

# 2009 TRADE POLICY AGENDA AND 2008 ANNUAL REPORT

*OF THE PRESIDENT OF THE UNITED STATES  
ON THE TRADE AGREEMENTS PROGRAM*



UNITED STATES TRADE REPRESENTATIVE





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# **2009 Trade Policy Agenda and 2008 Annual Report**

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on the Trade Agreements Program



# Foreword

The 2009 Trade Policy Agenda and 2008 Annual Report of the President of the United States on the Trade Agreements Program are submitted to the Congress pursuant to Section 163 of the Trade Act of 1974, as amended (19 U.S.C. 2213). Chapter II and Annex II of this document meet the requirements of the World Trade Organization in accordance with Sections 122 and 124 of the Uruguay Round Agreements Act. In addition, the report also includes an annex listing trade agreements entered into by the United States since 1984. Trade data for 2008, where listed, are annualized based on January to November data. Services data by country are only available through 2007.

The Office of the United States Trade Representative (USTR) is responsible for the preparation of this report, which was written by USTR staff. The Office of the U.S. Trade Representative gratefully acknowledges the contributions of the Environmental Protection Agency, the Departments of Agriculture, Commerce, Health and Human Services, Justice, Labor, and State.

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## LIST OF FREQUENTLY USED ACRONYMS

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

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

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**ANNEX I**

**ANNEX II**

**ANNEX III**

**THE PRESIDENT'S  
TRADE POLICY AGENDA**



# I. THE PRESIDENT'S TRADE AGENDA: MAKING TRADE WORK FOR AMERICAN FAMILIES

President Obama has charted a course for economic recovery that will restore growth and promote broad-based prosperity. It will emphasize improvements in the living standards of American families while reorienting our economy to meet today's challenges – energy, the environment, and global competitiveness.

The President's trade agenda will contribute to achieving these objectives. It will reflect our respect for entrepreneurship and market competition, our environment, opportunity for all, and the rights of workers. We seek to benefit Americans and the world by pursuing trade policies that embody these values. We particularly recognize the need to pay special attention to how our policies influence the well being of people struggling both at home and in the poorest regions of the world. Fundamentally, our trade policy needs a keen appreciation of its economic consequences for our workers, their families, and their communities, a fact recognized in the progress our Congress is making to upgrade our existing adjustment assistance programs for workers.

Eliminating barriers to trade in the face of serious turmoil in our economy and financial markets will be a challenge. In enacting the Economic Recovery Act, the Congress affirmed our commitment to comply with the rules that govern international commerce and reached agreement to improve our trade adjustment assistance programs. These acts recognize the importance of trade to our economy and our responsibilities to those who face the highest hurdles in adjusting to changing trade patterns.

The President will use all available tools to address this economic crisis including achieving access to new markets for American businesses large and small. One of these tools is the authority Congress can grant the Executive to negotiate trade agreements and bring them to the legislature for an up or down vote. We will only ask for renewed trade negotiating authority after engaging in extensive consultation with Congress to establish the proper constraints on that authority and after we have assessed our priorities and made clear to this body and the American people what we intend to do with it.

Trade is a significant and increasingly important factor in contributing to the U.S. and global economies. In 2008, U.S. goods and services trade (exports plus imports) were equal to 30.8 percent of U.S. Gross Domestic Product (GDP), and exports alone accounted for 13.1 percent of the U.S. economy. World goods and services trade accounted for an estimated 33.5 percent of global GDP in 2008 (about \$20.8 trillion dollars). In other words, trade is a large and growing part of our everyday commerce, and the jobs produced by these transactions are significant and well-paying.

Yet, there are signs that trade, which has grown consistently in recent years, is slowing markedly. For the first time since 1982, global trade flows are projected to decline in 2009 by 2.1 percent to 2.8 percent. U.S. trade in goods and services already dropped by 14 percent between the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2008.

Pressing economic conditions require the discipline to respond to immediate problems while staying true to our long-term goals. The President's approach will be to promote adherence to the rules-based international trading system in order to promote economic stability, while introducing new concepts – including increasing transparency and promoting broader participation in the debate – to help revitalize economic growth and promote higher living standards at home and abroad. We are in the process of developing a plan of action to address the pending trade agreements in consultation with Congress. We

hope to move on the Panama Free Trade Agreement (FTA) relatively quickly. And we plan to establish benchmarks for progress on the Colombian and South Korean FTAs.

The President's agenda will take account of the changing contours of the world economy by underscoring the importance of continuing education and the mastery of new skills to ensure we continuously strengthen our competitiveness. The President's agenda will also stress the importance of harnessing new technologies to help our citizens learn, conduct business, and compete. It recognizes the impact of transportation and energy infrastructure on the location and productivity of economic activity. The President's agenda also recognizes the necessity of pursuing energy and environmental policies that ensure a sustainable and prosperous future for our planet. These changes will make environmental dynamics more central to the direction of the world economy.

We also want to expand the universe of those who benefit from trade and fully address the costs it creates. For example, trade and commercial policies should help small and medium-sized firms become more integrated as effective competitors in the global marketplace. Our goal should not only be to help them respond to competitive imports, it also should be to create conditions that help them become effective exporters.

Open world markets can incentivize people and capital to move from less productive to more productive jobs and uses. This process ultimately stimulates higher wages and innovation while lowering prices for consumers. But trade outcomes do not lift everyone up in the short run, and cause painful adjustments for some. It is the responsibility of government to ensure that people receive the assistance they need to make those adjustments. Our trade policy needs a keener appreciation of the consequences of trade for our workers, their families, and their communities. The Congress has already made meaningful progress on this front by upgrading our existing adjustment assistance programs for workers.

To make support for global markets sustainable, our consideration of the effects of trade can not stop at the edge of our borders. Trade is more beneficial for the world, and fairer for everyone, if it respects the basic rights of workers. Our trade policies should build on the successful examples of labor provisions in some of our existing agreements.

Also, as we tackle the issues of equity, we need to ask how trade policy can respond to mounting global environmental challenges. These range from climate change to dangerously depleted resources such as fisheries. We should aim to make trade a part of the tool kit of solutions for addressing international environmental challenges.

The clear implication of these global challenges is that simply lowering tariffs and eliminating tariffs will not produce a successful trade policy. Managing our nation's trade policy and engagement in the world economy has become an ever more complex challenge. Therefore, we must bring the same vigor and innovation to making trade policies more transparent and accountable that we are now applying to the process of developing and implementing our domestic economic policies.

## **PRESIDENT OBAMA'S POLICY PRIORITIES**

### **Support a rules-based trading system**

This Administration reaffirms America's commitment to a rules-based trading system that advances the well being of the citizens of the United States and our trading partners. We all win from building on the foundations for peaceful commercial exchange created since 1945.

We shall continue this country's commitment to the World Trade Organization's (WTO) system of multilateral trading rules and dispute settlement. The WTO is both a venue for multilateral liberalization through negotiation and a defense against protectionism. We will aggressively defend our rights and benefits under the rules-based trading system. This is in the interest of all Americans.

A strong, market-opening agreement for both goods and services in the WTO's Doha Round negotiations would be an important contribution to addressing the global economic crisis, as part of the effort to restore trade's role in leading economic growth and development. The Administration is committed to working with our trading partners for such an outcome. However, it will be necessary to correct the imbalance in the current negotiations in which the value of what the United States would be expected to give is well-known and easily calculable, whereas the broad flexibilities available to others leaves unclear the value of new opportunities for our workers, farmers, ranchers, and businesses.

### **Advance the social accountability and political transparency of trade policy**

As the scope of trade policy expands to address non-tariff and other barriers to trade, we need trade policy to meet strong standards of social accountability and political transparency.

Social accountability includes tackling adjustment issues for the work force that are created by changes in global trade. In the stimulus, the Congress expanded eligibility for Trade Adjustment Assistance (TAA) by adjusting the criteria for receiving benefits and broadening the sectors of the workforce (*e.g.*, services workers) eligible for TAA.

Social accountability also means working with our trading partners to improve the status, conditions, and protections of workers. We need to ensure that expanded trade is not at the expense of workers' welfare and that competitiveness is not based on the exploitation of workers. Building on the provisions concerning labor in some of our FTAs is a way forward in this regard.

In addition to promoting social accountability, U.S. trade policy development needs to become more transparent. Many stakeholders are frustrated with the lack of consultation involved in the development and implementation of trade policy, but we can and should expand public participation in advising U.S. trade negotiators. The methods for doing so will have to evolve but improved websites for the trade policy agencies and more public consultation venues outside the established advisory groups are important steps toward this goal.

### **Make trade an important policy tool for achieving progress on national energy and environmental goals**

The President has called for new policies to advance a cleaner environment, a stronger response to the challenge of climate change and more sustainable natural resources and energy supplies. Trade policy makers will be working to examine how trade can advance these goals.

We should build on the environmental goods and services negotiations begun in the Doha Round, whether at the WTO or in other negotiating arenas. We should assure that the frameworks for trade policy and for tackling global climate complement each other so as to reinforce sustainable economic growth. We should ensure that climate policies are consistent with our trade obligations, but we also should be creative and firm in assuring that trade rules do not block us from tackling this critical environmental task.

## **Make sure that trade agreements are addressing the major unresolved issues that are responsible for trade frictions**

As tariff levels have declined, other impediments to world trade have become more significant. American firms increasingly focus on “behind the border” measures and other non-tariff barriers (NTBs) as major impediments to their access to other national markets. We will negotiate for improved transparency and due process in our partners’ trade practices and policies, including government procurement and the crafting of market regulations. We will seek to open markets and secure fair treatment for American services, which are an increasingly important element of our trading profile. We will protect American innovations and creativity by negotiating and enforcing strong and effective intellectual property protections. We will pursue advances in trade facilitation and consumer product safety, through plurilateral negotiations if appropriate. And we will work with our trading partners to develop and implement policies that address the heightened security threats associated with trade in the least trade-impeding manner possible.

## **Build on existing Free Trade Agreements and Bilateral Investment Treaties in a responsible and transparent manner**

The Bush administration has left a legacy of numerous pending agreements and negotiations. We will conduct extensive outreach and discourse with the public on whether these agreements appropriately advance the interests of the United States and our trading partners. In particular, we will promptly, but responsibly, address the issues surrounding the Colombia, Korea and Panama Free Trade Agreements. We shall also review the implementation of our FTAs and bilateral investment treaties (BITs) to ensure that they advance the public interest.

We will also work with Canada and Mexico to identify ways in which NAFTA could be improved without having an adverse effect on trade. We will do this in a collaborative spirit and emphasize ways in which this process can benefit the citizens of all three countries. And, we will consider proposals for new bilateral and regional agreements when they promise to deliver significant benefits consistent with our national economic policies. If new negotiating authority is required, we will seek that from Congress.

## **Uphold our commitment to be a strong partner to developing countries, especially the poorest developing countries**

Expanded trade can make an important contribution to boosting growth in developing countries and lift their national income levels. Economic growth in these countries benefits the American economy by expanding markets for American exporters. We shall promote trade policies, including technical assistance for capacity building, that will help these countries engage successfully with the world economy.

Trade preference programs help entrepreneurs in developing countries compete effectively in the world trading system. Many of our nation’s trade preference programs are coming due for legislative review. We will work with the Congress and public stakeholders on their renewal and reform. We will give careful consideration to proposals to concentrate benefits more effectively on the poorest countries and those that need the margin of preference to compete.

In addition to preferences, building trade capacity in developing countries will help them to reap the benefits of the global economy. The United States is already the largest bilateral provider of trade capacity building assistance, and we will continue to support these efforts.

Finally, especially in this time of an international financial crisis, credit for trade financing is critical. We will work with international financial institutions and export credit facilities to ensure that there is adequate trade financing available, especially for small and medium-sized exporters.

## **Conclusion**

This agenda addresses the underlying goals and priorities for this Administration's trade policy within the context of a financial crisis and rapidly changing economies. A reading of the last Administration's trade policy record that follows in this volume makes clear that there are many strategic and programmatic choices that must be made to advance the President's agenda. These choices will be the work of 2009. Our agenda is to combine the best elements of previous trade policies, especially a rules-based system of global trade, with a determination to make trade policy a powerful contributor to the President's national economic agenda for revival of the global economy and renewal of growth that benefits all people. If we work together, free and fair trade with a proper regard for social and environmental goals and appropriate political accountability will be a powerful contributor to the national and global well being.

February 27, 2009



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## II. THE WORLD TRADE ORGANIZATION

### A. Introduction

At the core of U.S. trade policy is a steadfast support of a rules-based multilateral trading system. Working through the World Trade Organization (WTO), the United States remains in a leadership role in securing the reduction of trade barriers in order to expand global economic opportunity, raise standards of living, and reduce poverty. The WTO Agreement also provides the foundation for high standard U.S. bilateral and regional agreements that make a positive contribution to a dynamic and open global trading system based on the rule of law. On a day-to-day basis, the WTO provides opportunities for U.S. interests to be advanced through the more than 20 standing Committees (not including numerous additional Working Groups, Working Parties, and Negotiating Bodies). These groups meet regularly to provide robust fora for Members to exchange views, work to resolve questions of Members' compliance with commitments, and develop initiatives aimed at systemic improvements.

This chapter outlines the work of the WTO in 2008 and the work ahead in 2009 – including on the multilateral trade negotiations launched at Doha, Qatar in November 2001, known as the Doha Development Agenda (DDA or Doha Round). This chapter details the work under the DDA as well as that of the WTO standing Committees and their subsidiary bodies and provides a review of the implementation and enforcement of the WTO Agreement. It also covers the critical accession negotiations to expand the WTO's membership to include new Members seeking to reform their economies and join the rules-based global trading system. In 2008, Ukraine and Cape Verde became Members of the WTO.

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

Throughout 2008, the United States worked to advance the Doha Round trade negotiations and the implementation of the WTO Agreement. The United States continued to lead the effort to move the DDA forward toward a successful final agreement and to rally other WTO Members to stay focused on achieving an ambitious market-opening outcome that would yield meaningful new trade flows. Building on Chair-led work in Geneva in the first half of the year, a group of approximately 30 Ministers met in Geneva in July in an effort to achieve breakthroughs in modalities in agriculture and non-agricultural market access (NAMA) that would thereby allow commencement of the final phase of negotiations. Ministers also conducted a services “signaling” conference to advance work on that market access pillar of the overall Doha Round negotiations. While significant progress was made in July, it fell short of the needed breakthrough. Seeking to build on progress made in July, senior officials resumed work toward agriculture and NAMA modalities in early September, and Chairs resumed broader multilateral meetings in October. These meetings continued through the end of the year.

In fall 2008, Members' focus turned to the emerging global economic crisis and the contributions the WTO should make toward ensuring the mistakes of history would not be repeated in the form of countries turning inward and creating new barriers to trade and investment as a response to the crisis. At a November 12 meeting of the major providers of trade finance at the WTO, the potential effect of the global economic situation on access to trade credit was reviewed, and a newly created WTO Secretariat Task Force was instructed to follow-up on the issue. At the November 15 Summit on Financial Markets and the World Economy in Washington, G-20 Leaders underscored the critical importance of rejecting

protectionism and not turning inward in times of financial uncertainty, specifically committing themselves not to raise trade barriers for a twelve month period and to strive to reach an ambitious and balanced conclusion to the Doha negotiations:

*We underscore the critical importance of rejecting protectionism and not turning inward in times of financial uncertainty. In this regard, within the next 12 months, we will refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing World Trade Organization (WTO) inconsistent measures to stimulate exports.*

However, in the days and weeks following the G-20 summit, a number of countries faltered in their commitments: Indonesia placed new licensing restrictions on at least 500 products; Argentina and Brazil sought to raise Mercosur tariffs on a range of agriculture and textiles products (although one month later, they backed away from taking such an action); on November 18, India increased the duty on crude soybean oil by 20 percent and the tariff on a range of iron and steel products by 5 percent; Russia increased taxes on certain imported foreign cars to a minimum of 35 percent; and France outlined plans to launch a state fund to protect French companies from foreign takeovers. At a December meeting of the WTO General Council, Members decided that the WTO would monitor and report on newly imposed restrictive trade measures, utilizing the WTO's existing Trade Policy Review Body to fulfill the task.

As 2008 drew to a close, the economic crisis highlighted the importance of maintaining and expanding open markets, setting the stage for further efforts in 2009 to successfully conclude the Doha Round negotiations. All of the Doha Round negotiating groups is expected to resume their work early in 2009. There will also be a more robust, public monitoring by the WTO of new trade measures by Members aimed at restricting trade, in order to support the G-20 Leaders' commitments to resist protectionist measures.

## **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 on-going WTO Committees. In addition, the mandate gives further direction on the WTO's existing work program and implementation of the WTO Agreement. The goal of the DDA is to reduce trade barriers in order to expand global economic growth, development, and opportunity. The main focus of the negotiations under the DDA is in the following areas: agriculture; industrial goods market access; services; trade facilitation; WTO rules (i.e., trade remedies, fish subsidies, and regional trade agreements); and development.

The Trade Negotiations Committee (TNC), established at the WTO's Fourth Ministerial Conference in Doha, oversees the agenda and negotiations in cooperation with the WTO General Council. The WTO Director General serves as Chairman of the TNC and worked closely with the 2008 Chairman of the General Council, Ambassador Bruce Gosper of Australia. Through formal and informal processes, the Chairman of the General Council, along with WTO Director General Pascal Lamy, plays a central role in steering efforts toward progress on the DDA. (Annex II identifies the various negotiating groups and special bodies responsible for the negotiations, some of which are the responsibility of the WTO General Council.)

As 2008 began, WTO Members were continuing to work towards agreement on modalities – the key framework of variables that would define the depth of tariff cutting and the extent of so-called flexibilities in agriculture and non-agricultural market access (NAMA), and set the stage for schedules and texts to be

put on the table in order to start the final stage of negotiations. In mid-2007, the Chairs of the agriculture and NAMA negotiating groups issued draft modalities texts, and followed up in the second half of 2007 with formal and informal consultations. In February 2008, the Chairs of these negotiating groups issued revised texts reflecting their views of the progress made on key issues resulting from the consultations. In addition, the Chair of the Services negotiating group issued an initial report that outlined key areas of convergence as well as areas needing further discussion by Members. Following additional consultations with Members in the first half of the year, the agriculture and NAMA Chairs issued revised texts in May and July 2008. The Chair of the Services negotiating group issued a revised report in May 2008.

Approximately 30 Ministers met in Geneva from July 19 to 29 in an effort to complete work on the modalities. They achieved significant progress in further narrowing the issues on agriculture and NAMA modalities, but fell short of a comprehensive agreement. The Ministers also held a constructive “signaling conference” on Services, at which they previewed offers to be exchanged after agreement is reached on agriculture and NAMA modalities.

On the third day of the July meetings, Director General Lamy convened a “G7” leadership group to tackle the most difficult issues on agriculture and NAMA. This was a significant development, effectively providing China, Brazil and India with a seat at this leadership table, in addition to the United States, the European Communities, Japan and Australia. The inclusion of the three key emerging markets represented an important step forward, moving the overall negotiating dynamic to more closely reflect the dynamic economic reality of today’s trading system. As today’s fastest growing economies, China, Brazil and India have enjoyed a new level of influence and will be expected to take-on an increased level of responsibility to make the trade liberalizing decisions and contributions that would benefit not only their own economic interests, but also promote global economic growth and development to the benefit of all developing countries.

Five days into the meetings, WTO Director General Lamy put forward to the G7 a package of proposed solutions for approximately 10 of the toughest issues that had divided the membership during the Doha Round negotiations on agriculture and NAMA. The solutions were an attempt to capture a balance that shared the pain and gain of the proposed outcomes. Six of the seven members of the leadership group, including the United States, initially indicated that while some of the proposed solutions set out in the Lamy package would be difficult to accept, they could support it as a compromise package. India was initially the only hold-out in accepting the Lamy package, but was subsequently joined by China. These Members’ objections focused primarily on two elements of the proposed packages: (1) their opposition to participating in the negotiation of industrial sectoral initiatives aimed at increasing the ambition of the industrial tariff negotiations through further tariff cuts on certain designated industrial goods such as chemicals, industrial machinery, and electronics; and (2) their insistence on further flexibilities from tariff cuts by lessening disciplines on the so-called “Special Safeguard Mechanism” (SSM), a new measure that would be created under the Doha Round agriculture negotiations, allowing developing countries to raise tariffs beyond their existing allowable WTO limits.

Several developing country exporters also opposed the further flexibilities sought by India and China that could have resulted in diminished market access for agricultural goods. There was a clear divergence between the economic interest and, therefore, the negotiating positions of different developing countries. The continuing move away from a simplistic north-south dichotomy was also seen in the NAMA negotiations, where the “middle ground” developing countries of Chile, Colombia, Costa Rica, Hong Kong China, Israel, Mexico, Pakistan, Peru, Singapore, and Thailand maintained a longstanding objective of more ambitious NAMA tariff-cutting coefficients and flexibilities than what was sought by NAMA hardliners such as India, Argentina, and South Africa.

The SSM issue in the Doha Round agriculture negotiations received extensive attention from Ministers and senior officials during the course of the last few days of the July meetings. Despite intensive efforts, a compromise could not be reached that would ensure that application of the SSM would not be abused. The impasse ultimately led to the conclusion that modalities would not be immediately reached, and the nine days of meetings were concluded on July 29, 2008.

Discussions resumed in September among senior officials of the G7 leadership group, and broadened in October as the agriculture and NAMA Chairs resumed consultations with Members in various configurations. These discussions continued through year's end. On November 15, leaders at the G-20 meeting in Washington instructed their trade ministers to work to agree on modalities by the end of the year that would lead to an ambitious and balanced Doha Round outcome. They also noted the need for each country to make the positive contributions necessary to achieve this result. LDC (Least Developed Countries) Ministers and APEC Leaders issued similar statements on November 20 and 22, respectively.

In light of the further narrowing of differences which emerged in the closing months of 2008, the agriculture and NAMA Chairs issued revised texts on December 6. However, in light of remaining wide gaps over several key issues, Director General Lamy chose not to call another meeting of Ministers until further convergence could be achieved, and thereby present greater potential that such a meeting would achieve a successful outcome.

During the final TNC meeting in 2008 on December 17, Director General Lamy recommended that the Chairs of the agriculture and NAMA negotiating groups resume work at the beginning of 2009, focusing on the areas which remain open and helping Members forge consensus. The Chairs of other Doha Round negotiating groups were also instructed to proceed with their work.

In the December 17 TNC meeting, with respect to wider WTO work, Director General Lamy noted the WTO's responsibility to follow up on the trade measures taken in the wake of the economic crisis, highlighting the work to be done by the Secretariat Task Force to produce regular updates of these measures and the Trade Policy Review Body in monitoring new trade measures. Lamy also recommended that the Secretariat Task Force keep reviewing developments in the area of trade finance and that the WTO develop a clear roadmap for work on Aid for Trade that would culminate with the second Aid for Trade Global Review in June 2009.

### **Prospects for 2009**

As the negotiations under the DDA begin in 2009, the linchpin to Doha Round success will remain securing meaningful market access commitments in agriculture, NAMA and services, particularly from key advanced developing countries that have been the fastest growing economies and are increasingly key players in the global economy. To generate the kind of economic growth, development, and poverty alleviation that WTO Members committed to when they launched the Doha Round in 2001, key emerging markets must take on the additional responsibilities that come with their increased influence in the global economy and make commitments that result in meaningful new trade flows.

The United States will continue to play a leadership role and work with other WTO Members in pursuit of a successful conclusion to the DDA that opens new markets and creates new trade flows. The challenge in 2009 will continue to be how to translate the expressions of political will, into concrete and specific details that will enable WTO Members to complete the work begun with the launch of negotiations at the Doha meeting. Monitoring new trade measures and encouraging Members to uphold their commitments to reject protectionism will also be key areas of WTO work in 2009.

# **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.

In early 2007, the United States engaged in discussions on agriculture with Brazil, the European Union and India as part of the broader “G4” process. When the G4 process broke down in June 2007, the central focus of the Doha negotiations returned to the multilateral process in Geneva. Ambassador Falconer tabled his draft text on agriculture in July on his own initiative, attempting to reflect progress in the negotiations and to narrow differences. Reflecting to some degree the state of play in the agriculture negotiations in July 2007, one concern with the draft text was the uneven handling of the three “pillars” in agriculture. While the domestic support and export competition pillars sections of the text were highly developed, many key topics in the market access pillar remained conceptual at best – with regard to both developed and developing country market access.

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

## **Major Issues in 2008**

Throughout 2008, the United States worked to advance the Doha Round trade negotiations and the implementation of the WTO Agreement. The United States continued to lead the effort to move the DDA forward toward a successful final agreement and to rally other WTO Members to stay focused on achieving an ambitious market-opening outcome.

The United States participated actively in the intensive consultations on the agriculture text chaired by Ambassador Falconer, resulting in an updated draft text in February 2008. The February text reflected Ambassador Falconer’s perception of the progress made in his consultations in previous months. Although the Geneva process addressed all areas of the negotiations, considerable attention had been given to the area of market access. The February text contained possible structural elements for the Sensitive Products, Special Products, Special Safeguard Mechanism, and other key market access modalities. Yet the text continued to leave a number of open issues affecting the level of ambition for each of these key topics in the market access pillar.

Intensive discussions on agriculture continued in Geneva during the first half of 2008. Again, all areas of the negotiations were examined, with particular attention on the architecture for the key elements in the market access pillar. In addition to the consultations that he chaired, Ambassador Falconer asked a group of developed and developing country Members (including the United States) to work together on data and methodological issues affecting the use of a “partial designation” approach to implement the new tariff-

rate quotas that would be created for Sensitive Products, and to report progress to the broader consultative process under his direct auspices.

Ambassador Falconer produced a second update to his draft agriculture text in May 2008 that reflected his perspective on the discussions in early 2008 as well as on the input from Members on the partial designation methodology. Ambassador Falconer tabled another update to his text in July 2008 which he intended to be used as a basis for Ministers' discussions in July.

Seeking to build on progress at the July meeting, Senior Officials resumed work on modalities for agriculture in early September, and Ambassador Falconer chaired numerous meetings of Senior Officials in October and November. Ambassador Falconer produced an updated text on December 6, 2008, along with three "working documents" addressing topics where he considered progress had been made since July 2008, but the issues were not yet at the point where he considered there to be a basis to incorporate "fully defined wording" within the text.

### **Prospects for 2009**

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

## **2. Council for Trade in Services, Special Session**

### **Status**

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

The Hong Kong Ministerial Declaration called for the negotiations to proceed to conclusion with a view to promoting the economic growth of all trading partners, with due respect for the right of Members to regulate their domestic markets. The Hong Kong Declaration provided a framework for intensifying the negotiations, with the goal of expanding the sectoral and modal coverage of commitments and improving their quality. 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 21 sectors and issues of interest. The United States joined in co-sponsoring 13 of these requests in the following areas: architectural, engineering and integrated engineering services; audiovisual services; computer and related services; construction and related engineering services; distribution services; private education services; energy services; environmental services; financial services; legal services; Mode 3 (commercial presence); postal/courier services including express delivery; and telecommunication services.

## **Major Issues in 2008**

The United States engaged actively in bilateral and plurilateral negotiations, pressing Members for a high level of ambition for services liberalization in such key sectors as computer, distribution, energy, environmental, express delivery, financial, and telecommunication services.

In order to maintain parity with the Agriculture and NAMA work on modalities, a number of Members agreed to participate in a services signaling conference to be held in parallel with the July 2008 Minister-level meetings on modalities. On July 26, 2008, a group of roughly 32 trade ministers engaged constructively on services market access requests, indicating their plans for new or improved commitments as well as their expectations from others. Based on the information shared at the signaling conference, Members were able to better gauge the progress in the services market access negotiations with a view to refining their requests in advance of the next round of revised offers and final offers. The United States and other delegations signaled improvements, but overall progress was incremental and more work will be necessary in order to achieve the extent of services liberalization necessary for a positive outcome.

In addition to the signaling conference, the United States and other Members pressed the Chair of the CTS-SS to produce a services text that would be released in parallel with the agreed modalities for Agriculture and NAMA. The United States pushed for a strong statement of ambition for services market access, on a par with that in the agriculture and non-agricultural goods negotiations, including improvements that respond to bilateral and plurilateral requests; a binding of current levels of liberalization, and new market access in key service sectors; elimination of barriers to establishment, such as foreign equity requirements; and removal of limitations on the cross-border supply of services. The Chair issued a draft report on May 26 that outlined key areas of convergence as well as areas needing further discussion by Members. After further consultations with the Chair, all but four Members agreed on a compromise report on elements required to conclude the services negotiations. On July 23, 2008, the Chair indicated that he considered the resulting services text to be complete, while noting the dissent of four Members. However, because Members were unable to reach agreement on modalities in other negotiating groups, the services text has yet to be finalized.

Throughout the negotiations, the United States has recognized the importance of modalities for the special treatment of least-developed country Members in the negotiations on trade in services (LDC Modalities) and the need to expedite consultations on an effective mechanism, pursuant to paragraph 9 of Annex C of the Hong Kong Ministerial Declaration. In cooperation with other Members, and through close cooperation with the LDCs, the United States supported an approach to LDC Modalities that would meaningfully address the requests of LDC Members. However, as an integral part of the negotiations for a services text, the issue of an agreed mechanism to implement the LDC Modalities remains unresolved.

## **Prospects for 2009**

The United States will continue to seek a high level of ambition and pursue aggressively its priority market access objectives, including opening up foreign markets to world-class service providers by having Members remove equity limitations, quantitative restrictions, and other barriers to trade in services.

### 3. Negotiating Group on Non-Agricultural Market Access (NAMA)

#### Status

In the NAMA negotiations, which cover industrial goods, fish, and fish products, the United States is seeking significant new competitive opportunities for U.S. businesses through cuts in applied tariff rates, and the reduction of non-tariff barriers.

The outcome of these negotiations is crucial for trade in industrial goods, which accounts for over 75 percent of total global trade in goods and more than 90 percent of total U.S. goods exports. In 2008, U.S. exports of industrial goods grew to an annualized \$1.2 trillion (based on data from January to September) – more than 9 times the level of U.S. agricultural exports. This figure is up 16 percent from 2007 and up 166 percent from 1994.

Markets	% of Tariffs with WTO Ceiling	WTO Ceiling Tariff Average*	2006 Applied Tariff Average
United States	100%	3.9	3.9
European Union	100%	4	4
Argentina	100%	30.6	10.5
Brazil	100%	29.4	10.8
China	100%	9	8.9
Egypt	99.2%	28.7	12.8
India	70.4%	33.5	14.8
Philippines	62.2%	22.8	6.8
South Africa*	96.3%	16	8

Source: WTO IDB and CTS Databases

\* This calculation excludes products with no legal WTO ceiling rate.

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

#### Major Issues in 2008

In 2008, Members focused on a number of substantive elements relating to tariff liberalization in NAMA: (1) the tariff-cutting formula and specifics on the level of ambition to be achieved by developed and developing country Members; (2) the scope of exceptions available to developing countries applying the tariff-cutting formula; (3) flexibilities to be provided for least-developed country (LDC) Members and other developing country Members; (4) a sectoral tariff component; and (5) work on non-tariff barriers.

Members attempted to finalize these elements at the WTO Ministerial in Geneva in July 2008, but consensus on these issues continued to be elusive. Discussions resumed in September and continued to the end of the year in an effort to further narrow differences on the various NAMA issues.

The key U.S. NAMA objective is to achieve an ambitious outcome that results in significant new market access through cuts in applied tariff rates in both developed and key developing country Member markets. The United States therefore supports a combination of tariff cuts achieved through applying a Swiss formula with different coefficients<sup>1</sup> for developed and developing Members and sectoral tariff elimination initiatives to most effectively achieve the objectives laid out in the Doha mandate. The United States also believes that all the elements of NAMA from the Framework in the July 2004 Package must be

<sup>1</sup> A Swiss formula is a progressive non-linear formula under which high tariffs are cut more than low tariffs. The Swiss coefficient sets a ceiling that tariffs approach but never reach, thus determining the overall level of ambition of the formula. The lower the number, the more aggressive the tariff cuts. Members are negotiating the coefficients to be used in the Swiss formula to determine the depth of tariff cuts for developed country Members and the depth of the tariff cuts for developing country Members.

considered in tandem. There is an inextricable link between the formula, flexibilities, and sectoral initiatives.

In negotiations leading up to the July 2008 meeting of Ministers, the formula coefficients and flexibility options were a primary area of discussion. With regard to coefficients, Members discussed options that reflect the appropriate levels of ambition, through the depth of tariff cuts they will produce, for developed and developing countries. The Chair's text from December 2008 proposed a choice for developing countries between three coefficients (20, 22 and 25 depending on the level of flexibilities taken) and a coefficient of 8 for developed countries.

In the current NAMA negotiating text, approximately thirty self-designated developing countries<sup>2</sup> are expected to apply the tariff cutting Swiss formula, choosing between the three available coefficients in the Chair's text, each linked with a different level of flexibilities. These countries include nine members of the so-called NAMA-11<sup>3</sup>, which has advocated a high developing country coefficient in the formula and expanded flexibilities for developing countries, as well as the members of Middle Ground group<sup>4</sup>, which has generally supported stronger market opening results and more limited exceptions to the formula. Also among the countries expected to apply a developing country coefficient are the four Recently Acceded Members (RAMs)<sup>5</sup> that are not considered small, vulnerable economies or Very Recently Acceded Members (VRAMs).

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

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

Further progress was made on sectoral tariff initiative discussions in 2008. The United States continued efforts to inform other Members of the benefits of sectoral liberalization and proposed specific flexibility

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

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

<sup>2</sup> Argentina; Bahrain; Brazil; Chile; China; Chinese Taipei; Colombia; Costa Rica; Croatia; Egypt; Hong Kong China; India; Indonesia; Israel; Korea; Kuwait; Malaysia; Mexico; Morocco; Oman; Pakistan; Peru; Philippines; Qatar; Singapore; South Africa; Thailand; Tunisia; Turkey; Venezuela; and UAE. Note: There is some discussion on the development status of Chinese Taipei, Korea, and Croatia for the purposes of these negotiations.

<sup>3</sup> Argentina; Brazil; Egypt; India; Indonesia; Namibia (non-formula applying country); Philippines; South Africa; Tunisia; and Venezuela.

<sup>4</sup> WTO Members affiliated with the Middle Ground group include: Chile; Colombia; Costa Rica; Hong Kong China; Israel; Mexico; Pakistan; Peru; Singapore; and Thailand.

<sup>5</sup> China; Chinese Taipei; Croatia; and Oman.

<sup>6</sup> Cameroon; Congo; Cote d'Ivoire; Cuba; Ghana; Kenya; Macao; Mauritius; Nigeria; Sri Lanka; Suriname; and Zimbabwe

options for developing country Members based on sensitivities they raised in sector-specific discussions. The United States worked with other sponsors of sectoral initiatives to refine sectoral proposals and draft the structure of individual sectoral agreements. To date, Members have proposed fourteen sectors that are being considered for such agreements.

Non-tariff barriers remain an integral and equally important component of the NAMA negotiations. In line with the Hong Kong Ministerial Declaration, WTO Members continued to consider how NTBs could be addressed horizontally (i.e., across all sectors), vertically (i.e., pertaining to a single sector), and through a bilateral request/offer process. In 2008, the United States tabled three draft proposed texts – (1) on transparency in export licensing, (2) on non-tariff barriers pertaining to safety and electromagnetic compatibility for electronic products, and (3) on non-tariff barriers relating to technical barriers to trade for automotive products. The latter two, as well as five other NTB proposals (including the U.S. proposal on remanufactured products and the U.S. proposal to facilitate and harmonize labeling requirements for textiles, clothing, footwear, and travel goods) were identified by Members in July 2008 as priorities for further negotiation to reach legal agreements.

#### **Prospects for 2009**

In 2009, the United States will continue to seek an ambitious NAMA outcome that will deliver new market access in key developed and developing country Member markets, while supporting elements of flexibility for developing country Members that does not operate to undermine the overall level of ambition. The United States remains committed to the view that true development gains can best be achieved through further real market liberalization by both developed and developing Members.

NTB proposals addressing the following issues and sectors identified in July 2008 as priorities for further negotiation by Members:

- Procedures for the facilitation of solutions to NTBs;
- Remanufactured goods;
- Chemical products and substances;
- Electronics;
- Electrical safety and electromagnetic compatibility (EMC) of electronic goods;
- Labeling of textiles, clothing, footwear and travel goods;
- Standards, technical regulations and conformity assessment procedures for automotive products

## **4. Negotiating Group on Rules**

### **Status**

At the Doha Ministerial Conference in 2001, Ministers agreed to negotiations aimed at clarifying and improving disciplines under the Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement) and the Agreement on Subsidies and Countervailing Measures (the SCM Agreement), while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives. Ministers also directed that the negotiations take into account the needs of developing and least-developed country Members. The Doha 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) antidumping (often including similar issues relating to countervailing duty remedies); (2) subsidies, including fisheries subsidies; and (3) regional trade agreements. Since the Rules Group began its work in 2002, Members have submitted over 200 formal papers and over 150 elaborated informal proposals to the Group.<sup>7</sup> In 2004, the Group began a

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

process of in-depth discussions of proposals in informal session to deepen the understanding of the technical issues raised by these proposals. In 2005, the Rules Chairman began holding a series of plurilateral consultations with smaller groups of interested Members, in order to have more intensive and focused technical discussions on elaborated proposals. In 2005, the Chairman also established a Technical Group as part of the Rules Group's work to examine in detail issues relating to antidumping questionnaires and verification outlines.

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

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

The Rules Group met five times in the first half of 2008. In May, the Chairman issued a working document, which compiled alternative textual proposals made by Members and summarized Members' reactions to the Chairman's text. In the Chairman's cover note to this working document, he indicated that while it was his firm intention to issue a revised text, he did not yet have a sufficient basis to do so as he had not received from Members any indication of possible middle ground approaches. In conclusion, the Chairman made it clear that all proposals and issues remained on the table and that revised draft texts will eventually be necessary.

Prior to the meeting of Ministers in July 2008, the Chairman of the Rules Group issued a report to the Trade Negotiating Committee. In this report, the Chairman stated his intention to circulate revised texts on antidumping and horizontal subsidies as soon as possible after modalities were achieved, even though Members' positions on key issues remained far apart. The Chairman stated that these texts would reflect a bottom-up approach and would include draft legal language in areas of consensus and other areas where he believed convergence could potentially be achieved. The Chairman cautioned, however, that the new texts would not offer any "magic solutions" in the many areas where Members' positions differ dramatically. Regarding fisheries subsidies, the Chairman stated that further input was necessary from Members before he issued a revised text. The Chairman noted that, to facilitate the process, he would issue a specific "road map" for moving forward, at the same time as he issues revised texts in antidumping and horizontal subsidies. This road map would identify key questions that need to be addressed in order to advance the negotiations towards a new fisheries text. Because modalities were not agreed to in July, the Chairman has not issued revised texts in antidumping and horizontal subsidies or the road map in the context of the fisheries subsidies negotiations.

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 33 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 2008**

*Antidumping:* In the first half of 2008, the Chair held several plenary, plurilateral and small group meetings to discuss his November 2007 draft text. The U.S. proposal to address the issue of offsets for non-dumped sales comparisons in antidumping proceedings, often referred to as “zeroing,” has continued to engender the most discussion and controversy in the Rules negotiations. A group calling itself the “Friends of Antidumping Negotiations” (FANs) has been very active in the Rules area since the beginning of the negotiations, generally seeking to impose limitations on the use of antidumping remedies. The FANs group consists of Brazil, Chile, Colombia, Costa Rica, Hong Kong China, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Chinese Taipei, Thailand, and Turkey. Most of the FANs, as well as certain other Members such as India, have been harshly critical of the Chairman’s November 2007 draft text because of the inclusion of provisions that would permit zeroing in certain circumstances. These critics have been calling for the Chairman to issue a revised text that explicitly bans zeroing. The United States has maintained the position that any final Antidumping Agreement must address the issue of zeroing.

In February 2008, the Africa Pacific Caribbean Group (ACP) and the Africa Group introduced a joint proposal calling for special and differential treatment for developing countries in trade remedies cases. In addition to the provision of technical assistance to developing countries, the proposal would require developed countries to explore the use of “constructive remedies” before applying antidumping measures to imports from developing countries. The constructive remedies are defined to include the lesser duty rule; non-application of provisional measures where exporters undertake to revise their prices or cease exports; acceptance of price undertakings sufficient to eliminate the “margin of injury;” and longer timeframes for responding to questionnaires. The proposal would also permit developing country governments to assist their domestic industries with respect to data collection, to help them satisfy standing requirements, and to self-initiate trade remedies cases. The technical assistance elements of the proposal received measured support from some members, but significant concerns were expressed regarding the substantive aspects of the proposal.

After the issuance of the Chairman’s draft text in November 2007, members of the FANs Group also submitted modified versions of previously-submitted proposals on a variety of issues, including: increasing the standing threshold from 25 percent to 50 percent of domestic production; increasing the *de minimis* dumping margin standard from two percent to five 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 versus non-dumped imports for causation purposes. To date, none of these proposals has led to a convergence of positions.

The United States has continued working to build support among Members for other proposals it had previously submitted, including those on issues such as injury causation, anticircumvention, new shipper reviews, facts available, and seasonal and perishable products, as well as a number of proposals aimed at improving transparency and due process in antidumping proceedings.

*Subsidies/CVD:* In the first half of 2008, the Chair held several small plurilateral meetings to discuss his November draft text as well as Members' proposals that were not included in the draft text. The Chair's draft text makes only relatively modest changes to the existing SCM Agreement. The text does include important clarifications to the existing rules by firmly establishing the "benefit-to-recipient" approach to the calculation of subsidy benefits, a position long advocated by the United States. In principle, these clarifications have not been controversial, although several refinements were suggested by the United States and others. Other areas of the Chair's text discussed in 2008 included: subsidy calculation methodologies, "dual pricing" practices (an issue of long-standing interest to the United States), state-owned banking practices, export credits and benefit pass-through. The provisions in the Chair's text on subsidy calculation methodologies – derived from a U.S. proposal – largely represent a technical advancement in the rules that elaborate upon important principles for the measurement of subsidy benefits. The issues of dual pricing and state-owned banking practices were discussed at several meetings during which Members expressed a wide range of positions. The Chair's text on export credits was reviewed in detail and alternative text was considered. However, many Members, including the United States, expressed serious reservations regarding the provisions in the Chair's proposed draft text as it would very significantly change the existing rules that have been developed over time and have generally functioned well.

Members' proposals that were not included in the Chair's draft text but discussed in 2008 included: appropriate "benchmarks" for use in subsidy determinations (Brazil); redefining the concept of "export competitiveness" in the SCM Agreement (India); amending the rules on duty drawback (India); and the definition of *de facto* export subsidies and "withdrawal" of subsidies found to be prohibited (Australia).

As a general matter, the United States continued to argue in 2008 that the Chair's draft text would result in little strengthening of the current general subsidy disciplines, despite the Doha Round negotiating mandate to clarify and improve the rules and address trade-distorting practices. Specifically, the United States has stated that the text regrettably does not reflect the U.S. proposal on prohibited subsidies or other proposals that would significantly strengthen the rules, such as the reinstatement of the Article 6.1 "dark amber" provisions. The United States has urged the Chair to rectify these deficiencies in subsequent versions of the text. The United States has also strongly advocated that the process of determining which provisions of the AD draft text might be appropriate for inclusion in the SCM Agreement start as soon as possible, given that each potential change would need to be assessed in light of the object and purpose of the SCM Agreement.

*Fisheries Subsidies:* In the first part of 2008, the Rules Group had several meetings to discuss the Chair's November 2007 draft text on fisheries subsidies, which would be an annex to the SCM Agreement. The text sets out a broad range of prohibited subsidies that contribute to fleet overcapacity and overfishing in wild marine capture fisheries, as well as a prohibition of subsidies that affect fishing on "overfished" stocks. The text also provides for a limited list of general exceptions available to all Members and additional exceptions for developing countries. Subsidies under both sets of exceptions would remain actionable under the existing SCM Agreement. In addition, the text requires Members not to cause depletion of or harm to, or create overcapacity with respect to, the fisheries resources of another Member. Finally, the text contains provisions concerning fisheries management systems, peer review through the UN Food and Agricultural Organization (FAO), notification and surveillance of Members' fisheries subsidies, dispute settlement, and transition arrangements.

The United States and other Friends of Fish (including Australia, Argentina, Chile, Ecuador, Mexico, New Zealand and Peru) supported the level of ambition in the Chair's text and contributed extensively to the technical discussion of its provisions. Japan, Korea, Chinese Taipei and the European Union continued to object to the scope of the Chair's prohibition, particularly with respect to subsidies to cover operating costs such as fuel. However, the negotiations made progress in several areas, including

widespread agreement on the importance of a general discipline not to cause overcapacity or harm to the fisheries resources of other Members, provisions on fisheries management, treatment of arrangements for developed country access to the fishing waters of developing countries, and the need for improved transparency provisions, including enhanced notification and meaningful surveillance.

The issue of appropriate and effective treatment for developing countries was an important focus of the negotiations and continued to prove very difficult. The Chair's text provided considerable flexibility for subsistence level and small scale developing country fishing. However, India, joined by Indonesia, introduced a proposal for much broader exceptions that could cover not only subsistence and small scale fishing, but also developing country industrial fishing. Specifically, the proposal would exempt quite large developing country vessels (up to 82 feet long) from meaningful disciplines. A revised proposal, joined by China, would extend the exceptions so that they would cover virtually all developing country fishing, including even larger vessels in distant water industrial fleets. The United States and other Friends of Fish (including developing countries) strongly resisted this proposal.

In July 2008, prior to the meeting of Ministers on modalities, the United States, with Australia and New Zealand, submitted a broad overview paper that reviewed progress in the negotiations to date and reaffirmed their commitment to achieve an ambitious and effective fisheries subsidies agreement. Also in July, Argentina, Chile, Colombia, Ecuador, Mexico and Peru submitted a complementary paper from a developing country perspective, supporting a more balanced approach to developing country exceptions than that put forward by India, Indonesia, and China.

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

In July 2008, the Rules Group Chairman held an informal meeting to discuss the implementation of the "Transparency Mechanism for Regional Trade Agreements" (WT/L/671). The General Council agreed that during the initial year of implementation of this provisional transparency mechanism, Members, with the assistance of the WTO Secretariat, would try to pinpoint any legal aspects that arise in the course of implementation. However, based on input received from Members, Chairman Valles in his July 2008 report to the TNC (TN/RL/22) noted that it was premature to conduct such a review of the Transparency Mechanism, because Members had not yet had sufficient experience applying the mechanism, in particular since the first Enabling Clause agreement was only to be reviewed in the Committee on Trade and Development in October 2008.

### **Prospects for 2009**

In 2009, the United States will continue to pursue an aggressive affirmative agenda building upon the U.S. proposals submitted thus far with respect to, *inter alia*, preserving the effectiveness of the trade remedy rules; improving transparency and due process in trade remedy proceedings; and strengthening the existing subsidies rules. Concerning fisheries subsidies, the United States will continue to press for an ambitious outcome and work to further improve and refine many of the provisions included in the Chair's draft text.

On RTAs, the transparency mechanism will continue to be applied in the consideration of additional RTAs, likely through 2009. The initial substantive review of the mechanism, as foreseen by the Chair of the General Council, may take place subject to Members' views on whether enough agreements have been reviewed under the mechanism so as to provide a basis for identifying areas where the mechanism may be improved. The United States will continue to advocate increased transparency and strong substantive standards for RTAs that support and advance the multilateral trading system.

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

### **Status**

An important U.S. objective was met when WTO negotiations on Trade Facilitation were launched under the August 1, 2004 Decision by the General Council on the Doha Work Program. The inclusion of negotiations on Trade Facilitation has greatly enhanced the market access aspect of the Doha 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 2008**

The work of the Negotiating Group on Trade Facilitation (NGTF) continued to have as its hallmark in 2008 broad-based and constructive participation by Members of all levels of development – a positive negotiating environment that is seen as offering “win-win” opportunities for all. Of particular note was the continued emergence within the NGTF of leadership from Members representing significant emerging markets, including India, Brazil, the Philippines, and China which, by working closely with the United States and others, has helped to steer the negotiations forward in a practical, problem-solving manner. The “Colorado Group”, consisting of the United States, Australia, Canada, Chile, Colombia, Costa Rica, EU, Hong Kong China, Japan, Korea, Morocco, New Zealand, Norway, Paraguay, Singapore, and Switzerland, also played a valuable role in the negotiations.

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.

During 2008, the NGTF continued its work on addressing the challenge of implementing the results of the negotiations that will face many developing country Members. The WTO and assistance organizations, including the U.S. Agency for International Development, continued training exercises with developing

country Members to help them undertake assessments of their individual situations regarding capacity and how to progress toward implementing the proposals submitted. There has also been intensified work on issues related to technical assistance and special and differential treatment, such as the process for establishing implementation schedules and the potential role for a future Committee. 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 a number of developing country Members openly recognize that they have an “offensive” interest in seeking implementation by their neighbors of any future new commitments in this area. This realization has led to broad developed and developing country Member alliances on some of the proposals. A similar dynamic emerged toward taking up how to address “special and differential” treatment as part of the negotiating outcome, with concrete and creative proposals emerging out of informal joint cooperative work by various developed and developing country Members.

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

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

The work of the NGTF during 2008 was characterized by intensive, Member-driven, text-based negotiations. Members submitted and revised textual proposals in an effort to narrow differences and build support. The approach of crafting a draft text through a “bottom up” Member-driven process, rather than through a chair-issued text, continued to enjoy strong support among Members. Among the proposals discussed, the TFNG devoted considerable time and attention to proposals on transparency, streamlining border procedures, special and differential treatment and trade-related technical assistance. An example includes the U.S. proposal on expedited shipments, which gathered support over the course of the year.

### **Prospects for 2009**

2009 will likely bring a continuation of the NGTF’s text-based, Member-driven “focused drafting mode,” in a process aimed at achieving a timely conclusion of text-based negotiations. As negotiations toward new and strengthened disciplines move forward, it will remain important that work proceeds in a methodical and practical manner on the issue of how all Members can meet the challenge of implementing the results of the negotiations -- including with regard to the issues of special and differential treatment and technical assistance. It is possible that some further specific proposals may be submitted, but it is likely that much of the work will involve the consideration of the proposals listed below as part of a process leading to refinement and, ultimately, articulation of some into an agreed text.

## **MEASURES PROPOSED BY WTO MEMBERS RELATED TO GATT ARTICLES V, VIII, AND X<sup>8</sup>**

- A. Publication and Availability of Information
  - Publication of Trade Regulations and Penalty Provisions
  - Internet Publication
  - Establishment of Enquiry Points
  - Notification of Trade Regulations
- B. Prior Publication and Consultation
- C. Advance Rulings
- D. Appeal Procedures
  - Right of Appeal
  - Appeal Mechanism in a Customs Union
- E. Other Measures to Enhance Impartiality and Non-Discrimination
  - Import Alerts/Rapid Alerts
  - Detention
  - Test Procedures
- F. Fees and Charges Connected with Importation and Exportation
  - Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation
- G. Release and Clearance of Goods
  - Pre-arrival Processing
  - Separating Release from Clearance Procedures
  - Risk Management /Analysis, Authorized Traders
  - Post-Clearance Audit
  - Expedited Shipments
  - Establishment and Publication of Average Release and Clearance Times
- H. Prohibition of Consular Transaction Requirement
- I. Border Agency Cooperation
- J. Formalities Connected with Importation and Exportation
  - Periodic Review of Formalities and Requirements
  - Reduction/Limitation of Formalities and Documentation Requirements
  - Use of International Standards
  - Acceptance of Commercially Available Information and of Copies
  - Single Window/One-time Submission
  - Elimination of Pre-Shipment Inspection
  - Use of Customs Brokers
  - Same Border Procedures Within a Customs Union
  - Uniform Forms and Documentation Requirements Relating to Import Clearance within a Customs Union
  - Option to return rejected Goods to Importer
- K. Tariff Classification - Objective Criteria for Tariff Classification
- L. Matters Related to Goods in Transit

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<sup>8</sup> As set out in the report of the Negotiating Group on Trade Facilitation to the Trade Negotiations Committee (TN/TF/3; November 21, 2005), endorsed by the Ministers at the December 2005 Hong Kong Ministerial and included in Annex E of the Hong Kong Ministerial Declaration. *See also*, WTO Negotiations on Trade Facilitation: Compilation of Members' Textual Proposals (TN/TF/W/43/Rev.15; July 9, 2008).

- Scope
- Basic Freedom of Transit
- Exceptions, Regulations, Restrictions and Non-Discrimination
- Disciplines on Fees and Charges
- Disciplines on Transit Formalities and Documentation Requirements
- Bonded Transport Regime and Guarantees
- Regional Transit Agreements or Arrangements
- Improved Coordination and Cooperation
- Disciplines on Restrictions to Freedom of Transit

## **MEASURES RELATED TO COOPERATION BETWEEN CUSTOMS AND OTHER AUTHORITIES ON TRADE FACILITATION AND CUSTOMS COMPLIANCE**

M. Exchange and Handling of Information

## **MEASURES RELATED TO SPECIAL & DIFFERENTIAL TREATMENT, TECHNICAL ASSISTANCE & CAPACITY BUILDING, CAPACITY ASSESSMENT AND OTHER IMPLEMENTATION MATTERS**

N. Implementation Mechanism

O. Regional Approaches

P. Institutional Arrangements

## **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 (CTE) to implement the mandate in paragraph 31 of the Doha Declaration. Paragraph 31 of the Doha Declaration includes a mandate to pursue negotiations, without prejudging their outcome, in three areas:

- i. the relationship between existing WTO rules and specific trade obligations (STOs) set out in Multilateral Environmental Agreements (MEAs) (with the negotiations limited to the applicability of existing WTO rules among parties to such MEAs and without prejudice to the WTO rights of Members that are not parties to the MEAs in question);
- ii. procedures for regular information exchange between MEA secretariats and relevant WTO committees, and the criteria for granting observer status; and
- iii. the reduction or, as appropriate, elimination of tariff and non-tariff barriers to trade in environmental goods and services.

### **Major Issues in 2008**

In 2008, the CTE in Special Session (CTESS) met both formally and informally, focusing primarily on DDA sub-paragraph 31(iii) of the negotiating mandate. Members also had more detailed discussions under sub-paragraph 31(i), attempting to find areas of convergence and being invited to explore whether

there was any room for accommodation with respect to some proposals that had not garnered broad support.

The CTESS Chairman, Ambassador Manuel Teehankee (Philippines), submitted a summary report of the CTESS' work to the TNC in July (TN/TE/18). The report provides for a detailed work plan under sub-paragraph 31(iii), and calls for text-based negotiations to begin under sub-paragraphs 31(i) and 31(ii) based on Members' proposals. However, the CTESS' implementation of the Chair's plans has been delayed due to the impasse at the July 2008 meeting of Ministers.

Regarding sub-paragraph 31(i) on the relationship between MEAs and WTO rules, a large majority of Members, including the United States, Australia, and Argentina, have underscored the value of experience-sharing to enhance the mutually supportive relationship of trade and environment, as well as the importance of national coordination between trade and environment experts, and believe that these elements should form an integral part of any outcome under sub-paragraph 31(i). These same Members have opposed outcomes that would go beyond the sub-paragraph 31(i) and paragraph 32 mandates by altering Members' WTO rights and obligations (e.g., a proposal from the EU would reduce the independence of WTO panels when deciding disputes involving environmental matters). Two new papers were filed under this subparagraph by Norway (a proposed draft Ministerial Decision) and by the Africa group (proposing that developing countries receive technical assistance to ensure that they implement their MEA obligations in a WTO-compatible manner).

Regarding sub-paragraph 31(ii), discussions have progressed significantly; however, there remain a few outstanding issues that will require further consultations (e.g., a proposal from the EU for automatic observer status to be granted to a number of MEA Secretariats that have participated in the CTESS' work).

Regarding sub-paragraph 31(iii), there continues to be, at this stage, a divergence of views among Members as to which goods would ultimately fall within the mandate. Nor is there any agreement among delegations at this stage on the particular modalities for cutting tariffs. The Chair's proposed work plan is without prejudice to the proposals currently on the table. As a first step, the Chair has invited Members to submit to the Secretariat "environmental goods of interest to them identified across as many categories as possible; and/or environmental goods identified in any requests/offers they would have made to other Members." The Chair has followed-up his invitation with a format for Members to use in submitting such goods of interest, but in light of the impasse at the July Ministerial meeting, has not provided a new timeline for receiving such new submissions, and none have been submitted.

### **Prospects for 2009**

In 2009, the CTESS is expected to continue to move toward fulfillment of all aspects of the mandate under Paragraph 31 of the Doha Declaration, taking into account the progress made in related negotiating groups. Under sub-paragraph 31(i), Members are expected to rely on previous discussions of their real world experiences in the negotiation and implementation of STOs set out in MEAs to draw conclusions for any text-based negotiations. The United States continues to view this experience-based exchange as the best way to explore the relationship between WTO rules and STOs contained in MEAs and maintains that these national experiences should form the basis for an outcome in the negotiations.

Discussions under sub-paragraph 31(ii) are likely to move to text in the coming year, as many Members feel that this is an area that is ready for progress. Several Members have also noted their interest in exploring linkages between sub-paragraphs 31(i) and (ii), in light of the view that enhanced cooperation between the WTO and MEA secretariats could contribute to improving both international and national

coordination, and could further contribute to a mutually supportive relationship between trade and environment regimes.

Finally, the CTESS is expected to remain active in discussing the importance of liberalization in both environmental goods and services in order to secure concrete benefits associated with access to state-of-the-art environmental technologies that promote sustainable development. The Chair's work plan, including the identification of environmental goods of interest, sets out a widely-supported way forward. The United States will continue to show leadership in advancing a robust outcome in the negotiations, including further development of an environmental goods and services agreement (EGSA), which we proposed in November 2007 in an effort to open markets for environmental goods and advance Members' environmental and development policies.

## **7. Dispute Settlement Body, Special Session**

### **Status**

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

### **Major Issues in 2008**

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

The United States has advocated two proposals. One would expand transparency and public access to dispute settlement proceedings. The proposal would open WTO dispute settlement proceedings to the public 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 non-parties to a dispute. WTO rules currently allow such submissions, but do not provide guidelines on how they are to be considered. Guidelines would provide a clearer roadmap for handling such submissions.

In addition, the United States and Chile submitted a proposal to help improve the effectiveness of the WTO dispute settlement system in resolving trade disputes among Members. The joint proposal

contained specifications aimed at giving parties to a dispute more control over the process and greater flexibility to settle disputes. Under the present dispute settlement system, parties are encouraged to resolve their disputes, but do not always have all the tools with which to do so. 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 2009**

In 2009, Members will continue to work to complete the review of the DSU. Members will be meeting a number of times over the course of 2009.

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

### **Status**

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

### **Major Issues in 2008**

The TRIPS Council Special Session held one formal meeting in 2008 (April 29), as well as several informal consultations. There was no significant shift, during the course of the year, in currently-held positions among WTO Members, nor any movement towards bridging sharp differences between competing proposals. Key positions are reflected in a 2005 WTO Secretariat document (TN/IP/W/12) which contains a side-by-side presentation of the three proposals before the Special Session; the Secretariat expanded upon this document in May 2007, with an addendum detailing the various arguments and questions raised by proponents of these proposals (TN/IP/W/12/Add. 1). In a July 2008 report to the TNC (TN/IP/18), the Chairman of the TRIPS Council Special Session highlighted, in particular, ongoing divergences with respect to participation in the multilateral register system (*i.e.*, whether the system would apply to all Members or only to those opting to participate in it) and to the nature of the legal obligations provided for in the system (*i.e.*, the extent to which legal effects at the domestic level determine the effect of registration of a GI for a wine or spirit in the system).

The United States, together with Argentina, Australia, Canada, Chile, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Mexico, New Zealand, Nicaragua, Paraguay, and Chinese Taipei continued to support the Joint Proposal under which Members would notify their GIs for wines and spirits for incorporation into a register on the WTO website. During 2008, the Republic of Korea and the Republic of South Africa formally associated themselves as co-sponsors of the Joint Proposal. Several Joint Proposal co-sponsors have submitted a Draft TRIPS Council Decision on the Establishment of a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits to the Special Session to set out clearly in draft legal form, a means by which Members could implement the mandate from paragraph 18 of the Doha Ministerial Declaration and Article 23.4 of the TRIPS Agreement. Members choosing to use the system would agree to consult the

system when making any decisions under their domestic laws related to GIs or, in some cases, trademarks. Implementation of this proposal would not impose any additional 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 wines and spirits. The current EU position is reflected in a June 2005 document in the form of draft legal text that combines two proposals: the multilateral GI register for wines and spirits and an amendment to the TRIPS Agreement to extend Article 23-level GI protection to products beyond wines and spirits. The effect of this proposal would be to expand the scope of the negotiations to all GI products and to propose that any GI notified to the EU's proposed register would be automatically protected as a GI throughout the world with very few permissible grounds for objection. In addition, the notified GI would be presumed valid against a competing rightholder, including a prior rightholder. Essentially, the system proposed by the EU could, as a practical matter, enable one Member to mandate GI protection in another Member simply by notifying that GI to the system. Such a proposal would negatively affect pre-existing trademark rights, as well as investments in generic food terms, and would directly contradict the principle of territoriality with respect to intellectual property in favor of a system based upon the unilateral and extraterritorial application of domestic law and national intellectual property regimes. While the EU has informally indicated possible modifications to its June 2005 proposals, these have not been presented formally within the negotiations.

A third proposal, from Hong Kong China, remains on the table, although it was not actively discussed during 2008.

### **Prospects for 2009**

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

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

### **Status**

The Special Session of the Committee on Trade and Development (CTD-SS) was established by the 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 countries Members have submitted 88 proposals to augment existing S&D provisions in the WTO agreement. Following intensive negotiations in 2002 and 2003, the CTD-SS agreed *ad referendum* on nearly a third of those proposals for consideration at the Fifth Ministerial Conference in Cancun, Mexico in 2003. Due to the breakdown of the DDA negotiations, these proposals were not adopted at Cancun. Since Cancun, WTO Members have taken no action to adopt them, and in November 2005, the Africa Group submitted a paper to the CTD-SS repudiating the agreed texts of these proposals. In 2004 and early 2005, the focus of the CTD-SS shifted to discussions

on new approaches to address the mandate more effectively, and reflected a desire to find a more productive approach than that associated with the specific proposals that individual Members or groups tabled. Despite extensive discussions, Members were unable to reach agreement on an alternative framework for approaching the mandate of the CTD-SS.

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

### **Major Issues in 2008**

Following the Hong Kong Ministerial, the CTD-SS conducted a thorough “accounting” of the remaining agreement-specific proposals. Though the number of proposals had been reduced considerably since their introduction in 2002 and 2003, divergences among Members’ positions on the remaining proposals were quite wide. In 2008, the Chairman of the CTD-SS continued to work closely with the Chairs of the other negotiating groups and Committees to which the proposals had been referred due to their technical complexity. The Chairs reported that there has been very little development on these proposals. However, some of the Chairs of the negotiating bodies indicated that a number of the issues raised in the proposals form an integral part of the ongoing negotiations. In addition, there are a number of bodies in which discussions on the proposals are continuing on the basis of revised language tabled by the proponents.

With respect to the remaining proposals still under consideration in the CTD-SS, Members have continued to focus their text-based discussions on seven of the 16 remaining Agreement-specific proposals. These proposals cover issues relating to Article 10.2 of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), Article 10.3 of the SPS Agreement and Article 3.5 of the Agreement on Import Licensing. At the request of the proponents, work relating to Article XVIII of the GATT has been put on hold while they consider revising the language of the proposal. No consensus on these proposals emerged during the discussions in 2008. The nine remaining Agreement-specific proposals that have been set aside at the instruction of the Chair will not be addressed until new ideas or new language is tabled.

The Hong Kong Declaration directs the CTD-SS to “resume work on all other outstanding issues, including the cross-cutting issues, the Monitoring Mechanism and the architecture of WTO rules.” In 2008, the possible elements of a Monitoring Mechanism continued to be discussed. During formal and informal meetings, Members have continued to emphasize the need for the mechanism to be simple, practical and forward looking. There continues to be disagreement as to whether the mechanism requires a new bureaucratic structure to function and whether the scope of the mechanism should be broadened to include monitoring the implementation and effectiveness of special and differential provisions.

### **Prospects for 2009**

In 2009, work will continue on the remaining S&D proposals and on the underlying issues inherent in them. As in 2008, much of the practical work on S&D in 2009 is likely to take place in the other Negotiating Groups, for example the Negotiating Groups on Agriculture, Non-Agricultural Market Access, Services, and Trade Facilitation. However, it is also likely that discussions will continue in the CTD-SS toward a mechanism to monitor implementation of S&D provisions and other cross-cutting issues.

## **C. Work Programs Established in the Doha Development Agenda**

### **1. Working Group on Trade, Debt, and Finance**

#### **Status**

Ministers at the 2001 Doha Ministerial Conference established the mandate for the Working Group on Trade, Debt, and Finance (WGTDF). Ministers instructed the WGTDF to examine the relationship between trade, debt, and finance, and to examine 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 2008**

The WGTDF held two formal meetings in 2008. The first meeting was held in July 2008. During this meeting, Members raised issues for discussion relating to the general availability of trade finance, the impact of the full implementation of Basel II bank requirements on the availability of trade finance for developing countries, and the effect of new indebtedness of poor developing countries on their ability to participate in trade. The Members also discussed a paper prepared by the WTO Secretariat that summarized a WTO-hosted expert group meeting on trade finance.

The second meeting was held in November 2008. During this meeting, Members discussed the submissions made by Brazil and Hong Kong China, a representative from the Secretariat of the Basel Committee on Banking Supervision made a presentation on certain important implications of the Basel II framework for trade financing, and the WTO Secretariat debriefed the Working Group on the outcome of the second meeting of the Expert Group on Trade Finance convened by the WTO in November.

#### **Prospects for 2009**

In 2009, the WGTDF will examine its mandate concerning the relationship between trade, debt, and finance, and may make recommendations on possible steps that might be taken within the mandate and competence of the WTO to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and LDC Members.

### **2. Working Group on Trade and Transfer of Technology**

#### **Status**

During the 2001 Doha Ministerial Conference, WTO Ministers agreed to an “examination... of the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries.” In fulfillment of that mandate, the TNC established the Working Group on Trade and Transfer of Technology (WGTTT), under the auspices of the General Council, which would report on its progress to the 2003 Ministerial Conference at Cancun. At that meeting, the WGTTT’s mandate was extended. During the 2005 Hong Kong Ministerial Conference, WTO Ministers recognized “the relevance of the relationship between trade and transfer of technology” and further agreed that, “building on the work carried out to date, this work shall continue on the basis of the mandate contained in paragraph 37 of the

Doha Ministerial Declaration.” Members have not reached consensus on any recommendations. The WGTTT met four times in 2008, continuing its work under the Doha Ministerial mandate to examine the relationship between trade and the transfer of technology.

### **Major Issues in 2008**

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

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

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

During 2008, the working group continued its discussion on the basis of presentations by Members and outside bodies on their experience and research regarding technology transfer, and on the basis of proposals by Members. In March, the World Bank presented its 2008 Global Economic Prospects Report which drew four broad conclusions. These conclusions are largely consistent with the view of the United States. First, technological progress in general in developing countries has outpaced that of high-income countries, due to increasing adaptation of technologies. In contrast, however, high-income countries remain the drivers of new technologies. Second, the pace of technology diffusion has increased rapidly. Third, issues such as trade, foreign direct investment (FDI), direct access to information, and exports are all important drivers of technology transfer. The World Bank Report indicates that lowering tariffs on intermediate inputs drives productivity and increased competition from imports spurs advances. Finally, factors such as the macroeconomic environment, the structure of the financial sector and the regulatory environment, and technological literacy/education all affect a country’s ability to absorb new technologies.

In mid-2008, India, Pakistan, and the Philippines returned to the discussion of their proposal for “Steps that Might be Taken within the Mandate of the WTO to Increase Flows of Technology to Developing Countries” originally presented in October 2005. During 2008, these Members focused on their ideas for improving the WTO web site to facilitate research on technology transfer programs, and to set up a page for Members to post information about technological needs which could be accessed by the private sector. The United States and other Members have expressed appreciation for the constructive ideas being advanced by the proponents and are continuing to explore the feasibility of some of these ideas.

## **Prospects for 2009**

As of December 2008, no WGTTT meetings have been scheduled in 2009. It is expected that, in response to a request from the Chairman of the Group, developing country Members will make presentations of their national experience with technology transfer, and that the group will continue its examination of issues raised in the October 2005 India/Pakistan/Philippines paper.

## **3. Work Program on Electronic Commerce**

### **Status**

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

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

### **Major Issues in 2008**

The Work Program on Electronic Commerce remains an item in the Doha mandate. There have been no follow-up dedicated discussions since the meeting in November 2005 during which Members examined two issues raised by the United States – the trade treatment of electronically delivered software and the customs duties moratorium on electronically transmitted products. No sessions of the Work Program were held in 2007. Electronic Commerce issues did figure prominently, however, in the symposium held in February 2008 to mark the tenth anniversary of the Basic Telecommunications Agreement. Many presenters at this symposium focused on the developmental benefits that competitive telecommunications markets brought, particularly relating to Internet-enabled applications.

### **Prospects for 2009**

The United States remains committed to advancing meaningful trade policies that promote the growth of electronic commerce. Indeed, the focus of work in all negotiating groups has been to advance market openings in key information technology product and service sectors. Market access for these products and services will further encourage the expansion of electronic commerce. The United States continues to support extending the current practice of not imposing customs duties on electronic transmissions and is in the process of examining ways to make the moratorium permanent and binding in the future. Furthermore, the United States will work to focus Members' attention on the growing importance of maintaining a liberal trade environment for electronically-delivered software and other digitally-delivered products. Depending on progress in the overall Doha Round in 2009, Members would renew their efforts under the Work Program to work toward those objectives.

## D. General Council Activities

### Status

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

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

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

The General Council uses both formal and informal processes to conduct the business of the WTO. Informal groupings, which generally include the United States, play an important role in consensus-building. Throughout 2008, the Chairman of the General Council, together with the Director General, conducted extensive informal consultations with both the Heads of Delegation of the entire WTO Membership and a wide variety of smaller groupings. These consultations were convened with a view towards making progress on the core issues in the DDA, as well as towards resolving outstanding issues on the General Council's agenda. In 2008, the main focus of work in the DDA negotiations was in the individual negotiating groups and reports on those groups are set out in other sections of this chapter.

### Major Issues in 2008

Ambassador Bruce Gosper of Australia served as Chairman of the General Council in 2008. In addition to work on the DDA, activities of the General Council in 2008 included:

*Accessions:* Capping over 13 years of work, the General Council approved the terms of accession for Ukraine in February 2008. (See section on Accessions.) The General Council also approved a request from Equatorial Guinea to initiate accession negotiations.

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

*Bananas:* During 2008, the General Council considered complaints from several banana-producing Latin American Members regarding the effect of enlargement and tariffication of quotas under the EU banana regime and the EU's non-recognition of negotiating rights under Articles XXIV:6 and XXVIII of the GATT 1994. This issue remains unresolved.

*Waivers of Obligations:* The General Council approved a request from the EU for a waiver concerning the application of the European Union Autonomous Preferential Treatment to Moldova and from Senegal providing a waiver from the provisions on minimum values of the Customs Valuation Agreement until 30 June 2009. The General Council also adopted waivers for the Harmonized System 1996 changes to WTO schedules of tariff concessions for Argentina and Panama. Annex II contains a detailed list of Article IX waivers currently in force.

### **Prospects for 2009**

The General Council is expected to be more active in 2009 as Members endeavor to bring the DDA negotiation to its concluding phase. In addition to its management of the WTO and oversight of implementation of the WTO Agreements, the General Council will continue to closely monitor work on all aspects of the DDA negotiations.

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

### **Status**

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

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

### **Major Issues in 2008**

In 2008, the CTG held four formal meetings, in March, May, July, and November. As the central oversight body in the WTO for all agreements related to trade in goods, the CTG devoted its attention primarily to providing formal approval of decisions and recommendations proposed by its subsidiary bodies. The CTG also served as a forum for airing initial complaints regarding actions that individual Members had taken with respect to the operation of goods-related WTO Agreements. Many of these

complaints were resolved through consultation. In addition, three major issues were debated extensively in the CTG in 2008:

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

*China Transitional Review:* On November 18, the CTG conducted the seventh annual Transitional Review Mechanism (TRM) review of China, as mandated by the Protocol on the Accession of the People's Republic of China to the WTO. China supplied the CTG with information and answered questions that Members posed, and the CTG reviewed the TRM reports of CTG subsidiary bodies. (See Chapter III Section E on China for a more detailed discussion of China's implementation of WTO commitments.)

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

## **Prospects for 2009**

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

## **1. Committee on Agriculture**

### **Status**

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

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

commitments in agriculture and the 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 other 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 become formal WTO disputes.

### **Major Issues in 2008**

The Agriculture Committee held three formal meetings in March, September, and December 2008 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, 28 notifications were subject to review during 2008. The United States participated actively in the review process and raised specific issues concerning the operation of Members' agricultural policies. The Committee proved to be an effective forum for raising issues relevant to the implementation of Members' commitments. For example, the United States used the review process to raise concerns about Nigeria's import bans on certain agricultural products and its use of reference prices for custom valuation purposes instead of actual declared values. Subsequently, Nigeria eliminated several import bans, though not all, and additionally reduced tariffs on several products, including some of interest to U.S. exporters. The United States also raised concerns about Switzerland's domestic purchase requirement for bovine semen and asked for an explanation of how Pakistan's administered price system for wheat functions. In addition, the United States used the review process to state its support for questions from Argentina and Australia requesting the European Union to propose multilateral negotiations to establish the bound Aggregate Measurement of Support (AMS) level corresponding to the actual number of EU Member States since its enlargement. The United States also used the review process to request that the European Union notify food assistance provided by Member States.

The United States also raised questions concerning elements of domestic support programs used by Albania, Armenia, Canada, Japan, and Taiwan.

During 2008, the Agriculture Committee addressed a number of other agricultural implementation-related issues, such as: (1) development of internationally-agreed disciplines to govern the provision of export credits, export credit guarantees, or insurance programs pursuant to Article 10.2 of the Agriculture Agreement, taking into account the effect of such disciplines on NFIDCs; (2) review of Members' notifications on tariff-rate quotas (TRQs) in accordance with the General Council's decision<sup>9</sup> regarding the administration of TRQ regimes in a transparent, equitable, and non-discriminatory manner; (3) annual monitoring of the Marrakesh NFIDC decision on food aid 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.

Also during 2008, the Committee conducted the seventh annual Transitional Review Mechanism for China, which is required under the protocol for China's accession to the WTO. The United States asked about China's domestic support for its pork industry, VAT exemptions, export VAT rebates, and administration of its TRQ regime for bulk agricultural commodities.

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<sup>9</sup> WT/L/384 General Council - Implementation-Related Issues and Concerns - Decision of 15 December 2000.

## **Prospects for 2009**

The United States will continue to make full use of the Agriculture Committee to ensure transparency through timely notification by Members and to enhance enforcement of Uruguay Round commitments as they relate to export subsidies, market access, domestic support, or any other trade-distorting practices by WTO Members. In addition, the Committee will continue to monitor and analyze the impact of the possible negative effects of the reform process on 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), consolidating the work under the GATT system of the Committee on Tariff Concessions and the Technical Group on Quantitative Restrictions and other Non-Tariff Measures. The MA Committee supervises the implementation of concessions on tariffs and non-tariff measures where not explicitly covered by another WTO body, and is responsible for verification of new concessions on market access in the goods area. The Committee reports to the Council on Trade in Goods.

### **Major Issues in 2008**

The MA Committee held two informal sessions followed by formal meetings in April and October 2008 to discuss the following topics: (1) the ongoing multilateral review of WTO schedules of Members' tariff concessions to accommodate updates to the Harmonized System (HS) 2002 tariff nomenclature and any other tariff modifications; (2) the WTO Integrated Data Base (IDB); and (3) finalizing consolidated schedules of WTO tariff concessions in HS 2002 and 2007 nomenclature. The Committee also conducted its seventh annual 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 certain Members that adopted the HS in the years following its introduction on January 1, 1988. Since then, the HS nomenclature has been modified by the World Customs Organization in 1996, 2002, and 2007. Using agreed examination procedures, WTO Members have the right to object to any proposed nomenclature change that affects the level of another Member's tariff rates on bound items on grounds that the new nomenclature (as well as any increase in tariff levels for an item above existing bindings) represents a modification of the tariff concession. Members may pursue unresolved objections under GATT 1994 Article XXVIII. The majority of Members have completed the process of implementing HS 1996 changes, but Argentina and Panama continue to require waivers, and additional information is needed from Venezuela in order to finalize certification of its HS1996 documentation.

In 2005, the MA Committee agreed to new procedures using the Consolidated Schedule of Tariff Concessions (CTS) database and assistance from the Secretariat for the introduction into Members' schedules and verification of the 373 amendments to HS nomenclature that took effect on January 1, 2002 (HS 2002). Work on this conversion to HS 2002, which is essential to laying the technical groundwork for analyzing the tariff implications of the DDA negotiations, continued throughout 2008.

In January 2007, the HS 2007 documentation was circulated to the WTO Membership, including the procedures and layout for the transposition from tariff schedules in HS 2002 to HS 2007. The Committee began discussions of the process of the transposition of Members' schedules to HS 2007. At the

Committee's meeting in October 2008, the Secretariat reported that it had not yet begun work on the HS 2007 transposition, due to the ongoing review, verification, and certification process for the HS2002 transpositions, as well as heavy Secretariat workload on the DDA negotiations.

*Integrated Data Base (IDB):* The MA Committee addressed issues concerning the IDB, which is updated annually with information on the tariffs, trade data, and non-tariff measures maintained by WTO Members. Members are required to provide this information as a result of a General Council Decision adopted in July 1997. The United States continues to take an active role in pressing for a more relevant database structure with the aim of improving the trade and tariff data supplied by WTO Members. As a result, participation has continued to improve, although as of October 2008, the following Members had not yet submitted tariff and trade information to the IDB: Cambodia, Cape Verde, Central African Republic, Chad, Democratic Republic of the Congo, Guinea Bissau, Haiti, Mozambique, Saudi Arabia, and Vietnam.

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

*China Transitional Review:* In October 2008, the MA Committee conducted its sixth annual review of China's implementation of its WTO commitments on market access. The United States, with support from other WTO Members, raised questions and concerns regarding China's implementation in the areas of export quotas on raw materials and value-added tax exemptions.

### **Prospects for 2009**

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

## **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, 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; the IPPC; the OIE; the International Trade Center; the Inter-American Institute for Cooperation on Agriculture (IICA), and the World Bank.

### **Major Issues in 2008**

In 2008, the SPS Committee held meetings in April, June, and October. In these meetings, Members exchanged views regarding the implementation of SPS Agreement provisions regarding transparency, equivalence, and regionalization, including Members providing information on 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 the 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 2008, the United States raised a number of concerns with measures imposed by other Members, including India’s avian influenza restrictions, Japan’s maximum residue limit enforcement policies, the EU ban on the use of pathogen reduction treatments on imported poultry meat, and Taiwan’s ban 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 proposed Food Protection Plan.

*Bovine Spongiform Encephalopathy (BSE):* During the April, June, and October meetings, Members were encouraged to resume trade in U.S. beef and beef products based on OIE guidelines. At various times, the United States, the EU, and the OIE made floor interventions to emphasize this point. In April, the United States acknowledged the recognition of certain Members, including Barbados, Indonesia, and the Philippines, that the United States has qualified as a Controlled Risk Country for BSE by the OIE.

*Avian Influenza:* Various Members raised concerns during SPS Committee meetings with certain Members’ measures that do not appear to comply with OIE guidelines for avian influenza. The United States remains particularly concerned when measures are imposed when outbreaks of low pathogenic avian influenza are notified to the OIE despite OIE guidance that bans are only to be imposed in instances of a high pathogenic outbreak.

*China’s Transitional Review Mechanism:* The United States and the EU submitted questions for the SPS Committee’s seventh review of China’s implementation of its WTO obligations as provided for in China’s WTO Accession Protocol. The United States asked questions regarding China’s BSE restrictions, requested information on the status of revision to China’s sampling plans and microbiological criteria for food-borne pathogens, and expressed concerns that China had banned ractopamine without conducting a risk assessment. The United States also raised its concern that China’s import bans related to low pathogenic avian influenza, which adversely affect the states of Arkansas and Virginia, do not appear to comply with OIE guidelines. Finally, the United States asked how China plans to boost its food safety regulations, especially with regard to the recent melamine-related problems, and whether such

regulations would be notified to the WTO in accordance with the SPS Agreement. China responded orally to questions and concerns raised by Members during the review and restated its commitment to implement fully the provisions of the SPS Agreement.

*Regionalization:* The SPS Committee finalized a decision on guidelines for the implementation of regionalization by Members. Regionalization is the process by which a Member recognizes the existence of regions of a trading partner's country that are disease-free or pest-free (or that at least have a lower disease or pest incidence than other regions). Regionalization can be an effective means to reduce restrictions on trade due to animal or plant health concerns by ensuring that Members do not go farther than necessary to achieve their appropriate level of protection. In many cases, country-wide import prohibitions can be reduced to state or county-wide prohibitions, depending on the characteristics of the pest or disease at issue as well as other factors. The Committee decision encourages Members to develop transparent processes for regionalization decisions, including the publication of the relevant regulations.

As evidence of the United States' support for the implementation of the regionalization provisions of the Agreement, this year the United States reported its recent recognition of 20 municipalities in Brazil as being free of the South American cucurbit fly, a major pest of melons. This recognition acknowledges that Brazil has instituted appropriate measures to create areas free of cucurbit fruit fly, consistent with international standards, and certified these regions as pest-free. The U.S. recognition process was done through a streamlined procedure for evaluating imported fruit and vegetables, as notified in G/SPS/N/USA/1307 and addenda.

*Technical Assistance:* The United States presented an update to document G/SPS/GEN/181 on SPS trade capacity building efforts to document that between June 2006 and May 2008 the United States sponsored 420 SPS technical assistance projects in 124 developing countries. At the Committee's June meeting, the representatives of Chinese Taipei and the Dominican Republic thanked the United States for the technical assistance provided to them during that Committee meeting.

*Notifications:* Because it is critical for trading partners to know and understand each other's laws, 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 270 SPS notifications to the WTO Secretariat in 2008 and submitted comments on 119 SPS measures notified by other Members.

*Private and Commercial Standards:* In October, the Committee established a working group to discuss private standards and their possible effects on international trade. The working group consists of the 30 Members that responded to the Secretariat's July questionnaire on this issue. As a participant in the working group, the United States plans to monitor the working group's activities closely. The working group will begin by collecting specific examples of where private SPS-related standards may have had an impact on a country's ability to export products. The Secretariat plans to distribute a questionnaire in February 2009 to solicit specific examples for the working group's review with responses due the following June. The working group will report regularly to the Committee on its progress.

## **Prospects for 2009**

The SPS Committee will hold three meetings in 2009 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 BSE, AI, food safety measures, and technical assistance.

In 2009, the Committee will undertake the Third Review of the Operation and Implementation of the SPS Agreement consistent with the Doha Declaration commitment to undertake such reviews at least every four years. The United States anticipates that the SPS Committee will also focus on furthering priorities identified in the second review, including the issuance of guidance regarding *ad hoc* consultations under Article 12.2 of the Agreement, and the provision of technical assistance and special and differential treatment. Finally, the Committee will continue to monitor the use and development of international standards, guidelines, and recommendations by Codex, OIE, and IPPC. A working group of the SPS Committee will also discuss the proliferation of private and commercial standards.

## **4. Committee on Trade-Related Investment Measures**

### **Status**

The Agreement on Trade-Related Investment Measures (the TRIMS Agreement), which entered into force with the establishment of the WTO in 1995, prohibits investment measures that are inconsistent with national treatment obligations under Article III:4 of the GATT 1994 and reinforces the prohibitions on quantitative restrictions set out in Article XI:1 of the GATT 1994. The TRIMS Agreement requires the elimination of certain measures imposing requirements on, or linking advantages to, certain actions of foreign investors, such as measures that require, or provide benefits for, the incorporation of local inputs in manufacturing processes ("local content requirements") or measures that restrict a firm's imports to an amount related to the quantity of its exports or of its foreign exchange earnings ("trade balancing requirements"). The Agreement includes an illustrative list of measures that are inconsistent with Articles III:4 and XI:1 of the GATT 1994.

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

### **Major Issues in 2008**

The TRIMS Committee held one formal meeting during 2008.

As part of the review of special and differential treatment provisions, the TRIMS Committee continued to consider several TRIMS-related proposals submitted by a group of Members from Africa. One proposal argued that Members should interpret and apply the TRIMS Agreement in a manner that supports WTO-consistent measures taken by African Members to safeguard their balance of payments. A second proposal argued that LDC or other low-income Members experiencing balance-of-payments difficulties should be permitted to maintain measures inconsistent with the TRIMS Agreement for periods of not less than six years. A third proposal would require the CTG to grant new requests from certain African Members for the extension of transition periods or for fresh transition periods for the notification and elimination of TRIMS. Although these proposals remain on the agenda of the TRIMS Committee, there has been little movement toward consensus on these issues. There was no substantive discussion of these proposals during the formal meeting.

Pursuant to paragraph 18 of the Protocol on the Accession of the People's Republic of China to the WTO, the TRIMS Committee conducted its seventh annual review in 2008 of China's implementation of the TRIMS Agreement and related provisions of the Protocol. The United States' main objectives in this review were to obtain information and clarification regarding China's WTO compliance efforts. During the October meeting of the TRIMS Committee, China addressed such issues of interest to the United States as its automobile and steel policies, as well as its guidance for foreign investment. U.S. agencies are analyzing China's policies in an effort to decide whether and how to pursue these issues in the future.

### **Prospects for 2009**

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

## **5. Committee on Subsidies and Countervailing Measures<sup>10</sup>**

### **Status**

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

### **Major Issues in 2008**

The Committee on Subsidies and Countervailing Measures (the SCM Committee) held three formal meetings in 2008, in April, July, 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 Committee. During the October meeting, the Committee held its seventh review of China's implementation of the SCM Agreement, pursuant to the Transitional Review Mechanism provided by China's protocol of WTO accession. Other issues addressed in the course of the year included: the examination of specific export subsidy program extension requests for certain developing country Members, approval of new members for the Permanent Group of Experts, and the updating of the methodology for 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 the meetings in April and October.

In reviewing notified CVD legislation and subsidies, SCM Committee procedures provide for the exchange in advance of written questions and answers in order to clarify the operation of the notified

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<sup>10</sup> For further information, see also the Joint Report of the United States Trade Representative and the U.S. Department of Commerce, *Subsidies Enforcement Annual Report to the Congress*, February 2009.

measures and their relationship to the obligations of the Agreement. At the end of 2008, 88 WTO Members (counting the 27 member states of the EU as one) have notified that they currently have CVD legislation in place, or have notified that they have no such legislation; 38 Members have not, as yet, made a notification. In 2008, the Committee reviewed the notifications of CVD laws and regulations of Albania, Canada, China, Costa Rica, Egypt, El Salvador, the EU, Guatemala, Nicaragua, the United States and Ukraine.<sup>11</sup>

As for CVD measures, five Members notified CVD actions they took during the latter half of 2007, and nine Members notified actions they took in the first half of 2008. Specifically, the SCM Committee reviewed actions taken by Australia, Brazil, Canada, Costa Rica, the EU, Japan, Mexico, New Zealand, Peru, South Africa, Turkey, and the United States.

The Committee examined eighteen new and full 2007 subsidy notifications and two new and full 2005 subsidy notifications. Unfortunately, numerous Members have never made a subsidy notification to the WTO, although many are lesser developed country Members. Notably, the Committee continued the review of China's first new and full subsidy notification, originally submitted in April 2006 (see *China Transitional Review* below). In 2007, the United States submitted its 2005 new and full subsidies notification, detailing over 40 federal programs and nearly 400 state programs. Several written sets of questions and answers were exchanged regarding the U.S. notification, which was reviewed by the SCM Committee at both the spring and fall meetings.

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

Following increasing pressure from the United States and other WTO members, China finally submitted its long-overdue subsidies notification to the WTO's Subsidies Committee in April 2006. Although the notification reported on over 70 subsidy programs, it was notably incomplete, as it failed to notify any subsidies, *inter alia*, provided by provincial and local government authorities. 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 China's subsidy notification and lay the groundwork for the further pursuit of several issues. In the context of the Transitional Review, the United States reiterated its concerns as to the lack of provincial and local programs in China's subsidy notification and pressed China to submit a full notification as soon as possible. The United States also informed the Committee that it had uncovered certain unreported subsidies that appeared to be export subsidies formulated by the central government and implemented by provincial and local governments, and stated that any export subsidies currently in place had to be terminated without delay.

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

To address the concerns of certain small developing country Members, a special procedure within the context of Article 27.4 of the SCM Agreement was adopted at the Fourth Ministerial Conference in 2001. Members meeting all the qualifications for the agreed-upon special procedures were eligible for annual

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<sup>11</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.

extensions for a five-year period through 2007, in addition to the two years referred to under Article 27.4. Antigua and Barbuda, Barbados, Belize, Costa Rica, Dominica, 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.

Following a request for a further extension, in 2007, the SCM Committee decided to recommend to the General Council that it extend the transition period until 2013 under similar special procedures as those that had previously been in place, with a two-year phase-out period ending in 2015. An important outcome of these negotiations, insisted upon by the United States and other developed and developing countries, was that the beneficiaries have no further recourse to extensions beyond 2015. The General Council adopted the recommendation of the SCM Committee in July 2007.

Specific export subsidy program extension requests under the new procedures were made in 2008 by all of the developing country Members listed above. These requests required, *inter alia*, a detailed examination of whether the applicable standstill and transparency requirements had been met. In total, the SCM Committee conducted a detailed review of more than 40 export subsidy programs. At the end of the process, all of the extension requests were granted.

*Permanent Group of Experts:* Article 24 of the SCM Agreement directs the Committee to establish a Permanent Group of Experts (PGE) “composed of five independent persons, highly qualified in the fields of subsidies and trade relations.” The Agreement articulates three possible roles for the PGE: (i) to 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 Committee, an advisory opinion on the existence and nature of any subsidy; and (iii) to provide, at the request of a Member, a “confidential” advisory opinion on the nature of any subsidy proposed to be introduced or currently maintained by that Member. To date, the PGE has not yet been called upon to perform any of the aforementioned duties. Article 24 further provides for the Committee to elect the experts to the PGE, with one of the five experts being replaced every year.

In the beginning of 2008, the Permanent Group of Experts only had two members: Yuji Iwasawa (Japan) and Mr. Asger Petersen (Denmark). The SCM Committee had been unable to reach a consensus as to the appointment of new members to succeed Mr. Hyung-Jin Kim (Korea), Mr. Terence P. Stewart (United States), and Professor Okan Aktan (Turkey), whose terms expired in 2005, 2006 and 2007, respectively. Mr. Iwasawa’s term expired in the spring of 2008. Following informal consultations held in March and April 2008, the Chairman announced at the 2008 spring meeting that Members had reached an understanding on the procedures to be followed to fill the four vacant positions. Pursuant to these procedures, the Committee elected four experts at a special meeting held in July 2008: Dr. Chang-fa Lo (Chinese Taipei); Dr. Manzoor Ahmad (Pakistan); Mr. Zhang Yuqing (China); and Mr. Jeffrey A. May (United States), with terms until 2010, 2011, 2012 and 2013, respectively.

*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>12</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 led to the adoption of an approach to calculate the \$1,000 threshold in constant 1990 dollars. The WTO Secretariat updated these calculations in 2008.<sup>13</sup>

### **Prospects for 2009**

In 2009, the United States will continue to focus on China’s subsidy programs and the Transitional Review Mechanism to ensure that China meets its obligations under its Protocol of Accession and the SCM Agreement. The United States will bring to the Committee’s attention unreported subsidies in China and, in particular, any subsidies that appear to be prohibited. At its spring 2009 meeting, the SCM Committee should complete its review of the United States’ 2005 subsidy notification. Finally, the Committee will undertake an examination of possible changes to the standard format for semi-annual reports on countervailing duty actions and the minimum information to be provided in reports on preliminary and final countervailing duty actions in light of recent changes agreed upon in the Committee on Anti-Dumping Practices.

## **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 2008**

The Valuation Agreement is administered by the Committee on Customs Valuation (the Customs Valuation Committee), which held two formal meetings in 2008. 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 2008.

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.

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<sup>12</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.

<sup>13</sup> See G/SCM/110/Add.5.

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

Achieving universal adherence to the Valuation Agreement in the Uruguay Round was an important objective of the United States. The Agreement was initially negotiated in the Tokyo Round, but its acceptance was voluntary until mandated as part of membership in the WTO. A proper valuation methodology under the Agreement, avoiding arbitrary determinations or officially-established minimum import prices, 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 October 2008, 80 Members had notified their national legislation on customs valuation (this figure does not include the 27 individual EU Members); 46 Members have not yet notified their national legislation on customs valuation. During 2008, the Committee concluded the examinations of the legislations of Kuwait, Saudi Arabia and Oman. At the Committee's October 2008 meeting, the Committee undertook its examination of the custom valuation legislations of Albania, Bahrain, Belize, Egypt, Nigeria, Oman, Tanzania, and continued its examination of the legislation of Thailand. The Committee's examination of these Members' customs valuation legislation will continue in 2009.

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

In 2008, the Customs Valuation Committee concluded China's Seventh Transitional Review in accordance with the Protocol of Accession of the People's Republic of China to the WTO. During 2008, the United States again sought clarifications about China's customs-related regulatory measures and legislation. The United States has been concerned about the implementation of these measures by China's customs personnel. At the October 2008 Customs Valuation Committee meeting, China provided oral answers to the United States questions. China will submit the answers in writing prior to the May 2009 Customs Valuation Committee meeting where they will be thoroughly reviewed.

The Customs Valuation Committee's work throughout 2008 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 2009**

The Customs Valuation Committee's work in 2009 will include reviewing the relevant implementing legislation and regulations notified by Members, along with addressing any further requests by other Members concerning implementation deadlines. The Committee will monitor progress by Members with regard to their respective work programs that were included in the decisions granting transitional reservations or extensions of time for implementation. In this regard, the Committee will continue to

provide a forum for sustained focus on issues arising from practices of all Members that have implemented the Valuation Agreement, to ensure that such Members' customs valuation regimes do not utilize arbitrary or fictitious values such as through the use of minimum import prices. Finally, the Committee will continue to address technical assistance issues as a matter of high priority.

## **7. Committee on Rules of Origin**

### **Status**

The objective of the Agreement on Rules of Origin (the ROO Agreement) is to increase transparency, predictability and consistency in both the preparation and application of rules of origin. The ROO Agreement provides important disciplines for conducting preferential and non-preferential origin regimes, such as the obligation to provide binding origin rulings upon request to traders within 150 days of that request. In addition to setting forth disciplines related to the administration of rules of origin, the ROO Agreement provides for a work program leading to the multilateral harmonization of rules of origin used for non-preferential trade. The Harmonization Work 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 2008 and will continue into 2009.

The ROO Agreement is administered by the Committee on Rules of Origin (the ROO Committee), which met formally twice in 2008, 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 2008**

As of the end of 2008, 79 Members notified the WTO concerning non-preferential rules of origin. In these notifications, 37 Members notified that they had non-preferential rules of origin and 42 Members notified that they did not have a non-preferential rule of origin regime. Forty-seven Members have not notified non-preferential rules of origin.

Eighty-six Members have notified the WTO concerning preferential rules of origin, of which 82 notified their preferential rules of origin and four notified that they did not have preferential rules of origin. Forty Members have not notified preferential rules of origin.

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

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

The ROO Agreement has provided a means for addressing and resolving many problems facing U.S. exporters pertaining to origin regimes, and the ROO Committee has been active in its review of the

Agreement's implementation. The ongoing HWP leading to the multilateral harmonization of non-preferential product-specific rules of origin has attracted a great deal of attention and resources. Significant progress has been made toward completion of this effort, despite the large volume and magnitude of complex issues which must be addressed for hundreds of specific products.

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

In addition to the April and October 2008 formal meetings, the ROO Committee conducted several informal consultations related to the HWP negotiations. The Committee's work in 2008 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 non-preferential rules of origin, the Committee is still grappling with a number of fundamental issues including many product-specific rules of origin for agricultural and industrial goods, and the scope of the prospective obligation to apply equally for all purposes the harmonized non-preferential rules of origin.

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

Because of the impasse among Members on (i) the product-specific rules related to the 94 core policy issues, (ii) the absence of a common understanding of scope of the prospective obligation to apply equally for all purposes the harmonized non-preferential rules of origin, and (iii) the growing concern among Members that the final result of the HWP negotiations would not produce a result consistent with the objectives of the HWP set forth in Article 9 of the ROO Agreement, the General Council recognized that its guidance was needed on how to resolve these issues. At the July 2007 General Council meeting, the General Council endorsed the recommendation of the ROO Committee that substantive work on these issues be suspended until the ROO Committee receives the necessary guidance from the General Council on how to reconcile the differences among Members on the above-mentioned 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 as soon as possible and report periodically to the General Council on its efforts in this regard. The Chair reported to the Council for Trade in Goods in December 2008 that the ROO Committee had continued work on technical issues as directed by the General Council in 2007.

In the two 2008 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. The architecture is the hierarchy for applying the different rules for determining origin.

## Prospects for 2009

Further progress in the HWP will remain contingent on achieving appropriate resolution of the “core policy issues”, to reaching a consensus on the scope of the prospective obligation to apply equally for all purposes the harmonized non-preferential rules of origin, and achieving a result that is consistent with the objectives set forth in Article 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 as well as bilateral and small-group meetings. The ROO Committee will continue to report periodically to the General Council on its progress in resolving these technical issues.

## 8. Committee on Technical Barriers to Trade

### Status

The Agreement on Technical Barriers to Trade (the TBT Agreement) establishes rules and procedures regarding the development, adoption, and application of voluntary product standards, mandatory technical regulations, and the procedures (such as testing or certification) used to determine whether a particular product meets such standards or regulations. The aim of the TBT Agreement is to prevent the use of technical requirements as unnecessary barriers to trade.

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

The Committee on Technical Barriers to Trade (the TBT Committee)<sup>14</sup> serves as a forum for consultation on issues associated with the implementation and administration of the TBT Agreement. The role of the TBT Committee includes discussions and/or presentations concerning specific standards, technical regulations and conformity assessment procedures proposed or maintained by a Member that are creating adverse trade consequences and/or are perceived to raise concerns under the Agreement. It also includes an exchange of information on Member government practices related to implementation of 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) 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 standards, technical regulations, and conformity assessment procedures, and to provide written comments for consideration on those proposals before they are finalized. Members are also required to establish a central contact point, known as an inquiry point, which is responsible for responding to requests for information on technical requirements or making the appropriate referral.

The National Institute of Standards and Technology (NIST) serves as the U.S. inquiry point. NIST maintains a reference collection of standards, specifications, test methods, codes, and recommended practices. This reference material includes U.S. Government agencies' regulations and standards and standards of non-governmental standardizing bodies. The inquiry point responds to requests for information concerning federal, state, and non-governmental standards, regulations, and conformity assessment procedures. Upon request, NIST will provide copies of notifications of proposed technical regulations and conformity assessment procedures from foreign governments received under the TBT Agreement. NIST also will provide information on central contact points for information maintained by other WTO Members. NIST refers requests for information concerning standards and technical regulations for agricultural products, including SPS measures, to the U.S. Department of Agriculture, which is the U.S. inquiry point pursuant to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

A number of documents relating to the work of the TBT Committee are available to the public directly from the WTO website: [www.wto.org](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 send them through the U.S. inquiry point at the address above. Minutes of the TBT Committee meetings are issued as "G/TBT/M/..." (followed by a number). Submissions by Members (e.g., statements, informational documents, proposals, etc.) and other working documents of the Committee are issued as "G/TBT/W/..." (followed by a number). Decisions and recommendations adopted by the TBT Committee are contained in *G/TBT/1/Rev.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.

With the implementation of the Marrakesh Agreement establishing the WTO, *all* Members assumed responsibility for compliance with the TBT Agreement. Although a predecessor to the TBT Agreement existed as a result of the Tokyo Round, known as the Standards Code, the expansion of its applicability to all Members as a result of the Uruguay Round negotiations was significant and resulted in new obligations for many Members. As a result of the TBT Agreement, interested parties in the United States have the right to receive information on proposed standards, technical regulations, and conformity assessment procedures being developed by other Members. The TBT Agreement also provides an opportunity for interested parties to influence the development of such measures by taking advantage of the opportunity to provide written comments on drafts. Among other things, this opportunity helps to prevent the establishment of technical barriers to trade. The TBT Agreement has functioned well in this regard, although discussions on how to improve the operation of the provisions on transparency are

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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).

ongoing. Other disciplines and obligations, such as the prohibition of discrimination and the call for measures not to be more trade restrictive than necessary to fulfill legitimate regulatory objectives, have been useful in evaluating potential trade barriers and in seeking ways to address them.

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

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

### **Major Issues in 2008**

The TBT Committee met three times in 2008, March (G/TBT/M/44), July (G/TBT/M/45), and November (G/TBT/M/46). 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 or conformity assessment procedures that affected, or had the potential to affect, trade adversely and were perceived to create unnecessary barriers to trade. The number of specific trade concerns brought to the attention of the TBT Committee set a record in 2008 with 53 different concerns raised with regard to Members' implementation and administration of the TBT Agreement. EU measures, such as REACH (Registration, Evaluation, Authorization and Restriction of Chemicals) and the classification of borates, nickel carbonates, and nickel compounds under the Dangerous Substances Directive, continue to draw significant attention in the Committee, as do China's proposed measures on the information security of IT products.

Following the adoption of the Fourth Triennial Review in November 2006, in 2008, the Committee continued its exchange of experiences on the future work items identified in that Review, including good regulatory practice, conformity assessment procedures, transparency, technical assistance, and special and differential treatment.

At its March 2008 meeting, the TBT Committee completed the Thirteenth Annual Review of the Implementation and Operation of the TBT Agreement and the Thirteenth Annual Review of the Code of Good Practice for the Preparation, Adoption, and Application of Standards. This work was based on the following background documents: a list of standardizing bodies that have accepted the Code in 2007 (G/TBT/CS/1/Add.12), a list of standardizing bodies that have accepted the Code since January 1, 1995 (G/TBT/CS/2/Rev.14), and the Thirteenth edition of the WTO TBT Standards Code Directory prepared by the ISO/IEC Information Centre.

At the November meeting, the TBT Committee also completed the Seventh Annual Transitional Review mandated in the Protocol of Accession of the People's Republic of China. The United States (G/TBT/W/292), Japan (G/TBT/W/293), and the EU (G/TBT/W/300) submitted written comments and questions. China's submission is contained in G/TBT/W/296. The Committee's report on the Review is contained in G/TBT/24.

During the 2008 meetings of the TBT Committee, representatives of the Codex, IEC, ISO, ITC, OECD, OIML, UNECE, and UNIDO (observers to the Committee) updated the Committee on their activities relevant to its work, including on technical assistance.

### **Prospects for 2009**

The TBT Committee will continue to monitor Members' implementation of the TBT Agreement. The number of specific trade concerns raised in the Committee appears to be increasing. Aside from the specific trade concerns, the Committee will continue work on the Fifth Triennial Review, including holding a workshop highlighting the role of relevant international standards in economic development on the margins of the March 18-19, 2009 meeting. Discussion of new issues will be driven by Member statements and submissions. In 2009, U.S. priorities are likely to continue to focus on good regulatory practice, transparency, encouraging the use of the TBT Committee Decision on Principles for the Development of International Standards, and 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. Based on papers submitted by Members on specific topics for discussion, the activities of the Working Group permit Members to develop a better understanding of the similarities and differences in their policies and practices for implementing the provisions of the Antidumping Agreement. Where possible, the Working Group endeavors to develop draft recommendations on the topics it discusses which it forwards to the Antidumping Committee for consideration. To date, the Antidumping Committee has adopted Working Group recommendations on five antidumping topics.

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

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

### **Major Issues in 2008**

In 2008, the Antidumping Committee held meetings on April 28 and October 27 and 28. At its meetings, the Antidumping Committee focused on implementation of the Antidumping Agreement, in particular, by continuing its review of Members' antidumping legislation. The Committee also reviewed reports required of Members that provide information as to preliminary and final antidumping measures and actions taken over the preceding six months.

The following is a list of the more significant activities that the Antidumping Committee, the Working Group, and the Informal Group undertook in 2008:

*Notification and Review of Antidumping Legislation:* To date, 70 Members have notified that they currently have antidumping legislation in place and 28 Members have notified that they maintain no such legislation. In 2008, the Antidumping Committee reviewed new notifications of antidumping legislation and/or regulations submitted by Albania, China, Costa Rica, Egypt, El Salvador, Guatemala, Nicaragua, and Ukraine. The Committee also continued its review of previously-reviewed legislative notifications submitted by Albania, Canada, China, Costa Rica, the European Communities, Guatemala, and the United States. Members, including the United States, were active in formulating written questions and in making follow-up inquiries at Antidumping Committee meetings.

*Notification and Review of Antidumping Actions:* In 2008, 23 Members notified that they had taken antidumping actions during the latter half of 2007, whereas 21 Members did so with respect to the first half of 2008. (By comparison, 30 Members notified that they had not taken any antidumping actions during the latter half of 2007, and 30 Members notified that they had taken no actions in the first half of 2008). These actions, as well as outstanding antidumping measures currently maintained by Members, were identified in semi-annual reports submitted for the Antidumping Committee's review and discussion (The semi-annual reports for the second half of 2007 were issued as "G/ADP/N/166," and the semi-annual reports for the first half of 2008 were issued as "G/ADP/N/173."). At its April and October 2008 meetings, the Committee reviewed Members' notifications of preliminary and final actions pursuant to Article 16.4 of the Antidumping Agreement.

*China Transitional Review:* At the October 2008 meeting, the Antidumping Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its seventh annual Transitional Review with respect to China's implementation of the Antidumping Agreement. The United States and Japan presented written questions to China with respect to China's antidumping laws and practices. China orally provided information in response to the questions posed by the United States and Japan.

*Working Group on Implementation:* The Working Group held meetings in April and October 2008. Beginning in 2003, the Working Group has held discussions on four agreed-upon topics: (1) export prices to third countries vs. constructed value under Article 2.2 of the Antidumping Agreement; (2) foreign exchange fluctuations under Article 2.4.1; (3) conduct of verifications under Article 6.7; and (4) judicial, arbitral or administrative reviews under Article 13. The discussions in the Working Group on these topics have focused on submissions by Members describing their own practices, including past submissions by the United States on all four topics. In 2008, the Working Group discussed a draft paper

prepared by New Zealand on price undercutting. Several Members posed questions to New Zealand on the issues raised in the paper, and it was agreed that further discussion would resume at the next Committee meeting in the Spring of 2009.

*Informal Group on Anticircumvention:* In 2008, the Informal Group held meetings in April and October. The Informal Group continued to discuss the first three items of the agreed framework of: (1) what constitutes circumvention; (2) what is being done by Members confronted with what they consider to be circumvention; and (3) to what extent can circumvention be dealt with under the relevant WTO rules, and what other options may be deemed necessary.

## **Prospects for 2009**

Work will proceed in 2009 on the areas that the Antidumping Committee, the Working Group and the Informal Group addressed this past year. The Antidumping Committee will pursue its review of Members' notifications of antidumping legislation, and Members will continue to have the opportunity to submit additional questions concerning previously reviewed notifications. This ongoing review process in the Antidumping Committee is important for ensuring that Members' antidumping laws are properly drafted and implemented, thereby contributing to a well-functioning, rules-based trading system. Since notifications of antidumping legislation are not restricted documents, U.S. exporters will continue to enjoy access to information about the antidumping laws of other Members that should assist them in better understanding the operation of such laws and in taking them into account in commercial planning.

The preparation by Members and review in the Antidumping Committee of semi-annual reports and reports of preliminary and final antidumping actions will also continue in 2009. The semi-annual reports are accessible to the general public from the WTO website, in keeping with the objectives of the Uruguay Round Agreements Act. (Information on accessing WTO notifications is included in Annex II.) This transparency promotes improved public knowledge and appreciation of the trends in and focus of all WTO Members' antidumping actions.

Discussions in the Working Group on Implementation will continue to play an important role, as more Members enact antidumping laws and begin to apply them. There has been a sharp and widespread interest in clarifying the many complex provisions of the Antidumping Agreement. Tackling these issues in a serious manner will require the involvement of the Working Group, which is the forum best suited to provide the necessary technical and administrative expertise. For these reasons, the United States will continue to use the Working Group to learn in greater detail about other Members' administration of their antidumping laws, especially as that forum provides opportunities to discuss not only the laws as written, but also the operational practices that Members employ to implement them. In 2009, the Working Group will continue its discussion of two topics that it has been discussing since 2003: (1) export prices to third countries vs. constructed value under Article 2.2 of the Antidumping Agreement; and (2) foreign exchange fluctuations under Article 2.4.1, while beginning discussion of a new topic; (3) Article 3.2 – How do Members determine whether there has been a significant price undercutting by dumped imports? In addition, the Working Group will continue its discussion of the draft recommendation on the conduct of antidumping verifications.

The work of the Informal Group on Anticircumvention will also continue in 2009, according to the framework for discussion on which Members agreed. However, given the focus on anticircumvention issues in the WTO Rules negotiations under the Doha Development Agenda, it is possible that there may be relatively little activity on these issues in the Informal Group in 2009.

## 10. Committee on Import Licensing

### Status

The Committee on Import Licensing (the Import Licensing Committee) was established to administer the Agreement on Import Licensing Procedures (Import Licensing Agreement) and to monitor compliance with the mutually agreed rules for the application of these widely used measures set out in the Agreement. The Import Licensing Committee normally meets twice a year to review information on import licensing requirements submitted by WTO Members in accordance with the obligations 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, 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. China's seventh review concerning its import licensing procedures was conducted at the October 2008 meeting of the Committee.

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 protect Members from unreasonable requirements or delays associated with a licensing regime. These obligations are intended to ensure that the use of import licensing procedures does not create additional barriers to trade beyond the policy measures implemented through licensing (the Import Licensing Agreement's provisions discipline licensing *procedures*). While the Agreement does not directly address the WTO consistency of the underlying measures, 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 "non-automatic" licensing systems, under which certain conditions must be met before a license is issued. Governments often use non-automatic licensing to administer import restrictions such as quotas and tariff-rate quotas (TRQs), or to administer safety or other requirements (e.g., for hazardous goods, armaments, antiquities, etc.). Requirements for permission to import that act like import licenses, such as certification of standards and sanitary and technical regulations, are also subject to the rules of the Import Licensing Agreement.

### Major Issues in 2008

At its meetings in April and October 2008, the Import Licensing Committee reviewed 81 new submissions from 36 Members,<sup>16</sup> including initial or revised notifications, completed questionnaires on

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<sup>16</sup> The Members submitting notifications during 2008 were: Albania, Argentina, Armenia, Bangladesh, Brazil, Canada, China, Colombia, Cote d'Ivoire, European Communities, Guatemala, Honduras, Hong Kong, India, Indonesia, Jamaica, Japan, Lesotho, Macao, Madagascar, Malaysia, Mauritius, Moldova, Morocco, Norway, Oman,

procedures, and questions and replies to questions. This count exceeded the number of notifications submitted to the Committee during 2007 due to a large number of questions and replies as well as a large number of annual replies to the Licensing Procedures Questionnaire. The Chairman reported that by the end of 2008, two additional Members (Lesotho and Ukraine) had made initial notifications, and that only 21 of 126 Committee Members had never submitted a notification to the Committee, including one newly acceded member, Cape Verde.<sup>17</sup> This brings the percentage of Members with at least an initial notification to the Committee to over 83 percent. Despite this progress, the Chairman and some Committee Members continued to express concern that even participating Members are not submitting notifications with the frequency required by the Import Licensing Agreement. The Committee Chairman reminded Members that notifications were required even if only to report that no import licensing system existed and that the WTO Secretariat was prepared to assist Members in developing their submissions.

The United States remained one of the most active members of the Import Licensing Committee, using the forum to gather information and to discuss import licensing measures applied to its trade by other Members. The U.S. representative brought a number of new issues to the Committee's attention as well as continuing to press Committee Members on issues where satisfactory information has not yet been provided.

The United States observed that India had not fully notified its import licensing requirements for non-insecticidal boric acid, and submitted a number of specific questions on the import licensing procedures for non-insecticidal boric acid (HS code 2810) for response. The United States noted that the stringent requirements applied to imports did not appear to be in place for domestic producers of non-insecticidal boric acid, as only importers were required to obtain an activity license for trade in boric acid for insecticide production, whether or not this was the designated end use. India was asked to explain. India promised to respond to these questions and comments in writing. Responding to the observation by the U.S. representative that its licensing fees for import and activity licenses were based on the value of the import, not on the cost of the services rendered in processing the licensing applications, and therefore not consistent with WTO provisions. India defended these *ad valorem* fees as aligned with the ability of its poorer importers to pay. The United States will continue to pursue this issue in the Committee and other appropriate fora.

The United States also expressed concerns related to Vietnam's recently applied licensing requirements on a large number of imported products. The issues raised included the purpose of these requirements and the failure to approve supposedly "automatic" import licenses in all cases as required by the Agreement. The United States asked that Vietnam provide information on the procedures and their application in line with normal notifications to the Committee as soon as possible. Finally, the United States asked for confirmation that these licensing requirements would expire on 31 December 2008. Vietnam indicated that it would respond to these interventions in writing.

The United States continued to press Brazil to provide information on its system of quotas and non-automatic licensing for imports of certain lithium compounds, *i.e.*, lithium carbonate and lithium hydroxide. Neither of these measures had been notified to the Committee. U.S. firms report that Brazil is using import licensing to enforce artificial customs valuation levels for certain imports, and ultimately

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Qatar, Saint Lucia, Singapore, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, the United States, and Zimbabwe.

