525,000	0	1,525,000	0	1,525,000	0.00%	0.00%
(b) Insurance	3,011,000	105,000	3,116,000	200,000	3,316,000	3.49%	6.42%
(c) Joint Services	255,000	0	255,000	0	255,000	0.00%	0.00%
(d) Miscellaneous	36,000	30,000	66,000	0	66,000	83.33%	0.00%
<b>Sect 9 Missions</b>							
(a) Missions Official	1,533,000	118,000	1,651,000	100,000	1,751,000	7.70%	6.06%
(b) Missions Technical	1,406,000	0	1,406,000	0	1,406,000	0.00%	0.00%
<b>Sect 10 Trade Policy Courses</b>	<b>3,315,000</b>	<b>(354,900)</b>	<b>2,960,100</b>	<b>(108,800)</b>	<b>2,851,300</b>	<b>-10.71%</b>	<b>-3.68%</b>
<b>Sect 11 Various</b>							
(a) Representation and Hospitality	299,000	0	299,000	500	299,500	0.00%	0.17%
(b) Dispute Settlement Panels	987,000	0	987,000	0	987,000	0.00%	0.00%
(c) Experts	50,000	0	50,000	0	50,000	0.00%	0.00%
(d) Appellate Body Members	793,500	0	793,500	0	793,500	0.00%	0.00%
(e) Library	700,000	(100,000)	600,000	0	600,000	-14.29%	0.00%
(f) Publications	803,000	(23,000)	780,000	1,000	781,000	-2.86%	0.13%
(g) Public Information Activities	380,000	(80,000)	300,000	0	300,000	-21.05%	0.00%
(h) External Auditors	50,000	0	50,000	0	50,000	0.00%	0.00%
(i) Ministerial Operating Fund	600,000	0	600,000	0	600,000	0.00%	0.00%
(j) ISO	57,000	0	57,000	0	57,000	0.00%	0.00%
(k) Other	130,000	10,000	140,000	0	140,000	7.69%	0.00%
(l) Appellate Body Operating Fund	1,600,000	0	1,600,000	0	1,600,000	0.00%	0.00%
<b>D</b>							
<b>Sect 12 ITC</b>	<b>18,911,000</b>	<b>0</b>	<b>18,911,000</b>	<b>0</b>	<b>18,911,000</b>	<b>0.00%</b>	<b>0.00%</b>
<b>Grand Total</b>	<b>196,003,900</b>	<b>0</b>	<b>196,003,900</b>	<b>1,200,000</b>	<b>197,203,900</b>	<b>0.00%</b>	<b>0.61%</b>

**2012-2013 PROPOSED REVISED BUDGET FOR  
THE WTO SECRETARIAT**  
(in Swiss Francs)

Section	2011	Inc/Dec 2012	2012	Inc/Dec 2013	2013	Diff 2012	Diff 2013
<b>A</b>							
<b>Sect 1 Work Years</b>							
(a) Salary	86,975,300	30,800	87,006,100	586,500	87,592,600	0.04%	0.67%
(b) Pension	18,326,100	196,900	18,523,000	203,800	18,726,800	1.07%	1.10%
(c) Common Staff Costs	18,027,200	57,400	18,084,600	(71,200)	18,013,400	0.32%	-0.39%
<b>Sect 2 Temporary Assistance</b>	<b>15,927,100</b>	<b>(822,200)</b>	<b>15,104,900</b>	<b>70,000</b>	<b>15,174,900</b>	<b>-5.16%</b>	<b>0.46%</b>
<b>B</b>							
<b>Sect 3 Communications</b>							
(a) Telecommunications	500,000	167,500	667,500	0	667,500	33.50%	0.00%
(b) Postal Charges	1,280,000	(174,300)	1,105,700	(60,000)	1,045,700	13.62%	-5.43%
<b>Sect 4 Building Facilities</b>							
(a) Rental	625,000	68,000	693,000	585,000	1,278,000	10.88%	84.42%
(b) Utilities	1,916,000	0	1,916,000	(170,000)	1,746,000	0.00%	-8.87%
(c) Maintenance and Insurance	1,307,000	380,000	1,687,000	(200,000)	1,487,000	29.07%	-11.86%
<b>Sect 5 Permanent Equipment</b>							
(a) Permanent Equipment	1,000,000	285,000	1,285,000	100,000	1,385,000	28.50%	7.78%
(b) Permanent Equipment Lease	64,000	(20,000)	44,000	0	44,000	-31.25%	0.00%
<b>Sect 6 Expendable</b>	<b>1,261,000</b>	<b>(80,000)</b>	<b>1,181,000</b>	<b>0</b>	<b>1,181,000</b>	<b>-6.34%</b>	<b>0.00%</b>
<b>Sect 7 Contractual Services</b>							
(a) Reproduction	1,605,600	(150,000)	1,455,600	(100,000)	1,355,600	-9.34%	-6.87%
(b) Office Automation	3,355,000	0	3,355,000	0	3,355,000	0.00%	0.00%
(c) Other	238,000	0	238,000	0	238,000	0.00%	0.00%
(d) Security Outsourcing	4,013,000	(50,000)	3,963,000	0	3,963,000	-1.25%	0.00%
<b>C</b>							
<b>Sect 8 Staff Overheads</b>							
(a) Training	1,500,000	0	1,500,000	0	1,500,000	0.00%	0.00%
(b) Insurance	2,999,000	105,000	3,104,000	200,000	3,304,000	3.50%	6.44%
(c) Joint Services	255,000	0	255,000	0	255,000	0.00%	0.00%
(d) Miscellaneous	34,000	30,000	64,000	0	64,000	88.24%	0.00%
<b>Sect 9 Missions</b>							
(a) Missions Official	1,496,000	105,000	1,601,000	100,000	1,701,000	7.02%	6.25%
(b) Missions Technical	1,406,000	0	1,406,000	0	1,406,000	0.00%	0.00%
<b>Sect 10 Trade Policy Courses</b>	<b>3,315,000</b>	<b>(354,900)</b>	<b>2,960,100</b>	<b>(108,800)</b>	<b>2,851,300</b>	<b>-10.71%</b>	<b>-3.68%</b>
<b>Sect 11 Various</b>							
(a) Representation and Hospitality	298,000	0	298,000	500	298,500	0.00%	0.17%
(b) Dispute Settlement Panels	987,000	0	987,000	0	987,000	0.00%	0.00%
(c) Experts	50,000	0	50,000	0	50,000	0.00%	0.00%
(e) Library	690,000	(100,000)	590,000	0	590,000	-14.49%	0.00%
(f) Publications	803,000	(23,000)	780,000	1,000	781,000	-2.86%	0.13%
(g) Public Information Activities	380,000	(80,000)	300,000	0	300,000	-21.05%	0.00%
(h) External Auditors	50,000	0	50,000	0	50,000	0.00%	0.00%
(i) Ministerial Operating Fund	600,000	0	600,000	0	600,000	0.00%	0.00%
(j) ISO	57,000	0	57,000	0	57,000	0.00%	0.00%
(k) Other	130,000	10,000	140,000	0	140,000	7.69%	0.00%
<b>D</b>							
<b>Sect 12 ITC</b>	<b>18,911,000</b>	<b>0</b>	<b>18,911,000</b>	<b>0</b>	<b>18,911,000</b>	<b>0.00%</b>	<b>0.00%</b>
<b>Grand Total</b>	<b>190,381,300</b>	<b>(418,800)</b>	<b>189,962,500</b>	<b>1,136,800</b>	<b>191,099,300</b>	<b>-0.22%</b>	<b>0.60%</b>

**2012-2013 PROPOSED REVISED BUDGET FOR  
THE APPELLATE BODY AND ITS SECRETARIAT**  
(in Swiss Francs)

Section	2011	Inc/Dec 2012	2012	Inc/Dec 2013	2013	Diff 2012	Diff 2013
<b>A</b>							
<b>Sect 1 Work Years</b>							
(a) Salary	2,109,000	245,500	2,354,500	91,800	2,446,300	11.64%	3.90%
(b) Pension	444,000	54,100	498,100	22,100	520,200	12.18%	4.44%
(c) Common Staff Costs	429,000	106,200	535,200	(50,700)	484,500	24.76%	-9.47%
<b>Sect 2 Temporary Assistance</b>	<b>65,600</b>	<b>0</b>	<b>65,600</b>	<b>0</b>	<b>65,600</b>	<b>0.00%</b>	<b>0.00%</b>
<b>B</b>							
<b>Sect 3 Communications</b>							
(a) Telecommunications	6,500	0	6,500	0	6,500	0.00%	0.00%
<b>Sect 4 Building Facilities</b>							
(b) Utilities	13,000	0	13,000	0	13,000	0.00%	0.00%
(c) Maintenance and Insurance	5,000	0	5,000	0	5,000	0.00%	0.00%
<b>Sect 5 Permanent Equipment</b>							
(a) Permanent Equipment	25,000	0	25,000	0	25,000	0.00%	0.00%
<b>Sect 6 Expendable</b>	<b>20,000</b>	<b>0</b>	<b>20,000</b>	<b>0</b>	<b>20,000</b>	<b>0.00%</b>	<b>0.00%</b>
<b>Sect 7 Contractual Services</b>							
(a) Reproduction	15,000	0	15,000	0	15,000	0.00%	0.00%
(b) Office Automation	10,000	0	10,000	0	10,000	0.00%	0.00%
<b>C</b>							
<b>Sect 8 Staff Overheads</b>							
(a) Training	25,000	0	25,000	0	25,000	0.00%	0.00%
(b) Insurance	12,000	0	12,000	0	12,000	0.00%	0.00%
(d) Miscellaneous	2,000	0	2,000	0	2,000	0.00%	0.00%
<b>Sect 9 Missions</b>							
(a) Missions Official	37,000	13,000	50,000	0	50,000	35.14%	0.00%
<b>Sect 11 Various</b>							
(a) Representation and Hospitality	1,000	0	1,000	0	1,000	0.00%	0.00%
(d) Appellate Body Members	793,500	0	793,500	0	793,500	0.00%	0.00%
(e) Library	10,000	0	10,000	0	10,000	0.00%	0.00%
(l) Appellate Body Operating Fund	1,600,000	0	1,600,000	0	1,600,000	0.00%	0.00%
<b>Grand Total</b>	<b>5,622,600</b>	<b>418,800</b>	<b>6,041,400</b>	<b>63,200</b>	<b>6,104,600</b>	<b>7.45%</b>	<b>1.05%</b>

**2012 DRAFT SCALE OF CONTRIBUTIONS**  
(in Swiss Francs with a minimum contribution of 0.015%)

MEMBER	2012 Contribution CHF	2012 Contribution	Interest <sup>2</sup> earned in 2010 for 2012 CHF	2012 net Contribution CHF
Albania	54,404	0.028%	46	54,358
Angola	441,061	0.227%	156	440,905
Antigua and Barbuda	29,145	0.015%	18	29,127
Argentina	716,967	0.369%	529	716,438
Armenia	31,088	0.016%	12	31,076
Australia	2,380,175	1.225%	2,513	2,377,662
Austria	2,432,636	1.252%	2,217	2,430,419
Bahrain	184,585	0.095%	191	184,394
Bangladesh	211,787	0.109%	101	211,686
Barbados	29,145	0.015%	4	29,141
Belgium	4,414,496	2.272%	5,184	4,409,312
Belize	29,145	0.015%	22	29,123
Benin	29,145	0.015%	0	29,145
Bolivia, Plurinational State of	58,290	0.030%	0	58,290
Botswana	62,176	0.032%	24	62,152
Brazil	2,088,725	1.075%	1,590	2,087,135
Brunei Darussalam	75,777	0.039%	71	75,706
Bulgaria	340,025	0.175%	338	339,687
Burkina Faso	29,145	0.015%	0	29,145
Burundi	29,145	0.015%	0	29,145
Cambodia	73,834	0.038%	13	73,821
Cameroon	71,891	0.037%	0	71,891
Canada	5,727,964	2.948%	7,319	5,720,645
Cape Verde	29,145	0.015%	17	29,128
Central African Republic	29,145	0.015%	0	29,145
Chad	46,632	0.024%	0	46,632
Chile	748,055	0.385%	160	747,895
China, People's Republic of	14,156,698	7.286%	3,779	14,152,919
Colombia	437,175	0.225%	407	436,768
Congo	52,461	0.027%	0	52,461
Costa Rica	161,269	0.083%	195	161,074
Côte d'Ivoire	116,580	0.060%	0	116,580
Croatia	322,538	0.166%	359	322,179
Cuba	145,725	0.075%	86	145,639
Cyprus	139,896	0.072%	141	139,755
Czech Republic	1,581,602	0.814%	1,626	1,579,976
Democratic Republic of the Congo	68,005	0.035%	0	68,005
Denmark	1,884,710	0.970%	2,192	1,882,518
Djibouti	29,145	0.015%	0	29,145
Dominica	29,145	0.015%	0	29,145
Dominican Republic	163,212	0.084%	0	163,212
Ecuador	198,186	0.102%	191	197,995
Egypt	579,014	0.298%	471	578,543

<sup>2</sup> Interest earned in 2010 under the Early Payment Encouragement Scheme (L/6384) to be deducted from the 2012 contributions.

MEMBER	2012 Contribution CHF	2012 Contribution	Interest <sup>2</sup> earned in 2010 for 2012 CHF	2012 net Contribution CHF
El Salvador	91,321	0.047%	4	91,317
Estonia	188,471	0.097%	214	188,257
European Union	0	0.000%	0	0
Fiji	29,145	0.015%	29	29,116
Finland	1,239,634	0.638%	1,342	1,238,292
Former Yugoslav Republic of Macedonia	58,290	0.030%	0	58,290
France	8,545,314	4.398%	9,914	8,535,400
Gabon	40,803	0.021%	0	40,803
Gambia	29,145	0.015%	0	29,145
Georgia	52,461	0.027%	51	52,410
Germany	17,135,317	8.819%	19,374	17,115,943
Ghana	97,150	0.050%	0	97,150
Greece	973,443	0.501%	812	972,631
Grenada	29,145	0.015%	0	29,145
Guatemala	137,953	0.071%	107	137,846
Guinea	29,145	0.015%	0	29,145
Guinea-Bissau	29,145	0.015%	0	29,145
Guyana	29,145	0.015%	23	29,122
Haiti	29,145	0.015%	14	29,131
Honduras	99,093	0.051%	0	99,093
Hong Kong, China	5,073,173	2.611%	6,160	5,067,013
Hungary	1,268,779	0.653%	0	1,268,779
Iceland	89,378	0.046%	107	89,271
India	3,240,924	1.668%	1,029	3,239,895
Indonesia	1,509,711	0.777%	92	1,509,619
Ireland	2,300,512	1.184%	2,861	2,297,651
Israel	866,578	0.446%	1,014	865,564
Italy	7,074,463	3.641%	6,872	7,067,591
Jamaica	77,720	0.040%	12	77,708
Japan	9,310,856	4.792%	6,574	9,304,282
Jordan	155,440	0.080%	153	155,287
Kenya	101,036	0.052%	53	100,983
Kingdom of Saudi Arabia	2,261,652	1.164%	1,441	2,260,211
Korea, Republic of	5,298,561	2.727%	5,062	5,293,499
Kuwait	617,874	0.318%	451	617,423
Kyrgyz Republic	29,145	0.015%	35	29,110
Latvia	159,326	0.082%	170	159,156
Lesotho	29,145	0.015%	16	29,129
Liechtenstein	46,632	0.024%	56	46,576
Lithuania	281,735	0.145%	58	281,677
Luxembourg	825,775	0.425%	0	825,775
Macao, China	163,212	0.084%	124	163,088
Madagascar	29,145	0.015%	0	29,145
Malawi	29,145	0.015%	0	29,145
Malaysia	2,209,191	1.137%	1,810	2,207,381
Maldives	29,145	0.015%	25	29,120
Mali	29,145	0.015%	0	29,145
Malta	79,663	0.041%	93	79,570
Mauritania	29,145	0.015%	0	29,145

MEMBER	2012 Contribution CHF	2012 Contribution	Interest <sup>2</sup> earned in 2010 for 2012 CHF	2012 net Contribution CHF
Mauritius	60,233	0.031%	70	60,163
Mexico	3,516,830	1.810%	3,527	3,513,303
Moldova	36,917	0.019%	34	36,883
Mongolia	31,088	0.016%	21	31,067
Morocco	367,227	0.189%	270	366,957
Mozambique	40,803	0.021%	33	40,770
Myanmar, Union of	38,860	0.020%	25	38,835
Namibia	44,689	0.023%	43	44,646
Nepal	31,088	0.016%	18	31,070
Netherlands	6,272,004	3.228%	6,588	6,265,416
New Zealand	444,947	0.229%	541	444,406
Nicaragua	44,689	0.023%	0	44,689
Niger	29,145	0.015%	0	29,145
Nigeria	699,480	0.360%	63	699,417
Norway	1,756,472	0.904%	1,796	1,754,676
Oman	293,393	0.151%	149	293,244
Pakistan	363,341	0.187%	376	362,965
Panama	178,756	0.092%	130	178,626
Papua New Guinea	48,575	0.025%	14	48,561
Paraguay	81,606	0.042%	14	81,592
Peru	330,310	0.170%	0	330,310
Philippines	722,796	0.372%	774	722,022
Poland	2,115,927	1.089%	2,254	2,113,673
Portugal	996,759	0.513%	704	996,055
Qatar	443,004	0.228%	5	442,999
Romania	709,195	0.365%	584	708,611
Rwanda	29,145	0.015%	31	29,114
Saint Kitts and Nevis	29,145	0.015%	0	29,145
Saint Lucia	29,145	0.015%	0	29,145
Saint Vincent and the Grenadines	29,145	0.015%	14	29,131
Senegal	46,632	0.024%	32	46,600
Sierra Leone	29,145	0.015%	0	29,145
Singapore	4,379,522	2.254%	5,062	4,374,460
Slovak Republic	744,169	0.383%	653	743,516
Slovenia	376,942	0.194%	412	376,530
Solomon Islands	29,145	0.015%	28	29,117
South Africa	1,084,194	0.558%	1,225	1,082,969
Spain	4,995,453	2.571%	3,643	4,991,810
Sri Lanka	136,010	0.070%	28	135,982
Suriname	29,145	0.015%	25	29,120
Swaziland	29,145	0.015%	15	29,130
Sweden	2,485,097	1.279%	2,974	2,482,123
Switzerland	2,642,480	1.360%	3,127	2,639,353
Chinese Taipei	3,122,401	1.607%	3,815	3,118,586
Tanzania, United Republic of	68,005	0.035%	50	67,955
Thailand	2,110,098	1.086%	2,375	2,107,723
Togo	29,145	0.015%	0	29,145
Tonga	29,145	0.015%	19	29,126
Trinidad and Tobago	132,124	0.068%	122	132,002

MEMBER	2012 Contribution CHF	2012 Contribution	Interest <sup>2</sup> earned in 2010 for 2012 CHF	2012 net Contribution CHF
Tunisia	248,704	0.128%	132	248,572
Turkey	1,863,337	0.959%	1,399	1,861,938
Uganda	40,803	0.021%	0	40,803
Ukraine	788,858	0.406%	372	788,486
United Arab Emirates	2,150,901	1.107%	934	2,149,967
United Kingdom	9,019,406	4.642%	10,441	9,008,965
United States	23,687,113	12.191%	922	23,686,191
Uruguay	89,378	0.046%	39	89,339
Venezuela, Bolivarian Republic of	742,226	0.382%	0	742,226
Viet Nam	736,397	0.379%	58	736,339
Zambia	52,461	0.027%	20	52,441
Zimbabwe	29,145	0.015%	27	29,118
<b>TOTAL</b>	<b>194,300,000</b>	<b>100.000%</b>	<b>152,151</b>	<b>194,147,849</b>

**WAIVERS CURRENTLY IN FORCE**  
(as of December 7, 2011)

WAIVER	DECISION	DATE of ADOPTION of DECISION	GRANTED UNTIL	REPORT in 2011 <sup>57</sup>
<b>Granted in 2011</b>				
Introduction of Harmonized System 2002 Changes into WTO Schedules of Tariff Concessions <sup>58</sup>	WT/L/832	30 November 2011	31 December 2012	-
Introduction of Harmonized System 2007 Changes into WTO Schedules of Tariff Concessions <sup>59</sup>	WT/L/833	30 November 2011	31 December 2012	-
Introduction of Harmonized System 2012 Changes into WTO Schedules of Tariff Concessions <sup>60</sup>	WT/L/834	30 November 2011	31 December 2012	-
CARIBCAN	WT/L/835	30 November 2011	31 December 2013	-
European Union - Application of Autonomous Preferential Treatment to the Western Balkans	WT/L/836	30 November 2011	31 December 2016	-

<sup>57</sup> Applicable if so stipulated in the corresponding waiver Decision.

