

# Table of Contents

## THE PRESIDENT'S TRADE POLICY AGENDA

I. Overview and the 2004 Agenda .....	1
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## THE PRESIDENT'S 2004 ANNUAL REPORT ON THE TRADE AGREEMENTS PROGRAM

II. The World Trade Organization .....	1
III. Bilateral and Regional Negotiations.....	105
A. Free Trade Agreements .....	105
1. Chile .....	105
2. Singapore .....	106
3. Jordan .....	107
4. Israel .....	108
5. U.S.-Central American FTA (CAFTA) Negotiations .....	108
6. Australia FTA Negotiations.....	109
7. Morocco FTA Negotiations.....	110
8. Southern Africa FTA Negotiations.....	110
B. Regional Initiatives .....	110
1. Free Trade Area of the Americas .....	110
2. Enterprise for ASEAN Initiative.....	112
3. NAFTA.....	113
4. MEFTA.....	115
5. APEC .....	116
C. The Americas .....	119
1. Canada .....	119
2. Mexico .....	122
3. Brazil and Southern Cone .....	123
4. The Andean Community .....	126
5. Central America and the Caribbean.....	127
D. Western Europe.....	130
1. EU .....	130
2. EFTA .....	134
3. Turkey .....	134
E. Central, Eastern and Southeast Europe .....	135
F. Russia and Newly Independent States.....	137
1. Normal Trade Relations Status.....	137
2. Intellectual Property Rights .....	138
3. Generalized System of Preferences .....	139
4. WTO Accession .....	139
5. Bilateral Trade Agreements and Bilateral Investment Treaties .....	140
6. Country Specific Issues.....	140

G. Mediterranean/Middle East.....	141
1. Morocco .....	141
2. Egypt.....	141
3. Israel .....	142
4. Jordan .....	142
5. Trade and Investment Framework Agreements .....	143
6. WTO Accession .....	143
7. Intellectual Property Rights .....	143
8. Bahrain.....	143
H. Asia and the Pacific .....	143
1. Australia.....	144
2. New Zealand .....	144
3. Association of Southeast Asian Nations.....	145
4. Republic of Korea .....	150
5. India.....	158
6. Pakistan .....	160
7. Afghanistan.....	160
8. People's Republic of China.....	161
9. Japan .....	165
10. Taiwan .....	182
11. Hong Kong.....	184
12. Sri Lanka.....	184
I. Africa .....	184
1. SACU FTA.....	184
2. Implementing AGOA.....	184
3. Promoting Economic Reform, Growth and Development.....	186
4. Expanding Bilateral and Regional Trade and Investment Relationships.....	186
5. Facilitating Sub-Saharan Africa's Integration into the Multilateral Trading System .....	188
<b>IV. Other Multilateral Activities .....</b>	<b>189</b>
A. Trade and the Environment.....	189
B. Trade and Labor.....	192
C. Organization for Economic Cooperation and Development.....	196
D. Semiconductor Agreement.....	205
E. Steel Trade Policy .....	205

<b>V. Trade Enforcement Activities .....</b>	<b>209</b>
A. Enforcing U.S. Trade Agreements.....	209
1. Overview .....	209
2. WTO Dispute Settlement.....	210
3. Other Monitoring and Enforcement Activities .....	210
B. U.S. Trade Laws .....	212
1. Section 301 .....	212
2. Special 301 .....	214
3. Section 1377 Telecom .....	219
4. Antidumping Actions .....	219
5. Countervailing Duty Actions .....	220
6. Import Practices (sections 337, 201, 421, China Textiles Safeguard).....	221
7. Trade Adjustment Assistance .....	224
(A) Labor .....	224
(B) Firms and Industries.....	225
8. Generalized System of Preferences .....	226
<b>VI. Trade Policy Development.....</b>	<b>229</b>
A. Trade Capacity Building .....	229
1. FTAA-Hemispheric Cooperation .....	230
2. Central America.....	231
3. Africa .....	231
B. Congressional Affairs.....	232
C. Private Sector Advisory System and Intergovernmental .....	233
D. Policy Coordination .....	237
 <b>Annex I. U.S. Trade in 2003</b>	
 <b>Annex II. WTO Background</b>	
 <b>Annex III. List of Trade Agreements</b>	

# List of Frequently Used Acronyms

AD .....	Antidumping
AGOA.....	African Growth and Opportunity Act
APEC.....	Asia Pacific Economic Cooperation
ASEAN .....	Association of Southeast Asian Nations
ATC .....	Agreement on Textiles and Clothing
ATPA .....	Andean Trade Preferences Act
ATPDEA .....	Andean Trade Promotion & Drug Eradication Act
BIA .....	Built-In Agenda
BIT .....	Bilateral Investment Treaty
BOP .....	Balance of Payments
CACM .....	Central American Common Market
CAFTA .....	Central American Free Trade Area
CARICOM.....	Caribbean Common Market
CBERA .....	Caribbean Basin Economic Recovery Act
CBI .....	Caribbean Basin Initiative
CFTA.....	Canada Free Trade Agreement
CITEL .....	Telecommunications division of the OAS
COMESA.....	Common Market for Eastern & Southern Africa
CTE .....	Committee on Trade and the Environment
CTG .....	Council for Trade in Goods
CVD .....	Countervailing Duty
DSB .....	Dispute Settlement Body
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
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
UNCTAD .....	United Nations Conference on Trade & Development
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
WTO .....	World Trade Organization

# The President's Trade Policy Agenda

# I. Overview and the 2004 Agenda

Free trade creates higher-paying jobs for American workers, more choices and lower prices for hardworking families, reduces the cost of doing business in the global economy, creates new markets and new opportunities for U.S. products and services, helps cut poverty and raise incomes through economic growth, and helps to deepen the roots of democracy and stability in parts of the world that have seen too little of both. This is an important time to be pursuing those objectives.

Trade and open markets contribute to healthy, growing economies—U.S. exports accounted for 25 percent of U.S. economic growth over the past decade and supported an estimated 12 million jobs. The Bush Administration will continue to move forward in 2004 to tear down barriers, cut import taxes and red tape, work for a level playing field, reduce poverty through growth, and build new markets that will support higher-paying U.S. jobs.

Three years ago, the Bush Administration initiated a new trade strategy for America: to pursue reinforcing trade initiatives globally, regionally, and bilaterally. Through an ambitious trade agenda, the United States is working to secure the benefits of open markets for American families, farmers, workers, consumers, and businesses. By pursuing multiple free trade initiatives, the United States is creating a “competition for liberalization” that provides leverage for openness in all negotiations, establishes models of success that can be used on many fronts, and develops a fresh political dynamic that puts free trade on the offensive.

This strategy is producing impressive results. Just a few years ago, efforts to launch a new global trade round had collapsed in the chaos of the 1999 Seattle ministerial. The United States was stymied on trade liberalization because

Presidential negotiating authority had lapsed in 1994, and three attempts to renew it had failed.

In this challenging environment, President Bush worked to reverse these setbacks. With bipartisan support, the President secured Congressional approval of the Trade Act of 2002.

The United States played a key role in defining and launching a new round of global trade talks at the World Trade Organization (WTO) at Doha in late 2001, achieving what could not be accomplished in Seattle. That same year we completed the unfinished business of China’s and Taiwan’s entry to the WTO, establishing a vital legal framework for expanding U.S. exports and integrating China’s economy into a system of global rules. Also in 2001, the Administration worked with Congress to pass a Free Trade Agreement (FTA) with Jordan and a basic trade accord with Vietnam. After the 2000 election, President Clinton had announced an interest in FTAs with Singapore and Chile, and this Administration followed up by negotiating the accords in 2002 and gaining Congressional approval in 2003.

The most important aspect of the Trade Act of 2002 was the renewal of the President’s trade negotiating authority. In 2003, the Administration put that authority to good use, promoting global negotiations in the WTO, working toward a Free Trade Area of the Americas (FTAA), completing and winning Congressional approval of state-of-the-art free trade agreements with Chile and Singapore, launching bilateral free trade negotiations with twelve more nations (concluding talks with four of them), announcing its intention to begin free trade negotiations with eight additional countries, and putting forward regional trade strategies to deepen U.S. trade and economic relationships in Southeast Asia and the Middle East.

The Trade Act of 2002 also renewed and improved trade preferences covering an estimated \$20 billion of business with developing countries in Africa, Latin America, and Asia through the renewal and improvement of the Andean Trade Preference Act, the African Growth and Opportunity Act, and the renewal of benefits under the U.S. Generalized System of Preferences. In addition, the Trade Act of 2002 tripled the level of trade adjustment assistance available to U.S. workers to nearly six billion dollars over a five-year period, which will help train American workers to compete for the jobs of the future.

In 2004, the United States will seek to expand on this record of accomplishment, with a trade liberalizing agenda that will be active and comprehensive. While working to further open markets and level the playing field for U.S. exports of goods and services, the Administration will also continue to focus on monitoring and enforcing existing U.S. trade agreements and trade laws, building the capacity of developing countries to participate in the global economy, and making the case for free trade to the American public.

## **Pressing Forward in the WTO**

On the global front, the United States is pressing an initiative to regain momentum in 2004. Having played a key role in launching the Doha Development Agenda, the United States followed up by proposing the elimination of all global tariffs on consumer and industrial goods by 2015, substantial cuts in farm tariffs and trade-distorting subsidies, and broad opening of services markets. Indeed, we are the only major country in the negotiations to put forward ambitious proposals in all three areas of the market access negotiations. These proposals reflect extensive consultations with Congress and the private sector. In addition to laying the groundwork for bold market opening, the United States took the lead in resolving the contentious access-to-medicines issue in August 2003. But at the Cancun WTO meeting in September, some

wanted to pocket our offers on agriculture, goods, and services without opening their own markets, a position we will not accept.

Despite the deadlock at Cancun, the United States continued its leadership role in the Doha negotiations. Only a few weeks after Cancun, more than twenty diverse APEC economies joined the United States in calling for a resumption of WTO negotiations, using the last Cancun text as a point of departure. In December, the WTO General Council completed its work for the year with an important report by its Chairman on the key issues that need to be addressed if the Doha Development Agenda is to move forward.

With signs that many countries concluded that the Cancun impasse was a lost opportunity, the Administration, in January, put forward a number of “common sense” suggestions to move the Doha negotiations forward in 2004. In a letter to all WTO ministers responsible for trade, the United States offered a realistic assessment that progress this year will depend on the willingness of Members to focus on the core agenda of market access for agriculture, manufactured goods, and services. In agriculture, the letter suggested that WTO Members agree to eliminate agricultural export subsidies by a date certain, agree to substantially decrease and harmonize levels of trade-distorting domestic support, and seek a substantial increase in real market access opportunities both in developed and major developing economies. The letter noted that the United States continues to stand by its 2002 proposal to set a goal of total elimination of trade-distorting agricultural subsidies and barriers to market access.

For manufactured goods, the United States proposed that WTO Members pursue an ambitious tariff-cutting formula that includes sufficient flexibility so that the methodology will work for all economies. In addition to the tariff-cutting formula, sectoral zero-tariff initiatives would be an integral part of the negotiations, and the United States suggested use of a “critical



mass” approach to define participation in sectoral initiatives. The United States also emphasized the consensus for addressing non-tariff trade barriers in the Doha negotiations.

In the important area of services, the United States suggested that Ministers press for meaningful services offers from a majority of WTO members, as well as make available technical assistance to help developing countries present offers. With regard to the so-called “Singapore Issues,” the United States now suggests proceeding solely with negotiations on trade facilitation.

The initial response to this initiative has been very positive both from overseas and among domestic constituencies, suggesting that 2004 need not be a lost year for the Doha WTO negotiations. As a follow-up step, the Administration has initiated a series of consultations in Geneva and in capitals to meet with Ministers and senior officials, listen to ideas, and work for progress.

### **Advancing Negotiations in the Free Trade Area of the Americas**

Since taking office, the Administration has been working to transform years of unfocused Free Trade Area of the Americas (FTAA) talks into a real market-opening initiative, with a concentration on first removing the barriers that most affect trade. The FTAA would be the largest free trade zone in the world, covering 800 million people with a combined gross domestic product of over \$13 trillion. It would expand U.S. access to Western Hemisphere markets, where tariff barriers are currently much higher than the U.S. average of 2 percent, and where non-tariff barriers are abundant. It is estimated that an average family of four would see an income gain, through greater purchasing power and higher income, of more than \$800 per year from goods and services liberalization in the FTAA.

At the Summit of the Americas in Quebec City in 2001, the United States led the FTAA into a period of concrete market access negotiations, and in February 2003, the Administration put

forward—on schedule—its market access offers to FTAA partners in the areas of agriculture, industrial goods, services, investment, and government procurement. The U.S. market access proposal was comprehensive and bold: about 65 percent of U.S. imports of manufactured goods from the Hemisphere (not already covered by NAFTA) would be duty-free immediately upon entry into force of FTAA, with all Hemispheric duties on such products eliminated by 2015. The U.S. offer would provide for immediate elimination of tariffs—if others reciprocate—in key sectors such as textiles and apparel, chemicals, construction and mining equipment, electrical equipment, energy products, environmental products, information technology, medical equipment, paper, steel, and wood products.

The U.S. offers of February 2003 demonstrate a strong commitment to the FTAA, and built momentum for focusing the negotiations on the core issues of market access. In November 2003, at the FTAA Ministerial in Miami co-chaired by the United States and Brazil, the 34 nations of the hemisphere agreed: to establish a common set of rights and obligations covering all nine areas under negotiation; that those nations that are prepared to go further could do so through plurilateral arrangements in some areas; and on a schedule to seek to complete the FTAA.

### **Spanning the Globe With Bilateral Free Trade Agreements**

Miami also provided the venue for the announcement of several new U.S. bilateral free trade initiatives, capping a busy year on the bilateral trade front. In 2003, the United States signed free trade agreements with Chile and Singapore, and those agreements won strong bipartisan majorities in Congress. These comprehensive, state-of-the-art FTAs set modern rules for 21st Century commerce and broke new ground in areas such as services, e-commerce, intellectual property protection, transparency, and the effective enforcement of environmental and labor laws to help ensure a level playing field for America’s workers. They also built on the experi-

ence of prior free trade agreements and will serve as useful models to advance other U.S. bilateral free trade initiatives in 2004.

In Latin America, for example, the long-sought FTA with Chile took effect on the tenth anniversary of NAFTA, and only two weeks after the Administration concluded a U.S.-Central America Free Trade Agreement (CAFTA) with El Salvador, Guatemala, Honduras, and Nicaragua. In early 2004, the United States completed Costa Rica's participation in CAFTA, and is now negotiating to include the Dominican Republic, creating what would be the second-largest U.S. export market in Latin America, behind only Mexico. This year the United States intends to launch new FTA negotiations with Panama, Colombia, and Peru, and will continue preparatory work for FTA negotiations with Bolivia and Ecuador, launching negotiations with those nations when they are ready. Taken together, the United States is on track to gain the benefits of free trade with more than two-thirds of the Western Hemisphere through sub-regional and bilateral FTAs.

In Southeast Asia and the Middle East, the President has announced initiatives to offer countries a step-by-step pathway to deeper trade and economic relationships with the United States. The Enterprise for ASEAN Initiative (EAI) and the plan for a Middle East Free Trade Area (MEFTA) both start by helping non-member countries to join the WTO, strengthening the global rules-based system. For some countries further along the path toward an open economy, the United States will negotiate Trade and Investment Framework Agreements (TIFAs) and Bilateral Investment Treaties (BITs). These customized arrangements can be employed to resolve trade and investment issues, to improve performance in areas such as intellectual property rights and customs enforcement, and to lay the groundwork for a possible FTA.

President Bush announced the Enterprise for ASEAN Initiative in October 2002. Significant progress was made in 2003, and the stage has

been set for further achievements in 2004. With the newly enacted Singapore FTA to serve as a guidepost for free trade with ASEAN nations, the President announced that he would begin negotiations for a comprehensive free trade agreement with Thailand in the second quarter of 2004. At the Cancun WTO Ministerial last September, Cambodia completed its accession to the World Trade Organization, taking another step in joining the global rules-based economy. Spurred by the progress of its neighbors, Vietnam is also working toward WTO membership, building on the foundation of a basic bilateral trade agreement with the United States that was enacted by Congress in 2001. And the United States is using TIFAs with the Philippines, Indonesia, and Brunei to solve practical trade problems and build closer bilateral trade ties.

The Middle East Free Trade Area initiative, announced by the President in May 2003, offers a similar pathway for the Maghreb, the Gulf states, and the Levant. In addition to helping reforming countries become WTO Members, the initiative will build on the FTAs with Jordan and Israel; provide assistance to build trade capacity and expand trade so countries can benefit from integration into the global trading system; and will launch, in consultation with Congress, new bilateral free trade agreements with governments committed to high standards and comprehensive trade liberalization.

The U.S.-Jordan FTA entered into force in December 2001, after the Administration worked with members of both parties in the House and Senate to prepare the way. As a result, trade between the United States and Jordan has nearly tripled in only three years. In 2003, the Administration launched free trade negotiations with Morocco, which are close to completion. In January 2004, the United States began free trade negotiations with Bahrain. These two moderate Arab states have been leaders in reforming their economies as well as their political systems. In 2004, the United States will continue its efforts to bring Saudi Arabia into the WTO and will expand its network of TIFAs and BITs

throughout the region. The United States has 10 TIFAs in the region, most recently signing agreements with Saudi Arabia, Kuwait, and Yemen. As more countries in the Middle East pursue free trade initiatives with the United States, the Administration will work to integrate these arrangements with the goal of creating a region-wide free trade area by 2013. The MEFTA complements the President's broader foreign policy goals by bringing economic hope and opportunity to the citizens of the Middle East.

In Africa, the African Growth and Opportunity Act (AGOA)—enacted in 2000 and expanded in 2002—has created tangible incentives for commercial and economic reform by providing enhanced access to the U.S. market for products from 38 eligible sub-Saharan nations. Enhancements made in 2002 to the African Growth and Opportunity Act—known as “AGOA II”—substantially improved access for imports from beneficiary sub-Saharan African countries. To build on this success as called for in the AGOA legislation, in 2003, the United States launched FTA negotiations with the five countries of the Southern African Customs Union (SACU): Botswana, Lesotho, Namibia, South Africa, and Swaziland. The U.S.-SACU FTA will be a first-of-its-kind agreement on the continent, building U.S. ties with sub-Saharan Africa even as it strengthens regional integration among the SACU nations.

The U.S. strategy is to seek bilateral free trade agreements with both developing and developed nations. Negotiations with Australia were launched in spring 2003 and concluded in February 2004. The U.S.-Australia FTA achieves the most significant immediate reduction of industrial tariffs of any U.S. free trade agreement. Therefore, once Congress enacts the FTA, the agreement will provide immediate benefits for America's manufacturing workers and companies. More than 99 percent of U.S. exports of manufactured goods to Australia will become duty-free immediately upon entry into force of the agreement. Manufactured goods currently account for 93 percent of total U.S. goods exports

to Australia. U.S. manufacturers estimate that the elimination of tariffs could result in \$2 billion per year in increased U.S. exports of manufactured goods.

## **Ensuring a Level Playing Field with China**

Since China joined the WTO, it has become America's sixth-largest export market. U.S. exports to China grew 75 percent over the last three years, even as U.S. exports to the rest of the world declined. China has become a major consumer of U.S. manufactured exports, such as electrical machinery and numerous types of components and equipment. The market share of U.S. service providers in China has also been increasing rapidly in many sectors. Meanwhile, growth in exports to China of agricultural products has been robust; for example, U.S. exports of soybeans reached an all-time high in 2003, and cotton exports were up 423 percent over 2002.

In 2003, China's progress in implementing its WTO market-opening commitments slowed. In response, senior Administration officials met frequently with Chinese counterparts in Washington, Beijing, and at the WTO in Geneva to address shortcomings in China's WTO compliance. They delivered a clear and consistent message: China must increase the openness of its market and treat U.S. goods and services fairly if support in the United States for an open market with China is to be maintained.

As a result, China has taken steps to correct systemic problems in its administration of the tariff-rate quota (TRQ) system for bulk agricultural commodities, and relaxed certain market constraints in soybeans and cotton trade, allowing U.S. exporters to achieve record prices and sales. China has also reduced capitalization requirements in specific financial services sectors, including opening the motor vehicle financing sector.

China's large installment purchases of billions of dollars of U.S. products—including soybeans, cotton, and manufactured goods—during recent

purchasing missions bode well for 2004. However, we continue to stress the need for structural change that ensures ongoing, open, and fair access—not reliance on one-off sales.

The Administration will also employ the special safeguard provisions applicable to China, as appropriate, to help ease our adjustment process to China's WTO accession. For example, late last year, the Administration invoked safeguard relief on three textile products imported into the United States from China following petitions filed by the U.S. textile industry. The United States continues to stand ready to use all available mechanisms to ease market disruptions when the facts of a particular case warrant.

In 2004, the Administration will continue to work hard to ensure that American intellectual property rights are protected, that U.S. firms are not subject to discriminatory taxation, that market access commitments in areas such as agriculture and financial services are fully met, that China's trading regime operates transparently, and that promises to grant trading and distribution rights are implemented fully and on time. The Administration will consult closely with Congress and interested U.S. stakeholders in continuing to press China for full WTO compliance, taking further action when appropriate.

### **Promoting a Cleaner Environment and Better Working Conditions**

The Chile and Singapore FTAs, which Congress approved in 2003, use innovative new mechanisms to meet the labor and environmental objectives set out by Congress in the Trade Act of 2002. Both agreements envision cooperative projects to promote respect for international core labor standards and to support environmental protection and sound management of natural resources. Both agreements also require that parties effectively enforce their own domestic environmental laws—an obligation enforceable through dispute settlement procedures.

The dispute settlement procedures of the new FTAs apply to all obligations of the agreements and set high standards for openness and transparency, such as open public hearings, public release of legal submissions by parties, and the opportunity for interested third parties to submit views. In all cases, the emphasis is on promoting compliance through consultation, joint action plans, and trade-enhancing remedies.

The FTAs with the Central American countries, Morocco, and Australia adopt labor and environmental provisions used in the Singapore and Chile FTAs. In each case, the United States is working to tailor them to the particular circumstances of each FTA partner. In Central America, for example, the Administration has emphasized trade capacity building projects to enhance the awareness and enforcement of labor laws, and has encouraged countries to work with the International Labor Organization to identify areas for improvement in labor laws and enforcement. In 2004, the Administration will continue to use the TPA model to advance labor and environmental protections in trade agreements.

### **Building New Bridges: Trade Capacity Building**

The United States is the largest single-country donor of trade-related technical assistance in the world, reflecting its commitment to helping developing countries participate fully in the global trading system. U.S. trade capacity building efforts stem from the belief that trade is critical to the economic growth of both developed and developing countries. With an increased capacity to take part in trade negotiations and to implement trade rules, developing countries can achieve win-win results for themselves and their trading partners.

As the largest single-country donor, the United States devotes substantial resources from USAID and a dozen other agencies, totaling more than \$2.5 billion in funding for trade capacity building activities (FY2000 through FY2003). The United States provided \$752 million in trade

capacity building activities in FY2003, up 18 percent from FY2002.

The United States recognizes the need to build the capacity of developing countries with which it is negotiating free trade agreements. In the CAFTA, FTAA and SACU FTA negotiations, the United States established separate cooperative groups on trade capacity building to define and identify priority needs for trade-related development assistance. The United States also seeks to give eligible countries the capacity to take advantage of preference programs such as AGOA. For example, U.S. technical assistance linked to AGOA assists eligible countries to develop AGOA export strategies, establish linkages with American businesses, and meet U.S. food safety and other standards.

Moving forward, the Administration will continue to assist the developing world integrate trade into development strategies. This will include working with multilateral institutions and private sector donors to promote initiatives such as the FTAA's Hemispheric Cooperation Program and the WTO Technical Assistance Plan and the Integrated Framework. As bilateral trade negotiations are concluded, the United States will assist trading partners to implement their commitments and to manage their transition to free trade. The Administration will also continue to work with qualifying countries to maximize the benefits of preference programs such as AGOA, the Andean Trade Preference Act, the Caribbean Basin Partnership Act, and the Generalized System of Preferences.

In addition, the Bush Administration is emphasizing the important contributions that small businesses make to the U.S. and global economies. Small businesses are a powerful source of jobs and innovation at home and an engine of economic development abroad. By helping to build bridges between American small businesses and potential new trading partners, these enterprises can become an integral part of

our larger trade capacity building strategy. In our continuing work with the U.S. Small Business Administration, our Office of Small Business Affairs at the Office of the United States Trade Representative has improved the lines of communication between U.S. small businesses and U.S. trade policy. Insuring that American small business concerns are addressed in our trade policy pursuits results in stronger agreements that help to create jobs at home and abroad.

## **Monitoring and Enforcing Trade Agreements**

To maximize opportunities for American workers, businesses, and farmers and maintain support for open trade at home, the United States must effectively enforce its trade laws and trade agreements and advance the rule of law in international trade. In 2003, the Administration successfully resolved trade disputes and aggressively monitored and enforced U.S. rights under international trade agreements in ways that benefit American producers, exporters, and consumers. These efforts have produced important results in areas such as agriculture, textiles, telecommunications, and the protection of intellectual property rights.

In 2004, we will seek to resolve favorably other trade disputes in a way that ensures a level playing field for America's interests. Among the most prominent cases are agricultural biotechnology products with the European Union; the Continued Dumping and Subsidy Offset Act (CDSOA) with 11 complaining parties; telecommunications with Mexico; geographical indications with the European Union; rice antidumping duties with Mexico; the Foreign Sales Corporation (FSC) WTO case brought by the EU; and apples with Japan. In the Foreign Sales Corporation and Continued Dumping and Subsidy Offset Act cases, the Administration will consult and work closely with the Congress to determine an approach that will meet our WTO obligations and promote the competitiveness of U.S. industry.

The Administration will continue to pursue policies that strengthen opportunities for American workers, farmers, and firms while helping build domestic support for trade. In addition to rigorously monitoring and enforcing our international trade agreements, we will maintain our commitment to effectively enforcing U.S. trade laws against unfair foreign trading practices. Such laws are particularly important because the U.S. economy is one of the most open in the world.

## **Conclusion**

America's agenda in 2004 is broad yet simple: to push firmly forward toward the vision set out by President Bush of "a world that trades in freedom." It is a vision of a world in which a working family can save money on everyday

household items because trade agreements have cut hidden import taxes. It is a vision of a world in which a New York stockbroker, an Ohio autoworker, or a Mississippi chicken farmer can access markets in Costa Rica or Australia as easily as in California or Alabama. It is a vision of a world in which free trade opens minds as it opens markets, encouraging democracy and greater tolerance. And it is a vision of a world in which hundreds of millions of people are lifted from poverty through economic growth fueled by trade. It's a vision worth working for.

**Robert B. Zoellick**

**United States Trade Representative**

**March 1, 2004**

# II. The World Trade Organization

## A. Introduction

This chapter outlines the progress in the work program of the World Trade Organization (WTO), the work ahead for 2004, and the multilateral trade negotiations launched at Doha, Qatar in November 2001. The United States remains steadfast in its support of the rules-based multilateral trading system of the WTO. As a key architect of the postwar trading system and a leader in the pursuit of successive rounds of trade liberalizations, the United States shares a common purpose with our WTO partners: to obtain the expansion of economic opportunities for the world's citizens by reducing trade barriers. A recent statement by the Bretton Woods institutions reflects the energy that the WTO can bring to the global economy: "... collectively reducing barriers is the single most powerful tool that countries, working together, can deploy to reduce poverty and raise living standards."

The multilateral trade negotiations and the implementation of WTO Agreements remained at the forefront of U.S. trade policy in 2003. Despite the impasse at the WTO's 5th Ministerial Conference in September 2003 in advancing the Doha Development Agenda (DDA), the year closed on a more upbeat note. On December 15, General Council Chairman Perez del Castillo outlined the overall direction required to reinvigorate the negotiating process in 2004—expressing his hope that the sense of urgency evident during his post-Cancun consultations would quickly enable governments in 2004 to put the negotiations back on track. 2003 closed with all WTO Members carefully reflecting on next steps.

The objectives agreed in Doha remain a priority in U.S. liberalization efforts. The WTO's mandate to reduce barriers and to provide a stable trading system in order to raise standards of living and reduce poverty continues to be an essential

element of the broader international economic landscape. Given its magnitude and scope, the potential of the DDA to transform world trade commands priority attention.

The WTO and multilateral trading system are constantly evolving. Members need to continue to take responsibility for important institutional improvements. Pursuant to the Uruguay Round Agreements Act, the United States will continue to press for increased transparency in WTO operations, in WTO negotiations and in Members' trade policies. The WTO needs to expand public access to dispute settlement proceedings, to circulate panel decisions promptly, to encourage more exchange with outside organizations and continue to encourage timely and accurate reporting by Members.

## The Doha Development Agenda

The DDA covers six broad areas: agriculture, non-agricultural market access, services, the so-called "Singapore issues" (transparency in government procurement, trade facilitation, investment and competition) and rules (trade remedies), TRIPS, and development-related issues. In addition to reviewing progress in the negotiations overall, Box 1 below identifies the issues for Ministerial consideration at the WTO's 5th Ministerial Conference in Cancun Mexico.

The DDA in 2003 had an extensive negotiating agenda and deadlines, but lack of progress in agriculture early in the year determined the overall pace of the negotiating agenda. Delays by the European Union in adopting, then translating, its reform of its Common Agricultural Policy (CAP) into WTO negotiating positions led to slowed negotiations overall, and hardened disagreements in areas including the extent to which the negotiating agenda should be broadened to include the Singapore Issues, and whether there was sufficient attention to development-related

**Box 1****5th Ministerial Conference, Cancun, Mexico—September 2003****Tasks for Cancun from the Doha Declaration**

Ministers agreed at the launch of the Doha Round to use the 5th Ministerial Conference as a midterm review of progress in the negotiations and provide any necessary political guidance on, including:

- *Singapore issues*: Take decisions by explicit consensus on modalities of negotiations on Singapore issues (investment, competition, transparency in Government Procurement and trade facilitation).
- *Agriculture negotiations*: Members were to submit their initial offers (draft schedules no later than date of Fifth Session).
- *TRIPS*: Conclude negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits.

Receive reports:

- from the Committee on Trade & Environment on issues in para. 32 with recommendations, where appropriate, for future action, including the desirability of negotiations;
- on technical assistance and capacity building in the field of trade and environment;

from General Council on:

- progress on those elements of the Work Program, which do not involve negotiations;
- the continued e-commerce work program;
- recommendations for action on small economies;
- progress in trade, debt and finance examination;
- progress in trade and technology transfer examination;

from Director General on:

- implementation and the adequacy of technical cooperation and capacity-building commitments;

issues. The EU's agricultural reforms were not agreed until late July 2003. As a result of U.S. efforts, in August of 2003 agreement was reached on the question of TRIPS/health and compulsory licensing for countries with little or insufficient manufacturing capacity—the resolution of which all hoped would provide new impetus to the Cancun meeting. Despite great efforts, Ministers arrived at Cancun with less progress than had been envisioned in the Doha Declaration.

Since the launch of the Doha Development Round in 2001, the United States has tabled seventy formal submissions to dramatically reduce barriers to trade in services, agricultural products and industrial goods, and to strengthen

the rules and disciplines of the WTO system. The market access related negotiations of the DDA offer the greatest potential to create jobs, advance economic reform and development, and reduce poverty worldwide. The United States recognizes there are many important issues in the national economic strategies of our developing country WTO partners, yet believes the focus of the WTO must remain concentrated on its mandate of reducing trade barriers and providing a stable, predictable, rules-based environment for world trade. As the experience at the Cancun Ministerial clearly showed, this is work that requires the focus, flexibility and political will of all Members. The United States is prepared to meet these requirements in order



to reach an ambitious outcome in the DDA negotiations, along with contributions of other WTO Members.

Given the emphasis on development in the DDA, the United States has led the effort to provide unprecedented contributions to strengthen technical assistance and capacity building to ensure the participation of all Members in the negotiations. After detailing the DDA's progress to date, this chapter follows with a review of the implementation of existing Agreements, including the critical negotiations to expand the WTO's membership to include new members seeking to reform their economies and join the rules-based system of the WTO.

### **The General Council and The Trade Negotiations Committee Pursue The Doha Development Agenda Preparations for the Cancun Ministerial Meeting.**

The Trade Negotiations Committee (TNC), established at the WTO's Fourth Ministerial Conference in Doha, Qatar, oversees the agenda and negotiations in cooperation with the WTO General Council. The TNC met regularly throughout 2003 to supervise negotiations and to work with the General Council. 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. The WTO Director-General serves as Chair of the TNC, and worked closely with the Chairman of the General Council, Ambassador Carlos Perez del Castillo of Uruguay. The Chairman of the General Council played a central role in preparations for Cancun.

At Doha, Ministers agreed to review progress at the mid-point of the DDA negotiations and to convene a Ministerial Conference in line with Article IV of the Marrakesh Agreement Establishing the WTO. Under Article IV, the WTO is required to hold a ministerial conference at least once every two years. Given the WTO's ongoing responsibility to supervise and assist in the implementation of commitments for the further liberalization of trade, and for the

resolution of disputes, the Members believed it would be important for Ministers to meet on a regular basis in order to provide necessary direction and political oversight to the organization's work. The regular cycle of ministerial meetings was an important innovation for the WTO.

The Doha Agenda is heavily oriented towards market access issues, with agricultural reform at the heart of the negotiations. The DDA, along with the day-to-day implementation of the rules governing world trade, are an important part of the Bush Administration's overall trade strategy in ensuring global growth and economic prosperity. In addition to work on the DDA at Cancun, Trade Ministers approved the accession protocols of Nepal and Cambodia, the first least-developed countries to join the WTO since its establishment in 1995. Each government now must complete its respective domestic ratification process to complete membership.

In addition to the meetings convened in Geneva, a series of informal ministerial-level meetings were held in 2003 to engage ministers on the issues. Various regional meetings, from APEC ACP and Africa where the Doha negotiations were the focus of attention and concern. A series of developed and developing country informal "mini-ministerials" were held in Tokyo, Paris, Sharm-El-Sheik and Montreal to help shape the issues for Cancun, and obtain ministerial direction. The Doha negotiations were also a topic at various regional meetings, including APEC and the G-8 Summit.

In late July, at an informal meeting in Montreal, Canada, Ministers asked the United States and EU to try to bridge the wide divergences in positions on agriculture to help avoid an impasse at Cancun. As a result, a framework paper was presented to Members in Geneva ten days later. Brazil, leading South Africa and ultimately a large number of Latin American Members as well as India, and China, formed a coalition known as the G20 in opposition to the U.S.-EU framework. These countries feared that the framework would diminish the level of ambition for agricultural

reform, particularly the elimination of export subsidies. As a result, they questioned the extent to which developing countries should reduce barriers and open their markets to trade.

Chairman Perez del Castillo held consultations in a variety of formats to pursue progress in the negotiations. Working with inputs from the Chairs of the negotiating bodies, the Chairman in July 2003 developed a draft text for ministerial consideration. This text was the subject of intensive discussion at the level of Heads of Delegation and with the Trade Negotiations Committee. While there was not a consensus on the text in Geneva, the Chairman, as has been the case for previous ministerial meetings, sent to ministers a draft text on his responsibility. This text was the point of departure for the discussions in Cancun, Mexico as the ministerial meeting opened. At the Ministerial meeting in Cancun, the process further evolved with a proposed text from the Chairman of the Ministerial, Minister Luis-Ernesto Derbez of Mexico.

The Cancun meeting ended in impasse after it became clear that countries were not ready to seriously negotiate liberalization in the key areas of agricultural reform and market access, and substantial divergences could not be bridged on the so-called Singapore issues. Finally, although cotton was not a specific agenda point on the DDA agenda, African cotton producers focused attention on their concerns in this sector as an issue separate and apart from the agriculture negotiations.

Before concluding the Ministerial Conference in September, Ministers instructed the General Council Chair to consult with Members on moving the DDA forward, building on the progress secured at Cancun. America played a key role in launching the Doha negotiations and advanced them with our ambitious proposals, and solved the contentious access-to-medicines issue before the Cancun ministerial. After Cancun, America suggested a resumption based on the draft Cancun text, an idea that has won widespread support around the world

The progress achieved at Cancun has subsequently been the subject of discussion by negotiators in Geneva. Specifically, the General Council Chairman's consultations post-Cancun focused on four issues: agriculture, non-agricultural market access (NAMA), the Singapore issues and the treatment of cotton. Chairman Perez-del-Castilo reported to Members on December 15 that while no breakthroughs had been achieved, there appeared to be a greater readiness of all Members to find a way forward.

### Prospects for 2004

Consultations will begin in January with the aim of restarting the talks early in the new year. If negotiations move forward, WTO members will provide further direction to negotiators on how to proceed on specific issues. Cancun confirmed that developing countries now play an increasingly important role in the WTO and with that increased participation comes new responsibility, particularly for the most active trading nations. Developing countries, which now comprise more than two-thirds of the WTO's membership, are at the center of the new negotiations. Key issues in 2004 will include:

- **Agriculture:** Following on the bold proposals tabled in 2002, the United States will continue its intensive campaign for agricultural reform addressing each of the three pillars of the negotiations: market access, export subsidies and domestic support. Progress in all three areas, to reduce and harmonize the level of trade domestic support, eliminate export subsidies and create new market access opportunities in the markets of developed and developing countries will be essential to putting the negotiations back on track.
- **Non-Agricultural Market Access:** The United States will continue to press partners to ensure that new market access opportunities in the manufacturing sector will keep pace with the progress on agriculture. The United States will continue to reach out to trading partners to find a means to ensure an

- ambitious market access result. The United States tabled a far-reaching proposal to eliminate in two steps all duties on industrial and consumer goods by 2015, utilizing a formula-based approach, and to address non-tariff measures concurrent with the negotiations. While this goal was not shared in 2003 by others, it provides the United States an excellent platform to continue to pursue a big outcome for U.S. exporters. Past U.S. efforts have been instrumental in bringing about the Information Technology Agreement, Chemical Harmonization and a host of other initiatives aimed at eliminating barriers to trade in non-agricultural products.
- **Services:** An aggressive agenda for market opening in services, including audio-visual services, financial services (including insurance), express delivery services, energy services and telecommunication services, is being pursued in the negotiations. Since the United States is the world's leader in services for the 21st century economy, and services account for 80 percent of U.S. employment, our efforts in this area continue to be significant. Market opening in services is essential to the long-term growth of the U.S. economy. Services are a great economic multiplier. Currently only 40 WTO Members have tabled offers, we will work with others to expand the offers and seek their improvement.
  - **Dispute Settlement:** The United States has led efforts to strengthen the rules governing the settlement of disputes because the system of WTO rules is only as strong as our ability to enforce our rights under these Agreements. For this reason, the United States has led the efforts to promote transparency in the operation of dispute settlement. This will continue to be an issue as Members pursue the review of the Dispute Settlement Understanding (DSU) which was extended into 2004.
  - **WTO Rules:** Utilizing the solid mandate achieved at Doha, negotiations will focus on strengthening the system of trade rules and addressing the underlying causes of unfair trade practices. American workers need strong and effective trade rules to combat unfair trade practices, particularly as tariffs decline. While there are no major deadlines in 2004, negotiators will continue to identify, and more precisely define, issues of concern. The process envisioned in the WTO should result in strengthened trade rules in antidumping and subsidies, as well as new disciplines on harmful fisheries subsidies that contribute to over-fishing.
  - **Trade Facilitation (Customs Procedures):** Increasingly, WTO Members are convinced that the key to developing their economies and combating corruption is in strengthening the trade rules governing customs procedures to ensure the free flow of goods and services in the new just-in-time economy. Strengthening these rules is the aim of work in the WTO. Progress is crucial, for example, to the success of our express delivery industry. In 2004, WTO Members will have to decide whether this area of work, so essential to market access, will be pursued in the negotiations.
  - **Environment:** The United States will pursue a practical approach to the negotiations, working to enhance the process of communication and cooperation between the Secretariats of Multilateral Environmental Agreements (MEAs) and the WTO. Along with our work in market access and rules, we will continue to be vigilant to ensure that these negotiations are not used to introduce protection under the guise of safeguarding the environment. The U.S. agenda is aimed at promoting growth, trade and the environment.
  - **Competition and Investment:** In both of these areas, decisions will need to be taken about how to proceed in light of the lack of

consensus at the Cancun Ministerial Conference. Substantial resistance to pursuing work of any kind on these issues remains, particularly from developing countries.

- **Transparency in Government Procurement:** Members in 2004 will need to determine whether a transparency agreement will be a contribution to the fight against corruption in government purchasing, long an issue and the subject of initiatives in other fora.
- **Trade and Development:** An essential ingredient in the DDA has been a more intensive program of technical assistance and capacity building to integrate developing countries into the trading system. In the coming year, the United States will pursue cooperation with the Bretton Woods institutions, and ensure the effectiveness of the approximately \$18 million targeted for the Global Trust Fund in 2004 to which the United States is a major contributor.
- **Implementation:** The majority of so-called implementation issues have been resolved through consultations. Nonetheless, outstanding issues remain, including the treatment of rules issues, particularly trade-related investment measures and whether to expand the negotiations in the TRIPS agreement regarding geographical indications beyond wines and spirits. A consensus has not emerged on these issues to date.

## 1. Special Session of the Committee on Agriculture

### Status

At the Fourth WTO Ministerial Conference in Doha, Qatar WTO Members agreed to an ambitious mandate for agriculture, including “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.”

WTO Members also established an ambitious negotiating timeline, calling for reform modalities, such as tariff and subsidy reduction formulas, to be established no later than March 31, 2003 and submission of draft schedules of specific commitments by the Fifth WTO Ministerial Conference. However, the March 2003 deadline was missed and the Cancun Ministerial concluded without an agreement.

The WTO provides multilateral disciplines on agricultural trade policies and serves as a forum for further negotiations on agricultural trade reform. The WTO is uniquely situated to advance the interests of U.S. farmers and ranchers, because only the WTO can impose disciplines on the entire broad range of agricultural producing and consuming Members. For example, absent a WTO Agreement on Agriculture, there would be no limits on European Union subsidization nor firm commitments for access to the Japanese market. Negotiations in the WTO provide the best hope to open important markets for U.S. farm products and reduce subsidized competition.

### Major Issues in 2003

In 2003, the United States continued to take the lead in calling for substantial reform of agricultural trade policies, across all Members and all products. The United States has proposed comprehensive reform by reducing high levels of allowed protection and trade-distorting support through formulas that reduce tariff and subsidy disparities across countries, as well as strengthening WTO rules on a range of trade-related measures. In addition, the United States has proposed that WTO Members agree to eliminate all trade-distorting subsidies and all tariffs by a date certain. Members with heavily-distorted agricultural sectors, such as the European Union and Japan, have resisted substantial reform and instead have called for marginal reductions in protection and trade-distorting support while also calling for new WTO provisions to legitimize

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1 Current Cairns Group Members are: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand, and Uruguay.

measures oriented toward addressing non-trade concerns. Developing countries, particularly within the Cairns Group<sup>1</sup>, have traditionally looked to the agriculture negotiations as a principal means for achieving more meaningful trade participation in the global economy. A new developing country coalition formed in 2003, now referred to as the G-20, has called for substantial reform of developed countries' agricultural domestic support and export subsidy policies while proposing far less ambitious reforms in developing countries' market access policies. The G-20 coalition includes traditionally import-sensitive countries like India as well as typically export-oriented Cairns group members, such as Brazil and South Africa.

The Uruguay Round Agreement on Agriculture provided the framework for further negotiations in 2003. Negotiations on agriculture began in the year 2000 and in the first two years some 45 proposals were submitted on behalf of 121 Members. In 2002, Members focused attention on specific proposals for establishing reform modalities, consistent with the Doha mandate. The United States submitted the first comprehensive set of proposed modalities for reform, helping set the discussions in Geneva on an ambitious reform track. A number of other Members, including the Cairns Group and other developing countries, also submitted specific modality proposals oriented toward substantial reform. The European Union, Japan, and other Members with high tariff and subsidy levels did not come forward with specific or forthcoming modality proposals, instead making general proposals for marginal reform.

According to the ambitious negotiating timeline set in Doha, Members were to agree on specific reform modalities by March 31, 2003. Little progress was made toward that goal because many countries refused to move off of their original positions. The chairman of the WTO Agriculture Committee, Stuart Harbinson, attempted to meet the March 2003 deadline by drafting modalities covering all three pillars of reform and addressing

issues of special and differential treatment for developing countries. Many Members disagreed with a number of the elements of the draft Harbinson text, and it did not serve to facilitate consensus on a way forward in the negotiations.

In the wake of disagreement over the Harbinson text, many WTO Members requested that the United States and the EU work together to bridge their differences. These members recognized that some common understanding on a framework for negotiations between the United States and the EU was a necessary condition for moving forward in agriculture. There was hope that steps toward CAP reform undertaken by the European Union would help them move forward with negotiations.

The United States and European Union negotiated a joint framework paper that they presented on August 13. The paper addressed key outstanding issues between the EU and U.S., and reaffirmed the objectives identified in the Doha Declaration. It identified a number of formulae for implementing reduction commitments for tariffs and subsidies, leaving the coefficients in the formulae to be the subject of future negotiations. The agreement included, among other things:

- A “blended formula” for tariff reductions that would require a harmonizing Swiss formula for a certain percentage of tariff lines, a Uruguay-round type average cut for another percentage of lines, and tariff elimination for the remainder of tariff lines;
- A harmonizing approach to reducing the most trade-distorting domestic support (amber box), with greater efforts by countries with higher trade-distorting subsidies; and
- A framework for “reductions of, with a view to phasing out,” export subsidies in parallel with disciplines on export credits.

Several countries charged that the EU-U.S. framework lacked ambition. The G20, which emerged in the run-up to Cancun, were particularly vocal in advocating larger reductions in domestic support and export subsidies by devel-

oped countries, together with strong special and differential provisions that would result in minimal reform and market access commitments by developing countries.

Going into the 5th WTO Ministerial in Cancun, Mexico (September 2003), there were multiple conflicting texts. In preparation for Cancun, the General Council Chairman Perez del Castillo incorporated substantial parts of the U.S.-EU framework into a draft modalities framework. The G20 tabled its own draft modalities framework. Four West African cotton-producing countries tabled a proposal that targeted the U.S. cotton support program and called for compensation for their producers.

At Cancun, Chairman Derbez developed a draft modalities text that sought to find common ground among the divergent positions. However, after five days of negotiations, Ministers were unable to agree on how to proceed in meeting the objectives mandated in the Doha Development Agenda. The ministerial closed without a final result.

No special sessions in Agriculture were held after the Cancun Ministerial. The Derbez text remains the most recent stage of development in establishing modalities for agricultural reform.

After a period of reflection and consultations between Chairman Perez del Castillo and members, on December 15, 2003 a General Council meeting was held to take stock and find a way forward. Members expressed a willingness to reinvigorate the trade talks, and will most likely resume negotiations early in 2004.

### **Prospects for 2004**

In 2004, negotiations will need to focus on establishing specific modalities so that members can conclude the round. As talks move forward, the United States will work to increase the level of ambition that all countries bring to all three pillars.

## **2. Special Session of the Council for Trade in Services**

### **Status**

In 2000, pursuant to the mandate provided in the Uruguay Round, Members embarked upon new, multi-sectoral services negotiations under Article XIX of the General Agreement on Trade in Services (GATS). The Doha Declaration recognized the work already undertaken in the services negotiations and reaffirmed the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services (CTS) in March 2001. The Doha mandate directed Members to conduct negotiations with a view to promoting the economic growth of all trading partners. The Doha mandate also set deadlines for initial services requests and offers. The Special Session met 4 times during 2003, in March, May, July, and October.

### **Major Issues in 2003**

The GATS negotiations entered a new phase in 2003 as WTO Members submitted initial negotiating offers consistent with the deadlines established in the Doha Declaration. The United States submitted its offer on March 31 and at the same time made the offer public. A copy of the initial U.S. GATS offer is available at: [www.ustr.gov/sectors/services/2003\\_03-31-consolidated\\_offer.PDF](http://www.ustr.gov/sectors/services/2003_03-31-consolidated_offer.PDF). As of December 2003, in addition to the United States, the following 39 WTO Members had submitted initial offers: Japan, New Zealand, Australia, Korea, Uruguay, Chinese Taipei, Canada, Norway, Paraguay, Bahrain, Iceland, Liechtenstein, Panama, Argentina, Switzerland, Senegal, Israel, Hong Kong, Poland, St. Christopher & Nevis, EU, Czech Republic, Macao, China, Mexico, Fiji, Slovenia, Chile, Singapore, Slovak Republic, Turkey, Sri Lanka, Guatemala, Peru, Thailand, Bolivia, Colombia, China, Bulgaria, and India.

Discussions continued in 2003 on three provisions contained in the GATS that relate to the negotiations. The GATS calls for an “assessment

of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV, *Increasing Participation of Developing Countries*.” A number of WTO Members have made written and oral presentations discussing the effects of services liberalization. The United States submitted a paper on this topic in March. The GATS also calls for establishment of two sets of procedures. The first, the Modalities for the Special Treatment for Least-Developed Country Members, was adopted by the Special Session in September. In connection with the Modalities, at the request of a number of LDCs, the United States expanded on its obligations under Article IV of the GATS by establishing more contact points in the developing world and distributed a list of those contact points to be used by private-sector businesses in developing countries, to enhance their exports of services to the United States. The second set of procedures, “The Modalities for the Treatment of Autonomous Liberalization,” addresses the treatment of liberalization undertaken autonomously by Members since previous negotiations, and was adopted by consensus at the March meeting of the Special Session.

Several other issues were discussed at Special Session meetings during 2003, including Mode 4 (temporary entry), following the introduction of a paper on the subject by India and 14 co-sponsors at the July meeting, and provisions on Special and Differential Treatment of developing-country Members. At the July meeting, the Chairman of the Special Session took on board views from Members, including the United States, to seek new dates and mileposts in the Cancun text in order to heighten the momentum and move the services negotiations to the next phase.

### **Prospects for 2004**

Sessions in Geneva will continue to include a general meeting of the Special Session, followed by bilateral meetings which allow Members the opportunity to present and discuss their initial

negotiating offers, and other topics of concern. Discussions in the general meeting and in the bilateral negotiating sessions are expected to continue on the topics noted above.

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

### **Status**

At the fourth WTO Ministerial Conference held in Doha in 2001, Ministers agreed to launch non-agricultural market access (NAMA) negotiations to reduce or eliminate non-tariff measures and tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation, in particular on products of export interest to developing countries. Ministers also agreed that developing countries should be permitted to provide less than full reciprocity, but that negotiations should be comprehensive and without *a priori* exclusions.

### **Major Issues in 2003**

Negotiations on non-agricultural market access in 2003 moved into a more active phase of work and focused intensively on discussion of a wide range of developed and developing member proposals on how tariff and non-tariff barriers (NTBs) should be liberalized (the “modalities” for tariff and NTB liberalization). Proposals ranged from employing traditional request-offer approaches, to various proposals for formula reductions and to the use of sectoral initiatives such as those proposed in the Uruguay Round for zero-zero elimination of tariffs or harmonization of tariff rates to lower levels by all, or a subset of participants. Many proposals called for a mix of modalities to achieve the Doha objectives set out above. These proposals varied dramatically on their level of ambition and the degree to which bound tariffs (which exceed applied levels in many developing countries) would be reduced to below current applied tariff levels, a test of the degree to which real new market access can be achieved in the negotiations.

As a general matter, all Members support the use of a formula as at least one key component of the liberalization modalities. Developing countries generally support use of a formula that would require developed countries to reduce tariffs substantially, while permitting developing countries to reduce tariffs, but retain relatively high levels of protection. Many countries also support an ambitious sectoral component that would also help deliver on the mandate to eliminate tariffs, as appropriate. However, most developing countries do not support mandatory participation in a sectoral component, nor the use of a sectoral component as an integral part of the modalities.

In the lead up to the Cancun Ministerial, the Chairman of the Negotiating Group presented members with a proposed “framework” on modalities, which outlined a number of ideas for how the negotiations could be conducted, reflecting his views on where consensus might lie. The Chairman’s text was hotly debated. While most members have indicated support for the structure of the Chairman’s text, the detailed proposals contained in the text, which involved a mix of modalities, were not broadly accepted. Efforts at Cancun to bridge differences did not succeed, in part due to lack of agreement on other issues in the negotiations (agriculture and the Singapore issues). However, wide differences of view also remain between developing countries, and between developing and developed countries, on the level of ambition and the means to achieve it, including how to preserve all aspects of the Doha mandate, for example those relating to less than full reciprocity. Most developed Members and a number of developing Members, such as Hong Kong, Singapore, Chile and Costa Rica, support significant liberalization of both developed and developing country markets in order to ensure that global growth and development can advance effectively. However, many developing countries have expressed the concern that they cannot sustain significant tariff reductions due to concerns about revenue losses and that significant liberalization of developed country markets would erode existing tariff preferences they wish to retain. A number of

developing countries are prepared to make concessions, but at this stage are reluctant to commit to reducing their bound rates to the level of their current applied rates.

### **Prospects for 2004**

In 2004, it will be necessary to find ways to bridge the significant differences that exist between Members on the modalities, to develop a framework for modalities, and then finalize the details on the type of formula that will be used, and the degree to which sectoral approaches will complement the formula approach in the negotiations. The United States continues to seek an ambitious approach that will deliver real market access in key developed and developing country markets. However, the U.S. position also supports elements of additional flexibility for the least developed and most financially constrained members and those developing country members that have already contributed significantly to liberalization through the maintenance of low tariff levels and high levels of tariff bindings. In the second half of 2004, it is anticipated that Members would negotiate and agree on the specifics of modalities as well as prepare market access offers.

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

### **Status**

In paragraph 28 of the Doha Declaration, the Ministers agreed to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement) and on Subsidies and Countervailing Measures (the Subsidies 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 participants. The Doha mandate specifically calls for the development of disciplines on trade-distorting practices, which are often the underlying causes of unfair trade, and also calls for clarified and improved WTO disciplines on fisheries subsidies. In addition,



paragraph 29 of the Doha Declaration provides for negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements.

Paragraph 28 provides for a two-phase process for the negotiations, in which participants would identify in the initial phase of negotiations the provisions in the Agreements that they would seek to clarify and improve in the subsequent phase, but does not specify any deadline with respect to the transition from the first phase to the second phase. WTO Members have submitted a total of 143 papers to the Rules Group thus far, with the vast majority of them identifying issues for discussion rather than making specific proposals, although several Members submitted specific proposals on particular issues in 2003.

### Major Issues in 2003

The Rules Group held five formal meetings in 2003 (in February, March, May, June, and July) under the Chairmanship of Ambassador Tim Groser from New Zealand, as well as several meetings informal with respect to its consideration of issues relating to regional trade agreements. The Group based its work primarily on the written submissions from Members, organizing its work in the following categories: (1) antidumping (often including similar issues relating to countervailing duty trade remedies); (2) subsidies, including fisheries subsidies; and (3) regional trade agreements.

Given the Doha mandate that the basic concepts and principles underlying the Antidumping and Subsidies Agreements must be preserved, the United States outlined in a 2002 submission the basic concepts and principles of the trade remedy rules, and identified four core principles that would guide U.S. proposals for the Rules Negotiating Group:

- First, negotiations must maintain the strength and effectiveness of the trade remedy laws and complement a fully effective dispute settlement system which enjoys the confidence of all Members;

- Second, trade remedy laws must operate in an open and transparent manner. This principle is fundamental to the rules-based system as a whole, and the transparency and due process obligations should be further refined as part of these negotiations;
- Third, disciplines must be enhanced to address more effectively underlying trade-distorting practices. Work has already begun along these lines with respect to the steel sector in discussions among the major steel producing nations at the OECD, based on the general recognition that market-distorting practices have contributed to global excess capacity; and
- Fourth, it is essential that dispute settlement panels and the Appellate Body, in interpreting obligations related to trade remedy laws, follow the appropriate standard of review and not impose on Members obligations that are not contained in the Agreements.

In accordance with these principles, the United States was very active in the discussions in the Rules Group in 2003, both in identifying specific issues for consideration, and in raising questions with respect to the issues raised by other Members.

- Pursuant to the first principle, we have repeatedly emphasized that the Doha mandate to preserve the effectiveness of the trade remedy rules must be strictly adhered to in evaluating proposals for changes to the Antidumping or Subsidies Agreements, and have raised a number of questions to evaluate whether issues raised by other Members are consistent with that mandate. We have also identified particular issues relevant to ensuring that these trade remedies remain effective, such as addressing the problem of circumvention of antidumping and countervailing duty orders, and the need for the unique characteristics of perishable and seasonal agricultural products to be reflected in the trade remedy rules.
- Pursuant to the second principle, we have identified a number of respects in which investigatory procedures in antidumping

and countervailing duty investigations could be improved, highlighting areas in which interested parties and the public could benefit from greater openness and transparency, as well as some areas where improved procedures could reduce costs. Since U.S. exporters are a major target of foreign trade remedy proceedings, it is essential to improve transparency and due process so that U.S. exporters are treated fairly.

- Pursuant to the third principle, we have stressed the need to address trade-distorting practices that are often the root causes of unfair trade, and have made a number of submissions to the Rules Group with respect to the strengthening of subsidies disciplines generally and the work ongoing in the OECD addressing trade-distorting practices in the steel sector.
- Pursuant to the fourth principle, we have emphasized the importance of ensuring that WTO panels and the Appellate Body adhere to the special standard of review in the Antidumping Agreement, and the need to address several issues raised by certain past findings of the WTO Appellate Body in trade remedy cases.

#### ***Antidumping and Countervailing Duty Trade Remedies:***

The United States has thus far in its submissions to the Rules Group identified over 30 issues for discussion related to antidumping and countervailing duty trade remedies, in accordance with the principles listed above. A group calling itself the “Friends of Antidumping” has also presented a series of papers identifying over 30 antidumping issues for discussion by the Rules Group, following up with more detailed proposals in 2003 on six of these issues. The “Friends” group consists of Brazil, Chile, Colombia, Costa Rica, Hong Kong, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Chinese Taipei, Thailand, and Turkey, although not all of its members have joined in each paper. From the issues that this group has raised thus far, and from the proposals they have submitted, it is clear that their goal is to impose additional restrictions on the use of

antidumping. In addition to the submissions by this group and the United States, Argentina, Australia, Brazil, Canada, China, Egypt, the European Communities, Hong Kong China, India, Japan, Korea, Morocco, New Zealand, Venezuela, and by a group of 18 textile-exporting Members also submitted papers on antidumping issues in 2003. The United States has been actively engaged in addressing the submissions from this group and other Members, posing written questions with respect to many of them, and seeking to ensure that the Doha mandate for the Rules Group is fulfilled.

***Subsidies:*** In 2003, the United States submitted its second subsidy-specific paper to the Rules Group, advocating a number of ways in which the existing rules should be strengthened, including the prohibition of additional types of subsidies; tougher rules on indirect subsidies and government investment in private sector companies; and changes to the rules on government pricing of natural resources. The United States also raised the issue of the different treatment under the Subsidies Agreement of indirect and direct taxes.

Additional substantive papers on subsidies issues were submitted in 2003 by India, Canada and Australia, and by Venezuela and Cuba jointly. India, in its second substantive subsidy paper, raised several issues regarding duty drawback and indirect tax programs and the definition of “export competitive” under Article 27 of the Subsidies Agreement. The Canadian and Australian papers argued for the clarification of several issues that have been subject to WTO dispute settlement proceedings. Venezuela and Cuba advocated making certain types of subsidies non-actionable, in particular certain types of subsidies provided by developing countries.

***Fisheries Subsidies:*** The United States played a major role in advancing the discussion of fisheries subsidies reform in the Rules Group in 2003, working closely with a broad coalition of developed and developing countries, including Australia, Chile, Ecuador, Iceland, New Zealand, Peru and the Philippines. After submitting two

papers in 2002 reviewing the problems caused by fisheries subsidies, the United States submitted a paper in April 2003 seeking to move the discussion to consideration of possible solutions, advocating stronger rules to remedy the economic and environmental damage from overfishing. Among the ideas presented in the U.S. paper were: possible expansion of the category of subsidies prohibited under WTO rules to include fisheries subsidies that directly promote overcapacity and overfishing, or have other trade-distorting effects; improvements to the quality of fisheries subsidy notifications under WTO rules; and ways to draw upon relevant expertise in other international organizations and obtain the views of non-governmental groups. The United States views improving WTO disciplines on harmful fisheries subsidies as an important objective that will provide a concrete, real world demonstration that trade liberalization benefits the environment and contributes to sustainable development.

Additional submissions in 2003 in support of strengthening disciplines on fisheries subsidies were made by the European Union and Chile, and by Argentina, Chile, New Zealand, Norway and Peru in a joint submission. However, Japan and Korea have continued to dispute that disciplines on fisheries subsidies should be strengthened, arguing that it has not been demonstrated that fisheries subsidies, rather than poor fishery management, have led to the present poor state of the world's fisheries. Additional submissions were made by China and by a group of eight small coastal state Members, advocating special and differential treatment with respect to fisheries subsidies for developing country Members.

**Regional Trade Agreements:** The discussion in the Rules Group on regional trade agreements (RTAs) has focused on ways in which WTO rules governing customs unions and free trade agreements, and economic integration agreements for services, might be clarified and improved. During 2003, the discussion on RTAs was divided into “transparency” and “systemic” issues. After finding more common ground on the need for

improved transparency in the discussions, the Rules Group focused on these issues with the understanding that work on systemic issues would be revisited at a future date.

The United States considers that the Group's work on transparency thus far has been of value, given the need to improve the effectiveness of the current WTO system for reviewing and analyzing trade agreements. Some of the proposals contemplated in the Rules Group would put the Secretariat to work systematically compiling information from Member submissions on each agreement. In 2003, Members focused on when, how and to what extent Members should notify the WTO of the provisions of an RTA, and how the WTO can best review these provisions. Some developing country Members, citing the GATT “Enabling Clause” decision of 1979 (GATT Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries), have opposed applying strengthened reporting and review disciplines to preferential agreements among them. Some European Members have argued for “grandfathering” preexisting RTAs so as to exempt them from some or all new disciplines on reporting and review that may emerge from the negotiations.

On substantive or “systemic” issues, previous work within the WTO Committee on Regional Trade Agreements identified many of the issues encompassed by the Doha mandate on RTAs. The WTO Secretariat also prepared a synopsis of these substantive issues. This work has informed the discussions in the Rules Group on such issues as the requirements of GATT Article XXIV that RTAs eliminate tariffs and “other restrictive regulations of commerce” on “substantially all the trade” between parties (and the analogous provisions for the GATS), the effects of particular rules of origin applied in RTAs, and the relationship between RTA rules and the application of trade remedies.

Papers on RTA issues submitted to the Rules Group by Australia, Chile, the European Union, Hong Kong China, Korea, India, New Zealand and Turkey have also contributed to the discus-

sions. The United States has been an active participant in the RTA discussions in the Group.

***Special and Differential Treatment Proposals:*** A list of proposals by certain developing and least developed country Members for special and differential treatment on issues pertaining to antidumping, subsidies, and regional trade agreements was referred by the Chairman of the General Council to the Rules Group in 2003. The Group had very limited discussion of these proposals at its meetings in 2003, largely because the sponsors of the proposals were in most cases unable to attend the meetings and present their proposals. These proposals will remain on the agenda for the Rules Group.

### **Prospects for 2004**

It is expected that the process of issue-identification in the Rules Group will continue in 2004, as well as consideration of specific proposals as they are submitted. The United States will continue to pursue an aggressive affirmative agenda, based on the core principles summarized above, and building upon the U.S. papers submitted in 2003 with respect to strengthening the existing subsidies rules, and improving WTO disciplines on harmful fisheries subsidies. On RTAs, a more focused discussion of possible procedural improvements within the WTO to enhance transparency is likely in 2004.

## **5. Special Session of the Committee on Trade and Environment**

### **Status**

Following the Fourth Ministerial Conference at Doha, the Trade Negotiations Committee (TNC) established a Special Session of the Committee on Trade and Environment (CTE) to implement the mandate in paragraph 31 of the Doha Declaration. The CTE in Regular Session has taken up other environment-related issues without a specific Doha negotiating mandate.

### **Major Issues in 2003**

The CTE in Special Session met three times in 2003. All three formal meetings took place prior

to the Fifth Ministerial in Cancun. At each of these meetings, the CTE in Special Session addressed each of the negotiating mandates set forth in the three sub-paragraphs under paragraph 31 of the Doha Declaration:

- (i) the relationship between existing WTO rules and specific trade obligations set out in MEAs (with specific reference to the applicability of such existing WTO rules as among parties to such MEAs and without prejudice to the WTO rights of Members that are not parties to any MEA 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 environmental goods and services.

### ***MEA Specific Trade Obligations and WTO Rules:***

During the second year of negotiations under this mandate, discussions generally settled into a phased approach, with initial focus on the specific parameters of the mandate and analysis of provisions in MEAs that are covered by it. While this did not preclude more conceptual discussions on the MEA-WTO relationship, the large majority of delegations resisted any premature consideration of potential results in the negotiations. Most delegations expressed readiness to focus attention on provisions in six MEAs that the United States had identified as containing “specific trade obligations” covered under the Doha mandate. These six MEAs are: (i) the Convention on International Trade in Endangered Species; (ii) the Montreal Protocol on Ozone Depleting Substances; (iii) the Basel Convention on Hazardous Wastes; (iv) the Cartagena Protocol on Biosafety; (v) the Rotterdam Convention on Prior Informed Consent; and (vi) the Stockholm Convention on Persistent Organic Pollutants. Additionally, there was a high degree of support for a U.S. suggestion that the CTE in Special Session afford Committee Members the opportunity to provide information on their experiences with respect to negotiation

and implementation of specific trade obligations in these MEAs in light of WTO rules.

***Procedures for Information Exchange and Criteria for Observer Status:*** Members generally appear to be supportive of identifying additional means to enhance information exchange between MEA secretariats and WTO bodies. In this regard, delegations suggested a number of options, including formalizing a structure of regular information exchange sessions with MEAs; organizing WTO parallel events at meetings of the conferences of the parties (COPs) of MEAs; organizing joint WTO, UNEP and MEA technical assistance and capacity building projects; promoting more regular exchange of documents between secretariats; and otherwise creating additional avenues for communication and coordination between trade and environment officials. On the issue of observer status for MEA secretariats in WTO bodies, little progress was made, although Members were able to agree on a separate decision to allow certain MEA secretariats to be invited on an ad hoc basis to attend CTE Special Session meetings. With respect to a more permanent status, a number of delegations expressed the view that the issue of criteria for ownership is dependent on an outcome in ongoing General Council and TNC deliberations.

***Environmental Goods and Services:*** Members engaged in more detailed discussions in the CTE in Special Session on the scope of products that could be included in a definition of environmental goods. While much of the focus continued to be on existing lists developed by the OECD and APEC, additional ideas were tabled, such as a proposal from Qatar to include clean energy production technologies in the definition. The United States submitted a paper on the practical considerations that affected development of the APEC list and the lessons that could be drawn from this earlier exercise. The United States followed up with a proposal on modalities for negotiations on environmental goods. This proposal suggested that there could be a flexible approach to the definition involving a core group of goods for which all Members would make tariff and non-tariff concessions and a complementary

list that would not require full participation. Reactions from preliminary discussions of the U.S. paper, held just before the Cancun Ministerial, were quite positive. Delegations continued to acknowledge that market access negotiations on environmental goods and services should take place in the Non-Agriculture Market Access Negotiating Group and the Committee in Trade in Services in Special Session.

In addition to the three CTE Special Session meetings, the CTE also met in Regular Session four times during 2003, debating important trade liberalization issues including, market access under Doha Sub-paragraph 32(i), TRIPS and environment under Doha Sub-paragraph 32(ii), labeling for environmental purposes under Doha sub-paragraph 32(iii), capacity building and environmental reviews under Doha paragraph 33 and the environmental effects of negotiations under Doha paragraph 51.

### **Prospects for 2004**

Following a resumption of Doha negotiations, the CTE in Special Session is likely to pick up where it left off. Under sub-paragraph 31(i), efforts may be limited to obtaining a clearer picture of whether there are specific problems that could be practically addressed on the basis of the approach set forth in the U.S. paper. It is quite possible that negotiations under sub-paragraph 31(ii) could pick up, particularly if it becomes more clear that eventual results under sub-paragraph 31(i) are likely to be limited in scope. Increased information exchange between MEAs and the WTO and more predictable observer status could go a long ways in ensuring that the two systems of international obligations remain compatible and mutually supportive. Finally, the CTE in Special Session is likely to engage in further discussions of ideas put forward by the United States regarding modalities for environmental goods. The CTE will remain the forum to highlight 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 and a cleaner environment.

## 6. Special Session of the Dispute Settlement Body

### Status

Following the Fourth Ministerial Conference in November, 2001, the TNC 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.”

### Major Issues in 2003

The Special Session of the DSB met frequently during 2003 in an effort to implement the Doha mandate. In previous phases of the review of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”), Members had engaged in a general discussion of the issues. Following that general discussion, Members tabled proposals to clarify or improve the DSU. Discussions intensified in 2003 in order to conclude discussions by May 2003. Members conducted a review of each proposal submitted and requested explanations and posed questions of the Member(s) making the proposal. Members also had an opportunity to discuss each issue raised by the various proposals. The Chair of the Special Session offered a draft text for consideration by the Members. Notwithstanding these efforts, Members were unable to conclude discussions. In July, the General Council decided that Members should seek to complete discussions by May 2004.

The United States 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 for the first time and give greater public access to briefs and panel reports. In addition to open hearings, public briefs, 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, joined by Chile, submitted a proposal to help improve the effectiveness of the WTO dispute settlement system in resolving trade disputes among WTO Members. The joint proposal contains specific options 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.

### Prospects for 2004

In 2004, Members will continue to work with a view to the May 2004 target date to complete the review of the DSU. The Chairman of the DSU review has requested that Members submit revised draft legal text early in 2004. Members will be meeting monthly in multi-day sessions through the end of May in an effort to complete their work.

## 7. Special Session of the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS)

### Status

With a view to completing the work started in the TRIPS Council on the implementation of Article 23.4, Ministers agreed at Doha 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. This is the

only issue before the Special Session of the Council. As no consensus on the system or other issues emerged at the Fifth Ministerial or in 2003, it is expected that negotiating groups will be reactivated early in 2004, and that this negotiating mandate will be extended.

### **Major Issues in 2003**

During 2003, the TRIPS Council continued its negotiations under Article 23.4, which is intended to facilitate protection of geographic indications. Argentina, Australia, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Namibia, New Zealand, the Philippines, Taiwan, and the United States continued to support the “Joint Proposal” under which Members would notify their geographical indications for wines and spirits for incorporation into a register on the WTO website. Members choosing to use the system would agree to consult the website when making any decisions under their domestic laws related to geographical indications or, in some cases, trademarks. Implementation of this proposal would not impose any additional obligations with regard to geographical indications on Members that chose not to participate nor would it place undue burdens on the WTO Secretariat. The European Union together with a number of other countries continued to support their alternative proposal for a system under which Members would notify the WTO of their geographical indications for wines and spirits. Other Members would then have eighteen months in which to object to the registration of particular notified geographical indications that they believed were not entitled to protection within their own territory. If no objection were made, each notified geographical indication would be registered and all WTO Members would be required to provide protection as required under Article 23. If an objection were made, the notifying Member and the Member objecting would negotiate a solution, but the geographical indication would have to be protected by all Members that had not objected.

At the April 2003 meeting, Hong Kong, China, introduced a proposal under which a registration should be accepted by participating Members’ domestic courts, tribunals or administrative bodies as *prima facie* evidence of: (a) ownership; (b) that the indication is within the definition of “geographical indications” under Article 22.1 of the TRIPS Agreement; and (c) that it is protected in the country of origin. The intention is that the issues will be deemed to have been proved unless evidence to the contrary is produced by the other party to the proceedings before domestic courts, tribunals or administrative bodies when dealing with matters related to geographical indications. In effect, a rebuttable presumption is created in favour of owners of geographical indications in relation to the three relevant issues. Although this proposal was discussed, it has not been endorsed by either supporters of the Joint Proposal or the EU proposal.

Prior to the April 2003 meeting, the Chairman of the Special Session issued a note by the Chairman containing a Draft Text of Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits (JOB(03)/75. This text was criticized by supporters of the Joint Proposal as going beyond the mandate of the negotiations, especially with regard to participation in the system and legal effect.

### **Prospects for 2004**

In his report to the TNC, the Chair of the Special Session of the Council for Trade-Related Aspects of Intellectual Property Rights noted that several delegations had raised comments and questions on his draft text, and that positions continue to be quite divided. He noted that profound differences exist with respect to the legal effect of registrations, international mechanisms for settling differences regarding geographical indications and participation.

The United States will aggressively pursue additional support for the Joint Proposal in the coming year, so that the negotiations can be completed.

## **8. Special Session of the Committee on Trade and Development**

### **Status**

In February 2002, the Trade Negotiating Committee convened a Special Session of the Committee on Trade and Development (CTD) to fulfill the Doha 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.” The Special Session is responsible for reviewing all existing special and differential treatment provisions available to developing-country Members. Under S&D provisions, the WTO provides developing-country Members with technical assistance and transitional arrangements toward implementation of WTO Agreements and, ultimately, full integration into the multilateral trading system. WTO S&D provisions also enable Members to provide better-than-MFN access to markets for developing-country Members. As part of the S&D review, the CTD Special Session provided recommendations to the General Council for consideration at the Cancun Ministerial, where no decisions were taken on S&D.

### **Major Issues in 2003**

The CTD Special Session met in January and February 2003 to continue work under its DDA mandate to review the S&D provisions. Debate was lively, particularly with regard to consideration of more than 80 Agreement-specific proposals by various developing-country members which, in their originally-proposed form, entailed reopening Agreements and revisiting the Uruguay Round's overall balance of obligations. By the February 2003 General Council session, the CTD Special Session had not completed its work. In lieu of tabling a final package of recommendations, the CTD instead submitted a progress report to the General Council that included those recommendations achieved to that point. The General Council decided that work would continue through deliberations by heads of delegations. United States helped advanced this next phase of the S&D review by submitting a proposal for an

improved process for such deliberations. The renewed effort by heads of delegation in the Spring and Summer of 2003 led to the completion of a set of recommendations that were later submitted by the Chairman of the General Council for adoption at the Cancun Ministerial, although no decision was taken on these recommendations at the Cancun Ministerial.

### **Prospects for 2004**

A resumption of Doha Round negotiations would ultimately include efforts by Committee Members to complete the S&D review under the DDA mandate. Discussions to date have led to crafting solutions reflecting convergence on a number of agreement-specific issues put forward. However, there remain a number of areas that will require more in-depth discussion as the DDA advances, in particular with regard to a more broadly-based assessment of S&D as it pertains to the fact that developing-country Members often present unique individual situations that may not be best addressed by a ‘one-size-fits-all’ approach. The CTD Special Session has held only preliminary discussions on how S&D treatment and differentiation among various levels of development should be incorporated into the architecture of the WTO, and with regard to the nature of a future mechanism for monitoring implementation and effectiveness of S&D treatment.

## **C. Work Programs established under the Doha Development Agenda**

### **1. Working Group on Transparency in Government Procurement**

#### **Status**

Leading up to the Cancun Ministerial, the Working Group on Transparency in Government Procurement (Working Group) continued work on development of elements of an agreement on transparency in government procurement. However, at the close of 2003, it remained unclear as to whether and how work will continue on this important topic in the WTO. General Council



Chairman Perez del Castillo, in his report of December 15, 2003, suggested that work should continue with the aim of reaching agreement on modalities for negotiations of an agreement on transparency in government procurement.

### **Major Issues in 2003**

The Working Group held two formal meetings in February and June 2003, in which it continued to make progress on identifying the key substantive elements of a potential agreement on transparency in government procurement. The Working Group particularly focused on two potential elements of an agreement that several Members, in particular developing countries, have singled out as an area of particular concern. Both elements relate to the enforcement of an agreement: domestic review procedures and the application of WTO dispute settlement procedures. The United States made a written submission to the Working Group in 2003 to address these two potential elements.

The U.S. submission and the discussions of the issue in the Working Group pointed out that an agreement on transparency in government procurement could accommodate different Members existing independent administrative or judicial tribunals and review procedures, and that an agreement could be tailored to preclude the challenge of individual contract awards under the DSU. In addition, transition periods could be used to phase-in application by developing countries of certain provisions of an agreement, including application of the DSU.

The Working Group's discussions confirmed that many WTO Members consider these elements to be fundamental to ensuring efficient and accountable procurement systems and have already incorporated these elements, in their existing procurement laws, regulations, and practices.

The draft ministerial text presented to Ministers at the Cancun Ministerial reaffirmed that negotiations of a multilateral agreement on transparency in government procurement would be limited to the transparency aspects and would not restrict

the ability of countries to give preferences to domestic supplies and suppliers. It also provided that such an agreement would cover only procurements above certain value thresholds (to be negotiated), and that coverage beyond goods and central government entities was not prejudged. It also stated that applicability of the DSU was not prejudged, except that individual contract awards would not be subject to the WTO dispute settlement system. In addition, the draft text reaffirmed that negotiations would take into account participants' development priorities and reiterated the commitment to provide technical assistance.

### **Prospects for 2004**

Regardless of how the Doha negotiations proceed, ensuring transparency in government procurement remains a priority for the United States in its pursuit of broader initiatives aimed at promoting the international rule of law, combating international bribery and corruption, and supporting the good governance practices that many countries have adopted as part of their overall structural reform programs. The United States will continue to incorporate transparency in government procurement provisions in its negotiations of bilateral FTAs. In addition, the United States will continue to work to enhance the transparency provisions of the plurilateral WTO Government Procurement Agreement (GPA).

## **2. Trade Facilitation**

### **Status**

The Fourth Ministerial Conference at Doha established an ambitious work program on Trade Facilitation, including a mandate for the Council on Trade in Goods to "review and as appropriate, clarify and improve relevant aspects of Article V, VIII, and X of GATT 1994 and identify the trade facilitation needs and priorities of Members, in particular developing and least developed countries." At Doha, it was agreed that negotiations on Trade Facilitation would take place after the Fifth Ministerial Conference, based upon a decision to be taken at that Ministerial on the modalities of negotiations.

## Major Issues in 2003

In 2003, the Council for Trade in Goods (CTG) held two formal sessions on Trade Facilitation before the Cancun Ministerial in September. There was a continuing consensus that systemic reforms related to increased transparency and efficiency in the conduct of border transactions would increase trading opportunities and diminish corruption, while providing the additional benefit of enhancing administrative capabilities that ensure effective compliance with various customs-related requirements, ranging from the environment to security. Much of the discussion was devoted to developing country concerns, with key submissions by Canada, Japan and the United States. In particular, a submission by the United States on Special and Differential Treatment fostered a robust exchange of views and elicited a wide range of positive responses to a proposed three point approach to (1) deal with varied needs and abilities of Members to implement results of negotiations through individualized transition periods; (2) create workable partnerships among Members and other institutions to support technical assistance needs; and (3) ensure effective enforcement of prospective Trade Facilitation commitments.

At the Cancun Ministerial Conference, no decision was taken on commencing negotiations on Trade Facilitation. The United States joined many others in supporting elements of the draft Ministerial Declaration text put forward by the Chairman of the Conference which would have launched negotiations on Trade Facilitation, leading to the clarification and improvement of GATT Articles V, VIII and X.

## Prospects for 2004

Notwithstanding the overall impasse at the Cancun Ministerial Conference, there emerged new broad-based support for commencing negotiations on Trade Facilitation. While the direction and pace of moving forward on Trade Facilitation will likely be contingent on the more general advancement of the Doha Agenda, at Cancun a number of previously-resisting developing country Members began to openly acknowledge

the merit of a launch of negotiations. While the Cancun Ministerial conference featured strident opposition to commencing negotiations from a number of developing countries, particularly those from Africa, a number of such Members have subsequently signaled informally that the Cancun position was a generalized approach driven by strong negative views relating specifically to several other so-called Singapore issues, rather than Trade Facilitation.

Many developing countries have joined the United States and other Members in the view that achieving a negotiated agreement on Trade Facilitation could be one of the most important development-related achievements emerging from the Doha Development Agenda. A broad array of development levels can also be seen among the members of the so-called “Colorado Group,” which has worked together for several years toward a launch of WTO negotiations on Trade Facilitation. Members of the Colorado Group include: the United States, Australia, Canada, Chile, Colombia, Costa Rica, European Union, Hong Kong China, Hungary, Japan, Korea, Morocco, New Zealand, Norway, Paraguay, Singapore, and Switzerland.

India and a few other Members have suggested that future WTO work on Trade Facilitation should not lead to new and strengthened WTO disciplines, but should only aim at non-binding or voluntary results. The United States is joined by many other Members in citing experience that shows how a rules-based border environment is an essential element for all Members in securing market access gains, and how such improvements can serve in particular to maximize opportunities for south-south trade. A number of developing countries have also joined the United States in recognizing that small and medium size enterprises (SMEs) have become important stakeholders in advancing WTO agenda in the area of Trade Facilitation. SMEs are poised to take advantage of opportunities provided by the digital economy and ever-improving efficiencies in the movement of goods, while at the same time are particularly disadvantaged when border procedures are opaque and overly burdensome.

### 3. Working Group on Trade and Competition Policy

#### Status

In 2003, the WTO Working Group on the Interaction between Trade and Competition Policy (the “Working Group”) held its seventh year of work under the oversight of the WTO General Council. The Working Group was established by WTO Trade Ministers at their first Ministerial Conference in Singapore in December 1996. Its mandate was to “study issues raised by Members relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit further consideration in the WTO framework.” In December 1998, the General Council authorized the Working Group to continue its work on the basis of a more focused framework of issues. This framework continued to serve as the basis of the Working Group’s work until the Doha Ministerial Conference in 2001.

In the November 2001 Doha Ministerial Declaration, the Ministers agreed that a decision was to be taken at the Fifth Session of the Ministerial Conference, by explicit consensus, as to the modalities of negotiations on trade and competition policy. The Ministerial Declaration provided that work leading up to the Fifth Session would focus on the clarification of: core principles, including transparency, non-discrimination and procedural fairness; (2) provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building. The Ministers recognized the needs of developing and least developed countries for technical assistance and capacity building in this area, and pledged to work in cooperation with other inter-governmental organizations, including UNCTAD, to provide assistance to respond to these needs.

Ministers were unable to reach agreement on trade and competition policy at the Cancun

Ministerial. As of year-end 2003 there has not been agreement on a new mandate for further work by the Working Group, and it is not clear whether the Working Group will continue its work in 2004, and, if so, what its mandate will be.

#### Major Issues in 2003

The Working Group held two meetings in February and May 2003. The Working Group continued to organize its work on the basis of written contributions from Members, supplemented by discussion and commentary offered by delegations at the meetings and, where requested, factual information and analysis from the WTO Secretariat and observer organizations such as the OECD and UNCTAD. As in 2002, the Working Group’s discussions focused on the issues specified in paragraphs 24 and 25 of the Doha Declaration—technical assistance and capacity building; provisions on hardcore cartels and modalities for voluntary cooperation; and core principles, including transparency, non-discrimination and procedural fairness. The Working Group also addressed the nature and scope of compliance mechanisms that might be included under a multilateral framework on competition policy, and possible elements of progressivity and flexibility that might be included in such a multilateral framework. In 2003, seventeen written submissions were contributed by twelve Members (counting the European Union and its 15 Member States as one contributor): Australia, Canada, China, Cuba, the European Union, Hong Kong China, Japan, Kenya, Korea, Kuwait, Malaysia, and the United States.

Despite the extensive work conducted on these issues, there remain major differences among Members as to how to proceed on trade and competition policy. The European Union’s submissions to the Working Group advocated a multilateral WTO agreement on competition policy with substantive disciplines subject to WTO dispute settlement. Several other Members, including Japan and Korea, likewise advocated a multilateral framework. However, a number of developing country Members responded that they were not ready to proceed to negotiation of a

multilateral agreement, stating that they did not want to be required to have a competition law and authority until they were ready. The United States played an active role in the Working Group, submitting a paper in May on the benefits for all Members of a possible WTO competition “peer review” process.

These divergent viewpoints expressed in the Working Group were reiterated during preparations for the Cancun Ministerial. In light of these differences in views, the revised draft Ministerial text circulated in Cancun called for further clarification of the issues in the Working Group, including consideration of possible modalities for negotiations, with the Working Group to report to the General Council by a specified date. However, as noted above, Ministers were ultimately unable to reach agreement on trade and competition policy.

#### **Prospects for 2004**

Given the absence of Ministerial direction at Cancun for further work on trade and competition policy, it is not clear whether the Working Group will continue its work in 2004, and, if so, what its mandate will be.

### **4. Working Group on Trade and Investment**

#### **Status**

The Working Group on Trade and Investment (WGTI) was established at the Singapore Ministerial in 1996. At the conclusion of the Doha meeting, Ministers extended the WGTI's mandate and agreed that investment negotiations “will take place after the next Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on the modalities of negotiations.” During the period between the Doha and Cancun Ministerials, U.S. contributions to the work of the WGTI were aimed at promoting understanding of the benefits of open investment policies and of the contribution of investment to economic development. WTO Members could not agree in Cancun on a mandate for negotiating on investment and other

Singapore issues. As of early 2004, the status of the WGTI and of any future WTO work plan on investment were unclear.

#### **Major Issues in 2003**

The Doha Declaration tasked the WGTI with examining seven issues, including the scope and definition of investment; transparency; non-discrimination; approaches to the treatment of investment prior to establishment, based on a GATS-type, positive list; development provisions; exceptions and balance-of-payments safeguards; and consultation and the settlement of disputes between Members. The Doha Declaration also stated 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.” WTO Members addressed the Doha Declaration issues during several WGTI sessions in 2002 and during two formal WGTI meetings and several informal consultations in 2003. The Working Group also discussed WTO activities relating to technical assistance on trade and investment issues.

The EU and Japan continued in 2003 to be the strongest advocates for the launch of WTO investment negotiations. Korea, Switzerland, and several developing countries, including Mexico, Chile, Singapore, and Costa Rica also advocated investment negotiations.

The EU and Japan argued in 2002 and 2003 that multilateral investment disciplines would stimulate increased flows of investment as well as trade, which increasingly follows investment. They highlighted the fact, which they described as an unfortunate anomaly, that investment to supply services enjoyed substantial multilateral protections under the GATS while investment to manufacture benefited from only minimal protections under WTO agreements.

The United States made similar arguments about the value of multilateral investment disciplines, but chose not to be a demandeur for a WTO investment agreement. Some domestic

stakeholders expressed concern during 2002 and 2003 that WTO investment negotiations would not produce a high-standards agreement. The United States circulated one formal proposal to the WGTI during the period between the Doha and Cancun Ministerials, a 2002 paper arguing that the disciplines of a multilateral investment agreement should extend to portfolio as well as direct investment.

Most developing country WTO Members consistently opposed all but the most limited proposals for WTO investment negotiations tabled either formally or informally during 2003. Developing countries argued that multilateral disciplines would restrict their ability to regulate foreign investment in ways designed to promote economic development objectives. They contended that investment disciplines were beyond both the mandate and the competence of the WTO. Pointing to the international financial crises of the 1990s, some developing countries also argued that multilateral disciplines could increase their vulnerability to increasingly rapid and volatile cross-border flows of portfolio investment capital.

In the weeks before the Cancun Ministerial, the EU and Japan, joined by Korea and Switzerland, proposed the launch of negotiations on a multilateral framework that would include each of the seven elements in the Doha Declaration, as well as other issues or elements that WTO Members might wish to propose. The EU/Japan proposal also called for provisions that would extend special and differential treatment to developing countries, clarify the relationship between an investment agreement and other WTO agreements, and clarify the relationship between a WTO investment agreement and existing bilateral and regional investment agreements.

Countries advocating WTO investment negotiations asserted that a decision had already been taken at Doha to launch negotiations on the basis of the issues identified in the Doha Declaration, but most developing countries asserted that, because they opposed a negotiation, there

was no “explicit consensus” as required by the Declaration to allow negotiations to commence.

Developing countries were substantially unified in their opposition to the EU/Japan negotiating proposal. In the days before the Cancun meeting, many developing countries united around a counter-proposal rejecting the launch of investment negotiations in favor of continuing working group discussions under the Doha Declaration mandates. The United States also opposed elements of the EU/Japan proposal that appeared to foreclose the possibility of achieving high standards in certain areas. For example, the EU/Japan proposal failed to clearly endorse coverage of portfolio investment in a potential WTO agreement.

The WTO Secretariat sought to reconcile the EU/Japan and developing country positions by proposing an additional period for consideration of possible negotiating modalities, but this proposal failed to satisfy either side. The conflict between the two positions gave rise to one of the most difficult disputes in Cancun and contributed significantly to the breakdown of negotiations. A decision by the EU and Japan in the final hours of the Ministerial to abandon their effort to achieve the launch of investment negotiations came too late to have a positive effect on the Cancun negotiating dynamic.

### **Prospects for 2004**

WTO members had yet to settle on a course of action on investment and other Singapore issues by the beginning of 2004. The EU shifted direction near the end of 2003, announcing that it would be willing to negotiate plurilateral agreements on investment and other Singapore issues, but a number of developing countries continued to oppose the launch of investment negotiations, whether on a multilateral or plurilateral basis. WTO members also continue to differ on the mission of the WGTI, with some arguing that it should resume efforts at identifying possible negotiating modalities, others arguing that it should limit itself to the further clarification of issues in the Doha Declaration, and a third group arguing that it should be disbanded.

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

### **Status**

The Work Program on Electronic Commerce continued to meet through a series of dedicated discussions under the auspices of the General Council. Three discussions were held during 2003.

### **Major Issues in 2003**

As in previous years, most of the sessions focused on the classification of certain electronically downloadable products, and the trade implications that might result from a decision to classify these products as goods or services, including the fiscal implications of classifying something as a good or service and how that might impact the current practice of not imposing customs duties on electronic transmissions. The United States submitted a contribution to the Work Program outlining key principles that could serve as a useful guide in developing trade policies in the area of electronic commerce.

### **Prospects for 2004**

The United States supports active involvement in the on-going negotiations that are important to the development of electronic commerce. The United States will continue to be an active participant in the dedicated discussions. In addition, the United States supports extending the current practice of not imposing customs duties on electronic transmissions with a view to making that permanent and binding in the future.

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

### **Status**

Ministers established the mandate for the Working Group on Trade, Debt and Finance (TDF) at the Doha ministerial. Ministers instructed the Working Group to examine the relationship between trade, debt and finance, and to examine 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 countries. The Group was also instructed 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 2003**

In 2003, the Working Group held two formal meetings to prepare a report to the Fifth Ministerial Conference. Members reached a consensus on a list of themes for further discussion should Ministers agree to continue the working group. This list of themes included trade liberalization as a source of growth; WTO rules and financial stability; the importance of market access and the reduction of other trade barriers in the Doha Development Agenda negotiations; trade and financial markets; trade-financing; better coherence in the design and implementation of trade-related reforms and monitoring; the inter-linkages between external liberalization and internal reform; and external financing, commodity markets and export diversifications.

### **Prospects for 2004**

Following a resumption of Doha negotiations, Working Group Members may be asked to continue discussions of the agreed themes and related issues reported to the Fifth Ministerial Conference.

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

### **Status**

At the Fourth Ministerial Conference in Doha, 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.” The TNC established the Working Group on Trade and Technology Transfer (WGTTT) under the auspices of the General Council, asking it to report on its progress to the Fifth Session of the Ministerial

Conference (Cancun). The WGTTT was not able to achieve consensus on any recommendations for consideration by ministers in Cancun, nor was any decision on the WGTTT's future work program taken in Cancun or during the December 2003 meeting of the General Council. The United States believes the WGTTT can play a role in helping WTO Members identify ways to promote the increased transfer and absorption of technology through trade, investment, and the provision of technical assistance, but the United States opposes national or multilateral mandates for the transfer of private or government-controlled technology.

### **Major Issues in 2003**

The WGTTT met formally three times in 2003, considering inputs from the Secretariat, WTO members, other WTO bodies, and other inter-governmental organizations. During its March meeting, the WGTTT began its consideration of a paper prepared by the Secretariat, entitled, "A Taxonomy of Country Experiences on International Technology Transfers," which suggested a framework for classifying the policies that governments have adopted to promote technology transfer. The Secretariat paper also included case studies of national experiences with technology transfer policies.

Several WTO members also circulated papers for discussion in the WGTTT. A March submission by the EU, "Reflection Paper on Transfer of Technology to Developing and Least-Developed Countries" highlighted the importance to technology transfer of commercial trade and investment, effective IPR protection, and the absorptive capacities of host countries. India, Pakistan, and several other developing countries submitted a paper in May 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 objected to this paper during the WGTTT's May and July sessions, arguing that it appeared to endorse mandates for the transfer of proprietary technology. The United States also objected to the

paper's suggestion that some WTO agreements were hindering the transfer of technology.

During 2003, the WGTTT continued to receive written inputs from other WTO bodies on issues relating to trade and technology transfer. Nine WTO bodies reported having performed or planned work in this area. The WGTTT also received three case studies on technology transfer that had been prepared by UNCTAD.

The United States and other developed countries have argued that market-based trade and investment are the most efficient means of promoting technology transfer and that governments should resist mandates for the transfer of proprietary technology. In the U.S. view, the contribution of trade and investment to technology transfer reinforces the case for continued trade and investment liberalization. The United States and others also argued that developing countries need to take steps to enhance their ability to absorb foreign technologies, and that technical assistance from developed countries could promote technology transfer and absorption.

