

# 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.