<sup>58</sup> The Members which have requested to be covered under this waiver are: Argentina; Australia; Brazil; China; Croatia; European Union; Iceland; India; Malaysia; Mexico; Thailand and Uruguay.

<sup>59</sup> The Members which have requested to be covered under this waiver are: Argentina; Australia; Brazil; Canada; China; Costa Rica; Croatia; Dominican Republic; El Salvador; European Union; Guatemala; Honduras; Hong Kong, China; India; Israel; Korea; Macao, China; Malaysia; Mexico; New Zealand; Nicaragua; Norway; Pakistan; Philippines; Singapore; Switzerland; Thailand; United States and Uruguay.

<sup>60</sup> The Members which have requested to be covered under this waiver are: Australia; Brazil; Canada; China; Costa Rica; Dominican Republic; El Salvador; European Union; Guatemala; Honduras; Hong Kong, China; India; Israel; Republic of Korea; Macao, China; Malaysia; Mexico; New Zealand; Norway; Pakistan; Singapore; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand and United States.

WAIVER	DECISION	DATE of ADOPTION of DECISION	GRANTED UNTIL	REPORT in 2011 <sup>57</sup>
Cape Verde – Implementation of Article VII of GATT 1994 and of the Agreement on Customs Valuation	WT/L/812	3 May 2011	1 January 2012	-
<b>Previously granted – in force in 2011</b>				
Introduction of Harmonized System 2007 Changes into WTO Schedules of Tariff Concessions <sup>61</sup>	WT/L/809	14 December 2010	31 December 2011	-
Introduction of Harmonized System 2002 Changes into WTO Schedules of Tariff Concessions <sup>62</sup>	WT/L/808	14 December 2010	31 December 2011	-
Argentina - Introduction of Harmonized System 1996 Changes into WTO Schedules of Tariff Concessions	WT/L/801	29 July 2010	30 April 2011	-
Preferential Tariff Treatment for Least-Developed Countries – Decision on Extension of waiver	WT/L/759	27 May 2009	30 June 2019	-
United States – Andean Trade Preference Act – Renewal of waiver	WT/L/755	27 May 2009	31 December 2014	WT/L/819 and Corr.1
United States – African Growth and Opportunity Act	WT/L/754	27 May 2009	30 September 2015	WT/L/818 and Corr.1
United States - Caribbean Basin Economic Recovery Act – Renewal of waiver	WT/L/753	27 May 2009	31 December 2014	WT/L/817

<sup>61</sup> The Members which have requested to be covered under this waiver are: Argentina; Australia; Brazil; Canada; China; Costa Rica; Croatia; El Salvador; European Union; Guatemala; Honduras; Hong Kong, China; India; Israel; Korea; Macao, China; Malaysia; Mexico; New Zealand; Nicaragua; Norway; Pakistan; Singapore; Switzerland; Thailand; United States and Uruguay.

<sup>62</sup> The Members which have requested to be covered under this waiver are: Argentina; Australia; Brazil; China; Costa Rica; Croatia; El Salvador; European Union; Iceland; India; Republic of Korea; Mexico; New Zealand; Norway; Thailand; United States and Uruguay.

<b>WAIVER</b>	<b>DECISION</b>	<b>DATE of ADOPTION of DECISION</b>	<b>GRANTED UNTIL</b>	<b>REPORT in 2011<sup>57</sup></b>
European Communities – Application of Autonomous Preferential Treatment to Moldova	WT/L/722	7 May 2008	31 December 2013	WT/L/815
Mongolia - Export duties on raw cashmere	WT/L/695	27 July 2007	29 January 2012	-
United States – Former Trust Territory of the Pacific Islands	WT/L/694	27 July 2007	31 December 2016	WT/L/816
Cuba – Article XV:6 of GATT 1994	WT/L/678	15 December 2006	31 December 2011	WT/L/826
CARIBCAN	WT/L/677	15 December 2006	31 December 2011	WT/L/828
Kimberley Process Certification Scheme for rough diamonds <sup>63</sup>	WT/L/676	15 December 2006	31 December 2012	-
European Communities' preferences for Albania, Bosnia and Herzegovina, Croatia, Serbia and Montenegro, and the Former Yugoslav Republic of Macedonia	WT/L/654	28 July 2006	31 December 2011	WT/L/814
Implementation of Para. 6 of the Doha Declaration on the TRIPS Agreement and Public Health	WT/L/540 and Corr.1	30 August 2003	See WT/L/540 and Corr.1	IP/C/61
Least-Developed Country Members – Obligations under Article 70.9 of the TRIPS Agreement with respect to Pharmaceutical Products	WT/L/478	8 July 2002	1 January 2016	-

<sup>63</sup> Annex: Australia; Botswana; Brazil; Canada; Croatia; India; Israel; Japan; Korea; Mauritius; Mexico; Norway; Philippines; Sierra Leone; Chinese Taipei; Thailand; United Arab Emirates; United States and Venezuela.

**Number of WTO Staff Members by Job Category on 1 January 2012  
(as per information available on 5 December 2011)**

Country	Senior	Professional	Support	Total
Albania			1	1
Argentina		4	5	9
Australia		8	2	10
Austria		5		5
Bangladesh		1		1
Barbados		1		1
Belgium		2	4	6
Benin		1		1
Bolivia		3		3
Brazil		8	2	10
Bulgaria		3		3
Burundi		1		1
Canada		23	1	24
Chile	1	1	2	4
China		9	1	10
Colombia		9	1	10
Congo, The Democratic Republic of the		1		1
Costa Rica		2		2
Côte d'Ivoire			1	1
Croatia		1		1
Cuba			1	1
Denmark		1	1	2
Ecuador		3		3
Egypt		6		6
Estonia		1		1
Finland		2	3	5
France	1	55	132	188
Germany		21	2	23
Ghana		2		2
Greece		3	2	5
Guatemala		1		1
Guinea		3		3
Honduras			1	1
Hong Kong, China		1		1
Hungary		1		1
India	1	10	2	13
Ireland		6	7	13
Italy		11	4	15
Jamaica		1		1

Japan		4		4
Kenya		1		1
Korea, Republic of		5		5
Lesotho		1		1
Malawi		1		1
Malaysia		2	1	3
Mauritius		1	1	2
Mexico		5	1	6
Morocco		3		3
Nepal			1	1
Netherlands		6	1	7
New Zealand		3	1	4
Nigeria		1		1
Norway		1	1	2
Pakistan		2		2
Paraguay			1	1
Peru		2	6	8
Philippines		8	3	11
Poland		2	2	4
Portugal		1	1	2
Romania		1	1	2
Rwanda	1	1		2
Saint Lucia		1		1
Senegal		1	1	2
Sierra Leone		1		1
South Africa		1		1
Spain		23	20	43
Sri Lanka		1	2	3
Sweden		3	1	4
Switzerland		19	19	38
Tanzania		1		1
Thailand		1		1
Trinidad and Tobago		1		1
Tunisia		4	2	6
Turkey		3		3
Uganda		3		3
United Kingdom		27	42	69
United States of America	1	24	4	29
Uruguay		3	5	8
Venezuela		4	1	5
Vietnam		1		1
Zambia		2		2
Zimbabwe		1	1	2
Total	5	387	294	686

**Note: Senior Management includes the Director-General and Deputies Director-General.**

**Source: WTO Secretariat as of December 5, 2011**

## WTO ACCESSION APPLICATIONS AND STATUS (as of 01-01-12)<sup>1</sup>

Applicant	Status of Multilateral and Bilateral Work
Afghanistan* (2004)	First Working Party (WP) meeting held in January 2011. Next one contemplated in early 2012. No bilateral market access offers have been circulated. The United States is providing technical assistance through the United States Agency for International Development (USAID), including drafting documentation, training, legal drafting, and institution building.
Algeria (1987)	Most recent WP meeting held in January 2008 to review draft WP report and status of market access negotiations. No WP meetings held since 2009.
Andorra (1997)	Inactive. Last WP meeting on October 13, 1999 reviewed legislative implementation schedule and goods and services market access offers.
Azerbaijan (1997)	Eighth WP meeting held in October 2010. Next meeting could occur in 2012, when Azerbaijan has submitted all of the required documentation, including a revised goods market access offer in the correct tariff nomenclature.
The Bahamas (2001)	First WP meeting was held in September 2010. Next WP meeting contemplated in early 2012. Market access negotiations initiated with the United States at the end of 2011.
Belarus (1993)	Belarus' last WP meeting was in October 2005. Chairman's Consultations since that time have confirmed willingness of WP Members to resume Working Party deliberations based on Belarus' demonstration that it intends to implement WTO provisions. Belarus has provided updated documentation on its trade regime, some additional legislation, and an improved offer on services market access. Revised draft WP report in preparation based on these submissions and additional information on Belarus' participation in a Customs Union (CU) with Russia and Kazakhstan. WP meeting, possibly in informal mode, contemplated in 2012.
Bhutan * (1999)	Inactive. Fourth WP meeting held in January 2008 to review additional documentation and conduct market access negotiations for goods and services. Bhutan did not seek further work on its WTO accession in 2011, and no further meetings are scheduled at this time.

\* Designates "least developed country" applicant.

<sup>1</sup> "Applicant" column includes date the Working Party was formed. Pre-1995 dates indicate that the original WP was formed under the GATT 1947, but was reformed as a WTO Working Party in 1995.

Applicant	Status of Multilateral and Bilateral Work
Bosnia and Herzegovina (1999)	Ninth WP meeting held September 2011 to review the revised draft WP report and a revised legislative action plan, and to conduct market access negotiations. Multilateral work is advancing, but domestic political issues have blocked necessary legislative work. Market access negotiations are proceeding slowly on goods; services negotiations are more advanced. Next WP meeting contemplated in the first half of 2012.
Comoros * (2007)	Application accepted at October 2007 General Council meeting; has not yet submitted initial documentation to activate the accession negotiations.
Equatorial* Guinea (2008)	Application accepted at February 2008 General Council meeting; has not yet submitted initial documentation to activate the accession negotiations.
Ethiopia* (2003)	Ethiopia circulated its responses to questions and comments from Members at the first WP meeting and related documentation in April and June 2009. A new WP Chair was selected in October 2010, and a second WP meeting was held in May 2011. No market access offers have been circulated to date. The United States provides technical assistance through USAID in the form of a resident advisor for drafting documentation, training, legal drafting, and institution building in the areas of customs, licensing, intellectual property, standards and sanitary measures.
Iraq (2004)	Iraq's last WP meeting was held in April 2008. A third meeting will be scheduled following Iraq's submission of initial market access offers for goods and services and written responses to questions and comments from the previous meeting. The United States provided technical assistance through USAID, to help with drafting documentation, training, legal drafting, and institution building.
Iran (2005)	Iran submitted its Memorandum on Foreign Trade Regime to activate the accession negotiations in November 2009, and provided responses to questions and comments on it in December 2011. The General Council Chairman is consulting with WTO Members on the designation of a WP Chair. Once Iran's responses to the written questions have been circulated to and reviewed by the WTO Members and a WP Chair has been selected, a first WP meeting may be called.
Kazakhstan (1996)	Kazakhstan substantially completed its negotiations on goods and services market access during 2011, and review of Kazakhstan's revised tables laying out its domestic support for agriculture is underway. Kazakhstan is updating and revising its draft WP report text based on information provided on Kazakhstan's participation in a in the CU with Russia and Belarus. Through September 2011, USAID provided technical assistance in the form of an advisor resident in Bishkek, Kyrgyz Republic, for drafting documentation, training, legal drafting, and institution building. Specific assistance in selected areas is still being provided.

Applicant	Status of Multilateral and Bilateral Work
Laos* (1998)	Seventh WP meeting held in June 2011 to continue review of the trade regime (including a revised factual summary). Bilaterals were held in Geneva in December 2011 and also on the margins of Laos' WP meeting in Geneva and addressed the interrelationship between Laos' WTO commitments and the provisions of our Bilateral Trade Agreement and focused on Laos' implementation of WTO provisions. The United States and Laos reached bilateral agreement on market access negotiations for goods and services in December 2011. The next WP meeting is possible in 2012. The United States is providing technical assistance through USAID in the form of a resident advisor for drafting documentation, training, legal drafting,
Lebanon (1999)	There have been no WP meetings on Lebanon's WTO accession since October 2009. Lebanon's efforts on legislative implementation remain blocked by domestic political issues, delaying completion of the accession process. Lebanon has provided an improved offer on services market access but there has been no movement on goods. At this time, no WP meeting is scheduled. Through USAID, the United States has traditionally provided strong technical assistance in the form of long terms advisors and short term specific assistance for drafting documentation, training, legal drafting, and institution building, with focus on customs procedures, intellectual property rights protection, services, and standards. Assistance was cut back in 2010.
Liberia* (2007)	Application accepted at December 2007 General Council meeting. Liberia submitted its Memorandum on Foreign Trade Regime in April 2011, and Members submitted questions on this document in May 2011. Replies are pending. In June 2010, the MCC Board approved a Threshold Program for Liberia that includes legal assistance connected to Liberia's WTO accession.
Libya (2004)	Application accepted at July 2004 General Council meeting. No documentation or market access offers circulated to date.
Montenegro (2005)	Terms of accession were approved at the Eighth Ministerial Meeting in Geneva in December 2011; Montenegro will become a Member of the WTO 30 days after notifying the WTO Secretariat that its domestic authorities have ratified/accepted the accession package. During the negotiations, the United States provided technical assistance to Montenegro in the form of an advisor resident in Belgrade, drafting documentation, training, legal drafting, and institution building in the areas of customs, licensing, intellectual property, standards, and sanitary measures.
The Russian Federation (1993)	Terms of accession were approved at the Eighth Ministerial Meeting in Geneva in December 2011; the Russian Federation will become a Member of the WTO 30 days after notifying the WTO Secretariat that its domestic authorities have ratified/accepted the accession package. Through 2007, the United States provided technical assistance in the form of a long term resident advisor and short term specific assistance on various topics and outreach programs to the Duma, Federation Council, regional governments, and the private sector.

Applicant	Status of Multilateral and Bilateral Work
Samoa* (1998)	Terms of accession were approved at the Eighth Ministerial Meeting in Geneva in December 2011; Samoa will become a Member of the WTO 30 days after notifying the WTO Secretariat that its domestic authorities have ratified/accepted the accession package.
Sao Tome and Principe* (2005)	Application accepted at May 2005 General Council meeting; has not yet submitted initial documentation to activate the accession negotiations.
Serbia (2005)	Serbia's eleventh WP meeting held in September 2011 to review revised draft WP report and other new documentation and to assess status of legislative implementation, which is generally proceeding well. Next WP expected for spring 2012. Serbia still has not passed a corrective amendment to the problematic Serbian "GMO law" which bans trade in biotech products. Bilateral negotiations on market access are near completion, pending a final agreement on agricultural tariffs.
The Seychelles (1995)	Seychelles resumed its WTO accession negotiations in 2010 after a hiatus of twelve years. The first WP meeting was held in November 2010. Next WP meeting contemplated in early 2012. Revised initial market access offers for goods and services were circulated in October 2010.
Sudan* (1995)	Inactive. Second WP meeting held March 10, 2004. Market access offers for goods and services were last tabled in October 2006.
Syria (2010)	Application for accession to the WTO first circulated in October 2001. Application accepted at May 2010 General Council meeting; has not yet submitted initial documentation to activate the accession negotiations.
Tajikistan (2001)	Sixth WP meeting held in July 2011 to review the first draft of Tajikistan's Working Party Report and the status of legislative implementation of WTO provisions. Next meeting will occur when Tajikistan has submitted all of the required documentation, including revised market access offers.
Uzbekistan (1995)	Inactive. Third WP meeting held in October 2005 to review additional documentation and initial market access offers. No meetings held since that time.
Vanuatu * (1995)	Vanuatu has resumed efforts to complete its WTO accession process in 2008 after a hiatus of nine years. Terms of accession were approved by the WTO General Council in October 2011. Vanuatu will become a Member of the WTO 30 days after notifying the WTO Secretariat that its domestic authorities have ratified/accepted the accession package, contemplated sometime in 2012.