<sup>17</sup> The EU and its member states are recorded by the Committee as a single Member for the purposes of submissions to the Committee. The Members that have never submitted a notification to this Committee are Angola, Belize, Botswana, Cambodia, Cape Verde, Central African Republic, Congo, Djibouti, Egypt, Guinea, Guinea Bissau, Mauritania, Mozambique, Myanmar, Nepal, St. Vincent & the Grenadines, Sierra Leone, Solomon Islands, Tanzania, Tonga, and Vietnam.

refusing to issue the licenses, bringing trade to a halt. China noted that the licensing requirements on toys were being administered in a manner inconsistent with the Agreement, and causing severe delays in customs clearance. Brazil claimed that lithium compounds are used in the production of nuclear power and therefore its Government maintained these restrictions for national security purposes. Brazil had no additional information on the licensing measures enforcing customs valuation, including those noted on toy imports, but observed that it applied licensing requirements for toy imports based on technical regulations to support toy safety.

The United States again noted Indonesia's non-automatic licensing system for selected textile products. A complaint was also lodged concerning licensing restrictions being applied to sugar, restricting imports and directing importers to use local substitutes instead. Both measures restricted imports. The U.S. representative pressed Indonesia for an explanation for their application and, ultimately, for their removal. Thailand supported the U.S. intervention, noting the impact of the restrictions on its sugar exports. Indonesia did not respond directly, but indicated that an official response would be forwarded to the United States as soon as possible. Indonesia added that current licensing requirements were based on a Decree by the Ministry of Trade issued in 2004. The Indonesian government was funding a sugar refinery revitalization program, the aim of which was to increase domestic production to match domestic demand for sugar. Noting a recent public statement supporting sugar self-sufficiency for Indonesia by the Minister of Trade, Indonesia clarified that once the program was completed in 2009, Indonesia might not need to import refined sugar as the local producers would be able to meet local demand.

After the Committee meeting, the United States also submitted written questions to Indonesia on new licensing restrictions on a number of other products (including electronics, household appliances, textiles and apparel, footwear, toys, and food and beverage products), special registration requirements, pre-shipment inspection, limited port access and a discretionary assessment for approval that could include consultations with domestic producers. The demarche included a request that Indonesia explain how this licensing system was consistent with its WTO obligations. Subsequent bilateral consultations did not resolve the issue, which will be raised in Committee meetings in 2009.

The United States also raised questions about Argentina's import licensing procedures for toys, asking for additional information on how import licences were allocated and on how the verification procedure was administered. No further information was given on how applications for these licences were actually considered.

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

At its October meeting, the Committee conducted its seventh annual Transitional Review of China's implementation of its WTO accession commitments in the area of import licensing procedures. The United States raised questions about China's new requirement that foreign exporters of cotton obtain a registration certificate from the Chinese agency in charge of standards and technical regulations, the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) before engaging in the export of cotton to China, or face pre-shipment inspection requirements.

Canada noted that China had greatly expanded the number of tariff headings covered by "automatic" import licenses for monitoring imports and collecting statistics (*e.g.*, for imports of coal, iron and steel, copper, aluminum waste and scrap, aluminum ores and concentrates, iron ores and concentrates and mineral or chemical fertilizers). While China claimed that there were no restrictions applied under "automatic" import licensing programs, Canada wanted to know why the monitoring was necessary and how the statistics are used. Canada also asked for information on the criteria for adding or removing a tariff heading from the list.

Australia sought information on China's licensing requirements relating to imports of iron ore. China responded that these requirements are automatic, and that any more stringent requirements were administered by the importing firms themselves.

### **Prospects for 2009**

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. As tariffs are liberalized, it becomes more critical that Members use import licensing procedures properly, particularly in the administration of agricultural TRQs, and to ensure that licensing procedures do not, in themselves, restrict imports in a manner not consistent with WTO provisions. Licensing continues to be a factor in the application of safeguard measures, technical regulations, and sanitary/phytosanitary requirements applied to imports as well. The proliferation of automatic licensing requirements raises additional concerns, as many such requirements appear to be administered in a manner that restricts trade. The Import Licensing Committee will continue to be the point of first 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.

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

## **11. Committee on Safeguards**

### **Status**

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

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

The Safeguards Agreement requires Members to notify the Safeguards Committee of their laws, regulations, and administrative procedures relating to safeguard measures. It also requires Members to notify the Safeguards Committee of various safeguards actions, such as (1) the initiation of an investigatory process; (2) a finding by a Member's investigating authority of serious injury or threat

thereof caused by increased imports; (3) the taking of a decision to apply or extend a safeguard measure; and (4) the proposed application of a provisional safeguard measure.

### **Major Issues in 2008**

During its two regular meetings in April and October 2008, 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 Albania, Costa Rica, Egypt, El Salvador, Guatemala, Malaysia, Nicaragua, Turkey, and Ukraine.

The Safeguards Committee reviewed Article 12.1(a) notifications, regarding the initiation of a safeguard investigatory process relating to serious injury or threat thereof and the reasons for it, from the following Members: Australia on swine meat; Brazil on CD-Rs and DVD-Rs; Egypt on blankets; Indonesia on ceramic tableware and dextrose monohydrate; Philippines on steel angle bars; Turkey on certain electrical appliances and cotton yarn; and Ukraine on casing and pump-compressor seamless steel pipes.

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: Australia on swine meat; Egypt on blankets; Moldova on beet sugar; Panama on BOPP and PVC films; South Africa on lysine; Turkey on certain electrical appliances, spectacle frames, and travel goods; and Ukraine on casing and pump-compressor seamless steel pipes.

The Safeguards Committee reviewed Article 12.1(c) notifications regarding a decision to apply a safeguard measure from the following Members: Egypt on blankets; Moldova on beet sugar; Panama on BOPP and PVC films; Philippines on ceramic floor and wall tiles, figured glass, float glass and glass mirrors; South Africa on lysine; Turkey on certain electrical appliances, spectacle frames and travel goods; and Ukraine on casing and pump-compressor seamless steel pipes.

The Safeguards Committee reviewed Article 12.4 notifications regarding the application of a provisional safeguard measure from Egypt on blankets and Turkey on cotton yarn.

The Safeguards Committee received notifications from the following Members of the termination of a safeguard investigation with no definitive safeguard measure imposed: from Australia on swine meat; Turkey on certain electrical appliances (partial); and Ukraine on PVC sections for windows and doors.

*China Transitional Review:* At the October 2008 meeting, the Safeguards Committee undertook its seventh annual Transitional Review with respect to China's implementation of the Safeguards Agreement. Given that China reported no new safeguards legislation or safeguards actions taken in the past year, the United States did not submit any questions, and the discussion was very brief.

### **Prospects for 2009**

The Safeguards Committee's work in 2009 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. At the suggestion of the Chairman, the Committee will also work toward establishing standards for more meaningful notifications of safeguard actions by Members.

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

### **Status**

Article XVII of the GATT 1994 requires Members, *inter alia*, to ensure that state trading enterprises (STEs), as defined in that Article, act in a manner consistent with the general principle of non-discriminatory treatment, make purchases or sales solely in accordance with commercial considerations, and abide by other GATT disciplines. The Understanding on the Interpretation of Article XVII of the GATT 1994 (the Article XVII Understanding) defines a state trading enterprise more narrowly for the purposes of providing a notification that is required under the 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 2008**

The WP-STE held one formal meeting in October, 2008. Prior to that meeting, the United States responded to questions from Australia concerning previous notifications of U.S. state trading enterprises.

At the October meeting, STE notifications were reviewed for Argentina, Armenia, Australia, Chile, Hong Kong China, Latvia, Macao China, Singapore, Switzerland, Chinese Taipei, Thailand, Trinidad and Tobago, Turkey, Ukraine, the United States, and Zimbabwe. Each of these Members had submitted STE notifications in 2008. Of these Members, Australia, Chile, Thailand, Chinese Taipei, Turkey, Ukraine and Trinidad and Tobago notified STEs under the definition contained in paragraph one of the Article XVII Understanding. All other Members submitting notifications indicated that they did not have STEs under the definition set out in the Understanding.

The United States' notification included updated information on the Commodity Credit Corporation, Isotopes Production and Distribution Program, Power Administrations, and Strategic Petroleum Reserve.

The WP-STE also focused its attention on Member compliance with the notification obligation. Members indicated the need to reflect further on the reasons for Member non-compliance and possible options to increase compliance and agreed to hold further informal consultations on the matter. The WP-STE also adopted its Annual Report to the Council for Trade in Goods for the year 2008.

### **Prospects for 2009**

The WP-STE is scheduled to meet in October, 2009. As part of the agriculture negotiations in the Doha Round, the United States proposed specific disciplines on export agricultural STEs that would increase transparency, improve competition and tighten disciplines for these entities. In 2009, the WP-STE will contribute to the ongoing discussion of these and other state trading issues through its review of new notifications and its examination of what further information could be submitted as part of the notification process to enhance transparency of STEs.

## **F. Council on Trade Related Aspects of Intellectual Property Rights**

### **Status**

The WTO Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council) monitors implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), provides a forum in which WTO Members can consult on intellectual property matters, and carries out the specific responsibilities assigned to the Council in the TRIPS Agreement.

The TRIPS Agreement sets minimum standards of protection for copyrights and 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 (IPRs) through civil actions for infringement, actions at the border and, at least in regard 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 country 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. 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 2008**

In 2008, the TRIPS Council held three formal meetings. In addition to continuing its work reviewing the implementation of the Agreement, the TRIPS Council's work in 2008 focused on the relationship of the TRIPS Agreement to the Convention on Biological Diversity, as well as ongoing consideration of issues addressed in the Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health. Some Members, including the United States, also sought to have the TRIPS Council continue to examine issues related to the enforcement provisions of the TRIPS Agreement.

*Review of Developing Country Members' TRIPS Implementation:* During 2008, the TRIPS Council continued to devote time to reviewing the TRIPS Agreement's implementation by developing country Members and newly acceded Members, as well as to providing assistance to developing country Members so they can implement fully the Agreement. In particular, the TRIPS Council continued to urge developing country Members to respond to the questionnaires already answered by developed country Members regarding their protection of GIs and implementation of the TRIPS Agreement's enforcement provisions, and to provide detailed information on their implementation of Article 27.3(b) of the Agreement. The United States continued to press for full implementation of the TRIPS Agreement by developing country Members and participated actively during the reviews of legislation by highlighting

specific concerns regarding individual Member's implementation of the Agreement's obligations, particularly with regard to China's efforts.

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

During 2008, the TRIPS Council undertook a review of the implementing legislation of Vietnam, in addition to the above-referenced review of China.

*Intellectual Property and Access to Medicines:* The August 30, 2003 solution (the General Council Decision on "Implementation of Paragraph 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 solution. The United States was the first Member to submit its acceptance of the amendment to the WTO. At the end of 2008, a total of 18 Members had accepted the amendment, which will enter into force, for those Members that have accepted it, upon its acceptance by two-thirds of the membership of the WTO. At its October 2008 meeting, the TRIPS Council reviewed implementation of the August 30, 2003 solution. Several members commented on the importance of the solution and reported on preparations to formally accept the amendment. Pursuant to a December 2007 Decision of the WTO General Council, the period in which Members may accept the amendment remains open until December 31, 2009.

*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 IPRs by requesting consultations with China. On September 25, 2007, the WTO Dispute Settlement Body established a panel to consider the dispute. The U.S. panel request alleges breaches of various provisions of the TRIPS Agreement related to three aspects of China's IPR regime. First, the panel request challenges quantitative thresholds in China's criminal law that must be met in order for willful acts of trademark counterfeiting and copyright piracy to be subject to criminal procedures and penalties. These thresholds provide pirates and counterfeiters in China a safe harbor to avoid criminal liability. Second, the panel request addresses the rules for disposal of IPR-infringing goods seized by Chinese customs authorities. Those rules appear to permit goods to be released into commerce following the removal of fake labels or other infringing features, when WTO rules dictate that these goods normally should be kept out of the marketplace altogether. Third, the panel request addresses the denial of copyright protection and enforcement to creative works that are awaiting or have not received Chinese censorship approval.

During 2008, the United States continued to monitor EU compliance with a 2005 ruling of the WTO Dispute Settlement Body (DSB) that the EU's regulation on food-related GIs is inconsistent with the EU's obligations under the TRIPS Agreement and the GATT 1994. The United States has raised certain questions and concerns with regard to the revised EU regulation and its compliance with the DSB findings and recommendations, and continues to monitor implementation in this dispute.

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

*Geographical Indications:* The Doha Declaration directed the TRIPS Council to discuss “issues related to extension” of 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. Consistent with this mandate, the Director-General appointed a Deputy Director-General to hold a number of such consultations with Members on the issue of extension.

Throughout 2008, the United States and many like-minded Members maintained the position that the *demandeurs* had not established that the protection provided GIs for products other than wines and spirits was inadequate, and thus proposals for expanding GI protection were unwarranted. The United States and other Members noted that the administrative costs and burdens of proposals to expand protection would be considerable for those Members that did not have a longstanding statutory regime for the protection of GIs, that the benefits accruing to those few Members that have longstanding statutory regimes for the protection of GIs would represent a windfall, and that other Members with few or no GIs would receive no counterbalancing benefits. While willing to continue the dialog in the TRIPS Council, the United States believes that discussion of the issues has been exhaustive and that no consensus has emerged with regard to extension of Article 23-level protection to products other than wines and spirits. The United States and other Members have also steadfastly resisted efforts by some Members to obtain new GI protections in the WTO agriculture negotiations.

In the context of the July 2008 meeting of WTO trade ministers held in Geneva, some Members sought to establish a new mandate to negotiate the extension of Article 23-level protection to products other than wines and spirits. The United States and other Members opposed these proposals. No action was taken on this question at the July 2008 meetings.

*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 except from patentability plants and animals and biological processes for the production of plants and animals). Most developing country Members have chosen not to provide such information and have raised topics that fall outside the scope of Article 27.3(b).

The Doha Declaration directs the TRIPS Council, in pursuing its work program under the review of Article 27.3(b), to examine, *inter alia*, the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) and the protection of traditional knowledge and folklore. Consideration of this set of issues also continues to be guided by the direction of Ministers in the Hong Kong Declaration, that all implementation issues (including the relationship of the TRIPS Agreement and the CBD) should be the subject of consultations facilitated by the WTO Director-General. Furthermore, Ministers agreed that work would continue in the TRIPS Council on this issue.

A number of developing country Members continue to advocate for amending the patent provisions of the TRIPS Agreement to require disclosure of the source of the genetic resource or traditional knowledge, as well as evidence of prior informed consent to obtain the genetic resource and adequate benefit sharing with the custodian community or country of the genetic resource in order to obtain a patent. In 2006, a

group of developing country Members submitted draft text for such an amendment to the TRIPS Agreement. There is, however, no consensus in the TRIPS Council that an amendment should be pursued.

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

In the context of the July 2008 meeting of WTO trade ministers held in Geneva, some Members sought to establish a new mandate to negotiate towards the type of patent disclosure amendment to the TRIPS Agreement described above. The United States and other Members opposed these proposals. No action was taken on this question at the July 2008 meetings.

*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/517/Add.3). In addition, and in accordance with the November 29, 2005, decision of the TRIPS Council, two LDC Members (Uganda and Sierra Leone) submitted information on their priority needs with regard to technical cooperation related to their implementation of the TRIPS Agreement. These submissions 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 2008, the United States provided an updated report on specific U.S. government institutions and incentives, as required.

## **Prospects for 2009**

In 2009, the TRIPS Council will continue to focus on its built-in agenda and the additional mandates established in the Doha Declaration, including issues related to the extension of Article 23-level protection for GIs for products other than wines and spirits, on the relationship between the TRIPS Agreement and the CBD, and on traditional knowledge and folklore, as well as other relevant new developments.

U.S. objectives for 2009 continue to be to:

- resolve differences through consultations and use of dispute settlement procedures, where appropriate;
- continue its efforts to ensure that developing country Members fully implement the TRIPS Agreement;
- engage in constructive dialogue regarding the technical assistance and capacity-related needs of developing countries in connection with TRIPS Agreement implementation;

- continue to encourage a fact-based discussion within the TRIPS Council on the enforcement provisions of the TRIPS Agreement; and
- ensure that provisions of the TRIPS Agreement are not weakened.

## **G. Council for Trade in Services**

### **Status**

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

The Council for Trade in Services (CTS) oversees implementation of the GATS and reports to the General Council. In addition, the CTS is responsible for a technical review of GATS Article XX.2 provisions; waivers from specific commitments pursuant to paragraphs 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 2008**

The CTS met twice in 2008 - in June and December. The CTS elected the delegate from Belgium as its new Chairperson in June.

During the June meeting of the CTS, Australia raised its ongoing 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. The EU explained that the EC Council required each individual Member State to ratify the relevant agreements and called for a consultation by the European Parliament. Entry into force of the EC-25 schedule is now dependent on the outcome of those proceedings. At the time of the meeting, only eight EU Member States had ratified the agreement according to their national procedures.

As part of China's Transitional Review Mechanism, the CTS held its seventh annual review of China's implementation of its services commitments in December 2008. The United States and other Members used the opportunity to raise questions and express concerns with regard to China's implementation of certain commitments.

The CTS received a number of notifications pursuant to GATS Article III.3 (transparency), GATS Article V (economic integration), and GATS Article VII (recognition). Albania, Armenia, Central African Republic, and Senegal made notifications under Article III.3. Notifications pursuant to GATS Article V

were made by China and Hong Kong, China; and China and Macao, China. Pakistan and Malaysia, and Panama and Chile made notifications pursuant to GATS Article VII.

### **Prospects for 2009**

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

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

### **Status**

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

### **Major Issues in 2008**

The CTFS met twice in 2008 – in June and December. During its June 2008 meeting, the Committee elected the delegate from the United Kingdom as the new Chairperson.

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

In December 2008, as part of China's Transitional Review Mechanism, the CTFS carried out its seventh annual review of China's implementation of its WTO financial services commitments. The United States and other Members used that opportunity to raise questions and express concerns with China's implementation of certain commitments concerning insurance, banking and related services, securities, pensions, and financial information services.

The CTFS also provided a forum for discussion of other topics, both on a formal basis and through informal consultations. These topics include technical issues and recent developments in financial services trade.

### **Prospects for 2009**

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

## **2. Working Party on Domestic Regulation**

### **Status**

GATS Article VI:4, on Domestic Regulation, provides for Members to develop any necessary disciplines relating to qualification requirements and procedures, technical standards and licensing requirements and procedures. A Ministerial Decision assigned priority to the professional services sector, and Members

subsequently established the Working Party on Professional Services (WPPS). In May 1997, the WPPS developed Guidelines for the Negotiation of Mutual Recognition Agreements in the Accountancy Sector, adopted by the WTO. The WPPS completed Disciplines on Domestic Regulation in the Accountancy Sector in December 1998. The texts are available at <http://www.wto.org>.

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

Thereafter, the pace of negotiations increased dramatically. In April 2007, the WPDR Chair issued an informal note on possible new disciplines for domestic regulation. The informal note was an attempt to consolidate elements of Members' proposals with a view to moving Members closer to a consensus on basic threshold issues, such as the appropriate level of ambition for disciplines applied to all services sectors, whether or not to submit any new disciplines to an operational "necessity test," how to balance the goal of diminishing regulatory trade barriers with the fundamental right to regulate, and how to address different levels of development.

### **Major Issues in 2008**

In January 2008, the Chair released a second informal note in the form of a draft text setting forth possible disciplines on domestic regulations. This second informal note was based upon meetings and consultations with the Chair held throughout 2007, during which Members engaged in intensive review and revision of the proposed disciplines with a view to producing an acceptable negotiating text that would reflect majority views on major threshold issues.

Members welcomed the January 2008 text as a useful step forward in negotiations, although it is clear that Members continue to have concerns about the basic threshold issues. In an informal document of March 2008, the Chair noted eight of the remaining controversial issues, and invited comments on those issues. In addition, during a July 2008 meeting, Members indicated additional issues which they believe warranted further discussion. Thus far, none of the proposed new disciplines have been agreed to by Members.

During the 2008 review sessions, the United States engaged actively and constructively with other Members and continued to negotiate on the basis of its June 2006 position paper on the WPDR ([http://www.ustr.gov/assets/Trade\\_Sectors/Services/asset\\_upload\\_file142\\_1037.pdf](http://www.ustr.gov/assets/Trade_Sectors/Services/asset_upload_file142_1037.pdf)). The United States considers that the horizontal or sector-specific application of any new disciplines should depend on the nature of the proposed disciplines, and that strong disciplines are not feasible on a horizontal basis. For that reason, the United States' priority in 2008 continued to be horizontal disciplines for regulatory transparency. Such disciplines are appropriate for horizontal implementation because they involve universal principles that promote governmental accountability, rule of law, and good governance. The United States also joined many other Members in voicing strong caution about submitting domestic regulations to an operational "necessity test" or its equivalent, or other intrusive disciplines that could have negative implications for Members' rights to regulate.

## **Prospects for 2009**

Future work in the WPDR will depend on the pace of negotiations for services market access. As the overall negotiations progress, the WPDR may continue to work in informal and *ad hoc* meetings on the basis of the January 2008 informal note, and the areas of controversy noted by the Chair and 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 rule-making under GATS Articles X (emergency safeguard mechanism), Article XIII (government procurement), and Article XV (subsidies).

### **Major Issues in 2008**

The WPGR held its only formal meeting in June 2008 and no new submissions were made by Members. The WPGR resumed ongoing discussions of emergency safeguard measures, government procurement, and subsidies. During its June meeting, the WPGR also elected the delegate from New Zealand as its new Chairperson.

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

On government procurement of services, delegations continued their discussion of a proposal by the 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, and MFN application. The United States continues to engage on this issue, but has questioned the need for a government procurement annex to the GATS in light of the fact that the Agreement on Government Procurement already covers services.

With respect to subsidies, Members discussed an informal communication from Hong Kong, China and Mexico and a follow-up document from Hong Kong, China on non-actionable subsidies.

## **Prospects for 2009**

Future work in the WPGR will depend on the pace of negotiations for services market access. As the overall negotiations progress, the WPGR may continue focused discussions in all three areas, including technical and procedural questions relating to the operation and application of any possible emergency

safeguard measures in services; proposals by Members concerning government procurement of services; and further discussion of how to facilitate a productive information exchange on subsidies.

## **4. Committee on Specific Commitments**

### **Status**

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

### **Major Issues in 2008**

The CSC held its only meeting on June 3, 2008 and no new submissions were made by Members. The CSC resumed previous discussion of classification and scheduling issues, and the relationship between old and new commitments. During the meeting, the CSC also elected the delegate from Colombia as its new Chairperson.

*Classification:* The Chair recalled last year's discussion of classification issues related to computer and related services and distribution services and encouraged Members to continue this dialogue and consider any other classification issues that may be useful for the Committee to address.

*Scheduling issues:* One Member raised the possibility of holding a workshop on scheduling commitments to complement work being done to revise offers. The Secretariat was prepared to hold a workshop, but raised logistical and timing issues. The Chair suggested that the incoming Chair hold consultations on the proposed workshop, including logistics and timing, and revisit this issue at the next meeting.

*Relationship between old and new commitments:* Discussions continued on the relationship between existing schedules and the new commitments resulting from the current negotiations. One Member emphasized the importance of dealing with this issue now, and remained supportive of the informal note from Canada, circulated in 2006, that proposed having a legal instrument with explicit recognition of the old schedules as a proper source for interpreting commitments in the new schedules. The Chair recommended this issue be taken up at the next meeting.

### **Prospects for 2009**

Work will continue on technical issues and other issues that Members raise. The CSC will likely continue to examine classification and scheduling issues as well as the relationship between old and new commitments, particularly as Members prepare final offers. Once the Doha Round concludes, the CSC will work to review offers for consistency with negotiated outcomes.

## **H. Dispute Settlement Understanding**

### **Status**

The Understanding on Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding or DSU), which is annexed to the WTO Agreement, provides a mechanism to settle disputes under the Uruguay Round Agreements. Thus, it is key to the enforcement of U.S. rights under these Agreements.

The DSU is administered by the Dispute Settlement Body (DSB), which 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 2008**

The DSB met 18 times in 2008 to oversee disputes and to address responsibilities such as appointing members to the Appellate Body and approving additions to the roster of governmental and non-governmental panelists.

*Roster of Governmental and Non-Governmental Panelists:* Article 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 non-governmental experts for GATT 1947 dispute settlement, which has been available for use by parties in selecting panelists. In 1995, the DSB agreed on procedures for renewing and maintaining the roster, and expanding it to include governmental experts. In response to a U.S. proposal, the DSB also adopted standards increasing and systematizing the information submitted by roster candidates. These modifications aid in evaluating candidates’ qualifications and encouraging the appointment of well-qualified candidates who have expertise in the subject matters of the Uruguay Round Agreements. In 2008, the DSB approved by consensus a number of additional names for the roster, including an updating of the names nominated by the United States. The United States scrutinized the credentials of these candidates to assure the quality of the roster.

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

*Rules of Conduct for the DSU:* The DSB completed work on a code of ethical conduct for WTO dispute settlement and on December 3, 1996, adopted the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes. A copy of the Rules of Conduct was printed in the Annual Report for 1996 and is available on the WTO and USTR websites. There were no changes in these Rules in 2008.

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 Agreement on Subsidies and Countervailing Measures (SCM Agreement)); (3) members of the WTO Secretariat assisting a panel or assisting in a formal arbitration proceeding; (4) the Chairman of the Textile Monitoring Body (“TMB”) and other members of the TMB Secretariat assisting the TMB in formulating recommendations, findings or observations under the Agreement on Textiles and Clothing; and (5) support staff of the Appellate Body.

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

*Appellate Body:* The DSU requires the DSB to appoint seven persons to serve on an Appellate Body, which is to be a standing body, with members serving four-year terms, except for three initial appointees determined by lot whose terms expired at the end of two years. At its first meeting on February 10, 1995, the DSB formally established the Appellate Body, and agreed to arrangements for selecting its members and staff. They also agreed that Appellate Body members would serve on a part-time basis, and sit periodically in Geneva. The original seven Appellate Body members, who took their oath on December 11, 1995, were: Mr. James Bacchus of the United States, Mr. Christopher Beeby of New Zealand, Professor Claus-Dieter Ehlermann of Germany, Dr. Said El-Naggar of Egypt, Justice Florentino Feliciano of the Philippines, Mr. Julio Lacarte-Muró of Uruguay, and Professor Mitsuo Matsushita of Japan. On June 25, 1997, it was determined by lot that the terms of Messrs. Ehlermann, Feliciano and Lacarte-Muró would expire in December 1997. The DSB agreed on the same date to reappoint them for a final term of four years commencing on 11 December 1997. On October 27, 1999, and November 3, 1999, the DSB agreed to renew the terms of Messrs. Bacchus and Beeby for a final term of four years, commencing on December 11, 1999, and to extend the terms of Dr. El-Naggar and Professor Matsushita until the end of March 2000. On April 7, 2000, the DSB agreed to appoint Mr. Georges Michel Abi-Saab of Egypt and Mr. A.V. Ganesan of India to a term of four years commencing on June 1, 2000. On May 25, 2000, the DSB agreed to the appointment of Professor Yasuhei Taniguchi of Japan to serve through December 10, 2003, the remainder of the term of Mr. Beeby, who passed away on March 19, 2000. On September 25, 2001, the DSB agreed to appoint Mr. Luiz Olavo Baptista of Brazil, Mr. John S. Lockhart of Australia and Mr. Giorgio Sacerdoti of Italy to a term of four years commencing on December 19, 2001. On November 7, 2003, the DSB agreed to appoint Professor Merit Janow of the United States to a term of four years commencing on December 11, 2003, to reappoint Professor Taniguchi for a final term of four years commencing on December 11, 2003, and to reappoint Mr. Abi-Saab and Mr. Ganesan for a final term of four years commencing on June 1, 2004. On September 27, 2005, the DSB agreed to reappoint Mr. Baptista, Mr. Lockhart and Mr. Sacerdoti for a final term of four years commencing on December 12, 2005. On July 31, 2006, the DSB agreed to the appointment of Mr. David Unterhalter of South Africa to serve through December 11, 2009, the remainder of the term of Mr. Lockhart, who passed away on January 13, 2006. On November 27, 2007, the DSB agreed to appoint Ms. Lilia R. Bautista 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. The names and biographical data for the Appellate Body members during 2008 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 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; and Mr. Unterhalter's term runs from December 18, 2008, to December 11, 2009.

In 2008, the Appellate Body issued 12 reports, 7 of which involved the United States as a party and are discussed in detail below.

*Dispute Settlement Activity in 2008:* During the DSB's first fourteen years in operation, WTO Members filed 388 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, and 19 in 2008). During that period, the United States filed 80 complaints against other Members' measures and received 113 complaints on U.S. measures. Several of these complaints involved the same issues (4 U.S. complaints against others and 26 complaints against the United States). A number of disputes commenced in earlier years remained active in 2008. 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 2009**

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 2009, 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 2009.

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

In 2008, 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 2008 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 Imports of Automobile Parts (DS340)*

On March 30, 2006, the United States requested consultations with China regarding China’s treatment of motor vehicle parts, components, and accessories (“auto parts”) imported from the United States. Although China’s WTO commitments limit its tariffs on imported auto parts to rates that are significantly below China’s tariffs on finished vehicles, China implemented regulations that impose a charge on imported auto parts equal to the tariff on complete automobiles, if the final assembled vehicle in which the parts are incorporated fails to meet certain local content requirements. The United States is concerned that these regulations impose a tax on U.S. auto parts beyond that allowed by WTO rules and result in discrimination against U.S. auto parts. These regulations appear inconsistent with several WTO provisions including Articles II and III of the GATT 1994 and Article 2 of the *Agreement on Trade-Related Investment Measures*, as well as specific commitments made by China in its WTO accession agreement. The EU (WT/DS/339) and Canada (WT/DS/442) also initiated disputes regarding the same matter. The EU, Canada, and the United States requested the establishment of a panel on September 28, 2006, and a single panel was established on October 26, 2006 to examine the complaints. On January 29, 2007, the Director-General composed the panel as follows: Mr. Julio Lacarte-Muró, Chair, and Mr. Ujal Singh Bhatia and Mr. Wilhelm Meier, Members.

The panel circulated its report on July 18, 2008. The report upheld U.S. claims that China’s regulations were inconsistent with China’s WTO obligations. In particular, it found that China’s regulations impose discriminatory internal charges and administrative procedures on imported auto parts resulting in violation of Articles III:2 and III:4 of the General Agreement on Tariffs and Trade 1994, and that certain aspects of the regulations are inconsistent with specific commitments made by China in its WTO accession agreement.

On September 15, 2008, China appealed the panel findings to the WTO Appellate Body. On December 15, 2008, the Appellate Body issued its report. The Appellate Body upheld the panel’s findings with respect to Articles III:2 and III:4 of the GATT 1994, and, after upholding the panel’s findings that the measures imposed internal charges and regulations, found that the specific commitment in China’s WTO accession agreement regarding tariff treatment was not implicated.

*China–Measures affecting the protection and enforcement of intellectual property rights (WT/DS362)*

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

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

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

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

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

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

*China—Prohibited subsidies (WT/DS358)*

On February 2 and April 27, 2007, the United States requested consultations and supplemental consultations, respectively, with China regarding subsidies provided in the form of refunds, reductions, or exemptions from income taxes or other payments. Because they are offered on the condition that enterprises purchase domestic over imported goods, or on the condition that enterprises meet certain export performance criteria, these subsidies appear to be inconsistent with several provisions of the WTO Agreement, including Article 3 of the *Agreement on Subsidies and Countervailing Measures*, Article III:4 of the *General Agreement on Tariffs and Trade 1994*, and Article 2 of the *Agreement on Trade-Related Investment Measures*, as well as specific commitments made by China in its WTO accession agreement. Mexico also initiated a dispute regarding the same subsidies.

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

On December 19, 2007, the United States and China informed the DSB that they had reached an agreement with respect to this matter and circulated a copy of the agreement. The agreement calls for China to take certain steps, including the revision and repeal of certain existing measures as well as the adoption of new measures, that would eliminate by January 1, 2008, the import substitution and export subsidies challenged by the United States. The agreement also commits China not to re-introduce those subsidies or establish import substitution or export subsidies under its new income tax law that went into effect on January 1, 2008. Mexico reached a similar agreement with China with respect to Mexico's dispute on the same subsidies.

*China–Measures affecting financial information services and foreign financial information suppliers (WT/DS373)*

On March 3, 2008, the United States requested WTO dispute settlement consultations with China concerning China's treatment of foreign financial information suppliers. China's regulatory regime requires foreign financial information suppliers to operate through a government-designated distributor and prohibits them from establishing local operations to provide their services. In addition, the agency designated by China to regulate these services appears to have a conflict of interest, as it is closely connected to a commercial operator in China. This regime appears inconsistent with several WTO provisions, including Articles XVI, XVII, and XVIII of the *General Agreement on Trade in Services*, as well as specific commitments made by China in its WTO accession protocol.

The EU also requested WTO consultations with China on the same measures. The United States, the EC, and China held joint consultations on April 22-23, 2008. On June 20, 2008, Canada requested consultations with China regarding the same measures.

On December 4, 2008, the United States and China informed the DSB that they had reached an agreement with respect to this matter and provided a copy of the agreement for circulation. The agreement calls for China to take certain steps, including the revision and repeal of certain existing measures, as well as the adoption of new measures, to respond to the United States' concerns regarding the absence of an independent regulator and the imposition of unfair requirements and restrictions on U.S. financial information service suppliers operating in China. China's commitments under the agreement include the establishment, by January 31, 2009, of an independent regulator for foreign financial information service suppliers, and the implementation of new non-discriminatory and transparent regulations by June 1, 2009. The EU and Canada reached identical agreements with China with respect to their disputes on the same matter.

*China– Grants, loans and other incentives (DS387)*

On December 19, 2008, the United States requested consultations with China regarding government support tied to China's industrial policy to promote the sale of Chinese brand name and other products abroad. This support is provided in the form of cash grant rewards, preferential loans, research and development funding, and payments to lower the cost of export credit insurance. Because these subsidies are offered on the condition that enterprises meet certain export performance criteria, they appear to be inconsistent with several provisions of the WTO Agreement, including Article 3 of the *Agreement on Subsidies and Countervailing Measures* and Articles 3, 9, and 10 of the *Agreement on Agriculture*, as well as specific commitments made by China in its WTO accession agreement. In addition, to the extent that the grants, loans and other incentives also benefit Chinese-origin products, but not imported products, the measures appear to be inconsistent with Article III:4 of the *General Agreement on Tariffs and Trade 1994*. Mexico also initiated a dispute regarding the same subsidies.

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

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

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

Because the EU did not comply with the recommendations and rulings of the DSB by May 13, 1999, the final date of its compliance period as set by arbitration, the United States sought WTO authorization to suspend concessions with respect to certain products of the EU, the value of which represents an estimate of the annual harm to U.S. exports resulting from the EU's failure to lift its ban on imports of U.S. meat. The EU exercised its right to request arbitration concerning the amount of the suspension. On July 12, 1999, the arbitrators determined the level of suspension to be \$116.8 million. On July 26, 1999, the DSB authorized the United States to suspend such concessions and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of \$116.8 million. On May 26, 2000, and again on October 31, 2008, USTR announced that it was considering changes to that list of EU products. While discussions with the EU to resolve this matter are continuing, no resolution has been achieved yet.

On November 3, 2003, the EU notified the WTO 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.

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.

#### *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 biotech foods. After approving a number of biotech products through October 1998, the EU adopted an across-the-board moratorium under which no further biotech applications were allowed to reach final approval. In addition, six Member States (Austria, France, Germany, Greece, Italy, and Luxembourg) adopted unjustified bans on certain biotech 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 biotech 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, Chairman, and Mr. Mohan Kumar and Mr. Akio Shimizu, Members.

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

- The panel found that the EU adopted a *de facto*, across-the-board moratorium on the final approval of biotech 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 biotech products into compliance with the recommendations and rulings of the DSB. On February 6, 2008, the EU 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 EU 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.

*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 EU has failed to bring its import regime for bananas into compliance with its WTO obligations and the DSB recommendations and rulings adopted on September 25, 1997. The request relates to the EU’s apparent failure to implement the WTO rulings in a proceeding initiated by Ecuador, Guatemala, Honduras, Mexico, and the United States. That proceeding resulted in findings that the EU’s banana regime discriminates against bananas originating in Latin American countries and against distributors of such bananas, including a number of U.S. companies. The EU was under an obligation to bring its banana regime into compliance with its WTO obligations by January 1999. The EU committed

to shift to a tariff-only regime for bananas no later than January 1, 2006. Despite these commitments, the banana regime implemented by the EU on January 1, 2006 includes a zero-duty tariff rate quota allocated exclusively to bananas from African, Caribbean, and Pacific countries. All other bananas do not have access to this duty-free tariff rate quota and are subject to a 176 euro per ton duty. The United States believes that this new regime is in violation of GATT Articles I:1 and XIII.

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

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

The panel issued its report on May 19, 2008. The panel agreed with the United States that the EC's regime was inconsistent with the EC'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 has failed to bring itself into compliance with the recommendations and rulings of the DSB. In particular, the Appellate Body rejected all of the EC's procedural arguments alleging the United States was barred from bringing the compliance proceeding, and agreed with the panel that the EC'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 EC's banana import regime was in violation of GATT Article I. The EU did not appeal that finding.

#### *European Union—Subsidies on large civil aircraft (DS316)*

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

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

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

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

On May 28, 2008, the United States requested consultations with the EU 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 is 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 (ITA), 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 appear 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 appear to be inconsistent with the EC’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.

### *India–Alcohol tariffs (WT/DS360)*

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

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

The establishment of the panel in this dispute (WT/DS360) followed the establishment of a panel on April 24, 2007 to consider similar claims raised by the EU in its separate case against India regarding the additional and extra-additional customs duties on imports of wine and distilled spirits (WT/DS352). On July 3, 2007, the United States along with the EU and India agreed to have the same panelists, working

procedures and schedule for both disputes, but to have separate panel reports. However, on July 13, 2007, the EU requested, pursuant to DSU Article 12.12, that the panel in DS352 suspend its work and the panel granted that request on July 16, 2007. This did not affect the work of the panel requested by the United States.

On June 9, 2008, the panel circulated its report. The panel found that the United States had not established that India's AD and EAD were inconsistent with Article II:1(a) or (b) of the GATT 1994. Specifically, the panel found that for a duty or charge to fall within the scope of those articles, it must be "inherently discriminatory" and that an essential but insufficient criteria for establishing that a duty is inherently discriminatory is establishing that the duty is not a charge equivalent to an internal tax. Because the panel considered the United States to have failed to establish that the AD and EAD were not charges equivalent to an internal tax within the meaning of GATT Article III:2, the United States could not establish that the duties fell within the scope of Article II:1(a) or (b).

On August 1, 2008, the United States appealed the report of the panel to the Appellate Body. The Appellate Body issued its report on October 30, 2008. The Appellate Body reversed the panel's findings on Article II of the GATT 1994. The Appellate Body considered that the additional duty on imports of alcoholic beverages and the extra-additional duty on imports of alcoholic beverages and other products would not be justified as offsetting excise duties and other internal taxes on like domestic products insofar as the duties result in charges on imports that exceed those on like domestic products and consequently, that this would render both the additional and extra-additional duties inconsistent with India's tariff commitments. The Appellate Body report was adopted on November 17, 2008.

#### *Turkey—Measures affecting the importation of rice (DS334)*

On November 2, 2005, the United States requested consultations regarding Turkey's import licensing system and domestic purchase requirement with respect to the importation of rice. By conditioning the issuance of import licenses to import at preferential tariff levels upon the purchase of domestic rice, not permitting imports at the bound rate, and implementing a *de facto* ban on rice imports during the Turkish rice harvest, Turkey appeared to be acting inconsistently with several WTO agreements, including the Agreement on Trade-Related Investment Measures (TRIMS), the GATT 1994, the Agreement on Agriculture, and the Agreement on Import Licensing Procedures. Consultations were held on December 1, 2005. The United States requested the establishment of a panel on February 6, 2006, and the DSB established a panel on March 17, 2006. On July 31, 2006, the Director-General composed the panel as follows: Ms. Marie-Gabrielle Ineichen-Fleisch, Chair, Mr. Yoichi Suzuki and Mr. Johann Frederick Kirsten, Members. The final report of the panel was circulated to WTO Members and made public on September 21, 2007. In the final report, the panel found that the system by which Turkey decided to deny, or fail to grant, certain certificates required for importing rice outside the tariff rate quota from September 2003 and at certain periods thereafter, constituted a quantitative import restriction as well as a practice of discretionary import licensing inconsistent with Turkey's obligations under Article 4.2 of the Agreement on Agriculture. The panel also found that Turkey's domestic purchase requirement for rice imports accorded less favorable treatment to imported rice than domestic rice and was therefore inconsistent with Turkey's national treatment obligations under Article III: 4 of the GATT 1994. The panel report was adopted by the DSB on October 22, 2007. Turkey informed the DSB at the end of November 2007 that it was in the process of implementing the recommendations and rulings of the DSB in this dispute and that it preserved its rights to a reasonable period of time (RPT) for such implementation.

The United States and Turkey came to an agreement that the reasonable period of time would be six months, expiring on April 22, 2008. On May 7, 2008, the United States and Turkey entered into a sequencing agreement with respect to the procedures that will apply if the United States seeks to establish

a compliance panel or seeks to suspend concessions or other obligations to Turkey in connection with this dispute.

#### **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 2008 in which the United States was a responding party.

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

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

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

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

On June 23, 2003, the United States and the EU notified the WTO of a mutually satisfactory temporary arrangement regarding the dispute. Pursuant to this arrangement, the United States made a lump-sum payment of \$3.3 million to the EU, to a fund established to finance activities of general interest to music copyright holders, in particular awareness-raising campaigns at the national and international level and activities to combat piracy in the digital network. The arrangement covered a three-year period, which ended on December 21, 2004.

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

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

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

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

Japan alleged that the preliminary and final determinations of the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (USITC) in their antidumping investigations of certain hot-rolled steel products from Japan, issued on November 25 and 30, 1998, February 12, 1999, April 28, 1999, and June 23, 1999, were erroneous and based on deficient procedures under the U.S. Tariff Act of 1930 and related regulations. Japan claimed that these procedures and regulations violate the GATT 1994, as well as the Antidumping Agreement and the Agreement Establishing the WTO. Consultations were held on January 13, 2000, and a panel was established on March 20, 2000. In May 2000, the Director-General composed the panel as follows: Mr. Harsha V. Singh, Chairman, Mr. Yanyong 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, 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, Korea, and Thailand requested consultations with the United States regarding the Continued Dumping and Subsidy Offset Act of 2000 (19 U.S.C. § 754), which amended Title VII of the Tariff Act of 1930 to transfer import duties collected under U.S. antidumping and countervailing duty orders from the U.S. Treasury to the companies that filed the antidumping and countervailing duty petitions. Consultations were held on February 6, 2001. On May 21, 2001, Canada and Mexico also requested consultations on the same matter, which were held on June 29, 2001. On July 12, 2001, the original nine complaining parties requested the establishment of a panel, which was established on August 23, 2001. On September 10, 2001, a panel was established at the request of Canada and Mexico, and all complaints were consolidated into one panel. The panel was composed of: Mr. Luzius Wasescha, Chair, and Mr. Maamoun Abdel-Fattah and Mr. William Falconer, Members.

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

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

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

Based on requests from Brazil, the EU, India, Japan, Korea, Canada, and Mexico, on November 26, 2004, the DSB granted these Members authorization to suspend concessions or other obligations, as provided in

DSU Article 22.7 and in the Decisions of the Arbitrators. The DSB granted Chile authorization to suspend concessions or other obligations on December 17, 2004. On December 23, 2004, January 7, 2005 and January 11, 2005, the United States reached agreements with Australia, Thailand and Indonesia that these three complaining parties would not request authorization to suspend concessions at that time, and that the United States would not object to a future request on grounds of lack of timeliness.

On May 1, 2005, Canada and the EU began imposing additional duties of 15 percent on a list of products from the United States. On August 18, 2005, Mexico began imposing additional duties ranging from nine 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, the President signed the Deficit Reduction Act into law. That Act includes a provision repealing the CDSOA. Certain of the complaining parties nevertheless continued to impose retaliatory measures because they considered that the Deficit Reduction Act failed to bring the United States into immediate compliance. Thus, on May 1, 2006, the EU renewed its retaliatory measure and added eight products to the list of targeted imports. Japan renewed its retaliatory measure on September 1, 2006, retaining the same list of targeted imports. Mexico adopted a new retaliatory measure on September 14, 2006, imposing duties of 110 percent on certain dairy products through October 31, 2006. After that date, Mexico has taken no further retaliatory measures. Canada did not renew its retaliatory measures once they expired on April 30, 2006.

On April 17, 2007, the EU announced that it would renew its retaliatory measure as of May 1, 2007, adding 32 more products to the 2006 list. On September 1, 2007, Japan once again renewed its retaliatory duties. The EU renewed its retaliatory measure again on April 3, 2008, removing 30 products from the 2007 list. On August 22, 2008, Japan announced that it would also 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.

#### *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” [footnote omitted]. The DSB established the panel on March 18, 2003. On May 19, 2003, the Director-General appointed as panelists Mr. Dariusz Rosati, Chair, Mr. Daniel Moulis and Mr. Mario Matus, Members.

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

- The panel found that the “Peace Clause” in the WTO Agreement on Agriculture did not apply to a number of U.S. measures, including (1) domestic support measures and (2) export credit guarantees

for “unscheduled commodities” and rice (a “scheduled commodity”). Therefore, Brazil could proceed with certain of its challenges.

- The panel found that the GSM 102, GSM 103, and SCGP export credit guarantees for “unscheduled commodities” (such as cotton and soybeans) and for rice are prohibited export subsidies. However, the panel also found that Brazil had not demonstrated that the guarantees for other “scheduled commodities” exceeded U.S. WTO reduction commitments and therefore breached the Peace Clause. Further, Brazil had not demonstrated that the programs threaten to lead to circumvention of U.S. WTO reduction commitments for other “scheduled commodities” and for “unscheduled commodities” not currently receiving guarantees.
- Some U.S. domestic support programs (*i.e.*, marketing loan, counter-cyclical, market loss assistance, and so-called “Step 2 payments,”) were found to cause significant suppression of cotton prices in the world market in marketing years 1999-2002 causing serious prejudice to Brazil’s interests. However, the panel found that other U.S. domestic support programs (*i.e.*, production flexibility contract payments, direct payments, and crop insurance payments) did not cause serious prejudice to Brazil’s interests because Brazil failed to show that these programs caused significant price suppression. The panel also found that Brazil failed to show that any U.S. program caused an increase in U.S. world market share for upland cotton constituting serious prejudice.
- The panel did not reach Brazil’s claim that U.S. domestic support programs threatened to cause serious prejudice to Brazil’s interests in marketing years 2003-2007. The panel also did not reach Brazil’s claim that U.S. domestic support programs per se cause serious prejudice in those years.
- The panel also found that Brazil had failed to establish that FSC/ETI tax benefits for cotton exporters were prohibited export subsidies.
- Finally, the panel found that Step 2 payments to exporters of cotton are prohibited export subsidies, not protected by the Peace Clause, and Step 2 payments to domestic users are prohibited import substitution subsidies because they were only made for U.S. cotton.

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

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

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

referring that matter to arbitration. On November 21, 2005, the United States and Brazil agreed to suspend the arbitration.

On February 8, 2006, 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, Chairman, and Mr. Mario Matus and Mr. Ho-Young Ahn, Members. On December 18, 2007, the Article 21.5 panel circulated its report. The panel found, *inter alia*, that: (1) U.S. export credit guarantees issued under the modified GSM 102 program with respect to unscheduled and certain scheduled (rice, pig and poultry meat) commodities constituted prohibited export subsidies; and (2) U.S. marketing loan and counter-cyclical payments for upland cotton were continuing to cause serious prejudice to Brazil by significantly suppressing world upland cotton prices. The panel rejected Brazil's claim that payments under the marketing loan and counter-cyclical payment programs were responsible for an increase in U.S. market share in MY 2005 and thereby caused serious prejudice to Brazil's interests. The panel also found that the United States was not required to have refused to perform on export credit guarantees that were issued prior to the deadline for the implementation of the DSB's recommendations and rulings as to such guarantees (July 1, 2005) and that were still outstanding as of that date.

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.

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 counter-cyclical 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, poultry meat) were prohibited export subsidies; and
- upheld the compliance panel's finding that Brazil's claims as to marketing loan and counter-cyclical 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 arbitrations would be carried out by the following individuals: Mr. Eduardo Pérez-Motta, Chairman, and Mr. Alan Matthews and Mr. Daniel Moulis, Members.

*United States–Sunset reviews of antidumping measures on oil country tubular goods from Argentina (DS268)*

On October 7, 2002, Argentina requested consultations with the United States regarding the final determinations of Commerce and the USITC in the sunset reviews of the antidumping duty order on oil country tubular goods (OCTG) from Argentina, issued on November 7, 2000 and June 2001, respectively, and Commerce’s determination to continue the antidumping duty order on OCTG from Argentina, issued on July 25, 2001. Consultations were held on November 14, 2002, and December 17, 2002. Argentina requested the establishment of a panel on April 3, 2003. The DSB established a panel on May 19, 2003. On September 4, 2003, the Director-General composed the panel as follows: Mr. Paul O’Connor, Chairman, and Mr. Bruce Cullen and Mr. Faizullah Khilji, Members. In its report circulated July 16, 2004, the panel agreed with Argentina that the waiver provisions prevent Commerce from making a determination as required by Article 11.3 and that Commerce’s Sunset Policy Bulletin is inconsistent with Article 11.3 of the Antidumping Agreement. The panel rejected Argentina’s claims that the USITC did not correctly apply the “likely” standard and did not conduct an objective examination. Further, the panel concluded that statutes providing for cumulation and the time-frame for continuation or recurrence of injury were not inconsistent with Article 11.3.

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

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

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

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

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

*United States–Anti-dumping measures on oil country tubular goods (OCTG) from Mexico (DS282)*

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

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

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

As a result of the second sunset review on oil country tubular goods, the antidumping duty order was revoked. On July 5, 2007, Mexico requested the panel, pursuant to Article 12.12 of the DSU, to suspend the proceedings, and on July 11, 2007, the panel informed the DSB that it had suspended the proceedings until further notice. On July 6, 2008, pursuant to Article 12.12 of the DSU, the authority for the establishment of the panel lapsed.

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

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

Antigua requested the establishment of a panel on June 12, 2003. The DSB established a panel on July 21, 2003. At the request of the Antigua, the WTO Director-General composed the panel on August 25, 2003, as follows: Mr. B. K. Zutshi, Chairman, and Mr. Virachai Plasai and Mr. Richard Plender, Members. The panel’s final report, circulated on November 10, 2004, found that the United States breached Article XVI (Market Access) of the GATS by maintaining three U.S. federal laws (18 U.S.C. §§

1084, 1952, and 1955) and certain statutes of Louisiana, Massachusetts, South Dakota, and Utah. It also found that these measures were not justified under exceptions in Article XIV of the GATS.

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

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

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

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. Throughout 2008, Antigua and the United States continued to consult in an effort 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 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 ITC 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. The panel rejected or declined to make findings with respect to the other EU claims.

#### *United States–Subsidies on large civil aircraft (DS317)*

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

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

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

*United States–Continued suspension of obligations in the EU - Hormones dispute (DS320)*

On November 8, 2004, the EU requested consultations with respect to “the United States’ continued suspension of concessions and other obligations under the covered agreements” in the EU – Hormones dispute. The EU argued that EU legislation of 2003 implementing the import ban on beef and beef products produced from animals treated with certain hormones brought the EU into compliance with its WTO obligations. Consultations were held on December 16, 2004. The EU requested the establishment of a panel on January 13, 2005, and the panel was established on February 17, 2005. Australia, Canada, China, Mexico, and Chinese Taipei reserved their third-party rights. On June 6, 2005, the Director-General composed the panel as follows: Mr. Tae-yul Cho, Chairman, and Ms. Claudia Orozco and Mr. William Ehlers, Members. The panel, in a communication dated August 1, 2005, granted the parties’ request to open the substantive meetings with the parties to the public via a closed-circuit television broadcast. The panel’s meetings with third parties remain closed.

The panel circulated its final report on March 31, 2008. In its report, the panel found that the United States breached Articles 23.2(a) and 23.1 of the DSU by making certain statements at the meetings of the Dispute Settlement Body and by maintaining the suspension of concessions after the EU had announced compliance. The panel also found that because the EC’s revised ban of 2003 was not consistent with the SPS Agreement and had not been brought into compliance, the United States had not breached Article 22.8 of the DSU.

The EU filed its notice of appeal in this dispute on May 29, 2008. The United States filed a notice of other appeal on June 10, 2008. The Appellate Body granted the parties’ request to open the hearing to the public via closed-circuit television broadcast. The oral hearing, which took place on July 28-29, 2008, was the first Appellate Body hearing ever to be open to the public.

On October 16, 2008, the Appellate Body issued its report. The Appellate Body reversed the panel’s findings that the United States had breached Articles 23.2(a) and 23.1 of the DSU. The Appellate Body also reversed several of the panel’s findings relating to the SPS Agreement issues concerning the EU’s amended ban of 2003. The Appellate Body found that it could not conclude whether or not the EU’s amended ban is WTO-consistent. The DSB adopted the Appellate Body report on November 14, 2008.

As discussed above (DS26 and 38), 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.

*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 20 February 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 24 December 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.

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, Chairperson, 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.

Pursuant to a joint request from the United States and Japan, the arbitration under Article 22.6 of the DSB was suspended on June 9, 2008.

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

On April 24, 2006, Thailand requested consultations with respect to the imposition by U.S. Customs and Border Protection of an additional bonding requirement on certain importers of shrimp subject to an antidumping duty order on frozen warmwater shrimp from Thailand. In addition, Thailand requested consultations with respect to Commerce's alleged use of "zeroing" in the antidumping investigation that resulted in the order. Thailand has alleged that these measures breach several provisions of the

Antidumping Agreement and the GATT 1994. Consultations were held on August 1, 2006. Thailand requested the establishment of a panel on September 15, 2006, and a panel was established on October 26, 2006. On January 26, 2007, the Director-General composed the panel as follows: Mr. Michael Cartland, Chair, and Mr. Graham Sampson and Ms. Enie Neri de Ross, Members.

The panel circulated its report on February 29, 2008. The panel found the use of zeroing in the investigation of shrimp from Thailand to have breached the Antidumping Agreement, and that the additional bond requirement as applied to importers of shrimp from Thailand was a “specific action against dumping” inconsistent with Article 18.1 of the AD Agreement and was inconsistent with the Ad Note to paragraphs 2 and 3 of GATT 1994 Article VI because it did not constitute “reasonable” security. It rejected or declined to make findings with respect to Thailand’s claims on other provisions of the GATT 1994 and the AD Agreement.

On April 17, Thailand appealed the findings of the panel with respect to the additional bond requirement. The United States cross-appealed one aspect of those findings on April 29. The Appellate Body issued its report on July 16, 2008. The Appellate Body found that the panel properly concluded that the additional bond requirement as applied to importers of shrimp from Thailand did not constitute reasonable security. It rejected Thailand’s other claims regarding the panel’s interpretation of the Ad Note. The panel and Appellate Body reports were adopted by the DSB on August 1, 2008.

On October 31, 2008, the United States and Thailand agreed that the reasonable period of time to implement the DSB’s rulings and recommendations would be eight months, expiring on April 1, 2009.

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

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

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

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 AD 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.

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

On April 24, 2006, India requested consultations with respect to the imposition by U.S. Customs and Border Protection of an additional bonding requirement on certain importers of shrimp subject to an antidumping duty order on frozen warmwater shrimp from India. India has alleged that these measures breach several provisions of the Antidumping Agreement and the GATT 1994. Consultations were held on July 31, 2006. India requested the establishment of a panel on October 26, 2006, and a panel was established on November 21, 2006. On January 26, 2007, the Director-General composed the panel as follows: Mr. Michael Cartland, Chair, and Mr. Graham Sampson and Ms. Enie Neri de Ross, Members.

The panel circulated its report on February 29, 2008. The panel found that the additional bond requirement as applied to importers of shrimp from India was a “specific action against dumping” inconsistent with Article 18.1 of the AD Agreement and was inconsistent with the Ad Note to paragraphs 2 and 3 of GATT 1994 Article VI because it did not constitute “reasonable” security. It rejected or declined to make findings with respect to India’s claims on other provisions of the GATT 1994, the AD Agreement, and the SCM Agreement.

On April 17, India appealed the findings of the panel with respect to the additional bond requirement. The United States cross-appealed one aspect of those findings on April 29. The Appellate Body issued its report on July 16, 2008. The Appellate Body found that the panel properly concluded that the additional bond requirement as applied to importers of shrimp from India did not constitute reasonable security. It rejected India’s other claims regarding the panel’s interpretation of the Ad Note. The panel and Appellate Body reports were adopted by the DSB on August 1, 2008.

On October 31, 2008, the United States and India agreed that the reasonable period of time to implement the DSB’s rulings and recommendations would be eight months, expiring on April 1, 2009.

*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 four antidumping investigations, 35 administrative reviews, and one 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 EU 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 EU had improperly tried to challenge the continued application, or application, of antidumping duties in 18 cases; in addition the panel agreed that the EU had improperly tried to challenge four measures that were not final at the time of panel establishment. 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 four 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’s report is expected to be circulated by February 2009.

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

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

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

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

On January 8, 2007, Canada requested consultations with the United States alleging (1) serious prejudice to the interests of Canada within the meaning of Articles 5 and 6 of the SCM Agreement in that subsidies to U.S. corn producers had caused price suppression for corn in Canada; (2) that certain U.S. export credit guarantee programs confer export subsidies in contravention of the SCM Agreement and the Agreement on Agriculture, and (3) that the U.S. exceeded its commitments regarding the Total Aggregate Measurement of Support in favor of domestic producers of agricultural products in several years from 1999 to 2005. Consultations were held on February 7, 2007.

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

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

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

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

*United States–Definitive Anti-Dumping 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 anti-dumping and countervailing duties imposed by the United States pursuant to final anti-dumping and countervailing duty determinations and orders issued by the U.S. Department of Commerce (DOC) 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 Articles I and VI of the *General Agreement on Tariffs and Trade 1994*, Articles 1, 2, 10, 12, 13, 14, 19, and 32 of the *Agreement on Subsidies and Countervailing Measures*, Articles 1, 2, 6, 9, and 18 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, and Article 15 of the *Protocol on the Accession of the People’s Republic of China*. Specifically, China claimed that DOC erred by finding a subsidy based on DOC’s view that certain State-owned enterprises are “public bodies;” by finding the existence of a “benefit” because DOC used an inappropriate benchmark; and by finding that certain subsidies were “specific” to a particular industry. China also challenged DOC’s use of a non-market economy methodology in the anti-dumping investigations simultaneously with the determination of subsidization and imposition of countervailing duties on the same subject merchandise. Finally, China alleged that DOC committed multiple procedural errors in the course of the anti-dumping and countervailing duty investigations, including its use of “facts available” on the basis of alleged shortcomings in information provided by respondents.

*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. limitations on the use of a dolphin-safe label for tuna and tuna products. 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), and alleges that these measures have the effect of prohibiting Mexican tuna and tuna products from being labeled dolphin-safe. Specifically, Mexico alleges that its tuna and tuna products are accorded less favorable treatment than like products of national origin and like products originating in other countries and are not immediately and unconditionally accorded 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 an existing international standard. Finally, Mexico alleges that the U.S. procedures for assessing conformity with the dolphin-safe labeling requirement create unnecessary obstacles to trade and do not grant access to Mexican suppliers under conditions that are no less favorable than those accorded to suppliers of like products of national origin or originating in any other country under comparable circumstances. Mexico alleges that the U.S. measures appear to be

inconsistent with the General Agreement on Tariffs and Trade 1994, Articles I and III, and the Agreement on Technical Barriers to Trade, Articles 2, 5, 6, and 8.

*United States–Anti-Dumping 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 anti-dumping duties imposed by the United States pursuant to the final results issued by the U.S. Department of Commerce (DOC) in the administrative review of the anti-dumping duty order on imports of certain orange juice from Brazil. Brazil claimed that certain actions by DOC and Customs and Border Protection with respect to this administrative review and with respect to any on-going or future antidumping administrative reviews concerning this anti-dumping 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 II, VI:1, and V:2 of the General Agreement on Tariffs and Trade 1994, Articles 1, 2.1, 2.4, 2.4.2, 9.1, 9.3, 11.2, and 18.3 of the Agreement on Implementation of Article VI of the GATT 1994 (the Anti-Dumping Agreement), and Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization. Specifically, Brazil complained that DOC used “zeroing” in the administrative review of the anti-dumping duty order on imports of orange juice.

*United States–Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand (Thailand) (WT/DS383)*

On November 26, 2008, the United States received from Thailand a request for consultations pertaining to the application of the so-called “practice of zeroing” in calculating overall weighted average margins of dumping in an investigation by the U.S. Department of Commerce (DOC) on polyethylene retail carrier bags from Thailand. Thailand claimed that the use of “zeroing” in the final antidumping duty determination, amended final determination and order inflated margins of dumping or created artificially margins of dumping where none would otherwise have been found, and was inconsistent with U.S. commitments and obligations under Article VI of the *General Agreement on Tariffs and Trade 1994* and Article 2.4.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*.

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

On December 1, 2008, Canada requested consultations regarding U.S. mandatory country of origin labeling (COOL). Canada challenges the COOL provisions in the *Agricultural Marketing Act of 1946*, as amended by the *Food, Conservation, and Energy Act, 2008* (2008 Farm Bill), and implemented in the U.S. Department of Agriculture Interim Final Rule published on August 1, 2008. These measures contain an obligation to inform consumers at the retail level of the country of origin of covered commodities, including beef and pork. Canada notes that the eligibility of a covered commodity for designation as exclusively U.S. origin occurs only when the covered commodity is derived from an animal that is exclusively born, raised, and slaughtered in the United States. It further notes that such a designation of U.S. origin excludes covered commodities from livestock that is exported to the United States for feed or immediate slaughter. Canada alleges that the U.S. measures appear to be inconsistent with the *General Agreement on Tariffs and Trade 1994* (GATT 1994), Articles III:4, IX:4, and X:3, the *Agreement on Technical Barriers to Trade*, Article 2 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*, Article 2. Additionally, Canada alleges 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).

On December 17, 2008, Mexico requested consultations regarding U.S. mandatory country of origin labeling (COOL). Mexico challenges the COOL provisions in the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, and implemented by the regulations published in 7 C.F.R. parts 60 and 65. Mexico notes that for certain products, the determination of national origin of those products differs considerably international norms on country of origin labeling. Mexico alleges that this is not justified to accomplish a legitimate objective. Mexico further alleges that the U.S. measures appear to be inconsistent with the *General Agreement on Tariffs and Trade 1994 (GATT 1994)*, Articles III, IX, and X, the *Agreement on Technical Barriers to Trade*, Article 2 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*, Article 2. Additionally, Mexico alleges 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 in the sense of *GATT 1994*, Article XXIII:1(b).

## **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 relevant information for the process. The Secretariat produces an independent report on the trade policies and practices of the Member under review. Accompanying the Secretariat's report is the Member's own report. In a TPRB session, the WTO Membership discusses these reports together and the Member under review addresses 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 Document Distribution Facility under the document symbol "WT/TPR."

The TPRB's Report to the Singapore Ministerial Meeting suggested that Members pay greater attention to Least Developed Countries (LDCs) in preparing the TPRB timetable. A 1999 appraisal of the TPRM's operation also drew attention to this matter.

Increasingly, TPRs of LDCs perform a technical assistance function, helping them improve their understanding of the trade policy structure's relationship with the WTO Agreements. The reviews have also enhanced these countries' understanding of the WTO Agreements, thereby better enabling them to comply and integrate into the multilateral trading system. In some cases, the reviews have spurred better interaction between 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 review process for an LDC now includes a two-to-three-day seminar for its officials on the WTO, in particular on the trade policy review exercise and the role of trade in economic policy. During 2008, the seminars for Lesotho, the Maldives, Mozambique, Solomon Islands and Zambia focused on preparation for such reviews. In addition, similar exercises were conducted in the preparation of the reviews of other Members, including the Dominican Republic and the Southern African Customs Union (SACU).

### **Major Issues in 2008**

During 2008, the TPRB reviewed the trade regimes of Pakistan, Ghana, Mexico, Brunei, Madagascar (an LDC), Mauritius, China, United States, Oman, Singapore, Barbados, Korea, Norway, Jordan, the Dominican Republic, Liechtenstein and Switzerland. Oman and Jordan underwent their first reviews.

From its inception in 1998 to the end of 2008, the TPRM has conducted 264 reviews, covering 135 out of 153 Members and representing some 97 percent of world trade. In June 2008, the latest trade policy review of the United States took place. Of the 32 LDC Members of the WTO, 27 had been reviewed by the end of 2008.

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 2008. 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 contingency measures such as anti-dumping 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;
- state involvement in the economy and privatization programs;
- 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 Integrated Framework.

### **Prospects for 2009**

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 2009, the proposed program of reviews is: Japan, EC, Brazil, Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa and Swaziland), Chile, Croatia, El Salvador, Fiji, Georgia, Guatemala, Guyana, Maldives, Morocco, Mozambique, New Zealand, Niger, Senegal, Solomon Islands, and Zambia.

## **J. Other General Council Bodies/Activities**

### **1. Committee on Trade and Environment**

#### **Status**

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

#### **Major Issues in 2008**

In 2008, the CTE met once, on November 3. In general, Members have been less active in meetings of the CTE, given the increased workload and intensified negotiating schedule of the CTSS. That said, the United States has continued its active role in CTE discussions, as discussed below.

*Market Access under Doha Sub-Paragraph 32(i):* Members considered how the CTE could move the discussion forward in a more structured way, and, attention was also given to specific sectors, including organic products. The CTE received information regarding regional workshops on environmental requirements related to private, voluntary standards, trade in organic agricultural products and biofuels, as well as other work being conducted by the UN Conference on Trade and Development (UNCTAD).

*The TRIPS Agreement and the Environment under Doha Sub-Paragraph 32(ii):* There were no discussions during 2008 under this agenda item.

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

*Capacity Building and Environmental Reviews under Doha Paragraph 33:* Many developing country Members stressed the importance of benefiting from technical assistance related to WTO negotiations on trade and environment, particularly given the complexity of some of these issues. Members held discussions with respect to national environmental reviews, and the Secretariat informed the CTE of its trade and environment technical assistance activities undertaken in 2008 and planned for 2009.

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

The CTE also received briefings by several multilateral environment agreement (MEA) secretariats regarding recent meetings, including: the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD).

### **Prospects for 2009**

It is expected that the CTE will continue to focus its attention on paragraphs 32, 33 and 51 of the Doha Declaration, and that these discussions may become more structured in 2009.

## **2. Committee on Trade and Development**

### **Status**

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

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

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

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

### **Major Issues in 2008**

The CTD in Regular Session held five formal sessions in March, May, July, October, and December 2008. Activities of the CTD and its subsidiary bodies in 2008 included:

*Technical Cooperation and Training:* The CTD took note of the Annual Report on Technical Assistance and Training, 1 January to 31 December 2007 (WT/COMTD/W/165), and of the Technical Cooperation Audit Report for 2007 (WT/COMTD/W/166). The Secretariat provided information on the status of implementation of the Biennial Technical Assistance and Training Plan for 2008 and 2009.

*Notifications Regarding Market Access for Developing and Least-Developed Countries:* The CTD considered updated GSP notifications from Norway (WT/COMTD/N/6/Add.4) and the United States (WT/COMTD/N/1/Add.6). An exchange of questions and answers on Norway's GSP notification are contained in documents WT/COMTD/65/Add.1 to Add.3. The CTD also discussed the EC's GSP scheme on the basis of questions submitted by Brazil, China, India and Pakistan (WT/COMTD/57/Add.1 to Add.4, respectively) and the responses provided by the EU (WT/COMTD/57/Add.5).

*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. The proponents of a Transparency Mechanism for PTAs (Brazil, China, India and the United States) circulated a draft proposal (JOB (08)/103) in October 2008. At the October CTD meeting, the Chairman indicated that important progress had been made, and that he would continue to work with Members on this matter. It was agreed at the December CTD that the Chairman would request that the General Council grant the Committee an extension until July 2009 to consider the matter and report back for appropriate action.

*Duty-Free, Quota-Free Market Access for LDCs Members:* The Decision taken at the Hong Kong Ministerial Conference on duty-free and quota-free (DFQF) market access for least-developed countries (LDCs) remains a standing item on the CTD's agenda. Under this item, India introduced its Duty-Free Tariff Preference (DFTP) Scheme for LDCs. The CTD conducted its third annual review of the implementation of the Hong Kong Decision, as mandated in Annex F of the Hong Kong Ministerial Declaration. A communication from the United States (WT/COMTD/W/149/Add.5) was considered. The U.S. submission contained a summary of the U.S. domestic legal and consultative process for implementing the DFQF decision. During discussions of DFQF, the LDC Group expressed appreciation to those developed country Members that had fulfilled their obligations under the Decision, and called for the provision of enhanced DFQF market access from others.

*Review of Regional Trade Agreements (RTAs) between Developing Country Members:* The CTD held its first Dedicated Session on RTAs in October. The Committee considered the Egypt-Turkey Free Trade Agreement (Goods) (WT/COMTD/RTA/1 and its subsequent revisions), pursuant to the provisions of the 14 December 2006 General Council Decision on a Transparency Mechanism for RTAs (WT/L/671).

*Dedicated Session on Small Economies:* Following on work of the CTD in the Dedicated Session (CTD-DS) to identify the unique characteristics and problems of Small Economies in the trading system, in 2008, the CTD-DS continued to monitor the progress of the small economies' proposals in the negotiating and other bodies. The Dedicated Session held one meeting in December where the Secretariat presented an updated compilation paper of the small economies' negotiating proposals to assist the Dedicated Session with its monitoring role.

*Aid for Trade:* The CTD held three sessions on Aid for Trade in 2008, in February, July, and October. Work focused on the Director-General's proposed Aid-for-Trade Roadmap for 2008, and included presentations from the regional development banks, the OECD and UNIDO related to the Roadmap. Work also addressed the outcomes of Standards and Trade Development Facility (STDF) events held in Cambodia, Uganda, and Guatemala; follow-up actions in connection with the results of the Symposium on Monitoring and Evaluation; and the discussion of a paper prepared by the Secretariat on the identification of core indicators to monitor progress and impact of the Aid for Trade work programme (WT/COMTD/AFT/W/9).

*LDC Subcommittee:* The Subcommittee held three meetings in 2008 where it mainly focused on the implementation of the WTO Work Program for the LDCs adopted by Members in 2002. The subjects discussed included: market access for LDCs; trade-related technical assistance and capacity-building initiatives for LDCs; and accession of LDCs to the WTO.

*Other CTD Issues:* The CTD also considered the declining terms of trade for primary commodities, and its implications for trade and development of primary commodity exporting countries, with presentations provided by UNCTAD. Additionally, the Joint Advisory Group (JAG) on the International Trade Centre UNCTAD/WTO (ITC) provided a report to the CTD on its 41<sup>st</sup> Session (ITC/AG/ (XLI)/216).

### **Prospects for 2009**

The CTD is expected to continue to monitor developments as they relate to issues of concern to developing country Members, including those related to technical assistance. Interest in market access is expected to continue. In this vein, the CTD will undertake its responsibility to review steps taken by Members, both developed and developing, to provide DFQF market access to the LDC Members. The CTD will also continue its work on Aid for Trade in preparation for the June 2009 Global Review of Aid for Trade in the WTO General Council. In addition, the CTD's examination of RTAs between developing country Members will continue as new RTAs are notified to the WTO. A new transparency mechanism to facilitate the review of PTAs is also expected to be implemented, and the first arrangements could be reviewed in late 2009.

## **3. Committee on Balance-of-Payments Restrictions**

### **Status**

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

### **Major Issues in 2008**

During 2008, no Member imposed new balance-of-payments restrictions. Bangladesh maintained restrictions under Article XVIII: B on salt, chicks, and eggs. In 2007, the Government of Bangladesh declared that it would remove these restrictions by the end of 2008, and on this basis, the Committee concluded that Bangladesh had met its obligations.

The BOP Committee met in November 2008 to conduct its seventh annual review under China's Transitional Review Mechanism. In light of China's balance-of-payments position, there was little discussion.

## Prospects for 2009

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

## 4. Committee on Budget, Finance and Administration

### Status

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

The United States is an active participant in the Budget Committee. The United States, as the Member with the largest share of world trade, makes the largest contribution to the WTO budget. The assessed contribution of each Member is based on the share of that Members' trade in goods, services, and intellectual property. For the 2009 budget, the U.S. assessed contribution is 13.486 per cent of the total budget assessment, or Swiss Francs (CHF) 24,766,412 (about \$22 million). Details required by Section 124 of the Uruguay Round Agreements Act on the WTO's consolidated budget for 2008 and 2009 are provided in Annex II.

### Major Issues in 2008

- *WTO Facilities:* In July 2008, the General Council approved the Budget Committee's recommendation regarding the long-term housing needs of the WTO, which had outgrown the main WTO building and annex facilities used to house Secretariat staff and functions. The General Council authorized the Director-General to sign an agreement with the Swiss Confederation, spelling out in detail the renovation, extension, and transitional measures (office premise rental, parking spaces, etc.) required for the renovation and relocation project. A first cost estimate, provided while negotiations were still ongoing in May 2008, was revised in October 2008, primarily due to costs for moving the IT data center and installation of telephones, electricity, cabling and back-up generator. These costs will be absorbed by the existing budget for 2008. The Budget Committee will work in close consultation with the Director-General as design proposals are submitted by candidates in the architectural competition and examined by jury in January 2009.
- *Security Enhancement Program:* In December 2004, the General Council agreed to fund the Secretariat's proposed Security Enhancement Program. This multi-year plan is designed to meet the new realities of the post-9/11 world by, among other things, improving controls on the entrance of goods, vehicles and people to the WTO facilities as well as by improving the technology available to monitor the WTO's facilities and grounds. Implementation of the program will conclude during the 2008-2009 biennium.
- *Critical Review of the Structure of the WTO Secretariat:* The Director-General has been conducting a critical review of the structure of the WTO Secretariat with a view to streamlining it. Implementation of the plan, which began in 2008 and includes discontinuing or merging some divisions with work redistribution and early retirement packages with posts to be filled at lower grades, is expected to result in future savings.

## Prospects for 2009

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 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 the restructuring plan and security enhancements.

## 5. Committee on Regional Trade Agreements

### Status

The Committee on Regional Trade Agreements (the CRTA), a subsidiary body of the General Council, was established in early 1996 as a central body to oversee all regional agreements to which Members are party.

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

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

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

With respect to trade in services, the CU or FTA must have “substantial sectoral coverage” and prohibit or eliminate substantially all discrimination; in 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 2008

As of November 1, 2008, 418 RTAs have been notified to the GATT or WTO. Of the notified agreements, 227 are currently in force. Of the RTAs in force, 143 are notified as GATT Article XXIV agreements; 27 are notified as Enabling Clause agreements;<sup>18</sup> and 57 are notified as GATS Article V agreements.

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

In the years prior to the adoption of the transparency mechanism, the CRTA had completed the factual examination of a total of 67 agreements, of which 46 were in the area of trade in goods and 21 in trade in services. Since the adoption of the transparency mechanism two years ago, 33 agreements have been examined (15 in 2008). A total of 91 RTAs remain to be reviewed, comprising 46 RTAs for which the factual presentation is under preparation and 45 RTAs (mostly with non-WTO Members) for which the factual presentation is on hold.

In November 2007, the WTO Secretariat circulated the factual presentation of the United States-Morocco FTA. The United States attended the 49<sup>th</sup> Session of the CRTA in which the United States-Morocco FTA was discussed, and responded to all questions (written and oral); the factual examination was completed during the 49<sup>th</sup> Session of the CRTA in April 2008.

At the time of the adoption of the Decision on the Transparency Mechanism for Regional Trade Agreements in December 2006, the Chair of the General Council had noted that Members intended to conduct an initial review of the Mechanism within one year. In this context, the Chair of the CRTA, in concert with the Chair of the Negotiating Group on Rules, reported in December 2008 that Members considered that there was not yet enough experience, particularly with regard to RTAs falling under the Enabling Clause, for the review to take place.

## Prospects for 2009

Three sessions of the Committee on Regional Trade Agreements are foreseen in 2009. The United States – Bahrain Free Trade Agreement and Dominican Republic-Central America- United States Free Trade Agreement are among those RTAs that are likely to be reviewed under the Transparency Mechanism in 2009.

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<sup>18</sup> Consistent with past practice, RTAs notified under the Enabling Clause continue to be reviewed in the Committee on Trade and Development.

## 6. Accessions to the World Trade Organization

### Status

Work on accessions in 2008 progressed rapidly in the first half of the year. Based on momentum developed during 2007, Ukraine became the 152<sup>nd</sup> WTO Member on May 16, 2008, and Cape Verde followed as 153<sup>rd</sup> on July 23, 2008. Both had substantially completed their negotiations in 2007, but domestic ratification of the accession packages approved by the General Council on February 5, 2008 and December 7, 2007 respectively, occurred only later in 2008. Through July, bilateral and multilateral work with Russia, Kazakhstan, and Montenegro continued at a rapid pace, but by the end of the year, only Montenegro was near completion of its accession negotiations. Its accession package may be considered for formal approval at the first meeting of the General Council in 2009. After Russia's invasion of Georgia in August and the disruptions of the international financial crisis in September and October, both bilateral and multilateral negotiations with Russia on its accession slowed to a more measured pace. Work on Kazakhstan's accession also lost momentum.

Equatorial Guinea applied for membership in the WTO in February 2008, bringing the number of countries in accession negotiations to twenty nine, over one-third of which are LDCs.<sup>19</sup> Accession applicants are welcome in all formal WTO meetings as observers. There were no other new requests for observer status during 2008.<sup>20</sup>

The Working Parties on the accessions of Algeria, Azerbaijan, Bhutan, Bosnia, Ethiopia, Iraq, Kazakhstan, Laos, Montenegro, Russia, Serbia, Ukraine, and Yemen met formally and informally during 2008 to review the trade regimes of the respective applicants. Additionally, Chairman's consultations, similar to informal Working Party meetings, were convened for Samoa and for Russia. Market access negotiations and bilateral consultations on other issues also took place at the time of these meetings. In addition, the United States had bilateral consultations with Lebanon on accession issues. The Working Party meetings in 2008 for Montenegro focused on the draft Working Party report text, including Protocol commitments, and domestic legislative implementation of WTO rules was underway.

Eight of the twenty nine applicants (Afghanistan, Bahamas, Comoros, Equatorial Guinea, Iran, Liberia, Libya, and Sao Tome and Principe) have not yet submitted initial descriptions of their trade regimes, the action necessary to activate their Working Parties and begin negotiations. The Working Parties on the accessions of Andorra, Belarus, Seychelles, Sudan and Uzbekistan remained inactive, although both Seychelles and Belarus have proposed resuming negotiations. In August, Vanuatu notified the WTO Secretariat of its wish to resume its accession process, halted in 2001 when Vanuatu declined to accept the accession package it had negotiated and that had been approved by the Working Party. The Working Parties on the accessions of Lebanon and Tajikistan also did not meet in 2008, but work continued on their accessions. Both Lebanon and Tajikistan submitted new documentation responding to Members' questions in 2008, however, and Working Party meetings for these countries are likely during 2009. The chart included in Annex II reports the current status of each accession negotiation.

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<sup>19</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, Montenegro, Russia, Samoa\*, Sao Tome and Principe\*, Serbia, Seychelles, Sudan\*, Tajikistan, Uzbekistan, Vanuatu\*, and Yemen\* (The 12 countries marked with an asterisk are LDCs).

<sup>20</sup> The Holy See is a permanent observer and, under the terms of its observer status, will not apply for accession.

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

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

In a typical accession negotiation, an application is submitted to the WTO General Council, which establishes a “Working Party” composed of all interested WTO Members to review the applicant’s trade regime and to conduct the negotiations. At the conclusion of its work, the Working Party transmits the agreed results of the negotiations to the General Council. Accession negotiations involve a detailed review of the applicant’s entire trade regime by the Working Party and bilateral negotiations for market access of goods and services. Applicants are expected to undertake trade liberalizing specific commitments on market access for industrial and agricultural goods, as well as for services based on requests from Working Party Members; to make necessary legislative changes to implement WTO institutional and regulatory requirements; and to eliminate existing WTO-inconsistent measures. Most accession applicants take these actions on WTO rules prior to accession.<sup>21</sup>

The terms of accession developed with Working Party Members in bilateral and multilateral negotiations are recorded in an accession “protocol package” consisting of a Report of the Working Party and Protocol of Accession, consolidated schedules of specific commitments on market access for imported goods and services by foreign suppliers, and agriculture schedules that include commitments on export subsidies and domestic supports. The Working Party adopts the completed protocol package containing the negotiated terms of accession and transmits it with its recommendation for approval to the General Council or Ministerial Conference. After General Council approval, accession applicants normally submit the package to their domestic authorities for acceptance. Thirty days after the WTO receives the applicant’s instrument accepting the terms of accession the applicant becomes a WTO Member.

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

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<sup>21</sup> As outlined below, negotiations with LDC applicants are subject to special procedures and guidelines, and do not, as a rule, fully implement WTO provisions prior to accession.

Lithuania, Macedonia, Moldova, Nepal, Ukraine, and Vietnam. Most of these countries had U.S.-provided resident experts for some portion of the process.

Current accession applicants to which the United States has provided a resident or other long-term WTO expert for the accession process include: Afghanistan, Algeria, Azerbaijan, Bosnia and Herzegovina, Ethiopia, Iraq, Lebanon, Montenegro, and Serbia. In addition a U.S.-funded WTO expert resident in Bishkek provides resident WTO accession assistance to Kazakhstan and Tajikistan, as well as post-accession assistance to the Kyrgyz Republic. Russia and Uzbekistan also received U.S. technical assistance in their accession processes. During 2008, the United States has made additional efforts to work with LDCs currently seeking accession to the WTO. In September 2008, Comoros, Ethiopia, Liberia, and Sao Tome participated in a USDA-sponsored workshop on the WTO accession process and Member obligations under the Agreement on Agriculture and the Agreement on the Application of Sanitary and Phytosanitary Measures (Cape Verde and Seychelles, both developing countries, also participated in this workshop). The United States has also provided technical assistance to Iraq, Laos, and Yemen in training government officials on the WTO accession process and the implementation of WTO obligations in 2008.

### **Major Issues in 2008**

Work on accessions continued to focus on those applicant countries--in this case, Russia and Montenegro and to a lesser extent Kazakhstan--that demonstrated progress on market access and either legislative implementation or development of the text of the report of the Working Party. All three countries moved aggressively during the year to conclude bilateral market access negotiations, and Montenegro intensified its efforts to enact legislation to implement the WTO Agreement in its domestic legal regime and to complete the accession process. Members continued to give focused attention to LDC accessions, particularly when those applicants took steps to further advance their accessions, including through the submission of documentation and market access offers. Work on other applicants' accession processes moved forward as well, but more slowly.

*Russia:* The United States and Russia, with the EU, continued to intensify work on the remaining multilateral issues and requirements for Russia's WTO Membership during the first half of 2008. The long awaited revised draft Working Party report text, the first revision since October 2004, was circulated in April, and was reviewed in an informal meeting of the Working Party in June. Additional informal work among interested delegations in July preceded circulation of a further revision in August. Working Party members continued to discuss the text of the draft Working Party report and Russia's draft Protocol of Accession in the fall of 2008. Russia made scant progress on accomplishing its legislative action plan for implementation of WTO provisions. One exception--revisions of Part IV of the Civil Code to bring it into conformity with the WTO TRIPS Agreement--were submitted to the Duma for consideration. Russia concluded bilateral negotiations on market access with additional Members (Saudi Arabia and United Arab Emirates), but negotiations continue with Georgia and possibly with Ukraine, which joined Russia's Working Party after its own accession.

*Kazakhstan:* For the second year in a row, Kazakhstan focused its efforts on bilateral negotiations on market access for goods and services, completing agreements with a number of Members. Although yet unable to conclude these negotiations with the United States, Kazakhstan made significant progress towards that goal in a number of areas. In addition to the remaining issues on goods and services, other bilateral issues affecting market access under discussion include sanitary and phytosanitary barriers to trade, trading rights, and the operation of State-owned and State-controlled enterprises. In 2009, Kazakhstan will likely intensify its market access negotiations with WTO Members, pursue legislative implementation of WTO provisions, and attempt to complete negotiation of its draft WP report and Protocol of Accession.

*Montenegro:* Montenegro successfully completed its market access negotiations with all Members except Ukraine at the end of 2008, with formal General Council approval of the terms of accession likely for early in 2009. The ups and downs of its accession process have mirrored the twists and turns of its recent history and emergence as an independent country. Montenegro was still part of the Federal Republic of Yugoslavia (FRY) when that country, the last of the former republics of Yugoslavia to do so, applied for accession to the WTO in 2001. In 2003, the FRY became the country of Serbia and Montenegro, with the understanding that the two republics would pursue harmonized economic policies and therefore continue accession to the WTO as a single entity. By 2005, however, it became clear that while the Union State of Serbia and Montenegro might be considered a single country, its two constituent territories were operating as separate economic units. They petitioned jointly to split the accession process and to negotiate their WTO Membership as separate customs territories and in May 2006, Montenegro declared its full independence from Serbia. During the accession process, Montenegro substantially revised the legal basis for its trade regime to bring it into conformity with WTO provisions. This process will be completed prior to its accession. Montenegro's GATT Schedule of tariff commitments will include membership in the Agreement on Trade in Civil Aircraft (ATCA) and full or substantial participation in the Chemical Harmonization Program and a number of other sectoral tariff arrangements that mandate zero duties for hundreds of tariff lines covering U.S. priorities. Montenegro will also become a participant in the Information Technology Agreement (ITA) by no later than 2010. Montenegro will not use agricultural export subsidies and will initiate negotiations for accession to the Agreement on Government Procurement immediately after becoming a WTO Member. Montenegro has offered to undertake broad services commitments focused in particular on liberalizing important infrastructure services. These commitments confirm Montenegro's intent to fully align its trade regime with other developed European economies and establish itself as an independent market-based trading economy.

*LDC Accessions:* WTO Members continued to emphasize a need for accelerating the accession process of LDCs, and in making WTO accession more accessible to these applicants. The accession negotiations for all LDC accession applicants are guided by the simplified and streamlined procedures developed for these countries at the end of 2002 in the WTO General Council Decision on Accessions of Least-Developed Countries (WT/L/508). Under these guidelines, the accession process becomes a tool for economic development, incorporating the applicant's own development program and laying out an action plan for progressive implementation of WTO rules. The market access schedules and protocols of accession developed under these guidelines reflect the need to address realistically these countries real trade capacity deficiencies and the difficulties they face in achieving normal WTO accession objectives. Using the guidelines, WTO Members pledged to exercise restraint in seeking market access concessions, and to agree to transitional arrangements for implementation of WTO Agreements. Discussions continued in various WTO fora on how the WTO guidelines on LDC accessions are being implemented. The United States and other developed WTO Members have sought to support the transitional goals established in the accession process with LDCs with technical assistance to meet the benchmarks included in the protocol commitments. In this way, the accession process becomes a development tool and an opportunity to mainstream the gains from international trade in their development programs, to build trade capacity, and to provide a better economic environment for investment and growth.

### **Prospects for 2009**

We expect a great deal of activity on WTO accessions during 2009. Montenegro is completing its accession process and will likely become the 154<sup>th</sup> WTO Member in 2009. Azerbaijan, Kazakhstan, and Russia have indicated that they would like to complete their work on WTO accession, if not become Members, prior to the end of 2009. Both multilateral and bilateral work with Russia and Kazakhstan intensified in 2008, but remains unfinished to a greater or lesser extent in all aspects of the negotiations. Azerbaijan's legislative action plan calls for substantial progress in WTO implementation by mid 2009, but much work remains to complete goods and services market access negotiations, and to finalize the

text of a Working Party report and Protocol of Accession. Serbia and Bosnia and Herzegovina are also likely to push for additional attention to their negotiations after Montenegro accedes. In addition, Iraq is expected to submit new documentation on its trade regime, provide initial goods and services market access offers, and circulate the new legislation that will bring its trade regime into conformity with the WTO. Efforts to advance the accessions of LDCs will continue. Vanuatu has resumed discussions with a view to completing its accession process, all but finished in 2001, but inactive since then. Special focus on Bhutan and Samoa can be expected, as these negotiations are well advanced, and on Ethiopia, Laos, and Yemen, the other LDC in the accession process that are actively negotiating at this time.

All accession-related negotiations will require attention and resources from WTO delegations. Priority is usually given to applicants that demonstrate a strong desire to move forward through their own efforts, e.g., that submit usable documentation on a timely basis, make necessary legal changes to implement WTO provisions, and move rapidly to negotiate acceptable market access commitments, maximize their opportunities for progress, and bring momentum to the negotiations overall. Thus, for any applicant, the pace of the accession process is largely self-determined.

## **7. Aid for Trade**

### **Status**

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

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

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

### **Major Issues in 2008**

Work on Aid for Trade during 2008 focused on technical issues and best practices in delivery of trade-capacity building assistance and prioritization of trade in national development plans. Following the first Global Review of Aid for Trade in November 2007, Members agreed that a subsequent Global Review would take place in mid-2009.

Significant work occurred during 2008 on the development of the monitoring framework envisioned in the Task Force report. The monitoring framework includes global monitoring of aid flows using the data resources of the OECD's Development Assistance Committee, country-level monitoring of progress in mainstreaming/integrating trade in national development plans, and case studies of best practices.

Work continued through the year to finish the legal work necessary to operationalize the Enhanced Integrated Framework for Least Developed countries (EIF). With completion of the monitoring and evaluation framework by the end of 2008, this legal framework will be in full effect and a permanent Board of Directors is expected to take office. The new Executive Director of the EIF, Dorothy Tembo of Zambia, took up her duties in early October. At the same time, UNOPS—the United Nations Office for Project Services—was designated as manager of the EIF Trust Fund.

## **Prospects for 2009**

Work in 2009 on Aid for Trade will focus on the finalization and implementation of the monitoring framework in time for its use at the mid-year Global Review of Aid for Trade. To this end, the WTO Secretariat and its regional development bank partners are planning focused regional discussions of Aid for Trade in Latin America, Africa and Asia with participation from trade, finance, and development officials. Work on efficient and effective ways to evaluate Aid for Trade activities is expected.

With all legal and institutional elements in place at the end of 2008, program activities under the Enhanced Integrated Framework are expected to begin in earnest.

## **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>22</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 30 Signatories to the Agreement: Canada, the EU<sup>23</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. Those WTO Members with observer status in the Committee are: Argentina, Australia, Bangladesh, Brazil, Cameroon, China, Colombia, Gabon, Ghana, India, Indonesia, Israel, the Republic of Korea, Mauritius, Nigeria, Oman, Saudi Arabia,

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<sup>22</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>23</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.

Singapore, Sri Lanka, Trinidad and Tobago, Tunisia and Turkey. In addition, the Russian Federation, the IMF and UNCTAD are also observers.

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

### **Major Issues in 2008**

The Aircraft Committee held one regular meeting on November 10, 2008. At this meeting, the Committee elected Ms. Cecilie Kverme, of Norway, as the next Committee Chairperson. The Committee also discussed the Technical Note prepared by the Secretariat on the possible revisions to the Product Coverage Annex in the light of the Harmonized Commodity and Description System that entered into force in 2007. The Committee agreed to revert to this item at its next regular meeting, but left open the possibility that a meeting to advance the Committee's work might be convened before then depending upon consultations to be undertaken by the Chairperson with the Signatories. The Technical Sub-Committee of the Committee on Trade in Civil Aircraft did not meet during the period under review and neither did the Sub-Committee of the Committee on Trade in Civil Aircraft.

### **Prospects for 2009**

The Aircraft Committee agreed to meet at least once, in the fall of 2009. The United States will continue to encourage Albania, Croatia, and Oman, 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 the Agreement. WTO Members are not required to join the GPA, but the United States strongly encourages all WTO Members to participate in this important agreement.

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

As of the end of 2008, nine Members are in the process of acceding to the GPA: Albania, China, Chinese Taipei, Georgia, Jordan, Kyrgyz Republic, Moldova, Oman, and Panama. Six additional Members have provisions in their respective Protocols of Accession to the WTO or Working Party reports regarding accession to the GPA: Armenia, Croatia, the Former Yugoslav Republic of Macedonia, Mongolia, Saudi Arabia, and the Ukraine.

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 on May 19, 2008. In the JCCT meeting in September, China committed to table an improved offer as soon as possible. China also submitted its responses to the Checklist of Lists for Provision of Information relating to its GPA accession on September 15, 2008.

With the addition of Bahrain and New Zealand in December 2008, 22 WTO Members, including those in the process of acceding to the GPA, have observer status in the GPA Committee: Albania, Argentina, Armenia, Australia, Bahrain, Cameroon, Chile, China, Chinese Taipei, Colombia, Croatia, Georgia, Jordan, Kyrgyz Republic, Moldova, Mongolia, New Zealand, Oman, Panama, Saudi Arabia, Sri Lanka, and Turkey. Four intergovernmental organizations (IMF, International Trade Centre, OECD, and UNCTAD) also have observer status.

Article XXIV:7(b) of the GPA calls for the Parties to undertake further negotiations to improve the Agreement and to expand the procurement that they cover under the GPA. In December 2006, the GPA Committee reached provisional agreement on a substantial revision of the text, subject to a legal check and to a mutually satisfactory outcome in the coverage negotiations. The new GPA text will be used as the basis for negotiations with countries in the process of acceding to the GPA. Most of the work on the legal check of Articles I through XXI of the revised text was completed in 2007. Issues remain on the Final Provisions in Article XXII and related texts, and significant work remains on the draft decisions on arbitration procedures and indicative criteria.

### **Major Issues in 2008**

On December 9, 2008, the GPA Committee adopted a decision approving Chinese Taipei’s accession to the GPA. This is the first new accession to the GPA since 1997. With its accession, Chinese Taipei fulfills a commitment when it joined the WTO in 2002. Chinese Taipei will become the 41st WTO member to be covered by the GPA.

During 2008, the GPA Committee held five meetings (in February, May, September, November, and December) during which Parties focused primarily on the accessions of China, Jordan, and Chinese Taipei, and the verification of the linguistic consistency of the English, French, and Spanish versions of the revised text. It also continued negotiations on both coverage and text-related issues. With respect to the revision of the GPA text, the Committee neared completion of verification of the linguistic consistency of the English, French, and Spanish versions of the revised text.

With respect to the negotiations under GPA Article XXIV:7 that are aimed at expanding procurement covered by the Agreement, little progress was made during 2008, other than the submission of several offers. Aruba with respect to the Netherlands submitted its initial offer and the EU, Norway and Switzerland submitted revised offers. As of the end of 2008, 11 Parties had submitted initial offers (the United States, Canada, the EC, Iceland, Israel, Japan, Korea, Norway, Singapore, Switzerland and Aruba), but only 6 Parties had submitted revised offers (the United States, Japan, Korea, the EC, Norway and Switzerland). Initial offers have not yet been submitted by Hong Kong China and Liechtenstein.

The GPA Committee held discussions at informal meetings on China and Jordan’s accessions to the GPA. The discussions focused on China’s Initial Offer and Responses to the Checklist of Issues and Jordan’s updated revised offer and revisions to its responses to a Checklist of Issues. In 2008, Moldova submitted its initial offer in its accession to the GPA as well as new responses to the Checklist of Issues.

## **Prospects for 2009**

The GPA Committee has tentatively scheduled 5 meetings for 2009, with the first set for the week of Feb 22, where it is expected to continue work on the accessions of Jordan, China and Moldova. The Committee also will aim to complete the revision of the GPA during 2009.

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

### **Status**

The WTO Ministerial Declaration on Trade in Information Technology Products (Information Technology Agreement (ITA)) was concluded at the WTO's First Ministerial Conference at Singapore in December 1996. Original participants in the ITA eliminated tariffs as of January 1, 2000 on a wide range of information technology products, and modified their WTO schedules of tariff concessions accordingly. As of October 2008, the ITA had 44 participants (coverin 71 Members and States or separate customs territories in the process of acceding to the WTO) representing approximately 97 percent of world trade in information technology products.<sup>24</sup> 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.

### **Major Issues in 2008**

The WTO Committee on the Expansion of Trade in Information Technology Products held one formal meeting in 2008. Work continued on classification divergences affecting ITA products and the Non-Tariff Measures (NTMs) Work Program as well as on drafting a list of conformity assessment procedures for the EMC/EMI (Electromagnetic Compatibility/Electromagnetic Interference) pilot project. The Committee membership reappointed Chairperson Khalid Emara of Egypt. Peru submitted its ITA schedule to participants for verification and approval. The EU introduced a proposal calling for immediate negotiations to review the ITA, under the premise that the existing Agreement is inadequate to address new developments in technology. Several countries, including the United States, raised significant questions and concerns about the EU proposal.

On August 18, the United States, Japan, and Chinese Taipei jointly requested the establishment of a dispute settlement panel to determine whether the EU is acting consistently with its WTO obligations in its tariff treatment of certain ITA products. See the "Dispute Settlement Understanding" section in Chapter II for further information on this case.

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<sup>24</sup> 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; Macao, China; Malaysia; Mauritius; Moldova; Morocco; New Zealand; Nicaragua, Norway; Oman; Panama; 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.

### **Prospects for 2009**

The next meeting of the Committee will be scheduled for spring 2009. An agenda has not yet been determined.

# **III. BILATERAL AND REGIONAL NEGOTIATIONS AND AGREEMENTS**

## **A. Free Trade Agreements**

### **1. Australia**

The United States-Australia Free Trade Agreement (FTA) entered into force on January 1, 2005. Since then, U.S. exports of goods to Australia have increased steadily, growing 12 percent in 2006 to \$17.8 billion, 8 percent in 2007 to \$19 billion, and 20 percent in 2008 to \$23 billion. Australia is currently the 14th largest export market for U.S. goods. Two-way annual goods trade in 2008 was \$33.9 billion, up 56 percent since 2004. Two-way services trade in 2007 was \$16.3 billion, an increase of about 50 percent since 2004. U.S. services exports to Australia totaled \$10.4 billion in 2007, and U.S. services imports totaled \$5.9 billion.

U.S. exports of agricultural products to Australia totaled over \$800 million in 2007. Top U.S. agricultural exports included processed fruit and vegetables, fresh fruit, red meats, and pet food. The FTA also established a new forum for scientific cooperation between U.S. and Australian authorities, which has been meeting since 2005 to address specific bilateral animal and plant health matters based on science and with a view to facilitating trade.

The FTA also promoted investment flows in both directions. Australian foreign direct investment (FDI) in the United States totaled \$27.5 billion in 2006 (latest data available), up 15 percent from 2005. U.S. FDI in Australia in 2007 was \$79 billion, up 15 percent from 2006. U.S. FDI in Australia is concentrated largely in the non-bank holding companies, manufacturing, mining, and finance sectors.

The third annual FTA Review took place in June 2008. The two sides agreed that implementation of the agreement has remained on track. They reviewed trade in agricultural products, sanitary and phytosanitary issues, mutual recognition of professional services, and intellectual property issues.

In September 2008, the United States announced its intention to begin negotiations to join the Trans-Pacific Strategic Economic Partnership (TPP) agreement, a high-standard FTA between Singapore, Chile, New Zealand, and Brunei Darussalam. In December 2008, the United States announced that Australia, Peru, and Vietnam also would participate in the negotiations.

### **2. Morocco**

The United States and Morocco signed an FTA on June 15, 2004. The Agreement entered into force on January 1, 2006. The United States-Morocco FTA is a comprehensive agreement that is an important part of the effort to promote more open and prosperous Middle Eastern societies. The FTA supports the significant economic and political reforms that are underway in Morocco and creates improved commercial and market opportunities for U.S. exports to Morocco by reducing and eliminating trade barriers.

Since the entry into force of the FTA, the U.S. goods trade surplus with Morocco has risen to \$603 million in 2008, up from \$79 million in 2005 (the year prior to entry into force). U.S. goods exports in 2008 were \$1.5 billion, up 10 percent from the previous year. Corresponding U.S. imports from Morocco were \$871 million, up 43 percent. Morocco is now the 68th largest export market for U.S. goods.

The Joint Committee established by the FTA held its first meeting in March 2008. U.S. and Moroccan experts discussed FTA implementation issues including the implementation of tariff-rate quotas, sanitary standards for U.S. exports of beef and poultry and Moroccan exports of vegetables, the interpretation of rule of origin requirements, and discrepancies in each party's collection of trade statistics. These discussions will continue during the coming year. Morocco and the United States continued to work together to advance negotiations for an Anti-Counterfeiting Trade Agreement (ACTA) with strong enforcement characteristics.

### **3. Chile**

#### **a. Overview**

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

The United States-Chile FTA eliminates tariffs and opens markets, reduces barriers for services, provides cutting-edge protection for intellectual property, ensures regulatory transparency, guarantees non-discrimination in the trade of digital products, commits the Parties to maintain competition laws that prohibit anticompetitive business conduct, and requires effective labor and environmental enforcement. In 2008, U.S. exports to Chile increased by 45 percent to \$12.1 billion, while U.S. imports from Chile decreased by 9 percent to \$8.2 billion.

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

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

The central oversight body for the Agreement is the United States-Chile Free Trade Commission (FTC), chaired jointly by the U.S. Trade Representative and the Chilean General Directorate for International Economic Affairs.

The fifth meeting of the FTC was held on December 12, 2008, during which the two countries evaluated progress on implementation of the Agreement during 2008. The Commission reviewed the operation of the specialized committees established under the Agreement and concluded that good progress had been made. The Working Group on Agricultural Trade, Environment Affairs Council, and Committees on Trade in Goods, Sanitary and Phytosanitary issues, Government Procurement, and Technical Barriers to Trade all convened in 2008.

Following procedures set out in the FTA, the United States and Chile agreed to accelerate the elimination of tariffs on goods covering approximately \$35 million in annual bilateral trade. The items identified for accelerated tariff elimination were selected based on requests by producers, consumers, and traders who are eager to take advantage of the benefits of free trade between the United States and Chile. Under the agreement, the United States agreed to eliminate tariffs on certain agricultural products, including spinach, sweet corn, preserved artichokes, and frozen vegetables. Chile agreed to eliminate the tariffs on a range of products, including rice, peas, safety headgear, and certain chemicals. These tariff cuts were implemented on January 1, 2009.

The Committee on Procurement also agreed on several modifications and rectifications of the Government Procurement Annex, as well as a clarification of the threshold adjustment process.

After thorough consultations under Article 3.17 of the United States-Chile FTA, the two governments also reached an agreement in November 2008 with respect to trade in table grapes.

## **ii. Labor**

The FTA establishes a cooperative mechanism to promote respect for the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work, and compliance with ILO Convention 182 on the Worst Forms of Child Labor. Activities that have been conducted since the Agreement went into effect include the exchange of information on U.S. experience with the application of information technology to judicial proceedings, U.S. methodologies for collecting and using labor data in policy-making, and a training seminar for Chilean labor judges conducted by Department of Labor Administrative Law Judges in the context of the International Seminar on the Modernization of the Labor Justice system.

## **iii. Environment**

On April 23-24, 2008, the U.S. and Chilean governments convened the fourth meeting of the Environmental Affairs Council to discuss the FTA Environment Chapter and the work plan associated with the Environmental Cooperation Agreement. Both governments agreed to work together on the issue of public participation and transparency in trade and environmental decision-making.

In addition, the Environmental Affairs Council invited the U.S. Trade and Environmental Policy Advisory Committee (TEPAC) Members and Liaisons to participate in the meeting and to have an exchange with its advisors on trade and environment issues. This was the first such meeting between trade and environment advisory committees established pursuant to the provisions of a free trade agreement.

## **iv. Intellectual Property Rights (IPR)**

Concerns about declines in Chile's protection of intellectual property rights (IPR) were reflected in the 2008 decision to maintain Chile's position on the Special 301 Priority Watch List. There are substantive deficiencies in Chile's IPR laws and regulations as well as overall inadequate IPR enforcement. The predominant concerns involve weak protection for patent and test data which affects the pharmaceutical sector and significant copyright piracy of movies, music, and software. The United States will continue working with Chile to improve IPR protection and enforcement to ensure full implementation of the FTA. At the fifth meeting of the FTC in December 2008, both Parties agreed that in the first quarter of 2009, experts will meet to perform a technical review of the status of implementation of the FTA chapter on Intellectual Property Rights.

## **4. Singapore**

The United States-Singapore Free Trade Agreement has been in force since January 1, 2004. Since then, exports from the United States to Singapore have increased 74 percent with steady growth in medical devices, electrical and non-electrical machinery and construction equipment, and pharmaceuticals.

Singapore is the United States' 16th largest trading partner, with two-way trade in goods totaling \$44.7 billion in 2008. U.S. exports are concentrated in machinery and electrical machinery, vehicles, mineral fuel, aircraft, and optic and medical instruments. Singaporean foreign direct investment into the United States totaled more than \$10 billion in 2007, a 90 percent increase from 2006. During the same period, U.S. FDI to Singapore increased by 5.3 percent. Two-way trade in services was \$11.1 billion in 2007. In October 2008, U.S. and Singaporean government officials held the fourth annual review of the FTA, noting that implementation remained on track and welcoming the growth in bilateral trade and investment

since the FTA came into force. They also discussed implementation issues, including relating to telecommunications and other service sectors, environmental cooperation, and IPR.

In September 2008, the United States announced its intention to begin negotiations to join the Trans-Pacific Strategic Economic Partnership (TPP) agreement, a high-standard FTA between Singapore, Chile, New Zealand, and Brunei Darussalam. In December 2008, the United States announced that Australia, Peru, and Vietnam also would participate in the negotiations.

## **5. Jordan**

In 2008, the United States and Jordan continued to benefit from their extensive economic partnership, including the United States-Jordan Free Trade Agreement, which went into effect in December 2001. While the FTA is a key part of the United States-Jordan economic relationship, it is just one component of close bilateral cooperation that began in earnest with joint efforts on Jordan's accession to the World Trade Organization (WTO) in 2000. U.S. efforts to support Jordan's rapid and successful WTO accession were followed on the bilateral front by the conclusion of a Bilateral Investment Treaty.

Qualifying Industrial Zones (QIZs) are another important example of successful U.S.-Jordanian efforts to boost Jordan's economic growth and promote peace in the Middle East. Established by Congress in 1996, the QIZ initiative allows products to enter the United States duty-free if manufactured in Israel, Jordan, Egypt, or the West Bank and Gaza. The program has succeeded in stimulating significant economic activity and promoting business cooperation between Jordan and Israel. In 2002, Jordanian exports under the QIZ agreement to the United States were \$369 million; by 2006 they reached \$1 billion, and in the first 11 months of 2008, they were \$709 million.

These various measures have played a significant role in boosting overall United States-Jordanian economic ties. U.S. goods exports were \$941 million in 2008, up 10 percent from 2007. Corresponding U.S. imports from Jordan were \$1.1 billion, down 14 percent. QIZ products still account for more than half of Jordanian exports to the United States, but the QIZ share is declining relative to total products shipped under the FTA. This shift toward importing products manufactured outside of the QIZs demonstrates the important role the FTA plays in helping Jordan diversify its economy.

In October 2008, the United States and Jordan convened the latest meeting of the Joint Committee established under the FTA to manage implementation of the agreement. This meeting reviewed a range of bilateral issues, including labor, agriculture, intellectual property rights, customs, and environment, with a plan to follow-up in detail in 2009.

## **6. Israel**

The 1985 United States-Israel Free Trade Agreement, the first FTA signed by the United States, continues to serve as a foundation for expanding trade and investment between the United States and Israel.

U.S. goods exports in 2008 were \$14.8 billion, up 14 percent from the previous year. U.S. goods imports from Israel were \$22.7 billion, up 9 percent. Israel is currently the 20th largest export market for U.S. goods. U.S. exports of private commercial services (*i.e.*, excluding military and government) to Israel were \$3.4 billion in 2007 (latest data available), and U.S. imports were \$3.1 billion. Sales of services in Israel by majority U.S.-owned affiliates were \$1.1 billion in 2006 (latest data available), while sales of services in the United States by majority Israel-owned firms were \$1.5 billion. The stock of U.S. FDI in Israel was \$10.1 billion in 2007 (latest data available), up from \$9.4 billion in 2006. U.S. FDI in Israel is concentrated largely in the manufacturing, information, professional, scientific, and technical sectors.

In 1996, the two sides, recognizing that the FTA had not served to liberalize some aspects of bilateral agriculture trade, concluded an Agreement Concerning Certain Aspects of Trade in Agricultural Products (ATAP), which provided for duty-free or other preferential treatment of certain agricultural products. The 1996 agreement was extended through 2003, and a new agreement was concluded in 2004. As the 2004 agreement was scheduled to expire at the end of 2008, the two sides agreed to extend the agreement through December 31, 2009 while a successor ATAP agreement is negotiated.

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

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic. The CAFTA-DR is the first free trade agreement between the United States and a group of smaller developing economies. This agreement is creating new economic opportunities by eliminating tariffs, opening markets, reducing barriers to services, promoting transparency, and establishing state-of-the-art rules for 21st century commerce. It is facilitating trade and investment among the Parties and furthering regional integration.

Central America and the Dominican Republic represent the third largest U.S. export market in Latin America, behind Mexico and Brazil. U.S. exports to the CAFTA-DR countries were valued at \$26.3 billion in 2008. Combined total two-way trade in 2008 between the United States and Central America and the Dominican Republic was \$45.6 billion.

In August 2005, President Bush signed the implementing legislation for the CAFTA-DR. The agreement entered into force for the United States and El Salvador, Guatemala, Honduras, and Nicaragua during 2006 and for the Dominican Republic during 2007. Effective January 1, 2009, Costa Rica became a Party to the CAFTA-DR.

On August 15, 2008, the CAFTA-DR Parties implemented important changes to the agreement's textiles provisions, including changing the rules of origin to ensure that pocket fabric in apparel is sourced from the United States or another CAFTA-DR Party. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico will provide duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States will provide reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes will further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

In October 2008, representatives of the CAFTA-DR Parties met for the second time to review the operation and administration of the agreement and to discuss ongoing implementation issues.

In November 2008, the CAFTA-DR Committee on Trade Capacity Building met for the third time. The Committee seeks to prioritize and coordinate trade capacity building activities undertaken by U.S. government agencies and international institutions in the CAFTA-DR countries. At the meeting, the Committee had in-depth discussions on current capacity building activities and considered potential future assistance in light of capacity building priorities that the Central American countries and the Dominican Republic had identified. See Chapter IV, Section A of this report for further discussion.

Also in November 2008, the Parties convened the first meeting of the Labor Affairs Council, the body responsible for overseeing the implementation of, and for reviewing progress under, the labor chapter of the CAFTA-DR. The Council reviewed progress on the implementation of the CAFTA-DR labor

chapter, discussed labor cooperation and capacity building efforts to date, and identified priorities for future capacity building activities. As called for by the CAFTA-DR, the Council also met in a public session to provide civil society an opportunity to discuss matters relating to the implementation of the labor chapter, including labor cooperation and capacity building. See Chapter IV, Section B of this report for further discussion.

## **8. Bahrain**

The United States-Bahrain FTA, which entered into force on January 11, 2006, generates export opportunities for the United States, creating jobs for U.S. farmers and workers. The agreement also supports Bahrain's economic and political reforms and enhances commercial relations with an economic leader in the Arabian Gulf. On the first day the agreement took effect, 100 percent of the two-way trade in industrial and consumer products began to flow without tariffs, and U.S. farmers have gained access to a new market for meats, fruits and vegetables, cereals, and dairy products. In addition, Bahrain opened its services market wider than any previous FTA partner, creating important new opportunities for U.S. financial service providers and companies that offer telecommunications, audiovisual, express delivery, distribution, healthcare, architecture, and engineering services.

The U.S.-Bahrain FTA also promotes the policy of advancing economic reforms and liberalization in the Middle East. The United States-Bahrain Bilateral Investment Treaty (BIT), which took effect in May 2001, covers investment issues between the two countries. The first meeting of the FTA Joint Committee took place in February 2008.

## **9. Panama**

The United States and Panama launched negotiations of a free trade agreement in April 2004 and concluded the negotiations in December 2006. The two governments signed the United States-Panama Trade Promotion Agreement (TPA) on June 28, 2007. Panama approved the TPA on July 11, 2007. The United States has not yet approved the agreement.

The TPA achieves the goal expressed by the U.S. Congress in the Caribbean Basin Trade Partnership Act to conclude comprehensive, mutually advantageous free trade agreements with beneficiary countries of the Caribbean Basin Initiative trade preference program.

The TPA will create significant new opportunities for American workers, farmers, businesses, and consumers by eliminating barriers to trade with Panama. Approximately 88 percent of U.S. exports of consumer and industrial goods will become duty-free immediately when the TPA enters into force. All remaining tariffs on consumer and industrial goods will be eliminated within 10 years. By value, more than 60 percent of current U.S. farm exports to Panama will become duty-free immediately when the TPA takes effect. Duties on other U.S. agricultural products will be phased out within 5 years to 12 years and on the most sensitive agricultural products within 15 years to 20 years.

Panama also implemented an expansive bilateral agreement reached with the United States on regulatory barriers to agricultural trade. Under this agreement, Panama recognized the equivalence of the U.S. meat and poultry inspection systems and of the U.S. regulatory system for processed food products, and agreed to provide access for all U.S. beef and beef products (including pet food), and all U.S. poultry and poultry products, consistent with international standards. Finally, Panama formalized its recognition of the U.S. beef grading system and cuts nomenclature, eliminated its onerous product registration procedures, and agreed to an automatic and cost-free registration process for the small group of U.S. agricultural products not exempted from this process.

The TPA will either open or lock in existing access to Panama's services market in such priority U.S. services export sectors as financial services, telecommunications, express delivery, computer and related services, distribution services, professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. The TPA will also help ensure a stable legal framework for U.S. investors in Panama. Except for certain specified exceptions, the agreement will commit Panama to allow U.S. investors to establish, acquire, and operate investments in Panama on the same basis as Panama's own investors or other foreign investors.