### **Prospects for 2004**

As of early 2004, the post-Cancun status of the WGTTT had not yet been resolved. The United States will support a continuation of the WGTTT's work under the Doha mandate. The United States will work with other countries to examine the relationship between trade and the transfer of technology, but will continue to oppose proposals for the mandated transfer of technology.

## **D. General Council Activities**

### **Status**

The WTO General Council is the highest 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 once every two years. (The Fifth Ministerial Conference met most recently in Cancun, Mexico). The General Council and Ministerial Conference consist of representatives of all WTO Members. 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. All accessions to the WTO must be approved by the General Council or the Ministerial Conference. Technically, meetings of both the Dispute Settlement Body (DSB) and the Trade Policy Review Body (TPRB) are meetings of the General Council convened for the purpose of discharging the responsibilities of the DSB and TPRB respectively.

Three major bodies report directly to the General Council: the Council for Trade in Goods, the Council for Trade in Services, and the Council for Trade-Related Aspects of Intellectual Property Rights. 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 Trading Arrangements report directly to the General Council. The Working Groups established at the First Ministerial Conference in Singapore to examine investment, trade and competition policy, and transparency in government procurement also report directly to the General Council. A number of subsidiary bodies report through the Council for Trade in Goods or the Council for Trade in Services to the General Council. The Doha Ministerial Declaration formed 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. The mandates are part of DDA and these were reviewed earlier in this chapter.

The General Council uses both formal and informal processes to conduct the business of the WTO. Informal groupings, which generally include the United States, can play an important role in consensus-building. In 2003, the Chairman of the General Council conducted extensive informal consultations, with both the

Heads of Delegation of the entire WTO Membership and a wide variety of smaller groupings. In the latter half of the year, these consultations were convened frequently with a view to finding consensus on both substantive and procedural elements that would enable forward movement on the Doha Development Agenda.

### **Major Issues in 2003**

Ambassador Carlos Perez del Castillo served as Chairman of the General Council in 2003. The major focus of Chairman Perez del Castillo and the General Council were the preparations for the Fifth Ministerial Conference in Cancun in September, as well as the effort to bring all sides back to work in line with the Cancun Ministerial mandate in the months following the Conference. These substantive issues involved in these activities are reviewed in the section on the Trade Negotiations Committee and the Doha Development Agenda. The following issues also figured prominently in the General Council activities:

***Coherence:*** Article III(5) of the Marrakesh Agreement Establishing the WTO provides for coherence in global economic policy making through WTO cooperation with the International Monetary Fund (IMF) and the World Bank. At the May 2003 session of the General Council, both the IMF Managing Director Horst Kohler and World Bank President James Wolfensohn participated in exchange of views with WTO Members. The discussion centered on the linkages among trade, finance and development policies at both the national and international level. Many WTO Members noted the importance of a successful conclusion to the DDA in promoting more coherent policymaking that would advance the shared objectives of sustainable growth, development and poverty reduction.

***Review of the U.S. Jones Act:*** Paragraph 3 of GATT 1994 mandates the General Council to conduct a review every two years to ascertain whether the original conditions creating the need for this exemption “still prevail.” The exemption provided in Paragraph 3 applies to certain statutory provisions (collectively referred to as the



“Jones Act”) notified to the WTO that prohibit foreign-built or repaired ships from engaging in the coastwise trade (i.e., cabotage). The United States would lose this exemption if the Jones Act were amended to become less WTO-consistent. The General Council conducted its third review of Paragraph 3 in December 2003. During this review, some WTO Members requested clarifications on data provided by the United States on U.S. shipyard orders and deliveries. Other WTO Members sought more information on the 2003 appropriations legislation (Pub. L. 108-7), which provided the legal grounds for up to three cruise ships constructed to completion in a shipyard located outside of the United States to receive a coastwise endorsement to operate in regular service transporting passengers between or among the islands of Hawaii. More generally, a number of WTO Members expressed the view that the review should have provided an opportunity to examine from a substantive point of view whether the conditions giving rise to the invocation of this exemption still exist. The General Council took note of the statements made during this year’s review and agreed that the next review would begin in 2005.

**Trade in Textiles and Clothing:** The General Council considered communications from several Members on changes in textiles quotas. These involved submissions of textile-exporting countries on (1) the reduction in potential market (quota) access in 2004 due to the lack of carry forward in the quota phase-out program required by the Agreement on Textiles and Clothing, and (2) the imposition of limitations on future antidumping actions against textile imports from developing countries that they expect will be brought beginning in January 2005 after the Textiles sector is fully integrated into the WTO and quotas currently in effect have expired. No consensus emerged among Members on these submissions.

**Waivers of Obligations:** As part of the annual review required by Article IX of the WTO Agreement, the General Council considered reports on the operation of a number of

previously agreed waivers, including those applicable to the United States for the Caribbean Basin Economic Recovery Act, and preferences for the Former Trust Territories of the Pacific Islands. The General Council also approved several other waivers, as described in the section on the Council on Trade in Goods (CTG). Annex II contains a detailed list of Article IX waivers currently in force.

**Capacity Building through Technical Cooperation:** The General Council continued its supervision of technical assistance for the purpose of capacity building in developing countries (i.e., modernizing their government operations to facilitate effective participation in the negotiation and implementation of WTO Agreements). For its part, the United States directly supports the WTO’s trade-related technical assistance (TRTA). In Cancun, the United States pledged an additional \$1.2 million for WTO TRTA. This contribution augmented \$1 million given earlier in 2003, bringing total U.S. support for WTO TRTA to more than \$3 million since the launch of Doha negotiations in November 2001. This money was in direct support of programs like the annual WTO Technical Assistance Plan.

**Venue for the Sixth Ministerial Conference:** In October 2003, the General Council accepted the invitation extended by Hong Kong to host the Sixth Ministerial Conference. The date of this conference has not yet been determined.

**S&D Review:** At the February 2003 General Council session, the Committee on Trade and Development put forward a progress report on the S&D review which noted that the Committee had not concluded discussions on a final package of recommendations, but took note of some recommendations that had been agreed in principle. The General Council decided to take up discussion of outstanding agreement-specific proposals under the leadership of Chairman Carlos Perez del Castillo, in the spring and summer of 2003. The Chair focused on a set of recommendations that might yield an early

agreement and involved the expertise of other WTO bodies in the consideration of relevant proposals. Renewed efforts by heads of delegation in the spring and summer helped advance a set of recommendations that were later put forward by the Chair, although not adopted, at the Cancun Ministerial.

### **Prospects for 2004**

The General Council will continue its important role in overseeing implementation of the WTO Agreements and the forward movement of negotiations on the Doha Development Agenda. Management of the WTO, especially with respect to public outreach efforts, consultations with Members, and its work with other institutions on capacity building, will figure prominently in Council discussions over the next year. The Council will meet at least quarterly.

The requirement for ministerial meetings was established in the Uruguay Round to assure regular, political level review by ministers of the operation of the WTO, similar to the practice of other international organizations. Ministerial Conferences were convened in Singapore (1996), Geneva (1998), Seattle (1999), Doha (2001) and Cancun (2003). The General Council has the authority to add issues to the WTO's agenda, whether for a work program or negotiation.

## **1. 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 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." Annex II provides more background information on the WTO dispute settlement process.

### **Major Issues in 2003**

The DSB met 22 times in 2003 to oversee disputes and to address responsibilities such as consulting on proposed amendments to the Appellate Body working procedures 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 will 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 2003, the DSB approved by consensus a number of additional names for the roster. The United States scrutinized the credentials of these candidates to assure the quality of the roster.

The present WTO panel roster appears in the background information in Annex II. The list in the roster notes the areas of expertise of each roster member (goods, services and/or TRIPS).

**Rules of Conduct for the DSU:** The DSB completed work on a code of ethical conduct for WTO

dispute settlement and on December 3, 1996, adopted the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes*. A copy of the Rules of Conduct was printed in the Annual Report for 1996 and is available on the WTO and USTR websites. There were no changes in these Rules in 2003.

The Rules of Conduct elaborate on the ethical standards built into the DSU, and 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 to a dispute 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 Uruguay Round Agreements Act (URAA), which directed the 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 Subsidies 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. The names and biographical data for the Appellate Body members 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's term as Chairperson runs from December 13, 2003 to December 12, 2004.

In 2003, the Appellate Body issued six reports, of which four involved the United States as a party and are discussed in detail below. The two other reports concerned the European Union's antidumping measures on bed linens from India and on pipe fittings from Brazil. The United States participated in both of these proceedings as an interested third party.

**Dispute Settlement Activity in 2003:** During its first nine years in operation, 305 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, and 26 in 2003) were filed with the WTO. During that period, the United States filed

64 complaints against other Members' measures and received 77 complaints on U.S. measures. A number of disputes commenced in earlier years remained active in 2003. A description of those disputes in which the United States was either a complainant, defendant, or third party during the past year follows below.

## Prospects for 2004

In 2004, we expect that the DSB will 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. DSB Members will continue to consider reform proposals in 2004.

### a. Disputes Brought by the United States

One of the most important components of U.S. trade policy is to ensure U.S. exporters receive open access and fair treatment in foreign markets. In 2003, 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 2003 where the United States was a complainant. As demonstrated by these summaries, the WTO dispute settlement process generally has proven to be an effective tool in combating barriers to U.S. exports and advancing our goal of ensuring a level playing field for American goods and services. Indeed, in a number of cases the United States has been able to achieve satisfactory outcomes invoking the consultation provisions of the dispute settlement procedures, without recourse to formal panel proceedings.

#### *Argentina—Patent and test data protection for pharmaceuticals and agricultural chemicals (DS171/196)*

On May 6, 1999, the United States filed a consultation request challenging Argentina's failure to provide a system of exclusive marketing rights for pharmaceutical products, and to ensure that changes in its laws and regulations during its

transition period do not result in a lesser degree of consistency with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”). Consultations were held on June 15, 1999, and again on July 27, 1999. On May 30, 2000, the United States expanded its claims in this dispute to include new concerns that arose as a result of Argentina’s failure to fully implement its remaining TRIPS obligations as required on January 1, 2000. These concerns include Argentina’s failure to protect confidential test data submitted to government regulatory authorities for pharmaceuticals and agricultural chemicals; its denial of certain exclusive rights for patents; its failure to provide such provisional measures as preliminary injunctions to prevent infringements of patent rights; and its exclusion of certain subject matter from patentability. Consultations began July 17, 2000. On May 31, 2002, the United States and Argentina notified the DSB that a partial settlement of this dispute had been reached. Of the ten claims raised by the United States, eight were settled. The United States reserved its rights with respect to two remaining issues: protection of test data against unfair commercial use and the application of enhanced TRIPS Agreement rights to patent applications pending as of the entry into force of the TRIPS Agreement for Argentina (January 1, 2000). The dispute remains in the consultation phase with respect to these issues.

#### *Brazil—Customs valuation (DS197)*

The United States requested consultations on May 31, 2000 with Brazil regarding its customs valuation regime. U.S. exporters of textile products reported that Brazil uses officially-established minimum reference prices both as a requirement to obtain import licenses and/or as a base requirement for import. In practice, this system works to prohibit the import of products with declared values below the established minimum prices. This practice appears inconsistent with Brazil’s WTO obligations, including those under the Agreement on Customs Valuation. The United States participated as an interested third party in a dispute initiated by the

European Union regarding the same matter, and decided to pursue its own case as well. The United States held consultations with Brazil on July 18, 2000, and continued to monitor the situation in 2003.

#### *Canada—Export subsidies and tariff-rate quotas on dairy products (DS103)*

The United States prevailed on its claim that Canada is providing subsidies to exports of dairy products in violation of its Uruguay Round commitment to reduce the quantity of subsidized exports of dairy products. The United States initiated this dispute in 1998, contending that Canada was providing export subsidies on dairy products in excess of its commitment levels and was maintaining a tariff-rate quota (TRQ) on fluid milk under which it only permitted the entry of milk in retail-sized containers by Canadian residents for their personal use. On August 12, 1998, the following panelists were selected, with the consent of the parties, to review the U.S. claims: Professor Tommy Koh, Chairman; Mr. Guillermo Aguilar Alvarez and Professor Ernst-Ulrich Petersmann, Members. On May 17, 1999, the panel issued its report upholding U.S. arguments by finding that Canada’s export subsidies are inconsistent with the Agreement on Agriculture, and that Canada’s practice of restricting the import of milk to retail-sized containers imported by Canadian residents is inconsistent with its obligations under the GATT 1994. On October 13, 1999, the Appellate Body issued its report upholding the panel’s finding that Canada’s export subsidies are inconsistent with its GATT obligations. The panel and Appellate Body reports were adopted by the Dispute Settlement Body (DSB) on October 27, 1999. On December 22, 1999, the parties reached agreement on the time period for implementation by Canada. Under this agreement, Canada was to complete full implementation of the DSB’s recommendations and rulings no later than January 31, 2001.

While Canada eliminated one of the export subsidies subject to the DSB findings, it introduced its “commercial export milk” scheme

under which exporters have access to milk at prices that are below domestic market levels in Canada. Therefore, on February 16, 2001, the United States, along with New Zealand, requested that the DSB reestablish the panel to review Canada's compliance measures. At the same time, the United States requested authorization to withdraw concessions benefiting goods from Canada if the panel agreed that Canada had failed to comply with the rulings against it. The panel was reestablished on March 1, 2001, with Mr. Peter Paleka replacing Professor Koh, who was no longer available to serve, and with Professor Petersmann serving as Chairman. The panel found that the steps Canada took to implement the adverse rulings regarding its dairy export practices were insufficient and that Canada continued to subsidize its dairy exports at a level that is inconsistent with its WTO commitments. Canada appealed the panel's findings. On December 3, 2001, the Appellate Body concluded that it did not have enough facts to make a ruling against Canada.

As a result, the United States, along with New Zealand, requested on December 6, 2001 that the panel be reconvened again to allow the complaining parties to present additional factual information. The panel was reestablished on December 18, 2001, with Mr. Peter Paleka and Mr. Guillermo Aguilar Alvarez serving as panelists, and with Professor Petersmann serving as Chairman. On July 26, 2002, the panel found that the steps Canada took to implement the adverse rulings regarding its dairy export practices were insufficient and that Canada continued to subsidize its dairy exports at a level that is inconsistent with its WTO commitments. Canada appealed the panel's findings. On December 20, 2002, the Appellate Body upheld the panel's findings. The DSB adopted the panel and Appellate Body reports on January 17, 2003. In order to permit time for consultations, Canada and the United States agreed to suspend further arbitration proceedings. A settlement of the dispute was notified to the DSB on May 9, 2003.

#### *Canada—Measures Relating to Exports of Wheat And Treatment of Imported Grain (DS276)*

On December 17, 2002, the United States requested consultations with Canada concerning the export of wheat by the Canadian Wheat Board and the treatment accorded by Canada to grain imported into Canada. The Government of Canada established the Canadian Wheat Board and granted to this enterprise exclusive and special privileges, including the exclusive rights to purchase and sell Western Canadian wheat for human consumption. The actions of the Government of Canada and the Canadian Wheat Board appear to be inconsistent with the obligations of the Government of Canada under Article XVII of the GATT 1994. Furthermore, with regard to the treatment of grain that is imported into Canada, the United States considers that Canadian measures discriminate against imported grain, including grain that is the product of the United States, in breach of the GATT 1994. Consultations were held January 31, 2003. The United States requested the establishment of a panel on March 6, 2003. The DSB established a panel on March 31, 2003. The Director General composed the panel as follows: Ms. Claudia Orozco, Chair, and Mr. Alan Matthews and Mr. Hanspeter Tschaeni, Members. Following a preliminary procedural ruling, the DSB established a second panel on July 11, 2003, with the same panelists and the same schedule.

#### *Egypt—Apparel Tariffs (WT/DS305)*

On December 23, 2003, the United States requested consultations with Egypt regarding the duties that Egypt applies to certain apparel and textile imports. During the Uruguay Round, Egypt agreed to bind its duties on these imports (classified under HS Chapters 61, 62 and 63) at rates of less than 50 percent (ad valorem) in 2003 and thereafter. The United States believes the duties that Egypt actually applies, on a "per article" basis, greatly exceed Egypt's bound rates of duty. Consultations are being scheduled.

*European Union—Regime for the importation, sale and distribution of bananas (DS27)*

The United States, along with Ecuador, Guatemala, Honduras, and Mexico, successfully challenged the EU banana regime under WTO dispute settlement procedures. The regime was designed, among other things, to take away a major part of the banana distribution business of U.S. companies. On May 29, 1996, at the request of the complaining parties, the Director-General selected the following panelists to serve in this dispute: Mr. Stuart Harbinson, Chairman; Mr. Kym Anderson and Mr. Christian Häberli, Members. On May 22, 1997, the panel found that the EU banana regime violated WTO rules; the Appellate Body upheld the panel's decision on September 9, 1997. At the request of the complaining parties, the compliance period was set by arbitration and expired on January 1, 1999. However, on January 1, 1999, the European Union adopted a regime that perpetuated the WTO violations identified by the panel and the Appellate Body. The United States sought WTO authorization to suspend concessions with respect to certain products of the European Union, the value of which is equivalent to the nullification or impairment sustained by the United States. The European Union exercised its right to request arbitration concerning the amount of the suspension and on April 6, 1999, the arbitrators determined the level of suspension to be \$191.4 million. On April 19, 1999, the DSB authorized the United States to suspend such concessions, and the United States imposed 100 percent ad valorem duties on a list of EU products with an annual trade value of \$191.4 million.

On April 11, 2001, the United States and the European Union agreed to an Understanding that identified the means by which the dispute could be resolved. Pursuant to the Understanding, the European Union implemented a revised import licensing regime for its banana tariff-rate quota on July 1, 2001, and allocated a significantly increased number of licenses to U.S. operators. The United States thereupon suspended its increased duties.

The European Union implemented an additional change to the tariff-rate quota by January 1, 2002, which resulted in further increases of licenses allocated to US operators.

*European Union—Measures concerning meat and meat products (hormones) (WT/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 ("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, 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 of its plans to make permanent the ban on one hormone, oestradiol.

*European Union—Protection of trademarks and geographical indications for agricultural products and foodstuffs (DS174)*

EU Regulation 2081/92, as amended, does not provide national treatment with respect to geographical indications for agricultural products and foodstuffs; it also does not provide sufficient protection to pre-existing trademarks that are similar or identical to such geographical indications. The United States considers this measure inconsistent with the European Union's obligations under the TRIPS Agreement and the GATT 1994. The United States requested consultations regarding this matter on June 1, 1999. Consultations were first held July 9, 1999, and continued through mid-2003. On April 4, 2003, the United States requested consultations on the additional issue of the EU's national treatment obligations under the GATT 1994. The United States and Australia held joint consultations with the EU on May 27, 2003. The United States requested the establishment of a panel on August 18, 2003, and a panel was established on October 2, 2003.

*European Union—Provisional Safeguard Measure on Imports of Certain Steel Products (DS260)*

On May 30, 2002, the United States requested consultations with the European Union concerning the consistency of the European Union's provisional safeguard measures on certain steel products with the General Agreement on Tariffs and Trade (1994) and with the WTO Agreement on Safeguards. Consultations were held on June 27 and July 24, 2002, but did not resolve the dispute. Therefore, on August 19, 2002, the United States requested that a WTO

panel examine these measures. The panel was established on September 16, 2002.

*European Union—Measures affecting the approval and marketing of biotech products (WT/DS291)*

On May 13, 2003, the United States filed a consultation request with respect to the EU's moratorium on all new biotech approvals, and bans of six member states (Austria, France, Germany, Greece, Italy and Luxembourg) on imports of certain biotech products previously approved by the EU. The moratorium is not supported by scientific evidence, and the EU's refusal even to consider any biotech applications for final approval constitutes "undue delay." The national import bans of previously EU-approved products appear not to be based on sufficient scientific evidence. Consultations were held June 19, 2003. The United States requested the establishment of a panel on August 7, 2003, and the DSB established a panel on August 29, 2003.

*Japan—Measures Affecting the Importation of Apples (DS245)*

On March 1, 2002, the United States requested consultations with Japan regarding Japan's measures restricting the importation of U.S. apples in connection with fire blight or the fire blight disease-causing organism, *Erwinia amylovora*. These restrictions include: the prohibition of imported apples from U.S. states other than Washington or Oregon; the prohibition of imported apples from orchards in which any fire blight is detected; the prohibition of imported apples from any orchard (whether or not it is free of fire blight) should fire blight be detected within a 500 meter buffer zone surrounding such orchard; the requirement that export orchards be inspected three times yearly (at blossom, fruitlet, and harvest stages) for the presence of fire blight for purposes of applying the above-mentioned prohibitions; a post-harvest surface treatment of exported apples with chlorine; production requirements, such as chlorine treatment of containers for harvesting and chlorine treatment of the packing line; and the post-harvest separation of apples for export to Japan from those



apples for other destinations. Consultations were held on April 18, 2002, and a panel was established on June 3, 2002. The Director-General selected as panelists Mr. Michael Cartland, Chair, and Ms. Kathy-Ann Brown and Mr. Christian Haerberli, Members.

In its report issued on July 15, 2003, the panel agreed with the United States that Japan's fire blight measures on U.S. apples are inconsistent with Japan's WTO obligations. In particular, the panel found that: (1) Japan's measures are maintained without sufficient scientific evidence, inconsistent with Article 2.2 of the SPS Agreement; (2) Japan's measures cannot be provisionally maintained under Article 5.7 of the SPS Agreement (an exception to the obligation under Article 2.2); and (3) Japan's measures are not based on a risk assessment and so are inconsistent with Article 5.1 of the SPS Agreement. Japan appealed the panel's report on August 28, 2003.

The Appellate Body issued its report on November 26, 2003, upholding panel findings that Japan's phytosanitary measures on U.S. apples, allegedly to protect against introduction of the plant disease fire blight, are inconsistent with Japan's WTO obligations. In particular, the Appellate Body upheld the three panel findings, detailed above, that Japan had appealed. The DSB adopted the panel and Appellate Body reports on December 10, 2003.

#### *Mexico—Measures affecting trade in live swine (DS203)*

On July 10, 2000, the United States requested consultations with Mexico regarding Mexico's October 20, 1999, definitive antidumping measure involving live swine from the United States as well as sanitary and other restrictions imposed by Mexico on imports of live swine weighing more than 110 kilograms. The United States considers that Mexico made a determination of threat of material injury that appears inconsistent with the Antidumping Agreement, and that other actions by Mexico in the conduct of its investigation are also in violation of the Agreement. In addition, the United States

considers that, by maintaining restrictions on the importation of live swine weighing 110 kilograms or more, Mexico was acting contrary to its obligations under the Agreement on Agriculture, the SPS Agreement, the Agreement on Technical Barriers to Trade ("TBT Agreement"), and the GATT 1994. Consultations were held September 7, 2000. Subsequent to the consultations, Mexico issued a protocol which has allowed a resumption of U.S. shipments of live swine weighing 110 kilograms or more into Mexico. At about the same time, Mexico self-initiated a review of its threat of injury determination based on information, including a shortage of slaughter hogs, that suggests that market conditions have changed substantially in Mexico. On May 23, 2003, Mexico terminated the antidumping duty.

#### *Mexico—Measures affecting telecommunications services (DS204)*

On August 17, 2000, the United States requested consultations with Mexico regarding its commitments and obligations under the General Agreement on Trade in Services ("GATS") with respect to basic and value-added telecommunications services. The U.S. consultation request covered a number of key issues, including the Government of Mexico's failure to: (1) maintain effective disciplines over the former monopoly, Telmex, which is able to use its dominant position in the market to thwart competition; (2) ensure timely, cost-oriented interconnection that would permit competing carriers to connect to Telmex customers to provide local, long-distance, and international service; and (3) permit alternatives to an outmoded system of charging U.S. carriers above-cost rates for completing international calls into Mexico. Prior to such consultations, which were held on October 10, 2000, the Government of Mexico issued rules to regulate the anti-competitive practices of Telmex (Mexico's major telecommunications supplier) and announced significant reductions in long-distance interconnection rates for 2001. Nevertheless, given that Mexico still had not fully addressed U.S. concerns, particularly with respect to international telecommunications services, on November 10, 2000, the United States filed a request for establishment of a

panel as well as an additional request for consultations on Mexico's newly issued measures. Those consultations were held on January 16, 2001. The United States requested the establishment of a panel on March 8, 2002. The panel was established on April 17, 2002. On August 26, 2002, the Director-General appointed as chairperson Mr. Ulrich Petersmann (Germany), and Mr. Raymond Tam (Hong Kong, China) and Mr. Björn Wellenius (Chile) as panelists.

*Mexico—Definitive antidumping measures on beef and rice (WT/DS295)*

On June 16, 2003, the United States requested consultations on Mexico's antidumping measures on rice and beef, as well as certain provisions of Mexico's Foreign Trade Act and its Federal Code of Civil Procedure. The specific U.S. concerns include: (1) Mexico's injury investigations in the two antidumping determinations; (2) Mexico's failure to terminate the rice investigation after a negative preliminary injury determination and its decision to include firms that were not dumping in the coverage of the antidumping measures; (3) Mexico's improper application of the "facts available"; (4) Mexico's improper calculation of the antidumping rate applied to non-investigated exporters; (5) Mexico's improper limitation of the antidumping rates it calculated in the beef investigation; (6) Mexico's refusal to conduct reviews of exporters' antidumping rates; and (7) Mexico's insufficient public determinations. The United States also challenged five provisions of Mexico's Foreign Trade Act. The United States alleges violations of various provisions of the Antidumping Agreement, the Agreement on Subsidies and Countervailing Measures, and the GATT 1994. Consultations were held July 31 and August 1, 2003. The United States requested the establishment of a panel on the measure on rice on September 19, 2003, and the DSB established a panel on November 7, 2003. Consultations on the measure on beef continue.

*Venezuela—Import Licensing Measures on Certain Agricultural Products (DS275)*

On November 7, 2002, the United States requested consultations with Venezuela

concerning its import licensing systems and practices that restrict agricultural imports from the United States. The United States considers that Venezuela's system creates a discretionary import licensing regime that appears to be inconsistent with the Agreement on Agriculture, the TRIMS Agreement, and the Import Licensing Agreement. The United States held consultations with Venezuela on November 26, 2002.

**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 2003 when the United States was a defendant.

*United States—Foreign Sales Corporation ("FSC") tax provisions (DS108)*

The European Union challenged the FSC provisions of the U.S. tax law, claiming that the provisions constitute prohibited export subsidies and import substitution subsidies under the Subsidies Agreement, and that they violate the export subsidy provisions of the Agreement on Agriculture. A panel was established on September 22, 1998. On November 9, 1998, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Crawford Falconer, Chairman; Mr. Didier Chambovey and Mr. Seung Wha Chang, Members. The panel found that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, and also violates U.S. obligations under the Agreement on Agriculture. The panel did not make findings regarding the FSC administrative pricing rules or the EU's import substitution subsidy claims. The panel recommended that the United States withdraw the subsidy by October 1, 2000. The panel

report was circulated on October 8, 1999 and the United States filed its notice of appeal on November 26, 1999. The Appellate Body circulated its report on February 24, 2000. The Appellate Body upheld the panel's finding that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, but, like the panel, declined to address the FSC administrative pricing rules or the EU's import substitution subsidy claims. While the Appellate Body reversed the panel's findings regarding the Agreement on Agriculture, it found that the FSC tax exemption violated provisions of that Agreement other than the ones cited by the panel. The panel and Appellate Body reports were adopted on March 20, 2000, and on April 7, 2000, the United States announced its intention to respect its WTO obligations. On November 15, 2000, the President signed the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 ("the ETI Act"), legislation that repealed and replaced the FSC provisions. However, the European Union claimed that the new legislation failed to bring the US into compliance with its WTO obligations.

On January 14, 2002, the Appellate Body issued its report with respect to the ETI Act. The Appellate Body affirmed the findings of the panel that: (1) the ETI Act's tax exclusion constituted a prohibited export subsidy under the WTO Subsidies Agreement; (2) the tax exclusion constituted an export subsidy that violated U.S. obligations under the WTO Agriculture Agreement; (3) the ETI Act's foreign article/labor limitation provides less favorable treatment to "like" imported products in violation of Article III:4 of GATT 1994; and (4) the ETI Act's transition rules resulted in a failure to withdraw the subsidy as recommended by the DSB under Article 4.7 of the Subsidies Agreement. The DSB adopted the panel and Appellate Body reports on January 29, 2002.

In November 2000, the European Union had sought authority to impose countermeasures in the amount of \$4.043 billion as a result of the alleged U.S. non-compliance, and the United

States had challenged this amount by requesting arbitration. Under a September 2000 procedural agreement between the United States and the European Union, the arbitration was suspended pending the outcome of the EU's challenge to the WTO-consistency of the ETI Act. With the adoption of the panel and Appellate Body reports, the arbitration automatically resumed. On August 30, 2002, the arbitrator circulated its decision. The arbitrator found that the countermeasures sought by the European Union were "appropriate" within the meaning of Article 4.10 of the Subsidies Agreement because, according to the arbitrator, they were not "disproportionate to the initial wrongful act to which they are intended to respond."

Following the adoption of the panel and Appellate Body reports, legislation was introduced in the U.S. House of Representatives to repeal the ETI Act. After holding hearings, both the House Ways and Means Committee and the Senate Finance Committee reported out bills.

On May 7, 2003, the DSB authorized the European Communities ("EC") to impose countermeasures up to a level of \$4.043 billion in the form of an additional 100 percent *ad valorem* duty on various products imported from the United States. On December 8, 2003, the Council of the European Union adopted Council Regulation (EC) No. 2193/2003, which provides for the graduated imposition of countermeasures beginning on March 1, 2004.

#### *United States—1916 Revenue Act (DS136/162)*

Title VII of the Revenue Act of 1916 (15 U.S.C. §§ 71-74, entitled "Unfair Competition"), often referred to as the Antidumping Act of 1916, allows for private claims against, and criminal prosecutions of, parties that import or assist in importing goods into the United States at a price substantially less than the actual market value or wholesale price. On April 1, 1999, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Johann Human, Chairman; Mr. Dimitrij Grçar and Mr.

Eugeniusz Piontek, Members. On January 29, 1999, the panel found that the 1916 Act is inconsistent with WTO rules because the specific intent requirement of the Act does not satisfy the material injury test required by the Antidumping Agreement. The panel also found that civil and criminal penalties in the 1916 Act go beyond the provisions of the Antidumping Agreement. The panel report was circulated on March 31, 2000. Separately, Japan sought its own rulings on the same matter from the same panelists; that report was circulated on May 29, 2000. On the same day, the United States filed notices of appeal for both cases, which were consolidated into one Appellate Body proceeding. The Appellate Body report, issued August 28, 2000, affirmed the panel reports. This ruling, however, has no effect on the U.S. antidumping law, as codified in the Tariff Act of 1930, as amended. The panel and Appellate Body reports were adopted by the DSB on September 26, 2000. On November 17, 2000, the European Union and Japan 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. A.V. Ganesan was appointed to serve as arbitrator. On February 28, 2001, he determined that the deadline for implementation was July 26, 2001. On July 24, 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. Legislation to repeal the Act and terminate cases pending under the Act was introduced in the House on December 20, 2001 and in the Senate on April 23, 2002, but legislative action was not completed. Legislation repealing the Act and terminating pending cases was again introduced in the Senate on May 19, 2003, and repeal legislation that would not terminate pending cases was introduced in the House on March 4, 2003 and in the Senate on May 23, 2003.

On January 17, 2002, the United States objected to proposals by the EU and Japan to suspend concessions, thereby referring the matter to arbitration. On February 20, 2002, the following individuals were selected by mutual

agreement of the parties to serve as Arbitrator: Mr. Dimitrij Grcar, Chair; Mr. Brendan McGivern and Mr. Eugeniusz Piontek, Members. At the request of the United States, the Arbitrator suspended its work on March 4, 2002, in light of on-going efforts to resolve the dispute. On September 19, 2003, the EU requested that its arbitration resume.

#### *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 permits certain retail establishments to play radio or television music without paying royalties to songwriters and music publishers. The European Union claimed that, as a result of this exception, the United States is in violation of its TRIPS obligations. Consultations with the European Union 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 for in section 110(5) is inconsistent with the United States' WTO obligations. The panel report was adopted by the DSB on July 27, 2000, and the United States has informed the DSB of its intention to respect its WTO obligations. On October 23, 2000, the European Union requested arbitration to determine the period of time to be given the United States to implement the panel's recommendation. By mutual agreement of the parties, Mr. J. Lacarte-Muró was appointed to serve as arbitrator. He determined that the deadline for implementation should be July 27, 2001. On July 24, 2001, the DSB approved a U.S. proposal to extend the deadline until the earlier of the end of the then-current session of the U.S. Congress or December 31, 2001.

On July 23, 2001, the United States and the European Union requested arbitration to determine the level of nullification or impairment of

benefits to the European Union 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 European Union in this case is \$1.1 million per year. On January 7, 2002, the European Union 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 European Union 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 to the WTO 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 covers the three-year period ending 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 it requested consultations on July 7, 1999. Consultations were held September 13 and December 13, 1999. On June 30, 2000, the European Union requested a panel. A panel was established on September 26, 2000, and at the request of the European Union the WTO Director-General composed the panel on October 26, 2000, 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 European Union 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. On March 28, 2002, the United States and the European Union notified the DSB that they had agreed that the reasonable period of time for the United States to implement the DSB's recommendations and rulings would expire on December 31, 2002, or on the date on which the current session of the U.S. Congress adjourns, whichever is later, and in no event later than January 3, 2003. On December 19, 2003, the EU and the United States agreed to extend the reasonable period of time for implementation until December 31, 2004.

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

Japan alleged that the preliminary and final determinations of the Department of Commerce and the 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 1999, the Director-General composed the panel as follows: Mr. Harsha V. Singh, Chairman; Mr. Yanyong

Phuangrach and Ms. Lidia di Vico, Members. On February 28, 2001, the panel circulated its report, in which it rejected most of Japan's claims, but found that, inter alia, particular aspects of the antidumping duty calculation, as well as one aspect of the U.S. antidumping duty law, were inconsistent with the WTO Antidumping Agreement. On April 25, 2001, the United States filed a notice of appeal on certain issues in the panel report. The Appellate Body report was issued on July 24, 2001, reversing in part and affirming in part. The reports were adopted on August 23, 2001. Pursuant to a February 19, 2002, arbitral award, the United States was given 15 months, or until November 23, 2002, to implement the DSB's recommendations and rulings. On November 22, 2002, the Department of Commerce issued a new final determination in the hot-rolled steel antidumping duty investigation, which implemented the recommendations and rulings of the DSB with respect to the calculation of antidumping margins in that investigation. In view of other DSB recommendations and rulings, after consultations with Japan, the United States requested that the "reasonable period of time" in this dispute be extended until December 31, 2003, or until the end of the first session of the next Congress, whichever is earlier. That request was approved by the DSB at its meeting of December 5, 2002. On December 10, 2003, the DSB agreed to extend the reasonable period of time for implementation until July 31, 2004.

*United States—Definitive safeguard measures on imports of circular welded carbon quality line pipe from Korea (DS202)*

On June 13, 2000, Korea requested consultations regarding safeguard measures imposed by the United States on imports of circular welded carbon quality line pipe. These measures were proclaimed by the United States on February 18, 2000, and introduced on March 1, 2000. Korea argued that such measures were inconsistent with the Agreement on Safeguards and the GATT 1994. Consultations were held July 28, 2000. On September 14, 2000, Korea requested the establishment of a panel. A panel was established on October 23, 2000, and composed of the following

panelists: Mr. Dariusz Rosati, Chairman and Robert Azevedo and Eduardo Bianchi, Members. The panel report was circulated on October 29, 2001. The panel found that the U.S. measure violates the Safeguards Agreement, but at the same time rejected several of Korea's claims related to both the measure itself and the investigation. The U.S. notice of appeal was filed with the WTO Appellate Body on November 19, 2001.

The Appellate Body issued its report on February 15, 2002. It rejected some of the panel's findings in favor of the United States, but also upheld several of those findings. The DSB adopted the panel report, as modified by the Appellate Body report, on March 8, 2002. The United States and Korea reached agreement in the dispute on July 29, 2002. Pursuant to that agreement, the United States increased the quantity of Korean line pipe exempt from the safeguard measure to 17,500 tons per quarter, effective September 1, 2002. The safeguard measure remained unchanged with regard to other import sources. On March 18, 2003, the United States notified the DSB that the safeguard measure at issue was terminated on March 1, 2003.

*United States—Antidumping measures and countervailing measures on steel plate from India (DS206)*

India contended that the Department of Commerce made several errors in its final determinations regarding certain cut-to-length carbon quality steel plate products from India, dated December 13, 1999 and amended on February 10, 2000. India also argued that the USITC made errors with respect to the negligibility, cumulation, and material injury caused by such products. India claimed that these errors were based on deficient procedures contained in the U.S. antidumping and countervailing duty laws, and thus raised questions concerning the obligations of the United States under the Antidumping Agreement, the GATT 1994, the Subsidies Agreement, and the Agreement Establishing the WTO. India requested consultations with the United States regarding this matter on October 4, 2000. The United States and India held

consultations in November 2000 and in July 2001. India then filed a panel request, which focused on a subset of the claims it had raised during consultations. On June 21, 2002, the Panel issued its report in the dispute, rejecting most of India's claims. The Panel agreed with India that one aspect of the challenged determination was not consistent with the Antidumping Agreement. It found that the Department of Commerce had failed to explain why it would have been "unduly difficult" to use certain information that the Indian respondent submitted. The DSB adopted the report on July 29, 2002. On August 27, 2002, the United States announced its intentions on implementing the DSB's rulings and recommendations arising from the report. The United States and India subsequently reached agreement on a reasonable period of time for implementation, ending on December 29, 2002.

On February 7, 2003, the United States implemented the DSB's recommendations and rulings by issuing a new determination in the investigation at issue. The authorities examined and considered all of the data on the record, and provided a thorough explanation of their treatment of this data, thereby fully complying with U.S. WTO obligations.

*United States—Countervailing duty measures concerning certain products from the European Communities (DS212)*

On November 13, 2000, the European Union requested WTO dispute settlement consultations in 14 separate U.S. countervailing duty proceedings covering imports of steel and certain other products from member states of the European Union, all with respect to the Department of Commerce's "change in ownership" (or "privatization") methodology that was challenged successfully by the European Union in a WTO dispute concerning leaded steel products from the UK. Consultations were held December 7, 2000. Further consultations were requested on February 1, 2001, and held on April 3. A panel was established at the EU's request on September 10, 2001. In its panel request, the European Union challenged 12 separate US CVD proceedings, as well as

Section 771(5)(F) of the Tariff Act of 1930. At the request of the European Union, the WTO Director-General composed the panel on November 5, 2001, as follows: Mr. Gilles Gauthier, Chairman; Ms. Marie-Gabrielle Ineichen-Fleisch and Mr. Michael Mulgrew, Members.

On July 31, 2002, the panel circulated its final report. In a prior dispute concerning leaded bar from the United Kingdom, the European Union successfully challenged the application of an earlier version of Commerce's methodology, known as "gamma." In this dispute, the panel found that Commerce's current "same person" methodology (as well as the continued application of the "gamma" methodology in several cases) was inconsistent with the Subsidies Agreement. The panel also found that section 771(5)(F) of the Tariff Act of 1930—the "change of ownership" provision in the U.S. statute—was WTO-inconsistent. The United States appealed, and the Appellate Body issued its report on December 9, 2002. The Appellate Body reversed the panel with respect to section 771(5)(F), finding that it did not mandate WTO-inconsistent behavior. The Appellate Body affirmed the panel's findings that the "gamma" and "same person" methodologies are inconsistent with the Subsidies Agreement, although it modified the panel's reasoning.

On January 27, 2003, the United States informed the DSB of its intention to implement the DSB's recommendations and rulings in a manner that respects U.S. WTO obligations. U.S. implementation proceeded in two stages. First, Commerce modified its methodology for analyzing a privatization in the context of the CVD law. Commerce published a notice announcing its new, WTO-consistent methodology on June 23, 2003. *See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 Fed. Reg. 37,125. Second, Commerce applied its new methodology to the twelve determinations that had been found to be WTO-inconsistent. On October 24, 2003, Commerce issued revised determinations under section 129 of the Uruguay Round Agreements

Act. As a result of this action, Commerce: (1) revoked two CVD orders in whole; (2) revoked one CVD order in part; and (3) in the case of five CVD orders, revised the cash deposit rates for certain companies. See *Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Measures Concerning Certain Steel Products from the European Communities*, 68 Fed. Reg. 64,858 (Nov. 17, 2003).

On November 7, 2003, the United States informed the DSB of its implementation of the DSB's recommendations and rulings.

*United States—Countervailing duties on certain corrosion-resistant carbon steel flat products from Germany (DS213)*

On November 13, 2000, the European Union requested dispute settlement consultations with respect to the Department of Commerce's countervailing duty order on certain corrosion-resistant flat rolled steel products from Germany. In a "sunset review", the Department of Commerce declined to revoke the order based on a finding that subsidization would continue at a rate of 0.54 percent. The European Union alleged that this action violates the Subsidies Agreement, asserting that countervailing duty orders must be revoked where the rate of subsidization found is less than the 1 percent *de minimis* standard for initial countervailing duty investigations. The United States and the European Union held consultations pursuant to this request on December 8, 2000. A second round of consultations was held on March 21, 2001, in which the European Union made a new allegation that the automatic initiation of sunset reviews by the United States is inconsistent with the SCM Agreement. A panel was established at the EU's request on September 10, 2001. The panel was composed of: Mr. Hugh McPhail, Chair, and Mr. Wieslaw Karsz, Member (selected by agreement of the parties); and Mr. Ronald Erdmann, Member (selected by the Director-General).

In its final report, which was circulated on July 3, 2002, the panel made the following findings in

favor of the United States: (1) the EU claims regarding "expedited sunset reviews" and "ample opportunity" for parties to submit evidence were not identified in the panel request, and were therefore outside the panel's terms of reference; (2) because Article 21.3 of the Subsidies Agreement contains no evidentiary standard for the self-initiation of sunset reviews, the automatic self-initiation of sunset reviews by Commerce was not a violation; and (3) the U.S. CVD law "as such" is not inconsistent with Article 21.3 with respect to the obligation that authorities "determine" the likelihood of continuation or recurrence of subsidization in a sunset review. Disagreeing with the United States, however, a majority of the panel found that the Subsidies Agreement's one percent *de minimis* standard for the investigation phase of a CVD proceeding applies to sunset reviews. Because U.S. law applies a 0.5 percent *de minimis* standard in reviews, the majority found a violation with respect to U.S. law "as such" and as applied in the German steel sunset review. In a rare step, one panelist dissented from this finding. The panel also found that Commerce's determination of likelihood of continuation or recurrence of subsidization in the German steel sunset review lacked "sufficient factual basis," and therefore was inconsistent with the obligation to "determine" under Article 21.3.

The United States appealed the *de minimis* finding, but not the case-specific finding concerning Commerce's determination of likelihood. The European Union cross-appealed on the findings it lost. The Appellate Body issued its report on November 28, 2002, and found in favor of the United States on all counts. The DSB adopted the panel and Appellate Body reports on December 19, 2002. On January 17, 2003, the United States informed the DSB of its intent to implement the DSB's recommendations and rulings.

*United States—Safeguard measures on imports of line pipe and wire rod from the European Communities (DS214)*

On December 1, 2000, the European Union requested consultations with the United States



regarding U.S. safeguard measures on imports of circular welded carbon quality line pipe and wire rod. The European Union argued that these measures are inconsistent with the Agreement on Safeguards and the GATT 1994. The European Union also claimed that certain aspects of the underlying U.S. safeguards legislation—Sections 201 and 202 of the Trade Act of 1974—and Section 311 of the NAFTA Implementation Act prevented the United States from respecting certain provisions of the Agreement on Safeguards and the GATT 1994. Consultations were held on January 26, 2001, and informal consultations continued thereafter. A panel was established at the EU's request on September 10, 2001, but it has not yet been composed.

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

On December 21, 2000, Australia, Brazil, Chile, the European Union, India, Indonesia, Japan, Korea, and Thailand requested consultations with the United States regarding the Continued Dumping and Subsidy Offset Act of 2000 (19 USC 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. 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 (selected by mutual agreement of the parties); and Mr. Maamoun Abdel-Fattah and Mr. William Falconer, Members (selected by the Director-General).

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 GATT Article VI. The panel also found that the CDSOA distorts the standing determination conducted by the Commerce Department 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 the Commerce Department's consideration of price undertakings (agreements to settle AD/CVD 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 Anti-dumping 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 AD Agreement, the SCM Agreement and the GATT of 1994 was introduced in the U.S. Senate (S. 1299).

*United States—Countervailing duties on certain carbon steel products from Brazil*  
(DS218)

On December 21, 2000, Brazil requested consultations with the United States regarding U.S. countervailing duties on certain carbon steel

products from Brazil, alleging that the Department of Commerce's "change in ownership" (or "privatization") methodology, which was ruled inconsistent with the WTO Subsidies Agreement when applied to leaded steel products from the UK, violates the Subsidies Agreement as it was applied by the United States in this countervailing duty case. Consultations were held on January 17, 2001.

*United States—Antidumping duties on seamless pipe from Italy (DS225)*

On February 5, 2001, the European Union requested consultations with the United States regarding antidumping duties imposed by the United States on seamless line and pressure pipe from Italy, complaining about the final results of a "sunset" review of that antidumping order, as well as the procedures followed by the Department of Commerce generally for initiating "sunset" reviews pursuant to Section 751 of the Tariff Act of 1930 and 19 CFR §351. The European Union alleges that these measures violate the WTO Antidumping Agreement. Consultations were held on March 21, 2001.

*United States—Final countervailing duty determination with respect to certain softwood lumber from Canada (DS257)*

On May 3, 2002, Canada requested consultations with the United States regarding the U.S. Department of Commerce's final countervailing duty determination concerning certain softwood lumber from Canada. Among other things, Canada challenged the evidence upon which the investigation was initiated, claimed that the Commerce Department imposed countervailing duties against programs and policies that are not subsidies and are not "specific" within the meaning of the Agreement on Subsidies and Countervailing Measures, and that the Commerce Department failed to conduct its investigation properly. Consultations were held on June 18, 2002, and a panel was established at Canada's request on October 1, 2002. The panel was composed of Mr. Elbio Rosselli, Chair, and Mr. Weislaw Karsz and Mr. Remo Moretta, Members. In its report, circulated on August 29, 2003, the panel found that the

United States acted consistently with the SCM Agreement and GATT 1994 in determining that the programs at issue provided a financial contribution and that those programs were "specific" within the meaning of the SCM Agreement. It also found, however, that the United States had calculated the benefit incorrectly and had improperly failed to conduct a "pass-through" analysis to determine whether subsidies granted to one producer were passed through to other producers. The United States appealed these issues to the WTO Appellate Body on October 21, 2003, and Canada appealed the "financial contribution" issue on November 5. The Appellate Body report is expected to issue on January 19, 2004.

*United States—Calculation of dumping margins (DS239)*

On September 18, 2001, the United States received from Brazil a request for consultations regarding the *de minimis* standard as applied by the U.S. Department of Commerce in conducting reviews of antidumping orders, and the practice of "zeroing" (or, not offsetting "dumped" sales with "non-dumped" sales) in conducting investigations and reviews. Brazil submitted a revised request on November 1, 2001, focusing specifically on the antidumping duty order on silicon metal from Brazil. Consultations were held on December 7, 2001.

*United States—Definitive safeguard measures on imports of certain steel products (DS248-49, 251-54, 258-59)*

By Presidential Proclamation 7529 of March 5, 2002, the United States imposed safeguard measures on ten products: certain carbon flat-rolled steel, hot-rolled bar, cold-finished bar, rebar, certain welded pipe, carbon and alloy fittings and flanges, stainless steel bar, stainless steel rod, stainless steel wire, and tin mill steel. The measures consisted for the most part of supplemental tariffs, with one type of certain carbon flat-rolled steel (steel slab) being subject to a tariff-rate quota ("TRQ"). All measures are scheduled to remain in effect until March 21, 2005, with the tariff rates being decreased by one-fifth in the second and third years. (For the

slab TRQ, the in-quota quantity would increase by 3 percent each year). Our FTA partners (Canada, Mexico, Israel and Jordan), along with developing country WTO Members that account for less than three percent of total imports, are not subject to these measures.

The EC, Japan, Korea, China, Switzerland, and Norway requested consultations under the WTO Dispute Settlement Understanding in March and early April of 2002. Consultations were held on 11-12 April 2002 with these countries as complaining parties, and Canada, Mexico, New Zealand, and Venezuela as third parties. These countries requested the formation of panels, which were established and consolidated with each other in June and July of 2002. New Zealand requested consultations on the steel safeguard measures on May 14, and Brazil on May 21. Consultations were held simultaneously with both on June 13. Panels were established in response to the New Zealand and Brazil requests, and consolidated with the panels in the other disputes. The United States reached agreement with the complaining parties to request that the panel adopt an extended briefing schedule. The Director-General appointed the panelists on July 25, 2002, as follows: Ambassador Stefan Johannesson, Chairman, and Mr. Mohan Kumar, and Ms. Margaret Liang, Members.

In a report issued on July 11, 2003, the Panel found that each of the ITC determinations was inconsistent with WTO rules because the ITC did not properly establish that imports caused injury to domestic steel producers, or that any injury was the result of “unforeseen developments.” Having found against the ITC determination, the Panel did not address the Administration’s decisions on what safeguard measures to apply in response to the ITC determinations.

The United States appealed the report on August 11, 2003. The Appellate Body issued its report on November 10, 2003, and upheld the Panel’s ultimate conclusion that each of the ten U.S. safeguard measures imposed is inconsistent with WTO rules. Specifically, it found with regard to all

of the safeguard measures that the United States: (1) failed to demonstrate that the injurious imports were the result of unforeseen developments and (2) failed to establish that, after exclusion of our FTA partners, imports from the remaining countries by themselves caused serious injury to the relevant U.S. industries. The Appellate Body also upheld the panel’s finding that the ITC failed to provide an adequate explanation of its finding that imports of certain carbon flat-rolled steel, stainless steel rod, and hot-rolled bar increased. In light of these findings, the Appellate Body did not address the U.S. appeal regarding the panel’s conclusions on causation. The DSB adopted the panel and Appellate Body reports on December 10, 2003.

Chinese Taipei requested consultations on November 1, 2002. Chinese Taipei alleged violations of Articles 2, 3, 4, and 5 of the Safeguards Agreement, as well as Articles I:1 and XIX:1(a) of the GATT 1994. Consultations were held December 12, 2002.

#### *United States—Rules of origin for textiles and apparel products (DS243)*

Section 334 of the Uruguay Round Agreements Act established statutory rules of origin for textile and apparel products. Section 405 of the Trade and Development Act of 2000 amended Section 334. On January 11, 2002, India requested consultations regarding the rules set out in Section 334 and Section 405, claiming that they distorted textile trade and were protectionist in violation of the Agreement on Rules of Origin. Consultations with India took place on February 7, 2002, February 28, 2002 and March 26, 2002. A panel on this matter was established on June 24, 2002, and composed by agreement of the parties on October 10, 2002. The members were as follows: Mr. Lars Anell, Chair; Mr. Donald McRae and Ms. Elizabeth Chelliah. In a report circulated on June 20, 2003, the panel found that the U.S. rules of origin for textile and apparel products are entirely consistent with the United States’ WTO obligations. The DSB adopted the report on July 21, 2003.

*United States—Sunset review of antidumping duties on corrosion-resistant carbon steel flat products from Japan (DS244)*

On January 30, 2002, Japan requested consultations with the United States regarding the final determination of both the United States Department of Commerce and the United States International Trade Commission on the full sunset review of corrosion-resistant carbon steel flat products from Japan, issued on August 2, 2000 and November 21, 2000, respectively. Consultations were held on March 14, 2002. A panel was established at Japan's request on May 22, 2002. The Director-General selected as panelists Mr. Dariusz Rosati, Chair, and Mr. Martin Garcia and Mr. David Unterhalter, Members.

In its report circulated on August 14, 2003, the panel found that the United States acted consistently with its international obligations under the WTO in conducting this sunset review. The panel found that Commerce may automatically initiate a sunset review; that U.S. law contains proper standards for conducting sunset reviews; that the *de minimis* and negligibility provisions in the Antidumping Agreement apply only to investigations, not sunset reviews; that U.S. administrative practice can only be challenged with respect to its application in a particular sunset review, not "as such"; and that Commerce and the ITC properly conducted this particular sunset review. Japan appealed the report on September 15, 2003.

The Appellate Body issued its report on December 15, 2003. The Appellate Body agreed that the United States may maintain the antidumping duty order at issue. The Appellate Body, however, concluded that the panel had not fully considered relevant arguments in finding that the Sunset Policy Bulletin can not be challenged "as such," and reversed the finding on that basis. The DSB adopted the panel and Appellate Body reports on January 9, 2004.

*United States—Equalizing excise tax imposed by Florida on processed orange and grapefruit products (DS250)*

On March 20, 2002, Brazil requested consultations with the United States regarding the

"Equalizing Excise Tax" imposed by the State of Florida on processed orange and grapefruit products produced from citrus fruit grown outside the United States—Section 601.155 Florida Statutes. Consultations were held with Brazil on May 2, 2002, and June 27, 2002, and a panel was established on October 1, 2002, but is not yet composed.

*United States—Sunset reviews of antidumping and countervailing duties on certain steel products from France and Germany (DS262)*

On July 25, 2002, the European Union requested consultations with the United States with respect to anti-dumping and countervailing duties imposed by the United States on imports of corrosion-resistant carbon steel flat products ("corrosion resistant steel") from France (dealt with under US case numbers A-427-808 and C-427-810) and Germany (dealt with under US case numbers A-428-815 and C-428-817), and on imports of cut-to-length carbon steel plate ("cut-to-length steel") from Germany (dealt with under US case numbers A-428-816 and C-428-817). Consultations were held on September 12, 2002.

*United States—Final dumping determination on softwood lumber from Canada (DS264)*

On September 13, 2002, Canada requested WTO dispute settlement consultations concerning the amended final determination by the U.S. Department of Commerce of sales at less than fair value with respect to certain softwood lumber from Canada, as published in the May 22, 2002 *Federal Register*, along with the antidumping duty order with respect to imports of the subject products. Canada alleged that Commerce's initiation of its investigation concerning the subject products, as well as aspects of its methodology in reaching its final determination, violated the GATT 1994 and the Agreement on Implementation of Article VI of GATT 1994. Consultations were held on October 11, 2002. On December 6, 2002, Canada requested establishment of a panel, and the DSB established the panel on January 8, 2003. On February 25, 2003, the parties agreed on the panelists, as follows: Mr.

Harsha V. Singh, Chairman, and Mr. Gerhard Hannes Welge and Mr. Adrian Makuc, Members.

*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 Agreement on Subsidies and Countervailing Measures, Article 19 of the Agreement on Agriculture, Article XXII of the General Agreement on Tariffs and Trade 1994, and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes. The Brazilian consultation request on U.S. support measures that benefit upland cotton claims that these alleged subsidies and measures are inconsistent with U.S. commitments and obligations under the Agreement on Subsidies and Countervailing Measures, the Agreement on Agriculture, and the General Agreement on Tariffs and Trade 1994. Consultations were held on December 3, 4 and 19 of 2002, and January 17, 2003.

On February 6, 2003, Brazil requested the establishment of a panel. Brazil's panel request pertains to "prohibited and actionable subsidies provided to US 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 US producers, users and exporters of upland cotton" [footnote omitted]. The Dispute Settlement Body established the panel on March 18, 2003. On May 19, 2003, the Director General appointed as panelists Dariusz Rosati of Poland, Chair; Daniel Moulis of Australia and Mario Matus of Chile, 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 the United States Department of Commerce (USDOC) and the United States International Trade Commission 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 the USDOC'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.

*United States—Investigation of the U.S. International Trade Commission in softwood lumber from Canada (DS277)*

On December 20, 2002, Canada requested consultations concerning the May 16, 2002 determination of the U.S. International Trade Commission (notice of which was published in the May 22, 2002 *Federal Register*) that imports of softwood lumber from Canada, which the U.S. Department of Commerce found to be subsidized and sold at less than fair value, threatened an industry in the United States with material injury. Canada alleged that flaws in the U.S. International Trade Commission's determination caused the United States to violate various aspects of the GATT 1994, the Agreement on Implementation of Article VI of GATT 1994, and the Agreement on Subsidies and Countervailing Measures. Consultations were held January 22, 2003. Canada requested the establishment of a panel on April 3, 2003, and the DSB established a panel on May 7, 2003. On June 19, 2003, the Director General composed the panel as follows: Mr. Hardeep Singh Puri, Chairman, and Mr. Paul O'Connor and Ms. Luz Elena Reyes De La Torre, Members.

*United States—Countervailing duties on steel plate from Mexico (WT/DS280)*

On January 21, 2003, Mexico requested consultations on an administrative review of a countervailing duty order on carbon steel plate in sheets from Mexico. Mexico alleges that the Department of Commerce used a WTO-inconsistent methodology—the "change-in-ownership"

methodology—to determine the existence of countervailable benefits bestowed on a Mexican steel producer. Mexico alleges inconsistency with various articles of the WTO Agreement on Subsidies and Countervailing Measures. Consultations were held April 2-4, 2003. Mexico requested the establishment of a panel on August 4, 2003, and the DSB established a panel on August 29, 2003.

*United States—Anti-dumping measures on cement from Mexico (WT/DS281)*

On January 31, 2003, Mexico requested consultations regarding a variety of administrative determinations made in connection with the antidumping duty order on gray portland cement and cement clinker from Mexico, including seven administrative review determinations by Commerce, the sunset determinations of Commerce and the ITC, and the ITC's refusal to conduct a changed circumstances review. Mexico also referred to certain provisions and procedures contained in the Tariff Act of 1930, the regulations of Commerce and the ITC, and Commerce's Sunset Policy Bulletin, as well as the URAA Statement of Administrative Action. Mexico cited a host of concerns, including case-specific dumping calculation issues; Commerce's practice of zeroing; the analytical standards used by Commerce and the ITC in sunset reviews; the U.S. retrospective system of duty assessment, including the assessment of interest; and the assessment of duties in regional industry cases. 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.

*United States—Anti-dumping measures on oil country tubular goods (OCTG) from Mexico (WT/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 ITC. Mexico also challenges certain provisions and procedures contained in the Tariff Act of 1930, the regulations of Commerce and the ITC, and Commerce's Sunset Policy Bulletin, as well as the URAA Statement of Administrative Action. The focus of this case appears to be on the analytical standards used by Commerce and the ITC in sunset reviews, although Mexico also challenges 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.

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

On March 13, 2003, Antigua & Barbuda requested consultations regarding its claim that U.S. federal, state and territorial laws on gambling violate U.S. specific commitments under the *General Agreement on Trade in Services* ("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 & Barbuda from lawfully offering gambling and betting services in the United States. Consultations were held on April 30, 2003. Antigua & Barbuda 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 & Barbuda, 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.

*United States—Laws, regulations and methodology for calculating dumping margins ("zeroing") (WT/DS294)*

On June 12, 2003, the European Union 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.

*United States—Countervailing duty investigation on dynamic random access memory semiconductors (DRAMS) from Korea (WT/DS296)*

On June 30, 2003, Korea requested consultations regarding determinations made by Commerce and the ITC in the countervailing duty investigation on DRAMS from Korea, and related laws and regulations. Consultations were held August 20, 2003. Korea requested further consultations on August 18, 2003, which were held October 1, 2003. Korea requested the establishment of a panel on November 19, 2003. The panel request covered only the Commerce and ITC determinations made in the DRAMS investigation.

## **2. Trade Policy Review Body**

### **Status**

The Trade Policy Review Body (TPRB), a subsidiary body of the General Council, was created by the Marrakesh Agreement Establishing the WTO to administer the Trade Policy Review Mechanism (TPRM). The TPRM is a valuable resource for improving the transparency of Members' trade and investment regimes and in ensuring adherence to WTO rules. The TPRM examines national trade policies of each Member on a schedule designed to cover the full WTO Membership on a frequency determined by trade volume. The process starts with an independent report by the WTO Secretariat on the trade policies and practices of the Member under view. This Member works closely with the Secretariat to provide relevant information for the report. The Secretariat report is accompanied by another report prepared by the government undergoing the review. Together these reports are discussed by the WTO Membership in a TPRB session. At this session, the Member under review will discuss the report and answer questions on its trade policies and practices. The express purpose of the review process is to strengthen Members observance of WTO provisions and contribute to the smoother functioning of the multilateral trading system. A number of Members have remarked that the preparations for the review are

helpful in improving their own trade policy formulation and coordination. The current process reflects improvements to streamline the TPRM and gives it broader coverage and greater flexibility. Reports cover the range of WTO agreements including goods, services, and intellectual property and are available to the public on the WTO's web site at [www.wto.org](http://www.wto.org). Documents are filed on the site's Document Distribution Facility under the document symbol "WT/TPR."

### **Major Issues in 2003**

During 2003, the TPRB conducted the following 17 reviews: Maldives, El Salvador, Canada, Burundi, South African Custom's Union (comprised of Botswana, Lesotho, Namibia, South Africa, and Swaziland), New Zealand, Morocco, Indonesia, Niger/Senegal (reviewed together as West-African Monetary Union members), Honduras, Bulgaria, Guyana, Haiti, Thailand, Chile, and Turkey. This group included six least-developed country Members and seven Members reviewed for the first time. As of the end of 2003, the TPRM had conducted 182 reviews, covering 110 out of 146 Members (counting the European Union as fifteen) and representing approximately 87 percent of world merchandise trade.

Reviews have emphasized the macroeconomic and structural context for trade policies, including the effects of economic and trade reforms, transparency with respect to the formulation and implementation of trade policy, and the current economic performance of Members under review. Another important issue has been the balance between multilateral, bilateral, regional and unilateral trade policy initiatives. Closer attention has been given to the link between Members' trade policies and the implementation of WTO Agreements, focusing on Members' participation in particular Agreements, the fulfillment of notification requirements, the implementation of TRIPS, the use of antidumping measures, government procurement, state-trading, the introduction by developing-countries of customs valuation methods, the adaptation of national legislation to WTO requirements and technical assistance.

As of the end 2003, twenty of the WTO's 30 least-developed country Members have been reviewed. For least developed countries, the reports represent the first comprehensive analysis of their commercial policies, laws and regulations and have implications and uses beyond the meeting of the TPRB. The TPRB's report to the Singapore Ministerial Conference recommended greater attention be paid to LDCs in the preparation of the TPRB timetable, and a 1999 appraisal of the operation of the TPRM also drew attention to this matter. Trade Policy Reviews of LDCs have increasingly performed a technical assistance function and have been useful in broadening the understanding of LDC's trade policy structure. These reviews tend to enhanced understanding of WTO Agreements, enabling better compliance and integration in the multilateral trading system. In some cases, the TPR has facilitated better interaction between government agencies. The TPRM's comprehensive coverage of trade policies also enables Members to identify shortcomings in specific areas where further technical assistance may be required.

The seminars and the technical assistance involve close cooperation between LDCs and the WTO Secretariat. This cooperation continues to respond more systematically to technical assistance needs of LDCs. The review process for an LDC now includes a multi-day seminar for its officials on the WTO and, in particular, the trade policy review exercise and the role of trade in economic policy; such seminars were held in 2003 for the review process of Gambia and Rwanda, a similar seminar has been held for Guyana.. Similar exercises have been conducted in Benin, Burkina Faso, Mali, Belize and Suriname. The Secretariat Report for an LDC review includes a section on technical assistance needs and priorities with a view to feeding this into the Integrated Framework process.

### **Prospects for 2004**

The TPRM will continue to be an important tool for monitoring Members' adherence to WTO commitments and an effective forum in which to

encourage Members to meet their obligations and to adopt further trade liberalizing measures. The program for 2004 calls for conducting 16 reviews, including the United States and the European Union, as well as, Brazil, Belize, Jamaica, Korea, Norway, Singapore, Sri Lanka, Suriname, and the Custom's territory of Switzerland and Liechtenstein. In addition, five LDC Members will be reviewed as well—Benin, Burkina Faso, Gambia, Mali, and Rwanda.

## **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)) in addition to the Textiles Monitoring Body (TMB), and the Working Party on State Trading.

### **Major Issues in 2003**

In 2003, the CTG held five formal meetings. As the central oversight body in the WTO for all agreements related to trade in goods, the CTG primarily devoted its attention 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 taken by individual Members with respect to the operation of agreements. Many of these complaints were resolved through consultation. In addition, four major issues were extensively debated in the CTG in 2003:

**Waivers:** The CTG approved several requests for waivers, including those related to the implementation of the Harmonized Tariff System, renegotiation of tariff schedules, and waivers for the implementation of the Kimberly Process. A list of waivers currently in force can be found in Annex II.



**TRIMS Article 9 Review:** The Council met several times, formally and informally, to consider proposals by India and Brazil to lower the level of obligations for developing countries under the TRIMS agreement. Developed countries expressed their opposition to rewriting the agreement.

**China Transitional Review:** On November 26, the CTG conducted China's Transitional Review (TRM) as mandated by the Protocol on the Accession of the People's Republic of China to the WTO. China supplied the CTG with information, answered questions posed by Members and reviewed the TRM reports of CTG subsidiary bodies. (See Chapter IV Section F on China for more detailed discussion of its implementation of WTO commitments).

**Trade Facilitation:** CTG met twice in 2003 in sessions dedicated to this issue. The CTG discussed how to improve and clarify Article X (transparency), Article VIII on fees and formalities, and Article V (transit). Progress was made in all of these areas.

**Textiles:** The CTG considered two proposals from developing countries concerning textile trade. Developing countries proposed that Members maintaining textile restraints increase quota growth rates for the remainder of the ATC. However, Members maintaining textile restraints argued that they had followed the provisions of the ATC precisely when calculating the appropriate quota levels. Developing country Members also proposed that Members maintaining textile restraints grant carry forward for the year 2004. However, these Members rejected this proposal citing the fact that all quotas are eliminated beginning in January 2005 and the ATC does not provide for carry forward in 2004.

#### **Prospects for 2004**

The CTG will continue to be the focal point for discussing agreements in the WTO dealing with trade in goods. Outstanding waiver requests will also be further examined.

## **1. Committee on Agriculture**

### **Status**

In 1995, the WTO formed the Committee on Agriculture to oversee the implementation of the Agreement on Agriculture and to provide a forum for Members to consult on matters related to provisions of the Agreement. In many cases, the Committee resolves problems without needing dispute settlement. The Committee also has responsibility for monitoring the parties to the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Program on Least Developed and Net Food-Importing Developing Countries (or "NFIDC Decision").

### **Major Issues in 2003**

The Committee held four formal meetings in March, June, September, and November 2003, to review progress on the implementation of commitments negotiated in the Uruguay Round. This review was undertaken on the basis of 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, 171 notifications were subject to review during 2003. The United States actively participated in the notification process and raised specific issues concerning the operation of Members' agricultural policies. For example, the United States raised questions concerning elements of domestic support programs used by the European Union, Canada, Norway, South Africa, and India; identified restrictive import licensing and tariff-rate quota administration practices by China, the European Union, Norway, New Zealand, South Africa, and Barbados; questioned Chinese Taipei's use of the special agricultural safeguard; and raised concerns with India's export policies. The Committee also proved to be an effective forum for raising issues relevant to the implementation of Members' commitments. For example, the United States

identified concerns with India's soybean oil tariffs, the Dominican Republic's import licensing scheme, and China's export subsidies, value-added tax policies, and TRQ allocation processes.

In the framework of the follow-up to the Decision by the Doha Ministerial Conference on Implementation-Related Issues and Concerns, the following agricultural implementation-related issues were further considered by the Committee: (1) the 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 Agreement on Agriculture, taking into account the effect of such disciplines on net food-importing countries; (2) improving the effectiveness of the implementation of the NFIDC Decision; and (3) enhancing Members' notifications on tariff-rate quotas (TRQs) in accordance with the General Council's decision regarding the administration of TRQ regimes in a transparent, equitable, and non-discriminatory manner.

On the basis of its formal and informal discussions regarding short-term financing difficulties by least-developed and net food-importing developing countries, a number of recommendations were adopted by the Committee. These recommendations were approved by the General Council at its meeting on 24-25 July.

At its March meeting, the Committee decided to accept the application by Namibia to be included in the WTO list of net food-importing developing countries. This list currently comprises the least-developed countries as recognized by the United Nations and the following 24 developing country Members of the WTO: Barbados, Botswana, Côte d'Ivoire, Cuba, Dominica, Dominican Republic, Egypt, Honduras, Jamaica, Jordan, Kenya, Mauritius, Morocco, Namibia, Pakistan, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sri Lanka, Trinidad and Tobago, Tunisia and Venezuela.

The annual monitoring exercise on the follow-up to the NFIDC Decision as a whole was undertaken at the November meeting of the

Committee, on the basis, *inter alia*, of Table NF:1 notifications by donor Members as well as contributions by the observer organizations.

### Prospects for 2004

The United States will continue to make full use of the Committee on Agriculture 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 least developed and net food-importing developing countries in accordance with the Agreement on Agriculture.

## 2. 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 Agreement is overseen by the Committee on Antidumping Practices, 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 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 Committee has adopted Working Group recommendations on: (1) pre-initiation notifications under Article 5.5 of the Agreement; (2) the periods used for data collection in investigations of dumped imports and of injury caused or threatened to be caused by such imports; (3) extensions of time to supply information; (4) the timeframe to be used in calculating the volume of dumped imports for making the determination under Article 5.8 of the Agreement as to whether the volume of such imports is negligible; and (5) guidelines for the improvement of annual reviews under Article 18.6 of the Agreement.

The last two recommendations listed above, both agreed upon in November 2002, addressed issues referred to the Committee by the 2001 Ministerial Decision on Implementation-Related Issues and Concerns. In 2003, the Committee and a number of WTO Members, including the United States, began implementing those recommendations. Many Members, including the United States, filed notifications with respect to their practices as to the timeframe under Article 5.8 of the Agreement, in accordance with the Committee's recommendation on that issue. In addition, pursuant to the Committee's recommendation under Article 18.6 designed to improve transparency in the Committee's annual reviews, in 2003 a number of Members, including the United States, provided additional information in their semi-annual reports to the Committee, and the Committee's annual report reflected this additional information.

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. Under this framework, the Informal Group held meetings in April and October 2003 to discuss the topics 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 circumvention can be dealt with under existing WTO rules and what other options may be deemed necessary.

### **Major Issues in 2003**

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 experience with respect to Members' application of antidumping remedies.

In 2003, the Antidumping Committee held two meetings, in May and October. At its meetings, the 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 in each case over the preceding six months.

Among the more significant activities undertaken in 2003 by the Antidumping Committee, the Working Group on Implementation and the Informal Group on Anticircumvention are the following:

***Notification and Review of Antidumping Legislation:*** To date, 75 Members of the WTO have notified that they currently have antidumping legislation in place, while 29 Members have notified that they maintain no such legislation. In 2003, the Antidumping Committee reviewed notifications of new or amended antidumping legislation submitted by Armenia, China, Costa Rica, Dominican Republic, Estonia, the European Union (EU), Latvia, Lithuania, Mexico, New Zealand, Nicaragua, Pakistan, Peru and Zimbabwe. Members, including the United States, were active in formulating written questions and in making follow-up inquiries at Committee meetings.

***Notification and Review of Antidumping Actions:***

In 2003, 32 WTO Members notified that they had taken antidumping actions during the latter half of 2002, whereas 27 Members did so with respect to the first half of 2003. (By comparison, 35 Members notified that they had not taken any antidumping actions during the latter half of 2002, and 26 Members notified that they had taken no actions in the first half of 2003). These actions, in addition to outstanding antidumping measures currently maintained by WTO Members, were identified in semi-annual reports submitted for the Antidumping Committee's review and discussion.

***China Transitional Review:*** At the October 2003 meeting, the Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its second annual transitional review with respect to China's implementation of the Agreement. Several Members, including the United States, presented written and oral questions to China with respect to China's antidumping laws and practices, particularly emphasizing concerns about a lack of transparency in some of China's practices, with China orally providing information in response to these questions at the October 2003 meeting. The United States also submitted several sets of questions to China with respect to its notifications to the WTO of its antidumping regulations and rules, as part of the regular Committee review of notifications of antidumping legislation, and submitted follow-up questions to China in late 2003 after receiving China's initial responses.

***European Union Expansion:*** At both its May and October 2003 meetings, the Committee discussed issues pertaining to the status of outstanding antidumping measures of the EU in light of the future expansion of the EU from 15 members to 25 members in 2004. The United States filed written questions to the EU on this issue, raising concerns about whether the EU's announced intention to extend automatically, upon expansion, its antidumping measures now covering imports into the territory of the 15 current

member-states of the EU to cover imports into the territory of the 25 member-states after expansion would be consistent with the Antidumping Agreement, particularly in the absence of an additional determination of injury covering the territory of the 25 member-states. At the Committee's October 2003 meeting, the EU responded orally to the U.S. questions, and several other Members raised additional questions and concerns on this issue.

***Working Group on Implementation:*** The Working Group held two rounds of meetings in April and October 2003. The Working Group's principal focus in 2003 was the selection of new topics for discussion, and then the first discussion of those topics. In April 2003, the Working Group considered various possible topics, and, upon its recommendation, the Committee in May 2003 approved four topics for the Working Group to discuss beginning at the fall meeting: (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. At its October 2003 meeting, the Working Group held its first discussion of these topics, with the United States submitting papers on the topics of foreign exchange fluctuations, conduct of verifications, and judicial, arbitral or administrative review. In addition to these topics, the Group also considered at the April and October 2003 meetings a draft recommendation on conditions of competition relevant to cumulation under Article 3.3. No agreement has been reached by the Group on this draft recommendation, but it is expected that the Group will consider this issue again in 2004.

The Working Group continues to serve as an active venue for work regarding the practical implementation of WTO antidumping provisions. It offers important opportunities for Members to examine issues and candidly exchange views and information across a broad range of topics. It has drawn a high level of partic-

ipation 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. Implementation concerns and questions stemming both from one's own administrative experience and from observing the practices of others are equally addressed. 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 Agreement's provisions and exploring options for improving practices among antidumping administrators.

***Informal Group on Anticircumvention:*** The Antidumping Committee's establishment of the Informal Group on Anticircumvention in 1997 marked an important step towards fulfilling the Decision of Ministers at Marrakesh to refer this matter to the Committee. At its two meetings in 2003, the Informal Group on Anticircumvention continued its useful discussions on 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? To what extent can it not? And what other options may be deemed necessary?

Members submitted papers and made presentations outlining scenarios based on factual situations faced by their investigating authorities, and exchanged views on how their respective authorities might respond to such situations. Moreover, those Members, such as the United States, that have legislation intended to address circumvention, responded to inquiries from other Members as to how such legislation operates and the manner in which certain issues may be treated. For the October 2003 meeting of the Informal Group, the United States submitted a paper summarizing its experience in two recent circumvention investigations that it had conducted.

## **Prospects for 2004**

Work will proceed in 2004 on the areas that the Antidumping Committee, the Working Group on Implementation and the Informal Group on Anticircumvention 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 Committee is important to ensuring that antidumping laws around the world are properly drafted and implemented, thereby contributing to a well-functioning, liberal trading system. As notifications of antidumping legislation are not restricted documents, U.S. exporters will continue to enjoy access to information about the antidumping laws of other countries 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 Committee of semi-annual reports and reports of preliminary and final antidumping actions will also continue in 2004. These reports are becoming accessible to the general public, in keeping with the objectives of the Uruguay Round Agreements Act. (Information on accessing WTO notifications is included in Annex II). This 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 and more Members enact laws and begin to apply them. There has been a sharp and widespread interest in clarifying understanding of 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. Indeed, it is only in the Antidumping Committee and the Working Group that Members can devote the considerable

time and resources needed to conduct a responsible examination of these questions. For these reasons, the United States will continue to rely upon 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 which Members employ to implement them. Therefore, as Members continue to submit papers on the topics being considered and participate actively in the discussions, the Group's utility should continue to grow. In 2004, the Working Group will continue its discussion of the four topics that it began discussing at its October 2003 meeting: (1) export prices to third countries vs. constructed value under Article 2.2 of the 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 work of the Informal Group on Anticircumvention will also continue in 2004 according to the framework for discussion on which Members agreed. Many Members, including the United States, recognize the importance of using the Informal Group to pursue the 1994 decision of Ministers at Marrakesh, who expressed the desirability of achieving uniform rules in this area as soon as possible.

### **3. Committee on Customs Valuation**

#### **Status**

The purpose of the WTO Agreement on the Implementation of GATT Article VII (known as the WTO Agreement on Customs Valuation) 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 provided through tariff reductions are not negated by unwarranted and unreasonable "uplifts" in the customs value of goods to which tariffs are applied.

#### **Major Issues in 2003**

The Agreement is administered by the WTO Committee on Customs Valuation, which held three formal meetings in 2003. The Agreement established a Technical Committee on Customs Valuation under the auspices of the World Customs Organization (WCO). In accordance with a 1999 recommendation of the WTO Working Party on Preshipment Inspection that was adopted by the General Council, the Committee on Customs Valuation 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. In April 2003, the WTO Secretariat compiled information indicating that 31 Members were using preshipment inspection regimes.

Experience continues to demonstrate that the implementation of the Agreement on Customs Valuation by developing countries often represents their first concrete and meaningful step toward reforming their customs regimes, and ultimately moving to a rules-based border environment for conducting trade transactions. Because the Agreement precludes the use of arbitrary customs valuation methodologies, an additional positive result is to diminish one of the incentives for corruption by customs officials. For all of these reasons, as part of an overall strategic approach to trade facilitation, the United States has taken an aggressive role at the WTO on matters related to customs valuation.

U.S. exporters across all sectors—including agriculture, automotive, textile, steel, and information technology products—have experienced difficulties related to the conduct of customs valuation regimes outside of the disciplines set forth under the WTO Agreement on Customs Valuation. U.S. exporters to many developing countries have had market access gains undermined through the application of arbitrarily-established minimum import prices, often used as a crude, broad-brush type of trade remedy - one that provides no measure of administrative transparency or procedural fairness. 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. It is notable that the use of minimum import prices, a practice inconsistent with the operation of the Agreement on Customs Valuation, continues to diminish as more developing countries undertake full implementation of the Agreement.

Achieving universal adherence to the WTO Agreement on Customs Valuation has been a longstanding and important objective of the United States, dating back more than twenty years. The Agreement was initially negotiated in the Tokyo Round, but its acceptance was voluntary as a “code,” until mandated as part of membership in the WTO. Under the Uruguay Round Agreement, special transitional measures were provided for developing country Members, allowing for delayed implementation of the Agreement on Customs Valuation and resulting in individual implementation deadlines for such Members beginning in 2000.

While many developing country Members undertook timely implementation of the Agreement, the Committee continued throughout 2003 to address various individual Member requests for either a transitional reservation for implementation methodology, or for a further extension of time for overall implementation. Working with key trading partners, the United States led the consultations for most such requests, which resulted in the development of a detailed decision tailored to the situation of the requesting Member. Each decision has included an individualized benchmarked work program toward full implementation, along with requirements to report on progress and specific commitments on other implementation issues important to U.S. export interests. The United Arab Emirates maintains an extension of the delay period in accordance with the provisions of paragraph 1, Annex III. El Salvador, Guatemala, Madagascar, and Sri Lanka maintain reservations that have been granted under paragraph 2, Annex III for minimum values, or under the Article IX waiver provisions.

In 2003, in accord with the Doha Ministerial mandate on “Implementation-Related Issues and Concerns,” the Committee continued to examine five proposals from India pertaining to the operation of several provisions of the Agreement. Support for these proposals from other WTO Members has been limited, and Members did not come to consensus on these issues in 2003. The Committee also actively worked to meet another Doha implementation-related mandate to “identify and assess practical means” for addressing concerns by several Members on the accuracy of declared values of imported goods. The Technical Committee was requested to provide this input, and in May 2003 it submitted its report along with a draft “Guide To the Exchange of Customs Valuation Information.” The Committee’s work in this area will continue in 2004.

An important part of the Committee’s work is the examination of implementing legislation. As of November 2003, 74 Members had notified their national legislation on customs valuation. During 2003, the Committee concluded the examinations of amendments to Australia’s legislation, and the legislation of Bolivia, Brunei Darussalam, China, Côte d’Ivoire, Cuba, Morocco and Slovakia. In November 2003, the Committee also conducted a Transitional Review in accordance with Paragraph 18 of the Protocol of China’s accession to the WTO.

The Committee’s work throughout 2003 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 2004**

The Committee’s work in 2004 will include a review of 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. The Committee will also work toward conclusion of its examination of the implementation-related proposals by India. 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 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.

#### **4. Committee on Import Licensing**

##### **Status**

The Committee on Import Licensing was established to administer the Agreement on Import Licensing Procedures and to monitor compliance with the mutually agreed rules for the application of these widely used measures. The Committee meets at least twice a year to review information on import licensing requirements submitted by WTO Members in accordance with the obligations of the Agreement. The Committee also receives questions from Members on the licensing regimes notified by other Members, and addresses specific observations and complaints concerning Members' licensing systems. While not a substitute for dispute settlement procedures, these consultations on specific issues allow Members to clarify problems and possibly to resolve them before they become disputes. Since the accession of China to the WTO in December 2001, the Committee has also conducted an annual review of China's compliance with accession commitments in the area of import licensing as part of the Transitional Review Mechanism provided for in the Protocol of Accession.

##### **Background**

The Agreement on Import Licensing Procedures establishes rules for all WTO Members that use import licensing systems to regulate their trade.

Its obligations establish disciplines to protect the importer against unreasonable requirements or delays associated with the licensing regime. The Agreement's provisions are intended to ensure that the use of such procedures by Members does not create additional barriers to trade beyond what was intended by the requirements themselves. The notification requirements and the system of regular Committee reviews seek to increase the transparency and predictability of Members' licensing regimes. While the Agreement's provisions do not directly address the WTO consistency of the underlying measures that licensing systems regulate, they establish the base line of what constitutes a fair and non-discriminatory application of the procedures. The Agreement covers both "automatic" licensing systems, which are intended only to monitor imports, not regulate them, and "non-automatic" licensing systems where certain conditions must be met before a license is issued. Governments often use non-automatic licensing to administer import restrictions, for 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 Agreement.

##### **Major Issues in 2003**

At its meetings in May and October 2003, the Committee reviewed 64 initial or revised notifications, completed questionnaires on procedures, and replies to questions from Committee members from 59 WTO Members (including EU Member States), a slight decline in the number of notifications from 2002 but bringing the number of Members notifying at least once to an all time high. The United States notified its licensing requirements for imports subject to the safeguard measures on steel products. Written questions were also submitted on Indonesia's non-automatic licensing system for selected textile products, first notified during 2002. The United States sought information and explanations from Indonesia on the operation of this licensing



system; the administration of the restrictions; the number and nature of import licences granted over a recent period; the distribution of such licences among supplying countries; and available import statistics with respect to the products subject to import licensing.

The Committee continued discussions on how the number and frequency of notifications by Members could be increased. The Chairman reported that at the end of 2003, only 26 of 146 Members (counting EU member states individually), had never submitted a notification to the Committee, bringing the percentage of WTO members with at least an initial notification to 83 percent. Concern remained, however, that notifications were not being submitted with the frequency required by the Agreement.

Since the September 2002 Committee meeting, four WTO Members have submitted requests for consultations initiating dispute settlement cases concerning import licensing procedures. The Philippines, the United States, and Nicaragua requested consultations with Australia, Venezuela, and Mexico respectively, concerning licensing requirements on agricultural products. The EU sought consultations addressing import restrictions in India's import and export trade policy in the period 2002-2007.

At its October meeting, the Committee carried out its second annual review of China's implementation of its WTO commitments relating to import licensing procedures as part of the Transitional Review Mechanism (TRM) included in the terms of China's accession protocol. The United States and other WTO Members, including the EU, Japan and Chinese Taipei, raised questions and concerns regarding China's implementation in several areas, including trading rights, China's administration of import quotas for automobiles, China's administration of TRQs for bulk agricultural commodities and fertilizer, and China's use of import inspection permits for a range of agricultural products. A report on the meeting was transmitted for use by the General Council conducting the overall review in December.

## Prospects for 2004

Both in the context of the Doha Development Agenda and in the day-to-day administration of current obligations, consideration of import licensing procedures is likely to intensify, principally with regard to the administration of agricultural TRQs, safeguard measures, and technical and sanitary requirements applied to imports. The Committee also 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. As use of import licensing increases, e.g., to enforce national security, environmental, and technical requirements, to administer TRQs, or to manage safeguard measures, utilization of the Committee as a forum for discussion and review will increase. As demonstrated by the recent increase in requests for formal consultations, this could have the effect of increasing the number of dispute settlement cases on import licensing requirements as well.

The Committee will continue discussions to encourage enhanced compliance with the notification and other transparency requirements of the Agreement, with renewed focus on securing timely revisions of the notifications, including the questionnaire, and responses to written questions, as required by the Agreement. The Committee will also continue to conduct annual reviews of China's import licensing operations in support of the TRM.

## 5. Committee on Market Access

### Status

In January 1995, WTO Members established the Committee on Market Access, 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 Committee on Market Access supervises the implementation of concessions on tariffs and non-tariff measures (where not explicitly covered by another WTO body, e.g., the Textiles Monitoring Body. The Committee also 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 2003

During 2003, WTO Members continued implementing the tariff reductions agreed in the Uruguay Round with the Committee having responsibility for verifying that implementation is proceeding on schedule. The Committee held two formal meetings in 2003, resumed a suspended formal meeting held over from November 2002, and held five informal meetings to discuss the following topics: (1) the ongoing review of WTO tariff schedules to accommodate updates to the Harmonized System (HS) tariff nomenclature; (2) the WTO Integrated Data Base; (3) finalizing consolidated schedules of WTO tariff concessions in current HS nomenclature; (4) reviewing the status of notifications on quantitative restrictions and reverse notifications of non-tariff measures; and, (5) implementation issues related to “substantial interest.” The Committee also conducted its second annual transitional review of China’s implementation of its WTO accession commitments.

**Updates to the Harmonized System (HS) of tariff nomenclature:** In 1993, the Customs Cooperation Council—now known as the World Customs Organization (WCO)—agreed to approximately 400 sets of amendments to the HS, which were to enter into effect on January 1, 1996. These amendments result in changes to the WTO schedules of tariff bindings. Using agreed examination procedures, Members have the right to object to any proposed nomenclature change affecting bound tariff 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 and can pursue unresolved objections under GATT 1994 Article XXVIII.

Since 1996, successive waivers have been granted by decisions of the General Council until implementation procedures can be finalized. The majority of WTO Members have completed the process, but a few Members continue to require waivers. The Committee also examined issues related to the transposition and renegotiation of

the schedules of certain Members which had adopted the HS in the years following its introduction on January 1, 1988.

Using the same procedures, the Committee also began to review Members’ WTO amendments which took effect on January 1, 2002 (HS2002). Drawing from the experience of HS96, the Committee, working with the Secretariat, has developed electronic procedures that will facilitate and expedite the process of reviewing and approving the 373 proposed amendments under HS2002. The United States submitted its proposed changes to the Secretariat in December 2001.

**Integrated Data Base (IAB):** The Committee addressed issues concerning the IAB, which is to be 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 U.S. objectives are to achieve full participation in the IAB by all WTO Members and, ultimately, to develop a method to make the trade and tariff information publicly available. In recent years, the United States has taken 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.

During 2003, the separate Negotiating Group on Non-Agricultural Market Access also took up this issue and developed procedures to facilitate the transfer of applicable tariff and trade data from other sources. As a result, participation has continued to improve. As of December 2003, 95 Members and three acceding countries had provided IAB submissions.

**Consolidated schedule of tariff concessions (CTS):** The Committee continued work to implement an electronic structure for tariff and trade data. The CTS includes: tariff bindings for each WTO Member that reflects Uruguay Round tariff concessions; HS96 updates to tariff nomenclature and bindings; and any other modifications to the WTO schedule (e.g., participation in the

Information Technology Agreement). The data base also includes agricultural support tables. The CTS will be linked to the IAB and will serve as the vehicle for conducting Doha negotiations in agriculture and non-agricultural market access.

**China Transitional Review:** In October 2003, the Committee conducted the second annual review of China's implementation of its WTO commitments on market access. The review touched upon issues such as implementation of China's schedule of tariff commitments, tariff-rate quota administration, management of industrial quotas, and China's application of value added and consumption taxes.

**Implementation Issues:** The Committee continued a discussion from 2002 on two implementation issues referred by the General Council. The first, a proposal by St. Lucia, dealt with the definition of "substantial supplier" in the context of quota allocations. Several developing countries expressed concern that the proposal could undermine the rights and obligations of some Members. The Secretariat undertook several analyses of the substantial supplier issue. The Committee also examined the issue of redistribution of negotiating rights. After lengthy discussion on these topics, the Committee reported back to the General Council that it could not reach a consensus on either issue.

### Prospects for 2004

The ongoing work program of the Committee, while highly technical, will ensure that all WTO Members' schedules are up-to-date and available in electronic spreadsheet format. The Committee will likely explore technical assistance needs related to data submissions. As Members finalize HS96 updates, the Committee will turn to reviewing Members' amended schedules based on the HS2002 revision. The electronic verification process, which incorporates the CTS data, will facilitate the review process and help developing countries to generate their own HS2002 submissions.

## 6. Committee on Rules of Origin

### Status

The objective of the WTO Agreement on Rules of Origin is to increase transparency, predictability, and consistency in both the preparation and application of rules of origin. The Agreement on Rules of Origin 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 request. In addition to setting forth disciplines related to the administration of rules of origin, the Agreement provides for a work program leading to the multilateral harmonization of rules of origin used for non-preferential trade regimes. The harmonization work program is more complex than initially envisioned under the Agreement, which originally set for the work to be completed within three years after its commencement in July 1995. This work program continued throughout 2003 and will continue into 2004.

The Agreement is administered by the WTO Committee on Rules of Origin, which met formally and informally throughout 2003. The Committee also served 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 Agreement also established a Technical Committee on Rules of Origin in the World Customs Organization to assist in the harmonization work program.

As of the end of 2003, 84 WTO Members notified the WTO concerning non-preferential rules of origin, of which 43 Members notified that they had non-preferential rules of origin and 41 Members notified that they did not have a non-preferential rules of origin regime. 89 Members notified the WTO concerning preferential rules of origin, of which 86 notified about their preferential rules of origin and four notified that they did not have preferential rules of origin.

## Major Issues in 2003

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

In addition to the October 2003 formal meeting, the Committee conducted numerous informal consultations and working party sessions related to the harmonization work program negotiations. The Committee proceeded in accordance with a December 2001 mandate from the General Council, which extended the harmonization work program while specifically requesting that the Committee on Rules of Origin focus during the first half of 2002 on identifying core policy issues arising under the harmonization work program that would require attention of the General Council.

The Committee continued to make progress in reducing the number of issues that remained outstanding under the harmonization work program, and proceeding on a track toward achieving consensus on product-specific rules of origin for more than 5000 tariff lines. In 2003, the Committee focused on approximately 90 unresolved issues identified as “core policy issues.” Many of these issues are particularly significant due to their broad application across important product sectors, including steel, beef products, sugar, automotive goods, and dairy products.

Specific origin questions among these “core policy issues” include, for example, how to determine the origin of fish caught in an Exclusive Economic Zone, or whether the refinement, fractionation, and hydrogenation substantially transform oil and fat products to a degree appropriate to confer country of origin. A cross-cutting unresolved “core policy issue” continues to arise from the apparent absence of common understanding among Members concerning the Agreement’s prospective obligation, upon completion of the harmonization and implementation of the results, for Members to “apply rules of origin equally for all purposes.” As a result, positions have sometimes been divided between a strictly neutral analysis under the criterion of ‘substantial transformation’ and an advocacy of restrictiveness for certain product-specific rules that would be unwarranted for application to the normal course of trade but is perceived as necessary for the operation of certain regimes or measures covered by other Agreements.

## Prospects for 2004

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 result in non-transparency, discrimination, and a lack of predictability. Attention will continue to be given to the implementation of the Agreement’s important disciplines related to transparency, which are recognized elements of what are considered to be “best customs practices.”

Further progress in the harmonization work program will remain contingent on achieving appropriate resolution of the “core policy issues” identified by the Committee. In accordance with a decision taken by the General Council in July 2003, work will continue on addressing these issues. The General Council, at its meeting in July 2003, extended the deadline for completion of the 94 core policy issues to July 2004. The General Council also agreed that following resolution of these core policy issues, the CRO would complete its remaining technical work by December 31, 2004.

## 7. Committee on Safeguards

### Status

The Committee on Safeguards was established to administer the WTO Agreement on Safeguards. The 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, thus 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 Agreement on Safeguards incorporates into WTO rules many of the concepts embodied in U.S. safeguards law (section 201 of the Trade Act of 1974, as amended). The Agreement requires all WTO Members to use transparent and objective procedures when taking safeguard actions to prevent or remedy serious injury to a domestic industry caused by increased imports.

Among its key provisions, the Agreement:

- requires a transparent, public process for making injury determinations;
- sets out clearer definitions than GATT Article XIX of the criteria for injury determinations;
- requires safeguard measures to be steadily liberalized over their duration;
- establishes an eight-year maximum duration for safeguard actions, and 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, which had

been utilized by countries to avoid GATT disciplines and which adversely affected third-country markets.