<b>Applicant</b>	<b>Status of Multilateral and Bilateral Work</b>
Yemen * (2000)	The United States and Yemen reached bilateral agreement on market access negotiations for goods and services in December 2010, but Yemen continued to negotiate with one WTO Member in 2011. Yemen appointed a new Trade Minister in December 2011, and after some time to transition, the next WP meeting may occur in 2012. The United States has provided help with orientation and the development of documentation through USAID and the United States - Middle East Partnership Initiative.

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**INDICATIVE LIST OF GOVERNMENTAL AND  
NON-GOVERNMENTAL PANELISTS**

Revision

To assist in the selection of panelists, the DSU provides in Article 8.4 that the Secretariat shall maintain an indicative list of governmental and non-governmental individuals.

The attached is a revised consolidated list of governmental and non-governmental panelists.<sup>64</sup> The list is based on the previous indicative list issued on 12 September 2011 (WT/DSB/44/Rev.16). It includes additional names approved by the DSB at its meetings on 27 September and 25 October 2011<sup>65</sup> and reflects deletions from the previous list as proposed by Members and for other appropriate reasons. Any future modifications or additions to this list submitted by Members will be circulated in periodic revisions of this list.

For practical purposes, the proposals for the administration of the indicative list approved by the DSB on 31 May 1995 are reproduced as an Annex to this document.

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<sup>64</sup> Curricula Vitae containing more detailed information are available to WTO Members upon request from the Secretariat (CTNC Division).

<sup>65</sup> See documents: WT/DSB/W/461 and 464.

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>ARGENTINA</b>	BARDONESCHI, Mr. Rodrigo C. CHIARADIA, Mr. Alfredo Vicente DUMONT, Mr. Alberto Juan LUNAZZI, Mr. Gustavo Nerio MAKUC, Mr. Adrián Jorge MÉNDEZ, Mr. Gustavo Héctor MORELLI, Mr. Esteban Andrés NEGRO, Ms. Sandra Cecilia NISCOVOLOS, Mr. Luis Pablo PAN, Ms. Julia Adriana Gabriela PÉREZ GABILONDO, Mr. José Luis PETRI, Mr. Gerardo Luis PIÑEIRO, Mr. Martín Enrique RAITERI, Ms. María Valeria REGÚNAGA, Mr. Marcelo RIABOI, Mr. Jorge B.	Trade in Goods Trade in Goods Trade in Goods Trade in Goods Trade in Services Trade in Goods Trade in Goods Trade in Goods Trade in Goods and Services Trade in Goods Trade in Goods; TRIPS Trade in Goods Trade in Goods Trade in Goods Trade in Goods Trade in Goods
<b>AUSTRALIA</b>	CHESTER, Mr. Douglas Owen CHURCHE, Mr. Milton DEADY, Mr. Stephen	TRIPS Trade in Goods Trade in Goods

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
	FARBENBLOOM, Mr. Simon GALLAGHER, Mr. Peter GOSPER, Mr. Bruce HOLMES, Ms. Patricia Ann JENNINGS, Mr. Mark	Trade in Goods and Services Trade in Goods; TRIPS Trade in Goods Trade in Goods Trade in Goods; TRIPS
<b>AUSTRALIA (cont'd)</b>	McCARTHY, Ms. Caroline MITCHELL, Mr. Andrew MORETTA, Mr. Remo MULGREW, Mr. Michael MYLER, Mr. Paul O'CONNOR, Mr. Paul Richard RAPER, Ms. Cathy SIN FAR LEE, Ms. Stephanie SPENCER, Mr. David VOON, Ms. Tania Su Lien WITBREUK, Ms. Trudy YOUNG, Ms. Elizabeth	TRIPS Trade in Goods and Services; TRIPS Trade in Goods and Services Trade in Goods Trade in Goods and Services Trade in Goods Trade in Goods and Services Trade in Goods Trade in Goods Trade in Goods and Services; TRIPS Trade in Goods and Services Trade in Goods
<b>BOLIVARIAN REPUBLIC OF VENEZUELA</b>	ESCOBAR, Mr. José Benjamín	Trade in Services

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
	MARQUEZ, Mr. Guillermo	Trade in Services
	ROJAS PENSO, Mr. Juan Francisco	Trade in Goods and Services
<b>BOLIVIA, PLURINATIONAL STATE OF</b>	ZELADA CASTEDO, Mr. Alberto	Trade in Goods
<b>BRAZIL</b>	ABREU, Mr. Marcelo de Paiva	Trade in Goods and Services
	BARRAL, Mr. Welber Oliveira	Trade in Goods
	BARTHEL-ROSA, Mr. Paulo	Trade in Goods
	BASSO, Ms. Maristela	Trade in Goods; TRIPS
	LEMME, Ms. Marta Calmon	Trade in Goods
	MAGALHÃES, Mr. José Carlos	Trade in Goods
	MARCONINI, Mr. Mario	Trade in Services
	MOURA ROCHA, Mr. Bolívar	Trade in Services
<b>BRAZIL (cont'd)</b>	NAIDIN, Ms. Leane Cornet	Trade in Goods
	RIOS, Ms. Sandra Polônia	Trade in Goods
	THORSTENSEN, Ms. Vera Helena	Trade in Goods
<b>CAMEROON</b>	NGANGJOH HODU, Mr. Yenkong	Trade in Goods and Services; TRIPS
<b>CANADA</b>	BERNIER, Mr. Ivan	Trade in Goods and Services
	BRADFORD, Mr. Meriel V. M.	Trade in Goods and Services
	BROWN, Ms. Catherine Anne	Trade in Goods and Services; TRIPS
	CLARK, Mr. Peter James	Trade in Goods and Services

MEMBER	NAME	SECTORAL EXPERIENCE
	CLOSE, Ms. Patricia Margaret	Trade in Goods
	DE MESTRAL, Mr. Armand	Trade in Goods
	EYTON, Mr. Anthony T.	Trade in Goods
	GHERSON, Mr. Randolph	Trade in Goods
	GOODWIN, Ms. Kirsten M.	Trade in Goods and Services; TRIPS
	HALLIDAY, Mr. Anthony L.	Trade in Goods and Services
	HERMAN, Mr. Lawrence L.	Trade in Goods
	HINES, Mr. Wilfred Roy	Trade in Goods
	MACMILLAN, Ms. Kathleen E.	Trade in Goods
	MCRAE, Mr. Donald Malcolm	Trade in Goods
	OSTRY, Ms. Sylvia	Trade in Goods
	RITCHIE, Mr. Gordon	Trade in Goods
	THOMAS, Mr. Christopher	Trade in Goods and Services
	WINHAM, Mr. Gilbert R.	Trade in Goods
<b>CHILE</b>	BIGGS, Mr. Gonzalo	Trade in Goods
	ERNST, Mr. Felipe	Trade in Goods and Services
	ESPINOZA, Mr. Alvaro	Trade in Goods
	MATUS, Mr. Mario	Trade in Goods
	MLADINIC, Mr. Carlos	Trade in Goods

MEMBER	NAME	SECTORAL EXPERIENCE
	PEÑA, Ms. Gloria SAEZ, Mr. Sebastián SATELER, Mr. Ricardo SOSA, Ms. Luz TIRONI, Mr. Ernesto	Trade in Goods Trade in Goods and Services TRIPS Trade in Goods and Services Trade in Goods
<b>CHINA</b>	CHEN, Mr. Yusong DONG, Mr. Shizhong E, Mr. Defeng GONG, Mr. Baihua HAN, Mr. Liyu HONG, Mr. Xiaodong HUANG, Mr. Dongli LI, Mr. Enheng LI, Ms. Yongjie LI, Mr. Zhongzhou SHI, Ms. Xiaoli SUO, Mr. Bicheng YANG, Mr. Guohua	Trade in Goods and Services; TRIPS Trade in Goods and Services; TRIPS Trade in Goods Trade in Goods and Services; TRIPS Trade in Goods; TRIPS Trade in Services Trade in Goods; TRIPS Trade in Goods and Services Trade in Goods and Services Trade in Goods Trade in Goods Trade in Goods Trade in Goods; TRIPS

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>CHINA (cont'd)</b>	ZENG, Mr. Lingliang	Trade in Goods
	ZHANG, Ms. Liping	Trade in Goods and Services
	ZHANG, Mr. Naigen	TRIPS
	ZHANG, Mr. Xiangchen	Trade in Goods and Services; TRIPS
	ZHANG, Mr. Yuqing	Trade in Goods and Services; TRIPS
	ZHU, Ms. Lanye	Trade in Services; TRIPS
<b>COLOMBIA</b>	IBARRA PARDO, Mr. Gabriel	Trade in Goods
	JARAMILLO, Mr. Felipe	Trade in Goods and Services
	LOZANO FERRO, Ms. Olga Lucia	Trade in Goods; TRIPS
	OROZCO GOMEZ, Ms. Angela María	Trade in Goods
	OROZCO, Ms. Claudia	Trade in Goods
	PRIETO, Mr. Diego	Trade in Goods and Services
	ROJAS ARROYO, Mr. Santiago	Trade in Goods; TRIPS
	TANGARIFE, Mr. Marcel	Trade in Goods; TRIPS
<b>CÔTE D'IVOIRE</b>	GOSSET, Ms. Marie	Trade in Goods; TRIPS
<b>CUBA</b>	CABALLERO RODRÍGUEZ, Mr. Eumelio	Trade in Goods and Services
	HERNÁNDEZ, Mr. Arnaldo	Trade in Goods and Services
	MARZIOTA DELGADO, Mr. Ernesto Antonio	Trade in Goods and Services

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>ECUADOR</b>	ESPINOSA CAÑIZARES, Mr. Cristian	Trade in Goods and Services; TRIPS
	MONTAÑO HUERTA, Mr. César	Trade in Goods and Services; TRIPS
	PINOARGOTE CEVALLOS, Mr. Alfredo	Trade in Goods
<b>EGYPT</b>	ABOUL-ENEIN, Mr. Mohamed Ibrahim Mostafa	Trade in Goods and Services
	FAWZY, Mr. Abdelrahman	Trade in Goods and Services
<b>EGYPT (cont'd)</b>	HATEM, Mr. Samy Affify	Trade in Goods
	RIAD, Mr. Tarek Fouad	Trade in Goods and Services; TRIPS
	SHAHIN, Ms. Magda	Trade in Goods and Services; TRIPS
	SHARAF ELDIN, Mr. Ahmed	Trade in Goods; TRIPS
	ZHRAN, Mr. Mohamed Mounir	Trade in Goods and Services; TRIPS
<b><u>EUROPEAN UNION</u></b>		
<b>AUSTRIA</b>	BENEDEK, Mr. Wolfgang	Trade in Goods
	MARTINS, Mr. Rudolf	Trade in Goods
	REITERER, Mr. Michael G. K.	Trade in Goods and Services; TRIPS
	WAAS, Mr. Gerhard	Trade in Goods and Services; TRIPS

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
	WEISS, Mr. Johann Friedrich ZEHETNER, Mr. Franz	Trade in Goods and Services; TRIPS Trade in Goods
<b>BELGIUM</b>	DASSESE, Mr. Marc Paul Albert DIDIER, Mr. Pierre PAUWELYN, Mr. Joost VAN DER BORGHT, Mr. Kim VANDER SCHUEREN, Ms. Paulette WOUTERS, Mr. Jan ZONNEKEYN, Mr. Geert A.	Trade in Goods and Services Trade in Goods Trade in Goods and Services; TRIPS Trade in Goods Trade in Goods and Services Trade in Goods and Services Trade in Goods
<b>CZECH REP.</b>	JUNG, Mr. Zdeněk PALEČKA, Mr. Peter PRAVDA, Mr. Miroslav ŠRONĚK, Mr. Ivan	Trade in Goods and Services Trade in Goods and Services Trade in Goods TRIPS
<b>DENMARK</b>	BOESGAARD, Mr. Hendrik	Trade in Goods
<b><u>EUROPEAN UNION (cont'd)</u></b>		
<b>EUROPEAN UNION</b>	CARL, Mr. Mogens Peter KUIJPER, Mr. Pieter Jan	Trade in Goods and Services; TRIPS Trade in Goods and Services; TRIPS

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
	WHITE, Mr. Eric	Trade in Goods and Services; TRIPS
<b>FINLAND</b>	BERGHOLM, Mr. Kari Axel JULIN, Mr. Jorma Kari Johannes LUOTONEN, Mr. Yrjö Kim David PULLINEN, Mr. Matti Johannes RANTANEN, Mr. Paavo	Trade in Goods Trade in Goods and Services Trade in Goods Trade in Goods Trade in Goods
<b>FRANCE</b>	ARMAIGNAC, Ms. Marie-Christine BOISSON DE CHAZOURNES, Mrs. Laurence COMBALDIEU, Mr. Jean Claude DELLEUR, Mr. Philippe JENNY, Mr. Frédéric Yves METZGER, Mr. Jean-Marie STERN, Ms. Brigitte VAN PHI, Mr. Phan	Trade in Services; TRIPS Trade in Goods and Services TRIPS Trade in Services Trade in Goods and Services; TRIPS Trade in Goods Trade in Goods Trade in Goods and Services
<b>GERMANY</b>	DELBRÜCK, Mr. Kilian HERRMANN, Mr. Christoph Walter HILF, Mr. Meinhard MENG, Mr. Werner OPPERMANN, Mr. Thomas	Trade in Goods Trade in Goods; TRIPS Trade in Goods and Services Trade in Goods, TRIPS Trade in Goods; TRIPS

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b><u>EUROPEAN UNION</u> (cont'd)</b>		
<b>GERMANY (cont'd)</b>	PETERSMANN, Mr. Ernst-Ulrich	Trade in Goods and Services; TRIPS
	TANGERMANN, Mr. Stefan	Trade in Goods
<b>GREECE</b>	MYROGIANNIS, Mr. George	Trade in Goods
	STANGOS, Mr. Petros N.	Trade in Goods and Services; TRIPS
<b>HUNGARY</b>	FURULYÁS, Mr. Ferenc	Trade in Goods
	HALGAND DANI, Ms. Virág	Trade in Goods and Services; TRIPS
	LAKATOS, Mr. Andrés	Trade in Goods and Services
<b>IRELAND</b>	LONG, Mr. Ronald	Trade in Goods; TRIPS
	MATTHEWS, Mr. Alan Henry	Trade in Goods
	MOCKLER, Mr. Thomas F.	Trade in Goods
<b>ITALY</b>	GERBINO, Mr. Mario	Trade in Goods
	GIARDINA, Mr. Andrea	Trade in Goods and Services
	MALAGUTI, Ms. Maria Chiara	Trade in Goods and Services; TRIPS
	MENSI, Mr. Maurizio	Trade in Goods
	SCHIRATTI, Mr. Giampiero	Trade in Goods
<b>MALTA</b>	BONELLO, Mr. Michael C.	Trade in Services

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>NETHERLANDS</b>	BLOKKER, Mr. Nicolaas Max	Trade in Goods
	BRINKHORST, Mr. Laurens Jan	Trade in Goods and Services
	BRONCKERS, Mr. Marco	Trade in Goods and Services; TRIPS
	ENGERING, Mr. Franciscus Aloysius	Trade in Goods and Services
	HOEKMAN, Mr. Bernard Marco	Trade in Goods and Services; TRIPS
<b>POLAND</b>	PIETRAS, Mr. Jaroslaw	Trade in Services
<b><u>EUROPEAN UNION</u> (cont'd)</b>		
<b>PORTUGAL</b>	CALHEIROS DA GAMA, Mr. José Sérgio	TRIPS
<b>ROMANIA</b>	BERINDE, Mr. Mihai	Trade in Goods
	CAMPEANU, Ms. Victoria	Trade in Goods
	FLORINA, Ms. Fratita Carmen	Trade in Goods
	RADU, Mr. Vasile	Trade in Goods
<b>SPAIN</b>	DÍAZ MIER, Mr. Miguel Ángel	Trade in Services
	LÓPEZ DE SILANES MARTÍNEZ Mr. Juan Pablo	Trade in Goods and Services
	PÉREZ SANCHEZ, Mr. José Luis	Trade in Goods and Services; TRIPS
	RIGO, Mr. Andrés	Trade in Services

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>SWEDEN</b>	AHNLID, Mr. Anders Gustav Ragnar	Trade in Goods and Services; TRIPS
	ANDERSSON, Mr. Thomas Martin	Trade in Goods
	ANELL, Mr. Lars	Trade in Goods; TRIPS
	BÄVERBRANT, Mr. Johan C.	Trade in Goods and Services; TRIPS
	BECKER, Ms. Gunnela Marianne	Trade in Goods and Services; TRIPS
	DAHLIN, Ms. Karin Elisabeth	Trade in Goods and Services; TRIPS
	FALLENIUS, Mr. Christer H.	Trade in Goods
	HÅKANSSON, Mr. Gösta PER-Olov	Trade in Services
	HOLGERSSON, Mr. Jörgen	Trade in Goods and Services
	KLEEN, Mr. Peter	Trade in Goods
	LINDSTRÖM, Mr. Jan Mikael	Trade in Goods
MANHUSEN, Mr. Christer	Trade in Goods and Services	
OLOFSGÅRD, Ms. Eva-Kajsa Buzaglo	Trade in Goods and Services; TRIPS	
<b><u>EUROPEAN UNION</u> (cont'd)</b>		
<b>SWEDEN (cont'd)</b>	RAHLÉN, Ms. Christina	Trade in Goods and Services; TRIPS