The TPA provides that U.S. suppliers will be permitted to bid on procurement above certain thresholds of most Panamanian government entities, including key ministries and state-owned enterprises, on the same basis as Panamanian suppliers. In particular, U.S. suppliers will be permitted to bid on procurement by the Panama Canal Authority, including for the \$5.25 billion Panama Canal expansion project, which began in 2007 and is expected to be completed in 2014.

The TPA includes important disciplines relating to intellectual property rights, electronic commerce, customs administration and trade facilitation, and dispute settlement.

The TPA also includes provisions concerning the protection of labor rights and the environment that were included as part of the Bipartisan Agreement on Trade Policy reached with the U.S. Congress on May 10, 2007. Under the TPA, each Party is required to adopt and maintain in its law, and practices thereunder, fundamental labor rights as stated in the 1998 International Labor Organization Declaration on Fundamental Principles and Rights at Work and its Follow-up, and effectively to enforce those laws. The Parties also committed to enforce effectively their own domestic environmental laws and adopt, maintain, and implement laws, regulations, and all other measures to fulfill obligations under the six multilateral environmental agreements that are identified in the TPA. All of the commitments in the environment and labor chapters are subject to the same dispute settlement procedures as obligations in other chapters of the TPA. These commitments are supplemented by a Labor Cooperation and Capacity Building Mechanism established under the labor chapter and a separate Environmental Cooperation Agreement through which the Parties will undertake cooperation on issues related to the protection of the environment and natural resources.

The United States had a goods trade surplus with Panama of \$4.7 billion in 2008 and is Panama's largest trading partner. Total goods trade between the United States and Panama was \$5.5 billion in 2008. Panama is a growing market for U.S. products. U.S. goods exports to Panama increased 36 percent from 2007 to 2008.

## **10. Oman**

The U.S.-Oman FTA, which entered into force on January 1, 2009, builds on existing FTAs to promote economic reforms and openness in the Middle East. Implementation of the obligations contained in the comprehensive agreement will generate export opportunities for U.S. goods and services providers, solidify Oman's trade and investment liberalization, and strengthen intellectual property rights protection and enforcement.

## **11. Thailand**

The United States suspended Free Trade Agreement negotiations with Thailand in 2006 following the dissolution of the Thai Parliament and the subsequent military-led coup. Although FTA negotiations remained suspended in 2008, U.S. and Thai officials continued to discuss bilateral issues as well as ways to advance the WTO Doha negotiations and the APEC and ASEAN agendas.

The United States and Thailand held informal consultations in March and a formal dialogue on trade and investment issues in Washington D.C. in June 2008. The United States raised concerns regarding Thai customs valuation practices, labeling requirements and other technical barriers to trade, market access for U.S. beef and live cattle, and the deterioration of intellectual property rights protection in Thailand over the past several years. The United States will continue to monitor and evaluate the political situation in Thailand and, as appropriate, will consider steps to further strengthen bilateral economic relations.

## **12. Republic of Korea**

The United States and the Republic of Korea successfully concluded the negotiation of a free trade agreement on April 1, 2007 and signed the United States-Korea Free Trade Agreement (KORUS FTA) on June 30, 2007. The KORUS FTA is the most commercially significant free trade agreement the United States has concluded in 16 years. Once approved and implemented, the KORUS FTA will provide preferential access for U.S. businesses, farmers, ranchers, services providers, and workers to the United States' seventh largest export market, help solidify the two countries' long-standing alliance, and underscore the U.S. commitment to, and engagement in, the Asia-Pacific region.

For more details regarding the KORUS FTA, please see Chapter III, Section E.

## **13. Malaysia**

The United States and Malaysia held two rounds of negotiations of a Free Trade Agreement in 2008. Solid progress has been made in the negotiations, which were launched in March 2006, although some significant challenges remain.

Malaysia is the United States' 18th largest goods trading partner. Two-way trade in goods with Malaysia totaled \$45 billion in 2008. Exports totaled \$13.4 billion and were concentrated in the electrical and non-electrical machinery, optic and medical instruments, iron and steel products, plastic, and aircraft sectors. The United States is Malaysia's second largest export market and fourth largest source of imports. Two-way trade in services totaled \$2.9 billion in 2007, and U.S. foreign direct investment in Malaysia increased to \$15.7 billion.

## **14. Colombia**

The United States and Colombia signed the United States-Colombia Trade Promotion Agreement (CTPA) in November 2006 and a Protocol of Amendment in June 2007. The Colombian Congress approved the agreement and protocol in 2007. The United States has not yet approved the agreement

Once approved and implemented, the CTPA will provide the United States substantial commercial benefits. Colombia is a growing export market of approximately 48 million consumers for U.S. goods in Latin America. U.S. two-way trade with Colombia reached \$25 billion in 2008, making Colombia the country's fourth largest trading partner in Latin America. U.S. goods exports to Colombia totaled \$11.4 billion in 2008, an increase of 34 percent from 2007. The International Trade Commission estimates that the CTPA will increase U.S. exports to Colombia by \$1.1 billion and U.S. GDP by \$2.5 billion.

In 2008, 92 percent of U.S. imports from Colombia entered the United States duty-free under U.S. most-favored nation tariff rates and various preference programs. Colombia's trade weighted average applied tariff rate on U.S. imports was 11.1 percent, while the equivalent U.S. rate on imports from Colombia was only 0.1 percent.

Our trade agreement with Colombia will further open this dynamic and growing economy. Colombia will provide immediate duty-free access for over one-half of its imports of U.S. agricultural products and over 80 percent of U.S. industrial and consumer products, with all remaining tariffs phased out over defined periods. Colombia is already the largest market for U.S. agricultural exports in South America. U.S. farmers and ranchers will benefit particularly from the immediate elimination of duties on high quality beef, cotton, wheat, soybeans, and many fruits and vegetables including apples, pears, peaches, and cherries. While negotiating the terms of the CTPA, the United States and Colombia also reached other agreements, including reopening Colombia's market to U.S. beef and beef products for human consumption when accompanied by a sanitary certificate issued by the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS).

In addition, the CTPA will remove barriers to U.S. services, provide a secure, predictable legal framework for investors, and strengthen protection for workers and the environment. The CTPA includes state-of-the-art provisions relating to intellectual property rights, electronic commerce, customs administration and trade facilitation, and dispute settlement.

The CTPA includes provisions concerning the protection of workers' rights and the environment that were included as part of the Bipartisan Agreement on Trade Policy reached with the U.S. Congress on May 10, 2007. Under the CTPA, each Party is required to adopt and maintain in its law, and practices thereunder, fundamental labor rights as stated in the 1998 International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work and its Follow-up, and to enforce effectively those laws. The Parties also committed to enforce effectively their own domestic environmental laws and adopt, maintain, and implement laws, regulations, and all other measures to fulfill obligations under the five multilateral environmental agreements (MEAs) that are identified in the agreement. All of the commitments in the environment and labor chapters are subject to the same dispute settlement procedures as obligations in other FTA chapters. These commitments are supplemented by a Labor Cooperation Mechanism established under the labor chapter and the United States-Colombia Environmental Cooperation Agreement, a separate agreement through which the Parties will undertake cooperation on issues related to the protection of the environment and natural resources.

## **15. Peru**

The United States and Peru signed the United States-Peru Trade Promotion Agreement (PTPA) on April 12, 2006. The Peruvian Congress ratified the Agreement in June 2006 and a Protocol of Amendment in June 2007. On December 14, 2007, President Bush signed into law the PTPA Implementation Act which approved the PTPA. The PTPA entered into force on February 1, 2009.

The United States has a vested interest in the security, stability, and success of the Andean region and stands to gain substantially from establishing stronger political and economic ties with Peru. The PTPA eliminates tariffs and trade barriers for U.S. manufacturers, workers, farmers, and investors, allowing U.S. products and services to compete more effectively with those of other countries in the region. Additionally, the PTPA will aid in promoting economic growth and prosperity in Peru by attracting new investment and more jobs. More importantly, the agreement will support and enhance the democratic and free market reforms that Peru has undertaken in recent years.

The United States' two-way trade with Peru doubled over the last four years to \$12.5 billion in 2008, with U.S. goods exports to Peru reaching \$6.4 billion. In 2008, 94 percent of U.S. imports from Peru entered the United States duty-free under U.S. most-favored nation tariff rates and various preference programs.

Under the terms of the PTPA, 80 percent of U.S. exports of consumer and industrial products to Peru became duty-free immediately, with remaining tariffs phased out over 10 years. More than 90 percent of current U.S. farm exports gained immediate duty-free access to Peru. Tariffs on most of the remainder of U.S. farm products will be phased out within 15 years, with all tariffs eliminated in 17 years. Peru has also agreed to eliminate its price band system on trade with the United States, and has addressed a number of significant sanitary and phytosanitary (SPS) and technical regulation issues that had impeded or stopped U.S. exports of beef, pork, poultry, and rice. In addition, the PTPA will remove barriers to U.S. services, provide a secure, predictable legal framework for investors, and strengthen protection for intellectual property, workers, and the environment.

The PTPA includes provisions concerning the protection of labor rights and the environment that were included as part of the Bipartisan Agreement on Trade Policy reached with the U.S. Congress on May 10, 2007. Under the PTPA, each Party is required to adopt and maintain in its law, and practices there under, fundamental labor rights as stated in the 1998 International Labor Organization Declaration on Fundamental Principles and Rights at Work and its Follow-up, and to enforce those laws effectively. The Parties also committed to enforce effectively their own domestic environmental laws and adopt, maintain, and implement laws, regulations, and all other measures to fulfill obligations under the seven multilateral environmental agreements (MEAs) that are identified in the PTPA.

All of the commitments in the environment and labor chapters are subject to the same dispute settlement procedures as obligations in other FTA chapters. These commitments are supplemented by a Labor Cooperation Mechanism established under the labor chapter and the United States-Peru Environmental Cooperation Agreement, a separate agreement through which the Parties will undertake cooperation on issues related to the protection of the environment and natural resources. The environment chapter includes a first-of-its kind Annex on Forest Sector Governance that provides for concrete steps that the Parties will take to enhance forest sector governance in Peru and promote legal trade in timber products.

The PTPA provides for improved standards for the protection and enforcement of a broad range of intellectual property rights. Such improvements include: state-of-the art protections for digital products such as software, music, and movies; stronger protection for patents, trademark and test data, including an electronic system for the registration and maintenance of trademarks; and strong enforcement provisions to combat piracy and counterfeiting.

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

### **a. Overview**

On January 1, 1994, the North American Free Trade Agreement between the United States, Canada, and Mexico (NAFTA) entered into force. All remaining duties and quantitative restrictions were eliminated, as scheduled, on January 1, 2008. NAFTA created the world's largest free trade area, which now links 444 million people producing \$17 trillion worth of goods and services.

Trade between the United States and its NAFTA partners has soared since the agreement entered into force. U.S. two-way trade with Canada and Mexico exceeds U.S. trade with the European Union and Japan combined. U.S. goods exports to NAFTA partners nearly tripled between 1993 and 2008, from \$142 billion to \$418 billion.

By dismantling barriers, NAFTA has led to increased trade and investment, growth in employment, and enhanced competitiveness. From 1993 to 2007, cumulative foreign direct investment in the NAFTA countries has increased by over \$2.2 trillion. Increased investment has brought better-paying jobs, as well as lower costs and more choices for consumers and producers.

## **b. Elements of NAFTA**

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

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

The FTC held its most recent annual meeting in August 2007, in Vancouver, Canada. At the meeting, the FTC agreed to develop a work plan to enhance North American competitiveness. Deputy Ministers from the NAFTA countries met in Monterrey, Mexico in February 2008 to discuss progress on the trilateral work plan.

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

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

The NAALC Labor Ministers convened the Eighth Regular Session of the Ministerial Council on April 24, 2008. They established priorities for the NAALC and for Secretariat activities, including addressing the challenges and opportunities of youth employment, improving mine safety, and protecting freedom of association. The Ministers signed a Joint Declaration to cooperate in order to resolve issues raised in a public communication concerning freedom of association, the protection of the right to organize, and the right to bargain collectively in the Mexican state of Puebla. In accordance with the Declaration, the three countries held a government-to-government exchange in Puebla, Mexico in December 2008. This event was followed by a seminar with relevant stakeholders to discuss labor law and best practices in North America related to freedom of association and collective bargaining, including federal and state procedures for processing worker complaints of illegal dismissals, procedures for the registration of unions, access to collective bargaining agreements, and labor-management cooperation mechanisms.

One new submission on labor matters was filed under the NAALC in 2008. The submission was filed with the Canadian NAO in April and alleged violations of collective bargaining and other labor rights in North Carolina. The United States addressed a related submission, filed in Mexico in 2006, by providing responses and information to the Mexican NAO on the application of federal and state labor laws in North Carolina. A copy of those responses was also sent to the Canadian NAO.

As part of its cooperative activities program, the NAALC Secretariat hosted a seminar on youth employment in Mexico City, Mexico in December 2008.

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

A further supplemental accord, the North American Agreement on Environmental Cooperation (NAAEC), seeks to ensure that trade liberalization and efforts to protect the environment are mutually supportive. The NAAEC created the Commission for Environmental Cooperation (CEC), which is composed of: (a) the Council, made up of the environment ministers or their equivalents from the United States, Canada, and Mexico; (b) the Joint Public Advisory Committee, made up of five private citizens from each of the Parties; and (c) the Secretariat, a professional staff, located in Montreal, Canada, which supports the Parties' implementation of the agreement. At the 2008 Council Session in Ottawa, Canada, the Council reviewed the work of the CEC, established the organization's goals for the coming year and, *inter alia*, reinforced the importance of both the NAFTA and NAAEC in raising environmental standards across all three countries. Specific information on the CEC's activities can be found in Chapter IV.

In November 1993, Mexico and the United States agreed on arrangements to help border communities with environmental infrastructure projects, in furtherance of the goals of the NAFTA and the NAAEC. The Border Environment Cooperation Commission (BECC) and the North American Development Bank (NADB) are working with 149 communities throughout the United States-Mexico border region to address their environmental infrastructure needs. As of December 16, 2008, the NADB had contracted a total of \$968 million in loans and/or grant resources to partially finance 129 infrastructure projects certified by the BECC with an estimated cost of \$3.12 billion.

## **B. Regional Initiatives**

### **1. Free Trade Area of the Americas (FTAA)**

As agreed at the Fourth Summit of the Americas of November 2005 ("Mar del Plata Summit"), the government of Colombia undertook consultations to facilitate the exploration of the two positions put forth at the Summit. The vast majority of leaders in the hemisphere, including President Bush, called for a continuation of the FTAA negotiations and the resumption of trade meetings. Other leaders indicated that the conditions did not yet exist for the achievement of the FTAA. All 34 leaders agreed to explore these two positions in light of the outcome of the December 2005 World Trade Organization (WTO) Ministerial Meeting in Hong Kong. Colombia's consultations were aimed to facilitate a meeting of trade officials; however, there was no agreement on the timing of a meeting and the FTAA negotiations remain suspended.

### **2. U.S. - ASEAN Trade and Investment Framework Agreement (TIFA)**

The ten member ASEAN group of countries collectively ranks as the United States' fifth largest trading partner and fourth largest export market. Trade continues to grow steadily, with \$182 billion in two-way goods trade in 2008. With robust economies and a total population of about 550 million, the ASEAN market provides significant potential opportunities for U.S. companies.

In October 2002, President Bush announced the Enterprise for ASEAN Initiative (EAI), which is intended to strengthen U.S. trade and investment ties with ASEAN members both as a region and individually. Under the EAI, the United States offered the prospect of bilateral free trade agreements (FTAs) to ASEAN countries that are committed to the economic reforms and openness inherent in an FTA with the United States. The offer required a potential FTA partner to be a WTO member and have a Trade and Investment Framework Agreement (TIFA) with the United States. Since the launch of the EAI, the United States concluded an FTA with Singapore in 2003, and later began FTA negotiations with Thailand and Malaysia. The United States already had TIFAs with Indonesia and the Philippines and concluded

TIFAs with Brunei, Cambodia, and Vietnam. The United States used regular meetings under bilateral TIFAs to address bilateral trade issues, further deepen trade and investment ties, and coordinate regional and multilateral trade efforts.

In August 2006, the United States and ASEAN concluded a TIFA. This regional TIFA represents the commitment by both the United States and ASEAN countries to build upon already strong trade and investment ties to further enhance their economic relationship and promote ASEAN regional economic integration. The TIFA includes a work plan under which the two sides are working on priority projects. In May 2008, Ambassador Susan C. Schwab met with ASEAN Trade Ministers to assess the progress made on the existing TIFA work plan projects: an ASEAN Single Window for Customs Clearance; and development of an ASEAN harmonized pharmaceutical regulatory regime. The participants also discussed the development of new cooperative projects for the coming year, including a joint agreement to pursue ASEAN-wide participation in the plurilateral Multi-Chip Integrated Circuit (MCP) Agreement, and services and investment initiatives.

### **3. Middle East Free Trade Area (MEFTA)**

In May 2003, President Bush proposed the MEFTA initiative, a plan of graduated steps for Middle Eastern nations to increase trade and investment with the United States and others in the world economy, with the eventual goal of a regional free trade agreement. The first step is to work closely with peaceful nations that want to become Members of the World Trade Organization (WTO) in order to facilitate their accession. As these countries implement domestic reform agendas, institute the rule of law, protect property rights (including intellectual property), and create a foundation for openness and economic growth, the United States will pursue specific strategies to enhance trade and investment relations with them, each strategy tailored to the relevant country's level of development. In particular, the United States will expand and deepen economic ties through Trade and Investment Framework Agreements (TIFAs), Bilateral Investment Treaties (BITs), comprehensive Free Trade Agreements (FTAs), and other measures as appropriate. Bilateral FTAs with Israel, Jordan, Morocco, Bahrain, and Oman have already entered into effect (see relevant FTA sections above).

In 2008, USTR continued to work with trading partners in the region to implement the MEFTA initiative. The United States and the United Arab Emirates decided early in 2007 that the timing was not conducive to concluding bilateral FTA negotiations and have since sought to pursue trade and investment enhancement through a "TIFA-Plus" process; the first meeting of this new format was held in June 2007. The United States continues actively to support the WTO accession efforts of Lebanon, Algeria, and Yemen, and has also taken steps to reinvigorate dialogues with other key trading partners in the region, including Egypt and Saudi Arabia.

### **4. Asia-Pacific Economic Cooperation Forum**

#### **Overview**

The Asia-Pacific Economic Cooperation (APEC) forum has been instrumental in promoting regional and global trade and investment since it was founded in 1989. It has provided a forum for Leaders to meet annually since 1993, when APEC Leaders met at Blake Island in the United States. The United States will host APEC again in 2011.

The United States worked closely with Peru, the APEC Chair in 2008, and other APEC economies in pursuing an ambitious trade and investment liberalization agenda with an eye toward reducing barriers to trade and facilitating the movement of goods and services in the region.

In 2008, APEC took steps to address the current global financial turmoil, advance the World Trade Organization Doha Development Agenda (WTO/DDA) negotiations, promote regional economic integration, set high standards for FTAs, spotlight the need for work on intellectual property protection and enforcement, strengthen the safety of traded goods, expand work on the environmental goods and services sector, and facilitate trade in information and communications technologies. The United States will work with Singapore, the APEC Chair in 2009, to build on these initiatives and take further concrete steps to promote economic integration in the Asia-Pacific region.

The 21 APEC economies collectively account for 44 percent of world trade and 54 percent of global GDP. The growth in U.S. goods exports to APEC clearly demonstrates the benefits of open markets. Since 1994, U.S. exports to APEC economies increased by 137 percent. In 2008, U.S. goods trade with the APEC economies totaled \$2.1 trillion, up 7 percent from 2007. U.S. services trade with the APEC economies totaled \$287 billion in 2007.

## **2008 Activities**

### **Addressing the Financial Crisis**

APEC Leaders discussed the global financial crisis at their November 2008 summit in Lima, Peru, and issued a separate statement on the global economy, resolving to take coordinated action to restore stability to financial markets and economic growth. Specifically, they endorsed “the common principles” and “broad policy responses” of the Washington Declaration issued on November 15 at the Summit on Financial Markets and the World Economy in Washington, D.C. APEC Leaders also extended support to the WTO/DDA, and reaffirmed their commitment to “free market principles, and open trade and investment regimes” as a driver for global growth, employment and poverty reduction, and called for accelerated implementation of APEC’s regional economic integration agenda, including a possible Free Trade Area of the Asia Pacific (FTAAP).

APEC Leaders also highlighted the need to avoid “protectionist measures which would only exacerbate” the current economic downturn. In this regard, they pledged to “refrain within the next 12 months” from raising barriers to investment or to trade in goods or services, imposing export restrictions, or implementing WTO inconsistent measures in all areas, including those that stimulate exports.

### **WTO Leadership**

APEC economies continued to exercise leadership in the WTO. At the November 2008 summit, APEC Leaders issued a strong statement that called for an “ambitious and balanced conclusion” to the WTO DDA as a basis to promote economic growth and prosperity. To achieve this mandate, APEC Leaders pledged to build on the progress made to date and to work to “reach agreement on modalities” before the end of the year. They directed Ministers to take steps to advance this objective.

### **Advancing Open Trade and Investment in the APEC Region**

*Promoting Regional Economic Integration (REI)/Free Trade Area of the Asia Pacific (FTAAP):* In 2008, the United States continued work to deepen trans-Pacific economic ties through APEC. At the summit of APEC Economic Leaders in Lima, the United States promoted and Leaders endorsed a Regional Economic Integration (REI) progress report and work plan that solidifies APEC’s role as the principal vehicle to strengthen economic integration in the Asia-Pacific. These include numerous agreed actions designed to accelerate work to explore the options and prospects of a FTAAP. To embrace the challenges and opportunities involved in these developments, the United States will work closely in 2009 with other APEC economies to advance the REI mandate, including by working to achieve greater convergence in

key areas of APEC's trade and investment agenda, such as customs administration, trade facilitation, and cross-border services.

*Free Trade Agreements (FTAs) and Regional Trade Agreements (RTAs):* In 2008, APEC continued to address the growing number of FTAs and RTAs in the Asia-Pacific and the need to ensure that APEC economies' agreements are trade-promoting and reflect high standards. In this regard, APEC economies agreed on five additional model measures in 2008, including in the areas of safeguards, competition policy, and environment. These key elements for high quality FTA/RTA chapters brought the total to 15 sets of model measures agreed since commencement of this work in 2005.

*Fostering the Safety of Traded Goods:* APEC continued to address the important issue of improving food and product safety practices in the region. In 2008, APEC economies endorsed the APEC Food Safety Cooperation Forum Partnership Training Institute Network, a U.S. proposal to leverage resources and expertise from industry and academia to support the needs identified by APEC economies in building stronger food safety capacity. APEC economies also agreed to further strengthen food safety management practices in the region by supporting the use of international standards, where appropriate, and science based regulatory approaches, in addition to continuing to deepen cooperation in 2009 to ensure the safety of traded products, such as toys.

*Trade and Investment Facilitation:* In 2008, APEC took further steps to facilitate trade and investment in the region. APEC endorsed an Investment Facilitation Action Plan to improve member economies' investment regimes and enhance the flow of investment in the Asia-Pacific by 2010. The United States will work with the other APEC economies on this initiative in 2009, including by developing reporting methodologies through which progress implementing the initiative can be publicly assessed.

APEC economies also agreed on concrete ways to implement the second Trade Facilitation Action Plan to reduce trade transaction costs by five percent by 2010. This commitment builds on the success of APEC's first five-year action plan that resulted in a five percent reduction in trade transaction costs from 2001-2006. The United States will work with APEC economies to carry forward this initiative in 2009, while also continuing work on the single window initiative (launched September 2006) to further facilitate trade in the region.

*Intellectual Property Rights (IPR) Protection and Enforcement:* In 2008, the United States led efforts to ensure effective implementation of previously agreed initiatives on IPR protection and enforcement, including the APEC Anti-Counterfeiting and Piracy Initiative and APEC Cooperation Initiative on Patent Acquisition Procedures. APEC Leaders and Ministers underscored the importance of continuing and building upon this work in 2009, by addressing areas such as satellite and cable signal theft, and streamlining patent examination practices in the region. The United States will work with the other APEC economies on these efforts, and also further encourage APEC members – some of whom have major IPR enforcement challenges – to put in place legal regimes and enforcement systems to better combat counterfeiting and piracy.

*Environmental Goods and Services:* APEC economies endorsed a framework outlining areas for expanded APEC participation in the environmental goods and services sector in 2008. Enshrined in this framework is a preliminary list of projects for APEC to undertake in this new and growing sector, including a U.S.-launched initiative to build a better understanding throughout the Asia-Pacific region of cutting-edge environmental technologies. APEC Ministers underscored the importance of this work, including its potential to contribute to the DDA negotiations on environmental goods and services, and called on member economies to advance this work during 2009.

*Information and Communications Technologies:* The United States launched and secured endorsement of the APEC Digital Prosperity Checklist to promote trade in the digital economy in 2008. APEC Leaders and Ministers welcomed the checklist, which identifies policy, regulatory, trade and other tools to promote the use and development of information and communication technologies by member economies, and instructed APEC to build on this work in 2009. APEC Ministers also welcomed the expansion of the APEC Data Privacy Pathfinder and its ongoing efforts to facilitate the accountable flow of data across the region. APEC Ministers also reaffirmed the importance of the role that the WTO Information Technology Agreement (ITA) has played in promoting trade, investment, and economic growth in APEC economies, and agreed to work together to ensure that the integrity of the ITA is maintained. The United States and other APEC economies will further this work, as well as the Pathfinder on the APEC Technology Choice Principles in 2009.

### **Private Sector Involvement**

*The APEC Business Advisory Council:* The APEC Business Advisory Council was extremely active during 2008, participating in government-business dialogues and offering recommendations to advance key APEC priorities including the WTO/DDA negotiations, promoting regional economic integration, urging high-quality FTAs, trade facilitation, and IPR protection and enforcement.

*Life Sciences Innovation Forum:* In 2008, the sixth Life Sciences Innovation Forum (LSIF) undertook work to promote investment in health. In addition to sponsoring capacity building programs to combat counterfeit drugs and medical devices, promote best practices on clinical trials regulations, and facilitate greater access to innovative and life saving medical products, LSIF undertook a study examining the role of, and returns on, investment in health systems. The results of the study both demonstrated the positive returns of these investments, as well as areas where medical life science innovations could yield the greatest improvement to health outcomes and economic growth. LSIF also completed an Enablers of Investment Checklist as a voluntary guidance tool for economies to assess their investment environment for life sciences innovation.

*Automotive and Chemical Dialogues:* The Automotive and Chemical Dialogues are public-private sector dialogues in which government officials and senior industry representatives work together to map out strategies for increasing integration and liberalizing trade in the automotive and chemical sectors in the APEC region.

In 2008, the Automotive Dialogue continued work to address impediments to trade in automotive products by advancing capacity building initiatives and undertaking work in areas such as rules of origin. In addition, this dialogue worked closely with other APEC working groups both to facilitate customs procedures for low risk shippers through the use of expedited clearance, and to develop a work plan to examine issues related to biofuel resources, fuel flexible vehicles and infrastructure, and biofuel standards and trade. The Automotive Dialogue will continue these efforts in 2009, and further examine issues related to Intellectual Property Rights, motorcycle safety, small and medium-sized enterprises, and market access for aftermarket parts.

The Chemical Dialogue intensified its advocacy on the potential adverse impact of the EU REACH chemical regulations. This dialogue developed a set of Principles for Best Practice Chemicals Regulations and a report on issues associated with implementation of the UN Globally Harmonized System (GHS), both of which were endorsed by APEC Ministers and recommended for submission as APEC contributions to the Strategic Approach to International Chemical Management. In addition, the Chemical Dialogue continued work to implement GHS and develop a common approach to simplifying rules of origin in the chemicals sector as a contribution to APEC's REI agenda.

## **5. U.S. – Trans-Pacific Partnership Free Trade Agreement (FTA)**

In September 2008, the United States announced its intention to negotiate the terms of U.S. participation in the Trans-Pacific Strategic Economic Partnership (TPP) FTA. The TPP Agreement, whose original members are Singapore, Chile, New Zealand, and Brunei Darussalam, is a high standard, comprehensive regional trade agreement intended to serve as a pathway to broader Asia-Pacific trade integration. In December 2008, the United States announced that Australia, Peru, and Vietnam also would participate in the negotiations.

The U.S. decision to launch negotiations with the TPP countries followed a detailed exploratory process that began in early 2008 and included extensive consultations with the U.S. Congress and stakeholders. As the United States was conducting this process, it began in March 2008 to participate in financial services and investment negotiations with TPP countries. While the rest of the TPP Agreement entered into force in 2006, these two chapters remained to be negotiated. Three rounds of negotiations on these chapters were held in 2008, with solid progress made in both areas.

The TPP will serve to strengthen U.S. trade and investment ties to the Trans-Pacific region, which is a priority given the economic significance of the region to the United States now and in the future. In addition, U.S. participation in the TPP could position U.S. businesses better to compete in the Asia-Pacific region, which is seeing the proliferation of preferential trade agreements among U.S. competitors and the development of several competing regional economic integration initiatives that exclude the United States. The TPP also will facilitate trade in the Trans-Pacific region, rationalize existing agreements, and support the multilateral trade agenda. In addition, it could serve as a vehicle for achieving the long-term APEC objective of a Free Trade Area of the Asia-Pacific.

## **C. The Americas**

### **1. Canada**

#### **a. Softwood Lumber**

The 2006 Softwood Lumber Agreement (SLA) is a significant accomplishment in U.S.-Canada bilateral relations. Its entry into force settled massive litigation in U.S. and international venues and resulted in the revocation of antidumping and countervailing duty orders on softwood lumber from Canada. The SLA is designed to constrain softwood lumber exports from Canada into the United States when demand in the United States is low. In favorable market conditions, the SLA provides for unrestricted trade in softwood lumber. During 2008, the maximum export restrictions were in place and Canada's share of the U.S. market fell. The Softwood Lumber Committee, established by the SLA to monitor implementation of the agreement, met in May 2008 and December 2008 to discuss a range of implementation issues and Canadian provincial assistance programs for softwood lumber industries.

On March 30, 2007, the United States requested formal consultations with Canada to resolve concerns regarding several Canadian federal and provincial programs, as well as Canada's interpretation of provisions of the agreement that adjust softwood lumber export levels, including the level triggering the agreement's surge mechanism. After formal consultations failed to resolve these concerns, on August 8, 2007, the United States requested international arbitration under the terms of the agreement to compel compliance with Canada's obligations relating to export volume caps and proper application of the import surge mechanism. On March 3, 2008, the arbitral tribunal considering the matter determined that Canada violated its SLA obligations by failing to properly adjust quota levels during the first half of 2007. The tribunal is expected to issue a determination in early 2009 on the appropriate remedy for Canada's

violation. On January 18, 2008, the United States asked a second arbitration tribunal to consider its challenge of several provincial programs. These programs circumvent Canada's obligations under the SLA by reducing or offsetting the export measures imposed by the agreement. A decision is anticipated in this arbitration sometime in late 2009.

## **b. Agriculture**

Canada is the largest market for U.S. food and agricultural exports. For 2008, U.S. agricultural exports to Canada grew by 17 percent to a record-breaking annualized \$16.4 billion.

As a result of the 1998 Canada Record of Understanding on Agricultural Matters (ROU), the U.S.-Canada Consultative Committee on Agriculture (CCA) and the Province/State Advisory Group (PSAG) were formed to strengthen bilateral agricultural trade relations and to facilitate discussion and cooperation on matters related to agriculture. The CCA met in May 2008 and November 2008 to discuss issues concerning livestock, fruits, vegetables, seed, plant trade, and biotechnology as well as to reinforce the close working relationship between the two governments and their respective agricultural sectors.

Continued progress was made in 2008 regarding the implementation of the Technical Arrangement Concerning Trade in Potatoes between the United States and Canada. This arrangement will provide U.S. potato producers with predictable access to Canadian Ministerial exemptions necessary to import potatoes into Canada. The arrangement, when fully implemented in November 2009, will allow a 60-day forward contract between a U.S. grower and a Canadian processor to serve as sufficient evidence of a shortage of Canadian potatoes in order for a Ministerial exemption to be granted automatically. In addition, the United States is phasing out spot-check inspections along the northeastern Canadian border crossing and shifting to quality inspections at the point of destination for potatoes. Finally, USDA has initiated rulemaking to allow some Canadian specialty potatoes that do not currently meet U.S. quality standards for size to enter the U.S. market.

In June 2007, the government of Canada implemented import requirements for U.S. beef and beef products which allowed full market access for imports of all U.S. beef and beef products from animals of all ages, consistent with the guidelines of the World Organization for Animal Health. In 2007, U.S. exports for beef and beef products to Canada increased to 132,473 metric tons worth \$603 million dollars from 96,591 metric tons worth \$433 million in 2006. In the first 11 months of 2008 U.S. exports of beef and beef products to Canada were 143,960 metric tons worth \$669 million, a 22.7 percent increase in volume over the same period in 2007.

## **c. Intellectual Property Rights (IPR)**

Canada has been an active participant in efforts to strengthen international IPR enforcement by negotiating an Anti-Counterfeiting Trade Agreement (ACTA) (see discussion in Chapter IV) and in the Security and Prosperity Partnership of North America (SPP) Intellectual Property Rights Working Group.

Canada is a member of the World Intellectual Property Organization (WIPO) and adheres to several international agreements, including the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. Canada is also a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (together the WIPO Treaties), which set standards for intellectual property protection in the digital environment. Canada has not yet ratified these two WIPO Treaties. In June 2008, Canada introduced legislation to implement the WIPO Treaties and to provide improved copyright protection. The bill, however, died on the order table when national elections were called in September 2008.

U.S. intellectual property owners remain concerned about Canada's weak border measures and general enforcement efforts. The lack of *ex officio* authority for Canadian Customs officers makes it difficult for them to seize shipments of counterfeit goods. To perform a civil seizure of a shipment under the Customs Act, the rights holder must obtain a court order, which requires detailed information on the shipment.

## **2. Mexico**

Mexico is the United States' third-largest single-country trading partner and has been among the fastest-growing major export markets for goods since 1993, with U.S. exports up 267 percent over the period. The NAFTA has fostered this relationship by virtue of the agreement's comprehensive, market-opening rules. It is also creating a more equitable set of trade rules as trade barriers in Mexico are reduced and eliminated.

### **a. Agriculture**

North American agricultural trade has grown significantly since the NAFTA was implemented. Mexico is currently the United States' second-largest agricultural export market. For 2008, U.S. agricultural exports to Mexico increased 28 percent above the 2007 level, to roughly \$16 billion.

On January 1, 2008, following the end of a 15-year transition period, the United States and Mexico removed all remaining tariffs and quotas under the NAFTA, joining North America in free trade (all tariff cuts between the United States and Canada and between Canada and Mexico had already been implemented). On January 1, 2008, Mexico eliminated all tariffs and tariff-rate quotas (TRQs) on U.S. corn, dry beans, milk powder, and sweeteners. The scheduled termination of the safeguard mechanism on chicken leg quarters at the end of 2007 also occurred. On January 1, 2008, the United States eliminated all remaining tariffs and TRQs on various horticultural products (asparagus, dried onions and garlic, cantaloupes and other melons, orange juice (fresh and frozen), as well as peanuts and products, canned tuna, sweeteners and sugar-containing products).

The United States has worked to open the Mexican market to U.S. agricultural products. The full reopening of all trading partners' markets (including Mexico) to U.S. beef and beef products from animals of all ages in a manner consistent with World Organization for Animal Health (OIE) guidelines on Bovine Spongiform Encephalopathy (BSE) is a top priority for the United States. OIE guidelines provide for conditions under which all beef and beef products from animals of all ages can be safely traded from all countries regardless of BSE status, when certain Specified Risk Materials (SRMs), defined by OIE for each classification status, are removed. In May 2007, the OIE classified the United States as a "controlled risk" country for BSE, and in May 2008, Mexico achieved the same OIE classification. Nevertheless, Mexico still continues to ban U.S. beef and beef products from animals over 30 months of age. Mexico also has unjustifiable bans on U.S. beef products such as ground beef, head and foot meat, and small intestines, which had been a major part of U.S. exports. The United States will continue to work to achieve the full reopening of Mexico's market in a manner consistent with the OIE guidelines for "controlled risk" countries. In addition, the United States is carefully monitoring Mexico's use of its antidumping trade remedy on imports from the United States, particularly on imports of Red and Golden Delicious Apples.

### **b. Intellectual Property Rights (IPR)**

Despite a fairly extensive set of IPR laws and an increase in the number of seizures and arrests during the past few years, the extent of IPR violations in Mexico remains significant. Monetary sanctions and other

penalties, when imposed, are minimal and largely targeted at bottom-tier IPR violators, such as small-scale vendors of infringing materials, who are numerous and easily replaced.

A bill proposing to give the Procuraduría General de la República (PGR) the power to prosecute intellectual property crimes *ex officio* (i.e., on its own initiative and without first receiving complaints from rights holders or their legal representatives) was approved by the Mexican Chamber of Deputies in April 2008 and is awaiting action by the Mexican Senate.

Mexico has been an active participant in efforts to strengthen international IPR enforcement by negotiating an Anti-Counterfeiting Trade Agreement (ACTA).

### **3. Brazil and the Southern Cone**

#### **a. MERCOSUR (Argentina, Brazil, Paraguay, and Uruguay)**

The Common Market of the South, referred to as “MERCOSUR” from its Spanish acronym, is the largest trade bloc in Latin America. MERCOSUR is currently comprised of Argentina, Brazil, Paraguay, and Uruguay, and makes up over one-half of Latin America’s gross domestic product. On December 9, 2005, Venezuela began the process of joining MERCOSUR as a full member, but the Brazilian and Paraguayan legislatures have yet to approve Venezuela’s accession. Venezuela also has yet to make certain policy changes that will grant it full voting rights. Bolivia, Peru, Colombia, Ecuador, and Chile are associate members of the bloc, and benefit from certain preferential access to MERCOSUR markets, but maintain their own external tariff policies.

As a common market, MERCOSUR applies a common external tariff (CET) to products of nonmembers with a limited number of country-specific exceptions. Full CET product coverage, originally scheduled for implementation in 2006, has been deferred until December 31, 2009. Paraguay and Uruguay may also maintain 100 country-specific exceptions until December 31, 2015.

#### **b. Argentina**

The United States exported goods valued at an estimated \$7.8 billion to Argentina in 2008, an increase of 34 percent from 2006. U.S. imports from Argentina were roughly \$6.0 billion, an increase of 34 percent from 2007.

Argentina's low level of IPR protection and enforcement remains a source of friction in the bilateral trade relationship. Argentina has been on the Special 301 Priority Watch List since 1996. Although cooperation has improved between Argentina’s enforcement authorities and the U.S. copyright industry, and the Argentine Customs authority has taken steps to improve enforcement, the United States continues to encourage stronger IPR enforcement actions to combat the widespread availability of pirated and counterfeit products.

#### **c. Brazil**

The United States exported goods valued nearly \$34 billion to Brazil in 2008. Brazil’s market accounts for 24 percent of U.S. exports to Latin America and the Caribbean, excluding Mexico, and 59 percent of U.S. goods exports to MERCOSUR.

The two governments conducted a meeting of the Bilateral Consultative Mechanism in Washington, D.C. on March 10, 2008, and discussed a number of bilateral and multilateral issues of mutual interest. Both

sides agreed to create a technical working group on trade facilitation and to investigate the potential for a Bilateral Investment Treaty.

Significant issues remain that restrict U.S. agricultural and food exports. For example, due to concerns about Bovine Spongiform Encephalopathy (BSE), Brazil still bans all U.S. cattle, beef, and beef products despite World Animal Health Organization (OIE) guidelines which specify that trade in all U.S. beef and beef products, with the exception of certain specified risk materials (SRMs) is safe. While some progress has been made in the area of sanitary and phytosanitary measures, Brazil's ban on wheat from the states of Washington, Oregon, Idaho, California, Nevada, and Arizona continues to adversely affect U.S. wheat exports.

According to the most recent statistics made available from the WTO covering the one-year period July 2007 through June 2008, Brazil has been a significant user of trade remedies, with the initiation of 16 antidumping investigations (ranking sixth among WTO Members) and the imposition of 11 antidumping measures (ranking seventh among WTO Members). With regard to imports from the United States during the same period, Brazil initiated antidumping investigations on supercalendared paper, phenol and butyl acrylate and imposed final antidumping measures on aluminum pre-sensitized plate and polycarbonate resin. In September 2008, Brazil initiated a safeguard action on recordable compact discs and digital versatile discs (CD-Rs/DVD-Rs), which is still pending.

Brazil is a beneficiary country under the Generalized System of Preferences (GSP) program and uses the program extensively. In 2008, after extensive analysis, including comments received from the public, the Administration determined that ferroniobium from Brazil can compete effectively in the U.S. market. As a result, the Administration revoked Brazil's competitive need limitation (CNL) waivers necessary for duty-free treatment of this product under the U.S. Generalized System of Preferences. The United States also continues to have concerns regarding Brazil's burdensome and non-transparent import licensing system.

Brazil has achieved some progress in enhancing the effectiveness of intellectual property enforcement, particularly with respect to pirated audio-visual goods. In addition, in July 2008, the United States Patent and Trademark Office (USPTO) and Brazil's IP office, the National Institute for Industrial Property (INPI), signed an MOU that memorializes the close working relationship between the two offices and that will serve as a vehicle for continued technical cooperation on IPR issues, such as patent and trademark examination training and information sharing. Nonetheless, shortcomings in some areas of IPR protection and enforcement, such as the large backlogs of patent and trademark applications and the involvement of Brazil's Health Ministry (ANVISA) in the examination process of patent applications for pharmaceuticals, continue to represent issues for U.S. IP rights holders.

#### **d. Paraguay**

The United States exported goods valued at an estimated \$1.7 billion to Paraguay in 2008, an increase of 35 percent from 2006. U.S. imports from Paraguay were roughly \$77 million, an increase of 14 percent from 2007.

In November 2008, Deputy U.S. Trade Representative John K. Veroneau traveled to Paraguay and met with President Fernando Lugo to discuss the countries' common interests in pursuing policies to increase economic growth.

Paraguay is a major exporter of, and a transshipment point for, pirated and counterfeit products in the region, particularly to Brazil. In 1998, Paraguay was designated as a Priority Foreign Country under the Special 301 provisions of the Trade Act of 1974. The United States and Paraguay concluded a

Memorandum of Understanding (MOU) on IPR issues. This MOU has been extended and revised twice since it entered into effect. The latest revision of the MOU was signed on April 30, 2008, and is valid through the end of 2009. Implementation of the MOU is subject to ongoing monitoring under U.S. trade law. The MOU details Paraguayan commitments to implement institutional and legal reforms and to strengthen intellectual property rights enforcement and prosecution. In addition, Paraguay agreed to ensure that its government ministries use only authorized software.

#### **e. Uruguay**

Uruguay has the smallest population among MERCOSUR members (3.5 million). U.S. exports to Uruguay increased by 47 percent to \$939 million in 2008, while imports decreased by 54 percent to \$224 million.

The United States-Uruguay commercial relationship has seen significant growth in the past several years. In 2002, Uruguay and the United States created a Joint Commission on Trade and Investment (JCTI) to exchange ideas on a variety of bilateral economic topics. A Bilateral Investment Treaty entered into force in November 2006.

In January 2007, the two governments signed a Trade and Investment Framework Agreement (TIFA), and have utilized the framework to exchange ideas on a variety of economic topics, including customs issues, intellectual property protection, investment, labor, and the environment.

On October 2, 2008, the two governments signed two protocols to the TIFA covering substantive commitments in the areas of trade facilitation and public participation in trade and environment.

#### **f. Chile**

The United States-Chile Free Trade Agreement entered into force on January 1, 2004 and provides the framework for bilateral trade relations. Developments in 2008 with respect to the United States-Chile FTA are discussed in Chapter III, Section A.

### **4. The Andean Community**

The United States has concluded Trade Promotion Agreements with Peru and Colombia. See Chapter III, Section A, for a description of these agreements and their status. Additional developments with countries in the region also occurred pursuant to the Andean Trade Preference Act (See Chapter V, Section B).

## **5. Central America and the Caribbean**

### **a. Free Trade Agreement with Central America and the Dominican Republic**

See Chapter III, Section A for a discussion of this topic.

## **D. Europe and Eurasia**

### **1. European Union**

#### **Overview**

The U.S. economic relationship with Europe is the largest and most complex in the world. Transatlantic trade and investment have played a major role in promoting prosperity on both sides of the Atlantic over the past half century. Given the magnitude and the highly integrated nature of the economic relationship, however, difficult trade issues often arise. The value of trade and investment affected by these issues can sometimes be quite large. Yet even when their impact is relatively small in dollar terms, U.S.-EU trade and investment disagreements can have implications for significant matters of principle or precedent, making their resolution both important and difficult.

With the accession of Romania and Bulgaria, the EU expanded to 27 countries at the beginning of 2007, and now encompasses a market of nearly 500 million consumers with a gross domestic product of \$14 trillion. U.S. goods exports to the European Union in 2008 were \$278 billion; U.S. exports of private commercial services (*i.e.*, excluding military and government) were \$179 billion in 2007.

During 2008, USTR actively engaged with the European Commission and EU Member States on a wide range of trade and investment issues, as well as on initiatives aimed at expanding transatlantic economic cooperation.

#### **a. Enhancing Transatlantic Economic Relations**

During their April 2007 Summit, U.S. and EU leaders launched the Framework for Advancing Transatlantic Economic Integration, with the goal of fostering cooperation and reducing trade and investment barriers through a multi-year work program in such areas as regulatory cooperation, intellectual property rights (IPR), investment, secure trade, financial markets, and innovation. The new Framework also established the Transatlantic Economic Council (TEC) to oversee Framework implementation, with input from the Transatlantic Business Dialogue, the Transatlantic Consumers Dialogue, and the Transatlantic Legislators Dialogue. The initial TEC meeting occurred in November 2007.

At the conclusion of its May 2008 meeting, the TEC reported progress on several initiatives, including commitments by the European Commission to propose changes to EU regulations that would allow the importation of poultry meat processed using pathogen reduction treatments (PRTs); by the U.S. Occupational Safety and Health Administration to publish a new request for information (RFI) concerning the use of suppliers' declaration of conformity as a basis for certifying that certain electrical and electronic equipment is safe for use in U.S. workplaces; and by the European Commission to undertake the necessary steps, within its competence, to ensure transparent implementation, legal certainty and non-discriminatory trade with respect to the new EU chemical regulation, REACH (Registration, Evaluation, Authorisation and Restriction of Chemical substances) and to take concrete action to ensure that trade in cosmetics and personal care products is not disrupted by REACH implementation. The TEC also produced an Open Investment Statement affirming the commitment of the United States and the EU to promoting open investment policies at home and abroad. It also noted progress in several other areas, including mutual recognition of accounting standards, customs cooperation, validation of alternative methods of animal testing, and patent harmonization.

As described in more detail below, the United States was disappointed by the EU's inability to make satisfactory progress during 2008 on two TEC market access issues of great interest to the United States: opening the EU market to poultry treated with PRTs and resolving REACH implementation issues.

#### **b. Regulatory Cooperation**

Trade obstacles arising from divergences in U.S. and EU regulations and the lack of transparency in EU rulemaking and standardization processes are an increasingly important focus of the U.S. dialogue with the EU. Under the Roadmap for U.S.-EU Regulatory Cooperation, U.S. and European officials broadly advanced U.S.-EU regulatory cooperation in 15 different sectors in 2007, with a particular focus on pharmaceuticals, medical devices, cosmetics, automobiles, chemicals, and electrical equipment. The U.S.-EU High-Level Regulatory Cooperation Forum (HLRCF) met in November 2007 to exchange views and share experiences regarding regulatory cooperation approaches and practices of mutual interest, with product safety and integration of trade impacts into regulatory analysis being topics of particular interest.

During 2008, much of the ongoing U.S.-EU work on regulatory cooperation came under the supervision of the TEC. At the May 2008 TEC meeting, the HLRCF presented a report on strengthening cooperation on the safety of imported products, which included concrete recommendations on how to overcome current constraints on effective information sharing. The HLRCF also presented a report on the analysis of international trade and investment impacts in the U.S. and EU regulatory impact assessment guidelines. These reports confirmed a common interest in working more closely on regulatory cooperation in the future.

#### **c. Subsidies for Large Commercial Aircraft**

The United States has long expressed its concerns with European government subsidization of large civil aircraft (LCA) developed by Airbus. The issue has acquired greater urgency in recent years as Airbus sought and received substantial new subsidies (so-called "launch aid," together with grants for infrastructure, research and development, and other types of subsidies) for the Airbus A380 super jumbo aircraft and commitments from various EU Member States of further launch aid subsidies for the new Airbus A350 passenger aircraft. In 2004 and 2005, USTR attempted to work with the European Commission to establish a new agreement aimed at eliminating LCA subsidies. The Commission's reluctance to negotiate such an agreement led the United States to initiate dispute settlement at the WTO in 2005 (as the United States believes subsidies to Airbus violate EU obligations under the WTO Agreement on Subsidies and Countervailing Measures). The EU requested its own WTO dispute settlement proceeding, claiming alleged U.S. Federal and State government subsidies to Boeing. Although the United States would prefer to reach a negotiated solution, it is prepared to see its WTO case through to completion if necessary. (See the "Dispute Settlement Understanding" section in Chapter II for further information on these cases.)

#### **d. WTO Information Technology Agreement**

For several years, the United States has raised concerns in both bilateral and multilateral settings regarding the duty treatment that the EU accords to several high technology products covered by the WTO Information Technology Agreement (ITA): LCD computer monitors, set-top boxes with a communication function, and certain multifunction digital machines (*i.e.*, devices that can scan, print, copy, and/or fax). The EU agreed to provide duty-free treatment to these products when it signed the ITA. On May 28, 2008, the United States requested formal consultations with the EU under WTO dispute settlement procedures; Japan and Chinese Taipei requested consultations shortly thereafter. These consultations failed to resolve the dispute, and on August 18, 2008, the United States, Japan, and Chinese Taipei jointly requested the establishment of a dispute settlement panel to determine whether the EU is

acting consistently with its WTO obligations. On September 23, the WTO Dispute Settlement Body (DSB) agreed to establish a panel. (See the “Dispute Settlement Understanding” section in Chapter II for further information on this case.)

#### **e. Agricultural Biotechnology**

In May 2003, the United States initiated WTO dispute settlement proceedings with respect to the EU’s *de facto* moratorium on approvals of agricultural biotechnology products and the existence of individual Member State bans on agricultural biotechnology products previously approved at the EU level. In September 2006, the WTO dispute settlement panel ruled in favor of the United States, finding that both the EU’s moratorium and the Member State prohibitions were inconsistent with WTO rules. The WTO adopted the panel report on November 21, 2006. On December 19, 2006, the EU notified the WTO that it intended to comply with the WTO recommendations and rulings set out in the panel report, and that it would need a “reasonable period of time” (RPT) to do so. The United States and EU agreed that the RPT would expire on November 21, 2007, and subsequently agreed to extend the RPT to January 11, 2008. When the RPT expired on January 11, the United States took the first step toward a resumption of WTO dispute settlement procedures by submitting a request to the WTO for authority to suspend concessions. Under a January 14, 2008 agreement with the Commission, however, proceedings on the U.S. request were suspended to provide the EU an opportunity to demonstrate meaningful progress on normalizing trade in biotechnology products. (See the “Dispute Settlement Understanding” section in Chapter II for further information on the WTO dispute).

During 2008, U.S. Government and Commission officials held several rounds of discussions on normalizing trade in biotechnology products. These discussions were useful in providing a forum for the exchange of information. However, the United States continues to have serious concerns with the operation of the EU biotechnology approval system. The backlog of pending applications (about 50 at the end of 2008) is even greater than when the United States initiated the WTO proceeding in 2003. In addition, individual EU Member States continue to adopt and maintain prohibitions on EU-approved biotechnology products.

#### **f. Chemicals**

On June 1, 2007, the EU’s comprehensive new regulatory regime for all chemicals (REACH) entered into force. REACH imposes extensive additional testing and reporting requirements, to be phased in over a number of years, on producers and downstream users of chemicals. This expansive EU regulation impacts virtually all industrial sectors, including the majority of U.S. manufactured goods exported to the EU. While supportive of the EU’s objectives of protecting human health and the environment, the United States continues to stress that the EU regulation adopts a particularly complex and burdensome approach, which appears to be neither workable nor cost-effective in its implementation, and could adversely impact innovation and disrupt global trade. Many of the EU’s trading partners have expressed similar concerns.

The United States has also continued to follow the implementation of other EU chemicals-related regulations such as the Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS), which has been applied to certain chemicals as well as to other substances. With respect to RoHS, we continue to seek clarification from the European Commission on various issues involving implementation of the existing Directive and the ongoing review of the Directive, which may result in changes to the Directive. We will continue to monitor closely the ongoing implementation of these and other EU regulations in 2009, and will seek to ensure that U.S. interests are protected.

### **g. Ban on Growth Promoting Hormones in Meat Production**

The EU continues to ban the import of U.S. beef obtained from cattle treated with growth-promoting hormones. In May 1996, the United States launched a formal WTO dispute settlement proceeding, challenging the EU ban. In 1999, the WTO ruled that the EU's ban was inconsistent with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), because it was not based on a scientific risk assessment, and authorized the United States to impose sanctions on EU products with an annual trade value of \$116.8 million. At present, the United States continues to apply 100 percent duties on \$116.8 million of certain imports from the EU.

In September 2003, the EU announced the adoption of a directive (EC Directive 2003/74) that recodified its ban on the use of the hormone estradiol for growth-promotion purposes and established provisional bans on the five other growth-promoting hormones included in the original EU legislation. The EU argued that it was now in compliance with the earlier WTO ruling and that U.S. sanctions were no longer justified. The United States maintained that the revised EU measure could not be considered compliant with the WTO's recommendations and rulings in the earlier hormones dispute, and that U.S. sanctions remained authorized.

In November 2004, the EU requested WTO consultations with the United States on this matter. A WTO panel issued its report in March 2008, finding that the United States had committed two procedural errors by continuing its sanctions after the EU claimed compliance, but that the EU's ban remained inconsistent with the requirements of the SPS Agreement. The EU filed an appeal in May 2008, and the United States filed a cross-appeal on the panel's procedural findings. The Appellate Body issued its report on October 16, 2008, reversing the panel's procedural findings in favor of the United States and concluding that the U.S. sanctions may remain unless and until the EU demonstrates compliance. The Appellate Body also reversed certain of the panel's findings regarding the consistency of the EU's revised ban with the SPS Agreement, ultimately leaving unanswered the question of whether the revisions to the ban have brought the EU into compliance. On December 22, the EU submitted a request for formal WTO consultations with the United States on the issue of whether the recodified 2003 hormone ban brings the EU into compliance with its obligations under the SPS Agreement.

During 2008, the United States and the European Commission continued longstanding talks on a possible interim settlement of the beef hormone issue. Such a settlement would involve the lifting of trade sanctions by the United States in exchange for additional EU market access for high-quality non-hormone beef. In November, following the Commission's failure for several months to negotiate a specific amount of new market access for hormone-free beef, the United States initiated a formal review of the beef hormones import retaliation list under Section 301 of the Trade Act of 1974, collecting comments from the public on the possible revision of the retaliations list, which had not changed since 1999. On January 15, 2009, USTR issued a *Federal Register* notice announcing that additional duties would be collected on a modified list of EU imports beginning on March 23, 2009.

### **h. Poultry Meat**

U.S. poultry meat exports to the EU have been banned since April 1, 1997 because U.S. poultry producers use washes of low-concentration pathogen reduction treatments (PRTs) to reduce the level of pathogens in poultry meat production, a practice not permitted by the EU sanitary regime. For many years, the United States has worked with the European Commission to gain approval of four PRT compounds. In December 2005, the European Food Safety Authority formally adopted the opinion of a scientific panel that had determined these four PRTs were safe. In February 2006, the European Commission's Health and Consumer Protection Directorate General circulated the first draft of a proposal to allow PRTs to be

used on poultry meat in the EU market. The Directorates General for Environment and Agriculture and Rural Development reportedly held up the proposal for two years.

At the November 2007 meeting of the TEC, the European Commission committed to resolve this issue by the time of the 2008 U.S.-EU summit. In May 2008, the Commission issued a revised proposal to authorize the use of poultry PRTs. The proposed EU regulation included a number of conditions that would have limited the ability of most U.S. exporters to sell poultry to the EU, including prohibiting the simultaneous or consecutive use of more than one PRT and requiring poultry meat processed with a PRT to be rinsed in potable water after the application of the PRT. The proposal also provided for an unnecessarily trade-restrictive labeling requirement for poultry meat treated with PRTs. Despite the inclusion of these excessively stringent conditions, the Standing Committee on the Food Chain and Animal Health, a regulatory body that assists the Commission in the development of food safety measures, rejected the proposal on June 2, 2008. EU Agriculture Ministers also rejected the proposal in December. On January 16, 2009, the United States requested formal WTO consultations with the EU on its ban on imports of poultry treated with PRTs.

#### **i. Pork**

U.S. pork exports to the EU are restricted by high tariffs, a complex system of tariff-rate quotas (TRQs), and SPS barriers, including *trichinae* testing and a ban on the use of PRTs. In the WTO Doha negotiations, the United States has been seeking improved access to the EU market for U.S. pork through an expansion and consolidation of TRQs and a reduction in tariffs. The United States is also pressing the EU in the context of the WTO compensation negotiations related to the 2007 enlargement of the EU (see Enlargement Section below) to make improvements in TRQ administration to enable more effective utilization of the quotas by U.S. exporters. Some progress was made in 2008 through the EU's elimination of additional residue testing requirements. In the coming year, the United States will continue to seek the resolution of SPS issues restricting pork exports to the EU.

#### **j. Wine**

On March 10, 2006, the United States and the EU concluded the Agreement between the United States of America and the European Communities on Trade in Wine, an accord on wine-making practices and wine labeling intended to facilitate bilateral trade in wine, currently valued at nearly \$3.7 billion annually, of which 85 percent is of EU origin. The agreement has improved marketing certainty for U.S. and EU wine exporters.

The agreement provides for: (1) mutual recognition of existing wine-making practices; (2) a consultative process for recognition of new wine-making practices; (3) a commitment by the United States to confine, with some exceptions, the use of certain terms on wine labels in the U.S. market solely to wine originating in the EU; (4) a commitment by the EU to allow, under specified conditions, the use of certain regulated terms on U.S. wine exported to the EU; (5) recognition of certain names of origin in each market; (6) simplified import certification requirements; and (7) defined parameters for optional labeling elements for U.S. wines sold in the EU market. The agreement also provided for a second phase of negotiations to further enhance bilateral wine trade. The agreement did not address the use of "geographical indications," a category of indicators of origin that are protected under intellectual property laws or treaties. The United States and the EU continue to meet to discuss implementation of the first agreement and second-phase issues.

In September 2008, the EU notified the United States that it would not renew the derogation in the wine agreement that permits the use of certain expressions on U.S. wine sold into the EU market. The agreement permits the EU to decline to extend the derogation. It will now expire in March 2009.

### **k. EU Enlargement**

Upon their accession to the EU in January 2007, Romania and Bulgaria were required to change their tariff schedules to conform to the EU's common external tariff schedule, resulting in increased tariffs on certain products imported from the United States. In December 2006, in advance of the accession, the United States and the EU entered into negotiations under WTO rules for compensation to the United States to offset the tariff changes.

Soon after the accession of Romania and Bulgaria, the United States presented a formal request for compensation under GATT 1994 Articles XXIV:6 and XXVIII. The Commission made an initial offer in June 2007 and the United States presented a formal counterproposal in October 2007. In January 2008, Commission negotiators essentially rejected the U.S. proposal and made no new offer, instead urging the United States to reconsider the offer the EU had already made. Senior U.S. and EU officials discussed the enlargement negotiations on several occasions during 2008, but made no significant progress toward a solution. The Commission has extended the formal negotiating period four times; the current negotiating period expires at the end of June 2009.

### **l. Rice**

The zero tolerance policy maintained by the EU for the presence in conventional agricultural shipments of trace amounts of unapproved biotechnology products continues to generate significant commercial risk for companies handling U.S. rice. This policy, put in place in reaction to the discovery of trace levels of unapproved biotechnology LL601 rice in the U.S. long grain rice crop in 2006, is harmful to U.S. exports because any detection of LL601 can potentially lead to detention or rejection of U.S. rice at the EU point of delivery or after distribution on the EU market. In February 2008, following a review of U.S. industry measures to ensure the exclusion of LL601 from rice shipments, the European Commission eliminated a requirement that EU Member States must test all U.S. rice shipments for genetically engineered rice upon arrival at EU ports. This change has resulted in a marginal improvement in the trading environment for U.S. rice exports to the EU during 2008. However, an EU-mandated origin-testing program for U.S. long grain rice shipments remains in place. Recognizing the extensive measures taken by the U.S. rice industry to eliminate the presence of LL601 from rice supplies, the United States seeks the elimination of this additional origin-testing requirement. Over the long run, the adoption by the EU of a reasonable low-level presence policy regarding unapproved biotechnology products will be a necessary condition for the complete recovery of U.S. rice sales to the EU market.

During 2008 the United States and the European Commission entered into discussions on the operation of the U.S.-EU husked rice agreement, which has been in effect since 2005. These discussions have focused on the annual increase in the import reference volume for the 2008/2009 marketing year as well as the longer-term operation of the tariff adjustment mechanism as set out in the agreement. For the short term, the United States is seeking a significant increase in the import reference quantity in the husked rice agreement. The longer-term U.S. objective is to obtain consistent market access for U.S. brown rice at a tariff well below the bound tariff of 65 euros per ton.

### **m. Bananas**

While the United States does not directly export bananas to the EU, the EU regime for the importation of bananas is of considerable importance to U.S. companies involved in the production, distribution, and marketing of bananas. In 1996, the United States, Ecuador, Guatemala, Honduras, and Mexico challenged before the WTO the then EU regime for importation of bananas. A WTO panel and the Appellate Body found 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 has been under an obligation to bring its bananas regime into compliance with its WTO obligations since September 1997.

On January 1, 2006, the EU implemented a new banana import regime that combined a 176 Euro/metric ton Most Favored Nation (MFN) tariff level with a zero duty tariff-rate quota in amounts up to 775,000 metric tons for bananas originating in Africa, Pacific and Caribbean (ACP) countries, with which the EU has long maintained preferential trading relationships. In February and July 2007, Ecuador and the United States, respectively, requested the establishment of compliance panels (under Article 21.5 of the WTO Dispute Settlement Understanding), challenging the consistency of this regime with the EU's WTO obligations. A panel report in the U.S. proceeding was issued in May 2008, finding that the EU's regime was in violation of GATT Articles I and XIII. A panel report in the Ecuador proceeding found similarly, and in addition found that the MFN tariff being applied by the EU was in excess of the EU's bound commitments, and therefore in violation of GATT Article II. The EU appealed both reports. The Appellate Body issued its report on November 26, 2008, upholding the findings that the EU was in violation of GATT Articles I, II, and XIII.

In July 2008, the EU, with the assistance of the WTO Director General, attempted to negotiate a comprehensive banana settlement with Latin American suppliers. Though agreement in principle seemed near, the EU suspended its efforts when WTO Members reached an impasse in talks on modalities for the WTO/DDA negotiations. The EU has said it wishes to conclude the banana negotiations within the context of a successful DDA modalities discussion.

## **2. Other European Countries**

The United States continues to broaden its economic engagement with the member countries of the European Free Trade Area (Switzerland, Norway, Iceland, and Liechtenstein). The United States and Switzerland continued discussions of bilateral trade and related issues under the U.S.-Swiss "Trade and Investment Cooperation Forum." The United States and Iceland also signed a "Trade and Investment Cooperation Forum" Agreement to expand trade relations between the two countries.

As in previous rounds of EU enlargement, USTR and other U.S. agencies have worked to help ensure that the accession of Bulgaria and Romania to the EU does not adversely affect U.S. commercial interests in the region (see EU Enlargement in the EU Section). Stabilization and Association Agreements (SAAs) with the EU, which represent a step in a candidate country's efforts to accede to the EU, have entered into force for Croatia and Macedonia, and have been signed with Albania, Bosnia and Herzegovina, Serbia, and Montenegro. These Agreements provide for the reduction to zero of virtually all tariff rates on industrial goods and preferential rates and quotas for many agricultural goods traded between the EU and these countries. Subsequent agricultural agreements (the Zero-Zero Agreements) have further reduced tariffs on the majority of agriculture goods, resulting in generally higher tariff rates (MFN tariff rates) imposed on U.S. goods in these countries than on EU goods.

Many of the countries in the Southeast Europe region are eligible for duty-free benefits under the U.S. Generalized System of Preferences (GSP) program. As provided by the GSP statute, once a country becomes an EU Member State, it may no longer be designated as a GSP beneficiary. The GSP statute also provides that a beneficiary may not receive GSP benefits if it affords preferential treatment to the products of a developed country, other than the United States, that has a significant adverse effect on U.S. commerce. As noted above, the United States has consulted with several countries concerning preferential tariffs they have granted to EU exports (as compared with U.S. exports) pursuant to their SAAs with the EU and will continue to monitor the impact of these agreements on U.S. commercial

interests. USTR is also working in the region to increase the use of GSP benefits by the eligible beneficiary countries.

### **3. Russia**

The United States has established strong bilateral trade and investment links with Russia, based on numerous bilateral trade agreements, including the 1992 bilateral trade agreement concluded in accordance with Title IV of the Trade Act of 1974. The United States also extends Generalized System of Preferences (GSP) benefits to Russia. The strong ties between the United States and Russia were strained at the end of 2008, however, as a result of Russia's military actions in Georgia. As President Bush noted in August, "Russia has sought to integrate into the diplomatic, political, economic, and security structures of the 21st Century. The United States has supported these efforts." However, by its recent actions in Georgia, he said, "Russia is putting its aspirations at risk."

#### **a. WTO Accession**

The United States has supported Russia's accession to the World Trade Organization (WTO) to encourage Russia to align its economy and legal regime with the requirements of rules-based 21<sup>st</sup> century global institutions and to support the establishment of market-based economic reforms. As with all accession negotiations, the United States and other WTO Members expect to achieve increased market access for their exports to Russia as a consequence of these negotiations and Russia's WTO accession. In 2006, the United States and Russia signed a WTO bilateral market access agreement on goods and services, and by the end of 2008, Russia had completed similar bilateral market access negotiations with most other interested WTO Members. During 2008, Russia made considerable progress in the multilateral negotiations on the terms for Russia's accession, but Russia's progress on integrating WTO provisions into domestic law and its compliance with bilateral agreements already in force was disappointing. Important issues that remain to be resolved include the operation of state-owned enterprises, protection of intellectual property, liberalization and binding of export duties, and commitments on agricultural supports.

#### **b. Jackson-Vanik Amendment**

Russia (as is the case with several of the other countries in the region – see below) receives conditional Normal Trade Relations (NTR) (formerly referred to as "most favored nation" or MFN) tariff treatment pursuant to the provisions of Title IV of the Trade Act of 1974, also known as the Jackson-Vanik amendment. Under the Jackson-Vanik amendment, the President is required to deny NTR tariff treatment to an economy that was not eligible for such treatment in 1974 and that fails to meet the freedom of emigration requirements contained in the legislation. This provision is subject to waiver, if the President<sup>25</sup> determines that such a waiver will substantially promote the legislation's objectives. Alternatively, the President can determine that the country is in full compliance with the legislation's emigration requirements. The country must also have a trade agreement with the United States, including certain specified elements, in order to obtain conditional NTR status. The President has determined that Russia is in full compliance with Title IV's freedom of emigration requirements and the United States and Russia have had a qualifying trade agreement in effect since 1992.

If a country is still subject to Jackson-Vanik at the time of its accession to the WTO, the United States invokes the "non-application" provisions of the WTO. In such cases, the United States and the other

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<sup>25</sup> In 2004, the President assigned to the Secretary of State the function of determining whether a country is in compliance with Jackson-Vanik or to grant a waiver.

country in effect have no “WTO relations.” In such a situation, the United States is unable, for example, to bring a WTO dispute to address a violation of the WTO agreement, including the commitments this Member undertook as part of its WTO accession package, and U.S. exporters are not able to benefit from many of the market opening commitments that the Member undertook in connection with its accession. Congressional action is required to terminate the application of Jackson-Vanik to a country. The Administration continues to consult with the Congress and interested stakeholders regarding the status of U.S. WTO accession negotiations and the timing of termination of the application of Jackson-Vanik and the provision of Permanent Normal Trade Relations status to Russia.

### **c. Intellectual Property Rights (IPR)**

U.S. industry continues to be concerned about the IPR situation in Russia, as weak enforcement regarding piracy and counterfeiting in Russia remains a serious problem. In addition, prosecutions and adjudications of IP cases remain sporadic and do not appear to have deterred further piracy. U.S. copyright industries estimate they lost in excess of \$1.5 billion in 2007 due to copyright piracy in Russia (*e.g.*, films, videos, sound recordings, books, and computer software). In 2008, Russia’s optical disc production capacity continued to be far in excess of domestic demand, raising concerns that optical discs containing pirated material may be used for export as well as for domestic consumption. Internet piracy continued to be a serious concern, especially given increasing broadband penetration in Russia and Russia’s role in hosting websites with pirated material.

The United States is working to ensure that Russia takes appropriate actions to protect intellectual property rights. The United States continues to encourage Russia to implement its commitments pursuant to the November 2006 Bilateral IPR Agreement between the United States and Russia, and will continue to evaluate further actions that Russia needs to take to improve the protection and enforcement of intellectual property rights. This bilateral agreement sets out actions that Russia will take to improve protection and enforcement of intellectual property rights. As part of the Bilateral IPR Agreement, the Russian government has committed to fight optical disc and Internet piracy, protect pharmaceutical test data, deter piracy and counterfeiting through criminal penalties, strengthen border enforcement, and bring Russian laws into compliance with WTO and other international IPR norms. The U.S. and Russian governments have an ongoing dialogue to ensure the full implementation of this binding agreement. Bilateral consultations were held in Washington and Moscow in 2008.

In response to petitions from the U.S. copyright industries, USTR continued a review in 2008 to determine Russia’s eligibility to receive GSP benefits. Russia has also been on the Special 301 Priority Watch List since 1997.

The most significant legislative development in 2008 was the Duma’s adoption of Part IV of the Civil Code, which replaced most of Russia’s civil IPR legislation with a single code as of January 1, 2008. Part IV still contains provisions that raise concerns regarding the implementation of WTO and other international agreements. The Russian government has pledged to ensure that Part IV and other IPR measures will be fully consistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The government of Russia introduced amendments to Part IV into the Duma to address U.S. concerns and the amendments passed the first of three readings. In 2008, Russia formally acceded to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty and the WIPO Copyright Treaty. These actions meet one of Russia’s commitments in the November 2006 United States-Russia bilateral IPR Agreement. The United States continues to work with the Russian government on improving the level of protection and enforcement of IP rights.

Under Article 39.3 of the TRIPS Agreement, WTO Members must protect against the disclosure and unfair commercial use of undisclosed test and other data submitted to government authorities to obtain

marketing approval of pharmaceutical and agricultural chemical products. Russia currently does not provide such protection for pharmaceutical products. Legislative changes to address these concerns are being considered by Russia's government.

Poor enforcement of IPR is a pervasive problem. The prosecution and adjudication of intellectual property cases remains sporadic and inadequate; there is a lack of transparency and a failure to impose deterrent penalties. In the Bilateral IPR Agreement, Russia committed to improve IPR enforcement and the United States committed to intensify training programs for customs and law enforcement officials. The U.S. Embassy in Moscow coordinated or participated in several IPR training programs in 2008. The government in 2008 put forward amendments to the Duma to provide *ex officio* authority to Customs officials, but the Duma did not take action on the proposed amendments. Russia also committed to enhancing its supervision of both licensed and unlicensed optical disc factories. While Russia's authorities took some positive steps, for example by closing some optical disc plants which had been operating on government-controlled restricted-access sites, concerns remained, including with regard to the infrequency of inspections of licensed facilities. In the November 2006 Bilateral IPR Agreement, Russia also committed to enhance its supervision of both licensed and unlicensed optical disc factories.

#### **d. Market Access for Poultry, Pork, and Beef**

The United States was actively engaged with the government of Russia throughout 2008 to ensure that U.S. producers of poultry, pork, and beef continue to have access to the Russian market and that Russia appropriately implements the U.S.-Russian Bilateral Meat Agreement on Trade in Certain Poultry, Pork, and Beef that entered into force in 2005. The Meat Agreement established tariff-rate quotas (TRQs) for poultry, pork, and beef, a 15 percent tariff for imports of U.S. high quality beef and other provisions related to importing meat and poultry into Russia. The bilateral market access agreement sets out a framework, including the timetables, tariff rates, and TRQ parameters, for WTO negotiations on how such goods will be treated post-2009. In October 2008, however, Russia proposed renegotiating the terms of access for poultry and pork. In December 2008, U.S. and Russian negotiators agreed to decrease the 2009 in-quota volume for U.S. poultry, increase the 2009 in-quota volume for pork, and increase the over-quota tariff rates for both poultry and pork. Because the 2005 Meat Agreement expires at the end of 2009, the United States expects to begin negotiations on how these meat products will be treated beginning in 2010.

#### **e. Sanitary and Phytosanitary Restrictions**

Sanitary and phytosanitary (SPS) restrictions continued to pose challenges to U.S. agricultural trade with Russia. When the United States and Russia signed the bilateral WTO market access agreement, the two governments also signed bilateral agreements to address SPS issues related to trade in frozen pork, certification of facilities to export pork, beef and poultry, trade in beef and beef by-products, and an agreement on treatment of products of modern biotechnology. Progress on some of these issues was based on Russian government resolutions issued in 2006 directing that international standards, guidelines and recommendations of the Organization for Animal Health (OIE) and the International Plant Protection Convention (IPPC) be followed. In 2008, however, the Chief of Russia's Veterinary Service signed measures that will severely restrict U.S. poultry exports to the Russian Federation. Russia has not provided any scientific justification for these measures. Following United States-Russia consultations in November and December 2008, the Russian government agreed to delay the implementation of a measure regulating use of chlorine in processing poultry until January 1, 2010. Further discussions among technical experts will take place in 2009.

## **f. Product Standards, Certification, and Licensing**

U.S. companies cite product certification requirements as an obstacle to U.S. trade and investment in Russia. In the context of Russia's WTO accession negotiations, the United States is urging Russia to put in place the necessary legal and administrative framework to establish transparent procedures for developing and applying standards, technical regulations, and conformity assessment procedures to better comply with WTO rules.

With regard to other non-tariff barriers, for alcoholic beverages, pharmaceuticals, and products with encryption capability, Russia requires an importer to obtain a non-automatic import license and an activity license to engage in production or distribution of the relevant product. In a bilateral agreement signed in November 2006, Russia agreed to establish a streamlined interim system for the import of goods containing encryption capabilities, to implement transparent, nondiscriminatory and WTO-compatible procedures for issuing permits and import licenses, and to allow importation of most commercially-traded information technology and telecommunications goods after a one-time notification, or in some cases, with no licensing or notification requirements at all. The U.S. Government will continue to work on addressing the licensing barriers to trade in products with encryption capabilities and the other products subject to non-automatic licensing requirements.

## **g. Services**

When Russia becomes a WTO Member and the United States applies the WTO Agreement to Russia, U.S. services suppliers in a wide range of sectors, including banking and securities, insurance, telecommunications, audio-visual services, distribution, express delivery, energy services, environmental services and professional services will benefit from improved access to the Russian market. For example, Russia will provide national treatment and a significant level of market access for insurance companies, including 100 percent foreign ownership of non-life insurance firms, upon accession. On banking and securities, Russia has agreed to bind most access at existing levels for most services and to offer some liberalization of treatment of foreign bank subsidiaries.

## **h. Investment**

Russia is among the top priority countries for pursuing negotiation of a bilateral investment treaty (BIT). In late 2007, the U.S. Government introduced the idea of opening BIT exploratory discussions with Russia, and Russian officials responded very positively. U.S. and Russian negotiators held a first round of such discussions in February 2008 and discussed each country's respective model investment treaty texts. The Russians took no substantive issues off the table and indicated a high degree of enthusiasm for further exploring the possibility of BIT negotiations. The United States and Russia previously had signed a BIT in 1992, but it was never ratified by the Russian Duma.

## **4. Ukraine**

In March 2008, the United States signed a Trade and Investment Cooperation Agreement (TICA) with Ukraine. The Council held its inaugural meeting in Kyiv in October 2008. The Council focused its initial work on discussing concrete steps to improve bilateral trade flows and the investment and business climate in Ukraine and to assess the status of Ukraine's compliance with its commitments in the World Trade Organization (WTO), having just become a member on May 16, 2008. The TICA is one of several bilateral trade and investment links the United States has established with Ukraine. On November 16, 1996, a bilateral investment treaty (BIT) entered into force and is operational. The BIT guarantees U.S. investors the better of national and most favored nation (MFN) treatment, the right to make financial

transfers freely and without delay, international legal standards for expropriation and compensation and access to international arbitration. Despite these links, several U.S. companies face longstanding investment disputes, which mainly date from the early 1990s and the initial opening of the Ukrainian economy to foreign investors. At least one American investor has sought arbitration over a dispute arising in 2008. In most of these cases, there has been little progress toward resolution.

#### **a. Intellectual Property Rights**

Recent years have seen steady improvement in Ukraine's protection of intellectual property rights, in particular a significant reduction in illegal production of optical discs. After reinstatement of Ukraine's GSP benefits reflecting this progress, the U.S. Government and U.S. and Ukrainian industry participants established an IPR Enforcement Cooperation Group to monitor the progress of future enforcement efforts. The new bilateral group has conducted a series of successful dialogues, meeting roughly once every four months, and in 2007, Ukraine's Special 301 designation was lowered further to Watch List in recognition of the progress made.

Some problems remain. The retail sale of pirated goods in Ukrainian markets is still widespread, as is their transit through Ukraine. Internet piracy is a growing problem, as many Ukraine-based websites offer pirated material for download, including copyrighted music, purportedly with the full knowledge of their Internet Service Providers (ISPs). In addition, Ukraine's collective management system for royalties still functions imperfectly. Rights holders complain that some royalty collecting societies collect fees for public use of copyrighted material without authorization and do not properly return royalty payments to rights holders. Business software piracy also remains a concern in Ukraine. Of continuing concern to patent holders is the fact that the Ukrainian Ministry of Health does not routinely check the validity of patents when it grants marketing approval in Ukraine, something Ukraine's new laws, developed in the process of WTO accession, are designed to remedy. Ukraine's progress in these areas will continue to be monitored, both in the Special 301 process and in the context of the IPR Enforcement Group.

#### **b. Sanitary and Phytosanitary (SPS) Issues**

Ukraine applies a range of measures that restrict imports of a number of U.S. agricultural products, key among them, pork, beef, and poultry. Ukraine's product certification and approval process is lengthy, duplicative, and expensive. Over the past several years, Ukraine has passed amendments to several laws and regulations designed to address these issues and to bring its legislative and regulatory framework into compliance with the requirements of the WTO SPS Agreement. For example, important changes were made to the law "On Veterinary Medicine" and the law "Quality and Safety of Food Products and Food Raw Materials" in the context of Ukraine's WTO accession.

There are a few areas of significant concern remaining between the United States and Ukraine. Ukraine maintains a complex and non-transparent system for overseeing human and animal health measures involving overlapping authority by the Veterinary Service, Sanitary Service, and Derzh Spozhyv Standard. Amendments to the law on "On Standards, Technical Regulations and Conformity Assessment Procedures," passed in May 2007, made some progress towards sorting this out, but failed to solve entirely the fundamental problem of overlapping authority. Further amendments to the Law have been proposed to the Rada.

A second issue involves the specific sanitary requirements under which the United States exports beef, beef products, and pork to Ukraine. As agreed bilaterally at the same time as the WTO Bilateral Market Access Agreement with Ukraine in March 2006, Ukraine is now allowing the entry of some U.S. beef and pork that has been certified as meeting the new veterinary certificate requirements. This has reduced a major irritant in U.S.-Ukrainian bilateral trade relations. Bilateral work continues to ensure that any

measures undertaken by Ukraine on beef are consistent with World Organization for Animal Health (OIE) guidelines for Bovine Spongiform Encephalopathy (BSE). U.S. pork exports to Ukraine continued to be hampered by regulations concerning *trichinae*. The United States is working with Ukraine to harmonize Ukrainian standards for *trichinae* with international norms so that these restrictions can also be removed.

### **c. Grain Exports**

Ukraine is the sixth largest wheat exporter in the world. The United States continues to express its concern about export restrictions that Ukraine periodically imposes on food and feed grain exports. Ukraine applied restrictions on grain exports in September 2006, and then adjusted them in July 2007, imposing highly-restrictive quotas that served as a near export ban on each grain-type covered (wheat, barley, corn, and rye). Ukraine introduced somewhat more liberal quotas in early 2008, allowing more grain to be exported early in the year, and removed them altogether in May. Restrictions remain on the export of sunflower seed oil. To date, Ukraine has not adequately justified the measures taken or currently in place, *e.g.*, it has not convincingly explained how it faces a “critical shortage,” as required in order to maintain such limits under Article XI of the GATT 1994. Ukraine also has argued that export restrictions are sometimes needed to combat rising food prices, not a justification recognized by WTO. Mismanagement of export licensing procedures compounds the problem, *e.g.*, leaving a large volume of grain in storage in 2007 to spoil past the point where it could be used even for animal feedstock. The continued use of such measures, *e.g.*, on sunflower oil, and threats of measures over the last three years has tarnished Ukraine's investment climate and damaged its reputation, and will remain a matter of contention between Ukraine and its WTO partners.

## **5. Turkey**

Turkey maintains high tariff rates on many agricultural and food products to protect domestic producers. As one example, the Turkish government imposes high tariffs, as well as excise taxes and other domestic charges, on imported alcoholic beverages which significantly increase wholesale prices of these products.

Turkey also uses its import licensing regime to manage trade in a number of sectors. In the case of meat and poultry, Turkey refuses to issue any import licenses, effectively banning imports of these products. This situation appears similar in some respects to Turkey's regime for the importation of rice. In 2006, the United States brought a WTO dispute against Turkey regarding its rice import regime. In September, 2007, the WTO dispute settlement panel agreed with the United States that Turkey's failure to grant licenses to import rice and its operation of a discretionary import licensing system for rice are in breach of Turkey's market access obligations under the WTO Agreement on Agriculture. The panel also agreed with the United States that Turkey's domestic purchase requirement, under which Turkey required importers of rice to purchase large quantities of domestic rice in order to import rice at preferential tariff rates, is in breach of the national treatment provisions of the WTO (See Chapter II, Section H for additional discussion of this dispute.)

In the area of intellectual property rights, improvements in Turkish enforcement efforts in the area of copyrights led USTR to move Turkey from “Priority Watch List” to “Watch List” status during the 2008 Special 301 review. However, the United States continued in 2008 to press the Turkish government to improve enforcement against copyright piracy and trademark infringement. Turkey does not have an adequate system in place to prevent generic drugs that infringe the Turkish patents of U.S. pharmaceutical companies from receiving marketing approval in Turkey. Turkey has a Registration Regulation for protecting confidential test data which provides a six-year term of data exclusivity protection for pharmaceutical test data; however the regulation contains several provisions that remain of concern.

The United States is using annual meetings of the United States-Turkey Trade and Investment Framework Agreement (TIFA) Council as one means to address these issues. In the recent past, the TIFA Council has been effective in addressing some concerns. Following the Council's April 2007 meeting, Turkey agreed to a protocol permitting the import of live breeding cattle from the United States. In further follow up to U.S. concerns raised at the 2007 meeting, the Turkish government clarified in September 2007 that it did not intend to apply a strip stamp tax system for alcoholic beverages in a way that discriminated against U.S. imports.

## **6. The Caucasus Region**

The United States continues actively to support political and economic reforms in the countries of the Caucasus region, which includes Armenia, Azerbaijan, and Georgia.

The United States has been working – bilaterally and multilaterally – to construct strong trade and investment links with this region. Bilaterally, the United States has concluded trade agreements to extend Normal Trade Relations (NTR, formerly referred to as “most favored nation” or MFN) tariff treatment to these countries and to enhance intellectual property rights protection. The United States also has extended Generalized System of Preferences (GSP) benefits to nearly 3,400 types of products from Armenia, Azerbaijan, and Georgia and has negotiated bilateral investment treaties (BITs) to guarantee compensation for expropriation, non-discriminatory and fair and equitable treatment, transfers in convertible currency, and the use of appropriate dispute settlement procedures. The United States has some form of bilateral investment agreement with all three countries.

Multilaterally, the United States has encouraged accession to the WTO as an important means of supporting economic reform. Armenia and Georgia are WTO Members and in 2008, the United States continued bilateral and multilateral negotiations with Azerbaijan on its application to join the WTO.

In June 2007, the United States signed a TIFA with Georgia. The TIFA Council has met twice, in Washington, DC in June 2007 and in Tbilisi in October 2008. The focus of work under this TIFA is to bolster Georgia's ambitious program of economic reform and liberalization and to help Georgia attract and retain foreign investment. Following Russia's invasion of Georgia in August 2008, the United States developed a robust assistance package for Georgia, part of which is aimed at bolstering trade ties and strengthening the investment climate in Georgia.

In 2008, USTR began discussions with Armenia aimed at exploring mutual opportunities to expand bilateral trade relations.

### **a. Jackson-Vanik Amendment**

Azerbaijan receives conditional NTR tariff treatment pursuant to the provisions of Title IV of the Trade Act of 1974, also known as the Jackson-Vanik amendment (see description of Jackson-Vanik above in the Russia section). The Secretary of State, pursuant to authority delegated by the President, has determined that Azerbaijan is in full compliance with Title IV's freedom of emigration requirements. Pursuant to specific legislation, the President has terminated application of Title IV to Georgia and Armenia. These countries now receive permanent normal trade relations (PNTR) treatment and the WTO Agreement applies between each country and the United States.

## **b. Intellectual Property Rights (IPR)**

Since the United States concluded bilateral agreements in the 1990's throughout the region which cover IPR protection, USTR has worked to ensure these countries' compliance with their respective IPR obligations. The United States has cooperated with, and provided technical assistance to, these countries to help improve the level of IPR protection. Copyright and trademark piracy has been a widespread and serious problem throughout the region. Customs and law enforcement authorities in the region are making slow progress in upgrading these countries' enforcement efforts, but continued close monitoring and technical assistance are still warranted. USTR uses bilateral TIFAs, WTO accession negotiations and other forums to address these issues.

## **c. Generalized System of Preferences (GSP)**

All three Caucasus countries are beneficiaries under the GSP program.

# **E. Asia**

## **1. Australia**

A discussion of United States-Australia bilateral relations during 2008 can be found in Chapter III, Section A, describing trade under the United States-Australia FTA. Australia has been an active participant in efforts to strengthen international IPR enforcement by negotiating an Anti-Counterfeiting Trade Agreement (ACTA).

## **2. New Zealand**

In September 2008, the United States announced its intention to begin negotiations to join the Trans-Pacific Strategic Economic Partnership (TPP) agreement, a high-standard regional FTA of which New Zealand is a founding member. A discussion of the TPP can be found in Chapter III, section B.5. In addition, the United States and New Zealand continued to consult closely on the WTO Doha Development Agenda negotiations, advancing the APEC agenda, and other regional trade policy developments.

Two-way goods trade between the United States and New Zealand totaled \$5.7 billion in 2008. U.S. goods exports totaled \$2.6 billion in 2008, down 7 percent from 2007 and are concentrated in the machinery, aircraft, electrical machinery, and vehicle sectors. Two-way trade in services totaled \$3.2 billion in 2007.

## **3. The Association of Southeast Asian Nations (ASEAN)**

### **a. Brunei Darussalam**

In September 2008, the United States announced its intention to begin negotiations to join the Trans-Pacific Strategic Economic Partnership (TPP) agreement, a high-standard regional FTA of which Brunei Darussalam is a member. A discussion of the TPP can be found in Chapter III, section B.5. In addition, the United States met regularly with Brunei throughout the year to address a range of bilateral issues, including intellectual property rights (IPR) issues and to coordinate on the WTO Doha negotiations and APEC and ASEAN initiatives. With respect to IPR, the United States urged Brunei to intensify its enforcement and prosecution efforts. In June, the United States also sponsored a workshop to discuss best

practices in effective enforcement and to improve the dialogue between rights holders and Brunei police, customs officials, and prosecutors. The United States and Brunei agreed to continue working together on these issues.

#### **b. Cambodia**

The United States and Cambodia continued to make progress on trade- and investment- related issues in 2008 through the joint work program established under the 2006 Trade and Investment Framework Agreement (TIFA). The TIFA dialogue focused on deepening bilateral trade and investment ties, implementation of Cambodia's WTO commitments, and supporting Cambodia's domestic economic reform program. The two countries held four meetings throughout 2008 to review Cambodia's WTO implementation, to discuss specific initiatives to enhance Cambodia's business and investment climate, including through strengthening its intellectual property protection, and to coordinate on the WTO Doha negotiations and ASEAN initiatives. In addition, the United States provided technical assistance to support improvements in the transparency of Cambodia's trade policy making process as well as in strengthening intellectual property protection at the border.

#### **c. Indonesia**

The United States continued its efforts to deepen trade and investment relations with Indonesia, to resolve outstanding bilateral economic issues, and to coordinate on ways to advance the WTO Doha negotiations, APEC, and ASEAN initiatives. The United States and Indonesia met regularly throughout the year and in May held a ministerial-level Trade and Investment Framework Agreement (TIFA) meeting, at which they discussed a wide range of bilateral issues including investment, intellectual property rights (IPR), services, agriculture, sanitary and phytosanitary measures, Indonesia's restrictive import licensing system, and Generalized System of Preferences (GSP) issues. At that meeting, the United States and Indonesia also agreed to intensify engagement through more frequent meetings of the working groups established on the priority issues of investment, agricultural and industrial products, IPR, and services. These groups met in November and December 2008 to discuss ways to address specific market access concerns, including on a range of investment issues, as well as specific initiatives to further cooperate in these areas. During 2008, the United States and Indonesia conducted informal exploratory discussions on a possible Bilateral Investment Treaty, and also expanded cooperative activities against illegal logging and associated trade as part of a working group established by the 2006 bilateral Memorandum of Understanding on this issue.

#### **d. Laos**

The United States-Laos Agreement on Trade Relations (BTA) came into effect on February 4, 2005, normalizing trade relations between the two countries. Under the BTA, the United States extended Normal Trade Relations status (NTR) (formerly referred to as "most favored nation" or MFN) to products of Laos. Laos agreed to implement a variety of reforms to its trade regime, including most favored nation and national treatment for products of the United States, transparency in rule-making, establishment of a regime to protect intellectual property rights, and implementation of WTO-compliant customs regulations and procedures. The United States is working closely with Laos to implement the terms of the BTA and to support Laos' efforts to accede to the WTO. The fourth meeting of the WTO Working Party for Laos' accession took place in July 2008.

#### **e. Malaysia**

The United States launched FTA negotiations with Malaysia in 2006. A discussion of progress made in these negotiations and U.S.-Malaysia bilateral economic relations during 2008 can be found in Chapter

III, section A.13. The United States and Malaysia also coordinated on the WTO Doha negotiations and on ways to advance APEC and ASEAN initiatives.

#### **f. The Philippines**

The United States continued to work under the bilateral Trade and Investment Framework Agreement (TIFA) to address outstanding bilateral issues and consider ways to further enhance trade and economic relations with the Philippines. The United States and the Philippines also continued to consult on WTO Doha negotiations and to coordinate on regional initiatives. The two sides met regularly throughout the year, including a formal TIFA meeting in October 2008, to address issues related to intellectual property rights, a proposed new system of tariff-rate quotas for pork and poultry being advanced by the Philippines' Department of Agriculture, the Philippines' excise tax system that imposes much lower taxes on domestically produced spirits than on imports, and other issues. Follow-up discussions to resolve the pork and poultry tariff-rate quota system proposed by the Philippines were held in November. The two sides also are considering initiatives to enhance their trade relationship, including in the areas of trade facilitation and services.

#### **g. Singapore**

A discussion of United States-Singapore relations during 2008 can be found in Chapter III, Section A.4. Singapore has been an active participant in efforts to strengthen international IPR enforcement by negotiating an Anti-Counterfeiting Trade Agreement (ACTA). The United States and Singapore also continued their cooperative efforts in the WTO, as well as their joint efforts to promote trade and intra-regional integration in Southeast Asia through both APEC and ASEAN.

#### **h. Thailand**

A discussion of United States-Thailand bilateral engagement on trade issues during 2008 can be found in Chapter III, section A.11. The two countries also consulted closely on the WTO Doha negotiations and on ways to advance APEC and ASEAN initiatives.

#### **i. Vietnam**

U.S. economic relations with Vietnam continued to expand significantly in 2008, building on momentum created by the 2001 United States-Vietnam Agreement on Trade Relations, or Bilateral Trade Agreement (BTA), and Vietnam's 2007 WTO accession. U.S. exports to Vietnam increased 59 percent in 2008, following an increase of 73 percent in 2007.

During 2008, the United States and Vietnam held five formal meetings under the 2007 Trade and Investment Framework Agreement (TIFA), during which they discussed issues relating to Vietnam's implementation of its WTO commitments and considered additional initiatives to further enhance trade and investment opportunities between the two countries. Among the issues discussed were trading rights, distribution services, sanitary and phytosanitary measures inhibiting exports of U.S. beef and poultry to Vietnam and the development of Vietnam's biotechnology policies. They also discussed the monitoring of national and provincial-level investment and service sector licensing regimes and intellectual property rights (IPR) enforcement. An IPR working group was established under the TIFA to expand further the already close cooperation and coordination efforts. Significant progress was made in reducing broadcast signal piracy in 2008, and the Vietnamese government took steps to address the growing problem of piracy on the Internet. The two sides also consulted closely on Vietnam's plans to reform its labor laws. In addition, the U.S. Government provided input to Vietnamese ministries and National Assembly members on important draft legislation relating to transparency, IPR, and excise taxes.

In June 2008, the United States and Vietnam launched negotiations of a Bilateral Investment Treaty (BIT) with the aim of expanding upon the existing investment provisions included in the BTA. The first round of BIT negotiations took place in December 2008 in Washington. In 2008, the United States and Vietnam also agreed to implement, with respect to each other, Phase I of the Asia-Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (APEC Telecom MRA). This agreement will lead to a reduction in the costs and time involved in exporting telecommunications and information technology equipment to Vietnam.

In September 2008, the United States announced its intention to begin negotiations to join the Trans-Pacific Strategic Partnership (TPP) agreement, a high-standard FTA between Singapore, Chile, New Zealand, and Brunei Darussalam. In December 2008, the United States announced that Vietnam, as well as Australia and Peru, also would participate in the negotiations. A discussion of the TPP can be found in Chapter III, Section B.

#### **4. Republic of Korea**

##### *FTA:*

In 2008, the U.S. Government continued to work with Congress to secure approval of the United States – Korea Free Trade Agreement (KORUS FTA), which is the United States’ most commercially significant free trade agreement in 16 years. Once approved and implemented, this agreement would provide significant economic, political, and strategic benefits for both sides. The U.S. International Trade Commission estimates that the reduction of Korean tariffs and tariff-rate quotas on goods alone would add \$10 billion - \$12 billion to annual U.S. GDP and around \$10 billion to annual merchandise exports.

Under the FTA, nearly 95 percent of bilateral trade in consumer and industrial products will become duty-free within three years of the date the agreement enters into force, and most remaining tariffs will be eliminated within 10 years. In agriculture, the FTA will eliminate immediately or phase out tariffs and quotas on a broad range of products, with almost two-thirds of Korea’s agriculture imports from the United States becoming duty-free immediately upon entry into force. In services, the FTA provides meaningful market access commitments that extend across virtually all major service sectors, including greater and more secure access for international delivery services and the opening of the Korean market for foreign legal consulting services. The FTA makes groundbreaking achievement in the area of financial services and will increase access to the Korean market, as well as ensure greater transparency and fair treatment, for U.S. suppliers of financial services.

The FTA goes well beyond eliminating tariff barriers – it also addresses non-tariff barriers in a wide range of sectors and includes state-of-the-art protections for investors and intellectual property rights, groundbreaking competition policy provisions, strong labor and environment safeguards, and far-reaching commitments related to transparency and regulatory due process. The KORUS FTA will also provide U.S. suppliers with greater access to the Korean government procurement market.

In addition to strengthening the United States-Korea economic partnership, the KORUS FTA will help to solidify the two countries’ long-standing alliance – serving as a pillar of bilateral relations for generations to come. In addition, as the first U.S. FTA with a North Asian partner, the KORUS FTA promises to serve as a model for trade agreements for the rest of the region, and will underscore the U.S. commitment to and engagement in the Asia-Pacific region.

### *Other Developments:*

After the signing of the FTA, regular bilateral trade consultation meetings, which were suspended during the FTA negotiations, resumed in September 2007. Designed to address potential bilateral trade issues as they emerge, the bilateral trade consultation meetings, led by USTR with participation from the full range of U.S. international economic agencies, serve as the primary forum for discussing trade issues and are augmented by a broad range of senior-level policy discussions. In 2008, bilateral trade consultations were held on three occasions. The United States worked closely with Korea during these consultations to address and resolve issues related to the manufacturing, agriculture, and services sectors.

On April 18, 2008, the United States and Korea agreed to a protocol that defines conditions for the importation of U.S. beef to Korea and provides for a full reopening of the Korean beef market. The protocol is fully consistent with OIE guidelines and will permit all U.S. beef and beef products from cattle of all ages to be exported to Korea, with appropriate Specified Risk Materials (SRMs), as defined by the OIE, removed.

On June 20, 2008, Korean beef importers and U.S. exporters reached a commercial understanding – separate from the April 18 agreement – that only U.S. beef and beef products from cattle less than 30 months of age will be shipped to Korea, as a transitional measure to improve Korean consumer confidence in U.S. beef. At the request of U.S. exporters, the U.S. Department of Agriculture (USDA) set up a voluntary Quality System Assessment (QSA) Program that will verify that beef from participating plants is from cattle less than 30 months of age. As a result of the April 18 agreement and June 20 commercial understanding, U.S. exports began as of June 26, 2008, and from June to November nearly \$280 million worth of U.S. beef and beef products has been exported to Korea, with Korea now the fourth largest export market in terms of value for all of 2008 for U.S. beef and beef products, after Mexico, Canada, and Japan.

The United States also worked closely with Korea to address U.S. industry concerns that Korea's energy efficiency regulations may have resulted in under-reporting of energy consumption in Korean-manufactured refrigerators. As a result, the Korean Government adopted on April 30, 2008 the international energy test standard for refrigerators to address this problem. In addition, the Korean government has worked closely with stakeholders and the U.S. Government in implementing this standard to ensure that the new regulations do not unfairly disadvantage U.S. manufacturers. Furthermore, the United States and Korea worked cooperatively in 2008 to achieve progress in a number of areas related to technical standards, such as power cord adaptors for laptop computers and controlled access system technology for satellite and Internet protocol television, to ensure that U.S. technology providers continue to enjoy a level playing field and unfettered access to the important Korean market.

In close consultation with the U.S. Government and industry stakeholders, Korea implemented in July 2008, amendments to its system for certifying compliance with automotive emissions standards that create an improved, streamlined process for U.S. and other foreign automakers. Under the amended regulations, certifications are based on manufacturer-provided test data, eliminating the need for in-country testing or tests witnessed by Korean regulators. This change also benefits U.S. suppliers of off-road vehicles, such as lift trucks and excavators.

In an important market-opening development, the Korea Communications Commission (KCC) voted on December 10 to remove the requirement that all mobile phones sold in Korea include the Wireless Internet Protocol for Interoperability (WIPI), effective April 1, 2009. WIPI is a Korea-developed mobile platform intended to ensure cross-carrier interoperability of downloaded content. The Korean government in 2005 had mandated that WIPI be installed in all mobile phones sold in Korea. KCC's decision to remove this requirement is a significant liberalization of the Korean telecommunications

market, making it far easier for foreign handset makers to access the Korean market and providing Korean consumers with more choice. The United States had consistently urged Korea to eliminate the WIPI mandate and to more fully embrace technology neutrality in telecom regulation.

The Korean government also worked constructively with U.S. publishers of academic and scientific journals to begin to address the publishers' concerns about fraudulent practices in Korea's national procurement system, which makes purchases of the journals on behalf of national universities and research institutes. Korea's Public Procurement System agreed to implement changes to its standard terms and conditions for contracts that should help to maintain the integrity of the contract process and prevent fraud, but continued monitoring is needed to ensure adequate enforcement of the provisions occurs and a decline in fraudulent practices takes place.

The United States and Korea also worked together to address a number of issues related to Korea's customs regulations. Korea modified its individual country-of-origin labeling requirement for oranges to allow labeling on the smallest retail packaging unit, and extended this exemption to bananas and durians as well. Korea also reconsidered its initial decision to reclassify certain solar panels containing photovoltaic cells and diodes to a tariff category which incurs a duty and announced its decision to continue to classify these products in a duty-free tariff line. The United States also worked with Korea to clarify marking requirements for goods made in Puerto Rico.

Finally, the United States and Korea cooperated extensively in a wide range of multilateral fora to advance open markets. Korea was a strong partner of the United States in the WTO Non-agricultural Market Access (NAMA) negotiations, supporting the push for ambitious liberalization. Korea has been an active participant in efforts to strengthen international IPR enforcement by joining the United States and others in negotiating an Anti-Counterfeiting Trade Agreement (ACTA). In APEC, the two countries worked closely to promote high-quality FTAs in the Asia-Pacific region.

## **5. India**

### **a. General**

The United States and India completed another year of active dialogue on trade policy in 2008. The bilateral trade agenda continued to expand to support the significant opportunities for bilateral trade and investment that U.S. and Indian companies are pursuing. The Civil Nuclear Agreement signed on October 10, 2008, opens the door even wider for U.S. exports to help India meet its tremendous energy needs. That said, many challenges to trade and investment in India persist, and USTR continued to work with the Indian government to address such concerns as India's tariff and tax regime, intellectual property rights policies, investment climate and regulatory hurdles. India continues to limit market access in various sectors through non-tariff barriers such as high border taxes and tariffs, foreign direct investment caps, non-transparent procedures, and discriminatory treatment of imports. Despite these barriers, trade expanded rapidly. In 2008, bilateral goods trade totaled \$45 billion. Bilateral services trade totaled \$19 billion in 2007.

### **b. Trade Dialogue**

Ambassador Schwab and India's Minister of Commerce and Industry Kamal Nath convened the fifth ministerial-level meeting of the United States-India Trade Policy Forum (TPF) in February 2008 in Chicago, Illinois. The discussions under the TPF cover bilateral trade, investment and related issues and also address multilateral issues such as the ongoing WTO Doha Round negotiations. The TPF is part of the overall Economic Dialogue between India and the United States. Through regular dialogue under the

TPF, the United States and India seek to remove impediments to bilateral trade and investment by anticipating potential trade problems and jointly resolving concerns.

The TPF serves as the umbrella for five Focus Groups: Agriculture, Tariff and Non-Tariff Barriers, Services, Investment, and Innovation and Creativity (focusing on intellectual property rights issues). Ongoing Focus Group discussions in 2008 addressed priority issues such as foreign direct investment caps, intellectual property rights protection and enforcement, restrictive Indian telecommunications policies and market access for a wide range of manufactured and agricultural products and services. Noteworthy developments in 2008 included the agreement to launch negotiations on a bilateral investment treaty and India's withdrawal of certain import restrictions on fresh fruit.

Another development in the 2008 bilateral U.S.-India trade dialogue was the Private Sector Advisory Group's (PSAG) identification of key policy issues on which it would provide strategic recommendations and insights to the TPF. The membership of the PSAG includes trade experts and representatives of private sector organizations in the United States and India with in-depth knowledge of international economic and trade policy. The PSAG identified completion of a bilateral investment treaty as its top recommendation.

In addition to the February 2008 TPF meeting, Ambassador Schwab and Minister Nath met a number of times in the context of the Doha Round negotiations in an effort to find common ground in the pursuit of an ambitious outcome.

With regard to intellectual property rights, the United States has been working constructively with India to improve its IPR regime. The U.S. dialogue with India takes place through the TPF's Focus Group on Innovation and Creativity, the Commerce Department-led High-Technology Cooperation Group, and work by the U.S. Government's Intellectual Property attaché stationed in New Delhi and other government officials from multiple U.S. Government agencies. There has been some progress in India's protection of intellectual property rights, including through the introduction of the proposed Drugs and Cosmetics (Amendment) Bill 2008 that will increase penalties for spurious and adulterated pharmaceuticals, and create a Customs recordation system. However, India still needs to improve its copyright regime to address issues related to protection of digital works on the Internet, strengthen its patent regime, including by clarifying the scope of patentable subject matter, provide effective data protection for pharmaceutical and agricultural chemicals, and increase enforcement against piracy and counterfeiting.

## **6. Pakistan**

A top priority for the Administration was building a strategic partnership with Pakistan. Following successful elections in Pakistan and the transition to democratic governance in early 2008, the United States continued to engage Pakistan in a number of economic fora. U.S. economic support for Pakistan and a strengthened bilateral trade relationship were important contributors to Pakistan's economic growth and development since 2001. U.S.-Pakistan goods trade more than doubled during 2000 - 2008 (annualized based on January-November data) to \$5.6 billion in 2008, with U.S. exports to Pakistan growing during the period by nearly 350 percent to \$2.1 billion and imports from Pakistan growing 64 percent to \$3.6 billion.

Pakistan's economic and security situation dramatically deteriorated in 2008. Terrorists increased attacks on Pakistani security forces and government officials, and on Afghanistan and Coalition forces along the border. These attacks expanded into areas of Pakistan not previously threatened. Connections in Pakistan to terrorist attacks in Mumbai, India, last November also undercut prospects for better Indo-Pakistani

relations. Pakistan's textile industry, which constitutes about half of Pakistan's exports, was under increasing pressure from the global economic downturn, tough competition from textile giant China and other South Asian exporters, acute electricity and gas shortages, price inflation, and a collapsed stock market. In response, Pakistan's textile industry requested its government impose a moratorium on bank loan repayments and provide subsidies for energy inputs. Pakistan and the IMF agreed in late 2008 to terms of a \$7.6 billion loan, averting a collapse of Pakistan's foreign exchange reserves.

USTR was particularly focused on helping Pakistan foster an investment climate that could attract increased foreign investment, and supporting closer Pakistan-Afghanistan trade relations. Two important components of this work were the Pakistan-Afghanistan Reconstruction Opportunity Zone (ROZ) legislation introduced in Congress in 2008 and prospects for completing a United States-Pakistan Bilateral Investment Treaty (BIT). The objective of the ROZ initiative was to grant duty-free treatment upon entry into the United States to certain goods produced in designated enclaves. In Pakistan, these areas would be in regions bordering Afghanistan and in areas affected by the earthquake in 2005. The legislative goal was to boost economic development and job creation in geographic areas most critical to success in the global war on terror. Complementing these bills, USTR also pledged to support Pakistan's and Afghanistan's efforts to modernize their 1965 transit trade agreement, which would provide benefits to both countries and the South-Central Asian region.

Congress also introduced the Enhanced Partnership with Pakistan Act (informally known as the Biden-Lugar Pakistan assistance bill) in 2008. The bill proposed providing \$1.5 billion annually in Economic Support Funds for the years 2009 – 2013, with aid contingent on Pakistan demonstrating more effective actions against terrorists. Since Congress did not pass the ROZ or Pakistan Partnership bills in 2008, Congressional sponsors indicated they would re-introduce the bills in 2009.

In 2003, the United States and Pakistan signed a Trade and Investment Framework Agreement (TIFA) and held TIFA Council meetings in 2005 and 2006. USTR hopes to schedule the next TIFA meeting in 2009. USTR's leadership of the TIFA talks, and in other regular, high-level bilateral dialogue meetings, reflects the importance the United States places on trade and economic relations in enabling the Pakistani people to achieve sustainable prosperity and stability. Areas addressed in these discussions included developing a way forward for the BIT negotiations begun in 2005, preparing for ROZs, coordinating assistance in Pakistan-Afghanistan border areas, improving enforcement of intellectual property rights and labor laws in Pakistan, and improving Pakistan's investment climate.

The government of Pakistan made progress in recent years to improve copyright enforcement, taking significant steps against unauthorized optical disc production and exports of pirated optical discs. Pakistan also created the Intellectual Property Rights Organization (IPRO), providing for the first time a centralized government body to oversee intellectual property rights enforcement and education. Nevertheless, there are still a number of concerns about the adequacy of Pakistan's regime for protection and enforcement of intellectual property rights. In the enforcement area, prosecutions and deterrent sentences for intellectual property infringement are lacking. Other serious barriers include continuing book piracy, weak trademark enforcement, lack of data protection for proprietary pharmaceutical and agricultural chemical test data, and problems with Pakistan's pharmaceutical patent protection. As a result, Pakistan was elevated to the Special 301 Priority Watch List in 2008.

## **7. Afghanistan**

Helping Afghanistan fight terrorism and extremism remains a top U.S. national security priority. As part of the United States' support for Afghanistan's long-term recovery process following decades of warfare, USTR has actively led on trade and investment issues in a number of high-level government-to-

government fora, including regular meetings under the United States-Afghanistan Trade and Investment Agreement (TIFA) that was signed in September 2004.

In 2008, the Administration continued to work with the U.S. Congress and private sector stakeholders on legislation to establish Reconstruction Opportunity Zones (ROZ) in Afghanistan and the border regions of Pakistan. The objective of the ROZ initiative is to boost economic development and job creation in geographic areas most critical to success in the global war on terror by granting duty-free treatment upon entry into the United States to certain goods produced in designated enclaves. A consensus of top U.S. and foreign government leaders, diplomatic, and military officials working in Afghanistan, and think tank analysts has identified providing legitimate employment opportunities to citizens in these impoverished critical areas as a top priority, and the ROZ legislation was designed to complement existing economic development and military strategies to foster this objective.

On October 5, 2008, USTR led a six-person interagency delegation for the third meeting of the United States-Afghanistan Trade and Investment Framework Agreement (TIFA) Council in Kabul. This meeting included talks on how Afghanistan could better use existing benefits under the U.S. Generalized Systems of Preferences (GSP) program, next steps on Afghanistan's accession to the World Trade Organization, progress on electricity generation, the importance of fighting corruption at all levels, and commitment to improving product quality standards. USTR officials also pledged to support Afghanistan's and Pakistan's efforts to modernize their 1965 transit trade agreement.

In April 2008, USTR joined the Department of State for its meeting with Afghan Rural Rehabilitation and Development Minister Ehsan Zia. These discussions focused on economic development issues, and U.S. Government representatives offered continued strong support to Afghanistan in its negotiations for terms of accession to the World Trade Organization.

USTR has supported efforts to assist Afghanistan's economic integration with South and Central Asia, including supporting Afghanistan's participation as an observer at the June 2008 United States-Central Asia TIFA Council meeting in Dushanbe, Tajikistan. USTR also participates in meetings of the Regional Economic Cooperation Conference, another forum designed to promote South-Central Asian regional economic integration.

On September 25, 2008, USTR participated in the United States-Afghanistan Strategic Partnership meeting in Washington. The Prosperity Working Group session included discussion of the need to: pass pro-competitive, transparent commercial and investment laws and regulations to attract investors and create new jobs; build key infrastructure, including roads, irrigation, and power plants; and expand regional trade ties, including through U.S. ROZ legislation pending in Congress.

## **8. Central Asia**

Throughout 2008, the United States continued to work – bilaterally and multilaterally – to construct strong trade and investment links with this region, which includes Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. In the 1990s, the United States concluded bilateral trade agreements to extend Normal Trade Relations (NTR, formerly referred to as “most favored nation” or MFN) to these countries and, *inter alia*, to enhance intellectual property rights protection. The United States also has extended Generalized System of Preferences (GSP) benefits to nearly 3,400 types of products from the region's eligible beneficiary developing countries (Kazakhstan, Kyrgyzstan, and Uzbekistan) and has negotiated bilateral investment treaties (BITs) to guarantee compensation for expropriation, non-discriminatory and fair and equitable treatment, transfers in convertible currency, and the use of

appropriate dispute settlement procedures. The United States currently has BITs in force with Kazakhstan and Kyrgyzstan, and has signed a BIT with Uzbekistan, which has not yet entered into force.

In 2005, the United States signed a multi-party Trade and Investment Framework Agreement (TIFA) with all five Central Asia countries (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan). This agreement provides a regional forum for the discussion of trade and investment issues with a view to improving the investment climate in the region and liberalizing and increasing trade between the United States and the region. In 2008, the TIFA Council held its third meeting in Dushanbe, Tajikistan, with a focus on practical steps to facilitate trade among the Central Asian countries.

Multilaterally, the United States has encouraged accession to the WTO as an important method of supporting economic reform. Kyrgyzstan has been a member of the WTO since 1998. In 2008, Kazakhstan had a meeting of its Working Party on WTO accession, as well as numerous bilateral meetings and several digital video conferences with the United States, which helped move work on Kazakhstan's accession forward. Although progress in the respective negotiations on Tajikistan's and Uzbekistan's accession to the WTO has been slower than on Kazakhstan's, the United States continues to promote changes in these countries' trade and investment regimes consistent with WTO rules. Turkmenistan has not yet applied for accession to the WTO.

#### **a. Jackson-Vanik Amendment**

Several countries in Central Asia receive conditional NTR tariff treatment pursuant to the provisions of Title IV of the Trade Act of 1974, also known as the Jackson-Vanik amendment (see description of Jackson-Vanik in Chapter III, Section D with respect to Russia). The Secretary of State, pursuant to authority delegated by the President, has determined that Kazakhstan, Tajikistan and Uzbekistan are in full compliance with Title IV's freedom of emigration requirements. Turkmenistan receives NTR tariff treatment subject to an annual waiver. Kyrgyzstan receives permanent normal trade relations (PNTR) treatment from the United States as a result of U.S. Congressional action when Kyrgyzstan joined the WTO.

The Administration continues to consult with Congress and interested stakeholders with a view to ending the application of the Jackson-Vanik amendment and granting these countries PNTR treatment when they become Members of the WTO.