### Major Issues in 2003

During its two regular meetings in April and October 2003, the Committee continued its review of Members’ laws, regulations, and administrative procedures, based on notifications required by Article 12.6 of the Agreement. The Committee reviewed new or amended legislative texts from China, Costa Rica, Croatia, the European Union, Indonesia, Japan, Latvia, Mexico, and Chinese Taipei.

The 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: Bulgaria on iron and steel; Ecuador on fibreboard, smooth ceramics and ceramics and porcelains; Estonia on swine meat, the European Union on certain prepared or preserved mandarins; Hungary on ammonium nitrate and white sugar; India on bisphenol A; Jordan on aerated water; Moldova on sugar; the Philippines on glass mirrors, figured glass and float glass; Poland on matches; and Venezuela on footwear.

The Committee reviewed Article 12.1(b) notifications, regarding a finding of serious injury or threat thereof caused by increased imports, from the following Members: Bulgaria on ammonium nitrate; China on certain steel products; the Czech Republic on sugar, tubes & pipes, and ammonium nitrate; Hungary on certain steel products and ammonium nitrate; India on edible vegetable oils; Jordan on sanitary ware products and pasta; Latvia on swine meat; the Philippines on glass mirrors, figured glass and float glass; Poland on certain steel products, calcium carbide and water heaters; the Slovak Republic on ammonium nitrate.

The Committee reviewed Article 12.1(c) notifications, regarding a decision to apply or extend a safeguard measure, from the following Members: Bulgaria on crown corks and ammonium nitrate;

China on certain steel products; the Czech Republic on sugar, tubes & pipes, and ammonium nitrate; Ecuador on fibreboard and matches; Hungary on certain steel products and ammonium nitrate; India on epichlorohydrin; Jordan on sanitary ware products and pasta; Latvia on live pigs and pork; the Philippines on cement; Poland on certain steel products, calcium carbide and water heaters; and the Slovak Republic on ammonium nitrate.

The Committee received notifications from the following Members of the termination of a safeguard investigation with no safeguard measure imposed: Bulgaria on urea and steel; the Czech Republic on wires, ropes and cables; certain steel products, and citric acid, Hungary on certain steel products and ammonium nitrate; and from Jordan on ceramic tiles, electric accumulators and two types of cooking appliances and aerated water.

The Committee reviewed a notification from the United States on the results of the mid-term review of its safeguard measures on steel.

The Committee reviewed Article 12.4 notifications, regarding the application of a provisional safeguard measure, from the following Members: Chile on fructose; the Czech Republic on ammonium nitrate; Ecuador on smooth ceramics; Hungary on ammonium nitrate and white sugar; the Philippines on glass mirrors, figured glass and float glass; and Venezuela on iron/steel “U” sections and footwear.

**China Transitional Review:** At the October 2003 meeting, the Committee undertook, pursuant to the Protocol on the Accession of the People’s Republic of China, its second transitional review with respect to China’s implementation of the Agreement. Several Members, including the United States, addressed questions and comments to China, with a particular emphasis on transparency concerns, relating to China’s notification of its safeguard regulations and rules, and to China’s safeguard measure with respect to certain steel products. China’s representatives provided oral responses at the October meeting.

In addition to its comments during the transitional review, the United States also submitted several sets of written questions to China as part of the regular Committee reviews of notifications of safeguards legislation and notifications of safeguard actions, in order to obtain further information on China’s safeguard rules and practices. China submitted written responses in October 2003, and we expect to follow up in 2004 with respect to these issues.

**Implementation:** At both the April and October 2003 meetings, the Committee discussed various issues pertaining to Article 9.1 of the Agreement, concerning the exclusion of developing country Members from the application of safeguard measures when certain criteria are met. In addition, pursuant to the direction of the General Council, the Committee considered a proposal by the Africa Group with respect to special and differential treatment for developing country Members under paragraphs 1 and 2 of Article 9 of the Agreement. The Committee adopted a report to the General Council on this issue at a special meeting in July 2003, stating that it was unable to reach consensus with respect to the proposal.

### Prospects for 2004

The Committee’s work in 2004 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 laws. Among the notifications in late 2003 that the Committee will be reviewing in 2004 are notifications by the EU of its provisional safeguard measure on certain prepared or preserved mandarins, and by Brazil of its intention to extend its safeguard measure on toys.

## 8. Committee on Sanitary and Phytosanitary Measures

### Status

The WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures establishes rules and procedures to ensure that sanitary and phytosanitary measures address legitimate

human, animal and plant health concerns; do not arbitrarily or unjustifiably discriminate between Members' agricultural and food products; and are not disguised restrictions on international trade. SPS measures protect against risks associated with plant or animal borne pests and diseases, additives; contaminants; toxins and disease-causing organisms in foods, beverages, or feedstuffs. Fundamentally, the Agreement requires that such measures be based on science and developed through systematic risk assessment procedures. At the same time, the SPS Agreement preserves every WTO Member's right to choose the level of protection it considers appropriate with respect to SPS risks.

The SPS Committee is a forum for consultation on Members' existing or proposed SPS measures that affect international trade, the implementation and administration of the Agreement, technical assistance, and the activities of the international standard-setting bodies. It also includes discussions of the Agreement's provisions related to transparency in the development and application of SPS measures, special and differential treatment, technical assistance, and equivalence.

Participation in the Committee is open to all WTO Members. Certain non-WTO Members also participate as observers, in accordance with guidance agreed to by the General Council. In addition, representatives of a number of international organizations are invited to attend meetings of the Committee as observers on an *ad hoc* basis: the Food and Agriculture Organization (FAO), the World Health Organization (WHO), the FAO/WHO Codex Alimentarius Commission, the FAO International Plant Protection Convention Secretariat (IPPC), the International Office of Epizootics (OIE), the International Organization for Standardization (ISO) and the International Trade Center (ITC), and others.

A number of documents relating to the work of the SPS Committee are available to the public directly from the WTO website: [www.wto.org](http://www.wto.org). The SPS Committee documents are indicated by the symbols, "G/SPS/..." Beginning in 2000, notifications of proposed SPS measures are indicated

by G/SPS/N ("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 country). Parties in the United States interested in submitting comments to foreign governments on their proposals should send them through the U.S. inquiry point shown in the box below. Reports of Committee meetings are issued as "G/SPS/R/..." (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/SPS/W/..." (followed by a number). As a general rule, written information provided by the United States to the Committee is provided on an "unrestricted" basis and available to the public on the WTO's website.

### Major Issues in 2003

In 2003, the Committee met three times and the Secretariat convened a workshop on the operation of inquiry points immediately following the November meeting. These meetings are used increasingly by members to raise concerns regarding the new and existing SPS measures of other Members. In addition, members are using the Committee meetings to exchange views and experiences in implementing various provisions of the agreement such as equivalence, transparency and regionalization. The United States views this as a positive development as it demonstrates growing familiarity with and implementation of the provisions of the SPS Agreement and increasing recognition of the value of the Committee as a venue to discuss SPS-related trade issues among Members.

With assistance from the United States and other donors, the 34 countries participating in the Free Trade Area of the Americas negotiations attended each of the meetings of the Committee in 2003. This significantly expanded capital-based, and Geneva-based, participation in the Committee. Plans are being made to secure funding sources to continue this assistance for attendance at future meetings.

**BSE-TSE<sup>2</sup>:** The Committee also devoted considerable time to discussing Members' activities regarding BSE and TSE's. Several Members have proposed and introduced measures to protect consumers and animals against BSE. The Committee discussed the need for these measures to be based on science and that international standards should be used as the basis of Members' actions, unless Members have a scientific justification for a more protective measure than that provided by the international standard. The United States anticipates that BSE will continue to be an issue of interest and concern of many Members and the Committee will have extensive discussions about the nature of the disease and measures taken by Members to protect public health and animal health. Several Members, including the United States, raised concerns about the non-science based categorization of countries' BSE-status and the use of this categorization to restrict trade.

**Implementation of the Bioterrorism Act:** At the November 2002 meeting and at each 2003 meeting of the Committee, the United States provided information on the implementation of the Public Health Security and Bioterrorism Preparedness Act of 2002, known simply as the Bioterrorism Act (BTA). The primary requirements of the BTA which affect food imported into the United States are: the requirement for all food handling facilities (including foreign facilities if they export to the United States), with some exceptions such as farms and restaurants, to register with the U.S. Food and Drug Administration (FDA); and to provide prior notice of all food consignments imported into the United States. Under the leadership of FDA, various U.S. agencies have conducted outreach and education to other countries to ensure exporters to the United States are aware of these requirements and know how to comply. Part of this effort included the presentation of information at each meeting of the SPS Committee and special outreach sessions conducted on the

margins of the March and November Committee meetings to provide Members with the opportunity to discuss these new requirements with FDA experts. During the March Committee meeting, Members were encouraged to submit comments and concerns about the proposed rules on registration and prior notice before the close of the comment period on April 4, 2003. The concerns of Members were also noted by FDA and appropriate responses were provided. At the November meeting, the major changes from the proposed rules that were reflected in the interim final rules and implementation requirements were explained both in the Committee meeting and at a special outreach meeting hosted by the United States. Members were also informed that although the implementation of the interim final rules could not be delayed (due to the automatic implementation provisions of the BTA on December 12, 2003), the United States would show flexibility regarding the enforcement of these requirements.

**Equivalence:** At the request of developing-country Members, the Committee held several informal meetings on the provisions of Article 4 of the Agreement—Equivalence. In 2001, the United States submitted a paper (G/SPS/W/111) outlining our views and the activities of regulatory agencies as they relate to equivalence. This paper and submissions from other Members enabled the Committee to develop and approve a decision of the Committee (G/SPS/19) which outlines steps designed to make it easier for Members to make use of the provisions of Article 4 of the Agreement. In 2002, the Committee began discussions on certain aspects of this decision which need clarification. The Committee adopted a work plan for the next two years on the clarification of this decision.

**Notifications:** During several discussions in the Committee regarding specific trade concerns among Members and equivalence, Members indicated that a specific discussion on the

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<sup>2</sup> Bovine Spongiform Encephalopathy and Transmissible Spongiform Encephalopathy



notification requirements and process would be helpful. The Committee decided to have informal meetings on notifications and transparency in 2002. At the June meeting, the Committee adopted a revision to the notification form and added space for Members to describe measure recognized to be equivalent.

**Technical Assistance:** In June 2000, the United States submitted information (G/SPS/W/181) on technical assistance which had been provided to Members on SPS issues. This information is updated on an annual basis to reflect assistance provided since the previous report in July 2001 (G/SPS/W/181add.1), June 2002 (add.2) and in June 2003 (add.3). Committee meeting, the United States provided updated information((G/SPS/W/181add.2) describing the technical assistance provided by U.S. agencies since the last report.

**China's Transitional Review Mechanism:** The United States participated in the Committee's second review of China's implementation of its WTO under paragraph 18 of the Protocol on the Accession of the People's Republic of China. The United States submitted questions regarding China's notification procedures, scientific basis for some of its SPS measures, national treatment and import inspection and approval procedures (G/SPS/W/139). This paper and those of other Members formed the basis of the Committee's discussions at the November meeting. China provided oral responses to the questions raised by the United States and other Members and restated its commitment to implement the provisions of the SPS Agreement.

**Transparency:** The SPS Agreement provides a process whereby WTO Members can obtain information on other Members' proposed SPS regulations and control, inspection, and approval procedures, and the opportunity to provide comments on those proposals before implementing Members' make their final decisions. These transparency procedures have proved extremely useful in preventing trade problems associated with SPS measures. The United States continued to press all WTO Members to establish

#### **U.S. Inquiry Point**

Office of Food Safety and Technical Services  
Attention: Carolyn F. Wilson  
Foreign Agricultural Service  
U.S. Department of Agriculture  
AG Box 1027  
Room 5545 South Agriculture Building  
14th and Independence Avenue, S.W.  
Washington, DC 20250-1027

Telephone: (202) 720-2239  
Fax: (202) 690-0677  
email: ofsts@fas.usda.gov

an official notification authority, as required by the Agreement, and to ensure that the Agreement's notification requirements are fully and effectively implemented. Each Member is also required to establish a central contact point, known as an inquiry point, to be responsible for responding to requests for information or making the appropriate referral. This inquiry point circulates notifications received under the Agreement to interested parties for comment. The SPS inquiry point for the United States is:

#### **Prospects for 2004**

The Committee will continue to monitor implementation of the Agreement by WTO Members. As mentioned above, the number of specific trade concerns raised in the Committee appears to be increasing and the Committee has been a useful forum for Members to raise concerns and then work bilaterally to resolve specific trade concerns. The number of concerns in this area is evidence of the importance and usefulness Members place on the effective operation of the Agreement. The Committee will continue to be an important forum for Members to provide information about efforts to manage and control food safety and animal health emergencies as well as ongoing food safety, animal and plant health activities that affect international trade.

In addition, during 2004, the United States expects the Committee to continue discussions on technical assistance and notifications. To date, developed countries have submitted most of the

papers and the United States will be encouraging developing-country Members to participate more actively in both formal meetings and informal consultations to identify improvements. At the November meeting, Committee agreed to an informal meeting in March 2004 on Article 6, Regionalization. Members have been invited to submit papers on their experiences with these provisions of the Agreement. These discussions are expected to continue throughout 2004. As a result of implementation discussions in the General Council, the Committee will need to address plans for conducting a review of the Agreement as agreed upon by the General Council. The Committee will continue to monitor the development of international standards, guidelines and recommendations by standard-setting organizations. The Committee will seek to identify areas where the development of additional or new standards would facilitate international trade and provide this information to the appropriate standard-setting organization for consideration. The Committee will also prepare for and conduct a review of China's implementation of the SPS Agreement.

## 9. Committee on Subsidies and Countervailing Measures<sup>3</sup>

### Status

The Agreement on Subsidies and Countervailing Measures (Subsidies 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. The Agreement nominally divides subsidy practices among three classes: prohibited (red light) subsidies; permitted yet actionable (yellow light) subsidies; and permitted, non-actionable (green light) subsidies.<sup>4</sup> Export subsidies and import substitution subsidies are prohibited. All other subsidies are permitted, yet are also actionable (through CVD or dispute settlement action) 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 WTO<sup>3</sup> Member. With the expiration of the Agreement's provisions on green light subsidies, at present, the only non-actionable subsidies are those which are not specific, as defined above.

### Major Issues in 2003

The Committee held two regular meetings in 2003. In addition to its routine activities concerned with reviewing and clarifying the consistency of WTO Members' domestic laws, regulations and actions with Agreement requirements, the Committee continued to accord special attention to the general matter of subsidy notifications and the process by which such notifications are made to and considered by the Subsidies Committee. In this regard, the Committee took action to address the poor and declining state of compliance with subsidy notifications in an effort to find a long-term solution to the problem. During the fall meeting, the

<sup>3</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 2004.

<sup>4</sup> Prior to 2000, Article 8 of the Agreement provided that certain limited kinds of government assistance granted for industrial research and development (R&D), regional development, or environmental compliance purposes would be treated as non-actionable subsidies so long as such assistance conformed to the applicable terms and conditions set forth in Article 8. In addition, Article 6.1 of the Agreement provided that certain other subsidies, referred to as dark amber subsidies, could be presumed to cause serious prejudice. These were: (i) subsidies to cover an industry's operating losses; (ii) repeated subsidies to cover a firm's operating losses; (iii) the direct forgiveness of debt (including grants for debt repayment); and (iv) when the ad valorem subsidization of a product exceeds five percent. If such subsidies were challenged on the basis of these dark amber provisions in a WTO dispute settlement proceeding, the subsidizing government would have the burden of showing that serious prejudice had not resulted from the subsidy. However, as explained in our 1999 report, a mandatory review was conducted in 1999 under Article 31 of the Agreement to determine whether to extend the application of these provisions beyond December 31 of that year. They expired on January 1, 2000 because a consensus could not be reached among WTO Members on whether to extend or the terms by which these provisions might be extended beyond their five-year period of provisional application.

Committee also undertook its second transitional review with respect to China's implementation of the Agreement. Other issues addressed in the course of the year included: the examination of the export subsidy program extension requests of certain developing countries, the methodology for the calculation of the per capita GNP threshold in Annex VII of the Agreement, the ramifications of European Union enlargement on existing trade remedy measures, and the election of two persons to the Permanent Group of Experts. Further information on these various activities is provided below.

#### *Review and Discussion of Notifications:*

Throughout the year, Members submitted notifications of: (i) new or amended CVD legislation and regulations; (ii) CVD investigations initiated and decisions taken; and (iii) measures which meet the definition of a subsidy and which are specific to certain recipients within the territory of the notifying Member. Notifications of CVD legislation and actions, as well as subsidy notifications, were reviewed and discussed by the Committee at both of its regular meetings. In reviewing notified CVD legislation and subsidies, Committee procedures provide for the exchange in advance of written questions and answers in order to clarify the operation of the notified measures and their relationship to the obligations of the Agreement. To date, 97 Members of the WTO (counting the European Union as one) have notified that they currently have CVD legislation in place, while 35 Members have not yet notified that they maintain such legislation. Among the notifications of CVD laws and regulations reviewed in 2003 were those of: Antigua and Barbuda; Argentina; Brazil; China; Costa Rica; Czech Republic; Dominican Republic; the European Communities; Grenada; Japan; Lithuania; Mexico; New Zealand; Nicaragua; Pakistan; Turkey; and, Zimbabwe<sup>5</sup>. The notifications of Armenia and Peru were scheduled to be reviewed at the fall 2003 regular meeting but were postponed until next year.

As for CVD measures, six WTO Members notified CVD actions taken during the latter half of 2002, and eleven Members notified actions taken in the first half of 2003. Specifically, the Committee reviewed actions taken by Argentina, Australia, Brazil, Canada, Costa Rica, the European Union, Latvia, Mexico, New Zealand, Peru, South Africa, the United States and Venezuela. With respect to subsidy notifications, 34 Members provided new and full notifications for 2003. (Importantly, the United States submitted its subsidy notification in 2003, continuing to be in compliance with its subsidy notification obligations under the Agreement.) Twenty-two of these notifications were reviewed in the fall of 2003. The remainder will be reviewed next year. In 2003, the Committee continued its examination of new and full notifications submitted for 1998 and 2001, as well as updating notifications submitted for 1999 and 2000.

Although WTO Membership was 146 as of December 2003, as noted above, only 34 Members provided new and full notifications for 2003. Only 59 Members submitted new and full subsidy notifications for 2001, while 47 and 43 Members, respectively, submitted updating notifications for the 1999 and 2000 periods. Notably, numerous Members have never made a subsidy notification to the WTO, although many are lesser developed countries.

In view of the ongoing difficulties experienced by Members, in meeting the Agreement's subsidy notification obligations, a three-prong strategy has been employed to address the problem. The first prong was to examine alternative practical approaches to the frequency and nature of subsidy notifications, as well as their review. In 2001, Members decided to devote maximum effort to submitting new and full notifications, every two years, and to de-emphasize the review of the annual updating notifications. Examination of the format for a subsidy notification constituted the second prong of the strategy.

<sup>5</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.

Efforts in this regard were made in 2002 and culminated in the adoption in 2003 of a revised, simplified format. The third prong was the organization of a subsidy notification seminar, geared to participation by capital-based officials responsible for notification which was held in 2002. Pursuant to an informal U.S. initiative, several developed country Members have offered technical assistance to neighboring developing country Members experiencing difficulty in assembling and submitting subsidy notifications. Implementation of this initiative will hopefully provide the needed impetus for those developing countries in need to meet their obligations under the Subsidies Agreement and thereby address, at least in part, the relatively poor record of WTO Members in submitting notifications of their subsidy programs.

**China Transitional Review:** At the fall meeting, the Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, the second annual transitional review with respect to China's implementation of its WTO obligations in the areas of subsidies, countervailing measures and pricing policies. A number of Members, including the United States, presented written and oral questions and concerns to China in these areas. China provided substantial information with respect to its countervailing duty laws and regulations, as well as some information regarding its pricing policies. While China orally described some of its subsidy programs in response to Members' inquiries during the transitional review, it has not submitted a subsidies notification since becoming a WTO Member, citing numerous practical difficulties in assembling and submitting the appropriate information. During the transitional review, the United States and others expressed concern that China had not yet submitted a subsidies notification and urged it to do so as soon as possible.

**Extension of the transition period for the phase out of export subsidies:** Under the Agreement, most developing countries were obligated to eliminate their export subsidies by December 31, 2001. Article 27.4 of the Agreement allows for an extension of this deadline provided consultations were entered into with the Subsidies Committee by December 31, 2002. The Committee has the authority to decide whether an extension is justified. In making this determination, the Committee must consider the "economic, financial and development needs" of the developing country Member. If the Committee grants an extension, annual consultations with the Committee must be held to determine the necessity of maintaining the subsidies.<sup>6</sup> If the Committee does not affirmatively sanction a continuation, the export subsidies must be phased out within two years.

In an attempt to try and address the concerns of small exporter developing countries, a special procedure within the context of Article 27.4 of the Agreement, was adopted at the Fourth Ministerial Conference under which countries whose share of world exports was not more than 0.10 percent and whose Gross National Income was not greater than \$20 billion could be granted a limited extension for particular types of export subsidy programs subject to rigorous transparency and standstill provisions. Members meeting all the qualifications for the agreed upon special procedures are eligible for a five-year extension of the transition period, in addition to the two years referred to under Article 27.4.<sup>7</sup>

In 2002, Colombia, El Salvador, Panama and Thailand made requests under the normal extension process provided for in the Agreement. Antigua and Barbuda, Barbados, Belize, Bolivia, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Honduras,

6 Any extension granted by the Committee would only preclude a WTO dispute settlement case from being brought against the export subsidies at issue. A Member's ability to bring a countervailing duty action under its national laws would not be affected.

7 In addition to agreement on the specific length of the extension, it was also agreed at the Fourth Ministerial Conference, in essence, that the Committee should look favorably upon the extension requests of Members which do not meet all the specific eligibility criteria for the special small exporter procedures but which are similarly situated to those that do meet all the criteria. This provision added at the request of Colombia.

Jamaica, Jordan, Kenya, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, Sri Lanka, and Suriname made requests under the special procedures adopted at the Fourth Ministerial Conference for small exporter developing countries.<sup>8</sup> Uruguay requested an extension for one program under both the normal and special procedures. Additionally, Colombia sought an extension for two of its export subsidies programs under a procedure agreed to at the Fourth Ministerial Conference analogous to that provided for small exporter developing countries.

In 2003, no requests were made for extensions under the normal Article 27.4 procedures.<sup>9</sup> Requests were made however, by all the countries which had received extensions under the special procedures adopted at the Fourth Ministerial Conference for small exporter developing countries. Colombia also requested an extension for two of its export subsidies programs for which extensions were granted under the procedure agreed to at the Fourth Ministerial Conference. All these requests required, *inter alia*, a detailed examination of whether the applicable standstill and transparency requirements had been met. In total, the Committee conducted a detailed review of more than 46 export subsidy programs. At the end of the process, all of the requests under the special procedures were granted. Throughout the review and approval process, the United States took a leadership role in ensuring close adherence to all of the preconditions necessary for continuation of the extensions.

#### ***The Methodology for Annex VII(b) of the Agreement:*** Annex VII of the Agreement

identifies certain lesser developed countries that are eligible for particular special and differential treatment. Specifically, the export subsidies of these countries are not prohibited and, therefore, are not actionable under the dispute settlement process. Secondly, a higher *de minimis* threshold is provided for in countervailing duty investigations of imports from these countries, although this standard expired at the end of 2002.<sup>10</sup> The countries identified in Annex VII include those WTO Members designated by the United Nations as “least developed countries” (Annex VII(a)) as well as countries that had, at the time of the negotiation of the Agreement, a per capita GNP under \$1,000 per annum and are specifically listed in Annex VII(b).<sup>11</sup> A country automatically “graduates” from Annex VII(b) status when its per capita GNP rises above the \$1,000 threshold. When a Member crosses this threshold it becomes subject to the subsidy disciplines of other developing country Members.

Since the adoption of the Agreement in 1995, the *de facto* interpretation by the Committee of the \$1,000 threshold was current (i.e., nominal or inflated) dollars. The concern with this interpretation, however, was that a Member could graduate from Annex VII on the basis of inflation alone, rather than on the basis of real economic growth.

In 2001, the Chairman of the Committee, in conjunction with the WTO Secretariat, developed an approach based on certain World Bank data that were used by the Uruguay Round negotiators in 1990 in developing Annex VII(b). While many Members expressed the view that they could accept this proposed methodology, other

8 Bolivia, Guatemala, Honduras, Kenya and Sri Lanka are all listed in Annex VII of the Subsidies Agreement and thus, may continue to provide export subsidies until their “graduation”. Therefore, these countries have only reserved their rights under the special procedures in the event they graduate during the five-year extension period contemplated by the special procedures. Because these countries are only reserving their rights at this time, the Committee did need to make any decisions as to whether their particular programs qualify under the special procedures.

9 As a result, the export subsidy programs of Colombia, El Salvador, Panama and Thailand which had been granted normal Article 27.4 extensions in 2002, must be phased out within two years (i.e., the end of 2005).

10 This *de minimis* for Annex VII countries was 3 percent, compared with the 2 percent for other developing countries.

11 Annex VII(b) countries 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.

Members indicated that it was more appropriate to rely on more recently available data. Thus, it was not possible to reach a consensus on the question of methodology.

At the Fourth Ministerial Conference, it was agreed:

... 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 U.S. \$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 U.S. \$1000 based upon the most recent data from the World Bank.<sup>12</sup>

No alternative methodology was proposed in 2002. Therefore, the Chairman's methodology proposed in 2001 has been in effect since January 1, 2003. The WTO Secretariat updated the calculations later in the year.<sup>13</sup>

**European Union Expansion:** At the fall meeting, the Committee discussed issues pertaining to the status of outstanding countervailing duty measures of the EU in light of the future expansion of the EU from 15 members to 25 members in 2004. The United States filed written questions to the

EU on this issue, raising concerns about whether the EU's announced intention to extend automatically, upon expansion, its countervailing duty measures now covering imports into the territory of the 15 current member-states of the EU to cover imports into the territory of the 25 member-states after expansion would be consistent with the Agreement, particularly in the absence of an additional determination of injury covering the territory of the 25 member-states. The EU responded orally to the U.S. questions, and several other Members raised additional questions and concerns on this issue. Discussion will continue in 2004.

**Permanent Group of Experts:** Article 24 of the 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 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 WTO 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. At the beginning of 2002, the members of the Permanent Group of Experts were: Professor Okan Aktan; Mr. Jorge Castro Bernieri; Dr. Marco Bronckers; Professor R.G. Flores Jr.; and Mr. Hyung-Jin Kim. Professor Flores' term as a member of the PGE

<sup>12</sup> The addition of the phrase "for three consecutive years" was added at the request of Honduras which was concerned that their possible graduation from Annex VII in the near future might place them in a worse position than those Members which avail themselves of the special procedures under Article 27.4 for small developing country exporters.

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

expired in the spring of 2003. In addition, Mr. Castro-Bernieri, who was elected to the PGE for the term 2001-2006, resigned upon his appointment to the WTO Secretariat. Mr. Terence P. Stewart—a recognized international trade law practitioner from the United States—and Mr. Yuji Iwasawa were elected to replace Mr. Castro-Bernieri and Professor Flores to the PGE, assuming terms until spring 2006, and spring 2008, respectively.

### Prospects for 2004

In 2004, the United States will continue to work with others to try to identify ways to rationalize the burdens of subsidy notification for all WTO Members without diminishing transparency or taking away from the other substantive benefits of the notification obligation and to provide technical assistance when available and where appropriate. Second, the United States will participate actively in the review of other WTO Members' CVD legislation and actions, as well as China's Transitional Review, and will bring to Members' and the Committee's attention any concerns which may arise about such laws or actions, whether in general or in the context of specific proceedings. Thirdly, the United States will continue to ensure the close adherence to the provisions of the agreed upon export subsidy extension procedures for small exporter developing countries. Finally, the United States is prepared to take a leadership role in addressing any technical questions that the Subsidies Committee may be asked to consider in the context of issues that may arise within the Rules Negotiating Group.

## 10. Committee on Technical Barriers to Trade

### Status

The Agreement on Technical Barriers to Trade (the TBT Agreement) establishes rules and

### U.S. Inquiry Point

National Center for Standards and  
Certification Information  
National Institute of Standards and  
Technology (NIST)  
100 Bureau Drive, Stop 2150  
Gaithersburg, MD 20899-2150

Telephone: (301) 975-4040  
Fax: (301) 926-1559  
email: [ncsci@NIST.GOV](mailto:ncsci@NIST.GOV)

NIST offers a free web-based service, Export Alert!, that provides U.S. customers with the opportunity to review and comment on proposed foreign technical regulations that can affect them. By registering for the Export Alert! Service, U.S. customers receive, via e-mail, notifications of drafts or changes to foreign regulations for a specific industry sector and/or country. To register on-line contact:

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. Its aim is to prevent the use of technical requirements as unnecessary barriers to trade. The Agreement applies to a broad range of industrial and agricultural products, though sanitary and phytosanitary (SPS) measures and specifications for government procurement are covered under separate agreements. It establishes rules that 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 non-discriminatory basis, developed and applied transparently, and should be based on relevant international standards and guidelines, when appropriate.

The TBT Committee<sup>14</sup> serves as a forum for consultation on issues associated with the implementation and administration of the Agreement. This includes discussions and/or presentations concerning specific standards, technical regulations and conformity assessment procedures maintained by a Member that are creating adverse trade consequences and/or are perceived to be violations of the Agreement. It also includes an exchange of information on Member government practices related to implementation of the Agreement and relevant international developments.

**Transparency and Availability of WTO/TBT Documents:** A key opportunity for 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.

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 which 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 country or 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 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). As a general rule, written information provided by the United States to the Committee is provided on an “unrestricted” basis and is available to the public on the WTO’s website.

### Major Issues in 2003

The TBT Committee met three times in 2003. At the meetings, the Committee addressed implementation of the Agreement, including an exchange of information on actions taken by Members domestically to ensure implementation and ongoing compliance. A number of Members used the Committee meetings to raise concerns about specific technical regulations which affected, or had the potential to affect, trade adversely and were perceived to create unnecessary barriers to trade. U.S. interventions were primarily targeted at a variety of proposals from the European Commission that could seriously disrupt trade.

14 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 international intergovernmental 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, pending final agreement by the General Council on the application of the guidelines for observer status for international intergovernmental organizations in the WTO.

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



The Committee conducted its Eighth Annual Review of the Implementation and Operation of the Agreement based on background documentation contained in G/TBT/12, and its Eighth Annual Review of the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the Agreement) based on background documentation contained in G/TBT/CS/1/Add.7 and G/TBT/CS/2/Rev.9. Decisions and recommendations adopted by the Committee are contained in G/TBT/1/Rev.8.

**Follow-up to the Second Triennial Review of the Agreement:** Beyond bilateral trade concerns discussed under “Statements on Implementation,” the work of the Committee has focused on issues identified in the Second Triennial Review of the Agreement (see G/TBT/9). The review provided the opportunity for WTO Members to review and discuss all of the provisions of the Agreement, which facilitated a common understanding of their rights and obligations under the Agreement. In follow-up to that review, priority attention has been given to technical assistance and the implementation needs of developing countries, as well as to trade effects resulting from labeling requirements.

**Technical Assistance:** In the Second Triennial Review, the Committee recognized the importance of ensuring that solutions to implementation problems were targeted at the specific priorities and needs identified by individual or groups of developing country Members. This called for effective coordination at the national level between authorities, agencies, and other interested parties to identify and assess the priority infrastructure needs of a specific Member. The Committee recognized the need for coordination and cooperation between donor Members and organizations, as well as between the Committee, other relevant WTO bodies, and donor organizations. In order to enhance the effectiveness of technical assistance and cooperation, the Committee agreed to develop a demand-driven technical cooperation program beginning with the identification and prioritization of needs by developing countries, and

working with other relevant international and regional organizations. To this end, the Committee developed and conducted a *Questionnaire for a Survey to Assist Developing Country Members to Identify and Prioritize their Specific Needs in the TBT Field* (G/TBT/W/178). To date, over 50 WTO Members responded to the survey. The Secretariat prepared an un-restricted summary of the survey responses received prior to the October 17, 2002, meeting of the Committee (G/TBT/W/186). On March 18, 2003 the Committee held a Workshop on Technical Assistance which included presentations on assistance needs, case studies on successful approaches, and a discussion of future strategies.

**Labeling:** The Committee intensified its exchange of information on issues associated with labeling requirements, noting the frequency with which specific concerns regarding mandatory labeling were raised at meetings of the Committee during discussions on implementation, and stressing that although such requirements can be legitimate measures, they should not become disguised restrictions on trade. Since the conclusion of the Second Triennial Review, a number of Members presented papers on their views, including submission from the United States (G/TBT/W/165). Although Switzerland and the European Union suggested the need for clarification of TBT disciplines to better address labeling concerns, their view gained little support, with most WTO Members including the United States emphasizing the need to comply with existing obligations. In response to a request from the Committee, the Secretariat prepared two background papers to inform the discussions: a compilation of notifications made since 1995 (G/TBT/W/183), and a compilation of specific trade concerns related to labeling raised at meetings of the TBT Committee (G/TBT/W/184). The Secretariat estimates some 723 notifications have been made between January 1, 1995 and August 31, 2002 which involved labeling proposals. The Committee held a “Learning Event” on labeling on October 21-22, 2003. The event was focused on case studies, with a particular focus on developing countries’ concerns.

**Third Triennial Review:** At its meeting on November 7, 2003, the Committee concluded its Third Triennial Review of the Agreement (G/TBT/13). The review reflected discussions undertaken by the Committee since the conclusion of the Second Triennial Review in 2000. The Review focused on the following topics: (a) implementation and administration of the Agreement; (b) good regulatory practice; (c) transparency procedures; (d) conformity assessment procedures; (e) technical assistance and special and differential treatment; and, (f) other elements. Among other things, the Committee agreed to intensify its exchange of information on conformity assessment, including implementation of supplier's declaration of conformity and other approaches to facilitate the acceptance of conformity assessment results through future workshops. It will also explore ways to facilitate coordination within the WTO and with other bodies technical assistance in response to identified needs. The United States submission for the Triennial Review is contained in G/TBT/W/220. The Triennial Review includes a listing of all the submissions made by Members in the context of the review and which are available at [www.wto.org](http://www.wto.org). It also includes information, by Member, on whether they have established an enquiry point and provided a Statement regarding domestic steps that have been taken to implement the Agreement.

### Prospects for 2004

The Committee will continue to monitor implementation of the Agreement by WTO Members. The number of specific trade concerns raised in the Committee appears to be increasing. The Committee has been a useful forum for Members to raise concerns and facilitate bilateral resolution of specific concerns. In 2004, the Committee is expected to host at least one workshop on conformity assessment in follow-up to the Third Triennial Review. Follow-up on issues raised in past reviews, or discussion of new issues in preparation for the Fourth Review, are driven by Members statements and submissions. The U.S. priorities are likely to continue to focus on good regulatory practice, transparency and technical assistance.

## 11. Committee on Trade-Related Investment Measures

### Status

The Agreement on Trade-Related Investment Measures (TRIMS) prohibits investment measures that violate the GATT Article III obligation to treat imports no less favorably than domestically produced products and the GATT Article XI obligation not to impose quantitative restrictions on imports. The TRIMS Agreement thus requires the elimination of certain measures imposing requirements on, or linking advantages to, the performance 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 violate its obligations. The TRIMS Agreement required formal notification and eventual elimination of TRIMS measures that existed at the time the agreement came into force in January 1995. Developed countries were required to eliminate notified TRIMS by the beginning of 1997, developing countries by the beginning of 2000, and least developed countries by the beginning of 2002. In 2001, eight developing countries were granted up to four additional years (retroactive to the beginning of 2000) to eliminate notified TRIMS. These extensions expired at the end of 2003.

Developments relating to the TRIMS Agreement are monitored and discussed both in the CTG and in the CTG Committee on Trade-Related Investment Measures (TRIMS Committee). The United States focused its work on TRIMS issues in several areas during 2003: the review of the operation of the TRIMS Agreement mandated under Article 9; monitoring compliance with the agreement; proposals for the provision of special and differential treatment relating to the TRIMS Agreement; and a review of China's compliance efforts.

## Major Issues in 2003

The TRIMS Committee held three formal meetings during 2003. TRIMS issues were also discussed during several meetings of the CTG.

The CTG continued its review of the operation of the TRIMS Agreement mandated by Article 9 of the Agreement. Members discussed proposals by several developing countries—including a 2002 paper from Brazil and India submitted under the Doha Ministerial Declaration mandate (paragraph 12(b)) to review the implementation of WTO agreements—recommending that the TRIMS Agreement be amended to allow developing countries to use TRIMS for development purposes.

The United States and several other WTO members opposed proposals to amend the TRIMS Agreement, arguing that TRIMS had been shown to distort trade flows and to discourage foreign investment, harming developing countries. Given the lack of consensus on proposals to amend the TRIMS Agreement, the United States argued that the Article 9 review should be concluded. The United States also argued that individual WTO Members experiencing difficulty complying with the Agreement should seek relief under existing WTO waiver mechanisms.

During meetings of the TRIMS Committee and of the CTG in late 2002 and 2003, the United States sought to verify whether the eight WTO Members that received extensions of their TRIMS phase-out deadlines in 2001 had eliminated notified measures and come into full compliance with the Agreement. In November 2003, six of these countries (Argentina, Colombia, Mexico, Philippines, Romania, and Thailand) reported that they had eliminated outstanding measures or were on track to do so by the end of the year. The Malaysian delegation was not able to describe the current status of its efforts to phase-out remaining TRIMS. Pakistan reported that it would not eliminate certain auto-related TRIMS by the end of 2003. In December, Pakistan requested that its deadline for eliminating certain measures in the automotive sector be extended again, until the end of 2006.

As part of the review of special and differential treatment provisions, the Chairman of the General Council considered several TRIMS-related proposals submitted by a group of African countries. One proposal stated that WTO Members should interpret and apply the TRIMS Agreement in a manner that supports WTO-consistent measures taken by developing and least-developed countries to safeguard their balance of payments. Under the second proposal, least-developed or other low-income WTO Members experiencing balance-of-payments difficulties would be permitted to maintain measures inconsistent with the TRIMS Agreement for periods of not less than six years. The final African proposal would have required the CTG to grant new requests from least-developed countries and certain other developing countries for the extension of transition periods or for fresh transition periods for the notification and elimination of TRIMS.

The African S&D proposals were discussed during several TRIMS Committee meetings in June and July. The United States argued that any TRIMS measures imposed for balance-of-payments purposes must follow existing WTO rules on balance-of-payments safeguards. The United States also said that it would not be appropriate to adopt fixed time periods for maintaining TRIMS measures in response to balance-of-payments crises and that, given the lack of requests for TRIMS extensions from least-developed countries to date, it was not convinced that a policy of automatically granting requests for longer TRIMS transition periods was warranted. Following extensive consultations, the Chairman concluded that it would be possible to reach agreement on the first African proposal, but that compromise on the other proposals was not attainable. The Chairman noted the absence of consensus in a July report to the General Council.

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 second annual review in 2003 of China's implementation of the TRIMS Agreement and related

provisions of the Protocol. The United States' principal objectives were to obtain information and clarification regarding China's WTO compliance efforts and to convey to China, in a multilateral setting, the concerns that it has regarding Chinese practices and/or regulatory measures that may not be in accordance with China's WTO commitments. During the October meeting of the TRIMS Committee, U.S. questions focused on China's regulation of the auto sector. U.S. agencies are analyzing China's policies and its responses to U.S. questions in an effort to decide whether and how to pursue these issues during future meetings of the CTG or the TRIMS Committee.

### Prospects for 2004

In early 2004, the United States will seek to verify the elimination of TRIMS by the countries that received extensions of the transition period until the end of 2003. The United States will also engage other WTO Members in efforts to promote compliance with the TRIMS Agreement.

## 12. Textiles Monitoring Body

### Status

The Textiles Monitoring Body (TMB), established in the Agreement on Textiles and Clothing (ATC), supervises the implementation of all aspects of the Agreement. Pursuant to the provisions of the ATC, the 10-year period for phasing out textile restraints ends on December 31, 2004. After that date, all remaining textile restraints maintained under the provisions of the ATC will be eliminated and the TMB will cease to exist. In 2003, TMB membership was composed of appointees and alternates from the United States, the European Union, Japan, Canada, Turkey, Peru, Indonesia, China, India, and Korea. Each TMB member serves in a personal capacity.

The ATC succeeded the Multifiber Arrangement (MFA) as an interim arrangement establishing special rules for trade in textile and apparel products on January 1, 1995. All Members of the WTO are subject to the disciplines of the ATC, whether

or not they were signatories to the MFA, and only Members of the WTO are entitled to the benefits of the ATC. The ATC is a ten-year arrangement which provides for the gradual integration of the textile and clothing sector into the WTO and provides for improved market access and the gradual and orderly phase-out of the special quantitative arrangements that have regulated trade in the sector among the major exporting and importing nations.

The United States has implemented the ATC in a manner which ensures that the affected U.S. industries and workers as well as U.S. importers and retailers have a gradual, stable and predictable regime under which to operate during the quota phase-out period. At the same time, the United States has aggressively sought to ensure full compliance with market-opening commitments by U.S. trading partners, so that U.S. exporters may enjoy growing opportunities in foreign markets.

Under the ATC, the United States is required to "integrate" products which accounted for specified percentages of 1990 imports in volume over three stages during the course of the transition period—that is, to designate those textile and apparel products for which it will henceforth observe full GATT disciplines. Once a WTO Member has "integrated" a product, the Member may not impose or maintain import quotas on that product other than under normal GATT procedures, such as Article XIX. As required by Section 331 of the Uruguay Round Agreements Act, the United States selected the products for early integration after seeking public comment, and published the list of items at the outset of the transition period, for purposes of certainty and transparency. The integration commitments for stages one and two were completed in 1995 and 1998. The United States notified the TMB in 2001 of the integration commitments for stage three and implemented these commitments on January 1, 2002. The list for all three stages may be found in the *Federal Register*, volume 60, number 83, pages 21075-21130, May 1, 1995.

Also as part of the ATC, with each “stage” is a requirement that the United States and other importing Members increase the annual growth rates applicable to each quota maintained under the Agreement by designated factors. Under the ATC, the weighted average annual growth rate for WTO Members’ quotas increased from 4.9 percent in 1994 to 9.3 percent in 2002.

### Major Issues in 2003

A considerable portion of the TMB’s time in 2003 was spent reviewing notifications made under Article 2 of the ATC dealing with textile products integrated into normal GATT rules and no longer subject to the provisions of the ATC. WTO Members wishing to retain the right to use the Article 6 safeguard mechanism were required in 2001 to submit a list of products comprising at least 18 percent (calculated by trade volume) of the products included in the annex to the ATC. A number of these notifications were defective for various reasons and in a number of cases the TMB’s review has carried into 2003. The TMB expressed concern that a number of countries which announced their intention to retain the right to use Article 6 safeguards failed to make the required integration notification. TMB documents are available on the WTO’s web site: <http://www.wto.org>. Documents are filed in the Document Distribution Facility under the document symbol “G/TMB.” The TMB also reviewed notifications from the United States, the European Union, Canada and Turkey concerning their textile restraints on China. These notifications were made to the TMB following the accession of China to the WTO in December 2001.

### Prospects for 2004

Although the TMB will dissolve at the end of 2004, the United States will continue to monitor compliance by trading partners with market opening commitments, and will raise concerns regarding the implementation of these commitments through 2004 in the TMB and in other WTO fora, as appropriate. The United States will also pursue further market openings, including in negotiations with WTO applicants in the process of acceding to

the WTO. In addition, the United States will continue to respond to surges in imports of textile products which cause or threaten serious damage to U.S. domestic producers. The United States will also continue efforts to enhance cooperation with U.S. trading partners and improve the effectiveness of customs measures to ensure that restraints on textile products are not circumvented through illegal transshipment or other means.

## 13. Working Party on State Trading

### Status

Article XVII of GATT 1994 requires Members to place certain restrictions on the behavior of state trading firms and on private firms to which they accord special or exclusive privileges to engage in importation and exportation. Among other things, Article XVII requires Members to ensure that “state trading enterprises” 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. To address the ambiguity regarding which types of firms fall within the scope of “state trading enterprises,” an agreement was reached in the Uruguay Round referred to as “*The Understanding on the Interpretation of Article XVII*” (the “Understanding”). The Understanding defines a state trading enterprise and instructs Members to notify the Working Party of all enterprises in their territory that fall within the agreed definition, whether or not such enterprises have imported or exported goods.

A WTO Working Party was established in 1995 to review, *inter alia*, the notifications of state trading enterprises and the coverage of state trading enterprises that are notified, and to develop an illustrative list of relationships between Members and state trading enterprises and the kinds of activities engaged in by these enterprises, which may be relevant for the purposes of Article XVII of GATT 1994. All Members are required under Article XVII of GATT 1994 and paragraph 1 of the Understanding to submit annual notifications of their state trading activities.

The WTO Agreement on Agriculture marked an important step in bringing the activities of agricultural state trading entities under the same disciplines that apply to non-agricultural products. Before the Uruguay Round, agricultural products were effectively outside the disciplines of GATT 1947. This also limited review of state trading enterprise activities, since many state trading enterprises directed trade in agricultural products. The lack of tariff bindings on agricultural products in most countries also limited the scope of GATT 1947 disciplines because without tariff bindings governments could raise import duties and state trading enterprises could impose domestic mark-ups on imported products.

Under the Agreement on Agriculture, all agricultural tariffs (including tariff-rate quotas (TRQs)) are now bound. While further work is needed on the administration of TRQs, bindings act to limit the scope of state traders to manipulate imports. Likewise, the disciplines on export competition, including value and quantity ceilings on export subsidies, apply fully to state trading enterprises. U.S. agricultural producers and exporters have expressed concerns about the operation of certain state trading enterprises, particularly single-desk importers or exporters of agricultural products, and have called for more meaningful disciplines.

### **Major Issues in 2003**

New and full notifications were first required in 1995 and, subsequently, every third year thereafter. updating notifications indicating any changes are to be made in the intervening years. The notifications submitted by WTO Members as of November 11, 2003 were: 40 Updating Notifications for 2000; 49 New and Full Notifications for 2001; 31 Updating Notifications for 2002; and 12 Updating Notifications for 2003. On November 24, 2003, the United States submitted New and Full Notifications of its state trading enterprises for 1998 and 2001 and Updating Notifications for 1999, 2000, 2002 and 2003.

The Working Party held one formal meeting in November 2003 where it reviewed Member

notifications. It also adopted a recommendation to the Council for Trade in Goods to change the periodicity of notifications from new and full notifications every three years with updating notifications in the intervening years, to new and full notifications every two years with an elimination of the updating notifications.

In October 2003, the United States submitted a request for information from Egypt regarding the operations of the Alexandria Cotton Exporters' Association (ALCOTEXCA) and its members, pursuant to Article XVII:4(c) of GATT 1994. Article XVII:4(c) provides that a Member that has reason to believe its interests are being adversely affected by the operations of a state trading enterprise may request that the Member establishing, maintaining or authorizing such enterprise supply information about its operations related to carrying out the provisions of GATT 1994. The United States believes that its interests are being adversely affected by the operations of the (ALCOTEXCA) and its members.

### **Prospects for 2004**

As part of the agricultural negotiations in the WTO, the United States proposed specific disciplines on both import and export agricultural state trading enterprises that would expand transparency and competition for these entities. Specifically, the United States has proposed the elimination of exclusive trading rights of single desk exporters, stronger notification requirements, and the elimination of the use of government funds or guarantees to finance potential operational deficits or to otherwise insulate export state trading enterprises from market or pricing risk.

In 2004, the Working Party on state trading enterprises 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 state trading enterprises.

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

### **Status**

The General Agreement on Trade in Services (GATS) is the first multilateral, legally enforceable agreement covering trade and investment in the services sector. It is designed to reduce or eliminate governmental measures that prevent services from being freely provided across national borders or that discriminate against locally-established services firms with foreign ownership. The Agreement 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 national schedules, similar to the national schedules for tariffs. The Council for Trade in Services (CTS) oversees implementation of the GATS and reports to the General Council. Ongoing negotiations take place in the CTS meeting in Special Session, described earlier in this chapter. The following section discusses work of the CTS regular session.

### **Major Issues in 2003**

The Fifth Protocol of the GATS (Financial Services) was reopened for three new members during 2003: the Dominican Republic, Uruguay, and Poland.

India tabled a paper concerning implementation of GATS Article VII, regarding Mutual Recognition. Several developing country Members argued that lack of mutual recognition agreements regarding the qualifications of service providers effectively limits market access. In particular, India argued that Members must investigate whether some non-governmental entities were delegated powers by the government to conclude mutual recognition agreements and therefore required notification pursuant to Article VII. This issue is especially, but not exclusively relevant to providers of professional services.

The United States, with the support of other WTO Members, raised concerns regarding China's

implementation of its GATS commitments in the distribution, express delivery, and telecommunications sectors during regular CTS meetings and as part of the Transitional Review of China's implementation of its services commitments.

The CTS continued to discuss proposals by some WTO Members for a technical review of Article XX:2 of the GATS. At its July meeting, the Council referred the matter for consideration by the Committee on Specific Commitments, which is due to report back to the Council at its first informal meeting in 2004. Discussion has continued on Members' concerns that the scheduling provisions in Article XX:2 may produce unintended confusion regarding the relationship between commitments in the Market Access and National Treatment columns of Member Schedules.

The first air transport review, which is required under the GATS Annex on Air Transport Services, examined developments in the air transport sector and the operation of the Annex with a view to considering the possible further application of the GATS in the air transport sector. The review began in late 2000 and was concluded at the CTS Regular Session meeting in October 2003. In October 2001, the United States submitted a written statement presenting its views that to date, bilateral and plurilateral venues outside the WTO have proven to be effective in promoting liberalization in this important sector (available at <http://docsonline.wto.org>. Documents are filed in the WTO Document Distribution Facility under the document symbol: S/C/W/198). The Council decided to formally commence the second review at its last regular meeting in 2005, without prejudice to Members' views on the interpretation of the Annex.

In April 2003, the European Union formally notified the Chair of the Special Session under Article V of the GATS regarding the consolidation of the European Union (15) to include Austria, Finland, and Sweden. As a result of the consolidation, several GATS commitments made by the three countries were withdrawn or modified. The Council addressed the issue of the EU Article V

notification at its July meeting. A number of Members voiced concerns about the notification process used by the EU, which constituted the first use of GATS Article XXI. A large number of Members also voiced concern about apparent EU intent to introduce new most favored nation (MFN) exemptions as a result of this enlargement. Concerns were generally raised about the use of Article XXI, especially in light of EU intent to enlarge further in 2004. To allow more time for consultations and examination, the EU and Members claiming an interest pursuant to Article XXI mutually agreed to extend the period of negotiations until June 1, 2004.

### **Prospects for 2004**

The CTS Regular Session will continue to discuss work related to ongoing implementation of the GATS, including with regard to Article VII and Article XXI. Once the CSC reports on its discussions of Article XX.2, the CTS will decide whether to continue discussion of the issue.

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

### **Status**

The Committee on Trade in Financial Services (CTFS) enables WTO Members to explore any financial services market access or regulatory issue deemed appropriate, including implementation of existing trade commitments.

### **Major Issues in 2003**

The CTFS met five times in 2003. During the reporting period, the Dominican Republic, Poland and Uruguay ratified their commitments under the 1997 Financial Services Agreement and completed procedures at the WTO to make those commitments binding under the GATS (accepted the “Fifth Protocol”). Brazil, Jamaica and the Philippines are now the only remaining participants from the 1997 negotiations that have not yet accepted the Fifth Protocol. WTO Members urged those three countries to accept the Fifth Protocol as quickly as possible and, in the meantime, to provide detailed information on the status of their domestic ratification efforts.

Several WTO Members, including Hong Kong, China, Switzerland, Peru, Malaysia and Turkey reported on developments under their financial services regimes, including issues such as e-finance. The IMF and the World Bank made special presentations on financial services issues, the IMF focusing on issues connected with financial sector stability and the World Bank, on how openness of the banking sector contributes to overall economic growth.

In December, 2003, the CTFS carried out a review of China’s implementation of its WTO financial services commitments as part of China’s Transitional Review Mechanism. The United States and other WTO members expressed concerns with China’s implementation of certain commitments in the insurance, motor vehicle financing, and banking sectors.

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

### **Status**

GATS Article VI, on Domestic Regulation, directs the CTS to develop any necessary disciplines relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures. A 1994 Ministerial Decision assigned priority to the professional services sector, for which the Working Party on Professional Services (WPPS) was established. The WPPS developed Guidelines for the Negotiation of Mutual Recognition Agreements in the Accountancy Sector, adopted by the WTO in May 1997. The WPPS completed Disciplines on Domestic Regulation in the Accountancy Sector in December 1998 (The texts are available at [www.wto.org](http://www.wto.org)).

After the completion of the Accountancy Disciplines, in May 1999 the CTS established a new Working Party on Domestic Regulation (WPDR) which also took on the work of the predecessor WPPS and its existing mandate. The WPDR is now charged with determining whether these or similar disciplines may be more generally applicable to other sectors. The Working



Party shall report its recommendations to the CTS not later than the conclusion of the services negotiations.

### **Major Issues in 2003**

With respect to the development of generally applicable regulatory disciplines, Members discussed a possible Annex to the GATS, which would consist of horizontal disciplines on licensing procedures and requirements, technical standards, qualification procedures and requirements, and transparency. Such regulatory disciplines would be aimed at ensuring that regulations are not in themselves a restriction on the supply of services. The United States has supported negotiating horizontal transparency disciplines, however it has signaled its interest in pursuing a sector specific approach with respect to the other elements.

The United States has supported focusing the Working Party's discussion on examples of problems or restrictions for which new disciplines would be appropriate, before defining the disciplines themselves. Some Members have suggested that any regulatory disciplines should only apply to sectors in which countries have scheduled specific commitments. The Working Party has also reviewed the relationship between any future regulatory disciplines and existing transitional mechanisms, recognition issues, and licensing procedures based on submissions from Singapore, India, and the EU.

Members continued to solicit views on the accountancy disciplines from their relevant domestic professional bodies, exploring whether the accountancy disciplines might serve as a model for those professions. The Secretariat has also conducted similar consultations with International Organizations. The results varied; in some professions, the accountancy disciplines could be applied, with perhaps a few modifications; in other professions, the accountancy disciplines were not applicable. During these consultations however, some Members found a general lack of familiarity with the GATS and/or the accountancy disciplines. The Working Party

agreed to hold a workshop on domestic regulations for trade policy experts and regulators; The workshop is scheduled to occur in 2004.

### **Prospects for 2004**

The Working Party will continue discussion of possible regulatory disciplines, both horizontal and sector-specific, to promote the GATS objective of effective market access. A workshop on domestic regulations for Member's trade policy and regulatory experts is planned for early 2004. Some Members may want to pursue additional negotiations, including extending the "Guidelines for the Negotiation of Mutual Recognition Agreements in the Accountancy Sector" to other sectors.

## **3. Working Party on GATS Rules**

### **Status**

The Working Party on GATS Rules was established to determine whether the GATS should include new disciplines on emergency safeguards, government procurement, or subsidies. The Working Party held five formal meetings in 2003. Of the three issues, the GATS established a deadline only for safeguards which has since then been extended to March 15, 2004.

### **Major Issues in 2003**

Members provided a progress report on safeguards negotiations in March 2003 and progress reports on government procurement and subsidies in July 2003 in preparation for the Fifth Ministerial Conference.

The Working Party continued its examination of the desirability and feasibility of an emergency safeguard for services, as well as the scope of Article X's mandate to negotiate on "the question of" emergency safeguard measures. Members evaluated different safeguard-type provisions contained in economic integration agreements and in statements made by Members in previous meetings. The Working Party also discussed a hypothetical example presented by ASEAN of a situation justifying the use of an emergency safeguard. Discussions on these issues also reviewed

submissions made by Switzerland and the EU, documents produced by the Chair and Secretariat, and Members' previous submissions.

On government procurement, the EU proposed negotiating an annex which would lay out conditions under which certain GATS provisions would apply to government procurement of services. Members continue to disagree on whether the scope of Article XIII excludes negotiations on market access, national treatment and most favored nation. Members reviewed different government procurement related provisions included in economic integration agreements. The United States continued to support commitments for transparency of government procurement of services and goods, and building on work conducted in the WTO Working Group on Transparency in Government Procurement.

With respect to subsidies, the Working Party examined possible definitions of what could be considered a subsidy, as well as what could be considered "trade distortive." Members sought to obtain more information on subsidies in services sectors, including from other international organizations. The Chair issued an updated "Checklist" on Subsidies" for Members to submit additional information. The Secretariat updated an earlier compilation of subsidy disciplines included in economic integration agreements.

### **Prospects for 2004**

Discussion on all three issues will continue in 2004. Given the March 15, 2004 deadline, and developing countries strong interest in emergency safeguards, these negotiations will be poised either for another extension or suspension of Article X's mandate, or a political decision on the scope of Article X's mandate (i.e. definitive decision on whether to an emergency safeguard mechanism will be construed). We can expect that developing countries will tie progress on further services liberalization commitments to an acceptable resolution on emergency safeguards. Members will also continue to gather further information for government procurement and subsidies negotiations, and discuss proposals for

a possible Annex or set of disciplines. The United States will need to ensure that any transparency disciplines for government procurement or commitments affecting services government procurement, are in line with those applied to government procurement of goods. Subsidies discussions will likely focus on Member's ability to obtain information on different types of services subsidies, from different sources, and use examples to examine "trade distortive" aspects.

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

### **Status**

The Committee on Specific Commitments examines ways to improve the technical accuracy of scheduling commitments, primarily in preparation for the GATS negotiations, and oversees application of the procedures for the modification of schedules under Article XXI of the GATS. The Committee also oversees implementation of commitments in Member schedules in sectors for which there is no sectoral body, currently all sectors except financial services. The Committee works to improve the classification of services so that scheduled commitments reflect the services activities, particularly to ensure coverage of evolving services.

### **Major Issues in 2003**

Before the submission of offers by June 30 as mandated by the Doha Declaration, the Chair of the CSC provided guidance on the parameters for the submission of offers.

At its July 2003 meeting, the Council for Trade in Services referred consideration of issues relating to Article XX:2 of the GATS to the CSC. The primary issue of concern is the relationship between Market Access and National Treatment commitments, particularly the interpretation of a Members's Schedule where one column reads "None" while the other reads "Unbound." The Committee held discussions on the topic at its meetings in September and December, and is scheduled to report back to the Council in 2004.

The Committee also continued work on improving classification of services in individual sectors for which problems have been identified. In particular, the Committee addressed classification issues in legal services and energy services.

### **Prospects for 2004**

Work will continue on technical issues and other issues raised by Members.

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

### **Status**

The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) is a multilateral agreement that sets minimum standards of protection for copyrights and neighboring rights, trademarks, geographical indications, industrial designs, patents, integrated-circuit layout designs, and undisclosed information. The TRIPS Agreement also establishes minimum standards for the enforcement of intellectual property rights through civil actions for infringement and, at least in regard to copyright piracy and trademark counterfeiting, in criminal actions and actions at the border. The TRIPS Agreement requires as well that, with very limited exceptions, WTO Members provide national and most-favored-nation treatment to the nationals of other WTO Members with regards to the protection and enforcement of intellectual property rights. Disputes between WTO Members regarding implementation of the TRIPS Agreement can be settled using the procedures of the WTO's Dispute Settlement Understanding.

The TRIPS Agreement entered into force on January 1, 1995, and its obligations to provide "most favored nation" and national treatment became effective on January 1, 1996 for all Members. Most substantive obligations are phased in based on a Member's level of development. Developed-country Members were required to implement the obligations of the Agreement fully by January 1, 1996; developing

country Members generally had to implement fully by January 1, 2000; and least-developed country Members must implement by January 1, 2006. Based on a proposal made by the United States at the Doha WTO Ministerial Conference, however, the transition period for least developed countries 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, was extended by the TRIPS Council until January 1, 2016. The WTO General Council, on the recommendation of the TRIPS Council, similarly waived until 2016 the obligation for least developed country Members to provide exclusive marketing rights for certain pharmaceutical products if those Members did not provide product protection for pharmaceutical inventions.

The WTO TRIPS Council monitors implementation of 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 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.

### **Major Issues in 2003**

In 2003, the TRIPS Council held four formal meetings, including "special negotiation sessions" on the establishment of a multilateral system for notification and registration of geographical indications for wines and spirits called for in Article 23.4 of the Agreement (See separate discussion of this topic elsewhere in Chapter IV and below). In addition to continuing its work reviewing the implementation of the Agreement by developing countries and newly-acceding Members, the Council's work in 2003 focused on TRIPS issues addressed in the Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health.

**Review of Developing Country Members' TRIPS Implementation:** As a result of the Agreement's staggered implementation provisions, the TRIPS Council during 2003 devoted considerable time to reviewing the Agreement's implementation by developing country Members and newly acceding Members as well as to providing assistance to developing country Members so they can fully implement the Agreement. In particular, the TRIPS Council called for developing country Members to respond to the questionnaires already answered by developed-country Members regarding their protection of geographical indications and implementation of the Agreement's enforcement provisions, and to provide detailed information on their implementation of Article 27.3(b) of the Agreement. This article permits Members to exclude from patentability plants, animals, and essential biological processes for producing plants and animals. The Council also concentrated on institution building internally and with the World Intellectual Property Organization (WIPO). During the TRIPS Council meetings, the United States continued to press for full implementation of the TRIPS Agreement by developing country Members and participated actively during the reviews of legislation by highlighting specific concerns regarding individual Members' implementation of their obligations.

During 2003, the TRIPS Council completed reviews of the implementing legislation of China (as part of China's transitional review), Brazil, Cameroon, Kenya and the Philippines, and noted new responses received from and the outstanding material required to complete the reviews of 15 other Members..

**Intellectual Property and Access to Medicines:** At the Doha Ministerial Conference, Ministers acknowledged the serious public health problems afflicting Africa and other developing and least developed countries, especially those resulting from HIV/AIDS, malaria, tuberculosis, and other epidemics. In doing so, WTO Ministers adopted the Declaration on the TRIPS Agreement and Public Health, clarifying the flexibilities available in the TRIPS Agreement that may be used by

WTO Members to address public health crises. The declaration sends a strong message of support for the TRIPS Agreement, confirming that it is an essential part of the wider national and international response to the public health crises that afflict many developing and least developed Members of the WTO, in particular those resulting from HIV/AIDS, tuberculosis and malaria and other epidemics. Ministers worked in a cooperative and constructive fashion to produce a political statement that answers the questions identified by certain Members regarding the flexibility inherent in the TRIPS Agreement. This strong political statement demonstrates that TRIPS is part of the solution to these crises. The statement does so, without altering the rights and obligations of WTO Members under the TRIPS Agreement, by reaffirming that Members are maintaining their commitments under the Agreement while at the same time highlighting the flexibilities in the Agreement. Ministers agreed on the need for a balance between the needs of poor countries without the resources to pay for cutting-edge pharmaceuticals and the need to ensure that the patent rights system which promotes the continued development and creation of new lifesaving drugs is promoted.

The United States is pleased that the Declaration reflects and confirms our profound conviction that the exclusive rights provided by Members as required under the TRIPS Agreement are a powerful force supporting public health objectives. As a consequence of Ministers' efforts, we believe those Members suffering under the effects of the pandemics of HIV/AIDS, tuberculosis and malaria, particularly those in sub-Saharan Africa, should have greater confidence in meeting their responsibilities to address these crises. The United States will continue working with the international community to ensure that additional funding and resources are made available to the least developed and developing country Members to assist them in addressing their public health care problems.

One major part of the Doha Declaration was the agreement to provide an additional ten-year tran-

sition period (until 2016) for least developed countries, which was first proposed by the United States. On June 27, 2002, the TRIPS Council implemented this aspect of the Doha Declaration by taking a decision that 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 January 1, 2016. This decision is made without prejudice to the right of least developed country Members to seek other extensions of the period provided for in paragraph 1 of Article 66 of the TRIPS Agreement.

In paragraph 6 of the Declaration on the TRIPS Agreement and Public Health, Ministers recognized the complex issues associated with the ability of certain Members lacking domestic manufacturing capacity to make use of the flexibilities in the TRIPS Agreement. Ministers directed the TRIPS Council to find an expeditious solution to the difficulties certain Members might face in using compulsory licensing if they lacked sufficient manufacturing capacity in the pharmaceutical sector and to report to the WTO General Council by the end of 2002. Intensive discussions were undertaken on a solution that, with appropriate provisions on scope, safeguards and transparency, would waive the obligation in paragraph 31(f) that requires that compulsory licenses, when granted, be predominantly for the supply of the domestic market, since it is this limitation that could make it difficult for a Member lacking manufacturing capacity of its own to obtain a needed pharmaceutical if that product were patented in the Member from which supply was being sought.

Throughout the ensuing negotiations to develop such a solution, the United States remained committed to the Doha Declaration and worked intensively to find a solution that would provide life-saving drugs to those truly in need. As the negotiations drew to a close, however, it became clear that some WTO Members and advocacy organizations sought to expand the scope of diseases beyond that intended at Doha to allow

countries to override drug patents to treat a wide range of concerns, such as obesity. The United States was seriously concerned that this approach could substantially undermine the WTO rules on patents which provide incentives for the development of new pharmaceutical products.

While pledging to continue to work with other WTO Members to try to find a solution within the WTO, on December 20, the United States announced an immediate practical solution to allow African and other developing countries to gain greater access to pharmaceuticals and HIV/AIDS test kits when facing public health crises. The United States pledged to permit these countries to override patents on drugs produced outside their countries in order to fight HIV/AIDS, malaria, tuberculosis, and other types of infectious epidemics, including those that may arise in the future. Specifically, the United States pledged not to challenge any WTO Member that contravenes WTO rules to export drugs produced under compulsory license to a country in need, and called on others to join the United States in this moratorium on dispute settlement.

The United States notified the WTO in early January 2003 of the specific terms and conditions of the moratorium. The key elements of this moratorium include a commitment not to pursue dispute settlement against a Member that notifies the TRIPS Council of its intention to issue a compulsory license to permit the production and export of a patented pharmaceutical product or HIV/AIDS test kit to eligible importing economies. Eligible importing economies will be those economies, other than those classified by the world bank as “high income economies,” that: (1) are facing a grave public health crisis associated with HIV/AIDS, malaria or tuberculosis or other infectious epidemics of comparable scale and gravity, including those that may arise in the future; (2) have no or insufficient production capacities in the pharmaceutical sector; and (3) have so notified the TRIPS Council. The moratorium also included measures to guard against product diversion, including steps to ensure that the product can be easily identified and a

requirement that all countries, to the extent of their ability, act to ensure that the drugs are not diverted from countries in need.

Following intensive consultations in 2003, the TRIPS Council, at its meeting of 28 August 2003, approved the draft Decision on “Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health”, along with the text of a statement to be read by the General Council Chairman at its adoption by the WTO General Council. On 30 August 2003, the General Council adopted the Decision in the light of the statement read out by its Chairman. The statement describes members’ “shared understanding” on how the decision is to be interpreted and implemented. It says the decision should be used in good faith to protect public health and not for industrial or commercial policy objectives and that all reasonable measures should be taken to prevent medicines from being diverted away from those countries for which they are intended to be provided. The decision takes the form of an interim waiver of Article 31(f), which allows countries producing generic copies of patented products under compulsory licenses to export the products to eligible importing countries where certain procedures are followed. The waiver will last until the WTO’s intellectual property agreement is amended. At its meeting of November 18, the Chairman of the TRIPS Council launched informal consultations with Members to discuss how best to amend the TRIPS Agreement. The United States pledged its full support to the Chairman in order to transform the Agreement in August, including the Perez-Motta text and Chairman’s Statement, into an amendment of the TRIPS Agreement with a view to its adoption within six months, if not sooner.

**TRIPS-related WTO Dispute Settlement Cases:** During the year, the United States continued to pursue consultations with the European Union regarding its failure to provide TRIPS-consistent protection of geographical indications of U.S. nationals, and on 29 August 2003, the United States and Australia each requested the establishment of a panel to examine EU rules on the

protection of trademarks and geographical indications for agricultural products and food-stuffs. At its meeting of 2 October 2003, the United States and Australia presented their second request, and the WTO Dispute Settlement Body agreed to establish the panel. The United States and Australia mentioned their serious concerns about the discriminatory nature of the EU regulation. The United States complained that the regulation did not allow the registration of non-EU geographical indications unless the geographical indication was from a country that offered geographical indication protection that was equivalent to that of the EU. Australia argued that the EU regime was inconsistent with existing WTO rules prohibiting discriminatory treatment, did not give due protection to trademarks, and was overly complex and prescriptive. The EU said that its regulation was fully compatible with WTO rules. The DSB established a single panel and the following countries requested to be third parties: Australia, United States, Mexico, New Zealand, Guatemala, India, Chinese Taipei, Turkey and Colombia.

There are a number of other WTO Members that likewise appear not to be in full compliance with their TRIPS obligations. The United States, for this reason, is still considering initiating dispute settlement procedures against several Members. We will continue to consult informally with these countries in an effort to encourage them to resolve outstanding TRIPS compliance concerns as soon as possible. We will also gather data on these and other countries’ enforcement of their TRIPS obligations and assess the best cases for further action if consultations prove unsuccessful.

**Geographical Indications:** The Doha Declaration directed the TRIPS Council to discuss “issues related to extension” of Article 23-level protection to geographical indications for products other than wines and spirits and to report to the Trade Negotiations Committee by the end of 2002 for appropriate action. Because no consensus could be reached in the TRIPS Council on how the Chair should report to the TNC on the issues

related to extension of Article 23-level protection to geographical indications for products other than wines and spirits, and, in light of the strong divergence of positions on the way forward on geographical indications and other implementation issues, the TNC Chair closed the discussion by saying he would consult further with Members. Throughout 2003, the United States and many like-minded Members continued to argue that *demandeurs* had not established that the protection provided geographical indications 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 geographical indications, and that the benefits accruing to those few Members that had longstanding statutory regimes for the protection of geographical indications would represent a windfall, while other Members with few or no geographical indications would receive no counterbalancing benefits. The draft Declaration for the WTO 5th Ministerial Conference in Cancun, Mexico, would have extended the mandate to discuss “issues related to extension” but not create a new mandate for GI negotiations. While willing to continue the dialog in 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. We view such initiatives as efforts to take back the names of many famous products, such as feta and parmesan, from U.S. producers who have invested considerable time and resources to make these names famous and who are currently using such terms in a manner fully consistent with international intellectual property agreements.

No further progress has been made on the Article 24.2 review of the application by Members of TRIPS provisions on geographical indications in spite of the review continuing to be on the TRIPS Council’s agenda. At each of the 2003 TRIPS Council meetings, the United States urged developing country Members that have not yet provided information on their regimes for the protection of geographical indications, and most of them have not, to do so. The United States also continued to support a proposal by New Zealand in 2000, and by Australia in 2001, that the Council conduct the review by addressing each article of the TRIPS Agreement covering geographical indications in light of the experience of Members as reflected in the responses to the “checklist.” The TRIPS Council Chairman intends to consult with Members on how to proceed with the review in 2004.

***Review of Current Exceptions to Patentability for Plants and Animals:*** TRIPS Article 27.3(b) permits Members to except from patentability plants and animals and biological processes for the production of plants and animals. Members may not, however, except from patentability micro-organisms and non-biological and microbiological processes. As called for in the Agreement, the TRIPS Council initiated a review of this provision in 1999 and, because of the interest expressed by some Members, the discussion continued through 2000 and 2001. In 1999, in order to facilitate the review by enabling easy comparisons, the Secretariat had prepared a synoptic table of information provided by developed Members on their practices. This portion of the review revealed that there was considerable uniformity in the practices of the developed Members. During the discussion, the United States noted that the ability to patent micro-organisms and non-biological and microbiological processes, as well as plants and animals, had given rise to a whole new industry that has brought inestimable benefits in health care, agriculture, and protection of the environment in those countries providing patent protection in this area. In 2001, the United States

again called for developing country Members to provide this same information so that the Council would have a more complete picture on which to base its discussion. Regrettably, 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), such as the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), and traditional knowledge.

The Doha Declaration directs the Council for TRIPS, 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 CBD, and the protection of traditional knowledge and folklore. The Council, at its March 2002 meeting, agreed to handle each of these topics as a separate agenda item, in order to avoid confusion, but the discussions have tended to overlap. Since the review began in 1999, the United States has introduced five separate papers discussing various aspects of the subjects under discussion, including a paper discussing in depth the provisions of the CBD that might have any relationship to the TRIPS Agreement and describing how the CBD's provisions regarding access to genetic resources and benefit sharing can be implemented through an access regime based on contracts that would spell out the conditions of access, including benefit sharing and reporting. Other papers describe the practices of the National Cancer Institute and the access regime of the U.S. National Park Service as examples of how a contractual access regime would function. The United States has suggested that any Member that has a question about whether a particular CBD implementation proposal would run afoul of TRIPS obligations raise the issue with the Council so that it might obtain the views of other Members. Updated information on organization activities was submitted from the FAO, the CBD, UNCTAD, UPOV, WIPO and the World Bank.

**Non-violation:** The Doha Declaration on Implementation directs the TRIPS Council to continue its examination of the scope and modalities for non-violation nullification and

impairment complaints related to the TRIPS Agreement, to make recommendations to the Fifth Ministerial Conference, and, during the intervening period, not to make use of such complaints. Throughout the year, the Council continued to discuss the operation of non-violation nullification and impairment complaints in the context of the TRIPS Agreement. Some Members argued that the possibility of such complaints created uncertainty. As in past years, the United States continued to support the automatic expiration of the moratorium at the 5th Ministerial meeting as no more uncertainty was created by non-violation cases in the TRIPS context than was the case with other WTO agreements, and that Article 26 of the Dispute Settlement Understanding and GATT decisions on non-violation provide sufficient guidance to enable a panel or the Appellate Body to make appropriate determinations in such cases. No consensus on a recommendation to establish scope and modalities or to extend the moratorium emerged by the time of the 5th Ministerial meeting.

**Electronic Commerce:** The TRIPS Council continued discussing the provisions of the TRIPS Agreement most relevant to electronic commerce and explored how these provisions apply in the digital world. The United States specifically suggested that the Secretariat might usefully undertake a study of how Members are implementing TRIPS with respect to the Internet environment. The United States will continue to support discussion of the application of the TRIPS Agreement in the digital environment, and encourage countries to implement the "Internet" Treaties of the World Intellectual Property Organization (WIPO), i.e., the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

**Further Reviews of the TRIPS Agreement:** Article 71.1 calls for a review of the Agreement in light of experience gained in implementation, beginning in 2002. The Council continues to consider how the review should best be conducted in light of the Council's other work. The Doha Ministerial



Declaration directs that, in its work under this Article, the Council is also to consider the relationship between intellectual property and the CBD, traditional knowledge, folklore, and other relevant new developments raised by Members pursuant to Article 71.1.

**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.

**Implementation of Article 66.2:** Article 66.2 requires developed countries to provide incentives for enterprises and institutions in their territories to promote and encourage technology transfer to least developed 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. During 2003, the TRIPS Council adopted a Decision calling on developed countries to provide detailed reports every third year, with annual updates, on these incentives. The reports are to be reviewed in the TRIPS Council at its last meeting each year. The United States had given detailed reports on specific U.S. Government institutions (the African Development Foundation and Agency for International Development) and incentives as required.

### **Prospects for 2004**

In 2004, the TRIPS Council will continue to focus on transforming the August 30 agreement on compulsory licensing for export into an amendment of the TRIPS Agreement, its built-in agenda and the additional mandates established in Doha, including on issues related to the extension of Article 23-level protection for geographical indications 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 2004 continue to be:

- to transform the Chairman's Statement and the Perez-Motta text into an amendment of the TRIPS Agreement;
- to resolve differences through dispute settlement consultations and panels, where appropriate;
- to continue its efforts to ensure full TRIPS implementation by developing-country Members; and
- to ensure that provisions of the TRIPS Agreement are not weakened.

## **H. 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. Following the Doha Ministerial Conference concluded in November 2002, the CTE in regular session continued discussion of many of the issues under consideration in recent years with a focus on issues identified in the Doha Declaration, including market access for issues associated with environmental measures; TRIPS and environment, and labeling for environmental purposes under paragraph 32; capacity-building and environmental reviews under paragraph 33; and discussion of the environmental aspects of Doha negotiations under paragraph 51. These issues in the Doha Declaration are separate from those that are subject to specific negotiating mandates in the Declaration and that are being taken up by the CTE in Special Session.

#### **Major Issues in 2003**

In 2003, the CTE met in Regular Session four times. The United States continued its active role in discussions, as discussed below.

**Market Access under Doha Sub-Paragraph 32(i):** The CTE in Regular Session continued to structure discussions on both a general and sectoral basis. In general, however, discussions demonstrated a low level of interest in these issues compared to those that took place in 2002. The more limited discussions in 2003 related specifically to submissions by Japan regarding the fisheries and forestry sectors. Most delegations questioned assertions by Japan that these sectors might be excluded from market access negotiations due to considerations of sustainable development.

**TRIPS and Environment under Doha Sub-Paragraph 32(ii):** Discussions under this item continued to focus, as they had prior to the Doha Ministerial Conference, on whether there may be any inherent conflicts between the TRIPS Agreement and the Convention on Biological Diversity (CBD) with respect to genetic resources and traditional knowledge. In this regard, the European Communities presented its ideas regarding access to, and benefit sharing associated with, genetic resources and traditional knowledge. In general, Members reiterated that the TRIPS Council was the most appropriate forum to consider these issues.

**Labeling for Environmental Purposes under Doha Sub-Paragraph 32(iii):** During 2003, there was considerable discussion among Members regarding proposals from the European Communities for future work on environmental labeling. Most Members continued to question the rationale for singling out environmental labeling for special consideration separate from ongoing work in the Committee on Technical Barriers to Trade on labeling more generally. As a result, there was no consensus in the CTE prior to the Cancun Ministerial for intensifying its ongoing work on environmental labeling.

**Capacity Building and Environmental Reviews under Doha Paragraph 33:** Many developing country Members stressed the importance of benefiting from technical assistance related to negotiations in the WTO on trade and

environment, particularly given the complexity of some of these issues. The United States submitted a related paper that sought to highlight some of the themes that had emerged from these discussions, including the potential benefits associated with national environmental reviews of trade negotiations. Most Members agreed that a key aspect of capacity building in this area involves increasing communication and coordination between trade and environment officials at national levels. Additionally, the United States and Canada continued to update the CTE in Regular Session on their respective reviews of the WTO negotiations, while the European Union provided additional information on its sustainability impact assessments.

**Discussion of Environmental Effects of Negotiations under Doha Paragraph 51:** During the course of 2003, the CTE in Regular Session received updates from key WTO Secretariat officials on developments in other areas of negotiations, including agriculture, non-agricultural market access, services and rules.

## Prospects for 2004

It is unlikely that discussion of these environmental issues identified in the Doha Declaration that do not have a negotiating mandate will increase in focus or intensity, although prospects could increase for more concrete discussions on how to enhance developing countries' capacities to increase coordination at national levels between trade and environmental officials. Additionally, the CTE in Regular Session may devote increasing attention to the substance of the mandate in paragraph 51 of the Doha Declaration.

## 2. Committee on Trade and Development

### Status

In 1965, the GATT established the Committee on Trade and Development (CTD or the "Committee") to strengthen its role in the economic development policies of less-developed Contracting Parties. Today, the CTD is a subsidiary body of the WTO General Council.

The Committee provides Members an opportunity to discuss trade issues from a development perspective, in contrast to most other WTO committees which are responsible for implementation of particular WTO Agreements. In 2002, the General Council instructed the CTD, as part of a DDA, to develop a work program to examine the issues surrounding fuller integration of small and vulnerable economies into the multilateral trading system.

Following the First Ministerial Conference in Singapore in 1996, the WTO formed a CTD subcommittee on Least-Developed Countries (LDCs) to implement a Ministerial initiative to help integrate LDCs into the multilateral trading system. The plan of action outlines an “Integrated Framework” (IF) to better coordinate trade-related technical assistance activities of donors to LDCs from six core international organizations: the International Monetary Fund, the International Trade Center, the United Nations Conference on Trade and Development, the United Nations Development Program, the World Bank and the WTO. The IF process also encourages the participation of the broader development community through a consultative group of bilateral donors and other multilateral organizations. The Doha Declaration, in order to continue progress toward this goal, instructed the subcommittee to design a work plan to consider issues of importance to LDCs including further coordination of technical assistance through the IF and additional steps to facilitate LDCs in joining the WTO.

### **Major Issues in 2003**

In 2003, the Committee held four formal sessions leading up to the Cancun Ministerial and an additional two sessions by year’s end. A continuing focus of the CTD and LDC Subcommittee has been monitoring the on-going efforts of the WTO, the International Trade Center (ITC), and the IF in providing trade-related technical assistance to developing-country Members. As standing items on the Committee’s agenda, Members considered the development aspects of Doha negotiations and electronic commerce. The United States also initiated discussion of WTO

reviews for regional trade agreements among developing countries. The United States voiced support for greater transparency through more in-depth examination of these agreements.

In the summer of 2003, several Members launched a renewed discussion of global trends in commodity prices. Commodity dependant producers submitted a paper outlining the difficulties posed by volatile and declining world prices for many primary products. The United States and other Members gave the view that price trends are functions of markets. To address problems of commodity volatility, Members should look to market-based strategies over efforts to manage supply. The proper role for the WTO as an institution in addressing this issue should be to focus efforts on trade policy-related aspects that play a role in commodity price trends and volatility.

**WTO Technical Assistance Plan:** Working closely with the newly created Institute for Training and Technical Cooperation, the Committee continued efforts to improve the WTO’s Trade-Related Technical Assistance (TRTA) programs. The WTO received over 1045 requests from 120 countries (reflecting all levels of development) as input into the 2003 Plan. The WTO was on track to deliver the 441 activities in the 2003 Technical Assistance despite the effects of SARS and war in Iraq. Activities generally took the form of regional or national seminars and workshops, trade policy courses, or internships, and covered topics ranging from accession and market access issues to technical barriers to trade.

The United States directly supports the WTO’s TRTA. At the Cancun Ministerial, the United States pledged an additional \$1.2 million for WTO TRTA. This contribution augmented \$1 million given earlier in 2003, bringing total U.S. support for WTO TRTA to more than \$3 million since the launch of Doha negotiations in November 2001. This money was in direct support of programs like the annual WTO Technical Assistance Plan. In 2003, the WTO also finished implementing two grants, totaling

\$1.02 million, under the Africa Trade and Investment Policy Program (ATRIP), supporting WTO training for Africans. The grants funded dispute settlement courses, computer-based training modules on WTO agreements, WTO training for Africans in Ghana and two regional seminars on agriculture and services.

The United States has worked out an agreement with the International Trade Center (ITC) to make the ITC's Interactive TradeMap database available to all countries where USAID has a Mission or presence. The Interactive TradeMap provides on-line access to the world's largest trade database. USAID will also work with the ITC to ensure that developing and transition countries have access to market analysis tools and training courses on trade in services.

**Small Economy Issues:** The Doha Declaration mandates an examination of small economy trade-related issues. The Committee continued this examination by discussing proposals submitted by Members of the small economies group and others. The United States has engaged actively in this dialogue. Overall, Committee Members recognized the potential benefits of Doha negotiations for smaller economies, which rely on an open trading system to foster growth. The United States, in particular, encouraged small economies to consider regional cooperation and resource sharing as a way to address institutional limitations due to size. The CTD recommended that discussion of this topic in dedicated session continue, and asked that Members of the small economies group rework proposals in light of recent exchanges.

**Implementation:** As part of the Doha work plan on implementation, the Committee also considered a proposal to review GATT provisions that allow Members in early stages of development under certain circumstances to undertake restrictive trade measures. No consensus was reached to undertake a formal review of these provisions.

**Sub-Committee on Least-Developed Countries:** In 2003, the Sub-Committee on Least-Developed Countries focused discussions on enhancing the

participation of LDCs in the Multilateral Trading System, the IF and WTO programs on trade-related technical assistance, accessions of LDCs into the WTO, and market access for LDCs.

**LDC Accession:** The LDC subcommittee initiated regular reports from Chairs of working parties of an LDC accession. These discussions focused on progress toward meeting the requirements of WTO Membership. Establishment of regular Chair reports follows the adoption of guidelines by the General Council in 2002 to streamline and simplify the accession process for LDC applicants. The United States participated actively in discussions with Working Party Chairs. The United States urged continued support from donors of those LDC applicants undertaking reforms, and encouraged LDCs to use the accession process to improve its trading environment. Efforts by Members to streamline the accession process have yielded tangible results. The United States and the WTO Membership welcomed the first two LDCs—Nepal and Cambodia—as they joined the WTO at the Cancun Ministerial.

**The “Integrated Framework”(IF):** The IF is the mechanism for coordinating the work of six multilateral agencies (IBRD, IMF, UNCTAD, WTO, ITC and UNDP) in mainstreaming trade into the development strategies of LDCs. The IF process starts with a Diagnostic Trade Integration Study (DTIS), which analyzes the technical assistance requirements for each country. The World Bank has completed DTIS for Cambodia, Lesotho, Madagascar, Mauritania, Malawi, Senegal and Yemen. USAID has completed a comparable diagnostic study for Mozambique, and has contributed a series of in-depth sector studies in support of the World Bank's DTIS for Mali. Additional DTISs are currently scheduled for Burundi, Djibouti, Eritrea, Ethiopia, Guinea, Mali and Nepal. Twelve other LDCs have requested to participate in the IF process, and their requests are being evaluated according to criteria agreed by the IF Steering Committee. The United States contributed funds for the past three years to the Integrated Framework Trust Fund in order to finance the DTIS. This includes \$200,000

of the \$1.2 million pledged at the Cancun Ministerial specifically reserved for the Trust Fund. The United States provided more than \$31 million for trade capacity building activities in IF countries in Fiscal Year 2003, through USAID's bilateral assistance programs. Most of this assistance addressed "supply side" capacity building priorities identified by least developed countries in the IF process.

### **Prospects for 2004**

The CTD will continue its function as the forum for trade-related development issues within the WTO. Particular emphasis is likely to be placed on efforts to improve the quality of WTO TRTA. As part of this work, the CTD must insist on enhanced mechanisms for monitoring, evaluating, outsourcing, and delivering TRTA in a way that is flexible and responsive to requests from Members. More broadly, the Committee will seek to improve the participation of developing-countries Members in the Multilateral Trading System. Resumption of Doha negotiations would reinvigorate work on small-economy issues and discussion of the developmental aspects of the DDA.

The Subcommittee will continue to take steps to improve the opportunities available to LDCs to further their integration into the trading system. Resumption of Doha negotiations would renew attention to efforts in technical cooperation, market access, LDC accession, and the IF process.

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

### **Status**

The Uruguay Round Understanding on Balance of Payments (BOP) substantially strengthened GATT provisions on BOP measures. Under the WTO, any Member imposing restrictions for balance of payments purposes must consult regularly with the BOP Committee to determine whether the use of such restrictions are necessary or desirable to address a country's balance of payments difficulties. The BOP Committee works closely with the International Monetary Fund in conducting consultations. Full consultations

involve examining a country'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 the balance of payments.

### **Major Issues in 2003**

Following the establishment of the WTO in 1995, the BOP Committee has demonstrated that the Uruguay Round Understanding on BOP provides Members with additional, effective tools to enforce international obligations. During 2003, no Member imposed new Balance of Payment restrictions.

The BOP Committee held one meeting during the year, in November, to conduct the second review of China's accession commitments as part of the annual Transitional Review Mechanism (TRM). To date, China has not notified the Committee of any BOP restrictions. Since China holds significant foreign reserves, it is not anticipated that China could justify BOP restrictions. During the first TRM in 2002, the United States and the EU posed questions regarding China's progress in liberalizing controls on its capital account. At the November 2003 TRM, Chinese Taipei asked additional questions on China's use of capital controls. In response, China noted that it does not restrict converting currency for current account transactions. However in regards to the outward remittance of earnings or dividends of foreign firms, these can only be converted if firms provide relevant documents that meet the "bona fide test" of earnings under China's laws on Foreign Invested Enterprises. According to China, this policy is designed to reduce money laundering and curb hot money. For purposes of transparency, China has committed to publish information on Foreign Exchange measures on the web and via the news media. China has published all laws, regulations and measures on the administration of foreign exchange through the Foreign Trade and Economic Cooperation Gazette and the website of the State Administration of Foreign Exchange ([www.safe.gov.cn](http://www.safe.gov.cn)). The United States will

continue to monitor China's compliance with its WTO commitments under BOP Agreement and its accession protocol.

As part of the work program agreed at Doha, Committee Members continued to consider proposals by delegations and certain suggestions provided by the Chair to clarify the respective roles of the IMF and BOP Committee in balance of payment proceedings. The BOP Committee did not arrive at a consensus on this issue in 2003.

#### **Prospects for 2004**

Should other Members resort to new BOP measures, WTO rules require a thorough program of consultation with this Committee. The United States expects the 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**

WTO Members are responsible for establishing and presenting to the General Council for approval the budget for the WTO Secretariat via the Budget Committee. The Committee meets throughout the year to address the financial requirements of the organization. In 2003, the Secretariat presented a biennial budget, setting out budget proposals for both 2004 and 2005. 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 and the largest contributor to the WTO budget. For the 2004 budget, the U.S. assessment rate is 15.735 percent of the total assessment, or Swiss Francs (CHF) 25,863,615 (about \$19.9 million). The total assessments of WTO Members are based on the share of WTO Members' trade in goods, services, and intellectual property. Details on the WTO's budget required by Section 124 of the Uruguay Round Agreements Act are provided in Annex II.

#### **Major Issues in 2003**

**New Salary Modalities:** In May 2003, the General Council adopted a recommendation by the Committee to use a new salary methodology in future salary adjustments. The Committee's recommendation was based on a review that was provided for in the WTO's Staff Regulations. The review determined that the WTO salary scale lagged behind those in comparable international organizations. The salary commitments in the 2004 and 2004 WTO budget are based on this new methodology.

**Biennial Budgeting:** In August 2003, the General Council adopted a Committee recommendation to move to a biennial budget cycle. In the view of WTO Members, biennial budgeting will allow for better planning and strategic thinking. It will also provide both Members and the WTO Secretariat with greater predictability with regard to the financial requirements of the WTO. Members also felt that a biennial budgeting process could be a more efficient use of time resources for both Members and the WTO Secretariat.

**Agreed Budget for 2004 and 2005:** The demand for budgetary resources created by (1) the statutory commitments with regard to salary, contribution to the pension fund and other staff costs; (2) the replenishment of the Appellate Body Operating Fund; and (3) the need to allocate annually the costs of Ministerial Conferences were the major issues facing the Budget Committee and the WTO members in determining the appropriate level of increase. The Committee proposed, and the General Council approved, a budget for the WTO Secretariat and Appellate Body of CHF 161,776,500 in 2004 and CHF 166,804,200 in 2005.

### **5. Committee on Regional Trade Agreements**

#### **Status**

The Committee on Regional Trade Agreements (CRTA), a subsidiary body of the General Council, was established in early 1996 as a central

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

The WTO addresses regional trade agreements in more than one agreement. In the GATT 1947, Article XXIV was the principal provision governing Free Trade Areas (FTAs), Customs Unions (CUs), and interim agreements leading to an FTA or CU. 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 countries. The Uruguay Round added two more provisions: the Understanding on the Interpretation of Article XXIV, which clarifies and enhances the requirements of GATT Article XXIV; and Article V of the General Agreement on Trade in Services (GATS), which governs services economic integration agreements.

FTAs and CUs are authorized departures from the principle of MFN treatment if certain requirements are met. First, tariffs and other restrictions on trade must be eliminated on substantially all trade between the parties. Second, duties and other restrictions of commerce applied to third countries upon the formation of a CU must not, on the whole, be higher or more restrictive than was the case before the agreement. For an FTA, no duties or restrictions may be higher. Finally, while interim agreements leading to FTAs or CUs are permissible, transition periods to full FTAs or CUs can exceed ten years only in exceptional

cases. With respect to the formation of a CU, the parties must notify Members to negotiate compensation to other Members for exceeding their WTO bindings with market access concessions. An analogous compensation requirement exists for services.

### **Major Issues in 2003**

During 2003, the Committee held two formal meetings. The Committee has 147 agreements under review, 119 referred by the Council on Trade in Goods, 27 by the Council for Trade in Services, and 1 by the Committee on Trade and Development.<sup>16</sup> The Committee has completed its factual examination for over 82 agreements but has a backlog of draft reports, as Members do not agree on the nature of appropriate conclusions. In November 2003, the Committee held a seminar for Geneva delegates and visiting capital-based representatives to hear academic and other views on the impact of RTAs on the multilateral trading system.

### **Prospects for 2004**

The Doha Declaration paragraph 29 calls for clarifying and improving rules for regional trade agreements, a mandate that is being undertaken by the Rules Negotiating Group. Accordingly, the discussion of systemic issues and improving the examination process in the CRTA has, in effect, been delayed. In the interim, two meetings have been scheduled for 2004, during which the Committee will continue to review the new regional trade agreements notified to the WTO and referred to the Committee. The European Union is expected to notify the WTO under Article XXIV early in 2004 of its May 2004 enlargement to include ten additional countries (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia). Some CRTA Members are likely to be interested in a prompt CRTA review of the enlargement following notification.

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<sup>16</sup> A list of all regional trade agreements notified to the GATT/WTO and in force is included in Annex II to this report.