MEMBER	NAME	SECTORAL EXPERIENCE
	RISINGGÅRD, Mr. Axel Börje RODIN, Mr. Arne STÅLBERG, Mr. Lars TAURIAINEN, Mr. Teppo Markus	Trade in Goods Trade in Goods; TRIPS Trade in Goods Trade in Goods and Services; TRIPS
<b>UNITED KINGDOM</b>	ARKELL, Mr. Julian BETHLEHEM, Mr. Daniel CROFT, Mr. Roy Henry Francis HINDLEY, Mr. Brian Vernon JOHNSON, Mr. Michael David Clarke MUIR, Mr. Tom PLENDER, Mr. Richard QURESHI, Mr. Asif Hasan ROBERTS, Mr. Christopher William ROBERTS, Mr. David F. SAROOSHI, Mr. Dan TOULMIN, Mr. John Kelvin	Trade in Services Trade in Goods and Services; TRIPS Trade in Services Trade in Goods and Services Trade in Goods Trade in Goods and Services; TRIPS Trade in Goods Trade in Goods Trade in Goods and Services Trade in Goods Trade in Services Trade in Services

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>GHANA</b>	OPOKU AWUKU, Mr. Emmanuel	Trade in Goods and Services; TRIPS
<b>HONG KONG, CHINA</b>	CARTLAND, Mr. Michael David CHEUNG, Mr. Peter Kam Fai LEUNG, Ms. Ada Ka Lai LITTLE, Mr. David MILLER, Mr. Tony J.A.	Trade in Goods and Services TRIPS TRIPS Trade in Goods and Services Trade in Goods and Services
<b>ICELAND</b>	BJÖRGVINSSON, Mr. David Thór JÓHANNSSON, Mr. Einar M. SANDHOLT, Mr. Brynjólfur	Trade in Goods and Services Trade in Goods Trade in Goods
<b>INDIA</b>	AGARWAL, Mr. Vinod Kumar AGRAWAL, Mr. Rameshwar Pal BHANSALI, Mr. Sharad BHATIA, Mr. Ujal Singh BHATNAGAR, Mr. Mukesh BHATTACHARYA, Mr. G. C. CHANDRASEKHAR, Mr. Kesava Menon CHAUDHURI, Mr. Sumanta	Trade in Goods; TRIPS Trade in Goods and Services; TRIPS Trade in Goods Trade in Goods and Services; TRIPS Trade in Goods Trade in Goods Trade in Goods and Services; TRIPS Trade in Goods and Services;

MEMBER	NAME	SECTORAL EXPERIENCE
	DAS, Mr. Abhijit DAS, Mr. Bhagirath Lal DASGUPTA, Mr. Jayant GOPALAN, Mr. Rajarangamani GOYAL, Mr. Arun KAUSHIK, Mr. Atul	TRIPS Trade in Goods Trade in Goods Trade in Goods Trade in Goods Trade in Services Trade in Goods; TRIPS
<b>INDIA (cont'd)</b>	KHER, Mr. Rajeev KHULLAR, Mr. Rahul KUMAR, Mr. Mohan MOHANTY, Mr. Prasant Kumar MUKERJI, Mr. Asoke Kumar NARAYANAN, Mr. Srinivasan PARTHASARATHY, Mr. R. PRABHU, Mr. Pandurang Palimar PRASAD, Ms. Anjali RAI, Mr. Pushpendra RAMAKRISHNAN, Mr. N.	Trade in Goods and Services; TRIPS Trade in Goods and Services; TRIPS Trade in Goods and Services Trade in Goods Trade in Goods and Services; TRIPS Trade in Goods; TRIPS Trade in Goods; TRIPS Trade in Goods; TRIPS Trade in Goods and Services; TRIPS TRIPS Trade in Goods

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
	RAO, Mr. Pemmaraju Sreenivasa REGE, Mr. Narayan Vinod SAJJANHAR, Mr. Ashok SESHADRI, Mr. V.S. SHARMA, Mr. Lalit VENUGOPAL, Mr. Krishnan YADAV, Mr. Amit ZUTSHI, Mr. B. K.	Trade in Goods Trade in Goods Trade in Goods Trade in Goods Trade in Goods and Services; TRIPS Trade in Goods; TRIPS Trade in Services Trade in Goods and Services; TRIPS
<b>ISRAEL</b>	ALTUVIA, Mr. Magen BROUDE, Mr. Tomer GABAY, Mr. Mayer HARAN, Mr. Ephraim F. HARPAZ, Mr. Guy	Trade in Goods Trade in Goods and Services; TRIPS TRIPS Trade in Services Trade in Goods and Services; TRIPS
<b>ISRAEL (cont'd)</b>	HOROVITZ, Mr. Dan POLINER, Mr. Howard Zvi REICH, Mr. Arie SEMADAR, Mr. Moshe	Trade in Goods and Services TRIPS Trade in Goods and Services; TRIPS Trade in Goods

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
	SHATON, Mr. Michael Marcel TALBAR, Mr. Michael Adin WEILER, Mr. Joseph H.H.	Trade in Goods and Services Trade in Goods Trade in Goods
<b>JAMAICA</b>	ROBINSON, Mr. Patrick L.	Trade in Goods and Services; TRIPS
<b>JAPAN</b>	ARAKI, Mr. Ichiro ASAKAI, Mr. Kazuo ASAKURA, Mr. Hironori HASEBE, Mr. Masamichi ISHIGURO, Mr. Kazunori IWASAWA, Mr. Yuji KANDA, Mr. Hideki KAZEKI, Mr. Jun KEMMOCHI, Mr. Nobuaki KOTERA, Mr. Akira OHARA, Mr. Yoshio SANO, Mr. Tadakatsu SHIMIZU, Mr. Akio SUZUKI, Mr. Masabumi	Trade in Goods and Services; TRIPS Trade in Goods Trade in Goods Trade in Goods and Services Trade in Goods and Services; TRIPS Trade in Goods Trade in Services Trade in Goods and Services Trade in Goods and Services Trade in Goods; TRIPS Trade in Goods Trade in Goods Trade in Goods; TRIPS

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
	TAKAHASHI, Ms. Misako	Trade in Services
<b>JAPAN (cont'd)</b>	TSURUOKA, Mr. Koji	Trade in Services
	YAMANE, Ms. Hiroko	Trade in Goods; TRIPS
<b>KOREA</b>	AHN, Mr. Dukgeun	Trade in Goods
	AHN, Mr. Ho-Young	Trade in Goods
	AHN, Mr. Myung-soo	Trade in Goods
	CHANG, Mr. Seung Wha	Trade in Goods
	CHO, Mr. Tae-Yul	Trade in Goods
	CHOI, Mr. Byung-il	Trade in Services
	CHOI, Mr. Won-Mog	Trade in Goods and Services; TRIPS
	KIM, Mr. Jong Bum	Trade in Goods
	LEE, Mr. Jaemin	Trade in Goods
	PARK, Mr. Nohyoung	Trade in Goods
	WOO, Mr. Jooha	Trade in Goods and Services
<b>LIECHTENSTEIN</b>	ZIEGLER, Mr. Andreas R.	Trade in Services; TRIPS
<b>MADAGASCAR</b>	ANDRIANARIVONY, Mr. Minoarison	Trade in Goods and Services; TRIPS
<b>MAURITIUS</b>	BEEKARRY, Mr. Navin	Trade in Goods and Services

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
	BHUGLAH, Mr. Achad	Trade in Goods and Services
<b>MEXICO</b>	AGUILAR ÁLVAREZ, Mr. Guillermo	Trade in Goods and Services; TRIPS
	AMIGO CASTAÑEDA, Mr. Jorge	TRIPS
	BOLÍVAR, Ms. Gisela	Trade in Goods and Services
	DE LA PEÑA, Mr. Alejandro	Trade in Goods and Services; TRIPS
	DELGADO, Mr. Sergio	Trade in Goods and Services
	DE MATEO VENTURINI, Mr. Fernando	Trade in Services
<b>MEXICO (cont'd)</b>	JASSO TORRES, Mr. Humberto	Trade in Goods
	ORTEGA, Mr. Armando	Trade in Goods and Services; TRIPS
	PEREZCANO DÍAZ, Mr. Hugo Manuel	Trade in Goods and Services; TRIPS
	POBLANO, Mr. José F.	Trade in Services; TRIPS
	REYES, Ms. Luz Elena	Trade in Goods
	TRASLOSHEROS HERNÁNDEZ, Mr. José Gerardo	Trade in Goods and Services; TRIPS
	VAZQUEZ BENITEZ, Mr. Adrián	Trade in Goods; TRIPS
	ZABLUDOVSKY KUPER, Mr. Jaime	Trade in Goods and Services; TRIPS
<b>NEPAL</b>	PANDEY, Mr. Posh Raj	Trade in Goods and Services

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
	SUBEDI, Mr. Surya P.	Trade in Goods and Services; TRIPS
<b>NEW ZEALAND</b>	ARMSTRONG, Mr. Wade Mowatt Valentine	Trade in Goods; TRIPS
	CARSON, Mr. Christopher Barr	Trade in Goods
	FALCONER, Mr. Crawford Dunlop	Trade in Goods
	FALCONER, Mr. William John	Trade in Goods and Services; TRIPS
	GROSER, Mr. Tim	Trade in Goods
	HAMILTON, Mr. Peter William	Trade in Goods
	HARVEY, Mr. Martin Wilfred	Trade in Goods
	HIGGIE, Ms. Dell Clark	Trade in Goods
	KENNEDY, Mr. Peter Douglas	Trade in Goods
	MACEY, Mr. Adrian	Trade in Goods; TRIPS
	MCPHAIL, Mr. Alexander Hugh	Trade in Goods
	NOTTAGE, Mr. Richard Frederick	Trade in Goods
	SLADE, Ms. Michelle	Trade in Goods and Services; TRIPS
	TRAINOR, Mr. Mark Julian	Trade in Goods; TRIPS
<b>NEW ZEALAND (cont'd)</b>	WALKER, Mr. David John	Trade in Goods and Services
	WOODFIELD, Mr. Edward A	Trade in Goods
<b>NIGER</b>	TANKOANO, Mr. Amadou	Trade in Goods and Services;

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
		TRIPS
<b>NIGERIA</b>	AGAH, Mr. Yonov Frederick NNONA, Mr. George C.	Trade in Goods and Services; TRIPS Trade in Goods and Services; TRIPS
<b>NORWAY</b>	GLENNE, Mr. Eirik HOLTEN, Ms. Inger LILLERUD, Mr. Kjell SELAND, Mr. Helge A. TØNSETH, Mr. Didrik	Trade in Goods and Services Trade in Goods; TRIPS Trade in Goods and Services Trade in Goods and Services; TRIPS Trade in Goods and Services; TRIPS
<b>PAKISTAN</b>	ARIF, Mr. Muhammad Ikram BASHIR, Mr. Shahid HAMID ALI, Mr. Muhammad HUSAIN, Mr. Ishrat KHAN, Mr. Mujeeb Ahmed MALIK, Mr. Riaz Ahmad	Trade in Goods Trade in Goods Trade in Goods; TRIPS Trade in Services Trade in Goods; TRIPS Trade in Goods
<b>PANAMA</b>	FERRER, Mr. Alejandro FRANCIS LANUZA, Ms. Yavel Mireya GONZALEZ, Mr. Carlos Ernesto	Trade in Goods and Services Trade in Goods and Services Trade in Goods and Services

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
	HARRIS ROTKIN, Mr. Norman SALAZAR FONG, Ms. Diana Alejandrina SHEFFER MONTES, Mr. Leroy Jhon	Trade in Goods and Services Trade in Goods Trade in Goods and Services
<b>PERU</b>	BELAÚNDE G., Mr. Victor Andres DE LA PUENTE LEON, Mr. Jose A. DIEZ LIZARDO, Mr. Juan LEÓN-THORNE, Mr. Raúl	TRIPS Trade in Goods and Services Trade in Goods Trade in Goods and Services
<b>QATAR</b>	MAKKI, Mr. Fadi	Trade in Goods and Services
<b>SRI LANKA</b>	JAYASEKERA, Mr. Douglas	Trade in Goods; TRIPS
<b>SWITZERLAND</b>	ADDOR, Mr. Felix BREINING, Ms. Christine CHAMBOVEY, Mr. Didier COTTIER, Mr. Thomas GETAZ, Mr. Henri Alexandre HÄBERLI, Mr. Christian INEICHEN-FLEISCH, Ms. Marie-Gabrielle KRAFFT, Mr. Mathias-Charles LEGLER, Mr. Thomas MEYER, Mr. Matthias	TRIPS Trade in Services Trade in Goods Trade in Goods and Services; TRIPS Trade in Services Trade in Goods Trade in Goods and Services Trade in Goods TRIPS Trade in Goods and Services;

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
	PANNATIER, Mr. Serge Nicolas TSCHÄENI, Mr. Hanspeter WASESCHA, Mr. Luzius WEBER, Mr. Rolf H.	TRIPS Trade in Goods Trade in Goods Trade in Goods and Services; TRIPS Trade in Services
<b>THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU</b>	CHANG, Ms. Yie-Yun KAO, Mr. Pei-Huan LI, Ms. Catherine	TRIPS Trade in Goods and Services; TRIPS Trade in Goods
<b>THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU (cont'd)</b>	LIN, Ms. Tsai-Yu LO, Mr. Chang-Fa NI, Mr. Kuei-Jung PENG, Ms. Shin-Yi YANG, Ms. Guang-Hwa YANG, Ms. Jen-Ni	Trade in Goods Trade in Goods and Services Trade in Goods; TRIPS Trade in Goods and Services Trade in Goods and Services Trade in Goods and Services
<b>TURKEY</b>	DILEMRE, Mr. Hüsni GÜRAKAN, Ms. Tulû KABAALIOĞLU, Mr. A. Haluk	Trade in Goods Trade in Goods Trade in Goods and Services

MEMBER	NAME	SECTORAL EXPERIENCE
	KAÇAR, Mr. Bayram MOLLASALİHOĞLU, Mr. Yavuz YAMAN, Mr. Şahin YAPICI, Mr. Murat YENAL, Mr. Aytaç	Trade in Goods Trade in Goods Trade in Goods Trade in Goods Trade in Goods
<b>UNITED STATES</b>	BIRENBAUM, Mr. David E. BROWN-WEISS, Ms. Edith CONNELLY, Mr. Warren GANTZ, Mr. David A. GORDON, Mr. Michael Wallace HODGSON, Ms. Mélida KASSINGER, Mr. Theodore W. KHO, Mr. Stephen KIRK, Mr. Michael K.	Trade in Goods Trade in Goods and Services Trade in Goods Trade in Goods Trade in Goods Trade in Goods and Services Trade in Goods and Services Trade in Goods and Services; TRIPS TRIPS
<b>UNITED STATES (cont'd)</b>	LAYTON, Mr. Duane LICHTENSTEIN, Ms. Cynthia Crawford MCGINNIS, Mr. John Oldham PARTAN, Mr. Daniel G. POWELL, Mr. Stephen J.	Trade in Goods Trade in Services Trade in Goods; TRIPS Trade in Goods Trade in Goods

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
	REYNA, Mr. Jimmie V. SANDSTROM, Mr. Mark R. THOMPSON, Mr. George W. TROSSEVIN, Ms. Marguerite VERRILL, Jr. Mr. Charles Owen	Trade in Goods and Services Trade in Goods and Services Trade in Goods Trade in Goods Trade in Goods
<b>URUGUAY</b>	AMORÍN, Mr. Carlos CAYRÚS, Mr. Hugo EHLERS, Mr. William ROSSELLI, Mr. Elbio VANERIO, Mr. Gustavo WHITELAW, Mr. James A.	Trade in Goods; TRIPS Trade in Goods and Services Trade in Goods Trade in Goods Trade in Goods and Services Trade in Goods

## ANNEX

### Administration of the Indicative List

1. To assist in the selection of panelists, the DSU provides in Article 8.4 that the Secretariat shall maintain an indicative list of qualified governmental and non-governmental individuals. Accordingly, the Chairman of the DSB proposed at the 10 February meeting that WTO Members review the roster of non-governmental panelists established on 30 November 1984 (BISD 31S/9) (hereinafter referred to as the "1984 GATT Roster") and submit nominations for the indicative list by mid-June 1995. On 14 March, The United States delegation submitted an informal paper discussing, amongst other issues, what information should accompany the nomination of individuals, and how names might be removed from the list. The DSB further discussed the matter in informal consultations on 15 and 24 March, and at the DSB meeting on 29 March. This note puts forward some proposals for the administration of the indicative list, based on the previous discussions in the DSB.

#### General DSU requirements

2. The DSU requires that the indicative list initially include "the roster of governmental and non-governmental panelists established on 30 November 1984 (BISD 31S/9) and other rosters and indicative lists established under any of the covered agreements, and shall retain names of persons on those rosters and indicative lists at the time of entry into force of the WTO Agreement" (DSU 8.4). Additions to the indicative list are to be made by Members who may "periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements". The names "shall be added to the list upon approval by the DSB" (DSU 8.4).

#### Submission of information

3. As a minimum, the information to be submitted regarding each nomination should clearly reflect the requirements of the DSU. These provide that the list "shall indicate specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements" (DSU 8.4). The DSU also requires that panelists be "well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member" (DSU 8.1).

4. The basic information required for the indicative list could best be collected by use of a standardized form. Such a form, which could be called a Summary Curriculum Vitae, would be filled out by all nominees to ensure that relevant information is obtained. This would also permit information on the indicative list to be stored in an electronic database, making the list easily updateable and readily available to Members and the Secretariat. As well as supplying a completed Summary Curriculum Vitae form, persons proposed for inclusion on the indicative list could also, if they wished, supply a full Curriculum Vitae. This would not, however, be entered into the electronic part of the database.

### Updating of indicative list

5. The DSU does not specifically provide for the regular updating of the indicative list. In order to maintain the credibility of the list, it should however be completely updated every two years. Within the first month of each two-year period, Members would forward updated Curricula Vitae of persons appearing on the indicative list. At any time, Members would be free to modify the indicative list by proposing new names for inclusion, or specifically requesting removal of names of persons proposed by the Member who were no longer in a position to serve, or by updating the summary Curriculum Vitae.