#### **b. Intellectual Property Rights (IPR)**

Since the 1990s, when the United States concluded bilateral trade agreements covering IPR protection with countries in the region, USTR has worked to ensure these countries' compliance with their IPR obligations. The United States has cooperated with, and provided technical assistance to, Kyrgyzstan (as a WTO Member) and other countries in the region to help improve the level of IPR protection. Copyright and trademark piracy has been a widespread and serious problem throughout the region. Customs and law enforcement authorities in the region are making slow progress in upgrading these countries' enforcement efforts, but continued close monitoring and technical assistance are still warranted.

#### **c. Generalized System of Preferences (GSP)**

As noted above, Kazakhstan, Kyrgyzstan, and Uzbekistan are beneficiary countries under the GSP program. Tajikistan and Turkmenistan have not yet applied to be designated as beneficiary countries under the GSP program. USTR conducts reviews of country practices, in response to petitions received from interested parties, to determine beneficiary countries' continued eligibility to receive GSP benefits based on the statutory eligibility criteria.

Country practice petitions have been accepted regarding concerns about the IPR regime and worker rights in Uzbekistan. Review of the petition for Uzbekistan, including bilateral consultations, continues.

## **9. People's Republic of China**

### **a. 2008 Developments**

China acceded to the World Trade Organization seven years ago on December 11, 2001. The terms of its accession called for China to implement numerous specific commitments over time. All of China's key commitments should have been phased in by December 11, 2006, two years ago. Consequently, China is no longer a new WTO member, and the United States and other WTO members have been holding China fully accountable as a mature member of the international trading system, placing a strong emphasis on China's adherence to WTO rules.

On the bilateral front, the United States and China pursued a robust set of formal and informal meetings and dialogues over the last year, including numerous working groups and high-level meetings under the auspices of the U.S.-China Joint Commission on Commerce and Trade (JCCT) and the U.S.-China Strategic Economic Dialogue (SED). Indeed, the United States and China held JCCT meetings in December 2007 and again in September 2008, while also holding SED meetings in December 2007, June 2008 and December 2008. As in prior years, the United States used these various avenues to seek resolutions to a number of pressing trade issues.

Bilateral engagement produced more near-term results in 2008 than in 2007, largely because China's leadership displayed an increased willingness to work constructively and cooperatively with the United States. In fact, the two sides were able to achieve incremental but important progress in numerous areas.

For example, China agreed to delay publication of final rules on information security certification that would have potentially barred several types of U.S. high technology products from China's market so that experts from both sides could discuss the best way forward. China confirmed that state-owned enterprises would base their software purchases solely on market terms without Chinese government intervention or directives favoring domestic software. China agreed to eliminate all remaining duplicative testing and inspection requirements for imported medical devices. China lifted Avian Influenza-related bans on poultry imports from several U.S. states, and China also agreed to allow several U.S. pork processing plants to resume exports to China. China committed to submit an improved offer as soon as possible in connection with its accession to the WTO's Government Procurement Agreement. China agreed to additional market access for foreign suppliers in the banking and securities sectors. China also agreed to institute notice-and-comment procedures for trade- and economic-related rules and regulations. At the same time, the United States and China agreed to begin or continue discussions in a number of other important areas, including, for example, intellectual property rights (IPR), steel trade, insurance, medical device pricing and tendering policies, sanitary and phytosanitary (SPS) measures, transportation and environmental goods and services, among other areas. The two sides also launched bilateral investment treaty negotiations.

On the enforcement side, the United States brought two new WTO cases against China in 2008. In March 2008, the United States challenged restrictions that China had placed on foreign suppliers of financial information services as well as China's failure to establish an independent regulator in this sector. The European Communities (EC) and later Canada joined in this challenge. In November 2008, following several months of constructive discussions the parties welcomed China's agreement to resolve all of their concerns through a settlement. Joined by Mexico, the United States initiated a second WTO case against

China in December 2008, challenging an industrial policy that generated a vast number of central, provincial and local government programs promoting increased worldwide recognition and sales of famous brands of Chinese merchandise through what appear to be prohibited export subsidies.

In addition, the United States continued to pursue four other WTO cases in 2008. In one of those cases, a challenge brought by the United States, the EC and Canada to China's use of prohibited local content requirements in the auto sector, a WTO panel ruled in favor of the complaining parties in March 2008, and the WTO's Appellate Body upheld that ruling on appeal in December 2008. In a WTO challenge to several prohibited tax subsidy programs, China followed through on the parties' earlier settlement by eliminating all of the subsidies at issue by January 1, 2008. In two other WTO cases, a challenge to key aspects of China's IPR enforcement regime, along with a challenge to market access restrictions affecting the importation and distribution of copyright-intensive products such as books, newspapers, journals, theatrical films, DVDs and music, the United States litigated its claims before WTO panels in 2008.

Looking back on 2008, the many developments in the U.S.-China trade relationship demonstrated that the Administration's policy of serious dialogue and resolute enforcement is delivering real results. The United States' intensive dialogue with China generated positive outcomes on a number of contentious issues, while U.S. use of WTO dispute settlement continued to generate favorable settlements and favorable WTO panel decisions.

However, despite the progress achieved in 2008, several specific issues continued to cause particular concern for the United States and U.S. industry, given China's WTO obligations. These outstanding issues arose in a range of areas, including principally intellectual property rights, industrial policies, trading rights and distribution services, agriculture and services, as discussed below under the heading of Priority Issues.

## **b. Trends**

China has taken many impressive steps over the last seven years to reform its economy, while making progress in implementing a set of sweeping WTO accession commitments that required it to reduce tariff rates, to eliminate non-tariff barriers, to provide national treatment and improved market access for goods and services imported from the United States and other WTO members, to protect intellectual property rights and to improve transparency. Although it does not appear to be complete in every respect, China's implementation of its WTO commitments has led to increases in U.S. exports to China, while deepening China's integration into the international trading system and facilitating and strengthening the rule of law and the economic reforms that China began thirty years ago. Since China's accession to the WTO in 2001, U.S. exports of goods to China have increased by 240 percent, rising from a 2001 total of \$19 billion to \$65 billion in 2007, while exports from January through November 2008 are 13 percent higher than 2007 exports during the same period. China is now the United States' third largest goods export market. China is also a substantial market for U.S. services, as the cross-border supply of services totaled \$14 billion in 2007, and services supplied through majority U.S.-invested companies in China totaled an additional \$10 billion in 2006, the latest date for which data is available.

Nevertheless, in some areas it appears that China has yet to fully implement important commitments, and in other areas significant questions have arisen regarding China's adherence to ongoing WTO obligations, including core WTO principles. Invariably, these problems can be traced to China's pursuit of industrial policies that rely on excessive, trade-distorting government intervention intended to promote or protect China's domestic industries. This government intervention, still evident in many areas of China's economy, is a reflection of China's historic yet unfinished transition from a centrally planned economy to a free-market economy governed by rule of law.

The United States and other WTO members had fully anticipated that tensions would arise from China's historic economic structure and the state's large role in China's economy. Consequently, they carefully negotiated conditions for China's WTO accession that would, when implemented, lead to significantly reduced levels of trade-distorting government intervention.

Through the first four years after China's accession to the WTO, China made noteworthy progress in adopting economic reforms that facilitated its transition toward a market economy. However, beginning in 2006, progress toward further market liberalization began to slow. It became clear that some parts of the Chinese government did not yet fully embrace key WTO principles of market access, non-discrimination and transparency. Differences in views and approaches between China's central government and China's provincial and local governments also continued to frustrate economic reform efforts, while China's difficulties in fully implementing the rule of law exacerbated this situation.

Last year, USTR noted that one of the critical issues for the international trading system would be to ensure that China's leadership does not retreat from the substantial progress made to date. USTR explained that evidence of a possible trend toward a more restrictive trade regime appeared most visibly in diverse Chinese measures over the preceding two years signaling new restrictions on market access and foreign investment in China.

In 2008, U.S. companies have pointed to further evidence of such a trend, including the setting of unique Chinese national standards, the tremendous expansion of the test market for China's home-grown 3G telecommunications standard, China's government procurement practices, an array of policies promoting and protecting "pillar industries," the promotion of famous Chinese brands of merchandise using what appear to be prohibited forms of financial support, the continued and incrementally more restrictive use of export quotas and export duties on a large number of raw materials, new and additional restrictions on foreign investment in China, and the continuing consideration of "national economic security" when evaluating mergers and acquisitions, among other significant restrictive practices.

Despite these many remaining challenges, China's WTO membership has continued to provide substantial ongoing benefits to the United States. Each year since China joined the WTO in 2001, U.S.-China trade has expanded dramatically, providing numerous and substantial opportunities for U.S. businesses, workers, farmers and service suppliers and a wealth of affordable goods for U.S. consumers. Indeed, China was the United States' second largest goods trading partner in 2007, with two-way trade totaling \$387 billion and on track to increase by 7 percent in 2008, based on data from January through November, while two-way services trade totaled \$23 billion in 2007.

### **c. Priority Issues**

At present, several specific areas cause particular concern for the United States and U.S. industry in terms of China's adherence to the obligations of WTO membership. The key concerns in each of these areas are summarized below.

#### **i. Intellectual Property Rights**

Since its accession to the WTO, China has put in place a largely satisfactory framework of laws and regulations aimed at protecting the intellectual property rights of domestic and foreign rights holders, as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). However, some critical reforms are still needed in a few areas, such as further improvement of China's measures for copyright protection on the Internet following China's notable accession to the World Intellectual Property Rights Organization (WIPO) Internet treaties, and correction of continuing deficiencies in China's criminal measures.

In addition, effective enforcement of China's IPR laws and regulations remains a significant challenge. Despite repeated anti-piracy campaigns in China and an increasing number of civil IPR cases in Chinese courts, counterfeiting and piracy remain at unacceptably high levels and continue to cause serious harm to U.S. businesses across many sectors of the economy. U.S. industry estimates that levels of piracy in China across most lines of copyright products, except business software, ranged between 90 percent and 95 percent based on data for 2007, while business software piracy rates were approximately 80 percent. These figures indicate little or no overall improvement over the previous year. USTR's annual Special 301 report, issued in April 2008, similarly confirmed a lack of progress through 2007, as USTR continued to place China on the Priority Watch List.

In 2008, the United States continued to seek ways to work with China to improve China's IPR enforcement regime. Indeed, as part of its efforts to develop innovative industries and technologies, China has an increasing stake in effective IPR enforcement. Throughout the year, a variety of U.S. agencies held regular bilateral discussions with their Chinese counterparts and conducted numerous technical assistance programs for central, provincial and local government officials on TRIPS Agreement rules, enforcement methods and rule of law issues. In addition, in September 2008, the United States was able to use the JCCT process to secure a renewed commitment from China to cooperate on a range of IPR issues, such as IPR and innovation, China's development of guidelines on IPR and standards, public-private discussions on copyright and Internet piracy challenges including infringement on user-generated content sites, and reducing the sale of pirated and counterfeit goods at wholesale and retail markets.

The United States also continued to prosecute a WTO case challenging specific deficiencies in China's legal regime for protecting and enforcing copyrights and trademarks. Following the establishment of a WTO panel last year to hear the case, 12 WTO members joined in as third parties. Proceedings before the panel took place in April and June 2008, and the panel made its decision public in January 2009. The panel found important aspects of China's IPR regime to be inconsistent with China's obligations under the TRIPS Agreement.

The United States continues to work closely with U.S. industry and to devote considerable staff and resources, both in Washington and in Beijing, to address the many challenges in the IPR area. The United States also remains committed to working constructively with China on a bilateral basis to significantly reduce IPR infringement levels in China. At the same time, as has been demonstrated, when bilateral discussions prove unable to resolve key issues, the United States remains prepared to take further action on these issues, including WTO dispute settlement where appropriate, given the importance of China developing an effective, TRIPS Agreement-compliant system for IPR enforcement.

## **ii. Industrial Policies**

China continued to pursue industrial policies in 2008 that seek to limit market access for non-Chinese origin goods and foreign service suppliers while offering substantial government resources to support Chinese industries and increase exports. In some cases, the objective of these policies seems to be to promote the development of advanced Chinese industries that are higher up the economic value chain than China's current labor-intensive industrial base. In other cases, China appears simply to be protecting less competitive state-owned enterprises.

As the WTO's Appellate Body confirmed in a December 2008 ruling, China has been applying WTO-inconsistent taxes on imported auto parts whenever they are used in the assembly of motor vehicles that fail to meet certain local content requirements. The United States looks forward to China's prompt compliance with this ruling.

China continues to deploy export quotas, export license fees, minimum export prices, export duties and other export restrictions on a number of raw materials where it holds the advantage of being one of the world's leading producers. Through these export restrictions, it appears that China is able to provide substantial artificial advantages to a wide range of downstream producers in China, both in the China market and other markets around the world.

In 2008, it became apparent that China was seeking to expand the market share of famous Chinese brands of merchandise around the world through the use of what appear to be prohibited forms of financial support, provided by the central government as well as provincial and local governments throughout China. The U.S. response, as noted above, was the filing of a WTO case challenging the financial support that China provides through its famous brands programs.

China continues to pursue unique national standards in a number of areas of high technology where international standards already exist, such as information security standards. China also pressures foreign companies seeking to participate in the standards-setting process to license their technology or intellectual property on unfavorable terms. In addition, even after repeatedly committing to technology neutrality for 3G telecommunications standards through the JCCT process, China's regulatory authorities continued to promote the home-grown TD-SCDMA standard and, in 2008, substantially expanded its test market, without allowing any operations by telecommunications service providers seeking to employ other 3G telecommunications standards.

Meanwhile, China has sought to protect many domestic industries through an increasingly restrictive investment regime. Since 2006, China has imposed new and additional restrictions on foreign investment, particularly in "pillar industries," while also granting its regulators vaguely defined powers under the Anti-monopoly Law and the rules governing foreign mergers and acquisitions that can be used to restrict legitimate foreign investment.

In 2008, bilateral discussions yielded some progress in resolving U.S. concerns regarding these problematic industrial policy measures, some of which raise questions about China's compliance with its WTO obligations in the areas of national treatment, market access, export restrictions, technology transfer and subsidies, among others. As noted above, China agreed to delay publication of final rules on information security certification that would have potentially barred several types of U.S. high technology products from China's market, so that experts from both sides could engage in discussions and find the best way forward. In addition, as previously reported, the United States was able to leverage its use of the WTO dispute settlement mechanism to gain China's agreement in November 2007 to eliminate several prohibited tax subsidy programs by January 1, 2008. The United States has monitored China's implementation of this agreement and has confirmed that China eliminated these subsidies, as agreed.

In 2009, the United States will continue to pursue vigorous bilateral engagement to resolve the serious disagreements that remain over a number of China's industrial policy measures. If dialogue fails to address U.S. concerns, however, the United States will not hesitate to take further actions seeking elimination of these industrial policy measures, including WTO dispute settlement, where appropriate.

### **iii. Trading Rights and Distribution Services**

For many U.S. companies, China's commitments to fully liberalize trading rights (the right to import and the right to export) and distribution services (wholesale, retail, direct selling and franchising services) are critically important. While China has implemented these commitments in most sectors, enabling many U.S. companies to import and export goods directly without using middlemen and to establish their own distribution networks in China, some serious problems still appear to remain.

Despite extensive and persistent bilateral engagement by the United States, China refused to remove import and distribution restrictions on copyright-intensive products such as books, newspapers, journals, theatrical films, DVDs and music, in apparent contravention of China's trading rights and distribution services commitments. These restrictions reduce and delay market access for these copyrighted products, creating additional incentives for infringement in China's market. Consequently, in April 2007, the United States initiated WTO dispute settlement proceedings. Hearings before the panel took place in July and September 2008, and the panel is scheduled to make its decision public in 2009.

In 2008, China also continued to make foreign retailers that seek to open new stores satisfy burdensome requirements not applicable to domestic retailers, although U.S. bilateral engagement did lead to incremental progress. At the September 2008 JCCT meeting, China announced steps that should streamline the licensing process and facilitate approvals for new foreign retail outlets, although some concerns remain.

Finally, while China is a major market for U.S. direct sellers, China continued to subject foreign direct sellers to unwarranted restrictions on their business operations in 2008. China also appears to have stopped issuing new licenses for direct sellers. Working closely with U.S. industry, the United States sought improvements in this area in 2008 and will continue to press China in 2009 to ensure that China fully meets its WTO commitments.

#### **iv. Agriculture**

While U.S. exports of agricultural commodities to China continued to perform strongly in 2008 and largely fulfill the potential envisioned by U.S. negotiators during the years leading up to China's WTO accession, China remains among the least transparent and predictable of the world's major markets for agricultural products, largely because of selective intervention in the market by China's regulatory authorities. As in past years, capricious practices by Chinese customs and quarantine agencies can delay or halt shipments of agricultural products into China, while SPS measures with questionable scientific bases and a generally opaque regulatory regime frequently bedevil traders in agricultural commodities, who require as much predictability and transparency as possible in order to preserve margins and reduce the already substantial risks involved in agricultural trade.

In 2008, the principal targets of questionable practices by China's regulatory authorities were poultry and pork, and anticipated growth in U.S. exports of these products was not realized. In addition, China continued to block the importation of U.S. beef and beef products, well over one year after these products had been declared safe to trade under international scientific guidelines.

In 2009, the United States will continue to pursue vigorous bilateral engagement with China in order to obtain progress on its outstanding concerns. The United States also will not hesitate to take other actions to resolve its concerns if dialogue fails, including WTO dispute settlement, where appropriate.

#### **v. Services**

While the United States continued to enjoy a substantial surplus in trade in services with China and the market for U.S. service providers in China remains promising, Chinese regulators continue to use an opaque regulatory process, overly burdensome licensing and operating requirements and other means to frustrate efforts of U.S. providers of banking, insurance, construction and engineering, telecommunications and legal services to achieve their full market potential in China. In the case of express delivery services, China is currently considering a draft law that would discriminatorily exclude foreign suppliers from a major segment of China's domestic express delivery market. In addition, China still does not allow foreign credit card companies and other suppliers to provide electronic payments

processing and related services for domestic currency transactions in China. USTR continues to consult closely with U.S. credit card companies on this issue.

Over the last year, U.S. engagement through the JCCT and SED processes led to China's agreement to increase market access for foreign suppliers of securities services. China also reduced capital requirements for providers of basic telecommunications services, although these capital requirements still remained excessive by international norms and will continue to discourage new providers from entering China's market.

Meanwhile, in March 2008, after dialogue failed to resolve U.S. concerns, the United States brought a WTO case challenging restrictions that China had placed on foreign suppliers of financial information services as well as China's failure to establish an independent regulator in this sector. As noted above, the EC and later Canada joined in this challenge, and following several months of constructive discussions China agreed to a settlement fully addressing all of the complaining parties' concerns. The settlement calls for China to install an independent regulator and remove the challenged restrictions through a series of steps, to be completed no later than June 1, 2009.

In 2009, the United States will continue to engage China on the many outstanding services issues and will closely monitor developments in an effort to ensure that China fully adheres to its WTO commitments. If necessary, the United States also will not hesitate to take further actions seeking to enforce China's WTO commitments, including WTO dispute settlement, where appropriate.

#### **vi. Transparency**

One of the core principles of the WTO Agreement, reinforced throughout China's WTO accession agreement, is transparency. Transparency permits markets to function effectively and reduces opportunities for officials to engage in trade distorting practices behind closed doors. While China's transparency commitments in many ways require a profound historical shift, China made important strides to improve transparency across a wide range of national and provincial authorities during the first four years of its WTO membership. However, two shortcomings stood out. As of December 11, 2005, China had still not adopted a single official journal for publishing all trade-related measures, and it had yet to regularize the use of notice-and-comment procedures for new or revised trade-related measures prior to implementation.

In 2006, after the United States elevated the issue to the JCCT level, China finally adopted a single official journal, to be administered by the Ministry of Commerce (MOFCOM). However, MOFCOM proved unable to secure full participation by all relevant government entities. In December 2007, following further U.S. engagement through the SED process, China re-committed to publishing all final trade-related measures in a single official journal.

The United States also used the SED process to urge China to adopt a mandatory notice-and-comment practice. Subsequently, in April 2008, the National People's Congress (NPC) instituted notice-and-comment procedures for draft laws. In addition, at the June 2008 SED meeting, China similarly committed to publish all proposed trade- and economic-related regulations and departmental rules for public comment, subject to specified exceptions, in a single location.

As these steps are implemented, they should lead to improved transparency, particularly for proposed Chinese laws and regulations. China's commitments in this area also signal increasing recognition by many Chinese government officials that improved transparency and greater input from stakeholders and the public contribute to better regulatory practices and improved policy making.

#### **d. The Year Ahead**

In 2009, the United States will continue its concerted efforts to ensure that China fully implements its WTO accession commitments and fully adheres to its fundamental obligations as a WTO member, with particular emphasis on reducing Chinese government intervention in the market, removing remaining trade and investment barriers and lowering IPR infringement levels in China. As always, USTR will continue to consult closely with U.S. stakeholders to ensure that U.S. policies and actions advance their interests. Throughout this process, the United States will continue to solve problems with dialogue if possible, and legal action when appropriate, while working within the rules-based international trading system.

In particular, on the bilateral front, the United States will continue to pursue a robust set of formal and informal meetings and dialogues with China, including high-level meetings, in order to ensure that the benefits of China's WTO membership are fully realized by the United States and other WTO members and that problems in the U.S.-China trade relationship are appropriately resolved. Through these efforts, the United States will place particular emphasis on issues arising in the areas of intellectual property rights, industrial policies, agriculture and services. Based on the increased willingness that China displayed in 2008 to work cooperatively and pragmatically with the United States on contentious issues, the United States is optimistic that significant progress is obtainable in 2009.

Nevertheless, as the United States has demonstrated on several occasions, when bilateral dialogue is not successful in resolving WTO-related concerns, the United States will not hesitate to invoke the dispute settlement mechanism at the WTO. In addition, when U.S. interests are being harmed by unfairly traded imports from China, the United States will continue to vigorously enforce U.S. trade remedy laws, as envisioned by WTO rules.

### **10. Japan**

The United States continued to urge Japan during 2008 to make further progress to open its economy and re-commit more fully to economic reform. Progress was made in a number of issue areas, even as the environment in Japan for enacting further reforms became increasingly challenging compared with recent years. The United States and Japan also stepped-up work in other areas of mutual interest to address arising issues in the Asia-Pacific region and beyond.

#### **United States-Japan Economic Partnership for Growth**

Much of the engagement between the United States and Japan on bilateral, regional and global trade and economic issues continued to take place under the United States-Japan Economic Partnership for Growth (EPG). At the senior level, coordination takes place within the United States-Japan Economic Sub-Cabinet Dialogue. Other work under the EPG continued through its separate initiatives on regulatory reform (Regulatory Reform and Competition Policy Initiative, co-chaired by USTR), trade (Trade Forum, co-chaired by USTR), investment (Investment Initiative, co-chaired by the Department of State), and financial issues (Financial Dialogue, co-chaired by the Department of the Treasury).

##### **a. Regulatory Reform Initiative**

The United States and Japan completed their seventh year of work under the United States-Japan Regulatory Reform and Competition Policy Initiative (Regulatory Reform Initiative) during the summer of 2008 with the Initiative's Annual Report to the Leaders. The Report outlined progress in a number of areas ranging from distribution to telecommunications to agriculture. Both Governments launched the

eighth round of the Initiative with an exchange of recommendations in October 2008. Working groups subsequently met in December, covering cross-sectoral issues as well as sector-specific groups in telecommunications, information technologies, and medical devices/pharmaceuticals.

Highlights of the work under the Initiative's seventh and eighth years are covered in the following two sections on Sectoral Regulatory Reform and Structural Regulatory Reform.

### **i. Sectoral Regulatory Reform**

*Telecommunications:* The United States continued to stress the need for reforms to help create a pro-competitive telecommunications services market in Japan based on transparent regulation. Despite ongoing difficulties addressing conduct by dominant operators in both the fixed and mobile markets, 2008 marked progress on a number of fronts. In particular, Japan took steps to ensure that NTT does not avoid network access obligations as it transitions to an Internet-protocol based "Next Generation" network; clarified that mobile operators cannot charge competitors interconnection fees that subsidize the promotion of handsets for their own subscribers; successfully arbitrated a dispute concerning a new entrant stymied in its effort to resell mobile services of Japan's dominant mobile provider; and initiated a process to permit the use of spectrum for mobile television services, an area where several Japanese operators are seeking to offer services on a technology-neutral basis (including U.S. technology).

On January 1, 2008, the United States-Japan Mutual Recognition Agreement (MRA) concerning the mutual acceptance of the results of conformity assessment procedures for telecommunications equipment entered into force. Based on this agreement, U.S. manufacturers will now have the option of selling equipment in the Japanese market that designated U.S.-based testing laboratories have certified as meeting Japan's technical requirements. This is expected to facilitate faster and more efficient trade in telecommunications equipment with Japan. Regulatory authorities of both countries are in the process of implementing this agreement and test labs in both countries are now operational for one set of requirements (electromagnetic compatibility).

*Information Technologies:* The United States continued to urge Japan to promote open information technology (IT) and electronic commerce policies, to harmonize its intellectual property rights (IPR) regime with international best practices, and to broaden cooperative work to improve IPR protection and enforcement.

Japan made improvements in several areas. Japan increased reimbursement incentives for doctors and hospitals to use innovative health IT that facilitates information sharing, such as picture archiving and communication systems. Japan announced plans to expand information available to potential vendors in Japan's central online database for government procurement of information systems, thus improving the quality of data about government procurement opportunities. Japan also undertook a public relations campaign to educate firms and consumers about its Privacy Act to prevent misinterpretations that might curtail legitimate uses of personal information due to an overabundance of caution or uncertainty.

The United States continued to emphasize the benefits of strengthening Japan's IPR enforcement system through the adoption of a system of statutory damages, copyright term extensions, and enhanced *ex officio* authority. While recognizing Japan's needs to revise its laws in response to developments in the digital economy, the United States continued to encourage not only measures to prevent online piracy and infringement but also to ensure more broadly the effective protection of IPR.

The United States and Japan cooperated in a number of fora to advance protections for IPR globally and in the Asia-Pacific region. Japan has been an active participant in efforts to strengthen international IPR enforcement by negotiating an Anti-Counterfeiting Trade Agreement (ACTA). The two countries worked

closely in the Asia-Pacific Economic Cooperation (APEC) forum to put in place legal regimes and enforcement systems to better address IPR enforcement problems in the region. Third-country capacity building efforts were undertaken through trilateral work with the European Union under the U.S. Department of Commerce-Ministry of Economy, Trade and Industry (DOC-METI) Initiative.

In January 2008, the United States Patent and Trademark Office (USPTO) and the Japan Patent Office (JPO) fully implemented the "Patent Prosecution Highway" (PPH). The PPH facilitates the processing of patent applications by providing applicants the option to request fast track processing in one patent office if the other patent office has determined that claims in a corresponding application submitted to it are patentable. The USPTO and JPO also implemented the "New Route," a pilot framework for international cooperation on patent search and examination under the DOC-METI Initiative.

In September 2008, the USPTO, JPO, and the European Patent Office, within the context of the Trilateral Framework, began the Strategic Handling of Applications for Rapid Examination (SHARE) pilot program as a way to enhance work-sharing amongst the patent offices. Under SHARE, a patent office would give precedence to examining applications for which it was the office of first filing, and would wait to examine applications for which it is the office of second filing until search and examination results are available from another patent office.

*Medical Devices and Pharmaceuticals:* The United States urged Japan to reform its regulatory and reimbursement pricing systems to address delays in the introduction of innovative U.S. medical devices and pharmaceuticals and to create sufficient incentives for the development of advanced products. As part of its efforts to reduce the lag in the introduction of new devices and drugs, Japan's regulatory agency in 2008 continued to increase hiring of staff to review product applications and broaden the staff's expertise by hiring more physicians and experts, including with industry experience. Japan also agreed to increase by 50 percent the number of clinical trial consultations regulators hold with drug companies.

The United States encouraged Japan to ensure that reimbursement pricing policies foster the introduction of innovative devices and drugs, which can improve health outcomes and healthcare system efficiency. Japan agreed to improve the transparency of its reimbursement pricing system. The United States urged Japan to avoid taking new measures that would harm innovation, including the implementation of annual pricing and the use of Japan's market expansion rule for drugs. Japan's decisions to improve incentives for the development of advanced devices by raising related premiums and creating new functional categories for devices were positive steps. The United States also continued to raise concerns about Japan's regulation of nutritional supplements, cosmetics, and quasi-drugs.

*Financial Services:* The United States encouraged Japan to realize its aim to upgrade the global competitiveness of its financial markets, through such measures as full-file consumer credit bureaus, appropriate measures for Japan Post privatization, and through transparent, consistent, and predictable financial services regulation. In December 2007, the Financial Services Agency (FSA) published the "Plan for Strengthening the Competitiveness of Japan's Financial and Capital Markets," and submitted amendments to the Financial Instruments and Exchange Law (FIEL) in March 2008. Following passage by Japan's Diet in June 2006, the revised FIEL went into effect in December 2008. Intended to improve Japan's standing as a global financial center, FIEL includes provisions to relax firewalls that separate different classes of financial institutions, expand the array of products of exchange tradable products, create a market exclusively for professional investors, and address the transparency and predictability of the financial regulatory regime. The FSA conducted regular outreach with the financial services sector during the course of this campaign to upgrade Japan's competitive fitness in this sector.

## ii. Structural Regulatory Reform

*Competition Policy:* The United States continued to urge Japan to strengthen its competition policy and to ensure due process in the enforcement of the Antimonopoly Act (AMA). In 2008, Japan submitted legislation to the Diet to amend the AMA in several important ways, including increasing administrative fines on firms playing a leading role in hard core cartels, extending the statute of limitations for AMA violations, improving the operation of the Japan Fair Trade Commission's (JFTC's) Leniency Program (which eliminates or reduces penalties for firms that report unlawful cartel activities to the JFTC), and improving pre-merger notification procedures. The future status of this legislation remains unclear. In addition, the JFTC continued its vigorous enforcement against hard-core AMA violations, announcing that in the fiscal year ending March 2008 it took enforcement action against 14 bid-rigging conspiracies and six price cartels, and imposed surcharges totaling more than \$100 million on 162 firms. For the purpose of improving due process in its investigation and decision-making processes, the JFTC indicated that it would not disclose attorney-client communications if they include confidential information protected by existing statutes. Japan also took steps in 2008 to help stamp out bid-rigging, including enacting new legislation and implementing additional administrative measures that strengthened administrative penalties against companies found to have engaged in bid-rigging activities.

*Transparency:* The United States continued during 2008 to strongly urge Japan to take new steps to improve the transparency of its regulatory and policy making processes in number of areas where improvements are much needed, such as requiring all Japanese ministries and agencies to publish their generally applicable interpretations of regulations, strengthening further Japan's public comment procedure process, and enacting new steps to improve the transparency of Japan's government-appointed advisory and other groups.

*Other Government Practices:* In 2008, the United States urged Japan to improve a variety of government policies and practices, including those to facilitate agricultural trade and improve insurance services (for discussion of insurance-related issues, see the "*Bilateral Consultations-- Insurance*" section below).

Regarding agriculture, a priority for the United States remains Japan's enforcement program for maximum residue levels (MRLs) for pesticides affecting U.S. specialty crops. Japan's import regime can result in a 100 percent test-and-hold policy with respect to an entire exporting country if a second violation within a year involves the same pesticide and commodity. In 2008, Japan agreed to revise its enforcement program by limiting enhanced testing requirements to individual exporters found to be in violation, provided that the exporting country's MRL for a particular commodity and pesticide combination is the same or more restrictive than that of Japan. However, in cases where the exporting country's standard is less restrictive -- as is the case for a significant number of U.S. standards -- Japan continues to impose countrywide sanctions in the case of two violations from the country within a year. The United States continued to urge Japan to take measures to provide an effective and consistent MRL enforcement program that is no more trade restrictive than necessary.

The United States worked with Japan to secure Japan's approval of several food additives including *nisin* and two organic materials, *potassium bicarbonate* and *lignin sulfonate*, that would enhance market access opportunities for U.S. agricultural products. The United States also encouraged Japan to harmonize its classification of cosmopolitan pests with international standards. In May 2008, Japan notified the WTO of new regulations with respect to the potato aphid (*macrosiphum euphorbiae*) that will improve market access for U.S. exports of lettuce.

*Privatization -- Japan Post:* In 2008, Japan continued its ten-year process of privatizing Japan Post, which was initiated on October 1, 2007. The United States continued to urge Japan to ensure a level playing field between the newly privatized Japan Post entities and their private sector counterparts in the

insurance, banking, and express delivery sectors. In addition, the United States continued to emphasize the need for ensuring full transparency in the privatization process, including ensuring interested parties have meaningful opportunities to express views before final decisions are made.

The United States urged Japan to continue to take measures to ensure a level playing field between the newly privatized postal financial entities (Japan Post Insurance and Japan Post Bank) and their private sector counterparts before permitting the introduction of new lending services, new or altered insurance products underwritten by Japan Post Insurance, or the origination of non-principal-guaranteed investment products by Japan Post Bank. Japan strengthened the Financial Services Agency's (FSA) regulatory supervision of the postal financial entities by appointing an additional Director to supervise Japan Post Insurance and four staff members to supervise Japan Post Insurance and Japan Post Bank. Japan reaffirmed that the FSA has sole authority over the supervision and inspection of Japan Post Bank and Japan Post Insurance under the Banking Law and Insurance Business Law and applies the same standards to the postal financial entities as are applied to other banks and insurance companies. Japan also provided assurances that the relationship between Japan Post Network and the two postal financial entities will be conducted in a fair manner and subject to the same rules and regulations applicable to the private sector.

The United States continued to urge Japan to take steps to ensure Japan Post Service Company products and services that compete with the private sector, including its Express Mail Service (EMS), meet customs treatment requirements equivalent to those applied to private sector international express carriers. Japan is preparing to subject all international postal items valued over 200,000 yen (approximately \$2,000) to more similar customs treatment by applying the "duty declaration" system before April 2009, and the United States is urging that this program be extended to include all EMS items regardless of value. The United States also continued to urge Japan to ensure that competitive services such as EMS are not subsidized by non-competitive postal services, as well as to ensure that arm's length transactions are in fact carried out by the Japan Post Service Company in line with a mid-2008 recommendation of Japan's Postal Services Privatization Committee.

*Commercial Law:* Japan took some steps in 2008 that may facilitate foreign mergers and acquisitions (M&A) in Japan, including a decision by Japan's Cabinet to set up a fair and transparent M&A climate. In addition, the Ministry of Economy, Trade and Industry's Corporate Values Study Group determined that hostile takeovers may have positive benefits for shareholders and, therefore, that management must make responsible judgments about the attractiveness of takeover bids and target companies and should in principle not invoke anti-takeover measures.

Japan also began implementing a plan to take broad-reaching measures to strengthen corporate governance mechanisms in Japanese corporations. This plan contemplates a broad examination of the current legal system with a view to identifying necessary administrative and/or legislative improvements, and encouraging the stock exchanges to strengthen their corporate governance-related rules and codes of conduct. The Tokyo Stock Exchange also announced that it would focus its efforts in fiscal year 2008 on improving conditions for enhanced corporate governance by its listed companies, including rules that address the issuance of new shares that cause substantial dilution to existing shareholders, problems with the independence of directors and auditors, and concerns raised by the introduction of certain takeover defense measures. In addition, the Financial Services Agency announced that most managers of investment trusts have a fiduciary duty to exercise proxy voting rights solely for the interest of beneficiaries and can be held liable for damages if they breach that fiduciary duty.

*Legal Services and Legal Systems Reform:* Japan took some important steps during 2008 toward improving the environment for international legal services. The Ministry of Justice (MOJ) began a consultation process with the Japan Federation of Bar Associations to formulate recommendations on measures to allow registered foreign legal consultants in Japan to establish professional corporations and

branch offices on the same basis as Japanese lawyers, with a goal of reaching a conclusion by the end of 2008. The MOJ also committed itself to continuing to examine ways to provide greater legal certainty regarding the ability of foreign legal consultants to act as “neutrals” and to represent parties in all international alternative dispute resolution proceedings taking place in Japan.

*Distribution:* Japan made several improvements in 2008 that should help facilitate customs procedures. This included revising its Customs Law to allow inclusion of authorized customs brokers in Japan's Authorized Economic Operators (AEO) program. This action will enable declarations of cargo release and of duties and taxes to be filed separately. Japan also eliminated customs overtime service charges and the simplified application procedures for overtime services.

## **b. Bilateral Trade Consultations**

### **i. Insurance**

In December 2008, the United States and Japan held an annual insurance consultation under the 1994 and 1996 bilateral insurance agreements. The United States also pressed for improvements in the regulatory environment and increased openness for foreign suppliers in Japan's insurance sector in the U.S.-Japan Regulatory Reform Initiative and other fora.

Regarding the privatization of Japan Post and the Japanese insurance market, the United States continued to urge Japan to ensure a level playing field between Japan Post Insurance and its private sector counterparts (for a detailed review, see *Privatization -- Japan Post*).

The United States urged Japan to undertake substantive deliberations on the broad spectrum of issues related to the Life and Non-Life Policyholder Protection Corporation, and also to subject insurance cooperatives (*kyosai*) regulated by various ministries to the same laws, requirements, standards, and Financial Services Agency (FSA) oversight as the private insurance sector with which they compete. The FSA did assume regulatory supervision of certain smaller *kyosai* under the “Small Amount Short-Term Insurance Provider” system. The United States also requested revisions to information disclosure restrictions affecting the bank sales channel and adoption of measures to allow foreign incorporated insurance company branches operating in Japan to transfer more seamlessly their business to a Japan-incorporated entity.

### **ii. Government Procurement**

*Public Works (Design/Construction):* The U.S. Government held expert level consultations with Japanese officials in September 2008 to urge Japan to take new measures to further open its large (\$163 billion) public works market to U.S. companies. The United States requested, for example, that Japan take measures to address low-bidding (i.e. bidding on projects with the expectation of not making a profit while planning that losses could be made up at a later date through change orders or discretionary procurements), to increase the use of Overall Greatest Value Method procurements in which bids are evaluated on more than price, to address concerns regarding unfair treatment of joint venture members, and to take measures to ensure proper compensation for design firms. The United States is working with Japan to promote the use of “Construction Management,” an advanced project delivery and management system used to maximize project efficiency, as this would increase the market for services in which U.S. companies have considerable expertise. The United States also continued to monitor carefully Japan's procurement procedures for projects covered by bilateral and multilateral agreements as well as to promote U.S. company participation in new types of public works projects in Japan.

### **iii. Investment**

The United States continued joint work with Japan in 2008 through the U.S.-Japan Investment Initiative to encourage new measures that improve the climate for direct foreign direct investment (FDI) and merger and acquisition (M&A) activity in Japan. Then Prime Minister Fukuda formed an “Expert Committee on FDI Promotion” that issued a report in May 2008 calling for tax and regulatory changes in five areas. Several of the recommendations are very close to ideas both governments have discussed in past Investment and Regulatory Reform Initiatives, including: (1) clarification of Japan's M&A rules regarding use of corporate takeover defense measures, and increased FDI promotion efforts; (2) a survey of Japan's security-related foreign investment restrictions with the aim of providing greater transparency to investors; (3) adoption of strategies and "action programs" to increase FDI in key business sectors, most notably medical devices and pharmaceuticals; and (4) quick action to reduce business costs and increase regulatory transparency. In response to these recommendations, the government incorporated certain new measures to expand FDI in its 2008 Major Economic Policy Framework Report and has indicated it is seeking to implement these new measures.

### **c. Sectoral Issues – Agriculture**

*Beef:* The United States interacted with Japan at all levels, including the ministerial level, to urge the full reopening of Japan’s market to U.S. beef and beef products in a manner consistent with internationally accepted guidelines established by the World Organization for Animal Health (OIE). By limiting the import of U.S. beef and beef products to animals 20 months and younger, Japan continued to apply import standards not based on internationally accepted science and that are inconsistent with the OIE determination that the United States falls under “controlled risk” for Bovine Spongiform Encephalopathy (BSE).

Beef exports to Japan over the first eleven months of 2008 totaled \$359 million (approximately 69,944 metric tons), an increase of 58 percent and 61 percent respectively over the same period in 2007. This level of trade suggests that Japanese consumers now accept U.S. beef. However, the Japanese government’s restrictions limiting the supply of U.S. beef will continue to prevent U.S. beef producers from recapturing a market share that, in 2003, was valued at approximately \$1.4 billion (376,000 metric tons).

*Rice:* Under the Uruguay Round Agreement on Agriculture, Japan committed to annual minimum market access (MMA) for imported rice. In response to not importing enough rice to fill its MMA quota in Japan for Fiscal Year 2007, Japan committed to implement improvements to ensure fulfillment of its MMA rice tariff-rate quota system in the future, including earlier and more frequent tenders. Unusually high global rice prices during this period exposed several weaknesses in Japan’s administration of its import quotas for rice.

In September 2008, Japan temporarily ceased tenders for imported rice and wheat in response to the release of rice tainted with pesticides and aflatoxin into Japan’s food supply. After implementing revisions to its import tender contracts to require importers to destroy or return to the exporting country rice or wheat that exceeds maximum residue levels, wheat and rice tenders resumed in October 2008. Addressing concerns with the operation of Japan’s tariff-rate quota system, the revised tender contracts, and Japan’s fulfillment of its MMA rice import quota obligations remain priorities for the United States.

## **11. Taiwan**

During 2008, the United States and Taiwan continued to work together to enhance economic cooperation through the U.S. Bilateral Trade and Investment Framework Agreement (TIFA) process, and to address shortcomings in several areas related to Taiwan's implementation of its World Trade Organization (WTO) commitments. These WTO implementation issues included ensuring market access for rice and improving intellectual property rights protection. In addition, the United States worked with Taiwan bilaterally to ensure market access for American beef and more transparent pharmaceutical pricing and reimbursement procedures.

### **a. Beef**

Throughout 2008, the United States continued to press Taiwan to provide market access for the full range of U.S. beef and beef products in a manner consistent with World Organization for Animal Health (OIE) guidelines for Bovine Spongiform Encephalopathy (BSE) and the May 2007 OIE designation of the United States as "controlled risk" for BSE. However, as of the end of 2008, Taiwan had not yet opened its markets in a manner consistent with the May 2007 OIE determination. After partially reopening the market to U.S. deboned beef from cattle less than 30 months of age in April of 2005, Taiwan re-imposed its import suspension in June 2005, after the discovery of a second case of BSE in the United States. On January 25, 2006, Taiwan again lifted its ban on U.S. deboned beef from cattle less than 30 months of age. In addition to beef and beef products, Taiwan also maintains BSE-related import suspensions on U.S.-origin non-ruminant products such as poultry and porcine meals for the use in animal feed. Taiwan also maintains a BSE-related import suspension on U.S.-origin protein-free tallow and yellow grease (ruminant-origin products) for use in animal feed and pet food while continuing to allow importation of these products for industrial use and human consumption. Taiwan's BSE-related import restrictions on protein-free tallow and yellow grease are not consistent with OIE guidelines which specifically state that these products should be freely traded regardless of the BSE status of the exporting country. The United States has been engaging with Taiwan to fully open the market for all these products on a scientific basis.

### **b. Rice**

The United States and other suppliers continued to have public sector rice tenders fail due to Taiwan's ceiling price mechanism. Recently, Taiwan implemented new destination testing requirements for shipments of U.S. long grain rice, thereby causing additional tenders to fail. Taiwan is a leading Asian market for U.S. rice exports. Throughout 2008, the United States highlighted to Taiwan its WTO obligation to purchase rice while expressing concerns that the ceiling price mechanism was non-transparent and causing unnecessary trade disruptions. The United States will continue to work with Taiwan and other interested suppliers to the Taiwan market to achieve improvements to the rice import system.

### **c. Maximum Residue Levels (MRL)**

Since the 2007 TIFA meeting, the United States and Taiwan have engaged in numerous discussions addressing systemic issues related to Taiwan's food safety regulatory system. Taiwan currently has a backlog of approximately 1,500 pesticide applications that must undergo a technical review before permanent MRLs may be established. The backlog presents significant challenges to U.S. agricultural trade because Taiwan will reject agricultural goods containing a pesticide residue for which the Department of Health (DOH) has not established an MRL. The United States has offered several suggestions on how Taiwan could reduce its backlog. However, thus far DOH has been unwilling to defer to the CODEX or U.S. MRL on an interim basis.

#### **d. Pork**

Since 2007, Taiwan has rejected U.S. pork meat with residues of ractopamine. Ractopamine is a veterinary drug commonly used in the United States and permitted in most major pork import markets. While Taiwan notified the WTO in August of 2007 of its intent to establish an MRL for ractopamine, which would have resolved the issue, Taiwan authorities have failed to implement the draft MRL. As a result, U.S. pork exports in 2007 fell sharply and some U.S. pork market share was lost to Canada in 2008 as overall imports recovered modestly.

#### **e. Intellectual Property Rights (IPR)**

IPR protection continues to be an important issue in the U.S.-Taiwan trade relationship. In December 2004, Taiwan was moved from the Special 301 Priority Watch List to the Watch List after an out-of-cycle review (OCR) determined that Taiwan had made sufficient progress to warrant improved status. The United States recognizes Taiwan's continuing efforts to take measures to improve enforcement of IPR, and in 2008 initiated an OCR to re-evaluate Taiwan's inclusion on the Special 301 Watch List. On January 16, 2009, the Office of the U.S. Trade Representative announced that, as a result of progress on protection and enforcement of intellectual property rights, Taiwan has been removed from the Special 301 Watch List.

To deter Internet piracy, the Taiwan Intellectual Property Office (TIPO), in May 2005, initiated an "implementation plan for strengthening preventive measures against Internet infringement." In 2007, Taiwan continued to make efforts to combat Internet-related IPR violations; including strengthening cooperation with foreign enforcement agencies and passing an amendment to the Copyright Law in June 2007 that subjects illegal file-sharing to a maximum jail term of two years.

In October 2007, Taiwan's Ministry of Education (MOE) issued its Action Plan for Protecting IPR on School Campuses. The Plan addresses IP piracy on school and university campuses on Taiwan and includes measures to restrict access with some exceptions, to most peer-to-peer (P2P) services from the island's principal academic network, the Taiwan Academic Network (TANet), as well as to reduce instances of illegal text book copying by students and on-campus copy shops. Since the implementation, police have raided several copying shops near campuses engaged in illegal textbook copying, and authorities have launched public awareness campaigns to help protect intellectual property. The United States will continue to monitor the implementation of the Action Plan and other efforts to reduce infringement by the academic community, both on and off campus. In order for the Action Plan to be successful, it is important that the MOE devote adequate resources to it, especially at high levels of the Ministry, as well as engage in regular consultation with rights holders in order to improve enforcement against the unauthorized use of copyright material that occurs on and around university campuses.

The United States strongly encouraged Taiwan's passage of legislation to create a specialized court for intellectual property matters and its training of judges and prosecutors on these matters. The necessary implementing legislation and regulations were passed in 2007, and the court opened in July 2008. In addition, the Taiwan High Prosecutor's Office has set up an intellectual property office to work with the new court. The United States will continue to monitor implementation of the specialized IP court.

Internet piracy and illegal peer-to-peer downloading remain serious concerns, and the United States will continue to urge the passage and implementation of effective legislation to address liability of Internet Service Providers (ISP). In September 2008, the Ma administration forwarded to the legislature ISP-related amendments to the Copyright Act, but the amendments have not yet been passed. The United States will continue to monitor Taiwan Customs' efforts to prevent imports of counterfeit materials.

## **f. Pharmaceuticals**

Continuing concerns in the pharmaceutical sector in Taiwan include the fairness and transparency of the pharmaceutical pricing system as well as the domestic regulatory regime. Through the TIFA process, the United States has been encouraging Taiwan to adopt a system of actual transaction pricing to address the significant gap between the higher amount that Taiwan's Bureau of National Health Insurance (BNHI) typically reimburses for a pharmaceutical product and the lower price actually paid to the provider of that product. This gap distorts pharmaceutical trade and prescription patterns in Taiwan. These distortions are compounded by another feature of the Taiwan health care system, which permits doctors to both prescribe and dispense pharmaceuticals. Research-based pharmaceutical companies see separating these functions as a critical element in the resolution of the long-term pricing problem. The United States has encouraged Taiwan to streamline certain regulatory procedures to speed the approval of new, innovative products to the market. Production and sale of counterfeit pharmaceuticals in Taiwan also remains a concern. The United States is encouraging Taiwan's Ministry of Justice and Department of Health to work together to take action to address this issue.

## **12. Hong Kong (Special Administrative Region)**

### **a. Intellectual Property Rights (IPR)**

Hong Kong is a special administrative region of the People's Republic of China. The Hong Kong government continues to maintain a robust IPR protection regime, though end-user piracy, the rapid growth of peer-to-peer downloading from the Internet, and the importation and transit shipments of infringing products remain as significant challenges. The business and entertainment software industries estimate that Hong Kong's piracy rate was 51 percent for business software and 80 percent for entertainment software in 2007, well above the software piracy rates in other advanced economies, resulting in annual losses to business and entertainment software right holders of approximately \$212 million in 2007.

Since 2006, the Hong Kong government has taken additional steps toward addressing each of these problems. Hong Kong Customs has used the Organized and Serious Crimes Ordinance (OSCO) to prosecute piracy syndicates and to freeze their assets. An April 2008 raid by Hong Kong Customs of an underground production facility resulted in the seizure of 110 DVD writers, 27,000 optical disks, and the conviction of two defendants who each received a 24 month prison term. Hong Kong officials have also established a joint task force with copyright industry representatives to track down online pirates using peer-to-peer networks for unauthorized file sharing.

After extensive consultation, the Copyright (Amendment) Ordinance was passed in July 2007 and the government proposed several amendments to the Ordinance in April 2008 to strengthen digital IPR protection. The Ordinance provides for criminal penalties for unauthorized copying and distribution of infringing copies of printed works in the course of profit-generating activities. The Ordinance also contains provisions to hold company directors criminally liable for the use of pirated software in their businesses. Additionally, the Ordinance provides for civil liability for the act of circumventing technical protection measures (TPMs) and criminal penalties for persons convicted of dealing in circumvention devices or providing a circumvention device for commercial purposes. In the first eight months of 2008, Hong Kong Customs reported 618 convictions for Ordinance violations, and over two-thirds of those individuals received jail terms. The government is consulting with industry representatives and content user representatives on the proposed amendments and expects to introduce the proposed digital IPR protection amendments to the Legislative Council for debate in the 2009-2010 session.

## **b. Beef**

Hong Kong banned imports of U.S. beef in December 2003 following the first case of Bovine Spongiform Encephalopathy (BSE). After two years of intensive efforts on the part of the U.S. Government, the Hong Kong government announced the partial reopening of its market to deboned beef from animals less than 30 months of age, with numerous restrictions, in December 2005. These excessive restrictions, however, have discouraged most qualified U.S. beef exporters from shipping to Hong Kong. It is estimated that the two-year ban (2004-2005) cost U.S. exporters approximately \$160 million. World Organization for Animal Health (OIE) guidelines provide for scientifically-based conditions under which all beef and beef products from animals of any age can be safely traded from all countries regardless of BSE status as long as the appropriate Specified Risk Materials (SRMs) are removed. In May 2007, the OIE classified the United States in a category of “controlled risk” for BSE. The United States continues to press Hong Kong to normalize trade and implement import requirements for U.S. beef and beef products on the basis of science, the OIE guidelines, and the U.S. controlled risk classification.

## **c. Food Labeling**

The United States exported nearly \$1.4 billion of agricultural, fishery, and forestry products to Hong Kong in 2008. Although Hong Kong has a population of only seven million residents, it is the seventh largest market for exports of U.S. food and beverage products with approximately 25 percent of U.S. exports to Hong Kong transshipped to China and Southeast Asia. While the Hong Kong market has developed relying on liberal access, the Hong Kong government is in various stages of implementing several labeling schemes that could raise significant barriers to consumer-ready U.S.-origin processed food exports.

On July 9, 2007, an amendment to Hong Kong’s Labeling Regulation went into effect that requires manufacturers to declare allergenic substances and list the food additive functional class, and name or identification number (under the International Numbering System), on food labels. Hong Kong’s requirements vary only slightly from U.S. regulations. However, the United States is concerned that the regulations do not contribute to improved consumer awareness or information. All U.S. processed food products exported to Hong Kong already include extensive label information on ingredients, allergens, and additives. As results of these differences, U.S. food products, especially name-brand processed foods, have had difficulties complying with the labeling changes in the period allotted. The United States has expressed its objections to this regulation.

On May 28, 2008, Hong Kong’s Legislative Council passed a nutritional labeling regulation that may raise prices and restrict choice for Hong Kong consumers after it takes effect on July 1, 2010. Hong Kong’s labeling regulations do not follow the labeling practices of major suppliers, and given Hong Kong’s small market size for most individual products, repackaging products to comply with the new Hong Kong labeling standard may not be economically feasible. The United States has requested that the regulations allow flexibility by permitting the importation of products that comply with United States labeling laws.

## **d. Energy Efficiency Labeling and Regulations**

The Hong Kong government enacted the Energy Efficiency Labeling Ordinance in May 2008 for consumer electrical appliances. The Ordinance is intended to assist consumers in choosing energy efficient products. Under the Ordinance, the product must be registered with the Hong Kong Electro-Mechanical Services Department and carry an energy label that complies with specific technical requirements. The Hong Kong-specific labeling system could become a trade barrier to the extent the

local system differs materially from internationally agreed labels, such as the “Energy Star” label used in the United States and Japan. The United States will continue to monitor this development closely.

### **13. Sri Lanka**

In 2008, U. S. exports to Sri Lanka (annualized) were valued at \$286 million a 26 percent increase compared to 2007, and overall bilateral trade totaled \$2.2 billion. Major U.S. exports to Sri Lanka in 2008 were aircraft, wheat, industrial machinery, electrical machinery and equipment, and scientific instruments including medical equipment.

In 2002, the Administration and the Sri Lankan government entered into a TIFA. The TIFA aims to enhance the countries’ economic relationship while promoting increased trade and investment. Since 2002, United States and Sri Lankan officials have met six times to review the trade relationship and explore ways in which we can work together to facilitate expanded trade and economic cooperation.

On May 29, 2008, the sixth meeting of the U.S.-Sri Lanka TIFA Council was held in Washington, D.C. During the talks, the United States called on Sri Lanka to reduce its high tariffs and levies on agricultural products as well as foreign movies and television episodes, eliminate labeling requirements and import controls on genetically modified (GM) and non-GM agricultural products, modify seed potato import permits to allow for lot or shipment inspection for the Colorado potato beetle, and provide more certainty and transparency in Sri Lanka’s government procurement. The United States also urged Sri Lanka to lift avian influenza-related suspensions on imports of certain U.S. poultry commodities and highlighted Sri Lanka’s failure to issue two overdue letters of credit to a U.S. company doing business in Sri Lanka since 2001. In addition, the two sides discussed how Sri Lanka can make better use of the U.S. Generalized System of Preferences (GSP) program and explored ways to provide IPR enforcement training. The officials also discussed technical assistance to support Sri Lankan efforts to implement a customs recordation database and to finalize its antidumping and countervailing duty legislation.

In response to U.S. concerns, the Sri Lankan government lifted the suspension on poultry imports from several U.S. states (imports from two U.S. states are still prohibited) and also issued the overdue letters of credit to the U.S. company. In addition, in response to U.S. calls for increased IPR enforcement against software pirates, Sri Lanka conducted a raid on dealers of pirated software in May 2008. This raid was Sri Lanka's first notable enforcement action against software pirates.

Follow-up is occurring with respect to the issues discussed at the sixth round of United States-Sri Lanka TIFA Council talks, including training for Sri Lankans on GSP utilization and IPR enforcement. Meetings were held in Sri Lanka in November 2008 to discuss progress on TIFA follow-up actions and on enhancing the U.S.-Sri Lanka trade and investment relationship.

In June 2008, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) filed a petition requesting that Sri Lanka’s GSP benefits be withdrawn for failure to satisfy GSP eligibility criteria related to worker rights. The Administration will consider, in early 2009, whether to accept the AFL-CIO petition and other country practice petitions.

### **14. Iraq**

USTR supports the government of Iraq’s commitment to internal security and stability, job creation, and economic development. Through a number of interagency initiatives, USTR is assisting Iraq’s efforts to integrate better with the global economy, increase foreign investment, and diversify its exports. With improved security conditions and progress in other areas, USTR expects to increase bilateral cooperation

with the government of Iraq, focusing on key trade and investment issues. In late 2008, lower prices for oil, Iraq's dominant export, complicated the Government of Iraq reconstruction budget plans.

In February 2008, USTR participated in the United States-Iraq Dialogue on Economic Cooperation (DEC) meetings in Baghdad. Topics included advancing Iraq's accession to the WTO; status of passage of key commercial, investment, and labor laws; improving Iraq's investment climate and fighting corruption; expanding Iraq's use of benefits under the U.S. Generalized System of Preferences (GSP) program; and ratification of the United States-Iraq Trade and Investment Framework Agreement (TIFA).

In April 2008, USTR held the second meeting of Iraq's Working Party on WTO accession to review Iraq's trade regime. The United States is providing technical assistance to help Iraq's government with the accession process, including help with WTO training of officials, legal drafting, tariff classification, and specific guidance on implementation of WTO provisions (e.g., in the areas of investment, standards and technical regulations, intellectual property protection, customs, and services). USTR also held bilateral consultations with Iraqi officials and U.S. agencies.

In June 2008, the AFL-CIO submitted a petition seeking withdrawal of Iraq's eligibility for benefits under the U.S. Generalized System of Preferences (GSP), citing a lack of progress in approving a new law to protect internationally recognized worker rights, as well as problems with human trafficking and the abuse of foreign workers. The United States is working closely with the Government of Iraq to improve worker rights protections. The Administration will consider in early 2009 whether to accept the AFL-CIO petition and other country practice petitions.

In November 2008, USTR participated in the Iraqi-U.S. Dialogue on Business and Investment Climate in Baghdad, which highlighted the importance of foreign investment to achieve Iraq's goals of rapidly developing and diversifying its economy. Representatives from the Iraqi and international private sectors explained their experiences in the Iraqi market and in other countries and suggested steps that would make Iraq a more attractive destination for foreign investment and commercial ventures. They also agreed on Iraq's investment potential and welcomed U.S.-Iraqi cooperation to improve Iraq's commercial environment.

## **F. Africa**

### **1. COMESA**

The Common Market for Eastern and Southern Africa (COMESA) is the largest regional economic organization in Africa, with 19 member states<sup>26</sup> and a population of about 390 million. COMESA has a free trade area, with 14 member states, and is set to launch a customs union in 2009. The United States and COMESA signed a TIFA in 2001 and have held five TIFA Council meetings. The most recent meeting, in April 2008, included discussions on United States-COMESA trade, implementation of AGOA, the WTO Doha negotiations, trade capacity building activities, infrastructure issues, and investment.

U.S. trade capacity building assistance to COMESA, delivered mainly through USAID's East Africa regional mission and its East and Central Africa Global Competitiveness Hub in Kenya, has helped COMESA to advance its internal free trade area, harmonize members' policies in telecommunications,

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<sup>26</sup> COMESA members are Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe.

services, and investment, and increase trade linkages with the United States under AGOA. Fourteen COMESA members are AGOA-eligible, and nine qualify for textile and apparel benefits.

Total two-way trade between the United States and the 19 member countries of COMESA was valued at \$17 billion in 2008, a 17 percent increase over 2007. Egypt and Kenya were the two largest national markets for U.S. goods. The leading U.S. exports to COMESA countries were cereal grains, aircraft, and machinery, and the leading U.S. imports from COMESA countries were petroleum products, apparel, and chemicals. In the first 11 months of 2008, U.S. imports from COMESA under AGOA and GSP were valued at \$943 million, a decrease of three percent over the same period in 2007.

## **2. East African Community**

On July 16, 2008, the United States and the East African Community (EAC) signed a United States-EAC TIFA in Washington, DC. Trade ministers and other senior officials from the five EAC member states – Burundi, Kenya, Rwanda, Tanzania, and Uganda – witnessed the signing. The purpose of the TIFA is to strengthen the United States-EAC trade and investment relationship, expand and diversify bilateral trade, and improve the climate for business between U.S. and East African firms. The United States-EAC TIFA establishes regular, high-level talks on the full spectrum of United States-EAC trade and investment topics, including the African Growth and Opportunity Act (AGOA), the World Trade Organization's Doha Round, trade facilitation issues, and trade capacity building assistance. The EAC is one of the leading regional economic organizations in sub-Saharan Africa and has made great strides in recent years toward integrating the economies of its member states. It has established a free trade area and a customs union and is working toward a common market.

Total two-way trade between the East African Community and the United States was valued at \$1.2 billion in 2008. The leading U.S. exports to the EAC are aircraft, machinery, wheat, and communications equipment. U.S. imports from the EAC include apparel, coffee, and cashews. In the first 11 months of 2008, U.S. imports from EAC under AGOA, including its GSP provisions, were valued at \$234 million, 3.7 percent greater than in the corresponding period in 2007.

## **3. Ghana**

In 2008, there was growing momentum in several areas of the United States-Ghana trade relationship. The United States and Ghana initiated discussions to explore the possibility of negotiating a bilateral investment treaty. Ghana also took significant steps toward implementing reforms urged by the United States to improve enforcement against counterfeiting and to prevent illegal transshipment of non-Ghanaian goods under the African Growth and Opportunity Act (AGOA).

In January 2008, the United States and Ghana held their fifth meeting under the auspices of the 1999 United States-Ghana Trade and Investment Framework Agreement. At the meeting, officials from the United States and Ghana explored several common objectives, including cooperation in the World Trade Organization, trade expansion, AGOA implementation, intellectual property protection and enforcement, trade capacity building and technical assistance, and infrastructure issues.

Total two-way trade between Ghana and the United States was valued at \$840 million in 2008. Ghana is the fifth largest sub-Saharan African market for U.S. goods. The leading U.S. exports to Ghana were motor vehicles, machinery, and mineral fuel. U.S. imports from Ghana are primarily oil, cocoa, and timber. In the first 11 months of 2008, imports from Ghana under AGOA, including its GSP provisions, were valued at \$41.7 million, a 38 percent decrease from the corresponding period in 2007. Leading AGOA/GSP imports were petroleum products and apparel.

## **4. Mauritius**

In September 2006, the United States and Mauritius signed a TIFA aimed at strengthening and expanding trade and investment ties between the two countries. The TIFA provides a formal mechanism to address bilateral trade issues and helps enhance trade and investment relations between the United States and Mauritius. The TIFA is encouraging new trade and investment opportunities in both countries by establishing a cooperative forum for implementing specific strategies to enhance the United States-Mauritius trade and investment relationship. The second TIFA Council meeting was held on April 28, 2008, in Washington, DC. The TIFA Council reviewed an extensive work plan that the United States and Mauritius are jointly undertaking in order to implement the TIFA, including a wide-range of programs and activities to support, facilitate, and ensure progress in strengthening the U.S.-Mauritian trade and investment relationship. It charted the way forward for future work under the TIFA and explored common objectives, including cooperation in the World Trade Organization, implementation of AGOA, export diversification, trade and investment promotion, and economic development. The United States and Mauritius are also exploring the possibility of negotiating a bilateral investment treaty.

Total two-way trade between Mauritius and the United States was valued at \$233 million in 2008. The leading U.S. exports to Mauritius are wheat, diamonds, and silicon. U.S. imports from Mauritius are primarily apparel, diamonds, and fish. In the first 11 months of 2008, U.S. imports from Mauritius under AGOA, including its GSP provisions, were valued at \$94 million, a 17 percent decrease from the corresponding period in 2007.

## **5. Nigeria**

In April 2008, the United States-Nigeria TIFA working group met to advance the ongoing work program to reduce trade barriers and diversify trade. Among the topics discussed were market access, implementation of AGOA, intellectual property protection and enforcement, commercial issues, trade capacity building and technical assistance, infrastructure, and investment issues. On trade issues, Nigeria discussed efforts underway to reduce tariffs and convert existing import bans to tariff-based structures. Nigeria also described measures adopted to improve transparency and procedures for temporary import licenses for oil service equipment. In the area of intellectual property rights, the two sides agreed to develop an action plan to enhance cooperation in a number of areas, including improving enforcement against piracy and counterfeiting. In October 2008, Nigeria took significant steps towards implementing trade reforms long urged by the United States, including removal of import bans and tariff-rate reductions.

Nigeria is the United States' largest trading partner in sub-Saharan Africa, largely due to the high level of petroleum imports from Nigeria. Nigeria is currently the fifth largest provider of crude oil and petroleum to the United States. Total two-way trade was valued at \$45 billion in 2008. The leading U.S. exports to Nigeria were machinery, wheat and motor vehicles. U.S. imports from Nigeria were primarily oil, but there was notable growth in several non-oil sectors, including cocoa and rubber. Nigerian exports to the United States under AGOA, including its GSP provisions, were valued at \$33.8 billion in the first 11 months of 2008, a 25 percent increase over the corresponding period in 2007. The United States was the largest foreign investor in Nigeria in 2008.

## **6. Rwanda**

In February 2008, President Bush and Rwandan President Kagame signed the United States-Rwanda Bilateral Investment Treaty (BIT), which will enter into force following ratification by the United States Senate and approval by the Rwandan Parliament. The BIT will provide legal protections for U.S. and

Rwandan investors that underscore the two countries' shared commitment to open investment and trade policies. The negotiations toward the BIT were launched in 2007 as one outcome of the consultations under the 2006 United States-Rwanda TIFA. The most recent U.S.-Rwanda TIFA Council meeting was held in Washington, D.C. in October 2007. The next meeting is scheduled to take place in Rwanda in the first half of 2009. Among the topics to be discussed are recent trends in two-way trade, implementation of AGOA, the WTO Doha negotiations, trade capacity building activities, and infrastructure issues.

Total two-way trade between Rwanda and the United States was valued at \$34 million in 2008. The leading U.S. exports to Rwanda are vegetable fats and oils, data processing equipment, and medical equipment. U.S. imports from Rwanda include coffee, tungsten ores and concentrates, and vegetable extracts. In the first 11 months of 2008, U.S. imports from Rwanda under AGOA, including its GSP provisions, were valued at \$1.1 million, a 7.3 percent decrease from the corresponding period in 2007.

## **7. South Africa**

The United States and South Africa enjoy a broad and mutually beneficial trade and investment relationship. U.S.-South African engagement on trade and investment issues takes place both bilaterally and via U.S. discussions and negotiations with the Southern African Customs Union (SACU), of which South Africa is a member. See Chapter III, Section 8 for more information on the U.S.-SACU relationship.

Two-way U.S.-South African trade was \$16.7 billion in 2008. South Africa is the largest and most diversified supplier of non-fuel products eligible under AGOA. In 2008, U.S. imports from South Africa under AGOA and related GSP provisions were valued at \$3.5 billion, up 89 percent from the corresponding period in 2007, and included transportation equipment, minerals and metals, agricultural products, chemicals, textiles, apparel, and footwear. South Africa is currently the top single-country market in sub-Saharan Africa for U.S. exports. In 2008, U.S. exports to South Africa totaled \$6.5 billion, a 17 percent increase over 2007. Leading U.S. exports to South Africa include motor vehicles, tractors, machinery, aircraft, medical equipment, and wheat.

South Africa continues to play an important role in the WTO Doha negotiations. South Africa is a member of the Cairns Group of nations (with a strong interest in agricultural liberalization) and the G-20 coalition of advanced developing countries. It is also a member of the so-called "NAMA-11" group of countries, which has opposed negotiating proposals that call for South Africa and other large developing countries to reduce tariffs on industrial and consumer goods. South Africa and the United States continue to consult closely on issues related to the Doha negotiations despite differences on certain issues.

The United States is the second-largest source of foreign investment in South Africa. An estimated 600 U.S. companies (including subsidiaries, joint ventures, local partners, agents, franchises, and representative offices) do business in South Africa.

As of the end of 2008, South Africa maintained antidumping duties on four U.S. products: chicken meat portions, L-lysine HCL, suspension polyvinyl chloride (PVC), and acetaminophenol. U.S. exporters of chicken parts argue that the antidumping measures against their products should be discontinued, consistent with a September 2007 ruling by South Africa's Supreme Court of Appeal concerning the calculation of the deadline for initiating a sunset review of antidumping measures. South Africa has indicated that the antidumping measure on suspension PVC, which is over six years old, will be terminated.

In November 2008, the joint U.S. export sales marketing arm of U.S. soda ash producers agreed to pay a fine and withdraw, as a joint entity, from the South African market as part of a settlement with South Africa's Competition Commission of a longstanding complaint that the U.S. entity operated as a price-fixing cartel with respect to export sales to South Africa. The settlement stated that U.S. producers will be free to make export sales to South Africa on an independent basis.

U.S. companies generally support the objectives of South Africa's Black Economic Empowerment (BEE) policies, which are intended to promote the economic empowerment of the historically disadvantaged population in South Africa. However, some U.S. companies have expressed concern about the scope and implementation of BEE. For example, there are concerns about BEE policies requiring the transfer of equity to historically disadvantaged individuals. BEE Codes adopted in 2007 allow qualifying multinationals to satisfy equity requirements through other types of empowerment programs (or "equity equivalents"). The standards and procedures for approving "equity equivalents" are still under development.

## **8. Southern African Customs Union**

On July 16, 2008, the United States and the five member countries of the SACU – Botswana, Lesotho, Namibia, South Africa, and Swaziland – signed a Trade, Investment, and Development Cooperative Agreement (TIDCA). The TIDCA establishes a forum for consultative discussions, cooperative work, and possible agreements on a wide range of trade issues, with a special focus on customs and trade facilitation, technical barriers to trade, sanitary and phytosanitary measures, and trade and investment promotion. The TIDCA is designed to build on and potentially capture some of the progress made in the FTA negotiations between the United States and SACU, which were suspended in 2006, largely due to divergent views on the scope and level of ambition for an FTA. Ideally, the TIDCA will help to put in place the "building blocks" for a future FTA, which remains a longer-term objective for both the United States and SACU.

The five SACU countries together are the United States' largest non-oil trading partner in sub-Saharan Africa, with two-way trade valued at \$18.2 billion in 2008. The SACU countries are key beneficiaries of AGOA and GSP, with U.S.-AGO/GSP imports valued at \$4.0 billion in the first 11 months of 2008, an increase of 68 percent over the corresponding period in 2007. SACU countries also comprise the largest U.S. export market in sub-Saharan Africa, with \$6.9 billion in U.S. exports in the 2008, 19 percent more than in 2007.

## **9. West African Economic and Monetary Union (UEMOA)**

Members of the West African Economic and Monetary Union (also known by its French acronym, UEMOA) are Benin, Burkina Faso, Cote d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo. UEMOA member countries are working toward greater regional integration with unified external tariffs. UEMOA has established a common accounting system, periodic reviews of member countries' macroeconomic policies based on convergence criteria, a regional stock exchange, and the legal and regulatory framework for a regional banking system. Seven of the eight UEMOA member countries are eligible for trade benefits under AGOA,<sup>27</sup> and five of these countries – Benin, Burkina Faso, Mali, Niger, and Senegal – are also eligible to receive AGOA's textile and apparel benefits. In November 2008, the United States and UEMOA held the third Trade and Investment Framework Agreement (TIFA) Council meeting, where parties discussed cooperation in the WTO, AGOA implementation, regional integration, commercial issues, trade capacity building, and technical assistance.

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<sup>27</sup> AGOA beneficiaries are Benin, Burkina Faso, Guinea-Bissau, Mali, Niger, Senegal, and Togo.

Total two-way trade between UEMOA and the United States was valued at \$2.7 billion in 2008. Togo and Benin formed the largest national markets in UEMOA for U.S. goods, though it seems likely that many of these U.S. exports were ultimately destined for other countries in the region, especially Nigeria. The leading U.S. exports to UEMOA in 2008 were motor vehicles, fuel oil, and electrical machinery. U.S. imports from UEMOA primarily consist of cocoa and petroleum products. In the first 11 months of 2008, U.S. imports from UEMOA under AGOA, including its GSP provisions, were valued at \$27.5 million, a 30 percent increase over the corresponding period in 2007.



# IV. OTHER MULTILATERAL ACTIVITIES

## A. Trade and the Environment

The Administration has continued and enhanced its efforts to address environmental objectives through multilateral, regional, and bilateral trade initiatives. On the multilateral front, the United States has been a global leader in seeking to discipline harmful fisheries subsidies and eliminate barriers to trade in environmental technologies and services, including clean energy technologies, through the WTO as part of the Doha Development Agenda (DDA). Following the 2007 conclusion of negotiations on free trade agreements containing new groundbreaking environmental provisions associated with the bipartisan trade deal with the Congress, and congressional approval of the agreement with Peru, the Administration worked cooperatively with the government of Peru to ensure implementation of those provisions in advance of the agreement's entry into force in January 2009. The Administration has also utilized additional bilateral trade fora, such as the United States-Indonesia Trade and Investment Framework Agreement (TIFA) and the Strategic Economic Dialogue with China, to leverage action on critical global environmental challenges, such as illegal logging.

### 1. Multilateral Fora

As described in more detail in the WTO section of this report, the United States is active on all aspects of the DDA trade and environment agenda. In particular, the United States contributed in 2008 to the intensification of work on liberalization of trade in environmental goods in the Committee on Trade and Environment (CTE) in Special Session, including through a joint proposal with the European Communities that lays the groundwork for an innovative new agreement on environmental goods and services (EGSA) and action to eliminate trade barriers to climate-friendly technologies. The United States believes that increased market access for environmental goods and services is an effective means to enhance access to environmental technologies around the world and has continued to advance pragmatic ideas for product coverage and modalities in negotiations on environmental goods. In the Rules Negotiating Group, the United States continues to lead in pressing for stronger disciplines on fisheries subsidies that contribute significantly to global overcapacity and overfishing. In July 2008, the United States, together with Australia and New Zealand, contributed a paper providing an overview of the issues and reaffirming the co-sponsors' strong commitment to an ambitious result, building on an earlier U.S. proposal to prohibit the most harmful subsidies that significantly influenced a Chairman's draft text issued in November 2007.

With respect to the DDA trade and environment agenda that does not specifically involve negotiations, the United States continued to play an active role in 2008, particularly through emphasizing the importance of capacity-building. This work included discussions in the CTE Regular Session with respect to the environmental implications of all areas under negotiation in the DDA.

USTR co-chairs the U.S. delegation to the OECD Joint Working Party on Trade and Environment (JWPTE), which met twice in 2008. Work has focused on trade, environment, and development issues with an emphasis on the role of environmental goods and services liberalization in promoting "win-win-win" scenarios for trade, the environment, and sustainable development; the role of regional trade agreements (RTAs) in promoting environmental awareness; and emerging areas of overlap between trade and climate change. These activities are discussed further in the OECD section of this report (Chapter IV, Section C).

USTR also participates in U.S. policy making regarding the implementation of various multilateral environmental agreements to help ensure compatibility between the activities of these organizations and U.S. environment-related trade policy activities. Examples include the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Convention on Biodiversity and the Cartagena Protocol on Biosafety, and the Stockholm Convention on Persistent Organic Pollutants. USTR also participates in U.S. policy making regarding activities related to the United Nations Environment Program and the UN Framework Convention on Climate Change.

USTR leads U.S. participation in the International Tropical Timber Agreement (ITTA), a commodity agreement whose objectives include sustainable management of tropical forests. Negotiations for a successor agreement to the 1994 ITTA were concluded in 2006. Once it comes into force, likely during the course of 2009, the new agreement is expected to strengthen efforts to promote trade in the context of sustainable management. USTR also continues to be involved in the trade-related aspects of a variety of other international forest policy undertakings, including implementation of President Bush's Initiative to Address Illegal Logging, launched in 2003. In addition, USTR participated extensively in U.S. policy making regarding the compliance regimes of the International Commission for the Conservation of Atlantic Tuna (ICCAT) and other regional fisheries management organizations, as well as in the negotiation of a new agreement in the UN Food and Agriculture Organization (FAO) on Port State Measures to address illegal, unreported and unregulated (IUU) fishing. USTR has also participated in the development of a new agreement in the International Maritime Organization (IMO) to address environmental standards for regulating ship recycling.

In addition, USTR leads United States participation in another international commodity agreement, the International Coffee Agreement (ICA). Since rejoining the International Coffee Organization (ICO) in February 2005, the United States has stressed the need to reform and revitalize the organization. In 2007, these efforts focused on the negotiation of a new ICA, which was concluded in September 2007. The new ICA is designed to enhance the ICO's role as a forum for intergovernmental consultations, to increase its contributions to meaningful market information and market transparency and to ensure that the organization plays a unique role in developing innovative and effective capacity building in the coffee sector. Among the capacity-building features of the new agreement is a "Consultative Forum on Coffee Sector Finance" to promote the development and dissemination of innovations and best practices that can enable coffee producers to better manage the financial aspects of the volatility and risk associated with competitive and evolving coffee markets. As a result of the new agreement, the ICO will be in a better position to facilitate international trade and sustainable development in the coffee sector.

## **2. Bilateral Activities**

The environment chapters of the trade agreements with Peru, Colombia, Panama, and Korea include obligations to implement and enforce provisions in a number of multilateral environmental agreements, such as those covering trade in endangered species, conservation of marine resources, and wetlands protection. In addition, the environment chapter in the Peru Trade Promotion Agreement includes an annex on forest sector governance that will lead to substantial improvements in Peru's management of its biodiversity-rich tropical forest resources. The annex also includes procedures for audits and verifications to monitor bilateral trade in forest products. In 2008, USTR worked with an interagency team to monitor and assist Peru to implement these provisions prior to entry into force of the agreement.

The United States has moved ahead with implementation of important environmental provisions of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). The

Secretariat for Environmental Matters is operational and has received three submissions concerning environmental enforcement issues since 2007. The United States authorized development of a factual record on the issues raised in the first submission in late 2008; the other two are currently being processed by the Secretariat. Additionally, each Party has set up an advisory committee to provide it with advice concerning implementation of the Environment Chapter.

The United States and Uruguay agreed to a protocol to the United States-Uruguay Trade and Investment Framework Agreement concerning public participation in trade and environmental policy. Both Parties agreed to promote public awareness of their trade and environmental laws and policies and to provide for meaningful opportunities for the public to participate in trade and environmental policy.

The United States and China have created a Bilateral Forum comprised of representatives of relevant government agencies to oversee work under a 2007 Memorandum of Understanding (MOU) between the United States and China on combating illegal logging and associated trade. This MOU establishes a framework for bilateral cooperation on combating illegal logging and associated trade, particularly with respect to goods traded by either country. Through the Bilateral Forum the Parties have begun to identify priority activities, including establishing a mechanism that will facilitate the exchange of information on trade in timber and products made of timber and promoting private sector efforts to understand their supply chain. Significantly, under the MOU the United States and China will be able to provide important support for third countries seeking to sustainably manage their forests by further closing markets to timber that has been illegally harvested.

USTR also chairs a Working Group on Illegal Logging and Associated Trade under the United States-Indonesia Trade and Investment Agreement. The Working Group was created by a first-of-its-kind MOU with Indonesia that was concluded in 2006. The Working Group meets regularly to share information on timber trade, including information on illegally produced timber products, and to enhance cooperation in law enforcement activities. Key results of Working Group meetings in 2008 included agreements on a regular exchange and review of bilateral trade data and plans for a joint, public report on progress combating illegal logging. The Working Group also monitored projects funded under the MOU, including training for customs and law enforcement officials, assistance for Indonesia's efforts to develop a legality standard, and enhancing partnerships with NGOs and the private sector. The agreement is designed to promote forest conservation by combating illegal logging and associated trade, and to help ensure that Indonesia's legally produced timber and wood products continue to have access to markets in the United States and elsewhere.

### **3. The North American Free Trade Agreement (NAFTA)**

USTR continues to work actively with EPA and other agencies in representing the United States in addressing North American trade and environmental issues, including under the NAFTA environmental side agreement -- the North American Agreement on Environmental Cooperation (NAAEC) -- and the border environmental infrastructure agreements. These institutions were designed to enhance the mutually supportive nature of expanded North American trade and environmental improvement. The trilateral Commission on Environmental Cooperation (CEC) has responsibility for implementation of the NAAEC. USTR works closely with EPA, trade and environment officials in Canada and Mexico, and the Secretariat of the CEC to implement the CEC's strategic plan on trade and environment. This strategic plan identifies six priority areas for CEC projects: renewable energy; trade and enforcement of environmental laws; ongoing environmental assessments of NAFTA; green purchasing; market-based mechanisms for sustainable use; and invasive alien species. As part of their implementation of this strategic plan, the Parties are examining ways in which environmental sustainability can promote

competitiveness. They are also taking steps to ensure that work under the NAAEC and the NAFTA on related issues is coordinated.

## **B. Trade and Labor**

The trade policy agenda of the United States includes a strong commitment to protecting the rights of workers in America and in countries with which we trade and promoting a level playing field for American workers. Expanded trade benefits all Americans through better jobs, lower prices, and greater choices in products available to consumers.

American workers benefit from expanded employment opportunities created by trade liberalization. A concerted focus on worker training and education policies will continue to ensure that the American workforce can compete with anyone. For workers displaced by trade, the Trade Adjustment Assistance Reform Act of 2002 (Title I of the Trade Act of 2002) modified and expanded the Trade Adjustment Assistance (TAA) for Workers program. TAA helps workers adversely affected by foreign trade by providing, among other things, job training, income support while in training, job search and relocation allowances, and tax credits for health insurance coverage. Congress has appropriated funds for the TAA program through March 6, 2009, under a continuing resolution; final appropriations action has not yet been completed. Additional information on the TAA program is available in Chapter V, Section B of this report.

In pursuing labor rights objectives through free trade agreements, USTR relied on the congressional guidance contained in the Bipartisan Trade Promotion Authority Act of 2002 (TPA). In addition, the United States' trade agreements with Peru, Colombia, Panama, and Korea, the United States incorporated the principles articulated in the Bipartisan Agreement on Trade Policy of May 10, 2007 between the Executive Branch and congressional leaders. In 2008, USTR continued to consult with the U.S. Congress on the implementation of FTA labor provisions and to work with Costa Rica, Oman, and Peru to ensure that the labor commitments were met as part of implementation of the FTAs with those countries. USTR also continued to work cooperatively with other U.S. agencies in multilateral, regional, and bilateral fora to promote respect for core labor standards, including the abolition of the worst forms of child labor.

### **1. Bipartisan Trade Promotion Authority Act of 2002 (TPA) – Trade and Labor**

The importance of the linkage between trade and labor was underscored by labor-related clauses in three sections of TPA: overall trade negotiating objectives; principal negotiating objectives; and the promotion of certain priorities to address U.S. competitiveness in the global economy.

The overall labor-related U.S. trade negotiating objectives were threefold. The first objective was to promote respect for worker rights and the rights of children consistent with the core labor standards of the International Labor Organization (ILO). TPA defined core labor standards as: (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition on the use of forced or compulsory labor; (4) a minimum age for the employment of children; and (5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. The second objective was to strive to ensure that parties to trade agreements do not weaken or reduce the protections of domestic labor laws as an encouragement for trade. The third objective was to promote the universal ratification of, and full compliance with, ILO Convention 182 – which the United States has ratified – concerning the elimination of the worst forms of child labor.

The principal trade negotiating objectives in TPA most important for labor included the provision that a party to a trade agreement with the United States should not fail to effectively enforce its labor laws in a manner affecting trade. TPA recognized that the United States and its trading partners retain the sovereign right to establish domestic labor laws, exercise discretion with respect to regulatory and compliance matters, and make resource allocation decisions with respect to labor law enforcement.

Additional principal negotiating objectives included strengthening the capacity of U.S. trading partners to promote respect for core labor standards and ensuring that the labor, health or safety policies and practices of U.S. trading partners did not arbitrarily or unjustifiably discriminate against American exports or serve as disguised trade barriers. A final principal negotiating objective was to seek commitments by parties to trade agreements to vigorously enforce their laws prohibiting the worst forms of child labor.

In addition to seeking greater cooperation between the WTO and the ILO, other labor-related priorities in TPA included the establishment of consultative mechanisms among parties to trade agreements to strengthen their capacity to promote respect for core labor standards and compliance with ILO Convention 182. The Secretary of Labor was charged with consulting with any country seeking a trade agreement with the United States concerning that country's labor laws and with providing technical assistance if needed. Finally, TPA mandated a series of labor-related reviews and reports to the U.S. Congress in connection with the negotiation of new trade agreements. These included an employment impact review of future trade agreements, the procedures for which were modeled after Executive Order 13141, which establishes environmental impact reviews of trade agreements. A report addressing labor rights and a report describing the extent to which there are laws governing exploitative child labor were also required for each of the countries with which USTR negotiates a free trade agreement.

## **2. Bipartisan Agreement on Trade Policy of May 10, 2007**

The Bipartisan Agreement identifies particular obligations that should be undertaken by parties to free trade agreements which the United States has negotiated with Peru, Colombia, Panama, and Korea. Two of the principal labor-related obligations are that each Party adopt and maintain in its statutes and regulations certain rights as stated in the ILO *Declaration on Fundamental Principles and Rights at Work and its Follow-Up* and that neither Party may waive or derogate from those statutes and regulations, or fail to effectively enforce them or other labor laws, in a manner affecting trade or investment between the Parties. Another labor-related provision is that decisions on the distribution of enforcement resources shall not be a reason for non-compliance with labor chapter obligations. Under the Bipartisan Agreement, FTA labor obligations should be subject to the same dispute settlement procedures and remedies as the commercial obligations.

## **3. Multilateral Efforts**

At the WTO Ministerial meetings in Singapore (1996) and Seattle (1999), the United States was among a group of countries supporting the creation of a WTO Working Party to examine the interrelationships between trade and labor standards. At the 2001 Doha WTO Ministerial, the United States supported a similar proposal sponsored by the European Union (EU) that a group of developing countries adamantly opposed. The text of the Doha Ministerial Declaration, adopted by consensus, includes the following:

“We affirm our declaration made at the Singapore Ministerial Conference regarding internationally recognized core labor standards. We take note of work underway in the International Labor Organization (ILO) on the social dimensions of globalization.”

In the Hong Kong Ministerial Declaration adopted during the 2005 WTO Ministerial, the governments reaffirmed the declarations and decisions adopted in Doha and their full commitment to give effect to them.

The United States remains the largest donor to the work of the ILO. The United States has been particularly supportive of the ILO's International Program on the Elimination of Child Labor (IPEC). ILO-IPEC efforts have focused on the means to eliminate the worst forms of child labor, including child prostitution and pornography, forced or bonded child labor, and work in hazardous or unhealthy conditions.

Activities to combat the worst forms of child labor continued in 2008, including in many of the U.S. trading partner countries. Total U.S. contributions to ILO-IPEC and other organizations in support of projects to address exploitive child labor in Fiscal Year 2008 amounted to approximately \$58 million, helping to finance 15 projects and other activities (such as research on the incidence of child labor) in 20 countries.

Labor issues also have been discussed in the Asia Pacific Economic Cooperation (APEC) forum. In 2008, the United States supported the discussion of labor rights among the areas relevant to the member economies' efforts to strengthen regional economic integration. In this regard, the United States, along with Korea and New Zealand, tabled language on a labor chapter model measure. Model measures are intended to promote a coherent and consistent approach for APEC economies to negotiate high quality trade agreements. The labor model measure received significant support, but ultimately was not reported to leaders due to lack of consensus. More information on efforts to promote regional convergence can be found in Chapter III, Section B of this report.

#### **4. Regional Activities**

The Inter-American Conference of Ministers of Labor (IACML) is a meeting of the Western Hemisphere's Labor Ministers, held approximately every two years under the auspices of the Organization of American States (OAS) in order to promote hemispheric cooperation on labor issues. The IACML responds to the labor mandates agreed to by Heads of State in the Summit of the Americas process. Trinidad and Tobago is the current chair of the IACML and hosted the Fifteenth IACML in September 2007.

At the Fifteenth IACML, labor ministers unanimously adopted a Declaration that reaffirmed their commitments regarding the ILO *Declaration on Fundamental Principles and Rights at Work* and the commitments by Heads of State in the Fourth Summit of the Americas. This included commitments to eradicate the worst forms of child labor, reduce youth unemployment, respond to decent work challenges in the Hemisphere, and strengthen the capacities of labor ministries. Ministers also endorsed the Plan of Action of Port of Spain that continues the two IACML Working Groups and encourages the sharing of best practices. Brazil chairs Working Group 1, with the United States and Guyana as vice-chairs. This Working Group focuses on decent work as a tool for promoting democracy in the context of globalization. El Salvador chairs, with Canada and Uruguay as vice-chairs, Working Group 2, which focuses on strengthening the capacities of labor ministries. Argentina will become president *pro tempore* of the 16th IACML, which will take place in Buenos Aires in September 2009. The ILO, the Organization of American States, the Inter-American Development Bank, and the UN's Economic Commission for Latin America and the Caribbean, along with the Business Technical Advisory Committee on Labor Matters (CEATAL) and the Trade Union Technical Advisory Committee (COSATE), participate in IACML meetings and activities. CEATAL and COSATE presented a Joint

Declaration to the Fifteenth IACML that highlighted the role of social dialogue and the importance of training and lifelong learning.

In 2008, the IACML work program examined government policies addressing the informal economy; programs to promote micro, small, and medium enterprises; and programs to enhance the effective enforcement of labor laws.

The Inter-American Network for Labor Administration (RIAL) was created by the Ministries of Labor of the Americas as a mechanism to support the implementation of the IACML Plan of Action. The Cooperation Fund of the RIAL finances bilateral technical exchanges between the Ministries of Labor of the Americas. These activities provide training and strengthened institutional capacities for participating labor ministries. The U.S. Department of Labor has participated in several bilateral technical exchanges supported by the RIAL Cooperation Fund. In addition, the Department of Labor partnered with the Brazilian Ministry of Labor and the OAS to organize a seminar on Youth Employment in the Americas in May 2008.

Other regional trade and labor activities carried out under the North American Agreement on Labor Cooperation/North American Free Trade Agreement and the OECD are noted in those sections of this report.

## **5. Bilateral Activities**

### **a. FTAs**

Reflecting a key element of the May 2007 Bipartisan Agreement on Trade Policy, for the first time in U.S. free trade agreements, the agreements with Peru, Colombia, Panama, and Korea include a commitment by each party to implement in its law and practice the fundamental labor rights as stated in the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. Each agreement provides that neither party shall waive or derogate from the statutes and regulations that implement this obligation in a manner affecting trade or investment between the parties. Additionally, the agreements include a commitment by each party not to fail to effectively enforce its labor laws, including its laws embodying the fundamental labor rights as stated in the ILO Declaration, through a sustained or recurring course of action or inaction in a manner affecting bilateral trade or investment.

All obligations set out in each labor chapter are subject to enforcement through the same dispute settlement procedures and enforcement mechanisms as each agreement's commercial obligations. The labor chapters commit each party to designate an office within its labor ministry to serve as a contact point for purposes of the labor chapter and create labor cooperation and capacity building mechanisms through which the parties will work together to enhance opportunities to improve labor standards and to further advance common commitments regarding labor matters.

The United States continued to implement bilateral trade agreements that fully incorporated the congressional guidance on trade and labor contained in TPA and the Bipartisan Agreement. In 2008, the United States worked with Costa Rica, Oman, and Peru through the FTA implementation process to ensure that these trading partners met all labor chapter obligations before the trade agreements entered into force. Specifically, all three countries designated an office within their labor ministries to be the contact point with the United States and the public on labor matters related to the FTA, and developed specific procedures for receiving and considering communications from the public. The establishment of this contact point is an important transparency measure contained in all trade agreements negotiated under TPA.

The Office of Trade and Labor Affairs (OTLA) in the Bureau of International Labor Affairs (ILAB) of the U.S. Department of Labor serves as the contact point for purposes of administering responsibilities under the labor provisions of free trade agreements and the North American Agreement on Labor Cooperation (NAALC), including the labor cooperation mechanisms. OTLA procedural guidelines for handling public submissions under free trade agreements were published on December 21, 2006 (Fed. Reg. vol. 71, no. 245, Dec 21, 2006, 76691-76696). DOL received the first submission under the CAFTA-DR in 2008, alleging worker rights violations in Guatemala. In accordance with DOL procedural guidelines, OTLA accepted the submission for review on June 12, 2008 and conducted extensive research on the issues raised in the submission. In December, OTLA extended the time for review of the submission due to the receipt of additional relevant information and anticipated issuance of a report in early 2009.

As mentioned above, each FTA includes a labor cooperation mechanism to help ensure the longer term capacity of U.S. trading partners to meet their obligations under the labor chapters, including capacity building programs designed to strengthen the capacity of labor ministries and the effective enforcement of labor laws. As part of promoting labor cooperation under the CAFTA-DR, and in accordance with the labor chapter of that agreement, the CAFTA-DR Labor Affairs Council meeting of labor ministers was held in El Salvador in November 2008. The council meeting included a discussion among ministers and vice-ministers from the seven labor ministries, and was followed by a public session at which civil society was given the opportunity to hold an open dialogue with the council members on capacity building initiatives and other matters related to the labor chapter.

The Administration committed approximately \$20 million in FY 2005, \$40 million in FY 2006 and FY 2007, and \$30 million in FY 2008 for labor and environment initiatives in CAFTA-DR countries. Of these funds, approximately \$75 million has been directed toward labor initiatives, including projects to strengthen labor ministries, modernize labor justice systems, reduce gender and other types of workplace discrimination, promote a culture of compliance with labor laws, and benchmark and verify progress. These initiatives are supplemented by Department of Labor-funded programs aimed at the elimination of child labor, to which approximately \$20 million has been directed between FY 2005 and FY 2008.

An interagency group comprising the Departments of State and Labor, USTR, USAID, and other agencies was established to program the funds. These agencies identify appropriate projects in consultation with the CAFTA-DR governments and in view of the 2005 *White Paper* on strengthening compliance and enhancing capacity issued by the *Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic*.

Several labor programs are also being carried out in Morocco, Oman, Bahrain, Jordan, and Egypt aiming to train workers on worker rights issues, to enhance the labor ministries' capacity to increase compliance with labor laws, and to help eradicate the worst forms of child labor. In 2008, the U.S. increased and extended an ILO project in Bahrain and Oman to improve labor inspections and promote social dialogue between unions and employers. Initiated in 2007, the project budget was increased from \$300,000 to \$756,000 and extended until 2010. The United States is also funding a \$3 million project in Morocco to combat the worst forms of child labor. The project began activities in 2008, and aims to withdraw 8,000 children from, or prevent them from participating in, exploitive child labor by 2010.

#### **b. Other Bilateral Agreements and Programs**

In August 2006, the U.S. Department of Labor (DOL) and Vietnam's Ministry of Labor, Invalids and Social Affairs reaffirmed their previous commitment to labor cooperation by signing a Letter of Understanding, pledging to continue the annual labor dialogue and cooperation on labor matters of mutual

interest, including international labor standards, worker rights, and labor market reform. In October 2008, the annual labor dialogue, headed by the DOL Deputy Under Secretary for International Affairs, took place in Washington, D.C.

Another aspect of trade and labor bilateral activities involves the worker rights provisions of U.S. trade preference programs – the African Growth and Opportunity Act (AGOA), the Andean Trade Preference Act (ATPA), the Caribbean Basin Trade Preferences Act (CBTPA), and the Generalized System of Preferences (GSP). Pursuant to the ATPA, there is an annual petitioning process to review the eligibility of countries. ATPA petitions concerning worker rights in Ecuador were filed in 2005 and the Trade Policy Staff Committee (TPSC) continued to review worker rights conditions in that country in 2008. Any modifications to the list of beneficiary developing countries or eligible articles resulting from this review of progress will be published in the *Federal Register*.

As part of the 2007 GSP Annual Review process, USTR accepted for review three worker rights-related petitions concerning Bangladesh, the Philippines, and Uzbekistan, and those petitions remain under review in the 2008 GSP Annual Review. In addition, in the 2008 GSP Annual Review, USTR continued the review of a 2006 petition concerning Niger. USTR and other U.S. government officials engaged with these governments through the U.S. embassies in those countries and other bilateral fora to monitor progress and press for action to address the problems cited in the petitions. Review of whether these countries are meeting the GSP worker rights criteria will continue in 2009. Worker rights-related petitions were also filed for Iraq and Sri Lanka in 2008. Decisions on whether to accept or reject these petitions will be made in early 2009.

## **C. Organization for Economic Cooperation and Development**

Thirty democracies in Europe, North America, and the Pacific Rim comprise the Organization for Economic Cooperation and Development (OECD), established in 1961 and headquartered in Paris. The OECD member countries account for 78 percent of world GDP, 94 percent of world official development assistance, over half of the world's energy consumption, and 18 percent of the world's population. The OECD is not just a grouping of economically significant nations, but also a policy forum covering a broad spectrum of economic, social, and scientific areas, from macroeconomic analysis to education to biotechnology. The OECD helps countries, both OECD members and non-members, reap the benefits and confront the challenges of a global economy by promoting economic growth, free markets, and efficient use of resources. Each substantive area is covered by a committee of member government officials, supported by Secretariat staff. The emphasis is on discussion and peer review, rather than negotiation, though some OECD instruments are legally binding, such as the Anti-Bribery Convention. Most OECD decisions require consensus among member governments. In the past, analysis of issues in the OECD often has been instrumental in forging a consensus among OECD countries to pursue specific negotiating goals in other international fora, such as the WTO.

The OECD conducts wide-ranging outreach activities to non-member countries and to business and civil society, in particular through its series of workshops and “Global Forum” events held around the world each year. In 2008, the OECD completed comprehensive reviews of the economies of Indonesia and South Africa, both non-member countries that participate as observers in various OECD committees. Non-members may participate as observers of committees when members believe that participation will be mutually beneficial. The OECD carries out a number of regional and bilateral cooperation programs. The China program, for instance, supports China’s efforts to establish a market economy and improve public governance.

The OECD is mainly funded by the member countries. National contributions to the annual budget are based on a formula related to the size of each member's economy, with the United States' contribution capped at just less than 25 percent. The overall budget for 2008 was projected to total 342.9 million euros (approximately \$471 million).

## 1. Trade Committee Work Program

In 2008, the OECD Trade Committee, its subsidiary Working Party, and its joint working groups on environment and agriculture, continued to address a number of issues of significance to the multilateral trading system. Members asked the Secretariat to focus its analytical resources on work that would advocate freer trade and facilitate WTO negotiations, deepening understanding of the rationale for progressive trade liberalization in a rules-based environment. The Trade Homepage on the OECD website (<http://www.oecd.org/trade>) contains up-to-date information on published analytical work and other trade-related activities.

Several major analytical pieces were developed or completed under the Trade Committee during 2008. These included the study *Technical Barriers to Trade: Evaluating the Trade Effects of Supplier's Declaration of Conformity*, which empirically assessed the impact and expected benefits of Supplier's Declaration of Conformity (SDOC) as a trade facilitating measure on trade flow, focusing on the harmonized introduction of SDOC throughout the EU for eligible medical devices, telecommunications and radio equipment and machinery. The Trade Committee also released a number of Working Papers on topics such as "Technology Transfer and the Economic Implications of the Strengthening of Intellectual Property Rights in Developing Countries" and "Trade and Innovation." Building on 2006-2007 groundwork, the Trade Committee continued its "BRIICS" project – the development of country studies on Brazil, Russia, India, Indonesia, China and South Africa, in which each country is analyzed across a set of core issues (such as goods and services liberalization and intellectual property rights) and selected country-specific issues.

Work in the Trade Committee on trade in services continued to provide analysis and background relevant to services liberalization and WTO negotiations. Services not only provide the bulk of employment and income in many OECD countries, they also serve as vital inputs for producing other goods and services. In 2008, the OECD continued its analysis of this sector. "Foreign Direct Investment (FDI) Spillovers and their Relationship with Trade," examined the increasing importance of FDI in international economic integration. The study indicated that service industries enjoy the strongest productivity-enhancing effects of FDI, and that trade liberalization can be seen as an important component of reform efforts designed to help countries maximize the benefits of FDI. Another paper, "Analysis of Subsidies for Services: the Case for Export Subsidies," took an exploratory first step in trying to understand the nature and scope of export subsidies in services.

During 2008, the OECD also provided analysis of two important service sectors: distribution and tourism. Tourism is an important sector for many developing countries with linkages to many other service sectors. In "Services Trade Liberalization and Tourism Development," the OECD explored the ways trade and investment liberalization could facilitate tourism sector growth in developing economies. "Market Structure in the Distribution Sector and Merchandise Trade" explored developments in the retail sector and the effects on trade in consumer goods.

The Trade Committee continued its work developing the first Services Trade Restrictiveness Index (STRI), a tool to measure the restrictiveness of regulations and other barriers affecting trade in services. During the year, the OECD collected data and examined barriers to trade in the three pilot sectors: business services, telecommunications, and construction services. Services experts met in June to discuss

measures affecting trade in business services and in December to discuss measures affecting trade in telecommunications and construction services. The meetings were designed to identify and rank the most important barriers to trade in these services. The results of these discussions will assist in the development of STRI methodologies.

A Global Forum on Globalization and Emerging Economies in June 2008 in Paris, France provided an opportunity to discuss the consequences for significant international markets and for the political economy of trade reform of the recent growth of the BRIICS. Several regional trade-related events were also held in 2008, including a regional forum on Trade Facilitation in June 2008 in Cape Town, South Africa, organized in collaboration with the South Africa Revenue Service (SARS) and the European Union. The participating 65 stakeholders involved in trade facilitation in Eastern and Southern Africa included WTO negotiators, trade officials, customs officers and experts, private sector representatives and representatives from regional and multilateral organizations, and the forum focused on the impact of economic factors such as cost or importance of informal trade on the efficient implementation of trade facilitation commitments.

The Trade Committee also laid the groundwork for a meeting of OECD member country trade ministers in June 2008. U.S. Trade Representative Susan C. Schwab headed the U.S. delegation. Ministers from a number of key non-members also participated. Those discussions made a positive contribution to the WTO negotiations.

In addition, the Trade Committee continued its dialogue with civil society and discussed aspects of its work and issues of concern with representatives of civil society, including members of the OECD's Business and Industry Advisory Council and Trade Union Advisory Council.

## **2. Dialogue with Non-OECD Members**

The OECD continued its contacts with non-member countries to encourage the integration into the multilateral trade regime of developing and transition economies, such as the countries of Eastern Europe and Central Asia, leading developing economies in South America and Asia, and sub-Saharan African countries. Following the May 2007 decision of the OECD Council in Ministerial session, the OECD began a concerted drive to broaden and deepen its involvement with emerging new players in the global economy through its Accession and Enhanced Engagement Programs.

In 2008, Chile, Estonia, Israel, Russia, and Slovenia continued the OECD accession process, while enhanced engagement program participation was offered to Brazil, China, India, Indonesia, and South Africa. Enhanced Engagement is a partnership arrangement that, depending on the interests and level of participation desired by the individual countries and upon approval by respective committees, may include elements of the following: committee participation, economic surveys, adherence to instruments, integration into the statistical reporting and information systems, sector-specific peer reviews, and other actions.

In 2008, the Trade Committee and its Working Party continued its discussion on how to enhance outreach to accession and enhanced engagement candidates and other interested non-members, encouraging non-member economies to be observers on an *ad hoc* basis when their participation could both benefit from, and contribute to, the Trade Committee's work. The current regular observers in the Trade Committee are Argentina, Brazil, Chile, and Hong Kong China. These four observers, plus the remaining Enhanced Engagement and Accession countries were invited to participate in the trade ministers' session focused on the multilateral trading system at the June 2008 Ministerial Council Meeting.

### **3. Technical Assistance and Capacity Building**

The Working Party of the Trade Committee and the OECD Development Assistance Committee (DAC) held two joint meetings during the year to discuss Aid for Trade (A4T). At the WTO's request, the OECD is supporting the A4T initiative in several ways: reporting on aid flows through the DAC's Creditor Reporting System database, and, in conjunction with the World Bank, advising on practical ways to monitor and evaluate A4T. As it did in 2007, the OECD is conducting a survey of donors and recipients on their strategies and practices in trade capacity building. This year's survey will build upon the baseline established by the 2007 survey. OECD and WTO staffs have been working closely with recipient countries to improve the response rate to the survey.

Building on the November 2008 Global Forum on A4T and working through the Trade Committee's Working Party and the DAC, OECD members and staff will pursue further work, including with the World Bank, on the monitoring and evaluation framework. This will serve as preparation for the WTO's second Global Review of Aid for Trade in June 2009.

### **4. Environment and Trade**

The OECD Joint Working Party on Trade and Environment (JWPTE) met twice in 2008 to continue its analysis of the effects of environmental policies on trade and the effects of trade policies on the environment, as well as its efforts to promote mutually supportive trade and environmental policies. During the year, the JWPTE contributed important work on environmental goods and services to support the WTO Doha negotiations, as well as work on identifying areas of synergy between trade and climate change mitigation policies.

The JWPTE also continued work on the environmental aspects of regional trade agreements (RTAs), including work on a checklist for trade negotiators. In this connection, the OECD held a workshop in October 2008 in Santiago, Chile. The extensive body of work highlights innovative environmental provisions in U.S. free trade agreements and associated cooperation mechanisms.

### **5. Agriculture and Trade**

The Committee for Agriculture (CoAg) is the primary forum for discussing agriculture-related issues in the OECD. The CoAg has two flagship publications that are produced annually – the *Agricultural Outlook* and a review of *Agricultural Policies in OECD Countries*. The *Agricultural Outlook*, which is prepared in conjunction with the Food and Agriculture Organization (FAO) of the United Nations, presents the OECD-FAO 10-year baseline for agricultural commodity production and trade. In addition to the OECD countries, the market projections in the report cover a large number of other countries and regions, including Brazil, Russia, Argentina, and South Africa. The 2008 report looked closely at the various factors contributing to earlier high commodity prices and the impact of record high fuel costs on producers.

The *Agricultural Policies in OECD Countries* report was released in June 2008. The new method of classifying policies designed to better reflect new, more decoupled but also more complex policy measures was further refined and improved. Findings from the review of agricultural policies in OECD member countries indicated that despite strong commodity prices and some reform efforts in some countries, overall support to agriculture remains high, but was down somewhat in 2007 as producer-favorable commodity prices eased the need for support. Coverage of the new U.S. farm bill and the EU

midterm review is planned for the 2009 edition. The OECD also completed its PSE (Producer Support Estimate) Manual, which describes the methodology used to calculate indicators of agricultural support. Other important activities this year included further work on biofuels, including the release of a major study on the efficiency and effectiveness of support policies in OECD countries. The role of biofuels in the run-up in international food prices was also a topic of analysis. In addition to the review in the Agricultural Policies report, detailed reviews for the agricultural economies of Japan and Korea were initiated in 2008.

A review of rural development in China was launched in 2007 and completed in 2008, in conjunction with the Public Governance and Territorial Development Directorate. Significant studies exploring the effect of non-tariff measures and the impact of animal diseases on trade were launched during the year.

In late 2008, CoAg organized a Global Forum on Agriculture which looked at the role of small landholders in agriculture. A secondary topic was a review of the agricultural policies in seven major non-member economies.

In 2008, the OECD also began planning for a 2010 Agricultural Ministerial.

## **6. Labor and Trade**

The 2008 *OECD Employment Outlook* continued the string of contributions on labor and trade found in this annual publication. In one chapter, it considered whether multinational enterprises (MNEs) promote better pay and working conditions in host countries, giving particular attention to OECD-based firms operating in developing and emerging economies, where concerns have been raised about the impact of MNEs on workers. In these economies, the OECD found that MNEs tend to pay higher wages at the firm level than their domestic counterparts, but strong evidence of better non-wage working conditions was not found. The OECD observed that many MNEs have adopted codes of conduct concerning labor practices in their foreign affiliate firms and discussed various policies aimed at strengthening the contribution of Foreign Direct Investment to improved wages and working conditions. The *Employment Outlook* is prepared by respected researchers in the Employment, Labor, and Social Affairs Directorate and is subject to peer review by a group of senior researchers from OECD Member governments. The United States actively participates in the peer-review group and currently holds the chair.

The Trade Union Advisory Committee (TUAC) to the OECD, made up of over 56 national trade union centers from OECD member countries, and the Business and Industry Advisory Committee (BIAC), which represents major business organizations in the 30 OECD member states, have played consultative roles in the operation of the OECD and its various committees since 1962. As part of the OECD Ministerial Council meeting in June 2008, joint consultations were held with TUAC and BIAC. TUAC's statement emphasized the need to: minimize the risk of rising unemployment; regulate financial markets; address growing inequality; develop a more effective approach to corporate accountability and social responsibility; develop a global strategy for dealing with the challenges of attenuating climate change; follow through on development assistance pledges by OECD countries; and support OECD enlargement. BIAC's statement emphasized that: sovereign wealth funds can contribute to the growth of OECD economies; the OECD has a leading role in promoting the freedom of cross-border investment and open markets for foreign investment, bearing in mind security considerations; climate change is a challenge to which all parts of society, including business, must respond; open trade and climate change policies can be mutually supportive; and cost-effective solutions to achieving climate stabilization goals are needed.

## 7. Export Credits

The OECD Arrangement for Officially Supported Export Credits (the Arrangement) places limitations on the terms and conditions of government-supported export credit financing, so that competition among exporters is based on the price, quality and serviceability of the goods and/or services being exported, rather than on the terms of government-supported financing. It also limits the ability of governments to tie their foreign aid to procurement of goods and services from their own countries (tied aid). The Participants to the Arrangement (Participants), a stand alone policy-level body of the OECD, are responsible for implementing the 30-year-old Arrangement and for negotiating further disciplines to reduce subsidies in official export credit support.

The Administration estimates that the Arrangement saves U.S. taxpayers about \$800 million annually. First, rules on minimum interest rates ensure that the Export-Import Bank of the United States, the U.S. export credit agency, no longer has to offer loans with below-cost interest rates and long repayment terms to compete with such practices by other governments. Second, agreement on minimum exposure fees for country risk has generally reduced costs. Finally, the “level playing field” created by the Arrangement's tied aid disciplines has created conditions for U.S. exporters to increase their exports by about \$1 billion per year. These exports alone would have cost taxpayers about \$300 million annually since 1993, if the United States had been compelled to create its own tied aid program to compete with other programs.

The OECD tied aid rules continue to reduce tied aid and redirect it from capital projects, where it has had trade-distorting effects, toward rural and social sector projects. Tied aid levels were nearly \$10 billion in 1991 before the rules were adopted, but were \$5.2 billion in 2007. For the first six months of 2008, the Participants provided \$4 billion in tied aid. This is significantly higher than tied aid levels for the same period in 2007, which was \$1.2 billion. However, as mentioned above, the tied aid rules help ensure that tied aid-financed projects represent bona fide development assistance and do not distort trade. For this reason, an increase in tied aid means an increase in the number of social sector and other such projects for which tied aid is not inappropriate.

After two years of negotiations, the Participants in July 2007 finalized a new agreement on official financing for aircraft, with Brazil participating as a full partner in the negotiations, even though it is not a member of the OECD Participants. Referred to as the Aircraft Sector Understanding (ASU), this agreement levels the playing field for the U.S. airline industry by eliminating or sharply reducing the official financing subsidies available to its foreign competitors. It also levels the playing field for U.S. manufacturers and exporters of airframes and related equipment. By requiring this financing to reflect a shared assessment of market risk, the ASU will allow aircraft sales campaigns to focus purchase decisions on price and quality, where U.S. producers excel, rather than on the terms and conditions of the financial packages, where subsidies have swayed purchase decisions. By eliminating or sharply reducing subsidies, the ASU encourages more use of market financing. The ASU covers all types of civil aircraft from jumbo jets to small planes and helicopters. In recent years, official financing for aircraft sales have supported deals valued at \$7 billion to \$10 billion annually, and the volume of financing has been growing rapidly.

In 2008, the Participants commenced a review to update the Nuclear Sector Understanding. The rules for nuclear power plant financing have not been updated since they were first agreed upon in 1984. They have seen little use over this period, either because they are considered too onerous or because of the past unpopularity of nuclear power. However, the recent and growing interest in nuclear power as a cheaper alternative to fossil fuels and one that does not produce greenhouse gases has been the impetus for the OECD to consider moderating the financing terms.

The OECD's current fee system for export credits sets the minimum fee levels to cover country risk for both sovereign and private borrowers. OECD members are free to charge whatever they want above this minimum to cover the buyer risk portion of a transaction for private sector borrowers. However, the nature of government financing has changed over the last decade, such that OECD members now sell their goods predominantly to private sector entities in foreign countries rather than to foreign governments. Because of this, the OECD launched a new initiative in 2008 that would establish a fee system to account for the commercial risk posed by private sector buyers. The Participants have asked the Working Group of Experts on Premium to report their progress by November 2009.

## **8. Investment**

The Investment Committee of the OECD is the primary multilateral forum for addressing international investment issues. The Committee's discussions and analytical work help build international consensus on key emerging policy challenges with respect to international investment and on ways to promote sound investment policy and high standards of investment protection. The Committee also seeks to promote voluntary adherence by multinational enterprises to sound business practices. The Committee is responsible for monitoring and implementing the OECD Codes of Liberalization and the OECD Declaration on International Investment and Multinational Enterprises. The United States plays a major role in shaping investment-related work within the OECD.

In view of recent developments among members and key non-members regarding maintaining national security or protecting other important national interests in relation to foreign investment, the OECD Investment Committee continued work in 2008 on surveying practices in this area and evaluating their implications for sustaining and promoting an open investment policy among OECD members and non-members. In March, October, and December 2008, the Committee hosted roundtables on "Freedom of Investment, National Security and 'Strategic' Sectors," in which OECD members and key non-members (e.g., Brazil, India, Russia, and China) continued to discuss approaches being taken to address national security interests and other essential interests and their potential implications for sustaining open investment policies. The roundtables focused on changes to legislative and regulatory practices at the juncture of investment policy and national security, threats to advances in investment liberalization, such as emerging protectionist pressures, and possible steps on international cooperation designed to address the issues. The OECD has finished Phase One of the work, in which members and key non-members took stock of the state of investment policy and national security practices, discussed issues arising from the stocktaking portion of the work and is now looking to 2009 when the Secretariat will release a final report on the Freedom of Investment project.