The biennial reporting requirement on the operation of agreements has been shifted by a year, to 2004. Nineteen reports are due on July 31, 2004, including a report on the United States-Israel FTA.

## **6. Accessions to the World Trade Organization**

### **Status**

Armenia and Macedonia (officially known as the Former Yugoslav Republic of Macedonia) became the 145th and 146th WTO Members on February 5 and April 4 respectively. In addition, the Fifth Minister Conference at Cancun, Mexico, approved the accession packages of Cambodia and Nepal, both of which will become members after their respective parliaments ratify their accession commitments. Significant progress towards completion of negotiations also was recorded with a number of the other twenty-four applicants with established Working Parties. Russia, Ukraine, and Saudi Arabia made major progress towards completion of market access negotiations and in terms of legislative implementation of WTO provisions. This progress provided support and momentum for development of draft Working Party documents and Protocol commitments. Substantial work was also recorded on the accession packages of Samoa and Tonga, Ethiopia and Afghanistan requested accession.

By the end of 2003, of the accession applicants with established Working Parties, only the Bahamas and Ethiopia had not yet submitted initial descriptions of their trade regimes. Bhutan, Cape Verde, and Tajikistan provided this essential comprehensive information in 2003. Initial working parties convened for the accessions of Sudan and Bosnia and Herzegovina for a first review of the information submitted on their foreign trade regimes. Working Party meetings and/or bilateral market access negotiations were also held during 2003 with Algeria, Belarus, Cambodia, Kazakhstan, Lebanon, Nepal, Russia, Samoa, Tonga, Ukraine, and Vietnam. The chart included in the Annex to this section reports the current status of each accession negotiation.

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. It is widely recognized that 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 growth, development, and investment.

The accession process strengthens the international trading system by ensuring that new Members understand and can implement WTO rules from the outset, and it offers current Members the opportunity to secure expanded market access opportunities and to address outstanding trade issues in a multilateral context. In a typical accession negotiation, the applicant submits an application to the WTO General Council, which establishes a Working Party to review information on the applicant's trade regime and to conduct the negotiations. Accession negotiations can be time consuming and technically complex, involving a detailed review of the applicant's entire trade regime by the Working Party and negotiations for import market access. Applicants need to be prepared to make legislative changes to implement WTO institutional and regulatory requirements, to eliminate existing WTO-inconsistent measures, and to make trade liberalizing specific commitments on market access for goods, services, and agriculture.

The terms of accession developed with Working Party members in these bilateral and multilateral negotiations are recorded in an accession "protocol package" consisting of a Working Party report and Protocol of Accession, consolidated schedules of specific commitments on market access for imported goods and foreign service 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 to the General Council or



Ministerial Conference for approval. After General Council approval, accession applicants normally submit the package to their domestic authorities for ratification. Thirty days after the applicant's instrument of ratification is received in Geneva, WTO Membership becomes effective.

The United States 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 and the Commercial Law Development Program (CLDP) of the U.S. Department of Commerce. The assistance can include short-term technical expertise focused on specific issues, e.g., Customs, IPR, or TBT, and/or a WTO expert in residence in the acceding country. Current WTO Members that received technical assistance in their accession process from the United States include Albania, Armenia, Bulgaria, Estonia, Georgia, Jordan, Kyrgyz Republic, Latvia, Lithuania, Macedonia, and Moldova. Most had U.S.-provided resident experts for some portion of the process. Among current accession applicants, the United States provides a resident WTO expert for the accessions of Azerbaijan, Cape Verde, Lebanon, Ukraine, and Serbia and Montenegro, and a U.S.-funded WTO expert resident in the Kyrgyz Republic provides WTO accession assistance to Kazakhstan, Uzbekistan, and Tajikistan on an "as requested" basis, and other forms of technical and expert support on WTO accession issues to Algeria, Bosnia and Herzegovina, Nepal, Russia, and Vietnam

### Major Issues in 2003

WTO Members sought to demonstrate that the new guidelines approved in December 2002 for

streamlined and accelerated accession negotiations with least developed country (LDC) accession applicants could work in practice.<sup>17</sup> The General Council had developed these guidelines to address the unique challenges that the accession process posed for countries with extremely low levels of income and economic development, lack of human resources to conduct the negotiations, infra-structure deficiencies, and a general lack of capacity to implement WTO provisions without additional time and technical assistance. By tying full implementation of WTO provisions to transitional arrangements and technical assistance, and making full use of existing WTO flexibilities and special provisions for LDCs, current WTO Members sought to use the WTO accession process to promote reform and build trade capacity in the applicant economic regimes while simplifying and streamlining the accession process.

Cambodia and Nepal were the first accession applicants to complete the accession process under the new guidelines. Both countries will complete implementation of WTO provisions over transition periods with extensive technical assistance. Market access commitments were substantial and will, over time, provide for better market access for imported goods and services on a basis that supports economic development. The Fifth Ministerial Conference at Cancun approved the accession packages of Cambodia and Nepal in September 2003. During 2003 there was also intensive work on the accessions of Samoa (another LDC) and Tonga.

Continuing the accelerated pace initiated in 2002, the Working Party on Russia's WTO Accession met five times to revise the draft Working Party report text, as well as to review legislative implementation of WTO provisions

<sup>17</sup> Twenty-nine LDCs are already WTO members. The accession packages of Nepal and Cambodia were approved by the Fifth Ministerial Conference at Cancun, and Vanuatu has completed negotiations but not submitted the results to the General Council for approval. Negotiations with Samoa are advanced and moving forward. Bhutan, Cape Verde, Ethiopia, Laos, Sudan, and Yemen have not yet commenced negotiations. All but Ethiopia have submitted initial documentation, and Sudan has had a first WP meeting. Afghanistan has applied for accession, but no WP has been established. Of the nine remaining LDCs that have not applied for WTO membership, two (Equatorial Guinea and Sao Tome and Principe) are WTO observers.

and progress in bilateral market access negotiations. Taking note of Russia's commitment to intensify its efforts to complete negotiations by the end of 2004, Ukraine, Belarus, and Kazakhstan also sought to intensify negotiations during 2003, and work was initiated on their draft Working Party reports. After a hiatus of almost three years, work on Saudi Arabia's accession resumed at an accelerated pace in October. By the end of the year, a revised draft Working Party report was in circulation and Saudi Arabia was making good progress in market access negotiations with WP members. Work on the Doha Ministerial agenda and preparations for the Fifth Ministerial Conference intensified after mid-year, however, and work on other accessions slowed considerably.

### **Prospects for 2004**

Russia, Ukraine, and Saudi Arabia are deeply engaged in legislative implementation of WTO provisions and market access negotiations to establish their schedules of concessions for market access in goods and services. While much work remains, they have all indicated that they hope to complete their accession negotiations in 2004 and it is likely that Members' efforts on accession will be focused on these countries during 2004. Other accession applicants, including a number of LDCs, will continue to press for additional meetings and negotiating time with WTO Members in order to promote progress in their accession negotiations. In addition to Tonga, Belarus, and Kazakhstan, whose accession work is advanced, Algeria, Lebanon, and Vietnam are likely to be active. Other active accessions should include Samoa, Cape Verde, and Bhutan (all LDCs), Bosnia and Herzegovian and Tajikistan. U.S. representatives will remain key players in all accession meetings, as the negotiations provide opportunities to expand market

access for U.S. exports, to encourage trade liberalization in developing and transforming economies, to promote trade capacity building in LDC applicants, and to support a high standard of implementation of WTO provisions by both new and current Members.

## **I. Plurilateral Agreements**

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

#### **Status**

The Information Technology Agreement, or ITA, was concluded at the WTO's First Ministerial Conference at Singapore in December 1996. The Agreement eliminated tariffs as of January 1, 2000 on a wide range of information technology products. Currently, the ITA has 61 participants representing 95 percent of world trade in information technology products.<sup>18</sup> The Agreement covers computers and computer equipment, electronic components including semiconductors, computer software products, set-top boxes, telecommunications equipment, semiconductor manufacturing equipment and computer-based analytical instruments.

#### **Major Issues in 2003**

The WTO Committee of ITA Participants held four formal meetings in 2003, during which the Committee reviewed the implementation status of the Agreement. While most participants have fully implemented tariff commitments, a few countries are still awaiting the completion of domestic procedural requirements or have not yet submitted the necessary documentation.

Four new members (Egypt, China, Bahrain and Morocco) joined the ITA in 2003, reflecting the

<sup>18</sup> ITA participants are: Albania, Australia, Bahrain, Bulgaria, Canada, China, Costa Rica, Croatia, Cyprus, Czech Republic, Egypt, El Salvador, Estonia, European Union (on behalf of 15 Member States), Georgia, Hong Kong China, Iceland, India, Indonesia, Israel, Japan, Jordan, Republic of Korea, Krygyz Republic, Latvia, Lithuania, Macau, Malaysia, Mauritius, Moldova, Morocco, New Zealand, Norway, Oman, Panama, Philippines, Poland, Romania, Singapore, Slovak Republic, Slovenia, Switzerland and Liechtenstein, Chinese Taipei, Thailand, Turkey, and the United States. Armenia and Macedonia have indicated their intention to join the ITA.

growing interest of developing country Members in trade in information technology products. In addition, two international non-governmental organizations, the International Trade Center (ITC) and the Organization for Economic Cooperation and Development (OECD) have been granted observer status in the Committee, as has the World Customs Organization (WCO), for meetings where the issues of HS classification and HS amendments are included in the agenda.

The Committee continued its work to reconcile classifications by ITA participants of certain information technology products where Members have applied divergent HS classification. The Secretariat updated and categorized its compilation of the list of divergences. Customs experts will continue to meet on these issues in 2004 and discuss the treatment of each category of products. The Committee agreed that one item will be sent to the WCO for a classification opinion. Work on classification divergences is expected to continue at the next Committee meeting in 2004.

The Committee also made progress on the Non-Tariff Measures (NTMs) Work Program, affecting trade in ITA products. As part of its work on one of the key issues identified by Members, electro-magnetic compatibility and electro-magnetic interference (EMC/EMI), the Committee held a workshop in April, which was well-attended by Member Government's trade and regulatory authorities and included observers from the private sector. More than 20 participants responded to the survey on EMC/EMI, which the Secretariat used to update a report describing the nature of the problem. Further work on this issue is expected to continue in 2004.

### **Prospects for 2004**

The Committee's work program on non-tariff measures continues to proceed in step with tariff implementation issues, but members have begun an active consultation process to determine whether there are other issues that should be pursued and how work on non-tariff measures in the ITA context relates to similar activities in the context of Doha negotiations. Participants also

will continue to consult with each other informally on the possibility of expanding product coverage for new technologies that have been developed since the ITA was founded. Throughout 2004, the Committee will continue to undertake its mandated work, including reviewing new applicants' tariff schedules for ITA participation, along with addressing further technical classification issues. In addition, the Committee will continue to monitor implementation of the Agreement, including undertaking any necessary clarifications. The next formal meeting on the Committee will be in February 2004. A number of additional WTO Members are actively working on proposals to join the ITA in 2004.

## **2. Committee on Government Procurement**

### **Status**

The WTO Government Procurement Agreement (GPA) is a "plurilateral" agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO's single undertaking and its membership is limited to WTO Members that specifically signed the GPA in Marrakesh or that have subsequently acceded to it. WTO Members are not required to join the GPA, but the United States strongly encourages all WTO Members to participate in this important Agreement. The 28 current signatories are: the United States; the European Union and its member states (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, United Kingdom); the Netherlands with respect to Aruba; Canada; Hong Kong China, China; Iceland; Israel; Japan; Liechtenstein; Norway; the Republic of Korea; Singapore; and Switzerland. Albania, Bulgaria, Chinese Taipei, Estonia, Georgia, Jordan, the Kyrgyz Republic, Latvia, Lithuania, Moldova, Oman, Panama, and Slovenia are in the process of negotiating GPA accession.

### **Major Issues in 2003**

GPA Article XXIV:7(b) and (c) calls for the Parties to undertake further negotiations with a view to improving both the text of the Agreement and

achieving the greatest possible extension of its coverage among all Parties and eliminating remaining discriminatory measures and practices. With regard to the text of the Agreement, the United States has continued to take the lead in advocating significant streamlining and clarification of the GPA's procedural requirements, while continuing to ensure full transparency and predictable market access. Much of the existing text of the GPA was developed in the late 1970s during the negotiations on the original GATT Government Procurement Code. As the current review of the Agreement has proceeded, the Committee has recognized that the GPA text needs to be modified to reflect ongoing modernization of the Parties' procurement systems and technologies, and to encourage other Members to accede to it.

In August and February 2003, the Committee held formal meetings and informal meetings in February, May, June, August and November. The Parties focused primarily on the simplification and improvement of the GPA, with the overall objective of promoting expanded membership of the GPA by making it more accessible to non-Parties. During 2003, the Committee made significant progress in its revision of the text, and has reached provisional agreement on the basic structure and drafting style of the Agreement.

As provided for in the GPA, the Committee monitors participants' implementing legislation. In 2003, the Committee completed its review of the national implementing legislation of Iceland.

### **Prospects for 2004**

In February 2004, the Committee plans to reach agreement on modalities for negotiations relating to extension of coverage and elimination of discriminatory measures and practices. It will commence market access negotiations after work on the text is completed. In 2004, the Committee will also continue its review of the legislation of the Netherlands with respect to Aruba, and its consideration of ways to improve accession procedures.

By spring of 2004, the Committee intends to reach provisional agreement on a revised text of the GPA. In the first half of 2004, the Committee will hold three informal meetings with the aim of completing work on the text. One of the important issues in the review of the text that will require further work is the treatment that developing countries should be given upon accession to the GPA, with the aim of facilitating additional accessions by developing countries.

### **3. Committee on Trade in Civil Aircraft Status**

The Agreement on Trade in Civil Aircraft ("Aircraft Agreement"), concluded in 1979, is a plurilateral agreement. The Aircraft Agreement is part of the WTO Agreements, however, it is in force only for those Members who have accepted it.

The Aircraft Agreement requires Signatories to eliminate tariffs on civil aircraft, their engines, subassemblies and parts, ground flight simulators and their components, and to provide these benefits on a non-discriminatory or MFN basis to all WTO Members. The Signatories have also provisionally agreed to duty-free treatment for ground maintenance simulators, although not a covered item under the current agreement. In areas other than tariffs, the Aircraft Agreement establishes international obligations concerning government intervention in aircraft and aircraft component development, manufacture and marketing.

As of January 1, 2004, there were 30 signatories to the Aircraft Agreement: Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Egypt, Estonia, the European Union, Denmark, France, Georgia, Germany, Greece, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Macau, Malta, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland, the United Kingdom, and the United States. Albania and Croatia committed to become parties upon accession to the WTO, and Oman agreed to become a party within three years of accession.

### **Major Issues in 2003**

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. During 2003, the full Aircraft Committee met twice.

The Aircraft Committee continued to consider proposals to modernize the provisions of the Aircraft Agreement to conform with the WTO and to change the definition of “civil” vs. “military” aircraft to clarify the coverage of the Aircraft Agreement, but was unable to reach consensus on either proposal. The United States requested that the Aircraft Committee consider ways to improve the operation of the Aircraft Agreement to avoid market distortions, specifi-

cally focusing on government actions related to marketing in aircraft sales campaigns. The United States suggested exploring mechanisms to improve communication to address perceived inconsistencies between Signatory actions and the obligations of the Aircraft Agreement.

### **Prospects for 2004**

The United States will continue to seek new Signatories to the Aircraft Agreement, both from countries having civil aircraft industries and from other countries procuring civil aircraft products but not currently significant civil aircraft product manufacturers. The latter countries are being encouraged to become Signatories to the Aircraft Agreement in order to foster non-discriminatory and efficient selection processes for aircraft products based solely upon commercial and technological factors.

# III. Bilateral and Regional Negotiations

## A. Free Trade Agreements

### 1. Chile

Chile has been a recognized leader of economic reform and trade liberalization in Latin America and currently is the only South American country with an investment grade credit rating. Real GDP growth averaged 8 percent for the decade prior to Chile's economic slowdown in 1998-99. Chile's real GDP grew at about a 2 percent rate in 2002 and at a 3.5 percent rate in 2003.

Two-way trade in goods (exports plus imports) between the United States and Chile totaled \$6.4 billion in 2002, with the United States in deficit by \$1.2 billion. Two-way trade in services in 2001 (latest year available) amounted to \$2.2 billion, with the United States in surplus by \$472 million. Since 1994, U.S. goods trade with Chile has expanded by 39 percent (to 2002) and services trade by 37 percent (to 2001).

The United States and Chile concluded negotiations on an historic Free Trade Agreement (FTA) on December 11, 2002. The agreement, signed on June 6, 2003 by U.S. Trade Representative Robert B. Zoellick and Chilean Foreign Minister Soledad Alvear, is the first comprehensive FTA between the United States and a South American country. The U.S.-Chile FTA, along with the U.S.-Singapore FTA, entered into force on January 1, 2004. The U.S. Congress implemented the agreement with strong bipartisan majorities in the House and Senate.

The U.S.-Chile FTA eliminates tariffs and opens markets, reduces barriers for services, protects leading-edge intellectual property, keeps pace with new technologies, ensures regulatory transparency, and provides explicit guarantees for electronic commerce and digital products and

effective labor and environmental enforcement. American workers, consumers, investors, manufacturers and farmers will enjoy access to one of the region's most stable and fastest growing economies, enabling products and services to flow between the two economies with no tariffs and streamlined customs procedures.

Under the agreement, more than 85 percent of bilateral trade in consumer and industrial goods became tariff-free immediately. In less than four years, 75 percent of farm production will also be freely traded. After just ten years, all trade in non-agricultural goods will take place without tariffs or quotas; for agriculture, the phase out will take just 12 years. Key U.S. export sectors benefit, such as agricultural and construction equipment, autos and auto parts, computers and other information technology products, medical equipment, and paper products. U.S. farmers' access to Chilean markets will be as good or better than the European Union or Canada. Farmers will gain duty-free treatment within four years for important U.S. products such as pork and pork products, beef and beef products, soybeans and soybean meal, durum wheat, feed grains, potatoes, and processed food products such as french fries, pasta, distilled spirits and breakfast cereals.

This agreement offers new access to a fast-growing Chilean services market for U.S. banks, insurance companies, telecommunications companies, security firms, express delivery companies, and professionals. U.S. firms may offer financial services to participants in Chile's highly successful privatized pension system. The agreement offers state of the art and non-discriminatory protections for digital products such as U.S. software, music, text, and videos. Protection for U.S. patents, trademarks, and trade secrets exceeds past agreements in the region.

The agreement establishes a secure, predictable legal framework for U.S. investors, and provides for ground-breaking anti-corruption measures in government contracting. U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of Chilean government entities, including airports and seaports.

With respect to labor and the environment, both governments commit to effectively enforce their domestic labor and environmental laws. An innovative enforcement mechanism includes monetary assessments to enforce commercial, labor and environmental obligations of the trade agreement. In addition, it establishes a framework for cooperative environmental projects that will help protect wildlife, reduce hazards and promote internationally recognized labor laws.

The negotiations on the U.S.-Chile FTA were conducted in a transparent manner to ensure that businesses, labor organizations, non-governmental organizations, state and local governments, and the public were kept informed and had ample opportunity to provide input on the negotiations. The Administration briefed Congress on the status of negotiations through periodic meetings with the House Committee on Ways and Means and the Senate Committee on Finance, as well as other committees with interests in the negotiations and individual Members' staffs.

## 2. Singapore

President Bush and Prime Minister Goh signed the U.S.-Singapore FTA on May 6, 2003. H.R. 2739, the U.S.-Singapore FTA Implementation Act, was passed by the House of Representatives on July 24, and by the Senate on July 31 with strong bipartisan support, and was signed by President Bush on September 3. The FTA entered into force on January 1, 2004.

This FTA is the first comprehensive U.S. FTA with any Asia-Pacific nation. Singapore is our 12th largest trading partner, with two-way trade of goods and services exceeding \$38 billion. The

provisions of the U.S.-Singapore FTA build on the WTO and NAFTA and make important advances in many key areas. Most tariffs will be eliminated immediately upon entry into force of the Agreement, with the remaining tariffs phased out over a 3 to 10-year period.

The FTA chapters cover goods, rules of origin, customs administration, technical barriers to trade, services, telecommunications, financial services, temporary entry, competition policy, government procurement, investment, intellectual property, electronic commerce, customs cooperation, transparency, labor and environment, and dispute settlement.

The FTA will provide strong disciplines in the most competitive U.S. sectors. U.S. firms will enjoy barrier-free market access, a transparent regulatory environment and non-discriminatory treatment across a wide range of services, including: financial services (banking, insurance, securities and related services), computer and related services, direct selling, telecommunications services, audiovisual services, construction and engineering, tourism, advertising, express delivery, professional services (architects, engineers, accountants, etc.), distribution services (such as wholesaling, retailing and franchising), adult education and training services, environmental services, and energy services.

The FTA has other important features. For example, this FTA will provide: a secure legal environment for U.S. investors operating in Singapore; explicit guarantees for electronic commerce and digital products; enhanced, state-of-the-art protection for intellectual property; specific commitments regarding the conduct of Singapore's government enterprises; reinforced commitments to strong and transparent disciplines on government procurement procedures; strong, simple, and transparent rules of origin; firm commitments to combat illegal transshipments of all traded goods and prevent circumvention for textiles and apparel; mobility for highly-trained personnel; and requirements to

ensure effective enforcement of domestic labor and environmental laws. An innovative enforcement mechanism includes monetary assessments to enforce commercial, labor, and environmental obligations of the trade agreement.

The FTA with Singapore will foster economic growth and create higher paying jobs in the United States by reducing and eliminating barriers to trade and investment. The agreement will not only improve market opportunities for U.S. goods and services exports, but it may also serve as a model for the Asia-Pacific region, encouraging trade liberalization, regulatory reform, and transparency, including under the Enterprise for ASEAN Initiative, which President Bush announced at the Summit of Leaders' of the Asia-Pacific Economic Cooperation forum in October 2002. The FTA will offer important benefits to U.S. workers, ranchers, farmers, and businesses while reinforcing important American values in the region.

These negotiations, which began in December 2000, recognized Singapore's importance as a trading partner and strategic role in the Asia Pacific region. The negotiations on the U.S.-Singapore FTA were conducted in a transparent manner to ensure that businesses, labor organizations, non-governmental organizations, state and local governments, and the public were kept informed and had ample opportunity to provide input on the negotiations. The Administration briefed Congress on the status of negotiations through periodic meetings with the House Committee on Ways and Means and the Senate Committee on Finance, as well as other committees with interests in the negotiations and individual Members' staffs.

### 3. Jordan

The United States and Jordan continued their efforts in 2003 to help take advantage of the opportunities afforded by the U.S.-Jordan Free Trade Agreement (FTA) which went into effect in December 2001. These efforts included meetings in June between senior USTR officials and the Jordanian Minister of Trade, as well as with the

Jordanian-American Business Association. At year's end the United States and Jordan were engaged in planning for the second U.S.-Jordan Joint Committee meeting to be held under the FTA. The FTA established the Joint Committee to bring together senior U.S. and Jordanian officials to discuss and act on ways to further boost bilateral trade and investment.

The FTA will eliminate nearly all tariffs on industrial goods and farm products within 10 years, as well as commercial barriers to bilateral trade in goods and services originating in the United States and Jordan. The FTA includes, for the first time ever in the text of a trade agreement, substantive provisions on electronic commerce. Other provisions address intellectual property rights protection, balance of payments, rules of origin, safeguards, labor, environment, and procedural matters such as consultations and dispute settlement. Because the United States already has an up-to-date Bilateral Investment Treaty with Jordan, the FTA does not include an investment chapter.

While the FTA is a key part of the U.S.-Jordan economic relationship, it is just one component of an extensive U.S.-Jordanian collaboration in economic relations. Close economic cooperation between the two countries began in earnest with joint efforts on Jordan's accession to the World Trade Organization (WTO) in 2000. The United States and Jordan continue to work together closely in the WTO, particularly on issues of special concern to developing nations. The United States' efforts to support Jordan's rapid and successful WTO accession were followed on the bilateral front by the conclusion of the U.S.-Jordan Trade and Investment Framework Agreement and 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.

These measures have played a significant role in boosting U.S.-Jordanian economic ties. In 2002 U.S. goods imports were \$412 million, an 80 percent increase (\$183 million) from 2001. In



2002 U.S. goods exports to Jordan were \$404 million, up 19 percent (\$65 million) from 2001.

#### **4. Israel**

The United States and Israel held two formal rounds of negotiations in 2003 on a new bilateral agreement on trade in agricultural products, in addition to extensive informal discussions. This new agreement would succeed the 1996 Agriculture Agreement which expired at the end of 2001. The United States and Israel extended the benefits provided by the Agriculture Agreement through 2002 and 2003. At the time this report went to press, the two sides were in the final stages of concluding a new agreement, which would provide duty free treatment of over 90 percent of bilateral agricultural trade. The United States and Israel have undertaken negotiations on agricultural trade to address problems arising from the two sides' disagreement as to whether or not the 1985 U.S.-Israel Free Trade Agreement permits either party to apply restrictions on bilateral trade in this area.

#### **5. U.S.-Central American Free Trade Agreement (CAFTA) Negotiations**

The five countries of the Central American Common Market (CACM), as a whole, comprise one of the largest trading partners in the Hemisphere for the United States, with bilateral trade expected to total about \$25 billion in 2003. From 1996 to 2002, U.S. exports to the region increased 54 percent. To consolidate and strengthen this relationship, in January 2003 the United States launched negotiations for a free trade agreement with the CACM member countries—Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. Negotiators for the U.S.- Central America Free Trade Agreement (CAFTA) held nine rounds of negotiations throughout 2003, resulting in an agreement among the United States, El Salvador, Guatemala, Honduras, and Nicaragua in mid-December in Washington, DC. Talks with Costa Rica continued into January 2004 resulting in that country being added to the FTA at the end of January. This historic Free Trade Agreement is the

first between the United States and a group of countries with small, developing economies. The FTA will eliminate most barriers and facilitate trade and investment among the countries, as well as help further CACM's integration efforts. When the United States and the Dominican Republic conclude market access negotiations, to be held January through March 2004, the Dominican Republic will be integrated into CAFTA, which will stand to become the United States' second largest market in Latin America after Mexico. Bilateral trade between the United States and the Dominican Republic totaled over \$8.4 billion in 2002.

To date, the United States has only six FTA partners: Canada, Mexico, Israel, Jordan, Chile, and Singapore, the last two of which entered into force in January 2004. Like the U.S.-Chile FTA, CAFTA is expected to spur progress on negotiations of the Free Trade Area of the Americas as well as ongoing global trade negotiations.

CAFTA will eliminate tariffs and open markets, reduce barriers for services, protect leading-edge intellectual property, keep pace with new technologies, ensure regulatory transparency, and provide explicit guarantees for electronic commerce and digital products and effective labor and environmental enforcement. American workers, consumers, investors, manufacturers and farmers will enjoy access to one of the hemisphere's most dynamic economic regions, enabling products and services to flow between the two economies with no tariffs and streamlined customs procedures.

Throughout the negotiation process, U.S. negotiators consulted closely with Congress, industry representatives, and labor and environmental groups to ensure the FTA advanced U.S. interests and, in its final provisions, reflected the goals contained in Trade Promotion Authority. Under the Trade Act of 2002, the Administration must notify Congress at least 90 days before signing an FTA. President Bush notified Congress of his intent to enter into an FTA with Central America in early 2004. During the 90-day period, both the

United States and the countries of Central America will undertake legal reviews of the texts and continue to consult with their respective legislatures and other interested groups regarding the provisions negotiated. Also during this period, the Dominican Republic, which will accede to the overall obligations agreed between the United States and Central America, will negotiate with the United States specific bilateral market access issues.

Under the agreement, more than 80 percent of U.S. commercial and industrial goods will enjoy tariff-free access to Central America immediately upon entry into force, and 85 percent will be duty free within 5 years. Virtually 100 percent of Central American nonagricultural goods will receive immediate duty-free access to the U.S. market. Most remaining tariffs will be eliminated in five years and all tariffs will be eliminated in 10 years for nonagricultural goods. Key U.S. exports, such as information technology products, agricultural and construction equipment, paper products, chemicals, and medical and scientific equipment will gain immediate duty-free access to Central America. More than half of current U.S. farm exports to Central America will become duty-free immediately, including high quality cuts of beef, cotton, wheat, soybeans, key fruits and vegetables, processed food products, and wine, among others. Tariffs on most U.S. farm products will be phased out within 15 years. U.S. farm products that will benefit from improved market access include pork, beef, poultry, rice, fruits and vegetables, corn, processed products and dairy products.

Under the Agreement, the Central American countries will accord substantial market access across their entire services regime, subject to very few exceptions. U.S. financial service suppliers will have full rights to establish subsidiaries, joint ventures or branches for banks and insurance companies. The agreement offers state of the art protections for digital products such as software, music, text and video. Protection for patents and trade secrets meets or exceeds past trade agreements.

The Agreement establishes a secure, predictable legal framework for U.S. investors, sets strong anti-corruption rules in government contracting, and guarantees U.S. firms transparent procurement procedures to sell goods and services to Central American government entities.

With respect to labor and the environment, both parties commit to effectively enforce their domestic labor and environment laws. An innovative enforcement mechanism includes monetary assessments to enforce commercial, labor and environmental obligations of the trade agreement. In addition, it establishes a framework for cooperative environmental projects and promotes internationally recognized labor standards. CAFTA includes unprecedented provisions that commit member countries to provide workers with improved access to procedures that protect their rights. CAFTA goes beyond Chile and Singapore FTAs through a 3-part cooperative approach to improve working conditions by: ensuring effective enforcement of existing labor laws, working with ILO to improve existing labor laws and enforcement, and building local capacity to improve worker rights.

## **6. Australia FTA Negotiations**

The United States and Australia held five rounds of FTA negotiations in 2003, and concluded the Agreement February 8, 2004. The FTA will further boost trade in both goods and services, enhancing employment opportunities in both countries. Two-way annual trade already is more than \$25 billion, and Australia purchases more goods from the United States than from any other country. The FTA will provide U.S. firms free access in all goods. More than 99 percent of U.S. exports of manufactured goods to Australia will become duty-free immediately upon entry into force and all U.S. agricultural exports to Australia, totaling more than \$400 million, will receive immediate duty-free access. The FTA also accords substantial access to virtually all U.S. services suppliers and will encourage additional foreign investment flows between the United States and Australia, adding to the many jobs that the already significant investment flows between the two countries currently support. The comprehen-

sive FTA strengthens intellectual property protection, has provisions on electronic commerce reflecting the principle of avoiding barriers that impeded the use of e-commerce, and includes transparency and other commitments on market access issues related to pharmaceuticals. Moreover, the FTA will bolster the WTO partnership between the United States and Australia, deepen the broader ties between the two countries, and strengthen the foundation of our security relationship.

## **7. Morocco FTA Negotiations**

In April of 2002 President Bush and King Mohammed VI agreed to pursue a Free Trade Agreement (FTA) between the United States and Morocco. On October 1, 2002, USTR Zoellick notified Congress and trade negotiations were initiated with the Moroccans in January of 2003. The FTA with Morocco will be comprehensive and is part of the Administration's effort to promote more open and prosperous Middle Eastern societies. The FTA will support the significant economic and political reforms underway in Morocco, and create improved commercial and market opportunities for U.S. exports to Morocco by reducing and eliminating trade barriers. Negotiations have continued through 2003 and are expected to conclude in 2004, which would make it the first FTA to be completed under the President's Middle East Free Trade Area initiative.

## **8. Southern Africa FTA Negotiations**

On November 4, 2002, U.S. Trade Representative Robert B. Zoellick notified Congress of President Bush's decision to negotiate a free trade agreement (FTA) with the five member countries of the Southern African Customs Union (SACU). These nations—Botswana, Lesotho, Namibia, South Africa and Swaziland—comprise the largest U.S. export market in sub-Saharan Africa, with \$2.5 billion in U.S. exports in 2002. The negotiations began in Pretoria, South Africa in June 2003 and subsequent rounds were held in August and October 2003. The target completion date is December 2004. This FTA—the first ever with

any sub-Saharan African country—offers an opportunity to craft a groundbreaking agreement that will serve as a model for similar efforts in the developing world. The SACU countries are strong economic reformers and leading AGOA beneficiaries. They have seen the positive role that trade can play in promoting economic growth and development and, through the FTA negotiations, are taking an important step toward deeper economic engagement with the United States. Through an FTA with SACU, U.S. businesses will gain preferential access to their largest export market in sub-Saharan Africa. Other exporters such as the European Union already receive preferential access to the South African market. By building on the success of AGOA, the SACU countries would secure the kind of guaranteed access to the American market that supports long-term investment and economic prosperity. The FTA would also reinforce ongoing regional economic reforms and lower the perceived risk of doing business in Southern Africa.

## **B. Regional Initiatives**

### **1. Free Trade Area of the Americas**

2003 was the first full year of negotiations with the U.S. and Brazil as Co-Chairs of the process. The 34 governments participating in the process initiated market access negotiations and continued to make progress on the draft text of the Agreement. In addition, they made progress on implementation of the Hemispheric Cooperation Program, which is designed to assist countries to participate in the negotiations, prepare to implement the FTAA obligations and adjust to hemispheric integration.

The U.S. participated actively in meetings of the nine negotiating groups (market access, agriculture, intellectual property rights, services, investment, government procurement, competition policy, dispute settlement, and subsidies/antidumping/countervailing duties) and the three committees and non-negotiating groups (the Technical Committee on Institutional Issues (TCI), the Consultative Group on Smaller

Economies (SME), and the Committee of Government Representatives on the Participation of Civil Society (SOC)). The negotiating groups and the TCI focused on eliminating brackets in the existing text, while delegations to the market access, agriculture, services, investment and government procurement negotiating groups met to negotiate market access commitments. Most delegations exchanged initial offers and requests for improvement to those initial offers in most of the market access areas. Some delegations also exchanged improved offers. In addition, the U.S. participated actively in the Ad Hoc Group on Rules of Origin, and an ad hoc group within the Market Access Negotiating Group, which are negotiating rules of origin for the FTAA. The Ministers have instructed negotiators to continue at a pace that will lead to conclusion of market access negotiations by September 30, 2004.

The U.S. proposed additions to the TCI text, similar to that in the Chile and Singapore FTAs, on labor and environment. Under the proposal, countries would reaffirm their obligations as members of the International Labor Organization (ILO) and pledge to strive to ensure that core labor standards in the ILO Declaration of Fundamental Principles and Rights at Work are fully protected in domestic labor laws. Countries would be obligated not to fail to effectively enforce domestic labor laws through a sustained or recurring course of action or inaction, in a manner affecting trade. This obligation would be subject to dispute settlement and could result in a monetary assessment if a country was found not to be meeting this obligation and failed to remedy the situation. Failure to pay the assessment could lead to suspension of trade benefits sufficient to collect the assessment. Several countries believe there is no mandate to include labor in the FTAA and have blocked discussion of the U.S. proposal.

Recognizing the role trade plays in promoting economic development in America and in other countries and reducing poverty and that smaller and less developed economies require financial support to assist in adjusting to hemispheric integration, the U.S. has worked with CARICOM and

other smaller economies to implement the Hemispheric Cooperation Program. The Inter-American Development Bank (IDB) hosted a meeting in October in Washington, D.C. with relevant donor institutions and FTAA countries to discuss preparation of trade capacity building (TCB) strategies by governments seeking assistance. These strategies are critical to identifying effective programs and appropriate funding sources. They are the first steps in enhancing the capacity of countries seeking assistance to complete negotiation of the FTAA Agreement, prepare to implement its obligations, enhance their capacity to trade and successfully adjust to hemispheric integration.

Despite this progress, negotiations were marked by disagreement about the FTAA's ultimate scope and ambition. Since 1994, the negotiations have been guided by principles and objectives approved by the leaders of the 34 democratically-elected FTAA countries. One of the most important principles is that the FTAA should improve upon World Trade Organization (WTO) rules and disciplines wherever possible and appropriate. Objectives include: progressive elimination of tariffs and non-tariff barriers, as well as other measures with equivalent effects; elimination of agricultural export subsidies in the hemisphere; liberalization of trade in services under conditions of certainty and transparency; adequate and effective protection of intellectual property rights, taking into account changes in technology; establishment of a fair and transparent legal framework for investment and related capital flows; integration of trade and environmental policies and observance and promotion of internationally-recognized core labor standards. Some delegations questioned these principles and objectives, proposing that the FTAA negotiations focus exclusively on market access, leaving additional rules and disciplines for discussion in the WTO.

At the Miami Ministerial meeting in November, the Trade Ministers considered the progress of the negotiations in the past year. In light of the WTO Cancun Ministerial, where global trade

liberalization (including agricultural trade reform) was set back and in view of the increase in political and economic uncertainty in the region, Ministers agreed that the FTAA negotiations would move forward with the flexibility necessary to handle differences in the economic and political situations of countries in the hemisphere. The FTAA will be comprehensive and include a common and balanced set of rights and obligations, in each of the nine negotiating disciplines, that will be applicable to all countries. Those countries that wish to may agree to additional obligations and benefits. This will allow countries to go beyond the common rights and obligations in areas where there has not been a consensus to do so on a hemisphere-wide basis. The Ministers directed Vice-Ministers to define the comprehensive set of common rights and obligations as well as procedures for negotiating additional provisions. Negotiation of these additional provisions is very important to the U.S., which hopes that all countries will eventually agree to them. Ministers reaffirmed that negotiations should be completed by January 2005. In addition, several delegations supported establishment of a consultative group on labor and environment within the FTAA process. This may provide a forum for discussion of the U.S. proposals on labor and environmental standards.

The Ministers also continued efforts to improve transparency in the FTAA process and build broader public understanding of and support for the FTAA. Ministers met with representatives of the eighth Americas Business Forum (ABF) and the Americas Trade and Sustainable Development Forum, organized with broad representation from civil society and received detailed recommendations from workshops covering all areas of the negotiations. The Ministers agreed to make public the third draft consolidated texts of the FTAA agreement, which is available on the USTR website (<http://www.ustr.gov>) and the official FTAA website (<http://www.ftaa-alca.org>). They also recognized the efforts of the FTAA Committee of Government Representatives on the Participation of Civil Society (SOC) to improve two-way

communication with civil society by holding open meetings that focus on issues under discussion in the negotiations. In 2003 two such meetings were held, one in Sao Paulo, Brazil on agriculture and the other in Santiago, Chile on services. Two more are scheduled for 2004: one in the Dominican Republic on intellectual property rights, the other in the U.S. on market access, with special focus on small businesses.

In Miami, Ministers also received two reports from the SOC: the Report on Best Practices and Illustrative Examples of Consultations with Civil Society at the National/Regional Level that highlights best practices for disseminating information to civil society and increasing its participation in the FTAA process and the Fourth Report of the SOC that describes SOC activities as well as the contributions received in response to the Open and On-Going Invitation for comment on all aspects of the FTAA negotiations. Ministers instructed the SOC to continue to forward such contributions to the relevant FTAA entities. Both reports are available on the official FTAA website. Finally, Ministers directed the SOC to coordinate with the TCI to prepare recommendations for the TNC on the possibility of creating a civil society consultative committee within the institutional framework of the FTAA upon entry into force. The TNC will review these recommendations and make a proposal to the Ministers.

Ministers agreed that their next meeting would be hosted by Brazil in 2004.

## **2. Enterprise for ASEAN Initiative**

President Bush announced a major new initiative, the Enterprise for ASEAN Initiative (EAI), in October 2002 to strengthen U.S. trade and investment ties with ASEAN both as a region and bilaterally. With two-way trade of nearly \$120 billion annually, the ten-member ASEAN group already is the United States' fifth largest trading partner collectively. The initiative is intended to further enhance the already close U.S. relationship with this strategic and commercially important region. With the ASEAN countries anticipating solid future economic growth and

with their population of 500 million, the United States anticipates significant opportunities for U.S. companies, particularly agricultural exporters. For ASEAN, this initiative will help boost trade and redirect investment back to the ASEAN region.

Under the EAI, the United States offered the prospect of bilateral free trade agreements with ASEAN countries that are committed to the economic reforms and openness inherent in an FTA with the United States. Any potential FTA partner must be a WTO member and have a TIFA with the United States. The United States now has TIFAs with Indonesia, Philippines, Thailand, and Brunei Darussalam and is near conclusion of one with Malaysia. The U.S. Government sees progress in addressing bilateral issues under these TIFAs as important to laying the groundwork for entering FTA negotiations with the confidence that they can be concluded successfully. The U.S. goal is to create a network of bilateral FTAs with ASEAN countries.

Under the EAI, the United States also committed to support the efforts of ASEAN members that do not yet belong to the WTO to complete their accessions successfully. With U.S. government support, Cambodia successfully acceded to the WTO in September 2003.

U.S. and ASEAN officials met in August 2003 to discuss progress under the EAI. The two sides will work to advance the U.S.-ASEAN work program established in 2002, including efforts on intellectual property rights, customs and trade facilitation, biotechnology, standards, agriculture, human resource development and capacity building, small and medium enterprises, and information and communications technology.

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

#### ***Overview***

Ten years ago, on January 1, 1994, the North American Free Trade Agreement between the United States, Canada and Mexico entered into

force. NAFTA created the world's largest free trade area, which now links 427 million people producing more than \$11 trillion worth of goods and services. The dismantling of trade barriers and the opening of markets has led to economic growth and rising prosperity in all three countries. NAFTA also includes significant labor and environmental cooperation agreements. The NAFTA has dramatically improved our trade and economic relations with our neighbors. The net result of these efforts is more economic opportunity and growth, greater fairness in our trade relations, and a coordinated effort to better protect worker rights and the environment in North America.

The magnitude of our trade relations in North America is impressive: 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 doubled between 1993 and 2002, from \$142 billion to \$258 billion, significantly higher than export growth of 49 percent for the rest of the world over the same period.

NAFTA's record is clear: By lowering trade barriers, the agreement has expanded trade in all three countries. This has led to better jobs, more choices for consumers at competitive prices, and rising prosperity. From 1993 (the year preceding the start of NAFTA implementation) to 2002, trade among the NAFTA nations climbed 109 percent, from \$297 billion to \$621 billion. Each day the NAFTA parties conduct nearly \$1.7 billion in trilateral trade. Thanks in part to NAFTA, North America is one of the most competitive, prosperous and economically integrated regions in the world.

#### ***Elements of NAFTA***

##### **A. Operation of the Agreement**

The NAFTA's central oversight body is the NAFTA Free Trade Commission, chaired jointly by the U.S. Trade Representative, the Canadian Minister for International Trade, and the Mexican Secretary of Economy. The NAFTA

Commission is responsible for overseeing implementation and elaboration of the NAFTA and for dispute settlement. The Commission held its most recent meeting annual meeting in October 2003, in Montreal, Canada. Ministers launched an initiative to study the Parties' most-favored-nation tariffs, in order to determine whether harmonizing these tariffs could further promote trade by reducing export-related transaction costs. The FTC also agreed to pursue further liberalization of the NAFTA rules of origin. Since nearly all tariffs between the Parties have been eliminated, reducing the costs associated with trade, such as those associated with compliance with the rules of origin, will generate additional benefits for traders.

## **B. Investment**

As part of the ongoing commitment to make the NAFTA more responsive to the needs of the public, the Commission at its October 2003 meeting produced two statements to enhance the transparency and efficiency of NAFTA's investor-state arbitration (Chapter 11 of the NAFTA Agreement):

- an affirmation of the authority of investor-state tribunals to accept written submissions (*amicus curiae* briefs) by non-disputing parties, coupled with recommended procedures for tribunals on the handling of such submissions; and
- endorsement of a standard form for the Notices of Intent to initiate arbitration that disputing investors are required to submit under Article 1119 of the NAFTA.

These procedures will enhance the transparency and efficiency of the investment chapter's investor-state dispute settlement process.

## **C. Dispute Settlement Mechanisms**

NAFTA has several mechanisms available to avoid and resolve disputes. Over the last year, only those provisions related to investor-state (see below) and reviews under Chapter 19 of antidumping and countervailing duty determinations were used. In ten years of experience under

Chapter 19, the United States has generally done well, and all three countries have demonstrated the process functions as intended. Since the NAFTA's inception on January 1, 1994, panels have been requested to review nearly ninety AD and CVD determinations by the countries' various trade agencies; nearly sixty of these requests concerned the United States. Completed decisions have been issued in over thirty cases, thirteen of which concern the United States, while another twenty-eight cases remain active, most of which concern the United States. Most notably, in the past several months, three panels have reviewed and issued in timely fashion unanimous decisions concerning the United States' antidumping and countervailing duty orders on softwood lumber from Canada. While remands are ongoing in all three of those cases—two concerning Commerce and one involving the U.S. International Trade Commission—the ability of the Chapter 19 system to handle such massive litigation has been noteworthy. Chapter 19 also provides for an extraordinary challenge procedure. Following a panel decision, either of the countries involved may request the establishment of a three-person extraordinary challenge committee ("ECC"), comprised of judges or former judges from those countries. If the ECC determines that one of the grounds for the extraordinary challenge has been met (such as a violation of the standard of review which materially affects the panel's decision and threatens the integrity of the panel process), it will vacate the original panel decision. Under the ten-year history of the NAFTA, only two ECCs have been requested: one concerning the Commerce Department's review of the U.S. antidumping order on Mexican cement and, just recently, a second concerning Commerce's sunset review of the antidumping order on pure magnesium from Canada. The cement ECC affirmed the decision of the lower panel, which affects the fifth annual administrative review.

## **D. 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. Each NAFTA Party also has established a National Administrative Office (NAO) within its Labor Ministry to serve as a contact point for information, to examine labor concerns, and to coordinate the expansive cooperative work programs. In addition, the Agreement created a trilateral Commission for Labor Cooperation, comprised of a Ministerial Council and an administrative Secretariat.

The Ministerial Council held its most recent meeting in Washington in November 2003. Ministers discussed labor issues facing the three countries, including the opportunities and challenges involved in developing the skills needed for the 21st century workforce, the social and labor components of hemispheric integration, and migrant worker rights. The Council agreed to continue its second review of the operation and effectiveness of the NAALC. Regarding this ongoing review, each country will solicit public views on the process and efficiency of the labor agreement. The countries will also share their findings with each other. A final report will be made available to the public in 2004.

In addition, the Council announced the release of the second edition of its major report on North American labor markets, "North American Labor Markets: Main Changes Since NAFTA." The study provides data on labor market issues such as unemployment, productivity, hours of work and classes of employment. In 2003, the Trilateral Working Group on Occupational Safety and Health, established by the U.S., Mexico and Canada, agreed to host a seminar on ergonomic best practices in the automotive sector; undertake additional training by the U.S. for Mexican labor inspectors; and pursue strategies for involving Hispanic workers in the development of safety and health management systems.

#### **E. NAFTA and the Environment**

A further supplemental accord, the North American Agreement on Environmental Cooperation (NAAEC), ensures that trade liber-

alization and efforts to protect the environment are mutually supportive. The NAAEC created the Commission for Environmental Cooperation (CEC), which is comprised of: a) the Council made up of the environmental ministers from the United States, Canada, and Mexico; b) the Joint Public Advisory Committee made up of five private citizens from each of the NAFTA countries; and c) the Secretariat made up of professional staff, located in Montreal, Canada. Specific information on the CEC's activities can be found in Section V.

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 communities throughout the U.S.-Mexico border region to address their environmental infrastructure needs. Since their creation, the institutions have been instrumental in the development of over 65 projects, now complete or under construction, with an aggregate cost of approximately \$2.1 billion. These projects, when complete, will serve about 9 million residents of the United States and Mexico, with new projects being developed continually.

#### **4. MEFTA**

The United States Middle East Free Trade Area initiative (MEFTA), announced by President Bush in May 2003, seeks to promote trade expansion and economic reforms in North Africa and the Middle East leading to a Middle East Free Trade Area within a decade. To re-ignite economic growth and expand opportunity in the Middle East, the U.S. will build on free trade agreements (FTAs) with Israel and Jordan and will take a series of graduated steps with countries in the region tailored to the level of development of individual countries. These steps include helping reforming countries with WTO Accession, enhancing access to the Generalized System of Preferences (GSP) program for eligible countries, negotiating Trade and Investment Framework



Agreements, negotiating Bilateral Investment Treaties, negotiating comprehensive Free Trade Agreements, melding sub-regional FTAs into MEFTA, and helping with Technical Assistance.

## **5. Asia Pacific Economic Cooperation**

### **Overview**

For the past decade the Asia Pacific Economic Cooperation (APEC) forum has been instrumental in advancing regional and global trade and investment liberalization. APEC, which was founded in 1989, was largely a consultative body until the United States invited Leaders from 18 Asia Pacific economies to Blake Island, Washington in 1993. This event marked the first ever meeting of Pacific Rim leaders, and was precipitated by the realization that Asia Pacific economies accounted for more than half of U.S. exports to the world, and had steadily increased in importance in recent years. APEC Leaders have met annually since.

The growth in U.S. good exports to APEC clearly demonstrates the benefits of open markets and trade liberalization. Since 1994, U.S. exports to APEC increased nearly 43 percent. In 2003, two-way trade with APEC members totaled \$1.3 trillion, an increase of 5 percent from 2002 (2003 based on annualized 11 months data).

### **2003 Activities**

#### **1. Leadership in the Multilateral Trading System**

APEC Leaders and Ministers meeting in Bangkok in October committed to move the DDA forward. They regretted the missed opportunity to advance negotiations at the September WTO Cancun Ministerial, but agreed that the WTO offers the potential for real benefits for all APEC members. To achieve further progress, they pledged to build on Chairman Derbez's text in Cancun, calling for flexibility and political will from all parties.

Leaders discussed and agreed to work to abolish all forms of agricultural export subsidies, unjustifiable export prohibitions and restrictions,

committed to working in the negotiating group on rules in accordance with the Doha mandate. Ministers noted that progress had been made in some areas of the WTO negotiations, and they welcomed the decision on TRIPS and access to essential medicines. There was consensus that increased focus should be applied to areas that dominated discussions in Cancun, such as agriculture, industrial market access and the Singapore Issues (trade facilitation, transparency in government procurement, competition and investment), noting that APEC's valuable work on trade facilitation would be helpful in the context of the WTO negotiations.

APEC Ministers and Leaders also emphasized the importance of continuing to build confidence in the WTO through APEC's Strategic Plan for WTO Capacity Building, created in 2000 to help developing APEC economies implement their WTO obligations. In June APEC Trade Ministers welcomed APEC's capacity building workshops on Trade and Environment, Geographical Indications, and Investment. At their October meeting, Ministers instructed senior officials to review the lessons of Cancun and utilize APEC's experience in this area to help reinvigorate the DDA negotiations. Furthering this work will help developing economies participate fully in the DDA negotiations and enjoy the benefits of WTO membership.

#### **2. Advancement of APEC's Work on Trade and Investment Liberalization and Facilitation**

APEC Leaders and Ministers reviewed APEC's trade policies and measures that contribute to trade and investment expansion and economic growth in the Asia-Pacific region. They agreed to new commitments in key areas under the Shanghai Accord, a U.S.-led blueprint for APEC's trade agenda agreed by APEC Leaders in 2001. These commitments include:

- an agreement on Transparency Standards in specific areas (Services, Investment, Competition Law and Policy and Regulatory

Reform, Standards and Conformance, Intellectual Property, Customs procedures, Market Access, and Business Mobility. Officials were also directed to complete work on standards on government procurement by the 2004 Trade Ministers meeting);

- an agreement to fight corruption;
- an agreement to carry forward APEC's "Pathfinder Statement to Implement APEC Policies on Trade and the Digital Economy" by, e.g., working to combat optical disc piracy and ensuring best enforcement practices, ensuring technology choice for business, and identifying additional information technology products on which tariffs could be eliminated;
- the identification by individual economies of trade facilitation reforms they intend to implement to achieve a significant reduction in business transaction costs by 2006 (by endeavoring to reduce them by 5 percent); and
- an agreement to accelerate structural reform.

In 2003, APEC made progress on a number of APEC "Pathfinder Initiatives"—cooperative arrangements which enable a group of countries to pilot initiatives, even though not all APEC Members can initially participate. In addition to the Statement on Trade and the Digital Economy, Leaders and Ministers welcomed the launch of the APEC Sectoral Food Mutual Recognition Arrangement (MRA) to promote trade in food/agricultural products. Ministers also noted that progress had been made on other Pathfinder Initiatives, including: Implementation of Unilateral Advance Passenger Information Systems; Adoption of the revised Kyoto Convention of the Simplification and Harmonization of Customs Procedures; Electronic Sanitary and Phytosanitary (SPS) Certificates; Electronic Certificates of Origin; Mutual Recognition Arrangement of Conformity Assessment on Electrical and Electronic Equipment Part II and Part III; and Corporate Governance.

APEC Members report annually on their actions to achieve free trade and investment by preparing Individual Action Plans (IAPs). The Shanghai Accord called for, and APEC Senior Officials developed, a more meaningful process for reviewing IAPs. The first of these enhanced reviews were of Japan and Mexico in 2002. In 2003 APEC Members reviewed the trade regimes of Canada, Hong Kong, Japan, Korea, Mexico, New Zealand and Thailand. During each session the economies being reviewed provided opening statements, while officials from other economies, as well as outside experts, submitted oral and written questions. The participants engaged in a productive exchange, bringing increased focus to trade and investment liberalization in APEC. The economies scheduled to be reviewed in 2004 include the United States, Chile, China, Peru, Singapore, and Chinese Taipei. In Bangkok Ministers reaffirmed their commitment to complete all twenty-one IAP peer reviews by the first APEC Senior Officials Meeting in early 2005, and to conduct a mid-term review of progress toward meeting the Bogor Goals by the Ministerial Meeting in 2005. Reports of the IAP Peer Review Meetings can be found on the APEC website ([www.apecsec.org.sg](http://www.apecsec.org.sg)).

APEC's work on trade and investment liberalization and facilitation is overseen by the *Committee on Trade and Investment* (CTI) and its sub-fora. The CTI and its sub-fora have well-developed, specific work programs in the sixteen substantive issue areas first defined in the 1995 Osaka Action Agenda (OAA). These areas are: tariffs, non-tariff measures, services, investment, government procurement, standards and conformance, customs, competition policy, deregulation, intellectual property rights, dispute mediation, mobility of business people, rules of origin, information gathering/analysis, and implementation of WTO obligations (including rules of origin), and Strengthening Economic Legal Infrastructure. The CTI's 2003 Annual Report to Ministers details all of the work on trade and investment undertaken in 2003 by the CTI and its sub-fora. This

Report and additional information can be found on the APEC website ([www.apecsec.org.sg](http://www.apecsec.org.sg)).

### 3. Free Trade Agreements

Another important issue for APEC in 2003 was the growing number of Regional Trade Agreements (RTAs) and Free Trade Agreements (FTAs) in the region. APEC held its first policy dialogue on regional and bilateral trade agreements in May 2003, and agreed to convene a second in 2004. Ministers agreed that such agreements can contribute to multilateral trade liberalization, and reiterated Leaders' emphasis that RTAs and FTAs must be consistent with both the WTO's rules and disciplines and APEC's goals and principles. They agreed that if RTAs and FTAs are comprehensive they can promote competitive liberalization in the region and help to build momentum for global trade liberalization.

### 4. Private Sector Involvement

APEC works closely with the private sector in many of its activities, and the United States has been a driving force in fostering this interaction.

#### *Live Sciences Innovation Forum*

In 2002, the United States led an initiative to establish the APEC Life Sciences Innovation Forum (LSIF), which held its initial meeting this year on August 14-15 in Phuket Thailand. Over 200 participants drawn from academia, government and industry discussed implementation of the APEC Leaders' instructions to develop a strategic plan for Life Sciences innovation in the region. The LSIF recommended key elements in four areas—Research, Development, Manufacturing and Marketing, and Health Services—for inclusion in the framework for the Life Sciences Innovation strategic plan. In addition, the LSIF recommended an agreement in principle to harmonize quality standards for life sciences products and services according to international best practices; and recommended that assessments be undertaken of the strength of each APEC economy to identify those areas where contributions to life sciences innovation may be established quickly and effectively. In October, APEC Ministers endorsed the

LSIF recommendations, took note of the progress in developing the draft “*Strategic Plan for Promoting Life Sciences Innovation*” and requested that the LSIF finalize the plan for endorsement in 2004. APEC Leaders endorsed the Ministerial conclusions.

#### *Automotive and Chemical Dialogues*

The *Automotive Dialogue* and the *Chemical Dialogue* are public-private sector dialogues recognized as important for improving the mutual understanding of key imperatives for the development of future policy and for enhancing the competitiveness of each sector.

The *Automotive Dialogue* is organized into six working groups—customs, technical regulatory harmonization, environment, information technology, economic and technical cooperation and market access. This year, the Dialogue, attended by over 150 participants from industry and government, recommended that APEC Ministers reaffirm that they will endeavor to refrain from using measures having the effect of increasing levels of protection in the automotive sector. APEC Ministers did reaffirm this undertaking at their meeting in October. The Dialogue approved a second letter expressing interest in the work of the WTO Non-Agricultural Market Access (NAMA) Negotiating Group, and offering its resources to support this work. In this regard, the Dialogue endorsed efforts to identify areas of interest to the automotive sector that might be useful in the context of the DDA to promote greater awareness of opportunities for economies to support the reduction or elimination of existing barriers to automotive trade and investment.

The *Chemical Dialogue* was attended by approximately 50 participants from industry and government this year. The Dialogue considered a broad agenda, including continuing to express strong concern over the EU's chemical legislation, building capacity for individual economies to implement the Globally Harmonized System (GHS) of hazard classification and labeling of chemicals, and identifying goals for the chemical sector in the WTO negotiations. APEC Ministers

noted the continuing concern of APEC economies over the European Commission's proposed regulatory framework for chemicals and downstream products. Ministers observed that many APEC economies had submitted detailed comments on the proposed system, and urged the European Commission to carefully consider the trade effects and trade policy implications of the proposed legislation. Chinese Taipei hosted a capacity-building workshop on the benefits of adopting the GHS and mechanisms for doing so. The chemical industry is working to identify priority non-tariff barriers that could be addressed in APEC as part of a contribution to the WTO Doha negotiations.

## **C. The Americas**

### **1. Canada**

Canada is the largest trading partner of the United States with over \$1 billion of two-way trade crossing our border daily. The United States and Canada share one of the world's largest bilateral direct investment relationships. In 2002, the stock of U.S. foreign direct investment in Canada was \$152 billion, an increase of 7.6 percent from 2001. In 2002, the stock of Canadian direct foreign investment in the United States was \$92.0 billion, a decrease of 9.9 percent.<sup>1</sup> The United States' trade deficit with Canada was \$54.5 billion in 2003, an increase of \$6.3 billion from \$48.2 billion in 2002. U.S. goods exports in 2003 were \$168.8 billion, up 4.7 percent from the previous year. Corresponding U.S. imports from Canada were \$223.3 billion, up 6.8 percent. Canada is currently the largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Canada were \$24.3 billion in 2002 (latest data available), and U.S. imports were \$18.4 billion. Sales of services in Canada by majority U.S.-owned affiliates

were \$51.2 billion in 2001 (latest data available), while sales of services in the United States by majority Canada-owned firms were \$47.9 billion.

#### **a. Softwood Lumber**

Following the expiration of the 1996 U.S.-Canada Softwood Lumber Agreement in 2001 [and the filing of petitions on behalf of the U.S. softwood lumber industry], the Commerce Department announced amended final antidumping rates ranging from 2.18 percent to 12.44 percent and an amended final countervailing duty rate of 18.79 percent, effective May, 2002.

Negotiations to find a durable solution as an alternative to litigation have been ongoing. The United States remains prepared to offer Canadian lumber producers the market access they seek in exchange for Canadian provinces implementing market-based pricing for sales of timber from public lands. The Department of Commerce, industry, non-governmental organizations, the Government of Canada and Canadian provinces have been engaged since early 2003 in the drafting of a Policy Bulletin which provides a blueprint for provincial forestry reforms. In the process, the provinces have offered commitments to ensure that competitive timber markets would operate in Canada. The Department of Commerce has indicated its willingness to consider petitions from individual provinces for a review of provincial market reforms, with the potential for province-specific revocation of the countervailing duty order. Negotiations on an interim agreement and the Policy Bulletin have been closely linked. In the absence of an agreement on basic reforms, the United States will effectively enforce U.S. trade laws to address the U.S. industry's concerns about subsidies to, and dumping of, Canadian softwood lumber.

Canada is challenging the underlying Commerce Department and ITC investigations in the WTO and NAFTA. On November 1, 2002 the WTO

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<sup>1</sup> 2003 estimates are annualized based on 11 months data.

Dispute Settlement Body officially adopted a panel report which addressed the Canadian challenge of the Commerce Department's preliminary countervailing duty determination. The report is a victory for the U.S. on two key issues in the ongoing dispute: Canadian provinces' sale of timber from public lands can constitute a subsidy under the WTO Subsidies Agreement; and U.S. laws governing reviews of countervailing duty orders are consistent with the WTO Subsidies Agreement. The ITC filed its injury remand to the NAFTA panel on December 15, 2003.

On January 12, 2004, the Department filed a remand determination in response to a NAFTA Panel's decision on the final determination in the CVD investigation. In its decision, the Panel upheld the Department's key findings—that the provincial governments' sale of timber from public lands constitutes a “financial contribution” by the government that can give rise to a “specific” subsidy, which can be subject to countervailing duties. In addition, however, the Panel remanded the benefit calculation methodology for further consideration by the Department. In the DOC's redetermination on remand, a CVD rate of 13.23 percent (lower than the 18.53 percent rate calculated in the investigation) was calculated. If this rate becomes final, the average combined AD/CV duties would be 21.66 percent. We expect a decision regarding whether the remand redetermination is acceptable to the Panel in April, 2004.

With regard to the AD investigation, the Department of Commerce filed a redetermination with the NAFTA panel last October. The dumping margin declined only slightly (from 8.43 percent to 8.07 percent). The Panel's decision on that redetermination is expected in early 2004.

## **b. Agriculture**

Canada is the United States' second largest market for food and agricultural exports. For fiscal year 2003 (October 2002-September 2003), U.S. agricultural exports to Canada grew by 6.1 percent to \$9.1 billion. As a result of the 1998

U.S.-Canada Record of Understanding on Agricultural Matters (ROU), the U.S.-Canada Consultative Committee (CCA) and the Province/State Advisory Group (PSAG) were formed to provide fora to strengthen bilateral agricultural trade relations and to facilitate discussion and cooperation on matters related to agriculture. In 2003, the CCA and PSAG met twice on issues including livestock, processed food, plant, seed, fortified breakfast cereals and horticultural trade, as well as pesticide and animal drug regulations.

## *Wheat*

USTR announced a four-prong approach to level the playing field for American farmers that included dispute settlement proceedings against the Canadian Wheat Board and the Government of Canada in the WTO, identification of impediments to U.S. wheat entering Canada, pursuing reforms to state trading enterprises (STE) as part of the WTO agricultural negotiations and countervailing and antidumping investigations in response to petitions filed by the North Dakota Wheat Commission.

During the past year, the Department of Commerce announced August 29 it had determined Canada subsidizes and dumps durum and hard red spring wheat. An ITC panel on October 3, 2003 made a negative determination on imports of durum wheat from Canada. ITC ruled in October, 2003 that US wheat farmers are injured by Canadian Wheat Board practices opening the door for duties of 14.6 percent to be imposed on imports of hard spring wheat from Canada. In November 2003, the Canadian Wheat Board working with the Government of Canada, Manitoba and Saskatchewan filed a NAFTA appeal. NAFTA has 13-16 months to review the matter and issues its findings. The U.S. Government maintains that Canada provides the Canadian Wheat Board with exclusive and special privileges, including monopoly rights. The U.S. allegation is being pursued under art. XVII & III:4 of GATT and a final panel report is due in February, 2004.

### *Dairy*

In April 1999, the United States and New Zealand successfully challenged Canada's subsidized dairy industry under WTO dispute settlement procedures. Canada committed to bring its export regime into compliance with its WTO export subsidy commitments on butter, skimmed milk powder and an array of other dairy products by January 31, 2001. However, the United States believed that Canada instituted new measures that largely duplicated the withdrawn subsidies and continued to challenge Canada in the WTO. After a series of panel reviews, in December 2002 the Appellate Body affirmed that Canada was not in compliance. The WTO's Dispute Settlement Body formally adopted the Appellate Body's report on January 17, 2003. On May 9, 2003, USTR and the U.S. Department of Agriculture announced the settlement with Canada resulting in major revisions to Canada's subsidy programs for its dairy exports. As a result of the settlement, Canada agreed to eliminate its dairy subsidies and consequently, Canada will no longer export subsidized dairy products to the United States and will significantly limit subsidized dairy exports destined to third countries.

### *Fortified Cereals*

Canadian regulations concerning breakfast cereals permit only the addition of niacin, vitamin B6, folic acid, pantothenic acid and magnesium to restore the amounts lost in processing, and of iron and thiamin as fortificants to address public health concerns identified for the Canadian population. Nutrient addition to breakfast cereals is optional, but the amounts that may be added are specified in the regulation. While a wide variety of cereals are marketed in Canada, the level of fortification of breakfast cereal is lower than in the United States for most nutrients, and fewer nutrients, i.e. only those listed above, are permitted to be added in Canada.

U.S. cereal manufacturers commonly fortify up to 15 vitamins and minerals in breakfast cereals. While there are no specific federal rules in the United States on the fortification of cereals, the

U.S. Food and Drug Administration (FDA) does maintain guidelines on fortification.

USTR raised the matter of Canada's cereal fortification regulations in bilateral, NAFTA and CCA meetings in 2003. FDA and Health Canada are working in the NAFTA Committee on Food Labeling, Packaging and Standards to work towards a harmonized approach on nutrition-related policies, particularly as it relates to labeling and standards, including fortification. In addition, the U.S. Department of Agriculture and FDA are working cooperatively with Health Canada in sponsoring a study by the National Academy of Sciences to determine principles for discretionary fortification of nutrients to food products and the suitability of using reference values based on the Academy's Dietary Reference Intake values for discretionary nutrient additions. The final report from the Academy is due at the end of December 2003.

### **c. Intellectual Property Rights**

Canada continues to make progress in improving its IPR regime. In December 2002, the Government of Canada (GOC) revised its Copyright Act (Bill C-11) so that Internet retransmission is, in effect, excluded from its compulsory licensing regime—that is, unless licensed by the Canadian Radio-television & Telecommunications Commission (CRTC) and the CRTC has determined not to so license Internet retransmissions. This follows amendments made to Canada's patent law in 2001 to provide 20 year patents that were filed before October 1, 1989. Despite these positive developments, several issues remain largely unresolved. Canada has not resolved the outstanding issue of national treatment of U.S. artists in the distribution of proceeds from Canada's private copying levy and its "neighboring rights" regime. In addition, Canada does not provide effective data exclusivity protections, and systematic inadequacies in Canadian administrative and judicial procedures allow entry of infringing generic versions of patented medicines into the marketplace. Further, Canada's border measures have

been the target of severe criticism by IP owners, who consider Canada's border enforcement measures to be inconsistent with its TRIPS obligations.

## **2. Mexico**

Mexico is our second largest single-country trading partner and has been among the fastest-growing major export markets for goods since 1993, with U.S. exports up 132 percent through 2003. The NAFTA has fostered this enormous relationship by virtue of the Agreement's comprehensive, market-opening rules. It is also creating a more equitable set of trade rules as Mexico's higher trade barriers are being reduced or eliminated.

### **a. Agriculture**

North American agricultural trade has grown significantly since the NAFTA was implemented. Mexico is currently the United States' third-largest agricultural export market. For 2003, U.S. agricultural exports to Mexico increased 8.8 percent from 2002, to \$7.9 billion (based on annualized 11 month data).

Current issues subject to negotiations include Mexico's limits on the importation and domestic consumption of high fructose corn syrup (HFCS). After the U.S. prevailed in the WTO, Mexico on May 20, 2002 removed antidumping duties it had put in place in 1998, but replaced this with a NAFTA-inconsistent tariff rate quota. In addition, on December 31, 2001, the Mexican Congress imposed a tax on soft drinks produced using HFCS. Although temporarily suspended by the Fox Administration, the tax was reimposed in July 2002, and remains in place. The tax effectively eliminated the use of HFCS in the Mexican beverage industry, reduced sales of HFCS by U.S. firms, lowered U.S. corn exports used to produce HFCS, and affected U.S. beverage exports. USTR continues to work to achieve a long-term solution.

The Administration has worked to address problems associated with Mexico's antidumping regime. The U.S. is concerned about the procedures applied in the investigation of U.S. exports of beef, rice, pork, and apples. Mexico imposed

antidumping duties on U.S. exports of long grain white rice in June 2002. In December 2002, Mexico passed amendments to its antidumping and countervailing duties laws. The United States and Mexico held consultations in July 2003 on Mexico's antidumping investigations related to beef and rice. In November 2003, the WTO established a dispute settlement panel with regard to Mexico's antidumping order on white long grain rice. In December 2003, the United States formally requested that a WTO panel on beef be formed, and there are separate proceedings under the NAFTA.

Mexico conducted two safeguard reviews over the last year with significant potential impact on U.S. exports. An investigation on certain plywood concluded in December 2003 excluded all plywood from the United States from its scope. In the case of poultry, Mexico imposed a provisional safeguard measure on imports of U.S. chicken leg quarters in January 2003 and a final safeguard on July 24, 2003. Through an exchange of letters on July 24 and 25, Mexico agreed to provide compensation to the United States for Mexico's safeguard measure and the United States provided its consent to the application of the safeguard measure past December 31, 2003—the expiration of the phase-out period for Mexican tariffs on U.S. chicken leg quarters. In particular, Mexico committed not to impose any additional import restrictions on U.S. poultry products, to eliminate certain sanitary restrictions on U.S. poultry products, and to consult with the United States in advance regarding new sanitary measures. As a result, U.S. exporters will continue to receive unlimited duty-free access to the Mexican market for most poultry products, as well as assured access for a growing volume of chicken leg-quarters and the further assurance that U.S. exporters will not be subject to any unjustified import restrictions. U.S. exports of poultry meat to Mexico totaled \$173.8 million in 2002.

### **b. Telecommunications**

Market barriers in Mexico's telecommunications sector remain a serious source of concern. In particular, through a series of rules and other

measures, Mexico does not permit effective competition and otherwise discriminates against U.S. suppliers of basic telecommunications services. As a result, wholesale telecommunications rates for U.S.-Mexico calls are still roughly four times their cost. These high rates cost U.S. companies and consumers hundreds of millions of dollars in excess payments a year.

The United States initially requested WTO consultations with Mexico on telecommunications issues in August 2000 and first requested the establishment of a WTO panel in November 2000. At that time, Mexico took steps to address several important barriers to telecommunications trade. However, relevant Mexican agencies have not yet addressed trade barriers affecting international telecommunications services. A WTO panel was formed in April 2002 to specifically address this issue.

#### **c. Tequila**

In August 2003, the Mexican Secretariat of Economy, citing the need to ensure the quality of Mexican tequila, announced that the official standard for tequila will be amended to require that tequila be “bottled at the source” in order to be labeled as tequila. Currently, the Mexican standard requires that only “100 percent agave” tequila be bottled at the source. Ordinary tequila can be sold and exported in bulk form under the current official standard. If the draft standard is formally proposed and adopted, it will require that all tequila be bottled within the territory of the Mexican appellation of origin, and bulk exports will be prohibited. If implemented, the measure would have an adverse impact on U.S. companies that import bulk tequila from Mexico and bottle tequila in the United States.

The Secretariat of Economy originally intended to sign a formal proposal to amend the standard on August 18, 2003. Following a formal comment period, it was to have been adopted later in 2003 and then enter into effect on January 1, 2004, with a one-year grace period to allow for the establishment of new procedures and the unwinding of existing contracts. Following

consultations with the U.S. Government, Mexico agreed to create a defined period of time to receive comments from interested stakeholders. The United States and Canada have held further meetings with Mexico in an ongoing effort to establish a framework for resolving this issue. The United States will continue to work to ensure that any action taken by Mexico is consistent with its international obligations.

#### **d. Intellectual Property Rights**

Piracy and counterfeiting of U.S. intellectual property as well as lax and ineffective enforcement of intellectual property rights in Mexico remain persistent problems. As a result, Mexico was placed on the 2003 Special 301 Watch List for the first time since 1999.

Progress was made in 2003 regarding concerns expressed by U.S. pharmaceutical and agricultural chemical companies about the lack of coordination between the Mexican Intellectual Property Institute (IMPI) and Mexican health officials with regard to the granting of marketing approval for their products. As part of the process to obtain approval to sell their products in Mexico, pharmaceutical and agricultural chemical companies must submit data on the safety and efficacy of their products. This data is very valuable and is the result of substantial investments in research by U.S. companies. In September 2003, the Mexican Health Ministry developed new regulations to require a determination from IMPI attesting that the drug in question does not already have a Mexican patent before the issuance of a health and safety certificate. The United States will continue to monitor the implementation of the new regulation.

### **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. As a customs union, Mercosur is a free trade area (FTA) that applies a common external tariff (CET) to prod-



ucts of nonmembers. Its members, Argentina, Brazil, Paraguay, and Uruguay, make up over one-half of Latin America's gross domestic product. Bolivia, Chile, and Peru are associate members and participate in the Mercosur FTA, but not in the CET. Mercosur became operative on January 1, 1995, and covers some 85 percent of intra-Mercosur trade, with each member allowed to maintain a list of sensitive products outside the FTA regime. Members aim to converge their individual tariff schedules to the CET by January 1, 2006. The four Mercosur countries are acting as a group in the context of the FTAA negotiations.

*Four Plus One:* In September 2001, the United States and the four Mercosur countries resumed meeting under the auspices of the 1991 Rose Garden Agreement. This agreement created a framework, known as the Four Plus One, for the United States and the Mercosur countries to discuss means to deepen their trade relationship.

## **b. Argentina**

U.S. goods exports to Argentina were \$2.4 billion in 2003, up 52 percent from 2002. Overall bilateral trade was \$5.6 billion, and the U.S. deficit of \$1.6 billion in 2002 decreased to \$0.8 billion in 2003. A key factor in the Argentine economy is its trade with Brazil, Argentina's number one trading partner.

On July 1, 2003 President Bush signed a Proclamation expanding the product coverage of the Generalized System of Preferences (GSP) program, under which 140 beneficiary developing countries and territories, including Argentina, import products duty-free into the United States. The President's Proclamation extends GSP benefits to approximately \$900 million in imports from these countries through the addition of new products, the restoration of previously lost benefits, and the continuation of benefits that would otherwise expire. The Proclamation underscores the Administration's commitment to providing trade opportunities to developing countries as a way to encourage

broad-based economic development. The President's action resulted in additional GSP benefits valued at more than \$96 million for Argentina.

DUSTR Allgeier met with his Argentinian counterpart October 22-23, 2003 in a meeting of the U.S.-Argentina Bilateral Council on Trade and Investment (BCTI). Among the issues discussed were the problems of U.S. investors and Argentina's need to honor the commitments made in its Bilateral Investment Treaty (BIT).

*Intellectual Property Rights (IPR):* Argentina's intellectual property rights regime does not yet appear to meet TRIPS standards and fails to fulfill long-standing commitments to the United States. Failure to provide adequate protection for copyright and patents has led to Argentina's placement on the Special 301 Priority Watch List through 2003. In 1997, the United States withdrew 50 percent of Argentina's benefits under GSP over this same issue, and benefits will not be restored unless the concerns of the United States are addressed adequately. In May 1999, the United States initiated a WTO case against Argentina because of its failure to protect patents and test data. The United States added additional claims to this case in May 2000, due to the fact that the TRIPS Agreement became fully applicable for Argentina in the year 2000. The United States engaged in a series of consultations with Argentina in Geneva throughout 2001, however, the problem remained unresolved. The establishment of the BCTI gave the two countries a vehicle to address various bilateral trade issues.

As a result of the April 24, 2002 meeting of the BCTI, the U.S. and Argentina finalized the elements of a joint notification to the World Trade Organization (WTO) regarding the dispute on intellectual property matters. In the joint notification, Argentina clarified how certain aspects of its intellectual property system, such as those related to its import restriction regime, operate so as to conform with the TRIPS Agreement. In addition,

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2 2003 estimates are annualized based on 11 months' data.

Argentina agreed to amend its patent law to provide protection for products obtained from a process patent and to ensure that preliminary injunctions are available in intellectual property court proceedings, among other amendments. Finally, on the remaining issues, including that of data protection, the United States retains its right to seek resolution under the WTO dispute settlement mechanism. Argentina and the United States notified a settlement of these issues to the WTO on May 31, 2002. Consultations continue on the unresolved issues.

#### **c. Brazil**

The United States exported goods valued at an estimated \$10.9 billion to Brazil in 2003. Brazil's market accounts for 21 percent of U.S. annual exports to Latin America and the Caribbean excluding Mexico, and 77 percent of U.S. goods exports to Mercosur.<sup>2</sup>

*Intellectual Property Rights (IPR):* In 1997, Brazil enacted laws providing protection for computer software, copyrights, patents, and trademarks. The United States has identified certain problems with parts of this legislation, including a local working requirement and extensive exceptions in the patent law to a prohibition on parallel imports. U.S. industry has also voiced concerns about the high levels of piracy and counterfeiting in Brazil, the lack of effective enforcement of copyright (especially for sound recordings and video cassettes), and trademark legislation. In 2001, the International Intellectual Property Association (IIPA) filed a petition to remove Brazil's GSP benefits due to its failure to offer adequate protection to copyrighted materials, in particular sound recordings. There was a GSP hearing regarding Brazil's failure to protect copyrighted material in 2003. The GSP Committee will make recommendations regarding the petition to the USTR.

#### **d. Paraguay**

With a population of just over five million, Paraguay is one of the smaller markets in Latin

America. In 2003, the United States exported an estimated \$499 million worth of goods to Paraguay.<sup>3</sup> However, Paraguay is a major exporter of, and a transshipment point for, pirated and counterfeit products in the region, particularly to Brazil.

*Intellectual Property Rights (IPR):* In January 1998, the USTR identified Paraguay as a "Priority Foreign Country" (PFC) under the "Special 301" provisions of the Trade Act of 1974. As required under the Trade Act of 1974 as amended, the USTR initiated an investigation of Paraguay in February 1998.

During negotiations under Special 301, the Government of Paraguay indicated that it had undertaken a number of actions to improve IPR protection. In November 1998, in light of commitments made by the Government of Paraguay in a bilateral Memorandum of Understanding (MOU), USTR concluded its Special 301 investigation. In December 2003, the two governments revised and extended the term of the MOU.

#### *U.S.-Paraguay Bilateral Council on Trade and Investments*

On September 26, 2003, following his meeting with President Bush, Paraguayan President Duarte witnessed the signing of the Agreement on the U.S.-Paraguay Bilateral Council on Trade and Investments. AUSTR Vargo signed for the United States and Foreign Minister Rachid signed for Paraguay.

#### **e. Uruguay**

With the smallest population of Mercosur (just over three million people), Uruguay nonetheless imported an estimated \$336 million of goods from the United States in 2003. The United States has been meeting with Uruguay under the auspices of the U.S.-Uruguay Joint Commission on Trade and Investment (JCTI) since AUSTR Regina Vargo and Uruguayan Vice Minister Valles signed the agreement in April 2002. The

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<sup>3</sup> 2003 estimates are annualized based on 11 months' data.

JCTI has been a forum to discuss deepening trade relations as well as to work toward resolution of bilateral irritants.

The last meeting of the JCTI in 2003 was held on the occasion of a visit to Uruguay by DUSTR Allgeier in October. At that meeting DUSTR Allgeier discussed the possibility of negotiating a BIT as well as other sectoral bilateral agreements. During the November 2003 Miami FTAA Ministerial USTR Zoellick and Uruguayan Foreign Minister Opertti announced the decision to initiate negotiations of a BIT in early 2004.

#### **f. Chile**

U.S.-Chile bilateral trade relations in 2003 were dominated by the negotiation of an FTA as discussed at the beginning of this Chapter.

### **4. The Andean Community**

#### **a. The Andean Region**

The U.S. goods trade deficit with the Andean region (comprising Bolivia, Colombia, Ecuador, Peru and Venezuela) increased from \$13.6 billion in 2002 to an estimated \$18.5 billion in 2003 (2003 based on annualized 11 month data). U.S. goods exports to the region were an estimated \$9.6 billion in 2003, a decline of 15.8 percent from 2002.

#### *i. U.S.-Andean Free Trade Agreement Negotiations*

On November 18, 2003, U.S. Trade Representative Robert B. Zoellick formally notified Congress, on behalf of President Bush, of the Administration's intent to initiate negotiations for a free trade agreement with Colombia, Peru, Ecuador, and Bolivia. The Administration plans to structure the negotiations to begin in the second quarter of 2004, initially with Colombia and Peru. The United States is prepared to work intensively with Ecuador and Bolivia in order to include them in the agreement as well. As a destination for U.S. exports, the Andeans collectively represented a market of \$7 billion in 2002, while the U.S. imported \$9.8 billion from the region. The stock of U.S. foreign direct investment in the four countries was \$4.5 billion in 2002.

#### *ii. Andean Trade Preference Act*

The U.S. trade relationship with the Andean countries is currently conducted 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 for the illegal drug trade, promote domestic development, and thereby solidify democratic institutions. The ATPDEA was signed into law on August 6, 2002 as part of the Trade Act of 2002. The program provides enhanced trade benefits for the four ATPA beneficiary countries.

The original ATPA expired in 2001. The ATPDEA retroactively restored the benefits of the ATPA, providing for retroactive reimbursement of duties paid during the lapse. In addition, the original ATPA included prohibitions on the extension of duty-free treatment in several sectors: for textiles, apparel, footwear, leather, tuna in airtight containers, and certain other items. The ATPDEA expanded the list of items eligible for duty-free treatment by about 700 products.

Apparel imports under ATPA accounted for nearly 13 percent of U.S. imports under ATPA in January-August 2003 and for 67 percent of all apparel imports from the region during the 2003 period. New products benefitting from the program include: tuna in pouches, leather products, footwear, petroleum and petroleum products, and watches and watch parts.

#### *iii. ATPDEA Eligibility*

The ATPA established a number of criteria that countries must meet in order to be designated as eligible for the program, and the ATPDEA added further eligibility criteria and provided for an annual review of the countries' eligibility. The new criteria relate to issues such as intellectual property rights, worker rights, government procurement procedures, and cooperation on countering narcotics and combating terrorism.

USTR initiated the 2003 ATPA Annual Review in a Federal Register notice dated August 14, 2003, and announced a deadline of September 15, 2003 for the filing of petitions. USTR received petitions to review certain practices in certain beneficiary developing countries to determine whether such countries were in compliance with the ATPA eligibility criteria. In a Federal Register notice dated November 13, 2003 a list was published of the September 2003 petitions that were filed. Ecuador, Peru, and Colombia had petitions filed against them for reasons such as worker rights, contract nullification, intellectual property rights, expropriation, and tax disputes. In December 2003 USTR indicated that it would announce the results of the preliminary review of the petitions by March 31, 2004.

## **5. Central America and the Caribbean**

### **a. U.S.-Central America Free Trade Agreement (CAFTA) Negotiations**

On January 8, 2003, the United States Trade Representative and Ministers from Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua announced the launch of negotiations on an agreement to eliminate tariffs and other barriers to trade in goods, agriculture, services, and investment between the United States and those Central American nations. Negotiations on the U.S.-Central American Free Trade Agreement, or CAFTA, began in San José, Costa Rica, on January 27. Negotiators have met in a total of nine rounds, once in each Central American capital, as well as in Cincinnati, New Orleans, Houston, and finally in Washington, DC, where the United States, El Salvador, Guatemala, Honduras and Nicaragua completed work on the FTA in mid-December 2003. Negotiations with Costa Rica continued into January 2004.

The United States and Central America enjoy an increasingly productive trade partnership. U.S. exports to the region have grown 54 percent since 1996 and totaled an estimated \$9.8 billion in 2002. Imports totaled almost \$11.9 billion. Bilateral trade in 2003 is on target to reach \$25 billion.

USTR has continued to hold periodic trade and investment meetings with the Dominican Republic throughout 2003. On August 4, 2003, the President notified Congress of his intention to enter into negotiations for an FTA with the Dominican Republic. The intention of the Administration is to hold bilateral market access negotiations from January through March in order to integrate the Dominican Republic into the CAFTA agreement, which would be submitted to Congress as a single agreement among the United States and six partners. The CAFTA countries including the Dominican Republic have the potential to form the United States' second largest market in Latin America after Mexico.

### **b. Central America**

CACM: The United States is Central America's principal trading partner. The Central American Common Market (CACM) consists of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, and provides duty-free trade for most products traded among the five countries. Panama, which has observer status, and Belize participate in CACM summits but not in regional trade integration efforts. The Central American countries continued during 2003 to pursue a range of bilateral and regional trade agreements. Negotiations between Canada and El Salvador, Guatemala, Honduras and Nicaragua made substantial progress and they intend to conclude an agreement with Canada soon after the completion of CAFTA. Negotiations for a Panama-CACM free trade agreement have resulted in agreement on common disciplines; negotiations of related market access provisions continued throughout 2003.

All of the countries are active participants in the FTAA negotiations.

The President announced on November 18 his intention to enter into negotiations with Panama for a bilateral free trade agreement in the second quarter of 2004. Throughout 2003, the United States continued to meet with Panama under our

existing Trade and Investment Council (TIC) mechanism. In 2003, the countries continued to meet and maintain an ongoing work program that includes investment issues. These meetings have served to prepare the bilateral relationship for the launch of FTA negotiations by helping to resolve a range of outstanding bilateral issues.

In 2002, bilateral trade between the United States and Panama totaled \$1.7 billion, of which U.S. exports accounted for \$1.4 billion. January-October 2003 figures showed a remarkable 35 percent increase in U.S. exports to Panama over the same period in 2002, with projected 2003 exports totaling about \$2 billion. Panama receives about fifty percent of its imports from the United States. In addition, the U.S. holds approximately \$25 billion in foreign direct investment in Panama, with investments in sectors ranging from finance, to maritime, to energy.

Panama was active in the FTAA and worked closely with the United States. In 2003, Panama chaired the Negotiating Group on Investment.

### **c. Caribbean Basin Initiative**

The trade programs collectively known as the Caribbean Basin Initiative (CBI) remain a vital element in the United States' 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), and was substantially expanded in 2000 through the U.S.-Caribbean Basin Trade Partnership Act (CBTPA). The Trade Act of 2002 increased the type and quantity of textile and apparel articles eligible for the 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.

In 2003, the Administration continued to work with Congress, the private sector, CBI beneficiary

countries, and other interested parties to ensure a faithful and effective implementation of this important expansion of trade benefits. Beginning in January 2003, USTR negotiated a free trade agreement with several CBI beneficiaries, as called for in the legislation. Negotiation of the U.S.-Central America Free Trade Agreement (CAFTA) concluded in mid-December 2003 with El Salvador, Guatemala, Honduras, and Nicaragua, while talks continued with Costa Rica into January 2004. Market access negotiations between the United States and the Dominican Republic from January through March 2004 are intended to lead to that country's integration into CAFTA. The agreement will lock in and expand the countries' CBI benefits while simultaneously opening member countries' markets to U.S. products. In the second quarter of 2004, USTR will launch FTA negotiations with Panama.

Since its inception, the CBERA program has helped beneficiaries diversify their exports. On a region-wide basis, this export diversification has led to a more balanced production and export base and has resulted in a reduction in the region's vulnerability to fluctuations in markets for traditional products. Since 1983, the year prior to the implementation of the CBI, total CBI country non-petroleum exports to the United States have more than tripled. Light manufactures, principally printed circuit assemblies and apparel, but also medical instruments and chemicals, account for an increasing share of U.S. imports from the region and constitute the fastest growing sectors for new investment in CBERA countries and territories.

Apparel remains one of the fastest growing categories of imports from the CBI countries and territories—growing from just 5.5 percent of total U.S. imports from the region in 1984, to nearly 45 percent in 2002, valued at over US\$9.5 billion. (Apparel constituted almost 59 percent of all imports from the five Central American countries with which the United States negotiated the CAFTA agreement.) Apparel has ranked as the leading category of U.S. imports from the region since 1988. The CAFTA provisions for textiles and apparel were specifically crafted to

encourage integration of the North and Central American industries to prepare for an increasingly competitive global market.

CBI currently provides 24 beneficiary countries and territories with duty-free access to the U.S. market. They are: Antigua and Barbuda, Aruba, The Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago. When CAFTA enters into force, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua will graduate from the CBI program, although the FTA will lock in their market access at better than its current levels.

#### **d. The Caribbean**

*The Dominican Republic:* The Dominican Republic is the United States' largest single trading partner in the CBI region, with bilateral trade exceeding \$8.4 billion in 2002. Annualized projections from January through October 2003 figures show a projected 3.6 percent increase in bilateral trade versus 2002. Reflecting the importance of this trade relationship, the President announced on August 4, 2003, his intention to negotiate a free trade agreement with the Dominican Republic. The United States and the Dominican Republic had revitalized the Trade and Investment Council (TIC) mechanism and held productive meetings under the TIC during 2002, covering both bilateral issues and cooperation in the FTAA and WTO negotiations. The TIC continued to meet throughout 2003, which helped prepare both sides to begin FTA negotiations in January 2004.

The Dominican Republic continues to lead all countries in taking advantage of CBI, as they have done in virtually every year since the program became effective, accounting for 28 percent of U.S. imports under CBI provisions. The Dominican Republic does not belong to any regional trade association, but has negotiated

trade agreements with its partners in Central America and CARICOM. After the Dominican Republic and the United States conclude market access negotiations in March 2004, the Dominican Republic will be integrated into CAFTA along with its Central American partners.

The Dominican Republic's relatively open trade and investment regime, augmented by recent fiscal reforms, has made it one of the world's fastest growing economies over the last decade and an economic engine in the Caribbean Basin. It maintains strong trade relations within the Caribbean, including with its neighbor, Puerto Rico, and with Central America, thus serving as an economic bridge within the region. Adding the Dominican Republic as an FTA partner will build on the progress we have made through our bilateral TIC meetings over the last year, where the Dominican Republic has made important efforts to resolve bilateral trade and investment issues. Through this process, the Dominican Republic has become a reliable trade partner in the region and also has worked closely with us to advance common objectives in the World Trade Organization (WTO) and FTAA negotiations. The Dominican Republic chaired the Negotiating Group on Intellectual Property and served as vice-chair for the Negotiating Group on Market Access.

*CARICOM:* Members of the Caribbean Community and Common Market (CARICOM) are: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. In theory, CARICOM is a customs union rather than a common market. However, progress towards a customs union remains limited.

CARICOM countries are active in the FTAA negotiations, which provide opportunity for frequent bilateral dialogue between U.S. and Caribbean officials. CARICOM serves as chair for the FTAA Negotiating Group on Services and the Consultative Group on Small Economies and as vice-chair on the Negotiating Group on

Competition Policy. In addition, the United States Trade Representative met with CARICOM trade ministers in Jamaica in July, 2003, to discuss ways to further enhance our trade relations both bilaterally and in multilateral trade negotiations.

## **D. Western Europe**

### **Overview**

The U.S. economic relationship (measured as trade plus investment) with Western Europe is the largest and most complex in the world. Due to the size and nature of the transatlantic economic relationship, serious trade issues inevitably arise on occasion. Sometimes small in dollar terms, especially compared with the overall value of transatlantic commerce, these issues can take on significance for their precedential impact on U.S. trade policies.

The United States' trade relations with Western Europe are dominated by its relations with the European Union (EU). From its origins in the 1950s, the EU has grown from six to fifteen Member States, with Austria, Finland, and Sweden becoming the newest EU member states on January 1, 1995. These fifteen countries together comprise a market of some 370 million consumers with a total gross domestic product of more than \$8 trillion. U.S. goods exported to the EU totaled an estimated \$143.5 billion in 2002. On May 1, 2004, the EU will expand again, to incorporate ten new member states from Central and Eastern Europe (Poland, Hungary, Czech Republic, Slovakia, Slovenia, Estonia, Latvia and Lithuania), as well as Cyprus and Malta. The combined EU of 25 will represent a market of more than 450 million consumers.

The other major trade group within Western Europe is the European Free Trade Association (EFTA), which includes Switzerland, Norway, Iceland, and Liechtenstein (Austria, Finland, and Sweden had also been members prior to their accession to the EU in 1995). Formed in 1960, EFTA provides for the elimination of tariffs on manufactured goods and selected agricultural

products that originate in, and are traded among, the member countries. The EFTA countries are linked to the EU through a free trade agreement. Norway, Iceland, and Liechtenstein have further structured their economic relations with the EU through the Agreement on the European Economic Area (EEA), which permits the three countries to participate in the EU Single Market (Switzerland rejected the EEA in a referendum at the end of 1992). In practice, the EEA involves the adoption by non-EU signatories of approximately 70 percent of EU legislation.

### **2003 Activities**

#### **1. European Union**

In 2003, the EU began to prepare in earnest for the historic step of integrating eight Central and Eastern European countries into the Union. The planned May 1, 2004, accession of these countries, plus Cyprus and Malta, will bring the EU a considerable distance closer to a single market encompassing the entire European continent. The EU has also committed to enter into accession negotiations with Romania and Bulgaria (Turkey remains an accession candidate, with no EU commitment to commence formal negotiations). Important EU institutional questions associated with enlargement still need to be resolved as the enlargement process proceeds.