6. Names on the 1984 GATT Roster that are not specifically resubmitted, together with up-to-date summary Curriculum Vitae, by a Member before 31 July 1995 would not appear after that date on the indicative list.

### Other rosters

7. The Decision on Certain Dispute Settlement Procedures for the GATS (S/L/2 of 4 April 1995), adopted by the Council for Trade in Services on 1 March 1995, provides for a special roster of panelists with sectoral expertise. It states that "panels for disputes regarding sectoral matters shall have the necessary expertise relevant to the specific services sectors which the dispute concerns". It directs the Secretariat to maintain the roster and "develop procedures for its administration in consultation with the Chairman of the Council". A working document (S/C/W/1 of 15 February 1995) noted by the Council for Trade in Services states that "the roster to be established under the GATS pursuant to this Decision would form part of the indicative list referred to in the DSU". The specialized roster of panelists under the GATS should therefore be integrated into the indicative list, taking care that the latter provides for a mention of any service sectoral expertise of persons on the list.

8. A suggested format for the Summary Curriculum Vitae form for the purposes of maintaining the Indicative List is attached.

## Summary Curriculum Vitae for Persons Proposed for the Indicative List<sup>1</sup>

- |     |  |   |
|-----|--|---|
| 1.  | <b>Name:</b>   | full name   |
| 2.  | <b>Sectoral Experience</b>   |   |
|     | List here any particular sectors of expertise:<br>(e.g. technical barriers, dumping, financial services,<br>intellectual property, etc.) |   |
| 3.  | <b>Nationality(ies)</b>  | all citizenships  |
| 4.  | <b>Nominating Member:</b>  | the nominating Member   |
| 5.  | <b>Date of birth:</b>  | full date of birth  |
| 6.  | <b>Current occupations:</b>  | year beginning, employer, title,<br>responsibilities  |
| 7.  | <b>Post-secondary education</b>  | year, degree, name of institution   |
| 8.  | <b>Professional qualifications</b>   | year, title   |
| 9.  | <b>Trade-related experience in Geneva in<br/>the WTO/GATT system</b>   |   |
|     | a. Served as a panelist  | year, dispute name, role as<br>chairperson/member   |
|     | b. Presented a case to a panel   | year, dispute name, representing<br>which party   |
|     | c. Served as a representative of a contracting party or<br>member to a WTO or GATT body, or as an officer<br>thereof                     | year, body, role  |
|     | d. Worked for the WTO or GATT Secretariat  | year, title, activity   |
| 10. | <b>Other trade-related experience</b>  |   |
|     | a. Government trade work   | year, employer, activity  |
|     | b. Private sector trade work   | year, employer, activity  |
| 11. | <b>Teaching and publications</b>   |   |
|     | a. Teaching in trade law and policy  | year, institution, course title   |
|     | b. Publications in trade law and policy  | year, title, name of periodical/book,<br>author/editor (if book)                                |
| 12. | <b>Language capabilities</b>   |   |
|     | a. English   | ability to work as a panelist in<br>WTO-official languages and any<br>other language capability |
|     | b. French  |   |
|     | c. Spanish   |   |
|     | d. Other language(s)   |   |

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<sup>1</sup> Members putting forward an individual for inclusion on the indicative list are requested to provide full contact details for this individual separately. The Summary Curriculum Vitae and the contact details should be sent electronically to the Secretariat.

## MEMBERSHIP OF THE WTO APPELLATE BODY

*From January 1, 2011, to December 10, 2011, the membership of the WTO Appellate Body was as follows:*

Ms. Lilia R. Bautista (Philippines),  
Mr. Shotaro Oshima (Japan),  
Mr. David Unterhalter (South Africa),  
Ms. Yuejiao Zhang (China)

Ms. Jennifer Hillman (United States),  
Mr. Ricardo Ramírez Hernández (Mexico),  
Mr. Peter Van den Bossche (Belgium),

*From December 11, 2011, to December 31, 2011, the membership of the WTO Appellate Body was as follows:*

Mr. Ujal Singh Bhatia (India),  
Mr. Shotaro Oshima (Japan),  
Mr. David Unterhalter (South Africa),  
Ms. Yuejiao Zhang (China)

Mr. Thomas R. Graham (United States),  
Mr. Ricardo Ramírez Hernández (Mexico),  
Mr. Peter Van den Bossche (Belgium),

### *BIOGRAPHICAL NOTES:*

#### **Lilia R. Bautista**

Born in the Philippines on 16 August 1935, Ms. Lilia R Bautista is currently Consultant to the Philippine Judicial Academy which is the training school for Philippine justices, judges and lawyers. She is also a member of several corporate boards.

Ms. Bautista was the Chairperson of the Securities and Exchange Commission of the Philippines from 2000 to 2004. Between 1999 and 2000, she served as Senior Undersecretary and Special Trade Negotiator at the Department of Trade and Industry in Manila. From December 1992 to June 1999, Ms. Bautista was the Philippine Permanent Representative in Geneva to the United Nations, WTO, WHO, ILO and other international organizations. During her assignment in Geneva, she chaired several bodies, including the WTO Council for Trade in Services. Her long career in the Philippine Government also included posts as Legal Officer in the Office of the President, Chief Legal Officer of the Board of Investments, and acting Trade Minister from February to June 1992.

Ms. Bautista earned her Bachelor of Laws Degree and a Masters Degree in Business Administration from the University of the Philippines. She was conferred the degree of Master of Laws by the University of Michigan as a Dewitt Fellow.

#### **Ujal Singh Bhatia**

Born in India on 15 April 1950, Ujal Singh Bhatia is currently an independent consultant and academic engaged in developing a policy framework for Indian agricultural investments overseas, while at the same time working with the Commonwealth Secretariat on multilateral trade issues.

From 2004 to 2010, Mr. Bhatia was India's Permanent Representative to the WTO. During his tenure as Permanent Representative, he was an active participant in the dispute settlement process, representing India in a number of dispute settlement cases both as a complainant and respondent in disputes relating to

anti-dumping, as well as taxation and import duty issues. He also has adjudicatory experience having served as a WTO dispute settlement panelist.

Mr. Bhatia previously served as Joint Secretary in the Indian Ministry of Commerce, where he focused on the legal aspects of international trade. During this period, he was also a Member of the Appellate Committee under the Foreign Trade (Development and Regulation) Act. The Committee heard appeals of exporters and importers against the orders of the Director General Foreign Trade. Mr. Bhatia was also Joint Secretary of the Ministry of Information and Broadcasting and held various positions in the public and private sectors of the Indian state of Orissa.

Mr. Bhatia's legal and adjudicatory experience spans three decades. He has focused on addressing domestic and international legal/jurisprudence issues, negotiating trade agreements and policy issues at the bilateral, regional and multilateral levels, and formulating and implementing trade and development policies for a range of agriculture, industry and service sector activities.

Mr. Bhatia is a frequent lecturer on international trade issues, and has published numerous papers and articles in Indian and foreign journals on a wide range of trade and economic issues.

Mr. Bhatia holds an M.A. in Economics from the University of Manchester and from Delhi University, as well as a B.A. (Hons.) in Economics, also from Delhi University.

### **Thomas R. Graham**

Born in the United States on 23 November 1942, Thomas R. Graham is Senior Counsel in the International Trade Group of the King & Spalding law firm where he represents respondents in non-U.S. trade remedy cases, negotiates the settlement of disputes, assists in WTO dispute settlement proceedings, and heads the practice's committee on long-term planning and development.

Prior to joining King & Spalding, Mr. Graham served for several years as the deputy head of the International Group of Skadden, Arps, Slate, Meagher & Flom, and participated in the firm's transition from a U.S. law firm to a global one.

In private law practice, Mr. Graham has participated in trade remedy proceedings, often collaborating with local counsel and national authorities in various countries to develop legal interpretations of laws and regulations consistent with GATT/WTO agreements, and negotiating the resolution of international trade disputes.

Mr. Graham served as Deputy General Counsel in the Office of the U.S. Trade Representative where he was instrumental in the negotiation of the Tokyo Round Agreement on Technical Barriers to Trade and where he represented the U.S. Government in dispute settlement proceedings under the GATT.

Earlier in his career, Mr. Graham spent three years in Geneva as a Legal Officer at the United Nations.

Mr. Graham taught for many years at the Georgetown Law Center as an adjunct professor. He has written several articles and monographs on international trade law and policy as a Guest Scholar at the Brookings Institution, and as a Senior Associate at the Carnegie Endowment for International Peace.

Mr. Graham holds a BA in International Relations and Economics from Indiana University and a J.D. from Harvard Law School.

### **Jennifer Hillman**

Born in the United States on 29 January 1957, Ms. Jennifer Hillman serves as a Fellow and Adjunct Professor of Law at the Georgetown University Law Center's Institute of International Economic Law. Her work focuses on the WTO dispute settlement system, the WTO agreements related to trade remedies, and the WTO jurisprudence related to trade remedies.

From 1998 to 2007, Ms. Hillman served as a member of the US International Trade Commission — an independent, quasi-judicial agency responsible for making determinations in anti-dumping and countervailing proceedings, and conducting safeguard investigations.

From 1995 to 1997, Ms. Hillman served as the chief legal counsel to the USTR, overseeing the legal developments necessary to complete the implementation of the Uruguay Round Agreement

From 1993 to 1995, Ms. Hillman was responsible for negotiating all US bilateral textile agreements prior to the adoption of the Agreement on Textiles and Clothing.

Ms. Hillman has a Bachelor of Arts and Master of Education from Duke University, North Carolina, and a Juris Doctor degree from Harvard Law School in Cambridge, Massachusetts.

### **Shotaro Oshima**

Born in Japan on 20 September 1943, Mr. Shotaro Oshima is a law graduate from the University of Tokyo, with almost 40 years experience as a diplomat in Japan's Foreign Service, most recently as Ambassador to the Republic of Korea.

From 2002 to 2005, Mr Oshima was Japan's Permanent Representative to the WTO, during which time he served as Chair of the General Council and the Dispute Settlement Body.

Prior to his time in Geneva, Mr Oshima served as Deputy Foreign Minister responsible for economic matters and was designated as Prime Minister Koizumi's Personal Representative to the G8 Summit in Canada in June 2002. In the same year he served as the Prime Minister's Personal Representative to the UN World Summit on Sustainable Development in South Africa.

### **Ricardo Ramírez Hernández**

Born in Mexico on 17 October 1968, Ricardo Ramírez is Counsel and Head of the International Trade Practice for Latin America at the law firm of Chadbourne & Parke in Mexico City. His practice has focused on issues related to NAFTA and trade across Latin America, including international trade dispute resolution. He holds the Chair of International Trade Law at the Mexican National University (UNAM) in Mexico City.

Prior to practicing with a law firm, Mr. Ramírez was Deputy General Counsel for Trade Negotiations of the Ministry of Economy in Mexico for more than a decade. In this capacity, he provided advice on trade and competition policy matters related to 11 Free Trade Agreements signed by Mexico, as well as with respect to multilateral agreements, including those related to the WTO, the Free Trade Area of the Americas (FTAA), and the Latin American Integration Association (ALADI).

Mr. Ramírez also represented Mexico in complex international trade litigation and investment arbitration proceedings. He acted as lead counsel to the Mexican government in several WTO disputes. He has also served on NAFTA panels.

Mr. Ramírez holds an LL.M. degree in International Business Law from the Washington College of Law of the American University, and a law degree from the Universidad Autónoma Metropolitana.

### **David Unterhalter**

Born in South Africa on 18 November 1958, David Unterhalter holds degrees from Trinity College, Cambridge, the University of the Witwatersrand, and University College Oxford. David Unterhalter has been a Professor of Law at the University of the Witwatersrand in South Africa since 1998, and from 2000 – 2006, he was the Director of the Mandela Institute, University of the Witwatersrand, an institute focusing upon global law.

Mr. Unterhalter is a member of the Johannesburg Bar; as a practicing advocate he has appeared in a large number of cases in the fields of trade law, competition law, constitutional law, and commercial law. His experience includes representing different parties in anti-dumping and countervailing duty cases. He has acted as an advisor to the South African Department of Trade and Industry. In addition, he has served on a number of WTO dispute settlement panels.

Mr. Unterhalter has published widely in the fields of public law and competition law.

### **Peter Van den Bossche**

Born in Belgium on 31 March 1959, Peter Van den Bossche is currently Professor of International Economic Law and Head of the Department of International and European Law at Maastricht University, the Netherlands. He also serves as the Academic Director of Maastricht University's Institute for Globalization and International Regulation and is on the faculty of the World Trade Institute in Berne, and the Institute of European Studies of Macau.

Mr. Van den Bossche has extensive experience in academia and has published extensively in the field of international economic law. The second edition of his textbook *The Law and Policy of the World Trade Organization* was published by Cambridge University Press in 2008. Mr. Van den Bossche is a Member of the Board of Editors of the *Journal of International Economic Law*. He has also acted as a consultant to many developing countries.

From 1997 to 2001, Mr. Van den Bossche was Counsellor and subsequently Acting Director of the WTO Appellate Body Secretariat. From 1990 to 1992, he served as a *Référéndaire* of Advocate General W. van Gerven at the European Court of Justice in Luxembourg.

Mr. Van den Bossche holds a Doctorate in Law from the European University Institute, Florence, an LL.M. from the University of Michigan Law School, and a *Licentiaat in de Rechten magna cum laude* from the University of Antwerp.

### **Yuejiao Zhang**

Born in China on 25 October 1944, Ms. Yuejiao Zhang is Professor of Law at Shantou University in China. She is an Arbitrator on China's International Trade and Economic Arbitration Commission and practices law as a private attorney. Ms. Zhang also serves as Vice President of China's International Economic Law Society.

Between 1998 and 2004, Ms. Zhang held various positions at the Asian Development Bank. Prior to this, Ms. Zhang held several positions in government and academia in China, including as Director-General of Law and Treaties at the Ministry of Foreign Trade and Economic Cooperation (1984-1997) where she

was involved in drafting many of China's trade laws, such as the Foreign Trade Law, the Anti-Dumping Regulation and the Anti-Subsidy Regulation.

From 1987 to 1996, Ms. Zhang was one of China's chief negotiators on intellectual property and was involved in the preparation of China's patent law, trade mark law, and copyright law. She also served as the chief legal counsel for China's GATT resumption and WTO accession. Between 1982 and 1985, Ms. Zhang worked as legal counsel at the World Bank.

Ms. Zhang was a Member of UNIDROIT from 1987-1999. She has a Bachelor of Arts from China High Education College and a Master of Laws from Georgetown University Law

Source: [http://www.wto.org/english/tratop\\_e/dispu\\_e/appellate\\_body\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm)

## Where to Find More Information on the WTO

Information about the WTO and trends in international trade is available to the public at the following websites:

The USTR home page: <http://www.ustr.gov>

The WTO home page: <http://www.wto.org>

U.S. submissions are available electronically on the WTO website using Documents Online, which can retrieve an electronic copy by the “document symbol”. Electronic copies of U.S. submissions are also available at the USTR website.

Examples of information available on the WTO home page include:

### Descriptions of the Structure and Operations of the WTO, such as:

- WTO Organizational Chart
- Membership
- Biographic backgrounds
- General Council activities

### WTO News, such as:

- Status of dispute settlement cases
- Press Releases on Appointments to WTO Bodies, Appellate Body Reports and Panel Reports, and others
- Schedules of future WTO meetings
- Summaries of Trade Policy Review Mechanism reports on individual Members’ trade practices

### Resources including Official Documents, such as:

- Notifications required by the Uruguay Round Agreements
- Working Procedures for Appellate Review
- Special Studies on key WTO issues
- On-line document database where one can find and download official documents
- Legal Texts of the WTO agreements
- WTO Annual Reports

### Community/Fora, such as:

- Media and NGOs
- General public news and chat rooms

### Trade Topics, such as:

- Briefing Papers on WTO activities in individual sectors, including goods, services, intellectual property, other topics
- Disputes and Dispute Reports

WTO publications may be ordered directly from the following sources:

1. The World Trade Organization  
Publications Services  
Centre William Rappard  
Rue de Lausanne 154  
CH - 1211 Geneva 21  
Switzerland

Tel: (41-22) 739 52 08 / 739 53 08  
Fax: (41-22) 739 57 92  
e-mail: [publications@wto.org](mailto:publications@wto.org)

2. Berman Associates  
15200 NBN Way  
P.O. Box 191  
Blue Ridge Summit, PA 17214

Tel: 301-459-7666  
Toll Free: 800-865-3457  
Fax: 301-459-6988  
Toll Free: 800-865-3450  
e-mail: [customercare@bernan.com](mailto:customercare@bernan.com)



## **ANNEX III**



# **U.S. Trade-Related Agreements and Declarations**

## **I. Agreements that have been Entered into Force**

Following is a list of trade agreements entered into by the United States since 1984 and monitored by the Office of the United States Trade Representative for compliance.