In the context of the project, the OECD has begun a discussion of the emerging issue of sovereign wealth funds (SWFs) in the global economy. The focus of the Committee's work is possible policy implications of SWF investment and sovereign investment generally and appropriate policies to address any concerns consistent with the imperative of maintaining open investment regimes. In April 2008, the OECD published an Investment Committee report on "Sovereign Wealth Funds and Recipient Country Policies." This report draws on the broadly accepted principles identified by the OECD – non-discrimination, transparency, predictability, proportionality, and accountability – that characterize open investment policies and are guideposts against which countries that receive SWF investments can measure their inward investment policies. The OECD formally endorsed the report at its June ministerial. In addition to this report, the OECD Investment Committee will institutionalize regularly scheduled "peer monitoring" of the investment policies of its members and certain key non-members (such as China, Russia, and India) to continue to press countries to maintain open investment regimes.

In 2008, the OECD continued its investment policy dialogue with non-members. The Middle East-North Africa Initiative (MENA), which aims to mobilize private investment for the benefit of economic development in Middle Eastern countries, continued to hold ministerial forums designed to consolidate advances from previous meetings and begin a new phase of cooperation on investment and governance policies. During this time, the MENA initiative, which will extend until 2010, began a second phase focused on a peer-learning process, the establishment of regional knowledge networks for policy development, public governance, capacity building, and the establishment of benchmarks for reform targets.

The OECD continued in 2008 to promote the Policy Framework for Investment (PFI). Developed within the past three years, the PFI is a comprehensive diagnostic tool - covering 10 broad policy areas ranging from investment to trade, competition and corporate governance - designed for use in attracting and retaining foreign and domestic investment. Work on the PFI in Vietnam continued throughout 2008, based on a schedule mutually developed by the OECD and the government of Vietnam, and other countries have expressed an interest in using the PFI, based on Vietnam's experience.

Finally, the Investment Committee continued to play an active role in 2008 in promoting corporate social responsibility through its oversight of the voluntary OECD Guidelines for Multinational Enterprises. The Committee also continues to serve as a forum for exchanges of experience on the Guidelines among national contact points (NCPs) as a source of clarification with respect to the Guidelines. It further serves as a source of guidance in addressing the role of NCPs in promoting the Guidelines and in assisting firms in the resolution of issues that arise between them and others regarding their activities in relation to the Guidelines.

## **9. Steel**

As noted in the Steel Trade Policy section of this report, the United States supported efforts by the OECD Secretariat to review policies related to trade in inputs to steelmaking, including government restrictions on exports of raw materials. A number of non-OECD steelmaking countries, including India, China, and Russia, have been active in the OECD steel activities. In addition, work of the OECD Steel Committee continued to examine issues related to subsidies and capacity in the steel sector, as well as issues related to the challenges posed to the global steel industry by climate change mitigation policies.

## **10. Regulatory Reform**

Since 1998, the OECD Trade Committee has contributed to OECD work on domestic regulatory governance with country reviews of regulatory reform efforts. The United States has supported this work on the grounds that targeted regulatory reforms (*e.g.*, those aimed at increasing transparency) can benefit domestic and foreign stakeholders alike by improving the quality of regulation and enhancing market openness. Main areas of work on regulatory policy have included cutting red tape, policy principles, regulatory performance, regulatory tools, country reports, and outreach to non-members.

The Trade Committee's work on regulatory reform has two aspects: country reviews and product standards. In conducting country reviews, the Committee evaluates regulatory reform efforts in light of six principles of market openness: transparency and openness of decision-making; non-discrimination; avoidance of unnecessary trade restrictions; use of internationally harmonized measures, where available and appropriate; recognition of the equivalence of other countries' procedures for conformity assessment, where appropriate; and application of competition principles. It examines the mutually reinforcing relationship between trade, investment, and competition policies and promotes the substantial gains for developing countries in higher trade flows and income per capita through market and regulatory reform.

In 2008, the Trade Committee carried out in-depth member country analyses, focused on identifying regulatory processes, tools, and policies, adopted in order to support market openness and improve trade and investment opportunities. The report, “Brazil – Strengthening Governance for Growth,” advocated the following: improved coordination between ministries, agencies, regulatory institutions and levels of government in the energy, telecommunications, and transport sectors; putting in place a system to assess the economic and social impact of new laws, with formal consultation processes; strengthening the accountability of regulatory agencies towards the public; and streamlining the appeals processes to reduce delays and increase certainty for investors.

## **11. The OECD Anti-Bribery Convention: Deterring Bribery of Foreign Public Officials**

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions entered into force in February 1999. The Convention was adopted by the then 29 members of the OECD and 5 non-members. The non-members were Argentina, Brazil, Chile, Bulgaria, and Slovakia (now an OECD member). The three parties to accede to the Anti-Bribery Convention most recently are Estonia (2004), South Africa (2007), and Israel (2008).

The Convention and the related 1997 Revised Recommendation on Combating Bribery in International Business Transactions require parties to criminalize the bribery of foreign public officials in executive, legislative, and judicial branches; impose dissuasive penalties on those who offer, promise, or pay bribes; end the practice of some OECD member countries of allowing tax deductibility of foreign bribes; and implement adequate accounting procedures to make it harder to hide illegal payments.

Prior to the entry into force of the Convention, the United States was alone in criminalizing the bribery of foreign public officials. As a result, U.S. firms were believed to have lost international contracts with an estimated value of billions of dollars every year due to non-U.S. firms’ bribery payments to corrupt officials. Such payments also distort investment and procurement decisions in developing countries, undermine the rule of law, and create an unpredictable environment for business. These consequences can be particularly damaging in developing countries.

By the end of 2008, all parties to the Convention but Israel had undergone a review of their respective national legislation implementing the Convention (*i.e.*, Phase One review) and 36 countries had completed the second phase (*i.e.*, Phase Two) of peer monitoring – the evaluation of enforcement. Information on these reviews is available at <http://www.export.gov/tcc> and <http://www.oecd.org>. The Working Group on Bribery, which meets four times a year to monitor implementation of the Convention, agreed in March 2008 to begin permanent peer reviews on a four-year cycle, to begin in 2009, in chronological order, according to the date on which each country’s Phase Two review was concluded.

The OECD Working Group on Bribery has begun a review of OECD anti-bribery instruments, covering issues related to the criminalization of the bribery of foreign public officials in international business transactions and detection/prevention of such bribery. The Working Group on Bribery is consulting stakeholders and partners for their views on what steps might need to be taken to strengthen the effectiveness of the anti-bribery instruments, based on major issues that have arisen in the course of monitoring implementation of those instruments since their adoption ten years ago.

## **D. Semiconductor Agreement**

On June 10, 1999, the United States, Japan, Korea, and the European Commission announced a multilateral Joint Statement on Semiconductors designed to ensure fair and open global trade in

semiconductors. The 1999 Joint Statement, which established the Government/Authorities Meeting on Semiconductors (GAMS), aims to promote the growth of the global semiconductor market through improved mutual understanding between industries and governments and cooperative efforts to respond to challenges facing the semiconductor industry. Chinese Taipei and China subsequently endorsed the objectives of the Joint Statement and became the Agreement's fifth and sixth parties. All major semiconductor producers are now parties to the Joint Statement.

In 2008, implementation of the landmark 2006 GAMS agreement to reduce to zero the duties on multichip integrated circuits (also known as "multi-chip packages" or "MCPs") continued to be a priority for the GAMS parties. Efforts remain active to secure the participation of China and other non-GAMS producers as well as users of MCPs in the agreement. In addition, GAMS parties and industry developed a proposed definition of "multi-component integrated circuits" (MCOs), which would be covered under an expanded scope of HS heading 8542. This proposed definition was examined during 2008 by the World Customs Organization's Harmonized System Review Sub-Committee (RSC) in the context of its current review cycle, but the RSC felt that the proposal was not ripe for decision. However, the RSC agreed to pursue the question in the context of its next review cycle, which begins in May 2009. Resolving this definition at issue is the first step toward responding to industry's request that the MCP agreement be expanded to include MCOs. With respect to non-preferential rules of origin, GAMS parties continued to encourage industry to develop consensus rules of origin for all semiconductor products. In the area of intellectual property rights, GAMS parties agreed to work to organize a meeting of their customs authorities to discuss opportunities for international cooperation to combat semiconductor counterfeiting.

The Joint Statement provides for industry to make reports and recommendations to governments on policies that may affect the future outlook and competitive conditions within the global semiconductor industry through a CEO-level World Semiconductor Council (WSC). In May 2008, the WSC held its ninth annual meeting. Specific topics discussed by the WSC included cooperation on global issues such as standardization, environmental concerns, worker health and safety, intellectual property rights, trade and investment liberalization, and worldwide market development. National/regional industry associations may become members of the WSC only if their governments have eliminated semiconductor tariffs or committed to eliminate these tariffs expeditiously.

The Joint Statement also calls for the parties to hold a GAMS meeting at least once a year to receive and discuss the WSC recommendations. The ninth GAMS meeting was held in September 2008, hosted by the European Communities. At the meeting, the GAMS parties discussed WSC recommendations relating to expanded participation in the MCP agreement and a possible new agreement to provide duty-free treatment for MCOs; improving market access through the WTO Doha Development Round negotiations for semiconductors and other information technology goods; expanding participation in the Information Technology Agreement (ITA); initiatives to protect intellectual property rights and intensify enforcement activities against counterfeiting; enforcing WTO non-discrimination rules to prevent discrimination against foreign products; promoting fair and effective antidumping rules; harmonizing rules of origin for semiconductors based on a manufacturing process; and promoting sound environmental and safety practices.

## **E. Steel Trade Policy**

In 2008, the Administration worked to address trade policy concerns related to the global steel sector through a number of fora, including the steel dialogue with China under the U.S.-China Joint Commission on Commerce and Trade (JCCT), activities in the OECD Steel Committee, and cooperation with North American governments and steel industries through the North American Steel Trade Committee

(NASTC). The United States supported efforts by the OECD Secretariat to reach out to developing steelmaking economies, including participation in a major conference hosted by the OECD in Kuala Lumpur, Malaysia, in December 2008 to discuss the volatile markets in steelmaking raw materials and government policies that may affect access to those raw materials. In addition, the United States continued work on subsidies and capacity issues, and enhanced its participation in the OECD Steel Committee, NASTC and industry meetings. Among the topics addressed were possible global climate change policies and the potential impact on trade and competitiveness in carbon-intensive manufacturing sectors, including the steel sector.

The United States continued its cooperative JCCT steel dialogue with China regarding subsidies, capacity, and trade issues. The JCCT steel dialogue is led by USTR and the U.S. Department of Commerce (Commerce) on the U.S. side and by the Ministry of Commerce (MOFCOM) on the Chinese side. The fourth steel dialogue meeting took place in Beijing in October 2008 and included the participation of industry representatives from both countries in addition to representatives of USTR, Commerce, the U.S. Department of Treasury, MOFCOM, China's Ministry of Industry and Information Technology, and China's Ministry of Finance, which is responsible for the administration of export taxes and value-added tax rebates. In the steel dialogue and in other fora, U.S. officials have continued to voice concerns with various policies of the Chinese government, including restrictions on the export of steelmaking raw materials.

After continued high levels of exports in 2007 and 2008, some Chinese steel products became the subject of new antidumping and countervailing duty investigations in a number of economies, including the United States, European Union, Canada, and Mexico. Beginning late in 2006 and accelerating in 2007, China took significant new administrative measures affecting trade in steel and steelmaking raw materials. These measures included the closure of a limited number of steel mills deemed to be obsolete or too polluting, stricter enforcement of environmental regulations applying to steel mills, and a combination of reductions in value-added tax rebates, export taxes on some products, and licensing of many exports. China also maintained or made more restrictive its export quotas on steelmaking raw materials. In addition to raising WTO concerns about China's export restrictions, the United States argued that China had acted to impose different levels of taxes on different exports of steel products and steelmaking inputs in a manner that appeared to encourage the export of certain value-added steel products. In response to the financial crisis in the fall of 2008, China rapidly reduced or removed export duties on many, but not all, steel products. The United States warned China that accelerating efforts to offset falling steel demand in China was likely to increase trade tensions.

The governments and steel industries of North America continued their wide-ranging work to seek common policy approaches for enhancing the competitiveness of North American steel producers. The governments of the United States, Canada, and Mexico worked together within the NASTC to develop coordinated positions on issues in multilateral settings of importance to steel, including the OECD Steel Committee and the WTO Rules Negotiations. Within the mandate of the NASTC, the three countries' governments and steel industries have been tracking developments in certain steel producing countries to identify and address, as appropriate, distortions in the global steel market. The Administration also continued working with the governments of Canada and Mexico to enhance the steel import monitoring systems maintained by all three NAFTA partners as well as the joint NAFTA Steel Monitor through follow-up efforts arising from the 2008 NAFTA Licensing Best Practices Summit. In addition, the NASTC industries issued a joint paper entitled "The Border Story," identifying potential impediments to intra-NAFTA trade in the three countries, particularly with respect to border infrastructure, regulations, customs practices, and licensing procedures.

The Administration also continues to raise specific concerns with other countries bilaterally, at the OECD, and in WTO meetings about policies that contribute to excess steel capacity and production,

including subsidies, border measures on steel and steelmaking raw materials, and other trade-distorting practices.

## **F. Anti-Counterfeiting Trade Agreement**

The United States is working to strengthen cooperation with its trading partners in the fight against counterfeiting and piracy. In October 2007, USTR announced an initiative, in partnership with several key trading partners, to fight counterfeiting and piracy by seeking to negotiate an Anti-Counterfeiting Trade Agreement (ACTA). The ACTA effort brings together a number of countries that are prepared to embrace strong intellectual property rights (IPR) enforcement in a leadership group to seek a new agreement calling for cooperation, strong enforcement practices, and a strong legal framework for IPR enforcement. Trading partners engaged in four rounds of negotiations in 2008. Participants so far have included Australia, Canada, the European Union (with its 27 Member States), Japan, Korea, Mexico, Morocco, New Zealand, Singapore, and Switzerland.

## **G. Import Safety**

To address growing concerns about the safety of imported products, President Bush established by Executive Order a working group on Import Safety (the Working Group). The Working Group is chaired by the Secretary for Health and Human Services and comprises senior Administration officials from a broad array of Federal agencies, including USTR. In September 2007, the Working Group – after conducting a comprehensive review of current practices – issued a Strategic Framework. The Strategic Framework outlines key principles for continual improvement in import safety. The Strategic Framework advocates a strategy that shifts the primary emphasis for import safety from intervention to prevention with verification. Three organizing principles form the keystones of the Strategic Framework: prevention; intervention; and response. Within each of these organizing principles are six cross-cutting building blocks: (1) Advancing a Common Vision; (2) Increasing Accountability, Enforcement, and Deterrence; (3) Focusing on Risks Over the Life Cycle of an Imported Product; (4) Building Interoperable Systems; (5) Fostering a Culture of Collaboration; and (6) Promoting Technological Innovation and New Science.

With the benefit of additional agency debate and public comment, in November 2007, the Working Group issued an Action Plan detailing 14 recommendations and 50 action steps – both long- and short-term – to implement the Strategic Framework. The Action Plan follows the Strategic Framework’s organizing principles of prevention, intervention, and response and draws on its six cross-cutting building blocks. The Action Plan emphasizes a cost-effective, risk-based approach to continually improving import safety, focusing on identifying and addressing problems where they are most likely to occur. It is an approach that moves from a “snapshot” assessment at the border to an ongoing “video” that involves building in safety at every step of the process. Implementation of the Action Plan contemplates intensified efforts with the private sector and U.S. trading partners to ensure that products reaching consumers in the United States are safe. The Action Plan’s 14 recommendations and 50 action steps, as well as the Strategic Framework, can be accessed at <http://www.importsafety.gov>.

In July 2008, the Working Group issued a progress report describing actions the Administration had taken to implement the Import Safety Action Plan since its issuance in November 2007. Among other things, the report identifies substantial progress in the convening of international forums, bilateral and multilateral discussions, international agreements, private sector advancements, federal government collaboration and information sharing, and enforcement actions. For example, the report notes high-level discussions on import safety as part of the Security and Prosperity Partnership of North America, the United States – China Strategic Economic Dialogue (SED), the United States – European Union High

Level Regulatory Cooperation Forum and the Transatlantic Economic Dialogue (TEC) as well as a bilateral talks with a variety of countries such as India, Vietnam, and recently with Brazil through the United States – Brazil Economic Partnership Dialogue (EPD) in October 2008, on ways to improve import safety. USTR’s participation in the Asia-Pacific Economic Cooperation (APEC) Subcommittee on Standards and Conformance (see below) is also highlighted.

In addition to active participation in the Working Group’s activities, USTR has continued to address the safety of imported products through its work on sanitary and phytosanitary (SPS) issues. An integral part of U.S. free trade agreements (FTAs) – including agreements with Korea and Panama signed in 2007 – are chapters concerning SPS measures. Each SPS chapter has among its stated objectives the protection of human and animal health. These chapters, among other things, establish standing committees of the parties to enhance cooperation and consultation on SPS matters and improve the parties’ understanding of each other’s SPS requirements, as well as to identify appropriate areas for capacity building and technical assistance in countries such as Panama and Peru.

Work with U.S. trading partners continues outside of FTAs as well. Prior to the December 2007 meeting of the SED with China, USTR also contributed to the U.S. Department of Health and Human Service’s efforts to conclude two memoranda of agreement (MOA) with China aimed at improving the safety of Chinese products exported to the United States. The MOAs adopt an innovative approach to improving the safety of products imported from China, including the use of foreign certification. Furthermore, the United States led efforts in the APEC Subcommittee on Standards and Conformance (SCSC) to launch new food and product safety initiatives, including the APEC Food Safety Cooperation Forum Partnership Training Institute Network (PTIN). The PTIN will enlist leadership from both the private sector and academia to create a network of food safety institutes and trainers in the APEC region. The APEC SCSC hosted a U.S.-led initiative to promote trade in safe toys in a regulator-to-regulator dialogue in July 2008 in Singapore and will hold a conference to bring all stakeholders together with regulators on the margins of the Hong Kong International Toy Fair in January 2010. These innovative capacity building efforts of the SCSC on food and product safety were recognized and endorsed by the APEC Leaders in November 2008.

The WTO SPS and Technical Barriers to Trade (TBT) Committees provide an important forum for the United States to exchange information with its trading partners on countries’ respective health and safety requirements and address concerns about their implementation. In 2008 alone, the United States Government obligated \$6.6 million in SPS trade capacity building assistance, for a total of \$70 million since 2000, and \$1.8 million in TBT trade capacity building assistance, for a total of over \$30 million in such assistance since 2000. These capacity building efforts provide an opportunity for the United States to work with its trading partners to ensure that SPS and product safety requirements are based on the best available scientific and technical information and in accordance with their health and safety objectives.

As noted in the Action Plan, strong intellectual property rights (IPR) enforcement is essential to the protection of public health and safety. In this area, USTR, with the help of other federal agencies, works with U.S. trading partners to address product counterfeiting by promoting stronger IPR laws and law enforcement around the world, for example through efforts to negotiate an ACTA. See Chapter IV, Section F for more information on this topic.



# V. TRADE ENFORCEMENT ACTIVITIES

## A. Enforcing U.S. Trade Agreements

### 1. Overview

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

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

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

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

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

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

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

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

## **2. WTO Dispute Settlement**

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

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

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

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

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

### **3. Other Monitoring and Enforcement Activities**

#### **a. Subsidies Enforcement**

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

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

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

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

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

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

#### **b. Monitoring Foreign Antidumping and Countervailing Duty Actions**

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

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

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

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

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

## **B. U.S. Trade Laws**

### **1. Section 301**

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

#### **a. Operation of the Statute**

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

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

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

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

## **b. Developments during 2008**

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

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

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

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

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

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

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

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

## **2. Special 301**

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

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

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

### **a. 2008 Special 301 Review Announcements**

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

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

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

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

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

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

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

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

## **b. Initiatives**

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

- **Continuing to Advance the STOP! Initiative:** USTR reported that it was actively engaged in implementing the Strategy Targeting Organized Piracy (STOP!) initiative. As part of this effort, USTR, in coordination with other agencies, continued to advocate the adoption of best practices guidelines for IPR enforcement.
- **Global Scope of Counterfeiting and Piracy:** USTR reported that global IPR theft and trade in fakes have grown to unprecedented levels, threatening innovative and creative economies around the world. Counterfeiting of pharmaceuticals and consumer safety were highlighted as areas of particular concern in the 2008 Special 301 report.
- **Notorious Markets:** Noting that global piracy and counterfeiting thrive in part due to large marketplaces that deal in infringing goods, USTR listed "notorious markets" in the Special 301 report. The listed markets are examples of both virtual (online) markets and traditional physical markets that have been the subject of IPR enforcement action, those that may merit further investigation for possible IPR infringements, or both.

- **Destruction of Seized Counterfeit Goods and Manufacturing Equipment:** The Special 301 report noted that the destruction of seized counterfeit goods, materials, and related manufacturing equipment is a reliable way to ensure that these goods do not wind up in the hands of consumers.
- **In Transit Goods:** In transit goods pose a high risk for counterfeiting and piracy. USTR reported that transshipment or in transit goods are significant problems in many countries, as well as in certain free trade zones.
- **Internet Piracy and the WIPO Internet Treaties:** USTR reported that, in order to realize the enormous potential of the Internet, a growing number of countries are implementing the WIPO Internet Treaties and creating a legal environment conducive to investment and growth in Internet-related businesses and technologies. The Special 301 report noted that as of April 2008, there were 64 members of the WIPO Copyright Treaty and 62 members of the WIPO Performances and Phonograms Treaty; these numbers will rise significantly when the EU Member States join.
- **Optical Media Piracy:** USTR reported that some trading partners had taken important steps toward implementing much-needed controls on optical media production in order to address and prevent future piracy. However, other countries urgently need to implement controls or to improve inadequate existing measures.
- **Ensuring Government Use of Authorized Software:** USTR reported continued progress in its ongoing work with other governments, particularly those in need of modernizing their software management systems or about which concerns regarding government use of illegal software have been expressed.
- **Ensuring Compliance with the WTO TRIPS Agreement:** USTR reported on efforts to ensure compliance by U.S. trading partners with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).
- **Intellectual Property and Health Policy:** Noting the Administration's dedication to addressing serious health problems, such as HIV/AIDS, afflicting least-developed countries in Africa and elsewhere, USTR reported on developments following the 2001 Doha Declaration on the TRIPS Agreement and Public Health.
- **Supporting Pharmaceutical Innovation:** USTR reported on its efforts to eliminate market access barriers faced by U.S. pharmaceutical companies in many countries to provide for affordable health care today and support the innovation that assures improved health care tomorrow.

### **3. Section 1377 Review of Telecommunications Agreements**

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

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

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

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

### **4. Antidumping Actions**

Under the antidumping law, duties are imposed on imported merchandise when the Department of Commerce (Commerce) determines that the merchandise is being dumped (sold at "less than fair value") and the U.S. International Trade Commission (USITC) determines that there is material injury or threat of material injury to the domestic industry, or material retardation of the establishment of an industry, "by reason of" those imports. The antidumping law's provisions are incorporated in Title VII of the Tariff Act of 1930 and have been substantially amended by the 1979, 1984, and 1988 trade acts as well as by the 1994 Uruguay Round Agreements Act.

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

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

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

If Commerce's final determination regarding dumping is negative, the investigation is terminated and no duties are imposed. If affirmative, the USITC makes a final injury determination. If the USITC determines that there is material injury or threat of material injury, or material retardation of an industry's establishment, by reason of the dumped imports, an antidumping order is issued. If the USITC's final injury determination is negative, the investigation is terminated and the cash deposits are refunded or the bonds posted are released.

Upon request of an interested party, Commerce conducts annual reviews of dumping margins pursuant to Section 751 of the Tariff Act of 1930. Section 751 also provides for Commerce and USITC review in cases of changed circumstances and periodic review in conformity with the five-year "sunset" provisions of the U.S. antidumping law and the WTO Antidumping Agreement.

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

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

## **5. Countervailing Duty Actions**

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

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

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

## **6. Other Import Practices**

### **a. Section 337**

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

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

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

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

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

## **b. Section 201**

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

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

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

## **c. Section 421**

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

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

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

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

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

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

#### **d. China Textile Safeguard**

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

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

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

## **7. Trade Adjustment Assistance**

### **a. Overview and Assistance for Workers**

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

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

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

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

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

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

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

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

#### **b. Assistance for Farmers**

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

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

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

#### **c. Assistance for Firms and Industries**

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

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

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

## **8. United States Preference Programs**

### **a. Overview**

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

### **b. Generalized System of Preferences**

#### **i. History**

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

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

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

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

## **ii. Purposes**

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

## **iii. Beneficiaries**

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

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

## **iv. Eligible Products**

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

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

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<sup>28</sup> H.R. Rep. No. 98-1090, at 2 (1984).

## v. Program Results

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

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

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

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

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

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

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

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

<sup>29</sup> Based on tariff line (eight-digit) classification in the HTSUS.

<sup>30</sup> Based on World Bank determinations of gross national incomes per capita (Atlas method – 2007)

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

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

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

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

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

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

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

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

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

#### **vi. Annual Reviews**

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

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

#### **vii. Conclusion of the 2007 GSP Annual Review**

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

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

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

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

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

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

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

#### **ix. 2008 GSP Annual Review**

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

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

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

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

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

### **c. African Growth and Opportunity Act**

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

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

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

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

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

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

#### **d. Andean Trade Preference Act**

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

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

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

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

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

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

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

#### **e. Caribbean Basin Initiative**

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

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

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

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

#### **f. HOPE II Act**

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

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

# VI. TRADE POLICY DEVELOPMENT

## A. Trade Capacity Building (TCB)

Trade capacity building (TCB) is a critical part of the United States' strategy to enable developing countries to negotiate and implement market-opening and reform-oriented trade agreements and to improve their capacity to benefit from increased trade. Providing developing countries with the tools to maximize the benefits of trade opportunities and improve the linkage between trade and sustainable development is critical to securing broad-based reforms. Absolute poverty rates for globalizing countries have fallen sharply over the last 20 years and the World Bank reports that per capita real income grew nearly three times faster for developing countries that lowered trade barriers relative to other developing countries. A recent study published by the Institute for International Economics found that trade barrier elimination in conjunction with related development policies would accelerate the decline in the number of people living in poverty over the next 15 years by an additional 500 million – greater than the entire population of the United States.

U.S. aid for trade is about giving countries, particularly the least trade-active, the training and technical assistance needed to: make decisions about the benefits of trade arrangements and reforms; implement their obligations to bring certainty to their trade regimes; and enhance such countries' ability to compete in a global economy. Accordingly, U.S. assistance addresses a broad range of issues, so rural areas and small businesses, including female entrepreneurs, benefit from ambitious reforms in trade rules that are being negotiated in the World Trade Organization (WTO) and in other trade agreements. The United States increased its annual TCB spending to almost \$2.3 billion in 2008, an increase of about 60 percent from the 2007 fiscal year. Total U.S. funding for TCB activities from 2000 to 2008 surpassed \$9.7 billion. In 2008, TCB funding was distributed as follows:

- Asia: \$266 million, for a total of \$1.14 billion since 2001
- Central and Eastern Europe: \$32 million, for a total of \$438 million since 2001
- Former Soviet Republics: \$49 million, for a total of \$848 million since 2001
- Latin America and Caribbean: \$174 million, for a total of \$2.1 billion since 2001
- Middle East and North Africa: \$602 million, for a total of \$1.6 billion since 2001
- Sub-Saharan Africa: \$1 billion, for a total of \$2.6 billion since 2001

The United States has and will continue to support the WTO's catalytic role in aid for trade as well as the Enhanced Integrated Framework that aims to help the least trade-active countries participate in the global trading system.

*Coherence:* An important element of this work involves coordination with regard to technical assistance activities among international institutions in order to identify and take advantage of donor complementarities in programming and to avoid duplication. Such institutions include the WTO, the World Bank, the International Monetary Fund (IMF), the regional development banks, and other donors. The United States works in partnership with these institutions and with other donors to ensure that international financial institutions offer trade-related assistance as an integral component of development programs tailored to the circumstances within each developing country, including by increasing awareness of existing mechanisms and programs.

The United States' efforts build on its long-standing commitment to help all countries benefit from the global trading system, including through mechanisms such as the Enhanced Integrated Framework (EIF); contributions to the WTO's Global Trust Fund for Trade-Related Technical Assistance; assistance to

countries acceding to the WTO; targeted assistance for developing countries participating in U.S. preference programs, such as the \$200 million African Global Competitiveness Initiative helping sub-Saharan African countries benefit from AGOA; coordination of assistance through Trade and Investment Framework Agreements (TIFAs); TCB working groups that are integral elements of free trade negotiations; and Committees on TCB created to aid in the implementation of a number of FTAs, including the FTAs with the Dominican Republic and Central America, and Peru. Similar committees will also aid in the implementation of FTAs with Colombia and Panama as those enter into force. Other TCB assistance is helping developing countries to work with the private sector and non-governmental organizations to transition to a more open economy, to prepare for FTA and WTO negotiations and to implement their trade obligations.

## **1. Millennium Challenge Corporation**

The Millennium Challenge Corporation (MCC), established by the United States in 2004, provides a significant source of bilateral assistance for trade capacity building efforts for eligible countries. The purpose of the MCC is to ensure that its programs – development compacts – are implemented in a manner in which “greater contributions from developed countries [are] linked to greater responsibility from developing nations.” By giving eligible countries the opportunity to identify their own priorities and develop their own proposals for reducing poverty and spurring economic growth, the MCC enables countries to address long-term development obstacles, including in the area of trade. The U.S. Trade Representative is a member of the MCC’s Board of Directors.

Since 2004, MCC programs have been a significant component of U.S. contributions to TCB, channeling funds to low and lower middle income countries that demonstrate a strong commitment to investing in their people, ensuring political justice, encouraging economic freedom, and promoting sustainable natural resource management policies. The primary vehicle for delivering this assistance is through a “compact” – a multi-year agreement between the MCC and an eligible country to fund specific programs targeted at reducing poverty and stimulating economic growth. To provide further incentive for reform and help additional countries qualify for compacts, the MCC provides “threshold” assistance to countries that fall just short of compact eligibility to help them address specific areas of policy weakness. The MCC has 18 compacts and 20 threshold agreements with 34 countries totaling more than \$6.8 billion of which more than \$3.7 billion is trade-related. In March 2008, the MCC Board decided to invite the Philippines to negotiate a compact. In December 2008, the MCC Board announced that, in FY2009, Colombia, Indonesia, and Zambia will be eligible to negotiate a compact for development assistance with the MCC and Liberia and Timor-Leste will be invited to propose Threshold programs.

## **2. The Integrated Framework**

The Integrated Framework for Trade-Related Assistance to Least-developed Countries (IF) is a multi-organization (including the WTO, World Bank, IMF, UNCTAD, UNDP, and the International Trade Centre), multi-donor program that operates as a coordination mechanism for trade-related assistance to least developed countries (LDCs) with the overall objective of integrating trade into national development plans. The mechanism incorporates a country-specific diagnostic assessment and action plan formulated by one of the international organizations in cooperation with the subject LDC. The action plan, consisting of needs identified by the diagnostic assessment, is offered to multilateral and bilateral donors. Project design and implementation can be accomplished through the resources of the IF Trust Fund or multilateral or bilateral donor programs in the field (as the United States does through its development assistance programs). The IF is exclusively for the LDCs, with the goal of getting the least trade-active more involved. Of the 50 LDCs, 48 have joined the IF.

Following discussions in the World Bank's Development Committee and the WTO, a process to enhance the IF was launched in early 2006. The United States was an active member of the Task Force created to guide this process and is an active participant in the implementation phase of this effort. The process focused on three elements to accelerate and improve the IF process: (1) increasing resources for follow-up; (2) building the in-country capacity of countries to benefit from the IF; and (3) improving IF governance, including monitoring and dissemination of best practices. The Task Force concluded its work in May 2007 with a recommendation that an Enhanced Integrated Framework (EIF) program be established. The new EIF was formally launched in May 2008, an executive director was named to lead the EIF Secretariat, and the United Nations Office for Project Services began work as the new manager of the EIF Trust Fund in October 2008. The EIF is expected to be fully operational by early 2009.

The United States Agency for International Development's (USAID) bilateral assistance to LDC participants supports initiatives both to integrate trade into national economic and development strategies and to address high priority "behind the border" capacity building needs designed to accelerate integration into the global trading system. Total U.S. Government TCB support to IF countries was \$993 million in 2008, which is predominantly bilateral assistance. The MCC is substantially engaged with 19 IF participants through compacts or threshold programs totaling about \$3.3 billion of which about \$1.7 billion is trade-related. Many IF countries also benefit from part of the \$47 million in regional assistance provided by USAID.

### **3. World Trade Organization-Related U.S. TCB**

International trade can play a major role in the promotion of economic growth and the alleviation of poverty. The WTO's Doha Development Agenda (DDA) recognizes that TCB can facilitate the more effective integration of developing countries into the international trading system and enable them to benefit further from global trade. The United States provides leadership in promoting trade and economic growth in developing countries through comprehensive TCB programs. The United States also directly supports the WTO's trade-related technical assistance.

*Global Trust Fund:* The United States supports the trade-related assistance activities of the WTO Secretariat through contributions to the Doha Development Agenda Global Trust Fund. With an additional contribution of nearly \$1 million in 2008, total U.S. contributions to the WTO amount to almost \$8 million since the launch of DDA negotiations.

*Aid for Trade:* The WTO's Hong Kong Declaration created a new WTO framework in which to discuss and prioritize aid for trade. In 2006, this framework created an Aid for Trade Task Force to operationalize aid for trade efforts and offer recommendations as to how to improve the efficacy and efficiency of these efforts among WTO Members and other international organizations. The United States continues to be an active partner in the aid for trade discussion.

The year 2008 saw an active agenda to implement many of the Task Force's recommendations. Significant work occurred during 2008 on the development of the monitoring framework envisioned in the Task Force report. The monitoring framework includes global monitoring of aid flows using the data resources of the OECD's Development Assistance Committee, country-level monitoring of progress in mainstreaming/integrating trade in national development plans, and case studies of best practices.

*WTO and Trade Facilitation:* The United States committed over \$300 million in FY2008, for a total of over \$2 billion since 2000, to trade facilitation activities. In doing so, the United States has supported the WTO Doha discussions by providing assistance to developing countries that seek help in responding to the regulatory proposals made by members in the Negotiating Group on Trade Facilitation.

*WTO Accession:* The United States provides technical support to countries that are in the process of acceding to the WTO. For example, in 2007, USAID and the U.S. Department of Agriculture (USDA) provided WTO accession and implementation services to Ukraine and Cape Verde, which became the 152<sup>nd</sup> and 153<sup>rd</sup> Members of the WTO in 2008. In 2008, the United States completed its accession assistance to Montenegro, which finished its accession negotiations at the end of the year. WTO accession support was provided to Iraq, Lebanon, Yemen, Afghanistan, Ethiopia, Bosnia and Herzegovina, Serbia, Kazakhstan, Tajikistan, Azerbaijan, Liberia, Comoros, Seychelles, and Sao Tome in 2008.

#### **4. TCB Initiatives for Africa**

The United States has aggressively funded programs and developed several new initiatives at the multilateral and bilateral levels to address the specific needs of sub-Saharan African countries with respect to reducing poverty and spurring economic growth. U.S. assistance more than doubled in FY2008 relative to the previous year, increasing to over \$1 billion in FY2008, for a total of nearly \$2.6 billion since 2001.

*African Global Competitiveness Initiative:* In July 2005, the United States announced the African Global Competitiveness Initiative (AGCI) to help build sub-Saharan Africa's capacity for trade. The five-year, \$200 million AGCI was designed to help expand African trade and investment with the United States, with other international trading partners, and regionally within Africa through improving the competitiveness of sub-Saharan African enterprises. AGCI's objectives are: (1) to improve the business climate for private sector-led trade and investment; (2) to strengthen the knowledge and skills of sub-Saharan African private sector enterprises to take advantage of market opportunities; (3) to increase access to financial services for trade and investment; and (4) to facilitate investments in infrastructure.

One major focus of AGCI programs is to help African countries make the most of the trade opportunities available under the African Growth and Opportunity Act (AGOA) preference program. (See the Africa section in Chapter III for more information on AGOA). AGCI supports AGOA through programs carried out by four USAID-funded Regional Hubs for Global Competitiveness – in Botswana, Kenya, Ghana, and Senegal – as well as via programs carried out by USAID bilateral missions. The Hubs have helped African countries to expand and diversify their exports to the United States. For example, the two trade hubs in West Africa have created and expanded export markets for Senegalese seafood and markets have expanded for shea butter from Ghana as well. In East Africa, the trade hub is helping to find and expand export markets for cut flowers from Kenya, Ethiopia, Burundi and Uganda. In Southern Africa, the trade hub is harmonizing and speeding up customs procedures within the region. Under an agreement with USAID, USDA continues to address sanitary and phytosanitary issues under AGCI, specifically in the areas of food safety and plant and animal health and the U.S. Department of Commerce's Commercial Law Development Program is working to improve protection of intellectual property rights.

*Assistance to West African Cotton Producers:* During 2008, the United States continued to fully mobilize its development agencies to address the obstacles faced by West African countries – particularly Benin, Burkina Faso, Chad, Mali and Senegal – in the cotton sector. The MCC, USAID, USDA, and the United States Trade and Development Agency all continued work on a coherent long-term development program based on the priorities of the West Africans. The United States will continue to coordinate with the WTO, World Bank, the African Development Bank, and others as part of the multilateral effort to address the development aspects of cotton. This includes active participation in the WTO Secretariat's periodic meetings with donors and recipient countries to discuss the development and reform aspects of cotton.

The centerpiece of U.S. assistance to the cotton sector in West Africa is USAID's West Africa Cotton Improvement Program (WACIP). The WACIP was launched in November 2005 with initial funding of \$7 million. In June 2006, total funding was increased \$27 million over the three year life of the program. The program is aimed at helping to improve the production and marketing of cotton in five countries: Benin, Burkina Faso, Chad, Mali, and Senegal. The WACIP is designed to help achieve the following objectives: (1) reduce soil degradation and expand the use of good agricultural practices; (2) strengthen private agricultural organizations; (3) establish a West African regional training program for ginners; (4) improve the quality of West African cotton through better classification of seed cotton and lint; (5) improve linkages between U.S. and West African research organizations involved with cotton; (6) improve the enabling environment for agricultural biotechnology; and (7) assist with policy/institutional reform.

In early 2007, implementation of the main component of WACIP began in earnest in the field. Through extensive consultation with stakeholders – government, farmers, and other involved parties – in the country, three main intervention areas were identified to fulfill the objectives outlined above:

- Creating momentum for longer term policy and institutional changes that will encourage investment and value-addition;
- Improving value addition by exploiting niche processing and marketing opportunities for cotton-based products; and
- Increasing productivity of cotton, the quality of cotton lint, and farmers' income from cotton and other crops in the cotton rotation.

A key element of the WACIP program is the identification of specific policy priorities through National Advisory Committees. Composed of stakeholders in each country, these committees undertook work to identify the specific projects that would yield the assistance and results sought by participants.

During 2008, a number of such projects were identified in the stakeholder consultations. Projects include those that focus on: improving producer incomes through training on integrated pest and soil fertility management; helping farmers control spiraling input costs and debt load through training and pilot programs testing alternative systems of input supply; developing organic cotton; and enhancing the capacity of the national agricultural research institutes to generate a steady stream of new cotton technologies through support for research,

The U.S. Government also provides complementary support to the cotton sector through other programs. During 2007, the MCC began implementation of compacts with Benin and Mali representing over \$750 million in development assistance to be distributed in coming years, much of which is allocated to agriculture and infrastructure investment. In July 2008, the MCC signed a \$481 million compact with Burkina Faso. The program will promote economic growth in the rural agriculture sector.

## **5. Free Trade Agreement (FTA) Negotiations**

Although the WTO programs and the IF are high priorities, they are only part of the U.S. TCB effort. In order to help U.S. FTA partners participate in negotiations, implement rules, and benefit over the long-term, USTR has created TCB working groups in free trade negotiations with developing countries and Committees on TCB to prioritize and coordinate TCB activities during the transition and implementation periods. USAID and USDA, their field missions, and a number of other U.S. Government assistance providers actively participate in these working groups and committees so that the TCB needs identified can be quickly and efficiently incorporated into ongoing regional and country assistance programs. The Committees on TCB also invite non-government organizations, representatives from the private sector,

and international institutions to join in building the trade capacity of the countries in each region. Trade capacity building is a fundamental feature of bilateral cooperation in support of the completed Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), and the signed free trade agreements with Colombia, Peru and Panama. USTR also works closely with the U.S. Department of State and other agencies to track the delivery of TCB assistance to Jordan, Morocco, Bahrain, and Oman.

#### **a. Dominican Republic-Central America Free Trade Agreement**

During the CAFTA-DR negotiations, the United States and other international institutions worked with the Central American countries and the Dominican Republic through a TCB working group to address trade capacity issues, such as rural diversification programs for agricultural products (*e.g.*, coffee), strengthening of food and agriculture regulatory systems, market linkages for goods and services, food industry development, strengthening of labor and customs systems, and combating exploitive child labor.

In order to build on the progress made during the negotiations, the CAFTA-DR established a Committee on TCB. The CAFTA-DR was signed in 2004 and went into force for all countries except Costa Rica during 2006 and 2007. The Committee on TCB has convened three times: in Guatemala City, Guatemala in February 2007; in Washington, D.C. in November 2007; and in Santa Domingo of the Dominican Republic in November 2008. These meetings were attended by representatives of each of the member countries and by the Inter-American Development Bank (IDB), the World Bank, the Organization of American States (OAS), and the Economic Commission for Latin America and the Caribbean (ECLAC), providing the opportunity for the Committee to review updates of recipient members' trade capacity building strategies and priorities as well as U.S. donor agencies' and the international institutions' trade capacity building activities. They additionally provided the opportunity for in-depth discussions of particular assistance areas, such as rural development and sanitary and phytosanitary assistance. The United States provided over \$80 million in TCB assistance through bilateral and regional assistance programs to the CAFTA-DR countries in FY2008 from a broad spectrum of U.S. donor agencies, such as the MCC, USDA, USAID, the U.S. Department of State, and the U.S. Trade and Development Agency.

#### **b. Peru Trade Promotion Agreement**

In April 2006, the United States and Peru signed the United States-Peru Trade Promotion Agreement (PTPA). The PTPA includes a provision that creates a Committee on TCB to build on work done during the negotiations by the TCB working group. The working group included the IDB, World Bank, OAS, and ECLAC. The working group addressed a broad range of economic assistance issues, including programs to aid small and medium enterprises, rural farmers, food safety inspectors, and customs officials. These programs are intended to help Peru implement the obligations of the PTPA and to more broadly benefit from the opportunities created by the free trade agreement. The Agreement calls for the Committee to further refine and implement Peru's national TCB strategy as well as foster assistance to promote economic growth, reduce poverty, and adjust to liberalized trade.

#### **c. Colombia Trade Promotion Agreement**

In November 2006, the United States and Colombia signed a comprehensive free trade agreement – The United States-Colombia Trade Promotion Agreement (CTPA). As with the United States-Peru Trade Promotion Agreement, the CTPA includes the creation of a Committee on TCB to build upon the progress made by the preceding TCB working group on economic assistance and poverty alleviation.

#### **d. Panama Trade Promotion Agreement**

The United States and Panama signed the United States-Panama Trade Promotion Agreement on June 28, 2007. The Agreement also establishes a trade capacity building committee, which will aid Panama to implement its obligations and allow it to more broadly benefit from the opportunities that the free trade agreement will create.

## **B. Private Sector Advisory System and Intergovernmental Affairs**

USTR's Office of Intergovernmental Affairs and Public Liaison (IAPL) administers the federal trade advisory committee system and provides outreach to, and facilitates dialogue with, state and local governments, the business and agricultural communities, labor, environmental, consumer, and other domestic groups on trade policy issues.

The trade advisory committee system, established by the U.S. Congress in 1974, operates under the auspices of IAPL. The trade advisory committee system was created to ensure that U.S. trade policy and trade negotiating objectives adequately reflect U.S. public and private sector interests. The trade advisory committee system consists of 28 advisory committees, with a total membership of approximately 700 advisors. IAPL manages the system, in cooperation with other agencies, including the Departments of Agriculture, Commerce, Labor, and the Environmental Protection Agency.

IAPL also has been designated as the NAFTA and WTO State Coordinator. As such, the office serves as the liaison to state points of contact, and state and local government officials, on information regarding the U.S. trade agenda, the implementation of the NAFTA and the WTO, bilateral free trade agreements, and other trade issues of interest.

Finally, IAPL coordinates USTR's outreach to the public and private sector through public briefings, USTR notices in the *Federal Register* soliciting written comments from the public and publicizing Trade Policy Staff Committee (TPSC) public hearings, consulting with and briefing interested constituencies, speaking at conferences and meetings around the country, and meeting frequently with a broad spectrum of groups at their request.

### **1. The Trade Advisory Committee System**

The trade advisory committees provide information and advice with respect to U.S. negotiating objectives and bargaining positions before entering into trade agreements, on the operation of any trade agreement once entered into, and on other matters arising in connection with the development, implementation, and administration of U.S. trade policy.

The system consists of 28 trade advisory committees. Recommendations for candidates for committee membership are collected from a number of sources, including Members of Congress, associations and organizations, publications, other federal agencies, response to *Federal Register* notices, and self-nomination by individuals who have demonstrated an interest in and knowledge of U.S. trade policy. Membership selection is based on qualifications, geography, and the needs of the specific committee. Members pay for their own travel and other related expenses. In 2004, the number of industry committees at the technical level was streamlined and consolidated to better reflect the composition of the U.S. economy, in response to recommendations from the U.S. Government Accountability Office (GAO).

The system is arranged in three tiers: the President's Advisory Committee for Trade Policy and Negotiations (ACTPN); 5 policy advisory committees dealing with environment, labor, agriculture,

Africa, and intergovernmental issues; and 22 technical advisory committees in the areas of industry and agriculture. Additional information on the advisory committees can be found on the USTR website [http://www.ustr.gov/Who\\_We\\_Are/Mission\\_of\\_the\\_USTR.html](http://www.ustr.gov/Who_We_Are/Mission_of_the_USTR.html).

Private sector advice is both a critical and integral part of the trade policy process. USTR maintains an ongoing dialogue with interested private sector parties on trade agenda issues. The trade advisory committee system is unique since the committees meet on a regular basis and receive sensitive information about ongoing trade negotiations and other trade policy issues and developments. Committee members are required to have a security clearance and an ethics briefing.

In response to GAO recommendations and advisor requests for improved access to documents, USTR introduced a significant improvement to facilitate the work of the trade advisory committees, by creating a secure encrypted advisors' website with password protection. Confidential draft texts of FTA agreements are posted to the secure website on an ongoing basis to allow advisors to provide comments to U.S. officials in a timely fashion during the course of negotiations. This has enhanced the quality and quantity of input from cleared advisors, especially from those advisors who reside outside of Washington, DC.

USTR has introduced additional procedural innovations to improve the operation of the trade advisory committee system. This includes a single monthly advisory committee teleconference call with the "Chairs" for all 28 committees. This keeps "Chairs" apprised of ongoing developments and important dates on the trade negotiations calendar, which, in turn, facilitates greater transparency for all advisors.

Additionally, USTR and the Departments of Commerce and Agriculture convene periodic plenary sessions of the industry trade advisory committees, and the agricultural technical committees, respectively, in order to make more efficient use of negotiators' time with the committees and allow the further exchange of ideas among committees.

In November 2007, the GAO recommended further steps that USTR could take to provide greater transparency and accountability to the composition of the trade advisory committees, including reporting annually on how the committees meet the representation requirements of the relevant legislation and clarifying which interests members represent. Pursuant to these recommendations, a further description of committee representation is provided below, and the membership rosters of the committees with the organizations and interests represented are available online at <http://www.ustr.gov> under the heading "Who We Are."

#### **a. President's Advisory Committee on Trade Policy and Negotiations**

The ACTPN consists of not more than 45 members who are broadly representative of the key economic sectors affected by trade. The President appoints ACTPN members for terms not to exceed the duration of the charter (up to four years). The ACTPN is the highest-tier committee in the system that examines U.S. trade policy and agreements from the broad context of the overall national interest.

Members of ACTPN are appointed to represent a variety of interests including non-federal governments, labor, industry, agriculture, small business, service industries, retailers, and consumer interests. A current roster of members and the interests they represent is available on the USTR website.

#### **b. Policy Advisory Committees**

At the second tier, the members of the five policy advisory committees are appointed by the USTR alone or in conjunction with other Cabinet officers. The Intergovernmental Policy Advisory Committee

(IGPAC) and the Trade Advisory Committee for Africa (TACA) are appointed and managed solely by USTR. Those policy advisory committees managed jointly with the Departments of Agriculture, Labor, and the Environmental Protection Agency are, respectively, the Agricultural Policy Advisory Committee (APAC), Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC), and the Trade and Environment Policy Advisory Committee (TEPAC). Each committee provides advice based upon the perspective of its specific area. A list of all the members of the Committees and the diverse interests they represent is available on the USTR website.

*APAC:* The Secretary of Agriculture and the U.S. Trade Representative appoint members jointly, and the Committee must be of sufficient size to be reasonably representative of U.S. organizations and persons interested in the respective agricultural commodities, approximately 35 members. The APAC are appointed to represent a broad spectrum of agricultural interests including the interests of farmers, processors, renderers, and retailers from diverse sectors of agriculture, including Fruits and Vegetables, Livestock, Dairy, and Wine. Members serve at the discretion of the Secretary of Agriculture and the U.S. Trade Representative.

*IGPAC:* The IGPAC consists of approximately 35 members appointed from, and representative of, the various states and other non-federal governmental entities within the jurisdiction of the United States. These entities include, but are not limited to, the executive and legislative branches of state, county, and municipal governments. Members may hold elective or appointive office. Members are appointed by and serve at the discretion of the U.S. Trade Representative.

*LAC:* By charter, the LAC consists of not more than 30 members from the U.S. labor community, appointed by the U.S. Trade Representative and the Secretary of Labor, acting jointly. Members represent unions from all sectors of the economy. Members are appointed by and serve at the discretion of the Secretary of Labor and the U.S. Trade Representative.

*TACA:* TACA consists of not more than 30 members, including, but not limited to, representatives from industry, labor, investment, agriculture, services, non-profit development organizations, and other interests. The members of the Committee are appointed to be broadly representative of key sectors and groups with an interest in trade and development in sub-Saharan Africa, including non-profit organizations, producers, and retailers. Members of the committee are appointed by and serve at the discretion of the U.S. Trade Representative.

*TEPAC:* TEPAC consists of not more than 35 members, including, but not limited to, representatives from environmental interest groups, industry (including the environmental technology and environmental services industries), agriculture, services, non-federal governments, and other interests. The Committee shall be broadly representative of key sectors and groups of the economy with an interest in trade and environmental policy issues. Members of the committee are appointed by and serve at the discretion of the U.S. Trade Representative.

### **c. Technical and Sectoral Committees**

At the third tier, the 22 technical and sectoral advisory committees are organized into two areas: industry and agriculture. Representatives are appointed jointly by the USTR and the Secretaries of Agriculture and Commerce, respectively. Each sectoral or technical committee represents a specific sector or commodity group and provides specific technical advice concerning the effect that trade policy decisions may have on its sector or issue.

*Agricultural Technical Committees (ATACs):* There are six ATACs that focus on the following products: Animals and Animal Products; Fruits and Vegetables; Grains, Feed and Oilseeds; Processed Foods;

Sweeteners and Sweetener Products; and Tobacco, Cotton, Peanuts, and Planting Seeds. Members of each Committee are appointed by and serve at the pleasure of the Secretary of Agriculture and the U.S. Trade Representative. Members must represent a U.S. entity with an interest in agricultural trade and should have expertise and knowledge of agricultural trade as it relates to policy and commodity specific products. In appointing members to the Committees, balance is achieved and maintained by assuring the members appointed represent industries and other entities across the range of interests which will be directly affected by the trade policies of concern to the Committee (for example, farm producers, farm and commodity organizations, processors, traders, and consumers). Geographical balance on each committee will also be sought. A list of all the members of the Committees and the diverse interests they represent is available on the USTR website.

*Industry Trade Advisory Committees (ITACs):* There are sixteen industry trade advisory committees (ITACs). These committees are: Aerospace Equipment (ITAC 1); Automotive Equipment and Capital Goods (ITAC 2); Chemicals, Pharmaceuticals, Health Science Products and Services (ITAC 3), Consumer Goods (ITAC 4); Distribution Services (ITAC 5); Energy and Energy Services (ITAC 6); Forest Products (ITAC 7); Information and Communication Technology Services and Electronic Commerce (ITAC 8); Non-Ferrous Metals and Building Products (ITAC 9); Services and Finance Industries (ITAC 10); Small and Minority Business (ITAC 11); Steel (ITAC 12); Textiles and Clothing (ITAC 13); Customs Matters and Trade Facilitation (ITAC 14); Intellectual Property Rights (ITAC 15); Standards and Technical Trade Barriers (ITAC 16). The ITAC Committee of Chairs was established to advise the Secretary of Commerce and the U.S. Trade Representative concerning the trade matters of common interest to the sixteen ITACs. In addition, the Committee performs such functions and duties as required by section 135 of the Trade Act of 1974, as amended, affecting the ITACs. The Committee also performs such other advisory functions relevant to trade policy matters as may be requested by the Secretary of Commerce and the U.S. Trade Representative, or their designees. Members of this Committee are the elected chairs from each of the sixteen ITACs.

Members of the ITACs are appointed jointly by the Secretary of Commerce and the U.S. Trade Representative and serve at their discretion. Committee members should have knowledge and experience in their industry and represent a U.S. entity that has an interest in trade matters related to the sectors or subject matters of concern to the individual committees. In appointing members to the Committees, balance is achieved and maintained by assuring the members appointed represent industries and other U.S. entities across the range of interests which will be directly affected by the trade policies of concern to the Committee. A list of all the members of the Committees and the diverse interests they represent is available on the USTR website (for example committees include exporters, importers, producers, and both small and large businesses).

## **2. State and Local Government Relations**

With the passage of the NAFTA Implementation Act in 1993 and the Uruguay Round Agreements Act in 1994, the United States created expanded consultative procedures between federal trade officials and state and local governments. Under both agreements, USTR's Office of IAPL is designated as the "Coordinator for State Matters." IAPL carries out the functions of informing the states, on an ongoing basis, of trade-related matters that directly relate to, or that may have a direct effect on, them. U.S. territories may also participate in this process. IAPL also serves as a liaison point in the Executive Branch for state and local government and federal agencies to transmit information to interested state and local governments, and relay advice and information from the states on trade-related matters. This is accomplished through a number of mechanisms.

#### **a. State Point of Contact System and IGPAC**

For day-to-day communications, pursuant to the NAFTA and Uruguay Round implementing legislation and Statements of Administrative Action, USTR created a State Single Point of Contact (SPOC) system. The Governor's office in each state designates a single contact point to disseminate information received from USTR to relevant state and local offices and assist in relaying specific information and advice from the states to USTR on trade-related matters.

The SPOC network ensures that state governments are promptly informed of Administration trade initiatives so their companies and workers may take full advantage of increased foreign market access and reduced trade barriers. It also enables USTR to consult with states and localities directly on trade matters which may affect them. SPOCs regularly receive USTR press releases, *Federal Register* notices, and other pertinent information. In 2006, USTR introduced a regular monthly conference call for SPOCs and members of the Intergovernmental Policy Advisory Committee (see description above) to keep state and local governments apprised of timely trade developments of interest.

IGPAC makes recommendations to the USTR and the Administration on trade policy matters from the perspective of state and local governments. USTR has sought to augment IGPAC's membership and expertise in order to receive timely advice on technical aspects of trade agreements. In 2008, IGPAC was briefed and consulted on trade priorities of interest to states and localities, including: ongoing negotiations in the WTO Doha Development Agenda with respect to the General Agreement on Trade in Services (GATS) and other matters, and bilateral and regional FTA negotiations. IGPAC members were also invited to participate in monthly teleconference call briefings along with State Points of Contact. Specific issues of interest to IGPAC and SPOCs included WTO Technical Barriers to Trade negotiations, China Bilateral Investment Treaty negotiations, and European Union (EU) challenges to state subsidies.

#### **b. Meetings of State and Local Associations and Local Chambers of Commerce**

USTR officials participate frequently in meetings of state and local government associations to apprise them of relevant trade policy issues and solicit their views. For example, USTR officials have met with the National Governors' Association, Council of State Governments, National Conference of State Legislatures, Conference of Chief Justices of state supreme courts and others. USTR officials also addressed gatherings of state and local officials, as well as local and regional chambers of commerce around the country.

#### **c. Consultations Regarding Specific Trade Issues**

USTR initiates consultations with particular states and localities on issues arising under the WTO and other U.S. trade agreements and frequently responds to requests for information from state and local governments. Topics of interest included the WTO Government Procurement Agreement (GPA), General Agreement on Trade and Services issues, FTA negotiations, NAFTA investment issues and others. On the issue of voluntary coverage of state government procurement under the GPA and FTAs, USTR consults extensively with governors' offices and other state officials. USTR also prepares periodic facts sheets to explain the benefits and specific provisions of trade agreements, for example, state by state benefits from pending FTAs with Colombia, Panama, and Korea.

### **3. 2008 Outreach Efforts**

It is important to recognize that the advisory committee system is but one of a variety of mechanisms through which the Administration obtains advice from interested groups and organizations on the

development of U.S. trade policy. In formulating specific U.S. objectives in major trade negotiations, USTR also routinely solicits written comments from the public via notices in the *Federal Register*, consults with and briefs interested constituencies, holds public hearings, and meets with a broad spectrum of private sector and non-governmental groups.

The 2008 trade agenda provided many opportunities for USTR to conduct outreach to, and consultations with, diverse trade policy stakeholders including the advisory committees, state and local governments, private sector and non-governmental groups, think tanks and universities.

#### **a. World Trade Organization**

Throughout 2008, USTR continued to solicit advice from cleared advisors, business and agriculture sectors, state governments, and other domestic stakeholders and the general public regarding U.S. objectives for Doha in areas such as agriculture, non-agriculture market access, and services. USTR briefed advisors and stakeholders on revised Doha agriculture and Non-Agricultural Market Access texts, and developed timely WTO Fact Sheets for the July 2008 Geneva meetings for posting to the public website and disseminated these broadly to interested parties.

#### **b. Bilateral and Regional Trade Agreements**

In 2008, USTR briefed and facilitated consultations with advisory committees and other stakeholders on free trade agreement negotiations, such as Colombia, Panama, and Korea. This included holding advisory committee meetings and teleconference briefings on the progress of negotiations, issuing public fact sheets, and making materials widely available on the USTR website. For example, fact sheets on the benefits of specific FTA provisions to the manufacturing, automotive, services, financial services, agriculture sectors, and to states more broadly were widely disseminated. USTR also briefed and facilitated consultations with advisors and other stakeholders on the Transpacific Partnership Agreement and issued public fact sheets.

#### **c. Monitoring and Compliance Activities**

USTR briefed and facilitated consultations with advisors, state officials and other stakeholders on trade disputes including China enforcement of WTO obligations concerning issues such as taxation of auto parts, subsidies and Intellectual Property Rights enforcement; U.S.-China Joint Commission on Commerce and Trade outcomes; EU Duty Treatment of high technology products; and other issues.

#### **d. Public Trade Education**

USTR continues its efforts to promote and educate the public on trade issues. USTR has participated in educational efforts regarding U.S. trade activities and their benefits through speeches, publications, and briefings. In 2008, USTR continued its fact sheet service, called Trade Facts, to update interested parties on important U.S. trade initiatives and explain the benefits and provisions of trade agreements. This service provides USTR press releases, fact sheets, and background information to advisors and to the general public. USTR's Internet homepage also serves as a vehicle to communicate to the public.

### **C. Policy Coordination**

The U.S. Trade Representative has primary responsibility, with the advice of the interagency trade policy organization, for developing and coordinating the implementation of U.S. trade policy, including on commodity matters (for example coffee and rubber) and, to the extent they are related to trade, direct

investment matters. Under the Trade Expansion Act of 1962, Congress established an interagency trade policy mechanism to assist with the implementation of these responsibilities. This organization, as it has evolved, consists of three tiers of committees that constitute the principal mechanism for developing and coordinating U.S. Government positions on international trade and trade-related investment issues.

The Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC), administered and chaired by USTR, are the subcabinet interagency trade policy coordination groups that are central to this process. The TPSC is the first line operating group, with representation at the senior civil servant level. Supporting the TPSC are more than 80 subcommittees responsible for specialized issues. The TPSC regularly seeks advice from the public on its policy decisions and negotiations through *Federal Register* notices and public hearings. In 2008, the TPSC held public hearings on China's Compliance with WTO Commitments (October 2, 2008) and the Andean Trade Preference Act, as amended: Notice Regarding Eligibility of Bolivia (October 23, 2008). The transcripts of these hearings are available in USTR's Reading Room.

Through the interagency process, USTR requests input and analysis from members of the appropriate TPSC subcommittee or task force. The conclusions and recommendations of this group are then presented to the full TPSC and serve as the basis for reaching interagency consensus. If agreement is not reached in the TPSC, or if particularly significant policy questions are being considered, issues are referred to the TPRG (Deputy USTR/Under Secretary level).

Member agencies of the TPSC and the TPRG consist of the Departments of Commerce, Agriculture, State, Treasury, Labor, Justice, Defense, Interior, Transportation, Energy, Health and Human Services, Homeland Security, the Environmental Protection Agency, the Office of Management and Budget, the Council of Economic Advisers, the Council on Environmental Quality, the International Development Cooperation Agency, the National Economic Council, and the National Security Council. The U.S. International Trade Commission is a non-voting member of the TPSC and an observer at TPRG meetings. Representatives of other agencies also may be invited to attend meetings depending on the specific issues discussed.



# **ANNEX I**

## Annex I. U.S. Trade in 2008

### I. 2008 Overview

U.S. trade (exports and imports of goods and services, and the receipt and payment of earnings on foreign investment)<sup>1</sup> increased by 8.4 percent in 2008 to a value of over \$6.1 trillion.<sup>2</sup> This marked the fifth consecutive year of strong growth (trade was up 18 percent in 2004, 16 percent in 2005 and 2006, and 11 percent in 2007). The increase in trade in 2008 largely reflected the strong growth in U.S. goods and services trade. U.S. trade in goods and services increased by 14 percent -- U.S. trade of goods alone increased by 14 percent and U.S. trade of services alone increased by 13 percent. Exports of goods and services, and earnings on investment increased by 10.3 percent in 2008, more than 50 percent faster than the rate of imports of goods and services, and payments on investment (6.8 percent).

In 2007, the latest year in which data is available, the United States was the world's largest trading nation for both exports and imports of goods and services.<sup>3</sup> The United States accounts for roughly 15 percent of world goods trade and for roughly 17 percent of world services trade.<sup>4</sup> Through 2008, the value of U.S. trade has increased 45-fold since 1970, 225 percent since 1994 (the year before the start of the Uruguay Round implementation), and 86 percent since 2000 (figure 1).<sup>5</sup> U.S. trade expansion was more rapid between 1970 and 2008 than the growth of the overall U.S. economy, in both nominal and real terms. In nominal terms, trade has grown at an annual average rate of 10.6 percent per year since 1970, compared to U.S. gross domestic product (GDP) whose average growth over the same period was 7.2 percent. In real terms, the average annual growth in trade was double the pace of GDP growth, 6.5 percent versus 3.0 percent.

The value of trade in goods and services, including earnings and payments on investment, was a record 42.7 percent of the value of U.S. GDP in 2008 (figure 2). This represented an increase from the corresponding figure in 2007 (40.9 percent).<sup>6</sup> For goods and services, excluding investment earnings and payments, U.S. trade represented a record 32 percent of the value of GDP in 2008, and was up from 29 percent in 2007.<sup>7</sup>

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<sup>1</sup> Earnings on foreign investment are considered trade because they are conceptually the payment made to foreign residents for the service rendered by the use of foreign capital. Beyond the overview section, however, this chapter deals with goods and services trade, excluding foreign investment earnings. All trade values are nominal unless otherwise indicated.

<sup>2</sup> In this Chapter, 2008 is estimated based on partial year data (January-November).

<sup>3</sup> Germany is the largest goods exporter, having surpassed the United States in 2003. China is the 2<sup>nd</sup> largest goods exporter, having surpassed the United States in 2007.

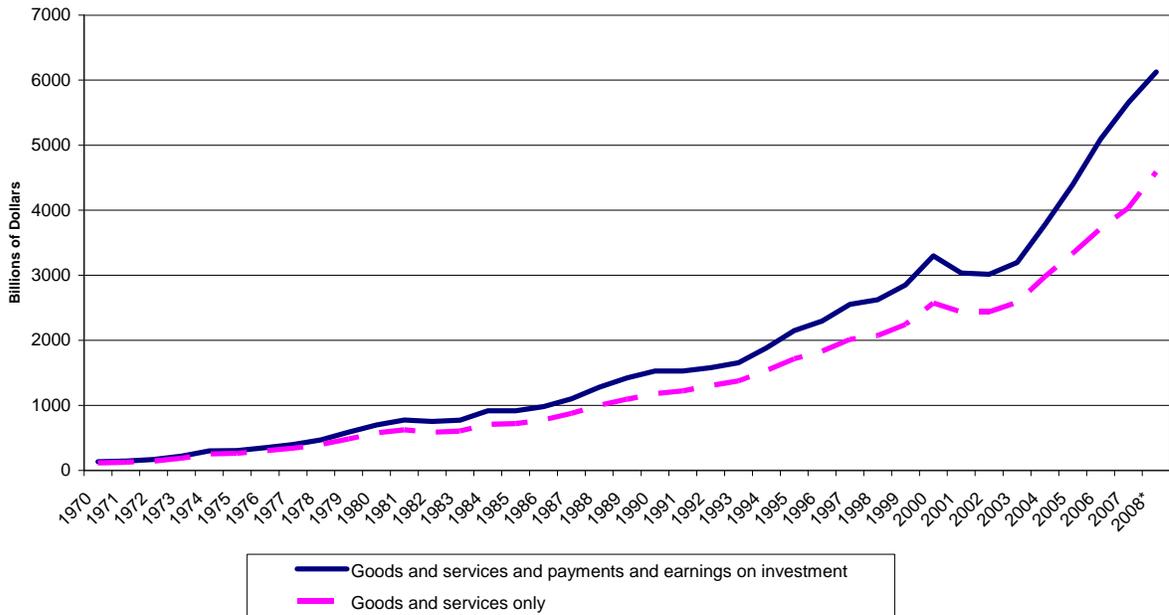
<sup>4</sup> Trade in goods and services excluding intra-EU trade.

<sup>5</sup> Trade in goods and services alone has increased 39-fold since 1970, 199 percent since 1994, and 78 percent since 2000.

<sup>6</sup> 13 percent of the value of GDP in 1970, 27 percent in 1994, and 34 percent in 2000.

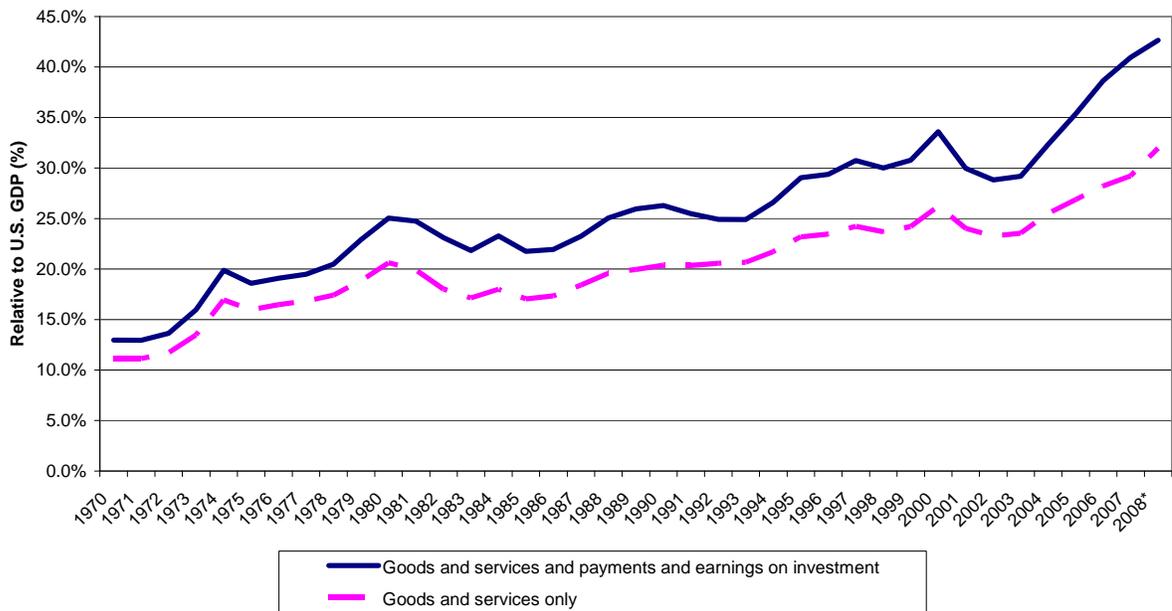
<sup>7</sup> 11 percent of the value of GDP in 1970, 22 percent in 1994, and 26 percent in 2000.

**Figure 1:  
U.S. Trade Growth 1970-2008\***



Total exports + imports  
 \* Annualized based on January-November 2008 data.  
 Source: U.S. Department of Commerce

**Figure 2:  
Growing Importance of Trade in the U.S. Economy, 1970-2008\***



Total exports + imports as a percentage of the value of U.S. GDP  
 \* Annualized based on January-November 2008 data.  
 Source: U.S. Department of Commerce

This growth in trade has occurred in both U.S. exports and imports. U.S. exports of goods and services (including investment earnings) in 2008 are 38-fold greater than 1970, 207 percent greater than 1994, and 88 percent greater than 2000. U.S. imports of goods and services are 54-fold greater than 1970, 243 percent greater than 1994, and 84 percent greater than 2000.

The total deficit on goods and services trade (excluding earnings and payments on foreign investment) declined in 2008 by approximately \$13 billion from \$700 billion in 2007 to \$687 billion. This was the second consecutive year of deficit decline. As a share of GDP, the deficit declined from 5.1 percent of GDP in 2007 to approximately 4.8 percent of GDP in 2008. The U.S. deficit in goods trade alone increased by \$15 billion from \$819 billion in 2007 (5.9 percent of GDP) to \$834 billion in 2008 (5.8 percent of GDP), while the services trade surplus increased by \$28 billion from \$119 billion in 2007 (0.9% of GDP) to \$147 billion in 2007 (1.0 percent of GDP). The increase in the goods deficit was largely the result of the increase in oil prices, up 59 percent in 2008 as compared to 2007. The deficit in petroleum increased by 39 percent in 2008 and accounted for nearly 60 percent of the total goods and services deficit. In contrast, the non-petroleum goods deficit actually declined by 18 percent in 2008.

## **II. Goods Trade**

### **A. Export Growth**

U.S. goods exports increased by 15 percent in 2008, as compared to the 12 percent increase in the preceding year (*table 1 and figure 3*). Manufacturing exports, which accounted for 80 percent of total goods exports, were up 9 percent, while agriculture exports, which accounted for 9 percent of total goods exports, were up by 32 percent. High technology exports, a subset of manufacturing exports, accounted for 21 percent of total goods exports and were up 2 percent in 2008. U.S. goods exports increased for every major end-use category in 2008, with the largest increases in the foods, feeds, and beverages category, up 35 percent, and in the industrial supplies and materials category, up 27 percent.

U.S. goods exports in 2008 were up 71 percent compared to 2000, and were up 163 percent since 1994. U.S. agriculture exports grew faster than both manufacturing exports and high technology exports in both timeframes, up 135 percent since 2000 and up 167 percent since 1994. Of the major end-use categories, exports of foods, feeds, and beverages, and industrial supplies and materials led growth in both timeframes, with the former growing faster since 2000 (137 percent to 132 percent) and the latter growing faster over the longer period since 1994 (230 percent to 171 percent). Of the \$818 billion increase in goods exports since 1994, industrial supplies and materials accounted for 34 percent of the increase, capital goods accounted for 33 percent, and consumer goods accounted for 13 percent.

In 2008, U.S. goods exports increased to all major markets (*table 2*). U.S. goods exports were led by a growth rate of 32 percent to Latin America, excluding Mexico, 14 percent to China, and 12 percent to the EU27 and Mexico. U.S. exports increased 10 percent to

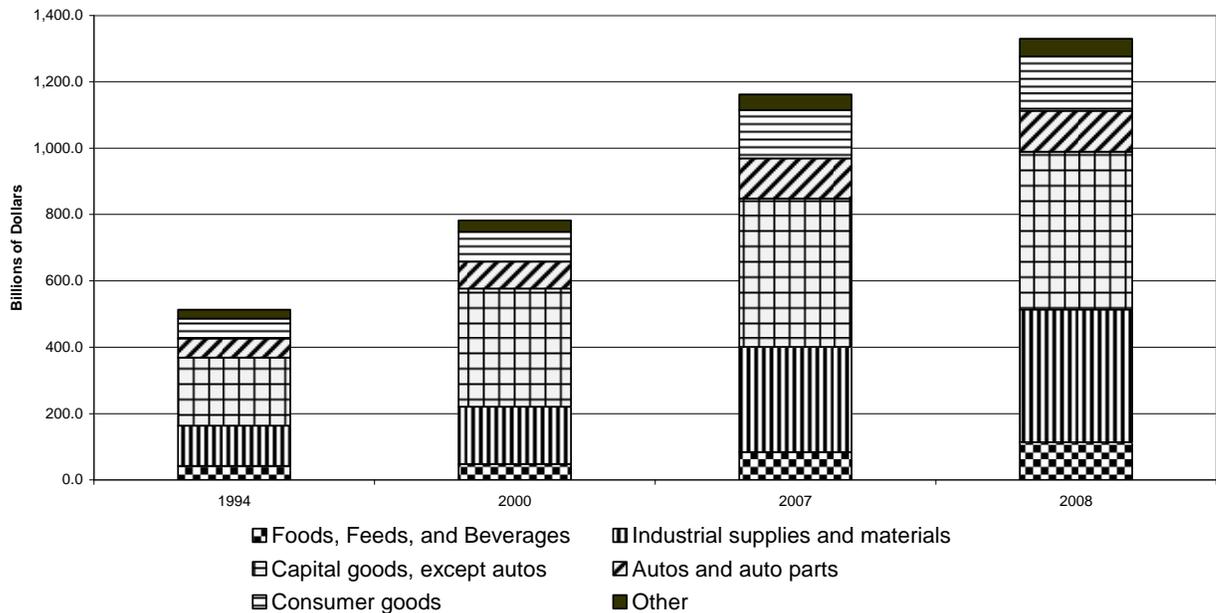
**Table 1**  
**U.S. Goods Exports**

Exports:	1994	2000	2007	2008*	07-08*	00-08*	94-08*
	<i>Billions of Dollars</i>				<i>Percent Changes</i>		
<b>Total (BOP basis)</b>	502.9	772.0	1,148.5	1,320.8	15.0%	71.1%	162.7%
<b>Food, feeds, and beverages</b>	42.0	47.9	84.3	113.5	34.7%	137.0%	170.5%
<b>Industrial supplies and materials</b>	121.4	172.6	316.3	400.4	26.6%	132.0%	229.8%
<b>Capital goods, except autos</b>	205.0	356.9	447.4	475.0	6.2%	33.1%	131.7 %
<b>Autos and auto parts</b>	57.8	80.4	121.0	124.1	2.5%	54.4%	114.7%
<b>Consumer goods</b>	60.0	89.4	146.1	163.3	11.8%	82.7%	172.2%
<b>Other</b>	26.5	34.8	47.3	53.8	13.7%	54.6%	102.9%
<b>Addendum: Agriculture</b>	45.9	52.1	92.4	122.4	32.4%	135.1%	166.5%
<b>Addendum: Manufacturing</b>	431.1	689.5	981.3	1,067.8	8.8%	54.9%	147.7%
<b>Addendum: High Technology</b>	120.7	227.4	274.2	279.0	1.8%	22.7%	131.1%

\* Annualized based on January-November 2008 data.

Source: U.S. Department of Commerce, Balance of Payments basis for total, Census basis for sectors.

**Figure 3:**  
**U.S. Goods Exports**



2007 Annualized based on January-November 2008 data  
Source: U.S. Department of Commerce

<b>Table 2</b>							
<b>U.S. Goods Exports to Selected Countries/Regions</b>							
<b>Exports from:</b>	1994	2000	2007	2008*	07-08*	00-08*	94-08*
	<i>Billions of Dollars</i>				<i>Percent Changes</i>		
<b>European Union (EU27)</b>	110.1	168.5	247.2	277.8	12.3%	64.8%	152.4%
<b>Canada</b>	114.4	178.9	248.9	265.7	6.7%	48.5%	132.1%
<b>Asian Pacific Rim, except Japan and China</b>	85.0	121.5	153.4	169.2	10.3%	39.3%	99.1%
<b>Mexico</b>	50.8	111.3	136.1	152.7	12.2%	37.1%	200.3%
<b>Latin America, except Mexico</b>	41.7	59.3	107.5	142.0	32.1%	139.5%	240.4%
<b>China</b>	9.3	16.2	62.2	70.6	13.5%	336.4%	661.0%
<b>Japan</b>	53.5	64.9	62.7	67.8	8.1%	4.4%	26.7%
<b>Addendum: Industrial Countries**</b>	294.0	435.2	592.3	651.4	10.0%	49.7%	121.6%
<b>Addendum: Developing Countries**</b>	218.6	346.7	570.2	675.1	18.4%	94.7%	208.8%
* Annualized based on January-November 2008 data.							
** As defined by the International Monetary Fund.							
Source: U.S. Department of Commerce, Census basis.							

industrial countries and 18 percent to developing countries. Since 1994, U.S. goods exports to developing countries exhibited higher growth rates than that to industrial countries, 209 percent compared to 122 percent. Due to this long term higher growth difference, 2008 marked the first year that the U.S. exported more to developing countries than to industrial countries, 51 percent to 49 percent.

U.S. exports to the European Union were up 12 percent in 2008 and became the largest export market for the United States accounting for 21 percent of aggregate U.S. exports (surpassing Canada). Capital goods, industrial supplies and materials, and consumer goods accounted for the majority of U.S. exports to the EU in 2008, 38 percent, 27 percent, and 19 percent, respectively. However, export growth in 2008 was led by industrial supplies and materials and agriculture, up 24 percent and 21 percent, respectively. U.S. exports to the EU have increased by 65 percent since 2000 and by 152 percent since 1994.

Exports to our NAFTA partners increased roughly 9 percent in 2008, and have increased 195 percent since 1993, the year before the start of NAFTA's entry into force. Approximately 32 percent of aggregate U.S. goods exports went to NAFTA countries in 2008 (\$418 billion).

U.S. exports to Canada, the largest single country U.S. export market accounting for 20 percent of U.S. exports, increased by 7 percent in 2008. Industrial supplies and materials, capital goods, and autos and auto parts accounted for more than three-quarters of total U.S. exports to Canada in 2008, 30 percent, 27 percent, and 21 percent, respectively. U.S. export growth to Canada was led by industrial supplies and materials (up 20 percent) and agriculture (up 17 percent). U.S. exports of consumer goods and capital goods increased by 8 percent and 6 percent, respectively, while exports of autos and auto parts declined by 10 percent. Overall, U.S. exports to Canada have increased by 49 percent since 2000 and by 132 percent since 1994.

U.S. exports to Mexico, the second largest country export market, accounting for 12 percent of U.S. goods exports, increased by 12 percent in 2008. Roughly two-thirds of U.S. exports were in the industrial supplies and capital goods categories, 36 percent and 30 percent, respectively. U.S. export growth to Mexico in 2008 was led by agricultural goods (up 28 percent) and by industrial supplies and materials (up 19 percent). U.S. goods exports to Mexico have increased by 37 percent since 2000 and by 200 percent since 1994.

U.S. exports to the Asian Pacific rim (excluding China and Japan) increased by 10 percent in 2008, and were up 39 percent since 2000 and 99 percent since 1994. Capital goods and industrial supplies and materials accounted for 75 percent of overall U.S. exports to the region, 51 percent and 24 percent, respectively. In 2008, U.S. exports of agriculture were up 44 percent and industrial supplies and materials were up 23 percent.

U.S. exports to Latin America (excluding Mexico) increased 32 percent in 2008, due mainly to strong export growth in agriculture (up 47 percent) and industrial supplies and materials (up 41 percent). Exports of capital goods were up a strong 27 percent, while consumer goods were up 15 percent. Overall, industrial supplies and capital goods accounted for most of U.S. exports to the region, each at 38 percent. U.S. exports to Latin America (excluding Mexico) have increased by 140 percent since 2000 and by 240 percent since 1994.

U.S. goods exports to China continued to increase in 2008, up 14 percent, the 9<sup>th</sup> straight year of double-digit growth. Capital goods accounted for 41 percent of U.S. exports to China in 2008, while exports of industrial supplies accounted for 39 percent.

U.S. exports of agricultural products to China, which accounted for 16 percent of total exports, increased by 56 percent in 2008, leading all other major categories. Industrial supplies and materials and consumer goods were the next two largest growth categories, each up 14 percent. U.S. exports to China have increased 336 percent since 2000 and were up 661 percent since 1994.

U.S. exports to Japan increased 8 percent in 2008, and were up only 27 percent since 1994 (up merely 4 percent since 2000). U.S. exports of agricultural products were up 35 percent in 2008, while exports of industrial supplies were up 5 percent. These two categories accounted for 46 percent of total U.S. exports to Japan in 2008 (industrial supplies 26 percent, agricultural products 20 percent). U.S. exports of capital goods and autos and auto parts both declined in 2008, by 3 percent and 1 percent, respectively.

## B. Import Growth

U.S. goods imports increased 10 percent in 2008 (*table 3 and figure 4*) two-thirds more than the 5.7 percent growth rate in 2007. Manufacturing imports, accounting for 70 percent of total goods imports, increased 2 percent in 2008. High technology imports, accounting for 16 percent of total goods imports, increased by 3 percent, while agriculture imports, accounting for 4 percent of total goods imports, increased by 12 percent in 2008. U.S. goods imports increased for every major end-use category in 2008 except for autos and auto parts which declined by 8 percent. The category with the largest import increase was industrial supplies and materials, up 27 percent, primarily due to the 59 percent increase in oil prices in 2008. In fact, the increase in petroleum imports accounted for roughly three-quarters of the overall increase in goods imports in 2008. The three largest end-use categories for U.S. imports together accounted for more than 80 percent of total U.S. imports in 2008 (industrial supplies – 38 percent; consumer goods – 23 percent; and capital goods – 21 percent).

U.S. goods imports were up 76 percent compared to 2000, and were up 222 percent since 1994. U.S. agriculture imports grew twice as fast as manufacturing imports since 2000, but only grew 25 percent faster than manufacturing imports since 1994. For the major end-use categories, U.S. imports of industrial supplies and materials (including petroleum) led growth in both timeframes, up 170 percent since 2000 and 397 percent since 1994. Of the \$1.5 trillion increase in goods imports since 1994, industrial supplies and materials accounted for 44 percent of the increase, consumer goods for 23 percent, capital goods for 19 percent, and autos and auto parts for 8 percent.

On a major country and regional basis, U.S. goods imports increased 23 percent from Latin America excluding Mexico, 8 percent from Canada, 6 percent from China, 5 percent from the EU, 4 percent from Mexico, while imports declined by 3 percent from Japan, and by 0.9 percent from the Asian Pacific region excluding Japan and China (*table 4*). U.S. imports increased 13 percent from developing countries and 5 percent from industrial countries. Since 1994, U.S. goods imports from developing countries exhibited higher growth (more than double) than that from industrial countries, 345 percent compared with 132 percent. Accordingly, the share of U.S. imports from developing countries has increased from 43 percent in 1994 to 59 percent in 2008.

U.S. goods imports from the EU, accounting for 17 percent of total U.S. imports, increased by 5 percent in 2008. Roughly 81 percent of this increase was in the industrial supplies and materials category (up 9 percent) and in the capital goods category (up 6 percent). U.S. imports of agricultural products from the EU increased only 2 percent in 2008. Overall, U.S. imports from the EU increased 63 percent since 2000 and 204 percent since 1994.

Imports from our NAFTA partners increased 7 percent in 2008 and have increased by 272 percent since NAFTA entered into force in January 1994. NAFTA imports accounted for 26 percent of aggregate U.S. goods imports in 2008, slightly down from 27 percent in 1994.

In 2008, Canada surpassed China as the largest single country supplier of goods to the United States. Canada accounted for 16 percent of total U.S. imports, and imports

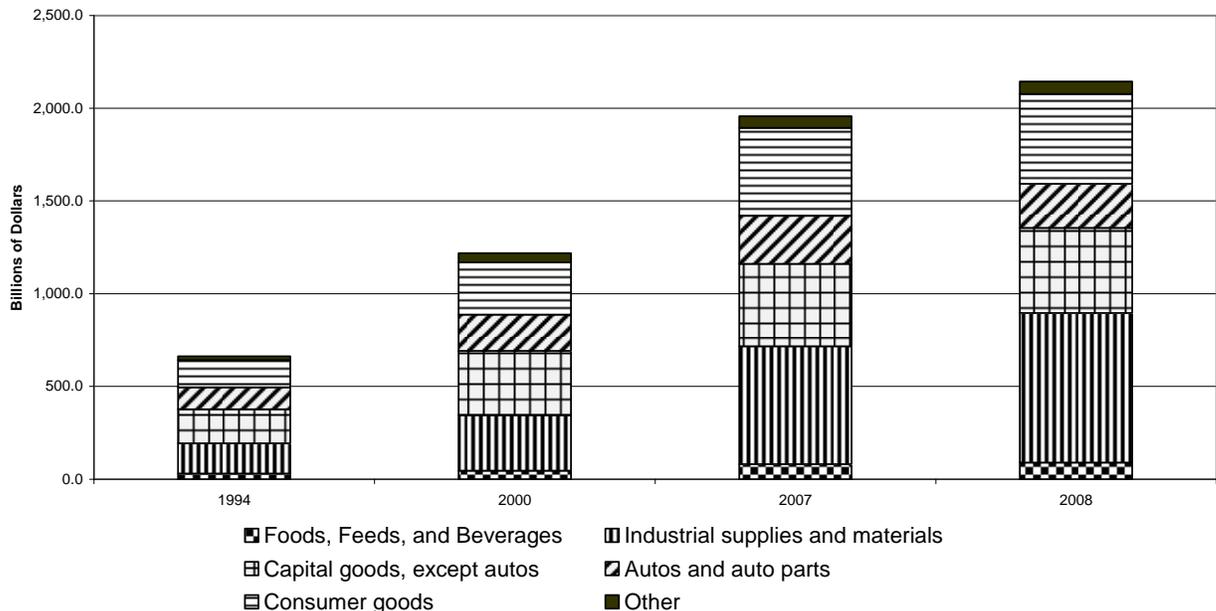
**Table 3**  
**U.S. Goods Imports**

Imports:	1994	2000	2007	2008*	07-08*	00-08*	94-08*
	<i>Billions of Dollars</i>				<i>Percent Changes</i>		
<b>Total (BOP basis)</b>	668.7	1,226.7	1,967.9	2,154.9	9.5%	75.7%	222.3%
<b>Food, feeds, and beverages</b>	31.0	46.0	81.7	89.3	9.3%	94.2%	188.4%
<b>Industrial supplies and materials</b>	162.1	299.0	634.7	806.4	27.0%	169.7%	397.4%
<b>Capital goods, except autos</b>	184.4	347.0	444.5	458.3	3.1%	32.1%	148.6%
<b>Autos and auto parts</b>	118.3	195.9	258.9	238.1	-8.1%	21.5%	101.3%
<b>Consumer goods</b>	146.3	281.8	474.9	485.3	2.2%	72.2%	231.8%
<b>Other</b>	21.3	48.3	62.2	66.5	6.8%	37.5%	212.4%
<b>Addendum: Agriculture</b>	26.0	39.2	72.1	80.9	12.3%	106.6%	211.9%
<b>Addendum: Manufacturing</b>	557.3	1,013.5	1,480.0	1,503.6	1.6%	48.4%	169.8%
<b>Addendum: High Technology</b>	98.1	222.1	326.8	335.4	2.6%	51.0%	241.8 %

\* Annualized based on January-November 2008 data.

Source: U.S. Department of Commerce, Balance of Payments basis for total, Census basis for sectors.

**Figure 4:**  
**U.S. Goods Imports**



2007 Annualized based on January-November 2008 data  
Source: U.S. Department of Commerce

<b>Table 4</b>							
<b>U.S. Goods Imports from Selected Countries/Regions</b>							
<b>Imports from:</b>	1994	2000	2007	2008*	07-08*	00-08*	94-08*
	<i>Billions of Dollars</i>				<i>Percent Changes</i>		
<b>European Union (EU27)</b>	121.9	227.6	354.4	370.7	4.6%	62.9%	204.1%
<b>Canada</b>	128.4	230.8	317.1	343.6	8.4%	48.8%	167.6%
<b>China</b>	38.8	100.0	321.4	339.8	5.7%	239.8%	776.1%
<b>Mexico</b>	49.5	135.9	210.7	219.1	4.0%	61.2%	342.6%
<b>Asian Pacific Rim, except Japan and China</b>	103.2	171.5	180.9	179.2	-0.9%	4.5%	73.7%
<b>Latin America, except Mexico</b>	38.5	73.3	134.8	166.3	23.3%	126.7%	332.3%
<b>Japan</b>	119.2	146.5	145.5	140.8	-3.2%	-3.9%	18.2%
<b>Addendum: Industrial Countries**</b>	380.7	622.3	838.9	881.6	5.1%	41.7%	131.5%
<b>Addendum: Developing Countries**</b>	282.5	595.7	1,118.1	1,258.7	12.5%	111.2%	345.3%
*Annualized based on January-November 2008 data.							
**As defined by the International Monetary Fund.							
Source: U.S. Department of Commerce, Census basis.							

increased by 8 percent in 2008. This increase was mostly in the industrial supplies category (which contains petroleum), primarily due to increased oil prices. While imports of industrial supplies and materials were up 27 percent in 2008, imports of autos and auto parts were down 21 percent. U.S. imports of agricultural goods from Canada were up 20 percent in 2008. U.S. imports from Canada have increased by 49 percent since 2000 and by 168 percent since 1994.

U.S. imports from Mexico, the third largest single country supplier of goods to the United States, increased by 4 percent in 2008, again primarily due to increased imports in the industrial supplies and materials category (up 22 percent) as a result of the price increase in oil. Similar to Canada, U.S. imports of autos and auto parts from Mexico declined in 2008 (8 percent). U.S. imports of agriculture increased by 7 percent in 2008. U.S. imports from Mexico have grown 61 percent since 2000 and 343 percent since 1994.

Although U.S. goods imports continued its growth from China in 2008 (up 6 percent), this growth has declined over the past 4 years (29 percent growth in 2004, 24 percent growth in 2005, 18 percent growth in 2006, and 12 percent in 2007). Overall, U.S. imports from China have increased by 240 percent since 2000 and 776 percent since 1994. In 2008, China was the second largest single country supplier of imports to the United States, accounting for 16 percent of total U.S. imports, up from 6 percent in 1994, and 8 percent in 2000. Imports from China accounted for 20 percent of the overall

increase in U.S. imports from the world since 1994 (second to NAFTA's 26 percent but greater than the EU's 17 percent). Much of U.S. imports from China are low value-added consumer goods, such as toys, footwear, apparel and some areas of consumer electronics. Consumer goods made up 51 percent of U.S. imports from China in 2008, but grew only 2 percent in 2008. U.S. imports of agricultural products and industrial supplies and materials, however, each exhibited stronger growth in 2008, 21 percent and 20 percent, respectively.

Although imports from China have shown strong expansion, growth of non-China imports from Asia has slowed relative to overall U.S. imports as a result of production shifting from other Asian countries to China. When U.S. imports from China, Japan, and the other Asian-Pacific Rim countries are considered together, however, the region's share of U.S. imports has actually declined from 39 percent in 1994 to 31 percent in 2008.

Imports from the Asian Pacific Rim (excluding Japan and China) declined slightly by less than 1 percent in 2008 and were up only 5 percent since 2000 (though up by 74 percent since 1994). Purchases from this region accounted for 8 percent of total U.S. imports in 2008, down from 16 percent in 1994. The largest import growth category in 2008 was agricultural products, up 17 percent. Imports of capital goods and consumer goods were each down 3 percent despite accounting for 39 percent and 26 percent of total U.S. imports from this region.

U.S. imports from Japan declined 3 percent in 2008, the second straight year of import decline. Since 2000, U.S. imports from Japan have similarly declined by 4 percent, while U.S. imports from Japan have only grown by 18 percent since 1994, far below the overall U.S. growth rate of 222 percent during the same timeframe. Purchases from Japan in 2008 accounted for 7 percent of total U.S. imports, as compared to 18 percent in 1994. The largest import growth category was agricultural products, up 14 percent. This category however only accounted for 0.4 percent of total imports from Japan in 2008. U.S. imports of consumer goods declined by 8 percent, while imports of autos and auto parts declined by 2 percent. Roughly 75 percent of total U.S. imports from Japan in 2008 were in the autos and auto parts category (40 percent) and the capital goods category (36 percent).

Imports from Latin America (excluding Mexico) increased by a strong 23 percent in 2008, again primarily due to increased oil prices. U.S. imports of industrial supplies and materials were the largest import growth category, up 34 percent in 2008. This category also accounted for 73 percent of total U.S. imports from the region. U.S. imports from Latin America have increased by 127 percent since 2000 and by 332 percent since 1994.

### **III. Services Trade**

#### **A. Export Growth**

U.S. exports of services grew 12 percent in 2008 to a record \$556 billion, and have grown 86 percent since 2000 and 178 percent since 1994 (*table 5 and figure 5*). U.S. services exports accounted for 30 percent of the level of U.S. goods and services exports in 2008.

Nearly all of the major services export categories exhibited double digit growth rates in 2008, led by passenger fares (up 25 percent), other transportation (up 19 percent), and the travel category (up 17 percent). Of the \$59 billion increase in U.S. services exports in 2008, the other private services category accounted for 32 percent of the increase, and the travel category accounted for 28 percent.

Since 2000, export growth has been led by other private services (up 125 percent), royalties and licensing fees (up 111 percent), and the other transportation category (up 106 percent). Similarly, these three categories exhibited the strongest export growth since 1994 as well. Export growth has been led by the other private services category, up 298 percent, the royalties and licensing fees category, up 242 percent, and the other transportation category, up 158 percent. Of the \$356 billion increase in U.S. services exports between 1994 and 2008, the other private services category accounted for 51 percent of the increase, the royalties and licensing fees category accounted for 18 percent, and the travel category accounted for 15 percent.

Detailed sectoral breakdowns for exports of the other private services category as well as exports to countries/regions are available only through 2007.

In 2007, 33 percent of U.S. exports of other private services were to business related parties (to a foreign parent or affiliate). The largest categories for U.S. exports of other private services to related and unrelated parties, in 2007 were: business, professional and technical services, \$108 billion; financial services, \$58 billion; and education, \$16 billion. The business, professional and technical services category were led by management and consulting services (\$25 billion), research and development and testing services (\$15 billion), computer and information services (\$13 billion), and operational leasing (\$12 billion).

The United Kingdom was the largest purchaser of U.S. private services exports in 2007, accounting for 13 percent of total U.S. private services exports. The next 4 largest purchasers of U.S. private services exports in 2007 were: Canada (\$43 billion), Japan (\$40 billion), Germany (\$25 billion), and Mexico (\$24 billion). Regionally, in 2007, the United States exported \$179 billion to the EU-27, \$105 billion to the Asia/Pacific Region (\$50 billion excluding Japan and China), \$67 billion to NAFTA countries, and \$33 billion to Latin America (excluding Mexico).

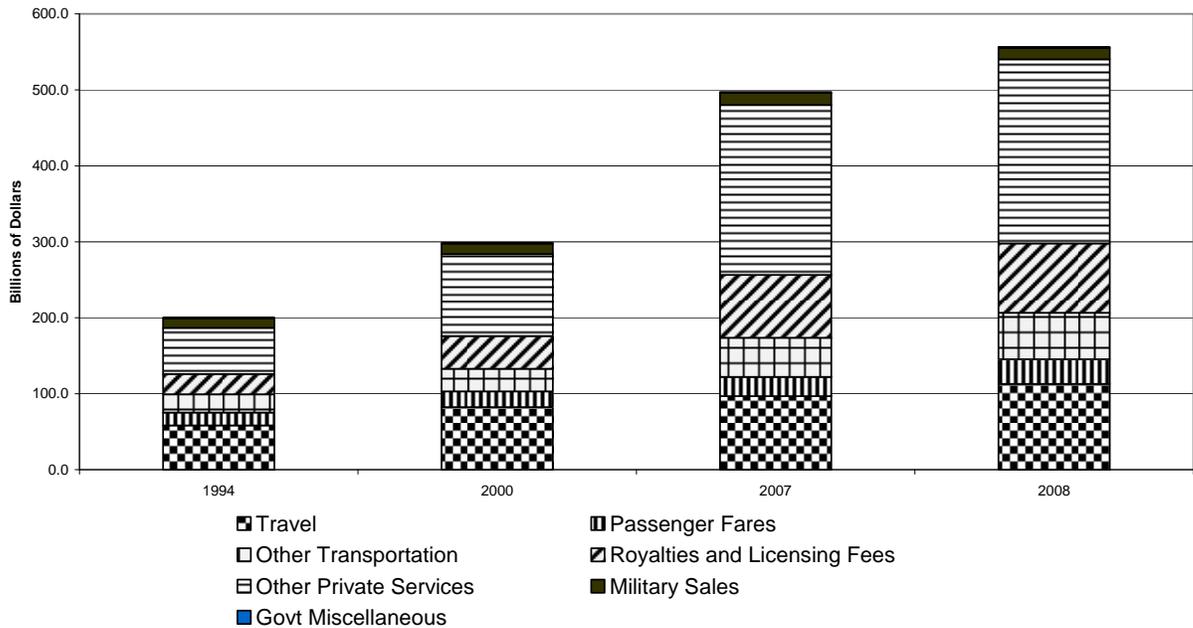
**Table 5**  
**U.S. Services Exports**

Exports:	1994	2000	2007	2008*	07-08*	00-08*	94-08*
	<i>Billions of Dollars</i>				<i>Percent Changes</i>		
<b>Total (BOP basis)</b>	200.4	298.6	497.2	556.4	11.9%	86.3%	177.7%
<b>Travel</b>	58.4	82.4	96.7	113.2	17.0%	37.3%	93.7%
<b>Passenger Fares</b>	17.0	20.7	25.6	32.1	25.4%	55.1%	88.8%
<b>Other Transportation</b>	23.8	29.8	51.6	61.3	18.9%	105.8%	158.2%
<b>Royalties and Licensing Fees</b>	26.7	43.2	82.6	91.3	10.5%	111.2%	241.8%
<b>Other Private Services</b>	60.8	107.9	223.5	242.3	8.4%	124.6%	298.3%
<b>Transfers under U.S. Military Sales Contracts</b>	12.8	13.8	16.1	15.1	-6.1%	9.3%	17.8%
<b>U.S. Government Miscellaneous Services</b>	0.9	0.8	1.2	1.2	2.2%	57.5%	39.6%

\*Annualized based on January-November 2008 data.

Source: U.S. Department of Commerce, Balance of Payments basis.

**Figure 5:**  
**U.S. Services Exports**



2007 Annualized based on January-November 2008 data  
Source: U.S. Department of Commerce

## **B. Import Growth**

Services imports by the United States increased in 2008 by 8 percent to a record \$409 billion (*table 6, figure 6*). The other private services, royalties and licensing fees and other transportation categories exhibited the largest growth in 2008, ranging between 9 percent and 14 percent. Of the \$31 billion increase in U.S. services imports in 2008, other private services accounted for 32 percent and other transportation accounted for 20 percent. U.S. services imports accounted for 16 percent of the level of U.S. goods and services imports in 2008.

Since 2000, imports of services have grown by 83 percent. Import growth has been led by direct defense expenditures (up 168 percent), other private services (up 155 percent), other transportation (up 77 percent) and the royalties and licensing fees category (up 69 percent).

Since 1994, services imports grew by 208 percent. U.S. payments (imports) of other private services and royalties and licensing fees have nearly quintupled, while direct defense expenditures have more than tripled. Of the \$276 billion growth in imports since 1994, the other private services category accounted for 45 percent of the increase and the other transportation category accounted for 17 percent of the increase.

As with exports, detailed sectoral breakdowns for imports of other private services are available only through 2007. In 2007, 40 percent of U.S. imports of other private services were from business related parties (from a foreign parent or affiliate). The largest categories for U.S. imports of other private services from related and unrelated parties in 2007 were: business professional and technical services \$69 billion; insurance services, \$43 billion; and financial services, \$19 billion. The business, professional and technical services category were led by management, and consulting services (\$20 billion), computer and information services (\$15 billion), and research, development, and testing services (\$11 billion).

In the import sector, the United Kingdom remained our largest supplier of private services, providing \$43 billion to the United States in 2007. This accounted for 13% of total U.S. imports of private services in 2007. The United States imported \$25 billion from both Canada, our second largest supplier, and Japan our third largest supplier. Germany and Bermuda were our fourth and fifth largest import suppliers, exporting \$24 and \$17 billion, respectively, worth of services to the U.S. in 2007.

Regionally, the U.S. imported \$133 billion of services from the EU-27 in 2007, \$69 billion from the Asia/Pacific region (\$36 billion excluding Japan and China), \$40 billion from NAFTA, and \$17 billion from Latin America (excluding Mexico).

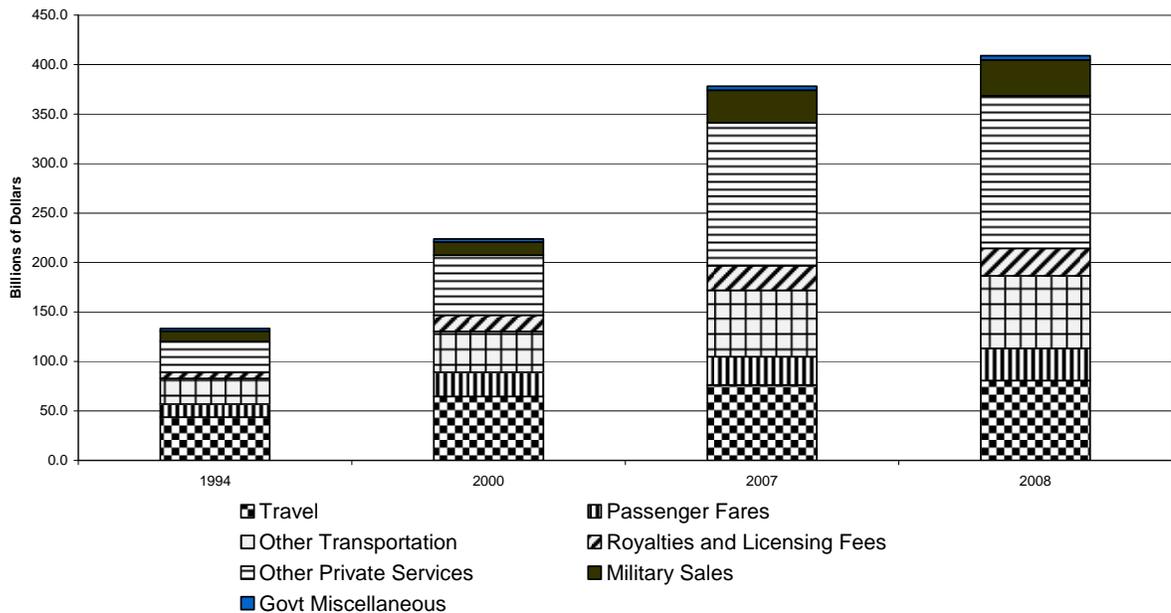
**Table 6**  
**U.S. Services Imports**

Imports:	1994	2000	2007	2008*	07-08*	00-08*	94-08*
	<i>Billions of Dollars</i>				<i>Percent Changes</i>		
<b>Total (BOP basis)</b>	133.1	223.7	378.1	409.2	8.2%	82.9%	207.5%
<b>Travel</b>	43.8	64.7	76.2	80.7	6.0%	24.7%	84.4%
<b>Passenger Fares</b>	13.1	24.3	28.5	32.5	14.0%	33.7%	148.5%
<b>Other Transportation</b>	26.0	41.4	67.1	73.3	9.4%	77.1%	181.9%
<b>Royalties and Licensing Fees</b>	5.9	16.5	25.0	27.8	11.0%	68.8%	375.1%
<b>Other Private Services</b>	31.6	60.5	144.4	154.3	6.9%	155.0%	389.0%
<b>Direct Defense Expenditures</b>	10.2	13.5	32.8	36.1	10.0%	168.1%	253.5%
<b>U.S. Government Miscellaneous Services</b>	2.6	2.9	4.2	4.4	4.9%	52.3%	71.5%

\*Annualized based on January-November 2008 data.

Source: U.S. Department of Commerce, Balance of Payments basis.

**Figure 6:**  
**U.S. Services Imports**



2007 Annualized based on January-November 2008 data  
Source: U.S. Department of Commerce

#### IV. The U.S. Trade Deficit

In 2008, the U.S. goods and services deficit decreased by \$13 billion to a level of \$687 billion (*table 7*), the second consecutive year of deficit decline. The U.S. deficit in goods trade alone increased by \$15 billion to \$834 billion in 2008, while the U.S. surplus in services trade increased by \$28 billion to \$147 billion. The increase in the goods deficit was largely the result of the increase in oil prices, up 59 percent in 2008 as compared to 2007. The deficit in petroleum increased by 39 percent in 2008 and accounted for nearly 60 percent of the total goods and services deficit. In contrast, the non-petroleum goods deficit actually declined by 18 percent in 2008.

As a share of U.S. GDP, the goods and services trade deficit declined from 5.1 percent of GDP in 2007 to 4.8 percent of GDP in 2008 (*table 8*). The goods trade deficit declined from 5.9 percent of GDP in 2007 to 5.8 percent of GDP in 2008, while the services trade surplus increased from 0.9 percent of GDP in 2007 to 1.0 percent of GDP in 2008.

The regional distribution of the goods trade deficit for 1994, 2000, and 2006-2007 is shown in *table 9*.

<b>Table 7</b>				
<b>U.S. Trade Balances with the World</b>				
<b>Balance:</b>	<b>1994</b>	<b>2000</b>	<b>2007</b>	<b>2008*</b>
	<i>Billions of Dollars</i>			
<b>Goods and Services (BOP Basis)</b>	-98.5	-379.8	-700.3	-686.8
<b>Goods (BOP Basis)</b>	-165.8	-454.7	-819.4	-834.1
<b>Services (BOP Basis)</b>	67.3	74.9	119.1	147.2
<b>* Annualized based on January-November 2008 data</b>				
<b>Source: U.S. Department of Commerce</b>				

<b>Table 8</b>				
<b>U.S. Trade Balances as a Share of GDP</b>				
<b>Share of GDP:</b>	<b>1994</b>	<b>2000</b>	<b>2007</b>	<b>2008*</b>
	<i>Percents</i>			
<b>Goods and Services (BOP Basis)</b>	-1.4	-3.9	-5.1	-4.8
<b>Goods (BOP Basis)</b>	-2.3	-4.6	-5.9	-5.8
<b>Services (BOP Basis)</b>	1.0	0.8	0.9	1.0
* Annualized based on January-November 2008 data				
Source: U.S. Department of Commerce				

<b>Table 9</b>				
<b>U.S. Goods Trade Balances with Selected Countries/Regions</b>				
<b>Balance:</b>	<b>1994</b>	<b>2000</b>	<b>2007</b>	<b>2008*</b>
	<i>Billions of Dollars</i>			
<b>Canada</b>	-14.0	-51.9	-68.2	-77.9
<b>European Union (EU27)</b>	-11.8	-59.1	-107.2	-93.0
<b>Japan</b>	-65.7	-81.6	-82.8	-73.1
<b>Mexico</b>	1.4	-24.6	-74.6	-66.4
<b>China</b>	-29.5	-83.8	-259.2	-269.2
<b>Asian Pacific Rim, except Japan and China</b>	-18.2	-50.0	-27.5	-10.0
<b>Latin America, except Mexico</b>	3.2	-14.1	-27.3	-24.3
<b>Addendum: Industrial Countries**</b>	-86.7	-187.1	-246.6	-239.6
<b>Addendum: Developing Countries**</b>	-63.9	-249.0	-547.9	-598.5
* Annualized based on January-November 2008 data				
** As defined by the International Monetary Fund				
Source: U.S. Department of Commerce				



## **ANNEX II**

## **Background Information on the WTO**

### ***Doha Development Agenda***

1. Doha Ministerial Declaration
2. Doha Declaration on the TRIPS Agreement and Public Health
3. Doha Declaration on Implementation-Related Issues and Concerns
4. Doha Work Programme
5. Amendment of the TRIPS Agreement
6. Hong Kong Ministerial Declaration
7. U.S. Submissions to the WTO in Support of the Doha Development Agenda
8. WTO Affinity Groups in the DDA

### ***Institutional Issues***

1. Membership of the WTO
2. 2008 WTO Budget Contributions
3. 2008-9 Budget for the WTO Secretariat
4. Waivers Currently in Force
5. WTO Secretariat Personnel Statistics
6. WTO Accession Application and Status
7. Indicative List of Governmental and Non-Governmental Panellists
8. Appellate Body Membership
9. Where to Find More Information on the WTO

# WORLD TRADE ORGANIZATION

WT/MIN(01)/DEC/1  
20 November 2001

(01-5859)

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**MINISTERIAL CONFERENCE**  
**Fourth Session**  
**Doha, 9 - 14 November 2001**

## **MINISTERIAL DECLARATION**

Adopted on 14 November 2001

1. The multilateral trading system embodied in the World Trade Organization has contributed significantly to economic growth, development and employment throughout the past fifty years. We are determined, particularly in the light of the global economic slowdown, to maintain the process of reform and liberalization of trade policies, thus ensuring that the system plays its full part in promoting recovery, growth and development. We therefore strongly reaffirm the principles and objectives set out in the Marrakesh Agreement Establishing the World Trade Organization, and pledge to reject the use of protectionism.
2. International trade can play a major role in the promotion of economic development and the alleviation of poverty. We recognize the need for all our peoples to benefit from the increased opportunities and welfare gains that the multilateral trading system generates. The majority of WTO Members are developing countries. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration. Recalling the Preamble to the Marrakesh Agreement, we shall continue to make positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development. In this context, enhanced market access, balanced rules, and well targeted, sustainably financed technical assistance and capacity-building programmes have important roles to play.
3. We recognize the particular vulnerability of the least-developed countries and the special structural difficulties they face in the global economy. We are committed to addressing the marginalization of least-developed countries in international trade and to improving their effective participation in the multilateral trading system. We recall the commitments made by Ministers at our meetings in Marrakesh, Singapore and Geneva, and by the international community at the Third UN Conference on Least-Developed Countries in Brussels, to help least-developed countries secure beneficial and meaningful integration into the multilateral trading system and the global economy. We are determined that the WTO will play its part in building effectively on these commitments under the Work Programme we are establishing.
4. We stress our commitment to the WTO as the unique forum for global trade rule-making and liberalization, while also recognizing that regional trade agreements can play an important role in promoting the liberalization and expansion of trade and in fostering development.

5. We are aware that the challenges Members face in a rapidly changing international environment cannot be addressed through measures taken in the trade field alone. We shall continue to work with the Bretton Woods institutions for greater coherence in global economic policy-making.

6. We strongly reaffirm our commitment to the objective of sustainable development, as stated in the Preamble to the Marrakesh Agreement. We are convinced that the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and the promotion of sustainable development can and must be mutually supportive. We take note of the efforts by Members to conduct national environmental assessments of trade policies on a voluntary basis. We recognize that under WTO rules no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, and are otherwise in accordance with the provisions of the WTO Agreements. We welcome the WTO's continued cooperation with UNEP and other inter-governmental environmental organizations. We encourage efforts to promote cooperation between the WTO and relevant international environmental and developmental organizations, especially in the lead-up to the World Summit on Sustainable Development to be held in Johannesburg, South Africa, in September 2002.

7. We reaffirm the right of Members under the General Agreement on Trade in Services to regulate, and to introduce new regulations on, the supply of services.

8. We reaffirm our declaration made at the Singapore Ministerial Conference regarding internationally recognized core labour standards. We take note of work under way in the International Labour Organization (ILO) on the social dimension of globalization.

9. We note with particular satisfaction that this Conference has completed the WTO accession procedures for China and Chinese Taipei. We also welcome the accession as new Members, since our last Session, of Albania, Croatia, Georgia, Jordan, Lithuania, Moldova and Oman, and note the extensive market-access commitments already made by these countries on accession. These accessions will greatly strengthen the multilateral trading system, as will those of the 28 countries now negotiating their accession. We therefore attach great importance to concluding accession proceedings as quickly as possible. In particular, we are committed to accelerating the accession of least-developed countries.

10. Recognizing the challenges posed by an expanding WTO membership, we confirm our collective responsibility to ensure internal transparency and the effective participation of all Members. While emphasizing the intergovernmental character of the organization, we are committed to making the WTO's operations more transparent, including through more effective and prompt dissemination of information, and to improve dialogue with the public. We shall therefore at the national and multilateral levels continue to promote a better public understanding of the WTO and to communicate the benefits of a liberal, rules-based multilateral trading system.

11. In view of these considerations, we hereby agree to undertake the broad and balanced Work Programme set out below. This incorporates both an expanded negotiating agenda and other important decisions and activities necessary to address the challenges facing the multilateral trading system.