In 2003, USTR continued to devote considerable resources to addressing issues of trade concern with the EU and its individual Member States, as well as to promoting efforts to enhance the transatlantic economic relationship.

##### **a. Geographical Indications**

The EU's system for the protection of geographical indications, namely Council Regulations 1493/99 for wines and spirits and 2081/92 for other agricultural products, is not available to other WTO Members on a national treatment basis. In order to receive protection, all non-EU WTO members are required instead to establish a GI registration system that the EU considers to be equivalent to its own system or negotiate a specific bilateral agreement with the EU. Under

the terms of the WTO TRIPS Agreement as well as the GATT, the EU is obligated to make such special protection available to all WTO Members, without the requirement for concluding special agreements or establishing special systems. In addition, both EU regulations appear to deprive non-EU trademark owners of TRIPS-level ownership rights in the event of a conflict with later-in-time geographical indications. U.S. industry has been vocal in raising concerns about the impact of these EU regulations on U.S.-owned trademarks.

For these reasons, in 1999 the United States initiated formal WTO consultations with the EU on Regulation 2081/92. A number of subsequent bilateral discussions have taken place; however, to date the EU has not adequately addressed the United States' concerns. In August, 2003, after requests made by the United States and Australia, the WTO established a panel to hear the dispute. The panel is in the process of being composed.

#### **b. Agricultural Biotechnology**

The EU's five-year moratorium on the approval of new products of modern agricultural biotechnology continues to hinder U.S. exports of corn, and threatens exports of soya. Restarting the EU approvals process remains a high priority for the United States in order to restore these exports. Despite implementation of EU Directive 01/18 in October 2002 (which governs the approval of biotechnology products, including seeds and grains, for environmental release and commercialization), a number of EU Member States have continued to refuse lifting the approvals moratorium. In May 2003, the U.S. Government initiated a dispute settlement process in the WTO to underscore its concerns regarding the failure of the EU to have a functioning approval process.

Several Member States have insisted that new EU regulations governing traceability and labeling and biotechnology food and feed authorizations must first enter into force before they will consent to renewed approvals. The traceability/labeling and food/feed regulations are now scheduled to come into effect in April 2004. USTR is consulting with

other agencies and the private sector regarding the likely trade impact of these regulations.

#### **c. Transatlantic Economic Partnership/Positive Economic Agenda**

At the May 1998 U.S.-EU Summit in London, the President and EU Leaders announced the Transatlantic Economic Partnership (TEP) initiative, designed to deepen and systematize cooperation in the trade field. Under the TEP, the two sides identified a number of broad areas in which they committed to work together in order to increase trade, avoid disputes, address disagreements, remove barriers, and achieve mutual interests. These areas included: technical barriers to trade, agriculture, intellectual property, government procurement, services, electronic commerce, environment and labor.

Building upon work begun under the TEP, U.S. and EU Leaders at the May 2002 U.S.-EU Summit in Washington agreed on a list of priority subject areas in which the United States and the EU committed to initiate, or give new impetus to existing, cooperative efforts. Labeled as the "Positive Economic Agenda," both sides have indicated their interest in using this list as a first step in an open-ended process of enhancing transatlantic cooperation, both for its own sake and as a means to put headline-grabbing trade disputes in their proper context. The agenda initially covers activities with respect to financial markets, regulatory cooperation, electronic procurement and customs, regulation of organic foods, and sanitary and phytosanitary measures. Work on these issues continued through 2003, leading in particular to a number of projects launched under the TEP Guidelines for Regulatory Cooperation and Transparency and completion of a bilateral mutual recognition agreement (MRA) covering marine safety. (See section on Regulatory Cooperation below.) In addition, the two sides made substantial progress toward resuming U.S. exports to the EU of poultry meat, suspended since 1997 due to EU sanitary and phytosanitary concerns. (See section on Poultry Meat below.)



#### **d. Public Dialogues**

Important companions to the official exchanges between governments in the United States and the EU are the various private dialogues among European and American businesses, labor organizations, and consumer groups. The first of these to be established, the Transatlantic Business Dialogue (TABD), is a forum in which American and European business leaders can meet to discuss ways to reduce barriers to U.S.-European trade and investment. Other dialogues—such as the Transatlantic Consumer Dialogue (TACD)—stem from a similar premise, i.e., that corresponding organizations on both sides of the Atlantic should share views and, where possible, present joint recommendations to governments in both the United States and the EU on how to improve transatlantic relations and to elevate the debate among countries in multilateral fora. In 2003, the TABD pursued a process of reconfiguration aimed at more sharply focusing the issues it discusses with governments. The TACD continued to engage in dialogue with governments on a number of trade and economic questions.

#### **e. Regulatory Cooperation**

As traditional barriers affecting transatlantic trade and investment have declined in recent years, specific trade obstacles arising from unnecessary divergences in U.S. and EU regulations and the lack of transparency in the EU rulemaking and standardization processes have loomed relatively larger in importance. During 2003, the United States continued efforts to enhance U.S.-EU regulatory cooperation and reduce unnecessary technical barriers to transatlantic trade.

In April 2002, under the auspices of the Transatlantic Economic Partnership (TEP) initiative, the United States and the European Commission concluded “Guidelines for Regulatory Cooperation and Transparency.” The TEP Guidelines outline specific cooperative steps that U.S. and European regulators are encouraged to follow in bilateral dialogues, including early and regular consultations, extensive data and information exchanges, and sharing of contemplated regulatory approaches.

The Guidelines also stress improved transparency and public participation as necessary elements to promote more effective regulatory cooperation, better quality regulation, and to help minimize possible regulatory-based trade disputes. During 2003, the United States and European Commission advanced regulatory cooperation projects under the Guidelines in such areas as cosmetics, auto safety, food additives, nutritional labeling and metrology—including the conclusion of formal arrangements for extensive information exchanges on pharmaceuticals and auto safety.

In 2003, the United States and the EU finalized a new, precedent-setting mutual recognition agreement (MRA) on marine equipment, under which designated U.S. equipment which meets all U.S. requirements can be marketed in the EU without additional testing. This agreement is to enter into force during 2004. The United States also continues to pursue implementation of the 1998 U.S.-EU Mutual Recognition Agreement (MRA), which includes sectoral annexes on telecommunications equipment; electromagnetic compatibility (EMC) for electrical products; electrical safety for electrical and electronic products; good manufacturing practices (GMP) for pharmaceutical products; product evaluation for certain medical devices; and safety of recreational craft. The annexes on telecommunications equipment, EMC, and recreational craft are fully operational. We are working to bring the medical device annex into operation during 2004.

#### **f. Foreign Sales Corporation Tax Rules**

Potentially the most damaging of the trade disputes currently involving the United States and the EU is the EU’s complaint to the WTO that the U.S. Foreign Sales Corporation (FSC) tax rules are an illegal export subsidy. The United States lost this case on February 24, 2000, repealed the FSC law, and enacted new legislation (the Extraterritorial Income Exclusion Act—ETI) in November 2000 to correct the shortcomings identified in the dispute. On January 14, 2002, the WTO review of the new legislation was completed, resulting in a finding that the ETI act

is also WTO-inconsistent. Subsequently, a WTO arbitration process determined that the EU was within its rights to retaliate against up to \$4.043 billion of U.S. products if the United States fails to bring its law into conformity with the WTO ruling. In 2003, legislation was introduced in both houses of Congress that would, *inter alia*, repeal the November 2000 law. In December 2003 the European Council approved a regulation providing for EU retaliation against U.S. exports beginning March 1, 2004 if the United States fails to comply with the WTO ruling. The Administration will be working with the Congress in 2004 as Congress considers a legislative solution that would bring the United States into compliance with its WTO obligations in this area. (For more information on this dispute, see Chapter II.)

#### **g. Chemicals**

The EU is developing a comprehensive new regulatory regime for chemicals which will impose extensive new testing and reporting requirements on over 30,000 chemicals, and extend data requirements to downstream users of chemicals. The proposal could affect the majority of U.S. goods exported to the EU (\$143 billion in 2002).

During 2003, while supportive of the EU's objectives to protect human health and the environment, the United States stressed that this draft regulation appears to adopt a particularly costly, burdensome, and complex approach, which could prove unworkable in its implementation, adversely impact innovation and disrupt global trade. The proposal also departs from ongoing international regulatory cooperation efforts. We will continue to monitor closely revisions to this draft regulation, and remain engaged constructively with the European Union to ensure that U.S. interests are protected.

#### **h. 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 1996 the United States challenged the EU ban on imports of U.S. beef in

the WTO. In June 1997, a WTO panel found in favor of the United States on the basis that the EU's ban was inconsistent with the EU's obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) because the EU failed to provide an adequate scientific risk assessment. In January 1998, the WTO Appellate Body upheld the panel's finding that, absent a risk assessment, the EU's ban on imported meat from animals treated with certain growth-promoting hormones is inconsistent with obligations under the WTO SPS Agreement. In 1999, the WTO authorized U.S. trade retaliation because the EU failed to comply with the WTO rulings by the May 13, 1999 deadline. Subsequent to receiving WTO authorization, in July 1999 the United States applied 100 percent duties on \$116.8 million of U.S. imports from the EU.

In October 2003, the EU amended its original hormone directive based on what it claimed were new studies that support the EU claim that growth hormones in beef production are unsafe. Later, during a WTO Dispute Settlement Body meeting, the EU announced that it was now in compliance with the earlier WTO ruling based on its new directive. The United States, supported by other member states, rejected the EU's assertion and maintains its retaliation on EU products as a result of the earlier WTO ruling.

The United States remains open to exploring possible ways to resolve this dispute.

#### **i. Poultry Meat**

The EU continues to maintain its 1997 ban on imports of U.S. poultry because many U.S. producers use washes of low-concentration chlorine as an antimicrobial treatment (AMT) to reduce the level of pathogens in poultry meat production, a practice not permitted by the EU's sanitary regime. During 2003, the United States gained EU approval for the use of alternative AMTs and approval of its residue program and water standards. The U.S. continues to provide the EU with information regarding U.S. food safety rules for poultry to address outstanding EU

concerns with a view to reestablishing poultry exports to the EU. The issue remains a key one in the Positive Economic Agenda. (See section on Positive Economic Agenda above).

#### **j. Wine**

U.S.-EU negotiations on a bilateral wine agreement were launched in 1999 and accelerated in 2003. Key U.S. industry concerns are EU recognition and acceptance of U.S. wine making practices, removal of EU import certification requirements and reductions in the EU's export subsidies and subsidies to its grape growers and wine producers. A major EU concern is restriction of the use of semi-generic wine names exclusively to wines of EU origin. Other U.S. issues include tariffs and trade restrictive requirements under the April 29, 2002 EU wine labeling regulation (Commission Regulation No. 753/2002). The United States will continue to press the EU to provide U.S. wine makers equitable access to the EU market.

#### **k. Margin of Preference**

In mid-2003, the European Commission (EC) notified the United States of its intentions to withdraw from market access concessions on rice made during the Uruguay Round. These concessions, known as the Margin of Preference (MOP), were meant to replace the EU's pre-1995 variable levy system for rice, so as to ensure maintenance of market access opportunities for rice imports into the EU. The EC proposes replacing the MOP with global Tariff-Rate Quotas (TRQs) for rice imports.

The United States is one of the leading suppliers of rice to the EU market. Since the MOP scheme went into effect, EU duties on rice have decreased by half and will decline significantly more under the MOP, as a result of recent EU reforms to its Common Agriculture Policy (CAP). Consequently, although under GATT Article XXVIII the EU has the right to modify its rice regime, the United States will continue to oppose any action that would impair market access for U.S. rice.

In 2002, the EC attempted to negotiate similar changes to MOP concessions for grains. In the end, the United States and the EC reached an agreement that maintained these concessions for almost all wheat and feed grain imports.

### **2. EFTA**

Although USTR activity in 2003 with the EFTA countries as a group was modest, the United States made substantial progress on negotiation of a mutual recognition agreement (MRA) with the EFTA EEA countries (i.e., Norway, Iceland, and Liechtenstein) which will cover telecommunications equipment, electro-magnetic compatibility (EMC), and recreational craft. We aim to conclude this MRA in early 2004. We are also looking to increase U.S. engagement with the EFTA countries and explore ways to foster closer U.S.-EFTA trade and economic relations.

### **3. Turkey**

**General:** As a result of its 1996 customs union with the European Union, Turkey applies the EU's common external customs tariff for third country (including U.S.) imports and imposes no duty on non-agricultural imports from EU and EFTA countries. Turkey's harmonization of its trade and customs regulations with those of the EU, coupled with a decline in most of its MFN tariff rates, benefits third country exporters as well. Nevertheless, Turkey continues to maintain high tariff rates on many agricultural and food products to protect domestic producers. The Turkish Government also levies high duties, as well as excise taxes and other domestic charges, on imported alcoholic beverages that increase wholesale prices by more than 200 percent. Turkey does not permit any meat imports.

**Investment:** While Turkey's legal regime for foreign investment is liberal, private sector investment is often hindered, regardless of nationality, by: excessive bureaucracy; political and macroeconomic uncertainty; weaknesses in the judicial system; high tax rates; a weak framework for corporate governance; and frequent, sometimes unclear changes in the legal and regulatory environment.

The Turkish government is considering legal and other changes to reduce red tape and dismantle other barriers to investment.

**Intellectual Property:** While maintaining that it is in full compliance with its obligations under the WTO TRIPS agreement, Turkey provides neither patent protection nor adequate data exclusivity for pharmaceutical products, both of which are required under TRIPS. Turkey has passed a patent law, but it will only protect drugs coming on the market in another 3-4 years. Local producers still rely on data submitted by drug inventors in registering their generic copies. The U.S. Government continues to urge Turkey to adopt data exclusivity retroactive to January 2000, when Turkey's TRIPS obligations came into effect.

**Qualifying Industrial Zones (QIZs):** Legislation introduced in both the Senate and the House of Representatives to make Turkey eligible for the Qualifying Industrial Zone (QIZ) program was not enacted by Congress prior to adjournment. The Administration had submitted draft legislation to the Congress in 2002 to amend current QIZ legislation to permit Turkish participation in the program.

## **E. Central, Eastern and Southeast Europe**

### **Overview**

The United States has developed strong trade and investment links and actively supported political and economic reforms in the countries of Central and Eastern Europe (Poland, Hungary, Slovenia, the Czech Republic, Slovakia, Estonia, Latvia and Lithuania) and Southeast Europe (Romania, Bulgaria, Croatia, Albania, Bosnia-Herzegovina, the Former Yugoslav Republic of Macedonia, and Serbia and Montenegro). On April 4, 2003, the Former Yugoslav Republic of Macedonia joined most of the countries in this region in becoming a formal member of the WTO. Other WTO members include: Poland, Hungary, the Czech Republic, Slovakia, Romania, Albania, Slovenia, Croatia, Latvia, Lithuania, and Estonia.

During 2003, the United States also restored a trade agreement to extend Normal Trade Relations (formerly referred to as most-favored nation or MFN) to Serbia and Montenegro and maintained Generalized System of Preferences (GSP) benefits to eligible countries in the region.

With a strong trade framework in place, USTR and its interagency colleagues worked during 2003 to ensure that Central and Eastern Europe and Southeast European countries satisfy their bilateral and multilateral trade obligations and comply with U.S. trade laws and regulations, such as those governing eligibility for participation in the GSP program.

### **2003 Activities**

#### **1. EU Accession**

A key emerging area of activity in 2003 was working with the countries slated to enter the European Union in May 2004 (Estonia, Latvia, Lithuania, Poland, Slovakia, Czech Republic, Hungary and Slovenia, as well as Cyprus and Malta) to ensure that the accession process does not adversely affect U.S. commercial interests in the region. USTR and other U.S. agencies engaged these countries on a wide range of trade policy issues related to EU accession, including: their adoption of the EU's standards, regulations and conformity assessment procedures, including sanitary and phytosanitary requirements, testing, certification, and labeling requirements; and their eventual entry into multilateral and bilateral agreements to which the European Union and/or individual EU member states are parties.

USTR and other U.S. agencies also concluded discussions with these countries and the European Commission to amend several bilateral investment treaties (BITs) to ensure that countries entering the European Union retained guarantees related to compensation for expropriation, transfers in convertible currency, and the use of appropriate dispute settlement procedures. The United States also is working with several accession countries to preserve protections and rights negotiated as part of our Bilateral Trade Agreements with them.

## 2. Tariff Differentials

The United States has been strongly supportive of the integration of the Central and East European countries into the European Union. Ten Central European countries (Poland, Hungary, Slovenia, the Czech Republic, Slovakia, Romania, Bulgaria, Estonia, Latvia, and Lithuania) have concluded Europe Agreements with the EU that set the stage for their EU membership. 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. Later agricultural agreements (the “Zero-Zero Agreements”) further reduced tariffs on the majority of agriculture goods. U.S. goods continue to face generally higher MFN rates in these countries, creating a tariff differential vis a vis EU goods.

Upon their entry into the European Union, these countries will adopt the EU’s common external tariff rate (CXT), which will reduce some of these differentials, but raise tariffs in other areas. The United States has been consulting with several key countries to minimize the tariff differential problem in the interim before accession. In September 2002, Poland lowered tariffs on key U.S. exports to Poland. In April 2002, Hungary implemented a similar agreement. From 2001 to 2003, the Czech Republic and Slovakia agreed to waive tariffs on large civil aircraft and key parts. As a result, the United States continued its support for these countries’ participation in the Generalized System of Preferences program until their accession to the EU in May 2004. In October 2003, USTR and other U.S. agencies launched similar negotiations with Bulgaria and continued tariff reduction talks with Romania, which were launched in October 2002.

## 3. Generalized System of Preferences

Most of the countries in this region participate in the Generalized System of Preferences program (except Serbia and Montenegro and Slovenia; the latter graduated in 2003 because of its increased income levels). As required by the GSP statute,

countries entering the EU in 2004 will no longer receive GSP benefits after accession to the European Union.

The GSP statute provides that a country 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 U.S. Government has consulted with several countries concerning those countries’ granting, pursuant to their Europe Agreements with the EU, of preferential tariffs to EU exporters vis-a-vis U.S. exporters.

## 4. Intellectual Property Rights

The United States has concluded bilateral agreements covering intellectual property rights (IPR) protection with many of the countries in Central and Eastern and Southeast Europe. USTR’s focus in the region is to closely monitor WTO Members’ compliance with the TRIPS Agreement, improve enforcement of IPR legislation, and counter trends such as copyright and trademark piracy. The U.S. Government has provided technical assistance to the countries in the region to help improve the level of IPR protection.

### a. Poland—Piracy

In 2003, USTR placed Poland on the Special 301 Priority Watch List because of strong concerns about an open air market inside the Government-owned Warsaw Stadium, which is awash in pirated optical media products and counterfeit goods. In addition, optical disc piracy is on the rise. There are concerns that pirated products may be produced in Poland itself as well as entering via its porous borders. Finally, despite a new pharmaceutical law that came into effect in October 2002, there are still significant shortcomings with the protection of confidential test data submitted for marketing approval.

### b. Croatia and Romania: Data Exclusivity

Protecting the confidential data submitted by pharmaceutical firms to health authorities in order to obtain marketing approval remained a top USTR priority in 2003. On January 1, 2003,

Hungary put into effect a ministerial decree providing for data exclusivity protection. The decree, however, remains problematic because it links protection to the existence of a patent and provides an inappropriate starting point for the period of protection. During 2003, USTR and other U.S. agencies pressed Croatia to provide adequate protections for confidential test data, ratify a 1998 Memorandum of Understanding Concerning Intellectual Property Rights, and provide sufficient enforcement of its IPR laws, especially those regarding copyrights and patents.

#### **c. Latvia, Lithuania, Romania: Copyright Piracy**

USTR retained Latvia, Lithuania, and Romania on the Special 301 Watch List in 2003. Latvia has improved its intellectual property rights regime to meet its TRIPs obligations, but important enforcement concerns remain. Large volumes of pirated products, including pirate optical media products are transshipped through Latvia from Russia and Ukraine. Lithuania faces similar IPR enforcement challenges and appears to remain a major transshipment country, as well. In 2003, the U.S. government urged the Romanian Government to strengthen its efforts against piracy by encouraging more anti-piracy raids with clear basis for civil ex parte searches, more piracy cases launched by prosecutors, and increased border enforcement.

### **5. Bilateral Trade Agreements and Bilateral Investment Treaties**

The United States has some form of bilateral trade agreement with all of the Central European countries. In addition to these general trade agreements, the United States has concluded a variety of trade agreements concerning specific product areas with various Central European countries, such as those regarding textiles with Romania and Macedonia, customs valuation with Romania, and poultry with Poland.

The United States has Bilateral Investment Treaties (BITs) in force with Albania, Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Poland, Romania, Slovakia, and Croatia.

## **F. Russia and the Newly Independent States**

### **Overview**

Over the past decade, the United States has been actively supporting political and economic reforms in the Newly Independent States (NIS) (Russia, Ukraine, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan). The U.S. Government has been striving to construct a framework for the development of strong trade and investment links between the United States and this region. This approach has been pressed on both bilateral and multilateral fronts. Bilaterally, the United States has negotiated trade agreements to extend Normal Trade Relations (formerly referred to as “most-favored nation” or “MFN”) tariff treatment to these countries and to enhance intellectual property rights (IPR) protection. The United States also has extended Generalized System of Preferences (GSP) benefits to eligible developing countries and has negotiated bilateral investment treaties (BITs) to guarantee compensation for expropriation, transfers in convertible currency, and the use of appropriate dispute settlement procedures. Multilaterally, the United States has encouraged accession to the WTO as an important method of supporting economic reform. Now that much of this framework is in place, USTR and its interagency colleagues are working to ensure that the NIS satisfy their bilateral and multilateral trade obligations, as well as comply with U.S. trade laws and regulations.

### **2003 Activities**

#### **1. Normal Trade Relations Status**

Russia, Ukraine, and seven of the other NIS republics within the region 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. Under the Jackson-Vanik amendment, the President is required to deny NTR tariff treatment to any non-market economy that was not eligible for such treatment in 1974 and that the President

determines or seriously restricts or burdens its citizens' right to emigrate. This provision is subject to waiver, if the President determines that such a waiver will substantially promote the legislation's objectives. Alternatively, the President can determine that an affected country complies fully with the legislation's emigration requirements and report on this status semi-annually. Affected countries 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, Ukraine and all of the other NIS republics, with the exception of Belarus and Turkmenistan, are in full compliance with Title IV's emigration requirements. Belarus and Turkmenistan receive NTR tariff treatment under an annual waiver, as Congress must enact a law to terminate application of Title IV to a country. Turkmenistan became subject to an annual waiver in 2003, following the reimposition of an exit visa requirement.

In 2000, pursuant to specific legislation, the President terminated application of Title IV to Kyrgyzstan, Albania and Georgia. These countries now receive full NTR treatment. The Administration is currently consulting with the Congress and interested stakeholders with regard to removing Russia and other NIS republics from the coverage of Title IV provisions.

If a country is still subject to Jackson-Vanik at the time of its accession to the WTO, the United States has invoked the "non-application" provisions of the WTO. In such cases, the United States and the other country in effect have no "WTO relations." This situation, among other things, prevents the United States from bringing a WTO dispute based on a country's violation of the WTO or of commitments the country undertook as part of its WTO accession package. (See Chapter II for further information.)

## 2. Intellectual Property Rights

Since the United States has concluded bilateral agreements covering IPR protection throughout

the NIS, USTR concentrates principally on ensuring compliance by these countries with their IPR obligations. In 2000, the transitional period granted developing countries and formerly centrally planned economies for compliance with the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) expired. Accordingly, USTR has conducted a close examination of compliance of WTO Members in the region with the TRIPS Agreement. The U.S. Government has cooperated with and provided technical assistance to the countries in the region to help improve the level of IPR protection. Much of USTR's focus in the region is on improving enforcement of existing IPR legislation. Copyright and trademark piracy has been a widespread and serious problem throughout much of the NIS. 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.

Two IPR issues in the region merit special mention:

### a. The Russian Federation—Widespread Optical Media Piracy

Piracy of U.S. films, videos, sound recordings, and computer software is a growing problem in Russia. In April 2003, Russia was again placed on the Special 301 "Priority Watch List" because of deficiencies in both the protection and enforcement of IPR. In 2003, USTR conducted hearings on a review of country eligibility for GSP including a review of Russia's continued eligibility to receive GSP benefits due to deficiencies in Russia's IPR regime resulting from a petition filed by the U.S. copyright industry. While Russia has revised several IPR laws, including those on the protection of trademarks, patents, integrated circuits and plant varieties, amendments to other IPR laws, including the copyright law, remain under consideration in the Duma. Notably, enforcement of IPR remains a pervasive problem. The prosecution and adjudication of intellectual property cases remains weak and sporadic; there is a lack of transparency and a failure to impose

deterrent penalties. Russia's customs administration also needs significant strengthening. In October 2002, as a result of U.S. efforts to work with the Government of Russia to address the growing optical media piracy problem, the Government of Russia established an inter-ministerial task force, headed by Russian Prime Minister Kasyanov, to combat optical media piracy. Since the creation of the inter-ministerial commission, the Russian government has taken some steps to remedy the optical media piracy problem, including raids on several of the illegal plants in operation, but piracy remains rampant and the number of plants illegally producing optical media continues to grow. Immediate adoption of effective enforcement measures to address optical media piracy are necessary, including vigorous implementation of a concrete plan to close illegal optical media plants and the adoption of an optical media law.

#### **b. Ukraine—Optical Media Piracy**

In 1999, U.S. industry estimated that Ukrainian pirates exported over 35 million pirated compact discs (CDs) to Europe and elsewhere, which represented over \$200 million in lost revenues. In June 2000, Ukrainian President Kuchma committed to a plan of action to stop the unauthorized production of CDs and to enact legislation to outlaw such piracy by November 1, 2000. However, due to Ukraine's failure to pass an adequate optical disc licensing law, USTR designated Ukraine a Priority Foreign Country in March 2000 and initiated a Special 301 investigation. In August 2001, USTR withdrew GSP beneficiary status from Ukraine. On December 11, 2001, USTR announced that the U.S. Government would impose 100 percent duties on a list of 23 Ukrainian products with an annual trade value of approximately \$75 million contingent upon the outcome of a vote on an optical media licensing law in the Ukrainian Parliament scheduled for December 13, 2001. When Ukraine failed to adopt the optical media licensing law, USTR announced on December 20, 2001 that the sanctions would take effect January 23, 2002. Ukraine has subsequently adopted an optical media licensing law, but due

to flaws in the legislation, the sanctions currently remain in effect pending amendment to the optical media licensing law to make it effective and further enforcement efforts on the part of the Ukrainian Government.

### **3. Generalized System of Preferences**

Most of the NIS (Armenia, Georgia, Moldova, Kazakhstan, Kyrgyzstan, Russia and Uzbekistan) participate in the GSP program. Azerbaijan, Tajikistan and Turkmenistan have not applied to be designated as eligible to receive the benefits of the GSP program. Belarus's GSP benefits were suspended in 2000 due to worker rights violations.

During annual GSP product reviews, the U.S. Government has reviewed several petitions requesting changes in the products imported from the NIS which are eligible for GSP benefits. In 2003, the U.S. Government reviewed the continued GSP eligibility of wrought titanium, which has been included in the GSP program since 1997. This review remains ongoing (68 FR 40012).

USTR has also conducted annual reviews of country practices, in response to petitions from the U.S. copyright industry, to determine several countries' eligibility to receive GSP benefits. In late 2000, based on significant improvement in Moldova's IPR regime, the U.S. copyright industry withdrew its GSP petition with respect to Moldova. In August 2001, USTR withdrew GSP beneficiary status from Ukraine (see subsection on Ukraine—Optical Media Piracy above). In 2003, due to improvements made to Armenia's IPR regime, the U.S. Government terminated review of the industry's petition with respect to Armenia. The reviews of Kazakhstan, Russia and Uzbekistan remain ongoing (see subsection on the Russian Federation—Widespread Optical Media Piracy above).

### **4. WTO Accession**

Prior to the end of 2003, four NIS countries (Kyrgyzstan, Georgia, Moldova and Armenia) had become members of the WTO. WTO accession working parties have been established for an



additional seven NIS countries (the Russian Federation, Ukraine, Azerbaijan, Belarus, Kazakhstan, Tajikistan and Uzbekistan). Turkmenistan has not yet applied for observer status or membership in the WTO.

The United States supports accession to the WTO on commercial terms and on the basis of a new Member's implementation of WTO provisions immediately upon accession. The United States has provided technical assistance, in the form of short- and long-term advisors, to many of the countries in the region in support of the WTO accession process. (See Chapter II for further information on accessions.)

Russia's WTO accession was particularly active in 2003. Russia indicated an interest in accelerating the negotiations and has taken steps to put in place new and amended laws and regulations to bring it into conformity with WTO provisions. Since Russia applied for membership, the United States has strongly supported Russia's efforts to join the GATT 1947 and then the WTO, through active participation in the WTO Working Party established to conduct the negotiations and through technical assistance on how to move Russia's trade regime into conformity with WTO rules. In a series of Working Party meetings through December 2003, Russia continued to describe its trade regime, with WTO delegations noting specific aspects of the trade regime that require further legislative action to become compatible with the WTO. The United States and Russia also continued bilateral discussions on Russia's offers on goods and services market access throughout 2003.

WTO-based reforms to Russia's trade regime will strengthen its ongoing efforts for broader-based market-oriented economic reform and can help Russia integrate more smoothly into the global economy. Adopting WTO provisions will give Russia a world-class framework for IPR protection, customs duties and procedures, and application of other requirements to imports that will encourage increased investment and

economic growth. Completion of the accession negotiations will depend on how rapidly Russia implements WTO rules and moves to conclude negotiations on goods and services with current WTO members.

## **5. Bilateral Trade Agreements and Bilateral Investment Treaties**

The United States has some form of bilateral trade agreement with all of the NIS countries. In addition to these general trade agreements, the United States has concluded a variety of trade agreements concerning specific product areas with various NIS countries, such as those regarding firearms and poultry with Russia.

The United States currently has BITs in force with seven NIS countries (Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, and Ukraine) and has signed BITs with three others (Russia, Belarus, and Uzbekistan) for which the formal process of ratification has not been completed.

## **6. Country Specific Issues**

The United States continued to encounter a number of country specific trade issues in the region, which were not described above. The major items are discussed below.

### **a. Russia—Market Access for Poultry, Pork and Beef**

The United States was actively engaged with the Russian government throughout 2003 to ensure that U.S. producers of poultry, pork and beef continue to maintain access to the Russian market. Following intense discussions, in September 2003 the United States signed an agreement in principle with the Russian government that establishes market access parameters for U.S. exports of poultry, pork and beef. This agreement will be finalized through an exchange of letters with the Russian Government. Technical discussions also continue to resolve issues concerning poultry plant certification.

### **b. Russia—Product Standards, Testing, Labeling and Certification**

U.S. companies still cite product certification requirements as a principal obstacle to U.S. trade and investment in Russia. In the context of Russia's WTO accession negotiations, we continue to urge Russia to bring its product regulations and certification requirements into compliance with international practice. The Russian government is now attempting 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 in Russia in order to better align with WTO rules.

There has been some movement to eliminate duplication among regulatory agencies and to clarify categories of products subject to certification. However, businesses are still experiencing difficulties in getting product approvals in key sectors. Certification is a particularly costly and prolonged procedure in the case of pharmaceuticals, alcoholic beverages, and telecommunications equipment. In many sectors, type certification or self-certification by manufacturers is currently not possible. Veterinary certification is often arbitrary and needs to be more transparent and based on science. Russian phytosanitary import requirements for certain planting seeds (notably corn, soybeans and sunflowers) appear to lack scientific basis and have blocked imports from the United States. Discussions to ease or eliminate burdensome Russian requirements are ongoing.

### **c. Russia—Aircraft Market Access**

The United States and Russia concluded a joint Memorandum of Understanding (MOU) in 1996 which was designed to address U.S. concerns about access to the Russian civil aircraft market and the application of international trade rules to the Russian aircraft sector. Under the MOU, the Russian Federation confirmed that it intends to become a signatory to the WTO Agreement on Trade in Civil Aircraft at some point in the future. The MOU also commits the Russian Federation to provide fair and reasonable access for foreign

aircraft to its market. Russia agreed to take specific steps, such as the granting of tariff waivers and the reduction of tariffs, to enable its airlines to meet their needs for U.S. and other non-Russian aircraft on a non-discriminatory basis. New tariff waivers have not been provided in recent years to keep up with demand for foreign aircraft, adversely affecting market access to Russia.

## **G. Mediterranean/Middle East**

### **Overview**

U.S. trade relations with the countries of Northern Africa and the Middle East have considerable potential value in terms of both U.S. commercial and foreign policy interests. The events of September 11, 2001 highlighted the importance of supporting peace and stability in the region by fostering economic development. The U.S.-Jordan Free Trade Agreement (FTA), the U.S.-Israel Free Trade Agreement, the U.S.-Morocco Free Trade Agreement, and the U.S. commitment to negotiate a Free Trade Agreement with Bahrain, together with the Trade and Investment Framework Agreements (TIFAs) established with several countries in the region, provide the context for our bilateral trade policy discussions with these countries, which are aimed at increasing U.S. exports to the region and assisting in the development of intra-regional trade.

### **2003 Activities**

#### **1. Morocco Free Trade Agreement**

The FTA with Morocco, which is discussed earlier in this chapter in the Free Trade Agreements (section A), will support the significant economic and political reforms underway in Morocco, and create improved commercial and market opportunities for U.S. exports.

#### **2. Egypt**

In 2003 the United States and Egypt continued efforts to expand bilateral trade and investment ties and to strengthen Egypt's economic reform

program. In recognition of Egypt's 2002 passage of a comprehensive new law on intellectual property rights (IPR), an effort in which the United States provided extensive technical assistance, Egypt was moved from the Priority Watch List to the Watch List in the 2003 Special 301 Review. Four video conferences were held by the working groups formed in 2002 under the U.S.-Egypt Trade and Investment Framework Agreement (TIFA) to facilitate progress in the areas of Customs Administration and Reform and Sanitary and Phytosanitary Issues Related to Agricultural Trade, achieving modest movement in addressing barriers to some U.S. agricultural exports. The U.S. and Egypt also sought to expand cooperation in the multilateral sphere on issues related to the Doha Development Agenda. Resolution of problems affecting U.S. firms and investors in Egypt continued to be a key focus of U.S. efforts in the TIFA process in such areas as corporate taxation, barriers to U.S. apparel exports, and IPR enforcement. To assure fair access for U.S. textile and apparel producers to Egypt's market, the United States in December initiated a request for WTO consultations with Egypt on Egyptian apparel tariffs which the United States views as far in excess of Egypt's WTO tariff bindings. At year's end Egypt's IPR enforcement is a point of renewed concern, as the Egyptian Government departed from its recent positive IPR efforts by approving unauthorized copies of U.S. pharmaceuticals based on confidential test data provided by U.S. firms, contrary to Egypt's WTO commitments.

### 3. Israel

U.S. negotiations with Israel on a new bilateral agreement on trade in agricultural products is discussed earlier in this chapter in the Free Trade Agreements section.

### 4. Jordan

#### Qualifying Industrial Zones

Qualifying Industrial Zones (QIZs) continue to be a bright spot in Jordanian economic perform-

ance. Eleven Qualifying Industrial Zones (QIZ) have been established in Jordan since 1998. They played an important role in helping to boost Jordan's exports to the United States from \$16 million in 1998 to \$412 million in 2002. Jordan estimates that QIZs have created up to 30,000 jobs. Peak QIZ employment is forecast at 40,000 to 45,000. Investment in the establishment of QIZs is approximately \$85 million to \$100 million, which is expected to grow to \$180 to \$200 million when all projects are completed.

In 2001, USTR designated the eleventh QIZ in Jordan, the Zarqa Industrial Zone. Five QIZs were designated in 2000: The Investors and Eastern Arab for Industrial and Real Estate Investments Company Ltd. (Mushatta International Complex), El Zay Ready Wear Manufacturing Company Duty-Free Area, Al Qastal Industrial Zone, Aqaba Industrial Estate, and Industry and Information Technology Park Company (Jordan CyberCity Company). Four QIZs were designated in 1999, Al-Tajamouat Industrial City, Ad-Dulayl Industrial Park, Al-Kerak Industrial Estate, and Gateway Projects Industrial Zone. The first QIZ in Jordan, Irbid, opened in 1998.

QIZs are established pursuant to legislation passed by the Congress in October 1996, authorizing the President to proclaim elimination of duties on articles produced in the West Bank, Gaza Strip, and qualifying industrial zones in Jordan and Egypt. To date all QIZs have been established in Jordan.

The steady growth of QIZs testifies to the economic potential of regional economic integration. In addition to the competitive benefit of duty-free status for QIZ exports to the United States, QIZs increasingly offer participating companies the advantages of modern infrastructure and strong export expertise and linkages. This evolution should serve to increase the economic benefits of QIZs. (For a discussion of the U.S.-Jordan Free Trade Agreement, see section A on Free Trade Agreements earlier in this chapter.)

## 5. Trade and Investment Framework Agreements

In 2003, the United States concluded a Trade and Investment Framework Agreement (TIFA) with Saudi Arabia and started negotiations on TIFAs with Kuwait, Qatar, the United Arab Emirates, and Oman. TIFAs have been previously negotiated with Tunisia, Algeria, Morocco, Bahrain, Egypt, Jordan, and Turkey. Each TIFA establishes a bilateral Trade and Investment Council that enables USTR-chaired representatives to meet directly with their counterparts regularly to discuss specific trade and investment matters and to negotiate the removal of impediments and barriers to trade and investment.

## 6. WTO Accession

Negotiations on the accession to the WTO of Saudi Arabia, Algeria, and Lebanon continued in 2003. The United States supports accession to the WTO on the basis of a new Member's implementation of WTO provisions immediately upon accession and of a new Member's commercially meaningful market access commitments for U.S. goods, services, and agricultural products.

## 7. Intellectual Property Rights

Protection of intellectual property rights remains a leading priority in the Middle East region. Lebanon is on the Special 301 Priority Watch List, while Egypt, Israel, Kuwait, Saudi Arabia, and Turkey are on the Watch List.

## 8. Bahrain Free Trade Agreement

On May 21, 2003, the United States and Bahrain announced their intention to seek to negotiate a Free Trade Agreement (FTA). On August 4, 2003, USTR Zoellick formally notified Congress that negotiations would be launched in January 2004. An FTA with Bahrain will also promote the President's initiative to advance economic reforms and openness in the Middle East and the Persian Gulf and to establish a Middle East Free Trade Area (MEFTA) by 2013. The successful conclusion of a comprehensive FTA will generate export opportunities for the United States,

creating jobs for U.S. farmers and workers, while supporting Bahrain's economic and political reforms and enhancing commercial relations with an economic leader in the Gulf. USTR Zoellick had consultations with Congress on the FTA in July 2003, and public hearings were held in November 2003. USTR is pursuing an aggressive negotiation schedule, and negotiations are expected to be finished by the summer of 2004.

## H. Asia and the Pacific

### Overview

The Southeast Asia and Pacific region continues to enjoy rapid trade and economic growth. This growth is largely the result of a commitment by many of the regional governments to economic reform and liberalization. While there is additional work to be done in opening markets in Southeast Asia and the Pacific, significant progress has been made. The commitment of regional leaders in the Asia Pacific Economic Cooperation (APEC) forum to move forward toward free and open regional trade and investment has been an important factor in spurring this regional trend (see Chapter III for information on APEC). In addition, the Administration is committed to using the Enterprise for ASEAN Initiative (EAI) to further open markets of interest to American farmers, ranchers, manufacturers, and services providers. It also will continue to work to ensure implementation of bilateral and multilateral agreements, including those protecting intellectual property, which is critical to U.S. exporters in high-technology, entertainment and other key sectors.

Highlights of the achievements in this region during 2003 include:

- *Signing of the U.S.-Singapore FTA.* In May 2003, the United States and Singapore signed an FTA, the first comprehensive agreement between the United States and an Asian nation. The FTA's provisions cover not only goods and services, but customs procedures and cooperation, investment, competition policy, intellectual property rights, electronic

commerce, transparency, labor and environment. The agreement with the United States' 13th largest trading partner is expected to eliminate trade barriers between the two countries and spur bilateral trade and investment. The agreement also will serve as a benchmark for possible free trade agreements with other countries in Southeast Asia.

- *Conclusion of the U.S.-Australia FTA.* The United States and Australia concluded FTA negotiations on February 8, 2004. The United States expects the FTA with Australia to boost trade in both goods and services and enhance employment opportunities in both countries. In addition to provisions on goods and services, the FTA covers a range of other issues, including investment, intellectual property rights, customs procedures, competition policy, government procurement, labor and environment. The United States believes that this FTA will further deepen its relationship with Australia and cooperation between the two countries in the WTO.
- *Announcement of intent to enter into FTA negotiations with Thailand.* In October 2003, President Bush announced his intent to enter into FTA negotiations with Thailand in accordance with legislative procedures specified by Congress. This action reaffirms the President's commitment under his Enterprise for ASEAN Initiative (EAI) to strengthen trade ties with countries in the ASEAN region that are actively pursuing economic reforms and follows the historic FTA with Singapore.

## 2003 Activities

The United States advanced both regional and bilateral trade initiatives in the Southeast Asia and Pacific region in 2003 to expand opportunities for U.S. industry, farmers, and ranchers. The United States pursued bilateral FTAs and undertook other bilateral work to strengthen trade ties with the Southeast Asia and Pacific region and eliminate barriers faced by U.S. exporters in this region. Regionally, the United States continued to work with ASEAN countries to make progress on

the EAI and with APEC members to reaffirm their commitment to global trade liberalization and the successful conclusion of the Doha Development Agenda, as well as to implement the Shanghai Accord, a series of specific commitments to ensure APEC reaches its free trade and investment goals.

## 1. Australia

In parallel with the FTA negotiations, which are discussed earlier in this chapter in Section A on Free Trade Agreements, the United States continued the extensive and detailed discussions with Australia on sanitary and phytosanitary (SPS) issues begun in 2002. The two sides continued to make progress on specific issues related to U.S. imports of beef and pet food. The two sides agreed that SPS measures must be based on science and be fully transparent. The Australian government implemented a new administrative framework in early 2002 to enhance the transparency of its SPS regime. Nonetheless, the United States continues to have concerns about the stringency of Australia's SPS regime.

## 2. New Zealand

The U.S. and New Zealand officials met several times in 2003 to discuss outstanding bilateral trade issues. New Zealand's two-year moratorium on applications for the release of genetically-modified organisms, about which the United States had raised concerns, expired and was replaced by new legislation setting out strict rules for release. The New Zealand government also passed legislation banning parallel imports of new films. The new legislation is a positive step, but additional action is needed to address long-standing U.S. concerns on this issue. In addition, U.S. concerns on other intellectual property issues, including trademarks and pharmaceutical issues remain. U.S. manufacturers' representatives have recently expressed concern that plans to extend Australia's regulatory regime for medical devices and complementary goods to New Zealand could impede the price competitiveness of many U.S. products in the New Zealand market.

The United States will continue working with New Zealand under the TIFA to address bilateral trade issues, as well as in APEC and the WTO to advance our common trade interests.

### **3. The Association of Southeast Asian Nations (ASEAN)**

The Enterprise for ASEAN Initiative (EAI) is discussed in Chapter B on Regional Initiatives.

#### **a. Indonesia**

##### *i. General*

The United States has worked to bolster its trade and investment relationship with Indonesia, seeking to help strengthen Indonesia's economy and encourage liberalization and other economic reforms that would generate additional trade and foreign investment. Senior U.S. and Indonesian trade officials, including at the ministerial level, met several of times in 2003 to discuss the range of outstanding issues affecting the U.S.-Indonesian economic relationship and other issues covered under our bilateral TIFA. The two sides also discussed ways to enhance Indonesia's investment climate and facilitate trade, including through improved governance and capacity building. They discussed the need to address outstanding issues under the TIFA to resolve bilateral issues and other steps to help lay the groundwork for a free trade agreement, as envisioned by the EAI. The United States and Indonesia also supported the launch of a private study on the impact of an FTA on the two economies, which now is underway and expected to be completed by summer, 2004. Indonesia is the United States' 27th largest trading partner, with \$12.2 billion in two-way trade in 2002.

##### *ii. Intellectual Property Rights*

The U.S. Government has continued to urge Indonesia to take steps to strengthen its IPR regime. USTR placed Indonesia on the Special 301 Priority Watch List in 2003 due to concerns over continued optical media piracy and weaknesses in Indonesia's IPR enforcement. Indonesia took some

noteworthy steps to strengthen its IPR regime over the past year, but significant problems remain. The Indonesian government enacted an extensive revision of its copyright law in July 2002 that came into effect in July 2003 and addressed a number of the United States' concerns. Over the last year it initiated public awareness campaigns and began addressing problems of interagency coordination. In addition, in November 2003 it submitted new draft regulations governing optical media production for Presidential approval. However, these proposed regulations, if signed, still would not firmly commit Indonesia to seize and destroy machinery and materials used in piracy.

Overall, protection of intellectual property rights remains weak and U.S. industry continues to report increases in illegal optical media production lines for both domestic consumption and export. U.S. industry also has raised serious concerns about counterfeiting and trademark violations of a wide range of products. While a limited number of raids against retail outlets for pirated optical media products have occurred, long delays remain in prosecuting intellectual property cases. Sentences continue to be light and insufficient to deter intellectual property piracy, further undermining the criminal penalties established by the new copyright law. The United States worked with Indonesia under our TIFA on an IPR action plan, which the United States first provided to Indonesia in May 2002. The United States continued to urge Indonesia to implement the specific recommendations in the IPR action plan, including steps to improve the legal framework and enforcement mechanisms to protect IPR.

##### *iii. Poultry Imports*

Appropriate authorities in the United States and Indonesia have worked together to ensure that U.S. poultry exports meet Indonesian requirements for *Halal* certification, but Indonesia continues to ban imports of U.S. poultry parts. The U.S. government continued to raise this issue with the Indonesian government in 2003 and will work with Indonesia to eliminate the ban.

#### *iv. Textiles*

The United States continued to raise concerns about the Indonesia government's Textiles Decree, passed in November 2002. This Decree effectively precludes textile imports into Indonesia other than for use as inputs into other products. The U.S. Government will continue to press the Indonesian government to address its concerns on this issue.

#### **b. Malaysia**

##### *i. General*

During 2003, the United States and Malaysia consulted on ways to enhance their trade relationship and strengthen their cooperation in regional and multilateral fora. The two sides agreed to negotiate a TIFA, which is nearly completed. The United States will continue to encourage Malaysia to further open and liberalize its economy, which is heavily trade-dependent. In 2002, Malaysia was the United States' 10th largest trading partner with \$34 billion in two-way trade.

##### *ii. Intellectual Property Rights*

Malaysia has made strides in strengthening its IPR regime over the past several years, including determined efforts to eliminate optical media piracy. (Copyright legislation was passed a few years ago.) Although Malaysia has made steady progress, the United States has continuing concerns about production overcapacity, much of which appears to make its way to export markets illicitly, and over Malaysia's inability to establish a climate of deterrence by prosecuting IPR offenders and imposing sufficiently deterrent penalties. In the summer of 2003, Malaysia announced plans to implement price controls on optical disks, a proposal about which the United States voiced significant concern. In December, Malaysia announced that implementation would be delayed until April 2004. The U.S. Government will continue to urge Malaysia to drop its price control proposal and to take additional steps to further strengthen its IPR environment.

#### **c. Philippines**

##### *i. General*

The United States sought to further enhance its trade and investment relationship with the Philippines in 2003, holding two rounds of consultations under the bilateral TIFA. The two sides have used these meetings to make progress in addressing outstanding concerns. In addition, the U.S. government used these meetings to urge the Philippine government to continue liberalizing its trade regime and to reaffirm its support for global trade liberalization concluding the Doha Development Agenda. The Philippines was the United States' 22nd largest trading partner in 2002, with \$13 billion in two-way trade.

##### *ii. Intellectual Property Rights*

To support the Philippines' efforts to strengthen its IPR regime, the U.S. Government in August 2002 provided the Government of the Philippines with an IPR Action Plan that included specific steps on judicial, legislative, and enforcement issues.

In December, it nearly passed an optical media law. This law, passage of which was a top U.S. priority, is intended to curb the unbridled pirate production of optical media. In addition, the Philippines Bureau of Customs passed regulations aimed at improved enforcement against trade in pirated products.

However, the Philippines government has yet to pass copyright amendments pending in its Congress, which would update the Philippines' law to address electronic commerce piracy. In addition, while the Philippines government stepped up the number of raids, it has been slow to prosecute IPR offenders and reluctant to impose sufficiently deterrent penalties. U.S. industry estimates that the weak IPR environment in the Philippines resulted in \$121 million in losses in 2002.

### *iii. Telecommunications*

The U.S. and Philippine governments successfully worked together to begin reopening U.S. access to Philippine telecommunications networks. In February 2003, Philippine telecommunications companies blocked access to their networks to incoming call traffic from certain U.S. and other foreign telecommunications companies that were unwilling to agree to tariff increases. Senior U.S. government officials, including the U.S. Trade Representative and the FCC Chairman, raised concerns over this action with the appropriate Philippine officials. In November, some telecommunications connections between the two countries were restored and ongoing negotiations appear positive. The U.S. government is continuing to monitor this issue closely to ensure that competitive access to these networks is fully restored.

### *iv. Customs*

The Philippines has made progress over the last several years toward bringing its customs regime into compliance with its WTO obligations, but the United States has continued to have concerns about inconsistent application of customs rules and procedures and undue and costly processing delays as well as the role of the Philippine private sector in the valuation process. At consultations in September 2003, the Philippines government outlined steps it has taken to strengthen enforcement and consistency of its customs rules and step up enforcement of IPR piracy at the border. The U.S. Government will continue to closely monitor this issue.

### *v. Sanitary and Phytosanitary (SPS) Issues*

Throughout 2003, the U.S. Government continued to urge the Philippines to abandon a proposal to require quarterly mandatory third-party inspections of meat and dairy production facilities overseas. The measure, as initially proposed in 2002, would disrupt U.S. meat and dairy exports to the Philippines, estimated at \$56 million. The Philippines had announced in December 2002 that implementation of the requirement, which was to take effect January 1,

2003, would be delayed. Implementation of this proposal remained indefinitely delayed throughout 2003.

### **d. Singapore**

The United States and Singapore negotiated a bilateral Free Trade Agreement (FTA), which was signed in May 2003 and entered into force on January 1, 2004. Discussion of U.S.-Singapore trade issues had been handled in the context of these negotiations (see U.S.-Singapore FTA).

### **e. Thailand**

#### *i. General*

The United States continued to bolster its trade ties with Thailand in 2002, with President Bush announcing in October his intent to enter into FTA negotiations with Thailand, in accordance with the legislative procedures specified by Congress. The announcement followed three Trade and Investment Council (TIC) meetings under the bilateral TIFA and a number of sub-TIC meetings. These meetings were intended to identify and make progress on outstanding bilateral trade issues and take other steps to help lay the groundwork for a free trade agreement, as envisioned by the EAI. Thailand was the United States' 18th largest trading partner in 2002 with \$20 billion in two-way trade.

#### *ii. Intellectual Property Rights*

The United States has continued to strongly urge Thailand to strengthen its IPR regime. To support Thai efforts, the U.S. Government provided it with an IPR Action Plan that included specific steps on judicial, legislative and regulatory, and enforcement issues. The Thai government has made some progress in implementing these recommendations, but significant and sustained progress is still needed.

The Thai government has not yet passed the Optical Disk Plant Control Act, which is intended to enhance the authority and capabilities of enforcement authorities to take action against pirate optical disk producers. It is drafting implementing regulations to accompany the law once it



is passed, and the U.S. government has strongly urged Thailand to ensure that these regulations address some of the weaknesses in the current draft law. The Thai government also failed to introduce an amendment to its copyright law to provide more effective copyright protection and to be consistent with the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty, despite indications earlier in the year that it would do so.

The Thai government stepped up enforcement efforts in mid-2003, leading to a noticeable short-term decline in retail piracy prior to the APEC Ministerial meeting in Bangkok in October 2003. However, street-level piracy again appears to be widely prevalent. The United States has strongly urged Thailand to take additional steps to ensure a high-level of enforcement on a sustained basis, which is critical to any serious effort to address intellectual property piracy. U.S. industry estimates losses due to piracy at over \$189 million last year.

### *iii. Customs*

Thailand made noteworthy progress in the past year addressing longstanding U.S. concerns regarding its customs rules and procedures. The U.S. Government has supported these reforms, providing Thailand in August with a proposed Customs Action Plan that includes specific proposals for steps to improve the consistency, efficiency, timeliness and transparency of Thailand's customs procedures and regulatory process, and improvement in enforcement at the border. The Thai government has implemented many of these recommendations, including some steps to implement its customs valuation legislation, which is intended to address concerns about Thailand's uneven, arbitrary, discretionary, and slow application of customs rules. It also has increased seizures of imports of infringing goods. The U.S. Government will continue to monitor Thailand's implementation of its customs valuation law and urge it to build on the improvements it has made this year.

### *iv. Market Access*

Thailand maintains relatively high tariffs and a complicated tariff regime, which serve to protect Thailand's agricultural, automotive, alcoholic beverage, textile, and electronics industries. While it continues to reduce selected duties in line with its WTO and ASEAN FTA commitments, its average tariffs remain relatively high. Tariff-rate quotas and arbitrarily applied phytosanitary standards serve as constraints to the import of certain agricultural products. In addition, Thailand has implemented non-transparent price controls on some products and has significant quantitative restrictions, which impede market access.

### **f. Cambodia**

In September 2003, WTO Members voted to approve Cambodia's accession to the WTO. Cambodia is in the process of completing domestic ratification procedures and hopes to become a member of the WTO in early 2004.

The Bilateral Textile Agreement the United States and Cambodia concluded in 1998 and renewed in 2001 is scheduled to expire on December 31, 2004. Once Cambodia accedes to the WTO, the United States will notify the agreement to the WTO under the Agreement on Textile and Clothing. The Agreement will remain in force until its expiration.

### **g. Normalization of Trade Relations with Vietnam and Laos**

#### *i. Vietnam*

On July 13, 2000, the United States and Vietnam signed an historic bilateral trade agreement (BTA), concluding a four-year negotiation to normalize trade relations. Upon implementation, the BTA granted Vietnam Normal Trade Relations (NTR) status, that is, the same low tariffs that the United States applies to imports from nearly every other country. The BTA also committed Vietnam to sweeping economic reforms, which created trade and investment opportunities for both U.S.

and Vietnamese companies, and will lay the foundation for a new U.S. relationship with Vietnam.

Vietnam remains subject to the Jackson-Vanik provision, however, which links continued eligibility for NTR treatment to sufficient progress by designated countries on the issue of free emigration. Each year since 1998, the President has granted a Jackson-Vanik waiver for Vietnam, thus clearing the way for Vietnam to receive annually renewed (as opposed to permanent) NTR treatment from the United States.

The second meeting of the Joint Committee established by the BTA was convened at the vice-ministerial level in March 2003 in Hanoi, during which the two sides assessed progress toward implementation of the BTA. While applauding Vietnam's commitment to economic reform, the United States underscored the importance of Vietnam moving quickly to meet the timetables for implementation contained in the BTA. The two countries also discussed Vietnam's pursuit of WTO membership. The next meeting of the Joint Committee will be held in the first quarter of 2004 and will review the first two years of implementation of the BTA.

In April 2003, the United States concluded a textile trade agreement with Vietnam. The U.S.-Vietnam BTA, concluded in December 2001, did not include textile quotas. Indeed, Vietnam is not a WTO member and therefore is not a participant in the WTO Agreement on Textiles and Clothing (ATC), which provides for the phaseout of textile and apparel quotas for WTO members that continue to face textile and apparel quotas. The BTA envisioned that such quotas would be put in place as Vietnam's economy progressed, striking a balance by allowing Vietnam to foster an apparel industry while eventually integrating Vietnam into the global textile and apparel quota system. The textile agreement assists U.S. domestic manufacturers by including Vietnam within the global textile quota regime, and it helps our importers by providing certainty and avoiding the unpredictability of frequent, random, unilateral limits.

In the 12 months prior to the introduction of Vietnamese textile quotas, Vietnamese textile exports grew by 1,400 percent. The U.S.-Vietnam textile agreement covers virtually all imports and allows for, on average, 7 percent annual growth. The agreement also allows for the retention of quotas until Vietnam joins the WTO.

The agreement provides increased market access for U.S. suppliers. As part of the agreement, Vietnam lowered its yarn, fabric and apparel tariffs to 7 percent, 12 percent, and 20 percent respectively, and Vietnam agreed to refrain from using non-tariff barriers.

Finally, the textile agreement includes stringent enforcement provisions, including a provision allowing the United States to adjust Vietnam's quotas after an investigation of pre-agreement transshipment, as well as a provision allowing U.S. Customs to visit Vietnamese facilities to control post-agreement wrongdoing.

As part of the BTA, Vietnam committed to make its IPR regime TRIPS-consistent by December 10, 2003. Although Vietnam has improved its legal and enforcement framework for IPR protections, wholesale piracy and counterfeiting continue and enforcement remains inadequate.

#### *ii. Laos*

On September 21, 2003, the United States and Laos signed a comprehensive bilateral trade agreement, which was originally negotiated and initialed in 1997, aimed at normalizing trade relations. Laos, unlike Vietnam, is not covered by the "Jackson-Vanik" provisions of U.S. trade law. As with the Vietnam agreement, however, the Laos agreement requires separate legislation enabling the President to grant normal trade relations status to Laos in order to bring into effect the bilateral trade agreement.

The BTA contains IPR provisions that would assist Laos in its IPR enforcement efforts. While Laos' small economy does not yet support a large retail market in pirated or counterfeit goods,

small outlets are spreading. While enforcement is weak, some elements of the Government of Laos are interested in creating strong domestic IPR legislation, especially in light of Laos' desire to protect the intellectual property created through Lao handicrafts and native music.

## 4. Republic of Korea

### a. Macroeconomics and Trade

Since experiencing a financial crisis in 1997, Korea has undertaken significant restructuring of its economy. While the Korean Government still maintains a majority ownership in a few of the largest commercial banks that were nationalized during the crisis such as Woori Bank (100 percent) and Korea Exchange Bank (36 percent) and a significant stake in three others (Korea First Bank, 48.5 percent; Hana Bank, 21.7 percent; and Kookmin Bank, 9.3 percent), Korea has made progress on implementing some of its reform commitments during the past five years. Consolidation has reduced the Korean banking sector to 12 commercial banks, less than half the pre-crisis number. Restructuring has largely been a success: NPLs have been reduced from 13 percent in 1999 to 3 percent in 2003; return on equity has increased from 3.5 percent prior to the crisis to 11 percent in 2002. However, the financial sector bailout and restructuring did not come cheaply: as of 2002 Korea has spent KRW155 trillion (\$139 billion or 30 percent of GDP), including funds recycled through the support packages, on various support measures.

Korea entered into its first recession in five years during the first half of 2003. Seasonally adjusted real GDP contracted 0.7 percent quarter-on-quarter in the second quarter of 2003, extending from the 0.4 percent drop in the first quarter. The slowdown was brought on by contracting domestic demand combined with slowing external sales. In response, both fiscal policy (a supplementary budget and tax cuts) and monetary policy have been eased somewhat. For the year, the Korean Government anticipates GDP growth may reach 3 percent.

On the trade front, the United States and Korea continued to consult regularly on a variety of issues. Meetings held on a quarterly basis serve as the primary forum for bilateral discussion. During quarterly trade meetings held in 2003, the United States and Korea focused on addressing U.S. concerns in the following areas: automotive, telecommunications, pharmaceuticals, intellectual property rights, and agriculture.

Despite their differences on a number of bilateral trade issues, the United States and Korea continue to cooperate effectively in regional and multilateral fora, including in the context of the Doha Development Agenda and the Asia Pacific Economic Cooperation forum.

### b. Telecommunications

**Standard-Setting:** Increasing Korean Government intervention in the workings of the telecom sector, including in the selection of technologies, continued to be of significant concern to the U.S. Government in 2003. Korean Governmental influence on the choice of sources of equipment and technologies is often apparent in the licensing process for operators and in localization policies for procurement. The Korean Government sometime uses its influence directly but often works indirectly through industry associations and quasi-governmental commissions or other entities. Some U.S. firms with leading-edge technologies have continued to encounter resistance to their efforts to introduce new software and technologies to the market, and some U.S. firms that formerly had a dominant market share have lost significant market share to Korean firms in the past few years. By limiting competition in the Korean telecommunications market, the Korean Government is hampering the ability of Korean firms to develop state-of-the-art, globally competitive products as well as Korea's goal of becoming an economic hub in Northeast Asia.

An increasing priority for the U.S. Government and U.S. industry that has been the focus of a number of bilateral meetings in 2003 relates to Korea's pursuit of domestically created telecom

standards which the Korean Government appears inclined to make mandatory. Specifically, the U.S. Government has focused on three key areas, in which developments over the past years have been troubling. The first relates to the wireless broadband Internet platform for interoperability (WIPI) for cellular phones. The U.S. Government's concerns related to WIPI include: inappropriate government involvement in the creation, standardization and deployment of WIPI; continued actions taken by the Korean Government to discourage Korean telecommunications service providers from subscribing to competing foreign standards; and overly-restrictive WIPI specifications which appear to be designed to keep competing foreign systems out of the market.

The second specific area of concern to the United States relates to the Korean Government's announcement that it will reallocate the 2.3 gigahertz spectrum to a new wireless broadband Internet service. Korea has announced that it will allow only one technology to be deployed in this spectrum, but has not yet made a strong case justifying its position. Furthermore, the United States has questions regarding the fairness and transparency of the procedures being used by the relevant Korean standards-setting body.

The final issue relates to location-based services (LBS). The Korean Government has not yet announced its intentions related to LBS. The U.S. Government will continue to monitor developments in this area closely.

Based on actions to date, it strongly appears that Korea is using telecom standards as a protectionist industrial policy. The U.S. Government has used every opportunity to raise its concerns at all levels of the Korean Government. The United States will continue to urge Korea, in its standards-setting processes, to fulfill all of its bilateral and multilateral obligations. In particular, Korea must avoid creating unnecessary obstacles to international trade in the telecommunications sector.

***Korea Telecom (KT) Privatization:*** On April 23, 2002, the Korean Government officially requested that Korea Telecom (KT) be removed from coverage under the 1997 U.S.-Korea bilateral procurement agreement following the complete divestiture of Korean Government shares in the company, which took place in June 2002. Korea has made a similar request to WTO Members to remove KT from coverage under the WTO General Procurement Agreement (GPA). In response, the U.S. Government has expressed serious concerns, regarding whether all government control and influence over the company have ceased (one GPA standard for removal from coverage). Consultations on the matter continue.

### **c. Motor Vehicles**

On October 20, 1998, the United States and Korea concluded a Memorandum of Understanding (MOU) to improve market access for foreign motor vehicles. This MOU followed USTR identification of Korean barriers to motor vehicles as a priority foreign country practice under Section 301. Under this MOU, Korea agreed to: (1) bind in the WTO its 80 percent applied tariff rate at 8 percent; (2) lower some of its motor-vehicle-related taxes and to eliminate others, thereby substantially reducing the tax burden on motor vehicle owners; (3) streamline its standards and certification procedures and adopt a manufacturer-driven self-certification system by 2002; (4) establish a new mortgage mechanism to make it easier to purchase motor vehicles in Korea; and (5) continue to actively and expeditiously address instances of anti-import activity and to proactively educate Korean citizens on the benefits of free trade and competition. As a result of the measures the Korean Government committed to in the 1998 MOU, the USTR terminated a Section 301 investigation and began monitoring the Korean Government's implementation of these measures through formal reviews.

During the 2003 MOU reviews, held in June and October, the United States and Korea assessed progress under the agreement and discussed additional steps Korea will take to implement this

agreement. The Korean Government has implemented many of the specific provisions of the MOU. In 2003, Korea established a self-certification system for automotive safety standards. This is a key MOU commitment, and its completion should help alleviate some standards barriers. Korea also simplified and reduced one important automotive tax, made a second purchase of 50 U.S.-produced vehicles for its Police Agency fleet, and endorsed and helped support the 2003 Import Motor Show. However, the U.S. Government remains seriously concerned about the lack of more substantial import penetration in the Korean automotive market. Despite a notable increase in U.S. vehicle sales in Korea in 2003, the total share of foreign vehicles in the Korean market is only slightly above one percent as a result of continued high taxes and tariffs, anti-import sentiments among many Korean consumers, and Korean Government positions vis-à-vis several important standards and certification issues. A key example of problems U.S. manufacturers continue to face in the Korean auto market was DaimlerChrysler's effort to introduce its Dodge Dakota vehicle in Korea. Despite their strong efforts to meet all applicable Korean rules and regulations, the company's attempted launch of the Dakota was repeatedly hindered by the continued use of new interpretations of Korean law imposed in a non-transparent manner. The U.S. Government expects that these kinds of barriers will not arise again in the Korean auto market.

Over the last year, the United States has made specific proposals for addressing these concerns and achieving further progress under the agreement. At the most recent MOU review, held in October 2003, U.S. proposals focused on Korea's fulfillment of the MOU commitment to "steadily reduce the tax burden on motor vehicle owner in the ROK in a way that advances the objectives of this MOU." This is a long-term, but critical objective of the MOU. The U.S. Government stressed that, given the continued complex nature of the Korean automotive tax system, Korea should develop a comprehensive plan as soon as possible to meet this commitment. This would not only

help Korea meet its MOU obligation, but would also offer transparency and predictability to auto manufacturers. The U.S. Government and U.S. industry have made specific suggestions on ways to reform the tax system, and also reduce the tariff burden, which the United States intends to discuss in more detail during reviews of the MOU in 2004. The U.S. Government also sought to address specific outstanding standards and certification issues, and the overly high automotive tariff and stressed the need to continue efforts to improve the generally negative perception of foreign vehicles among Korean citizens.

#### **d. Steel**

Steel issues are detailed in Chapter V, "Other Multilateral Issues."

#### **e. Pharmaceuticals**

Over the past year, U.S. concerns regarding pharmaceuticals trade related mainly to the pricing of innovative pharmaceuticals under Korea's national health insurance reimbursement system and to the lack of transparency in the Korean system. While positive steps were taken in 1999 and 2000 to address U.S. concerns in this sector, the Korean Government began to back away from its previous actions and commitments in 2002. Throughout 2003, a series of government-to-government and government-industry consultations took place in order to address U.S. concerns. While some progress was made, more needs to be done. The U.S. Government looks forward to resolving outstanding issues in 2004.

The U.S. Government's two main areas of concern related to pharmaceuticals are:

**Pricing Policy:** The change back to an Actual Transaction Price system (ATP) from a Lowest Transaction Price (LTP) system. In August 2002, in a unilateral move away from a negotiated resolution to a long-standing problem, Korea adopted a ministerial ordinance establishing LTP. During discussions prior to this move, the United States had urged Korea to take steps to ensure the full implementation and enforcement of the ATP system whereby both imported and domestically

manufactured pharmaceuticals are reimbursed without hospital margins. However, in 2002 Korea announced plans to discard the ATP system and adopt on a one-year trial basis an LTP system in which the reimbursement price of a drug was based on the lowest transaction price from the previous quarter rather than the actual transaction price. There was great concern that this change to LTP would unfairly lower the reimbursement prices for U.S.-made drugs. After a year of consultations with the U.S. Government and U.S. industry (and domestic court cases that went against LTP), Korea decided to discard the LTP system and return to the ATP system as of September 1, 2003. The U.S. Government will be closely monitoring the implementation of the ATP system in order to ensure that it is done in a manner that does not lead to a distortion of the incentives needed to promote innovation and the availability of innovative pharmaceutical products in the Korean market.

**Triennial Re-Pricing:** The movement on January 1, 2003, to subject patented and bio-equivalent generic drugs to price changes—cuts, in seemingly all cases—while non-bio-equivalent generics were not subject to the price cuts. The proposed scheme appears even more discriminatory in that it will force proportionally larger price cuts on innovative, patented drugs (the specialty of U.S. and other foreign pharmaceutical companies) than on generic drugs (the specialty of Korean companies). The U.S. Government is closely examining these cuts and is continuing to press Korea to examine closely its WTO obligations and consult fully with all relevant stakeholders before taking any further steps.

**Transparency:** The creation of a transparent science-based reimbursement guideline setting process. The Health Insurance Reimbursement Agency (HIRA) has imposed unduly restrictive reimbursement guidelines on many innovative foreign drugs. (HIRA was established in 2000 to audit medical claims and assess the appropriateness and the economy of health services delivered to insurees). The guidelines establish the indications for which a product can be reimbursed.

These guidelines are initially set by the Korea Food and Drug Administration, but can later be modified by guidelines established by HIRA. The process for establishing these modified guidelines is non-transparent and a more independent appeals process should be established. U.S. Government has urged Korea to develop a transparent process for revising reimbursement guidelines as well as adopting an appeals process. Numerous discussions between the Korean Government and industry took place in 2003 on this issue and discussions are ongoing.

The U.S. Government believes that developing policies that improve health care for all Koreans is best pursued by consulting with all domestic and foreign stakeholders, including foreign industry and governments. The U.S. Government will continue to encourage the Korean Government to conduct increased consultations with industry, increase the use of public comment procedures, and increase the use of the Internet to disseminate information.

For 2004, the U.S. Government plans to continue to work with the Korean Government to bring about a more transparent, unbiased, rational, science based health care system that provides predictability for our companies regarding pharmaceutical pricing and reimbursement guidelines.

#### **f. Intellectual Property Rights**

The United States continues to have serious concerns regarding adequate protection and enforcement of intellectual property in Korea. In the 2003 Special 301 Report, USTR announced that Korea would be the subject of a Special 301 Out-of-Cycle Review. Under the 2003 Special 301 Out-of-Cycle Review, the United States' decision on whether Korea would remain on the Watch List or be moved to Priority Watch List was based on Korea's taking action in all of the following areas: 1) taking all actions necessary to ensure that the Standing Inspection Team (SIT), responsible for investigating and reporting end user software piracy, is granted police powers at the earliest opportunity; 2) drafting and submitting legislation to the National Assembly that estab-

lishes the exclusive right of transmission for sound recordings, including both the full right of making available and the full right of communication to the public; 3) providing additional, new data on Korea's enforcement efforts that is sufficient to more fully evaluate the full range of its enforcement activities. In addition, in order to resolve the film distribution issues, the Korean Government should: 4) Draft and submit legislation to the National Assembly to grant the Korea Media Review Board (KMRB) all authority necessary to stop film piracy; and 5) fully and faithfully implement its agreement on the "WIPI" intellectual property issue.

During 2003, Korea took some steps toward fulfilling its spring 2002 commitments, including facilitating the passage of legislation to provide the Standing Inspection Team with police powers and increasing cooperation between the prosecutor's officers and U.S. right holders to curb software infringement. Although recent legislation drafted by MOCT provided for the right of making available to phonogram producers, the United States was disappointed that the legislation did not include a provision for the right of communication to the public. The U.S. Government will continue to urge Korea to be more forthcoming on this and other IPR issues.

In addition, other significant IPR issues emerged over the last year that required concerted efforts by the U.S. Government. One issue involved alleged infringement of a U.S. industry's intellectual property in the creation/promulgation of a new telecommunications standard (WIPI). Another was related to pirates' ability to illegally register and distribute U.S. videos and DVDs in the Korean market in violation of U.S. companies' copyrights. Also of concern to the United States was the fact that Korea has not taken sufficient new steps to address additional U.S. concerns as outlined in the 2002 Special 301 Report, related to the protection of temporary copies, reciprocity provisions regarding database protection, *ex parte* relief and the lack of full retroactive protection for pre-existing copyrighted works.

In early 2004, the United States, after conducting the Out-of-Cycle Review, decided to elevate Korea to Priority Watch List. (More details at <http://www.ustr.gov/releases/2004/01/04?01.pdf>)

### **g. Financial Services**

As a condition in the IMF stabilization package, Korea agreed to bind its OECD commitments on financial services market access in the WTO. In January 1999, Korea provided WTO Members with a revised and somewhat improved schedule of financial services commitments that entered into force as of September 1999. The U.S. Government will continue to work with Korea to bring about more liberal treatment of foreign financial services providers.

### **h. Government Support for Korean Industry**

***Semiconductor Production and Export:*** During the past few years, the U.S. Government has expressed strong concerns about instances of possible Korean subsidization of semiconductor production and export that could adversely affect U.S. trade interests. In particular, the U.S. Government sought redress by the Korean Government for its support of Hynix Semiconductor, Inc., Korea's second largest semiconductor manufacturer. The Korean Government did not address the concerns expressed by the U.S. Government and continued to provide financial assistance to Hynix. U.S. industry initiated a countervailing duty (CVD) investigation, and a formal CVD investigation was conducted and completed by the U.S. Commerce Department and International Trade Commission during 2003. As a result of this CVD investigation, countervailing duties of 44.29 percent, equal to the subsidies provided to Hynix by the Korean Government, have been put in place with respect to certain U.S. imports of semiconductors from Hynix.

In 2003, while the CVD investigation was ongoing, a new Hynix bailout package was provided by Hynix creditors which included: a substantial debt forgiveness package in the form

of a three-year-plus payback moratorium on 3 trillion Korean won of debt; a significant reduction in interest on the 3 trillion Korean won principal (from 6.7 percent to 3.2 percent); and a new 1.9 trillion Korean won debt-to-equity swap. This new bailout package was approved in December 2002; however, the actual assistance to Hynix was provided in 2003. This new bailout assistance was not included in the CVD investigation but will be examined by the Commerce Department in its first annual review of Hynix subsidies, scheduled to begin in 2004.

In addition, as this report was going to press, the Korean Government announced that it planned to invest one trillion won (\$831 million) in research and development of next-generation semiconductors over the next five years. With this investment, the Korean Government stated that it hoped to expand semiconductor export revenue.

The U.S. Government continues to raise its concerns on the issue of subsidization of the Korean semiconductor industry in a number of fora and has noted Korea's obligations under the Subsidies Agreement not to provide subsidies that may cause adverse effects to other WTO Members. The U.S. Government will continue to press Korea to fulfill its international obligations and to move forward with genuine structural reform of its financial sector.

*Paper Subsidies:* The U.S. paper industry has raised increased concerns regarding targeted Korean Government aid to the Korean coated paper sector. Specifically, U.S. industry alleges that government subsidies have been provided in the form of directed credit, low-cost facility investment loans, tax benefits for facility expansion, and direct government financial support for industrial expansion. These programs serve to keep troubled companies afloat and distort international competition. The U.S. Government raised concerns regarding paper subsidies in numerous bilateral and multilateral fora in 2003 and will continue to pursue this issue with the Koreans in the coming year.

#### **i. Cinema Screen Quotas**

Korean Law requires that domestic films be shown in each cinema for a minimum number of days per year. Current law requires that Korean films be shown 146 days of the year, with a potential discretionary reduction to 106 days. The Korean National Assembly adopted a resolution on December 8, 2000, stating that the screen quota system must not be abolished until the domestic market share for Korean films maintains a 40 percent level. Although domestic films have "maintained" a market share close to 50 percent in 2001, 2002, and 2003, there has been very little progress on the issue. Lack of resolution of this "screen quota" issue was one of the primary reasons that U.S.-Korea discussions of a Bilateral Investment Treaty (BIT) stalled in 2001. (See *Bilateral Investment Treaty*) This issue remains unresolved because of a lack of flexibility on the part of various Korean stakeholders. Efforts by the Roh Moo-hyun Administration to encourage Korean filmmakers to find a compromise solution with the U.S. film industry have yet to bear fruit.

#### **j. Bilateral Investment Treaty**

In 1998, former Korean President Kim Dae Jung proposed the negotiation of a bilateral investment treaty (BIT) with the United States. The U.S. side aimed to secure Korean commitments on a balanced and open investment regime and provide protections for U.S. investors in Korea. Negotiations held in 1999 made progress related to Korean liberalization of investment restrictions in a number of sectors, but several issues remained unresolved, primary of which was liberalization of the screen quota system. In addition, further progress needed to be made with regard to granting greater access for U.S. investors in telecommunication services and resolving IPR issues, specifically, with respect to retroactive copyright protection for preexisting works and sound recordings. By 2001, both sides agreed that further BIT negotiations would not be productive without resolution of the screen quota issue. (See *Screen Quotas*.)



## k. Cosmeceuticals

The Korean Cosmetic Products Act, which became effective in July 2000, separates cosmetic products from cosmeceuticals or cosmetics by function, such as sunscreen, wrinkle cream or skin whiteners. The Act governs the sale and promotion of cosmeceuticals and requires that these products be labeled as cosmeceuticals and not include claims that are beyond proven efficacy. In 2003, the Korean Government took some steps toward reforming the Cosmetic Act, however, the United States continues to have serious concerns (related to the Act). The U.S. Government and U.S. industry fear that the Act, as it currently stands, will continue to slow the pace of product approvals and fails to adequately protect proprietary information. The United States believes that Korea should both simplify its cosmetics regulations and harmonize them with other major cosmetics markets.

## l. Agriculture

**Implementation of the Biosafety Protocol:** On March 28, 2001, the Ministry of Commerce, Industry, and Energy (MOCIE) issued legislation (the so-called “LMO Act”) to implement Korea’s interpretation of the Cartagena Biosafety protocol. On June 25, 2002, MOCIE released a proposed Presidential Decree and Ministerial Ordinance to the LMO Act. These proposed regulations were notified to the WTO. In May 2003, the U.S. Government and U.S. industry submitted comments and questions to Korea generally requesting clarification of a variety of vague requirements outlined in the proposed regulations. To date, however, MOCIE has not responded to the U.S. Government. Lack of clarity and transparency of the LMO Act regulations could disrupt trade when the regulations become effective.

**Environmental Risk Assessment:** Environmental risk assessments (ERA) for biotech crops will become mandatory when MOCIE’s LMO Act goes into effect (expected sometime in early 2004). On January 9, 2002, the Ministry of Agriculture and Forestry (MAF) issued guidelines for voluntary ERAs of biotech crops used for food, feed, and

seed. However, the voluntary ERA program is hampered by lack of clear guidelines and insufficient resources. To date, only ten ERA applications have been submitted for assessments and no ERA’s have been completed. The U.S. Government has continued to request that a sufficient grace period with adequate lead-time and minimally restrictive implementation requirements are adopted to avoid major disruptions of trade. However, there has been growing concern that the lack of clear guidance and shortage of resources for conducting ERA’s may cause MAF to fail to complete assessments of applications submitted in a timely manner when the LMO Act goes into effect. The Korean Government should address these concerns.

**Mandatory Food Safety Assessment:** Under the Food Safety Act, issued by Korea’s Ministry of Health and Welfare (MHW), the Korea Food and Drug Administration (KFDA) was given the authority to conduct mandatory safety assessments to evaluate biotechnology applications intended for human consumption. Since April 20, 1999, the KFDA has been operating a voluntary safety assessment program of biotech crops for human consumption. In accordance with the revision of the Food Sanitation Act issued in August 2002, safety assessments of biotech crops were to become mandatory on February 26, 2004. The U.S. Government and U.S. industry expressed concerns that the requirement to have completed the mandatory safety assessment prior to February 26, 2004, could result in trade disruptions if resource constraints made it impossible for KFDA to process all applications prior to the deadline.

Recognizing the potential problem, KFDA revised its safety assessment guidelines to provide an additional year for assessments of all biotech crops except soybeans, corn, and potatoes. Safety assessments for soybeans, corn, and potatoes will still have to be completed by February 26, 2004. Assessments for all other biotech crops may be completed by February 26, 2005. To date, ten biotech crops and six biotech additives have undergone and received positive KFDA safety assessments.

**Rice:** The exception to tariffication that Korea received for rice during the Uruguay Round expires at the end of 2004. Under the minimum market access (MMA) quota for rice in place since the end of the Uruguay Round, the United States has sold 30,000 MT out of the 142,520 MMA available in CY2001, 40,000 MT out of the 171,023 MT MMA available in CY 2002, and 55,000 MT out of the 199,528 MT MMA available in CY 2003. Such sales were only possible after Korea agreed to hold tenders for U.S. #1 grade medium rice. Korea's administration of the MMA quota severely restricts how imported rice may be marketed. The United States has pressed Korea to eliminate restrictions on how the rice MMA quota is administered.

Surging world rice prices in 2003 prompted Korea to implement a "price ceiling" mechanism for rice import tenders. Under the "price ceiling" system, the Agricultural and Fisheries Marketing Corporation (AFMC), the state trading enterprise for purchasing rice, set an internal price ceiling and turned down bidders that offered prices that were higher than the AFMC's internal target price. As a result, completion of several tenders and subsequent deliveries of MMA rice were delayed. Consequently, some of the deliveries to fulfill the 2003 quota will occur in 2004.

**Tariffs and Tariff Classification:** U.S. officials have continued to express concern regarding a number of products subject to exceedingly high tariffs and possible inappropriate tariff classifications, including high tariff rates on croaker and Korea's customs classification of citrus pulp pellets. U.S. officials have also urged the Korean Customs Service to reconsider its policy of classifying beef bones with minimal amounts of meat attached as pure muscle meat subject to a tariff of 40.5 percent. If beef bones were classified as offal the applicable tariff would be 18.2 percent.

#### **m. Import Clearance Procedures, Food Standards, and Labeling**

After WTO dispute settlement consultations with the United States between 1995 and 1999, the Korean Government revised its import clearance

procedures to harmonize them with international practice including: (1) expediting clearance for fresh fruits and vegetables; (2) instituting a new sampling, testing, and inspection regime; (3) eliminating some nonscience-based phytosanitary requirements; and (4) beginning revisions of food related regulations.

In 2003, a new import inspection program implemented by the MHW and the KFDA undermined Korea's earlier efforts to harmonize its import clearance programs with international norms, including WTO national treatment provisions. On January 27, 2003, the new import inspection program was notified to the WTO in G/SPS/N/KOR/123. In comments on the notification, the U.S. Government and other countries expressed concern about a new requirement mandating annual maximum residue limit (MRL) testing of agricultural products on a packing-house basis and the associated testing fee of roughly \$1,960. Since domestic agricultural products are only subject to random tests and the Korean Government bears all test costs associated with random tests, national treatment is a serious concern.

No changes were made to address U.S. concerns and the new requirements became effective on August 18, 2003. KFDA, the implementing agency of this new import inspection program, proposed to reduce the MRL testing fees to 278,400 Korean won (approximately \$242) from 2,256,000 Korean won (approximately \$1,960). However, reduction in the testing fee still does not fully address the underlying national treatment issue. The U.S. Government will continue to press Korea to resolve fully these issues in bilateral and multilateral fora.

Additional work will be needed to bring Korea's food related regulations into conformity with international standards, specifically those related to limited classification of food categories and burdensome testing requirements.

On June 28, 2003, KFDA announced new "Proposed Standards and Specifications for Health Functional Foods." The objective of the

so-called “Functional Food Code” is to regulate health foods and nutritional supplements by listing products that can be classified as functional foods and setting standards and specifications for functional foods. Products classified as functional foods can carry “efficacy claims” on their labels. In the proposed Functional Food Code, however, limited categories of functional foods and nonscience-based upper limits on vitamin and mineral content restrict entry of U.S. health foods and supplements into the Korean market. The U.S. Government and U.S. industry submitted comments detailing concern about restrictions on health foods and nutritional supplements that are freely traded in foreign countries. To date, however, KFDA has not addressed U.S. concerns. The U.S. Government will continue to press Korea on this issue.

## **5. India**

### **a. General**

Trade between the United States and India totaled \$18 billion in 2003, well below potential because widespread barriers to market access in India, including high taxes and tariffs, differential treatment of imports, and reference prices.

The United States continued its efforts to open India's markets and develop a constructive, long-term trade relationship. We sought to identify areas for cooperation. Discussions focused on WTO matters as well as bilateral trade issues including India's tariff and tax regime, biotechnology, intellectual property rights, and subsidies.

### **b. Trade Dialogue**

USTR Zoellick and Indian Minister of Trade and Industry Arun Jaitley held several meetings this year. USTR also appointed the first-ever Assistant United States Trade Representative for South Asia who is responsible for India as well as other countries in the region. At the specific request of USTR Zoellick, the new AUSTR for South Asia devoted most of his efforts to working to open India's markets, historically among the most civilized in the world. With a consumer class of over

200 million people, India presents enormous export opportunities for the United States. The new AUSTR visited India twice and frequently met with Indian diplomatic and trade officials based in Washington quite frequently in the second half of 2003. He focused especially on reducing India's very high agricultural tariffs and its high tariffs on industrial goods, on resolving several trade disputes—particularly one involving an Indian policy that unreasonably restricts the market for American fertilizer—and on protecting American intellectual property. As part of the United States-India Economic Dialogue, the United States-India Trade Policy Working Group (TPWG), led by USTR and India's Ministry of Commerce, met regularly at the technical and Ministerial levels. To that end, TPSC agencies met with their Indian counterparts twice by digital video conference (DVC) and face-to-face on numerous occasions during 2003. Participants covered the full range of bilateral trade issues during these discussions. A further DVC was devoted to a thorough discussion of intellectual property rights protection and enforcement. Another was devoted to an exchange of information on biotechnology regulations.

### **c. Intellectual Property Rights**

Enforcement of intellectual property rights in India remains problematic, and the country remains on the Special 301 “Priority Watch List.” As a signatory to the Uruguay Round of GATT trade negotiations, India was required to comply with most of the obligations of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) by January 1, 2000, and must introduce and enact a comprehensive patent system for pharmaceuticals and agricultural chemicals no later than 2005. The Indian Government has announced its intention to conform fully to the WTO TRIPS requirements of the Uruguay Round and has stated that it will be fully TRIPS compliant by January 1, 2005.

In June 2002, Parliament passed legislation amending the Patents Act. While the new legislation corrects some of the shortcomings of the 1970 Patents Act, the legislation contains

numerous deficiencies and appears to fail to comply with both the letter and spirit of the TRIPS Agreement. Most notably, the following problems pose significant concerns: numerous categories of inventions are not patentable; lack of protection for product-by-process inventions; failure to address the abusive government use and revocation provisions present in the 1970 Act; and failure to recognize importation as satisfying the “working” requirement. Moreover, the law adds a new requirement to patentability, i.e., disclosure of the source and geographical origin of biological material used in an invention. To the extent that these types of requirements are unrelated to obtaining patent protection, they serve no legitimate purpose in a patent system and impose unnecessary burdens on patent applicants. We await the Indian Government’s implementation of TRIPS-compliant legislation in time to meet its WTO January 1, 2005 commitment.

The Indian Government has made encouraging statements concerning the implementation of TRIPS-compliant data exclusivity regulations (protection for undisclosed test data). We await Indian Government issuance of such regulations.

While the copyright law generally complies with the TRIPS Agreement, the 1999 amendments undermine TRIPS requirements concerning protection for computer programs. Unfortunately, Indian copyright enforcement efforts are characterized by long delays and low penalties.

The Government of India, along with a “core group” of local industry representatives, academics and IP lawyers has been discussing amendments to the Indian Copyright Act to implement the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty. The United States has asked India for further information about the schedule for implementation of the WIPO Treaties and the draft Copyright Law amendments.

The United States has continuing concerns over the environment for intellectual property enforcement in India. These concerns include lack of deterrent penalties for counterfeiting and piracy,

and unnecessary delays in civil and criminal cases. High piracy rates (particularly for popular fiction and certain textbooks), increasing problems with exports, nascent problems with optical disk piracy, extensive use of expensive civil remedies to address social problems better addressed through socially deterrent criminal measures, are among the IPR enforcement problems U.S. industry is facing in India. CD-R seizures also continue to rise—over 100 percent from 2001 to 2002. Internet piracy is a growing problem. In the trademark area, fast moving consumer goods and other sectors have also complained about high levels of counterfeiting and difficulties in bringing effective enforcement. Counterfeiting in the auto, pharmaceutical, entertainment, consumer goods and apparel industries are examples. Particularly troubling are extensive public health and safety risks posed by counterfeit medicines and auto parts. This major problem is complicated by India’s export of counterfeit goods to the Middle East, southern Africa and Europe.

#### **d. Diammonium Phosphate (DAP)**

Changes in India’s fertilizer price control and subsidy regime have driven U.S. and other foreign phosphate fertilizer exports out of the Indian market. Recently, the Indian Government increased domestic subsidies while offering import subsidies set so low that U.S. producers cannot profitably sell in the Indian market. U.S. phosphate fertilizer exports fell from a peak of 2.3 million tons in 1999 to virtually zero this year.

The United States continues to press the Indian Government to end distorting policies that impede U.S. producers of DAP from competing in the Indian market.

#### **e. Reference Pricing**

In August 2001, following allegations of under invoicing by vegetable oil importers, the Government of India imposed reference prices on imports of palm oil and palm products. In September 2002, India added soybean oil to its fixed reference price regime and in December 2002, raised the reference price to a level that substantially exceeds world prices for vegetable

oils. The applied tariff for crude soybean oil was already at the WTO bound rate of 45 percent. Given fluctuations of world market prices and India's relaxed norms for revision of reference prices, the effective tariff for crude soybean oil (CSBO) is likely to exceed India's tariff bindings on CSBO. From September 2002 until May 2003, India's effective tariff for CSBO was above 45 percent, since its CSBO reference prices were well above world market prices.

## **f. Export Subsidies**

Since October 2000, faced with massive grain stocks and shortage problems, the Government of India started allocating large quantities of wheat for export at highly subsidized prices. In April 2001, following the success of its wheat exports program, India began subsidizing exports of rice. India did not notify any grain export subsidy programs under its Uruguay Round commitments. In late 2003, record offtake for domestic consumption and heavy exports lowered government-held stocks of wheat and rice, easing domestic pressures on the Indian Government to continue the export of grains at highly subsidized prices. By the end of January 2004, the Indian Food Ministry may consider new export allocations after reviewing grain stock levels.

## **6. Pakistan**

In 2003, the United States strengthened its trade dialogue with Pakistan on issues affecting our trade and investment relationship. Minister of Commerce Humayun Akhtar Khan visited Washington in June and met with Commerce Secretary Evans and Ambassador Zoellick. USTR agreed to negotiate a Trade and Investment Framework Agreement (TIFA). The negotiations were completed expeditiously, and the TIFA was signed during President Musharraf's visit at the end of June.

In preparation for the first TIFA meeting, AUSTRA Ashley Wills visited Islamabad in October and was hosted by Minister Khan. Ambassador Wills discussed a number of bilateral trade and investment issues while in Pakistan. During his consultations, Ambassador Wills requested that

additional attention be given to Pakistan's significant problems in enforcing intellectual property rights. Just prior to Commerce Assistant Secretary William Lash's visit to Pakistan in August, a U.S. roadmap was presented to the Pakistanis in the summer outlining the improvements we are seeking. The Government of Pakistan has begun to address the intellectual property problems, particularly in the optical disk sector, by planning the creation of an inter-agency task force.

Throughout the year Pakistan and the United States consulted frequently on the Doha Development Agenda negotiations. Closer collaboration developed between our missions in Geneva.

## **7. Afghanistan**

An interagency working group worked throughout the year to further development of the Afghan Trade Initiative. Further, a U.S.-Afghanistan Commercial Working Group was created. The bi-national group is co-chaired by USTR and the Department of Commerce for the United States, and by the Ministry of Commerce for Afghanistan. The inaugural meeting of the Working Group was held in Chicago on June 9. Trade issues also were discussed between Ambassador Zoellick and Afghan Finance Minister Ghani and between Commerce Secretary Evans and Commerce Minister Kazemi.

In order to stimulate greater Afghan utilization of the U.S. Generalized System of Preferences (GSP) program, a capacity building seminar was held by DVC with Afghan participants. In addition, Afghanistan and the United States will soon conclude an arrangement that grants duty-free treatment under the GSP program to certain textile handicrafts. Finally, the Administration continued its efforts to obtain legislation to permit hand-made carpets to be eligible for duty-free treatment under the GSP.

Afghanistan has requested initiation of the accession process for its membership in the World Trade Organization, and USTR is assisting Afghanistan on what WTO membership entails.

The United States continued to work with Afghanistan and its neighboring governments to remove transit barriers to trade. The interagency task force also focused on providing assistance to Afghanistan to build a strong customs administration in order to better track and increase incoming domestic revenue and to facilitate trade.

## 8. People's Republic of China

Much has changed in the U.S.-China economic and trade relationship since China began negotiations to join the predecessor to the World Trade Organization (WTO), the General Agreement on Tariffs and Trade (GATT), 17 years ago. In 1986, total U.S.-China trade was only \$7.9 billion, and imports from China outpaced U.S. exports to China by \$1.7 billion. In contrast, in 2003, total U.S.-China trade is projected to top \$170 billion, with imports from China exceeding U.S. exports to China by more than \$125 billion. The Administration is focused on increasing U.S. exports as a means to reduce the growth in the deficit.

Two years after acceding to the WTO, China has become the United States' third largest trading partner and the sixth largest market for U.S. exports. Indeed, over the last three years, while U.S. exports to the rest of the world have decreased by 10 percent, U.S. exports to China have increased by 66 percent. China has become a major consumer of U.S. manufactured exports, such as electrical machinery and numerous types of components and equipment, among other goods. Growth in U.S. exports to China of agricultural products has also been robust, and the market share of U.S. service providers in China has been increasing rapidly in many sectors.

U.S. business success in China, however, is not necessarily a demonstration of WTO implementation progress, nor does it necessarily signal that expectations are being fully met. Rather, China's WTO implementation progress must be measured by the degree to which China has begun to institutionalize market mechanisms and to make its trade regime more predictable and transparent. By that score, the shortcomings in China's WTO implementation are noteworthy.