### **Multilateral and Plurilateral Agreements**

- ▶ Marrakesh Agreement Establishing the World Trade Organization (WTO) (signed April 15, 1994), the Ministerial Decisions and Declarations adopted by the Uruguay Round Trade Negotiations Committee on December 15, 1993, and subsequent WTO agreements.
  - a. Multilateral Agreements on Trade in Goods
    - i. General Agreement on Tariffs and Trade 1994
    - ii. Agreement on Agriculture
    - iii. Agreement on the Application of Sanitary and Phytosanitary Measures
    - iv. Agreement on Technical Barriers to Trade
    - v. Agreement on Trade-Related Investment Measures
    - vi. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
    - vii. Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994
    - viii. Agreement on Preshipment Inspection
    - ix. Agreement on Rules of Origin
    - x. Agreement on Import Licensing Procedures
    - xi. Agreement on Subsidies and Countervailing Measures
    - xii. Agreement on Safeguards
  - b. General Agreement on Trade in Services (GATS)
    - i. Fourth Protocol to the GATS (Basic Telecommunications Services) (February 5, 1998)
    - ii. Fifth Protocol to the GATS (Financial Services) (March 1, 1999)
  - c. Agreement on Trade-Related Aspects of Intellectual Property Rights
  - d. Plurilateral Trade Agreements
    - i. Agreement on Trade in Civil Aircraft (April 12, 1979; amended in 1986)
    - ii. Agreement on Government Procurement (April 15, 1994)
- ▶ WTO Ministerial Declaration on Trade in Information Technology Products (Information Technology Agreement (ITA)) (March 26, 1997)

- ▶ International Tropical Timber Agreement (successor to the 1994 International Tropical Timber Agreement, December 7, 2011)
- ▶ International Coffee Agreement 2007 (successor to the 2001 International Coffee Agreement; entered into force February 2, 2011)
- ▶ North American Free Trade Agreement (January 1, 1994)
  - i. Agreement with Mexico and Canada to a first round of NAFTA Accelerated Tariff Elimination (March 26, 1997)
  - ii. Agreement with Mexico and Canada to a second round of NAFTA Accelerated Tariff Elimination (July 27, 1998)
  - iii. Agreement with Mexico to a third round of NAFTA Accelerated Tariff Elimination (November 29, 2000)
  - iv. Agreement with Mexico to a fourth round of NAFTA Accelerated Tariff Elimination (December 5, 2001)
  - v. Agreement with Mexico and Canada on adjustments to the NAFTA Rules of Origin (November 27, 2002)
  - vi. Agreement with Mexico and Canada on adjustments to the NAFTA Rules of Origin (October 8, 2004)
  - vii. Agreement with Mexico and Canada on adjustments to the NAFTA Rules of Origin (March 8, 2006)
  - viii. Agreement with Mexico and Canada on adjustments to the NAFTA Rules of Origin (April 11, 2008)
  - ix. Agreement with Mexico and Canada on adjustments to the NAFTA Rules of Origin (April 9, 2009)
- ▶ North American Agreement on Environmental Cooperation (January 1, 1994)
- ▶ North American Agreement on Labor Cooperation (January 1, 1994)
- ▶ Statement Concerning Semiconductors by the European Commission and the Governments of the United States, Japan, and Korea (June 10, 1999)
- ▶ Agreement on Mutual Acceptance of Oenological Practices (December 18, 2001)

- ▶ The Dominican Republic-Central America-United States Free Trade Agreement (Costa Rica (January 1, 2009); the Dominican Republic (March 1, 2007); El Salvador (March 1, 2006); Guatemala (July 1, 2006); Honduras (April 1, 2006); and Nicaragua (April 1, 2006)
  - i. Amendment to the Dominican Republic-Central America-United States Free Trade Agreement relating to Article 22.5 (March 29, 2006)
  - ii. Amendment to the Dominican Republic-Central America-United States Free Trade Agreement relating to Textiles Matters (August 15, 2008)
  - iii. Amendment to the Dominican Republic-Central America-United States Free Trade Agreement relating to Guatemala Tariffs on Beer (February 4, 2009)
- ▶ Agreement Establishing a Secretariat for Environmental Matters Under the Dominican Republic-Central America-United States Free Trade Agreement (August 25, 2006)
- ▶ Agreement on Duty-Free Treatment of Multi-Chips Integrated Circuits (MCPs) (January 18, 2006) (Korea, Taiwan, Japan, European Union and the United States)
- ▶ Agreement on Requirements for Wine Labeling (January 23, 2007) (Australia, Argentina, Canada, Chile, New Zealand and the United States)

## **Bilateral Agreements**

### **Albania**

- ▶ Agreement on Bilateral Trade Relations (May 14, 1992)
- ▶ Bilateral Investment Treaty (January 4, 1998)

### **Argentina**

- ▶ Private Courier Mail Agreement (May 25, 1989)
- ▶ Bilateral Investment Treaty (October 20, 1994)

### **Armenia**

- ▶ Agreement on Bilateral Trade Relations (April 7, 1992)
- ▶ Bilateral Investment Treaty (March 29, 1996)

### **Australia**

- ▶ Settlement on Leather Products Trade (November 25, 1996)

- ▶ Understanding on Automotive Leather Subsidies (June 20, 2000)
- ▶ Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (October 19, 2002)
- ▶ United States -Australia Free Trade Agreement (January 1, 2005)

### **Azerbaijan**

- ▶ Agreement on Bilateral Trade Relations (April 21, 1995)
- ▶ Bilateral Investment Treaty (August 2, 2001)

### **Bahrain**

- ▶ Bilateral Investment Treaty (May 30, 2001)
- ▶ United States-Bahrain Free Trade Agreement (August 1, 2006)

### **Bangladesh**

- ▶ Bilateral Investment Treaty (July 25, 1989)

### **Belarus**

- ▶ Agreement on Bilateral Trade Relations (February 16, 1993)

### **Bolivia**

- ▶ Bilateral Investment Treaty (June 6, 2001)

### **Brazil**

- ▶ Memorandum of Understanding between the Government of Brazil and the Government of the United States Concerning Trade Measures in the Automotive Sector (March 16, 1998)
- ▶ Memorandum of Understanding Between the Government of the United States of America and the Government of the Federative Republic of Brazil Regarding a Fund for Technical Assistance and Capacity Building with Respect to the Cotton Dispute (WT/DS267) in the World Trade Organization (April 20, 2010)
- ▶ Framework for a Mutually Agreed Solution to the Cotton Dispute in the World Trade Organization (WT/DS267) (June 25, 2010)

## **Bulgaria**

- ▶ Agreement on Trade Relations (November 22, 1991)
- ▶ Bilateral Investment Treaty (June 2, 1994; amended January 1, 2007)
- ▶ Agreement Concerning Intellectual Property Rights (July 6, 1994)

## **Cambodia**

- ▶ Agreement between the United States of America and the Kingdom of Cambodia on Trade Relations and Intellectual Property Rights Protection (October 8, 1996)

## **Cameroon**

- ▶ Bilateral Investment Treaty (April 6, 1989)

## **Canada**

- ▶ Agreement on Salmon & Herring (May 11, 1993)
- ▶ Agreement Regarding Tires (May 25, 1993)
- ▶ Memorandum of Understanding on Provincial Beer Marketing Practices (August 5, 1993)
- ▶ Agreement on Ultra-High Temperature Milk (September 1993)
- ▶ Agreement on Beer Market Access in Quebec and British Columbia Beer Antidumping Cases (April 4, 1994)
- ▶ Agreement on Salmon & Herring (April 1994)
- ▶ Agreement on Barley Tariff-Rate Quota (September 8, 1997)
- ▶ Record of Understanding on Agriculture (December 1998)
- ▶ Agreement on Magazines (Periodicals) (May 1999)
- ▶ Agreement on Implementation of the WTO Decision on Canada's Dairy Support Programs (December 1999)
- ▶ Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (January 17, 2002)

- ▶ Agreement to Implement Phase II of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (January 28, 2003)
- ▶ United States-Canada Understanding on Implementation of the Decision of the WTO General Council of August 30, 2003, on “Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health” as Interpreted by the Accompanying Statement of the Chairman of the General Council of the Same Date (July 16, 2004)
- ▶ Softwood Lumber Agreement between the Government of the United States of America and the Government of Canada (SLA 2006) (October 12, 2006)
- ▶ Technical Arrangement between the United States and Canada concerning Trade in Potatoes (November 1, 2007)
- ▶ Agreement Between the Government of the United States and the Government of Canada on Government Procurement (February 16, 2010).

## **Chile**

- ▶ United States-Chile Free Trade Agreement (January 1, 2004)
- ▶ United States-Chile Agreement on Accelerated Tariff Elimination (November 14, 2008)
- ▶ United States-Chile Agreement on Trade in Table Grapes (November 21, 2008)
- ▶ United States-Chile Agreement on Beef Grade Labeling (March 26, 2009)

## **China**

- ▶ Accord on Industrial and Technological Cooperation (January 12, 1984)
- ▶ Memorandum of Understanding on the Protection of Intellectual Property Rights (January 17, 1992)
- ▶ Memorandum of Understanding on Prohibiting Import and Export in Prison Labor Products (June 18, 1992)
- ▶ Memorandum of Understanding Concerning Market Access (October 10, 1992)
- ▶ Agreement on Trade Relations between the United States of America and the People’s Republic of China (February 1, 1980)
- ▶ Agreement on Providing Intellectual Property Rights Protection (February 26, 1995)

- ▶ Report on China's Measures to Enforce Intellectual Property Protections and Other Measures (June 17, 1996)
- ▶ Interim Agreement on Market Access for Foreign Financial Information Companies (Xinhua) (October 24, 1997)
- ▶ Bilateral Agriculture Agreement (April 10, 1999)
- ▶ Memorandum of Understanding between China and the United States Regarding China's Value-Added Tax on Integrated Circuits (July 14, 2004)
- ▶ Memorandum of Understanding between the Governments of the United States of America and the People's Republic of China Concerning Trade in Textile and Apparel Products (November 8, 2005)
- ▶ Memorandum of Understanding between the United States of America and the People's Republic of China Regarding Certain Measures Granting Refunds, Reductions, or Exemptions from Taxes or Other Payments (November 29, 2007)
- ▶ Memorandum of Understanding between the United States of America and the People's Republic of China Regarding Certain Measures Affecting Foreign Suppliers of Financial Information Services (November 13, 2008)

### **Colombia**

- ▶ Memorandum of Understanding on Trade in Bananas (January 9, 1996)
- ▶ Exchange of Letters between the United States and Colombia on Sanitary and Phyto-sanitary Measures and Technical Barriers to Trade Issues (February 27, 2006)
- ▶ Exchange of Letters between United States and Colombia on Beef Sanitary and Phyto-sanitary Issues (August 21, 2006)

### **Congo, Democratic Republic of the (formerly Zaire)**

- ▶ Bilateral Investment Treaty (July 28, 1989)

### **Congo, Republic of the**

- ▶ Bilateral Investment Treaty (August 13, 1994)

### **Costa Rica**

- ▶ Memorandum of Understanding on Trade in Bananas (January 9, 1996)

## **Croatia**

- ▶ Memorandum of Understanding on Intellectual Property Rights (May 26, 1998)
- ▶ Bilateral Investment Treaty (June 20, 2001)

## **Czech Republic**

- ▶ Bilateral Investment Treaty (December 19, 1992; amended May 1, 2004)

## **Dominican Republic**

- ▶ Exchange of Letters on Trade in Textile and Apparel Goods (October 21, 2006)

## **Ecuador**

- ▶ Agreement on Intellectual Property Rights Protection (October 15, 1993)
- ▶ Bilateral Investment Treaty (May 11, 1997)

## **Egypt**

- ▶ Bilateral Investment Treaty (June 27, 1992)

## **Estonia**

- ▶ Bilateral Investment Treaty (February 16, 1997; amended May 1, 2004)

## **European Economic Area – European Free Trade Association (EEA EFTA States – Norway, Iceland, and Liechtenstein)**

- ▶ Agreement on Mutual Recognition between the United States of America and the EEA EFTA States (March 1, 2006).
- ▶ Agreement between the United States of America and the EEA EFTA States on the Mutual Recognition of Certificates of Conformity for Marine Equipment (March 1, 2006)

## **European Union**

- ▶ Wine Accord (July 1983)
- ▶ Agreement for the Conclusion of Negotiations between the United States and the European Community under GATT Article XXIV:6 (January 30, 1987)
- ▶ Agreement on Exports of Pasta with Settlement, Annex and Related Letter (September 15, 1987)

- ▶ Agreement on Canned Fruit (updated) (April 14, 1992)
- ▶ Agreement on Meat Inspection Standards (November 13, 1992)
- ▶ Corn Gluten Feed Exchange of Letters (December 4 and 8, 1992)
- ▶ Malt-Barley Sprouts Exchange of Letters (December 4 and 8, 1992)
- ▶ Oilseeds Agreement (December 4 and 8, 1992)
- ▶ Agreement on Recognition of Bourbon Whiskey and Tennessee Whisky as Distinctive U.S. Products (March 28, 1994)
- ▶ Memorandum of Understanding on Government Procurement (April 15, 1994)
- ▶ Letter on Financial Services Confirming Assurances to Provide Full MFN and National Treatment (July 14, 1995)
- ▶ Agreement on EU Grains Margin of Preference (signed July 22, 1996; retroactively effective December 30, 1995)
- ▶ Exchange of Letters Concerning Implementation of the Marrakesh Agreement Establishing the World Trade Organization and Related Matters (June 26, 1996)
- ▶ Exchange of Letters between the United States of America and the European Community on a Settlement for Cereals and Rice, and Accompanying Exchange of Letters on Rice Prices (July 22, 1996)
- ▶ Agreement for the Conclusion of Negotiations between the United States of America and the European Community under GATT Article XXIV:6, and Accompanying Exchange of Letters (signed July 22, 1996; retroactively effective December 30, 1995)
- ▶ Tariff Initiative on Distilled Spirits (February 28, 1997)
- ▶ Agreement on Global Electronic Commerce (December 9, 1997)
- ▶ Agreed Minute on Humane Trapping Standards (December 18, 1997)
- ▶ Agreement on Mutual Recognition between the United States of America and the European Community (December 1, 1998)
- ▶ Agreement between the United States and the European Community on Sanitary Measures to Protect Public and Animal Health in Trade in Live Animals and Animal Products (July 20, 1999)
- ▶ Understanding on Bananas (April 11, 2001)

- ▶ Agreement on the Mutual Acceptance of Oenological Practices (December 18, 2001)
- ▶ Agreement between the United States of America and the European Community on the Mutual Recognition of Certificates of Conformity for Marine Equipment (July 1, 2004)
- ▶ Agreement in the Form of an Exchange of Letters between the United States and the European Community Relating to the Method of Calculation of Applied Duties for Husked Rice (June 30, 2005; retroactively effective March 1, 2005)
- ▶ Agreement between the United States and European Community on Trade in Wine (March 10, 2006)
- ▶ Agreement for the Conclusion of Negotiations between the United States of America and the European Community under GATT Article XXIV:6, and Accompanying Exchange of Letters (March 22, 2006)
- ▶ Joint Letter from the United States and the European Communities on implementation of GATS Article XXI procedures relating to the accession to the European Communities of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Austria, Poland, Slovenia, the Slovak Republic, Finland, and Sweden (August 7, 2006)
- ▶ Memorandum of Understanding Between the United States and European Commission Regarding the Importation of Beef from Animals Not Treated with Certain Growth-Promoting Hormones and Increased Duties Applied to Certain Products of the European Communities (May 13, 2009)

### **Georgia**

- ▶ Agreement on Bilateral Trade Relations (August 13, 1993)
- ▶ Bilateral Investment Treaty (August 17, 1997)

### **Grenada**

- ▶ Bilateral Investment Treaty (March 3, 1989)

### **Haiti**

- ▶ Exchange of Letters on Trade in Textile and Apparel Goods (September 18, 2008)

### **Hong Kong**

- ▶ Agreement to Implement Phase I and Phase II of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (April 4, 2005)

- ▶ Memorandum of Understanding between the United States of America and the Hong Kong Special Administrative Region Concerning Cooperation in Trade in Textile and Apparel Goods (August 1, 2005)

### **Honduras**

- ▶ Memorandum of Understanding on Worker Rights (November 15, 1995)
- ▶ Bilateral Investment Treaty (July 11, 2001)

### **Hungary**

- ▶ Agreement on Trade Relations (July 7, 1978)
- ▶ Agreement on Intellectual Property Rights Protection (September 29, 1993)

### **India**

- ▶ Agreement Regarding Indian Import Policy for Motion Pictures (February 5, 1992)
- ▶ Reduction of Tariffs on In-Shell Almonds (May 27, 1992)
- ▶ Agreement on Intellectual Property Rights Protection (March 1993)
- ▶ Agreement on Import Restrictions (December 28, 1999)
- ▶ Agreement on Textile Tariff Bindings (September 15, 2000)

### **Indonesia**

- ▶ Conditions for Market Access for Films and Videos into Indonesia (April 19, 1992)
- ▶ Memorandum of Understanding with Indonesia Concerning Cooperation in Trade in Textile and Apparel Goods (September 26, 2006)

### **Israel**

- ▶ United States-Israel Free Trade Agreement (August 19, 1985)
- ▶ United States-Israel Agreement Concerning Certain Aspects of Trade in Agricultural Products (July 27, 2004; extended by Exchange of Letters December 10, 2008)
- ▶ United States-Israel Agreement Concerning Certain Aspects of Trade in Agricultural Products (July 27, 2004; extended by Exchange of Letters (December 10, 2008; December 6, 2009; and December 12, 2010)

## **Jamaica**

- ▶ Agreement on Intellectual Property (February 1994)
- ▶ Bilateral Investment Treaty (March 7, 1997)

## **Japan**

- ▶ Market-Oriented Sector-Selective (MOSS) Agreement on Medical Equipment and Pharmaceuticals (January 9, 1986)
- ▶ Exchange of Letters Regarding Tobacco (October 6, 1986)
- ▶ Foreign Lawyers Agreement (February 27, 1987)
- ▶ Science and Technology Agreement (June 20, 1988; extended June 16, 1993)
- ▶ Procedures to Introduce Supercomputers (June 15, 1990)
- ▶ Measures Relating to Wood Products (June 15, 1990)
- ▶ Policies and Procedures Regarding Satellite Research and Development/Procurement (June 15, 1990)
- ▶ Policies and Procedures Regarding International Value-Added Network Services and Network Channel Terminating Equipment (July 31, 1990)
- ▶ Joint Announcement on Amorphous Metals (September 21, 1990)
- ▶ Measures Further to 1990 Policies and Procedures regarding International Value-Added Network Services (April 27, 1991)
- ▶ Measures Regarding International Value-Added Network Services Investigation Mechanisms (June 25, 1991)
- ▶ United States-Japan Major Projects Arrangement (July 31, 1991; originally negotiated 1988)
- ▶ Measures Related to Japanese Public Sector Procurement of Computer Products and Services (January 22, 1992)
- ▶ United States-Japan Framework for a New Economic Partnership (July 10, 1993)
- ▶ Exchange of Letters Regarding Apples (September 13, 1993)
- ▶ United States-Japan Public Works Agreement (January 18, 1994)