## **WORK PROGRAMME**

### IMPLEMENTATION-RELATED ISSUES AND CONCERNS

12. We attach the utmost importance to the implementation-related issues and concerns raised by Members and are determined to find appropriate solutions to them. In this connection, and having regard to the General Council Decisions of 3 May and 15 December 2000, we further adopt the Decision on Implementation-Related Issues and Concerns in document WT/MIN(01)/17 to address a number of implementation problems faced by Members. We agree that negotiations on outstanding implementation issues shall be an integral part of the Work Programme we are establishing, and that agreements reached at an early stage in these negotiations shall be treated in accordance with the provisions of paragraph 47 below. In this regard, we shall proceed as follows: (a) where we provide a specific negotiating mandate in this Declaration, the relevant implementation issues shall be addressed under that mandate; (b) the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the Trade Negotiations Committee, established under paragraph 46 below, by the end of 2002 for appropriate action.

### AGRICULTURE

13. We recognize the work already undertaken in the negotiations initiated in early 2000 under Article 20 of the Agreement on Agriculture, including the large number of negotiating proposals submitted on behalf of a total of 121 Members. We recall the long-term objective referred to in the Agreement to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets. We reconfirm our commitment to this programme. Building on the work carried out to date and without prejudging the outcome of the negotiations we commit ourselves to comprehensive negotiations aimed at: 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. We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the Schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development. We take note of the non-trade concerns reflected in the negotiating proposals submitted by Members and confirm that non-trade concerns will be taken into account in the negotiations as provided for in the Agreement on Agriculture.

14. Modalities for the further commitments, including provisions for special and differential treatment, shall be established no later than 31 March 2003. Participants shall submit their comprehensive draft Schedules based on these modalities no later than the date of the Fifth Session of the Ministerial Conference. The negotiations, including with respect to rules and disciplines and related legal texts, shall be concluded as part and at the date of conclusion of the negotiating agenda as a whole.

## SERVICES

15. The negotiations on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries. We recognize the work already undertaken in the negotiations, initiated in January 2000 under Article XIX of the General Agreement on Trade in Services, and the large number of proposals submitted by Members on a wide range of sectors and several horizontal issues, as well as on movement of natural persons. We reaffirm the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services on 28 March 2001 as the basis for continuing the negotiations, with a view to achieving the objectives of the General Agreement on Trade in Services, as stipulated in the Preamble, Article IV and Article XIX of that Agreement. Participants shall submit initial requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003.

## MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

16. We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Product coverage shall be comprehensive and without *a priori* exclusions. The negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments, in accordance with the relevant provisions of Article XXVIII *bis* of GATT 1994 and the provisions cited in paragraph 50 below. To this end, the modalities to be agreed will include appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations.

## TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

17. We stress the importance we attach to implementation and interpretation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in a manner supportive of public health, by promoting both access to existing medicines and research and development into new medicines and, in this connection, are adopting a separate Declaration.

18. With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. We note that issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be addressed in the Council for TRIPS pursuant to paragraph 12 of this Declaration.

19. We instruct the Council for TRIPS, in pursuing its work programme including under the review of Article 27.3(b), the review of the implementation of the TRIPS Agreement under Article 71.1 and the work foreseen pursuant to paragraph 12 of this Declaration, to examine, *inter alia*, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by Members pursuant to Article 71.1. In undertaking this work, the TRIPS Council shall be

guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement and shall take fully into account the development dimension.

#### RELATIONSHIP BETWEEN TRADE AND INVESTMENT

20. Recognizing the case for a multilateral framework to secure transparent, stable and predictable conditions for long-term cross-border investment, particularly foreign direct investment, that will contribute to the expansion of trade, and the need for enhanced technical assistance and capacity-building in this area as referred to in paragraph 21, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations.

21. We recognize the needs of developing and least-developed countries for enhanced support for technical assistance and capacity building in this area, including policy analysis and development so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development. To this end, we shall work in cooperation with other relevant intergovernmental organisations, including UNCTAD, and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs.

22. In the period until the Fifth Session, further work in the Working Group on the Relationship Between Trade and Investment will focus on the clarification of: scope and definition; transparency; non-discrimination; modalities for pre-establishment commitments based on a GATS-type, positive list approach; development provisions; exceptions and balance-of-payments safeguards; consultation and the settlement of disputes between Members. Any framework should reflect in a balanced manner the interests of home and host countries, and take due account of the development policies and objectives of host governments as well as their right to regulate in the public interest. The special development, trade and financial needs of developing and least-developed countries should be taken into account as an integral part of any framework, which should enable Members to undertake obligations and commitments commensurate with their individual needs and circumstances. Due regard should be paid to other relevant WTO provisions. Account should be taken, as appropriate, of existing bilateral and regional arrangements on investment.

#### INTERACTION BETWEEN TRADE AND COMPETITION POLICY

23. Recognizing the case for a multilateral framework to enhance the contribution of competition policy to international trade and development, and the need for enhanced technical assistance and capacity-building in this area as referred to in paragraph 24, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations.

24. We recognize the needs of developing and least-developed countries for enhanced support for technical assistance and capacity building in this area, including policy analysis and development so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development. To this end, we shall work in cooperation with other relevant intergovernmental organisations, including UNCTAD, and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs.

25. In the period until the Fifth Session, further work in the Working Group on the Interaction between Trade and Competition Policy will focus on the clarification of: core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building. Full account shall be taken of the needs of developing and least-developed country participants and appropriate flexibility provided to address them.

#### TRANSPARENCY IN GOVERNMENT PROCUREMENT

26. Recognizing the case for a multilateral agreement on transparency in government procurement and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations. These negotiations will build on the progress made in the Working Group on Transparency in Government Procurement by that time and take into account participants' development priorities, especially those of least-developed country participants. Negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers. We commit ourselves to ensuring adequate technical assistance and support for capacity building both during the negotiations and after their conclusion.

#### TRADE FACILITATION

27. Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations. In the period until the Fifth Session, the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of Members, in particular developing and least-developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area.

#### WTO RULES

28. In the light of experience and of the increasing application of these instruments by Members, we agree to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures, while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants. In the initial phase of the negotiations, participants will indicate the provisions, including disciplines on trade distorting practices, that they seek to clarify and improve in the subsequent phase. In the context of these negotiations, participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries. We note that fisheries subsidies are also referred to in paragraph 31.

29. We also agree to negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements.

#### DISPUTE SETTLEMENT UNDERSTANDING

30. 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.

#### TRADE AND ENVIRONMENT

31. With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:

- (i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question;
- (ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;
- (iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

We note that fisheries subsidies form part of the negotiations provided for in paragraph 28.

32. We instruct the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to:

- (i) the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;
- (ii) the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and
- (iii) labelling requirements for environmental purposes.

Work on these issues should include the identification of any need to clarify relevant WTO rules. The Committee shall report to the Fifth Session of the Ministerial Conference, and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations. The outcome of this work as well as the negotiations carried out under paragraph 31. (i) and (ii) shall be compatible with the open and non-discriminatory nature of the

multilateral trading system, shall not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations, and will take into account the needs of developing and least-developed countries.

33. We recognize the importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular the least-developed among them. We also encourage that expertise and experience be shared with Members wishing to perform environmental reviews at the national level. A report shall be prepared on these activities for the Fifth Session.

#### ELECTRONIC COMMERCE

34. We take note of the work which has been done in the General Council and other relevant bodies since the Ministerial Declaration of 20 May 1998 and agree to continue the Work Programme on Electronic Commerce. The work to date demonstrates that electronic commerce creates new challenges and opportunities for trade for Members at all stages of development, and we recognize the importance of creating and maintaining an environment which is favourable to the future development of electronic commerce. We instruct the General Council to consider the most appropriate institutional arrangements for handling the Work Programme, and to report on further progress to the Fifth Session of the Ministerial Conference. We declare that Members will maintain their current practice of not imposing customs duties on electronic transmissions until the Fifth Session.

#### SMALL ECONOMIES

35. We agree to a work programme, under the auspices of the General Council, to examine issues relating to the trade of small economies. The objective of this work is to frame responses to the trade-related issues identified for the fuller integration of small, vulnerable economies into the multilateral trading system, and not to create a sub-category of WTO Members. The General Council shall review the work programme and make recommendations for action to the Fifth Session of the Ministerial Conference.

#### TRADE, DEBT AND FINANCE

36. We agree to an examination, in a Working Group under the auspices of the General Council, of the relationship between trade, debt and finance, and of any possible recommendations on steps that might be taken within the mandate and competence of the WTO to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and least-developed countries, and 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. The General Council shall report to the Fifth Session of the Ministerial Conference on progress in the examination.

## TRADE AND TRANSFER OF TECHNOLOGY

37. We agree to an examination, in a Working Group under the auspices of the General Council, 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. The General Council shall report to the Fifth Session of the Ministerial Conference on progress in the examination.

## TECHNICAL COOPERATION AND CAPACITY BUILDING

38. We confirm that technical cooperation and capacity building are core elements of the development dimension of the multilateral trading system, and we welcome and endorse the New Strategy for WTO Technical Cooperation for Capacity Building, Growth and Integration. We instruct the Secretariat, in coordination with other relevant agencies, to support domestic efforts for mainstreaming trade into national plans for economic development and strategies for poverty reduction. The delivery of WTO technical assistance shall be designed to assist developing and least-developed countries and low-income countries in transition to adjust to WTO rules and disciplines, implement obligations and exercise the rights of membership, including drawing on the benefits of an open, rules-based multilateral trading system. Priority shall also be accorded to small, vulnerable, and transition economies, as well as to Members and Observers without representation in Geneva. We reaffirm our support for the valuable work of the International Trade Centre, which should be enhanced.

39. We underscore the urgent necessity for the effective coordinated delivery of technical assistance with bilateral donors, in the OECD Development Assistance Committee and relevant international and regional intergovernmental institutions, within a coherent policy framework and timetable. In the coordinated delivery of technical assistance, we instruct the Director-General to consult with the relevant agencies, bilateral donors and beneficiaries, to identify ways of enhancing and rationalizing the Integrated Framework for Trade-Related Technical Assistance to Least-Developed Countries and the Joint Integrated Technical Assistance Programme (JITAP).

40. We agree that there is a need for technical assistance to benefit from secure and predictable funding. We therefore instruct the Committee on Budget, Finance and Administration to develop a plan for adoption by the General Council in December 2001 that will ensure long-term funding for WTO technical assistance at an overall level no lower than that of the current year and commensurate with the activities outlined above.

41. We have established firm commitments on technical cooperation and capacity building in various paragraphs in this Ministerial Declaration. We reaffirm these specific commitments contained in paragraphs 16, 21, 24, 26, 27, 33, 38-40, 42 and 43, and also reaffirm the understanding in paragraph 2 on the important role of sustainably financed technical assistance and capacity-building programmes. We instruct the Director-General to report to the Fifth Session of the Ministerial Conference, with an interim report to the General Council in December 2002 on the implementation and adequacy of these commitments in the identified paragraphs.

## LEAST-DEVELOPED COUNTRIES

42. We acknowledge the seriousness of the concerns expressed by the least-developed countries (LDCs) in the Zanzibar Declaration adopted by their Ministers in July 2001. We recognize that the integration of the LDCs into the multilateral trading system requires

meaningful market access, support for the diversification of their production and export base, and trade-related technical assistance and capacity building. We agree that the meaningful integration of LDCs into the trading system and the global economy will involve efforts by all WTO Members. We commit ourselves to the objective of duty-free, quota-free market access for products originating from LDCs. In this regard, we welcome the significant market access improvements by WTO Members in advance of the Third UN Conference on LDCs (LDC-III), in Brussels, May 2001. We further commit ourselves to consider additional measures for progressive improvements in market access for LDCs. Accession of LDCs remains a priority for the Membership. We agree to work to facilitate and accelerate negotiations with acceding LDCs. We instruct the Secretariat to reflect the priority we attach to LDCs' accessions in the annual plans for technical assistance. We reaffirm the commitments we undertook at LDC-III, and agree that the WTO should take into account, in designing its work programme for LDCs, the trade-related elements of the Brussels Declaration and Programme of Action, consistent with the WTO's mandate, adopted at LDC-III. We instruct the Sub-Committee for Least-Developed Countries to design such a work programme and to report on the agreed work programme to the General Council at its first meeting in 2002.

43. We endorse the Integrated Framework for Trade-Related Technical Assistance to Least-Developed Countries (IF) as a viable model for LDCs' trade development. We urge development partners to significantly increase contributions to the IF Trust Fund and WTO extra-budgetary trust funds in favour of LDCs. We urge the core agencies, in coordination with development partners, to explore the enhancement of the IF with a view to addressing the supply-side constraints of LDCs and the extension of the model to all LDCs, following the review of the IF and the appraisal of the ongoing Pilot Scheme in selected LDCs. We request the Director-General, following coordination with heads of the other agencies, to provide an interim report to the General Council in December 2002 and a full report to the Fifth Session of the Ministerial Conference on all issues affecting LDCs.

#### SPECIAL AND DIFFERENTIAL TREATMENT

44. We reaffirm that provisions for special and differential treatment are an integral part of the WTO Agreements. We note the concerns expressed regarding their operation in addressing specific constraints faced by developing countries, particularly least-developed countries. In that connection, we also note that some Members have proposed a Framework Agreement on Special and Differential Treatment (WT/GC/W/442). We therefore agree that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational. In this connection, we endorse the work programme on special and differential treatment set out in the Decision on Implementation-Related Issues and Concerns.

#### **ORGANIZATION AND MANAGEMENT OF THE WORK PROGRAMME**

45. The negotiations to be pursued under the terms of this Declaration shall be concluded not later than 1 January 2005. The Fifth Session of the Ministerial Conference will take stock of progress in the negotiations, provide any necessary political guidance, and take decisions as necessary. When the results of the negotiations in all areas have been established, a Special Session of the Ministerial Conference will be held to take decisions regarding the adoption and implementation of those results.

46. The overall conduct of the negotiations shall be supervised by a Trade Negotiations Committee under the authority of the General Council. The Trade Negotiations Committee shall

hold its first meeting not later than 31 January 2002. It shall establish appropriate negotiating mechanisms as required and supervise the progress of the negotiations.

47. With the exception of the improvements and clarifications of the Dispute Settlement Understanding, the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis. Early agreements shall be taken into account in assessing the overall balance of the negotiations.

48. Negotiations shall be open to:

- (i) all Members of the WTO; and
- (ii) States and separate customs territories currently in the process of accession and those that inform Members, at a regular meeting of the General Council, of their intention to negotiate the terms of their membership and for whom an accession working party is established.

Decisions on the outcomes of the negotiations shall be taken only by WTO Members.

49. The negotiations shall be conducted in a transparent manner among participants, in order to facilitate the effective participation of all. They shall be conducted with a view to ensuring benefits to all participants and to achieving an overall balance in the outcome of the negotiations.

50. The negotiations and the other aspects of the Work Programme shall take fully into account the principle of special and differential treatment for developing and least-developed countries embodied in: Part IV of the GATT 1994; the Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries; the Uruguay Round Decision on Measures in Favour of Least-Developed Countries; and all other relevant WTO provisions.

51. The Committee on Trade and Development and the Committee on Trade and Environment shall, within their respective mandates, each act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.

52. Those elements of the Work Programme which do not involve negotiations are also accorded a high priority. They shall be pursued under the overall supervision of the General Council, which shall report on progress to the Fifth Session of the Ministerial Conference.

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# WORLD TRADE ORGANIZATION

WT/MIN(01)/DEC/2  
20 November 2001

(01-5860)

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MINISTERIAL CONFERENCE  
Fourth Session  
Doha, 9 - 14 November 2001

## DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH

Adopted on 14 November 2001

1. We recognize the gravity of the public health problems afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics.
2. We stress the need for the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) to be part of the wider national and international action to address these problems.
3. We recognize that intellectual property protection is important for the development of new medicines. We also recognize the concerns about its effects on prices.
4. We agree that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all.

In this connection, we reaffirm the right of WTO Members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose.

5. Accordingly and in the light of paragraph 4 above, while maintaining our commitments in the TRIPS Agreement, we recognize that these flexibilities include:
  - (a) In applying the customary rules of interpretation of public international law, each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular, in its objectives and principles.
  - (b) Each Member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted.

- (c) Each Member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency.
- (d) The effect of the provisions in the TRIPS Agreement that are relevant to the exhaustion of intellectual property rights is to leave each Member free to establish its own regime for such exhaustion without challenge, subject to the MFN and national treatment provisions of Articles 3 and 4.

6. We recognize that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002.

7. We reaffirm the commitment of developed-country Members to provide incentives to their enterprises and institutions to promote and encourage technology transfer to least-developed country Members pursuant to Article 66.2. We also agree that the least-developed country Members will not be obliged, with respect to pharmaceutical products, to implement or apply Sections 5 and 7 of Part II of the TRIPS Agreement or to enforce rights provided for under these Sections until 1 January 2016, without prejudice to the right of least-developed country Members to seek other extensions of the transition periods as provided for in Article 66.1 of the TRIPS Agreement. We instruct the Council for TRIPS to take the necessary action to give effect to this pursuant to Article 66.1 of the TRIPS Agreement.

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# WORLD TRADE ORGANIZATION

WT/MIN(01)/17  
20 November 2001

(01-5858)

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**MINISTERIAL CONFERENCE**  
**Fourth Session**  
**Doha, 9 - 14 November 2001**

## **IMPLEMENTATION-RELATED ISSUES AND CONCERNS**

Decision of 14 November 2001

The Ministerial Conference,

*Having regard to* Articles IV.1, IV.5 and IX of the Marrakesh Agreement Establishing the World Trade Organization (WTO);

*Mindful* of the importance that Members attach to the increased participation of developing countries in the multilateral trading system, and of the need to ensure that the system responds fully to the needs and interests of all participants;

*Determined* to take concrete action to address issues and concerns that have been raised by many developing-country Members regarding the implementation of some WTO Agreements and Decisions, including the difficulties and resource constraints that have been encountered in the implementation of obligations in various areas;

*Recalling* the 3 May 2000 Decision of the General Council to meet in special sessions to address outstanding implementation issues, and to assess the existing difficulties, identify ways needed to resolve them, and take decisions for appropriate action not later than the Fourth Session of the Ministerial Conference;

*Noting* the actions taken by the General Council in pursuance of this mandate at its Special Sessions in October and December 2000 (WT/L/384), as well as the review and further discussion undertaken at the Special Sessions held in April, July and October 2001, including the referral of additional issues to relevant WTO bodies or their chairpersons for further work;

*Noting also* the reports on the issues referred to the General Council from subsidiary bodies and their chairpersons and from the Director-General, and the discussions as well as the clarifications provided and understandings reached on implementation issues in the intensive informal and formal meetings held under this process since May 2000;

*Decides* as follows:

1. General Agreement on Tariffs and Trade 1994 (GATT 1994)
  - 1.1 Reaffirms that Article XVIII of the GATT 1994 is a special and differential treatment provision for developing countries and that recourse to it should be less onerous than to Article XII of the GATT 1994.
  - 1.2 Noting the issues raised in the report of the Chairperson of the Committee on Market Access (WT/GC/50) concerning the meaning to be given to the phrase "substantial interest" in paragraph 2(d) of Article XIII of the GATT 1994, the Market Access Committee is directed to give further consideration to the issue and make recommendations to the General Council as expeditiously as possible but in any event not later than the end of 2002.
  
2. Agreement on Agriculture
  - 2.1 Urges Members to exercise restraint in challenging measures notified under the green box by developing countries to promote rural development and adequately address food security concerns.
  - 2.2 Takes note of the report of the Committee on Agriculture (G/AG/11) regarding the implementation of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries, and approves the recommendations contained therein regarding (i) food aid; (ii) technical and financial assistance in the context of aid programmes to improve agricultural productivity and infrastructure; (iii) financing normal levels of commercial imports of basic foodstuffs; and (iv) review of follow-up.
  - 2.3 Takes note of the report of the Committee on Agriculture (G/AG/11) regarding the implementation of Article 10.2 of the Agreement on Agriculture, and approves the recommendations and reporting requirements contained therein.
  - 2.4 Takes note of the report of the Committee on Agriculture (G/AG/11) regarding the administration of tariff rate quotas and the submission by Members of addenda to their notifications, and endorses the decision by the Committee to keep this matter under review.
  
3. Agreement on the Application of Sanitary and Phytosanitary Measures
  - 3.1 Where the appropriate level of sanitary and phytosanitary protection allows scope for the phased introduction of new sanitary and phytosanitary measures, the phrase "longer time-frame for compliance" referred to in Article 10.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures, shall be understood to mean normally a period of not less than 6 months. Where the appropriate level of sanitary and phytosanitary protection does not allow scope for the phased introduction of a new measure, but specific problems are identified by a Member, the Member applying the measure shall upon request enter into consultations with the country with a view to finding a mutually

satisfactory solution to the problem while continuing to achieve the importing Member's appropriate level of protection.

- 3.2 Subject to the conditions specified in paragraph 2 of Annex B to the Agreement on the Application of Sanitary and Phytosanitary Measures, the phrase "reasonable interval" shall be understood to mean normally a period of not less than 6 months. It is understood that timeframes for specific measures have to be considered in the context of the particular circumstances of the measure and actions necessary to implement it. The entry into force of measures which contribute to the liberalization of trade should not be unnecessarily delayed.
- 3.3 Takes note of the Decision of the Committee on Sanitary and Phytosanitary Measures (G/SPS/19) regarding equivalence, and instructs the Committee to develop expeditiously the specific programme to further the implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures.
- 3.4 Pursuant to the provisions of Article 12.7 of the Agreement on the Application of Sanitary and Phytosanitary Measures, the Committee on Sanitary and Phytosanitary Measures is instructed to review the operation and implementation of the Agreement on Sanitary and Phytosanitary Measures at least once every four years.
- 3.5 (i) Takes note of the actions taken to date by the Director-General to facilitate the increased participation of Members at different levels of development in the work of the relevant international standard setting organizations as well as his efforts to coordinate with these organizations and financial institutions in identifying SPS-related technical assistance needs and how best to address them; and  
  
(ii) urges the Director-General to continue his cooperative efforts with these organizations and institutions in this regard, including with a view to according priority to the effective participation of least-developed countries and facilitating the provision of technical and financial assistance for this purpose.
- 3.6 (i) Urges Members to provide, to the extent possible, the financial and technical assistance necessary to enable least-developed countries to respond adequately to the introduction of any new SPS measures which may have significant negative effects on their trade; and  
  
(ii) urges Members to ensure that technical assistance is provided to least-developed countries with a view to responding to the special problems faced by them in implementing the Agreement on the Application of Sanitary and Phytosanitary Measures.

#### 4. Agreement on Textiles and Clothing

Reaffirms the commitment to full and faithful implementation of the Agreement on Textiles and Clothing, and agrees:

- 4.1 that the provisions of the Agreement relating to the early integration of products and the elimination of quota restrictions should be effectively utilised.
- 4.2 that Members will exercise particular consideration before initiating investigations in the context of antidumping remedies on textile and clothing exports from developing countries previously subject to quantitative restrictions under the Agreement for a period of two years following full integration of this Agreement into the WTO.
- 4.3 that without prejudice to their rights and obligations, Members shall notify any changes in their rules of origin concerning products falling under the coverage of the Agreement to the Committee on Rules of Origin which may decide to examine them.

Requests the Council for Trade in Goods to examine the following proposals:

- 4.4 that when calculating the quota levels for small suppliers for the remaining years of the Agreement, Members will apply the most favourable methodology available in respect of those Members under the growth-on-growth provisions from the beginning of the implementation period; extend the same treatment to least-developed countries; and, where possible, eliminate quota restrictions on imports of such Members;
- 4.5 that Members will calculate the quota levels for the remaining years of the Agreement with respect to other restrained Members as if implementation of the growth-on-growth provision for stage 3 had been advanced to 1 January 2000; and make recommendations to the General Council by 31 July 2002 for appropriate action.

## 5. Agreement on Technical Barriers to Trade

- 5.1 Confirms the approach to technical assistance being developed by the Committee on Technical Barriers to Trade, reflecting the results of the triennial review work in this area, and mandates this work to continue.
- 5.2 Subject to the conditions specified in paragraph 12 of Article 2 of the Agreement on Technical Barriers to Trade, the phrase "reasonable interval" shall be understood to mean normally a period of not less than 6 months, except when this would be ineffective in fulfilling the legitimate objectives pursued.
- 5.3 (i) Takes note of the actions taken to date by the Director-General to facilitate the increased participation of Members at different levels of development in the work of the relevant international standard setting organizations as well as his efforts to coordinate with these organizations and financial institutions in identifying TBT-related technical assistance needs and how best to address them; and  
  
(ii) urges the Director-General to continue his cooperative efforts with these organizations and institutions, including with a view to according priority to the

effective participation of least-developed countries and facilitating the provision of technical and financial assistance for this purpose.

- 5.4 (i) Urges Members to provide, to the extent possible, the financial and technical assistance necessary to enable least-developed countries to respond adequately to the introduction of any new TBT measures which may have significant negative effects on their trade; and

(ii) urges Members to ensure that technical assistance is provided to least-developed countries with a view to responding to the special problems faced by them in implementing the Agreement on Technical Barriers to Trade.

6. Agreement on Trade-Related Investment Measures

- 6.1 Takes note of the actions taken by the Council for Trade in Goods in regard to requests from some developing-country Members for the extension of the five-year transitional period provided for in Article 5.2 of Agreement on Trade-Related Investment Measures.

- 6.2 Urges the Council for Trade in Goods to consider positively requests that may be made by least-developed countries under Article 5.3 of the TRIMs Agreement or Article IX.3 of the WTO Agreement, as well as to take into consideration the particular circumstances of least-developed countries when setting the terms and conditions including time-frames.

7. Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

- 7.1 Agrees that investigating authorities shall examine with special care any application for the initiation of an anti-dumping investigation where an investigation of the same product from the same Member resulted in a negative finding within the 365 days prior to the filing of the application and that, unless this pre-initiation examination indicates that circumstances have changed, the investigation shall not proceed.

- 7.2 Recognizes that, while Article 15 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 is a mandatory provision, the modalities for its application would benefit from clarification. Accordingly, the Committee on Anti-Dumping Practices is instructed, through its working group on Implementation, to examine this issue and to draw up appropriate recommendations within twelve months on how to operationalize this provision.

- 7.3 Takes note that Article 5.8 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 does not specify the time-frame to be used in determining the volume of dumped imports, and that this lack of specificity creates uncertainties in the implementation of the provision. The Committee on Anti-Dumping Practices is instructed, through its working group on Implementation, to study this issue and draw up recommendations within 12

months, with a view to ensuring the maximum possible predictability and objectivity in the application of time frames.

- 7.4 Takes note that Article 18.6 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 requires the Committee on Anti-Dumping Practices to review annually the implementation and operation of the Agreement taking into account the objectives thereof. The Committee on Anti-dumping Practices is instructed to draw up guidelines for the improvement of annual reviews and to report its views and recommendations to the General Council for subsequent decision within 12 months.

8. Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994

- 8.1 Takes note of the actions taken by the Committee on Customs Valuation in regard to the requests from a number of developing-country Members for the extension of the five-year transitional period provided for in Article 20.1 of Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.
- 8.2 Urges the Council for Trade in Goods to give positive consideration to requests that may be made by least-developed country Members under paragraphs 1 and 2 of Annex III of the Customs Valuation Agreement or under Article IX.3 of the WTO Agreement, as well as to take into consideration the particular circumstances of least-developed countries when setting the terms and conditions including time-frames.
- 8.3 Underlines the importance of strengthening cooperation between the customs administrations of Members in the prevention of customs fraud. In this regard, it is agreed that, further to the 1994 Ministerial Decision Regarding Cases Where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value, when the customs administration of an importing Member has reasonable grounds to doubt the truth or accuracy of the declared value, it may seek assistance from the customs administration of an exporting Member on the value of the good concerned. In such cases, the exporting Member shall offer cooperation and assistance, consistent with its domestic laws and procedures, including furnishing information on the export value of the good concerned. Any information provided in this context shall be treated in accordance with Article 10 of the Customs Valuation Agreement. Furthermore, recognizing the legitimate concerns expressed by the customs administrations of several importing Members on the accuracy of the declared value, the Committee on Customs Valuation is directed to identify and assess practical means to address such concerns, including the exchange of information on export values and to report to the General Council by the end of 2002 at the latest.

9. Agreement on Rules of Origin

- 9.1 Takes note of the report of the Committee on Rules of Origin (G/RO/48) regarding progress on the harmonization work programme, and urges the Committee to complete its work by the end of 2001.
- 9.2 Agrees that any interim arrangements on rules of origin implemented by Members in the transitional period before the entry into force of the results of the harmonisation work programme shall be consistent with the Agreement on Rules of Origin, particularly Articles 2 and 5 thereof. Without prejudice to Members' rights and obligations, such arrangements may be examined by the Committee on Rules of Origin.

10. Agreement on Subsidies and Countervailing Measures

- 10.1 Agrees that Annex VII(b) to the Agreement on Subsidies and Countervailing Measures includes the Members that are listed therein until their GNP per capita reaches US \$1,000 in constant 1990 dollars for three consecutive years. This decision will enter into effect upon the adoption by the Committee on Subsidies and Countervailing Measures of an appropriate methodology for calculating constant 1990 dollars. If, however, the Committee on Subsidies and Countervailing Measures does not reach a consensus agreement on an appropriate methodology by 1 January 2003, the methodology proposed by the Chairman of the Committee set forth in G/SCM/38, Appendix 2 shall be applied. A Member shall not leave Annex VII(b) so long as its GNP per capita in current dollars has not reached US \$1000 based upon the most recent data from the World Bank.
- 10.2 Takes note of the proposal to treat measures implemented by developing countries with a view to achieving legitimate development goals, such as regional growth, technology research and development funding, production diversification and development and implementation of environmentally sound methods of production as non-actionable subsidies, and agrees that this issue be addressed in accordance with paragraph 13 below. During the course of the negotiations, Members are urged to exercise due restraint with respect to challenging such measures.
- 10.3 Agrees that the Committee on Subsidies and Countervailing Measures shall continue its review of the provisions of the Agreement on Subsidies and Countervailing Measures regarding countervailing duty investigations and report to the General Council by 31 July 2002.
- 10.4 Agrees that if a Member has been excluded from the list in paragraph (b) of Annex VII to the Agreement on Subsidies and Countervailing Measures, it shall be re-included in it when its GNP per capita falls back below US\$ 1,000.
- 10.5 Subject to the provisions of Articles 27.5 and 27.6, it is reaffirmed that least-developed country Members are exempt from the prohibition on export subsidies set forth in Article 3.1(a) of the Agreement on Subsidies and Countervailing Measures, and thus have flexibility to finance their exporters, consistent with their development needs. It is understood that the eight-year period in Article

27.5 within which a least-developed country Member must phase out its export subsidies in respect of a product in which it is export-competitive begins from the date export competitiveness exists within the meaning of Article 27.6.

10.6 Having regard to the particular situation of certain developing-country Members, directs the Committee on Subsidies and Countervailing Measures to extend the transition period, under the rubric of Article 27.4 of the Agreement on Subsidies and Countervailing Measures, for certain export subsidies provided by such Members, pursuant to the procedures set forth in document G/SCM/39. Furthermore, when considering a request for an extension of the transition period under the rubric of Article 27.4 of the Agreement on Subsidies and Countervailing Measures, and in order to avoid that Members at similar stages of development and having a similar order of magnitude of share in world trade are treated differently in terms of receiving such extensions for the same eligible programmes and the length of such extensions, directs the Committee to extend the transition period for those developing countries, after taking into account the relative competitiveness in relation to other developing-country Members who have requested extension of the transition period following the procedures set forth in document G/SCM/39.

11. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

11.1 The TRIPS Council is directed to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make recommendations to the Fifth Session of the Ministerial Conference. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement.

11.2 Reaffirming that the provisions of Article 66.2 of the TRIPS Agreement are mandatory, it is agreed that the TRIPS Council shall put in place a mechanism for ensuring the monitoring and full implementation of the obligations in question. To this end, developed-country Members shall submit prior to the end of 2002 detailed reports on the functioning in practice of the incentives provided to their enterprises for the transfer of technology in pursuance of their commitments under Article 66.2. These submissions shall be subject to a review in the TRIPS Council and information shall be updated by Members annually.

12. Cross-cutting Issues

12.1 The Committee on Trade and Development is instructed:

- (i) to identify those special and differential treatment provisions that are already mandatory in nature and those that are non-binding in character, to consider the legal and practical implications for developed and developing Members of converting special and differential treatment measures into mandatory provisions, to identify those that Members consider should be made mandatory, and to report to the General Council with clear recommendations for a decision by July 2002;
- (ii) to examine additional ways in which special and differential treatment provisions can be made more effective, to consider ways, including improved information

flows, in which developing countries, in particular the least-developed countries, may be assisted to make best use of special and differential treatment provisions, and to report to the General Council with clear recommendations for a decision by July 2002; and

- (iii) to consider, in the context of the work programme adopted at the Fourth Session of the Ministerial Conference, how special and differential treatment may be incorporated into the architecture of WTO rules.

The work of the Committee on Trade and Development in this regard shall take fully into consideration previous work undertaken as noted in WT/COMTD/W/77/Rev.1. It will also be without prejudice to work in respect of implementation of WTO Agreements in the General Council and in other Councils and Committees.

- 12.2 Reaffirms that preferences granted to developing countries pursuant to the Decision of the Contracting Parties of 28 November 1979 ("Enabling Clause")<sup>1</sup> should be generalised, non-reciprocal and non-discriminatory.

### 13. Outstanding Implementation Issues<sup>2</sup>

Agrees that outstanding implementation issues be addressed in accordance with paragraph 12 of the Ministerial Declaration (WT/MIN(01)/DEC/1).

### 14. Final Provisions

Requests the Director-General, consistent with paragraphs 38 to 43 of the Ministerial Declaration (WT/MIN(01)/DEC/1), to ensure that WTO technical assistance focuses, on a priority basis, on assisting developing countries to implement existing WTO obligations as well as on increasing their capacity to participate more effectively in future multilateral trade negotiations. In carrying out this mandate, the WTO Secretariat should cooperate more closely with international and regional intergovernmental organisations so as to increase efficiency and synergies and avoid duplication of programmes.

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<sup>1</sup> BISD 26S/203.

<sup>2</sup>A list of these issues is compiled in document Job(01)/152/Rev.1.

**Doha Work Programme**

**Decision Adopted by the General Council on 1 August 2004**

1. The General Council reaffirms the Ministerial Declarations and Decisions adopted at Doha and the full commitment of all Members to give effect to them. The Council emphasizes Members' resolve to complete the Doha Work Programme fully and to conclude successfully the negotiations launched at Doha. Taking into account the Ministerial Statement adopted at Cancún on 14 September 2003, and the statements by the Council Chairman and the Director-General at the Council meeting of 15-16 December 2003, the Council takes note of the report by the Chairman of the Trade Negotiations Committee (TNC) and agrees to take action as follows:

**a. Agriculture:** the General Council adopts the framework set out in Annex A to this document.

**b. Cotton:** the General Council reaffirms the importance of the Sectoral Initiative on Cotton and takes note of the parameters set out in Annex A within which the trade-related aspects of this issue will be pursued in the agriculture negotiations. The General Council also attaches importance to the development aspects of the Cotton Initiative and wishes to stress the complementarity between the trade and development aspects. The Council takes note of the recent Workshop on Cotton in Cotonou on 23-24 March 2004 organized by the WTO Secretariat, and other bilateral and multilateral efforts to make progress on the development assistance aspects and instructs the Secretariat to continue to work with the development community and to provide the Council with periodic reports on relevant developments.

Members should work on related issues of development multilaterally with the international financial institutions, continue their bilateral programmes, and all developed countries are urged to participate. In this regard, the General Council instructs the Director General to consult with the relevant international organizations, including the Bretton Woods Institutions, the Food and Agriculture Organization and the International Trade Centre to direct effectively existing programmes and any additional resources towards development of the economies where cotton has vital importance.

**c. Non-agricultural Market Access:** the General Council adopts the framework set out in Annex B to this document.

**d. Development:**

**Principles:** development concerns form an integral part of the Doha Ministerial Declaration. The General Council rededicates and recommits Members to fulfilling the development

dimension of the Doha Development Agenda, which places the needs and interests of developing and least-developed countries at the heart of the Doha Work Programme. The Council reiterates the important role that enhanced market access, balanced rules, and well targeted, sustainably financed technical assistance and capacity building programmes can play in the economic development of these countries.

**Special and Differential Treatment:** the General Council reaffirms that provisions for special and differential (S&D) treatment are an integral part of the WTO Agreements. The Council recalls Ministers' decision in Doha to review all S&D treatment provisions with a view to strengthening them and making them more precise, effective and operational. The Council recognizes the progress that has been made so far. The Council instructs the Committee on Trade and Development in Special Session to expeditiously complete the review of all the outstanding Agreement-specific proposals and report to the General Council, with clear recommendations for a decision, by July 2005. The Council further instructs the Committee, within the parameters of the Doha mandate, to address all other outstanding work, including on the cross-cutting issues, the monitoring mechanism and the incorporation of S&D treatment into the architecture of WTO rules, as referred to in TN/CTD/7 and report, as appropriate, to the General Council.

The Council also instructs all WTO bodies to which proposals in Category II have been referred to expeditiously complete the consideration of these proposals and report to the General Council, with clear recommendations for a decision, as soon as possible and no later than July 2005. In doing so these bodies will ensure that, as far as possible, their meetings do not overlap so as to enable full and effective participation of developing countries in these discussions.

**Technical Assistance:** the General Council recognizes the progress that has been made since the Doha Ministerial Conference in expanding Trade-Related Technical Assistance (TRTA) to developing countries and low-income countries in transition. In furthering this effort the Council affirms that such countries, and in particular least-developed countries, should be provided with enhanced TRTA and capacity building, to increase their effective participation in the negotiations, to facilitate their implementation of WTO rules, and to enable them to adjust and diversify their economies. In this context the Council welcomes and further encourages the improved coordination with other agencies, including under the Integrated Framework for TRTA for the LDCs (IF) and the Joint Integrated Technical Assistance Programme (JITAP).

**Implementation:** concerning implementation-related issues, the General Council reaffirms the mandates Ministers gave in paragraph 12 of the Doha Ministerial Declaration and the Doha Decision on Implementation-Related Issues and Concerns, and renews Members' determination to find appropriate solutions to outstanding issues. The Council instructs the Trade Negotiations Committee, negotiating bodies and other WTO bodies concerned to redouble their efforts to find appropriate solutions as a priority. Without prejudice to the positions of Members, the Council requests the Director-General to continue with his consultative process on all outstanding implementation issues under paragraph 12(b) of the Doha Ministerial Declaration, including on issues related to the extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits, if need be by appointing Chairpersons of concerned WTO bodies as his Friends and/or by holding dedicated consultations. The Director-General shall report to the TNC and the General Council no later than May 2005. The Council shall review progress and take any appropriate action no later than July 2005.

**Other Development Issues:** in the ongoing market access negotiations, recognising the fundamental principles of the WTO and relevant provisions of GATT 1994, special attention shall be given to the specific trade and development related needs and concerns of developing countries, including capacity constraints. These particular concerns of developing countries, including relating to food security, rural development, livelihood, preferences, commodities and net food imports, as well as prior unilateral liberalisation, should be taken into consideration, as appropriate, in the course of the Agriculture and NAMA negotiations. The trade-related issues identified for the fuller integration of small, vulnerable economies into the multilateral trading system, should also be addressed, without creating a sub-category of Members, as part of a work programme, as mandated in paragraph 35 of the Doha Ministerial Declaration.

**Least-Developed Countries:** the General Council reaffirms the commitments made at Doha concerning least-developed countries and renews its determination to fulfil these commitments. Members will continue to take due account of the concerns of least-developed countries in the negotiations. The Council confirms that nothing in this Decision shall detract in any way from the special provisions agreed by Members in respect of these countries.

**e. Services:** the General Council takes note of the report to the TNC by the Special Session of the Council for Trade in Services<sup>1</sup> and reaffirms Members' commitment to progress in this area of the negotiations in line with the Doha mandate. The Council adopts the recommendations agreed by the Special Session, set out in Annex C to this document, on the basis of which further progress in the services negotiations will be pursued. Revised offers should be tabled by May 2005.

**f. Other negotiating bodies:**

**Rules, Trade & Environment and TRIPS:** the General Council takes note of the reports to the TNC by the Negotiating Group on Rules and by the Special Sessions of the Committee on Trade and Environment and the TRIPS Council.<sup>2</sup> The Council reaffirms Members' commitment to progress in all of these areas of the negotiations in line with the Doha mandates.

**Dispute Settlement:** the General Council takes note of the report to the TNC by the Special Session of the Dispute Settlement Body<sup>3</sup> and reaffirms Members' commitment to progress in this area of the negotiations in line with the Doha mandate. The Council adopts the TNC's recommendation that work in the Special Session should continue on the basis set out by the Chairman of that body in his report to the TNC.

**g. Trade Facilitation:** taking note of the work done on trade facilitation by the Council for Trade in Goods under the mandate in paragraph 27 of the Doha Ministerial Declaration and the work carried out under the auspices of the General Council both prior to the Fifth Ministerial Conference and after its conclusion, the General Council decides by explicit consensus to commence negotiations on the basis of the modalities set out in Annex D to this document.

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<sup>1</sup> This report is contained in document TN/S/16.

<sup>2</sup> The reports to the TNC referenced in this paragraph are contained in the following documents: Negotiating Group on Rules - TN/RL/9; Special Session of the Committee on Trade and Environment - TN/TE/9; Special Session of the Council for TRIPS - TN/IP/10.

<sup>3</sup> This report is contained in document TN/DS/10.

**Relationship between Trade and Investment, Interaction between Trade and Competition Policy and Transparency in Government Procurement:** the Council agrees that these issues, mentioned in the Doha Ministerial Declaration in paragraphs 20-22, 23-25 and 26 respectively, will not form part of the Work Programme set out in that Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round.

**h. Other elements of the Work Programme:** the General Council reaffirms the high priority Ministers at Doha gave to those elements of the Work Programme which do not involve negotiations. Noting that a number of these issues are of particular interest to developing-country Members, the Council emphasizes its commitment to fulfil the mandates given by Ministers in all these areas. To this end, the General Council and other relevant bodies shall report in line with their Doha mandates to the Sixth Session of the Ministerial Conference. The moratoria covered by paragraph 11.1 of the Doha Ministerial Decision on Implementation-related Issues and Concerns and paragraph 34 of the Doha Ministerial Declaration are extended up to the Sixth Ministerial Conference.

2. The General Council agrees that this Decision and its Annexes shall not be used in any dispute settlement proceeding under the DSU and shall not be used for interpreting the existing WTO Agreements.

3. The General Council calls on all Members to redouble their efforts towards the conclusion of a balanced overall outcome of the Doha Development Agenda in fulfilment of the commitments Ministers took at Doha. The Council agrees to continue the negotiations launched at Doha beyond the timeframe set out in paragraph 45 of the Doha Declaration, leading to the Sixth Session of the Ministerial Conference. Recalling its decision of 21 October 2003 to accept the generous offer of the Government of Hong Kong, China to host the Sixth Session, the Council further agrees that this Session will be held in December 2005.

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## **Annex A**

### **Framework for Establishing Modalities in Agriculture**

1. The starting point for the current phase of the agriculture negotiations has been the mandate set out in Paragraph 13 of the Doha Ministerial Declaration. This in turn built on the long-term objective of the Agreement on Agriculture to establish a fair and market-oriented trading system through a programme of fundamental reform. The elements below offer the additional precision required at this stage of the negotiations and thus the basis for the negotiations of full modalities in the next phase. The level of ambition set by the Doha mandate will continue to be the basis for the negotiations on agriculture.

2. The final balance will be found only at the conclusion of these subsequent negotiations and within the Single Undertaking. To achieve this balance, the modalities to be developed will need to incorporate operationally effective and meaningful provisions for special and differential treatment for developing country Members. Agriculture is of critical importance to the economic development of developing country Members and they must be able to pursue agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns. Non-trade concerns, as referred to in Paragraph 13 of the Doha Declaration, will be taken into account.

3. The reforms in all three pillars form an interconnected whole and must be approached in a balanced and equitable manner.

4. The General Council recognizes the importance of cotton for a certain number of countries and its vital importance for developing countries, especially LDCs. It will be addressed ambitiously, expeditiously, and specifically, within the agriculture negotiations. The provisions of this framework provide a basis for this approach, as does the sectoral initiative on cotton. The Special Session of the Committee on Agriculture shall ensure appropriate prioritization of the cotton issue independently from other sectoral initiatives. A subcommittee on cotton will meet periodically and report to the Special Session of the Committee on Agriculture to review progress. Work shall encompass all trade-distorting policies affecting the sector in all three pillars of market access, domestic support, and export competition, as specified in the Doha text and this Framework text.

5. Coherence between trade and development aspects of the cotton issue will be pursued as set out in paragraph 1.b of the text to which this Framework is annexed.

#### **DOMESTIC SUPPORT**

6. The Doha Ministerial Declaration calls for "substantial reductions in trade-distorting domestic support". With a view to achieving these substantial reductions, the negotiations in this pillar will ensure the following:

- Special and differential treatment remains an integral component of domestic support. Modalities to be developed will include longer implementation periods and lower reduction coefficients for all types of trade-distorting domestic support and continued access to the provisions under Article 6.2.

- There will be a strong element of harmonisation in the reductions made by developed Members. Specifically, higher levels of permitted trade-distorting domestic support will be subject to deeper cuts.
- Each such Member will make a substantial reduction in the overall level of its trade-distorting support from bound levels.
- As well as this overall commitment, Final Bound Total AMS and permitted *de minimis* levels will be subject to substantial reductions and, in the case of the Blue Box, will be capped as specified in paragraph 15 in order to ensure results that are coherent with the long-term reform objective. Any clarification or development of rules and conditions to govern trade distorting support will take this into account.

***Overall Reduction: A Tiered Formula***

7. The overall base level of all trade-distorting domestic support, as measured by the Final Bound Total AMS plus permitted *de minimis* level and the level agreed in paragraph 8 below for Blue Box payments, will be reduced according to a tiered formula. Under this formula, Members having higher levels of trade-distorting domestic support will make greater overall reductions in order to achieve a harmonizing result. As the first instalment of the overall cut, in the first year and throughout the implementation period, the sum of all trade-distorting support will not exceed 80 per cent of the sum of Final Bound Total AMS plus permitted *de minimis* plus the Blue Box at the level determined in paragraph 15.

8. The following parameters will guide the further negotiation of this tiered formula:

- This commitment will apply as a minimum overall commitment. It will not be applied as a ceiling on reductions of overall trade-distorting domestic support, should the separate and complementary formulae to be developed for Total AMS, *de minimis* and Blue Box payments imply, when taken together, a deeper cut in overall trade-distorting domestic support for an individual Member.
- The base for measuring the Blue Box component will be the higher of existing Blue Box payments during a recent representative period to be agreed and the cap established in paragraph 15 below.

***Final Bound Total AMS: A Tiered Formula***

9. To achieve reductions with a harmonizing effect:

- Final Bound Total AMS will be reduced substantially, using a tiered approach.
- Members having higher Total AMS will make greater reductions.
- To prevent circumvention of the objective of the Agreement through transfers of unchanged domestic support between different support categories, product-specific AMSs will be capped at their respective average levels according to a methodology to be agreed.

- Substantial reductions in Final Bound Total AMS will result in reductions of some product-specific support.

10. Members may make greater than formula reductions in order to achieve the required level of cut in overall trade-distorting domestic support.

### ***De Minimis***

11. Reductions in *de minimis* will be negotiated taking into account the principle of special and differential treatment. Developing countries that allocate almost all *de minimis* support for subsistence and resource-poor farmers will be exempt.

12. Members may make greater than formula reductions in order to achieve the required level of cut in overall trade-distorting domestic support.

### ***Blue Box***

13. Members recognize the role of the Blue Box in promoting agricultural reforms. In this light, Article 6.5 will be reviewed so that Members may have recourse to the following measures:

- Direct payments under production-limiting programmes if:
  - such payments are based on fixed and unchanging areas and yields; or
  - such payments are made on 85% or less of a fixed and unchanging base level of production; or
  - livestock payments are made on a fixed and unchanging number of head.

Or

- Direct payments that do not require production if:
  - such payments are based on fixed and unchanging bases and yields; or
  - livestock payments made on a fixed and unchanging number of head; and
  - such payments are made on 85% or less of a fixed and unchanging base level of production.

14. The above criteria, along with additional criteria will be negotiated. Any such criteria will ensure that Blue Box payments are less trade-distorting than AMS measures, it being understood that:

- Any new criteria would need to take account of the balance of WTO rights and obligations.
- Any new criteria to be agreed will not have the perverse effect of undoing ongoing reforms.

15. Blue Box support will not exceed 5% of a Member's average total value of agricultural production during an historical period. The historical period will be established in the negotiations. This ceiling will apply to any actual or potential Blue Box user from the beginning of the implementation period. In cases where a Member has placed an exceptionally large percentage of its trade-distorting support in the Blue Box, some flexibility will be provided on a

basis to be agreed to ensure that such a Member is not called upon to make a wholly disproportionate cut.

### ***Green Box***

16. Green Box criteria will be reviewed and clarified with a view to ensuring that Green Box measures have no, or at most minimal, trade-distorting effects or effects on production. Such a review and clarification will need to ensure that the basic concepts, principles and effectiveness of the Green Box remain and take due account of non-trade concerns. The improved obligations for monitoring and surveillance of all new disciplines foreshadowed in paragraph 48 below will be particularly important with respect to the Green Box.

### **EXPORT COMPETITION**

17. The Doha Ministerial Declaration calls for "reduction of, with a view to phasing out, all forms of export subsidies". As an outcome of the negotiations, Members agree to establish detailed modalities ensuring the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect by a credible end date.

### ***End Point***

18. The following will be eliminated by the end date to be agreed:

- Export subsidies as scheduled.
- Export credits, export credit guarantees or insurance programmes with repayment periods beyond 180 days.
- Terms and conditions relating to export credits, export credit guarantees or insurance programmes with repayment periods of 180 days and below which are not in accordance with disciplines to be agreed. These disciplines will cover, *inter alia*, payment of interest, minimum interest rates, minimum premium requirements, and other elements which can constitute subsidies or otherwise distort trade.
- Trade distorting practices with respect to exporting STEs including eliminating export subsidies provided to or by them, government financing, and the underwriting of losses. The issue of the future use of monopoly powers will be subject to further negotiation.
- Provision of food aid that is not in conformity with operationally effective disciplines to be agreed. The objective of such disciplines will be to prevent commercial displacement. The role of international organizations as regards the provision of food aid by Members, including related humanitarian and developmental issues, will be addressed in the negotiations. The question of providing food aid exclusively in fully grant form will also be addressed in the negotiations.

19. Effective transparency provisions for paragraph 18 will be established. Such provisions, in accordance with standard WTO practice, will be consistent with commercial confidentiality considerations.

### ***Implementation***

20. Commitments and disciplines in paragraph 18 will be implemented according to a schedule and modalities to be agreed. Commitments will be implemented by annual instalments. Their phasing will take into account the need for some coherence with internal reform steps of Members.

21. The negotiation of the elements in paragraph 18 and their implementation will ensure equivalent and parallel commitments by Members.

### ***Special and Differential Treatment***

22. Developing country Members will benefit from longer implementation periods for the phasing out of all forms of export subsidies.

23. Developing countries will continue to benefit from special and differential treatment under the provisions of Article 9.4 of the Agreement on Agriculture for a reasonable period, to be negotiated, after the phasing out of all forms of export subsidies and implementation of all disciplines identified above are completed.

24. Members will ensure that the disciplines on export credits, export credit guarantees or insurance programs to be agreed will make appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries as provided for in paragraph 4 of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries. Improved obligations for monitoring and surveillance of all new disciplines as foreshadowed in paragraph 48 will be critically important in this regard. Provisions to be agreed in this respect must not undermine the commitments undertaken by Members under the obligations in paragraph 18 above.

25. STEs in developing country Members which enjoy special privileges to preserve domestic consumer price stability and to ensure food security will receive special consideration for maintaining monopoly status.

### ***Special Circumstances***

26. In exceptional circumstances, which cannot be adequately covered by food aid, commercial export credits or preferential international financing facilities, ad hoc temporary financing arrangements relating to exports to developing countries may be agreed by Members. Such agreements must not have the effect of undermining commitments undertaken by Members in paragraph 18 above, and will be based on criteria and consultation procedures to be established.

### **MARKET ACCESS**

27. The Doha Ministerial Declaration calls for "substantial improvements in market access". Members also agreed that special and differential treatment for developing Members would be an integral part of all elements in the negotiations.

### ***The Single Approach: a Tiered Formula***

28. To ensure that a single approach for developed and developing country Members meets all the objectives of the Doha mandate, tariff reductions will be made through a tiered formula that takes into account their different tariff structures.

29. To ensure that such a formula will lead to substantial trade expansion, the following principles will guide its further negotiation:

- Tariff reductions will be made from bound rates. Substantial overall tariff reductions will be achieved as a final result from negotiations.
- Each Member (other than LDCs) will make a contribution. Operationally effective special and differential provisions for developing country Members will be an integral part of all elements.
- Progressivity in tariff reductions will be achieved through deeper cuts in higher tariffs with flexibilities for sensitive products. Substantial improvements in market access will be achieved for all products.

30. The number of bands, the thresholds for defining the bands and the type of tariff reduction in each band remain under negotiation. The role of a tariff cap in a tiered formula with distinct treatment for sensitive products will be further evaluated.

### ***Sensitive Products***

#### Selection

31. Without undermining the overall objective of the tiered approach, Members may designate an appropriate number, to be negotiated, of tariff lines to be treated as sensitive, taking account of existing commitments for these products.

#### Treatment

32. The principle of ‘substantial improvement’ will apply to each product.

33. ‘Substantial improvement’ will be achieved through combinations of tariff quota commitments and tariff reductions applying to each product. However, balance in this negotiation will be found only if the final negotiated result also reflects the sensitivity of the product concerned.

34. Some MFN-based tariff quota expansion will be required for all such products. A base for such an expansion will be established, taking account of coherent and equitable criteria to be developed in the negotiations. In order not to undermine the objective of the tiered approach, for all such products, MFN based tariff quota expansion will be provided under specific rules to be negotiated taking into account deviations from the tariff formula.

### ***Other Elements***

35. Other elements that will give the flexibility required to reach a final balanced result include reduction or elimination of in-quota tariff rates, and operationally effective improvements

in tariff quota administration for existing tariff quotas so as to enable Members, and particularly developing country Members, to fully benefit from the market access opportunities under tariff rate quotas.

36. Tariff escalation will be addressed through a formula to be agreed.

37. The issue of tariff simplification remains under negotiation.

38. The question of the special agricultural safeguard (SSG) remains under negotiation.

### ***Special and differential treatment***

39. Having regard to their rural development, food security and/or livelihood security needs, special and differential treatment for developing countries will be an integral part of all elements of the negotiation, including the tariff reduction formula, the number and treatment of sensitive products, expansion of tariff rate quotas, and implementation period.

40. Proportionality will be achieved by requiring lesser tariff reduction commitments or tariff quota expansion commitments from developing country Members.

41. Developing country Members will have the flexibility to designate an appropriate number of products as Special Products, based on criteria of food security, livelihood security and rural development needs. These products will be eligible for more flexible treatment. The criteria and treatment of these products will be further specified during the negotiation phase and will recognize the fundamental importance of Special Products to developing countries.

42. A Special Safeguard Mechanism (SSM) will be established for use by developing country Members.

43. Full implementation of the long-standing commitment to achieve the fullest liberalisation of trade in tropical agricultural products and for products of particular importance to the diversification of production from the growing of illicit narcotic crops is overdue and will be addressed effectively in the market access negotiations.

44. The importance of long-standing preferences is fully recognised. The issue of preference erosion will be addressed. For the further consideration in this regard, paragraph 16 and other relevant provisions of TN/AG/W/1/Rev.1 will be used as a reference.

### **LEAST- DEVELOPED COUNTRIES**

45. Least-Developed Countries, which will have full access to all special and differential treatment provisions above, are not required to undertake reduction commitments. Developed Members, and developing country Members in a position to do so, should provide duty-free and quota-free market access for products originating from least-developed countries.

46. Work on cotton under all the pillars will reflect the vital importance of this sector to certain LDC Members and we will work to achieve ambitious results expeditiously.

### **RECENTLY ACCEDED MEMBERS**

47. The particular concerns of recently acceded Members will be effectively addressed through specific flexibility provisions.

## **MONITORING AND SURVEILLANCE**

48. Article 18 of the Agreement on Agriculture will be amended with a view to enhancing monitoring so as to effectively ensure full transparency, including through timely and complete notifications with respect to the commitments in market access, domestic support and export competition. The particular concerns of developing countries in this regard will be addressed.

## **OTHER ISSUES**

49. Issues of interest but not agreed: sectoral initiatives, differential export taxes, GIs.

50. Disciplines on export prohibitions and restrictions in Article 12.1 of the Agreement on Agriculture will be strengthened.

## Annex B

### Framework for Establishing Modalities in Market Access for Non-Agricultural Products

1. This Framework contains the initial elements for future work on modalities by the Negotiating Group on Market Access. Additional negotiations are required to reach agreement on the specifics of some of these elements. These relate to the formula, the issues concerning the treatment of unbound tariffs in indent two of paragraph 5, the flexibilities for developing-country participants, the issue of participation in the sectorial tariff component and the preferences. In order to finalize the modalities, the Negotiating Group is instructed to address these issues expeditiously in a manner consistent with the mandate of paragraph 16 of the Doha Ministerial Declaration and the overall balance therein.

2. We reaffirm that negotiations on market access for non-agricultural products shall aim to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. We also reaffirm the importance of special and differential treatment and less than full reciprocity in reduction commitments as integral parts of the modalities.

3. We acknowledge the substantial work undertaken by the Negotiating Group on Market Access and the progress towards achieving an agreement on negotiating modalities. We take note of the constructive dialogue on the Chair's Draft Elements of Modalities (TN/MA/W/35/Rev.1) and confirm our intention to use this document as a reference for the future work of the Negotiating Group. We instruct the Negotiating Group to continue its work, as mandated by paragraph 16 of the Doha Ministerial Declaration with its corresponding references to the relevant provisions of Article XXVIII *bis* of GATT 1994 and to the provisions cited in paragraph 50 of the Doha Ministerial Declaration, on the basis set out below.

4. We recognize that a formula approach is key to reducing tariffs, and reducing or eliminating tariff peaks, high tariffs, and tariff escalation. We agree that the Negotiating Group should continue its work on a non-linear formula applied on a line-by-line basis which shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments.

5. We further agree on the following elements regarding the formula:

- product coverage shall be comprehensive without *a priori* exclusions;
- tariff reductions or elimination shall commence from the bound rates after full implementation of current concessions; however, for unbound tariff lines, the basis for commencing the tariff reductions shall be [two] times the MFN applied rate in the base year;
- the base year for MFN applied tariff rates shall be 2001 (applicable rates on 14 November);
- credit shall be given for autonomous liberalization by developing countries provided that the tariff lines were bound on an MFN basis in the WTO since the conclusion of the Uruguay Round;

- all non-*ad valorem* duties shall be converted to *ad valorem* equivalents on the basis of a methodology to be determined and bound in *ad valorem* terms;
- negotiations shall commence on the basis of the HS96 or HS2002 nomenclature, with the results of the negotiations to be finalized in HS2002 nomenclature;
- the reference period for import data shall be 1999-2001.

6. We furthermore agree that, as an exception, participants with a binding coverage of non-agricultural tariff lines of less than [35] percent would be exempt from making tariff reductions through the formula. Instead, we expect them to bind [100] percent of non-agricultural tariff lines at an average level that does not exceed the overall average of bound tariffs for all developing countries after full implementation of current concessions.

7. We recognize that a sectorial tariff component, aiming at elimination or harmonization is another key element to achieving the objectives of paragraph 16 of the Doha Ministerial Declaration with regard to the reduction or elimination of tariffs, in particular on products of export interest to developing countries. We recognize that participation by all participants will be important to that effect. We therefore instruct the Negotiating Group to pursue its discussions on such a component, with a view to defining product coverage, participation, and adequate provisions of flexibility for developing-country participants.

8. We agree that developing-country participants shall have longer implementation periods for tariff reductions. In addition, they shall be given the following flexibility:

- a) applying less than formula cuts to up to [10] percent of the tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed [10] percent of the total value of a Member's imports; or
- b) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [5] percent of tariff lines provided they do not exceed [5] percent of the total value of a Member's imports.

We furthermore agree that this flexibility could not be used to exclude entire HS Chapters.

9. We agree that least-developed country participants shall not be required to apply the formula nor participate in the sectorial approach, however, as part of their contribution to this round of negotiations, they are expected to substantially increase their level of binding commitments.

10. Furthermore, in recognition of the need to enhance the integration of least-developed countries into the multilateral trading system and support the diversification of their production and export base, we call upon developed-country participants and other participants who so decide, to grant on an autonomous basis duty-free and quota-free market access for non-agricultural products originating from least-developed countries by the year [...].

11. We recognize that newly acceded Members shall have recourse to special provisions for tariff reductions in order to take into account their extensive market access commitments undertaken as part of their accession and that staged tariff reductions are still being implemented in many cases. We instruct the Negotiating Group to further elaborate on such provisions.

12. We agree that pending agreement on core modalities for tariffs, the possibilities of supplementary modalities such as zero-for-zero sector elimination, sectorial harmonization, and request & offer, should be kept open.

13. In addition, we ask developed-country participants and other participants who so decide to consider the elimination of low duties.

14. We recognize that NTBs are an integral and equally important part of these negotiations and instruct participants to intensify their work on NTBs. In particular, we encourage all participants to make notifications on NTBs by 31 October 2004 and to proceed with identification, examination, categorization, and ultimately negotiations on NTBs. We take note that the modalities for addressing NTBs in these negotiations could include request/offer, horizontal, or vertical approaches; and should fully take into account the principle of special and differential treatment for developing and least-developed country participants.

15. We recognize that appropriate studies and capacity building measures shall be an integral part of the modalities to be agreed. We also recognize the work that has already been undertaken in these areas and ask participants to continue to identify such issues to improve participation in the negotiations.

16. We recognize the challenges that may be faced by non-reciprocal preference beneficiary Members and those Members that are at present highly dependent on tariff revenue as a result of these negotiations on non-agricultural products. We instruct the Negotiating Group to take into consideration, in the course of its work, the particular needs that may arise for the Members concerned.

17. We furthermore encourage the Negotiating Group to work closely with the Committee on Trade and Environment in Special Session with a view to addressing the issue of non-agricultural environmental goods covered in paragraph 31 (iii) of the Doha Ministerial Declaration.

## **Annex C**

### **Recommendations of the Special Session of the Council for Trade in Services**

- (a) Members who have not yet submitted their initial offers must do so as soon as possible.
- (b) A date for the submission of a round of revised offers should be established as soon as feasible.
- (c) With a view to providing effective market access to all Members and in order to ensure a substantive outcome, Members shall strive to ensure a high quality of offers, particularly in sectors and modes of supply of export interest to developing countries, with special attention to be given to least-developed countries.
- (d) Members shall aim to achieve progressively higher levels of liberalization with no a priori exclusion of any service sector or mode of supply and shall give special attention to sectors and modes of supply of export interest to developing countries. Members note the interest of developing countries, as well as other Members, in Mode 4.
- (e) Members must intensify their efforts to conclude the negotiations on rule-making under GATS Articles VI:4, X, XIII and XV in accordance with their respective mandates and deadlines.
- (f) Targeted technical assistance should be provided with a view to enabling developing countries to participate effectively in the negotiations.
- (g) For the purpose of the Sixth Ministerial meeting, the Special Session of the Council for Trade in Services shall review progress in these negotiations and provide a full report to the Trade Negotiations Committee, including possible recommendations.

## Annex D

### Modalities for Negotiations on Trade Facilitation

1. Negotiations shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit.<sup>4</sup> Negotiations shall also aim at enhancing technical assistance and support for capacity building in this area. The negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues.
2. The results of the negotiations shall take fully into account the principle of special and differential treatment for developing and least-developed countries. Members recognize that this principle should extend beyond the granting of traditional transition periods for implementing commitments. In particular, the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members. It is further agreed that those Members would not be obliged to undertake investments in infrastructure projects beyond their means.
3. Least-developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.
4. As an integral part of the negotiations, Members shall seek to identify their trade facilitation needs and priorities, particularly those of developing and least-developed countries, and shall also address the concerns of developing and least-developed countries related to cost implications of proposed measures.
5. It is recognized that the provision of technical assistance and support for capacity building is vital for developing and least-developed countries to enable them to fully participate in and benefit from the negotiations. Members, in particular developed countries, therefore commit themselves to adequately ensure such support and assistance during the negotiations.<sup>5</sup>
6. Support and assistance should also be provided to help developing and least-developed countries implement the commitments resulting from the negotiations, in accordance with their nature and scope. In this context, it is recognized that negotiations could lead to certain commitments whose implementation would require support for infrastructure development on the part of some Members. In these limited cases, developed-country Members will make every effort to ensure support and assistance directly related to the nature and scope of the commitments in order to allow implementation. It is understood, however, that in cases where required support and assistance for such infrastructure is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required. While every effort will be made to ensure the necessary support and assistance, it is understood that the commitments by developed countries to provide such support are not open-ended.

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<sup>4</sup> It is understood that this is without prejudice to the possible format of the final result of the negotiations and would allow consideration of various forms of outcomes.

<sup>5</sup> In connection with this paragraph, Members note that paragraph 38 of the Doha Ministerial Declaration addresses relevant technical assistance and capacity building concerns of Members.

7. Members agree to review the effectiveness of the support and assistance provided and its ability to support the implementation of the results of the negotiations.

8. In order to make technical assistance and capacity building more effective and operational and to ensure better coherence, Members shall invite relevant international organizations, including the IMF, OECD, UNCTAD, WCO and the World Bank to undertake a collaborative effort in this regard.

9. Due account shall be taken of the relevant work of the WCO and other relevant international organizations in this area.

10. Paragraphs 45-51 of the Doha Ministerial Declaration shall apply to these negotiations. At its first meeting after the July session of the General Council, the Trade Negotiations Committee shall establish a Negotiating Group on Trade Facilitation and appoint its Chair. The first meeting of the Negotiating Group shall agree on a work plan and schedule of meetings.

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**AMENDMENT OF THE TRIPS AGREEMENT**

*Decision of 6 December 2005*

The General Council;

*Having regard* to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");

*Conducting* the functions of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;

*Noting* the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) and, in particular, the instruction of the Ministerial Conference to the Council for TRIPS contained in paragraph 6 of the Declaration to find an expeditious solution to the problem of the difficulties that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face in making effective use of compulsory licensing under the TRIPS Agreement;

*Recognizing*, where eligible importing Members seek to obtain supplies under the system set out in the proposed amendment of the TRIPS Agreement, the importance of a rapid response to those needs consistent with the provisions of the proposed amendment of the TRIPS Agreement;

*Recalling* paragraph 11 of the General Council Decision of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health;

*Having considered* the proposal to amend the TRIPS Agreement submitted by the Council for TRIPS (IP/C/41);

*Noting* the consensus to submit this proposed amendment to the Members for acceptance;

*Decides* as follows:

1. The Protocol amending the TRIPS Agreement attached to this Decision is hereby adopted and submitted to the Members for acceptance.
  2. The Protocol shall be open for acceptance by Members until 1 December 2007 or such later date as may be decided by the Ministerial Conference.
  3. The Protocol shall take effect in accordance with the provisions of paragraph 3 of Article X of the WTO Agreement.
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## ATTACHMENT

### PROTOCOL AMENDING THE TRIPS AGREEMENT

*Members of the World Trade Organization;*

*Having regard* to the Decision of the General Council in document WT/L/641, adopted pursuant to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");

*Hereby agree* as follows:

- The Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement") shall, upon the entry into force of the Protocol pursuant to paragraph 4, be amended as set out in the Annex to this Protocol, by inserting Article 31*bis* after Article 31 and by inserting the Annex to the TRIPS Agreement after Article 73.
- Reservations may not be entered in respect of any of the provisions of this Protocol without the consent of the other Members.
- This Protocol shall be open for acceptance by Members until 1 December 2007 or such later date as may be decided by the Ministerial Conference.
- This Protocol shall enter into force in accordance with paragraph 3 of Article X of the WTO Agreement.
- This Protocol shall be deposited with the Director-General of the World Trade Organization who shall promptly furnish to each Member a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 3.
- This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

*Done* at Geneva this sixth day of December two thousand and five, in a single copy in the English, French and Spanish languages, each text being authentic.

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## **ANNEX TO THE PROTOCOL AMENDING THE TRIPS AGREEMENT**

### ***Article 31bis***

1. The obligations of an exporting Member under Article 31(f) shall not apply with respect to the grant by it of a compulsory licence to the extent necessary for the purposes of production of a pharmaceutical product(s) and its export to an eligible importing Member(s) in accordance with the terms set out in paragraph 2 of the Annex to this Agreement.

2. Where a compulsory licence is granted by an exporting Member under the system set out in this Article and the Annex to this Agreement, adequate remuneration pursuant to Article 31(h) shall be paid in that Member taking into account the economic value to the importing Member of the use that has been authorized in the exporting Member. Where a compulsory licence is granted for the same products in the eligible importing Member, the obligation of that Member under Article 31(h) shall not apply in respect of those products for which remuneration in accordance with the first sentence of this paragraph is paid in the exporting Member.

3. With a view to harnessing economies of scale for the purposes of enhancing purchasing power for, and facilitating the local production of, pharmaceutical products: where a developing or least-developed country WTO Member is a party to a regional trade agreement within the meaning of Article XXIV of the GATT 1994 and the Decision of 28 November 1979 on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries (L/4903), at least half of the current membership of which is made up of countries presently on the United Nations list of least-developed countries, the obligation of that Member under Article 31(f) shall not apply to the extent necessary to enable a pharmaceutical product produced or imported under a compulsory licence in that Member to be exported to the markets of those other developing or least-developed country parties to the regional trade agreement that share the health problem in question. It is understood that this will not prejudice the territorial nature of the patent rights in question.

4. Members shall not challenge any measures taken in conformity with the provisions of this Article and the Annex to this Agreement under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994.

5. This Article and the Annex to this Agreement are without prejudice to the rights, obligations and flexibilities that Members have under the provisions of this Agreement other than paragraphs (f) and (h) of Article 31, including those reaffirmed by the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2), and to their interpretation. They are also without prejudice to the extent to which pharmaceutical products produced under a compulsory licence can be exported under the provisions of Article 31(f).

## ANNEX TO THE TRIPS AGREEMENT

1. For the purposes of Article 31*bis* and this Annex:
  - (a) "pharmaceutical product" means any patented product, or product manufactured through a patented process, of the pharmaceutical sector needed to address the public health problems as recognized in paragraph 1 of the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2). It is understood that active ingredients necessary for its manufacture and diagnostic kits needed for its use would be included<sup>1</sup>;
  - (b) "eligible importing Member" means any least-developed country Member, and any other Member that has made a notification<sup>2</sup> to the Council for TRIPS of its intention to use the system set out in Article 31*bis* and this Annex ("system") as an importer, it being understood that a Member may notify at any time that it will use the system in whole or in a limited way, for example only in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. It is noted that some Members will not use the system as importing Members<sup>3</sup> and that some other Members have stated that, if they use the system, it would be in no more than situations of national emergency or other circumstances of extreme urgency;
  - (c) "exporting Member" means a Member using the system to produce pharmaceutical products for, and export them to, an eligible importing Member.
2. The terms referred to in paragraph 1 of Article 31*bis* are that:
  - (a) the eligible importing Member(s)<sup>4</sup> has made a notification<sup>2</sup> to the Council for TRIPS, that:
    - (i) specifies the names and expected quantities of the product(s) needed<sup>5</sup>;
    - (ii) confirms that the eligible importing Member in question, other than a least-developed country Member, has established that it has insufficient or no manufacturing capacities in the pharmaceutical sector for the product(s) in question in one of the ways set out in the Appendix to this Annex; and
    - (iii) confirms that, where a pharmaceutical product is patented in its territory, it has granted or intends to grant a compulsory licence in accordance

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<sup>1</sup> This subparagraph is without prejudice to subparagraph 1(b).

<sup>2</sup> It is understood that this notification does not need to be approved by a WTO body in order to use the system.

<sup>3</sup> Australia, Canada, the European Communities with, for the purposes of Article 31*bis* and this Annex, its member States, Iceland, Japan, New Zealand, Norway, Switzerland, and the United States.

<sup>4</sup> Joint notifications providing the information required under this subparagraph may be made by the regional organizations referred to in paragraph 3 of Article 31*bis* on behalf of eligible importing Members using the system that are parties to them, with the agreement of those parties.

<sup>5</sup> The notification will be made available publicly by the WTO Secretariat through a page on the WTO website dedicated to the system.

with Articles 31 and 31*bis* of this Agreement and the provisions of this Annex<sup>6</sup>;

- (b) the compulsory licence issued by the exporting Member under the system shall contain the following conditions:
- (i) only the amount necessary to meet the needs of the eligible importing Member(s) may be manufactured under the licence and the entirety of this production shall be exported to the Member(s) which has notified its needs to the Council for TRIPS;
  - (ii) products produced under the licence shall be clearly identified as being produced under the system through specific labelling or marking. Suppliers should distinguish such products through special packaging and/or special colouring/shaping of the products themselves, provided that such distinction is feasible and does not have a significant impact on price; and
  - (iii) before shipment begins, the licensee shall post on a website<sup>7</sup> the following information:
    - the quantities being supplied to each destination as referred to in indent (i) above; and
    - the distinguishing features of the product(s) referred to in indent (ii) above;
- (c) the exporting Member shall notify<sup>8</sup> the Council for TRIPS of the grant of the licence, including the conditions attached to it.<sup>9</sup> The information provided shall include the name and address of the licensee, the product(s) for which the licence has been granted, the quantity(ies) for which it has been granted, the country(ies) to which the product(s) is (are) to be supplied and the duration of the licence. The notification shall also indicate the address of the website referred to in subparagraph (b)(iii) above.

3. In order to ensure that the products imported under the system are used for the public health purposes underlying their importation, eligible importing Members shall take reasonable measures within their means, proportionate to their administrative capacities and to the risk of trade diversion to prevent re-exportation of the products that have actually been imported into their territories under the system. In the event that an eligible importing Member that is a developing country Member or a least-developed country Member experiences difficulty in implementing this provision, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in order to facilitate its implementation.

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<sup>6</sup> This subparagraph is without prejudice to Article 66.1 of this Agreement.

<sup>7</sup> The licensee may use for this purpose its own website or, with the assistance of the WTO Secretariat, the page on the WTO website dedicated to the system.

<sup>8</sup> It is understood that this notification does not need to be approved by a WTO body in order to use the system.

<sup>9</sup> The notification will be made available publicly by the WTO Secretariat through a page on the WTO website dedicated to the system.

4. Members shall ensure the availability of effective legal means to prevent the importation into, and sale in, their territories of products produced under the system and diverted to their markets inconsistently with its provisions, using the means already required to be available under this Agreement. If any Member considers that such measures are proving insufficient for this purpose, the matter may be reviewed in the Council for TRIPS at the request of that Member.

5. With a view to harnessing economies of scale for the purposes of enhancing purchasing power for, and facilitating the local production of, pharmaceutical products, it is recognized that the development of systems providing for the grant of regional patents to be applicable in the Members described in paragraph 3 of Article 31*bis* should be promoted. To this end, developed country Members undertake to provide technical cooperation in accordance with Article 67 of this Agreement, including in conjunction with other relevant intergovernmental organizations.

6. Members recognize the desirability of promoting the transfer of technology and capacity building in the pharmaceutical sector in order to overcome the problem faced by Members with insufficient or no manufacturing capacities in the pharmaceutical sector. To this end, eligible importing Members and exporting Members are encouraged to use the system in a way which would promote this objective. Members undertake to cooperate in paying special attention to the transfer of technology and capacity building in the pharmaceutical sector in the work to be undertaken pursuant to Article 66.2 of this Agreement, paragraph 7 of the Declaration on the TRIPS Agreement and Public Health and any other relevant work of the Council for TRIPS.

7. The Council for TRIPS shall review annually the functioning of the system with a view to ensuring its effective operation and shall annually report on its operation to the General Council.

## **APPENDIX TO THE ANNEX TO THE TRIPS AGREEMENT**

### Assessment of Manufacturing Capacities in the Pharmaceutical Sector

Least-developed country Members are deemed to have insufficient or no manufacturing capacities in the pharmaceutical sector.

For other eligible importing Members insufficient or no manufacturing capacities for the product(s) in question may be established in either of the following ways:

(i) the Member in question has established that it has no manufacturing capacity in the pharmaceutical sector;

or

(ii) where the Member has some manufacturing capacity in this sector, it has examined this capacity and found that, excluding any capacity owned or controlled by the patent owner, it is currently insufficient for the purposes of meeting its needs. When it is established that such capacity has become sufficient to meet the Member's needs, the system shall no longer apply.

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# WORLD TRADE ORGANIZATION

WT/MIN(05)/DEC  
22 December 2005

(05-6248)

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MINISTERIAL CONFERENCE  
Sixth Session  
Hong Kong, 13 - 18 December 2005

## DOHA WORK PROGRAMME

### Ministerial Declaration

Adopted on 18 December 2005

1. We reaffirm the Declarations and Decisions we adopted at Doha, as well as the Decision adopted by the General Council on 1 August 2004, and our full commitment to give effect to them. We renew our resolve to complete the Doha Work Programme fully and to conclude the negotiations launched at Doha successfully in 2006.

2. We emphasize the central importance of the development dimension in every aspect of the Doha Work Programme and recommit ourselves to making it a meaningful reality, in terms both of the results of the negotiations on market access and rule-making and of the specific development-related issues set out below.

3. In pursuance of these objectives, we agree as follows:

*Agriculture  
negotiations*

4. We reaffirm our commitment to the mandate on agriculture as set out in paragraph 13 of the Doha Ministerial Declaration and to the Framework adopted by the General Council on 1 August 2004. We take note of the report by the Chairman of the Special Session on his own responsibility (TN/AG/21, contained in Annex A). We welcome the progress made by the Special Session of the Committee on Agriculture since 2004 and recorded therein.

5. On domestic support, there will be three bands for reductions in Final Bound Total AMS and in the overall cut in trade-distorting domestic support, with higher linear cuts in higher bands. In both cases, the Member with the highest level of permitted support will be in the top band, the two Members with the second and third highest levels of support will be in the middle band and all other Members, including all developing country Members, will be in the bottom band. In addition, developed country Members in the lower bands with high relative levels of Final Bound Total AMS will make an additional effort in AMS reduction. We also note that there has been some convergence concerning the reductions in Final Bound Total AMS, the overall cut in trade-distorting domestic support and in both product-specific and non product-specific *de minimis* limits. Disciplines will be developed to achieve effective cuts in trade-distorting domestic support consistent with the Framework. The overall reduction in trade-distorting domestic support

will still need to be made even if the sum of the reductions in Final Bound Total AMS, *de minimis* and Blue Box payments would otherwise be less than that overall reduction. Developing country Members with no AMS commitments will be exempt from reductions in *de minimis* and the overall cut in trade-distorting domestic support. Green Box criteria will be reviewed in line with paragraph 16 of the Framework, *inter alia*, to ensure that programmes of developing country Members that cause not more than minimal trade-distortion are effectively covered.

6. We agree to ensure the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect to be completed by the end of 2013. This will be achieved in a progressive and parallel manner, to be specified in the modalities, so that a substantial part is realized by the end of the first half of the implementation period. We note emerging convergence on some elements of disciplines with respect to export credits, export credit guarantees or insurance programmes with repayment periods of 180 days and below. We agree that such programmes should be self-financing, reflecting market consistency, and that the period should be of a sufficiently short duration so as not to effectively circumvent real commercially-oriented discipline. As a means of ensuring that trade-distorting practices of STEs are eliminated, disciplines relating to exporting STEs will extend to the future use of monopoly powers so that such powers cannot be exercised in any way that would circumvent the direct disciplines on STEs on export subsidies, government financing and the underwriting of losses. On food aid, we reconfirm our commitment to maintain an adequate level and to take into account the interests of food aid recipient countries. To this end, a "safe box" for bona fide food aid will be provided to ensure that there is no unintended impediment to dealing with emergency situations. Beyond that, we will ensure elimination of commercial displacement. To this end, we will agree effective disciplines on in-kind food aid, monetization and re-exports so that there can be no loop-hole for continuing export subsidization. The disciplines on export credits, export credit guarantees or insurance programmes, exporting state trading enterprises and food aid will be completed by 30 April 2006 as part of the modalities, including appropriate provision in favour of least-developed and net food-importing developing countries as provided for in paragraph 4 of the Marrakesh Decision. The date above for the elimination of all forms of export subsidies, together with the agreed progressivity and parallelism, will be confirmed only upon the completion of the modalities. Developing country Members will continue to benefit from the provisions of Article 9.4 of the Agreement on Agriculture for five years after the end-date for elimination of all forms of export subsidies.

7. On market access, we note the progress made on *ad valorem* equivalents. We adopt four bands for structuring tariff cuts, recognizing that we need now to agree on the relevant thresholds – including those applicable for developing country Members. We recognize the need to agree on treatment of sensitive products, taking into account all the elements involved. We also note that there have been some recent movements on the designation and treatment of Special Products and elements of the Special Safeguard Mechanism. Developing country Members will have the flexibility to self-designate an appropriate number of tariff lines as Special Products guided by indicators based on the criteria of food security, livelihood security and rural development. Developing country Members will also have the right to have recourse to a Special Safeguard Mechanism based on import

quantity and price triggers, with precise arrangements to be further defined. Special Products and the Special Safeguard Mechanism shall be an integral part of the modalities and the outcome of negotiations in agriculture.

8. On other elements of special and differential treatment, we note in particular the consensus that exists in the Framework on several issues in all three pillars of domestic support, export competition and market access and that some progress has been made on other special and differential treatment issues.

9. We reaffirm that nothing we have agreed here compromises the agreement already reflected in the Framework on other issues including tropical products and products of particular importance to the diversification of production from the growing of illicit narcotic crops, long-standing preferences and preference erosion.

10. However, we recognize that much remains to be done in order to establish modalities and to conclude the negotiations. Therefore, we agree to intensify work on all outstanding issues to fulfil the Doha objectives, in particular, we are resolved to establish modalities no later than 30 April 2006 and to submit comprehensive draft Schedules based on these modalities no later than 31 July 2006.

*Cotton* 11. We recall the mandate given by the Members in the Decision adopted by the General Council on 1 August 2004 to address cotton ambitiously, expeditiously and specifically, within the agriculture negotiations in relation to all trade-distorting policies affecting the sector in all three pillars of market access, domestic support and export competition, as specified in the Doha text and the July 2004 Framework text. We note the work already undertaken in the Sub-Committee on Cotton and the proposals made with regard to this matter. Without prejudice to Members' current WTO rights and obligations, including those flowing from actions taken by the Dispute Settlement Body, we reaffirm our commitment to ensure having an explicit decision on cotton within the agriculture negotiations and through the Sub-Committee on Cotton ambitiously, expeditiously and specifically as follows:

- All forms of export subsidies for cotton will be eliminated by developed countries in 2006.
- On market access, developed countries will give duty and quota free access for cotton exports from least-developed countries (LDCs) from the commencement of the implementation period.
- Members agree that the objective is that, as an outcome for the negotiations, trade distorting domestic subsidies for cotton production be reduced more ambitiously than under whatever general formula is agreed and that it should be implemented over a shorter period of time than generally applicable. We commit ourselves to give priority in the negotiations to reach such an outcome.

12. With regard to the development assistance aspects of cotton, we welcome the Consultative Framework process initiated by the Director-General to implement the decisions on these aspects pursuant to paragraph 1.b of the Decision adopted by the General Council on 1 August 2004. We take note of his Periodic Reports and the positive evolution of development assistance noted therein. We urge the Director-General to further intensify his consultative efforts with bilateral donors

and with multilateral and regional institutions, with emphasis on improved coherence, coordination and enhanced implementation and to explore the possibility of establishing through such institutions a mechanism to deal with income declines in the cotton sector until the end of subsidies. Noting the importance of achieving enhanced efficiency and competitiveness in the cotton producing process, we urge the development community to further scale up its cotton-specific assistance and to support the efforts of the Director-General. In this context, we urge Members to promote and support South-South cooperation, including transfer of technology. We welcome the domestic reform efforts by African cotton producers aimed at enhancing productivity and efficiency, and encourage them to deepen this process. We reaffirm the complementarity of the trade policy and development assistance aspects of cotton. We invite the Director-General to furnish a third Periodic Report to our next Session with updates, at appropriate intervals in the meantime, to the General Council, while keeping the Sub-Committee on Cotton fully informed of progress. Finally, as regards follow up and monitoring, we request the Director-General to set up an appropriate follow-up and monitoring mechanism.

*NAMA  
negotiations*

13. We reaffirm our commitment to the mandate for negotiations on market access for non-agricultural products as set out in paragraph 16 of the Doha Ministerial Declaration. We also reaffirm all the elements of the NAMA Framework adopted by the General Council on 1 August 2004. We take note of the report by the Chairman of the Negotiating Group on Market Access on his own responsibility (TN/MA/16, contained in Annex B). We welcome the progress made by the Negotiating Group on Market Access since 2004 and recorded therein.

14. We adopt a Swiss Formula with coefficients at levels which shall *inter alia*:

- Reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation, in particular on products of export interest to developing countries; and
- Take fully into account the special needs and interests of developing countries, including through less than full reciprocity in reduction commitments.

We instruct the Negotiating Group to finalize its structure and details as soon as possible.

15. We reaffirm the importance of special and differential treatment and less than full reciprocity in reduction commitments, including paragraph 8 of the NAMA Framework, as integral parts of the modalities. We instruct the Negotiating Group to finalize its details as soon as possible.

16. In furtherance of paragraph 7 of the NAMA Framework, we recognize that Members are pursuing sectoral initiatives. To this end, we instruct the Negotiating Group to review proposals with a view to identifying those which could garner sufficient participation to be realized. Participation should be on a non-mandatory basis.

17. For the purpose of the second indent of paragraph 5 of the NAMA

Framework, we adopt a non-linear mark-up approach to establish base rates for commencing tariff reductions. We instruct the Negotiating Group to finalize its details as soon as possible.

18. We take note of the progress made to convert non *ad valorem* duties to *ad valorem* equivalents on the basis of an agreed methodology as contained in JOB(05)/166/Rev.1.

19. We take note of the level of common understanding reached on the issue of product coverage and direct the Negotiating Group to resolve differences on the limited issues that remain as quickly as possible.

20. As a supplement to paragraph 16 of the NAMA Framework, we recognize the challenges that may be faced by non-reciprocal preference beneficiary Members as a consequence of the MFN liberalization that will result from these negotiations. We instruct the Negotiating Group to intensify work on the assessment of the scope of the problem with a view to finding possible solutions.

21. We note the concerns raised by small, vulnerable economies, and instruct the Negotiating Group to establish ways to provide flexibilities for these Members without creating a sub-category of WTO Members.

22. We note that the Negotiating Group has made progress in the identification, categorization and examination of notified NTBs. We also take note that Members are developing bilateral, vertical and horizontal approaches to the NTB negotiations, and that some of the NTBs are being addressed in other fora including other Negotiating Groups. We recognize the need for specific negotiating proposals and encourage participants to make such submissions as quickly as possible.

23. However, we recognize that much remains to be done in order to establish modalities and to conclude the negotiations. Therefore, we agree to intensify work on all outstanding issues to fulfil the Doha objectives, in particular, we are resolved to establish modalities no later than 30 April 2006 and to submit comprehensive draft Schedules based on these modalities no later than 31 July 2006.

*Balance  
between  
Agriculture and  
NAMA*

24. We recognize that it is important to advance the development objectives of this Round through enhanced market access for developing countries in both Agriculture and NAMA. To that end, we instruct our negotiators to ensure that there is a comparably high level of ambition in market access for Agriculture and NAMA. This ambition is to be achieved in a balanced and proportionate manner consistent with the principle of special and differential treatment.

*Services  
negotiations*

25. The negotiations on trade in services shall proceed to their conclusion with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries, and with due respect for the right of Members to regulate. In this regard, we recall and reaffirm the objectives and principles stipulated in the GATS, the Doha Ministerial Declaration, the Guidelines and Procedures for the Negotiations on Trade in Services adopted by the Special Session of the Council for Trade in Services on 28 March 2001 and the Modalities for the Special Treatment for Least-Developed Country Members in

the Negotiations on Trade in Services adopted on 3 September 2003, as well as Annex C of the Decision adopted by the General Council on 1 August 2004.

26. We urge all Members to participate actively in these negotiations towards achieving a progressively higher level of liberalization of trade in services, with appropriate flexibility for individual developing countries as provided for in Article XIX of the GATS. Negotiations shall have regard to the size of economies of individual Members, both overall and in individual sectors. We recognize the particular economic situation of LDCs, including the difficulties they face, and acknowledge that they are not expected to undertake new commitments.

27. We are determined to intensify the negotiations in accordance with the above principles and the Objectives, Approaches and Timelines set out in Annex C to this document with a view to expanding the sectoral and modal coverage of commitments and improving their quality. In this regard, particular attention will be given to sectors and modes of supply of export interest to developing countries.

*Rules negotiations*

28. We recall the mandates in paragraphs 28 and 29 of the Doha Ministerial Declaration and reaffirm our commitment to the negotiations on rules, as we set forth in Annex D to this document.

*TRIPS negotiations*

29. We take note of the report of the Chairman of the Special Session of the Council for TRIPS setting out the progress in the negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits, as mandated in Article 23.4 of the TRIPS Agreement and paragraph 18 of the Doha Ministerial Declaration, contained in document TN/IP/14, and agree to intensify these negotiations in order to complete them within the overall time-frame for the conclusion of the negotiations that were foreseen in the Doha Ministerial Declaration.

*Environment negotiations*

30. We reaffirm the mandate in paragraph 31 of the Doha Ministerial Declaration aimed at enhancing the mutual supportiveness of trade and environment and welcome the significant work undertaken in the Committee on Trade and Environment (CTE) in Special Session. We instruct Members to intensify the negotiations, without prejudging their outcome, on all parts of paragraph 31 to fulfil the mandate.

31. We recognize the progress in the work under paragraph 31(i) based on Members' submissions on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). We further recognize the work undertaken under paragraph 31(ii) towards developing effective procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and criteria for the granting of observer status.

32. We recognize that recently more work has been carried out under paragraph 31(iii) through numerous submissions by Members and discussions in the CTE in Special Session, including technical discussions, which were also held in informal information exchange sessions without prejudice to Members' positions. We instruct Members to complete the work expeditiously under paragraph 31(iii).

*Trade  
Facilitation  
negotiations*

33. We recall and reaffirm the mandate and modalities for negotiations on Trade Facilitation contained in Annex D of the Decision adopted by the General Council on 1 August 2004. We note with appreciation the report of the Negotiating Group, attached in Annex E to this document, and the comments made by our delegations on that report as reflected in document TN/TF/M/11. We endorse the recommendations contained in paragraphs 3, 4, 5, 6 and 7 of the report.

*DSU  
negotiations*

34. We take note of the progress made in the Dispute Settlement Understanding negotiations as reflected in the report by the Chairman of the Special Session of the Dispute Settlement Body to the Trade Negotiations Committee (TNC) and direct the Special Session to continue to work towards a rapid conclusion of the negotiations.

*S&D treatment*

35. We reaffirm that provisions for special and differential (S&D) treatment are an integral part of the WTO Agreements. We renew our determination to fulfil the mandate contained in paragraph 44 of the Doha Ministerial Declaration and in the Decision adopted by the General Council on 1 August 2004, that all S&D treatment provisions be reviewed with a view to strengthening them and making them more precise, effective and operational.

36. We take note of the work done on the Agreement-specific proposals, especially the five LDC proposals. We agree to adopt the decisions contained in Annex F to this document. However, we also recognize that substantial work still remains to be done. We commit ourselves to address the development interests and concerns of developing countries, especially the LDCs, in the multilateral trading system, and we recommit ourselves to complete the task we set ourselves at Doha. We accordingly instruct the Committee on Trade and Development in Special Session to expeditiously complete the review of all the outstanding Agreement-specific proposals and report to the General Council, with clear recommendations for a decision, by December 2006.

37. We are concerned at the lack of progress on the Category II proposals that had been referred to other WTO bodies and negotiating groups. We instruct these bodies to expeditiously complete the consideration of these proposals and report periodically to the General Council, with the objective of ensuring that clear recommendations for a decision are made no later than December 2006. We also instruct the Special Session to continue to coordinate its efforts with these bodies, so as to ensure that this work is completed on time.

38. We further instruct the Special Session, within the parameters of the Doha mandate, to resume work on all other outstanding issues, including on the cross-cutting issues, the monitoring mechanism, and the incorporation of S&D treatment into the architecture of WTO rules, and report on a regular basis to the General Council.

*Implementation*

39. We reiterate the instruction in the Decision adopted by the General Council on 1 August 2004 to the TNC, negotiating bodies and other WTO bodies concerned to redouble their efforts to find appropriate solutions as a priority to outstanding implementation-related issues. We take note of the work undertaken by the Director-General in his consultative process on all outstanding implementation issues under paragraph 12(b) of the Doha Ministerial Declaration, including on

issues related to the extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits and those related to the relationship between the TRIPS Agreement and the Convention on Biological Diversity. We request the Director-General, without prejudice to the positions of Members, to intensify his consultative process on all outstanding implementation issues under paragraph 12(b), if need be by appointing Chairpersons of concerned WTO bodies as his Friends and/or by holding dedicated consultations. The Director-General shall report to each regular meeting of the TNC and the General Council. The Council shall review progress and take any appropriate action no later than 31 July 2006.

*TRIPS &  
Public Health*

40. We reaffirm the importance we attach to the General Council Decision of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, and to an amendment to the TRIPS Agreement replacing its provisions. In this regard, we welcome the work that has taken place in the Council for TRIPS and the Decision of the General Council of 6 December 2005 on an Amendment of the TRIPS Agreement.

*Small  
Economies*

41. We reaffirm our commitment to the Work Programme on Small Economies and urge Members to adopt specific measures that would facilitate the fuller integration of small, vulnerable economies into the multilateral trading system, without creating a sub-category of WTO Members. We take note of the report of the Committee on Trade and Development in Dedicated Session on the Work Programme on Small Economies to the General Council and agree to the recommendations on future work. We instruct the Committee on Trade and Development, under the overall responsibility of the General Council, to continue the work in the Dedicated Session and to monitor progress of the small economies' proposals in the negotiating and other bodies, with the aim of providing responses to the trade-related issues of small economies as soon as possible but no later than 31 December 2006. We instruct the General Council to report on progress and action taken, together with any further recommendations as appropriate, to our next Session.

*Trade, Debt &  
Finance*

42. We take note of the report transmitted by the General Council on the work undertaken and progress made in the examination of the relationship between trade, debt and finance and on the consideration of any possible recommendations on steps that might be taken within the mandate and competence of the WTO as provided in paragraph 36 of the Doha Ministerial Declaration and agree that, building on the work carried out to date, this work shall continue on the basis of the Doha mandate. We instruct the General Council to report further to our next Session.

*Trade &  
Transfer of  
Technology*

43. We take note of the report transmitted by the General Council on the work undertaken and progress made in the examination of the relationship between trade and transfer of technology and on the consideration of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries. Recognizing the relevance of the relationship between trade and transfer of technology to the development dimension of the Doha Work Programme and building on the work carried out to date, we agree that this work shall continue on the basis of the mandate contained in paragraph 37 of the Doha Ministerial Declaration. We instruct the General

Council to report further to our next Session.

*Doha  
paragraph 19*

44. We take note of the work undertaken by the Council for TRIPS pursuant to paragraph 19 of the Doha Ministerial Declaration and agree that this work shall continue on the basis of paragraph 19 of the Doha Ministerial Declaration and the progress made in the Council for TRIPS to date. The General Council shall report on its work in this regard to our next Session.

*TRIPS non-  
violation and  
situation  
complaints*

45. We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to paragraph 11.1 of the Doha Decision on Implementation-Related Issues and Concerns and paragraph 1.h of the Decision adopted by the General Council on 1 August 2004, and direct it to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make recommendations to our next Session. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement.

*E-commerce*

46. We take note of the reports from the General Council and subsidiary bodies on the Work Programme on Electronic Commerce, and that the examination of issues under the Work Programme is not yet complete. We agree to reinvigorate that work, including the development-related issues under the Work Programme and discussions on the trade treatment, *inter alia*, of electronically delivered software. We agree to maintain the current institutional arrangements for the Work Programme. We declare that Members will maintain their current practice of not imposing customs duties on electronic transmissions until our next Session.

*LDCs*

47. We reaffirm our commitment to effectively and meaningfully integrate LDCs into the multilateral trading system and shall continue to implement the WTO Work Programme for LDCs adopted in February 2002. We acknowledge the seriousness of the concerns and interests of the LDCs in the negotiations as expressed in the Livingstone Declaration, adopted by their Ministers in June 2005. We take note that issues of interest to LDCs are being addressed in all areas of negotiations and we welcome the progress made since the Doha Ministerial Declaration as reflected in the Decision adopted by the General Council on 1 August 2004. Building upon the commitment in the Doha Ministerial Declaration, developed-country Members, and developing-country Members declaring themselves in a position to do so, agree to implement duty-free and quota-free market access for products originating from LDCs as provided for in Annex F to this document. Furthermore, in accordance with our commitment in the Doha Ministerial Declaration, Members shall take additional measures to provide effective market access, both at the border and otherwise, including simplified and transparent rules of origin so as to facilitate exports from LDCs. In the services negotiations, Members shall implement the LDC modalities and give priority to the sectors and modes of supply of export interest to LDCs, particularly with regard to movement of service providers under Mode 4. We agree to facilitate and accelerate negotiations with acceding LDCs based on the accession guidelines adopted by the General Council in December 2002. We commit to continue giving our attention and priority to concluding the ongoing accession proceedings as rapidly as possible. We welcome the Decision by the TRIPS Council to extend the transition period under Article 66.1 of the TRIPS Agreement. We reaffirm our commitment to enhance effective trade-related technical assistance and capacity building to

LDCs on a priority basis in helping to overcome their limited human and institutional trade-related capacity to enable LDCs to maximize the benefits resulting from the Doha Development Agenda (DDA).

*Integrated  
Framework*

48. We continue to attach high priority to the effective implementation of the Integrated Framework (IF) and reiterate our endorsement of the IF as a viable instrument for LDCs' trade development, building on its principles of country ownership and partnership. We highlight the importance of contributing to reducing their supply side constraints. We reaffirm our commitment made at Doha, and recognize the urgent need to make the IF more effective and timely in addressing the trade-related development needs of LDCs.

49. In this regard, we are encouraged by the endorsement by the Development Committee of the World Bank and International Monetary Fund (IMF) at its autumn 2005 meeting of an enhanced IF. We welcome the establishment of a Task Force by the Integrated Framework Working Group as endorsed by the IF Steering Committee (IFSC) as well as an agreement on the three elements which together constitute an enhanced IF. The Task Force, composed of donor and LDC members, will provide recommendations to the IFSC by April 2006. The enhanced IF shall enter into force no later than 31 December 2006.

50. We agree that the Task Force, in line with its Mandate and based on the three elements agreed to, shall provide recommendations on how the implementation of the IF can be improved, *inter alia*, by considering ways to:

1. provide increased, predictable, and additional funding on a multi-year basis;
2. strengthen the IF in-country, including through mainstreaming trade into national development plans and poverty reduction strategies; more effective follow-up to diagnostic trade integration studies and implementation of action matrices; and achieving greater and more effective coordination amongst donors and IF stakeholders, including beneficiaries;
3. improve the IF decision-making and management structure to ensure an effective and timely delivery of the increased financial resources and programmes.

51. We welcome the increased commitment already expressed by some Members in the run-up to, and during, this Session. We urge other development partners to significantly increase their contribution to the IF Trust Fund. We also urge the six IF core agencies to continue to cooperate closely in the implementation of the IF, to increase their investments in this initiative and to intensify their assistance in trade-related infrastructure, private sector development and institution building to help LDCs expand and diversify their export base.

*Technical  
Cooperation*

52. We note with appreciation the substantial increase in trade-related technical assistance since our Fourth Session, which reflects the enhanced commitment of Members to address the increased demand for technical assistance, through both bilateral and multilateral programmes. We note the progress made in the current approach to planning and implementation of WTO's programmes, as embodied in

the Technical Assistance and Training Plans adopted by Members, as well as the improved quality of those programmes. We note that a strategic review of WTO's technical assistance is to be carried out by Members, and expect that in future planning and implementation of training and technical assistance, the conclusions and recommendations of the review will be taken into account, as appropriate.

53. We reaffirm the priorities established in paragraph 38 of the Doha Ministerial Declaration for the delivery of technical assistance and urge the Director-General to ensure that programmes focus accordingly on the needs of beneficiary countries and reflect the priorities and mandates adopted by Members. We endorse the application of appropriate needs assessment mechanisms and support the efforts to enhance ownership by beneficiaries, in order to ensure the sustainability of trade-related capacity building. We invite the Director-General to reinforce the partnerships and coordination with other agencies and regional bodies in the design and implementation of technical assistance programmes, so that all dimensions of trade-related capacity building are addressed, in a manner coherent with the programmes of other providers. In particular, we encourage all Members to cooperate with the International Trade Centre, which complements WTO work by providing a platform for business to interact with trade negotiators, and practical advice for small and medium-sized enterprises (SMEs) to benefit from the multilateral trading system. In this connection, we note the role of the Joint Integrated Technical Assistance Programme (JITAP) in building the capacity of participating countries.

54. In order to continue progress in the effective and timely delivery of trade-related capacity building, in line with the priority Members attach to it, the relevant structures of the Secretariat should be strengthened and its resources enhanced. We reaffirm our commitment to ensure secure and adequate levels of funding for trade-related capacity building, including in the Doha Development Agenda Global Trust Fund, to conclude the Doha Work Programme and implement its results.

*Commodity  
Issues*

55. We recognize the dependence of several developing and least-developed countries on the export of commodities and the problems they face because of the adverse impact of the long-term decline and sharp fluctuation in the prices of these commodities. We take note of the work undertaken in the Committee on Trade and Development on commodity issues, and instruct the Committee, within its mandate, to intensify its work in cooperation with other relevant international organizations and report regularly to the General Council with possible recommendations. We agree that the particular trade-related concerns of developing and least-developed countries related to commodities shall also be addressed in the course of the agriculture and NAMA negotiations. We further acknowledge that these countries may need support and technical assistance to overcome the particular problems they face, and urge Members and relevant international organizations to consider favourably requests by these countries for support and assistance.

*Coherence*

56. We welcome the Director-General's actions to strengthen the WTO's cooperation with the IMF and the World Bank in the context of the WTO's Marrakesh mandate on Coherence, and invite him to continue to work closely with the General Council in this area. We value the General Council meetings that are held with the participation of the heads of the IMF and the World Bank to advance our Coherence mandate. We agree to continue building on that experience and

expand the debate on international trade and development policymaking and inter-agency cooperation with the participation of relevant UN agencies. In that regard, we note the discussions taking place in the Working Group on Trade, Debt and Finance on, *inter alia*, the issue of Coherence, and look forward to any possible recommendations it may make on steps that might be taken within the mandate and competence of the WTO on this issue.

*Aid for Trade*

57. We welcome the discussions of Finance and Development Ministers in various fora, including the Development Committee of the World Bank and IMF, that have taken place this year on expanding Aid for Trade. Aid for Trade should aim to help developing countries, particularly LDCs, to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO Agreements and more broadly to expand their trade. Aid for Trade cannot be a substitute for the development benefits that will result from a successful conclusion to the DDA, particularly on market access. However, it can be a valuable complement to the DDA. We invite the Director-General to create a task force that shall provide recommendations on how to operationalize Aid for Trade. The Task Force will provide recommendations to the General Council by July 2006 on how Aid for Trade might contribute most effectively to the development dimension of the DDA. We also invite the Director-General to consult with Members as well as with the IMF and World Bank, relevant international organisations and the regional development banks with a view to reporting to the General Council on appropriate mechanisms to secure additional financial resources for Aid for Trade, where appropriate through grants and concessional loans.

*Recently-  
acceded  
Members*

58. We recognize the special situation of recently-acceded Members who have undertaken extensive market access commitments at the time of accession. This situation will be taken into account in the negotiations.

*Accessions*

59. We reaffirm our strong commitment to making the WTO truly global in scope and membership. We welcome those new Members who have completed their accession processes since our last Session, namely Nepal, Cambodia and Saudi Arabia. We note with satisfaction that Tonga has completed its accession negotiations to the WTO. These accessions further strengthen the rules-based multilateral trading system. We continue to attach priority to the 29 ongoing accessions with a view to concluding them as rapidly and smoothly as possible. We stress the importance of facilitating and accelerating the accession negotiations of least-developed countries, taking due account of the guidelines on LDC accession adopted by the General Council in December 2002.

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## **Annex A**

### **Agriculture**

#### Report by the Chairman of the Special Session of the Committee on Agriculture to the TNC

1. The present report has been prepared on my own responsibility. I have done so in response to the direction of Members as expressed at the informal Special Session of the Committee on Agriculture on 11 November 2005. At that meeting, following the informal Heads of Delegation meeting the preceding day, Members made it crystal clear that they sought from me at this point an objective factual summary of where the negotiations have reached at this time. It was clear from that meeting that Members did not expect or desire anything that purported to be more than that. In particular, it was clear that, following the decision at the Heads of Delegation meeting that full modalities will not be achieved at Hong Kong, Members did not want anything that suggested implicit or explicit agreement where it did not exist.

2. This is not, of course, the kind of paper that I would have chosen or preferred to have prepared at this point. Ideally, my task should have been to work with Members to generate a draft text of modalities. But this text reflects the reality of the present situation. There will be – because there must be if we are to conclude these negotiations – such a draft text in the future. I look at this now as a task postponed, but the precise timing of this is in the hands of Members.

3. As for this paper, it is precisely what it is described to be. No more, no less. It is the Chairman's report and, as such, it goes from me to the TNC. It is not anything more than my personal report – in particular, it is not in any sense an agreed text of Members. It does not, therefore, in any way prejudge or prejudice the positions of Members on any matter within it or outside of it. And, it certainly does not bind Members in any way. It should go without saying that the agreed basis of our work is, and shall remain, the Doha Mandate itself and the Framework in the Decision adopted by the General Council on 1 August 2004.

4. As to the character of the paper, I have endeavoured to reflect what I discerned as the wishes of Members when they directed me to prepare this paper. I have tried to capture as clearly as I can such conditional progress and convergence as has developed in the post-July 2004 period. In doing so, I have not tried to brush under the carpet divergences that remain, and the paper tries to be just as clear on those points. Of course, it is a summary report. As such, it cannot – and does not – recapitulate each and every detail on each and every issue. But I took from Members' comments that they would prefer a paper which could 'orient' further discussion.

5. In that regard, I hope that anyone reading this paper would be able to get a pretty clear idea of what it is that remains to be done. Members made it clear that it was not my task as Chair to prescribe what is to be done next in a programmatic way. My task was to register where we are now, but I confess to having done so with an eye to genuinely clarifying where key convergences exist or key divergences remain, rather than obscuring or overcomplicating matters.

6. My own sense, when I review this myself, is the compelling urgency of seizing the moment and driving the process to a conclusion as rapidly as possible. We have made – particularly since August of this year – genuine and material progress. Indeed, it has come at a relatively rapid pace. It is also clear to me that it has been the product of a genuinely negotiating process. In other words, it has been a case of making proposals and counterproposals. That is why the matters covered in this report have an essentially conditional character. As I see it, the reality is that we have yet to find that last bridge to agreement that we need to secure modalities. But it would be a grave error, in my view, to imagine that we can take much time to find that bridge. As Chair, I am convinced that we must maintain momentum.

You don't close divergences by taking time off to have a cup of tea. If you do so, you will find that everyone has moved backwards in the meantime. That, it seems to me, is a profound risk to our process. I would like to believe that this report at least underlines to us that there is indeed something real and important still within our grasp and we ought not to risk losing it. Our over-riding challenge and responsibility is to meet the development objective of the Doha Development Agenda. To meet this challenge and achieve this goal, we must act decisively and with real urgency.

7. The future life of this paper, if any, is a matter entirely in the hands of TNC Members to decide. This, as I see it, is the proper safeguard of the integrity of what has come to be described as a "bottom-up" process.

## DOMESTIC SUPPORT

8. There has been very considerable potential convergence, albeit on a manifestly conditional basis.

### *Overall Cut*

- There is a working hypothesis of three bands for overall cuts by developed countries. There is a strongly convergent working hypothesis that the thresholds for the three bands be US\$ billion 0-10; 10-60; >60. On this basis, the European Communities would be in the top band, the United States and Japan in the second band, and all other developed countries at least in the third band. For developing countries, there is a view that either developing countries are assigned to the relevant integrated band (the bottom) or that there is a separate band for them.<sup>1</sup>
- Based on post-July 2005 proposals, there has been an undeniably significant convergence on the range of cuts. Of course, this has been conditional. But subject to that feature, a great deal of progress has been made since the bare bones of the July 2004 Framework. The following matrix provides a snapshot:

<b>Bands</b>	<b>Thresholds (US\$ billion)</b>	<b>Cuts</b>
1	0-10	31%-70%
2	10-60	53%-75%
3	> 60	70%-80%

### *De Minimis*

- On product-specific *de minimis* and non-product-specific *de minimis*, there is a zone of engagement for cuts between 50% and 80% for developed countries.
- As regards developing countries, there are still divergences to be bridged. In addition to the exemption specifically provided for in the Framework, there is a view that, for all developing countries, there should be no cut in *de minimis* at all. Alternatively, at least for those with no

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<sup>1</sup> On the proposed basis that cut remains to be determined for those developing countries with an AMS. In any case, there is a view (not shared by all) that cuts for developing countries should be less than 2/3 of the cut for developed countries.

AMS, there should be no cut and, in any case, any cut for those with an AMS should be less than 2/3 of the cut for developed countries.

### *Blue Box*

9. There is important and significant convergence on moving beyond (i.e. further constraining) Blue Box programme payments envisaged in the July 2004 Framework. However, the technique for achieving this remains to be determined. One proposal is to shrink the current 5% ceiling to 2.5%.<sup>2</sup> Another proposal rejects this in favour of additional criteria disciplining the so-called "new" Blue Box only. Others favour a combination of both, including additional disciplines on the "old" Blue Box.

### *AMS*

- There is a working hypothesis of three bands for developed countries.
- There is close (but not full) convergence on the thresholds for those bands. There appears to be convergence that the top tier should be US\$25 billion and above. There is some remaining divergence over the ceiling for the bottom band: between US\$12 billion and 15 billion.
- There has been an undeniably significant convergence on the range of cuts. Of course, this has been conditional. But, that understood, a great deal of progress has been made since the bare bones of the July 2004 Framework. The following matrix<sup>3</sup> provides a snapshot:

<b>Bands</b>	<b>Thresholds (US\$ billion)</b>	<b>Cuts</b>
1	0-12/15	37-60%
2	12/15-25	60-70%
3	>25	70-83%

- There is therefore working hypothesis agreement that the European Communities should be in the top tier, and the United States in the second tier. However, while the basis for Japan's placement as between these two tiers has been narrowed, it remains to be finally resolved.
- For developed countries in the bottom band, with a relatively high level of AMS relative to total value of agriculture production, there is emerging consensus that their band-related reduction should be complemented with an additional effort.
- What is needed now is a further step to bridge the remaining gap in positions – particularly as regards the United States and the European Communities, it being understood that this is not a matter to be resolved in isolation from the other elements in this pillar and beyond.

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<sup>2</sup> The exact extent of the flexibility to be provided pursuant to paragraph 15 of the July 2004 Framework remains to be agreed.

<sup>3</sup> Of course, this needs to be viewed as illustrative rather than overly literally, if for no other reason than that these are conditional figures. For instance, while the European Communities has indicated it could be prepared to go as far as 70% in the top tier, they make it clear that this is acceptable only if the United States will go to 60% in the second tier. The United States for its part, however, has only indicated preparedness to go to that 60% if the European Communities is prepared to go as high as 83% - which it has not indicated it is prepared to do.

- On the base period for product-specific caps, certain proposals (such as for 1995-2000 and 1999-2001) are on the table. This needs to be resolved appropriately, including the manner in which special and differential treatment should be applied.

### *Green Box*

10. The review and clarification commitment has not resulted in any discernible convergence on operational outcomes. There is, on the one side, a firm rejection of anything that is seen as departing from the existing disciplines while there is, on the other, an enduring sense that more could be done to review the Green Box without undermining ongoing reform. Beyond that there is, however, some tangible openness to finding appropriate ways to ensure that the Green Box is more "development friendly" i.e. better tailored to meet the realities of developing country agriculture but in a way that respects the fundamental requirement of at most minimal trade distortion.

## **EXPORT COMPETITION**

### *End Date*

11. While concrete proposals<sup>4</sup> have been made on the issue of an end date for elimination of all forms of export subsidies, there is at this stage no convergence. There are suggestions for the principle of front-loading or accelerated elimination for specific products, including particularly cotton.

### *Export Credits*

12. Convergence has been achieved on a number of elements of disciplines with respect to export credits, export credit guarantee or insurance programmes with repayment periods of 180 days and below. However, a number of critical issues remain.<sup>5</sup>

### *Exporting State Trading Enterprises*

13. There has been material convergence on rules to address trade-distorting practices identified in the July 2004 Framework text, although there are still major differences regarding the scope of practices to be covered by the new disciplines. Fundamentally opposing positions remain, however, on the issue of the future use of monopoly powers. There have been concrete drafting proposals on such matters as definition of entities and practices to be addressed as well as transparency. But there has been no genuine convergence in such areas.

### *Food Aid*

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<sup>4</sup> One Member has proposed the year 2010 for "export subsidies", with accelerated elimination for "specific" products. Another group of Members have proposed a period "no longer than five years" for all forms of export subsidies, with "direct" export subsidies subject to front-loading within that period.

<sup>5</sup> This includes, but is not limited to: exemptions, if any, to the 180 day rule; whether the disciplines should allow for pure cover only or also permit direct financing; the appropriate period for programmes to fully recover their costs and losses through the premia levied from the exporters (principle of self-financing - there needs to be convergence between position which range from one year to fifteen years); the disciplines regarding special circumstances; and the question of special and differential treatment, including whether, as some Members argue, developing countries should be allowed longer repayment terms for export credits extended by them to other developing countries and the specifics of differential treatment in favour of least-developed and net food-importing developing countries.