Unlike last year, China's uneven and incomplete WTO compliance record can no longer be attributed to start-up problems.

China acceded to the WTO on December 11, 2001, after 15 years of negotiations with the United States and other WTO members. Under the terms of its accession, China committed to implement a set of sweeping reforms designed to implement the WTO's market access, national treatment and transparency standards, to protect intellectual property rights (IPR), to limit the use of trade-distorting domestic subsidies and to make other changes to bring its legal and regulatory system in line with those of other WTO members. For China's leadership, these commitments were primarily intended to consolidate and accelerate the market-oriented reforms responsible for lifting 300 million Chinese citizens out of poverty over the past 25 years. China also viewed joining the WTO as a means to ensure its continued access to export markets. In turn, other WTO members envisioned that faithful WTO implementation by China would reduce the ability of non-market forces, including government policies and officials, to intervene in the market to direct or restrain trade flows.

In its WTO accession agreement, China also agreed to two separate safeguard mechanisms designed to allow WTO members to cope with market disruptions caused by increasing economic integration with China. The first mechanism permits a China-specific safeguard and can be applied to any product being imported from China. The second mechanism applies specifically to textiles and apparel products. At the end of 2003, the Administration took action under the textile safeguard mechanism for three categories of products being imported from China. The Administration will continue to be ready to use all available mechanisms, including the China-specific safeguards when the facts of a particular case warrant.

Meanwhile, as China continued to pursue the implementation of its WTO commitments in 2003, China's second year of WTO membership, a number of positive developments occurred.

China began to take steps to correct systemic problems in its administration of the tariff-rate quota (TRQ) system for bulk agricultural commodities, largely in response to high-level engagement by the Administration. It relaxed certain barriers to soybean trade that allowed U.S. exporters to achieve record sales. It reduced capitalization requirements in certain financial services sectors. It opened up the motor vehicle financing sector. It solved outstanding concerns that had prevented China's membership in the WTO's Committee of Participants in the Expansion of Trade in Information Technology Products.

Despite these gains, 2003 also proved to be a year in which China's WTO implementation efforts lost a significant amount of momentum. In a number of different sectors, including some key sectors of economic importance to the United States, China fell far short of implementing its WTO commitments, offsetting many of the gains made in other areas. Indeed, institutionalization of market mechanisms still remains incomplete, and intervention by Chinese government officials in the market is common. In many instances, China has sought to deflect attention from its inadequate implementation of required systemic changes by managing trade in such a way as to temporarily increase affected imports from vocal trading partners, such as the United States.

China's WTO implementation efforts, it should be noted, have taken place against a challenging political and social backdrop. In 2003, China underwent a major leadership change, passed through a harrowing national SARS epidemic, undertook a sizeable restructuring of the government's economic and trade functions, and confronted a host of dislocations inherent in its transition from a planned economy to a more market-oriented economy. These factors may have presented substantial challenges, but China still needs to fulfill its WTO commitments.

As highlighted in the 2002 Report, which covered China's first year of WTO membership, China's efforts were most problematic in the areas of agriculture, services, enforcement of intellectual

property rights and transparency. Although we have seen progress in some of these areas in 2003 as a result of high-level engagement, they still remain areas of serious concern.

At the same time, other areas of concern have developed, such as China's questionable use of certain tax policies to favor domestic production. This year has also seen an increasing use of industrial policies to encourage domestic industries at the expense of imports from abroad or foreign businesses operating in China. This latter phenomenon is particularly apparent in the automotive sector, where a proposed industrial policy threatens to undercut many U.S. industry gains in China's market. In addition, there are a number of important commitments that will face implementation deadlines in 2004, with those involving trading rights and distribution services being the most critical. It will require vigilance by the United States and other WTO members to ensure China fulfills these commitments.

As the slowdown in China's WTO implementation efforts became evident in 2003, the Administration stepped up its efforts to engage senior Chinese leaders. Over the course of the past year, President Bush emphasized the importance of China's WTO obligations in meetings with his counterpart, Hu Jintao, and with China's Premier, Wen Jiabao. United States Trade Representative Zoellick made two separate visits to China for talks on WTO implementation matters with Premier Wen and with Vice Premier Wu Yi. He also raised U.S. concerns throughout the year with his Ministry of Commerce (MOFCOM) counterpart, including most recently at the October 2003 APEC meetings in Thailand. The Secretaries of Commerce and Treasury made their own trips to China, again carrying the message that China's WTO implementation was a matter of the highest priority. Sub-cabinet officials from various U.S. economic and trade agencies also met with their Chinese counterparts in China, Washington and Geneva to work through areas of concern, including WTO implementation issues, on numerous other occasions.

In 2003, the Administration also utilized the newly established sub-cabinet dialogue on WTO compliance and other trade matters (the Trade Dialogue), which brings together U.S. economic and trade agencies and various Chinese ministries and agencies with a role in China's WTO implementation. Trade Dialogue meetings were convened twice in 2003, once in February, led by then Deputy United States Trade Representative Huntsman, and later in November, led by Deputy United States Trade Representative Shiner. The Trade Dialogue meetings have proven to be effective in communicating specific trade concerns and in serving as an early warning mechanism for emerging trade disputes.

A summary of the WTO compliance issues of the most concern to the United States follows. For a more detailed discussion, see USTR's 2003 Report to Congress on China's WTO Compliance, dated December 11, 2003.

### **Agriculture**

China's potential as a market for U.S. agricultural exports was a key factor in U.S. support for China's WTO accession and the grant of permanent normal trade relations status to China. While China's attempts to restrict certain agricultural imports have been an ongoing theme of the first two years of China's WTO membership, high-level interventions by Administration officials have been able to contain much of the commercial impact of these barriers, particularly in 2003. Indeed, from January through September 2003, U.S. exports of soybeans climbed above \$1.2 billion—a record—and cotton exports, at \$337 million, were 478 percent greater than during the same period in 2002. Many other agricultural products also fared well, as U.S. exports to China totaled \$2.9 billion from January through September 2003, representing a 102 percent increase over the same period in 2002.

Again, however, increased sales alone are not indicative of full WTO implementation. China committed to make systemic changes designed to create fairness, predictability and transparency in agricultural trade.

In 2003, China's actual and threatened use of unreasonable rules on biotechnology, most notably in the case of soybeans, and questionable sanitary and phytosanitary (SPS) measures have continued to frustrate efforts of U.S. agricultural traders to develop a consistent market for their exports to China. While many affected U.S. exports increased this year, in part because of high-level interventions by Administration officials, systemic problems with the biotechnology rules and China's SPS administration continue to cloud market access. These and other emerging concerns, such as China's apparent use of subsidies to promote certain agricultural exports, will require continued engagement by the Administration in order to prevent trade disruptions and ensure that China plays by the rules.

China's administration of TRQs for bulk agricultural commodities is another area that has caused serious concern. Since China's WTO accession, the setting of sub-quotas, use of Catch\_22 import licensing procedures, allocation of TRQs in commercially unviable quantities and lack of transparency in TRQ allocation and management have combined to limit what should be an expanding market for U.S. exporters, particularly in the case of cotton. In June 2003, however, China agreed to address the United States' most pressing systemic concerns with China's TRQ system. Although the results of this settlement will not be clear until shipments begin to flow in early 2004, China has since taken steps to eliminate separate allocations for general trade and processing trade, eliminate certain unnecessary licensing requirements, and create a new mechanism for identifying allocation recipients. Due to these developments, the United States decided not to initiate WTO dispute resolution on this issue in 2003.

### **Intellectual Property Rights**

In the year leading up to its WTO accession, China did make significant improvements to its framework of laws and regulations covering intellectual property rights. However, the lack of effective IPR enforcement in China is a major obstacle toward a meaningful system of IPR



protection. IPR problems are pervasive, covering the widespread production, distribution and end-use of counterfeit and pirated products, brands and technologies. Violations include the rampant piracy of film, music, publishing and software products, infringement of pharmaceutical, chemical, information technology and other patents, and counterfeiting of consumer goods, electrical equipment, automotive parts and industrial products. IPR infringements not only have an economic toll, but also present a direct challenge to China's ability to regulate products that could have health and safety implications for China's population and international consumers. While a domestic Chinese business constituency is increasingly active in promoting IPR enforcement, piracy and counterfeiting remain pervasive. If significant improvements are to be achieved on this front, China will have to close legal and enforcement loopholes and devote considerable resources, political will and high-level attention to this problem.

The United States has had an ongoing dialogue with China on IPR matters for a number of years. In the Administration's view, keys to achieving effective IPR enforcement will be for China to lower thresholds for criminal prosecution, increase criminal penalties for IPR violators to deterrent levels, demonstrate a willingness to increase prosecution and punishment of IPR offenders, increase resources and devote more training for enforcement throughout China, and establish more effective communication procedures among relevant officials of China's courts and investigative units, the Supreme People's Procuratorate and China's lawmaking bodies.

In recent months, the Chinese leadership has signaled a new resolve to address IPR enforcement issues. In October 2003, Vice Premier Wu was appointed to head a Leading Group on IPR issues, which should help to reduce bureaucratic resistance and confusion on IPR enforcement among the numerous Chinese government entities with responsibilities in this area. In remarks following her appointment, she acknowledged China's IPR enforcement problem and explained

that China was paying increasing attention to IPR enforcement, not just to implement its WTO commitments but also to attract more foreign investment as it opened up its market and to accelerate China's economic and social progress. She pledged that China would intensify its IPR enforcement efforts and penalize those who commit IPR infringement.

## Services

Concerns continued to arise in many service sectors, principally due to transparency problems and China's use of capitalization and other requirements that exceed international norms. The United States and China have cooperated to resolve some of these concerns, but progress has been slow and uneven. Following bilateral discussions, China did begin to take steps to substantially reduce capitalization requirements in the insurance sector. In some cases, such as express delivery services, much progress was made toward resolving regulatory concerns in 2002, but problematic measures have re-surfaced in 2003 and remain under consideration. In other cases, such as China's implementation of its commitments on branching by insurance companies, the United States and China remain at odds despite a longstanding cooperative and otherwise productive dialogue with China's regulators.

## Value-Added Tax Policies

China uses value-added tax (VAT) policies to encourage domestic production in a number of industrial and agricultural sectors. In the case of semiconductors, China's policy of providing VAT rebates to domestic semiconductor producers disadvantages U.S. exports and raises serious WTO concerns. In the case of fertilizer, China exempts from the VAT fertilizer that is primarily produced domestically and that competes directly with the principal U.S. fertilizer export, another practice that raises serious WTO concerns. The Administration will continue to press China on these issues and will take further appropriate actions seeking elimination of China's differential tax treatment, including dispute resolution at the WTO, if necessary.

## **Transparency**

An area of cross-cutting concern continues to be transparency. While some Chinese ministries and agencies have taken steps to improve opportunities for public comment on draft laws and regulations, and to provide appropriate WTO enquiry points, China's overall effort is plagued by uncertainty and a lack of uniformity. Some of China's ministries and agencies seek selective comment on proposed regulations and implementing rules from domestic Chinese interests, while excluding participation from foreign businesses active in the China market. The Administration is committed to seeking improvements in this area.

## **Trading Rights and Distribution Services**

Ensuring the unrestricted rights of all Chinese and foreign businesses to engage in importing and exporting was a key WTO accession commitment obtained by the United States and other WTO members, as was China's commitment to fully liberalize the distribution services sector. To date, however, China has fallen behind in its implementation of these commitments, which are required to be phased in over the first three years of China's WTO membership. Foreign businesses, in particular, continue to be beset by a variety of restrictions, which are undercutting market access for the entire range of U.S. businesses active in the China market. With full liberalization in these important areas required by December 11, 2004, Administration officials are actively engaged with their Chinese counterparts in an effort to obtain China's full compliance.

## **Conclusion**

While the U.S.-China economic and trade relationship is growing rapidly, there are a number of systemic concerns that remain, making further improvements in that relationship problematic. The Administration remains committed to resolving the United States' concerns through all available means. The Administration's preference is to resolve those concerns through bilateral consultations in a timely and effective manner. If bilateral efforts are not successful, however, the

Administration is fully prepared to enforce U.S. rights through other means, including dispute resolution at the WTO.

## **9. Japan**

The United States redoubled its efforts to promote structural and regulatory reform in Japan, improve market access for U.S. goods and services, and support the adoption and successful implementation of pro-competitive policies throughout the Japanese economy. The United States has been encouraged by positive trends in corporate and financial restructuring and welcomes Prime Minister Junichiro Koizumi's continuing commitment to structural and regulatory reform. While the Japanese economy has been showing encouraging signs of life, it remains weighed down by non-performing loans and deflation and is in need of additional reforms that will address persistent structural rigidities, excessive regulation, and market access barriers. Throughout 2003, the U.S. Government has been working with the Government of Japan to develop and implement concrete steps for Japan to take to further open and deregulate its markets. These measures are designed to help Japan revitalize its economy and generate sustainable economic growth.

In addition to bilateral approaches, the United States relied on a wide range of regional and multilateral fora in 2003, including the WTO and APEC, to advance its trade agenda with Japan. The United States is working to ensure that our trade priorities in these fora, including on agriculture and services, are well coordinated with our bilateral agenda so that the various initiatives are complementary and mutually reinforcing.

## ***Overview of Accomplishments in 2003***

### **U.S.-Japan Economic Partnership for Growth**

In 2003, the United States continued to place a high premium on promoting much-needed regulatory reforms and obtained improved access for U.S. goods and services in a number of areas. Under the U.S.-Japan Economic Partnership for

Growth (the Partnership), the United States has been working with Japan to promote sustainable growth in both countries by addressing such issues as sound macroeconomic policies, structural and regulatory reform, financial and corporate restructuring, foreign direct investment, and open markets. While regulatory and structural reform remains of paramount importance, the United States and Japan also addressed new and lingering trade issues in a variety of sectors.

The following provides brief updates of each component of the Partnership along with accomplishments achieved in 2003.

*Subcabinet Economic Dialogue:* Co-chaired by the NSC/NEC and Japan's Ministry of Foreign Affairs (MOFA), the "Subcabinet" sets the tone and direction of the Partnership, with Deputy/Vice Ministerial level officials meeting on an annual basis to discuss a broad range of bilateral, regional, and multilateral issues. Recommendations from these meetings are given to the respective Governments for use in developing policy. At the third meeting of the Subcabinet in April 2003 in Washington, participants covered a range of issues, including deflation in Japan, establishment of Japan's Industrial Revitalization Corporation, the launch of the Special Zones for Structural Reform, and various regional and global issues. The next meeting of the Subcabinet is expected to convene mid-2004, coinciding with the 2004 annual meeting of the Private Sector/Government Commission, which is described below.

*Private Sector/Government Commission:* The "Commission" is designed to better integrate the U.S. and Japanese private sectors more fully into the economic work of the two governments. Private sector delegates from Japan and the United States meet annually with the Subcabinet to discuss issues of key importance to both countries. The 2003 Commission meeting was held in Washington in April 2003 to address the topic "Successfully Meeting Economic Challenges in the 21st Century." The private sector provided recommendations for consideration by both

governments in four key areas: (1) corporate and financial restructuring; (2) healthcare innovation; (3) corporate governance; and (4) trade and investment. The Commission convened a follow-up meeting in October 2003, where the two governments responded to the April recommendations.

*Regulatory Reform and Competition Policy Initiative:* Co-chaired by USTR and MOFA, the "Regulatory Reform Initiative" seeks to promote economic growth and open markets by focusing on sectoral and cross-sectoral issues related to regulatory reform and competition policy. Under this Initiative, the United States has made concerted efforts to focus on issues the Koizumi Administration has identified as important areas for reform, such as telecommunications, information technologies, medical devices and pharmaceuticals, energy, and competition policy. Throughout 2003, Working Groups and a High-Level Officials Group met to discuss reform proposals that culminated in the Second Report to the Leaders, which was conveyed to President Bush and Prime Minister Koizumi on May 23, 2003. That report detailed numerous regulatory reform measures that Japan had implemented or would implement.

*Investment Initiative:* The Investment Initiative addresses laws, regulations, policies, and other measures intended to improve the climate for foreign direct investment (FDI). Led by the U.S. Department of State and Japan's Ministry of Economy, Trade, and Industry (METI), the Investment Initiative meets regularly to resolve investment issues and prepare a joint report for the Leaders' summit. Key topics discussed at the most recent meeting in November 2003 in Tokyo included mergers and acquisitions, and tax, labor, and land policy. The Initiative includes co-sponsored investment promotion seminars in both countries to bring about better understanding and support for FDI from regional government and business leaders. During the talks, the U.S. private sector is given an opportunity to actively participate and directly present their investment concerns to the Government of Japan.

**Financial Dialogue:** The Financial Dialogue serves as a forum for the U.S. Department of Treasury, and Japan's Ministry of Finance (MOF) and Financial Services Agency (FSA) to exchange information on key macroeconomic and financial sector issues, including non-performing loans. As appropriate, the Report to the Leaders under the Regulatory Reform Initiative includes progress in financial sector liberalization achieved under this Dialogue. The third meeting of this group was convened in November 2003 in Washington.

**Trade Forum:** The Trade Forum, which is led by USTR and MOFA, was created to foster focused and substantive discussion on a wide-range of sectoral trade issues of interest and concern to both governments. It also serves as an "early warning" mechanism to facilitate resolution of emerging trade problems. Issues raised at the second meeting of the Trade Forum in July 2003, included agriculture, public works, and new U.S. visa and passport regulations. The Trade Forum meets at least once a year.

#### **a. Regulatory Reform**

The United States and Japan issued a Second Report to the Leaders under the Regulatory Reform Initiative in May 2003. In that report, Japan agreed to undertake many important regulatory reform measures. Significant achievements were made in various sectors, including telecommunications, information technologies, energy, medical devices and pharmaceuticals, and financial services. Other important progress was made in key areas such as competition policy, transparency and other government practices, legal system reform, revision of Japan's commercial law, and distribution.

Building on progress achieved in the first two years of the Regulatory Reform Initiative, the United States presented Japan on October 24, 2003, with 54 pages of recommendations calling on Japan to adopt a wide range of regulatory reforms. Consistent with the overall objective of the Partnership, these recommendations include reform measures intended to help Japan return to sustainable growth and open markets.

Furthermore, the United States placed a special emphasis on issues that Japan has identified as priorities for reform.

The October 2003 recommendations presented to Japan act as the basis for bilateral discussions in a High-level Officials Group and the various Working Groups established under the Regulatory Reform Initiative. The Working Groups have already begun meeting to discuss the recommendations. These discussions will in turn serve as the basis for an annual report to the President and Prime Minister in mid-2004 detailing the progress made under this Initiative, including specific measures to be taken by each Government.

Highlights of the Second Report to the Leaders and key reform recommendations submitted in October are as follows:

##### *i. Sectoral Regulatory Reform*

**Telecommunications:** The establishment of a pro-competitive telecommunications services market in Japan is the primary focus of the United States in pursuing regulatory reform for this sector. However, Japan's telecommunications regulator, the Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT), continues to defer to the interests of NTT at the expense of business and residential users and to the detriment of promoting competition in the telecommunications services market. In this environment, the inability of competitive telecommunications carriers to make inroads into NTT's control of 98 percent of subscriber lines and 58 percent of mobile customers continues to impair the introduction of innovative, low-cost services to business and residential users in Japan's \$145 billion telecommunications market, one of the world's largest.

The May 2003 Second Report to the Leaders highlighted measures taken by Japan to promote further competition in this sector. These measures included proposed revision of the Telecommunications Business Law (TBL) to abolish the Type I (facility-based) and Type II (others) business categories and streamline

various requirements for competitive carriers. (The revised TBL was eventually passed by the Diet in July 2003.) The report also clarified that NTT East and West will be required to file reports documenting their compliance with conditions attached to the approval of new business offerings, such as interprefectural Internet Protocol (IP)-based services. In the area of mobile communications, the report indicated slow and steady progress towards resolving the issue of whether fixed carriers should have the right to set user rates for termination of their calls on mobile networks. Furthermore, the report noted that NTT DoCoMo, designated since 2002 as a “dominant carrier,” reduced its interconnection rates by 5 percent compared to the previous year. During talks in the Telecommunications Working Group, the two governments explored emerging issues by inviting experts from the government and private sector to share their views about the developing IP telephony market, which is expected to have a significant impact on competition.

However, competitive carriers in Japan suffered a setback when in April 2003 MPHPT announced its approval for a 12 percent increase in the rates charged to wireline carriers by NTT East and West for calls transferred at regional switches. This increase was based on a revision of the methodology for calculating the cost of interconnection. The same formula allowed a 3 percent decrease for local switches, resulting in an average increase of 5 percent. These rates will be in effect for two years. MPHPT maintained that the increase was necessary due to NTT’s declining traffic and hence, their declining revenues. In meetings of the Telecommunications Working Group, as well as the public comments submitted to Japan throughout the revision process, the United States pressed Japan to rectify the flaws in the methodology, such as the inclusion of non-traffic-sensitive (NTS) costs and the uniform rate for both regional carriers despite widely varying costs for the East and West regions. In the second Report to the Leaders, Japan promised to address these issues as it reviews the methodology for rates which will be applied from 2005.

In the October 2003 Regulatory Reform submission, the United States urged Japan to take bold steps to improve competition in this sector, including: follow through on deregulation of competitive carriers under the new TBL; strengthen regulatory independence, transparency, and accountability; reinforce dominant carrier safeguards; conduct an objective and transparent review of interconnection rates; and investigate mobile termination rates to ensure reasonable rates and competitive neutrality. In addition, the U.S. proposed to continue inviting experts to the Telecommunications Working Group to provide information about emerging communications technologies. The United States recommendations were discussed at the first meeting of the Telecommunications Working Group, which took place in November 2003 in Tokyo. Under the auspices of the Working Group, guest speakers provided information about recent developments in RFID (Radio Frequency Identification) and its implications for spectrum policy.

**Information Technologies:** The primary objective of the Information Technologies (IT) Working Group under the Regulatory Reform Initiative is to work with Japan to establish a vibrant and competitive IT sector that can benefit both our economies, as well as provide global leadership in this area. Although Japan’s electronic commerce (e-commerce) market is one of the largest in the world, its tremendous potential for growth remains unfulfilled because the IT sector is burdened by regulatory and other barriers. Japan has taken significant steps toward, and continues to make progress on, realizing its ambitious plan to become a global IT leader. In 2003, recognizing that IT infrastructure had developed significantly as a result of its efforts, the Japanese Government drafted and released an update of its “e-Japan Strategy,” which marked a shift toward more heavily promoting the utilization of IT. Even so, the Japanese Government itself acknowledged through the measures proposed in the “2003 e-Japan Priority Policy Program” that legal and other barriers that hinder growth in the IT sector persist. As Japan responds to the challenges that

lie ahead in this pivotal sector, the U.S. Government is working with Japan to establish a regulatory framework that ensures competition, promotes innovation, allows private sector-led regulation where appropriate, and protects intellectual property rights in the digital age. Establishing such a framework will promote the development of IT-related businesses and e-commerce, and thus provide significant opportunities for U.S. firms and their leading technology products and services in a market that is expected to reach nearly \$125 billion by 2005. Having entered its third year in fall 2003, the IT Working Group has been a very cooperative and constructive dialogue for advancing these goals.

Throughout 2003, discussions in the IT Working Group focused on protecting intellectual property; removing regulatory and non-regulatory barriers to e-commerce; promoting e-commerce via private-sector self-regulatory mechanisms and technology-neutral, market-driven solutions; and expanding IT procurement opportunities. The recommendations also included a proposal for a cooperative effort in the area of IT-based education. Japan has in turn agreed to take significant steps to promote growth in the IT sector. The specific measures Japan has taken are summarized in the May 2003 Second Report to the Leaders under the Regulatory Reform Initiative.

With regard to strengthening the protection of intellectual property, Japan passed legislation amending the Copyright Law to extend the term of copyright protection for cinematographic works from 50 to 70 years, which will go into effect in early 2004. In addition, Japan passed legislation which strengthens the enforcement of copyright protection by alleviating the burden of proof on rightholders to establish infringement and the amount of damages in copyright infringement cases. Japan also established the Intellectual Property Strategy Headquarters to implement Japan's "IP Strategic Program" that will include measures designed to meet the challenges of strengthening the protection and enforcement of intellectual property rights in the digital age.

Japan also took steps to increase user confidence in e-commerce by confirming that current and future revisions to the regulations allowing the use of electronic signatures will always maintain technological neutrality. Japan reinforced the leadership role of the private sector by agreeing to support the development of private-sector self-regulatory mechanisms for online consumer protection and management of personal data. Japan also enhanced opportunities for e-education technology providers by holding two forums with the United States that promoted IT solutions in primary education.

In addition, Japan recognized the important role of e-government in promoting growth in the IT sector by ensuring that all ministries will adopt concrete measures to ensure non-discriminatory, transparent, and fair procurement of information systems, and by expanding the use and availability of interactive online procurement systems. Japan also agreed to jointly hold with the U.S. Government a high-level U.S.-Japan government/private sector network security forum to raise awareness of key issues, highlight best practices, and strengthen public-private partnerships in promoting network security. This forum took place in September 2003, at which time the governments issued the "U.S.-Japan Joint Statement on Promoting Global Cyber Security," which emphasized the important roles the U.S. and Japan play as global leaders in this area.

Building on these accomplishments and the progress achieved over the past year, the United States made several recommendations in the October 2003 Regulatory Reform submission to reinvigorate Japan's IT sector. These recommendations included removing regulatory and other barriers, strengthening the protection of digital content, promoting the use of e-commerce in the public and private sectors, promoting network security, and facilitating IT procurement reforms. An overarching objective of this year's IT Working Group, incorporated throughout the specific recommendations, is to promote and expand private-sector input and the use of public comment opportunities in the Japanese policy-

making and regulatory processes. Specific recommendations include removing existing barriers that impede business-to-business and business-to-consumer e-commerce, such as allowing non-attorneys to provide online mediation and arbitration services for profit (Alternative Dispute Resolution). The U.S. submission also stressed the importance of transparency and coordination among ministries in implementing the Law on the Protection of Personal Information ("Privacy Law"), and sought assurance that companies, particularly those in e-commerce, would not be overly burdened in complying with the law (privacy protection).

With regard to strengthening the protection of intellectual property, the United States made several recommendations to strengthen the protection of digital content and the enforcement system against infringement. These recommendations include adopting a statutory damages system and extending Japan's terms of copyright protection for sound recordings and all other works protected by Japan's Copyright Law. To promote e-commerce use, the United States has urged Japan to support private sector self-regulatory mechanisms for privacy and Alternative Dispute Resolution, as well as to ensure that laws governing electronic transactions are technology-neutral. The United States has also called on Japan to support fair and open procedures for e-government procurement by ensuring transparency, efficiency, security, and private sector-led innovation. The United States conveyed and discussed these recommendations in detail during the first round of talks of the IT Working Group, which took place in November 2003.

**Energy:** Japan took a major step forward in 2003 towards liberalizing its energy sector. In June of this year, the Japanese Diet passed sweeping legislation that will lead to a further liberalization of Japan's energy sector (the third largest in the world after the United States and China) and should bring the government's regulation of utilities substantially closer to practices in other developed countries. This legislation paves the way for expanding liberalization in the retail elec-

tricity sector from 26 percent to 63 percent of the market by 2005 and expanding liberalization in the retail gas sector from 40 percent to 50 percent of the market by 2007. Importantly, as Japan developed this legislation, it provided several opportunities for public comment, fostering the kind of investor confidence that is so important to maintaining a stable, competitive energy market. A truly competitive Japanese energy sector will spur domestic economic growth and increase opportunities for U.S. firms to produce, sell, and trade energy products and services in Japan's electricity and gas markets. It will also provide opportunities for increasing U.S. exports to Japan's electrical generation equipment market.

The energy section of the Second Report to the Leaders concluded in May previewed many of key elements contained in the energy reform legislation that won Diet approval a month later. For example, to foster reliability and transparency in the transmission/distribution electricity sector, vertically integrated electric utilities are prohibited from using transmission information to disadvantage third-party generators. In addition, to prevent cross-subsidization of other utility operations, transmission/distribution accounts must be separate from generation and sales accounts. Players in the transmission/distribution sector are also prohibited from discriminating against other electricity sector participants. Furthermore, Japan will establish a neutral transmission system organization intended to create fair and non-discriminatory rules for the transmission and distribution of electric power.

Important reform legislation measures to improve the natural gas supply were also previewed in the Second Report to the Leaders, such as: providing non-utilities with eminent domain to construct gas supply pipelines; giving third parties access to non-utility as well as utility gas supply pipelines; ensuring fair and transparent gas transportation service through accounting separation of transmission from sales, information firewalls, and prohibition of discrimination against third parties. To facilitate fair negotiations between owners and users of LNG facilities, Japan will also

be issuing joint METI/JFTC guidelines on acceptable practices.

Furthermore, in the Second Report to the Leaders, Japan recognized: (1) that the effectiveness of the new reform legislation in ensuring a fair, efficient, and stable energy market depends on vigilant market oversight; and (2) the importance of an enforcement mechanism equipped with the number of staff, expertise, and independence necessary to perform this task.

With passage of the energy reform legislation, Japan has established an important framework for future liberalization. The focus in Japan is now on creating detailed implementing ordinances and regulations that should lead to a genuinely competitive market, increase efficiency, and improve the environment for investment in line with the aims of Japan's energy reform law. Accordingly, the United States made numerous recommendations regarding implementation measures in its October 2003 Regulatory Reform and Competition submission to Japan.

The United States, for example, recommended that Japan take concrete measures to ensure that the Electricity and Gas Market Divisions of METI, which regulate the energy sector, are free from undue political and industry influences. In addition, to ensure adequacy of infrastructure in both the electricity and gas sectors, the United States recommended that Japan undertake studies to evaluate whether there is enough interconnection capability needed to support a competitive power market and to establish incentives for investment in new gas pipeline construction in regions where the network is not sufficiently developed.

Specifically in regard to the electricity sector, the United States recommended that if the accounting separation and information firewalls Japan plans to establish to prevent competitive abuses prove inadequate, METI should adopt operational unbundling to ensure a fair and transparent market. Meaningful government oversight of the neutral transmission system organization is also crucial, and transmission rules should be

revised to facilitate greater access to transmission lines for all market participants.

As for the gas sector, the United States urged Japan to establish and strengthen a mechanism to conduct more rigorous rate approval examinations and audits and conduct neutral and fair ex-post facto monitoring. The United States also recommends that Japan promote construction and improvement of pipelines for gas supply use by parties other than general gas utilities and to establish detailed rules to ensure non-discriminatory negotiations between LNG terminal owners and third-party users of LNG terminals.

The United States commends Japan for its recent efforts to further liberalize its electricity and gas sectors. Much still needs to be done, however, as energy prices in Japan are still the highest among OECD members. Moreover, greater liberalization does not always mean greater market access unless a regulatory regime is established that genuinely encourages new players to enter the market. With this in mind, the United States considers the above reform recommendations as conducive to foster Japan's economic recovery, help U.S. firms compete in the Japanese electricity and gas markets, and create new opportunities for competitively priced, high-quality exports to the Japanese market for electrical generation equipment. Based on these recommendations, further discussions on energy issues took place in November 2003 in the Energy Working Group.

***Medical Devices and Pharmaceuticals:*** Japan's regulatory and reimbursement pricing systems slow the introduction of innovative U.S. medical devices and pharmaceuticals in Japan. Japan has recently decided to carry out major reform of these systems that will become fully effective in April 2005. The United States has advocated such reform to speed the introduction of new devices and drugs and to create incentives for the development of innovative products. Although Japan recognizes the importance of reform, its government has in recent years discouraged innovation by significantly cutting the reimbursement prices



for devices and drugs. The price cuts are part of Japan's response to the strain on its health care budget arising from an aging society where the number of workers supporting each retiree is declining steadily.

The U.S. Government believes that the Japanese Government's proposed health care reform is a first step toward confronting underlying problems, although Japan must move expeditiously to implement its plans. Japan's proposed reform focuses on transformation of the insurance system, creation of a new health insurance program for the elderly, and a review of the medical fee system.

The U.S. Government has welcomed the Japanese Government's comprehensive approach to pricing reform, as outlined in Japan's "Industry Vision" proposals to improve the competitiveness of its medical device and pharmaceutical sectors. Japan pledges in the Industry Visions to discuss with industry the health insurance coverage of devices and drugs and to implement pricing policies that recognize the value of innovation. The United States was further encouraged by Japan's statement in the May 2003 U.S.-Japan Second Report to the Leaders that it will encourage innovation by implementing the Industry Visions so that better devices and drugs are made available faster. The U.S. Government hopes to make further progress on these issues through the Regulatory Reform Initiative, which is part of the U.S.-Japan Economic Partnership for Growth. In October 2003, the U.S. Government presented its device and drug proposals to Japan under the Initiative and discussed them at a meeting of the Medical Devices and Pharmaceuticals Working Group in Tokyo. The Working Group meets under the framework of both the Initiative and the 1986 U.S.-Japan Market-Oriented, Sector-Selective (MOSS) Agreement. The U.S. proposals encouraged Japan to make full use of pricing rules, including premium-pricing rules, to reward and stimulate advances in drug research and medical technology. The United States also urged Japan to abolish rules that penalize or fail to

recognize the value of innovation. In addition, the United States requested that Japan provide U.S. industry with opportunities to provide input and with access to consultations before any change in reimbursement policy such as proposed changes in the Foreign Price Adjustment rule.

The Japanese Government has also taken recent steps that could lead to faster deregulation of medical devices and pharmaceuticals, which would speed the introduction of innovative products in Japan. Japan has revised its Pharmaceutical Affairs Law to create a new agency to oversee premarketing and approval of drugs and devices. The U.S. Government has welcomed the creation of the new Pharmaceuticals and Medical Devices Organization (PMDO), as it is expected to make approvals of drugs and devices faster. However, the United States has urged Japan to implement performance measures to ensure that steady progress is made toward faster approvals. In the Second Report to the Leaders, Japan said it would undertake major regulatory reform and continue discussing its plans with major stakeholders, including U.S. industry. More recently, in the October 2003 Regulatory Reform Initiative submission, the U.S. Government encouraged Japan to speed approvals and maintain a dialogue with industry. The United States also requested that Japan establish a user fee system that is based on performance and transparency, which should lead to faster and better systems for approvals and postmarketing safety.

**Financial Services:** The Government of Japan has implemented most of its "Big Bang" financial deregulation initiative. Those reforms aimed to make Tokyo's financial markets "free, fair and global" by allowing new financial products, increasing competition within and between financial industry segments, and enhancing accounting and disclosure standards. Big Bang liberalization has substantially improved the ability of foreign financial service providers to reach customers in most segments of the Japanese financial system.

There was additional progress in financial sector deregulation in 2003. The requirement for physical certificates for Japanese Government Bonds (JGBs) and corporate debentures was eliminated on January 6, 2003. This followed the elimination of the requirement for physical certificates for commercial paper on April 1, 2002.

In addition, on May 23, 2003 the Diet passed new securities market legislation to diversify corporate stock and bond distribution channels and increase the number of intermediaries. This legislation reduces minimum capital requirements for securities companies, investment trust management companies and investment advisory companies. On the same day, the Diet also passed major shareholder rule revisions designed to prevent abuse by brokers. The new rules authorize the Financial Services Agency (FSA) to inspect major shareholders of brokerage houses, including non-financial corporations and individuals. Finally, on May 30, 2003, the Diet passed legislation introducing a new sales agent system to permit CPAs, licensed tax accountants, and financial planners to sell corporate stocks to investors as agents of security brokerage houses. The entire securities market reform package will take effect on April 1, 2004.

Japan also amended the Postal Services Corporation Law in July 2003 to allow private investment advisory companies to provide fund management services for Postal Savings (Yucho) and Postal Life Insurance (Kampo). This is a significant breakthrough for foreign investment firms doing business in Japan, who now have the opportunity to manage funds that constitute a significant percentage of individual savings in Japan.

The United States welcomes Japan's progress in increasing the efficiency and competitiveness of its financial markets. In its October 2003 recommendations for regulatory reform regarding financial services, the United States put forward proposals to support further opening and development of the Japanese financial markets, which will allow Japan to take full advantage of international financial expertise and support future

Japanese growth. These include: (1) strengthening disclosure rules for investment trust performance by setting standards based on global best practices; (2) taking the measures necessary to make the No-Action Letter process an effective means for promoting regulatory transparency in the financial services sector; (3) increasing the defined contribution (DC) pension plan contribution limits; (4) granting regulatory approval to prototype plans for DC pensions; (5) further improving rules governing Money Management Funds (MMFs); (6) revising the E-Notification Law to include lenders subject to the Moneylending Business Law; (7) working closely with the private financial services community to review current reporting and record-keeping requirements; and (8) subjecting any legislative action for the financial services activities proposed for the Postal Public Corporation to full public notice and comment.

These issues were discussed on November 5, 2003, at the third annual meeting of the U.S.-Japan Financial Services Working Group, a component of the Financial Dialogue of the U.S.-Japan Economic Partnership for Growth.

#### *ii. Structural Regulatory Reform*

**Competition Policy:** A key goal of our regulatory reform efforts is to ensure that steps to deregulate and introduce competition into Japan's economy are not undone by anticompetitive actions by firms and trade associations resistant to such steps. An active and strong antitrust enforcement policy in Japan is needed to eliminate and deter anticompetitive behavior, including stronger measures to dismantle Japan's bid rigging (dango) system and active enforcement against anticompetitive exclusionary practices by dominant firms in deregulated industries.

Japan undertook some important steps in 2003 aimed at strengthening its antitrust enforcement regime. The independence and neutrality of the Japan Fair Trade Commission (JFTC), for example, was protected by changing its organizational status to an independent agency under the Cabinet Office. The JFTC also began reviewing the

possible overhaul of the Antimonopoly Act (AMA) to strengthen the JFTC's enforcement effectiveness, examining such issues as an increase in the level and scope of administrative fines (surcharges), the introduction of a corporate leniency policy, bolstered JFTC search and investigative powers, lengthened statute of limitations, and revised criminal accusation procedures. In addition, a number of major steps were taken to address Japan's bid rigging problem. The Bid Rigging Involvement Prevention Act, a law aimed at preventing the complicity of government officials in bid rigging, came into effect in January 2003, and the JFTC immediately used its new powers to prevent a recurrence of bureaucrat-led bid rigging on public works projects in Hokkaido. The Ministry of Land, Infrastructure and Transport (MLIT) supported this new law by publishing on its website a bid rigging countermeasures booklet for use by central government, local government, and quasi-governmental commissioning entities, and by introducing a new contract clause specifying pre-established damages that must be paid by contractors that commit bid rigging.

In its October 2003 Regulatory Reform submission, the United States recommended that Japan enhance deterrence of AMA violations by increasing the level of administrative fines substantially, bringing more criminal prosecutions, and encouraging judges to impose tougher sentences on AMA violators. The United States also urged Japan to strengthen the JFTC's enforcement capabilities, including by introducing a corporate leniency program, giving the JFTC enhanced investigation powers for criminal matters, expanding the staff and budget of the JFTC, extending the statute of limitations for AMA violations, and improving the JFTC's economic analysis capabilities. The United States also recommended that Japan take further measures to address prolific bid rigging, including by prohibiting bid rigging companies from participating in new government contracts for at least nine months, and publicizing the full results of investigations into bureaucrat-led bid rigging at the central or local government level. Furthermore, the submission urged that Japan

implement measures to permit the JFTC to enforce the AMA against incumbent dominant firms that engage in anticompetitive exclusion of new entrants in deregulated industries. These recommendations were discussed in detail at a meeting of the Cross-Sectoral Working Group in November 2003.

#### *Transparency and Other Government Practices:*

The United States continues to press Japan to make its regulatory system more transparent and accessible. While some progress has been achieved in this regard, the system continues to lack the transparency and accountability necessary to ensure that all players have equal access to government information and to the policy-making process. Reforms that increase the transparency of the regulatory process and make the bureaucracy more accountable work to shift greater control to the general public and help curb burdensome discretionary powers of the bureaucracy. Such reforms also help level the playing field for foreign firms, reducing the special advantages traditionally enjoyed by Japan's domestic firms.

Japan took several steps in 2003 to increase the transparency and accountability of its regulatory system. As specified in the Second Report to the Leaders, Japan made a number of pledges to improve its Public Comment Procedure (PCP) in an effort to make it more effective and to encourage more widespread use of this potentially important mechanism. The Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT), for example, requested that all ministries and agencies work to gather a broader range of opinions and information through the PCP when formulating, amending, or repealing a regulation by allowing for sufficiently long public comment periods. Japan is also working to enhance its e-government portal (<http://www.e-gov.go.jp/>) to, in part, provide greater information on the PCP. In a related development, some ministries and agencies have recently begun to solicit public comments for draft plans that act as the basis for legislation.

In addition, the Second Report to the Leaders included a lengthy section on the new initiative in Japan to encourage deregulation at the local level within Special Zones for Structural Reform. To date, Prime Minister Junichiro Koizumi has approved more than 250 of these zones since the first zones were established in April 2003. This new, innovative approach to deregulation and structural reform can provide important opportunities for Japan to return to sustainable growth. In the Second Report to the Leaders, Japan pledged to continue to take steps to ensure transparency in the development of the zones, in the zone application process, and in establishing procedures to implement the zones. Japan also said that it would encourage foreign firms, including U.S. companies, to submit zones ideas and would assist them in the process.

Building on these measures, the United States recommended in its October 2003 Regulatory Reform and Competition Policy submission that Japan undertake additional improvements in its regulatory system to support its reform overall efforts and ensure that all actors have the same access to government information and the policy-making process. The United States urged Japan to: (1) improve the effectiveness of the Public Comment Procedure (PCP) by requiring a minimum 30-day comment period (repeated MPHPT surveys show that just half of the solicitations for comments provide for less than 30 days); (2) take additional steps to facilitate public input into draft legislation while it is being developed by the government before it is submitted to the Diet; (3) ensure that the process to restructure and privatize public corporations is transparent and that the private sector has opportunities to provide input; (4) implement measures and practices to strengthen the No-Action Letter system, which was established two years ago and has been woefully underutilized; and (5) continue to select and establish the Special Zones for Structural Reform in a transparent manner and place a focus on expanding market-entry opportunities. Based on these recommendations, further discussions on transparency issues took place in November

2003 during the inaugural meeting this year of the Cross-Sectoral Working Group.

*Legal Services and Judicial System Reform:* The creation of a legal environment in Japan that supports regulatory and structural reform and meets the needs of international business is a critical element for Japan's economic recovery and restructuring. The Japanese legal system must be able to respond to the market's need for the efficient provision of international legal services, and provide a sound and effective foundation for the conduct of business transactions in an increasingly deregulated environment.

Japan took some major steps in 2003 toward modernizing its legal system. Most significant was amendment of the law regulating foreign lawyers to substantially eliminate restrictions on the freedom of association between foreign lawyers and Japanese lawyers. Once those amendments come into effect in late 2004 or 2005, foreign lawyers will be able to enter into partnership arrangements with Japanese lawyers and will be able to hire Japanese lawyers as associates. Law firms composed of U.S. and Japanese lawyers will be able to operate under a single name, and the members will be able to determine the profit allocation among themselves freely. Japan also made progress in the area of judicial system reform, including implementation of measures to reduce by 50 percent the time required to complete court trials, and examining concrete and wide-ranging issues aimed at strengthening judicial oversight of administrative agencies.

In its October 2003 submission, the United States urged Japan to ensure that the amendments allowing freedom of association between foreign and Japanese lawyers come into effect by September 2004. The United States also called on Japan to allow foreign lawyers to form professional corporations and to establish branch offices throughout Japan, just as Japanese lawyers are currently permitted to do, and to allow foreign lawyers to count all of the time they practice in Japan toward the three-year experience requirement to qualify as a licensed foreign

legal consultant. The United States also urged Japan to modify standing requirements for judicial review of administrative acts so that all persons who suffer injury as a result of a regulatory action may file an appeal with the courts. These recommendations were discussed in more detail at a meeting of the Cross-Sectoral Working Group in November 2003.

**Commercial Law:** Reform of Japan's commercial law to permit the use of modern merger techniques is necessary to facilitate merger and acquisition activities by both foreign and domestic firms in Japan. The Japanese economy will also benefit from additional measures to improve corporate governance, since good corporate governance systems will encourage increased productivity and economically sound business decisions as management strives to maximize shareholder value. However, good corporate governance requires active shareholder participation, particularly by large institutional investors such as pension funds and mutual funds, and the encouragement of good information flows through whistleblower protections.

Japan took initial steps in 2003 to introduce modern merger techniques into Japanese law by revising the Industrial Revitalization Law to permit triangular mergers and cash mergers in restructuring plans authorized by the government (see Investment section). Japan also took steps to increase corporate transparency by requiring disclosure of the name, career summary, corporate share-holdings, and nature of their relationship with the company of each member of the board, including executive committee members.

In its October 2003 Regulatory Reform submission, the United States encouraged Japan to build on these initial steps by taking further measures to improve commercial law and corporate governance in Japan. Specifically, the United States recommended that Japan introduce modern merger techniques into its commercial law for general use and that it improve corporate governance by requiring pension fund and mutual fund managers to vote proxies for the benefit of fund

beneficiaries and to disclose voting policies and actual voting records. The United States also urged Japan to introduce legislation to protect whistleblowing employees who report violations of securities laws or regulations from retaliation. Further, in order to promote the efficient and economical resolution of commercial disputes, the United States recommended that Japan create an alternative dispute resolution (ADR) regime that permits non-lawyers to act as arbitrators or other neutral roles in ADR proceedings and that allows ADR rules, processes, and standards to be flexibly tailored by the parties to the proceedings. These recommendations were discussed in more detail at a meeting of the Cross-Sectoral Working Group in November 2002.

**Distribution:** Japan's rigid and inefficient distribution and customs systems restrict market access for imported products and undermine the competitiveness of foreign-made products. With regard to customs, the United States continues to urge Japan to modernize clearance procedures to fully open its market to imported goods. The demand for the rapid delivery of goods and information has produced a number of new industries, including the express carrier industry, that are now seen as vital for the smooth development of the global economy. It is important therefore, to minimize the regulations, procedures, and costs that could inhibit the free exchange of goods and information through the express carrier industry. While more remains to be done, the Japanese Government has implemented several measures and provided a number of assurances in the context of the Regulatory Reform Initiative that will enhance the ability of U.S. express carriers to provide an efficient, speedy exchange of goods and information to benefit the Japanese economy.

In the Second Report to the Leaders, the Japanese Government noted the creation of 12 "international physical distribution special zones" in which overtime charges are reduced and the customs framework for overtime clearance is improved. In addition, on April 1, 2003, the Japanese Customs and Tariff Bureau (CTB) launched a system that enables non-residents to

file import duty declarations, etc., and control inventory. Additionally, the CTB committed to examining the feasibility of expanding the U-Clearance system.

U.S. reform recommendations to the Japanese Government in October 2003 recognized that Japan has implemented, and plans to implement, additional positive measures to simplify and automate customs processing, but contained several further recommendations dealing with customs clearance. The submission again recommended that Japan lower landing fees at Narita and Kansai international airports by formulating the level of landing fees in an open and transparent manner, using internationally accepted accounting standards, and basing those fees on the actual cost of providing services. In an effort to improve consumer convenience and expand consumer choice, the United States made a number of recommendations aimed at increasing the acceptance of credit and debit cards in Japan, and enhancing the security of transactions made with those cards. The U.S. Government continues to monitor progress on customs processing procedures and the fair and uniform implementation of the Large Store Location Law. In November 2003, the Cross-Sectoral Working Group met to discuss these and other issues.

## **b. Bilateral Consultations**

### *i. Insurance*

Under the 1994 and 1996 bilateral insurance agreements, Japan took significant steps to deregulate its insurance market. These steps included sweeping measures that resulted in meaningful improvements in the product approval process, greater use of direct sales of insurance products, and a diversification of allowable product offerings. As a result, U.S. insurance companies continue to visibly and substantially increase their presence in both the life and non-life insurance sectors in Japan. Issues of serious concern to U.S. insurers remain that remain include competitive concerns related to Kampo (Japan's postal insurance entity), the review and reform of the Life Insurance Policyholder Protection Corporation

(PPC), and unregulated and regulated insurance cooperative (kyosai).

Bilateral consultations under the two insurance agreements were held in Tokyo in November 2003. The talks, which included the participation of the National Association of Insurance Commissioners, covered a broad range of issues that had been highlighted by U.S. industry as key areas of concern.

Under Japan Post, the new public corporation established in April 2003, Kampo continues to provide a range of life insurance products that compete directly with the private sector. In November, Kampo's regulatory body, the Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) regrettably approved Kampo's request to begin offering a hybrid fixed-term/whole life product in the face of opposition by the insurance industry and Japan's trading partners. The United States has called for MPHPT to revoke its approval or for Japan Post to refrain from introducing the product until a level playing field is established in Japan's insurance market. The United States has urged Japan to ensure that the process of determining the future of Kampo is conducted in a fully open and transparent manner. The United States has also urged Japan to consult and work closely with both domestic and foreign insurers in determining the appropriate approach to reforming Kampo.

During the insurance talks, the United States also raised the issue of the future of the Life Insurance PPC. The United States urged Japan to carry out its commitment to promptly convene the Financial System Council to conduct a thorough review of the safety net system and ensure that subsequent legislation is enacted in time to establish a more efficient, sustainable safety net system before current stopgap measures expire in March 2006. The United States views the FSA's commitment to conduct the review as essential and stressed that the deliberations should be transparent and should involve representatives of interested parties, including foreign insurance companies.

The United States also raised its concerns about regulated and unregulated *kyosai*. These insurance cooperatives provide a range of insurance products that compete directly with the private sector and occupy substantial market share in the Japanese insurance market. In order to create a level playing field between *kyosai* and their private sector competitors, the United States has urged Japan to subject all *kyosai* to the same laws, level of taxation, safety net contribution requirements, reserve requirements, standards, and regulatory oversight as their private sector counterparts.

The United States and Japan also discussed the FSA's implementation of recommendations to streamline Japan's product approval process and increase needed personnel and technical resources. In addition, the United States emphasized its concerns about the case agent system and transparency, particularly "No-Action Letter" procedures. The two countries also addressed a number of new issues that have arisen as Japan continues to restructure its financial system, such as the expansion of sales of insurance by banks.

In addition to the annual consultations, the United States utilizes the U.S.-Japan Regulatory Reform Initiative to put forward several recommendations to promote further reform in Japan's insurance market. The United States made specific recommendations to address the concerns identified above for *Kampo*, the Life PPC, *Kyosai*, and transparency in its 2003 Regulatory Reform submission to Japan.

## *ii. Autos and Auto Parts*

Improving access to the Japanese auto and auto parts markets remains an important objective of the United States. While there has been a trend toward closer integration as well as important technological advancements in the global automotive industry over the past several years, the effect of these changes on market access and competition in this sector remains unclear. Unfortunately, Japan's limited market access and weak competitive environment have continued to

disproportionately hurt foreign vehicle and auto parts manufacturers in Japan. The United States remains disappointed that, after rising steadily in 1995 and 1996, sales of North American-made vehicles have fallen for the last seven years, with sales in 2003 expected to be substantially less than in 1994. In an effort to contend with these economic conditions and position themselves to better compete in the future, U.S. auto companies have continued to consolidate distribution networks and rethink corporate strategies. The auto parts sector also remains problematic: the U.S. auto parts trade deficit with Japan increased from a record level of \$9.5 billion in 1997 to an estimated \$11.4 billion in 2003.

In order to address barriers in and improve U.S. companies' access to the domestic Japanese automotive market and Japanese auto plants in the United States, the United States and Japan established the Automotive Consultative Group (ACG) in October 2001. The ACG serves as the focal point for addressing lingering as well as emerging issues in this key sector of both countries' economies. More specifically, the group is designed to assess trends in the industry based on a series of trade and economic data on autos and automotive parts to be provided by both countries and work to identify areas in which specific action can be taken by Japan to address U.S. concerns. The ACG met in January 2003 to discuss deregulation (particularly with respect to the automotive parts aftermarket), increasing transparency in rules and regulations governing the auto sector, and more rigorous application of Japanese competition laws. Future ACG meetings will be held annually in principle.

In addition to meetings under the ACG, the United States is continuing to address broad crosscutting issues impacting the automotive sector under the Economic Partnership for Growth, announced by President Bush and Prime Minister Koizumi in June 2001. This includes expanding opportunities for foreign investment, increasing transparency, and promoting corporate restructuring in the Japanese economy.

### *iii. Government Procurement*

**Construction/Public Works:** U.S. firms remain largely excluded from Japan's massive (\$210 billion) public works market, obtaining far less than one percent of projects awarded. Discriminatory practices inhibit the full involvement of U.S. design and construction firms in this sector, which has become increasingly competitive due to decreases in public works spending. The discriminatory practices continue despite the existence of the 1994 U.S.-Japan Public Works Agreement (Action Plan), under which Japan is obligated to use specified open and competitive procedures for public works procurements valued at or above specified thresholds. The requirements set by these procedures go above and beyond those called for under the WTO Agreement on Government Procurement (GPA). Problematic practices include failure to address rampant bid rigging, use of arbitrary qualification and evaluation criteria to exclude U.S. firms, unreasonable restrictions on the formation of joint ventures, and the structuring of individual procurements so they fall below thresholds established in international agreements. The United States is concerned about these practices, which seriously impede the ability of U.S. companies to participate in Japan's public works sector.

During the Trade Forum in July 2003, the United States urged Japan to eliminate the obstacles that prevent U.S. companies from full and fair participation in its public works sector. The United States and Japan agreed to hold expert-level meetings on construction issues parallel to the Trade Forum, so bilateral sectoral concerns could be addressed in greater detail. The United States welcomed the Japanese Government's announcement of the "implementation of the mixed-type procurement," which allows companies to decide whether to bid solo or as a joint venture. The United States urged the Japanese Government to use this practice for all projects. The United States also encouraged Japan to increase the use of Construction Management and Project Management technology for all public works projects and urged all commissioning entities to use the fair, open, and non-discriminatory

procurement procedures of the Action Plan for Urban Renewal and Private Finance Initiative projects. In addition, the United States urged the Japanese Government to ensure that the procurement procedures set forth in the 1991 U.S.-Japan Major Projects Arrangement (MPA) are used for all outstanding MPA projects. In October 2003, Japanese private sector organizations hosted the fifth U.S.-Japan Construction Cooperation Forum (CCF), which focused on facilitating the formation of joint ventures between U.S. and Japanese design/consulting and construction companies for Private Finance Initiative projects.

### *iv. Investment*

Prime Minister Koizumi's January 2003 pledge to double Japan's cumulative FDI in the next five years has led Japan to build on its earlier reforms to encourage FDI. Changing Japanese attitudes toward inward foreign direct investment (FDI), depressed asset values, and improvement in the regulatory environment enabled U.S. and other foreign firms to continue to gain significant new footholds in the Japanese economy, mostly through mergers and acquisitions. Although FDI in Japan remains the lowest among OECD countries, investment has been rising in recent years, especially in the banking/insurance, telecommunications, and machinery sectors. However, FDI flows overall and in these sectors slowed in JFY2002 (ending March 2003) and remained low in early CY2003. FDI in JFY2002 was 2.19 trillion yen (\$20 billion at the current exchange rate of \$1= 107.6 yen), up slightly from JFY2001 but down almost one third in yen terms from the JFY2000 peak. U.S. direct investment into Japan mirrored overall trends, declining in JFY2002 to 590 billion yen (\$5.5 billion), almost 40 percent from JFY2000 levels. Despite these declines, current FDI flows into Japan are still far higher than historical levels (pre-1999).

Japanese and foreign businesses continue to be significantly affected by the implementation of several recent legal changes. The Securities Exchange Law, for example, now mandates consolidated and market-value accounting for listed firms and a new bankruptcy law (Civil



Reconstruction Law) encourages business reorganization, including spin-offs, rather than forced liquidation of assets. In addition, the concept of corporate governance, such as the role of boards of directors, is changing in ways that bode well for increased investments, mergers and acquisitions. Amendments to the Commercial Law now allow, since April 2003, large-scale corporations to choose either Japan's traditional statutory auditor system or executive committee system (i.e., U.S.-style corporate governance). Although the Diet in 2003 amended the Industrial Revitalization Law (IRL) to allow triangular mergers and cash mergers, using parent company stock as merger consideration, for those companies covered by the IRL, it did not address tax considerations for foreign companies involved in such mergers.

Despite the progress achieved over recent years, government and business observers from both countries recognize that much more remains to be done to increase FDI in Japan, and the U.S. and Japanese Governments have agreed to continue to consult on investment issues. The U.S.-Japan Investment Initiative, under the Economic Partnership for Growth, sets forth a framework for bilateral discussions on investment that highlights and resolves possible impediments. The Initiative meets regularly throughout the year and presents an annual report to the President and Prime Minister on the year's accomplishments. During the talks, the U.S. and Japanese private sectors are given an opportunity to actively participate and directly present their investment concerns to the Governments of Japan and the United States. Businesses in both Japan and the United States agree that two new bilateral agreements—an income tax treaty and a social security totalization agreement—concluded in 2003 will benefit investors in both countries.

#### *v. Housing/Wood Products*

Discussions with Japan in the housing/wood products area are ongoing. The Building Experts Committee and the Japan Agricultural Standards (JAS) Technical Committees, which were set up under the terms of the 1990 U.S.-Japan Wood Products Agreement, met in Nagoya in October

2003 to discuss a number of housing/wood products-related issues, notably the new regulations pertaining to indoor air quality that took effect on July 1, 2003. Foreign manufacturers, including many in the United States, have been hard-pressed to meet the new requirements. Although Japan announced the amendment to the Building Standard Law in March 2002, information on the process to demonstrate compliance was not made available until May 2003, which left manufacturers with less than two months to have their products tested and gain the necessary approval to allow their continued use. Approval of the first U.S. testing body is still pending. The United States put forth several recommendations at the meeting in October 2003 to facilitate recognition of overseas test data. This will be extremely important in the future as additional chemicals are regulated, thereby potentially impacting more products. The United States will be following up with Japan in the coming months on this issue.

Restrictions on building size and designs, and products still constrain the use of some U.S. building products and systems in Japan that are commonly used in the United States and elsewhere around the world, thereby limiting choice for consumers and artificially inflating housing costs. The United States continues to have serious reservations about the transparency and basis of certain testing methodologies for evaluating fire resistance.

### **c. Sectoral Issues**

#### *i. Agriculture*

Japan remains the United States' second largest export market (behind Canada) for food and agriculture products. Despite this, Japan maintains many barriers to imports of these products.

**Rice:** The United States continues to express ongoing concerns over U.S. access to Japan's rice market. Although the United States has supplied about half of Japan's rice import needs since 1995 when it opened its market under its WTO minimum market access agreement, only a small percentage of U.S. rice ever reaches Japanese

consumers as an identifiable product of the United States. Imports of U.S. rice under government-supervised tenders, for example, are destined almost exclusively for government stocks or re-exported as food aid. Only a minor share of U.S. rice imported under the tariff rate quota (TRQ) is allowed to be sold into the private sector immediately upon entry. In addition, very small quantities are, however, sometimes released from government stocks and eventually permitted to enter the industrial food-processing sector. Since Japan tariffed rice imports in 1999, only a minuscule amount has been imported outside of the TRQ, because it would be subject to a duty of 341 yen per kilogram, equivalent to about 790 percent ad valorem.

**Beef Safeguard Measure:** On August 1, 2003, Japan imposed an emergency tariff measure—a safeguard duty, increasing the duty on imports of chilled beef to 50 percent from the previously applied rate of 38.5 percent. Japan is the United States' largest beef export market, purchasing an average of nearly \$1.2 billion worth of fresh, chilled, and frozen beef from 2000 to 2002. The average value of U.S. exports of chilled beef for 2000-2002 was \$720 million. While acknowledging existence of the technical trigger for imposing this measure, the United States considers its use under the existing circumstances to be improper. The U.S. position is that such measures were intended to aid domestic producers confronted with import surges. This is not the case in Japan, however, where 2003 beef imports are recovering from severely depressed 2002 levels following the discovery of several animals infected with Bovine Spongiform Encephalopathy (BSE) in 2001. Imposition of this safeguard threatens this recovery and harms not only U.S. beef producers, but also a full range of Japanese beef consumers, including the food service, grocery, and restaurant industries.

The higher tariff is scheduled to be in effect until March 31, 2004 (the end of the Japanese fiscal year). The safeguard could be triggered again in JFY2004 (for frozen or chilled beef) unless the Government of Japan takes action to change the

safeguard provision in its annual tariff legislation. Since the imposition of the tariff increase, the U.S. Government has raised this issue repeatedly in bilateral government-to-government meetings as well as public fora in Japan. While the safeguard measure remains in place, the United States will continue to urge Japan to remove the safeguard measure and return the tariff to its previous level.

**Sanitary and Phytosanitary Measures:** Japan's use of sanitary and phytosanitary measures continues to create many barriers to U.S. food and agricultural goods. The United States is increasingly concerned that these measures are being imposed despite their inconsistency with international standards and in the absence of supportive science.

This was the conclusion of a WTO dispute settlement panel and the WTO Appellate Body in a case involving Japan's requirements on U.S. apple exports, including orchard inspections. The panel and Appellate Body found that these requirements, ostensibly to protect Japanese orchards against fire blight disease, did not have a scientific basis and were not based on a valid risk assessment.

Another prime example is Japan's fumigation requirement on U.S. fruits and vegetables for cosmopolitan pests, which are imposed despite the fact that these are pests that are widely distributed in Japan and are not under official control. The fumigation requirement is particularly detrimental to the quality of these products, many of which sometimes do not survive fumigation and must be destroyed. The United States has raised this issue in the WTO Committee on the Sanitary and Phytosanitary Measures.

The United States continues to work with Japan to resolve this and other SPS concerns in appropriate bilateral and multilateral meetings. In addition, the United States will monitor closely Japan's newly established Food Safety Agency and will take every opportunity to ensure that this agency operates in a manner consistent with Japan's trade commitments and promotes WTO consistent policies that are based on sound science.

## *ii. Steel*

Steel Issues are detailed in Chapter V.

## *iii. Flat Glass*

Barriers to U.S. flat glass sales in Japan persist, in contrast to the high market shares U.S. flat glass manufacturers have gained in other industrialized economies. Japan's three domestic producers constitute an oligopoly that exerts tight control over distribution channels by, for example, maintaining extensive equity and financial ties to distributors. In addition, Japanese flat glass manufacturers adjust prices, capacity and product mix at virtually the same time, contributing to a lack of competition in the market.

The United States has engaged Japan in discussions of these concerns in various bilateral fora over the past decade, most recently in the 2003 Trade Forum held in July under the U.S.-Japan Partnership for Economic Growth. During the Trade Forum discussion, the U.S. Government highlighted the continuing problems that prevent market entry, including the need for tighter enforcement of rules against anticompetitive behavior.

The United States continues to urge Japan to take steps to promote competition in and access to its glass market. The United States also continues to work with U.S. industry on ways to improve market access and enhance competition in this sector.

# **10. Taiwan**

In 2003, the United States and Taiwan continued to work together to address shortcomings in several areas related to Taiwan's WTO commitments, including ensuring market access for rice, improving intellectual property rights protection, and further opening Taiwan's telecommunications services market. In addition, the United States worked with Taiwan bilaterally to ensure market access for pharmaceutical products.

## **a. Rice**

The Taiwan government's management of its rice import system was particularly troublesome this

past year and required a number of substantive consultations to achieve access for U.S. rice. In late 2002, Taiwan announced modifications to its rice import system without prior consultation with the United States and other interested WTO members. The United States consulted with Taiwan as 2002 came to a close, but Taiwan's responses did not resolve concerns that the new system would be more trade restrictive. Subsequently, the United States, Australia, and Thailand formally submitted an objection to the WTO in January 2003. In addition, several rice tenders were cancelled by Taiwan in 2003 due to use of a ceiling price, which resulted in delayed market entry. The United States engaged the Taiwan government on numerous occasions in 2003 in an effort to resolve concerns related to the existing rice import system and will continue to do so in 2004. Taiwan is a leading Asian market for U.S. rice exports and, despite problems associated with the rice tender process, U.S. suppliers won a majority of the tenders conducted in 2003. We look forward to continuing to work with the Taiwan government to address remaining concerns with its rice import system.

## **b. Intellectual Property Rights**

The level of intellectual property rights (IPR) piracy in Taiwan remains at a very high level. U.S. concerns were serious enough to warrant continued placement of Taiwan on the Special 301 Priority Watch List for the third year in a row. After the Taiwan authorities declared 2002 to be the "Action Year for IPR Protection," they implemented a "Comprehensive Three Year Action Plan for IPR Protection" to cover the years 2003-2005. While these were welcome steps, the United States continued in 2003 to urge the Taiwan government to further improve its enforcement and legal framework for IPR protection.

In June, Taiwan amended its copyright law which addressed some U.S. concerns. However, several important proposed revisions to the law were modified or deleted by legislators before the amendments were enacted. As a result, the United States continued to request that the Taiwan government submit for legislative approval these

outstanding revisions to the copyright law, including Internet-related provisions such as technological protection measures.

As 2003 came to a close, there appeared to be initial signs that Taiwan's efforts to control piracy are leading to a decrease in the incidence of end user piracy of business software and an increase in the number of raids and seizures. However, infringement in other areas, especially of optical media, continues to remain unacceptably high. Further, there is increasing concern with the use of the Internet to distribute infringing product and that Taiwan's overall enforcement and prosecutory efforts need to be implemented quickly, and improved and broadened for the long term.

We will continue to monitor Taiwan's progress in addressing its high piracy rates, focusing in particular on whether the Taiwan government aggressively enforces its laws, actively combats piracy, and takes other concrete actions to reduce all types of IPR violations. We also look forward to working with the Taiwan government on further amendments to its copyright law to conform with international IPR norms.

#### **c. Telecommunications**

Two years after WTO accession, Taiwan has yet to establish an independent telecommunications regulatory authority. Furthermore, despite repeated requests from the United States, Taiwan has yet to implement a licensing regime consistent with its WTO commitments to permit foreign carriers to apply for authorization to supply local, long-distance, and international services.

Taiwan's telecommunications regulatory authority, the Directorate General of Telecommunications, and formerly wholly state-owned monopoly ChungHwa Telecom are under the purview of the Ministry of Transportation and Communications. As 2003 came to a close, Taiwan's legislature had approved only one of two bills necessary to establish a new National Communications Commission, an independent regulatory authority.

Taiwan is developing criteria regarding the issuance of telecommunications licenses for local, domestic long distance, and international services but continues to delay implementation. Further, capital requirements for comprehensive network services (NTD 16 billion), city-call services (NTD 12 billion), and long-distance/or international services (NTD 2 billion) continue to be excessively high. Comprehensive fixed-line and local network licensees will require a build-up of 400,000 lines but 60,000 lines will be sufficient for initiating basic services. We will continue to monitor whether such requirements are hindering Taiwan's progress toward full market opening of its telecommunications sector in a WTO-consistent manner.

#### **d. Pharmaceuticals**

Taiwan's pharmaceutical registration process continues to slow market entry for new drugs that have already been approved in other industrial countries. Taiwan's Department of Health implemented a new requirement for firms to submit validation data as part of the registration and approval process for both new drugs and those already on the market. The United States worked closely with the Taiwan government in 2003 to achieve market access for pharmaceutical products and will continue to do so in 2004.

The United States will also continue to work with Taiwan to ensure that registration data pertaining to pharmaceutical and agricultural chemical products that are submitted to the government for marketing approval are protected from unfair commercial use. This protection, known as "data exclusivity," is a requirement of the WTO TRIPS Agreement and is intended to ensure that registration data is not used by third parties without the original owner's consent for an effective period of time.

Another area of concern in this sector involves pricing, whereby hospitals and doctors in Taiwan buy drugs at discounted prices and are then reimbursed at higher rates, contrary to regulations that reimbursements be made at the purchase price. The U.S. government will continue to work with

Taiwan officials and industry to develop ways in which this systemic problem can be addressed.

## **11. Hong Kong (Special Administrative Region)**

### **a. Intellectual Property Rights**

Hong Kong has made good progress in addressing IPR concerns over the past several years. In 2003, Hong Kong continued to strengthen its IPR enforcement regime, especially in the area of education, to combat copyright and trademark infringement. Due to these efforts, the Hong Kong people are increasingly aware of the importance of the IPR regime to their own industries, notably movies and toys. As 2003 came to a close, the Hong Kong government continued to work on an amendment to refine the “fair use” rules for copyright publications in response to concerns regarding the temporary suspension of criminal provisions. The unauthorized copying of computer programs, movies, music, television programs, and music remains illegal; but in June 2001, Hong Kong’s Legislative Council (LegCo) temporarily suspended these provisions for copyright publications. The LegCo liberalized the parallel importation of computer software this year, while maintaining criminal penalties for such imports of “entertainment” copyrighted products like movies and music. The U.S. industry has expressed some concern about the adequacy of new legislation and continues to push for even stronger enforcement. We will continue to monitor this situation and other anti-piracy efforts closely.

### **b. Telecommunications**

Hong Kong completed its liberalization of local fixed telecommunications network services (FTNS) on January 1, 2003. Some U.S. companies are considering applying for licenses, but remain concerned about how interaction with the incumbent service provider (PCCW/HKT) will be regulated. Potential new entrants are also concerned that they would be disadvantaged in comparison with the incumbent. We will

continue to closely monitor developments in this sector.

## **12. Sri Lanka**

The United States and Sri Lanka strengthened their already close trade relations in 2003, during which the second and third meetings under the Trade and Investment Framework Agreement (TIFA) were held. A Sri Lankan delegation led by Commerce Minister Ravi Karunanayake and G.L. Peiris, Minister of Enterprise Development, Industrial Policy and Investment Promotion, visited Washington in March. This TIFA meeting focused on the diversification of the Sri Lankan economy and the exchange of views on the Doha Development Agenda.

Deputy USTR Shiner visited Sri Lanka in October for the third TIFA session. Sri Lankan Prime Minister Ranil Wickremesinghe emphasized the importance of trade relations with the United States by leading the Sri Lankan delegation. Sri Lanka used this meeting to express its strong interest in negotiating a comprehensive and ambitious free trade agreement with the United States. In November, the Prime Minister was invited to the United States by President Bush, a meeting at which trade was an important topic.

Through the TIFA process, most outstanding bilateral trade issues have been resolved. At the Cancun WTO Ministerial, Sri Lanka publicly advocated a pragmatic approach for developing countries and urged WTO Members to focus on negotiations rather than rhetoric.

## **I. Africa**

### **1. SACU FTA**

The Southern Africa FTA Negotiations are discussed in Chapter A on Free Trade Agreements.

### **2. Implementing AGOA**

The African Growth and Opportunity Act (AGOA), passed in May 2000 as part of the Trade and Development Act of 2000, is the centerpiece

of U.S. trade policy for sub-Saharan Africa. AGOA provides a number of key economic benefits and incentives to promote economic reform and trade expansion in sub-Saharan Africa. The Act also 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.

AGOA offers beneficiary sub-Saharan African countries duty-free access to the U.S. market for essentially all products. It extended the existing Generalized System of Preferences (GSP) program for beneficiary countries through September 30, 2008 and added 1,835 products to the 4,650 products already eligible for duty-free treatment under GSP. It eliminated the GSP competitive need limitation for beneficiary sub-Saharan African countries, lifted all existing quotas on apparel products from eligible countries that are determined to have effective measures in place to prevent illegal transshipment, and allows less developed country beneficiary countries to use regional or third-party fabric in apparel imported into the United States under the program. The third-country fabric provision is set to expire on September 20, 2004. In late 2003, legislation was introduced in Congress to authorize the extension of AGOA for a number of years beyond its current expiration date of 2008 and to extend its third-country fabric provision beyond 2004.

AGOA requires the President to determine annually whether sub-Saharan African countries are, or remain, eligible for benefits based on their progress in meeting criteria set out in the Act. These criteria include establishment of a market-based economy and the rule of law, the elimination of barriers to U.S. trade and investment, implementation of economic policies to reduce poverty, the protection of internationally recognized worker rights, and establishment of a system to combat corruption. Additionally, countries cannot engage in: 1) violations of

internationally recognized human rights, 2) support for acts of international terrorism, or 3) activities that undermine U.S. national security or foreign policy interests. An interagency AGOA Implementation Subcommittee, chaired by USTR, conducts the annual eligibility review, drawing on information from the public, NGOs, the private sector, and the prospective beneficiary governments. Following the last eligibility review in December 2003, and based on the recommendation of the U.S. Trade Representative, the President signed the Proclamation on AGOA on December 30, 2003 stating that 37<sup>4</sup> sub-Saharan African countries met the Act's requirements for eligibility in 2004. Angola was designated as a new AGOA beneficiary, while the Central African Republic and Eritrea, previously AGOA-eligible, had their AGOA beneficiary status terminated.

As of December 2003, 22 AGOA-eligible countries had instituted acceptable customs measures to prevent illegal transshipment and, accordingly, had been certified for AGOA's textile and apparel benefits.

AGOA also provides for the establishment of a U.S.-Sub-Saharan Africa Trade and Economic Cooperation Forum, informally known as "AGOA Forum," to discuss expanding trade and investment relations between the United States and sub-Saharan African countries, and implementation of AGOA. The third meeting of the Forum was held in Washington, D.C. in December 2003 and included participation by the President, the United States Trade Representative, the Secretaries of State, Treasury, Commerce, and Agriculture, the Administrators of USAID and the U.S. Trade and Development Agency, and ministerial-level officials from almost all AGOA-eligible countries. As with earlier forums, including the January 2003 Forum in Mauritius, the private sector and the NGO community organized parallel events during the government-to-government meetings.

<sup>4</sup> The list of eligible countries for AGOA and of those that have met requirements for textiles and apparel benefits can be found at <http://www.agoa.gov>.

Since its passage in 2000, AGOA has had a significant impact on growth and economic development in several beneficiary countries. AGOA-related trade and investment has created over 190,000 African jobs and over \$340 million in investments. In the first nine months of 2003, AGOA imports exceeded \$10 billion, up 59 percent over the same period in 2002, largely due to an increase in oil imports. Over 92 percent of U.S. imports from AGOA-eligible countries now enter the United States duty-free, under AGOA, GSP, or zero-duty MFN rates. While most U.S. imports from the region continue to be in the energy sector, AGOA has begun to diversify U.S.-African trade. For example, in the first nine months of 2003 non-fuel AGOA imports exceeded \$2.0 billion, with apparel imports totaling \$870 million, a 42 percent increase over the same period in 2001. AGOA transportation equipment imports were up 24 percent, to \$520 million, and AGOA agricultural imports increased 17 percent, to \$160 million.

AGOAs successes are also creating new commercial opportunities for U.S. exporters, as African exporters explore new input sources in the United States. U.S. exports to the region increased eight percent in the first nine months of 2003, with especially notable gains in agricultural goods, machinery, and transportation equipment.

See Section VI.A.3 for information on trade capacity building activities related to AGOA.

### **3. Promoting Economic Reform, Growth and Development**

AGOAs has prompted important economic and social reforms across sub-Saharan Africa and delivered new jobs and opportunities for economic growth and development to the region. AGOA's eligibility criteria create incentives for countries to reform their economies and create an environment conducive to increased trade and investment. The criteria represent global best practices to attract and maintain trade and investment, which are essential for the transfer of technology, and help promote competition and increase exports.

In 2003, the United States again consulted extensively with sub-Saharan African countries on AGOA eligibility requirements. As a result of these consultations, many eligible countries are implementing needed reforms, including measures to combat corruption, accelerate privatization, deregulate key industries, promote more open trade, and strengthen intellectual property and labor law protections. Many countries have ratified ILO Convention 182 on the elimination of the worst forms of child labor, and several are working to change, or have changed, laws on child trafficking and/or worker rights. By bringing increased investment to, and creating new jobs in, sub-Saharan African countries, AGOA is also demonstrating how trade can benefit developing countries.

### **4. Expanding Bilateral and Regional Trade and Investment Relationships**

AGOAs successes are helping to strengthen and expand U.S. bilateral and regional trade and investment ties with sub-Saharan Africa. One of the mechanisms for building on and improving U.S. trade and investment relationships in Africa is discussions arising out of Trade and Investment Framework Agreements (TIFAs). The U.S. has TIFAs with three African countries—South Africa, Nigeria, and Ghana—and two regional organizations—the West African Economic and Monetary Union (known by its French acronym, UEMOA), and the Common Market for Eastern and Southern Africa (COMESA).

#### **a. South Africa**

The United States and South Africa enjoy a broad and mutually beneficial trade and investment relationship. Two-way trade increased 11.5 percent in the first nine months of 2003, to \$5.4 billion. During the same period, U.S. imports from South Africa under AGOA and related GSP provisions increased by 24 percent, led by increases in motor vehicles, chemicals, and apparel. South Africa is the largest U.S. supplier of non-fuel AGOA-eligible products (including GSP items), with sales worth more than \$1.2 billion in the first nine months of 2003. Leading imports

include platinum group metals, diamonds, motor vehicles, chemicals and apparel. Leading U.S. exports to South Africa include motor vehicles, aircraft, machinery, and medical equipment. Primary agricultural imports from South Africa are fresh fruits, which increased by approximately 50 percent in the first nine months of 2003; the primary U.S. agricultural export is wheat. South Africa and the United States continue to consult closely on issues related to the Doha Development Agenda, despite differences in many areas. South Africa is a member of the G-X coalition of countries that presented a hardcore stance toward the Doha Round at the September 2003 WTO Ministerial in Cancun.

As with many diverse and vibrant bilateral trading relationships, certain disputes have arisen between the United States and South Africa. These include concerns related to South Africa's December 2000 antidumping order against imports of certain U.S. poultry products, as well as ongoing problems related to South Africa's basic telecommunications monopoly, Telkom, and its failure to provide facilities necessary for U.S. value-added network services (VANS) providers to operate and expand. The United States continued to discuss these issues with South Africa in 2003, including in the context of the U.S.-SACU FTA negotiations. The United States is the largest single-country source of new foreign investment in South Africa since the country's 1994 transition to democracy. More than 900 U.S. companies and more than 400 U.S. subsidiaries and franchises are operating in South Africa.

#### **b. Nigeria**

Nigeria is the United States' largest trading partner in sub-Saharan Africa, based primarily on the high level of U.S. petroleum imports from Nigeria. Total two-way trade was valued at \$8.4 billion in the first nine months of 2003, a 72 percent increase over the same period in 2002, due mainly to a surge in oil imports. Nigeria was the United States' fifth largest supplier of petroleum and the third largest purchaser of U.S. wheat in 2002. Primary agricultural imports from

Nigeria are cocoa beans, which increased by over 160 percent in the first nine months of 2003. Nigeria is seeking to utilize AGOA to diversify its export base, especially in the area of manufactured goods. Nigerian exports to the United States under AGOA, including its GSP provisions, were valued at \$7.0 billion during the first nine months of 2003, an 87 percent increase over the same period in 2002, due almost entirely to the increase in oil exports. The United States is the largest foreign investor in Nigeria.

The United States is working closely with the Government of Nigeria, through the U.S.-Nigeria TIFA and other initiatives, to promote expanded trade and investment and a more diversified economy. At the last U.S.-Nigeria TIFA Council meeting in June 2002, the United States and Nigeria pledged to work together on critical issues such as the Doha Development Agenda, AGOA implementation, and trade capacity building. The United States is concerned about the government of Nigeria's use of protective import bans on certain products, including sorghum, millet, wheat flour, bulk vegetable oil, and some printed fabrics. The United States is also concerned about significant recent tariff increases on various products, including rice and meats.

#### **c. Ghana**

Total two-way trade between Ghana and the United States was valued at \$223 million in the first nine months of 2003, a 2 percent decrease over the same period in 2002. Ghana is the seventh largest sub-Saharan African market for U.S. goods. The leading U.S. exports to Ghana are rice, machinery, wheat, and motor vehicles. U.S. imports from Ghana are primarily oil, timber, aluminum, and cocoa. In the first three quarters of 2003, U.S. imports from Ghana under AGOA, including its GSP provisions, were valued at \$36.5 million, up 17 percent from the same period in 2002.

Ghana and the United States enjoy a long-standing commercial relationship despite occasional commercial disputes involving U.S.



companies. A number of commercial issues have been resolved or addressed within the U.S.-Ghana TIFA. At the last U.S.-Ghana TIFA Council meeting, in July 2002, discussions focused on outstanding commercial disputes, WTO issues, AGOA implementation, and trade capacity building.

#### **d. COMESA**

The United States signed the TIFA with Common Market for Eastern and Southern Africa (COMESA) in October 2001 and has subsequently held two U.S.-COMESA TIFA Council meetings, most recently in June 2003. COMESA is the largest regional economic organization in Africa, with twenty member states and a population of 385 million. It is making great strides in advancing economic integration in the sub-region, including via implementation of the COMESA Free Trade Area, in which nine COMESA members participated in 2003. Fourteen COMESA members are AGOA-eligible and ten qualify for textile and apparel benefits. At the June 2003 TIFA meeting, Ambassador Zoellick and COMESA Secretary General Mwencha discussed implementation of AGOA, measures to enhance agricultural trade, WTO issues, and trade capacity building activities.

#### **e. UEMOA**

The eight-member West African Economic and Monetary Union (known by its French acronym, UEMOA) represents one of the most successful efforts to date toward regional integration in Africa. UEMOA has established a customs union, eliminated internal duties, and is addressing key non-tariff barriers. There is a UEMOA central bank and a regional stock exchange. Six of the eight UEMOA member countries are eligible for AGOA. UEMOA has only recently begun to realize benefits under AGOA. UEMOA's largest economy—Cote d'Ivoire, which accounts for over 40 percent of the region's GDP—became eligible for AGOA only in May 2002 and, until

late 2003, only one UEMOA country—Senegal—had qualified for AGOA's textile and apparel benefits. Mali, Cote d'Ivoire and Niger qualified for such benefits in December 2003.

UEMOA entered into a TIFA with the United States in April 2002. At the most recent TIFA Council meeting in Washington in December 2003, UEMOA Commission President Toure and Deputy U.S. Trade Representative Shiner discussed AGOA implementation, means to increase trade and investment flows, issues related to the Doha Development Agenda, and trade capacity building.

### **5. Facilitating Sub-Saharan Africa's Integration Into the Multilateral Trading System**

AGOA has also helped to promote sub-Saharan Africa's integration into the multilateral trading system and to encourage support for the new round of global trade negotiations in a region that accounts for more than a quarter of WTO membership. U.S. consultation and collaboration with African Members of the WTO played an important part in the successful launch of the Doha Development Agenda in November 2001. The United States and African WTO Members continued to consult closely in 2003 on issues related to the Doha Development Agenda. Although the United States and the Africa Group in the WTO differed in their views on some areas, including agriculture, non-agricultural market access, and the Singapore Issues, they also worked together to resolve one of the most difficult outstanding issues—TRIPS and Public Health—thereby facilitating developing country access to essential drugs, consistent with WTO rules. The December 2003 AGOA Forum provided an opportunity for U.S. and African trade officials to discuss practical ways to put the Doha Development Agenda back on track following the disappointment of the Cancun Ministerial.

## IV. Other Multilateral Activities

The United States pursues its trade and trade-related interests in a wide range of other international fora. In addition to opening new trade opportunities, such efforts focus on establishing an infrastructure for international trade that is transparent, predictable and efficient, and prevents corrupt practices and other impediments to expanded trade and sustainable economic growth and prosperity. These efforts also are aimed at ensuring that U.S. strategies and objectives relating to international trade, environment, labor and other trade-related interests are balanced and mutually supportive.

### A. Trade and the Environment

As President Bush stated when he signed the Trade Act of 2002, “History shows that as nations become more prosperous, their citizens will demand, and can afford, a cleaner environment.” Understanding that advancing trade and environmental objectives are mutually supportive, the U.S. Government has been very active in promoting a trade policy agenda that pursues economic growth in a manner that integrates economic, social, and environmental policies. To help maximize the complementary effect of our trade and environmental policies, the Bush Administration announced in April 2001 that it would continue the policy of conducting environmental reviews of trade agreements under Executive Order 13141 (1999) and implementing guidelines. The Order and implementing guidelines require careful assessment and consideration of the environmental impacts of trade agreements, including detailed written reviews of environmentally significant trade agreements. The reviews are the product of rigorous interagency consultations. During 2003, as part of its ongoing review policy, USTR and the White House Council on Environmental Quality (CEQ) continued their work on the environmental reviews of FTAs under negotiation with

Morocco, five Central American countries, Australia, and the members of the Southern African Customs Union. Interim reviews of the Morocco and Central American agreements have now been issued. USTR and CEQ also completed environmental reviews of the final texts of the FTAs with Chile and Singapore. The review process for each of these agreements made important contributions to the negotiations and to the content of the final agreements. USTR and CEQ also continued their work on an environmental review of the WTO Doha Development Agenda negotiations and an environmental review of the Free Trade Area of the Americas (FTAA).

The U.S. Government continues to take an active role in the WTO Committee on Trade and Environment (CTE) to put into effect the WTO’s commitment to the simultaneous promotion of trade, expanded environmental improvement, and economic growth and development.

The U.S. Congress specified certain objectives with respect to trade and environment in the Trade Act of 2002, and USTR took these into account in coordinating interagency development of negotiating positions. In addition, USTR has participated both in multilateral and regional economic fora and in international environmental agreements, in conjunction with other U.S. agencies. USTR also has worked bilaterally with U.S. trading partners to avert or minimize potential trade frictions arising from foreign and U.S. environmental regulations.

### 1. Multilateral Fora

As described in more detail in the WTO section of this report, the United States was active on all aspects of the Doha trade and environment agenda. The United States introduced papers in the CTE in Special Session outlining its approach to increase communication and coordination between WTO bodies and secretariats of

multilateral environmental agreements (MEAs) and on the relationship between specific trade obligations in MEAs and existing WTO rules. The United States coordinated effectively with other interested WTO Members in seeking new disciplines on fisheries subsidies through negotiations in the Rules Negotiating Group. The United States also identified increased market access for environmental goods and services as an effective means to enhance access to environmental technologies around the world and proposed innovative ideas for developing modalities in negotiations on environmental goods. With respect to the Doha trade and environment agenda that does not specifically involve negotiations, the United States played an active role, particularly in emphasizing the importance of capacity-building, including with respect to environmental reviews of trade negotiations, and the role of the CTE in regular session in discussing the environmental implications of all areas under negotiation in the Doha Development Agenda.

USTR co-chairs U.S. participation in the OECD Joint Working Party on Trade and Environment (JWPTE), which met twice in 2003. Work has focused on trade, environment and development issues with an emphasis on the role of environmental goods and services liberalization and eco-labeling schemes in promoting “win-win-win” scenarios. These activities are discussed further in the OECD section of this report (Chapter V, Section C).

USTR participates in U.S. policymaking regarding the implementation of various multilateral environmental agreements to ensure that the activities of these organizations are compatible with both U.S. environmental and trade policy objectives. 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 United Nations Framework Convention on Climate

Change, international fisheries management schemes, the Cartagena Protocol on Biosafety and the Stockholm Convention on Persistent Organic Pollutants. USTR also continues to be involved in the trade-related aspects of international forest policy deliberations, including in the newly-formed permanent United Nations’ Forum on Forests—the successor to the Commission on Sustainable Development’s *ad hoc* Intergovernmental Forum on Forests and in the International Tropical Timber Organization. USTR participated in international negotiations to develop a Framework Convention on Tobacco Control, under the auspices of the World Health Organization, and continues to advise on trade-related tobacco issues. In addition, USTR has participated extensively in U.S. policymaking regarding the International Commission for the Conservation of Atlantic Tuna’s revision of its compliance regime

## **2. The North American Free Trade Agreement (NAFTA)**

USTR continues to work actively with the agencies that lead U.S. participation in the institutions created by the NAFTA environmental side agreements, the North American Agreement on Environmental Cooperation (NAAEC) and the border environmental infrastructure agreement. These institutions were designed to enhance the mutually supportive nature of expanded North American trade and environmental improvement. The Border Environment Cooperation Commission and the North American Development Bank develop and finance needed environmental infrastructure projects along the U.S.-Mexico border.

The Commission for Environmental Cooperation (CEC), governed by the trilateral Ministerial-level Council that implements the NAAEC, continues its efforts on numerous fronts and devotes a significant portion of its annual work program to trade and environment issues. The Environmental Protection Agency (EPA) takes the lead role, through the interagency process, at

the CEC on behalf of the U.S. Government. The CEC work program encompasses four broad areas: environment, economy, and trade; conservation of biodiversity; pollutants and health; and law and policy. The projects in the annual work program are designed to deepen cooperation among the Parties by furthering environmental sustainability in open markets and stewardship of the North American environment. For example, at its 2003 meeting, the CEC Council adopted a strategic plan for North American cooperation in the conservation of biodiversity, supporting a biodiversity strategic plan developed by officials in all three NAFTA countries. The CEC continued its work in the area of children's health, and aims to develop a set of environment and health indicators by 2004. In 2003, the CEC also kicked off a ten-year review of the NAFTA and the NAAEC. The review will assess the implementation of the NAAEC and the environmental effects of the NAFTA.

USTR also participated in the NAFTA 10(6) group (named after the provision of the NAAEC addressing CEC cooperation with the NAFTA itself). The 10(6) group is composed of senior trade and environment officials from all three NAFTA governments, that meets to discuss issues of common concern. At its 2003 meeting, the CEC Council requested the 10(6) group to report back to the Council regarding its work on cross-cutting trade and environment issues, and a proposed agenda for a possible future trade and environment ministers meeting.

In June 2002, the Council agreed to work with their trade counterparts to arrange a forum where interested parties could express their views on the implementation and operation of NAFTA Chapter 11 (Investment). USTR worked with its Canadian and Mexican counterparts to arrange a meeting with interested stakeholders in Montreal in May 2003. The input received at this meeting helped inform the transparency measures developed by the NAFTA Investment Experts Group, and adopted by the Free Trade Commission in October 2003.

### 3. The Western Hemisphere

U.S. negotiators continued to identify and pursue relevant trade-related environmental issues within the framework of the FTAA. Complementary environmental elements in the overall Summit of the Americas Plans of Action are intended to further regional cooperation.

The United States also has continued to support efforts by the FTAA Civil Society Committee to expand opportunities for two-way communication with members of civil society throughout the Hemisphere. The Committee carefully considered civil society's submissions on the full range of issues, including environmental concerns.

### 4. Bilateral Activities

The Bush Administration has adopted the policy of using the deepened economic relationship that comes from new trade agreements to enhance environmental policy cooperation with our new FTA partners. These negotiations are led by the Department of State with full interagency cooperation. As a complement to the Morocco FTA negotiations, the United States and Morocco negotiated a Joint Statement on Environmental Cooperation that will establish a Working Group on Environmental Cooperation, develop a plan of action and set priorities for future environment-related projects. Areas for environmental cooperation already identified include: environmental law and infrastructure development; economic incentives and voluntary programs; coastal protection and preservation of fisheries; conservation of natural resources and protected areas; and environment-related technology. In addition to the Joint Statement, USAID and EPA have developed a project that will focus on building Morocco's capacity to develop its environmental laws, institutions and enforcement mechanisms—consistent with the commitments that Morocco will take on as part of the FTA.

An Environmental Cooperation Agreement with Central America will also be linked to the Central America Free Trade Agreement (CAFTA). Similar to the Joint Statement with Morocco,

this Agreement will identify priorities for environmental cooperation and establish a Joint Commission on Cooperation to administer the Agreement.

USTR has just completed FTA negotiations with Australia, and has initiated negotiations with the five countries of the Southern African Customs Union. USTR is seeking provisions in these agreements that similarly incorporate the Trade Act guidance and U.S. trade and environment priorities.

USTR worked with other agencies to address the environmental cooperation aspects of the Chile and Singapore FTAs. USTR and the agencies have begun implementing the eight environmental cooperation projects outlined in the Chile FTA. These projects will address environmental issues identified during the FTA negotiations and the environmental review of the FTA, such as promoting cleaner fuels in Chile, and improving environmental enforcement and compliance. USTR also participated in the State Department-led negotiation of an Environmental Cooperation Agreement (ECA) with Chile, and a Memorandum of Understanding (MOU) on environmental cooperation with Singapore. The MOU and ECA will guide future cooperative efforts, including environmental capacity building that addresses the linkages between trade and the environment.

The United States also announced its plans to negotiate an FTA with Bahrain and the Dominican Republic. In preparation for the negotiations with Bahrain, USTR initiated a trade capacity building project in Bahrain, which included training on environmental law enforcement.

## **B. Trade and Labor**

The trade policy agenda of the United States includes a strong commitment to protecting labor rights and protecting the rights of workers, both in America and in our trading partners. Expanded trade benefits all Americans through lower prices and greater choices in products available to

consumers. Many American workers benefit from expanded employment opportunities created by trade liberalization. In pursuing these objectives, we use the bipartisan congressional guidance contained in the Trade Act of 2002 to bring the benefits of trade and open markets to America and the rest of the world. USTR worked cooperatively with other USG agencies in multilateral, regional and bilateral fora to promote respect for core labor standards, including the abolition of the worst forms of child labor, in pursuing labor provisions in numerous trade agreements consistent with the bipartisan guidance contained in the Trade Act of 2002.

During 2003 the United States conducted trade negotiations with five Central American countries, (Honduras, Nicaragua, Guatemala, El Salvador, and Costa Rica), as well as with Morocco, and Australia. We also tabled labor text for the Free Trade Area of the Americas (FTAA) this past year and expect to engage in negotiations during 2004. Trade negotiations were also launched on an FTA with the South African Customs Union (SACU); negotiations on the labor chapter of the FTA with SACU will begin in 2004. The President has also notified Congress of his intent to negotiate in 2004 with the Dominican Republic, Bahrain, the Andean countries and Panama. In keeping with TPA guidance, all of these proposed FTAs will include substantial labor provisions.