- ▶ Mutual Understanding on Intellectual Property Rights between the Japanese Patent Office and the U.S. Patent and Trademark Office (January 20, 1994)
- ▶ Rice (April 15, 1994)
- ▶ Harmonized Chemical Tariffs (April 15, 1994)
- ▶ Copper (April 15, 1994)
- ▶ Market Access (April 15, 1994)
- ▶ Actions to be Taken by the Japanese Patent Office and the U.S. Patents and Trademark Office pursuant to the January 20, 1994, Mutual Understanding on Intellectual Property Rights (August 16, 1994)
- ▶ Measures by the Government of the United States and the Government of Japan Regarding Insurance (October 11, 1994)
- ▶ Measures on Japanese Public Sector Procurement of Telecommunications Products and Services (November 1, 1994)
- ▶ Measures Related to Japanese Public Sector Procurement of Medical Technology Products and Services (November 1, 1994)
- ▶ Measures Regarding Financial Services (February 13, 1995)
- ▶ Policies and Measures Regarding Inward Direct Investment and Buyer-Supplier Relationships (June 20, 1995)
- ▶ Exchange of Letters on Financial Services (July 26 and 27, 1995)
- ▶ Interim Understanding for the Continuation of Japan-U.S. Insurance Talks (September 30, 1996)
- ▶ United States-Japan Insurance Agreement (December 24, 1996)
- ▶ Japan's Recognition of U.S.-Grade marked Lumber (January 13, 1997)
- ▶ Resolution of WTO dispute with Japan on Sound Recordings (January 13, 1997)
- ▶ National Policy Agency Procurement of VHF Radio Communications System (March 31, 1997)
- ▶ United States-Japan Enhanced Initiative on Deregulation and Competition Policy (June 19, 1997)

- ▶ United States-Japan Agreement on Distilled Spirits (December 17, 1997)
- ▶ First Joint Status Report on Deregulation and Competition Policy (May 29, 1998)
- ▶ United States-Japan Joint Report on Investment (April 28, 1999)
- ▶ Second Joint Status Report on Deregulation and Competition Policy (May 3, 1999)
- ▶ United States-Japan Agreement on NTT Procurement Procedures (July 1, 1999)
- ▶ Third Joint Status Report on Deregulation and Competition Policy (July 19, 2000)
- ▶ Fourth Joint Status Report on Deregulation and Competition Policy (June 30, 2001)
- ▶ United States-Japan Economic Partnership for Growth (June 30, 2001)
- ▶ First Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative (June 25, 2002)
- ▶ Second Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative (May 23, 2003)
- ▶ Third Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative (June 8, 2004)
- ▶ Fourth Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative (November 2, 2005)
- ▶ Fifth Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative (June 29, 2006)
- ▶ Sixth Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative (June 6, 2007)
- ▶ Agreement on Mutual Recognition of Results of Conformity Assessment Procedures between the United States of America and Japan (U.S.-Japan Telecom MRA) (January 1, 2008)
- ▶ Seventh Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative (July 5, 2008)
- ▶ Eighth Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative (July 6, 2009)
- ▶ Memorandum Between the Relevant Authorities of the United States and the Ministry of Health, Labour and Welfare of Japan Concerning Enforcement of Japan's Pesticide Maximum Residue Levels (July 28, 2009)

## **Jordan**

- ▶ Agreement between the United States and Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area (December 17, 2001)
- ▶ Bilateral Investment Treaty (June 12, 2003)

## **Kazakhstan**

- ▶ Agreement on Bilateral Trade Relations (February 18, 1993)
- ▶ Bilateral Investment Treaty (January 12, 1994)
- ▶ United States-Kazakhstan Agreement Related to Certain Investment and Services Requirements (September 21, 2011)

## **Korea**

- ▶ Record of Understanding on Intellectual Property Rights (August 28, 1986)
- ▶ Agreement on Access of U.S. Firms to Korea's Insurance Markets (August 28, 1986)
- ▶ Record of Understanding Concerning Market Access for Cigarettes (May 27, 1988; amended October 16, 1989)
- ▶ Agreement Concerning the Korean Capital Market Promotion Law (September 1, 1988)
- ▶ Agreement on the Importation and Distribution of Foreign Motion Pictures (December 30, 1988)
- ▶ Agreement on Market Access for Wine and Wine Products (January 18, 1989)
- ▶ Investment Agreement (May 19, 1989)
- ▶ Agreement on Liberalization of Agricultural Imports (May 25, 1989)
- ▶ Record of Understanding on Telecommunications (January 23, 1990)
- ▶ Record of Understanding on Telecommunications (February 15, 1990)
- ▶ Exchange of Letters Regarding the 1986 Intellectual Property Rights Agreement: Product Pipeline Protection (February 22, 1990)
- ▶ Record of Understanding on Beef (March 21, 1990)
- ▶ Exchange of Letters on Beef (April 26 and 27, 1990)

- ▶ Agreement on Wine Access (December 19, 1990)
- ▶ Record of Understanding on Telecommunications (February 7, 1991)
- ▶ Agreement on International Value-Added Services (June 20, 1991)
- ▶ Understanding on Telecommunications (February 17, 1992)
- ▶ Exchange of Letters Relating to Korea Telecom Company's Procurement of AT&T Switches (March 31, 1993)
- ▶ Beef Agreements (June 26, 1993; December 29, 1993)
- ▶ Record of Understanding on Agricultural Market Access in the Uruguay Round (December 13, 1993)
- ▶ Exchange of Letters on Telecommunications Issues Relating to Equipment Authorization and Korea Telecom Company's Procurement (March 29, 1995)
- ▶ Agreement on Steel (July 14, 1995)
- ▶ Shelf-Life Agreement (July 20, 1995)
- ▶ Revised Cigarette Agreement (August 25, 1995)
- ▶ Memorandum of Understanding to Increase Market Access for Foreign Passenger Vehicles in Korea (September 28, 1995)
- ▶ Exchange of Letters on Implementation of the 1992 Telecommunications Agreement (April 12, 1996)
- ▶ Korean Commitments on Trade in Telecommunications Goods and Services (July 23, 1997)
- ▶ Agreement on Korean Motor Vehicle Market (October 20, 1998)
- ▶ Exchange of Letters Regarding Tobacco Sector Related Issues (June 14, 2001)
- ▶ Exchange of Letters on Data Protection (March 12, 2002)
- ▶ Record of Understanding between the Governments of the United States and the Republic of Korea Regarding the Extension of Special Treatment for Rice (February 2005)
- ▶ Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (May 10, 2005)

- ▶ Agreed Minutes on Fuel Economy and Greenhouse Gas Emissions Regulations (February 10, 2011)
- ▶ Agreed Minutes on Visa Validity Period (February 10, 2011)

### **Kyrgyzstan**

- ▶ Agreement on Bilateral Trade Relations (May 8, 1992)
- ▶ Bilateral Investment Treaty (January 12, 1994)

### **Latvia**

- ▶ Agreement on Bilateral Trade Relations (August 21, 1992)
- ▶ Bilateral Investment Treaty (November 26, 1996; amended May 1, 2004)
- ▶ Agreement on Trade & Intellectual Property Rights Protection (January 20, 1995)

### **Lithuania**

- ▶ Bilateral Investment Treaty (November 22, 2001; amended May 1, 2004)

### **Laos**

- ▶ Bilateral Trade Agreement (February 4, 2005)

### **Macao**

- ▶ Memorandum of Understanding with Macao Concerning Cooperation in Trade in Textile and Apparel Goods (August 8, 2005)

### **Mexico**

- ▶ Agreement with Mexico on Tire Certification (March 8, 1996)
- ▶ Memorandum of Understanding between the United States and Mexico Regarding Areas of Food and Agriculture Trade (April 4, 2002)
- ▶ United States-Mexico Exchange of Letters Regarding Mexico's NAFTA Safeguard on Certain Poultry Products (July 24-25, 2003)
- ▶ Understanding Regarding the Implementation of the WTO Decision on Mexico's Telecommunications Services (June 1, 2004)

- ▶ Agreement between the U.S. Trade Representative and Secretaria de Economia of the United Mexican State on Trade in Tequila (January 17, 2006)
- ▶ Agreement between the U.S. Trade Representative and Secretaria de Economia of the United Mexican State on Trade in Cement (April 3, 2006)
- ▶ United States-Mexico Exchange of Letters Regarding Trade in Sweetener Goods (July 27, 2006)
- ▶ Bilateral Agreement on Customs Cooperation regarding Claims of Origin Under FTA Cumulation Provisions (January 26, 2007)
- ▶ Customs Cooperation Agreement with Mexico relating to Textiles Matters (August 15, 2008)
- ▶ Mutual Recognition Agreement between the Government of the United States of America and the Government of the United Mexican States for Conformity Assessment of Telecommunications Equipment (June 10, 2011)

### **Moldova**

- ▶ Agreement on Bilateral Trade Relations (July 2, 1992)
- ▶ Bilateral Investment Treaty (November 25, 1994)

### **Mongolia**

- ▶ Agreement on Bilateral Trade Relations (January 23, 1991)
- ▶ Bilateral Investment Treaty (January 1, 1997)

### **Morocco**

- ▶ Bilateral Investment Treaty (May 29, 1991)
- ▶ United States- Morocco Free Trade Agreement (January 1, 2006)

### **Mozambique**

- ▶ Bilateral Investment Treaty (March 2, 2005)

### **Nicaragua**

- ▶ Bilateral Intellectual Property Rights Agreement with Nicaragua (December 22, 1997)
- ▶ Exchange of Letters on Trade in Textile and Apparel Goods (March 24, 2006)

## **Norway**

- ▶ Agreement on Procurement of Toll Equipment (April 26, 1990)

## **Oman**

- ▶ United States-Oman Free Trade Agreement (January 1, 2009)

## **Panama**

- ▶ Bilateral Investment Treaty (May 30, 1991)
- ▶ Agreement on Bilateral Trade Relations (1994)
- ▶ Agreement on Cooperation in Agricultural Trade (December 20, 2006)
- ▶ Agreement regarding Certain Sanitary and Phytosanitary Measures and Technical Standards Affecting Agricultural Products (December 20, 2006)

## **Paraguay**

- ▶ Memorandum of Understanding on Intellectual Property Rights (March 30, 2004; renewed May 2006, April 2008, and November 2009)

## **Peru**

- ▶ United States-Peru Trade Promotion Agreement (February 1, 2009)
- ▶ Memorandum of Understanding on Intellectual Property Rights (May 23, 1997)
- ▶ Exchange of Letters on Sanitary and Phytosanitary Measures and Technical Barriers to Trade Issues (January 5, 2006)
- ▶ Additional Letter Exchange on Sanitary and Phytosanitary Measures and Technical Barriers to Trade Issues (April 10, 2006)

## **Philippines**

- ▶ Protection and Enforcement of Intellectual Property Rights (April 6, 1993)
- ▶ Agreement regarding Pork and Poultry Meat (February 13, 1998)
- ▶ Memorandum of Understanding with the Philippines Concerning Cooperation in Trade in Textile and Apparel Goods (August 23, 2006)

## **Poland**

- ▶ Business and Economic Relations Treaty (August 6, 1994; amended May 1, 2004)

## **Romania**

- ▶ Agreement on Bilateral Trade Relations (April 3, 1992)
- ▶ Bilateral Investment Treaty (January 15, 1994; amended January 1, 2007)

## **Russia**

- ▶ Trade Agreement Concerning Most Favored Nation and Nondiscriminatory Treatment (June 17, 1992)
- ▶ Joint Memorandum of Understanding on Market Access for Aircraft (January 30, 1996)
- ▶ Agreed Minutes regarding exports of poultry products from the United States to Russia (March 15, March 25, and March 29, 1996)
- ▶ Agreement on Russian Firearms & Ammunition (April 3, 1996; amended 2003)
- ▶ Protocol of the Negotiations between the Experts of Russia and the United States of America on the Issue of U.S. Poultry Meat Imports into the Russian Federation (March 31, 2002)
- ▶ Agreement between the Government of the United States of America and the Government of the Russian Federation on Trade in Certain Types of Poultry, Beef and Pork (June 15, 2005; amended December 29, 2008)
- ▶ Agreement between the Government of the United States of America and the Government of the Russian Federation on Protection and Enforcement of Intellectual Property Rights (November 19, 2006)
- ▶ Agreement between the Government of the United States of America and the Government of the Russian Federation on Market Access for Beef and Beef By-Products (November 16, 2006)
- ▶ Agreement between the Government of the United States of America and the Government of the Russian Federation on Importation of Pork and Pork By-Products into the Russian Federation (November 19, 2006)
- ▶ Agreement between the Government of the United States of America and the Government of the Russian Federation on Inspection of Facilities for Exporting Pork and Poultry to the Russian Federation (November 19, 2006)

- ▶ Agreement between the Government of the United States of America and the Government of the Russian Federation on Agricultural Biotechnology (November 19, 2006)
- ▶ Agreement between the Government of the United States of America and the Government of the Russian Federation on Establishment of Import licensing Procedures for Imports of Goods Containing Encryption Technology (November 19, 2006)
- ▶ Exchange of Letters between the Government of the United States of America and the Government of the Russian Federation on Tariff Treatment of Certain Aircraft Imported Under Operational Lease (November 19, 2006)
- ▶ Exchange of Letters between the Ministry of Economic Development and Trade of the Russian Federation and the Office of the U.S. Trade Representative on Tariff Treatment of Certain Combine Harvester-Threshers and Self-Propelled Forage Harvesters (November 19, 2006)
- ▶ Letter on Market Access between the United States and the Russian Federation for Service Suppliers in Certain Energy Related Sectors (November 19, 2006)
- ▶ Letter on Market Access between the United States and the Russian Federation for Certain Insurance Firms (November 19, 2006)
- ▶ Bilateral Agreement on Verification of Pathogen Reduction Treatments and Resumption of Trade in Poultry (July 14, 2010)
- ▶ Bilateral Agreement on Pre-Negotiation Requirements Applied to Certain Imports of Meat Products from the United States (applied provisionally as of December 14, 2011)

### **Rwanda**

- ▶ Bilateral Investment Treaty (January 1, 2012)

### **Senegal**

- ▶ Bilateral Investment Treaty (October 25, 1990)

### **Singapore**

- ▶ Agreement on Intellectual Property Rights Protection (April 27, 1987)
- ▶ Agreement to Implement Phase I and Phase II of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (October 8, 2003)
- ▶ United States-Singapore Free Trade Agreement (January 1, 2004)

## **Slovakia**

- ▶ Bilateral Investment Treaty (December 19, 1992; amended May 1, 2004)

## **Sri Lanka**

- ▶ Agreement on the Protection and Enforcement of Intellectual Property Rights (September 20, 1991)
- ▶ Bilateral Investment Treaty (May 1, 1993)

## **Suriname**

- ▶ Agreement on Bilateral Trade Relations (1993)

## **Switzerland**

- ▶ Exchange of Letters on Financial Services (November 9 and 27, 1995)

## **Taiwan**

- ▶ Agreement on Customs Valuation (August 22, 1986)
- ▶ Agreement on Export Performance Requirements (August 1986)
- ▶ Agreement Concerning Beer, Wine, and Cigarettes (1987)
- ▶ Agreement on Turkeys and Turkey Parts (March 16, 1989)
- ▶ Agreement on Beef (June 18, 1990)
- ▶ Agreement on Intellectual Property Protection (June 5, 1992)
- ▶ Agreement on Intellectual Property Protection (Trademark) (April 1993)
- ▶ Agreement on Intellectual Property Protection (Copyright) (July 16, 1993)
- ▶ Agreement on Market Access (April 27, 1994)
- ▶ Telecommunications Liberalization by Taiwan (July 19, 1996)
- ▶ United States-Taiwan Medical Device Issue: List of Principles (September 30, 1996)
- ▶ Agreement on Market Access (February 20, 1998)

- ▶ Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (March 16, 1999)
- ▶ Understanding on Government Procurement (August 23, 2001)
- ▶ Protocol of Bovine Spongiform Encephalopathy (BSE)-Related Measures for the Importation of Beef and Beef Products for Human Consumption from the Territory of the Authorities Represented by the American Institute in Taiwan (November 2, 2009)

### **Tajikistan**

- ▶ Agreement on Bilateral Trade Relations (November 24, 1993)

### **Thailand**

- ▶ Agreement on Cigarette Imports (November 23, 1990)
- ▶ Agreement on Intellectual Property Protection and Enforcement (December 19, 1991)

### **Trinidad and Tobago**

- ▶ Agreement on Intellectual Property Protection and Enforcement (September 26, 1994)
- ▶ Bilateral Investment Treaty (December 26, 1996)

### **Tunisia**

- ▶ Bilateral Investment Treaty (February 7, 1993)

### **Turkey**

- ▶ Bilateral Investment Treaty (May 18, 1990)
- ▶ WTO Settlement Concerning Taxation of Foreign Film Revenues (July 14, 1997)

### **Turkmenistan**

- ▶ Agreement on Bilateral Trade Relations (October 25, 1993)

### **Ukraine**

- ▶ Agreement on Bilateral Trade Relations (June 23, 1992)
- ▶ Bilateral Investment Treaty (November 16, 1996)

- ▶ Agreement between the Government of the United States of America and the Government of the Republic of Ukraine on Sanitary and Phytosanitary Measures (February 21, 2007)
- ▶ Agreement between the U.S. and the Ukraine on Export Duties on Ferrous and Non-Ferrous Scrap Metal (February 22, 2007)

### **Uruguay**

- ▶ Bilateral Investment Treaty (November 1, 2006)

### **Uzbekistan**

- ▶ Agreement on Bilateral Trade Relations (January 13, 1994)

### **Vietnam**

- ▶ Agreement between the United States and Vietnam on Trade Relations (December 10, 2001)
- ▶ Copyright Agreement (June 27, 1997)
- ▶ Exchange of Letters on Equivalence of Food Safety Inspection Systems (May 31, 2006)
- ▶ Exchange of Letters on Beef (May 31, 2006)
- ▶ Exchange of Letters on Biotechnology (May 31, 2006)
- ▶ Exchange of Letters on Energy Services (May 31, 2006)
- ▶ Exchange of Letters on Elimination of Prohibited Subsidies to Textile and Garment Sector (May 31, 2006)
- ▶ Bilateral Agreement on Export Duties on Ferrous and Nonferrous Scrap Metals (May 31, 2006)
- ▶ Exchange of Letters on Shelf Life (May 31, 2006)
- ▶ Acceptance of U.S. Certificates for Exports of Poultry Meat and Meat Products (May 31, 2006)
- ▶ Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (June 19, 2008)

## **II. Agreements that have been Negotiated but have not yet Entered into Force**

Following is a list of trade agreements concluded by the United States since 1984 that have not yet entered into force.