14. There is consensus among Members that the WTO shall not stand in the way of the provision of genuine food aid. There is also consensus that what is to be eliminated is commercial displacement. There have been detailed and intensive discussions, some of which have even been text-based, but not to a point where a consolidated draft text could be developed. This has been precluded by Members clinging to fundamentally disparate conceptual premises. There are proposals that in the disciplines a distinction should be made between at least two types of food aid: emergency food aid and food aid to address other situations. However, there is not yet a common understanding where emergency food aid ends and other food aid begins, reflecting concerns that this distinction should not become a means to create a loophole in disciplines. A fundamental sticking point is whether, except in exceptional, genuine emergency situations, Members should (albeit gradually) move towards untied, in-cash food aid only, as some Members propose but other Members strongly oppose.<sup>6</sup>

#### *Special and Differential Treatment*

15. Framework provisions for special and differential treatment, including with respect to the monopoly status of state trading enterprises in developing countries and an extended lifetime for Article 9.4, have been uncontroversial, but details remain to be established.

#### *Special Circumstances*

16. Work on the criteria and consultation procedures to govern any ad hoc temporary financing arrangements relating to exports to developing countries in exceptional circumstances is not much developed.

## **MARKET ACCESS**

#### *Tiered Formula*

- We have progressed on *ad valorem* equivalents.<sup>7</sup> This has successfully created a basis for allocating items into bands for the tiered formula.
- We have a working hypothesis of four bands for structuring tariff cuts.
- There has been very considerable convergence on adopting a linear-based approach for cuts within those bands. Members have, of course, by no means formally abandoned positions that are even more divergent.<sup>8</sup> We need now to narrow the extent of divergence that remains. This will include whether or not to include any "pivot" in any band.
- Members have made strong efforts to promote convergence on the size of actual cuts to be undertaken within those bands. But, even though genuine efforts have been made to move

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<sup>6</sup> This fundamental divergence has effectively precluded convergence on such matters as what disciplines, if any, should be established with respect to monetization of food aid or the question of the provision of food aid in fully grant form only. The importance of operationally effective transparency requirements is generally acknowledged, but details have still to be developed, particularly those relating to the role of the WTO in this context. Further work is required to clarify the role of recipient countries and relevant international organizations or other entities in triggering or providing food aid.

<sup>7</sup> The method for calculating the AVEs for the sugar lines is still to be established.

<sup>8</sup> At one end of the spectrum, as it were, a "harmonisation" formula within the bands; at the other end "flexibility" within the formula.

from formal positions (which of course remain), major gaps are yet to be bridged. Somewhat greater convergence has been achieved as regards the thresholds for the bands. Substantial movement is clearly essential to progress.<sup>9</sup>

- Some Members continue to reject completely the concept of a tariff cap. Others have proposed<sup>10</sup> a cap between 75-100%.

#### *Sensitive Products*

- Members have been prepared to make concrete - albeit conditional - proposals on the number of sensitive products. But, in a situation where proposals extend from as little as 1% to as much as 15% of tariff lines, further bridging this difference is essential to progress.
- The fundamental divergence over the basic approach to treatment of sensitive products needs to be resolved.<sup>11</sup> Beyond that, there needs to be convergence on the consequential extent of liberalisation for such products.

#### *Special and Differential Treatment*

- Just as for developed countries, there is a working hypothesis of four bands for developing countries. There is no disagreement on lesser cuts within the bands. A certain body of opinion is open to considering cuts of two-thirds of the amount of the cuts for developed countries as a plausible zone in which to search more intensively for convergence.<sup>12</sup> But

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<sup>9</sup> The matrix below is an illustrative table that portrays the extent of divergences that remain, even on the basis of post-August 2005 proposals. This does not entirely cover all the subtleties of those proposals to utilize a "pivot" (although most are in fact within the ranges tabulated), but is intended to convey a snapshot of the status of average cuts proposed post-August.

	Thresholds	Range of cuts (%)
Band 1	0% - 20/30%	20-65
Band 2	20/30% - 40/60%	30-75
Band 3	40/60% - 60/90%	35-85
Band 4	>60/90%	42-90

<sup>10</sup> As an element in certain conditional proposals on overall market access, tabled post-July 2005.

<sup>11</sup> Some see this as being tariff quota based and expressed as a percentage of domestic consumption, with proposals of up to 10%. Others propose *pro rata* expansion on an existing trade basis, including taking account of current imports. Some also propose no new TRQs, with sensitivity in such cases to be provided through other means, e.g. differential phasing. There is also a proposal for a "sliding scale" approach.

<sup>12</sup> In this pillar, as well as in the other two, there is general convergence on the point that developing countries will have entitlement to longer implementation periods, albeit that concrete precision remains to be determined.

significant disagreement on that remains, and divergence is, if anything, somewhat more marked on the connected issue of higher thresholds for developing countries.<sup>13</sup>

- Some Members continue to reject completely the concept of a tariff cap for developing countries. Others have proposed<sup>14</sup> a cap at 150%.
- For sensitive products, there is no disagreement that there should be greater flexibility for developing countries, but the extent of this needs to be further defined.<sup>15</sup>

### *Special Products*

- Regarding *designation* of special products, there has been a clear divergence between those Members which consider that, prior to establishment of schedules, a list of non-exhaustive and illustrative criteria-based indicators should be established and those Members which are looking for a list which would act as a filter or screen for the selection of such products. Latterly, it has been proposed (but not yet discussed with Members as a whole) that a developing country Member should have the right to designate at least 20 per cent of its agricultural tariff lines as Special Products, and be further entitled to designate an SP where, for that product, an AMS has been notified and exports have taken place. This issue needs to be resolved as part of modalities so that there is assurance of the basis upon which Members may designate special products.
- Some moves toward convergence on *treatment* of Special Products have been made recently. Some Members had considered that special products should be fully exempt from any new market access commitments whatsoever and have automatic access to the SSM. Others had argued there should be some degree of market opening for these products, albeit reflecting

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<sup>13</sup> The matrix below is an illustrative table that portrays the extent of divergences that remain, just on the basis of post-August 2005 proposals.

	Thresholds	Range of cuts (%)
Band 1	0% - 20/50%	15-25*
Band 2	20/50% - 40/100%	20-30*
Band 3	40/100% - 60/150%	25-35*
Band 4	>60-150%	30-40*

\*There is also a proposal that cuts for developing countries should be "slightly lesser" than the upper tariff cuts for developed countries shown in the preceding table (i.e.: "slightly lesser" than 65, 75, 85 and 90%).

<sup>14</sup> As an element in certain conditional proposals on overall market access, tabled post-July 2005.

<sup>15</sup> While the eventual zone of convergence for developed countries undoubtedly has a bearing in this area, it has been proposed by a group of Members that the principles of sensitive products generally and for TRQs specifically should be different for developing countries. Another group of Members has proposed, in the post-August period, an entitlement for developing countries of at least 50% more than the maximum number of lines used by any developed Member. This would (based on developed country proposals) amount to a potential variation between 1.5% and 22.5% of tariff lines. This latter group has also proposed that products relating to long-standing preferences shall be designated as sensitive and that any TRQ expansion should not be "at the detriment of existing ACP quotas". This particular view has been, however, strongly opposed by other Members which take the firm position that tropical and diversification products should not at all be designated as sensitive products.

more flexible treatment than for other products. In the presence of this fundamental divergence, it had clearly been impossible to undertake any definition of what such flexibility would be. Genuine convergence is obviously urgently needed. There is now a new proposal for a tripartite categorization of Special Products involving limited tariff cuts for at least a proportion of such products which remains to be fully discussed. It remains to be seen whether this discussion can help move us forward.

### *Special Safeguard Mechanism*

- There is agreement that there would be a special safeguard mechanism and that it should be tailored to the particular circumstances and needs of developing countries. There is no material disagreement with the view that it should have a quantity trigger. Nor is there disagreement with the view that it should at least be capable of addressing effectively what might be described as import "surges". Divergence remains over whether, or if so how, situations that are lesser than "surge" are to be dealt with. There is, however, agreement that any remedy should be of a temporary nature. There remains strong divergence however on whether, or if so how, a special safeguard should be "price-based" to deal specifically with price effects.
- There is some discernible openness, albeit at varying levels, to at least consider coverage of products that are likely to undergo significant liberalisation effects, and/or are already bound at low levels and/or are special products. Beyond that, however, there remains a fundamental divergence between those considering all products should be eligible for such a mechanism and those opposing such a blanket approach.

### *Other Elements*

17. There has been no further material convergence on the matters covered by paragraphs 35 and 37 of the July 2004 Framework text. The same may be said for paragraph 36 on tariff escalation, albeit that there is full agreement on the need for this to be done, and a genuine recognition of the particular importance of this for commodities exporters. Certain concrete proposals have been made on paragraph 38 (SSG) and met with opposition from some Members.

18. Concrete proposals have been made and discussed on how to implement paragraph 43 of the July 2004 Framework on tropical and diversification products. But there remains divergence over the precise interpretation of this section of the July Framework<sup>16</sup> and no common approach has been established.

19. The importance of long-standing preferences pursuant to paragraph 44 of the July 2004 Framework is fully recognised and concrete proposals regarding preference erosion have been made and discussed.<sup>17</sup> There seems not to be inherent difficulty with a role for capacity building. However, while there is some degree of support for e.g. longer implementation periods for at least certain products in order to facilitate adjustment, there is far from convergence on even this. Some argue it is not sufficient or certainly not in all cases, while others that it is not warranted at all.

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<sup>16</sup> It is argued by some Members that this is to be interpreted as meaning full duty- and tariff quota-free access, but by others as less than that.

<sup>17</sup> Note 15 above refers.

## **LEAST-DEVELOPED COUNTRIES**

20. There is no questioning of the terms of paragraph 45 of the July Framework agreement, which exempts least-developed countries from any reduction requirement. The stipulation that "developed Members, and developing country Members in a position to do so, should provide duty-free and quota-free market access for products originating from least-developed countries" is not at this point concretely operational for all Members. At this stage, several Members have made undertakings. Proposals for this to be bound remain on the table.<sup>18</sup>

## **COTTON**

21. While there is genuine recognition of the problem to be addressed and concrete proposals have been made, Members remain at this point short of concrete and specific achievement that would be needed to meet the July Framework direction to address this matter ambitiously, expeditiously and specifically. There is no disagreement with the view that all forms of export subsidies are to be eliminated for cotton although the timing and speed remains to be specified. Proposals to eliminate them immediately or from day one of the implementation period are not at this point shared by all Members. In the case of trade distorting support, proponents seek full elimination with "front-loaded" implementation.<sup>19</sup> There is a view that the extent to which this can occur, and its timing, can only be determined in the context of an overall agreement. Another view is that there could be at least substantial and front-loaded reduction on cotton specifically from day one of implementation, with the major implementation achieved within twelve months, and the remainder to be completed within a period shorter than the overall implementation period for agriculture.<sup>20</sup>

## **RECENTLY-ACCEDED MEMBERS**

22. Concrete proposals have been made and discussed, but no specific flexibility provisions have commanded consensus.

## **MONITORING AND SURVEILLANCE**

23. A proposal has been made but there is no material advance at this point.

## **OTHER ISSUES**

24. On paragraph 49 (sectoral initiatives, differential export taxes, GIs) certain positions and proposals have been tabled and/or referred to. They are issues that remain of interest but not agreed.

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<sup>18</sup> It is also proposed that this should be accompanied by simple and transparent rules of origin and other measures to address non-tariff barriers.

<sup>19</sup> Concrete proposals have been made, with a three-step approach: 80% on day one, an additional 10% after 12 months and the last 10% a year later.

<sup>20</sup> A Member has indicated that it is prepared to implement all its commitments from day one and, in any case, to autonomously ensure that its commitments on eliminating the most trade-distorting domestic support, eliminating all forms of export subsidies and providing mfn duty- and quota-free access for cotton will take place from 2006.

25. At this point, proposals on paragraph 50 have not advanced materially.
26. In the case of small and vulnerable economies, a concrete proposal has been made recently. It has not yet been subject to consultation.
27. There is openness to the particular concerns of commodity-dependent developing and least-developed countries facing long-term decline and/or sharp fluctuations in prices. There is, at this point (where, overall, precise modalities are still pending), support for the view that such modalities should eventually be capable of addressing effectively key areas for them.<sup>21</sup>

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<sup>21</sup> This would appear to include in particular such a matter as tariff escalation, where it discourages the development of processing industries in the commodity producing countries. The idea of a review and clarification of what the current status is of GATT 1994 provisions relating to the stabilisation of prices through the adoption of supply management systems by producing countries, and the use of export taxes and restrictions under such systems is also on the table. Proponents would seek something more than this such as more concrete undertakings in the area of non-tariff measures and actual revision of existing provisions. There is, at this point, no consensus in these latter areas, but an appreciation at least of the underlying issues at stake.

## **Annex B**

### **Market Access for Non-Agricultural Products**

#### Report by the Chairman of the Negotiating Group on Market Access to the TNC

#### **B. INTRODUCTION**

1. A Chairman's commentary of the state of play of the NAMA negotiations was prepared in July 2005 and circulated in document JOB(05)/147 and Add.1 (hereinafter referred to as the "Chairman's commentary"). The current report, made on my responsibility, reflects the state of play of the NAMA negotiations at this juncture of the Doha Development Agenda, and supplements that commentary.

2. With an eye on the forthcoming Ministerial, Section B of this report attempts to highlight those areas of convergence and divergence on the elements of Annex B of Decision adopted by the General Council on 1 August 2004, (hereinafter referred to as the "NAMA framework"), and to provide some guidance as to what may be a possible future course of action with respect to some of the elements. Section C of the report provides some final remarks about possible action by Ministers at Hong Kong.

3. In preparing this report, use has been made of documents provided by Members (as listed in TN/MA/S/16/Rev.2) as well as the discussions in the open-ended sessions of the Group, plurilateral meetings and bilateral contacts, as long as they were not in the nature of confessionals.

#### **C. SUMMARY OF THE STATE OF PLAY**

4. Full modalities must have detailed language and, where required, final numbers on all elements of the NAMA framework. Such an agreement should also contain a detailed work plan concerning the process after the establishment of full modalities for the purpose of the submission, verification and annexation of Doha Schedules to a legal instrument. While acknowledging that progress has been made since the adoption of the NAMA framework, the establishment of full modalities is, at present, a difficult prospect given the lack of agreement on a number of elements in the NAMA framework including the formula, paragraph 8 flexibilities and unbound tariffs.

5. Regarding the structure of this section, generally Members recognize that the issues identified in the preceding paragraph are the three elements of the NAMA framework on which solutions are required as a matter of priority, and that there is a need to address them in an interlinked fashion. So, this report will commence with these three subjects before moving on to the other elements of the NAMA framework in the order in which they are presented therein.

#### **Formula (paragraph 4 of the NAMA framework)**

6. On the non-linear formula, there has been movement since the adoption of the NAMA framework. There is a more common understanding of the shape of the formula that Members are willing to adopt in these negotiations. In fact, Members have been focusing on a Swiss formula. During the past few months, much time and effort has been spent examining the impact of such a formula from both a defensive and offensive angle. In terms of the specifics of that formula, there are basically two variations on the table: a formula with a limited number of negotiated coefficients and a formula where the value of each country's coefficient would be based essentially on the tariff average of bound rates of that Member, resulting in multiple coefficients.

7. In order to move beyond a debate on the merits of the two options (and in recognition of the fact that what matters in the final analysis is the level of the coefficient) more recently Members have engaged in a discussion of numbers. Such a debate has been particularly helpful, especially as it demonstrated in a quantifiable manner to what extent the benchmarks established in paragraph 16 of the Doha Ministerial Declaration would be achieved. While it is evident that one of the characteristics of such a formula is to address tariff peaks, tariff escalation and high tariffs (as it brings down high tariffs more than low tariffs), one benchmark which has been the subject of differences of opinion has been that of "less than full reciprocity in reduction commitments" and how it should be measured. Some developing Members are of the view that this means less than average percentage cuts i.e. as translated through a higher coefficient in the formula, than those undertaken by developed country Members. However, the latter have indicated that there are other measurements of less than full reciprocity in reduction commitments including the final rates after the formula cut which in their markets would be less than in developing country markets. Also, in their view, such a measurement of less than full reciprocity in reduction commitments has to take into account not only the additional effort made by them in all areas but also of paragraph 8 flexibilities and the fact that several developing Members and the LDCs would be exempt from formula cuts.

8. Other objectives put forward by developed Members and some developing Members as being part of the Doha NAMA mandate are: harmonization of tariffs between Members; cuts into applied rates; and improvement of South-South trade. However, these objectives have been challenged by other developing Members who believe that, on the contrary, they are not part of that mandate.

9. During the informal discussions, many Members engaged in an exchange on the basis of an approach with two coefficients. In the context of such debates, the coefficients which were mentioned for developed Members fell generally within the range of 5 to 10, and for developing Members within the range of 15 to 30, although some developing Members did propose lower coefficients for developed Members and higher coefficients for developing Members. In addition, a developing country coefficient of 10 was also put forward by some developed Members. However, while this discussion of numbers is a positive development, the inescapable reality is that the range of coefficients is wide and reflects the divergence that exists as to Members' expectations regarding the contributions that their trading partners should be making.

#### **Flexibilities for developing Members subject to a formula (paragraph 8 of the NAMA framework)**

10. A central issue concerning the paragraph 8 flexibilities has been the question of linkage or non-linkage between these flexibilities and the coefficient in the formula. A view was expressed that the flexibilities currently provided for in paragraph 8 are equivalent to 4-5 additional points to the coefficient in the formula, and as a result there was need to take this aspect into account in the developing country coefficient. In response, the argument has been made by many developing Members that those flexibilities are a stand alone provision as reflected in the language of that provision, and should not be linked to the coefficient. Otherwise, this would amount to re-opening the NAMA framework. Some of those Members have also expressed the view that the numbers currently within square brackets are the minimum required for their sensitive tariff lines, and have expressed concern about the conditions attached to the use of such flexibilities, such as the capping of the import value. In response, the point has been made by developed Members that they are not seeking to remove the flexibilities under paragraph 8, and therefore are not re-opening the NAMA framework. They further point out that the numbers in paragraph 8 are within square brackets precisely to reflect the fact that they are not fixed and may need to be adjusted downwards depending on the level of the coefficient. In addition, the need for more transparency and predictability with regard to the tariff lines which would be covered by paragraph 8 flexibilities has been raised by some of these Members. Some developing Members have also advanced the idea that there should be the option for those developing Members not wanting to use paragraph 8 flexibilities to have recourse to a higher coefficient in the formula in the interest of having a balanced outcome.

### **Unbound Tariff Lines (paragraph 5, indent two of the NAMA framework)**

11. There has been progress on the discussion of unbound tariff lines. There is an understanding that full bindings would be a desirable objective of the NAMA negotiations, and a growing sense that unbound tariff lines should be subject to formula cuts provided there is a pragmatic solution for those lines with low applied rates. However, some Members have stressed that their unbound tariff lines with high applied rates are also sensitive and due consideration should be given to those lines. There now appears to be a willingness among several Members to move forward on the basis of a non-linear mark-up approach to establish base rates, and in the case of some of these Members, provided that such an approach yields an equitable result. A non-linear mark-up approach envisages the addition of a certain number of percentage points to the applied rate of the unbound tariff line in order to establish the base rate on which the formula is to be applied. There are two variations of such an approach. In one case, a constant number of percentage points are added to the applied rate in order to establish the base rate. The other variation consists of having a different number of percentage points depending on the level of the applied rate. In other words, the lower the applied rate the higher the mark-up and the higher the applied rate, the lower the mark-up. There is also one proposal on the table of a target average approach where an average is established through the use of a formula, with the unbound tariff lines expected to have final bindings around that average.

12. On a practical level, in their discussions on unbound tariff lines, Members have been referring mostly to the constant mark-up methodology to establish base rates. In the context of such discussions, the number for the mark-up has ranged from 5 to 30 percentage points. Once again the gap between the two figures is wide, but Members have displayed willingness to be flexible.

### **Other elements of the formula (paragraph 5 of the NAMA framework)**

13. Concerning product coverage (indent 1), Members have made good progress to establish a list of non-agricultural products as reflected in document JOB(05)/226/Rev.2. The main issue is whether the outcome of this exercise should be an agreed list or guidelines. It would appear that several Members are in favour of the former outcome, however, some have expressed their preference for the latter. In any event, there are only a limited number of items (17) on which differences exist and Members should try and resolve these differences as quickly as possible.

14. On ad valorem equivalents (indent 5), agreement was reached to convert non *ad valorem* duties to *ad valorem* equivalents on the basis of the methodology contained in JOB(05)/166/Rev.1 and to bind them in *ad valorem* terms. To date, four Members have submitted their preliminary AVE calculations, but there are many more due. Those Members would need to submit this information as quickly as possible so as to allow sufficient time for the multilateral verification process.

15. The subject of how credit is to be given for autonomous liberalization (indent 4) by developing countries provided that the tariff lines are bound on an MFN basis in the WTO since the conclusion of the Uruguay Round has not been discussed in detail since the adoption of the NAMA framework. However, this issue may be more usefully taken up once there is a clearer picture of the formula.

16. All the other elements of the formula such as tariff cuts commencing from bound rates after full implementation of current commitments (indent 2), the base year (indent 3), the nomenclature (indent 6) and reference period for import data (indent 7) have not been discussed any further since July 2004, as they were acceptable to Members as currently reflected in the NAMA framework.

### **Other flexibilities for developing Members**

### Members with low binding coverage (paragraph 6 of the NAMA framework)

17. A submission by a group of developing Members, covered under paragraph 6 provisions, was made in June 2005. The paper proposed that Members falling under this paragraph should be encouraged to substantially increase their binding coverage, and bind tariff lines at a level consistent with their individual development, trade, fiscal and strategic needs. A preliminary discussion of this proposal revealed that there were concerns about this proposal re-opening this paragraph by seeking to enhance the flexibilities contained therein. Further discussion of this proposal is required. However, it appears that the issue of concern to some of the paragraph 6 Members is not related so much to the full binding coverage, but rather to the average level at which these Members would be required to bind their tariffs.

### Flexibilities for LDCs (paragraph 9 of the NAMA framework)

18. There appears to be a common understanding that LDCs will be the judge of the extent and level of the bindings that they make. At the same time, Members have indicated that this substantial increase of the binding commitments which LDCs are expected to undertake should be done with a good faith effort. In this regard, some yardsticks for this effort were mentioned including the coverage and level of bindings made in the Uruguay Round by other LDCs as well as the more recently acceded LDCs.

### Small, vulnerable economies

19. A paper was submitted recently by a group of Members which proposes *inter alia* lesser and linear cuts to Members identified by a criterion using trade share. While some developing and developed Members were sympathetic to the situation of such Members, concerns were expressed with respect to the threshold used to establish eligibility, and also the treatment envisaged. Other developing Members expressed serious reservations about this proposal which in their view appeared to be creating a new category of developing Members, and to be further diluting the ambition of the NAMA negotiations. The sponsors of this proposal stressed that the small, vulnerable economies had characteristics which warranted special treatment.

20. This is an issue on which there is a serious divergence of opinion among developing Members. This subject will need to be debated further. Discussions may be facilitated through additional statistical analysis.

### Sectorals (paragraph 7 of the NAMA framework)

21. It appears that good progress is being made on the sectoral tariff component of the NAMA negotiations. Work which is taking place in an informal Member-driven process has focused on *inter alia* identification of sectors, product coverage, participation, end rates and adequate provisions of flexibilities for developing countries. Besides the sectorals based on a critical mass approach identified in the Chairman's commentary – bicycles, chemicals, electronics/electrical equipment, fish, footwear, forest products, gems and jewellery, pharmaceuticals and medical equipment, raw materials and sporting goods – I understand that work is ongoing on other sectors namely apparel, auto/auto parts and textiles.

22. While this component of the NAMA negotiations is recognized in the NAMA framework to be a key element to delivering on the objectives of paragraph 16 of the Doha NAMA mandate, some developing Members have questioned the rationale of engaging in sectoral negotiations before having the formula finalized. Many have also re-iterated their view that sectorals are voluntary in nature. The point has also been made by other developing Members that sectorals harm smaller developing Members due to an erosion of their preferences. However, the proponents of such initiatives have argued that sectorals are another key element of the NAMA negotiations and an important modality for delivering on the elimination of duties as mandated in paragraph 16 of the Doha Ministerial Declaration. In addition, they

have pointed out that some of the sectorals were initiated by developing Members. Moreover, such initiatives require substantive work and were time-consuming to prepare. Concerning preference erosion, this was a cross-cutting issue.

23. Members will need to begin considering time-lines for the finalization of such work, and the submission of the outcomes which will be applied on an MFN basis.

#### **Market Access for LDCs (paragraph 10 of the NAMA framework)**

24. In the discussions on this subject, it was noted that the Committee on Trade and Development in Special Session is examining the question of duty-free and quota-free access for non-agricultural products originating from LDCs. Consequently, there is recognition by Members that the discussions in that Committee would most probably have an impact on this element of the NAMA framework, and would need to be factored in at the appropriate time.

#### **Newly Acceded Members (paragraph 11 of the NAMA framework)**

25. Members recognize the extensive market access commitments made by the NAMs at the time of their accession. From the discussions held on this subject, it was clarified that those NAMs which are developing Members have access to paragraph 8 flexibilities. As special provisions for tariff reductions for the NAMs, some Members are willing to consider longer implementation periods than those to be provided to developing Members. Other proposals such as a higher coefficient and "grace periods" for the NAMs were also put forward, but a number of Members have objected to these ideas. There has also been a submission by four low-income economies in transition who have requested to be exempt from formula cuts in light of their substantive contributions at the time of their WTO accession and the current difficult state of their economies. While some Members showed sympathy for the situation of these Members, they expressed the view that other solutions may be more appropriate. Some developing Members also expressed concern about this proposal creating a differentiation between Members. Further discussion is required on these issues.

#### **NTBs (paragraph 14 of the NAMA framework)**

26. Since adoption of the July 2004 framework, Members have been focusing their attention on non-tariff barriers in recognition of the fact that they are an integral and equally important part of the NAMA negotiations. Some Members claim that they constitute a greater barrier to their exports than tariffs. The Group has spent a considerable amount of time identifying, categorizing and examining the notified NTBs. Members are using bilateral, vertical and horizontal approaches to the NTB negotiations. For example, many Members are raising issues bilaterally with their trading partners. Vertical initiatives are ongoing on automobiles, electronic products and wood products. There have been some proposals of a horizontal nature concerning export taxes, export restrictions and remanufactured products. On export taxes, some Members have expressed the view that such measures fall outside the mandate of the NAMA negotiations. Some Members have also raised in other Negotiating Groups some of the NTBs they had notified initially in the context of the NAMA negotiations. For example, a number of trade facilitation measures are now being examined in the Negotiating Group on Trade Facilitation. Some other Members have also indicated their intention to bring issues to the regular WTO Committees. NTBs currently proposed for negotiation in the NAMA Group are contained in document JOB(05)/85/Rev.3.

27. Some proposals have been made of a procedural nature in order to expedite the NTB work, including a suggestion to hold dedicated NTB sessions. Further consideration will need to be given to this and other proposals. Members will also need to begin considering some time-lines for the submission of specific negotiating proposals and NTB outcomes.

### **Appropriate Studies and Capacity Building Measures (paragraph 15 of the NAMA framework)**

28. There has been no discussion as such on this element as it is an ongoing and integral part of the negotiating process. Several papers have been prepared by the Secretariat during the course of the negotiations and capacity building activities by the Secretariat have increased considerably since the launch of the Doha Development Agenda. Such activities will need to continue taking into account the evolution of the negotiations.

### **Non-reciprocal preferences (paragraph 16 of the NAMA framework)**

29. In response to calls by some Members for a better idea of the scope of the problem, the ACP Group circulated an indicative list of products (170 HS 6-digit tariff lines) vulnerable to preference erosion in the EC and US markets as identified through a vulnerability index. Simulations were also submitted by the African Group. Some developing Members expressed concern that the tariff lines listed covered the majority of their exports, or covered critical exports to those markets and were also precisely the lines on which they sought MFN cuts. As a result, for these Members, it was impossible to entertain any solution which related to less than full formula cuts or longer staging. In this regard, concern was expressed by them that non-trade solutions were not being examined. For the proponents of the issue, a trade solution was necessary as this was a trade problem. According to them, their proposal would not undermine trade liberalization because they were seeking to manage such liberalization on a limited number of products.

30. This subject is highly divisive precisely because the interests of the two groups of developing Members are in direct conflict. Additionally, it is a cross-cutting issue which makes it even more sensitive. While, the aforementioned list of products has been helpful in providing a sense of the scope of the problem and may help Members to engage in a more focused discussion, it is clear that pragmatism will need to be shown by all concerned.

### **Environmental Goods (paragraph 17 of the NAMA framework)**

31. Since the adoption of the July framework in 2004, limited discussions have been held on this subject in the Group. However, it is noted that much work under paragraph 31(iii) of the Doha Ministerial Declaration has been undertaken by the Committee on Trade and Environment in Special Session. There would need to be close coordination between the two negotiating groups and a stock taking of the work undertaken in that Committee would be required at the appropriate time by the NAMA Negotiating Group.

### **Other elements of the NAMA framework**

32. On the other elements of the NAMA framework, such as supplementary modalities (paragraph 12), elimination of low duties (paragraph 13) and tariff revenue dependency (paragraph 16) the Group has not had a substantive debate. This has in part to do with the nature of the issue or because more information is required from the proponents. Regarding supplementary modalities, such modalities will become more relevant once the formula has been finalized. On elimination of low duties, this issue may be more suitable to consider once there is a better sense of the likely outcome of the NAMA negotiations. On tariff revenue dependency, more clarity is required from the proponents on the nature and scope of the problem.

#### **D. FINAL REMARKS**

33. As may be observed from the above report, Members are far away from achieving full modalities. This is highly troubling. It will take a major effort by all if the objective of concluding the NAMA negotiations by the end of 2006 is to be realized.

34. To this end, I would highlight as a critical objective for Hong Kong a common understanding on the formula, paragraph 8 flexibilities and unbound tariffs. It is crucial that Ministers move decisively on these elements so that the overall outcome is acceptable to all. This will give the necessary impetus to try and fulfill at a date soon thereafter the objective of full modalities for the NAMA negotiations.

35. Specifically, Ministers should:

- Obtain agreement on the final structure of the formula and narrow the range of numbers.
- Resolve their basic differences over paragraph 8 flexibilities.
- Clarify whether the constant mark-up approach is the way forward, and if so, narrow the range of numbers.

## Annex C

### Services

#### Objectives

1. In order to achieve a progressively higher level of liberalization of trade in services, with appropriate flexibility for individual developing country Members, we agree that Members should be guided, to the maximum extent possible, by the following objectives in making their new and improved commitments:

- (a) Mode 1
  - (i) commitments at existing levels of market access on a non-discriminatory basis across sectors of interest to Members
  - (ii) removal of existing requirements of commercial presence
- (b) Mode 2
  - (i) commitments at existing levels of market access on a non-discriminatory basis across sectors of interest to Members
  - (ii) commitments on mode 2 where commitments on mode 1 exist
- (c) Mode 3
  - (i) commitments on enhanced levels of foreign equity participation
  - (ii) removal or substantial reduction of economic needs tests
  - (iii) commitments allowing greater flexibility on the types of legal entity permitted
- (d) Mode 4
  - (i) new or improved commitments on the categories of Contractual Services Suppliers, Independent Professionals and Others, de-linked from commercial presence, to reflect *inter alia*:
    - removal or substantial reduction of economic needs tests
    - indication of prescribed duration of stay and possibility of renewal, if any
  - (ii) new or improved commitments on the categories of Intra-corporate Transferees and Business Visitors, to reflect *inter alia*:
    - removal or substantial reduction of economic needs tests
    - indication of prescribed duration of stay and possibility of renewal, if any
- (e) MFN Exemptions

- (i) removal or substantial reduction of exemptions from most-favoured-nation (MFN) treatment
  - (ii) clarification of remaining MFN exemptions in terms of scope of application and duration
- (f) Scheduling of Commitments
  - (i) ensuring clarity, certainty, comparability and coherence in the scheduling and classification of commitments through adherence to, *inter alia*, the Scheduling Guidelines pursuant to the Decision of the Council for Trade in Services adopted on 23 March 2001
  - (ii) ensuring that scheduling of any remaining economic needs tests adheres to the Scheduling Guidelines pursuant to the Decision of the Council for Trade in Services adopted on 23 March 2001.

2. As a reference for the request-offer negotiations, the sectoral and modal objectives as identified by Members may be considered.<sup>22</sup>

3. Members shall pursue full and effective implementation of the Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services (LDC Modalities) adopted by the Special Session of the Council for Trade in Services on 3 September 2003, with a view to the beneficial and meaningful integration of LDCs into the multilateral trading system.

4. Members must intensify their efforts to conclude the negotiations on rule-making under GATS Articles X, XIII, and XV in accordance with their respective mandates and timelines:

- (a) Members should engage in more focused discussions in connection with the technical and procedural questions relating to the operation and application of any possible emergency safeguard measures in services.
- (b) On government procurement, Members should engage in more focused discussions and in this context put greater emphasis on proposals by Members, in accordance with Article XIII of the GATS.
- (c) On subsidies, Members should intensify their efforts to expedite and fulfil the information exchange required for the purpose of such negotiations, and should engage in more focused discussions on proposals by Members, including the development of a possible working definition of subsidies in services.

5. Members shall 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. We call upon Members to develop text for adoption. In so doing, Members shall consider proposals and the illustrative list of possible elements for Article VI:4 disciplines.<sup>23</sup>

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<sup>22</sup> As attached to the Report by the Chairman to the Trade Negotiations Committee on 28 November 2005, contained in document TN/S/23. This attachment has no legal standing.

<sup>23</sup> As attached to the Report of the Chairman of the Working Party on Domestic Regulation to the Special Session of the Council for Trade in Services on 15 November 2005, contained in document JOB(05)/280.

## Approaches

6. Pursuant to the principles and objectives above, we agree to intensify and expedite the request-offer negotiations, which shall remain the main method of negotiation, with a view to securing substantial commitments.

7. In addition to bilateral negotiations, we agree that the request-offer negotiations should also be pursued on a plurilateral basis in accordance with the principles of the GATS and the Guidelines and Procedures for the Negotiations on Trade in Services. The results of such negotiations shall be extended on an MFN basis. These negotiations would be organized in the following manner:

- (a) Any Member or group of Members may present requests or collective requests to other Members in any specific sector or mode of supply, identifying their objectives for the negotiations in that sector or mode of supply.
- (b) Members to whom such requests have been made shall consider such requests in accordance with paragraphs 2 and 4 of Article XIX of the GATS and paragraph 11 of the Guidelines and Procedures for the Negotiations on Trade in Services.
- (c) Plurilateral negotiations should be organised with a view to facilitating the participation of all Members, taking into account the limited capacity of developing countries and smaller delegations to participate in such negotiations.

8. Due consideration shall be given to proposals on trade-related concerns of small economies.

9. Members, in the course of negotiations, shall develop methods for the full and effective implementation of the LDC Modalities, including expeditiously:

- (a) Developing appropriate mechanisms for according special priority including to sectors and modes of supply of interest to LDCs in accordance with Article IV:3 of the GATS and paragraph 7 of the LDC Modalities.
- (b) Undertaking commitments, to the extent possible, in such sectors and modes of supply identified, or to be identified, by LDCs that represent priority in their development policies in accordance with paragraphs 6 and 9 of the LDC Modalities.
- (c) Assisting LDCs to enable them to identify sectors and modes of supply that represent development priorities.
- (d) Providing targeted and effective technical assistance and capacity building for LDCs in accordance with the LDC Modalities, particularly paragraphs 8 and 12.
- (e) Developing a reporting mechanism to facilitate the review requirement in paragraph 13 of the LDC Modalities.

10. Targeted technical assistance should be provided through, *inter alia*, the WTO Secretariat, with a view to enabling developing and least-developed countries to participate effectively in the negotiations. In particular and in accordance with paragraph 51 on Technical Cooperation of this Declaration, targeted technical assistance should be given to all developing countries allowing them to fully engage in the negotiation. In addition, such assistance should be provided on, *inter alia*, compiling and analyzing statistical data on trade in services, assessing interests in and gains from services trade, building regulatory capacity, particularly on those services sectors where liberalization is being undertaken by developing countries.

### **Timelines**

11. Recognizing that an effective timeline is necessary in order to achieve a successful conclusion of the negotiations, we agree that the negotiations shall adhere to the following dates:

- (a) Any outstanding initial offers shall be submitted as soon as possible.
- (b) Groups of Members presenting plurilateral requests to other Members should submit such requests by 28 February 2006 or as soon as possible thereafter.
- (c) A second round of revised offers shall be submitted by 31 July 2006.
- (d) Final draft schedules of commitments shall be submitted by 31 October 2006.
- (e) Members shall strive to complete the requirements in 9(a) before the date in 11(c).

### **Review of Progress**

12. The Special Session of the Council for Trade in Services shall review progress in the negotiations and monitor the implementation of the Objectives, Approaches and Timelines set out in this Annex.

## Annex D

### Rules

#### I. Anti-Dumping and Subsidies and Countervailing Measures including Fisheries Subsidies

We:

1. *acknowledge* that the achievement of substantial results on all aspects of the Rules mandate, in the form of amendments to the Anti-Dumping (AD) and Subsidies and Countervailing Measures (SCM) Agreements, is important to the development of the rules-based multilateral trading system and to the overall balance of results in the DDA;
2. *aim* to achieve in the negotiations on Rules further improvements, in particular, to the transparency, predictability and clarity of the relevant disciplines, to the benefit of all Members, including in particular developing and least-developed Members. In this respect, the development dimension of the negotiations must be addressed as an integral part of any outcome;
3. *call on* Participants, in considering possible clarifications and improvements in the area of anti-dumping, to take into account, *inter alia*, (a) the need to avoid the unwarranted use of anti-dumping measures, while preserving the basic concepts, principles and effectiveness of the instrument and its objectives where such measures are warranted; and (b) the desirability of limiting the costs and complexity of proceedings for interested parties and the investigating authorities alike, while strengthening the due process, transparency and predictability of such proceedings and measures;
4. *consider* that negotiations on anti-dumping should, as appropriate, clarify and improve the rules regarding, *inter alia*, (a) determinations of dumping, injury and causation, and the application of measures; (b) procedures governing the initiation, conduct and completion of antidumping investigations, including with a view to strengthening due process and enhancing transparency; and (c) the level, scope and duration of measures, including duty assessment, interim and new shipper reviews, sunset, and anti-circumvention proceedings;
5. *recognize* that negotiations on anti-dumping have intensified and deepened, that Participants are showing a high level of constructive engagement, and that the process of rigorous discussion of the issues based on specific textual proposals for amendment to the AD Agreement has been productive and is a necessary step in achieving the substantial results to which Ministers are committed;
6. *note* that, in the negotiations on anti-dumping, the Negotiating Group on Rules has been discussing in detail proposals on such issues as determinations of injury/causation, the lesser duty rule, public interest, transparency and due process, interim reviews, sunset, duty assessment, circumvention, the use of facts available, limited examination and all others rates, dispute settlement, the definition of dumped imports, affiliated parties, product under consideration, and the initiation and completion of investigations, and that this process of discussing proposals before the Group or yet to be submitted will continue after Hong Kong;
7. *note*, in respect of subsidies and countervailing measures, that while proposals for amendments to the SCM Agreement have been submitted on a number of issues, including the definition of a subsidy, specificity, prohibited subsidies, serious prejudice, export credits and guarantees, and the

allocation of benefit, there is a need to deepen the analysis on the basis of specific textual proposals in order to ensure a balanced outcome in all areas of the Group's mandate;

8. *note* the desirability of applying to both anti-dumping and countervailing measures any clarifications and improvements which are relevant and appropriate to both instruments;
9. *recall* our commitment at Doha to enhancing the mutual supportiveness of trade and environment, *note* that there is broad agreement that the Group should strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing, and *call on* Participants promptly to undertake further detailed work to, *inter alia*, establish the nature and extent of those disciplines, including transparency and enforceability. Appropriate and effective special and differential treatment for developing and least-developed Members should be an integral part of the fisheries subsidies negotiations, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns;
10. *direct* the Group to intensify and accelerate the negotiating process in all areas of its mandate, on the basis of detailed textual proposals before the Group or yet to be submitted, and complete the process of analysing proposals by Participants on the AD and SCM Agreements as soon as possible;
11. *mandate* the Chairman to prepare, early enough to assure a timely outcome within the context of the 2006 end date for the Doha Development Agenda and taking account of progress in other areas of the negotiations, consolidated texts of the AD and SCM Agreements that shall be the basis for the final stage of the negotiations.

## II. Regional Trade Agreements

1. We welcome the progress in negotiations to clarify and improve the WTO's disciplines and procedures on regional trade agreements (RTAs). Such agreements, which can foster trade liberalization and promote development, have become an important element in the trade policies of virtually all Members. Transparency of RTAs is thus of systemic interest as are disciplines that ensure the complementarity of RTAs with the WTO.

2. We commend the progress in defining the elements of a transparency mechanism for RTAs, aimed, in particular, at improving existing WTO procedures for gathering factual information on RTAs, without prejudice to the rights and obligations of Members. We instruct the Negotiating Group on Rules to intensify its efforts to resolve outstanding issues, with a view to a provisional decision on RTA transparency by 30 April 2006.

3. We also note with appreciation the work of the Negotiating Group on Rules on WTO's disciplines governing RTAs, including *inter alia* on the "substantially all the trade" requirement, the length of RTA transition periods and RTA developmental aspects. We instruct the Group to intensify negotiations, based on text proposals as soon as possible after the Sixth Ministerial Conference, so as to arrive at appropriate outcomes by end 2006.

## Annex E

### Trade Facilitation

#### Report by the Negotiating Group on Trade Facilitation to the TNC

1. Since its establishment on 12 October 2004, the Negotiating Group on Trade Facilitation met eleven times to carry out work under the mandate contained in Annex D of the Decision adopted by the General Council on 1 August 2004. The negotiations are benefiting from the fact that the mandate allows for the central development dimension of the Doha negotiations to be addressed directly through the widely acknowledged benefits of trade facilitation reforms for all WTO Members, the enhancement of trade facilitation capacity in developing countries and LDCs, and provisions on special and differential treatment (S&DT) that provide flexibility. Based on the Group's Work Plan (TN/TF/1), Members contributed to the agreed agenda of the Group, tabling 60 written submissions sponsored by more than 100 delegations. Members appreciate the transparent and inclusive manner in which the negotiations are being conducted.

2. Good progress has been made in all areas covered by the mandate, through both verbal and written contributions by Members. A considerable part of the Negotiating Group's meetings has been spent on addressing the negotiating objective of improving and clarifying relevant aspects of GATT Articles V, VIII and X, on which about 40 written submissions<sup>1</sup> have been tabled by Members representing the full spectrum of the WTO's Membership. Through discussions on these submissions and related questions and answers (JOB(05)/222), Members have advanced their understanding of the measures in question and are working towards common ground on many aspects of this part of the negotiating mandate. Many of these submissions also covered the negotiating objective of enhancing technical assistance and support for capacity building on trade facilitation, as well as the practical application of the principle of S&DT. The Group also discussed other valuable submissions dedicated to these issues.<sup>2</sup> Advances have also been made on the objective of arriving at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues, where two written proposals have been discussed.<sup>3</sup> Members have also made valuable contributions on the identification of trade facilitation needs and priorities, development aspects, cost implications and inter-agency cooperation.<sup>4</sup>

3. Valuable input has been provided by a number of Members in the form of national experience papers<sup>5</sup> describing national trade facilitation reform processes. In appreciation of the value to developing countries and LDCs of this aspect of the negotiations, the Negotiating Group recommends that Members be encouraged to continue this information sharing exercise.

4. Building on the progress made in the negotiations so far, and with a view to developing a set of multilateral commitments on all elements of the mandate, the Negotiating Group recommends that it continue to intensify its negotiations on the basis of Members' proposals, as reflected currently in document TN/TF/W/43/Rev.4, and any new proposals to be presented. Without prejudice to individual Member's positions on individual proposals, a list of (I) proposed measures to improve and clarify GATT Articles V, VIII and X; (II) proposed provisions for effective cooperation between customs and other

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<sup>1</sup> TN/TF/W/6-W/15, W/17-W/26, W/28, W/30-W/32, W/34-36, W/38-W/40, W/42, W/44-W/49, W/53, W/55, W/58, W/60-W/62, W/64-W/67, W/69, W/70.

<sup>2</sup> TN/TF/W/33, W/41, W/56, W/63, W/73 and W/74.

<sup>3</sup> TN/TF/W/57 and W/68.

<sup>4</sup> TN/TF/W/29, W/33, W/41, W/62 and W/63.

<sup>5</sup> TN/TF/W/48, W/50, W/53, W/55, W/58, W/60, W/61, W/65, W/69 and W/75.

authorities on trade facilitation and customs compliance; and, (III) cross-cutting submissions; is provided below to facilitate further negotiations. In carrying out this work and in tabling further proposals, Members should be mindful of the overall deadline for finishing the negotiations and the resulting need to move into focussed drafting mode early enough after the Sixth Ministerial Conference so as to allow for a timely conclusion of text-based negotiations on all aspects of the mandate.

5. Work needs to continue and broaden on the process of identifying individual Member's trade facilitation needs and priorities, and the cost implications of possible measures. The Negotiating Group recommends that relevant international organizations be invited to continue to assist Members in this process, recognizing the important contributions being made by them already, and be encouraged to continue and intensify their work more generally in support of the negotiations.

6. In light of the vital importance of technical assistance and capacity building to allow developing countries and LDCs to fully participate in and benefit from the negotiations, the Negotiating Group recommends that the commitments in Annex D's mandate in this area be reaffirmed, reinforced and made operational in a timely manner. To bring the negotiations to a successful conclusion, special attention needs to be paid to support for technical assistance and capacity building that will allow developing countries and LDCs to participate effectively in the negotiations, and to technical assistance and capacity building to implement the results of the negotiations that is precise, effective and operational, and reflects the trade facilitation needs and priorities of developing countries and LDCs. Recognizing the valuable assistance already being provided in this area, the Negotiating Group recommends that Members, in particular developed ones, continue to intensify their support in a comprehensive manner and on a long-term and sustainable basis, backed by secure funding.

7. The Negotiating Group also recommends that it deepen and intensify its negotiations on the issue of S&DT, with a view to arriving at S&DT provisions that are precise, effective and operational and that allow for necessary flexibility in implementing the results of the negotiations. Reaffirming the linkages among the elements of Annex D, the Negotiating Group recommends that further negotiations on S&DT build on input presented by Members in the context of measures related to GATT Articles V, VIII and X and in their proposals of a cross-cutting nature on S&DT.

## **PROPOSED MEASURES TO IMPROVE AND CLARIFY GATT ARTICLES V, VIII AND X**

### **A. PUBLICATION AND AVAILABILITY OF INFORMATION**

- Publication of Trade Regulations
- Publication of Penalty Provisions
- Internet Publication
  - (a) of elements set out in Article X of GATT 1994
  - (b) of specified information setting forth procedural sequence and other requirements for importing goods
- Notification of Trade Regulations
- Establishment of Enquiry Points/SNFP/Information Centres
- Other Measures to Enhance the Availability of Information

### **B. TIME PERIODS BETWEEN PUBLICATION AND IMPLEMENTATION**

- Interval between Publication and Entry into Force

C. CONSULTATION AND COMMENTS ON NEW AND AMENDED RULES

- Prior Consultation and Commenting on New and Amended Rules
- Information on Policy Objectives Sought

D. ADVANCE RULINGS

- Provision of Advance Rulings

E. APPEAL PROCEDURES

- Right of Appeal
- Release of Goods in Event of Appeal

F. OTHER MEASURES TO ENHANCE IMPARTIALITY AND NON-DISCRIMINATION

- Uniform Administration of Trade Regulations
- Maintenance and Reinforcement of Integrity and Ethical Conduct Among Officials
  - (a) Establishment of a Code of Conduct
  - (b) Computerized System to Reduce/Eliminate Discretion
  - (c) System of Penalties
  - (d) Technical Assistance to Create/Build up Capacities to Prevent and Control Customs Offences
  - (e) Appointment of Staff for Education and Training
  - (f) Coordination and Control Mechanisms

G. FEES AND CHARGES CONNECTED WITH IMPORTATION AND EXPORTATION

- General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation
  - (a) Specific Parameters for Fees/Charges
  - (b) Publication/Notification of Fees/Charges
  - (c) Prohibition of Collection of Unpublished Fees and Charges
  - (d) Periodic Review of Fees/Charges
  - (e) Automated Payment
- Reduction/Minimization of the Number and Diversity of Fees/Charges

H. FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

- Disciplines on Formalities/Procedures and Data/Documentation Requirements Connected with Importation and Exportation
  - (a) Non-discrimination
  - (b) Periodic Review of Formalities and Requirements
  - (c) Reduction/Limitation of Formalities and Documentation Requirements
  - (d) Use of International Standards
  - (e) Uniform Customs Code
  - (f) Acceptance of Commercially Available Information and of Copies
  - (g) Automation

- (h) Single Window/One-time Submission
- (i) Elimination of Pre-Shipment Inspection
- (j) Phasing out Mandatory Use of Customs Brokers

I. CONSULARIZATION

- Prohibition of Consular Transaction Requirement

J. BORDER AGENCY COOPERATION

- Coordination of Activities and Requirement of all Border Agencies

K. RELEASE AND CLEARANCE OF GOODS

- Expedited/Simplified Release and Clearance of Goods
  - (a) Pre-arrival Clearance
  - (b) Expedited Procedures for Express Shipments
  - (c) Risk Management /Analysis, Authorized Traders
  - (d) Post-Clearance Audit
  - (e) Separating Release from Clearance Procedures
  - (f) Other Measures to Simplify Customs Release and Clearance
- Establishment and Publication of Average Release and Clearance Times

L. TARIFF CLASSIFICATION

- Objective Criteria for Tariff Classification

M. MATTERS RELATED TO GOODS TRANSIT

- Strengthened Non-discrimination
- Disciplines on Fees and Charges
  - (a) Publication of Fees and Charges and Prohibition of Unpublished ones
  - (b) Periodic Review of Fees and Charges
  - (c) More effective Disciplines on Charges for Transit
  - (d) Periodic Exchange Between Neighbouring Authorities
- Disciplines on Transit Formalities and Documentation Requirements
  - (a) Periodic Review
  - (b) Reduction/Simplification
  - (c) Harmonization/Standardization
  - (d) Promotion of Regional Transit Arrangements
  - (e) Simplified and Preferential Clearance for Certain Goods
  - (f) Limitation of Inspections and Controls
  - (g) Sealing
  - (h) Cooperation and Coordination on Document Requirements
  - (i) Monitoring
  - (j) Bonded Transport Regime/Guarantees
- Improved Coordination and Cooperation
  - (a) Amongst Authorities

(b) Between Authorities and the Private Sector

- Operationalization and Clarification of Terms

**II. PROPOSED PROVISIONS FOR EFFECTIVE COOPERATION BETWEEN CUSTOMS AND OTHER AUTHORITIES ON TRADE FACILITATION AND CUSTOMS COMPLIANCE**

- Multilateral Mechanism for the Exchange and Handling of Information

**III. CROSS-CUTTING SUBMISSIONS**

**1. Needs and Priorities Identification**

- General tool to assess needs and priorities and current levels of trade facilitation
- Take result of assessment as one basis for establishing trade facilitation rules, arranging S&D treatment and providing technical assistance and capacity building support

**2. Technical Assistance and Capacity Building**

- Technical Assistance and Capacity Building in the Course of the Negotiations
  - Identification of Needs and Priorities
  - Compilation of Needs and Priorities of Individual Members
  - Support for Clarification and Educative Process Including Training
- Technical Assistance and Capacity Building Beyond the Negotiations Phase
  - Implementation of the Outcome
  - Coordination Mechanisms for Implementing Needs and Priorities as well as Commitments

**3. Multiple-Areas**

- Identification of Trade Facilitation Needs and Priorities of Members
- Cost Assessment
- Inter-Agency Cooperation
- Links and Inter-relationship between the Elements of Annex D
- Inventory of Trade Facilitation Measures
- Assessment of the Current Situation
- Timing and Sequencing of Measures

## **Annex F**

### **Special and Differential Treatment**

#### LDC Agreement-specific Proposals

#### **23) Understanding in Respect of Waivers of Obligations under the GATT 1994**

- (i) We agree that requests for waivers by least-developed country Members under Article IX of the WTO Agreement and the Understanding in respect of Waivers of Obligations under the GATT 1994 shall be given positive consideration and a decision taken within 60 days.
- (ii) When considering requests for waivers by other Members exclusively in favour of least-developed country Members, we agree that a decision shall be taken within 60 days, or in exceptional circumstances as expeditiously as possible thereafter, without prejudice to the rights of other Members.

#### **36) Decision on Measures in Favour of Least-Developed Countries**

We agree that developed-country Members shall, and developing-country Members declaring themselves in a position to do so should:

- (a) (i) Provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability.
- (ii) Members facing difficulties at this time to provide market access as set out above shall provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs, defined at the tariff line level, by 2008 or no later than the start of the implementation period. In addition, these Members shall take steps to progressively achieve compliance with the obligations set out above, taking into account the impact on other developing countries at similar levels of development, and, as appropriate, by incrementally building on the initial list of covered products.
- (iii) Developing-country Members shall be permitted to phase in their commitments and shall enjoy appropriate flexibility in coverage.
- (b) Ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access.

Members shall notify the implementation of the schemes adopted under this decision every year to the Committee on Trade and Development. The Committee on Trade and Development shall annually review the steps taken to provide duty-free and quota-free market access to the LDCs and report to the General Council for appropriate action.

We urge all donors and relevant international institutions to increase financial and technical support aimed at the diversification of LDC economies, while providing additional financial and technical assistance through appropriate delivery mechanisms to meet their implementation obligations, including fulfilling SPS and TBT requirements, and to assist them in managing their adjustment processes, including those necessary to face the results of MFN multilateral trade liberalisation.

### **38) Decision on Measures in Favour of Least-Developed Countries**

It is reaffirmed that least-developed country Members will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial or trade needs, or their administrative and institutional capacities.

Within the context of coherence arrangements with other international institutions, we urge donors, multilateral agencies and international financial institutions to coordinate their work to ensure that LDCs are not subjected to conditionalities on loans, grants and official development assistance that are inconsistent with their rights and obligations under the WTO Agreements.

### **84) Agreement on Trade-Related Investment Measures**

LDCs shall be allowed to maintain on a temporary basis existing measures that deviate from their obligations under the TRIMs Agreement. For this purpose, LDCs shall notify the Council for Trade in Goods (CTG) of such measures within two years, starting 30 days after the date of this declaration. LDCs will be allowed to maintain these existing measures until the end of a new transition period, lasting seven years. This transition period may be extended by the CTG under the existing procedures set out in the TRIMs Agreement, taking into account the individual financial, trade, and development needs of the Member in question.

LDCs shall also be allowed to introduce new measures that deviate from their obligations under the TRIMs Agreement. These new TRIMs shall be notified to the CTG no later than six months after their adoption. The CTG shall give positive consideration to such notifications, taking into account the individual financial, trade, and development needs of the Member in question. The duration of these measures will not exceed five years, renewable subject to review and decision by the CTG.

Any measures incompatible with the TRIMs Agreement and adopted under this decision shall be phased out by year 2020.

### **88) Decision on Measures in Favour of Least-Developed Countries–Paragraph 1**

Least-developed country Members, whilst reaffirming their commitment to the fundamental principles of the WTO and relevant provisions of GATT 1994, and while complying with the general rules set out in the aforesaid instruments, will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs, and their administrative and institutional capabilities. Should a least-developed country Member find that it is not in a position to comply with a specific obligation or commitment on these grounds, it shall bring the matter to the attention of the General Council for examination and appropriate action.

We agree that the implementation by LDCs of their obligations or commitments will require further technical and financial support directly related to the nature and scope of such obligations or commitments, and direct the WTO to coordinate its efforts with donors and relevant agencies to significantly increase aid for trade-related technical assistance and capacity building.

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**U.S. SUBMISSIONS TO THE WTO IN SUPPORT  
OF THE DOHA DEVELOPMENT AGENDA**  
(WTO Document Symbol in Parentheses)

**Committee on Agriculture, Special Session**

- Export Competition, Market Access and Domestic Support (JOB(02)/122)
- Joint EC-US Paper on Agriculture (JOB(03)/157)
- Proposal for Tariff Rate Quota Reform (G/AG/NG/W/58)
- Proposal for Comprehensive Long-Term Agricultural Trade Reform (G/AG/NG/W/15)
- Note on Domestic Support Reform (G/AG/NG/W/16)
- Tariff Quota Administration (JOB(06)/188)
- Domestic Support Simulations – Simulations (JOB(06)/186)
- Tariff Quota Administration - Communication by the United States (JOB(06)/184)
- Comments on Food Aid (JOB(06)/183)
- Agriculture Domestic Support Simulations – Simulations (JOB(06)/151)
- Applied Tariff Simulations - Agriculture - Summary of Results (JOB(06)/152)
- United States Communication on Special Products (JOB(06)/137)
- United States Communication on Export Credits, Export Credit Guarantees or Insurance Programs (JOB(06)/119)
- United States Communication on State Trading Export Enterprises (JOB(06)/79)
- United States Communication on Domestic Support - Annex 2 - Domestic Support: The Basis for Exemption from the Reduction Commitments (JOB(06)/80)
- United States' Communication on Food Aid (JOB(06)/78)
- Market Access Simulations – Simulations (JOB(06)/63)
- US Communication on US Product-Specific Blue Box Limits (JOB(08)/10)
- Elements of Special Products Modalities - Communication from Australia, Canada, Costa Rica, Malaysia, New Zealand, Paraguay, Thailand, United States and Uruguay (JOB(08)/24)

**Council on Trade in Services, Special Session**

- Framework for Negotiation (S/CSS/W/4)
- Proposals for Negotiation (JOB(00)/8376)
- Accounting Services (S/CSS/W/20)
- Audiovisual and Related Services (S/CSS/W/21)
- Distribution Services (S/CSS/W/22)
- Higher (Tertiary) Education, Adult Education and Training (S/CSS/W/23)
- Energy Services (S/CSS/W/24)
- Environmental Services (S/CSS/W/25)
- Express Delivery Services (S/CSS/W/26)
- Financial Services (S/CSS/W/27)
- Legal Services (S/CSS/W/28)
- Movement of Natural Persons (S/CSS/W/29)
- Market Access in Telecommunications and Complementary Services (S/CSS/W/30)
- Tourism and Hotels (S/CSS/W/31)
- Transparency in Domestic Regulation (S/CSS/W/102)
- Advertising and Related Services (S/CSS/W/100)
- Desirability of a Safeguard Mechanism for Services: Promoting Liberalization of Trade in Services (S/WPGR/W/37)

- Modalities for the Special Treatment For Least-Developed Country Members in the Negotiations on Trade In Services – JOB(03)/133
- U.S. Government Points of Contact in Least-Developed Country Members (JOB (03)/33)
- Proposed Guide for Scheduling Commitments on Energy Services in the WTO (JOB(03)/89)
- Small and Medium Sized Enterprises (TN/S/W/5)
- Initial Offer (TN/S/O/USA)
- An Assessment of Services Trade and Liberalization in the United States and Developing Economies (TN/S/W/12)
- Joint Statement on Market Access in Services (JOB(04)/176)
- U.S. Proposal for Transparency Disciplines in Domestic Regulation: Building on Existing International Disciplines and Proposals (JOB(04)/128)
- Communication from the United States: Horizontal Transparency Disciplines in Domestic Regulation (JOB(06)/182)
- Outline of the U.S. position on a Draft Consolidated Text in the WPDR (JOB(06)/223)
- Classification in the Telecommunications Sector under the WTO-GATS Framework (TN/S/W/35 and S/CSC/W/45)
- Guidelines for Scheduling Commitments Concerning Postal and Courier Services, including Express Delivery (TN/S/W/30)
- Joint Statement on Liberalization of Logistics Services (TN/S/W/34)
- Joint Statement on Legal Services (TN/S/W/37 and S/CSC/W/46)
- Legal Services – Objectives for Further Liberalisation and Limitations to be Removed (JOB(05)/276)
- Joint Statement on Liberalization of Construction and Related Engineering Services (JOB(05)/130)
- Joint Statement on Liberalization of Financial Services (JOB(05)/17)
- Working Toward a Productive Information Exchange (in the Working Party on GATS Rules) (JOB(05)/5)
- Statement on Services of Common Interest in the Energy Sector (JOB(06)/17)
- Implementation of the Modalities for the Special Treatment for Least Developed Country Members in the Trade in Services Negotiations (JOB(06)/77)
- Revised Services Offer (TN/S/O/USA/Rev.1)
- Review of Progress in Telecommunications Services (JOB(07)/199)
- Review of Progress in Postal and Courier Services, including Express Delivery Collective Request (JOB(07)/200)

### **Negotiating Group on Market Access**

- Tariffs & Trade Data Needs Assessment (TN/MA/W/2)
- Negotiations on Environmental Goods (TN/MA/W/3 and TN/TE/W/8)
- Modalities Proposal (TN/MA/W/18)
- Proposal on Modalities for Addressing Non-Tariff Barriers (NTBs) (TN/MA/W/18/Add.1)
- Revenue Implications of Trade Liberalization (TN/MA/W/18/Add.2)
- Vertical NTB Modality (TN/MA/W/18/Add.3)
- Contribution on an Environmental Goods Modality (TN/TE/W/38) & (TN/MA/W/18/Add.5)
- Liberalizing Trade in Environmental Goods (TN/MA/W/3, TN/MA/W/18/Add.4, Add.5, and Add.7)
- Non-Tariff Barrier Notifications (TN/MA/W/46/Add.8)
- Non-Tariff Barrier Notifications – Revision (TN/MA/W/46/Add.8/Rev.1)
- Non-Agricultural Market Access: Modalities (TN/MA/W/44)
- Contribution by Canada, European Communities and United States, Non-Agricultural Market Access: Modalities (JOB(03)/163)
- Progress Report: Discussions on Forestry NTBs (TN/MA/W/48/Add.1)
- Negotiating NTBs Related to Remanufacturing and Refurbishing (TN/MA/W/18/Add.11)

- A View To Harmonize Textile, Apparel, and Footwear Labeling Requirements (TN/MA/W/18/Add.12)
- Progress Report: WTO NAMA Discussions on Autos NTBs (TN/MA/W/18/Add.9)
- Tariff Elimination in the Gems and Jewelry Sector (TN/MA/W/61)
- Tariff Liberalization in the Forest Products Sector (TN/MA/W/64)
- Tariff Elimination in the Electronics/Electrical Sector (TN/MA/W/59)
- Initial List of Environmental Goods (TN/MA/W/18/Add.7 or TN/TE/W/52)
- Treatment of Non Ad Valorem Technical Tariffs (TN/MA/W/18/Add.8)
- Tariff Liberalization in the Chemicals Sector (TN/MA/W/58)
- How to Create a Critical Mass Sectoral Initiative (TN/MA/W/55)
- U.S. Proposal on Negotiating NTBs Related to the Auto Sector (TN/MA/W/18/Add.6)
- Non-Tariff Barriers Building Codes and the Wood Products Sector (TN/MA/W/48)
- Non-Tariff Barriers – Requests (TN/MA/NTR/3)
- Tariff Elimination in the Electronics/Electrical Sector (TN/MA/W/69)
- Open Access to Enhanced Healthcare (JOB(06)/35)
- Progress Report: NTB Discussions Related to Remanufactured and Refurbished Goods (TN/MA/W/18/Add.10) and (TN/MA/W/18/Add.10/Corr.1)
- Tariff Liberalisation in the Forest Products Sector1 (TN/MA/W/75)
- Negotiating Text on Textiles, Apparel, Footwear and Travel Goods Labeling Requirements (TN/MA/W/18/Add.14)
- Tariff Liberalization in the Chemicals Sector (TN/MA/W/72)
- Progress Report: Sectoral Discussions on Tariff Elimination in the Chemicals Sector (TN/MA/W/18/Add.1)
- Tariff Elimination in the Electronics/Electrical Sector JOB(06)/85
- Negotiating Proposal on Tariff Liberalisation in the Forest Products Sector JOB(06)/128
- Market Access for Environmental Goods TN/MA/W/70
- Negotiating Proposal on Tariff Elimination in the Gems and Jewellery Sector TN/MA/W/61/Add.2
- Swiss Dual proposal JOB(05)/36
- Analytical Contributions June 2005 JOB(05)/97
- Room Document for Simulation Presentation March 06. Actual doc # unknown.
- Negotiating Text on Liberalizing Trade in Remanufactured Goods (TN/MA/W/18/Add.15)
- Revised U.S. Negotiating Text on Liberalizing Trade in Remanufactured Goods (TN/MA/W/18/Add.16)
- Regulation of Remanufactured Goods: Answers to Frequently Asked Questions (JOB(07)/60)
- Non-Tariff Barriers – Requests (TN/MA/NTR/3/Add.2)
- Proposal for Modifications to "Ministerial Decision on Procedures for the Facilitation of Solutions to Non-Tariff Barriers" (TN/MA/W/88) NTBs (JOB(07)/145)
- Reducing Non-Tariff Barriers to Trade Related to Labeling of Textiles, Apparel, Footwear and Travel Goods – HS Classifications of Travel Goods (JOB(07)/59)
- Reducing Non-Tariff Barriers to Trade Related to Labelling of Textiles, Apparel, Footwear and Travel Goods - U.S. Responses to U.S. Questions (JOB(06)/266/Add.1)
- Non-Tariff Barriers to Trade related to Textiles, Clothing and Footwear - U.S. answers to Questionnaire by the European Communities (JOB(07)/22)
- Communication from the European Communities and the United States on NTBs related to Textiles, Apparel, Footwear and Clothing (TN/MA/W/93)
- Negotiating Text on Liberalizing Trade in Remanufactured Goods (TN/MA/W/18/Add.16/Rev.1)
- Illustrative Examples of Remanufactured Goods (JOB(07)/224)

- Negotiating Text on Non-Tariff Barriers Pertaining to the Electrical Safety and Electromagnetic Compatibility (EMC) of Electronic Goods (TN/MA/W/105 Rev.1)
- Negotiating Protocol on Enhanced Transparency on Export Licensing (TN/MA/W/15/Add.4/Rev.1)
- Communication from the United States on Automotive NTBs (JOB(08)/39)
- Non Paper on “Committee-First” for the “Horizontal Mechanism”, TN/MA/W/106 of 9 May 2008 (JOB(08)/45)
- Agreement on Non-Tariff Barriers Pertaining to Standards, Technical Regulations, and Conformity Assessment Procedures for Automotive Products (JOB (08)/46)
- Sectoral Negotiations in Non-Agricultural Market Access (NAMA) (TN/MA/W/97/Rev.1)
- Joint paper on Revised Draft Modalities for Non-Agricultural Market Access (NAMA) (TN/MA/W/95)
- Communication from the European Communities and the United States for an Anti-Concentration Clause in NAMA (TN/MA/W/96)
- Tariff Elimination in the Sports Equipment Sector (TN/MA/W/85)

### **Negotiating Group on Rules**

- Fisheries Subsidies -- Joint communication from the United States, Australia, Chile, Ecuador, Iceland, New Zealand, Peru, and the Philippines (TN/RL/W/3)
- Fisheries Subsidies (TN/RL/W/21)
- OECD Steel Paper (TN/RL/W/24)
- Questions on Papers Submitted to Rules Negotiating Group (TN/RL/W/25)
- Basic Concepts of the Trade Remedies Rules (TN/RL/W/27)
- Special and Differential Treatment and the Subsidies Agreement (TN/RL/W/33)
- Second Set of Questions from the United States on Papers Submitted to the Rules Negotiating Group (TN/RL/W/34)
- Investigatory Procedures Under The Antidumping and Subsidies Agreements (TN/RL/W/35)
- Communication From The United States Attaching A Communiqué From The Organization For Economic Cooperation And Development (OECD) (TN/RL/W/49)
- Circumvention (TN/RL/W/50)
- Replies To Questions Presented To The United States On Submission TN/RI/W/27 (TN/RL/W/53)
- Third Set Of Questions From The United States On Papers Submitted To The Rules Negotiating Group (TN/RL/W/54)
- Responses By The United States To Questions From Australia On Investigatory Procedures Under The Anti-Dumping And Subsidies Agreements (TN/RL/W/71)
- Identification Of Certain Major Issues Under The Anti-Dumping And Subsidies Agreements (TN/RL/W/72)
- Possible Approaches To Improved Disciplines On Fisheries Subsidies (TN/RL/W/77)
- Subsidies Disciplines Requiring Clarification And Improvement (TN/RL/W/78)
- Elements Of A Steel Subsidies Agreement (TN/RL/W/95)
- Identification of Additional Issues under the Anti-dumping and Subsidies Agreements (TN/RL/W/98)
- Fourth Set Of Questions From The United States On Papers Submitted To The Rules Negotiating Group (TN/RL/W/103)
- Further Issues Identified Under The Anti-Dumping And Subsidies Agreements For Discussion By the Negotiating Group On Rules (TN/RL/W/130)
- Replies to the Questions from India on TN/RL/W/35 (TN/RL/W/147)
- Three Issues Identified by the United States (TN/RL/W/153)
- Accrual of Interest (TN/RL/W/168)
- Additional Views on the Structure of the Fisheries Subsidies Negotiations (TN/RL/W/169)

- Fisheries Subsidies (TN/RL/W/196) (co-sponsored with Brazil, Chile, Colombia, Ecuador, Iceland, New Zealand, Pakistan and Peru)
- Offsets for Non-Dumped Comparisons (TN/RL/W/208)
- Allocation of Subsidy Benefits Over Time (TN/RL/GEN/4)
- Exchange Rates (TN/RL/W/GEN/5)
- New Shipper Reviews (TN/RL/GEN/11)
- Allocation Periods for Subsidy Benefits (TN/RL/GEN/12)
- Prompt Access to Non-Confidential Information (TN/RL/GEN/13)
- Conduct of Verifications (TN/RL/GEN/15)
- All-Others Rate (TN/RL/GEN/16)
- Expensing Versus Allocating Subsidy Benefits (TN/RL/GEN/17/Rev.1)
- Preliminary Determinations (TN/RL/GEN/25)
- Circumvention (TN/RL/GEN/29)
- Fisheries Subsidies – Programmes for Decommissioning of Vessels and Licence Retirement (TN/RL/GEN/41)
- Further Submission on When and How to Allocate Subsidy Benefits Over Time (TN/RL/GEN/45)
- Further Comments on Lesser Duty Proposals (TN/RL/GEN/58)
- Causation (TN/RL/GEN/59)
- Submission on Circumvention (TN/RL/GEN/71)
- Identification of Parties (TN/RL/GEN/89) (co-sponsored with Brazil)
- Access to Non-Confidential Information (TN/RL/GEN/90)
- New Shipper Reviews (TN/RL/GEN/91)
- Expanding the Prohibited “Red Light“ Subsidy Category (TN/RL/GEN/94)
- Further Submission on Facts Available (TN/RL/GEN/105)
- Circumvention (TN/RL/GEN/106)
- Exchange Rates (TN/RL/GEN/107)
- Disclosure of Essential Preliminary Legal and Factual Considerations (Mandatory Preliminary Determinations) (TN/RL/GEN/108)
- Fisheries Subsidies (TN/RL/GEN/127)
- Causation (TN/RL/GEN/128)
- Definition of Domestic Industry for Perishable, Seasonal Agricultural Products (TN/RL/GEN/129)
- Allocation and Expensing of Subsidies Benefits (TN/RL/GEN/130)
- Collection of Anti-Dumping Duties under Article 9.3 (TN/RL/GEN/131)
- Conduct of On-the-Spot Investigations (TN/RL/GEN/132)
- Disclosure of Calculations in Preliminary and Final Determinations (TN/RL/GEN/133)
- Fisheries Subsidies: Proposed New Disciplines (TN/RL/GEN/145)
- Expanding the Prohibited Red Light Subsidy Category – Draft Text (TN/RL/GEN/146)
- Proposal on Offsets for Non-Dumped Comparisons (TN/RL/GEN/147)
- Fisheries Subsidies (TN/RL/W/235) (co-sponsored with Australia and New Zealand)

### **Committee on Antidumping Practices**

- Proposal for Operationalization of Art. 15 (G/ADP/AHG/W/138)
- Draft Recommendation on Operationalizing Art. 15 (G/ADP/AHG/W/143)
- Para. 7.4: Annual Reviews of the Antidumping Agreement (G/ADP/W/427)

## **Committee on Subsidies and Countervailing Measures**

- Approval of Qualifying Requests under SCM Article. 27.4, Joint communication from the United States, Australia, Canada, the EU, Japan and Switzerland (G/SCM/W/521)

## **Dispute Settlement Body, Special Session**

- Contribution of the United States to the Improvement of the Dispute Settlement Understanding of the WTO-Related to Transparency (TN/DS/W/13)
- Negotiations on Improvements And Clarifications of the Dispute Settlement Understanding on Improving Flexibility and Member Control in WTO Dispute Settlement (TN/DS/W/28)
- Further Contribution of The United States to The Improvement of The Dispute Settlement Understanding of the WTO Related to Transparency (TN/DS/W/46)
- Negotiations on Improvements and Clarifications of the Dispute Settlement Understanding on Improving Flexibility and Member Control in WTO Dispute Settlement, Joint communication from United States and Chile (TN/DS/W/52)
- Some Questions for Consideration on Item(f) (TN/DS/W/74)
- Contribution of the United States on Some Practical Considerations in Improving the Dispute Settlement Understanding of the WTO Related to Transparency and Open Meetings (TN/DS/W/79)
- Further Contribution of the United States on Improving Flexibility and Member Control in WTO Dispute Settlement (TN/DS/W/82)
- Further Contribution of the United States on Improving Flexibility and Member Control in WTO Dispute Settlement, Addendum (TN/DS/W/82/Add.1)
- Further Contribution of the United States on Improving Flexibility and Member Control in WTO Dispute Settlement, Addendum, Corrigendum (TN/DS/W/82/Add.1/Corr.1)
- Further Contribution of the United States to the Improvement of the Dispute Settlement Understanding of the WTO Related to Transparency - Revised Legal Drafting (TN/DS/W/86)
- Dispute Settlement Body - Special Session - Negotiations on Improvements and Clarifications of the Dispute Settlement Understanding - Further Contribution of the United States on Improving Flexibility and Member Control - Addendum (TN/DS/W/82/Add.2)
- Flexibility and Member Control - Revised Textual Proposal by Chile and the United States (TN/DS/W/89)

## **Trade Facilitation**

- Article VIII - Fees and Formalities (G/C/W/384)
- Article X - Publication and Administration (G/C/W/400)
- Integrated and Comprehensive Approach to Special and Differential Treatment (G/C/W/451)
- Communication on Trade Facilitation (JOB(04)/103)
- Introduction to Proposals by the United States of America (TN/TF/W/11)
- Advance Binding Rulings (TN/TF/W/12)
- Proposal on Transparency and Publication (TN/TF/W/13)
- Communication from the United States (TN/TF/W/14)
- Express Shipments (TN/TF/W/15)
- Release of Goods (TN/TF/W/21)
- Consularization - Proposal from Uganda and the United States (TN/TF/W/22)
- Multilateral Mechanism - Proposal from India and the United States (TN/TF/W/57)
- United States Assistance on Trade Facilitation (TN/TF/W/71)
- Communication from Australia, Canada and the United States - Draft Text on Advance Rulings (TN/TF/W/125)

- Communication from Uganda and the United States – Consularization (TN/TF/W/86 and Add.1)
- Communication from Uganda and the United States – Consularization (TN/TF/W/104)
- Communication from the United States - Express Shipments (TN/TF/W/91)
- Communication from Chile, Peru, and the United States - Internet Publication (TN/TF/W/89)
- Communication from Australia, Canada, and the United States - Common Elements of Advance Rulings (TN/TF/W/80)
- Communication from the United States – Draft Text on Internet Publication (TN/TF/W/145)
- Communication from the United States – Draft Text on Expedited Shipments (TN/TF/W/144 and Rev.1&2)
- Communication from the United States -- United States Assistance on Trade Facilitation (TN/TF/W/151)
- Communication From Australia, Canada, Turkey And The United States -- Draft Text On Advance Rulings (TN/TF/W/153)
- Communication From Uganda And The United States -- Prohibiting Consularization Requirements: Fulfilling A Longstanding Trade Facilitation Objective (TN/TF/W/156)

### **Committee on Trade and Environment, Regular and Special Session**

- Sub-Paragraph 31 (i) of the Doha Declaration – Relationship between existing WTO rules and specific trade obligations set out in Multilateral Environmental Agreements (MEAs) (TN/TE/W/20 and TN/TE/W/40)
- Sub-Paragraph 31 (ii) of the Doha Declaration - Procedures for information exchange between MEA Secretariats and relevant WTO committees and criteria for granting MEA observer status (TN/TE/W/5 and TN/TE/W/70)
- Sub-Paragraph 31(iii) of the Doha Declaration – Market access for environmental goods and services (TN/TE/W/8, TN/TE/W/34, TN/TE/W/38, TN/TE/W/52, TN/TE/W/64, TN/TE/W/65, JOB(06)140 and JOB(06)169, JOB(07)/54, and JOB(07)193)
- Paragraph 33 of the Doha Declaration (WT/CTE/W/227)

*Six dual submissions on Environmental Goods to the Committee on Trade and Environment Special Session and the Negotiating Group on Market Access are also listed under the Negotiating Group on Market Access.*

### **Council on TRIPS, Regular & Special Session**

- Questions and Answers: Comparison of Proposals (TN/IP/W/1)
- Issues for Discussion, Article 23.4 (TN/IP/W/2)
- Proposal for a Multilateral System of Registration and Protection of Geographic Indications for Wine & Spirits Based on Article 23.4 of the TRIPS Agreement (TN/IP/W/5)
- Multilateral System of Registration and Protection of Geographic Indications for Wine & Spirits (TN/IP/W/6)
- Paragraph 6 of the Doha Declaration on TRIPS and Public Health (IP/C/W/340)
- Second Submission on Paragraph 6 of the Doha Declaration on TRIPS and Public Health (IP/C/W/358)
- Implications of Article 23 Extension (IP/C/W/386)
- Moratorium to Address Needs of Developing and Least-Developed Members with No or Insufficient Manufacturing Capacities in the Pharmaceutical Sector (IP/C/W/396)
- Joint Proposal for a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits (TN/IP/W/9)

- Article 27.3(B), Relationship between the TRIPS Agreement and the CBD, and the Protection of Traditional Knowledge and Folklore (IP/C/W/434)
- Technology Transfer Practices of the U.S. National Cancer Institute's Departmental Therapeutics Program (IP/C/W/341)
- Access to Genetic Resources: Regime of the United States' National Parks (IP/C/W/393)
- Proposed Draft TRIPS Council Decision on the Establishment of a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits (TN/IP/W/10 and Add.1)
- Article 27.3(B), Relationship between the TRIPS Agreement and the CBD and the Protection of Traditional Knowledge and Folklore (IP/C/W/449)
- Comments on Implementation of the 30 August 2003 Agreement (Solution) on the TRIPS Agreement and Public Health (IP/C/W/444)
- Relationship between the Trips Agreement and the CBD, and the Protection of Traditional Knowledge and Folklore (IP/C/W/469)

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

- Remarks on the Review of Special and Differential Treatment (TN/CTD/W/9)
- Monitoring Mechanism (TN/CTD/W/19)
- Approach to Agreement-Specific Proposals (TN/CTD/W/27)

#### **Working Group on Transparency in Government Procurement**

- Capacity Building Questions (WT/WGTGP/W/34)
- Workplan Proposal (WT/WGTGP/W/35)
- Considerations Related to Enforcement of an Agreement on Transparency in Government Procurement (WT/WGTGP/W/38)

#### **Work Program on Electronic Commerce**

- Work Program on Electronic Commerce (WT/GC/W/493/Rev.1)

#### **Working Group on the Relationship between Trade and Investment**

- Covering FDI & Portfolio Investment in an Agreement (WT/WGTI/W/142)

#### **Working Group on the Interaction between Trade and Competition Policy**

- Technical Assistance (WT/WGTCP/W/185)
- Hardcore Cartels (WT/WGTCP/W/203)
- Voluntary Cooperation (WT/WGTCP/W/204)
- Transparency & Non-discrimination (WT/WGTCP/W/218)
- Procedural Fairness (WT/WGTCP/W/219)
- The Benefits of Peer Review in the WTO Competition Context (WT/WGTCP/W/233)

*Updated: 12 Dec 2008*

**WTO Affinity Groups in the DDA**  
(As of December 11, 2008)

<b>G-20</b>	<b>G-33</b>	<b>G-10</b>	<b>NAMA-11</b>	<b>LDCs in WTO</b>
Argentina	Antigua- Barbuda	Chinese Taipei	Argentina	Angola
Bolivia	Barbados	Iceland	<b>Brazil**</b>	Bangladesh
<b>Brazil**</b>	Belize	Israel	Egypt	Benin
Chile	Benin	Japan	<b>India**</b>	Burkina Faso
China	Bolivia	Korea	Indonesia	Burundi
Cuba	Botswana	Liechtenstein	Namibia	Cambodia
Ecuador	China	Mauritius	Philippines	Central Africa Rep
Egypt	Congo	Norway	<b>South Africa**</b>	Chad
Guatemala	Cote d'Ivoire	<b>Switzerland**</b>	Tunisia	Congo, DRC
India	Cuba		Venezuela	Djibouti
Indonesia	Dominica			Gambia
Mexico	Dominican Rep.			Guinea
Nigeria	El Salvador			Guinea Bissau
Pakistan	Grenada			Haiti
Paraguay	Guatemala			Lesotho
Peru	Guyana			Madagascar
Philippines	Haiti			Malawi
South Africa	Honduras			Maldives
Tanzania	India			Mali
Thailand	<b>Indonesia**</b>			Mauritania
Uruguay	Jamaica			Mozambique
Venezuela	Kenya			Myanmar (Burma)
Zimbabwe	Korea			Nepal
	Madagascar			Niger
	Mauritius			Rwanda
	Mongolia			Senegal
	Mozambique			Sierra Leone
	Nicaragua			Solomon Islands
	Nigeria			Tanzania
	Pakistan			Togo
	Panama			Uganda
	Peru			Zambia
	Philippines			
	St. Kitts & Nevis			<b>LDCs acceding:</b>
	St. Lucia			Afghanistan
	St. Vincent & Grenadines			Bhutan
	Senegal			Comoros
	Sri Lanka			Equatorial Guinea
	Suriname			Ethiopia
	Tanzania			Laos
	Trinidad & Tobago			Liberia
	Turkey			Samoa
	Uganda			Sao Tome & Principe
	Venezuela			Sudan
	Zambia			Vanuatu
	Zimbabwe			Yemen
				<b>WTO Observers:</b>
				Holy See*

\*\* = Group Coordinator

\*Permanent Observer Status

## MEMBERSHIP OF THE WORLD TRADE ORGANIZATION

as of December 1, 2008 (153 Members)

Government	Entry into Force/ Membership	Government	Entry into Force/ Membership
Albania	September 8, 2000	Democratic Republic of the Congo	January 1, 1997
Angola	November 23, 1996	Denmark	January 1, 1995
Antigua and Barbuda	January 1, 1995	Djibouti	May 31, 1995
Argentina	January 1, 1995	Dominica	January 1, 1995
Armenia	February 5, 2003	Dominican Republic	March 9, 1995
Australia	January 1, 1995	Ecuador	January 21, 1996
Austria	January 1, 1995	Egypt	June 30, 1995
Bahrain0078	January 1, 1995	El Salvador	May 7, 1995
Bangladesh	January 1, 1995	Estonia	November 13, 1999
Barbados	January 1, 1995	European Union	January 1, 1995
Belgium	January 1, 1995	Fiji	January 14, 1996
Belize	January 1, 1995	Finland	January 1, 1995
Benin	February 22, 1996	France	January 1, 1995
Bolivia	September 12, 1995	Gabon	January 1, 1995
Botswana	May 31, 1995	Georgia	June 14, 2000
Brazil	January 1, 1995	Germany	January 1, 1995
Brunei Darussalam	January 1, 1995	Ghana	January 1, 1995
Bulgaria	December 1, 1996	Greece	January 1, 1995
Burkina Faso	June 3, 1995	Grenada	February 22, 1996
Burundi	July 23, 1995	Guatemala	July 21, 1995
Cambodia	October 12, 2004	Guinea	October 25, 1995
Cameroon	December 13, 1995	Guinea Bissau	May 31, 1995
Canada	January 1, 1995	Guyana	January 1, 1995
Cape Verde	July 23, 2008		
Central African Republic	May 31, 1995	Haiti	January 30, 1996
Chad	October 19, 1996	Honduras	January 1, 1995
Chile	January 1, 1995	Hong Kong, China	January 1, 1995
China	December 11, 2001	Hungary	January 1, 1995
Colombia	April 30, 1995	Iceland	January 1, 1995
Congo	March 27, 1997	India	January 1, 1995
Costa Rica	January 1, 1995	Indonesia	January 1, 1995
Côte d'Ivoire	January 1, 1995	Ireland	January 1, 1995
Croatia	November 30, 2000	Israel	April 21, 1995
Cuba	April 20, 1995	Italy	January 1, 1995
Cyprus	July 30, 1995	Jamaica	March 9, 1995
Czech Republic	January 1, 1995	Japan	January 1, 1995

**MEMBERSHIP OF THE WORLD TRADE ORGANIZATION (cont.)**

<b>Government</b>	<b>Entry into Force/ Membership</b>	<b>Government</b>	<b>Entry into Force/ Membership</b>
Jordan	April 11, 2000	Norway	January 1, 1995
Kenya	January 1, 1995	Oman	November 9, 2000
Korea, Republic of	January 1, 1995	Pakistan	January 1, 1995
Kuwait	January 1, 1995	Panama	September 6, 1997
Kyrgyz Republic	December 20, 1998	Papua New Guinea	June 9, 1996
Latvia	February 10, 1999	Paraguay	January 1, 1995
Lesotho	May 31, 1995	Peru	January 1, 1995
Liechtenstein	September 1, 1995	Philippines	January 1, 1995
Lithuania	May 31, 2001	Poland	July 1, 1995
Luxembourg	January 1, 1995	Portugal	January 1, 1995
Macao, China	January 1, 1995	Qatar	January 13, 1996
Macedonia	April 4, 2003	Romania	January 1, 1995
Madagascar	November 17, 1995	Rwanda	May 22, 1996
Malawi	May 31, 1995	Saint Kitts and Nevis	February 21, 1996
Malaysia	January 1, 1995	Saint Lucia	January 1, 1995
Maldives	May 31, 1995	Saint Vincent and the Grenadines	January 1, 1995
Mali	May 31, 1995	Saudi Arabia	December 11, 2005
Malta	January 1, 1995	Senegal	January 1, 1995
Mauritania	May 31, 1995	Sierra Leone	July 23, 1995
Mauritius	January 1, 1995	Singapore	January 1, 1995
Mexico	January 1, 1995	Slovak Republic	January 1, 1995
Moldova	July 26, 2001	Slovenia	July 30, 1995
Mongolia	January 29, 1997	Solomon Islands	July 26, 1996
Morocco	January 1, 1995	South Africa	January 1, 1995
Mozambique	August 26, 1995	Spain	January 1, 1995
Myanmar	January 1, 1995	Sri Lanka	January 1, 1995
Namibia	January 1, 1995	Suriname	January 1, 1995
Nepal	April 14, 2003	Swaziland	January 1, 1995
Netherlands - For the Kingdom in Europe and Netherlands Antilles	January 1, 1995	Sweden	January 1, 1995
New Zealand	January 1, 1995	Switzerland	July 1, 1995
Nicaragua	September 3, 1995	Taiwan (referred to in the WTO as Chinese Taipei)	January 1, 2002
Niger	December 13, 1996	Tanzania	January 1, 1995
Nigeria	January 1, 1995	Thailand	January 1, 1995
		Ukraine	May 16, 2008
The Gambia	October 23, 1996	United Kingdom	January 1, 1995
Togo	May 31, 1995	United States of America	January 1, 1995
Tonga	July 27, 2007	Uruguay	January 1, 1995
Trinidad and Tobago	March 1, , 1995	Venezuela	January 1, 1995
Tunisia	March 29, 1995	Vietnam	January 11, 2007
Turkey	March 26, 1995	Zambia	January 1, 1995
Uganda	January 1, 1995	Zimbabwe	March 5, 1995
United Arab Emirates	April 10, 1996		

PROPOSED REVISED SCALE OF CONTRIBUTIONS FOR 2009  
(Minimum contribution of 0.015 per cent)

MEMBER	2008 net Contribution CHF incl. Surplus 2006	2009 Contribution CHF before Surplus	Partial Utilization of Surplus 2007 <sup>1</sup>	2009 Contribution %	Interest <sup>2</sup>	2009 net Contribution CHF
Albania	37,359	41,294	(880)	0.022	(235)	40,179
Angola	208,143	251,518	(5,360)	0.134	(1,110)	245,048
Antigua and Barbuda	26,685	28,155	(600)	0.015	(212)	27,343
Argentina	572,838	591,255	(12,600)	0.315	0	578,655
Armenia	26,685	28,155	(600)	0.015	(187)	27,368
Australia	2,028,060	2,149,165	(45,800)	1.145	(11,940)	2,091,425
Austria	2,511,948	2,563,982	(54,640)	1.366	(18,039)	2,491,303
Bahrain	142,320	152,037	(3,240)	0.081	0	148,797
Bangladesh	181,458	189,577	(4,040)	0.101	0	185,537
Barbados	30,243	28,155	(600)	0.015	(144)	27,411
Belgium	4,685,886	4,810,751	(102,520)	2.563	(30,022)	4,678,209
Belize	26,685	28,155	(600)	0.015	(141)	27,414
Benin	26,685	28,155	(600)	0.015	(89)	27,466
Bolivia	40,917	45,048	(960)	0.024	(10)	44,078
Botswana	62,265	63,818	(1,360)	0.034	(291)	62,167
Brazil	1,574,415	1,683,669	(35,880)	0.897	(9,012)	1,638,777
Brunei Darussalam	71,160	73,203	(1,560)	0.039	(467)	71,176
Bulgaria	231,270	266,534	(5,680)	0.142	(1,582)	259,272
Burkina Faso	26,685	28,155	(600)	0.015	0	27,555
Burundi	26,685	28,155	(600)	0.015	0	27,555
Cambodia	58,707	63,818	(1,360)	0.034	(287)	62,171
Cameroon	49,812	52,556	(1,120)	0.028	(152)	51,284
Canada	6,272,754	6,308,597	(134,440)	3.361	(48,760)	6,125,397
Cape Verde	0	28,155	(600)	0.015	0	27,555
Central African Republic	26,685	28,155	(600)	0.015	0	27,555
Chad	26,685	28,155	(600)	0.015	0	27,555
Chile	553,269	625,041	(13,320)	0.333	(2,640)	609,081
China, People's Republic of	9,496,302	11,070,546	(235,920)	5.898	(12,443)	10,822,183
Colombia	343,347	364,138	(7,760)	0.194	(1,747)	354,631
Congo	48,033	45,048	(960)	0.024	0	44,088
Costa Rica	158,331	161,422	(3,440)	0.086	(1)	157,981
Côte d'Ivoire	110,298	116,374	(2,480)	0.062	0	113,894
Croatia	293,535	313,459	(6,680)	0.167	(1,731)	305,048
Cuba	104,961	116,374	(2,480)	0.062	(579)	113,315
Cyprus	120,972	123,882	(2,640)	0.066	(840)	120,402
Czech Republic	1,174,140	1,304,515	(27,800)	0.695	(7,374)	1,269,341
Democratic Republic of the Congo	26,685	28,155	(600)	0.015	0	27,555
Denmark	1,752,315	1,846,968	(39,360)	0.984	(3,328)	1,804,280
Djibouti	26,685	28,155	(600)	0.015	0	27,555
Dominica	26,685	28,155	(600)	0.015	0	27,555
Dominican Republic	177,900	174,561	(3,720)	0.093	(790)	170,051
Ecuador	156,552	170,807	(3,640)	0.091	(1,159)	166,008
Egypt	430,518	465,496	(9,920)	0.248	(471)	455,105

<sup>1</sup> The 2007 Surplus is distributed on the same basis as the Members' assessed contribution as at 1 January 2009.

<sup>2</sup> Interest earned in 2007 under the Early Payment Encouragement Scheme (L/6384) to be deducted from the 2009 contribution.

MEMBER	2008 net Contribution CHF incl. Surplus 2006	2009 Contribution CHF before Surplus	Partial Utilization of Surplus 2007 <sup>1</sup>	2009 Contribution %	Interest <sup>2</sup>	2009 net Contribution CHF
El Salvador	101,403	101,358	(2,160)	0.054	(148)	99,050
Estonia	144,099	165,176	(3,520)	0.088	(1,059)	160,597
European Communities	0	0	0	0	0	0
Fiji	26,685	28,155	(600)	0.015	(198)	27,357
Finland	1,118,991	1,199,403	(25,560)	0.639	(8,499)	1,165,344
Former Yugoslave Republic of Macedonia	42,696	45,048	(960)	0.024	(21)	44,067
France	8,674,404	8,851,932	(188,640)	4.716	(3,111)	8,660,181
Gabon	48,033	45,048	(960)	0.024	0	44,088
Gambia	26,685	28,155	(600)	0.015	0	27,555
Georgia	32,022	37,540	(800)	0.02	(196)	36,544
Germany	15,765,498	16,521,354	(352,080)	8.802	(106,585)	16,062,689
Ghana	71,160	78,834	(1,680)	0.042	(52)	77,102
Greece	862,815	906,591	(19,320)	0.483	(4,777)	882,494
Grenada	26,685	28,155	(600)	0.015	0	27,555
Guatemala	112,077	125,759	(2,680)	0.067	(771)	122,308
Guinea	26,685	28,155	(600)	0.015	0	27,555
Guinea-Bissau	26,685	28,155	(600)	0.015	0	27,555
Guyana	26,685	28,155	(600)	0.015	(81)	27,474
Haiti	26,685	28,155	(600)	0.015	(39)	27,516
Honduras	64,044	65,695	(1,400)	0.035	(53)	64,242
Hong Kong, China	5,235,597	5,341,942	(113,840)	2.846	(42,265)	5,185,837
Hungary	1,054,947	1,139,339	(24,280)	0.607	(6,196)	1,108,863
Iceland	80,055	86,342	(1,840)	0.046	(589)	83,913
India	1,328,913	2,333,111	(49,720)	1.243	(3,389)	2,280,002
Indonesia	1,321,797	1,392,734	(29,680)	0.742	(7,866)	1,355,188
Ireland	2,289,573	2,351,881	(50,120)	1.253	(18,047)	2,283,714
Israel	898,395	897,206	(19,120)	0.478	(5,464)	872,622
Italy	7,039,503	7,256,482	(154,640)	3.866	(49,181)	7,052,661
Jamaica	81,834	82,588	(1,760)	0.044	0	80,828
Japan	9,811,185	9,946,223	(211,960)	5.299	(58,954)	9,675,309
Jordan	122,751	133,267	(2,840)	0.071	(565)	129,862
Kenya	78,276	84,465	(1,800)	0.045	(430)	82,235
Korea, Republic of	4,523,997	4,859,553	(103,560)	2.589	(19,364)	4,736,629
Kuwait	421,623	486,143	(10,360)	0.259	(724)	475,059
Kyrgyz Republic	26,685	28,155	(600)	0.015	(131)	27,424
Latvia	110,298	127,636	(2,720)	0.068	(734)	124,182
Lesotho	26,685	28,155	(600)	0.015	(5)	27,550
Liechtenstein	44,475	45,048	(960)	0.024	(337)	43,751
Lithuania	199,248	228,994	(4,880)	0.122	(959)	223,155
Luxembourg	674,241	733,907	(15,640)	0.391	(4,967)	713,300
Macao, China	131,646	140,775	(3,000)	0.075	(930)	136,845
Madagascar	26,685	28,155	(600)	0.015	(76)	27,479
Malawi	26,685	28,155	(600)	0.015	0	27,555
Malaysia	2,182,833	2,256,154	(48,080)	1.202	(16,103)	2,191,971
Maldives	26,685	28,155	(600)	0.015	(129)	27,426
Mali	26,685	28,155	(600)	0.015	0	27,555
Malta	74,718	78,834	(1,680)	0.042	(509)	76,645
Mauritania	26,685	28,155	(600)	0.015	0	27,555
Mauritius	62,265	61,941	(1,320)	0.033	(406)	60,215
Mexico	3,741,237	3,767,139	(80,280)	2.007	(17,737)	3,669,122
Moldova	26,685	30,032	(640)	0.016	(185)	29,207
Mongolia	26,685	28,155	(600)	0.015	(211)	27,344

MEMBER	2008 net Contribution CHF incl. Surplus 2006	2009 Contribution CHF before Surplus	Partial Utilization of Surplus 2007 <sup>1</sup>	2009 Contribution %	Interest <sup>2</sup>	2009 net Contribution CHF
Morocco	289,977	305,951	(6,520)	0.163	(2,207)	297,224
Mozambique	35,580	37,540	(800)	0.02	(207)	36,533
Myanmar, Union of	49,812	52,556	(1,120)	0.028	(4)	51,432
Namibia	33,801	39,417	(840)	0.021	0	38,577
Nepal	28,464	30,032	(640)	0.016	(164)	29,228
Netherlands	5,984,556	6,167,822	(131,440)	3.286	(33,322)	6,003,060
New Zealand	455,424	469,250	(10,000)	0.25	(3,338)	455,912
Nicaragua	37,359	39,417	(840)	0.021	0	38,577
Niger	26,685	28,155	(600)	0.015	0	27,555
Nigeria	482,109	442,972	(9,440)	0.236	(1)	433,531
Norway	1,529,940	1,623,605	(34,600)	0.865	(10,252)	1,578,753
Oman	217,038	228,994	(4,880)	0.122	(930)	223,184
Pakistan	298,872	330,352	(7,040)	0.176	(1,754)	321,558
Panama	161,889	163,299	(3,480)	0.087	(332)	159,487
Papua New Guinea	44,475	39,417	(840)	0.021	(325)	38,252
Paraguay	56,928	63,818	(1,360)	0.034	0	62,458
Peru	225,933	255,272	(5,440)	0.136	0	249,832
Philippines	829,014	824,003	(17,560)	0.439	(1,871)	804,572
Poland	1,517,487	1,698,685	(36,200)	0.905	(10,869)	1,651,616
Portugal	946,428	972,286	(20,720)	0.518	(1,212)	950,354
Qatar	238,386	294,689	(6,280)	0.157	0	288,409
Romania	469,656	534,945	(11,400)	0.285	(83)	523,462
Rwanda	26,685	28,155	(600)	0.015	(67)	27,488
Saint Kitts and Nevis	26,685	28,155	(600)	0.015	(182)	27,373
Saint Lucia	26,685	28,155	(600)	0.015	(145)	27,410
Saint Vincent and the Grenadines	26,685	28,155	(600)	0.015	(88)	27,467
Saudi Arabia, Kingdom of	1,506,813	1,739,979	(37,080)	0.927	(9,444)	1,693,455
Senegal	37,359	33,786	(720)	0.018	0	33,066
Sierra Leone	26,685	28,155	(600)	0.015	0	27,555
Singapore	3,808,839	4,048,689	(86,280)	2.157	(29,493)	3,932,916
Slovak Republic	334,452	563,100	(12,000)	0.3	(2,563)	548,537
Slovenia	309,546	335,983	(7,160)	0.179	(2,169)	326,654
Solomon Islands	26,685	28,155	(600)	0.015	(212)	27,343
South Africa	903,732	992,933	(21,160)	0.529	(5,131)	966,642
Spain	4,646,748	4,917,740	(104,800)	2.62	(27,491)	4,785,449
Sri Lanka	142,320	142,652	(3,040)	0.076	(218)	139,394
Suriname	26,685	28,155	(600)	0.015	(162)	27,393
Swaziland	32,022	33,786	(720)	0.018	(234)	32,832
Sweden	2,376,744	2,485,148	(52,960)	1.324	(17,690)	2,414,498
Switzerland	2,522,622	2,588,383	(55,160)	1.379	(18,529)	2,514,694
Chinese Taipei	3,285,813	3,386,108	(72,160)	1.804	(434)	3,313,514
Tanzania	48,033	52,556	(1,120)	0.028	(26)	51,410
Thailand	1,825,254	1,944,572	(41,440)	1.036	(13,841)	1,889,291
Togo	26,685	28,155	(600)	0.015	0	27,555
Tonga	26,685	28,155	(600)	0.015	0	27,555
Trinidad and Tobago	92,508	99,481	(2,120)	0.053	(398)	96,963
Tunisia	224,154	227,117	(4,840)	0.121	(1,226)	221,051
Turkey	1,407,189	1,578,557	(33,640)	0.841	(6,555)	1,538,362
Uganda	26,685	30,032	(640)	0.016	0	29,392
Ukraine	0	640,057	(13,640)	0.341	0	626,417
United Arab Emirates	1,328,913	1,522,247	(32,440)	0.811	(6,506)	1,483,301

MEMBER	2008 net Contribution CHF incl. Surplus 2006	2009 Contribution CHF before Surplus	Partial Utilization of Surplus 2007 <sup>1</sup>	2009 Contribution %	Interest <sup>2</sup>	2009 net Contribution CHF
United Kingdom	9,622,611	9,933,084	(211,680)	5.292	(69,255)	9,652,149
United States	25,094,574	25,313,222	(539,440)	13.486	(7,370)	24,766,412
Uruguay	67,602	69,449	(1,480)	0.037	(32)	67,937
Venezuela	540,816	593,132	(12,640)	0.316	(4,024)	576,468
Viet Nam	505,236	463,619	(9,880)	0.247	(1,984)	451,755
Zambia	26,685	37,540	(800)	0.02	(212)	36,528
Zimbabwe	35,580	31,909	(680)	0.017	0	31,229
<b>Total</b>	<b>177,900,000</b>	<b>187,700,000</b>	<b>(4,000,000)</b>	<b>100</b>	<b>(830,378)</b>	<b>182,869,622</b>

**2008 PROPOSED CONSOLIDATED REVISED BUDGET FOR THE WTO  
SECRETARIAT AND THE APPELLATE BODY AND ITS SECRETARIAT**

(in Swiss francs)

Part	Section	Line	Original Proposal 2008	Reductions 2008	Revised Proposal 2008	
A	Sect 1 Work Years	(a)Salary	85,239,100	0	85,239,100	
		(b)Pension	17,208,800	0	17,208,800	
		(c)Common Staff Costs	15,469,900	0	15,469,900	
		(d)Restructuring Plan	0	0	0	
	Sect 2 Temporary Assistance			14,963,000	0	14,963,000
B	Sect 3 Communications	(a) Telecommunications	506,500	0	506,500	
		(b) Postal Charges	1,382,000	0	1,382,000	
	Sect 4 Building Facilities	(a) Rental	340,000	0	340,000	
		(b) Utilities	1,771,000	0	1,771,000	
		(c) Maintenance and Insurance	1,694,000	0	1,694,000	
	Sect 5 Permanent Equipment	(a)Permanent Equipment	2,153,800	0	2,153,800	
		(b)Permanent Equipment Lease	274,000	0	274,000	
	Sect 6 Expendable			1,327,000	0	1,327,000
	Sect 7 Contractual Services					
		(a) Reproduction	1,425,000	0	1,425,000	
	(b) Office Automation	3,378,700	0	3,378,700		
	(c)Other	282,000	0	282,000		
	(d) Security Outsourcing	3,452,000	0	3,452,000		
C	Sect 8 Staff Overheads	(a) Training	1,875,000	(460,000)	1,415,000	
		(b) Insurance	2,502,500	0	2,502,500	
		(c) Joint Services	204,000	0	204,000	
		(d) Miscellaneous	32,000	0	32,000	
	Sect 9 Missions	(a)Missions Official	1,533,000	0	1,533,000	
		(b)Missions Technical	1,406,000	0	1,406,000	
	Sect 10 Trade Policy Courses			3,823,600	0	3,823,600
	Sect 11 Various	(a) Representation and Hospitality	299,000	0	299,000	
		(b) Dispute Settlement Panels	1,247,000	0	1,247,000	
		(c) Experts	50,000	0	50,000	
		(d) Appellate Body Members	818,800	(65,300)	753,500	
		(e) Library	660,000	0	660,000	
		(f) Publications	880,000	0	880,000	
		(g) Public Information Activities	270,000	0	270,000	
		(h) External Auditors	40,000	0	40,000	
(i) Ministerial Operating Fund		600,000	0	600,000		
(j) ISO		57,000	0	57,000		
(k) Other		80,000	0	80,000		
(l) Appellate Body Operating Fund	600,000	(54,000)	546,000			
(m) Security Enhancement Programme	330,000	0	330,000			
Sect 12 Unforeseen			100,000	0	100,000	
D	Sect 13 ITC		17,196,100	0	17,196,100	
<b>Grand Total</b>			<b>185,470,800</b>	<b>(579,300)</b>	<b>184,891,500</b>	

## 2008 PROPOSED REVISED BUDGET FOR THE WTO SECRETARIAT

(in Swiss francs)

Part	Section	Line	Original Proposal 2008	Reductions 2008	Revised Proposal 2008
A	Sect 1 Work Years	(a)Salary	83,208,100	0	83,208,100
		(b)Pension	16,799,300	0	16,799,300
		(c)Common Staff Costs	15,108,400	0	15,108,400
		(d)Restructuring Plan	0	0	0
	Sect 2 Temporary Assistance		14,897,400	0	14,897,400
B	Sect 3 Communications	(a) Telecommunications	500,000	0	500,000
		(b) Postal Charges	1,382,000	0	1,382,000
	Sect 4 Building Facilities	(a) Rental	340,000	0	340,000
		(b) Utilities	1,758,000	0	1,758,000
		(c) Maintenance and Insurance	1,639,000	0	1,639,000
	Sect 5 Permanent Equipment	(a)Permanent Equipment	2,118,200	0	2,118,200
		(b)Permanent Equipment Lease	274,000	0	274,000
	Sect 6 Expendable		1,307,000	0	1,307,000
	Sect 7 Contractual Services	(a) Reproduction	1,410,000	0	1,410,000
		(b) Office Automation	3,369,700	0	3,369,700
(c)Other		282,000	0	282,000	
(d) Security Outsourcing		3,452,000	0	3,452,000	
C	Sect 8 Staff Overheads	(a) Training	1,850,000	(460,000)	1,390,000
		(b) Insurance	2,490,500	0	2,490,500
		(c) Joint Services	204,000	0	204,000
		(d) Miscellaneous	30,000	0	30,000
Sect 9 Missions	(a)Missions Official	1,496,000	0	1,496,000	
	(b)Missions Technical	1,406,000	0	1,406,000	
Sect 10 Trade Policy Courses		3,823,600	0	3,823,600	
Sect 11 Various	(a) Representation and Hospitality	298,000	0	298,000	
	(b) Dispute Settlement Panels	1,247,000	0	1,247,000	
	(c) Experts	50,000	0	50,000	
	(e) Library	650,000	0	650,000	
	(f) Publications	880,000	0	880,000	
	(g) Public Information Activities	270,000	0	270,000	
	(h) External Auditors	40,000	0	40,000	
	(i) Ministerial Operating Fund	600,000	0	600,000	
	(j) ISO	57,000	0	57,000	
	(k) Other	80,000	0	80,000	
	(m) Security Enhancement Programme	330,000	0	330,000	
Sect 12 Unforeseen		100,000	0	100,000	
D	Sect 13 ITC		17,196,100	0	17,196,100
<b>Grand Total</b>			<b>180,943,300</b>	<b>(460,000)</b>	<b>180,483,300</b>

**2008 PROPOSED REVISED BUDGET FOR THE APPELLATE BODY AND ITS  
SECRETARIAT**

(in Swiss francs)

Part	Section	Line	Original Proposal 2008	Reductions 2008	Revised Proposal 2008
A	Sect 1 Work Years	(a)Salary	2,031,000	0	2,031,000
		(b)Pension	409,500	0	409,500
(c)Common Staff Costs		361,500	0	361,500	
	Sect 2 Temporary Assistance		65,600	0	65,600
B	Sect 3 Communications	(a) Telecommunications	6,500	0	6,500
	Sect 4 Building Facilities	(b) Utilities	13,000	0	13,000
		(c) Maintenance and Insurance	55,000	0	55,000
	Sect 5 Permanent Equipment	(a)Permanent Equipment	35,600	0	35,600
	Sect 6 Expendable		20,000	0	20,000
C	Sect 7 Contractual Services	(a) Reproduction	15,000	0	15,000
		(b) Office Automation	9,000	0	9,000
Sect 8 Staff Overheads		(a) Training	25,000	0	25,000
		(b) Insurance	12,000	0	12,000
	(d) Miscellaneous	2,000	0	2,000	
Sect 9 Missions	(a)Missions Official	37,000	0	37,000	
C	Sect 11 Various	(a) Representation and Hospitality	1,000	0	1,000
		(d) Appellate Body Members	818,800	(65,300)	753,500
		(e) Library	10,000	0	10,000
		(l) Appellate Body Operating Fund	600,000	(54,000)	546,000
<b>Grand Total</b>			<b>4,527,500</b>	<b>(119,300)</b>	<b>4,408,200</b>

**2009 CONSOLIDATED REVISED BUDGET FOR THE WTO SECRETARIAT AND THE APPELLATE BODY  
AND ITS SECRETARIAT**  
(in Swiss francs)

P a r t	Section	Line	Original Approved 2009 Budget	Revised 2009 Budget Proposal	CHF Difference	% Difference	
A	Sect 1 Work Years						
		(a) Salary	88,503,500	86,811,900	(1,691,600)	(1.91)	
		(b) Pension	17,934,000	17,639,300	(294,700)	(1.64)	
		(c) Common Staff Costs	16,588,300	16,986,000	397,700	2.40	
		Sub-total	123,025,800	121,437,200	(1,588,600)	(1.29)	
	Sect 2 Temporary Assistance		14,393,100	14,975,500	582,400	4.05	
B	Sect 3 Communications						
		(a) Telecommunications	506,500	506,500	0	0.00	
		(b) Postal Charges	1,305,000	1,305,000	0	0.00	
		Sub-total	1,811,500	1,811,500	0	0.00	
	Sect 4 Building Facilities						
		(a) Rental	55,000	609,000	554,000	1 007.27	
		(b) Utilities	1,876,000	1,876,000	0	0.00	
		(c) Maintenance and Insurance	1,211,000	1,211,000	0	0.00	
		Sub-total	3,142,000	3,696,000	554,000	17.63	
		Sect 5 Permanent Equipment		2,198,000	2,198,000	0	0.00
		Sect 6 Expendable		1,305,000	1,305,000	0	0.00
	Sect 7 Contractual Services						
		(a) Reproduction	1,425,000	1,425,000	0	0.00	
	(b) Office Automation	3,756,000	3,756,000	0	0.00		
	(c) Other	282,000	282,000	0	0.00		
	(d) Security Outsourcing	3,787,000	3,787,000	0	0.00		
	Sub-total	9,250,000	9,250,000	0	0.00		
C	Sect 8 Staff Overheads						
		(a) Training	1,775,000	1,775,000	0	0.00	
		(b) Insurance	2,622,500	2,622,500	0	0.00	
		(c) Joint Services	204,000	204,000	0	0.00	
		(d) Miscellaneous	32,000	32,000	0	0.00	
		Sub-total	4,633,500	4,633,500	0	0.00	
	Sect 9 Missions						
		(a) Missions Official	1,533,000	1,533,000	0	0.00	
		(b) Missions Technical	1,406,000	1,406,000	0	0.00	
		Sub-total	2,939,000	2,939,000	0	0.00	
		Sect 10 Trade Policy Courses		3,823,600	3,823,600	0	0.00
		Sub-total	3,823,600	3,823,600	0	0.00	
	Sect 11 Various						
		(a) Representation and Hospitality	299,000	299,000	0	0.00	
		(b) Dispute Settlement Panels	1,247,000	1,247,000	0	0.00	
		(c) Experts	50,000	50,000	0	0.00	
		(d) Appellate Body Members	789,700	789,700	0	0.00	
		(e) Library	700,000	700,000	0	0.00	
		(f) Publications	790,000	790,000	0	0.00	
		(g) Public Information Activities	270,000	270,000	0	0.00	
	(h) External Auditors	40,000	40,000	0	0.00		
	(i) Ministerial Operating Fund	600,000	0	(600,000)	(100.00)		
	(j) ISO	57,000	57,000	0	0.00		
	(k) Other	80,000	80,000	0	0.00		
	(l) Appellate Body Operating Fund	1,575,700	1,575,700	0	0.00		
	(m) Security Enhancement Programme	330,000	330,000	0	0.00		
	Sub-total	6,828,400	6,228,400	(600,000)	(8.79)		
	Sect 12 Unforeseen		100,000	100,000	0	0.00	
D	Sect 13 ITC		17,330,100	16,859,900	(470,200)	(2.71)	
	<b>Grand Total</b>		<b>190,780,000</b>	<b>189,257,600</b>	<b>(1,522,400)</b>	<b>(0.80)</b>	

2009 REVISED BUDGET FOR THE **WTO SECRETARIAT**  
(in Swiss francs)

P a r t	Section	Line	Original Approved 2009 Budget	Revised 2009 Budget Proposal	CHF Difference	% Difference
A	Sect 1 Work Years	(a) Salary	86,394,500	84,732,900	(1,661,600)	(1.92)
		(b) Pension	17,506,500	17,216,300	(290,200)	(1.66)
		(c) Common Staff Costs	16,199,800	16,587,000	387,200	2.39
	Sub-total		120,100,800	118,536,200	(1,564,600)	(1.30)
	Sect 2 Temporary Assistance		14,327,500	14,909,900	582,400	4.06
B	Sect 3 Communications	(a) Telecommunications	500,000	500,000	0	0.00
		(b) Postal Charges	1,305,000	1,305,000	0	0.00
	Sub-total		1,805,000	1,805,000	0	0.00
	Sect 4 Building Facilities	(a) Rental	55,000	609,000	554,000	1007.27
		(b) Utilities	1,863,000	1,863,000	0	0.00
		(c) Maintenance and Insurance	1,206,000	1,206,000	0	0.00
	Sub-total		3,124,000	3,678,000	554,000	17.73
	Sect 5 Permanent Equipment		2,173,000	2,173,000	0	0.00
	Sect 6 Expendable		1,285,000	1,285,000	0	0.00
	Sect 7 Contractual Services					
	(a) Reproduction	1,410,000	1,410,000	0	0.00	
	(b) Office Automation	3,746,000	3,746,000	0	0.00	
	(c) Other	282,000	282,000	0	0.00	
	(d) Security Outsourcing	3,787,000	3,787,000	0	0.00	
Sub-total		9,225,000	9,225,000	0	0.00	
C	Sect 8 Staff Overheads	(a) Training	1,750,000	1,750,000	0	0.00
		(b) Insurance	2,610,500	2,610,500	0	0.00
		(c) Joint Services	204,000	204,000	0	0.00
		(d) Miscellaneous	30,000	30,000	0	0.00
	Sub-total		4,594,500	4,594,500	0	0.00
	Sect 9 Missions	(a) Missions Official	1,496,000	1,496,000	0	0.00
		(b) Missions Technical	1,406,000	1,406,000	0	0.00
	Sub-total		2,902,000	2,902,000	0	0.00
	Sect 10 Trade Policy Courses		3,823,600	3,823,600	0	0.00
	Sub-total		3,823,600	3,823,600	0	0.00
	Sect 11 Various	(a) Representation and Hospitality	298,000	298,000	0	0.00
		(b) Dispute Settlement Panels	1,247,000	1,247,000	0	0.00
		(c) Experts	50,000	50,000	0	0.00
		(e) Library	690,000	690,000	0	0.00
(f) Publications		790,000	790,000	0	0.00	
(g) Public Information Activities		270,000	270,000	0	0.00	
(h) External Auditors		40,000	40,000	0	0.00	
(i) Ministerial Operating Fund		600,000	0	(600,000)	(100.00)	
(j) ISO		57,000	57,000	0	0.00	
(k) Other		80,000	80,000	0	0.00	
(m) Security Enhancement Programme		330,000	330,000	0	0.00	
Sub-total		4,452,000	3,852,000	(600,000)	(13.48)	
Sect 12 Unforeseen		100,000	100,000	0	0.00	
D	Sect 13 ITC		17,330,100	16,859,900	(470,200)	(2.71)
<b>Grand Total</b>			<b>185,242,500</b>	<b>183,744,100</b>	<b>(1,498,400)</b>	<b>(0.81)</b>

2009 REVISED BUDGET FOR THE **APPELLATE BODY AND ITS SECRETARIAT**  
(in Swiss francs)

P a r t	Section	Line	Original Approved 2009 Budget	Revised 2009 Budget Proposal	CHF Difference	% Difference	
A	Sect 1 Work Years	(a)Salary	2,109,000	2,079,000	(30,000)	(1.42)	
		(b)Pension	427,500	423,000	(4,500)	(1.05)	
		(c)Common Staff Costs	388,500	399,000	10,500	2.70	
	Sub-total		2,925,000	2,901,000	(24,000)	(0.82)	
	Sect 2 Temporary Assistance		65,600	65,600	0	0.00	
B	Sect 3 Communications						
		(a) Telecommunications	6,500	6,500	0	0.00	
	Sub-total		6,500	6,500	0	0.00	
	Sect 4 Building Facilities						
		(b) Utilities	13,000	13,000	0	0.00	
		(c) Maintenance and Insurance	5,000	5,000	0	0.00	
	Sub-total		18,000	18,000	0	0.00	
Sect 5 Permanent Equipment			25,000	25,000	0	0.00	
Sect 6 Expendable			20,000	20,000	0	0.00	
	Sect 7 Contractual Services						
		(a) Reproduction	15,000	15,000	0	0.00	
		(b) Office Automation	10,000	10,000	0	0.00	
	Sub-total		25,000	25,000	0	0.00	
C	Sect 8 Staff Overheads						
		(a) Training	25,000	25,000	0	0.00	
		(b) Insurance	12,000	12,000	0	0.00	
		(d) Miscellaneous	2,000	2,000	0	0.00	
	Sub-total		39,000	39,000	0	0.00	
	Sect 9 Missions			37,000	37,000	0	0.00
	Sub-total		37,000	37,000	0	0.00	
	Sect 11 Various						
		(a) Representation and Hospitality	1,000	1,000	0	0.00	
		(d) Appellate Body Members	789,700	789,700	0	0.00	
		(e) Library	10,000	10,000	0	0.00	
		(l) Appellate Body Operating Fund	1,575,700	1,575,700	0	0.00	
Sub-total		2,376,400	2,376,400	0	0.00		
<b>Grand Total</b>			<b>5,537,500</b>	<b>5,513,500</b>	<b>(24,000)</b>	<b>(0.43)</b>	

**WAIVERS CURRENTLY IN FORCE**  
**(As at 31 July 2008)**

WAIVERS	GRANTED	EXPIRY	DECISION
Preferential Tariff Treatment for Least-Developed Countries	15 June 1999	30 June 2009	WT/L/304
LDCs – Article 70.9 of the TRIPS Agreement with respect to pharmaceutical products	8 July 2002	1 January 2016	WT/L/478
Albania - Implementation of Specific Concessions – Extension of the staging period of implementation for a number of products	26 May 2005	1 January 2007 or 1 January 2009 for Part A of the Annex	WT/L/610
European Communities – European Communities' preferences for Albania, Bosnia and Herzegovina, Croatia, Serbia and Montenegro, and the Former Yugoslav Republic of Macedonia	28 July 2006	31 December 2011	WT/L/654
Canada – CARIBCAN	15 December 2006	31 December 2011	WT/L/677
Cuba – Article XV:6 of GATT 1994	15 December 2006	31 December 2011	WT/L/678
Australia, Botswana, Brazil, Canada, Croatia, India, Israel, Japan, Korea, Mauritius, Mexico, Norway, Philippines, Sierra Leone, Chinese Taipei, Thailand, United Arab Emirates, United States, Venezuela - Kimberley Process Certification Scheme for rough diamonds – Extension of waiver	15 December 2006	31 December 2012	WT/L/676
United States – Former Trust Territory of the Pacific Islands	27 July 2007	31 December 2016	WT/L/694

WAIVERS	GRANTED	EXPIRY	DECISION
Argentina; Australia; Brazil; China; Costa Rica; Croatia; El Salvador; European Communities; Iceland; India; Republic of Korea; Mexico; New Zealand; Norway; Singapore; Chinese Taipei; Thailand; United States and Uruguay - Introduction of Harmonized System 2002 Changes into WTO Schedules of Tariff Concessions	18 December 2007	31 December 2008	WT/L/712
Argentina; Australia; Brazil; Canada; Costa Rica; Croatia; El Salvador; European Communities; Guatemala; Honduras; Hong Kong, China; India; Republic of Korea; Macao, China; Malaysia; Mexico; New Zealand; Nicaragua; Norway; Pakistan; Singapore; Switzerland; Thailand; United States and Uruguay - Introduction of Harmonized System 2007 Changes into WTO Schedules of Tariff Concessions	18 December 2007	31 December 2008	WT/L/713
European Communities – Application of Autonomous Preferential Treatment to Moldova	7 May 2008	31 December 2013	WT/L/722
Senegal – Customs Valuation Agreement – Request for extension of waiver	31 July 2008	30 June 2009	WT/L/735
Argentina - Introduction of Harmonized System 1996 Changes into WTO Schedules of Tariff Concessions	31 July 2008	30 April 2009	WT/L/733
Panama - Introduction of Harmonized System 1996 Changes into WTO Schedules of Tariff Concessions	31 July 2008	30 April 2009	WT/L/734

**Number of WTO Staff Members by Job Category on 1 January 2009  
(as per information available on 17 November 2008)**

<b>Country</b>	<b>Senior</b>	<b>Professional</b>	<b>Support</b>	<b>Total</b>
Argentina		3	4	7
Australia		7	2	9
Austria		5		5
Bangladesh		1		1
Belgium		2	3	5
Benin		1		1
Bolivia		3	1	4
Brazil		7	2	9
Bulgaria		1		1
Canada		20	3	23
Chile	1	1	3	5
China		8		8
Colombia		6	2	8
Congo, The Democratic Republic of the		1		1
Costa Rica		3		3
Cote d'Ivoire			1	1
Cuba		1		1
Denmark		1	1	2
Ecuador		2		2
Egypt		6		6
Estonia		1		1
Finland		3	3	6
France	1	52	141	194
Germany		17	3	20
Ghana		2		2
Greece		4	2	6
Guatemala		1		1
Honduras			1	1
Hong Kong Chinese		1		1
Hungary		1		1
India	1	8	2	11
Ireland		5	7	12
Italy		11	3	14
Japan		3		3
Korea, Republic of		4		4
Lesotho		1		1
Malawi		1		1
Malaysia		2	1	3
Mauritius		1	1	2
Mexico		5		5
Morocco		2	1	3
Netherlands		6	1	7
New Zealand		4	1	5

**Number of WTO Staff Members by Job Category on 1 January 2009  
(as per information available on 17 November 2008)**

<b>Country</b>	<b>Senior</b>	<b>Professional</b>	<b>Support</b>	<b>Total</b>
Nigeria		1		1
Norway		1	1	2
Pakistan		2		2
Peru		1	4	5
Philippines		7	2	9
Poland		2	2	4
Portugal			1	1
Romania		1	1	2
Rwanda	1	1		2
Saint Lucia		1		1
Senegal			1	1
South Africa		1		1
Spain		22	23	45
Sri Lanka		2	2	4
Sweden		3	1	4
Switzerland		22	23	45
Tanzania		1		1
Thailand		1		1
Trinidad and Tobago		1		1
Tunisia		4	2	6
Turkey		3		3
Uganda		2		2
United Kingdom		26	45	71
United States	1	23	5	29
Uruguay		3	4	7
Venezuela		4		4
Zambia		1		1
Zimbabwe		1	1	2
<b>Total</b>	<b>5</b>	<b>351</b>	<b>307</b>	<b>663</b>

**Note: Senior Management includes the Director-General and Deputies Director-General**

	<i>Annual Average Base Salary</i>
<b>Senior Management</b>	<b>272,157 CHF</b>
<b>Professional staff</b>	<b>159,941 CHF</b>
<b>Support staff</b>	<b>96,342 CHF</b>

**Source: WTO Secretariat as of December 31, 2008**

## WTO ACCESSION APPLICATIONS AND STATUS (as of 1-01-09)<sup>1</sup>

Applicant	Status of Multilateral and Bilateral Work
Afghanistan* (2004)	Application for accession to the WTO accepted at December 2004 General Council meeting; has not yet submitted initial documentation to activate the accession negotiations. The United States is providing technical assistance through the United States Agency for International Development (USAID), including drafting documentation, training, legal drafting, and institution building.
Algeria (1987)	Most recent Working Party (WP) meeting held in January 2008 to review draft WP report and status of market access negotiations. In the past, the United States has provided technical assistance through the Commercial Development Law Program (CLDP) of the Department of Commerce for legislative review and training, as well as drafting and translating documentation for the negotiations. While that program is finished, additional technical assistance through the Middle East Partnership Initiative is being considered.
Andorra (1997)	Inactive. WP meeting on October 13, 1999 reviewed legislative implementation schedule and goods and services market access offers. Awaiting information on legislative implementation and circulation of revised market access offers.
Azerbaijan (1997)	WP meetings held in May and December 2008 to review additional documentation, including a factual summary, and conduct market access negotiations for goods and services based on October 2008 offers. Bilateral consultations with United States in November laid foundation for further market access progress. The United States continues to provide technical assistance (through USAID) in the form of a resident advisor for drafting documentation, training, legal drafting, and institution building in the areas of customs, licensing, intellectual property, standards and sanitary measures, to facilitate the accession process.
Bahamas (2001)	Application accepted at July 2001 General Council meeting; has not yet submitted initial documentation to activate the accession negotiations.
Belarus (1993)	Inactive. Chairman's periodic consultations since 2006 have determined that there is no consensus for further Working Party review, and that work on outstanding issues would depend on fresh documentation from Belarus and substantially improved offers on goods and services market access. Next meeting not scheduled.
Bhutan * (1999)	Fourth WP held in January 2008 to review additional documentation and conduct market access negotiations for goods and services. The United States met with Bhutan in June 2008 to review new WP documentation and provide informal comments. Fifth WP meeting likely to be scheduled for early 2009.
Bosnia and Herzegovina (1999)	Fifth WP meeting held July 2008 to review elements of a draft WP report and revised offers on services, agricultural supports, and legislative action plan. Revised market access offer for goods reviewed in October 2008. Next meeting planned for 2009. The United States is providing technical assistance through CLDP in drafting documentation, training, legal drafting, and institution building.