### **1. Trade Act of 2002 (TPA) Guidance on Trade and Labor**

The importance of the linkages between trade and labor is underscored by the fact that the Bipartisan Trade Promotion Authority Act of 2002 (TPA) has labor-related clauses in three sections of the legislation: 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 are threefold. First, to promote respect for worker rights and the rights of children consistent with the core labor standards of the International Labor Organization (ILO). TPA

defines 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. Second, 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. And third, to promote the universal ratification 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 include, most importantly for labor, 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 recognizes that the United States and its trading partners retain the sovereign right to establish domestic labor laws, and to exercise discretion with respect to regulatory and compliance matters, and to make resource allocation decisions with respect to labor law enforcement. To strengthen the capacity of our trading partners to promote respect for core labor standards is an additional principal negotiating objective, as is to ensure that labor, health or safety policies and practices of our trading partners do not arbitrarily or unjustifiably discriminate against American exports or serve as disguised trade barriers. A final principal negotiating objective is 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 include 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 Department of Labor is charged with consulting with any country seeking a trade

agreement with the United States concerning that country's labor laws, and providing technical assistance if needed. Finally, TPA mandates a series of labor-related reviews and reports to Congress in connection with the negotiation of new trade agreements. These include an employment impact review of future trade agreements, the procedures for which are modeled after the Executive Order establishing environmental impact reviews of trade agreements. A meaningful labor rights report, and a report describing the extent to which there are laws governing exploitative child labor, are also required for each of the countries with which we are negotiating.

## 2. 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, we supported a similar proposal which was put forth by the EU, but a vocal group of developing countries adamantly opposed this proposal. The text of the Doha Ministerial Declaration, adopted by consensus, therefore, 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.”

The 2003 Cancun WTO Ministerial focused solely on the Doha negotiating agenda, and adopted no declaration.

The work on the social dimensions of globalization underway at the ILO is being done by the Working Party on the Social Dimensions of Globalization of the ILO's Governing Body. The ILO is unique among international organizations in that it has a tripartite (Government, employer and worker representatives) membership in all of its committees and constituent bodies. Thus, the

Working Party on the Social Dimensions of Globalization has a representative not only of the U.S. Government, but also the U.S. Council for International Business and the AFL-CIO. As a further extension of this work, the ILO created a “World Commission on the Social Dimension of Globalization.” During 2003 the United States Trade Representative met twice with the Director-General of the ILO to discuss the work of the World Commission and to encourage greater policy coherence and cooperation between the WTO and the ILO. We look forward to the report of the World Commission in 2004.

The United States remains the largest donor to the work of the ILO. The United States has been particularly supportive of two ILO initiatives: the International Program on the Elimination of Child Labor (IPEC), and work to implement the 1998 *ILO Declaration on Fundamental Principles and Rights at Work*. Recognizing that all child labor will never be eliminated until poverty is eliminated, IPEC/ILO 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.

### 3. Regional Activities

The Thirteenth Inter-American Conference of Ministers of Labor (IACML), hosted by Brazil in September 2003, continued the implementation of the labor-related mandates of the Third Summit of the Americas that began with the Ottawa IACML meeting in 2001. The Salvador Declaration, endorsed by labor ministers at the XIII IACML, is groundbreaking in its emphasis on the importance of considering labor in the FTAA negotiation process, and the need for greater integration of economic and labor policies.

The Salvador Plan of Action provides for the continued examination of the impacts of trade and integration on labor within Working Group 1, chaired by Argentina and vice-chaired by the United States. A second working group focuses on capacity-building of Labor Ministries, including improving the ability of Ministries to effectively

promote the *ILO Declaration on Fundamental Principles and Rights at Work*. Each of these working groups will involve the ILO, the Organization of American States, the Inter-American Development Bank, the UN's Economic Commission for Latin America and the Caribbean, the Business Technical Advisory Committee on Labor Matters and the Trade Union Technical Advisory Committee in their work.

In their November 2002 Quito Declaration, the hemisphere's Trade Ministers not only renewed the commitment to observe the *ILO Declaration*, but also noted the IACML Working Group's examination of the question of globalization related to labor and requested that the results of that work be shared with them. In response to this request, the IACML “troika” leadership, the Ministers of Labor from Canada, Brazil and Mexico, attended the FTAA Trade Ministerial in Miami in November 2003 to report on the IACML's work on labor and integration. The Labor Ministers called for the strengthening of social dialogue in the Summit of the Americas process so that economic integration under the Summit process is pursued in a satisfactory manner.

Other regional trade and labor activities carried out under NAFTA/NAALC and the OECD are noted in those sections of this report.

### 4. Bilateral Activities

The signing and Congressional approval of the Chile and Singapore FTAs, which include texts that fully incorporated Congressional guidance on trade and labor contained in TPA, establishes a firm basis for future bilateral agreements linking trade and labor. President Bush signed the Singapore FTA on May 6, 2003 and Ambassador Zoellick signed the Chile FTA in Miami on June 6, 2003. In each of these FTAs the parties reaffirm their obligations as ILO members and commit to strive to ensure that core labor standards, including the *ILO Declaration on Fundamental Principles and Rights at Work* and ILO Convention 182 concerning the worst forms of child labor, are recognized and protected by domestic labor laws. Each Party is also obligated to effectively enforce

its labor laws, subject to the discretionary authority spelled out in TPA.

Cooperation and consultations are the preferred means to achieve the labor objectives and assure compliance with all obligations. However, if a dispute settlement panel were to find that a party had failed to enforce its labor laws in a manner affecting trade, and if the countries cannot agree on a settlement, the panel would establish a monetary assessment, based on criteria such as the trade effect and pervasiveness of the violation.

In commercial trade disputes, the assessment is supposed to be calculated solely on “trade effects.” Since the quantifiable trade effect of a labor violation is likely to be very small, the agreements include other criteria for the panel to use in determining the assessment. The assessment may not exceed \$15 million per violation per year. The proceeds of the assessment would go into a fund, established under the agreement, and expended only upon the direction of a joint commission. The intention is for the funds to be used to address the underlying labor problem. The assessment must be paid each year until the country comes into compliance with its obligations.

If a party fails to pay the assessment within a reasonable period, the other party may take appropriate steps to collect the assessment, including suspending tariff benefits under the FTA sufficient to collect the assessment, bearing in mind the agreement’s objective of eliminating barriers to bilateral trade while seeking to avoid unduly affecting parties or interests not party to the dispute.

The United States has negotiated the same TPA-consistent, means of dispute settlement for labor clause violations in the Central America, Morocco, and Australia FTAs. The SACU FTA will also follow this guidance.

In approaching labor issues in the context of negotiations with Central America, the United States adopted a three-pronged strategy. The first element is labor text that fully incorporates TPA guidance as well as the guidance received in

consultations with the House and Senate Committees. The language in the labor chapter is stronger and more comprehensive than in earlier FTAs, such as the Chile FTA, requiring that tribunals for the enforcement of labor laws be fair, equitable, transparent, and that such proceedings not entail unwarranted delays. In addition, the Labor Cooperation and Capacity Building Mechanism in the CAFTA provides opportunities for public participation in the development and implementation of labor cooperation activities.

A second, equally important, element has been intensive bilateral consultations with each of our negotiating partners focused on assessing—and addressing where necessary—key labor issues in each country. While the CAFTA negotiations were ongoing, the five CAFTA countries asked the ILO to conduct a review of their labor laws relating to fundamental principles and rights at work. The ILO report makes clear that all five countries have laws giving effect to all of the ILO’s fundamental principles and rights at work, but the report also pointed out gaps in the law where improvements could be made to better protect worker rights.

The third element of our strategy is the design and implementation of labor cooperation and capacity building programs to strengthen the capacity of our partners in Central America to better protect worker rights once the agreement takes effect. These initiatives include a regional project in Central America funded through a grant of \$6.75 million from the U.S. Department of Labor to increase workers’ and employers’ knowledge of their national labor laws, strengthen labor inspections systems, and create and bolster alternative dispute resolution mechanisms. Several such programs are also being carried out in Morocco aiming to train workers on worker rights issues, to enhance the Labor Ministry’s capacity to increase compliance with labor laws, and to help eradicate the worst forms of child labor.

Our bilateral textile agreement with Cambodia has a unique aspect in that import quotas may be



increased dependent upon the efforts of the government to effectively enforce its domestic labor laws and protect the fundamental rights of Cambodian workers. With funds jointly provided by the U.S. Department of Labor, the Government of Cambodia and the apparel manufacturers association, the ILO monitors working conditions in Cambodian enterprises and reports on the results of that monitoring. Based upon the government's efforts to effectively enforce its labor laws—and according to findings supported by ILO monitoring reports and two field visits—at the end of 2003 the U.S. Government approved a 14 percent increase in quota levels for next year.

The U. S. bilateral textile agreement with Vietnam, concluded early in 2003, also includes a labor provision. Both parties reaffirm their commitments as members of the ILO, and also indicate their support for implementation of codes of corporate social responsibility as one way of improving working conditions in the textile sector. The agreement also calls for a review of progress on the goal of improving working conditions in the textile sector when the U.S. Department of Labor and the Ministry of Labor, Invalids and Social Affairs of the Socialist Republic of Vietnam meet to review the implementation of the Memorandum of Understanding between the two ministries signed in November 2000. The topic of working conditions in the textile sector was discussed in the November 2003 consultations held in Hanoi.

A final aspect of trade and labor bilateral activities relates to the worker rights provisions of U.S. trade preference programs, such as the Andean Trade Preference Act (ATPA), as amended, and the Generalized System of Preferences (GSP). The 2003 Annual ATPA Review is the first such review to be conducted pursuant to the ATPA regulations on the eligibility of countries for the benefits of the ATPA. As part of this process, petitions were filed requesting the review of certain practices in several countries regarding compliance with the eligibility criteria set forth in the ATPA. A number of petitions were filed regarding Ecuador on matters related to worker rights.

The Trade Policy Staff Committee (TPSC) is conducting a preliminary review of these petitions. The results of the preliminary review, including any proposed modifications to the application of the ATPA, will be published in the *Federal Register* on or about March 31, and public comment will be sought.

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*.

During 2003, USTR also reviewed a number of petitions requesting that GSP trade preferences be withdrawn from countries for not taking steps to afford internationally recognized worker rights. In September 2003, USTR announced the 2001 and 2002 country practice petitions that were accepted for review, namely those on Swaziland and Guatemala. Public comments were solicited and hearings were held on the worker rights practices in these countries in October 2003. Acceptance of a petition for review does not indicate any opinion with respect to disposition on the merits. Acceptance indicates only that the TPSC has found the petitions eligible for merit review through the interagency process. As the year ended, the Guatemala and Swaziland reviews were still in progress. The Bangladesh country practice review on worker rights, originally accepted in 1999, also continues. GSP petitions were filed in 2003 against Costa Rica and El Salvador. A decision on whether to accept these cases for review is pending.

## **C. Organization for Economic Cooperation and Development**

Thirty market 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. In 2001, these countries accounted for 59 percent of world GDP (in purchasing-power-parity terms), 76 percent of world trade, 95 percent of world official development assistance, and 19 percent of the world's

population. The OECD is not just a grouping of these economically significant nations, however, 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 by promoting economic growth and free markets. 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. 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 World Trade Organization (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. Non-members may also apply to participate as observers of committees for which they meet “major player” and “mutual benefit” criteria. The OECD carries out a number of regional and bilateral cooperation programs. The Russia program, for instance, supports Russia’s efforts to establish a market economy and eventually join the OECD.

## 1. Trade Committee Work Program

In 2003, the OECD Trade Committee, its subsidiary Working Party, and its joint working groups on environment, competition, 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 continued progressive trade liberalization in a rules-based environment. The Trade Homepage on the OECD website ([www.oecd.org/trade](http://www.oecd.org/trade)) contains up-to-date information on published analytical work

and other trade-related activities. Major analytical pieces completed under the Trade Committee during 2003 included studies on “Quantifying the Benefits of Liberalization of Trade in Services” and on “Regionalism and the Multilateral Trading System.” Reflecting the needs of WTO negotiators in Geneva, additional work addressed the benefits of trade facilitation measures, welfare gains resulting from further liberalization in tariffs, liberalizing trade in environmental goods, and the impact on government revenues of tariff cuts. In a joint project with the United Nations Conference on Trade and Development, the OECD produced a series of papers on managing request-offer negotiations under the General Agreement on Trade in Services in two specific sectors. Other analytical work covered the use and impact of different types of non-tariff barriers, structural adjustment in textiles and clothing, and the impact on economic performance of trade reforms undertaken by countries benefiting from debt relief under the HIPC [Heavily Indebted Poor Country] Initiative.

## 2. Competition Policy and Trade

The Joint Group on Trade and Competition (JG) continued work on issues at the intersection of trade and competition policy with the aim of providing an improved analytical foundation for the consideration of this topic in the OECD as well as in other fora, particularly the WTO. The JG has helped to promote mutual understanding and interaction between the trade and antitrust “cultures,” as well as better clarity and coherence of approaches toward issues of common interest. The JG met twice in 2003 and approved Secretariat papers on the potential application of the principles of transparency, non-discrimination, and procedural fairness to competition law concerns, on the possible use of peer review and other compliance mechanisms in a multilateral framework on competition policy, and on the “role of special and differential treatment at the trade, competition, and development interface.” These papers were the subject of a Joint Global Forum on Trade and Competition held at the OECD on May 15-16, which was intended to assist countries, in

the run-up to the WTO Ministerial Meeting in Cancun, to better evaluate the implications of closer multilateral cooperation in the competition field for their development policies and objectives. Representatives of over 60 countries, including trade and competition experts from both OECD member and non-member countries, as well as NGOs and international organizations, participated in this event.

### **3. 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 29 members of the OECD and five non-members in 1997. The non-members were Argentina, Brazil, Chile, Bulgaria, and Slovakia (now an OECD member). In 2001, Slovenia, also a nonmember, became the thirty-fifth country to sign the Convention. The Convention requires the parties to criminalize bribery of foreign public officials in executive, legislative, and judicial branches, levy dissuasive penalties on those who offer, promise or pay bribes, and implement adequate accounting procedures to make it harder to hide illegal payments. All 35 signatories have adopted legislation to implement the Convention.

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 had lost international contracts estimated in the billions of dollars every year due to 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.

By the end of 2003, all signatories except Turkey had undergone a review of their respective national legislation implementing the Convention. The signatories to the Convention commenced the second phase (i.e., Phase II) of peer monitoring—the evaluation of enforcement—in

November 2001. By the end of 2003, eight countries had been so reviewed: Finland, the United States, Iceland, Germany, Bulgaria, Canada, France and Norway. The United States has successfully pressed for an accelerated Phase 2 monitoring schedule and OECD budget funds to support it. The Working Group on Bribery will undertake seven of these country reviews in 2004 with the goal of completing the first 35 country review cycle in 2007. The OECD Convention Parties will also continue to study whether the Convention's coverage should be expanded to include several related issues, including the bribery of foreign political parties and candidates.

### **4. Dialogue with Non-OECD Members**

The OECD has continued its contacts with non-member countries to encourage the integration into the multilateral trade regime of developing and transitional economies, such as the countries of Eastern Europe and Central Asia, leading developing economies in South America and Asia, and sub-Saharan African countries.

The April 2003 Ministerial Council Meeting (MCM) focused on a global agenda for growth and development. The OECD invited ten non-member countries from Africa, Asia, Eastern Europe, Latin America, and the Middle East to its trade-related discussions. Other non-members participated in the OECD Forum held concurrently with the MCM, which looked at growth and development and included sessions on export credits, agricultural policy reform in an international context, and intellectual property rights, as well as a trade ministers' panel on the Doha Round. Argentina, Brazil, Chile, Hong Kong, and Singapore remain active non-member observers of the Trade Committee and its Working Party. As part of its series of Global Forum on Trade events, the OECD organized a conference on the "Market Access Challenge in the Doha Development Agenda" in May 2003, for which 60 countries, including 34 non-members, registered.

The OECD organized three events in 2003 connected to its ongoing trade policy dialogue

with transition economies. Two focused on trade in services: a forum in late June on trade in services in South Eastern Europe that was held in Bucharest, and an informal Working Party meeting in December on strategies for developing regional and multilateral trade in services in transition economies. Both events attracted attendance from Members, the Baltic states, and Russia as well as the countries of South Eastern Europe. The third event, a meeting of experts from OECD countries with Russian government officials, took place in Moscow in early June, and was aimed at developing government analytical capacity in the trade policy area.

The Trade Committee's fifth informal consultation with civil society organizations took place in October 2003. Discussion centered on assessments of the WTO Ministerial Meeting in Cancun and on a way forward. U.S. members of the OECD's Business and Industry Advisory Committee and of the U.S. Government's Technical Advisory Committees participated in the consultation.

## 5. Environment and Trade

The OECD Joint Working Party on Trade and Environment (JWPTE) met twice in 2003 to continue its analysis of the effects of environmental policies on trade and the effects of trade policies on the environment. During the year, the JWPTE contributed important work on environmental goods and services to support the Doha negotiating agenda. The JWPTE developed a series of cases studies involving eight developing countries, which identify complementary measures that can ensure the maximum realization of benefits from the liberalization of environmental goods and services markets. The JWPTE's work on environmental goods also focused on the practical considerations relating to defining environmental goods and services for the purposes of market access negotiations. The United States proposed additional new work in this area as well which would explore the synergies between liberalization of environmental goods and environmental services. The JWPTE undertook

work on the development dimension of trade and environment, building upon the development initiatives agreed upon at Doha. The work involved identifying lessons learned from the case studies developed in 2002. The JWPTE also undertook work on labeling for environmental purposes, focusing on developing country access to developed country markets under select eco-labeling programs. The JWPTE began work in 2003 to support the trade and environment-related elements of the September 2002 World Summit for Sustainable Development plan of implementation.

## 6. Export Credits

The OECD Arrangement on Guidelines for Officially Supported Export Credits places limitations on the terms and conditions of government-supported export credit financing so that competition among exporters is based on the price and quality of the goods and 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, a stand-alone policy-level body of the OECD, are responsible for implementing the 25-year-old Arrangement and for negotiating further disciplines to reduce subsidies in official export credit support.

Under the Arrangement, the Export-Import Bank of the United States (Ex-Im Bank), the U.S. export credit agency, no longer has to offer loans with low interest rates and long repayment terms. In addition, the "level playing field" created by the Arrangement's tied aid disciplines has allowed U.S. exporters to increase their exports by about \$1 billion a year. These exports would have cost taxpayers about \$300 million in annual appropriations to Ex-Im Bank if the United States had to create its own tied aid program in order to compete.

A major success was achieved in 2003. Members of the OECD Working Party on Export Credits

and Credit Guarantees (ECG) reached consensus on a landmark agreement that requires export credit agencies to evaluate the environmental impact of the projects that they are considering, lays out the procedures to be followed when performing an evaluation, and sets minimum standards to be used. The agreement marks the conclusion of several years of intensive negotiations. In 2001, the United States rejected a draft agreement for its failure to ensure that appropriate environmental standards would be used, and its failure to provide basic transparency. Other ECG members chose to implement the agreement voluntarily. After two years of implementation experience, other ECG members were willing to strengthen the OECD agreement during the mandated review in 2003. At this point, the United States was able to join the agreement, which was then formalized by the OECD Council.

The OECD tied aid rules continue to reduce tied aid dramatically 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 reduced to \$2.5 billion in 2002 (from \$3.5 billion in 2001)—its lowest level on record. Data for the first half of 2003 indicate that a further decline is expected, to perhaps as low as \$1.5 billion.

On January 1, 2003, an agreement took effect that banned tied aid in Central and Eastern Europe and key countries of the former Soviet Union (FSU), and formally incorporated the agreement into the Arrangement. The agreement keeps these newly opened markets free from the trade-distorting effects of tied aid until such time as their per capita income levels increase and render them ineligible for tied aid. Prior to January 1, 2003, Central and Eastern Europe and the former Soviet Union were the subject of two separate agreements that had taken effect at different points in time. The new agreement merged and

updated these two agreements. Inclusion of the new agreement into the Arrangement eliminates the temporary nature of the FSU agreement, which had to be renewed annually by consensus.

In November 2003, the United States submitted to participants a revision of its 2002 proposal to apply the tied aid disciplines to untied aid. Untied aid is a form of aid financing that is not currently subject to multilateral disciplines but can have trade-distorting effects. Furthermore, because untied aid is not governed in any way, other participants can circumvent existing anti-trade distortion disciplines by simply declaring their aid to be untied. Japan is the largest provider of untied aid, and its levels of untied aid are increasing. In addition, other governments are beginning to offer untied aid and at increasing rates. The United States had hoped that its revised proposal would facilitate acceptance, but Japan continued to block provisions for basic transparency with respect to untied aid. As a result, the Treasury Department is pursuing this issue in the G-7 Finance Minister forum.

Participants are addressing a number of other issues, including a review of market window behavior. Market windows are quasi-governmental financial institutions that support national exports and yet are unbound by multilateral rules. In 2002, Congress requested that the Administration negotiate disciplines for market windows and report on the status of those negotiations in 2004.

One of the biggest challenges to face participants in recent years is how to address certain issues raised by some developing countries.<sup>1</sup> In 2002, participants began a concerted effort to assure that the Arrangement rules equitably address the trade finance needs of both developing countries and OECD members. The major portion of this work was achieved in 2003 with the redrafting of the Arrangement to address specific issues and princi-

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1 As noted above, the negotiation of the export credit rules at the OECD has led to substantial subsidy reductions pursuant to the Arrangement—a result that may not have been possible if the rules had been negotiated in a consensus forum that included those countries that benefit from such subsidies.

ples that have been identified in the course of WTO dispute settlement proceedings. More specifically, the goal of the redrafting exercise was to improve the consistency of the text with regard to relevant international obligations (i.e., the WTO Agreement on Subsidies and Countervailing Measures), to enhance the clarity and user-friendliness of the Arrangement (i.e., to draft it for all export official credit providers and not just the OECD countries), and to increase transparency vis-à-vis non-participants. The new Arrangement text is to be implemented January 1, 2004. The participants will continue to work with non-OECD members in 2004 and beyond to improve and refine the Arrangement rules to ensure and maintain a level playing field for all governments providing official export credit support.

## 7. Investment

International investment issues are studied and discussed in several OECD bodies, and the United States places a high priority on this work. The United States believes that discussions within the OECD can help build international consensus on the meaning and importance of certain investment protection standards, promote voluntary adherence by multinational enterprises to appropriate business practices, and strengthen understanding of the ways in which investment can promote development. The United States continues to play a major role in shaping the work of investment-related bodies and initiatives within the OECD.

The Committee on International Investment and Multinational Enterprises (CIME) plays the leading role in the analysis of international investment issues within the OECD. It is also responsible for the implementation of the OECD Declaration on International Investment and Multinational Enterprises. CIME examined several investment protection issues in 2003. Member countries considered a study, prepared by the OECD Secretariat, entitled “Bilateral Investment Treaties, Regional Agreements and Multilateral Investment Disciplines,” which reviewed the compatibility of most-favored nation (MFN) clauses in an array of international

investment agreements. CIME is considering additional analysis of international jurisprudence relating to the interaction of MFN provisions across investment agreements. CIME also examined two other Secretariat papers, on the “Fair and Equitable Treatment Standard in International Investment Law” and “Indirect Expropriation and the Right to Regulate in International Investment Law.” Legal experts from Member countries discussed these two papers during a December meeting. The United States believes the OECD can play a useful role in shaping global norms in areas like these, and has sought to exercise leadership within CIME on investment protection issues.

The OECD continued in 2003 to expand its outreach on investment issues to non-members. These efforts included follow-up work with Russia on implementation of the policy recommendations in the OECD Russia Investment Survey; the publishing of a comprehensive study of foreign direct investment (FDI) policy in China, entitled “OECD Investment Policy Review of China: Progress and Reform Challenges;” and the 2003 Global Forum on International Investment, which focused on “Modern Governance and Transparency for Investment.” CIME, in close association with the OECD Committee on Non-Members, has also proposed a Middle East and North Africa (MENA) investment initiative and supports an OECD Investment Initiative for Growth and Development in Africa. This work is part of an overall OECD strategy aimed at promoting the coherence of development policies and increased investment for development. As part of this strategy, CIME is also studying the relationship between Official Development Assistance (ODA) and FDI. Additional outreach initiatives for non-members included an invitation to Argentina to make a presentation to CIME on the impact on FDI and Argentina’s international obligations of measures imposed by the government in response to the country’s economic crisis, and consideration of a request by Romania to become an adherent to the Declaration on International Investment and Multinational Enterprises.

CIME plays an active role in promoting corporate social responsibility through its oversight of the voluntary OECD Guidelines for Multinational Enterprises. In September 2003, CIME hosted the third annual meeting of National Contact Points (NCPs), the government agencies designated by each OECD member country to monitor implementation of the guidelines within its territory. The NCP annual meeting provided an opportunity to review the third year of implementation activity under the revised guidelines. The meeting confirmed that the visibility and use of the guidelines have increased, with governments, business entities, labor unions, non-governmental organizations, and other civil society leaders referring to or relying on the guidelines as an instrument for the promotion of appropriate business conduct.

The 2003 OECD Roundtable on Corporate Responsibility, held in conjunction with the annual meeting of the NCPs, focused on how the OECD guidelines could be used with other anti-corruption instruments to enhance the anti-corruption practices and policies of business. The United Nations Expert Panel on Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo discussed the OECD guidelines in its October 2002 report. This prompted a number of NCPs to seek to resolve issues related to the applicability of the guidelines to the activities of OECD Member country firms doing business in the Congo. The October 2003 Final Report of the UN Expert Panel noted the cooperation of the NCP in implementing the guidelines.

## 8. Labor and Trade

The Trade Union Advisory Committee (TUAC) to the OECD, made up of 56 national trade union centers from OECD member countries, has played a consultative role to the OECD since 1962. There were three joint consultations in 2003 between TUAC and BIAC (the Business and Industry Advisory Committee). TUAC and BIAC held joint consultations on lifelong learning, and participated actively in the OECD Meeting of the Employment, Labor and Social Affairs Committee

at the Ministerial Level in September 2003. TUAC's statement from the Ministerial concluded that: "Ministers must mandate the OECD to contribute to building the Social Dimension of globalization through joint work with other international organizations, in particular the ILO..." The OECD liaison committee with International Non-governmental Organizations met with TUAC representatives on "Post-Cancun—Challenges and Opportunities for Global Governance" in December 2003.

## 9. Regulatory Reform

Since 1998, the OECD Trade Committee has contributed to OECD work on domestic regulatory governance on the basis of 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.

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/appropriate; recognition of the equivalence of other countries' procedures for conformity assessment where appropriate; and application of competition principles.

The Trade Committee undertook reviews of France and Germany in 2003, bringing to a total of twenty the country studies it has reviewed (for all G7 countries, plus thirteen other OECD Members). The Secretariat commenced work on a review of (non-member) Russia. In addition, the OECD organized a Global Forum on Governance in March that looked at how appropriate regulatory policy could advance the objectives of the Doha Development Agenda. Finally, the APEC-OECD Cooperative Initiative on Regulatory

Reform held two workshops in 2003 aimed at developing an integrated checklist to help countries assess their progress in implementing the common principles on regulatory reform.

## 10. Services

Work in the OECD on trade in services has continued to provide analysis and background relevant to WTO negotiations, with emphasis on issues of importance to developing countries in the negotiations. The Secretariat, in cooperation with UNCTAD, produced papers on energy and insurance services to aid developing countries in the request-offer process of the negotiations. In September, the OECD presented a paper in the Council for Trade in Services in Special Session in the WTO, which paper provided examples and case studies of services exported by developing countries. In November 2003, the OECD held its fourth “services experts” meeting, which was organized jointly with the World Bank. The meeting, attended by representatives of developing countries, focused on the roles of individuals as service suppliers (called “mode four” in the GATS) and their treatment in trade agreements.

## 11. Steel

As noted in the “Steel Trade Policy” section of this report, the Administration continues to work hard to achieve the goals set out in the President’s Initiative on Steel in order to reach more lasting solutions to the structural problems of the global steel industry. These problems have contributed to a decades-long, cyclical proliferation of unfair trade and trade remedy responses. As a result, the United States and other major steel-producing countries launched talks in the OECD —via the creation of a “High-Level Group” of government officials—to address the inter-related problems of global excess, inefficient steel capacity and the market distorting practices which help to sustain such capacity. U.S. government officials have helped to spearhead these OECD efforts to urge the market-driven rationalization of the world’s excess, inefficient steelmaking capacity, while also formulating better disciplines over practices

that can distort markets and trade—beginning with and focusing on government subsidies.

In the summer of 2003, the High-Level Group met at the OECD to take stock of the progress being made to advance the agenda relating to uneconomic steel capacity and market distorting practices, and to provide further political-level guidance for the work being done since its previous meeting in December 2002. Much of this work has occurred in technical subsidiary bodies—the Capacity Working Group and the Disciplines Study Group—set up in 2002 to explore more deeply the relevant issues.

In the Capacity Working Group, the participating governments have agreed upon a number of improvements in the notification and review of information concerning global steel capacity developments so that such developments are subject to a more transparent and rigorous reporting standard. Global steel capacity trends are now examined in accordance with a structured “peer review” procedure which was established with the active involvement of the United States. In this process, governments are expected to supply detailed information as to capacity trends in their steel industries and are called upon to answer questions from other governments regarding the accuracy of capacity estimates or the appropriateness of government policies that may help to sustain uneconomic capacity. Based on the most recent information submitted, the latest estimates of closure of excess, inefficient steelmaking capacity indicate that there was closure of 105 million metric tons of capacity worldwide during the period from 1998-2002, with another 29-35 million tons projected to be closed between 2003-2005.

Reported new installations bring the net worldwide closure numbers to a lower, but still significant, amount: 72-78 million tons in the 1998-2005 period. However, closures appear to be leveling off, and there is much new capacity being created in response to a surge in demand, particularly in China. The United States will continue to press other countries to pursue only



market-driven restructuring and investment through the work of the Capacity Working Group.

With respect to market-distorting practices, nearly 40 governments have been working intensively to develop an agreement that would reduce or eliminate trade-distorting government subsidies to the steel sector, establishing stronger rules and going well beyond current international disciplines. Significant progress has been made in elaborating upon its core elements (*e.g.*, the nature and extent of the subsidy prohibition) and identifying options for resolving difficult issues. However, major points of contention remain, such as: (1) whether subsidies beyond limited plant closure aid should be exempted from the envisaged blanket prohibition of all subsidies; (2) the kind and level of special and differential treatment, if any, that should be accorded to developing countries; and (3) whether and to what extent the agreement should address trade remedies. We have worked well with the other participants to promote progress in these talks, but significant differences of view remain on some of these key issues. The goal remains to produce an “advanced negotiating text” for political level review by the spring of 2004 and to conclude negotiations by the end of 2004.

## 12. Developing Countries

During 2003, the Trade Committee and its Working Party discussed a number of issues of particular concern to developing countries on which the OECD had undertaken analysis. These included revenue losses associated with the lowering of tariffs, structural adjustment in textiles and clothing, and the impact of preference erosion. In October 2003, the Trade Committee discussed in joint session with the Chair of the OECD Development Assistance Committee (DAC) enhancing coherence between trade policy and development strategies. Members noted the Trade Committee’s ongoing efforts to take account of policy impacts on developing nations in its work.

The Trade Committee built on its previous work with the DAC to make available current OECD work helpful to trade negotiators, particularly from developing countries. In 2003, twenty-three recent OECD analytical papers on topics relevant to the Doha Development Agenda were put together as a CD-ROM “Tool Kit II.” The OECD distributed copies of the Tool Kit II free of charge to all WTO Member governments at the WTO Ministerial Meeting in Cancun in September; free updates are available through a link on the OECD website. The Tool Kit II also contains interviews with Trade Directorate staff members and video presentations from the June 2003 OECD Global Forum on Trade.

In addition to that Global Forum, which focused on the “market access challenge in the DDA” (Doha Development Agenda), the OECD organized other trade-related outreach events for developing countries in 2003. These included a regional workshop on “promoting merchandise trade” for African business, government, and non-governmental organization representatives, held in December in Nairobi; a regional workshop on “trade capacity building and private sector development in Asia,” held in Phnom Penh also in December; and a conference on trade and investment for African and international private and public sector leaders, held in Dakar in April.

With support from the United States, the OECD in 2003 continued working with the WTO on their joint trade capacity building database. The database identifies trade-related technical assistance and capacity building efforts of multilateral agencies and national governments within the context of the DDA. This information is critical to improving knowledge of available assistance and assessing responsiveness to developing country needs. All multilateral and bilateral donors contributed to the compilation of information. The database indicates that the United States was the largest bilateral donor, accounting alone for over half of bilateral trade capacity building assistance in 2002. The information from the database is being widely distributed among donors and

developing country trade officials to coordinate more effectively trade-related technical assistance activities worldwide.

## **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. Chinese Taipei subsequently endorsed the objectives of the Joint Statement and became the fifth party. The 1999 Joint Statement on Semiconductors reflects over a decade of progress under three previous semiconductor agreements toward opening up the Japanese market to foreign semiconductors, improving cooperation between Japanese users and foreign semiconductor suppliers, and eliminating tariffs in the top five semiconductor producers (the United States, Japan, Korea, the European Union, and Chinese Taipei). Moreover, whereas activities in the 1990's were focused on the Japanese market, today the agenda under this unique forum covers a broad range of public policy issues aimed at promoting the health 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.

In May 2003, industry CEOs representing all five parties held their fourth World Semiconductor Council (WSC) meeting under the 1999 Joint Statement. The WSC was created under a previous Joint Statement (1996) to provide a forum for industry representatives to discuss and engage in cooperation concerning global issues such as standardization, environmental concerns, worker health and safety, intellectual property rights, trade and investment liberalization, and worldwide market development. Membership in the WSC requires governments of national/regional industry associations to have eliminated semiconductor tariffs, or committed to eliminate these tariffs expeditiously.

The 1999 Joint Statement also requires that governments and other authorities meet at least once a year to receive and discuss the recommendations of the WSC regarding policies that may affect the future outlook and competitive conditions within the global semiconductor industry. The fourth such meeting was held in November 2003, hosted by the United States. At that meeting, the WSC recommended that government authorities pursue the following policies: promotion of open and competitive markets around the world; protection of intellectual property rights; non-discrimination for foreign products in all markets, including a lowering of China's VAT rate to 3 percent on all semiconductors, regardless of origin; promotion of fair and effective antidumping rules; discouraging the use of copyright levies on digital equipment; expanding participation in the Information Technology Agreement (ITA); re-affirmation of the principle that in all markets, the competitiveness of semiconductor producers—and not trade-distorting measures—should be the principle determinant of success; full protection of intellectual property; adoption of policies that promote the growth of e-commerce, including a permanent customs duty moratorium on electronic commerce transactions; and adoption of environmental regulations that are both the least trade restrictive possible and based on scientific assessments of the risks posed by the targeted materials and their likely substitutes. The WSC has invited China to become a party to the Joint Statement, reflecting China's increasing importance as a producer and consumer of semiconductors. China is expected to become the second-largest market for semiconductors, behind the United States, by 2010.

## **E. Steel Trade Policy**

In 2003, the Administration continued to implement the President's comprehensive strategy to respond to the challenges facing the United States steel industry. This strategy, announced on June 5, 2001, is designed to restore market forces to world steel markets and to eliminate practices that harm the U.S. steel industry and its workers.

The Administration's initiative contains three elements. First, the President directed the United States Trade Representative to request that the International Trade Commission initiate an investigation, under Section 201 of the Trade Act of 1974, of serious injury to the steel industry caused by increasing imports of steel products. Second, the President directed the United States Trade Representative, in cooperation with the Secretaries of Commerce and Treasury, to initiate negotiations with our trading partners to eliminate inefficient excess capacity in the steel industry worldwide. Finally, the President directed the United States Trade Representative, together with the Secretaries of Commerce and Treasury, to initiate negotiations on the rules that will govern steel trade in the future, so as to eliminate the underlying market-distorting subsidies that led to the current conditions of the global steel industry.

The President, in March 2002, imposed temporary safeguard measures after a comprehensive investigation by the U.S. International Trade Commission (ITC), which found that imports of certain steel products were a substantial cause of serious injury to domestic steel industries. These safeguard measures, which were intended to give our domestic industry an opportunity to adjust to import competition, took the form of tariffs, ranging from 8 percent to 30 percent on imports of ten steel product groups, and a tariff-rate quota (TRQ) on steel slab. In order to minimize the impact of these tariffs on U.S. consumers, imports of more than 1,000 niche steel products not sufficiently available from domestic producers were excluded from the relief. In addition, imports from our free trade partners and most imports from developing countries were excluded.

After the safeguards were implemented, several WTO Members requested consultations under the WTO Dispute Settlement Understanding. When consultations failed to resolve the dispute, a panel was established to consider the complaints. The WTO panel issued a report in July 2003 finding that the United States did not establish a sufficient basis for imposing the safe-

guard measures. The United States appealed the panel report, and the Appellate Body report was released on November 10, 2003. The WTO Appellate Body upheld the Panel's ultimate conclusion that each of the ten U.S. safeguard measures was inconsistent with WTO rules.

On September 19, 2003, the ITC issued its midterm report regarding the steel safeguard measures. The ITC midterm report documented a number of changes that occurred in domestic and global steel markets. The ITC reported that "since the imposition of the safeguard measures, the industries producing steel products (subject to the safeguard) have undergone major restructuring and consolidation." The ITC report also indicated that steel producers and workers "negotiated groundbreaking collective bargaining agreements since the imposition of the safeguard measures."

On December 4, 2003, President Bush signed a proclamation terminating the steel tariffs and the TRQ. The proclamation stated: "The U.S. steel industry wisely used the 21 months of breathing space we provided to consolidate and restructure. The industry made progress increasing productivity, lowering production costs, and making America more competitive with foreign steel producers." As indicated in the proclamation, the President concluded that the safeguard measures have achieved their purpose, and as a result of changed economic circumstances, maintaining the measures was no longer warranted.

In his proclamation, the President indicated that the Administration will continue its steel import licensing and monitoring program which was established concurrently with the safeguards so it can respond to future import surges that could unfairly damage the industry.

Significant progress was made in implementing the other elements of the Administration's steel strategy. In December 2002, the world's major steel-producing countries began negotiations in the OECD to eliminate market-distorting government practices in steel trade, focusing first on the substantial reduction and elimination of

market-distorting steel subsidies. The agreement by all of the world's major steel producers to begin these negotiations was a historic achievement in a sector of the world economy that has defied previous reform efforts. Participants also reached consensus on a work schedule that aims to produce an advanced working text by the spring of 2004. The participants in the OECD discussions of excess inefficient steel capacity have forecasted significant closure of such capacity, and have commenced a robust peer

review process in which governments report information and answer questions about capacity developments within their territories. Projections by participants in this process show that excess inefficient capacity will fall by 72 to 78 million metric tons from 1998 through 2005. The ongoing work on steel at the OECD represents the most sustained and comprehensive commitment of any Administration—and any country—to address the root causes of ongoing market distortions in the world steel market.

# V. Trade Enforcement Activities

## A. Enforcing U.S. Trade Agreements

### 1. Overview

Enforcement of existing trade agreements remains a top priority for this Administration. 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 Department of Commerce, and strong advocacy by the State, Commerce and Agriculture Departments, help ensure that these agreements yield the maximum advantage in terms of ensuring market access for Americans, advancing the rule of law internationally, and creating a fair, open, and predictable trading environment. We seek to achieve this goal through a variety of means, including:

- Asserting U.S. rights through the mechanisms in 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 like 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 the NAFTA through NAFTA's trilateral work program, tariff acceleration, and use, or threat of use, of NAFTA's dispute settlement mechanism, including using its labor and environmental side agreements to promote fairness for workers and effective environmental protection.

Through 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, the United States has filed 64 complaints at the WTO, thus far successfully concluding 37 of them by settling 20 cases favorably and prevailing on 17 others through litigation in WTO panels and the Appellate Body. The United States has obtained favorable settlements and favorable panel 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.* Our hope in filing cases, of course, is to secure U.S. benefits rather than to engage in prolonged litigation. Therefore, whenever possible we have sought to reach favorable settlements that eliminate the foreign violation

without having to resort to panel proceedings. We have been able to achieve this preferred result in 20 of the 37 cases concluded so far, involving: Australia's ban on salmon imports; Belgium's duties on rice imports; Brazil's auto investment measures; Brazil's patent law; Denmark's civil procedures for intellectual property enforcement; 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 our trading partners have not been willing to negotiate settlements, we have pursued our cases to conclusion, prevailing in 17 cases so far, 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; the EU's import barriers on bananas; the EU's ban on imports of beef; 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 measures that discriminated against imports of U.S. automobiles; 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 beef imports; and Mexico's antidumping duties on high-fructose corn syrup.

USTR also works 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 NAFTA. USTR has

effectively applied Section 301 of the Trade Act of 1974 to address unfair foreign government measures, "Special 301" for intellectual property rights enforcement, Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 for telecommunications trade problems, and Title VII of the 1988 Act to address problems in foreign government procurement. The application of these trade law tools is described further below.

## 2. WTO Dispute Settlement

### 2003 Activities

In 2003, the United States filed four new complaints under WTO dispute settlement procedures involving Egypt's tariffs on textile and apparel products, the European Community's protection of trademarks and geographical indications, the European Community's restrictions on biotechnology products, and Mexico's anti-dumping duties on rice and beef. The United States also initiated panel proceedings on a case begun earlier involving Canada's unfair practices with respect to wheat.

The cases described in Chapter II 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/enforcement/index.shtml>).

## 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 affecting competition not only domestically, but also in the subsidizing government's market and in third country markets. Previously, 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 distortive 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 the United States' 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 Import Administration'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 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 the matter to be reliably evaluated, USTR and Commerce will 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, SEO staff have handled numerous inquiries and met with representatives of U.S. industries concerned about the subsidization of foreign competitors. They have also deepened their interaction and coordination with Import Administration's Trade Remedy Compliance Staff (TRCS) to identify, track and, where appropriate, address various foreign government policies, business practices and trade trends that may contribute to the development of subsidy and other unfair trade problems. These efforts have been facilitated by stationing TRCS officers overseas (currently in China and Korea), who help gather and verify the accuracy of information concerning foreign subsidy practices, and can play a pivotal role in clarifying or resolving problems that otherwise might lead to harm to U.S. commercial interests and unnecessary frictions with our trading partners.

Meanwhile, the SEO's electronic subsidies database continues to fulfill the goal of providing the U.S. trading community 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, covering more than 50 countries and over 2,000 government practices. This database is updated monthly, making information on subsidy programs investigated or reviewed 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 country to another. The United States carefully 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, the Department of Commerce, via the TRCS, tracks foreign antidumping and countervailing duty actions involving U.S. exporters and gathers information collected from U.S. embassies worldwide, enabling U.S. companies and U.S. government agencies to watch other Members' administration of antidumping and countervailing duty actions involving U.S. companies. Information about foreign antidumping and countervailing duty actions affecting U.S. exports is accessible to the public via the Department of Commerce's Import Administration website at <http://ia.ita.doc.gov/foradcvd/index.html>, and at the TRCS website, <http://ia.ita.doc.gov/trcs/index.html>. The deployment of IA officers to certain overseas locations, as noted above, has contributed importantly 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 filed a WTO case against Mexico's anti-dumping measures on U.S. exports of rice, as well as certain changes to Mexico's foreign trade laws. Among other antidumping investigations of U.S. goods that were closely monitored in the past year are the European Union's investigation of certain cold-rolled stainless steel, Mexico's antidumping measures on live swine (rescinded in May 2003 as a result of WTO consultations and following a changed circumstances review) and China's investigations of art paper, optical fiber, and several chemical products.

Members must notify on an ongoing basis 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 Import Administration 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 the principal U.S. statute for addressing 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.

The USTR has initiated 121 investigations pursuant to Section 301 since the statute was first enacted in 1974.

#### **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 policy or practice 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 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 practices are determined to violate a trade agreement or to be unjustifiable, the USTR must take action. If the practices 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 practices alleged. Investigations of alleged violations of trade agreements with 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 practices (other than the failure to provide adequate and effective protection of intellectual property rights) must be decided within 12 months.

The range of actions that may be taken under Section 301 is broad and encompasses any action that is within the power of the President with respect to trade in goods or services or with respect to any other area of pertinent relations with a foreign country. Specifically, the USTR may: (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.

During 2003, there were new or ongoing actions or other major developments in the following Section 301 investigations. (For a description of WTO dispute settlement procedures related to Section 301 investigations, see Chapter II).

#### **b. Intellectual Property Laws and Practices of the Government of Ukraine (301-121)**

On March 12, 2001, the Trade Representative identified Ukraine as a priority foreign country under section 182 of the Trade Act (known as Special 301—see below), and simultaneously initiated a Section 301 investigation of the intellectual property laws and practices of the Government of Ukraine. The priority foreign country identification was based on: (1) deficiencies in Ukraine's acts, policies and practices regarding the protection of intellectual property rights, including the lack of effective action enforcing intellectual property rights, as evidenced by high levels of compact disc piracy; and (2) the failure of the Government of Ukraine to enact adequate and effective intellectual property legislation addressing optical media piracy.

The United States consulted repeatedly with the Government of Ukraine regarding the matters under investigation. However, the Government of Ukraine made very little progress in addressing two key issues: its failure to use existing law enforcement tools to stop optical media piracy, and its failure to adopt an optical media licensing regime. On August 2, 2001, the USTR determined that the acts, policies and practices of Ukraine with respect to the protection of intellectual property rights were unreasonable and burdened or restricted U.S. commerce, and were thus actionable under Section 301(b). The USTR determined that appropriate and feasible action in response included the suspension of duty-free treatment accorded to the products of Ukraine under the GSP program, effective with respect to goods entered on or after August 24, 2001. The USTR also announced that further action could include the imposition of prohibitive duties on certain

Ukrainian products, and the office of the USTR sought public comment on a preliminary product list. On December 11, 2001, the USTR determined that appropriate additional action included the imposition of 100 percent duties on a list of 23 Ukrainian products with an annual trade value of approximately \$75 million. The increased duties went into effect on January 23, 2002.

Consultations with the Government of Ukraine continued, but Ukraine failed to take all of the steps needed to stop high levels of optical media piracy. Accordingly, the suspension of GSP benefits and increased duties on certain Ukrainian products remained in effect throughout 2003.

### **c. EC—Measures Concerning Meat and Meat Products (Hormones) (301-62a)**

An EC directive prohibits the import 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 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 European Community’s and its Member States of tariff concessions and related obligations under the GATT covering trade up to

\$116.8 million per year. In a notice published in July 1999, the USTR announced that the United States was exercising this authorization by imposing 100 percent *ad valorem* duties on certain products of certain EC Member States.

Pursuant to Section 307 of the Trade Act, in May 2003 USTR notified representatives of the domestic beef industry that the increased duties would terminate unless USTR received a written request prior to July 29, 2003 for a continuation of the increased duties. Beef industry representatives responded prior to July 29, 2003 by requesting in writing that the increased duties remain in place until the United States and the EC reach a satisfactory solution to the dispute. Accordingly, the increased duties were continued under Section 307 of the Trade Act.

The increased duties remained in place throughout 2003. While talks have continued with the aim of reaching a mutually satisfactory solution to the dispute, no resolution has been reached.

## **2. Special 301**

During the past year, the United States continued to implement vigorously 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 those 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 of 1974, under Special 301 provisions, 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 the relevant U.S. products must be designated as “Priority Foreign Countries.”

Priority Foreign Countries are potentially subject to an investigation under the Section 301 provisions of the Trade Act of 1974. USTR may not designate a country as a Priority Foreign Country if it is entering into good faith negotiations or making significant progress in bilateral or multi-lateral negotiations to provide adequate and effective protection of IPR.

USTR must decide whether to identify countries within 30 days after issuance of the annual National Trade Estimate Report. In addition, USTR may identify a trading partner as a Priority Foreign Country or remove such identification whenever warranted.

USTR has created a “Priority Watch List” and “Watch List” under Special 301 provisions. 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 are the focus of increased bilateral attention concerning the problem areas.

Additionally, under Section 306, USTR monitors a country’s compliance with their bilateral intellectual property agreements. USTR may apply sanctions if a country fails to comply.

#### **a. 2003 Special 301 Review Announcements**

On May 1, 2003, United States Trade Representative Robert B. Zoellick announced the results of the 2003 “Special 301” annual review, which examined in detail the adequacy and effectiveness of intellectual property protection in approximately 74 countries. Under the Special 301 provisions of the Trade Act of 1974, as amended, USTR identified 49 trading partners that deny adequate and effective protection of

intellectual property and/or equitable market access to U.S. artists and industries that rely upon intellectual property protection.

In the report, USTR noted the continued designation of Ukraine as a Priority Foreign Country due to its persistent failure to take effective action against significant levels of optical media piracy and to implement intellectual property laws that provide adequate and effective protection. As a result, the \$75 million in sanctions imposed on Ukrainian products on January 23, 2002, remain in place. This continued failure to adequately protect intellectual property rights could also jeopardize Ukraine’s efforts to join the World Trade Organization (WTO) and seriously undermine its efforts to attract trade and investment. The U.S. Government continues to remain actively engaged with Ukraine in encouraging the nation to combat piracy and enact the necessary intellectual property rights legislation and regulations.

Paraguay and China continued to be designated for “Section 306 monitoring” to ensure both countries comply with the commitments to the United States under bilateral intellectual property agreements. Paraguay’s agreement is also in the process of being renegotiated in 2003-04.

Furthermore, 11 trading partners were placed on the “Priority Watch List”: Argentina, Bahamas, Brazil, the EU, India, Indonesia, Lebanon, the Philippines, Poland, Russia, and Taiwan. An additional 36 trading partners were placed on the “Watch List.” USTR also announced an “out-of-cycle” (OCR) review for the Republic of Korea.

#### **b. Ongoing Initiatives**

##### *i. Global Scourge of Counterfeiting and Piracy*

One area of particular concern for the 2003 Special 301 report was counterfeiting and digital piracy, which has increased dramatically in recent years. Unfortunately, in the area of counterfeiting, what was once a localized industry concentrated on the copying of high-end designer goods has now become a massive, sophisticated global business involving the manufacturing and sale of

counterfeit versions of everything from soaps, shampoos, razors, and batteries to cigarettes, alcoholic beverages, and automobile parts, as well as medicines and health care products.

Counterfeiting of such a broad range of products on a global scale affects more than just the companies that produce legitimate products. While it has a direct impact on the sales and profits of those companies, counterfeits also hurt the consumers who waste their money and sometimes put themselves at risk by purchasing fake goods. It also hurts the countries concerned by decreasing tax revenues and deterring investments. In addition, counterfeiters pay no taxes or duties and do not comply with basic manufacturing standards for the health and safety of workers or product quality and performance.

Piracy and counterfeiting of copyrighted products in digital format, as well as counterfeiting of all types of trademarked products, have grown to such a scale because they offers enormous profits and little risk for the criminal element of society. Criminals can get into the counterfeiting business with little capital investment, and even if caught and charged with a crime, the penalties in many countries are so low that they offer no deterrent. This is why USTR seeks, through our free trade agreements and our bilateral consultations, to ensure that criminal penalties are high enough to have a deterrent effect, as well as to ensure that pirated and counterfeit products, and the equipment used to make them are seized and destroyed. These products can be produced and sold at prices much lower than legitimate products, but still deliver attractive profit margins for the infringer because the counterfeit and pirated products are usually made with substandard materials, and undergo little or no quality control or even basic health and safety testing. The economic damage caused by counterfeiting to the legitimate companies whose products are counterfeited is enormous. Losses to U.S. industries alone are estimated at \$200 to \$250 billion per year.

## *ii. Controlling Optical Media Production*

Over the past year, some of our trading partners, such as Malaysia and Taiwan, have taken important steps toward implementing, or have committed to adopt, much needed controls on optical media production. However, others that are in urgent need of such controls, including Ukraine, Thailand, Indonesia, Pakistan, the Philippines, and Russia, have not made sufficient progress in this regard.

Governments such as those of China, Hong Kong, and Macau that implemented optical media controls in previous years have clearly demonstrated their commitment to continue to enforce these measures, although continued effort is necessary. The effectiveness of such measures is underscored by the direct experience of these governments in successfully reducing pirated production of optical media. We continue to urge our trading partners facing the threat of pirate optical media production within their borders to adopt similar controls or aggressively enforce existing regulations in the coming year. USTR is concerned, moreover, about recent reports of increased piracy and counterfeiting in Bulgaria, which had been a model in its region for taking the necessary steps to tackle optical media piracy by, for example, enacting optical media controls. Particularly troubling are reports that the CD plant licensing laws may be revised in a manner that would undermine, not improve, their effectiveness. We will be closely monitoring the situation and look to the Government of Bulgaria to maintain strong optical disc regulations.

## *iii. Implementation of the WTO TRIPS Agreement*

One of the most significant achievements of the Uruguay Round was the negotiation of the TRIPS Agreement, which requires all WTO Members to provide certain minimum standards of protection for patents, copyrights, trademarks, trade secrets, geographical indications, and other

forms of intellectual property. The Agreement also requires countries to provide effective enforcement of these rights. The TRIPS Agreement is the first broadly subscribed multi-lateral intellectual property agreement that is enforceable between governments, allowing them to resolve disputes through the WTO's dispute settlement mechanism.

Developed countries were required to fully implement TRIPS as of January 1, 1996, while developing countries were given a transition period until January 1, 2000. Ensuring that developing countries are in full compliance with the Agreement now that this transition period has come to an end is one of this Administration's highest priorities with respect to intellectual property rights. With respect to least developed countries, and with respect to the protection of pharmaceuticals and agriculture chemicals in certain developing countries, even longer transitions are provided.

Progress continues to be made by developing countries toward full implementation of their TRIPS obligations. Nevertheless, certain countries are still in the process of finalizing implementing legislation and establishing adequate enforcement mechanisms. Every year the U.S. Government provides extensive technical assistance and training on the implementation of the TRIPS Agreement, as well as other international intellectual property agreements, to a large number of U.S. trading partners. Such assistance is provided by a number of U.S. Government agencies, including the U.S. Patent and Trademark Office, the U.S. Copyright Office, the State Department, the U.S. Customs Service, and the Justice Department, on a country-by-country basis, as well as in group seminars, including those co-sponsored with the World Intellectual Property Organization (WIPO) and the WTO. Technical assistance involves review of, and drafting assistance on, laws concerning intellectual property and enforcement. Training programs usually cover the substantive provisions of the TRIPS Agreement, as well as enforcement. The United States will continue to work with WTO Members and expects further

progress in the near term to complete the TRIPS implementation process. However, in those instances where additional progress is not achieved in the near term, the United States will pursue our rights through WTO dispute settlement proceedings.

One key implementation priority that we have focused on in this review is the implementation of Article 39.3, which requires WTO Members to protect test data submitted by drug companies to health authorities against disclosure of that data and against unfair commercial use of that data.

Most countries, including the United States, impose stringent regulatory testing requirements on companies seeking to market a new drug or agricultural chemical product. Many countries have recognized, however, the value of allowing abbreviated approval procedures for second-comers seeking to market an identical product to one that has already been approved. Generally, these second applicants may be required to demonstrate only the bioequivalence of their products with the product of the first company, and will not be required to repeat all of the expensive and laborious clinical tests conducted by the first company to prove the safety of the product.

However, because of the expense involved in producing the safety and efficacy data needed to obtain marketing approval, the TRIPS Agreement recognizes that the original applicant should be entitled to a period of exclusivity during which second-comers may not rely on the data that the innovative company has created to obtain approval for their copies of the product. During this period of exclusive use, the data cannot be relied upon by regulatory officials to approve similar products. This period of exclusivity is generally five years in the United States and six to 10 years in the EC Member States. Other countries that provide a period of exclusivity against reliance on data include Australia, Canada, China, Czech Republic, Estonia, Japan, Jordan, Korea, Mexico, New Zealand, Slovenia, and Switzerland. We commend Hungary and Colombia on their recently implemented decrees that provide data protection. We urge all WTO members to swiftly

complete their implementation of Article 39.3, including the rest of the countries in the Andean Community, as well as Israel.

#### *iv. Internet Piracy and the WIPO Copyright Treaties*

Throughout the world, countries have begun to recognize the importance of the Internet as a vehicle for economic expansion. However, despite the promise that the Internet holds for innovative and creative industries, it also creates significant challenges, as it serves as an extremely efficient global distribution network for pirated products. We are currently working with other governments, and consulting with U.S. industry, to develop the best strategy to address Internet piracy.

An important first step in the fight against Internet piracy was achieved at the World Intellectual Property Organization (WIPO) when it concluded two copyright treaties in 1996: the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), referred to as the WIPO Internet Treaties. These treaties help raise the minimum standards of intellectual property protection around the world, particularly with respect to Internet-based delivery of copyrighted works. They clarify exclusive rights in the on-line environment and specifically prohibit the devices and services intended to circumvent technological protection measures for copyrighted works. Both treaties entered into force in 2002.

These treaties represent the consensus view of the world community that the vital framework of protection under existing agreements, including the TRIPS Agreement, should be supplemented to eliminate any remaining gaps in copyright protection on the Internet that could impede the development of electronic commerce.

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. In the competition for foreign direct

investment, these countries now hold a decided advantage. We urge other governments to ratify and implement the two WIPO Internet Treaties.

#### *v. Other Initiatives Regarding Internet Piracy*

We are seeking to incorporate the highest standards of protection for intellectual property into appropriate bilateral and regional trade agreements that we negotiate. We had our first success in this effort by incorporating the standards of the WIPO Internet Treaties as substantive obligations in our FTAs with Jordan, Chile, and Singapore. Moreover, our proposals in these negotiations will further update copyright and enforcement obligations to reflect the technological challenges we face today as well as those that may exist at the time negotiations are concluded.

#### *vi. Government Use of Software*

In October 1998, the United States announced a new Executive Order directing U.S. Government agencies to maintain appropriate and effective procedures to ensure legitimate use of software. In addition, USTR was directed to undertake an initiative to work with other governments, particularly those in need of modernizing their software management systems or about which concerns have been expressed, regarding inappropriate government use of illegal software.

The United States has achieved considerable progress under this initiative. Countries that have issued decrees mandating the use of only authorized software by government ministries include Bolivia, China, Chile, Colombia, Costa Rica, the Czech Republic, France, Ireland, Israel, Jordan, Paraguay, Thailand, the United Kingdom, Spain, Peru, Greece, Turkey, Hungary, Korea, Hong Kong, Macau, Lebanon, Taiwan, and the Philippines. Ambassador Zoellick was pleased that these governments have recognized the importance of setting an example in this area and expects that these decrees will be fully implemented. The United States looks forward to the adoption of similar decrees, with effective and transparent procedures that ensure legitimate use of software, by additional governments in the coming year.

### 3. Section 1377 Review of Telecommunications Agreements

Section 1337 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, mutually advantageous market opportunities to telecommunications products and services of U.S. firms in that country.

The 2003 Section 1377 review focused on the following issues: (1) unjustifiably high prices for the service of connecting U.S. networks with both fixed and mobile networks in countries as diverse as Argentina, the Dominican Republic, Germany, Mexico and Switzerland; (2) lack of reasonable access to leased lines, particularly in Australia, France, Germany, Mexico and Singapore; and (3) willingness of foreign authorities to tolerate breaches of domestic telecom rules by favored companies.

USTR has urged national regulators to fulfill their responsibility to address such problems, and initial signs were promising. For example, some foreign regulators (e.g., the United Kingdom) have addressed the issue of high charges for access to mobile networks, and some governments are developing tools for regulators to combat anti-competitive practices. USTR remains concerned, however, with the lack of clear regulatory independence in many countries and will continue to monitor developments in this area.

#### Mexico

A WTO dispute settlement panel held further hearings on the case against Mexico requested by the United States. The focus of the panel request was: (1) Mexico's failure to ensure that Telmex (Mexico's major supplier of telecommunications) provides U.S. telecom companies interconnection

at "cost-oriented" rates and reasonable terms and conditions; and (2) Mexico's refusal to allow U.S. companies to send their calls into and out of Mexico over leased lines. A panel decision is expected in early 2004.

### 4. Antidumping Actions

Under the antidumping law, duties are imposed on imported merchandise when the Department of Commerce determines that the merchandise is being dumped (sold at "less than fair value" (LTFV)) 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 minimum requirements for filing, Commerce initiates an antidumping investigation. 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 LTFV imports. If this preliminary determination by the USITC is negative, the investigation is terminated; if it is affirmative, the case shifts back to Commerce for preliminary and final inquiries into the alleged LTFV 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 equal to the estimated weighted average dumping margin.

If Commerce's final determination of LTFV sales is negative, the investigation is terminated. 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 LTFV imports, an antidumping order is issued. If the USITC's final injury determination is negative, the investigation is terminated and the Customs bonds 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, and 37 in 2003. 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; 24 in 1995; 9 in 1996; 7 in 1997; 9 in 1998; 19 in 1999; 20 in 2000; 30 in 2001; 27 in 2002, and 15 in 2003. Under its sunset review procedures, Commerce revoked 57 antidumping duty orders and continued 72 orders in 2000; revoked 12 antidumping duty orders and continued 22 orders in 2001; revoked 9 antidumping duty orders and continued 2 orders in 2002; and revoked 2 antidumping duty orders and continued 5 orders in 2003.

## 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 with the antidumping law, the USITC and the Department of Commerce jointly administer the CVD law.

The CVD law's purpose is to offset certain foreign government subsidies benefiting 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 representative of the interested party(ies). The USITC is responsible for investigating material injury issues. The USITC must make a preliminary finding of a reasonable indication of material injury or threat of material injury, or material retardation of an industry's establishment, by reason of the imports subject to investigation. If the USITC's preliminary determination is negative, the investigation terminates; otherwise, Commerce issues preliminary and final determinations on subsidization. If Commerce's final determination of subsidization is affirmative, the USITC proceeds with its final injury determination.

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, 3 in 2002, and 5 in 2003. 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, none in 2002, and 2 in 2003. Under its sunset review procedures, Commerce revoked 8 countervailing duty orders and continued 22 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; and revoked no countervailing duty orders and continued no orders in 2003.

## **6. Other Import Practices**

### **a. Section 337**

Section 337 of the Tariff Act of 1930 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, usually involving U.S. patents.

The USITC conducts Section 337 investigations through adjudicatory proceedings under the Administrative Procedure Act. The proceedings normally involve an evidentiary hearing before a USITC administrative law judge who issues an Initial Determination that is subject to review by the 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. 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. Importation of the subject goods may continue during this review process, if the importer pays a bond set by the USITC. If 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 prior to completion of an investigation if the USITC determines that there is reason to believe a violation of Section 337 exists.

In 2003, the USITC instituted 18 new Section 337 investigations and one ancillary advisory opinion proceeding relating to a previously issued USITC remedial order. During the year, the USITC issued three limited exclusion orders and four cease and desist orders covering imports from foreign firms, as follows: Inv. No. 337-TA-486, *Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof* (limited exclusion order); Inv. No. 337-TA-482, *Certain Compact Disc and DVD Holders* (limited exclusion order); Inv. No. 337-TA-460, *Certain Sortation Systems, Parts Thereof, and Products Containing Same* (limited exclusion order); Inv. No. 337-TA-406, *Certain Lens Fitted Film Packages* (four cease and desist orders). A limited exclusion order covers only certain imports from particular named sources (as contrasted with a general exclusion order, which covers certain products from all sources). The President permitted all the limited exclusion orders and cease and desist orders to go into effect during 2003.

### **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 and 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 United States International Trade Commission (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, 2003, the United States had safeguard measures in place on the following imported steel products: (1) certain carbon flat-rolled steel, including carbon and alloy steel slabs (slabs), plate (including cut-to-length plate and clad plate), hot-rolled steel (including plate in coils), cold-rolled steel (other than grain-oriented electrical steel), corrosion-resistant and other coated steel (collectively, certain flat steel); (2) carbon and alloy hot-rolled bar and light shapes (hot-rolled bar); (3) carbon and alloy cold-finished bar (cold-finished bar); (4) carbon and alloy rebar (rebar); (5) carbon and alloy welded tubular products (other than oil country tubular goods) (certain tubular products); (6) carbon and alloy flanges, fittings, and tool joints (carbon and alloy fittings); (7) stainless steel bar and light shapes (stainless steel bar); (8) stainless steel rod; (9) carbon and alloy tin mill products (tin mill products); and (10) stainless steel wire; (11) certain carbon steel wire rod; and (12) circular welded carbon quality line pipe

The measures on certain steel wire rod and circular welded carbon quality line pipe were imposed on March 1, 2000. They expired on March 1, 2003.

Effective March 20, 2002, the President imposed a safeguard measure on certain flat steel in the form of a TRQ on slabs and a tariff on other certain flat steel. At the same time, the President imposed tariffs on hot-rolled bar, cold-finished bar, rebar, certain tubular products, carbon and alloy fittings, stainless steel bar, stainless steel rod, tin mill products, and stainless steel wire (collectively, the “steel safeguard measures”). Subsequent to the effective date of the measure, USTR granted requests made by U.S. consumers, U.S. importers, and foreign producers that certain products that were not sufficiently available from domestic producers be excluded from these safeguard measures.

In July, 2002, the WTO formed a dispute settlement panel to consider claims brought by the European Communities, Japan, Korea, China, Switzerland, Norway, New Zealand, and Brazil that the steel safeguard measures taken on March 20, 2002 were inconsistent with WTO rules. On November 10, 2003, the WTO Appellate Body issued a report finding that the safeguard measures on steel products were inconsistent with the Safeguards Agreement and GATT 1994 in that they were based on a findings that did not comply with the Safeguards Agreement prohibition on attributing to imports injury caused by other factors, did not demonstrate the existence of unforeseen developments, and did not justify the exclusion of U.S. FTA partners from application of the measures.

On September 19, 2003, the USITC issued its midterm report on the steel safeguard measures. In view of the information provided in the USITC’s report, and after seeking advice from the Secretary of Commerce and the Secretary of Labor, the President, taking into account that the measures had achieved their purpose, determined that the effectiveness of the steel safeguard measures had been impaired by changed economic circumstances, and that termination of the measures was warranted. Accordingly, the steel safeguard measures terminated on December 5, 2003.

### 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. 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 United States International Trade Commission (ITC) 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 ITC 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 its market. The trade diversion provision is implemented in U.S. law by Section 422 of the Trade Act of 1974, as amended.

Through the end of 2003, four petitions have been filed under Section 421. On October 18, 2002, the ITC found that pedestal actuators from China were being imported in such increased quantities or under such conditions as to cause market disruption to domestic producers. On January 17, 2003, the President determined that providing import relief was not in the national economic interest of the United States. On April 9, 2003, the

petitioner, Motion Systems Corporation, filed suit challenging this determination with the U.S. Court of International Trade.

On January 27, 2003, the ITC made a positive determination of market disruption in its investigation regarding imports of certain steel wire garment hangers from China. On April 25, 2003, the President determined that providing import relief was not in the national economic interest of the United States.

On June 4, 2003, the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers filed a petition regarding certain brake drums and rotors from China. On August 3, 2003, the ITC issued a negative determination regarding imports of those products.

On September 5, 2003, the ITC initiated an investigation concerning imports of certain ductile iron waterworks fittings from China, pursuant to a petition filed by a domestic producer and three of its subsidiaries. This petition was the first to allege "critical circumstances" and to request provisional relief. Section 421(i) requires that for such cases the ITC determine, on an expedited basis, whether delay in taking action would cause damage to the relevant domestic industry which would be difficult to repair and, if in the affirmative, whether imports of the product subject of the investigation have caused or threatened to cause market disruption. On October 16, 2003, the ITC made a negative critical circumstances finding. On December 4, 2003, the ITC made a positive market disruption determination. The President's determination regarding import relief is due by March 3, 2004.

### d. China Textile Safeguard

The terms for China's accession to the WTO ("Accession Agreement") also include a special textiles safeguard, which is available for WTO members to use until December 31, 2008. This safeguard covers all products subject to the WTO Agreement on Textiles and Clothing as of January 1, 1995.

On November 17, 2003, the interagency Committee for the Implementation of Textile Agreements (CITA) determined that imports of Chinese-origin knit fabric (Category 222), cotton and man-made fiber brassieres and other body supporting garments (Category 349/649), and cotton and man-made fiber dressing gowns and robes (Category 350/650) are, due to market disruption and the threat of market disruption, threatening to impede the orderly development of trade in these products, and that imports of these products from China play a significant role in the existence and threat of market disruption. As a result, on December 24, 2003, the United States requested consultations with China with a view to easing market disruption and avoiding the threat of market disruption.

Upon receipt of the request for consultations, China agreed to hold its shipments of these products to the United States in 2004 to a level no greater than 7.5 percent above the amount that entered the United States during the twelve-month period ending on September 30, 2003. The United States stands ready to consult with China, and to reach agreement on a mutually satisfactory solution within the 90-day consultations period prescribed in the Accession Agreement. If no such solution is reached, the United States will maintain the limits on Chinese shipments until December 23, 2004.

## **7. Trade Adjustment Assistance**

### **a. Assistance for Workers**

Assisting workers to obtain and maintain the skills needed to compete in the 21st century is a top priority of the Administration. 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. Available assistance includes job retraining, trade readjustment allowances (TRA), job search assistance, relocation assistance, a health insurance tax credit, and other re-employment services. The program was most recently amended and expanded 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 repealed the North America Free Trade Agreement Transitional Adjustment Assistance (NAFTA-TAA) program. The TAA Reform Act also raised the statutory cap on funds that may be allocated to the States for training from \$110 million to \$220 million per year. Workers covered under certifications issued pursuant to NAFTA-TAA petitions filed on or before November 3, 2002, will continue to be covered under the provisions of the NAFTA-TAA program that were in effect on September 30, 2001. Amendments to the TAA program apply to petitions for adjustment assistance that are filed on or after November 4, 2002.

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 of like or directly competitive articles 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 by the workers' firm to a country that has a free trade agreement with the United States or is a beneficiary country under a U.S. trade preference program; 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 administers the TAA program through the Employment and Training Administration (ETA). Workers certified as eligible to apply for adjustment assistance may apply for TAA benefits and services at the

nearest state One Stop Career Center or office of the State Workforce Agency. In order to be eligible for TAA, workers must be enrolled in approved training within eight weeks of the issuance of the Department of Labor certification or within 16 weeks of the worker's most recent qualifying separation (whichever is later) or must have successfully completed approved training. A state may waive this requirement under six specific conditions.

The TAA Reform Act created a program of health coverage tax credits (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 coverage under qualified health insurance. The tax credit may be claimed at the end of the year, or, beginning in August 2003, a qualified individual may receive the credit in the form of monthly advance payments to the health insurance provider.

In addition, the TAA Reform Act of 2002 created an Alternative Trade Adjustment Assistance (ATAA) program for older workers who are not likely to find suitable reemployment in their local labor market. This program was implemented on August 6, 2003 and provides qualified trade-impacted workers who are over 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 the new employment to qualify for the program.

Fact-finding investigations were instituted for 3,547 TAA petitions in fiscal year (FY) 2003. In FY 2003, 1,864 certifications were issued covering an estimated 195,870 workers, whereas 1,221 petitions covering an estimated 83,126 workers resulted in denials of eligibility to apply. Fact-finding investigations were instituted for 69 NAFTA-TAA petitions in FY 2003. In FY 2003, 180 NAFTA-TAA certifications were issued covering an estimated 17,641 workers

whereas 339 NAFTA-TAA petitions covering an estimated 14,629 workers resulted in denials of eligibility to apply.

The Trade Act of 2002 also contains a provision for Trade Adjustment Assistance for Farmers, with an appropriation of not more than \$90 million for each fiscal year 2003 through 2007 to be administered by the U.S. Department of Agriculture. 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 (7 CFR 1580). Primary requirements for eligibility are that the price of the basic agricultural commodity in the most recent year is less than 80 percent of the average price of the previous five years, and the imports contributed importantly to the price decline.

If a group is certified as eligible for benefits, individual producers can then apply to the Farm Service Agency for technical assistance and/or cash benefits. A producer must receive technical assistance to become eligible for cash benefits. Cash benefits are subject to certain personal and farm income limits, and cannot exceed \$10,000 per year to an individual producer. The cash benefit per unit is one-half of the gap between the most recent year's price and the previous five-year average price. If the funding authorized by Congress is insufficient to pay 100 percent of all claims during the fiscal year, payments will be prorated. No cash benefits were expended under this program in FY 2003.

## **b. Assistance for Firms and Industries**

The Planning and Development Assistance Division of the Department of Commerce's Economic Development Administration (EDA) administers the TAA program for firms and industries. This program is authorized by Title II, Chapter 3, of the Trade Act of 1974, as amended, and was extended by the Trade Act of 2002 through September 30, 2007. Under the

firms and industries TAA program, EDA funds a network of 12 Trade Adjustment Assistance Centers (TAACs). These TAACs are sponsored by nonprofit organizations, institutions of higher education, and a state agency. In FY 2003, EDA provided \$10.4 million in funding to the TAACs. TAACs assist firms in completing petitions for certification of eligibility. To be certified as eligible to apply for TAA, a firm must show that increased imports of articles like or directly competitive with those produced by the firm contributed importantly to declines in its sales, production, or both, and to the separation or threat of separation of a significant portion of the firm's workers. In FY 2003, EDA certified 207 firms under the TAA program. Once EDA has certified a firm, the TAAC assists the firm in assessing its competitive situation and in developing an adjustment proposal. The adjustment proposal must show that the firm is aware of its strengths and weaknesses and must present a clear and rational strategy for achieving economic recovery. EDA's Adjustment Proposal Review Committee (APRC) must approve the firm's adjustment proposal. During FY 2003, the APRC approved 162 adjustment proposals from certified firms.

After the adjustment proposal is approved by the APRC, the firm may request technical assistance from the TAAC to implement its strategy. Using funds provided by the TAA program, the TAAC contracts with consultants to provide the technical assistance identified in the firm's proposal. The firm must typically pay 50 percent of the cost of each consultant contract, and the maximum amount of technical assistance available to a firm under the TAA program is \$75,000. Common types of technical assistance that firms request include the development of marketing materials, the identification of new products for the firm to produce, and the identification of appropriate management information systems.

The legislation authorizes EDA to provide funding to trade associations and other organizations representing trade-injured industries to

undertake technical assistance activities, which will generally benefit all firms in that industry. Since FY 1996, however, EDA has used the available program resources to support the TAAC network, which provides technical assistance to individual trade-injured firms.

## 8. Generalized System of Preferences

The Generalized System of Preferences (GSP) is a program that grants duty-free treatment to specified products that are imported from 147 designated developing countries, territories, and associations of countries. The program began in 1976, when the United States joined 19 other industrialized nations in granting tariff preferences to promote the economic growth of developing countries through trade expansion. The GSP program, reauthorized under the *Trade Act of 2002*, enables products within some 5,000 tariff categories (defined at the eight-digit level in the *Harmonized Tariff Schedule of the United States*) to be imported duty-free into the United States. Of this total figure, approximately 1500 tariff categories have been exclusively dedicated to the least-developed and African Growth and Opportunity Act (AGOA) countries. In 2003, GSP eligible countries were able to ship more than \$20 billion to the United States duty-free under this program, not including imports under AGOA.

The premise of the GSP program is that the creation of trade opportunities for developing countries is an effective, cost-efficient way of encouraging broad-based economic development and a key means of sustaining the momentum behind economic reform and trade liberalization. In its current form, GSP is designed to assist in the integration of developing countries into the international trading system in a manner commensurate with their development. The program achieves these ends by making it easier for exporters from developing economies to compete in the U.S. market with exporters from industrialized nations while at the same time excluding from duty-free treatment under GSP those products determined by the President and the Congress to be "import-sensitive."

An important attribute of the GSP program is its ability to adapt, product by product, to changing market conditions and the changing needs of producers, workers, exporters, importers and consumers. Modifications can be made in the list of articles eligible for duty-free treatment by means of an annual review. The process begins with a *Federal Register* notice requesting the submission of petitions for modifications in the list of eligible articles. Petitions may also be submitted concerning the eligibility of countries for the GSP program. For those petitions that are accepted for full review, public hearings are held, a U.S. International Trade Commission study of the “probable economic impact” of granting product petitions is prepared, and all relevant materials are reviewed by the interagency GSP Subcommittee of the Trade Policy Staff Committee. Following completion of the review, the President announces his decision on changes to the GSP program.

The program was originally authorized for ten years and subsequently reauthorized for eight years. For several years thereafter, Congress renewed the program for only brief periods of one or two years. The GSP program has lapsed temporarily several times—September 30, 1994; July 31, 1995; May 31, 1997; June 30, 1998; July 1, 1999; and September 30, 2001. Each time it was reauthorized and duty-free treatment made retroactive to the previous expiration date, thus

maintaining the continuity of the program’s benefits. The program was most recently reauthorized on August 6, 2002, and is scheduled to expire on December 31, 2006.

On January 14, 2003, the President issued a proclamation making Afghanistan a GSP beneficiary country and some product eligibility changes. In March 2003, a notice published in the *Federal Register* announced the petitions accepted for review in the combined 2001/2002 annual product review and the schedule of remaining events in that review. On June 30, the President signed a Proclamation announcing changes to the Harmonized Tariff Schedule resulting from the 2001 Special Three Country Review for Argentina, the Philippines and Turkey and the 2001/2002 Annual Product Review. This action was followed by a notice announcing the outcome of each petition concerning products published in the *Federal Register* on July 3, 2003. In July 2003, notices were published in the *Federal Register* announcing initiation of a review to consider the designation of the People’s Democratic Republic of Algeria as a GSP beneficiary country and extending the deadline for submissions of petitions for the 2003 Annual GSP Product and Country Eligibility Review until September. A *Federal Register* notice published in September 2003 announced the 2001, 2002, and ongoing country practice petitions that had been accepted for full review and the schedule of events remaining in that review.

# VI. Trade Policy Development

## A. Trade Capacity Building

The United States is the largest single-country donor of trade-related technical assistance in the world, reflecting its commitment to helping developing countries participate fully in the global trading system. The President's Trade Policy Agenda for 2003 stated that the "United States is committed to expanding the circle of nations that benefit from global trade...[and] to help[ing] developing economies build the capacity to take part in trade negotiations, implement the rules, and seize opportunities." The details provided below show that we are living up to that commitment.

U.S. trade capacity building (TCB) efforts stem from the basic belief that trade is critical to the growth of developing countries, and that providing funds to these countries to enhance their participation in global trade is a highly leveraged form of development assistance. By having increased capacity to take part in trade negotiations, implement the rules, and seize opportunities, developing countries can achieve win-win results for themselves and their trading partners. A key component of TCB assistance is that it is demand driven and in support of trade strategies designed by the recipients themselves.

The United States devoted substantial resources to TCB activities in FY2003 through the United States Agency for International Development (USAID) and a dozen or so other agencies, totaling almost \$752 million, up 18% from FY2002 (see <http://www.ustr.gov> or <http://www.usaid.gov> for the U.S. Government TCB Database). This funding was allocated as follows:

- \$174 million in the Middle East and North Africa;
- \$150 million in Latin America and the Caribbean;

- \$133 million in sub-Saharan Africa;
- \$92 million in Asia;
- \$84 million in the former Soviet Republics;
- \$65 million in Central and Eastern Europe; and
- \$53 million for non-targeted global projects.

The United States was also the largest single-country contributor to the World Bank and other multilateral development banks, which provide an increasingly broad range of TCB assistance to the Doha Development Agenda, the Free Trade Area of the Americas's Hemispheric Cooperation Program, and other technical assistance frameworks.

The United States directly supports the WTO's trade-related technical assistance (TRTA) (see Chapter II). For example, in Cancun, the United States pledged an additional \$1.2 million for WTO TRTA. This contribution augmented \$1 million given earlier in 2003, bringing total United States support for WTO TRTA to more than \$3 million since the launch of Doha negotiations in November 2001. This money was in direct support of programs such as the annual WTO Technical Assistance Plan.

The United States is also a strong supporter of the Integrated Framework (IF). For example, the United States has contributed funds for the past three years to the Integrated Framework Trust Fund to finance Diagnostic Trade Integration Studies (DTIS). This includes \$200,000 of the Cancun pledge being specifically reserved for the Trust Fund. Further, USAID's bilateral assistance to the 13 Least Developed Countries currently participating in the renewed IF exceeded \$32 million in fiscal year 2003, more than double the previous year's expenditures. These funds support 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.

The United States also supports countries that are in the process of acceding to the WTO. For example, USAID provided WTO accession and implementation services to Nepal, which officially became a WTO member at Cancun, and Cape Verde. In addition, many countries in Eastern Europe and the former Soviet Union have also benefited from USAID support in this area.

Although the WTO and the Integrated Framework are priorities, they are only part of the U.S. TCB effort. The United States recognizes the need to build the capacity of developing countries with which it is negotiating free trade agreements. To complement the on-going FTAA, CAFTA, and SACU free trade negotiations, separate cooperative groups on trade capacity building were established with the purpose of defining and identifying priority needs.

## 1. Hemispheric Cooperation Program

The Hemispheric Cooperation Program (HCP), launched by the United States and its FTAA partners at the November 2002 Quito Ministerial Meeting, is a special trade capacity building initiative to assist FTAA countries in benefiting fully from hemispheric free trade. The Hemispheric Cooperation Program gives donors the opportunity to find innovative ways to work with other resource partners to integrate trade into development strategies such as the Poverty Reduction Strategies developed in conjunction with the World Bank.

The foundation of the HCP is the national or regional TCB strategies, which identify trade-related technical assistance needs in three key areas: participation in FTAA negotiations, implementation of FTAA commitments, and economic adjustment relating to the FTAA and economic integration. USAID, along with the Inter-American Development Bank (IDB), Organization of American States (OAS), and United Nations

Economic Commission for Latin America and the Caribbean (ECLAC), provided support to those countries choosing to prepare TCB strategies. The strategies cover a range of areas including customs facilitation, environmental assessments, animal and plant health, public outreach, small business development, and rural diversification.

On October 14-15, 2003, the first Hemispheric Cooperation Program Donor-Country Roundtable was held. At the roundtable, countries including Brazil, Canada, Chile, Mexico, and the United States expressed their commitment to provide assistance and were joined by many donor institutions. Key highlights and outcomes of the Donor-Country Roundtable included:

- Focusing the attention of the donor community to the Hemispheric Cooperation Program and how it aims to be driven by TCB strategies prepared by the countries themselves.
- Providing the recipient countries within the various sub-regions an opportunity to begin focusing on cross-cutting TCB needs. This helps those countries identify the TCB needs that are of highest priority within each sub-region.
- Helping the FTAA countries and the donor community to begin to mainstream TCB into the conceptualization and implementation of the donor's development assistance strategies and the countries' national development planning.
- Advancing the dialogue among countries on how the Hemispheric Cooperation Program can best be a useful vehicle in helping recipient countries mobilize TCB assistance.

The United States continues to demonstrate its long-term commitment to its neighbors through the efforts of over 10 U.S. government agencies in both bilateral and regional activities. U.S. trade-related technical assistance in the hemisphere reached \$150 million in FY 2003, an increase of \$47 million from FY 2002 levels.

## 2. Central America

Through the US-CAFTA TCB working group, the United States and institutions like the IDB have helped the Central American countries to develop their own national trade capacity building strategies. Through these strategies, the governments identified their trade capacity building needs, to which the U.S. Government, international institutions, corporations, and non-governmental organizations have begun to respond.

This year, in response to the needs identified by the Central American countries, the U.S. Government provided over \$61 million in TCB assistance, far greater than the \$47 million projected at the beginning of the negotiations. Since the launch of negotiations, the IDB has approved more than \$320 million in CAFTA-related operations.

The TCB working group helped attract private and non-governmental organizations to join in the effort of trade capacity building. For example:

- The Humane Society of the United States (HSUS) developed “The CAFTA Alliance” partnership to promote environmentally sustainable and humane agricultural programs, as well as the protection of wildlife and habitat.
- The City of New Orleans and the State of Louisiana worked with local universities and entrepreneurs to establish “Idea Village International,” an institute to train entrepreneurs in Central America.

In a first for any free trade agreement, CAFTA institutionalizes trade capacity building through a Committee on Trade Capacity Building. This recognizes the importance of such assistance in promoting economic growth, reducing poverty, and adjusting to liberalized trade.

The Committee on Trade Capacity Building will build on work done during the negotiations to enhance partnerships with international

institutions (Inter-American Development Bank, World Bank, Organization of American States, ECLAC, and the Central American Bank for Economic Integration), non-governmental organizations, and the private sector.

## 3. Africa

### a. Southern African Customs Union (SACU)

The cooperative group supporting the U.S.-SACU FTA underscores the Administration’s position that empowering SACU by providing it assistance will ultimately result in an agreement that is beneficial for all involved. This assistance needs to account for the differing sizes of economies and levels of development of the SACU members. As an illustration of its commitment to make TCB a fundamental element of the negotiations, the United States has pledged an initial \$2 million in TCB assistance to SACU in relation to the FTA. At the end of 2003, SACU was in the process of developing an integrated strategy to help ensure that the provision of FTA-related technical assistance is coordinated. In addition to providing training, the United States has provided the trade ministries of Botswana, Lesotho, Namibia and Swaziland with computers to enhance intra-SACU policy coordination and a TCB “facilitator” who will be responsible for coordinating technical assistance activities.

The cooperative group intends to work actively with the private sector and foundations to bring additional resources and creativity to the US-SACU FTA. For example, future cooperative group meetings will bring together public and private donors to identify the best possible programs to meet the needs identified in SACU’s integrated strategy.

In FY2003, the U.S. Government provided \$6.6 million in trade-related technical assistance to SACU, up from \$5.6 million the year before. SACU members also had access to part of the \$18.6 million assistance provided to the Southern African Development Community.

## **b. African Growth and Opportunity Act (AGOA)**

Trade capacity building is an important element of AGOA implementation. Several U.S. agencies—including USAID, Customs and Border Protection, and the Departments of State, Agriculture and Commerce—have conducted technical assistance and outreach programs designed to assist beneficiary countries to maximize their AGOA benefits. AGOA implementation is a major focus of the three USAID-funded Regional Hubs for Global Competitiveness in sub-Saharan Africa (in Botswana, Kenya, and Ghana). In addition, over the past few years, USTR has coordinated through the USAID-funded Africa Trade and Investment Policy Program (ATRIP) more than 20 regional and national technical assistance seminars on AGOA across sub-Saharan Africa. These seminars, in which representatives of several U.S. agencies participate, are designed to help ensure that the sub-Saharan African public and private sectors are equipped to fully utilize AGOA benefits.

In FY2003, the U.S. Government provided almost \$69 million in trade-related technical assistance to AGOA-beneficiary countries, up from \$61 million the year before.

### *Other*

For more details on TCB efforts for APEC, Bahrain, Morocco and the WTO, please see corresponding sections of this report.

## **B. Congressional Affairs**

In 2003, the Administration worked closely with the 108th Congress to move forward and complete action on critical trade legislation, including measures to implement key free trade agreements. The Administration also consulted regularly with Congress regarding ongoing bilateral, regional, and global trade talks, the initiation of new trade negotiations with several important trading partners, and several trade compliance matters.

In July, the Congress considered and passed legislation to implement the U.S.-Chile Free Trade Agreement and the U.S.-Singapore

Free Trade Agreement. The President signed this legislation into law in September.

USTR continued close consultations with Congress regarding the U.S.-Central America Free Trade Agreement, which was concluded in mid-December. USTR also maintained discussions with Congress regarding negotiations on the U.S.-Southern African Customs Union (SACU) Free Trade Agreement, U.S.-Australia Free Trade Agreement, and the U.S.-Morocco Free Trade Agreement.

USTR also consulted closely with Congress regarding ongoing negotiations of the WTO Doha Agenda, including hosting over 60 Members of Congress and staff at the September WTO ministerial in Cancun, Mexico. In addition, USTR worked with Congress regarding negotiations for the Free Trade Area of the Americas, including hosting Congressional staff at the November mini-Ministerial meeting in Miami, Florida.

USTR also worked to keep Congress informed regarding the Administration's intent to initiate negotiations on several new Free Trade Agreements, including the U.S.-Dominican Republic Free Trade Agreement, U.S.-Thailand Free Trade Agreement, U.S.-Panama Free Trade Agreement, and a U.S.-Andean Free Trade Agreement that could include separate negotiations with Columbia, Peru, Bolivia and Ecuador. USTR also worked with Congress regarding the launch of the President's Middle East Free Trade Area initiative, which included announcing an intent to initiate negotiations on a U.S.-Bahrain Free Trade Agreement.

USTR also worked in close partnership with Congress on a number of other critical trade-related issues, including China's compliance with its WTO commitments, the section 201 investigation on steel, Canadian softwood lumber, Foreign Sales Corporation/Extraterritorial Income, compliance with WTO rulings regarding the 1916 Act, section 211, Irish music licensing, and intellectual property protection, among other important matters.

## C. 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.

First, the advisory committee system, established by the U.S. Congress in 1974, falls under the auspices of IAPL. The 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 advisory committee system consists of 31 advisory committees, with a total membership of up to 1,000 advisors. It is managed by IAPL, often in cooperation with other agencies including the Departments of Agriculture, Commerce, Defense, and Labor, and the Environmental Protection Agency.

Second, IAPL also has been designated as the NAFTA and WTO State Coordinator. As such, the office serves as the liaison to all state and local governments on the implementation of the NAFTA and the WTO, and other trade issues of interest.

Finally, IAPL also coordinates USTR's outreach to the public and private sector through notification of USTR *Federal Register* Notices soliciting written comments from the public, consulting with and briefing interested constituencies, holding public hearings, and meeting frequently with a broad spectrum of groups at their request.

### 1. The Advisory Committee System

The 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 currently consists of 31 advisory committees, with a total membership of up to 1,000 advisors. (Currently, there are approximately 700 advisors). Recommendations for candidates for committee membership are collected from a number of sources including Members of Congress, associations and organizations, publications, other federal agencies, and individuals who have demonstrated an interest or expertise in 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.

The system is arranged in three tiers: the President's Advisory Committee for Trade Policy and Negotiations (ACTPN); five policy advisory committees; and 26 technical, sectoral, and functional advisory committees. Additional information can be found on the USTR website (<http://www.ustr.gov/outreach/advise.shtml>). In 2004, the number of industry committees at the technical level will be streamlined and consolidated to better reflect the composition of the U.S. economy.

The private sector is essential to job creation. Therefore, private sector advice is both a critical and integral part of the trade policy process. USTR already maintains an ongoing dialogue with interested private sector parties on trade agenda issues. The advisory committee system is unique, however, 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.

In 2003, USTR introduced a significant improvement to facilitate the work of the advisory committees, by creating for the first time a secure encrypted advisors' website with password protection. Confidential draft texts of FTA agreements are now posted to the secure website on an ongoing basis, to allow advisors to provide comment to U.S. officials in a timely fashion throughout 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 and had difficulty accessing documents in the past.

#### **a. President's Advisory Committee on Trade Policy and Negotiations**

The President's Advisory Committee for Trade Policy and Negotiations (ACTPN) consists of no more than 45 members broadly representative of key economic sectors affected by trade. The President appoints ACTPN members for two-year renewable terms. The 1974 Trade Act requires that membership broadly represent key economic sectors affected by trade. 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.

#### **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. Those managed solely by USTR are the Intergovernmental Policy Advisory Committee (IGPAC) and the Trade Advisory Committee on Africa (TACA). 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 Policy Advisory Committee (LAC), and Trade and Environment Policy Advisory Committee (TEPAC). Members serve two-year renewable terms or until the committee's charter expires. Each committee provides advice based upon the perspective of its specific area.

#### **c. Sectoral, Functional and Technical Committees**

At the third tier, the 27 sectoral, functional, and technical advisory committees are organized in two areas: industry and agriculture. Representatives are appointed jointly by the USTR and the Secretaries of Commerce and Agriculture, respectively. Each sectoral or technical committee represents a specific sector or

commodity group (such as textiles, or grains and oilseeds) and provides specific technical advice concerning the effect that trade policy decisions may have on its sector. Presently, there are six agricultural technical committees co-chaired by USTR and Agriculture and twenty-one industry committees co-chaired by USTR and Commerce.

In 2004, the industry trade advisory committee system will be streamlined and consolidated by USTR and Commerce to ensure that the committees reflect today's U.S. economy and vision for the future, since the current committees were put in place more than twenty years ago. The new structure will reflect important changes in the U.S. economy since then. As of spring 2004, sixteen new Industry Trade Advisory Committees (ITACs) will replace the existing twenty-one committees. The restructuring is consistent with recommendations in a recent U.S. General Accounting Office Report, *"International Trade: Advisory Committee System Should be Upgraded to Better Serve U.S. Policy Needs"* (GAO 02-876), and reflects the commitment of Commerce and the USTR to improve the trade advisory committee system. All current members of the industry advisory committee system have been invited to continue their service within the new structure.

## **2. State and Local Government Relations**

With the passage of the NAFTA in 1993, and the Uruguay Round Agreements Act in 1994, which implements WTO obligations in the United States, 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. IAPL also serves as a liaison point in the Executive Branch for state and local governments 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**

For day-to-day communications, 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 affect them. SPOCs regularly receive USTR press releases, *Federal Register* notices, and other pertinent information.