### **Multilateral Agreements**

- ▶ OECD Agreement on Shipbuilding (December 21, 1994; interested parties evaluating implementing legislation)
- ▶ Anti Counterfeiting Trade Agreement (signed by the United States on October 1, 2011)

### **Bilateral Agreements**

#### **Belarus**

- ▶ Bilateral Investment Treaty (signed January 15, 1994)

#### **Colombia**

- ▶ United States-Colombia Trade Promotion Agreement (signed November 22, 2006); Protocol of Amendment (signed June 28, 2007)

#### **El Salvador**

- ▶ Bilateral Investment Treaty (signed March 10, 1999)

#### **European Union**

- ▶ Agreement on Trade in Bananas Between the United States of American and the European Union (signed June 8, 2010).

#### **Estonia**

- ▶ Trade and Intellectual Property Rights Agreement (April 19, 1994; requires approval by Estonian legislature)

#### **Korea**

- ▶ United States-Korea Free Trade Agreement (signed June 30, 2007)
- ▶ Exchange of Letters between the United States and Korea related to the United States-Korea Free Trade Agreement (February 10, 2011)

## **Lithuania**

- ▶ Trade and Intellectual Property Rights Agreement (April 26, 1994; requires approval by Lithuanian legislature)

## **Libya**

- ▶ United States-Libya Trade and Investment Agreement (signed May 20, 2010)

## **Nicaragua**

- ▶ Bilateral Investment Treaty (signed July 1, 1995)

## **Panama**

- ▶ United States-Panama Trade Promotion Agreement (signed June 28, 2007)

## **Russia**

- ▶ Bilateral Investment Treaty (signed June 17, 1992)

## **Uzbekistan**

- ▶ Bilateral Investment Treaty (signed December 16, 1994)

### **III. Other Trade-Related Agreements and Declarations**

Following is a list of other trade-related agreements and declarations negotiated by the Office of the United States Trade Representative from January 1993 through December 2009. These documents provide the framework for negotiations leading to future trade agreements or establish mechanisms for structured dialogue in order to develop specific steps and strategies for addressing and resolving trade, investment, intellectual property and other issues among the signatories.

#### **Multilateral Agreements and Declarations**

- ▶ Second Ministerial of the World Trade Organization, Ministerial Declaration on Global Electronic Commerce (May 20, 1998)
- ▶ WTO Guidelines for the Negotiation of Mutual Recognition Agreements on Accountancy (May 29, 1997)

- ▶ Free Trade Area of the Americas
  - ▶ First Summit of the Americas, Declaration of Principles and Plan of Action, Miami, Florida (December 11, 1994)
  - ▶ Trade Ministerial Joint Declaration, Denver, USA (June 30, 1995)
  - ▶ Second Ministerial Trade Meeting Joint Declaration, Cartagena, Colombia (March 21, 1996)
  - ▶ Third Trade Ministerial Meeting Joint Declaration, Belo Horizonte, Brazil (May 16, 1997)
  - ▶ Fourth Trade Ministerial Joint Declaration, San Jose, Costa Rica (March 19, 1998)
  - ▶ Second Summit of the Americas Declaration of Principles and Plan of Action, Santiago, Chile (April 19, 1998)
  - ▶ Fifth Trade Ministerial Meeting, Declaration of Ministers, Toronto, Canada (November 4, 1999)
  - ▶ Sixth Meeting of Ministers of Trade of the Hemisphere Ministerial Declaration, Buenos Aires, Argentina (April 7, 2001)
  - ▶ Third Summit of the Americas Declaration of Principles and Plan of Action, Quebec City, Canada (April 22, 2001)
  - ▶ Seventh Meeting of Ministers of Trade of the Hemisphere Ministerial Declaration, Quito, Ecuador (November 1, 2002)
  - ▶ Eighth Ministerial Meeting, Ministerial Declaration, Miami, USA (November 20, 2003)
  - ▶ Fourth Summit of the Americas Declaration of Mar Del Plata and Plan of Action, Mar del Plata, Argentina (November 5, 2005)
  - ▶ Fifth Summit of the Americas Declaration of Commitment of Port of Spain, Trinidad and Tobago (April 19, 2009)
- ▶ Asia Pacific Economic Cooperation
  - ▶ 1st Joint Ministerial Statement (November 6-7, 1989)
  - ▶ 2nd Joint Ministerial Statement (July 29-31, 1990)
  - ▶ 3rd Joint Ministerial Statement (November 12-14, 1991)

- ▶ 4th Joint Ministerial Statement (September 10-11, 1992)
- ▶ 5th Joint Ministerial Statement (November 17-19, 1993)
- ▶ Leaders' Economic Vision Statement (November 20, 1993)
- ▶ Ministers Responsible for Trade Statement (October 6, 1994)
- ▶ 6th Joint Ministerial Statement (November 11-12, 1994)
- ▶ Leaders' Declaration of Common Resolve (November 15, 1994)
- ▶ 7th Joint Ministerial Statement (November 16-17, 1995)
- ▶ Leaders' Declaration for Action (November 19, 1995)
- ▶ Ministers Responsible for Trade Statement (July 15-16, 1996)
- ▶ 8th Joint Ministerial Statement (November 22-23, 1996)
- ▶ Leaders' Declaration: From Vision to Action (November 25, 1996)
- ▶ Ministers Responsible for Trade Statement (May 8-10, 1997)
- ▶ 9th Joint Ministerial Statement (November 21-22, 1997)
- ▶ Leaders' Declaration on Connecting the APEC Community (November 25, 1997)
- ▶ Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Agreement (June 5, 1998)
- ▶ Ministers Responsible for Trade Statement (June 22-23, 1998)
- ▶ 10th Joint Ministerial Statement (November 14-15, 1998)
- ▶ Leaders' Declaration on Strengthening the Foundations for Growth (November 18, 1998)
- ▶ Ministers Responsible for Trade Statement (June 29-30, 1999)
- ▶ 11th Joint Ministerial Statement (September 9-10, 1999)
- ▶ Leaders' Declaration: The Auckland Challenge (September 13, 1999)
- ▶ Ministers Responsible for Trade Statement (June 6-7, 2000)
- ▶ 12th Joint Ministerial Statement (November 12-13, 2000)

- ▶ Leaders' Declaration: Delivering to the Community (November 16, 2000)
- ▶ Ministers Responsible for Trade Statement (June 6-7, 2001)
- ▶ 13th Joint Ministerial Statement (October 17-18, 2001)
- ▶ Leaders' Declaration: Meeting New Challenges in the New Century (October 21, 2001)
- ▶ Ministers Responsible for Trade Statement (May 29-30, 2002)
- ▶ 14th Joint Ministerial Statement (October 23-24, 2002)
- ▶ Leaders' Declaration: Expanding the Benefits of Cooperation for Economic Growth and Development - Implementing the Vision (October 27, 2002)
- ▶ Ministers Responsible for Trade Statement (June 2-3, 2003)
- ▶ 15th Joint Ministerial Statement (October 17-18, 2003)
- ▶ Declaration: A World of Differences - Partnership for the Future (October 21, 2003)
- ▶ Ministers Responsible for Trade Statement (June 4-5, 2004)
- ▶ 16th Joint Ministerial Statement (November 17-18, 2004)
- ▶ Leaders' Declaration: One Community, Our Future (November 20-21, 2004)
- ▶ Ministers Responsible for Trade Statement (June 2-3, 2005)
- ▶ 17th Joint Ministerial Statement (November 15-16, 2005)
- ▶ Leaders' Declaration: Towards One Community: Meet the Challenge, Make the Change (November 18-19, 2005)
- ▶ Ministers Responsible for Trade Statement (June 1-2, 2006)
- ▶ 18th Joint Ministerial Statement (November 15-16, 2006)
- ▶ Leaders' Declaration: Towards a Dynamic Community for Sustainable Development and Prosperity (November 18-19, 2006)
- ▶ Ministers Responsible for Trade Statement (July 5-6, 2007)
- ▶ 19th Joint Ministerial Statement (September 5-6, 2007)

- ▶ Leaders' Declaration: Strengthening our Community, Building a Sustainable Future (September 9, 2007)
- ▶ Ministers Responsible for Trade Statement (May 31-June 1, 2008)
- ▶ 20th Joint Ministerial Statement (November 19-20, 2008)
- ▶ Leaders' Declaration: A New Commitment to Asia-Pacific Development (November 22-23, 2008)
- ▶ Ministers Responsible for Trade Statement (July 21-22, 2009)
- ▶ 21st Joint Ministerial Statement (November 11-12, 2009)
- ▶ Leaders' Declaration: Sustaining Growth, Connecting The Region (November 14-15, 2009)
- ▶ Ministers Responsible for Trade Statement (June 5-6, 2010)
- ▶ 22nd Joint Ministerial Statement (November 10-11, 2010)
- ▶ Leaders' Declaration: The Yokohama Vision - Bogor and Beyond (November 13-14, 2010)
- ▶ Leaders' Declaration: Toward a Seamless Regional Economy (November 12-13, 2011)
- ▶ Organization of American States (OAS), Inter-American Telecommunications Commission (CITEL) Mutual Recognition Agreement for Conformity Assessment of Telecommunications Equipment (October 29, 1999)
- ▶ United States-Andean Community Trade and Investment Council Agreement (October 30, 1998)
- ▶ United States-Central American Regional Trade and Investment Framework Agreement (March 20, 1998)
- ▶ United States-Association of Southeast Asian Nations Trade and Investment Framework Arrangement (August 25, 2006)
- ▶ World Wine Trade Group Memorandum of Understanding on Certification Requirements (October 20, 2011)

## **Bilateral Documents and Declarations**

### **Afghanistan**

- ▶ United States-Afghanistan Trade and Investment Framework Agreement (September 21, 2004)

### **Algeria**

- ▶ United States-Algeria Trade and Investment Framework Agreement (July 13, 2001)

### **Angola**

- ▶ United States-Angola Trade and Investment Framework Agreement (May 19, 2009)

### **Argentina**

- ▶ Bilateral Council on Trade and Investment (February 2002)

### **Association of Southeast Asian Nations (ASEAN)**

- ▶ United States-ASEAN Trade and Investment Framework Agreement (August 5, 2006)

### **Bolivia**

- ▶ Agreement between the Government of the United States of America and the Government of the Republic of Bolivia concerning a United States-Bolivia Council on Trade and Investment (May 8, 1990)

### **Brazil**

- ▶ Bilateral Consultative Mechanism (June 25, 2001)
- ▶ United States- Brazil Agreement on Trade and Economic Cooperation (March 19, 2011)

### **Brunei Darussalam**

- ▶ United States-Brunei Darussalam Trade and Investment Framework Agreement (December 16, 2002)

### **Cambodia**

- ▶ United States-Cambodia Trade and Investment Framework Agreement (July 14, 2006)

## **Caribbean Common Market**

- ▶ United States-Caribbean Common Market Trade and Investment Framework Agreement (1991)

## **Central Asian Economies**

- ▶ United States-Central Asian Trade and Investment Framework Agreement (June 1, 2004)

## **China**

- ▶ United States-China Joint Commission on Commerce and Trade Agreements (April 21, 2004)
- ▶ United States-China Joint Commission on Commerce and Trade Agreements (July 11, 2005)
- ▶ Memorandum of Understanding on Combating Illegal Logging and Associated Trade (May 5, 2008)

## **Common Market for Eastern and Southern Africa**

- ▶ United States-Common Market for Eastern and Southern Africa Trade and Investment Framework Agreement (October 2001)

## **East African Community**

- ▶ United States-East African Community Trade and Investment Framework Agreement (July 16, 2008)

## **Ecuador**

- ▶ Agreement between the Government of the United States of America and the Government of the Republic of Ecuador concerning a United States-Ecuador Council on Trade and Investment (July 23, 1990)

## **Egypt**

- ▶ United States-Egypt Trade and Investment Framework Agreement (July 1, 1999)

## **European Union**

- ▶ United States-EU Transatlantic Economic Partnership (May 18, 1998)
- ▶ United States-EU Joint Action Plan for the Transatlantic Economic Partnership (November 9, 1998)

- ▶ Decision to Establish the U.S.-EU High Level Working Group on Jobs and Growth, Joint Statement of the U.S.-EU Summit (November 28, 2010)

### **Georgia**

- ▶ United States-Georgia Trade and Investment Framework Agreement (June 20, 2007)

### **Ghana**

- ▶ United States-Ghana Trade and Investment Framework Agreement (February 26, 1999)

### **Iceland**

- ▶ United States-Iceland Trade and Investment Cooperation Forum Agreement (January 15, 2009)

### **India**

- ▶ United States-India Trade Policy Forum , Framework for Cooperation on Trade and Investment (March 17, 2010)

### **Indonesia**

- ▶ United States-Indonesia Understanding on a Trade and Investment Council (July 16, 1996)
- ▶ Memorandum of Understanding on Combating Illegal Logging and Associated Trade (November 16, 2006)

### **Israel**

- ▶ Understanding regarding Israel's intellectual property regime for pharmaceutical products (February 18, 2010)

### **Iraq**

- ▶ United States-Iraq Trade and Investment Framework Agreement (July 11, 2005)

### **Japan**

- ▶ United States-Japan Joint Statement on the Bilateral Steel Dialogue (September 24, 1999)
- ▶ Exchange of Letters between the United States and Japan—Letters Regarding Electro-Magnetic Compatibility (EMC) Testing of Unintentional Radiators and Industrial Scientific and Medical (ISM) Equipment (February 26, 2007)

**Kuwait**

- ▶ United States-Kuwait Trade and Investment Framework Agreement (February 6, 2004)

**Lebanon**

- ▶ United States-Lebanon Trade and Investment Framework Agreement (November 30, 2006)

**Liberia**

- ▶ United States-Liberia Trade and Investment Framework Agreement (February 15, 2007)

**Malaysia**

- ▶ United States-Malaysia Trade and Investment Framework Agreement (May 10, 2004)

**Maldives**

- ▶ United States-Maldives Trade and Investment Framework Agreement (October 17, 2009)

**Mauritius**

- ▶ United States-Mauritius Trade and Investment Framework Agreement (September 18, 2006)

**Mongolia**

- ▶ United States-Mongolia Trade and Investment Framework Agreement (July 15, 2004)

**Mozambique**

- ▶ United States-Mozambique Trade and Investment Framework Agreement (June 21, 2005)

**Nepal**

- ▶ United States-Nepal Trade and Investment Framework Agreement (April 15, 2011)

**New Zealand**

- ▶ United States-New Zealand Trade and Investment Framework Agreement (October 2, 1992)

**Nigeria**

- ▶ United States-Nigeria Trade and Investment Framework Agreement (February 16, 2000)

## **Oman**

- ▶ United States-Oman Trade and Investment Framework Agreement (July 7, 2004)

## **Pakistan**

- ▶ United States-Pakistan Trade and Investment Framework Agreement (June 25, 2003)

## **Paraguay**

- ▶ Joint Commission on Trade and Investment (September 26, 2003)
- ▶ Memorandum of Understanding on Intellectual Property Rights (March 30, 2004; renewed May 2006, April 2008, November 2009, and December 2011)

## **Philippines**

- ▶ United States-Philippines Trade and Investment Framework Agreement (1989)
- ▶ United States-Philippines Trade and Investment Framework Agreement Protocol Concerning Customs Administration and Trade Facilitation (November 13, 2011)

## **Qatar**

- ▶ United States-Qatar Trade and Investment Framework Agreement (March 19, 2004)

## **Rwanda**

- ▶ United States-Rwanda Trade and Investment Framework Agreement (June 7, 2006)

## **Saudi Arabia**

- ▶ United States-Saudi Arabia Trade and Investment Framework Agreement (July 31, 2003)

## **South Africa**

- ▶ United States-South Africa Trade and Investment Framework Agreement (February 18, 1999)

## **Southern Africa Customs Union**

- ▶ United States-Southern Africa Customs Union Trade, Investment, and Development Cooperative Agreement (July 16, 2008)

## **Sri Lanka**

- ▶ United States-Sri Lanka Trade and Investment Framework Agreement (July 25, 2002)

## **Switzerland**

- ▶ United States-Switzerland Trade and Investment Cooperation Forum Agreement (May 25, 2006)

## **Taiwan**

- ▶ United States-Taiwan Trade and Investment Framework Agreement (September 19, 1994)

## **Thailand**

- ▶ United States-Thailand Trade and Investment Framework Agreement (October 23, 2002)

## **Tunisia**

- ▶ United States-Tunisia Trade and Investment Framework Agreement (October 2, 2002)

## **Turkey**

- ▶ United States-Turkey Trade and Investment Framework Agreement (September 29, 1999)

## **Ukraine**

- ▶ United States-Ukraine Trade and Investment Cooperation Agreement (March 28, 2008)

## **United Arab Emirates (UAE)**

- ▶ United States-United Arab Emirates Trade and Investment Framework Agreement (March 15, 2004)

## **Uruguay**

- ▶ United States-Uruguay Bilateral and Commercial Trade Review (May 20, 1999)
- ▶ Joint Commission on Trade and Investment (January 25, 2007)
- ▶ United States-Uruguay Trade and Investment Framework Agreement (January 25, 2007)
  - ▶ United States-Uruguay Trade and Investment Framework Agreement Protocol Concerning Trade and Environment Public Participation (October 2, 2008)
  - ▶ United States-Uruguay Trade and Investment Framework Agreement Protocol Concerning Trade Facilitation (October 2, 2008)

**Vietnam**

- ▶ United States-Vietnam Trade and Investment Framework Agreement (June 21, 2007)

**West African Economic and Monetary Union**

- ▶ United States-West African Economic and Monetary Union Trade and Investment Framework Agreement (April 24, 2002)

**Yemen**

- ▶ United States-Yemen Trade and Investment Framework Agreement (February 6, 2004)