\* Designates "least developed country" applicant.

<sup>1</sup> "Applicant" column includes date the Working Party was formed. Pre-1995 dates indicate that the original WP was formed under the GATT 1947, but was reformed as a WTO Working Party in 1995.

Applicant	Status of Multilateral and Bilateral Work
Cape Verde * (2000)	Cape Verde became the 153 <sup>rd</sup> Member of the WTO on July 23, 2008.
Comoros * (2007)	Application accepted at October 2007 General Council meeting; has not yet submitted initial documentation to activate the accession negotiations.
Equatorial Guinea (2008)	Application accepted at February 2008 General Council meeting; has not yet submitted initial documentation to activate the accession negotiations.
Ethiopia* (2003)	First WP meeting held in May 2008 to review responses to questions on Ethiopia's Memorandum on the Foreign Trade Regime (MFTR). No market access offers circulated to date. The United States provides technical assistance through USAID in the form of a resident advisor for drafting documentation, training, legal drafting, and institution building in the areas of customs, licensing, intellectual property, standards and sanitary measures.
Iraq (2004)	Second WP meeting held in April 2008 to review additional documentation and responses to questions from previous meeting. The next WP meeting will be scheduled following Iraq's submission of initial market access offers for goods and services. The United States provides technical assistance in the form of a team of resident advisors funded through USAID, to help with drafting documentation, training, legal drafting, and institution building.
Iran (2005)	Application for accession to the WTO accepted by the General Council in May 2005. No documentation or market access offers circulated to date.
Kazakhstan (1996)	Twelfth WP meeting held in July 2008, with next meeting planned for the first half of 2009, to review substantially revised draft WP report text and remaining legislative implementation in legislative action plan. Bilateral negotiations are well advanced. Revised goods and services market access offers are expected prior to next Working Party, reflecting progress achieved in bilaterals with United States and others during 2008. Through USAID, the United States provides technical assistance in the form of an advisor resident in Bishkek, Kyrgyz Republic, for drafting documentation, training, legal drafting, and institution building. Specific assistance has been provided in the areas of customs, licensing, intellectual property, standards and sanitary measures.
Laos * (1998)	Fourth WP meeting held in July 2008 to continue review of the trade regime. Next WP possible in first half of 2009. The United States is providing technical assistance to help train Lao officials.
Lebanon (1999)	Draft WP report circulated in September 2008. Next WP meeting to be scheduled based on progress on legislative implementation and removal of WTO-inconsistent measures. Bilateral market access negotiations moving slowly. Through USAID and United States - Middle East Partnership Initiative, the United States has continued to provide technical assistance in the form of resident advisors and short term specific assistance. Assistance provided in drafting documentation, training, legal drafting, and institution building, with focus on customs procedures, intellectual property rights protection, services, and standards.

Applicant	Status of Multilateral and Bilateral Work
Liberia* (2007)	Application accepted at December 2007 General Council meeting. No documentation or market access offers circulated to date.
Libya (2004)	Application accepted at July 2004 General Council meeting. No documentation or market access offers circulated to date.
Montenegro (2005)	Working Party meetings held in February and July. Seventh Working Party held in November 2008 conducted the final substantive review of draft Working Party report and provided WTO Members with an opportunity to complete market access negotiations for goods and services. Final WP meetings to adopt WP report and Schedules planned for January 2009. General Council approval contemplated for February 2009. The United States has provided technical assistance to Montenegro in the form of an advisor resident in Belgrade, drafting documentation, training, legal drafting, and institution building in the areas of customs, licensing, intellectual property, standards and sanitary measures. This program will conclude in March of 2009.
Russia (1993)	Accession process well advanced. Bilateral market access negotiations with WTO Members largely completed (Georgia, and possibly Ukraine, outstanding) after reaching agreement with the United States in November 2006. Revised draft Working Party report text circulated in April and in August 2008. Negotiations continue to reach agreement on certain Protocol commitment texts and on level of agricultural supports and subsidies. Next revision of the draft WP report expected for circulation and review in the first half of 2009. Russia's legislative implementation ongoing.
Samoa * (1998)	Informal WP meeting held in July 2008 to review revised draft WP report and continue negotiations on revised market access offers on goods and services. Substantial progress recorded in both areas. Next meetings will be scheduled when Samoa responds to final written questions and comments, and circulates revised market access offers..
Sao Tome and Principe * (2005)	Application accepted at May 2005 General Council meeting; has not yet submitted initial documentation to activate the accession negotiations.
Serbia (2005)	Fifth and sixth WP meetings held in May and December 2008 to review additional documentation and status of legislative implementation. Next WP meeting likely during first half of 2009, depending upon legislative activity. Bilateral negotiations on goods and services are advancing. The United States has provided technical assistance to Serbia in the form of an advisor resident in Belgrade, drafting documentation, training, legal drafting, and institution building in the areas of customs procedures, import and activity licensing, intellectual property rights protection, standards and sanitary measures. This program will conclude in March of 2009.
Seychelles (1995)	Conducted informal consultations in October 2008 on possible resumption of negotiations that have been inactive since 1998.
Sudan* (1995)	Inactive. Second WP meeting held March 10, 2004. Revised market access offers for goods and services were tabled in October 2006.
Syria	Application for accession to the WTO first circulated in October 2001. No Council review to date.

Applicant	Status of Multilateral and Bilateral Work
Tajikistan (2001)	No WP meeting held since October 2006. Scheduling of next meeting likely in early 2009 after circulation of elements of a draft WP report and revised market access offers on goods and services. The United States provides technical assistance through USAID in the form of an advisor resident in Bishkek, for drafting documentation, training, legal drafting, and institution building.
Ukraine (1993)	Ukraine became the 152 <sup>st</sup> Member of the WTO on May 16, 2008. Throughout Ukraine's fourteen year accession effort, the United States provided technical assistance through CLDP in the form of a resident advisor, and/or additional short term assistance through USAID, to help achieve WTO compliance in customs valuation, import licensing, standards and sanitary measures, and intellectual property rights protection.
Uzbekistan (1995)	Third WP meeting held in October 2005 to review additional documentation and initial market access offers. No further meetings are scheduled at this time.
Vanuatu * (1995)	Conducted bilateral consultations in August and November 2008 with selected WTO delegations seeking to resume its accession process and renegotiate the accession package approved by the Working Party but not adopted by Vanuatu in 2001.
Yemen * (2000)	Bilateral negotiations were held in Washington D.C. in February 2008. Fifth WP meeting held in October 2008 to continue review of trade regime and conduct bilateral negotiations on revised market access offers on goods and services. Next meeting contemplated during first half of 2009. The United States has provided help with orientation and the development of documentation through USAID and the United States - Middle East Partnership Initiative.

# WORLD TRADE ORGANIZATION

WT/DSB/44/Rev.4  
31 October 2008

(08-5286)

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## INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS

### Revision

To assist in the selection of panelists, the DSU provides in Article 8.4 that the Secretariat shall maintain an indicative list of governmental and non-governmental individuals.

In accordance with the proposals for the administration of the indicative list of panelists approved by the DSB on 31 May 1995, the list should be completely updated every two years. For practical purposes, the proposals for the administration of the indicative list approved by the DSB on 31 May 1995 are reproduced as an Annex to this document.

The attached is a revised consolidated list of governmental and non-governmental panelists.<sup>47</sup> The list is based on the previous indicative list issued on 4 August 2008 (WT/DSB/44/Rev.3). It includes additional names approved by the DSB at its meeting on 21 October 2008.<sup>48</sup> Any future modifications or additions to this list submitted by Members will be circulated in periodic revisions of this list.

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<sup>47</sup> Curricula Vitae containing more detailed information are available to WTO Members upon request from the Secretariat (Council & TNC Division).

<sup>48</sup> See document: WT/DSB/W/387.

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>ARGENTINA</b>	BARDONESCHI, Mr. Rodrigo C.	Trade in Goods
	CHIARADIA, Mr. Alfredo Vicente	Trade in Goods
	DUMONT, Mr. Alberto Juan	Trade in Goods
	LUNAZZI, Mr. Gustavo Nerio	Trade in Goods
	MAKUC, Mr. Adrián Jorge	Trade in Services
	MÉNDEZ, Mr. Gustavo Héctor	Trade in Goods
	MORELLI, Mr. Esteban Andrés	Trade in Goods
	NEGRO, Ms. Sandra Cecilia	Trade in Goods
	NISCOVOLOS, Mr. Luis Pablo	Trade in Goods and Services
	PAN, Ms. Julia Adriana Gabriela	Trade in Goods
	PÉREZ GABILONDO, Mr. José Luis	Trade in Goods; TRIPS
	PETRI, Mr. Gerardo Luis	Trade in Goods
	PIÑEIRO, Mr. Martín Enrique	Trade in Goods
	REGÚNAGA, Mr. Marcelo	Trade in Goods
	RAITERI, Ms. María Valeria	Trade in Goods
RIABOI, Mr. Jorge B.	Trade in Goods	
STANCANELLI, Mr. Néstor Edgardo	Trade in Goods	
<b>AUSTRALIA</b>	CHESTER, Mr. Douglas Owen	TRIPS
	CHURCHE, Mr. Milton	Trade in Goods
	DEADY, Mr. Stephen	Trade in Goods
	FARBENBLOOM, Mr. Simon	Trade in Goods and Services

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>AUSTRALIA (cont'd)</b>	GALLAGHER, Mr. Peter	Trade in Goods; TRIPS
	JENNINGS, Mr. Mark	Trade in Goods; TRIPS
	McCARTHY, Ms. Caroline	TRIPS
	MITCHELL, Mr. Andrew	Trade in Goods and Services; TRIPS
	MORETTA, Mr. Remo	Trade in Goods and Services
	MYLER, Mr. Paul	Trade in Goods and Services
	O'CONNOR, Mr. Paul Richard	Trade in Goods
	RAPER, Ms. Cathy	Trade in Goods and Services
	SIN FAR LEE, Ms. Stephanie	Trade in Goods
	SPENCER, Mr. David	Trade in Goods
	VOON, Ms. Tania Su Lien	Trade in Goods and Services; TRIPS
	WITBREUK, Ms. Trudy	Trade in Goods and Services
YOUNG, Ms. Elizabeth	Trade in Goods	
<b>BOLIVIA</b>	ZELADA CASTEDO, Mr. Alberto	Trade in Goods
<b>BRAZIL</b>	ABREU, Mr. Marcelo de Paiva	Trade in Goods and Services
	BARRAL, Mr. Welber Oliveira	Trade in Goods
	BARTHEL-ROSA, Mr. Paulo	Trade in Goods
	BASSO, Ms. Maristela	Trade in Goods; TRIPS
	LEMME, Ms. Marta Calmon	Trade in Goods
	MAGALHÃES, Mr. José Carlos	Trade in Goods
	MARCONINI, Mr. Mario	Trade in Services

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>BRAZIL (cont'd)</b>	MOURA ROCHA, Mr. Bolívar	Trade in Services
	NAIDIN, Ms. Leane Cornet	Trade in Goods
	RIOS, Ms. Sandra Polônia	Trade in Goods
	THORSTENSEN, Ms. Vera Helena	Trade in Goods
<b>CANADA</b>	BERNIER, Mr. Ivan	Trade in Goods and Services
	BRADFORD, Mr. Meriel V. M.	Trade in Goods and Services
	BROWN, Ms. Catherine Anne	Trade in Goods and Services; TRIPS
	CLARK, Mr. Peter James	Trade in Goods and Services
	CLOSE, Ms. Patricia Margaret	Trade in Goods
	DE MESTRAL, Mr. Armand	Trade in Goods
	EYTON, Mr. Anthony T.	Trade in Goods
	GHERSON, Mr. Randolph	Trade in Goods
	GOODWIN, Ms. Kirsten M.	Trade in Goods and Services; TRIPS
	HALLIDAY, Mr. Anthony L.	Trade in Goods and Services
	HERMAN, Mr. Lawrence L.	Trade in Goods
	HINES, Mr. Wilfred Roy	Trade in Goods
	MACMILLAN, Ms. Kathleen E.	Trade in Goods
	MCRAE, Mr. Donald Malcolm	Trade in Goods
	OSTRY, Ms. Sylvia	Trade in Goods
	RITCHIE, Mr. Gordon	Trade in Goods
THOMAS, Mr. Christopher	Trade in Goods and Services	

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>CANADA (cont'd)</b>	WINHAM, Mr. Gilbert R.	Trade in Goods
<b>CHILE</b>	BIGGS, Mr. Gonzalo	Trade in Goods
	ERNST, Mr. Felipe	Trade in Goods and Services
	ESPINOZA, Mr. Alvaro	Trade in Goods
	MATUS, Mr. Mario	Trade in Goods
	MLADINIC, Mr. Carlos	Trade in Goods
	PEÑA, Ms. Gloria	Trade in Goods
	SAEZ, Mr. Sebastián	Trade in Goods and Services
	SATELER, Mr. Ricardo	TRIPS
	TIRONI, Mr. Ernesto	Trade in Goods
<b>CHINA</b>	DONG, Mr. Shizhong	Trade in Goods and Services; TRIPS
	LI, Mr. Enheng	Trade in Goods and Services
	ZENG, Mr. Lingliang	Trade in Goods
	ZHANG, Mr. Yuqing	Trade in Goods and Services; TRIPS
	ZHU, Ms. Lanye	Trade in Services; TRIPS
<b>COLOMBIA</b>	BARBERI, Mr. Fernando	Trade in Goods
	CÁRDENAS, Mr. Manuel Jose	Trade in Goods and Services; TRIPS
	IBARRA PARDO, Mr. Gabriel	Trade in Goods
	JARAMILLO, Mr. Felipe	Trade in Goods and Services
	LEAL ANGARITA, Mr. Manuel	Trade in Goods and Services
	OROZCO GOMEZ, Ms. Angela María	Trade in Goods

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>COLOMBIA (cont'd)</b>	OROZCO, Ms. Claudia	Trade in Goods
	TANGARIFE, Mr. Marcel	Trade in Goods; TRIPS
<b>CÔTE D'IVOIRE</b>	GOSSET, Ms. Marie	Trade in Goods; TRIPS
<b>CROATIA</b>	ŠARČEVIĆ, Mr. Petar	Trade in Goods and Services
<b>CUBA</b>	CABALLERO RODRÍGUEZ, Mr. Eumelio	Trade in Goods and Services
	HERNÁNDEZ, Mr. Arnaldo	Trade in Goods and Services
	MARZIOTA DELGADO, Mr. Ernesto Antonio	Trade in Goods and Services
<b>ECUADOR</b>	PINOARGOTE CEVALLOS, Mr. Alfredo	Trade in Goods
<b>EGYPT</b>	ABOUL-ENEIN, Mr. Mohamed Ibrahim Mostafa	Trade in Goods and Services
	FAWZY, Mr. Abdelrahman	Trade in Goods and Services
	HATEM, Mr. Samy Affify	Trade in Goods
	RIAD, Mr. Tarek Fouad	Trade in Goods and Services; TRIPS
	SHAHIN, Ms. Magda	Trade in Goods and Services; TRIPS
	SHARAF ELDIN, Mr. Ahmed	Trade in Goods; TRIPS
	ZAHRAN, Mr. Mohamed Mounir	Trade in Goods and Services; TRIPS

MEMBER	NAME	SECTORAL EXPERIENCE
<b><u>EUROPEAN COMMUNITIES</u></b>		
<b>AUSTRIA</b>	BENEDEK, Mr. Wolfgang MARTINS, Mr. Rudolf REITERER, Mr. Michael G. K. WAAS, Mr. Gerhard WEISS, Mr. Johann Friedrich ZEHETNER, Mr. Franz	Trade in Goods Trade in Goods Trade in Goods and Services; TRIPS Trade in Goods and Services; TRIPS Trade in Goods and Services; TRIPS Trade in Goods
<b>BELGIUM</b>	DASSESE, Mr. Marc Paul Albert DIDIER, Mr. Pierre VAN DER BORGHT, Mr. Kim VANDER SCHUEREN, Ms. Paulette WOUTERS, Mr. Jan ZONNEKEYN, Mr. Geert A.	Trade in Goods and Services Trade in Goods Trade in Goods Trade in Goods and Services Trade in Goods and Services Trade in Goods
<b>CZECH REP.</b>	JUNG, Mr. Zdeněk PALEČKA, Mr. Peter PRAVDA, Mr. Miroslav ŠRONĚK, Mr. Ivan	Trade in Goods and Services Trade in Goods and Services Trade in Goods TRIPS
<b>DENMARK</b>	BOESGAARD, Mr. Hendrik KUIJPER, Mr. Pieter Jan WHITE, Mr. Eric	Trade in Goods Trade in Goods and Services; TRIPS Trade in Goods and Services; TRIPS

MEMBER	NAME	SECTORAL EXPERIENCE
<b><u>EUROPEAN COMMUNITIES</u></b> (cont'd)		
<b>FINLAND</b>	BERGHOLM, Mr. Kari Axel JULIN, Mr. Jorma Kari Johannes LUOTONEN, Mr. Yrjö Kim David PULLINEN, Mr. Matti Johannes RANTANEN, Mr. Paavo	Trade in Goods Trade in Goods and Services Trade in Goods Trade in Goods Trade in Goods
<b>FRANCE</b>	ARMAIGNAC, Ms. Marie-Christine BOISSON DE CHAZOURNES, Mrs. Laurence COMBALDIEU, Mr. Jean Claude DELLEUR, Mr. Philippe JENNY, Mr. Frédéric Yves METZGER, Mr. Jean-Marie STERN, Ms. Brigitte VAN PHI, Mr. Phan	Trade in Services; TRIPS Trade in Goods and Services TRIPS Trade in Services Trade in Goods and Services; TRIPS Trade in Goods Trade in Goods Trade in Goods and Services
<b>GERMANY</b>	DELBRÜCK, Mr. Kilian HERRMANN, Mr. Christoph Walter HILF, Mr. Meinhard MENG, Mr. Werner OPPERMANN, Mr. Thomas PETERSMANN, Mr. Ernst-Ulrich TANGERMANN, Mr. Stefan	Trade in Goods Trade in Goods; TRIPS Trade in Goods and Services Trade in Goods, TRIPS Trade in Goods; TRIPS Trade in Goods and Services; TRIPS Trade in Goods

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b><u>EUROPEAN COMMUNITIES</u> (cont'd)</b>		
<b>GREECE</b>	MYROGIANNIS, Mr. George	Trade in Goods
	STANGOS, Mr. Petros N.	Trade in Goods and Services; TRIPS
<b>HUNGARY</b>	FURULYÁS, Mr. Ferenc	Trade in Goods
	LAKATOS, Mr. Andrés	Trade in Goods and Services
<b>IRELAND</b>	LONG, Mr. Ronald	Trade in Goods; TRIPS
	MATTHEWS, Mr. Alan Henry	Trade in Goods
	MOCKLER, Mr. Thomas F.	Trade in Goods
<b>ITALY</b>	GERBINO, Mr. Mario	Trade in Goods
	GIARDINA, Mr. Andrea	Trade in Goods and Services
	MENSI, Mr. Maurizio	Trade in Goods
	SCHIRATTI, Mr. Giampiero	Trade in Goods
<b>NETHERLANDS</b>	BLOKKER, Mr. Nicolaas Max	Trade in Goods
	BRINKHORST, Mr. Laurens Jan	Trade in Goods and Services
	BRONCKERS, Mr. Marco	Trade in Goods and Services; TRIPS
	ENGERING, Mr. Franciscus Aloysius	Trade in Goods and Services
	HOEKMAN, Mr. Bernard Marco	Trade in Goods and Services; TRIPS
<b>POLAND</b>	PIETRAS, Mr. Jaroslaw	Trade in Services
<b>PORTUGAL</b>	CALHEIROS DA GAMA, Mr. José Sérgio	TRIPS

MEMBER	NAME	SECTORAL EXPERIENCE
<b><u>EUROPEAN COMMUNITIES (cont'd)</u></b>		
<b>ROMANIA</b>	BERINDE, Mr. Mihai CAMPEANU, Ms. Victoria FLORINA, Ms. Fratita Carmen RADU, Mr. Vasile	Trade in Goods Trade in Goods Trade in Goods Trade in Goods
<b>SPAIN</b>	CASTILLO URRUTIA, Mr. Juan Antonio DÍAZ MIER, Mr. Miguel Ángel LÓPEZ DE SILANES MARTÍNEZ Mr. Juan Pablo PÉREZ SANCHEZ, Mr. José Luis RIGO, Mr. Andrés	Trade in Goods Trade in Services Trade in Goods and Services Trade in Goods and Services; TRIPS Trade in Services
<b>SWEDEN</b>	AHNLID, Mr. Anders Gustav Ragnar ANDERSSON, Mr. Thomas Martin ANELL, Mr. Lars BÄVERBRANT, Mr. Johan C. BECKER, Ms. Gunnela Marianne DAHLIN, Ms. Karin Elisabeth FALLENIOUS, Mr. Christer H. HÅKANSSON, Mr. Gösta PER-Olov HOLGERSSON, Mr. Jörgen	Trade in Goods and Services; TRIPS Trade in Goods Trade in Goods; TRIPS Trade in Goods and Services; TRIPS Trade in Goods and Services; TRIPS Trade in Goods and Services; TRIPS Trade in Goods Trade in Services Trade in Goods and Services

MEMBER	NAME	SECTORAL EXPERIENCE
<b><u>EUROPEAN COMMUNITIES</u></b> (cont'd)		
<b>SWEDEN</b> (cont'd)	KLEEN, Mr. Peter LINDSTRÖM, Mr. Jan Mikael MANHUSEN, Mr. Christer OLOFSGÅRD, Ms. Eva-Kajsa Buzaglo RAHLÉN, Ms. Christina RISINGGÅRD, Mr. Axel Börje RODIN, Mr. Arne STÅLBERG, Mr. Lars TAURIAINEN, Mr. Teppo Markus	Trade in Goods Trade in Goods Trade in Goods and Services Trade in Goods and Services; TRIPS Trade in Goods and Services; TRIPS Trade in Goods Trade in Goods; TRIPS Trade in Goods Trade in Goods and Services; TRIPS
<b>UNITED KINGDOM</b>	ARKELL, Mr. Julian BETHLEHEM, Mr. Daniel CROFT, Mr. Roy Henry Francis HINDLEY, Mr. Brian Vernon JOHNSON, Mr. Michael David Clarke MUIR, Mr. Tom PLENDER, Mr. Richard QURESHI, Mr. Asif Hasan ROBERTS, Mr. Christopher William ROBERTS, Mr. David F. SAROOSHI, Mr. Dan TOULMIN, Mr. John Kelvin	Trade in Services Trade in Goods and Services; TRIPS Trade in Services Trade in Goods and Services Trade in Goods Trade in Goods and Services; TRIPS Trade in Goods Trade in Goods Trade in Goods and Services Trade in Goods Trade in Services Trade in Services

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>HONG KONG, CHINA</b>	CARTLAND, Mr. Michael David	Trade in Goods and Services
	CHEUNG, Mr. Peter Kam Fai	TRIPS
	LEUNG, Ms. Ada Ka Lai	TRIPS
	LITTLE, Mr. David	Trade in Goods and Services
	MILLER, Mr. Tony J.A.	Trade in Goods and Services
<b>ICELAND</b>	BJÖRGVINSSON, Mr. David Thór	Trade in Goods and Services
	JÓHANNSSON, Mr. Einar M.	Trade in Goods
	SANDHOLT, Mr. Brynjolfur	Trade in Goods
<b>INDIA</b>	AGARWAL, Mr. Vinod Kumar	Trade in Goods; TRIPS
	AGRAWAL, Mr. Rameshwar Pal	Trade in Goods and Services; TRIPS
	BHATTACHARYA, Mr. G. C.	Trade in Goods
	CHANDRASEKHAR, Mr. Kesava Menon	Trade in Goods and Services; TRIPS
	CHAUDHURI, Mr. Sumanta	Trade in Goods and Services; TRIPS
	DAS, Mr. Bhagirath Lal	Trade in Goods
	DASGUPTA, Mr. Jayant	Trade in Goods
	GOPALAN, Mr. Rajarangamani	Trade in Goods
	GOYAL, Mr. Arun	Trade in Services
	KAUSHIK, Mr. Atul	Trade in Goods; TRIPS
	KUMAR, Mr. Mohan	Trade in Goods and Services
	MOHANTY, Mr. Prasant Kumar	Trade in Goods

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>INDA (cont'd)</b>	MUKERJI, Mr. Asoke Kumar	Trade in Goods and Services; TRIPS
	NARAYANAN, Mr. Srinivasan	Trade in Goods; TRIPS
	PRABHU, Mr. Pandurang Palimar	Trade in Goods; TRIPS
	PRASAD, Ms. Anjali	Trade in Goods and Services; TRIPS
	RAI, Mr. Pushpendra	TRIPS
	RAMAKRISHNAN, Mr. N.	Trade in Goods
	RAO, Mr. Pemmaraju Sreenivasa	Trade in Goods
	REGE, Mr. Narayan Vinod	Trade in Goods
	SAJJANHAR, Mr. Ashok	Trade in Goods
	SHARMA, Mr. Lalit	Trade in Goods and Services; TRIPS
	VENUGOPAL, Mr. Krishnan	Trade in Goods; TRIPS
	WATAL, Ms. Jayashree	TRIPS
ZUTSHI, Mr. B. K.	Trade in Goods and Services; TRIPS	
<b>ISRAEL</b>	ALTUVIA, Mr. Magen	Trade in Goods
	GABAY, Mr. Mayer	TRIPS
	HARAN, Mr. Ephraim F.	Trade in Services
	HOROVITZ, Mr. Dan	Trade in Goods and Services
	POLINER, Mr. Howard Zvi	TRIPS
	SEMADAR, Mr. Moshe	Trade in Goods
	SHATON, Mr. Michael Marcel	Trade in Goods and Services
	TALBAR, Mr. Michael Adin	Trade in Goods

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>ISRAEL (cont'd)</b>	WEILER, Mr. Joseph H.H.	Trade in Goods
<b>JAPAN</b>	ARAKI, Mr. Ichiro	Trade in Goods and Services; TRIPS
	ASAKAI, Mr. Kazuo	Trade in Goods
	ASAKURA, Mr. Hironori	Trade in Goods
	HASEBE, Mr. Masamichi	Trade in Goods and Services
	ISHIGURO, Mr. Kazunori	Trade in Goods and Services; TRIPS
	IWASAWA, Mr. Yuji	Trade in Goods
	KANDA, Mr. Hideki	Trade in Services
	KEMMOCHI, Mr. Nobuaki	Trade in Goods and Services
	KOTERA, Mr. Akira	Trade in Goods and Services
	OHARA, Mr. Yoshio	Trade in Goods; TRIPS
	SANO, Mr. Tadakatsu	Trade in Goods
	SHIMIZU, Mr. Akio	Trade in Goods
	SUZUKI, Mr. Masabumi	Trade in Goods; TRIPS
	TSURUOKA, Mr. Koji	Trade in Services
	YAMANE, Ms. Hiroko	Trade in Goods; TRIPS
<b>KOREA</b>	AHN, Mr. Dukgeun	Trade in Goods
	AHN, Mr. Ho-Young	Trade in Goods
	AHN, Mr. Myung-soo	Trade in Goods
	CHANG, Mr. Seung Wha	Trade in Goods
	CHO, Mr. Tae-Yul	Trade in Goods

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>KOREA (cont'd)</b>	CHOI, Mr. Byung-il	Trade in Services
	CHOI, Mr. Won-Mog	Trade in Goods and Services; TRIPS
	KIM, Mr. Jong Bum	Trade in Goods
	LEE, Mr. Jaemin	Trade in Goods
	PARK, Mr. Nohyoung	Trade in Goods
	WOO, Mr. Jooha	Trade in Goods and Services
<b>LIECHTENSTEIN</b>	ZIEGLER, Mr. Andreas R.	Trade in Services; TRIPS
<b>MADAGASCAR</b>	ANDRIANARIVONY, Mr. Minoarison	Trade in Goods and Services; TRIPS
<b>MAURITIUS</b>	BEEKARRY, Mr. Navin	Trade in Goods and Services
	BHUGLAH, Mr. Achad	Trade in Goods and Services
<b>MEXICO</b>	AGUILAR ÁLVAREZ, Mr. Guillermo	Trade in Goods and Services; TRIPS
	AMIGO CASTAÑEDA, Mr. Jorge	TRIPS
	BOLÍVAR, Ms. Gisela	Trade in Goods and Services
	DE LA PEÑA, Mr. Alejandro	Trade in Goods and Services; TRIPS
	DELGADO, Mr. Sergio	Trade in Goods and Services
	DE MATEO VENTURINI, Mr. Fernando	Trade in Services
	JASSO TORRES, Mr. Humberto	Trade in Goods
	ORTEGA, Mr. Armando	Trade in Goods and Services; TRIPS
	PEREZCANO DÍAZ, Mr. Hugo Manuel	Trade in Goods and Services; TRIPS
	POBLANO, Mr. José F.	Trade in Services; TRIPS
RAMÍREZ HERNÁNDEZ, Mr. Ricardo	Trade in Goods and Services	

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>MEXICO (cont'd)</b>	REYES, Ms. Luz Elena	Trade in Goods
	TRASLOSHEROS HERNÁNDEZ, Mr. José Gerardo	Trade in Goods and Services; TRIPS
	ZABLUDOVSKY KUPER, Mr. Jaime	Trade in Goods and Services; TRIPS
<b>NEPAL</b>	PANDEY, Mr. Posh Raj	Trade in Goods and Services
	SUBEDI, Mr. Surya P.	Trade in Goods and Services; TRIPS
<b>NEW ZEALAND</b>	ARMSTRONG, Mr. Wade Mowatt Valentine	Trade in Goods; TRIPS
	CARSON, Mr. Christopher Barr	Trade in Goods
	FALCONER, Mr. Crawford Dunlop	Trade in Goods
	FALCONER, Mr. William John	Trade in Goods and Services; TRIPS
	GROSER, Mr. Tim	Trade in Goods
	HAMILTON, Mr. Peter William	Trade in Goods
	HARVEY, Mr. Martin Wilfred	Trade in Goods
	HIGGIE, Ms. Dell Clark	Trade in Goods
	KENNEDY, Mr. Peter Douglas	Trade in Goods
	MACEY, Mr. Adrian	Trade in Goods; TRIPS
	MCPHAIL, Mr. Alexander Hugh	Trade in Goods
	NOTTAGE, Mr. Richard Frederick	Trade in Goods
	SLADE, Ms. Michelle	Trade in Goods and Services; TRIPS
	TRAINOR, Mr. Mark Julian	Trade in Goods; TRIPS
	WALKER, Mr. David John	Trade in Goods and Services
WOODFIELD, Mr. Edward A	Trade in Goods	

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>NIGER</b>	TANKOANO, Mr. Amadou	Trade in Goods and Services; TRIPS
<b>NIGERIA</b>	NNONA, Mr. George C.	Trade in Goods and Services; TRIPS
<b>NORWAY</b>	GLENNE, Mr. Eirik HOLTEN, Ms. Inger LILLERUD, Mr. Kjell LUNDBY, Mr. Ole SELAND, Mr. Helge A. TØNSETH, Mr. Didrik	Trade in Goods and Services Trade in Goods; TRIPS Trade in Goods and Services Trade in Goods and Services; TRIPS Trade in Goods and Services; TRIPS Trade in Goods and Services; TRIPS
<b>PAKISTAN</b>	HAMID ALI, Mr. Muhammad HUSAIN, Mr. Ishrat KHAN, Mr. Mujeeb Ahmed MALIK, Mr. Riaz Ahmad	Trade in Goods; TRIPS Trade in Services Trade in Goods; TRIPS Trade in Goods
<b>PANAMA</b>	FRANCIS LANUZA, Ms. Yavel Mireya GONZALEZ, Mr. Carlos Ernesto HARRIS ROTKIN, Mr. Norman SALAZAR FONG, Ms. Diana Alejandrina	Trade in Goods and Services Trade in Goods and Services Trade in Goods and Services Trade in Goods
<b>PERU</b>	BELAÚNDE G., Mr. Victor Andres DIEZ LIZARDO, Mr. Juan LEÓN-THORNE, Mr. Raúl	TRIPS Trade in Goods Trade in Goods and Services
<b>QATAR</b>	MAKKI, Mr. Fadi	Trade in Goods and Services

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>SRI LANKA</b>	JAYASEKERA, Mr. Douglas	Trade in Goods; TRIPS
<b>SWITZERLAND</b>	ADDOR, Mr. Felix	TRIPS
	BREINING, Ms. Christine	Trade in Services
	CHAMBOVEY, Mr. Didier	Trade in Goods
	COTTIER, Mr. Thomas	Trade in Goods and Services; TRIPS
	GETAZ, Mr. Henri Alexandre	Trade in Services
	HÄBERLI, Mr. Christian	Trade in Goods
	INEICHEN-FLEISCH, Ms. Marie-Gabrielle	Trade in Goods and Services
	KRAFFT, Mr. Mathias-Charles	Trade in Goods
	LEGLER, Mr. Thomas	TRIPS
	MEYER, Mr. Matthias	Trade in Goods and Services; TRIPS
	PANNATIER, Mr. Serge Nicolas	Trade in Goods
	TSCHÄENI, Mr. Hanspeter	Trade in Goods
	WASESCHA, Mr. Luzius	Trade in Goods and Services; TRIPS
	WEBER, Mr. Rolf H.	Trade in Services
<b>THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU</b>	LO, Mr. Chang-Fa	Trade in Goods and Services
	YANG, Ms. Guang-Hwa	Trade in Goods and Services
<b>TURKEY</b>	GÜRAKAN, Ms. Tulû	Trade in Goods
	KAÇAR, Mr. Bayram	Trade in Goods
	YENAL, Mr. Aytaç	Trade in Goods

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>UNITED STATES</b>	BIRENBAUM, Mr. David E.	Trade in Goods
	BROWN-WEISS, Ms. Edith	Trade in Goods and Services
	CONNELLY, Mr. Warren	Trade in Goods
	GANTZ, Mr. David A.	Trade in Goods
	GORDON, Mr. Michael Wallace	Trade in Goods
	HODGSON, Ms. Mélida	Trade in Goods and Services
	KASSINGER, Mr. Theodore W.	Trade in Goods and Services
	KHO, Mr. Stephen	Trade in Goods and Services; TRIPS
	KIRK, Mr. Michael K.	TRIPS
	LAYTON, Mr. Duane	Trade in Goods
	LICHTENSTEIN, Ms. Cynthia Crawford	Trade in Services
	McGINNIS, Mr. John Oldham	Trade in Goods; TRIPS
	PARTAN, Mr. Daniel G.	Trade in Goods
	POWELL, Mr. Stephen J.	Trade in Goods
	REYNA, Mr. Jimmie V.	Trade in Goods and Services
	SANDSTROM, Mr. Mark R.	Trade in Goods and Services
THOMPSON, Mr. George W.	Trade in Goods	
TROSSEVIN, Ms. Marguerite	Trade in Goods	
VERRILL, Jr. Mr. Charles Owen	Trade in Goods	

<b>MEMBER</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>URUGUAY</b>	AMORÍN, Mr. Carlos	Trade in Goods; TRIPS
	CAYRÚS, Mr. Hugo	Trade in Goods and Services
	EHLERS, Mr. William	Trade in Goods
	ROSSELLI, Mr. Elbio	Trade in Goods
	VANERIO, Mr. Gustavo	Trade in Goods and Services
	WHITELAW, Mr. James A.	Trade in Goods
<b>VENEZUELA</b>	ESCOBAR, Mr. José Benjamín	Trade in Services
	MARQUEZ, Mr. Guillermo	Trade in Services
	ROJAS PENSO, Mr. Juan Francisco	Trade in Goods and Services

## ANNEX

### Administration of the Indicative List

1. To assist in the selection of panelists, the DSU provides in Article 8.4 that the Secretariat shall maintain an indicative list of qualified governmental and non-governmental individuals. Accordingly, the Chairman of the DSB proposed at the 10 February meeting that WTO Members review the roster of non-governmental panelists established on 30 November 1984 (BISD 31S/9) (hereinafter referred to as the “1984 GATT Roster”) and submit nominations for the indicative list by mid-June 1995. On 14 March, The United States delegation submitted an informal paper discussing, amongst other issues, what information should accompany the nomination of individuals, and how names might be removed from the list. The DSB further discussed the matter in informal consultations on 15 and 24 March, and at the DSB meeting on 29 March. This note puts forward some proposals for the administration of the indicative list, based on the previous discussions in the DSB.

#### General DSU requirements

2. The DSU requires that the indicative list initially include “the roster of governmental and non-governmental panelists established on 30 November 1984 (BISD 31S/9) and other rosters and indicative lists established under any of the covered agreements, and shall retain names of persons on those rosters and indicative lists at the time of entry into force of the WTO Agreement” (DSU 8.4). Additions to the indicative list are to be made by Members who may “periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements.” The names “shall be added to the list upon approval by the DSB” (DSU 8.4).

#### Submission of information

3. As a minimum, the information to be submitted regarding each nomination should clearly reflect the requirements of the DSU. These provide that the list “shall indicate specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements” (DSU 8.4). The DSU also requires that panelists be “well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member” (DSU 8.1).

4. The basic information required for the indicative list could best be collected by use of a standardized form. Such a form, which could be called a Summary Curriculum Vitae, would be filled out by all nominees to ensure that relevant information is obtained. This would also permit information on the indicative list to be stored in an electronic database, making the list easily updateable and readily available to Members and the Secretariat. As well as supplying a completed Summary Curriculum Vitae form, persons proposed for inclusion on the indicative list could also, if they wished, supply a full Curriculum Vitae. This would not, however, be entered into the electronic part of the database.

### Updating of indicative list

5. The DSU does not specifically provide for the regular updating of the indicative list. In order to maintain the credibility of the list, it should however be completely updated every two years. Within the first month of each two-year period, Members would forward updated Curricula Vitae of persons appearing on the indicative list. At any time, Members would be free to modify the indicative list by proposing new names for inclusion, or specifically requesting removal of names of persons proposed by the Member who were no longer in a position to serve, or by updating the summary Curriculum Vitae.

6. Names on the 1984 GATT Roster that are not specifically resubmitted, together with up-to-date summary Curriculum Vitae, by a Member before 31 July 1995 would not appear after that date on the indicative list.

### Other rosters

7. The Decision on Certain Dispute Settlement Procedures for the GATS (S/L/2 of 4 April 1995), adopted by the Council for Trade in Services on 1 March 1995, provides for a special roster of panelists with sectoral expertise. It states that "panels for disputes regarding sectoral matters shall have the necessary expertise relevant to the specific services sectors which the dispute concerns." It directs the Secretariat to maintain the roster and "develop procedures for its administration in consultation with the Chairman of the Council." A working document (S/C/W/1 of 15 February 1995) noted by the Council for Trade in Services states that "the roster to be established under the GATS pursuant to this Decision would form part of the indicative list referred to in the DSU." The specialized roster of panelists under the GATS should therefore be integrated into the indicative list, taking care that the latter provides for a mention of any service sectoral expertise of persons on the list.

8. A suggested format for the Summary Curriculum Vitae form for the purposes of maintaining the Indicative List is attached as an Annex.

**Summary Curriculum Vitae  
for Persons Proposed for the Indicative List**

1. **Name:** full name
  2. **Sectoral Experience**  
  
List here any particular sectors of expertise:  
(e.g. technical barriers, dumping, financial services,  
intellectual property, etc.)
  3. **Nationality(ies)** all citizenships
  4. **Nominating Member:** the nominating Member
  5. **Date of birth:** full date of birth
  6. **Current occupations:** year beginning, employer, title,  
responsibilities
  7. **Post-secondary education** year, degree, name of institution
  8. **Professional qualifications** year, title
  9. **Trade-related experience in Geneva in  
the WTO/GATT system**
    - a. Served as a panelist year, dispute name, role as  
chairperson/member
    - b. Presented a case to a panel year, dispute name, representing  
which party
    - c. Served as a representative of a contracting party or  
member to a WTO or GATT body, or as an officer  
thereof year, body, role
    - d. Worked for the WTO or GATT Secretariat year, title, activity
  10. **Other trade-related experience**
    - a. Government trade work year, employer, activity
    - b. Private sector trade work year, employer, activity
  11. **Teaching and publications**
    - a. Teaching in trade law and policy year, institution, course title
    - b. Publications in trade law and policy year, title, name of periodical/book,  
author/editor (if book)
-

## MEMBERSHIP OF THE WTO APPELLATE BODY

*From January 1, 2008, to May 31, 2008, the membership of the WTO Appellate Body was as follows:*

Mr. Georges M. Abi-Saab (Egypt),  
Ms. Lilia R. Bautista (Philippines),  
Ms. Jennifer Hillman (United States),  
Mr. David Unterhalter (South Africa)

Professor Luiz Olavo Baptista (Brazil),  
Mr. Arumugamangalam V. Ganesan (India),  
Professor Giorgio Sacerdoti (Italy),

*From June 1, 2008, to December 31, 2008, the membership of the WTO Appellate Body was as follows:*

Professor Luiz Olavo Baptista (Brazil),  
Ms. Jennifer Hillman (United States),  
Professor Giorgio Sacerdoti (Italy),  
Ms. Yuejiao Zhang (China)

Ms. Lilia R. Bautista (Philippines),  
Mr. Shotaro Oshima (Japan),  
Mr. David Unterhalter (South Africa),

### *BIOGRAPHICAL NOTES:*

#### **Georges Michel Abi-Saab**

Born in Egypt on June 9, 1933, Georges Michel Abi-Saab is Honorary Professor of International Law at the Graduate Institute of International Studies in Geneva (having taught there from 1963 to 2000); Honorary Professor at Cairo University's Faculty of Law; and a Member of the Institute of International Law.

Professor Abi-Saab served as consultant to the Secretary-General of the United Nations for the preparation of two reports on "Respect of Human Rights in Armed Conflicts" (1969 and 1970), and for the report on "Progressive Development of Principles and Norms of International Law Relating to the New International Economic Order" (1984). He represented Egypt in the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law (1974 to 1977), and acted as Counsel and advocate for several governments in cases before the International Court of Justice (ICJ) as well as in international arbitrations. He has also served twice as judge ad hoc on the ICJ, as Judge on the Appeals Chamber of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda, and as a Commissioner of the United Nations Compensation Commission. He is a Member of the Administrative Tribunal of the International Monetary Fund and of various international arbitral tribunals (ICSID, ICC, CRCICA, etc.).

Professor Abi-Saab graduated in law from Cairo University and pursued his studies in law, economics and politics at the Universities of Paris, Michigan (MA in Economics), Harvard Law School (LLM and SJD), Cambridge and Geneva (Docteur es Sciences Politiques). He also held numerous visiting professorships, inter alia, at Harvard Law School, the Universities of Tunis, Jordan, the West Indies (Trinidad), as well as the Rennert Distinguished Professorship at NYU School of Law and the Henri Rolin Chair in Belgian Universities.

Professor Abi-Saab is the author of numerous books and articles, including "Les exceptions préliminaires dans la procédure de la Cour internationale: Etude des notions fondamentales de procédure et des moyens de leur mise en oeuvre" (Paris, Pedone, 1967); "International Crises and the Role of Law: The United Nations Operation in Congo 1960-1964" (Oxford University Press, 1978); "The Concept of International Organization" (as editor) (Paris, UNESCO, 1981; French edition, 1980); and of two courses at the Hague Academy of International Law: "Wars of National Liberation in the Geneva Conventions and Protocols" (Recueil des cours, vol. 165 (1979-IV)) and the "General Course of Public International Law" (in French) (Recueil des cours, vol. 207 (1987-VII)).

### **Luiz Olavo Baptista**

Born in Brazil in 1938, Luiz Olavo Baptista is currently Professor of International Trade Law at the University of São Paulo Law School.

He has been a Member of the Permanent Court of Arbitration at The Hague since 1996, and of the International Chamber of Commerce (“ICC”) Institute for International Trade Practices and of its Commission on Trade and Investment Policy, since 1999. In addition, he has been one of the arbitrators designated under Mercosur’s Protocol of Brasilia since 1993.

Professor Baptista is also senior partner at the L.O. Baptista Law Firm, in São Paulo, Brazil, where he concentrates his practice on corporate law, arbitration and international litigation. He has been practicing law for almost 40 years advising governments, international organizations and large corporations in Brazil and in other jurisdictions. Professor Baptista has been an arbitrator at the United Nations Compensation Commission (E4A Panel) in several private commercial disputes and State-investor proceedings, as well as in disputes under Mercosur’s Protocol of Brasilia. In addition, he has participated as a legal advisor in diverse projects sponsored by the World Bank, the United Nations Conference on Trade and Development, the United Nations Center on Transnational Corporations, and the United Nations Development Programme.

He obtained his law degree from the Catholic University of São Paulo, pursued post-graduate studies at Columbia University Law School and The Hague Academy of International Law, and received a Ph.D. in International Law from the University of Paris II. He was Visiting Professor at the University of Michigan (Ann Arbor) in 1978-1979, and at the University of Paris I and the University of Paris X between 1996 and 2000. Professor Baptista has published extensively on various issues in Brazil and abroad.

### **Lilia R. Bautista**

Born in the Philippines on August 16, 1935, Ms Lilia R Bautista is currently Consultant to the Philippine Judicial Academy which is the training school for Philippine justices, judges and lawyers. She is also a member of several corporate boards.

Ms Bautista was the Chairperson of the Securities and Exchange Commission of the Philippines from 2000 to 2004. Between 1999 and 2000, she served as Senior Undersecretary and Special Trade Negotiator at the Department of Trade and Industry in Manila. From December 1992 to June 1999, Ms Bautista was the Philippine Permanent Representative in Geneva to the United Nations, WTO, WHO, ILO and other international organizations. During her assignment in Geneva, she chaired several bodies, including the WTO Council for Trade in Services. Her long career in the Philippine Government also included posts as Legal Officer in the Office of the President, Chief Legal Officer of the Board of Investments, and acting Trade Minister from February to June 1992.

Ms Bautista earned her Bachelor of Laws Degree and a Masters Degree in Business Administration from the University of the Philippines. She was conferred the degree of Master of Laws by the University of Michigan as a Dewitt Fellow.

## **Arumugamangalam Venkatachalam Ganesan**

Born in Tirunelveli, Tamil Nadu, India on June 7, 1935, Arumugamangalam Venkatachalam Ganesan was a distinguished civil servant of India. He was appointed to the Indian Administrative Service, a premier civil service of India in May 1959, and served in that service until June 1993. In a career spanning over 34 years, he has held a number of high level assignments, including Joint Secretary (Investment), Department of Economic Affairs, Government of India (1977-1980); Inter-Regional Adviser, United Nations Centre on Transnational Corporations, United Nations Headquarters, New York (1980-1985); Additional Secretary, Department of Industrial Development, Government of India (1986-1989); Chief Negotiator of India for the Uruguay Round of Multilateral Trade Negotiations and Special Secretary, Ministry of Commerce, Government of India (1989-1990); Civil Aviation Secretary of the Government of India (1990-1991); and Commerce Secretary of the Government of India (1991-1993). He represented India on numerous occasions in bilateral, regional and multilateral negotiations in the areas of international trade, investment and intellectual property rights. Between 1989 and 1993, he represented India at the various stages of the Uruguay Round of Multilateral Trade Negotiations.

After his retirement from civil service, Mr. Ganesan served as an expert and consultant to various agencies of the United Nations system, including the United Nations Conference on Trade and Development (“UNCTAD”), the United Nations Industrial Development Organization (“UNIDO”) and the United Nations Development Programme, in the field of international trade, investment and intellectual property rights. He has also spoken extensively to the business, managerial, scientific and academic communities in India on the scope and substance of the Uruguay Round negotiations and Agreements and their implications. Until his appointment to the Appellate Body of the WTO in 2000, he was a Member of the Government of India’s High Level Trade Advisory Committee on Multilateral Trade Negotiations. He was also a Member of the Permanent Group of Experts under the WTO Agreement on Subsidies and Countervailing Measures, and a Member of a Dispute Settlement Panel of the WTO in 1999-2000 in the United States – Section 110(5) of the US Copyright Act case.

Mr. Ganesan has written numerous newspaper articles and monographs dealing with various aspects of the Uruguay Round Agreements and their implications. He is also the author of many papers on trade, investment and intellectual property issues for UNCTAD and UNIDO, and has contributed to books published in India on matters concerning the Uruguay Round, including intellectual property right issues. Mr. Ganesan holds M.A and M.Sc degrees from the University of Madras, India.

## **Jennifer Hillman**

Born in the United States on January 29, 1957, Ms Jennifer Hillman serves as a Fellow and Adjunct Professor of Law at the Georgetown University Law Center's Institute of International Economic Law. Her work focuses on the WTO dispute settlement system, the WTO agreements related to trade remedies, and the WTO jurisprudence related to trade remedies.

From 1998 to 2007, Ms Hillman served as a member of the U.S. International Trade Commission — an independent, quasi-judicial agency responsible for making determinations in anti-dumping and countervailing proceedings, and conducting safeguard investigations.

From 1995 to 1997, Ms Hillman served as the chief legal counsel to the USTR, overseeing the legal developments necessary to complete the implementation of the Uruguay Round Agreement.

From 1993 to 1995, Ms Hillman was responsible for negotiating all U.S. bilateral textile agreements prior to the adoption of the Agreement on Textiles and Clothing.

Ms Hillman has a Bachelor of Arts and Master of Education from Duke University, North Carolina, and a Juris Doctor degree from Harvard Law School in Cambridge, Massachusetts.

### **Shotaro Oshima**

Born in Japan on 20 September 1943, Mr. Shotaro Oshima is a law graduate from the University of Tokyo, with almost 40 years experience as a diplomat in Japan's Foreign Service, most recently as Ambassador to the Republic of Korea.

From 2002 to 2005, Mr Oshima was Japan's Permanent Representative to the WTO, during which time he served as Chair of the General Council and the Dispute Settlement Body.

Prior to his time in Geneva, Mr Oshima served as Deputy Foreign Minister responsible for economic matters and was designated as Prime Minister Koizumi's Personal Representative to the G8 Summit in Canada in June 2002. In the same year he served as the Prime Minister's Personal Representative to the UN World Summit on Sustainable Development in South Africa.

### **Giorgio Sacerdoti**

Born on March 2, 1943, Giorgio Sacerdoti is Professor of International Law and European Law at Bocconi University, Milan, Italy, since 1986.

Professor Sacerdoti has held various posts in the public sector including Vice-Chairman of the Organisation for Economic Cooperation and Development ("OECD") Working Group on Bribery in International Business Transactions until 2001 where he was one of the drafters of the "Anticorruption Convention of 1997". He has acted as consultant to the Council of Europe, the United Nations Conference on Trade and Development ("UNCTAD") and the World Bank in matters related to foreign investments, trade, bribery, development and good governance. In the private sector, he has often served as arbitrator in international commercial disputes and at the International Centre for Settlement of Investment Disputes. Professor Sacerdoti has published extensively on international trade law, investments, international contracts and arbitration.

After graduating from the University of Milan with a law degree summa cum laude in 1965, Professor Sacerdoti gained a Master in Comparative Law from Columbia University Law School as a Fulbright Fellow in 1967. He was admitted to the Milan bar in 1969 and to the Supreme Court of Italy in 1979. He is a Member of the Committee on International Trade Law of the International Law Association.

### **David Unterhalter**

Born in South Africa on November 18, 1958, David Unterhalter holds degrees from Trinity College, Cambridge, the University of the Witwatersrand, and University College Oxford. David Unterhalter has been a Professor of Law at the University of the Witwatersrand in South Africa since 1998, and from 2000 – 2006, he was the Director of the Mandela Institute, University of the Witwatersrand, an institute focusing upon global law.

Mr. Unterhalter is a member of the Johannesburg Bar; as a practicing advocate he has appeared in a large number of cases in the fields of trade law, competition law, constitutional law, and commercial law. His experience includes representing different parties in anti-dumping and countervailing duty cases. He has acted as an advisor to the South African Department of Trade and Industry. In addition, he has served on a number of WTO dispute settlement panels. Mr. Unterhalter has published widely in the fields of public law and competition law.

## **Yuejiao Zhang**

Born in China on 25 October 1944, Ms. Yuejiao Zhang is Professor of Law at Shantou University in China. She is an Arbitrator on China's International Trade and Economic Arbitration Commission and practices law as a private attorney. Ms. Zhang also serves as Vice President of China's International Economic Law Society.

Between 1998 and 2004, Ms. Zhang held various positions at the Asian Development Bank. Prior to this, Ms. Zhang held several positions in government and academia in China, including as Director-General of Law and Treaties at the Ministry of Foreign Trade and Economic Cooperation (1984-1997) where she was involved in drafting many of China's trade laws, such as the Foreign Trade Law, the Anti-Dumping Regulation and the Anti-Subsidy Regulation.

From 1987 to 1996, Ms. Zhang was one of China's chief negotiators on intellectual property and was involved in the preparation of China's patent law, trade mark law, and copyright law. She also served as the chief legal counsel for China's GATT resumption and WTO accession. Between 1982 and 1985, Ms. Zhang worked as legal counsel at the World Bank.

Ms. Zhang was a Member of UNIDROIT from 1987-1999. She has a Bachelor of Arts from China High Education College and a Master of Laws from Georgetown University Law Center.

Source: WTO Secretariat

## Where to Find More Information on the WTO

Information about the WTO and trends in international trade is available to the public at the following websites:

The USTR home page: <http://www.ustr.gov>

The WTO home page: <http://www.wto.org>

U.S. submissions are available electronically on the WTO website using Documents Online, which can retrieve an electronic copy by the “document symbol”. Electronic copies of U.S. submissions are also available at the USTR website.

Examples of information available on the WTO home page include:

Descriptions of the Structure and Operations of the WTO, such as:

- WTO Organizational Chart
- Membership
- Biographic backgrounds
- General Council activities

WTO News, such as:

- Status of dispute settlement cases
- Press Releases on Appointments to WTO Bodies, Appellate Body Reports and Panel Reports, and others
- Schedules of future WTO meetings
- Summaries of Trade Policy Review Mechanism reports on individual Members' trade practices

Resources including Official Documents, such as:

- Notifications required by the Uruguay Round Agreements
- Working Procedures for Appellate Review
- Special Studies on key WTO issues
- On-line document database where one can find and download official documents
- Legal Texts of the WTO agreements
- WTO Annual Reports

Community/Forums, such as:

- Media and NGOs
- General public news and chat rooms

Trade Topics, such as:

- Briefing Papers on WTO activities in individual sectors, including goods, services, intellectual property, other topics
- Disputes and Dispute Reports

WTO publications may be ordered directly from the following sources:

1. The World Trade Organization  
Publications Services  
Centre William Rappard  
Rue de Lausanne 154  
CH - 1211 Geneva 21  
Switzerland  
  
Tel: (41-22) 739 52 08 / 739 53 08  
Fax: (41-22) 739 57 92  
email: [publications@wto.org](mailto:publications@wto.org)
2. Berman Associates  
4611-F Assembly Drive  
Lanham, MD 20706-4391  
  
Tel: 301/459-7666  
Toll Free: 800/274-4888  
fax: 301/459-0056  
Toll Free: 800/865-3450  
e-mail: [query@bernan.com](mailto:query@bernan.com)  
e-mail: [order@bernan.com](mailto:order@bernan.com)

## **ANNEX III**

## **ANNEX III: U.S. Trade-Related Agreements and Declarations**

### **I. Agreements That Have Entered Into Force**

Following is a list of trade agreements entered into by the United States since 1984 and monitored by the Office of the United States Trade Representative for compliance.

#### **Multilateral and Plurilateral Agreements**

- ▶ Marrakesh Agreement Establishing the World Trade Organization (WTO) (signed April 15, 1994), the Ministerial Decisions and Declarations adopted by the Uruguay Round Trade Negotiations Committee on December 15, 1993, and subsequent WTO agreements.
  - a. Multilateral Agreements on Trade in Goods
    - i. General Agreement on Tariffs and Trade 1994
    - ii. Agreement on Agriculture
    - iii. Agreement on the Application of Sanitary and Phytosanitary Measures
    - iv. Agreement on Technical Barriers to Trade
    - v. Agreement on Trade-Related Investment Measures
    - vi. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
    - vii. Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994
    - viii. Agreement on Preshipment Inspection
    - ix. Agreement on Rules of Origin
    - x. Agreement on Import Licensing Procedures
    - xi. Agreement on Subsidies and Countervailing Measures
    - xii. Agreement on Safeguards
  - b. General Agreement on Trade in Services (GATS)
    - i. Fourth Protocol to the GATS (Basic Telecommunications Services) (February 5, 1998)
    - ii. Fifth Protocol to the GATS (Financial Services) (March 1, 1999)
  - c. Agreement on Trade-Related Aspects of Intellectual Property Rights
  - d. Plurilateral Trade Agreements
    - i. Agreement on Trade in Civil Aircraft (April 12, 1979; amended in 1986)
    - ii. Agreement on Government Procurement (April 15, 1994)
- ▶ WTO Ministerial Declaration on Trade in Information Technology Products (Information Technology Agreement (ITA)) (March 26, 1997)

- ▶ International Tropical Timber Agreement (successor to the 1983 International Tropical Timber Agreement, January 1, 1997)
- ▶ International Coffee Agreement (successor to the 1994 International Coffee Agreement; entered into force provisionally October 1, 2001 and definitively May 17, 2005; U.S. Instrument of accession deposited February 3, 2005)
- ▶ North American Free Trade Agreement (January 1, 1994)
  - i. Agreement with Mexico and Canada to a first round of NAFTA Accelerated Tariff Elimination (March 26, 1997)
  - ii. Agreement with Mexico and Canada to a second round of NAFTA Accelerated Tariff Elimination (July 27, 1998)
  - iii. Agreement with Mexico to a third round of NAFTA Accelerated Tariff Elimination (November 29, 2000)
  - iv. Agreement with Mexico to a fourth round of NAFTA Accelerated Tariff Elimination (December 5, 2001)
  - v. Agreement with Mexico and Canada on adjustments to the NAFTA Rules of Origin (November 27, 2002)
  - vi. Agreement with Mexico and Canada on adjustments to the NAFTA Rules of Origin (October 8, 2004)
  - vii. Agreement with Mexico and Canada on adjustments to the NAFTA Rules of Origin (March 8, 2006)
- ▶ North American Agreement on Environmental Cooperation (January 1, 1994)
- ▶ North American Agreement on Labor Cooperation (January 1, 1994)
- ▶ Statement Concerning Semiconductors by the European Commission and the Governments of the United States, Japan, and Korea (June 10, 1999)
- ▶ Agreement on Mutual Acceptance of Oenological Practices (December 18, 2001)
- ▶ The Dominican Republic-Central America-United States Free Trade Agreement (Costa Rica (January 1, 2009); the Dominican Republic (March 1, 2007); El Salvador (March 1, 2006); Guatemala (July 1, 2006); Honduras (April 1, 2006); and Nicaragua (April 1, 2006)
- ▶ Agreement Establishing a Secretariat for Environmental Matters Under the Dominican Republic-Central America-United States Free Trade Agreement (August 25, 2006)

- ▶ Agreement on Duty-Free Treatment of Multi-Chips Integrated Circuits (MCPs) (January 18, 2006) (Korea, Taiwan, Japan, European Union and the United States)
- ▶ Agreement on Requirements for Wine Labeling (January 23, 2007) (Australia, Argentina, Canada, Chile, New Zealand and the United States)
- ▶ Amendment to the Dominican Republic-Central America-United States Free Trade Agreement relating to Textiles Matters (August 15, 2008)

## **Bilateral Agreements**

### **Albania**

- ▶ Agreement on Bilateral Trade Relations (May 14, 1992)
- ▶ Bilateral Investment Treaty (January 4, 1998)

### **Argentina**

- ▶ Private Courier Mail Agreement (May 25, 1989)
- ▶ Bilateral Investment Treaty (October 20, 1994)

### **Armenia**

- ▶ Agreement on Bilateral Trade Relations (April 7, 1992)
- ▶ Bilateral Investment Treaty (March 29, 1996)

### **Australia**

- ▶ Settlement on Leather Products Trade (November 25, 1996)
- ▶ Understanding on Automotive Leather Subsidies (June 20, 2000)
- ▶ Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (October 19, 2002)
- ▶ United States -Australia Free Trade Agreement (January 1, 2005)

### **Azerbaijan**

- ▶ Agreement on Bilateral Trade Relations (April 21, 1995)
- ▶ Bilateral Investment Treaty (August 2, 2001)

## **Bahrain**

- ▶ Bilateral Investment Treaty (May 30, 2001)
- ▶ United States-Bahrain Free Trade Agreement (August 1, 2006)

## **Bangladesh**

- ▶ Bilateral Investment Treaty (July 25, 1989)

## **Belarus**

- ▶ Agreement on Bilateral Trade Relations (February 16, 1993)

## **Bolivia**

- ▶ Bilateral Investment Treaty (June 6, 2001)

## **Brazil**

- ▶ Memorandum of Understanding between the Government of Brazil and the Government of the United States Concerning Trade Measures in the Automotive Sector (March 16, 1998)

## **Bulgaria**

- ▶ Agreement on Trade Relations (November 22, 1991)
- ▶ Bilateral Investment Treaty (June 2, 1994; amended January 1, 2007)
- ▶ Agreement Concerning Intellectual Property Rights (July 6, 1994)

## **Cambodia**

- ▶ Agreement between the United States of America and the Kingdom of Cambodia on Trade Relations and Intellectual Property Rights Protection (October 8, 1996)

## **Cameroon**

- ▶ Bilateral Investment Treaty (April 6, 1989)

## **Canada**

- ▶ Agreement on Salmon & Herring (May 11, 1993)
- ▶ Agreement Regarding Tires (May 25, 1993)

- ▶ Memorandum of Understanding on Provincial Beer Marketing Practices (August 5, 1993)
- ▶ Agreement on Ultra-High Temperature Milk (September 1993)
- ▶ Agreement on Beer Market Access in Quebec and British Columbia Beer Antidumping Cases (April 4, 1994)
- ▶ Agreement on Salmon & Herring (April 1994)
- ▶ Agreement on Barley Tariff-Rate Quota (September 8, 1997)
- ▶ Record of Understanding on Agriculture (December 1998)
- ▶ Agreement on Magazines (Periodicals) (May 1999)
- ▶ Agreement on Implementation of the WTO Decision on Canada's Dairy Support Programs (December 1999)
- ▶ Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (January 17, 2002)
- ▶ Agreement to Implement Phase II of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (January 28, 2003)
- ▶ United States-Canada Understanding on Implementation of the Decision of the WTO General Council of August 30, 2003, on "Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health" as Interpreted by the Accompanying Statement of the Chairman of the General Council of the Same Date (July 16, 2004)
- ▶ Softwood Lumber Agreement between the Government of the United States of America and the Government of Canada (SLA 2006) (October 12, 2006)
- ▶ Technical Arrangement between the United States and Canada concerning Trade in Potatoes (November 1, 2007)

## **Chile**

- ▶ United States-Chile Free Trade Agreement (January 1, 2004)
- ▶ United States-Chile Agreement on Trade in Table Grapes (November 21, 2008)

## **China**

- ▶ Accord on Industrial and Technological Cooperation (January 12, 1984)
- ▶ Memorandum of Understanding on the Protection of Intellectual Property Rights (January 17, 1992)
- ▶ Memorandum of Understanding on Prohibiting Import and Export in Prison Labor Products (June 18, 1992)
- ▶ Memorandum of Understanding Concerning Market Access (October 10, 1992)
- ▶ Agreement on Trade Relations between the United States of America and the People's Republic of China (February 1, 1980)
- ▶ Agreement on Providing Intellectual Property Rights Protection (February 26, 1995)
- ▶ Report on China's Measures to Enforce Intellectual Property Protections and Other Measures (June 17, 1996)
- ▶ Interim Agreement on Market Access for Foreign Financial Information Companies (Xinhua) (October 24, 1997)
- ▶ Bilateral Agriculture Agreement (April 10, 1999)
- ▶ Memorandum of Understanding between China and the United States Regarding China's Value-Added Tax on Integrated Circuits (July 14, 2004)
- ▶ Memorandum of Understanding between the Governments of the United States of America and the People's Republic of China Concerning Trade in Textile and Apparel Products (November 8, 2005)
- ▶ Memorandum of Understanding between the United States of America and the People's Republic of China Regarding Certain Measures Granting Refunds, Reductions, or Exemptions from Taxes or Other Payments (November 29, 2007)
- ▶ Memorandum of Understanding between the United States of America and the People's Republic of China Regarding Certain Measures Affecting Foreign Suppliers of Financial Information Services (November 13, 2008)

## **Colombia**

- ▶ Memorandum of Understanding on Trade in Bananas (January 9, 1996)
- ▶ Exchange of Letters between the United States and Colombia on Sanitary and Phytosanitary Measures and Technical Barriers to Trade Issues (February 27, 2006)

- ▶ Exchange of Letters between United States and Colombia on Beef Sanitary and Phytosanitary Issues (August 21, 2006)

### **Congo, Democratic Republic of the (formerly Zaire)**

- ▶ Bilateral Investment Treaty (July 28, 1989)

### **Congo, Republic of the**

- ▶ Bilateral Investment Treaty (August 13, 1994)

### **Costa Rica**

- ▶ Memorandum of Understanding on Trade in Bananas (January 9, 1996)

### **Croatia**

- ▶ Memorandum of Understanding on Intellectual Property Rights (May 26, 1998)
- ▶ Bilateral Investment Treaty (June 20, 2001)

### **Czech Republic**

- ▶ Bilateral Investment Treaty (December 19, 1992; amended May 1, 2004)

### **Dominican Republic**

- ▶ Exchange of Letters on Trade in Textile and Apparel Goods (October 21, 2006)

### **Ecuador**

- ▶ Agreement on Intellectual Property Rights Protection (October 15, 1993)
- ▶ Bilateral Investment Treaty (May 11, 1997)

### **Egypt**

- ▶ Bilateral Investment Treaty (June 27, 1992)

### **Estonia**

- ▶ Bilateral Investment Treaty (February 16, 1997; amended May 1, 2004)

## **European Economic Area – European Free Trade Association (EEA EFTA States -- Norway, Iceland, and Liechtenstein)**

- ▶ Agreement on Mutual Recognition between the United States of America and the EEA EFTA States (March 1, 2006).
- ▶ Agreement between the United States of America and the EEA EFTA States on the Mutual Recognition of Certificates of Conformity for Marine Equipment (March 1, 2006)

## **European Union**

- ▶ Wine Accord (July 1983)
- ▶ Agreement for the Conclusion of Negotiations between the United States and the European Community under GATT Article XXIV:6 (January 30, 1987)
- ▶ Agreement on Exports of Pasta with Settlement, Annex and Related Letter (September 15, 1987)
- ▶ Agreement on Canned Fruit (updated) (April 14, 1992)
- ▶ Agreement on Meat Inspection Standards (November 13, 1992)
- ▶ Corn Gluten Feed Exchange of Letters (December 4 and 8, 1992)
- ▶ Malt-Barley Sprouts Exchange of Letters (December 4 and 8, 1992)
- ▶ Oilseeds Agreement (December 4 and 8, 1992)
- ▶ Agreement on Recognition of Bourbon Whiskey and Tennessee Whisky as Distinctive U.S. Products (March 28, 1994)
- ▶ Memorandum of Understanding on Government Procurement (April 15, 1994)
- ▶ Letter on Financial Services Confirming Assurances to Provide Full MFN and National Treatment (July 14, 1995)
- ▶ Agreement on EU Grains Margin of Preference (signed July 22, 1996; retroactively effective December 30, 1995)
- ▶ Exchange of Letters Concerning Implementation of the Marrakesh Agreement Establishing the World Trade Organization and Related Matters (June 26, 1996)
- ▶ Exchange of Letters between the United States of America and the European Community on a Settlement for Cereals and Rice, and Accompanying Exchange of Letters on Rice Prices (July 22, 1996)

- ▶ Agreement for the Conclusion of Negotiations between the United States of America and the European Community under GATT Article XXIV:6, and Accompanying Exchange of Letters (signed July 22, 1996; retroactively effective December 30, 1995)
- ▶ Tariff Initiative on Distilled Spirits (February 28, 1997)
- ▶ Agreement on Global Electronic Commerce (December 9, 1997)
- ▶ Agreed Minute on Humane Trapping Standards (December 18, 1997)
- ▶ Agreement on Mutual Recognition between the United States of America and the European Community (December 1, 1998)
- ▶ Agreement between the United States and the European Community on Sanitary Measures to Protect Public and Animal Health in Trade in Live Animals and Animal Products (July 20, 1999)
- ▶ Understanding on Bananas (April 11, 2001)
- ▶ Agreement on the Mutual Acceptance of Oenological Practices (December 18, 2001)
- ▶ Agreement between the United States of America and the European Community on the Mutual Recognition of Certificates of Conformity for Marine Equipment (July 1, 2004)
- ▶ Agreement in the Form of an Exchange of Letters between the United States and the European Community Relating to the Method of Calculation of Applied Duties for Husked Rice (June 30, 2005; retroactively effective March 1, 2005)
- ▶ Agreement between the United States and European Community on Trade in Wine (March 10, 2006)
- ▶ Agreement for the Conclusion of Negotiations between the United States of America and the European Community under GATT Article XXIV:6, and Accompanying Exchange of Letters (March 22, 2006)
- ▶ Joint Letter from the United States and the European Communities on implementation of GATS Article XXI procedures relating to the accession to the European Communities of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Austria, Poland, Slovenia, the Slovak Republic, Finland, and Sweden (August 7, 2006)

## **Georgia**

- ▶ Agreement on Bilateral Trade Relations (August 13, 1993)
- ▶ Bilateral Investment Treaty (August 17, 1997)

## **Grenada**

- ▶ Bilateral Investment Treaty (March 3, 1989)

## **Haiti**

- ▶ Exchange of Letters on Trade in Textile and Apparel Goods (September 18, 2008)

## **Hong Kong**

- ▶ Agreement to Implement Phase I and Phase II of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (April 4, 2005)
- ▶ Memorandum of Understanding between the United States of America and the Hong Kong Special Administrative Region Concerning Cooperation in Trade in Textile and Apparel Goods (August 1, 2005)

## **Honduras**

- ▶ Memorandum of Understanding on Worker Rights (November 15, 1995)
- ▶ Bilateral Investment Treaty (July 11, 2001)

## **Hungary**

- ▶ Agreement on Trade Relations (July 7, 1978)
- ▶ Agreement on Intellectual Property Rights Protection (September 29, 1993)

## **India**

- ▶ Agreement Regarding Indian Import Policy for Motion Pictures (February 5, 1992)
- ▶ Reduction of Tariffs on In-Shell Almonds (May 27, 1992)
- ▶ Agreement on Intellectual Property Rights Protection (March 1993)
- ▶ Agreement on Import Restrictions (December 28, 1999)
- ▶ Agreement on Textile Tariff Bindings (September 15, 2000)

## **Indonesia**

- ▶ Conditions for Market Access for Films and Videos into Indonesia (April 19, 1992)

- ▶ Memorandum of Understanding with Indonesia Concerning Cooperation in Trade in Textile and Apparel Goods (September 26, 2006)

## **Israel**

- ▶ United States-Israel Free Trade Agreement (August 19, 1985)
- ▶ United States-Israel Agreement Concerning Certain Aspects of Trade in Agricultural Products (July 27, 2004; extended by Exchange of Letters December 10, 2008)

## **Jamaica**

- ▶ Agreement on Intellectual Property (February 1994)
- ▶ Bilateral Investment Treaty (March 7, 1997)

## **Japan**

- ▶ Market-Oriented Sector-Selective (MOSS) Agreement on Medical Equipment and Pharmaceuticals (January 9, 1986)
- ▶ Exchange of Letters Regarding Tobacco (October 6, 1986)
- ▶ Foreign Lawyers Agreement (February 27, 1987)
- ▶ Science and Technology Agreement (June 20, 1988; extended June 16, 1993)
- ▶ Procedures to Introduce Supercomputers (June 15, 1990)
- ▶ Measures Relating to Wood Products (June 15, 1990)
- ▶ Policies and Procedures Regarding Satellite Research and Development/Procurement (June 15, 1990)
- ▶ Policies and Procedures Regarding International Value-Added Network Services and Network Channel Terminating Equipment (July 31, 1990)
- ▶ Joint Announcement on Amorphous Metals (September 21, 1990)
- ▶ Measures Further to 1990 Policies and Procedures regarding International Value-Added Network Services (April 27, 1991)
- ▶ Measures Regarding International Value-Added Network Services Investigation Mechanisms (June 25, 1991)

- ▶ United States-Japan Major Projects Arrangement (July 31, 1991; originally negotiated 1988)
- ▶ Measures Related to Japanese Public Sector Procurement of Computer Products and Services (January 22, 1992)
- ▶ United States-Japan Framework for a New Economic Partnership (July 10, 1993)
- ▶ Exchange of Letters Regarding Apples (September 13, 1993)
- ▶ United States-Japan Public Works Agreement (January 18, 1994)
- ▶ Mutual Understanding on Intellectual Property Rights between the Japanese Patent Office and the U.S. Patent and Trademark Office (January 20, 1994)
- ▶ Rice (April 15, 1994)
- ▶ Harmonized Chemical Tariffs (April 15, 1994)
- ▶ Copper (April 15, 1994)
- ▶ Market Access (April 15, 1994)
- ▶ Actions to be Taken by the Japanese Patent Office and the U.S. Patents and Trademark Office pursuant to the January 20, 1994, Mutual Understanding on Intellectual Property Rights (August 16, 1994)
- ▶ Measures by the Government of the United States and the Government of Japan Regarding Insurance (October 11, 1994)
- ▶ Measures on Japanese Public Sector Procurement of Telecommunications Products and Services (November 1, 1994)
- ▶ Measures Related to Japanese Public Sector Procurement of Medical Technology Products and Services (November 1, 1994)
- ▶ Measures Regarding Financial Services (February 13, 1995)
- ▶ Policies and Measures Regarding Inward Direct Investment and Buyer-Supplier Relationships (June 20, 1995)
- ▶ Exchange of Letters on Financial Services (July 26 and 27, 1995)
- ▶ Interim Understanding for the Continuation of Japan-U.S. Insurance Talks (September 30, 1996)

- ▶ United States-Japan Insurance Agreement (December 24, 1996)
- ▶ Japan's Recognition of U.S.-Grade marked Lumber (January 13, 1997)
- ▶ Resolution of WTO dispute with Japan on Sound Recordings (January 13, 1997)
- ▶ National Policy Agency Procurement of VHF Radio Communications System (March 31, 1997)
- ▶ United States-Japan Enhanced Initiative on Deregulation and Competition Policy (June 19, 1997)
- ▶ United States-Japan Agreement on Distilled Spirits (December 17, 1997)
- ▶ First Joint Status Report on Deregulation and Competition Policy (May 29, 1998)
- ▶ United States-Japan Joint Report on Investment (April 28, 1999)
- ▶ Second Joint Status Report on Deregulation and Competition Policy (May 3, 1999)
- ▶ United States-Japan Agreement on NTT Procurement Procedures (July 1, 1999)
- ▶ Third Joint Status Report on Deregulation and Competition Policy (July 19, 2000)
- ▶ Fourth Joint Status Report on Deregulation and Competition Policy (June 30, 2001)
- ▶ United States-Japan Economic Partnership for Growth (June 30, 2001)
- ▶ First Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative (June 25, 2002)
- ▶ Second Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative (May 23, 2003)
- ▶ Third Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative (June 8, 2004)
- ▶ Fourth Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative (November 2, 2005)
- ▶ Fifth Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative (June 29, 2006)
- ▶ Sixth Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative (June 6, 2007)

- ▶ Agreement on Mutual Recognition of Results of Conformity Assessment Procedures between the United States of America and Japan (U.S.-Japan Telecom MRA) (January 1, 2008)
- ▶ Seventh Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative (July 5, 2008)

### **Jordan**

- ▶ Agreement between the United States and Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area (December 17, 2001)
- ▶ Bilateral Investment Treaty (June 12, 2003)

### **Kazakhstan**

- ▶ Agreement on Bilateral Trade Relations (February 18, 1993)
- ▶ Bilateral Investment Treaty (January 12, 1994)

### **Korea**

- ▶ Record of Understanding on Intellectual Property Rights (August 28, 1986)
- ▶ Agreement on Access of U.S. Firms to Korea's Insurance Markets (August 28, 1986)
- ▶ Record of Understanding Concerning Market Access for Cigarettes (May 27, 1988; amended October 16, 1989)
- ▶ Agreement Concerning the Korean Capital Market Promotion Law (September 1, 1988)
- ▶ Agreement on the Importation and Distribution of Foreign Motion Pictures (December 30, 1988)
- ▶ Agreement on Market Access for Wine and Wine Products (January 18, 1989)
- ▶ Investment Agreement (May 19, 1989)
- ▶ Agreement on Liberalization of Agricultural Imports (May 25, 1989)
- ▶ Record of Understanding on Telecommunications (January 23, 1990)
- ▶ Record of Understanding on Telecommunications (February 15, 1990)
- ▶ Exchange of Letters Regarding the 1986 Intellectual Property Rights Agreement: Product Pipeline Protection (February 22, 1990)

- ▶ Record of Understanding on Beef (March 21, 1990)
- ▶ Exchange of Letters on Beef (April 26 and 27, 1990)
- ▶ Agreement on Wine Access (December 19, 1990)
- ▶ Record of Understanding on Telecommunications (February 7, 1991)
- ▶ Agreement on International Value-Added Services (June 20, 1991)
- ▶ Understanding on Telecommunications (February 17, 1992)
- ▶ Exchange of Letters Relating to Korea Telecom Company's Procurement of AT&T Switches (March 31, 1993)
- ▶ Beef Agreements (June 26, 1993; December 29, 1993)
- ▶ Record of Understanding on Agricultural Market Access in the Uruguay Round (December 13, 1993)
- ▶ Exchange of Letters on Telecommunications Issues Relating to Equipment Authorization and Korea Telecom Company's Procurement (March 29, 1995)
- ▶ Agreement on Steel (July 14, 1995)
- ▶ Shelf-Life Agreement (July 20, 1995)
- ▶ Revised Cigarette Agreement (August 25, 1995)
- ▶ Memorandum of Understanding to Increase Market Access for Foreign Passenger Vehicles in Korea (September 28, 1995)
- ▶ Exchange of Letters on Implementation of the 1992 Telecommunications Agreement (April 12, 1996)
- ▶ Korean Commitments on Trade in Telecommunications Goods and Services (July 23, 1997)
- ▶ Agreement on Korean Motor Vehicle Market (October 20, 1998)
- ▶ Exchange of Letters Regarding Tobacco Sector Related Issues (June 14, 2001)
- ▶ Exchange of Letters on Data Protection (March 12, 2002)
- ▶ Record of Understanding between the Governments of the United States and the Republic of Korea Regarding the Extension of Special Treatment for Rice (February 2005)

- ▶ Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (May 10, 2005)

### **Kyrgyzstan**

- ▶ Agreement on Bilateral Trade Relations (May 8, 1992)
- ▶ Bilateral Investment Treaty (January 12, 1994)

### **Latvia**

- ▶ Agreement on Bilateral Trade Relations (August 21, 1992)
- ▶ Bilateral Investment Treaty (November 26, 1996; amended May 1, 2004)
- ▶ Agreement on Trade & Intellectual Property Rights Protection (January 20, 1995)

### **Lithuania**

- ▶ Bilateral Investment Treaty (November 22, 2001; amended May 1, 2004)
- ▶

### **Laos**

- ▶ Bilateral Trade Agreement (February 4, 2005)

### **Macao**

- ▶ Memorandum of Understanding with Macao Concerning Cooperation in Trade in Textile and Apparel Goods (August 8, 2005)

### **Mexico**

- ▶ Agreement with Mexico on Tire Certification (March 8, 1996)
- ▶ Memorandum of Understanding between the United States and Mexico Regarding Areas of Food and Agriculture Trade (April 4, 2002)
- ▶ United States-Mexico Exchange of Letters Regarding Mexico's NAFTA Safeguard on Certain Poultry Products (July 24-25, 2003)
- ▶ Understanding Regarding the Implementation of the WTO Decision on Mexico's Telecommunications Services (June 1, 2004)

- ▶ Agreement between the U.S. Trade Representative and Secretaria de Economia of the United Mexican State on Trade in Tequila (January 17, 2006)
- ▶ Agreement between the U.S. Trade Representative and Secretaria de Economia of the United Mexican State on Trade in Cement (April 3, 2006)
- ▶ Bilateral Agreement on Customs Cooperation regarding Claims of Origin Under FTA Cumulation Provisions (January 26, 2007)
- ▶ Customs Cooperation Agreement with Mexico relating to Textiles Matters (August 15, 2008)

### **Moldova**

- ▶ Agreement on Bilateral Trade Relations (July 2, 1992)
- ▶ Bilateral Investment Treaty (November 25, 1994)

### **Mongolia**

- ▶ Agreement on Bilateral Trade Relations (January 23, 1991)
- ▶ Bilateral Investment Treaty (January 1, 1997)

### **Morocco**

- ▶ Bilateral Investment Treaty (May 29, 1991)
- ▶ United States- Morocco Free Trade Agreement (January 1, 2006)

### **Mozambique**

- ▶ Bilateral Investment Treaty (March 2, 2005)

### **Nicaragua**

- ▶ Bilateral Intellectual Property Rights Agreement with Nicaragua (December 22, 1997)
- ▶ Exchange of Letters on Trade in Textile and Apparel Goods (March 24, 2006)

### **Norway**

- ▶ Agreement on Procurement of Toll Equipment (April 26, 1990)

### **Oman**

- ▶ United States-Oman Free Trade Agreement (January 1, 2009)

## **Panama**

- ▶ Bilateral Investment Treaty (May 30, 1991)
- ▶ Agreement on Bilateral Trade Relations (1994)
- ▶ Agreement on Cooperation in Agricultural Trade (December 20, 2006)
- ▶ Agreement regarding Certain Sanitary and Phytosanitary Measures and Technical Standards Affecting Agricultural Products (December 20, 2006)

## **Paraguay**

- ▶ Memorandum of Understanding on Intellectual Property Rights (March 30, 2004; renewed May 2006, April 2008)

## **Peru**

- ▶ United States-Peru Trade Promotion Agreement (February 1, 2009)
- ▶ Memorandum of Understanding on Intellectual Property Rights (May 23, 1997)
- ▶ Exchange of Letters on Sanitary and Phytosanitary Measures and Technical Barriers to Trade Issues (January 5, 2006)
- ▶ Additional Letter Exchange on Sanitary and Phytosanitary Measures and Technical Barriers to Trade Issues (April 10, 2006)

## **Philippines**

- ▶ Protection and Enforcement of Intellectual Property Rights (April 6, 1993)
- ▶ Agreement regarding Pork and Poultry Meat (February 13, 1998)
- ▶ Memorandum of Understanding with the Philippines Concerning Cooperation in Trade in Textile and Apparel Goods (August 23, 2006)

## **Poland**

- ▶ Business and Economic Relations Treaty (August 6, 1994; amended May 1, 2004)

## **Romania**

- ▶ Agreement on Bilateral Trade Relations (April 3, 1992)
- ▶ Bilateral Investment Treaty (January 15, 1994; amended January 1, 2007)

## **Russia**

- ▶ Trade Agreement Concerning Most Favored Nation and Nondiscriminatory Treatment (June 17, 1992)
- ▶ Joint Memorandum of Understanding on Market Access for Aircraft (January 30, 1996)
- ▶ Agreed Minutes regarding exports of poultry products from the United States to Russia (March 15, March 25, and March 29, 1996)
- ▶ Agreement on Russian Firearms & Ammunition (April 3, 1996; amended 2003)
- ▶ Protocol of the Negotiations between the Experts of Russia and the United States of America on the Issue of U.S. Poultry Meat Imports into the Russian Federation (March 31, 2002)
- ▶ Agreement between the Government of the United States of America and the Government of the Russian Federation on Trade in Certain Types of Poultry, Beef and Pork (June 15, 2005; amended December 29, 2008)
- ▶ Agreement between the Government of the United States of America and the Government of the Russian Federation on Protection and Enforcement of Intellectual Property Rights (November 19, 2006)
- ▶ Agreement between the Government of the United States of America and the Government of the Russian Federation on Market Access for Beef and Beef By-Products (November 16, 2006)
- ▶ Agreement between the Government of the United States of America and the Government of the Russian Federation on Importation of Pork and Pork By-Products into the Russian Federation (November 19, 2006)
- ▶ Agreement between the Government of the United States of America and the Government of the Russian Federation on Inspection of Facilities for Exporting Pork and Poultry to the Russian Federation (November 19, 2006)
- ▶ Agreement between the Government of the United States of America and the Government of the Russian Federation on Agricultural Biotechnology (November 19, 2006)
- ▶ Agreement between the Government of the United States of America and the Government of the Russian Federation on Establishment of Import licensing Procedures for Imports of Goods Containing Encryption Technology (November 19, 2006)

- ▶ Exchange of Letters between the Government of the United States of America and the Government of the Russian Federation on Tariff Treatment of Certain Aircraft Imported Under Operational Lease (November 19, 2006)
- ▶ Exchange of Letters between the Ministry of Economic Development and Trade of the Russian Federation and the Office of the U.S. Trade Representative on Tariff Treatment of Certain Combine Harvester-Threshers and Self-Propelled Forage Harvesters (November 19, 2006)
- ▶ Letter on Market Access between the United States and the Russian Federation for Service Suppliers in Certain Energy Related Sectors (November 19, 2006)
- ▶ Letter on Market Access between the United States and the Russian Federation for Certain Insurance Firms (November 19, 2006)

### **Senegal**

- ▶ Bilateral Investment Treaty (October 25, 1990)

### **Singapore**

- ▶ Agreement on Intellectual Property Rights Protection (April 27, 1987)
- ▶ Agreement to Implement Phase I and Phase II of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (October 8, 2003)
- ▶ United States-Singapore Free Trade Agreement (January 1, 2004)

### **Slovakia**

- ▶ Bilateral Investment Treaty (December 19, 1992; amended May 1, 2004)

### **Sri Lanka**

- ▶ Agreement on the Protection and Enforcement of Intellectual Property Rights (September 20, 1991)
- ▶ Bilateral Investment Treaty (May 1, 1993)

### **Suriname**

- ▶ Agreement on Bilateral Trade Relations (1993)

### **Switzerland**

- ▶ Exchange of Letters on Financial Services (November 9 and 27, 1995)

## **Taiwan**

- ▶ Agreement on Customs Valuation (August 22, 1986)
- ▶ Agreement on Export Performance Requirements (August 1986)
- ▶ Agreement Concerning Beer, Wine, and Cigarettes (1987)
- ▶ Agreement on Turkeys and Turkey Parts (March 16, 1989)
- ▶ Agreement on Beef (June 18, 1990)
- ▶ Agreement on Intellectual Property Protection (June 5, 1992)
- ▶ Agreement on Intellectual Property Protection (Trademark) (April 1993)
- ▶ Agreement on Intellectual Property Protection (Copyright) (July 16, 1993)
- ▶ Agreement on Market Access (April 27, 1994)
- ▶ Telecommunications Liberalization by Taiwan (July 19, 1996)
- ▶ United States-Taiwan Medical Device Issue: List of Principles (September 30, 1996)
- ▶ Agreement on Market Access (February 20, 1998)
- ▶ Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (March 16, 1999)
- ▶ Understanding on Government Procurement (August 23, 2001)

## **Tajikistan**

- ▶ Agreement on Bilateral Trade Relations (November 24, 1993)

## **Thailand**

- ▶ Agreement on Cigarette Imports (November 23, 1990)
- ▶ Agreement on Intellectual Property Protection and Enforcement (December 19, 1991)

## **Trinidad and Tobago**

- ▶ Agreement on Intellectual Property Protection and Enforcement (September 26, 1994)
- ▶ Bilateral Investment Treaty (December 26, 1996)

## **Tunisia**

- ▶ Bilateral Investment Treaty (February 7, 1993)

## **Turkey**

- ▶ Bilateral Investment Treaty (May 18, 1990)
- ▶ WTO Settlement Concerning Taxation of Foreign Film Revenues (July 14, 1997)

## **Turkmenistan**

- ▶ Agreement on Bilateral Trade Relations (October 25, 1993)

## **Ukraine**

- ▶ Agreement on Bilateral Trade Relations (June 23, 1992)
- ▶ Bilateral Investment Treaty (November 16, 1996)
- ▶ Agreement between the Government of the United States of America and the Government of the Republic of Ukraine on Sanitary and Phytosanitary Measures (February 21, 2007)
- ▶ Agreement between the U.S. and the Ukraine on Export Duties on Ferrous and Non-Ferrous Scrap Metal (February 22, 2007)

## **Uruguay**

- ▶ Bilateral Investment Treaty (November 1, 2006)

## **Uzbekistan**

- ▶ Agreement on Bilateral Trade Relations (January 13, 1994)

## **Vietnam**

- ▶ Agreement between the United States and Vietnam on Trade Relations (December 10, 2001)
- ▶ Copyright Agreement (June 27, 1997)
- ▶ Exchange of Letters on Equivalence of Food Safety Inspection Systems (May 31, 2006)
- ▶ Exchange of Letters on Beef (May 31, 2006)
- ▶ Exchange of Letters on Biotechnology (May 31, 2006)

- ▶ Exchange of Letters on Energy Services (May 31, 2006)
- ▶ Exchange of Letters on Elimination of Prohibited Subsidies to Textile and Garment Sector (May 31, 2006)
- ▶ Bilateral Agreement on Export Duties on Ferrous and Nonferrous Scrap Metals (May 31, 2006)
- ▶ Exchange of Letters on Shelf Life (May 31, 2006)
- ▶ Acceptance of U.S. Certificates for Exports of Poultry Meat and Meat Products (May 31, 2006)
- ▶ Agreement to Implement Phase I of the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (June 19, 2008)

## **II. Agreements that have been Negotiated but have not yet Entered into Force**

Following is a list of trade agreements concluded by the United States since 1984 that have not yet entered into force.

### **Multilateral Agreements**

- ▶ OECD Agreement on Shipbuilding (December 21, 1994; interested parties evaluating implementing legislation)
- ▶ International Tropical Timber Agreement (concluded January 27, 2006; when enters into force, it will replace the International Tropical Timber Agreement, 1997)
- ▶ International Coffee Agreement (concluded September 28, 2007; when enters into force it will replace the International Coffee Agreement, 2001)
- ▶ Agreement with Mexico and Canada on adjustments to the NAFTA Rules of Origin (April 11, 2008)

### **Bilateral Agreements**

#### **Belarus**

- ▶ Bilateral Investment Treaty (signed January 15, 1994; pending exchange of instruments)

#### **Colombia**

- ▶ United States-Colombia Trade Promotion Agreement (signed November 22, 2006; entry into force pending); Protocol of Amendment (signed June 28, 2007)

#### **El Salvador**

- ▶ Bilateral Investment Treaty (signed March 10, 1999; pending exchange of instruments)

#### **Estonia**

- ▶ Trade and Intellectual Property Rights Agreement (April 19, 1994; requires approval by Estonian legislature)

#### **Korea**

- ▶ United States-Korea Free Trade Agreement (signed June 30, 2007; approval pending)

## **Lithuania**

- ▶ Trade and Intellectual Property Rights Agreement (April 26, 1994; requires approval by Lithuanian legislature)

## **Nicaragua**

- ▶ Bilateral Investment Treaty (signed July 1, 1995; pending ratification by United States and exchange of instruments of ratification.)

## **Panama**

- ▶ United States-Panama Trade Promotion Agreement (signed June 28, 2007; entry into force pending)

## **Russia**

- ▶ Bilateral Investment Treaty (signed June 17, 1992; pending approval by Russian Parliament and exchange of instruments of ratification)

## **Uzbekistan**

- ▶ Bilateral Investment Treaty (signed December 16, 1994; pending exchange of instruments)

### **III. Other Trade-Related Agreements and Declarations**

Following is a list of other trade-related agreements and declarations negotiated by the Office of the United States Trade Representative from January 1993 through June 2007. These documents provide the framework for negotiations leading to future trade agreements or establish mechanisms for structured dialogue in order to develop specific steps and strategies for addressing and resolving trade, investment, intellectual property and other issues among the signatories.

#### **Multilateral Agreements and Declarations**

- ▶ Second Ministerial of the World Trade Organization, Ministerial Declaration on Global Electronic Commerce (May 20, 1998)
- ▶ WTO Guidelines for the Negotiation of Mutual Recognition Agreements on Accountancy (May 29, 1997)
- ▶ Free Trade Area of the Americas
  - ▶ First Summit of the Americas, Declaration of Principles and Plan of Action, Miami, Florida (December 11, 1994)
  - ▶ Trade Ministerial Joint Declaration, Denver, USA (June 30, 1995)
  - ▶ Second Ministerial Trade Meeting Joint Declaration, Cartagena, Colombia (March 21, 1996)
  - ▶ Third Trade Ministerial Meeting Joint Declaration, Belo Horizonte, Brazil (May 16, 1997)
  - ▶ Fourth Trade Ministerial Joint Declaration, San Jose, Costa Rica (March 19, 1998)
  - ▶ Second Summit of the Americas Declaration of Principles and Plan of Action, Santiago, Chile (April 19, 1998)
  - ▶ Fifth Trade Ministerial Meeting, Declaration of Ministers, Toronto, Canada (November 4, 1999)
  - ▶ Sixth Meeting of Ministers of Trade of the Hemisphere Ministerial Declaration, Buenos Aires, Argentina (April 7, 2001)
  - ▶ Third Summit of the Americas Declaration of Principles and Plan of Action, Quebec City, Canada (April 22, 2001)
  - ▶ Seventh Meeting of Ministers of Trade of the Hemisphere Ministerial Declaration, Quito, Ecuador (November 1, 2002)

- ▶ Eighth Ministerial Meeting, Ministerial Declaration, Miami, USA (November 20, 2003)
- ▶ Fourth Summit of the Americas Declaration of Mar Del Plata and Plan of Action, Mar del Plata, Argentina (November 5, 2005)
- ▶ Asia Pacific Economic Cooperation
  - ▶ Declaration of Common Resolve (November 15, 1994)
  - ▶ Declaration for Action (November 19, 1995)
  - ▶ Declaration on an APEC Framework for Strengthening Economic Cooperation and Development (November 22-23, 1996)
  - ▶ Declaration on Connecting the APEC Community (November 25, 1997)
  - ▶ Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Agreement (June 5, 1998)
  - ▶ Declaration on Strengthening the Foundations for Growth (November 18, 1998)
  - ▶ Declaration: the Auckland Challenge (September 13, 1999)
  - ▶ Declaration: Delivering to the Community (November 16, 2000)
  - ▶ Declaration: Meeting New Challenges in the New Century (October 21, 2001)
  - ▶ Declaration: Leaders Declaration (October 27, 2002)
  - ▶ Declaration: Partnership for the Future (October 21, 2003)
- ▶ Organization of American States (OAS), Inter-American Telecommunications Commission (CITEL) Mutual Recognition Agreement for Conformity Assessment of Telecommunications Equipment (October 29, 1999)
- ▶ United States-Andean Community Trade and Investment Council Agreement (October 30, 1998)
- ▶ United States-Central American Regional Trade and Investment Framework Agreement (March 20, 1998)
- ▶ United States-Association of Southeast Asian Nations Trade and Investment Framework Arrangement (August 25, 2006)

## **Bilateral Documents and Declarations**

### **Afghanistan**

- ▶ United States-Afghanistan Trade and Investment Framework Agreement (September 21, 2004)

### **Algeria**

- ▶ United States-Algeria Trade and Investment Framework Agreement (July 13, 2001)

### **Argentina**

- ▶ Bilateral Council on Trade and Investment (February 2002)

### **Association of Southeast Asian Nations (ASEAN)**

- ▶ United States-Asean Trade and Investment Framework Agreement (August 5, 2006)

### **Brazil**

- ▶ Bilateral Consultative Mechanism (June 25, 2001)

### **Brunei Darussalam**

- ▶ United States-Brunei Darussalam Trade and Investment Framework Agreement (December 16, 2002)

### **Cambodia**

- ▶ United States-Cambodia Trade and Investment Framework Agreement (July 14, 2006)

### **Caribbean Common Market**

- ▶ United States-Caribbean Common Market Trade and Investment Framework Agreement (1991)

### **Central Asian Economies**

- ▶ United States-Central Asian Trade and Investment Framework Agreement (June 1, 2004)

### **China**

- ▶ United States-China Joint Commission on Commerce and Trade Agreements (April 21, 2004)

- ▶ United States-China Joint Commission on Commerce and Trade Agreements (July 11, 2005)

### **Common Market for Eastern and Southern Africa**

- ▶ United States-Common Market for Eastern and Southern Africa Trade and Investment Framework Agreement (October 2001)

### **East African Community**

- ▶ United States-East African Community Trade and Investment Framework Agreement (July 16, 2008)

### **Egypt**

- ▶ United States-Egypt Trade and Investment Framework Agreement (July 1, 1999)

### **European Union**

- ▶ United States-EU Transatlantic Economic Partnership (May 18, 1998)
- ▶ United States-EU Joint Action Plan for the Transatlantic Economic Partnership (November 9, 1998)

### **Georgia**

- ▶ United States-Georgia Trade and Investment Framework Agreement (June 20, 2007)

### **Ghana**

- ▶ United States-Ghana Trade and Investment Framework Agreement (February 26, 1999)

### **Iceland**

- ▶ United States-Iceland Trade and Investment Cooperation Forum Agreement (January 15, 2009)

### **Indonesia**

- ▶ United States-Indonesia Understanding on a Trade and Investment Council (July 16, 1996)
- ▶ Memorandum of Understanding on Combating Illegal Logging and Associated Trade (November 16, 2006)

## **Iraq**

- ▶ United States-Iraq Trade and Investment Framework Agreement (July 11, 2005)

## **Japan**

- ▶ United States-Japan Joint Statement on the Bilateral Steel Dialogue (September 24, 1999)
- ▶ Exchange of Letters between the United States and Japan—Letters Regarding Electro-Magnetic Compatibility (EMC) Testing of Unintentional Radiators and Industrial Scientific and Medical (ISM) Equipment (February 26, 2007)

## **Kuwait**

- ▶ United States-Kuwait Trade and Investment Framework Agreement (February 6, 2004)

## **Lebanon**

- ▶ United States-Lebanon Trade and Investment Framework Agreement (November 30, 2006)

## **Liberia**

- ▶ United States-Liberia Trade and Investment Framework Agreement (February 15, 2007)

## **Malaysia**

- ▶ United States-Malaysia Trade and Investment Framework Agreement (May 10, 2004)

## **Mauritius**

- ▶ United States-Mauritius Trade and Investment Framework Agreement (September 18, 2006)

## **Mongolia**

- ▶ United States-Mongolia Trade and Investment Framework Agreement (July 15, 2004)

## **Mozambique**

- ▶ United States-Mozambique Trade and Investment Framework Agreement (June 21, 2005)

## **New Zealand**

- ▶ United States-New Zealand Trade and Investment Framework Agreement (October 2, 1992)

## **Nigeria**

- ▶ United States-Nigeria Trade and Investment Framework Agreement (February 16, 2000)

## **Oman**

- ▶ United States-Oman Trade and Investment Framework Agreement (July 7, 2004)

## **Pakistan**

- ▶ United States-Pakistan Trade and Investment Framework Agreement (June 25, 2003)

## **Paraguay**

- ▶ Joint Commission on Trade and Investment (September 26, 2003)

## **Philippines**

- ▶ United States-Philippines Trade and Investment Framework Agreement (1989)

## **Qatar**

- ▶ United States-Qatar Trade and Investment Framework Agreement (March 19, 2004)

## **Rwanda**

- ▶ United States-Rwanda Trade and Investment Framework Agreement (June 7, 2006)

## **Saudi Arabia**

- ▶ United States-Saudi Arabia Trade and Investment Framework Agreement (July 31, 2003)

## **South Africa**

- ▶ United States-South Africa Trade and Investment Framework Agreement (February 18, 1999)

## **Southern Africa Customs Union**

- ▶ United States-Southern Africa Customs Union Trade, Investment, and Development Cooperative Agreement (July 16, 2008)

## **Sri Lanka**

- ▶ United States-Sri Lanka Trade and Investment Framework Agreement (July 25, 2002)

## **Switzerland**

- ▶ United States-Switzerland Trade and Investment Cooperation Forum Agreement (May 25, 2006)

## **Taiwan**

- ▶ United States-Taiwan Trade and Investment Framework Agreement (September 19, 1994)

## **Thailand**

- ▶ United States-Thailand Trade and Investment Framework Agreement (October 23, 2002)

## **Tunisia**

- ▶ United States-Tunisia Trade and Investment Framework Agreement (October 2, 2002)

## **Turkey**

- ▶ United States-Turkey Trade and Investment Framework Agreement (September 29, 1999)

## **United Arab Emirates (UAE)**

- ▶ United States-United Arab Emirates Trade and Investment Framework Agreement (March 15, 2004)

## **Uruguay**

- ▶ United States-Uruguay Bilateral and Commercial Trade Review (May 20, 1999)
- ▶ Joint Commission on Trade and Investment (January 25, 2007)
- ▶ United States-Uruguay Trade and Investment Framework Agreement (January 25, 2007)

## **Vietnam**

- ▶ United States-Vietnam Trade and Investment Framework Agreement (June 21, 2007)

## **West African Economic and Monetary Union**

- ▶ United States-West African Economic and Monetary Union Trade and Investment Framework Agreement (April 24, 2002)

## **Yemen**

- ▶ United States-Yemen Trade and Investment Framework Agreement (February 6, 2004)