#### **b. Intergovernmental Policy Advisory Committee**

For advice from states and localities on trade policy matters, USTR has established an Intergovernmental Policy Advisory Committee on Trade (IGPAC). It is one of the five policy advisory committees discussed above. The IGPAC is comprised entirely of state and local officials and associations. Appointed on a bipartisan basis, the committee makes recommendations to the Trade Representative and the Administration on trade policy matters. In 2003, USTR took important steps to improve and reenergize the IGPAC and USTR's partnership with states and localities, by holding more frequent IGPAC meetings and briefings; inviting permanent staff liaisons from the National Governors' Association (NGA), National Conference of State Legislatures (NCSL), National Association of Attorneys General (NAAG), Council of State Governments (CSG), National Association of Counties (NACo), and National League of Cities (NLC) to become full IGPAC members; and extending an invitation to all of USTR's State Points of Contact to obtain the security clearance necessary to join the IGPAC. Augmenting IGPAC's membership will greatly

expand opportunities for state and local governments to provide comments and advice on trade agreements, since cleared advisors are allowed access to a secure advisors' website in order to review draft negotiating texts. In 2003, IGPAC was briefed and consulted on trade priorities of interest to states and localities, including government procurement, services, and investment issues in the WTO, FTAA, and bilateral FTA negotiations.

#### **c. Meetings of State and Local Associations**

USTR officials participate frequently in meetings of state and local government associations to apprise them of relevant trade policy issues and solicit their views. Associations include the National Governors' Association (NGA), Western Governors' Association (WGA), National Conference of State Legislatures (NCSL), Council of State Governments (CSG), National Association of Counties (NACo), U.S. Conference of Mayors (USCM), National League of Cities (NLC), and other associations.

#### **d. Consultations Regarding Specific Trade Issues**

USTR initiates consultations with particular states and localities on issues arising under the WTO and NAFTA agreements, and frequently responds to requests for information from state and local governments. Topics of interest included the WTO Government Procurement Agreement; WTO services issues; Free Trade Area of the Americas, bilateral FTA negotiations; NAFTA investment issues, and others.

### **3. Public and Private Sector Outreach**

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 *Federal Register* notices, consults with and briefs interested constituencies, holds public hearings, and

meets with a broad spectrum of private sector and non-governmental groups.

#### **a. 2003 Outreach Efforts**

The 2003 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.

##### *i. World Trade Organization*

Throughout 2002, IAPL worked on public outreach related to multilateral trade negotiations launched in 2001 at the WTO Ministerial in Doha, Qatar. This included the solicitation of comments from the public on important WTO issues such as services, agriculture, and market access negotiations. Throughout 2003, USTR built on that work and solicited advice from cleared advisors, other domestic stakeholders and the general public regarding U.S. objectives for the Doha Development Agenda. During the course of the WTO Ministerial in Cancun, Mexico in September 2003, USTR undertook an unprecedented outreach effort to keep advisors and the public fully informed of continuing developments, via daily webcast briefings on USTR's website, Trade Fact sheets, and other press releases and updates.

##### *ii. Free Trade Area of the Americas*

Throughout 2003, USTR briefed and facilitated consultations with advisory committees, other stakeholders and the general public on the FTAA agenda leading up to the FTAA Ministerial in Miami, Florida. As the host of the Miami Ministerial, USTR worked closely throughout the year with officials from the State of Florida, county, and city representatives in Miami to ensure the success of the meeting and to provide ample opportunity for input from the private sector and civil society during the FTAA negotiations. The 8th Americas Business Forum (ABF), organized by private sector groups from throughout the Hemisphere, and the 1st Americas Trade and Sustainable Development

Forum (ATSDF), organized by the University of Miami North-South Center in partnership with NGOs from throughout the Hemisphere, were open to anyone in the public who registered and were convened within the security perimeter. FTAA government delegates were strongly encouraged by USTR to attend the fora and meet directly with the private sector and civil society. At the conclusion of the fora, representatives from both the ABF and ATSDF met with the 34 Ministers in an unprecedented roundtable dialogue discussion that was televised live and webcast to the public.

In 2003, the 34 FTAA governments also agreed to convene a series of public issue meetings around the Hemisphere, in order to hear the views of civil society directly. The first was held in June 2003 in Sao Paulo, Brazil on the topic of Agriculture, and the second was held in September 2003 in Santiago, Chile on the topic of Services. U.S. government and civil society groups, such as the American Farm Bureau Federation, Oxfam, and the State of Georgia, attended. In 2004, public meetings are planned in the Dominican Republic on the topic of Intellectual Property Rights and in the U.S. on market access and small business. Members of the public are invited to attend.

##### *iii. Bilateral Trade Agreements*

In 2003, USTR briefed and facilitated consultations with advisory committees and other stakeholders on negotiations to conclude free trade agreements with Singapore and Chile. This included frequent teleconference briefings on the progress of bilateral negotiations with Chile, issuing public fact sheets on the agreements with Chile and Singapore, and making materials widely available on the USTR website. Advisory committee reports on the Chile and Singapore FTAs, as required under the Trade Act of 2002, were delivered to the President, USTR, and Congress and made public on USTR's website months in advance of Congressional consideration of the FTAs, to enable informed public discussion. Throughout the year, USTR also consulted with advisors and other stakeholders regarding other FTA negotiations in progress or

pending, including the Central American Free Trade Agreement (CAFTA), the South African Customs Union (SACU); Morocco; Australia; Bahrain; Panama; Dominican Republic; Thailand; Andean countries.

#### *iv. Monitoring and Compliance Activities*

USTR briefed and facilitated consultations with advisors and other stakeholders on disputes including the WTO steel dispute; the case brought by the EU against the U.S. Foreign Sales Corporation; and other items. Other issues of interest to advisors and domestic groups included the protection of U.S. intellectual property rights; agriculture and biotechnology issues.

#### *v. Sectoral Initiatives*

USTR, in coordination with other federal agencies, facilitated briefings and consultations with advisors and other stakeholders on the Bush Administration's Multilateral Steel Initiative.

#### *vi. Public Trade Education*

USTR continues its efforts to promote and educate the public on trade issues. USTR has participated in education efforts regarding the range of trade activities and benefits through speeches, publications, and briefings. In 2003, USTR continued its new e-mail service, called Trade Facts, to update interested parties on important U.S. trade initiatives. This service provides USTR press releases, fact sheets and background information to advisors and to the general public. USTR's Internet homepage serves as a vehicle to communicate to the public. USTR continued to use recorded webcasts to update the public on a daily basis from the WTO Cancun Ministerial, the FTAA Miami Ministerial, and used teleconference briefings for updates on other negotiations. During 2003, IAPL assisted in efforts to revise the USTR website, including improving the organization of the website and adding buttons and links to make the site more user-friendly. The USTR internet address is <http://www.ustr.gov>.

## **D. Policy Coordination**

USTR leads the Executive Branch in the development of policy on trade and trade-related investment. Under the Trade Expansion Act of 1962, the 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 areas. The TPSC regularly seeks advice from the public on its policy decisions and negotiations through *Federal Register* notices and public hearings. In 2003, the TPSC held three public hearings on the following proposals: China's Compliance with WTO Commitments (October 3, 2003); U.S.-Dominican Republic Free Trade Agreement (October 8, 2003); and U.S.-Bahrain Free Trade Agreement (November 5, 2003). The transcripts of these hearings are available on <http://www.ustr.gov/outreach/transcripts/index.htm>

Through the interagency process, USTR assigns responsibility for issue analysis to 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, and 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 United States 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**

## U.S. Trade in 2003

### I. 2003 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 6.5 percent in 2003 to a value of approximately \$3.2 trillion.<sup>2</sup> This was the first yearly increase in trade since 2000. The increase in trade in 2003 largely reflected the continued recovery of the U.S. economy as well as improved economic conditions in a number of U.S. trade partners. U.S. trade of goods and services, U.S. trade of goods alone, and U.S. trade of services alone, all exhibited similar increases, each up over 7 percent. Exports of goods and services, and earnings on investment increased by 3.6 percent, and imports of goods and services, and payments on investment increased by 8.8 percent in 2003.

In 2002, the latest year for which international data is available, the United States was the largest trading nation in the world for both exports and imports of goods and services. The United States accounts for roughly 19 percent of world goods trade and for roughly 15 percent of world services trade.<sup>3</sup> Through 2003, the value of U.S. trade has increased 24-fold since 1970, and 70 percent since 1994, the year before the start of the Uruguay Round implementation (*figure 1*).<sup>4</sup> U.S. trade expansion was more rapid in the 1970-2003 period 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 10.2 percent per year since 1970, compared to U.S. gross domestic product (GDP) whose average annual growth over the same period was 7.4 percent. In real terms, the average annual growth in trade was nearly double the pace of GDP growth, 6.1 percent versus 3.1 percent.

The value of trade in goods and services, including earnings and payments on investment, was 29.5 percent of the value of U.S. GDP in 2003 (*figure 2*). This represented an increase from the corresponding figure in 2002 (28.9 percent), but down from its high point in 2000 (34 percent).<sup>5</sup> For goods and services, excluding investment earnings and payments, U.S. trade represented 24.1 percent of the value of GDP in 2003, up from 23.5 percent in 2002, but down from its high of 26 percent in 2000.<sup>6</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, 2003 is estimated based on partial year data (January-October).

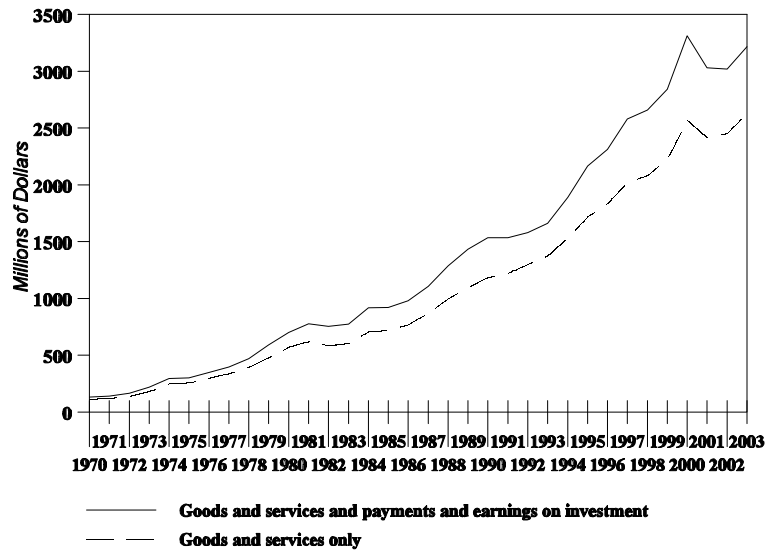
<sup>3</sup> Goods trade excluding intra-EU trade.

<sup>4</sup> Trade in goods and services alone has increased 23-fold since 1970 and 71 percent since 1994.

<sup>5</sup> Thirteen percent of the value of GDP in 1970 and 27 percent in 1994.

<sup>6</sup> Eleven percent of the value of GDP in 1970 and 22 percent in 1994.

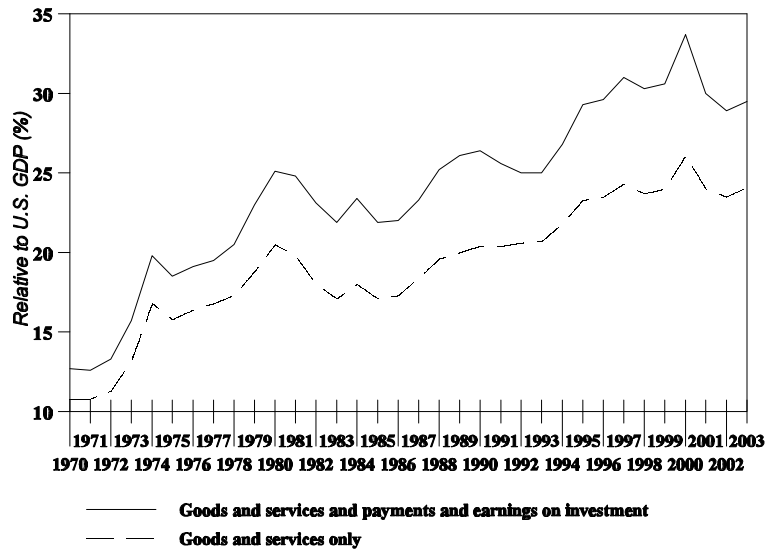
**Figure 1:  
U.S. Trade Growth**



Total exports + imports

Source: U.S. Department of Commerce.

**Figure 2:  
Growing Importance of Trade in the U.S. Economy**



Total exports + imports as a percentage of the value of U.S. GDP

Source: U.S. Department of Commerce.

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This growth in trade has occurred in both U.S. exports and imports. U.S. exports of goods and services (including investment earnings) in 2003 are 19-fold greater than 1970 and 47 percent greater than 1994. U.S. imports of goods and services are 30-fold greater than 1970 and 92 percent greater than 1994.

With the value of U.S. exports increasing less than that of imports, the total deficit on goods and services trade (excluding earnings and payments on foreign investment) increased by approximately \$88 billion from \$418 billion in 2002 (4.0 percent of GDP) to \$506 billion in 2003 (4.6 percent of GDP). The U.S. deficit in goods trade alone increased by \$81 billion from \$483 billion in 2002 (4.6 percent of GDP) to \$564 billion in 2003 (5.2 percent of GDP). The services trade surplus declined from \$65 billion in 2002 (0.6 percent of GDP) to \$58 billion in 2003 (0.5 percent of GDP).

## **II. Goods Trade**

### **A. Export Growth**

U.S. goods exports increased by 6 percent in 2003, as compared to the 6 percent decrease in the preceding year (*table 1*). Manufacturing exports, which accounts for 87 percent of total goods exports, was up only two percent, while agriculture exports, which accounts for 8 percent of total goods exports, were up by 10 percent. High technology exports, a subset of manufacturing exports, accounted for 25 percent of total goods exports and were down 2 percent in 2003. U.S. goods exports increased for nearly every major end-use category in 2003, with the largest increase for industrial supplies and materials, up 10 percent. Only the capital goods category showed a decline in exports in 2003, of slightly over one percent.

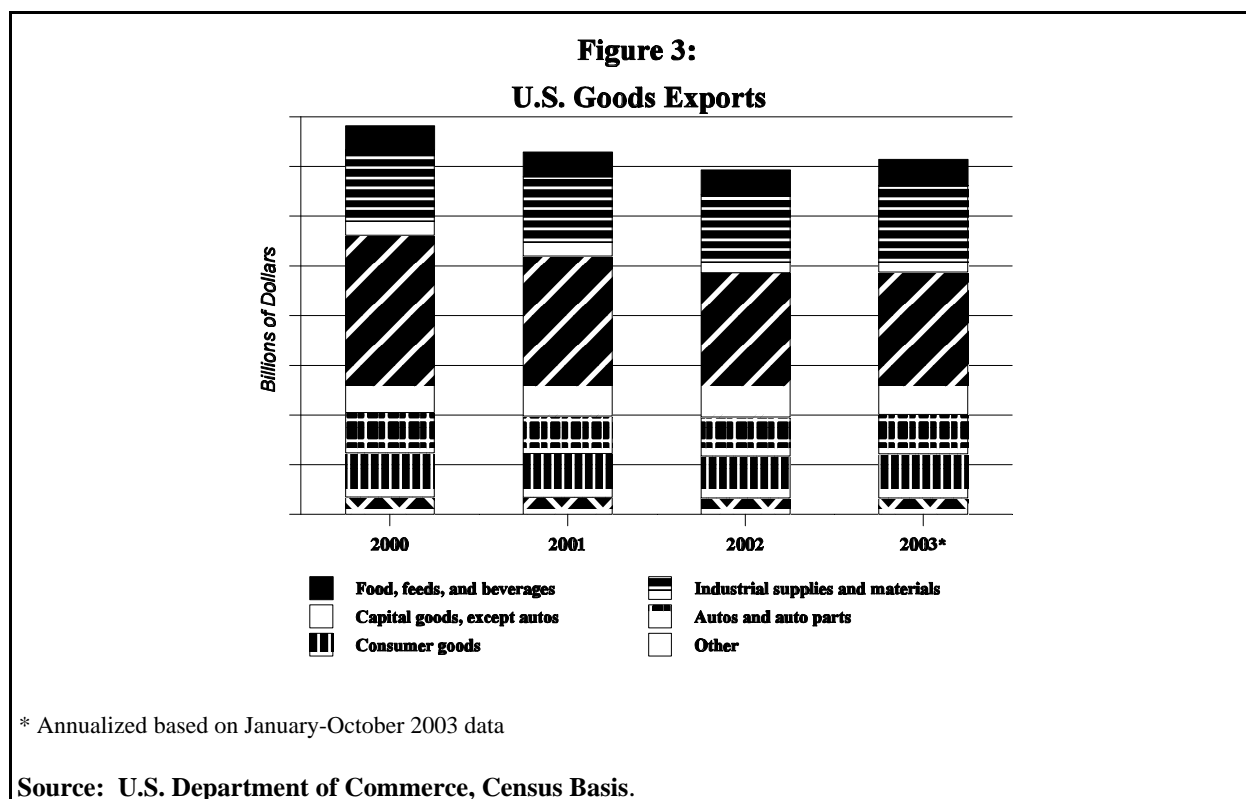
Since 1994, U.S. goods exports are up 40 percent. Manufacturing exports increased 43 percent while high technology exports increased 45 percent and agriculture exports increased 31 percent. Exports of consumer goods and industrial supplies have each risen more than 40 percent, while capital goods and autos and auto parts have increased nearly 40 percent. Of the \$202 billion increase in goods exports since 1994, capital goods accounted for 40 percent of the increase, industrial supplies and materials accounted for 26 percent and consumer goods accounted for 14 percent.

U.S. goods exports increased to nearly all major markets in 2003 (*table 2*), led by a growth rate of over 20 percent to China, and down only to Mexico (1 percent). U.S. exports increased 4 percent to high income countries and 2 percent to middle and low income countries. Since 1994, U.S. goods exports to low and middle income countries exhibited higher growth than that to high income countries, 47 percent compared to 34 percent.

Table 1: U.S. Goods Exports						
Exports:	2000	2001	2002	2003*	02-03*	94-03*
	<i>Billions of Dollars</i>				<i>Percent Change</i>	
<b>Total (BOP basis)</b>	772.0	718.7	681.9	703.9	3.2	40.0
<b>Food, feeds, and beverages</b>	47.9	49.4	49.6	53.5	7.8	27.5
<b>Industrial supplies and materials</b>	172.6	160.1	156.8	173.2	10.4	42.7
<b>Capital goods, except autos</b>	356.9	321.7	290.4	286.4	-1.4	39.7
<b>Autos and auto parts</b>	80.4	75.4	78.9	79.6	0.8	37.7
<b>Consumer goods</b>	89.4	88.3	84.4	88.8	5.3	48.1
<b>Other</b>	34.8	34.1	32.9	33.0	0.5	24.6
<b>Addendum: Agriculture</b>	52.1	55.2	54.8	60.4	10.1	30.5
<b>Addendum: Manufacturing</b>	689.5	640.2	606.3	617.7	1.9	43.3
<b>Addendum: High technology</b>	227.4	199.6	178.6	174.5	-2.3	44.5

\* Annualized based on January-October 2003 data.

Source: U.S. Department of Commerce, Balance of Payments Basis for Total, Census Basis for Sectors.



<b>Table 2:</b> <b>U.S. Goods Exports to Selected Countries/Regions</b>						
<b>Exports to:</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003*</b>	<b>02-03*</b>	<b>94-03*</b>
	<i>Billions of Dollars</i>				<i>Percent Change</i>	
<b>Canada</b>	178.9	163.4	160.9	168.6	4.7	47.3
<b>European Union</b>	165.1	158.8	143.7	149.3	3.9	38.5
<b>Japan</b>	64.9	57.5	51.4	51.6	0.3	-3.5
<b>Mexico</b>	111.3	101.3	97.5	96.3	-1.2	89.3
<b>China</b>	16.2	19.2	22.1	26.9	21.5	189.7
<b>Pacific Rim, except Japan and China</b>	121.5	104.8	105.0	106.0	1.0	24.7
<b>Latin America, except Mexico</b>	59.3	58.2	51.6	51.6	0.2	23.8
<b>Addendum: High Income Countries</b>	442.9	411.6	386.8	401.5	3.8	34.0
<b>Addendum: Low to Middle Income Countries</b>	338.7	317.3	306.5	313.4	2.3	47.3
* Annualized based on January-October 2003 data.						
Source: U.S. Department of Commerce, Census Basis.						

Goods exports to China continued to increase in 2003, up nearly 22 percent, over \$4 billion. Most of the U.S. export growth to China was in industrial supplies and materials, which were up 41 percent. U.S. exports of agriculture products to China doubled in the last year, rising to roughly \$4 billion. Exports of capital goods and industrial supplies accounted for 81 percent of U.S. exports to China in 2003, while agriculture exports accounted for 14 percent. U.S. exports to China have nearly tripled since 1994 (up 190 percent through 2003).

Exports to our NAFTA partners increased nearly 3 percent in 2003, and have increased 87 percent since 1993, the year before the start of NAFTA's implementation. Over 37 percent of aggregate U.S. goods exports went to NAFTA countries in 2003 (\$265 billion), up from nearly 33 percent in 1993 (\$142 billion).

U.S. exports to Canada, the largest U.S. export market, accounting for 24 percent of U.S. exports, increased by 5 percent in 2003. Growth areas of U.S. exports to Canada include consumer goods (up 10 percent), industrial supplies (up 8 percent) and agriculture products (up 7 percent). Overall, U.S. exports to Canada are up by 47 percent since 1994.

U.S. exports to Mexico, the second largest single country export market, accounting for 14 percent of U.S. exports, declined by one percent in 2003. The decline in U.S. exports to Mexico marked the third straight year of declining exports (down 4 percent in 2002 and 9 percent in 2001). This decline was in the auto and auto parts category (down 12 percent) and the consumer goods category (down 10 percent). U.S. exports were up significantly in agriculture goods (up 9 percent). Since 1994, however, U.S.

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exports to Mexico have increased nearly 90 percent.

U.S. exports to the European Union were up 4 percent in 2003. Exports grew in autos and auto parts (up 17 percent), consumer goods (up 11 percent), and industrial supplies (up 11 percent). In 2003, the EU accounted for 21 percent of aggregate U.S. exports. Since 1994, U.S. exports to the EU have increased by 39 percent.

U.S. exports to Japan, the Pacific Rim (excluding China and Japan), and Latin America (excluding Mexico) were all up one percent or less in 2003. U.S. exports to Japan have declined in 5 of the last 7 years, and are down 3 percent since 1994. U.S. exports to the Pacific Rim and Latin America have increased 25 percent and 24 percent, respectively, since 1994.

## **B. Import Growth**

U.S. goods imports increased 9 percent in 2003 (*table 3 and figure 4*), easily surpassing the 2 percent growth rate in 2002. Manufacturing imports, accounting for 81 percent of total goods imports, increased 5 percent in 2003. High technology imports, accounting for 16 percent of total goods imports, increased by 5 percent as well, while agriculture imports, accounting for 4 percent of total goods imports, increased by 13 percent in 2003. U.S. goods imports increased for nearly every major end-use category in 2003, with the largest increases in industrial supplies (up 20 percent), food, feeds, and beverages (up 13 percent) and consumer goods (up 9 percent). Only the “other imports” category showed a decline in 2003 (down 3 percent). Consumer goods, industrial supplies, and capital goods accounted for 75 percent of U.S. imports in 2003.

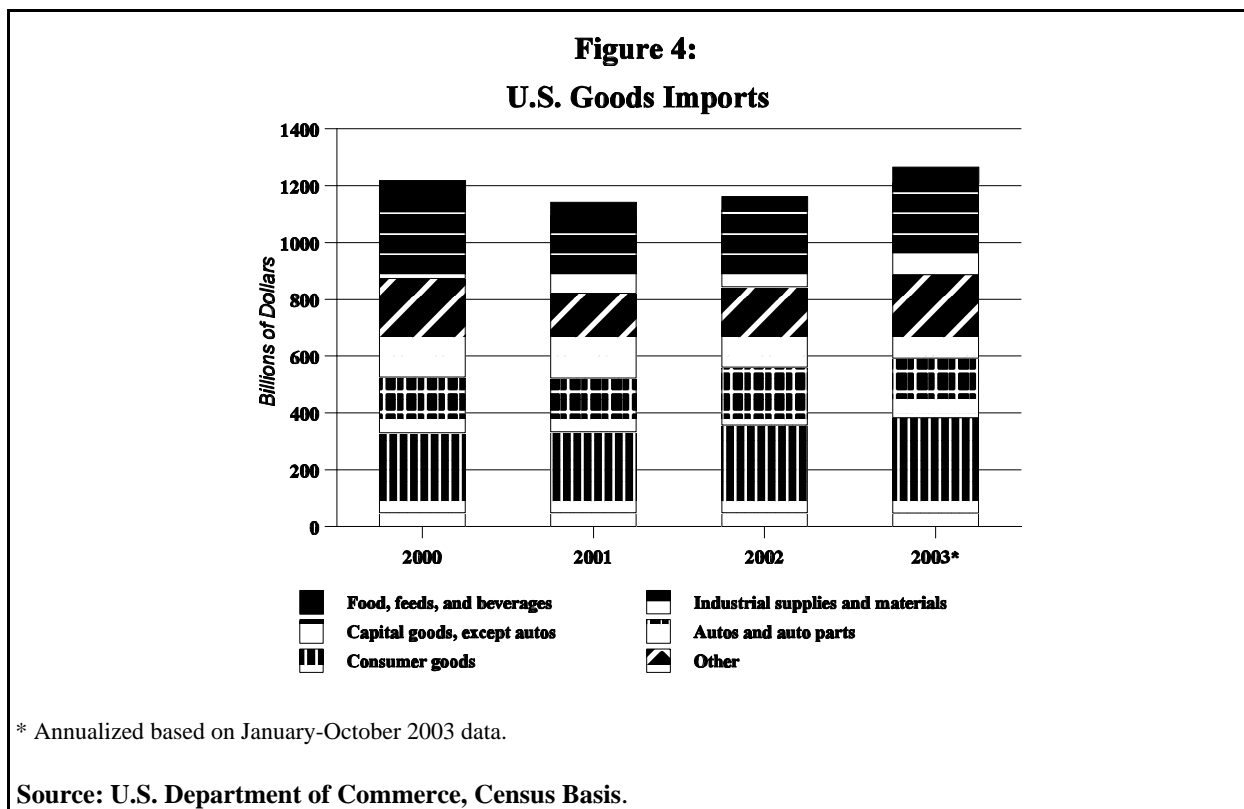
Since 1994, U.S. goods imports are up nearly 90 percent, more than double the growth by U.S. exports. U.S. imports of manufactured products and agriculture products have both grown by over 80 percent. Imports of advanced technology products have more than doubled. For the major end-use categories, U.S. imports of consumer goods have grown by 129 percent, while industrial supplies, foods, feeds and beverages, and autos and auto parts grew by 99 percent, 81 percent, and 77 percent, respectively. Of the \$600 billion increase in goods imports since 1994, consumer goods accounted for 31 percent of the increase, industrial supplies and materials accounted for 27 percent, capital goods for 18 percent, and autos and auto parts for 15 percent.



Table 3: U.S. Goods Imports						
Imports:	2000	2001	2002	2003*	02-03*	94-03*
	<i>Billions of Dollars</i>				<i>Percent Change</i>	
Total (BOP Basis)	1,224.4	1,145.9	1164.7	1,267.8	8.9	89.6
Food, feeds, and beverages	46.0	46.6	49.7	56.1	12.8	81.1
Industrial supplies and materials	299.0	273.9	267.7	322.3	20.4	98.8
Capital goods, except autos	347.0	298.0	283.3	294.1	3.8	59.5
Autos and auto parts	195.9	189.8	203.7	209.7	2.9	77.3
Consumer goods	281.8	284.3	307.9	335.0	8.8	129.0
Other	48.3	48.4	49.1	47.5	-3.2	123.2
Addendum: Agriculture	39.2	39.5	42.1	47.4	12.9	82.7
Addendum: Manufacturing	1,013.5	950.7	974.6	1,026.9	5.4	84.3
Addendum: High technology	222.1	195.2	195.2	204.5	4.8	108.4

\* Annualized based on January-October 2003 data.

Source: U.S. Department of Commerce, Balance of Payments Basis for Total, Census Basis for Sectors.



<b>Table 4:</b> <b>U.S. Goods Imports from Selected Countries/Regions</b>						
<b>Imports from:</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003*</b>	<b>02-03*</b>	<b>94-03*</b>
	<i>Billions of Dollars</i>				<i>Percent Change</i>	
<b>Canada</b>	230.8	216.3	209.1	223.3	6.8	73.9
<b>European Union</b>	220.0	220.1	225.8	244.7	8.4	104.8
<b>Japan</b>	146.5	126.5	121.4	119.2	-1.9	0.0
<b>Mexico</b>	135.9	131.3	134.6	137.0	1.7	176.7
<b>China</b>	100.0	102.3	125.2	155.0	23.8	299.6
<b>Pacific Rim, except Japan and China</b>	171.5	147.3	146.9	148.3	1.0	43.6
<b>Latin America, except Mexico</b>	73.3	67.4	69.5	78.7	13.2	104.6
<b>Addendum: High Income Countries</b>	630.7	595.3	591.2	624.1	5.6	62.1
<b>Addendum: Low to Middle Income Countries</b>	587.3	545.7	572.5	642.0	12.1	130.7
* Annualized based on January-October 2003 data.						
Source: U.S. Department of Commerce, Census Basis.						

On a regional basis, U.S. goods imports increased from nearly all the major markets in 2003, led by a growth rate of nearly 24 percent from China, and down only from Japan, by 2 percent (*table 4*). U.S. imports increased by 12 percent from low and middle income countries, and by 6 percent from high income countries. Since 1994, U.S. goods imports from low and middle income countries exhibited higher growth (more than double) than that from high income countries, 131 percent compared to 62 percent. Accordingly, the share of U.S. imports from low and middle income countries has increased from 42 percent in 1994 to 51 percent in 2003. This marked the first year that the United States imported more from low and middle income countries than from high income countries.

U.S. goods imports continued its strong growth from China in 2003, even surpassing significant growth rate of 2002 (24 percent as compared to 22 percent). U.S. imports from China have nearly quadrupled since 1994. As such, China became the second largest single country supplier of goods to the United States in 2003 (surpassing Mexico). Twelve percent of total U.S. imports were sourced from China in 2003, up from 6 percent in 1994. Imports from China accounted for 19 percent of the overall increase in U.S. imports from the world since 1994 (third to NAFTA's 30 percent and the European Union's 21 percent). U.S. imports from China are primarily low value-added consumer goods, such as toys, footwear, apparel and some areas of consumer electronics. Consumer goods made up 60 percent of U.S. imports from China in 2003.

Imports from Latin America (excluding Mexico) increased by 13 percent in 2003, and have more than doubled since 1994. Roughly half of the increase in imports from Latin America was in the mineral fuel

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category. U.S. import prices for crude oil through the first 10 months of 2003 was up 21 percent over the same period of 2002. U.S. imports from Latin America accounted for 6 percent of total U.S. imports in 2003.

U.S. goods imports from the European Union, accounting for 19 percent of total U.S. imports, increased by 8 percent in 2003, tripling the growth rate from 2002 (up 2.6 percent). More than half of U.S. imports from the European Union are consumer goods and capital goods. Increasing import categories included foods, feed and beverages (up 22 percent), autos and auto parts (up 16 percent), industrial supplies (up 13 percent), and consumer goods (up 10 percent). Imports of capital goods declined less than 1 percent. U.S. Imports from the EU have doubled since 1994.

Imports from our NAFTA partners increased 5 percent in 2003 and are up 138 percent since NAFTA started implementation. NAFTA imports accounted for 29 percent of aggregate U.S. goods imports in 2003, down slightly from 30 percent in 2002, but up from 27 percent in 1994.

U.S. imports from Canada, the largest single country supplier of goods to the United States, accounting for 18 percent of U.S. imports, increased by 7 percent in 2003 (the first import growth increase since 2000). Nearly all of the increase was in the mineral fuel category. Accordingly, U.S. imports of industrial supplies from Canada were up 18 percent in 2003. U.S. imports from Canada have grown by 74 percent since 1994.

U.S. imports from Mexico, the third largest single country supplier of goods to the United States, increased by 2 percent in 2002. U.S. imports of industrial supplies and foods, feeds, and beverages increased 15 percent and 13 percent, respectively. Imports of consumer goods and autos and auto parts both declined by 5 percent and 1 percent, respectively. U.S. imports from Mexico have grown 177 percent since 1994.

Imports from the Pacific Rim (excluding Japan and China) increased 1 percent in 2003, and were up 43 percent since 1994. Imports from Japan declined 2 percent in 2003, and were basically the same as in 1994. Purchases from Japan in 2003 accounted for 9 percent of total U.S. imports, as compared to 18 percent in 1994.

### **III. Services Trade**

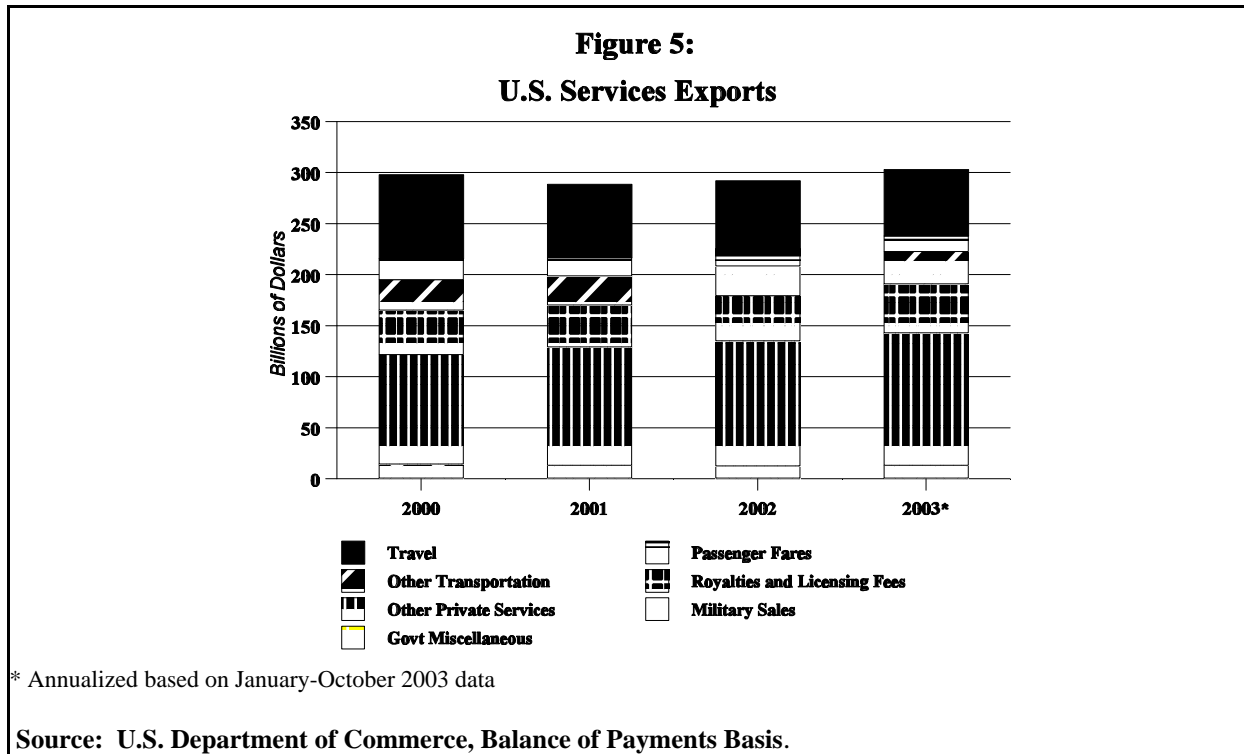
#### **A. Export Growth**

U.S. exports of services grew roughly 4 percent in 2003 to over \$300 billion, and since 1994, U.S. services exports have increased by approximately 52 percent. U.S. services exports accounted for 30 percent of the level of U.S. goods and services exports in 2003, compared to 29 percent in 1994.

<b>Table 5:</b> <b>U.S. Services Exports</b>						
Exports:	2000	2001	2002	2003*	02-03*	94-03*
	<i>Billions of Dollars</i>				<i>Percent Change</i>	
<b>Total (BOP basis)</b>	298.1	288.9	292.2	303.0	3.7	51.7
<b>Travel</b>	82.4	71.9	66.5	65.0	-2.4	11.2
<b>Passenger Fares</b>	20.7	17.9	17.0	15.3	-10.5	-10.2
<b>Other Transportation</b>	29.8	28.4	29.2	31.8	9.1	34.0
<b>Royalties and Licensing Fees</b>	43.2	41.1	44.1	47.9	8.6	79.4
<b>Other Private Services</b>	107.4	116.1	122.6	129.7	5.8	115.4
<b>Transfers under U.S. Military Sales Contracts</b>	13.8	12.5	11.9	12.5	4.3	-2.6
<b>U.S. Government Miscellaneous Services</b>	0.8	0.8	0.8	0.8	2.0	-8.6

\* Annualized based on January-October 2003 data.

Source: U.S. Department of Commerce, Balance of Payments Basis.



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The growth in U.S. services exports in 2003 was largely driven by the other private services category, which accounted for 43 percent of total U.S. services exports and increased 6 percent (\$7 billion) from the previous year. The royalties and licensing fees category and the other transportation categories also exhibited growth in 2003, each up roughly 9 percent (\$4 billion and \$3 billion, respectively). The tourism categories (travel and passenger fares) both declined in 2003.

Since 1994, nearly all of the major services export categories have grown. Export growth has been led by the other private services category, up 115 percent, and the royalties and licensing fees category, up 79 percent. The other transportation and travel categories also were up 34 percent and 11 percent, respectively. Of the \$103 billion increase in U.S. services exports between 1994 and 2003, the other private services category accounted for 67 percent of the increase and the royalties and licensing fees category accounted for 21 percent.

Detailed sectoral breakdowns for exports of the other private services category are available only through 2002. In 2002, other private services exports totaled \$123 billion. Of this, U.S. exports to business related parties (to a foreign parent or affiliate) accounted for \$44 billion, or 35 percent of total other private services exports. For the remaining exports of other private services to unaffiliated parties, the values of exports in 2002 were: business, professional and technical services, \$29 billion; financial services, \$16 billion; education, \$13 billion; insurance premiums, \$12 billion; and telecommunications, \$4 billion. Business, professional and technical services were led by the installation, maintenance, and repair of equipment category (\$5 billion), operational leasing (\$3.6 billion), legal services (\$3.3 billion), and computer and data processing services (\$3.0 billion).

The United Kingdom was the largest purchaser of U.S. private services exports in 2002, accounting for 11 percent of total U.S. private services exports. The top 5 purchasers of U.S. private services exports in 2002 were: the United Kingdom (\$32 billion), Japan (\$30 billion), Canada (\$24 billion), Germany (\$16 billion), and Mexico (\$16 billion).

Regionally, in 2002, the United States exported \$96 billion to the EU, \$75 billion to the Asia/Pacific Region (\$39 billion excluding Japan and China), \$40 billion to NAFTA countries, and \$23 billion to Latin America (excluding Mexico).

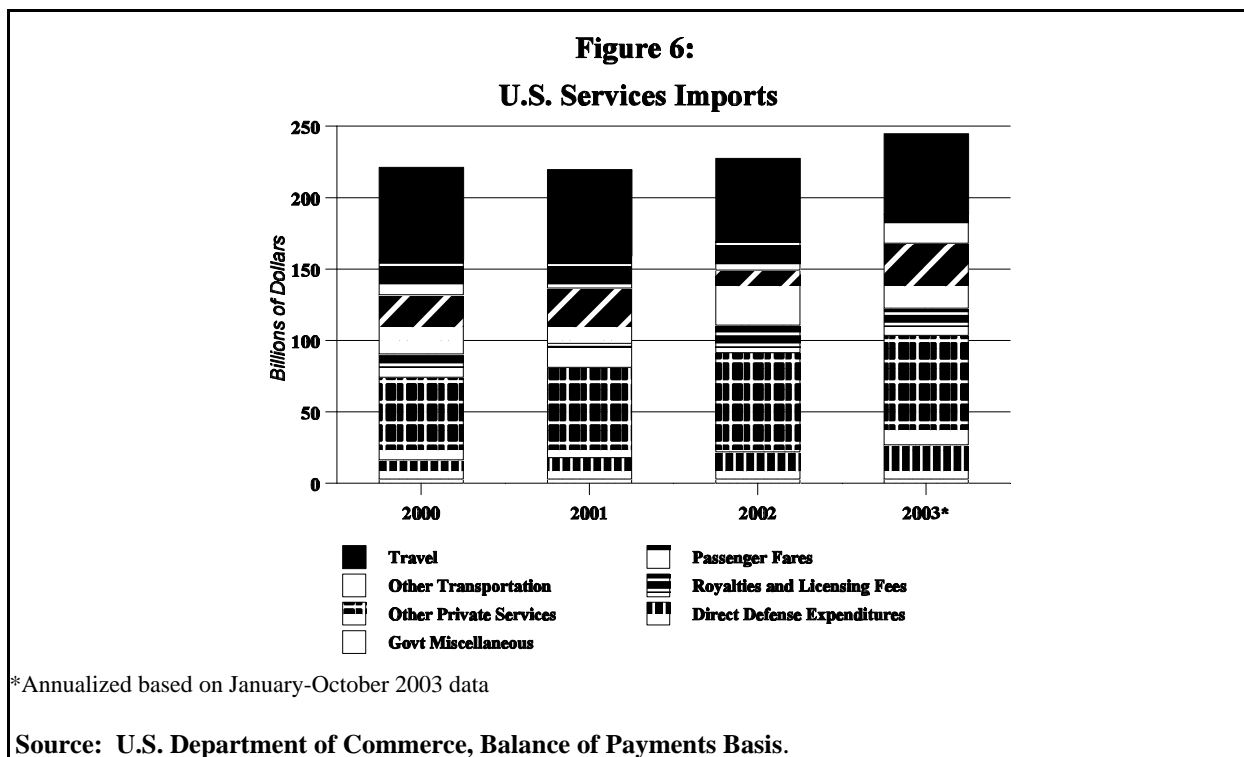
## **B. Import Growth**

Services imports by the United States increased in 2002 by nearly 8 percent to \$245 billion (*table 6, figure 6*). While import growth was greater than export growth in 2003 (8 percent compared to 4 percent) the United States remained a net exporter of services. Growth in U.S. imports of services in 2003 were led by three services import categories: other private services, other transportation, and direct defense expenditures. These three categories accounted for roughly 60 percent of total services imports in 2003. The two of the six major services import categories that declined in 2003 were travel, and royalties and licensing fees (down 3 percent and 2 percent, respectively).

<p align="center"><b>Table 6:</b> <b>U.S. Services Imports</b></p>						
Imports:	2000	2001	2002	2003*	02-03*	94-03*
	<i>Billions of Dollars</i>				<i>Percent Change</i>	
<b>Total (BOP basis)</b>	221.0	219.5	227.4	244.7	7.6	86.6
<b>Travel</b>	64.7	60.2	58.0	56.4	-2.9	28.8
<b>Passenger Fares</b>	24.3	22.6	20.0	20.4	2.0	55.9
<b>Other Transportation</b>	41.4	38.7	38.5	45.5	18.1	74.9
<b>Royalties and Licensing Fees</b>	16.5	16.7	19.3	18.9	-1.8	223.1
<b>Other Private Services</b>	57.8	63.4	69.4	76.6	10.3	158.4
<b>Direct Defense Expenditures</b>	13.5	15.0	19.2	24.0	24.9	135.2
<b>U.S. Government Miscellaneous Services</b>	2.9	2.9	2.9	3.0	2.5	17.0

\* Annualized based on January-October 2003 data.

Source: U.S. Department of Commerce, Balance of Payments Basis.



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Since 1994, services imports grew almost 87 percent or \$114 billion. This growth was driven by the other private services category (accounting for 41 percent of the increase) and the other transportation category (accounting for 17 percent of the increase). All of the major service categories grew since 1994. U.S. imports of royalties and licensing fees have tripled, while imports of other private services and direct defense expenditures have increased 158 percent and 135 percent respectively.

As with exports, detailed sectoral breakdowns for imports of other private services are available only through 2002. In 2002, other private services imports totaled \$69 billion. Of this, U.S. imports from business related parties (from a foreign parent or affiliate) accounted for \$32 billion or 47 percent of total other private service imports. For the remaining imports of other private services from unaffiliated parties, the values of import in 2002 were: insurance premiums, \$47 billion; business professional and technical services, \$10.7 billion; telecommunications, \$4.2 billion; financial services, \$3.7 billion; and education, \$2.5 billion. Business, professional and technical services were led by the miscellaneous disbursements category (\$1.5 billion),<sup>7</sup> management, consulting, and public relations services (\$1.2 billion), computer and data processing services (\$1.1 billion), and research, development, and testing services (\$1.0 billion).

In the import sector, the United Kingdom remained our largest supplier of private services, providing \$27 billion to the United States in 2002. This accounted for 13% of total U.S. imports of private services in 2002. The United States imported \$18 billion from Canada, our second largest supplier, and \$17 billion from Japan, our third largest supplier. Germany and Mexico were our fourth and fifth largest import suppliers, exporting \$15 billion and \$11 billion worth of services to the U.S., respectively, in 2002.

Regionally, the U.S. imported \$77 billion of services from the EU, \$48 billion from the Asia/Pacific region (\$27 billion excluding Japan and China), \$29 billion from NAFTA, and \$10 billion from Latin America (excluding Mexico).

#### **IV. The U.S. Trade Deficit**

The U.S. goods and services deficit increased by \$88 billion in 2003 to a level of \$506 billion (*table 7*). The U.S. goods trade deficit alone increased by \$81 billion to \$564 billion in 2003. However, the services trade surplus decreased by \$6 billion to \$58 billion in 2003.

As a share of U.S. GDP, the goods and services trade deficit was 4.6 percent of GDP in 2003, an increase of 0.6 percentage points from the level in 2002 (*table 8*). The goods trade deficit was 5.2 percent of GDP in 2003, up from 4.6 percent in 2002. The services trade surplus was 0.5 percent of GDP in 2003, down from 0.6 percent in 2002.

The regional distribution of the goods trade deficit for the past 4 years is shown in *table 9*.

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<sup>7</sup> Miscellaneous disbursements include transactions such as outlays to fund news-gathering costs of broadcasters and disbursements to fund production costs of motion pictures companies.

<b>Table 7</b> <b>U.S. Trade Balances with the World</b>				
<b>Balance:</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003*</b>
	<i>Billions of Dollars</i>			
<b>Goods and Services (BOP Basis)</b>	-375.4	-357.8	-418.0	-505.6
<b>Goods (BOP Basis)</b>	-452.4	-427.2	-482.9	-564.0
<b>Services (BOP Basis)</b>	77.0	69.4	64.8	58.3
* Annualized based on January-October 2003 data.				
Source: U.S. Department of Commerce, Balance of Payments Basis for World.				

<b>Table 8</b> <b>U.S. Trade Balances as a share of GDP</b>				
<b>Share of GDP:</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003*</b>
	<i>Percent</i>			
<b>Goods and Services (BOP Basis)</b>	-3.8	-3.5	-4.0	-4.6
<b>Goods (BOP Basis)</b>	-4.6	-4.2	-4.6	-5.2
<b>Services (BOP Basis)</b>	0.8	0.7	0.6	0.5
* Annualized based on January-October 2003 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>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003*</b>
	<i>Billions of Dollars</i>			
<b>Canada</b>	-51.9	-52.8	-48.2	-54.7
<b>European Union</b>	-55.0	-61.3	-82.1	-95.4
<b>Japan</b>	-81.6	-69.0	-70.0	-67.6
<b>Mexico</b>	-24.6	-30.0	-37.1	-40.7
<b>China</b>	-83.6	-83.1	-103.1	-128.1
<b>Pacific Rim, except Japan and China</b>	-50.0	-42.6	-41.9	-42.2
<b>Latin America, except Mexico</b>	-14.1	-9.2	-18.0	-27.1
<b>Addendum: High Income Countries</b>	-187.8	-183.7	-204.4	-222.7
<b>Addendum: Low to Middle Income Countries</b>	-248.6	-228.5	-266.0	-328.6
* Annualized based on January-October 2003 data.				
Source: U.S. Department of Commerce, Census Basis.				

## **ANNEX II**

## **Background Information on the WTO**

### ***Doha Development Agenda***

Doha Ministerial Declaration .....	
Doha Declaration on the TRIPs Agreement and Public Health .....	
Doha Declaration on Implementation-Related Issues and Concerns .....	
U.S. Submissions in Support of the Doha Development Agenda .....	

### ***Institutional Issues***

Membership of the WTO. ....	
2004 WTO Budget Contributions .....	
Budget for the WTO Secretariat .....	
Waivers Currently in Force .....	
WTO Secretariat Personnel Statistics .....	
WTO Accession Application and Status .....	
Indicative List of Governmental and Non-Governmental Panelists .....	
Appellate Body Membership .....	
<b><i>Where to Find More Information on the WTO</i></b> .....	

# **WORLD TRADE ORGANIZATION**

**WT/MIN(01)/DEC/1**

20 November 2001  
(01-5859)

**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)

**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.



# WORLD TRADE ORGANIZATION

WT/MIN(01)/17

20 November 2001  
(01-5858)

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.

## **U.S. SUBMISSIONS TO THE WTO IN SUPPORT OF THE DOHA DEVELOPMENT AGENDA**

### **Committee on Agriculture, Special Session**

- Export Competition, Market Access & Domestic Support (JOB(02)/122)

### **Council on Trade in Services, Special Session**

- Modalities for the Special Treatment For Least-Developed Country Members in the Negotiations on Trade In Services – JOB (03)/133
- US Government Points of Contact in Least-Developed Country Members – JOB (03)/33
- 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)

### **Negotiating Group on Market Access**

- Tariffs & Trade Data Needs Assessment (TN/MA/W/2)
- Environmental Goods (TN/MA/W/3)
- 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 Environmental Goods In The WTO: Approaching The Definition Issue (TN/TE/W/34) & (TN/MA/W/18/Add.4)
- Non-Agricultural Market Access: Modalities (TN/MA/W/44)  
*Joint communication from the United States, Canada, and the EU*

### **Negotiating Group on Rules**

- Fisheries Subsidies (TN/RL/W/3)  
*Joint communication from the United States, Australia, Chile, Ecuador, Iceland, New Zealand, Peru, and the Philippines*
- Fisheries Subsidies (TN/RL/W/21)
- OECD Steel Paper (TN/RL/W/24)
- Questions on Papers Submitted to Rules Negotiating Group (TN/RL/W/25)
- Basic Concepts of the Trade Remedies Rules (TN/RL/W/27)
- Special and Differential Treatment and the Subsidies Agreement (TN/RL/W/33)
- Second Set of Questions from the United States on Papers Submitted to the Rules Negotiating Group (TN/RL/W/34)
- Investigatory Procedures Under The Antidumping and Subsidies Agreements (TN/RL/W/35)
- Communication From The United States Attaching A Communiqué From The Organization For Economic Cooperation And Development (OECD) (TN/RL/W/49)
- Circumvention (TN/RL/W/50)

- Replies To Questions Presented To The United States On Submission TN/RL/W/27 (TN/RL/W/53)
- Third Set Of Questions From The United States On Papers Submitted To The Rules Negotiating Group (TN/RL/W/54)
- Responses By The United States To Questions From Australia On Investigatory Procedures Under The Anti-Dumping And Subsidies Agreements (TN/RL/W/71)
- Identification Of Certain Major Issues Under The Anti-Dumping And Subsidies Agreements (TN/RL/W/72)
- Possible Approaches To Improved Disciplines On Fisheries Subsidies (TN/RL/W/77)
- Subsidies Disciplines Requiring Clarification And Improvement (TN/RL/W/78)
- Elements Of A Steel Subsidies Agreement (TN/RL/W/95)
- Identification of Additional Issues under the Anti-dumping and Subsidies Agreements (TN/RL/W/98)
- Fourth Set Of Questions From The United States On Papers Submitted To The Rules Negotiating Group (TN/RL/W/103)
- Further Issues Identified Under The Anti-Dumping And Subsidies Agreements For Discussion By the Negotiating Group On Rules (TN/RL/W/130)

#### **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 (G/SCM/W/521)  
*Joint communication from the United States, Australia, Canada, the EU, Japan and Switzerland*

#### **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)  
*Joint communication from United States and Chile*
- Further Contribution of The United States to The Improvement of The Dispute Settlement Understanding of the WTO Related to Transparency – suggested text (TN/DS/W/46)
- Negotiations on Improvements and Clarifications of the Dispute Settlement Understanding on Improving Flexibility and Member Control in WTO Dispute Settlement – suggested text (TN/DS/W/52)  
*Joint communication from United States and Chile*

#### **Committee on Trade and Environment, Regular and Special Session**

- Para. 31 (ii) WTO - Multilateral Environmental Agreements (MEAs) Co-operation (TN/TE/W/5)
- Para. 31 (iii) Environmental Goods (TN/TE/W/8)
- Para. 31 (i) Multilateral Environmental Agreements (MEAs) (TN/TE/W/20)
- Paragraph 33 of the Doha Declaration (WT/CTE/W/227)

*(Dual submissions on Environmental Goods are listed under the Negotiating Group on Market Access)*

#### **Council on TRIPS, Regular & Special Session**

- Proposal on GIs for Wine & Spirits (TN/IP/W/6)
- Questions and Answers: Comparison of Proposals (TN/IP/W/1)
- Issues for Discussion, Article 23.4 (TN/IP/W/2)
- Second submission on TRIPS & Public Health, Paragraph.6 (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)

#### **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)

#### **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)

#### **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)

**MEMBERSHIP OF THE WORLD TRADE ORGANIZATION**  
as of January 1, 2004 (146 Members)\*

<b>Government</b>	<b>Entry into Force/ Membership</b>	<b>Government</b>	<b>Entry into Force/ Membership</b>
Albania	September 8, 2000	Dominican Republic	March 9, 1995
Angola	November 23, 1996	Ecuador	January 21, 1996
Antigua and Barbuda	January 1, 1995	Egypt	June 30, 1995
Argentina	January 1, 1995	El Salvador	May 7, 1995
Armenia	February 5, 2003	Estonia	November 13, 1999
Australia	January 1, 1995	European Union	January 1, 1995
Austria	January 1, 1995	Fiji	January 14, 1996
Bahrain	January 1, 1995	Finland	January 1, 1995
Bangladesh	January 1, 1995	Former Yugoslav Republic of Macedonia	April 4, 2003
Barbados	January 1, 1995	France	January 1, 1995
Belgium	January 1, 1995	Gabon	January 1, 1995
Belize	January 1, 1995	Georgia	June 14, 2000
Benin	February 22, 1996	Germany	January 1, 1995
Bolivia	September 12, 1995	Ghana	January 1, 1995
Botswana	May 31, 1995	Greece	January 1, 1995
Brazil	January 1, 1995	Grenada	February 22, 1996
Brunei Darussalam	January 1, 1995	Guatemala	July 21, 1995
Bulgaria	December 1, 1996	Guinea	October 25, 1995
Burkina Faso	June 3, 1995	Guinea Bissau	May 31, 1995
Burundi	July 23, 1995	Guyana	January 1, 1995
Cameroon	December 13, 1995	Haiti	January 30, 1996
Canada	January 1, 1995	Honduras	January 1, 1995
Central African Republic	May 31, 1995	Hong Kong, China	January 1, 1995
Chad	October 19, 1996	Hungary	January 1, 1995
Chile	January 1, 1995	Iceland	January 1, 1995
China	December 11, 2001	India	January 1, 1995
Colombia	April 30, 1995	Indonesia	January 1, 1995
Congo	March 27, 1997	Ireland	January 1, 1995
Costa Rica	January 1, 1995	Israel	April 21, 1995
Côte d'Ivoire	January 1, 1995	Italy	January 1, 1995
Croatia	November 30, 2000	Jamaica	March 9, 1995
Cuba	April 20, 1995	Japan	January 1, 1995
Cyprus	July 30, 1995	Jordan	April 11, 2000
Czech Republic	January 1, 1995	Kenya	January 1, 1995
Democratic Republic of the Congo	January 1, 1997	Korea, Republic of	January 1, 1995
Denmark	January 1, 1995	Kuwait	January 1, 1995
Djibouti	May 31, 1995	Kyrgyz Republic	December 20, 1998
Dominica	January 1, 1995	Latvia	February 10, 1999

<b>Government</b>	<b>Entry into Force/ Membership</b>	<b>Government</b>	<b>Entry into Force/ Membership</b>
Lesotho	May 31, 1995	Rwanda	May 22, 1996
Liechtenstein	September 1, 1995	Saint Kitts and Nevis	February 21, 1996
Lithuania	May 31, 2001	Saint Lucia	January 1, 1995
Luxembourg	January 1, 1995	Saint Vincent and the Grenadines	January 1, 1995
Macao, China	January 1, 1995	Senegal	January 1, 1995
Madagascar	November 17, 1995	Sierra Leone	July 23, 1995
Malawi	May 31, 1995	Singapore	January 1, 1995
Malaysia	January 1, 1995	Slovak Republic	January 1, 1995
Maldives	May 31, 1995	Slovenia	July 30, 1995
Mali	May 31, 1995	Solomon Islands	July 26, 1996
Malta	January 1, 1995	South Africa	January 1, 1995
Mauritania	May 31, 1995	Spain	January 1, 1995
Mauritius	January 1, 1995	Sri Lanka	January 1, 1995
Moldova	July 26, 2001	Suriname	January 1, 1995
Mongolia	January 29, 1997	Swaziland	January 1, 1995
Morocco	January 1, 1995	Sweden	January 1, 1995
Mozambique	August 26, 1995	Switzerland	July 1, 1995
Myanmar	January 1, 1995	Taiwan (referred to in the WTO as Chinese Taipei)	January 1, 2002
Namibia	January 1, 1995	Tanzania	January 1, 1995
Netherlands	January 1, 1995	Thailand	January 1, 1995
New Zealand	January 1, 1995	The Gambia	October 23, 1996
Nicaragua	September 3, 1995	Togo	May 31, 1995
Niger	December 13, 1996	Trinidad and Tobago	March 1, 1995
Nigeria	January 1, 1995	Mexico	January 1, 1995
Norway	January 1, 1995	Tunisia	March 9, 1995
Oman	November 9, 2000	Turkey	March 26, 1995
Pakistan	January 1, 1995	Uganda	January 1, 1995
Panama	September 6, 1997	United Arab Emirates	April 10, 1996
Papua New Guinea	June 9, 1996	United Kingdom	January 1, 1995
Paraguay	January 1, 1995	United States	January 1, 1995
Peru	January 1, 1995	Uruguay	January 1, 1995
Philippines	January 1, 1995	Venezuela	January 1, 1995
Poland	July 1, 1995	Zambia	January 1, 1995
Portugal	January 1, 1995	Zimbabwe	March 5, 1995
Qatar	January 13, 1996		
Romania	January 1, 1995		

\*During 2003, Cambodia and Nepal completed their accession process, but domestic ratification requirements have not yet been completed. Membership will occur 30 days after the instrument of acceptance is deposited with the WTO.

**PROPOSED REVISED SCALE OF CONTRIBUTIONS FOR 2004**  
(Minimum contribution of 0.015 per cent)

MEMBERS	2003 Contribution	2004 Contribution	Interest Earned <sup>1</sup>	2004 net Contribution
	CHF	%	CHF	CHFCHF
Albania	23,070	0.015	24,084	3424,050
Angola	106,122	0.080	128,448	103128,345
Antigua and Barbuda	23,070	0.015	24,084	24,084
Argentina	713,632	0.462	741,787	741,787
Armenia		0.015	24,084	24,084
Australia	1,757,934	1.154	1,852,862	3,6311,849,231
Austria	2,111,674	1.376	2,209,306	4,2272,205,079
Bahrain	106,122	0.073	117,209	160117,049
Bangladesh	163,028	0.105	168,588	43168,545
Barbados	30,760	0.019	30,506	3930,467
Belgium	4,107,998	2.682	4,306,219	5,3414,300,878
Belize	23,070	0.015	24,084	24,084
Benin	23,070	0.015	24,084	24,084
Bolivia	38,450	0.025	40,140	6940,071
Botswana	58,444	0.035	56,196	8456,112
Brazil	1,424,188	0.950	1,525,320	8421,524,478
Brunei Darussalam	63,058	0.041	65,830	11065,720
Bulgaria	144,572	0.097	155,743	45155,698
Burkina Faso	23,070	0.015	24,084	24,084
Burundi	23,070	0.015	24,084	24,084
Cameroon	38,450	0.026	41,746	8441,662
Canada	6,067,410	3.940	6,326,064	10,8066,315,258
Central African Republic	23,070	0.015	24,084	24,084
Chad	23,070	0.015	24,084	24,084
Chile	446,020	0.311	499,342	384498,958
China, People's Republic of	4,852,390	3.261	5,235,862	7,6875,228,175
Colombia	324,518	0.219	351,626	6351,620
Congo	35,374	0.024	38,534	38,534
Costa Rica	149,186	0.101	162,166	270161,896
Côte d'Ivoire	96,894	0.063	101,153	101,153
Croatia	204,554	0.138	221,573	276221,297
Cuba	107,660	0.064	102,758	200102,558
Cyprus	93,818	0.061	97,942	15097,792
Czech Republic	767,462	0.510	818,856	1,598817,258
Democratic Republic of the Congo	24,608	0.019	30,506	30,506
Denmark	1,462,638	0.954	1,531,742	2,6231,529,119
Djibouti	23,070	0.015	24,084	24,084
Dominica	23,070	0.015	24,084	24,084
Dominican Republic	196,864	0.125	200,700	200,700

Ecuador	118,426	0.082	131,659	201131,458
Egypt	398,342	0.258	414,245	784413,461
El Salvador	90,742	0.060	96,336	10596,231
Estonia	98,432	0.064	102,758	192102,566
European Communities	0	0.000	0	0
Fiji	23,070	0.016	25,690	4125,649
Finland	987,396	0.635	1,019,556	1,9821,017,574
Former Yugoslave Republic of Macedonia		0.025	40,140	40,140
France	8,108,336	5.212	8,368,387	14,0408,354,347
Gabon	52,292	0.035	56,196	56,196
Gambia	23,070	0.015	24,084	24,084
Georgia	23,070	0.015	24,084	24,084
Germany	13,718,960	8.885	14,265,756	14,96114,250,795
Ghana	66,134	0.038	61,013	61,013
Greece	632,118	0.409	656,690	502656,188
Grenada	23,070	0.015	24,084	4224,042
Guatemala	96,894	0.063	101,153	152101,001
Guinea	23,070	0.015	24,084	24,084
Guinea-Bissau	23,070	0.015	24,084	24,084
Guyana	23,070	0.015	24,084	24,084
Haiti	23,070	0.015	24,084	224,082
Honduras	59,982	0.038	61,013	9760,916
Hong Kong, China	4,869,308	3.196	5,131,498	10,0835,121,415
Hungary	641,346	0.427	685,591	528685,063
Iceland	69,210	0.043	69,041	13868,903
India	1,307,300	0.799	1,282,874	7861,282,088
Indonesia	1,190,412	0.811	1,302,142	1,3141,300,828
Ireland	1,847,138	1.149	1,844,834	3,5711,841,263
Israel	873,584	0.563	903,953	1,185902,768
Italy	6,361,168	4.156	6,672,874	9,6766,663,198
Jamaica	83,052	0.055	88,308	6688,242
Japan	9,780,142	6.394	10,266,206	4,34010,261,866
Jordan	93,818	0.064	102,758	98102,660
Kenya	67,672	0.045	72,252	10972,143
Korea, Republic of	3,640,446	2.415	3,877,524	6,5823,870,942
Kuwait	292,220	0.196	314,698	314,698
Kyrgyz Republic	23,070	0.015	24,084	24,084
Latvia	75,362	0.050	80,280	14780,133
Lesotho	23,070	0.015	24,084	24,084
Liechtenstein	38,450	0.025	40,140	8340,057
Lithuania	116,888	0.081	130,054	206129,848
Luxembourg	530,610	0.343	550,721	856549,865
Macao, China	95,356	0.064	102,758	178102,580



Madagascar	23,070	0.015	24,084	4424,040
Malawi	23,070	0.015	24,084	24,084
Malaysia	1,948,646	1.302	2,090,491	3,7072,086,784
Maldives	23,070	0.015	24,084	1524,069
Mali	23,070	0.015	24,084	24,084
Malta	75,362	0.047	75,463	14075,323
Mauritania	23,070	0.015	24,084	24,084
Mauritius	58,444	0.039	62,618	12162,497
Mexico	3,486,646	2.231	3,582,094	1,7603,580,334
Moldova	23,070	0.015	24,084	4,86419,220
Mongolia	23,070	0.015	24,084	2924,055
Morocco	239,928	0.155	248,868	253248,615
Mozambique	23,070	0.015	24,084	424,080
Myanmar, Union of	49,216	0.033	52,985	6952,916
Namibia	41,526	0.027	43,351	4743,304
Netherlands, Kingdom of the	5,353,778	3.422	5,494,363	6,5895,487,774
New Zealand	373,734	0.250	401,400	736400,664
Nicaragua	30,760	0.019	30,506	6330,443
Niger	23,070	0.015	24,084	24,084
Nigeria	292,220	0.191	306,670	306,670
Norway	1,261,160	0.855	1,372,788	2,3691,370,419
Oman	161,490	0.111	178,222	239177,983
Pakistan	235,314	0.157	252,079	212251,867
Panama	175,332	0.115	184,644	228184,416
Papua New Guinea	47,678	0.030	48,168	6348,105
Paraguay	79,976	0.051	81,886	81,886
Peru	193,788	0.130	208,728	208,728
Philippines	850,514	0.562	902,347	4902,343
Poland	1,068,910	0.701	1,125,526	1,8201,123,706
Portugal	879,736	0.567	910,375	472909,903
Qatar	127,654	0.070	112,392	112,392
Romania	256,846	0.176	282,586	492282,094
Rwanda	23,070	0.015	24,084	24,084
Saint Lucia	23,070	0.015	24,084	2624,058
Senegal	33,836	0.022	35,323	7235,251
Sierra Leone	23,070	0.015	24,084	24,084
Singapore	3,034,474	2.022	3,246,523	3,5873,242,936
Slovak Republic	304,524	0.191	306,670	504306,166
Slovenia	246,080	0.159	255,290	467254,823
Solomon Islands	23,070	0.015	24,084	24,084
South Africa	739,778	0.488	783,533	279783,254
Spain	3,740,416	2.411	3,871,102	3,2183,867,884

Sri Lanka	144,572	0.093	149,321	100149,221
St. Kitts and Nevis	23,070	0.015	24,084	4124,043
St. Vincent and the Grenadines	23,070	0.015	24,084	2624,058
Suriname	23,070	0.015	24,084	24,084
Swaziland	24,608	0.016	25,690	5425,636
Sweden	2,208,568	1.397	2,243,023	4,5022,238,521
Switzerland	2,251,632	1.463	2,348,993	4,3142,344,679
Chinese Taipei	3,123,678	2.000	3,211,200	6353,210,565
Tanzania	36,912	0.024	38,534	38,534
Thailand	1,461,100	0.991	1,591,150	2,9191,588,231
Togo	23,070	0.015	24,084	24,084
Trinidad and Tobago	63,058	0.040	64,224	4764,177
Tunisia	195,326	0.129	207,122	353206,769
Turkey	1,150,424	0.740	1,188,144	7701,187,374
Uganda	27,684	0.017	27,295	827,287
United Arab Emirates	855,128	0.523	839,729	678839,051
United Kingdom of Great Britain and Northern Ireland	8,800,436	5.689	9,134,258	17,6309,116,628
United States of America	24,452,662	15.735	25,264,116	4,72525,259,391
Uruguay	89,204	0.057	91,519	191,518
Venezuela	486,008	0.326	523,426	523,426
Zambia	23,070	0.016	25,690	25,690
Zimbabwe	69,210	0.044	70,646	6970,577
<b>TOTAL</b>	<b>153,800,000</b>	<b>100.000</b>	<b>160,560,000</b>	<b>181,224160,378,776</b>

**2004 PROPOSED REVISED BUDGET FOR THE WTO SECRETARIAT**  
(in Swiss francs)

2004 Budget					
Part	Section	Item	Original Proposal 2004	Reductions	Revised Proposal 2004
A	Sect 1 Work Years	(a)Salary	71,705,600	(691,600)	71,014,000
		(b)Pension	14,421,400	(154,200)	14,267,200
		(c)Common Staff Costs	13,885,300	(455,300)	13,430,000
	Sect 2 Temporary Assistance		16,928,950	(1,165,800)	15,763,150
B	Sect 3 Communications	(a) Telecommunications	778,000	(30,000)	748,000
		(b) Postal Charges	1,585,000	(130,000)	1,455,000
	Sect 4 Building Facilities	(a) Rental	312,400	(10,000)	302,400
		(b) Utilities	1,632,500	(13,000)	1,619,500
		(c) Maintenance and Insurance	1,223,000	(30,000)	1,193,000
	Sect 5 Permanent Equipt		3,594,350	(374,500)	3,219,850
	Sect 6 Expendable		1,390,000	(37,000)	1,353,000
	Sect 7 Contractual Serv.	(a) Reproduction	1,430,000	(50,000)	1,380,000
		(b) Office Automation	2,253,800	(61,000)	2,192,800
		(c)Other	267,000	0	267,000
C	Sect 8 Staff Overheads	(a) Training	520,000	(30,000)	490,000
		(b) Insurance	1,897,000	(35,300)	1,861,700
		(c) Joint Services	647,000	(15,000)	632,000
		(d) Miscellaneous	116,500	(30,000)	86,500
	Sect 9 Missions	(a)Missions Official	1,181,100	0	1,181,100
		(b)Missions Technical	1,383,200	0	1,383,200
	Sect 10 TPTC		3,881,000	0	3,881,000
	Sect 11 Various	(a) Representation and Hospitality	283,000	0	283,000
		(b) Dispute Settlement Panels	1,287,000	(70,000)	1,217,000
		(e) Library	609,000	(30,100)	578,900
		(f) Publications	285,000	(10,000)	275,000
		(g) Public Information Activities	210,000	0	210,000
		(h) External Auditors	50,000	(10,000)	40,000
		(i) Ministerial Operating Fund	700,000	(100,000)	600,000
(j) ISO		57,000	0	57,000	
(k) Other		90,000	0	90,000	
Sect 12 Unforeseen		100,000	0	100,000	
D	Sect 13 ITC		16,125,250	(235,850)	15,889,400
Grand Total			160,829,350	(3,768,650)	157,060,700

**2004 PROPOSED REVISED BUDGET FOR THE APPELLATE BODY AND ITS SECRETARIAT**  
(in Swiss francs)

**2004  
Budget**

			Original		Revised
			Proposal 2004	Reductions	Proposal 2004
Part	Section	Item			
<b>A</b>	Sect 1 Work Years	(a)Salary	1,684,900	0	1,684,900
		(b)Pension	350,100	0	350,100
		(c)Common Staff Costs	290,500	0	290,500
	Sect 2 Temporary Assistance		36,000	0	36,000
<b>B</b>	Sect 3 Communications	(a) Telecommunications	6,500	0	6,500
		(b) Utilities	13,000	0	13,000
		(c) Maintenance and Insurance	5,000	0	5,000
	Sect 5 Permanent Equipt		23,000	0	23,000
	Sect 6 Expendable		20,000	0	20,000
	Sect 7 Contractual Serv.	(a) Reproduction	15,000	0	15,000
<b>C</b>	Sect 8 Staff Overheads	(a) Training	25,000	0	25,000
		(b) Insurance	9,000	0	9,000
		(d) Miscellaneous	2,000	0	2,000
	Sect 9 Missions	(a)Missions Official	10,000	0	10,000
	Sect 11 Various	(a) Representation and Hospitality	1,000	0	1,000
		(d) Appellate Body Members	620,000	0	620,000
		(e) Library	8,000	0	8,000
		(l) Appellate Body Operating Fund	1,696,800	(100,000)	1,596,800
<b>G r a n d</b>					
<b>Total</b>			<b>4,815,800</b>	<b>(100,000)</b>	<b>4,715,800</b>

**2005 PROPOSED BUDGET FOR THE WTO SECRETARIAT**  
(in Swiss francs)

**2005 Budget**

<b>Part</b>	<b>Section</b>	<b>Item</b>	<b>Original Proposal 2005</b>	<b>Reductions</b>	<b>Revised Proposal 2005</b>
<b>A</b>	Sect 1 Work Years	(a)Salary	77,117,100	(1,690,300)	75,426,800
		(b)Pension	15,569,000	(356,200)	15,212,800
		(c)Common Staff Costs	14,449,700	(970,300)	13,479,400
	Sect 2 Temporary Assistance		17,417,950	(2,170,800)	15,247,150
<b>B</b>	Sect 3 Communications	(a) Telecommunications	798,000	(50,000)	748,000
		(b) Postal Charges	1,605,000	(150,000)	1,455,000
	Sect 4 Building Facilities	(a) Rental	312,400	(10,000)	302,400
		(b) Utilities	1,651,500	(32,000)	1,619,500
		(c) Maintenance and Insurance	1,170,000	23,000	1,193,000
	Sect 5 Permanent Equipt		3,185,850	(38,000)	3,147,850
	Sect 6 Expendable		1,430,000	(77,000)	1,353,000
	Sect 7 Contractual Serv.	(a) Reproduction	1,430,000	(50,000)	1,380,000
		(b) Office Automation	2,395,300	(210,500)	2,184,800
		(c)Other	277,000	(10,000)	267,000
<b>C</b>	Sect 8 Staff Overheads	(a) Training	710,000	(220,000)	490,000
		(b) Insurance	1,988,900	(45,200)	1,943,700
		(c) Joint Services	647,000	(15,000)	632,000
		(d) Miscellaneous	94,000	(47,500)	46,500
	Sect 9 Missions	(a)Missions Official	1,217,100	(36,000)	1,181,100
		(b)Missions Technical	1,424,200	(41,000)	1,383,200
	Sect 10 TPTC		3,881,000	0	3,881,000
	Sect 11 Various	(a) Representation and Hospitality	283,000	0	283,000
		(b) Dispute Settlement Panels	1,316,000	(99,000)	1,217,000
		(c) Library	642,000	(63,100)	578,900
		(f) Publications	285,000	(10,000)	275,000
		(g) Public Information Activities	210,000	0	210,000
		(h) External Auditors	50,000	(10,000)	40,000
		(i) Ministerial Operating Fund	700,000	(100,000)	600,000
		(j) ISO	57,000	0	57,000
		(k) Other	95,000	(5,000)	90,000
	Sect 12 Unforeseen		100,000	0	100,000
<b>D</b>	Sect 13 ITC		16,306,450	(297,150)	16,009,300
<b>Grand Total</b>			<b>168,815,450</b>	<b>(6,781,050)</b>	<b>162,034,400</b>

**2005 PROPOSED BUDGET FOR THE APPELLATE BODY AND ITS SECRETARIAT**  
(in Swiss francs)

**2005 Budget**

			Original		Revised
Part	Section	Item	Proposal 2005	Reductions	Proposal 2005
A	Sect 1 Work Years	(a)Salary	1,725,200	0	1,725,200
		(b)Pension	357,900	0	357,900
		(c)Common Staff Costs	296,400	0	296,400
	Sect 2 Temporary Assistance		36,000	0	36,000
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	5,000	0	5,000
	Sect 5 Permanent Equipt		23,000	0	23,000
	Sect 6 Expendable		20,000	0	20,000
	Sect 7 Contractual Serv.	(a) Reproduction	15,000	0	15,000
C	Sect 8 Staff Overheads	(a) Training	30,000	(5,000)	25,000
		(b) Insurance	9,000	0	9,000
		(d) Miscellaneous	2,000	0	2,000
	Sect 9 Missions	(a)Missions Official	10,000	0	10,000
	Sect 11 Various	(a) Representation and Hospitality	1,000	0	1,000
(d) Appellate Body Members		620,000	0	620,000	
(e) Library		8,000	0	8,000	
(l) Appellate Body Operating Fund		1,696,800	(100,000)	1,596,800	
Grand Total		4,874,800	(105,000)	4,769,800	

### Waivers Currently in Force

The following waivers, granted under Article IX: 3 of the Agreement Establishing the World Trade Organization, are currently in effect. Waivers granted for a period exceeding one year are reviewed annually by the General Council. The General Council may extend, modify, or terminate a waiver as part of the annual review process. The last review of multi-year waivers took place on December 20, 2001.

WAIVERS IN FORCE AS OF JANUARY 1, 2003	GRANTED	EXPIRES
<i>Introduction of the Harmonized System 2002 changes into WTO Schedules of Tariff Concessions:</i> Argentina, Australia, Bulgaria, Canada, China, Croatia, Czech Republic, Estonia, European Communities, Hungary, Iceland, India, Korea, Latvia, Lithuania, Mexico, Nicaragua, Norway, Romania, Singapore, Slovak Republic, Slovenia, Switzerland, Thailand, United States, Uruguay and Hong Kong, China and Macao, China	December 12, 2002	December 31, 2003
Switzerland — Preferences for Albania and Bosnia-Herzegovina	July 18, 2001	March 31, 2004
Argentina — Introduction of the Harmonized System 1996 changes into WTO Schedules of Tariff Concessions	July 24, 2003	April 30, 2004
Israel — Introduction of the Harmonized System 1996 changes into WTO Schedules of Tariff Concessions	December 16, 2003	April 30, 2004
Thailand - Introduction of the Harmonized System 1996 changes into WTO Schedules of Tariff Concessions	December 16, 2003	April 30, 2004
Sri Lanka — Establishment of a new Schedule VI	December 16, 2003	April 30, 2004
El Salvador — Agreement on the Implementation of Article VII of the GATT 1994	July 8, 2002	March 7, 2005
United States — Caribbean Basin Economic Recovery Act	November 15, 1995	December 31, 2005
EC — Transitional Regime for the EC Autonomous Tariff Rate Quotas on Imports of Bananas	November 14, 2001	December 31, 2005
United States — Former Trust Territory of the Pacific Islands	October 14, 1996	December 31, 2006
Canada - CARIBCAN	October 14, 1996	December 31, 2006
Turkey — Preferential Treatment for Bosnia-Herzegovina	December 8, 2000	December 31, 2006
EC — Autonomous Preferential Treatment to the Countries of the Western Balkans	December 8, 2000	December 31, 2006
Cuba — Article XV:6 of the GATT 1994	December 20, 2001	December 31, 2006
<i>Kimberley Process Certification Scheme for rough diamonds:</i> Australia, Brazil, Canada, Czech Republic, European Communities, Israel, Japan, Korea, Philippines, Sierra Leone, Switzerland, Thailand, United Arab Emirates and the United States. <i>Countries covered by Paragraph 3 of the Decision:</i> Bulgaria, Croatia, Czech Republic, European Communities, Hungary, Mauritius, Romania; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Slovenia, Switzerland, Venezuela	May 15, 2003	December 31, 2006
EC — The ACP-EC Partnership Agreement	November 14, 2001	December 31, 2007
Preferential Tariff Treatment for Least-Developed Countries	June 15, 1999	June 30, 2009
LDCs — Article 70.9 of the TRIPS Agreement with respect to pharmaceutical products	July 8, 2002	January 1, 2016
<i>Introduction of the Harmonized System 2002 changes into WTO Schedules of Tariff Concessions:</i> Argentina, Australia, Bulgaria, Canada, China, Colombia, Croatia, Czech Republic, Estonia,	May 13, 2002	Expires 1 year after the date of implementation of

European Communities, Hungary, Iceland, India, Korea, Latvia, Lithuania, Malaysia, Mexico, New Zealand, Norway, Romania, Singapore, Slovak Republic, Slovenia, Switzerland, Thailand, Turkey, United States, Uruguay and Hong Kong, China		HS2002 changes.
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## WTO SECRETARIAT PERSONNEL STATISTICS

### Number of Staff Members by Job Category

Country	Senior	Professional	Support	Total
Argentina		4	3	7
Australia		8	3	11
Austria		4	2	6
Belgium		3	1	4
Benin		1		1
Bolivia		2	1	3
Brazil	1	3	2	6
Cameroon		1		1
Canada		24	3	27
Chile		2	4	6
China		5		5
Colombia		5	1	6
Congo, RDC		1		1
Costa Rica		1		1
Cote d'Ivoire			1	1
Cuba			1	1
Denmark		1	1	2
Ecuador		1		1
Egypt		5		5
Estonia		1		1
Ethiopia			1	1
Finland		2	2	4
France		46	107	153
Germany		13	3	16
Ghana		3		3
Greece		4		4
Honduras			1	1
Hong Kong		1		1
Hungary	1	2		3
India		9	4	13
Ireland		3	8	11
Italy		10	3	13
Japan		4		4
Kenya	1			1
Korea, Republic of		1		1
Lebanon		1		1
Malawi		1		1
Malaysia		1	1	2
Mauritius		1	1	2
Mexico		6		6
Morocco		2		2



## WTO ACCESSION APPLICATIONS AND STATUS (as of 12-31-03)<sup>1</sup>

Applicant	Status of Multilateral and Bilateral Work
Afghanistan*	Application for accession to the WTO circulated in April 2003.
Algeria (1987)	Working Party (WP) meeting was held December 28, 2003. Factual Summary circulated.
Andorra (1997)	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.
Armenia (1993)	Armenia became the 145 <sup>th</sup> Member of the WTO on February 5, 2003.
Azerbaijan (1997)	First WP meeting held June 2002 to review initial documentation. No market access offers to date.
Bahamas (2001)	Application accepted at July 2001 General Council meeting; has not yet submitted initial documentation to activate the accession negotiations.
Belarus (1993)	Fourth WP meeting held January 24, 2003 to review outstanding issues from March 2001 meeting and status of bilateral negotiations on goods and services market access. Revised offers circulated March 2003. Next meeting likely in early 2004. Factual Summary in development.
Bosnia Herzegovina (1999)	First WP meeting held November 4. No market access offers to date.
Bhutan * (1999)	Application accepted at October 1999 General Council meeting. Initial documentation circulated in February 2003. Responses to initial questions in development.
Cambodia * (1995)	Final formal WP meeting adopted the protocol package on July 22, 2003. Package approved by Fifth Ministerial Conference September 11, 2003.
Cape Verde * (2000)	Application accepted at July 2000 General Council meeting. Initial documentation circulated July 2003. First WP meeting likely in early 2004.
Ethiopia* (2003)	Application accepted at February 2003 General Council meeting. No documentation or market access offers to date.
Iran	Application for accession to the WTO circulated in September 1996; under consideration in the General Council since July 2001.
Kazakhstan (1996)	Last WP meeting held December 13, 2002 to review legislative implementation and plans for removal of WTO-inconsistent measures. Revised goods and services market access offers circulated March and April 2003. Next WP meeting likely in first part of 2004.
Laos * (1998)	Initial documentation submitted in March 2001. No WP meetings or market access offers to date.
Lebanon (1999)	Second WP meeting scheduled for December 4, 2003 to continue review initial documentation. Initial goods and services offers tabled in October and December, respectively.
Libya	Application for accession to the WTO circulated in December 2001. No General Council review to date.

\* 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.

<b>Applicant</b>	<b>Status of Multilateral and Bilateral Work</b>
Former Yugoslav Republic of Macedonia (1995)	Macedonia became the 146 <sup>th</sup> Member of the WTO on April 4, 2003.
Nepal * (1989)	Final formal WP meeting adopted the protocol package on August 15, 2003. Package approved by Fifth Ministerial Conference September 11, 2003. requests.
Russia (1993)	Revised draft WP report text undergoing section by section review to establish the factual basis for commitments. Intensive bilateral and multilateral work on protocol, agriculture, and goods and services market access continues. Legislative implementation ongoing. Next meeting likely in February 2004.
Samoa * (1998)	Informal WP meeting was held July and November 2003 to review initial draft WP report and continue negotiations on market access offers on goods and services. Revised draft WP report in development.
Saudi Arabia (1993)	Last WP meeting and bilateral negotiations held October 23-24, 2003. Revised draft WP report in development. Saudi Arabia providing additional information on the status of legislative implementation. Based on intensive bilateral work, significant progress achieved in goods and services market access negotiations. Next WP meeting scheduled for late February.
Serbia and Montenegro (2001)	Initial documentation submitted in June 2002. Responses to initial questions in development. No market access offers to date. First WP meeting anticipated in first part of 2004. Responses to initial questions and comments delayed by development of a Constitution and domestic governing structure.
Seychelles (1995)	WP meeting held in March 1998 continued review of the foreign trade regime. Next WP meeting to review status of legislative implementation. Further negotiations on goods and services market access awaiting revised offers.
Sudan * (1995)	First WP meeting held on July 11, 2003. No market access offers to date.
Syria	Application for accession to the WTO first circulated in October 2001. No Council review to date.
Tajikistan (2001)	Application accepted at July 2001 General Council meeting. Initial documentation circulated in March 2003. Responses to initial questions in development.
Tonga (1995)	Informal WP meeting held July 17, 2003 to review comments provided on draft WP report and Tongan inputs. Meeting November 11, 2003 reviewed revised WP report and action plans for WTO implementation and revised market access offers. Tongan responses outstanding.
Ukraine (1993)	Last WP meeting held on October 27-28, 2003. Review based on elements of a draft WP report text and information on legislative implementation. Bilateral work on elimination of nontariff barriers to trade in goods. Work on goods and services market access schedules well advanced. Next WP meeting likely in first quarter 2004.
Uzbekistan (1995)	First WP meeting held July 17, 2002 to review initial documentation. No market access offers to date.
Vanuatu * (1995)	Formal WP meeting October 29, 2001 adopted the protocol package. General Council approval delayed pending reconsideration of status by ni-Vanuatu Government.
Vietnam (1995)	Last WP meeting held on December 10-11, 2003. Review initiated of action plans for legislative implementing of WTO provisions. Goods and services market access negotiations continue.

Applicant	Status of Multilateral and Bilateral Work
Yemen * (2000)	Initial documentation submitted in November 2002. No market access offers to date. First WP meeting to be scheduled after circulation of written responses to initial questions and comments.

**INDICATIVE LIST OF GOVERNMENTAL AND  
NON-GOVERNMENTAL PANELISTS**

1. 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.
2. 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.
3. The attached is an updated consolidated list of governmental and non-governmental panelists.<sup>2</sup> The list contains the names included in the previous indicative list (WT/DSB/17) circulated by the Secretariat on 3 November 1999 and takes into account all the modifications made to that list by Members in accordance with the requirement that the list should be updated every two years. The new names approved by the DSB in the period between 28 October 1999 and 20 March 2000 are also included in the attached list.

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<sup>2</sup> Curricula vitae containing more detailed information are available on request from the WTO Secretariat (Council Division – Room 2025). The curricula vitae which have been submitted on diskette are also available on the Document Dissemination Facility.

<b>COUNTRY</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>AUSTRALIA</b>	ARNOTT, Mr. R.J.	Trade in Goods
	CHESTER, Mr. D.O.	TRIPS
	CHURCHE, Mr. M.	Trade in Goods
	GASCOINE, Mr. D.F.	Trade in Goods
	HAWES, Mr. D.C.	Trade in Goods and Services
	HIRD, Miss J.M.	Trade in Goods
	HUSSIN, Mr. P.A.	Trade in Goods
	MAY, Mr. P.H.	Trade in Goods
	O'CONNOR, Mr. P.R.	Trade in Goods
	SMITH, Mr. P.A.	TRIPS
	THOMSON, Mr. G.A.	Trade in Goods and Services
	WAINCYMER, Mr. J.	Trade in Goods
	YOUNG, Ms. E.	Trade in Goods
<b>CANADA</b>	BERNIER, Mr. I.	Trade in Goods and Services
	BRADFORD, Mr. M.V.M.	Trade in Goods and Services
	BROWN, Ms. C.A.	Trade in Goods and Services; TRIPS
	CLARK, Mr. P.J.	Trade in Goods and Services
	CLOSE, Ms. P.	Trade in Goods
	DE MESTRAL, Mr. A.	Trade in Goods
	EYTON, Mr. A.T.	Trade in Goods
	GHERSON, Mr. R.	Trade in Goods
	GOODWIN, Ms. K.M.	Trade in Goods and Services; TRIPS
	HALLIDAY, Mr. A.L.	Trade in Goods and Services
	HERMAN, Mr. L.L.	Trade in Goods
	HINES, Mr. W.R.	Trade in Goods
	MACMILLAN, Ms. K.E.	Trade in Goods
	MCRAE, Mr. D.	Trade in Goods
	OSTRY, Ms. S.	Trade in Goods
	RICHIE, Mr. G.	Trade in Goods
	THOMAS, Mr. J.C.	Trade in Goods and Services
	WINHAM, Mr. M.M.	Trade in Goods

<b>CHILE</b>	BIGGS, Mr. G.	Trade in Goods
	JARA, Mr. A.	Trade in Goods and Services
	MATUS, Mr. M.	Trade in Goods
	PEÑA, Ms. G.	Trade in Goods
	SAEZ, Mr. S.	Trade in Goods and Services
	SATELER, Mr. R.	TRIPS
	TIRONI, Mr. E.	Trade in Goods
<b>COLOMBIA</b>	CÁRDENAS, Mr. M.J.	Trade in Goods and Services; TRIPS
	IBARRA PARDO, Mr. G.	Trade in Goods
	JARAMILLO, Mr. F.	Trade in Goods and Services
	LEAL ANGARITA, Mr. M.	Trade in Goods and Services
	OROZCO JARAMILLO, Ms. C.Y.	Trade in Goods
<b>CUBA</b>	CABALLERO RODRÍGUEZ, Mr. E.	Trade in Goods and Services
<b>CZECH REP.</b>	JUNG, Mr. Z.	Trade in Goods and Services
	PALEČKA, Mr. P.	Trade in Goods and Services
	PRAVDA, Mr. M.	Trade in Goods
	ŠRONĚK, Mr. I.	TRIPS
<b>EGYPT</b>	ABOUL-ENEIN, Mr. M.I.M.	Trade in Goods and Services
	HATEM, Mr. S.A.	Trade in Goods and Services
	SHAHIN, Ms. M.	Trade in Goods and Services; TRIPS
	SHARAFELDIN, Mr. A.	Trade in Goods; TRIPS
	ZAHARAN, Mr. M.M.	Trade in Goods and Services; TRIPS
<b>EUROPEAN COMMUNITIES</b>		
<b>AUSTRIA</b>		
	BENEDEK, Mr. W.	Trade in Goods
	MARTINS, Mr. R.	Trade in Goods
	REITERER, Mr. M.G.K.	Trade in Goods and Services; TRIPS
	WEISS, Mr. J.F.	Trade in Goods and Services; TRIPS
	ZEHETNER, Mr. F.	Trade in Goods



**EUROPEAN****COMMUNITIES (cont'd)****BELGIUM**

DASSESE, Mr. M.P.A.	Trade in Goods and Services
DIDIER, Mr. P.	Trade in Goods
VANDER SCHUEREN, Ms. P.	Trade in Goods and Services

**DENMARK**

BOESGAARD, Mr. H.	Trade in Goods
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**FINLAND**

BERGHOLM, Mr. K.A.	Trade in Goods
JULIN, Mr. J.K.J.	Trade in Goods and Services
LUOTONEN, Mr. Y.K.D.	Trade in Goods
PULLINEN, Mr. M.Y.	Trade in Goods
RANTANEN, Mr. P.I.	Trade in Goods

**FRANCE**

ARMAIGNAC, Ms. M.-C.	Trade in Services; TRIPS
BEAURAIN, Mr. C.	Trade in Services
COMBALDIEU, Mr. J.C.	TRIPS
DELLEUR, Mr. P.	Trade in Services
JENNY, Mr. F.Y.	Trade in Goods and Services; TRIPS
METZGER, Mr. J-M.	Trade in Goods

**GERMANY**

BARTH, Mr. D.	Trade in Services
BARTKOWSKI, Mr. D.H.H.	Trade in Services
DELBRÜCK, Mr. K.	Trade in Goods
HILF, Mr. M.	Trade in Goods and Services
MENG, Mr. W.	Trade in Goods, TRIPS
MÖHLER, Mr. R.	Trade in Goods
von MÜHLENDahl, Mr. A.	TRIPS
OPPERMANN, Mr. T.	Trade in Goods; TRIPS
PETERSMANN, Mr. E-U	Trade in Goods and Services; TRIPS
TANGERMANN, Mr. S.	Trade in Goods
WITT, Mr. P.J.	Trade in Goods

**GREECE**

MYROGIANNIS, Mr. G.	Trade in Goods
STANGOS, Mr. P.N.	Trade in Goods and Services; TRIPS

**EUROPEAN****COMMUNITIES (cont'd)****IRELAND**

LONG, Mr. R.	Trade in Goods; TRIPS
MATTHEWS, Mr. A.H.	Trade in Goods
MOCKLER, Mr. T.F.	Trade in Goods

**ITALY**

GERBINO, Mr. M.	Trade in Goods
GIARDINA, Mr. A.	Trade in Goods and Services

	SACERDOTI, Mr. G.	Trade in Goods and Services
	SCHIRATTI, Mr. G.	Trade in Goods
<b>NETHERLANDS</b>	BLOKKER, Mr. N.M.	Trade in Goods
	HOEKMAN, Mr. B.M.	Trade in Goods and Services; TRIPS
	van de LOCHT, Mr. P.	Trade in Goods and Services
<b>SPAIN</b>	CASTILLO URRUTIA, Mr. J.A.	Trade in Goods
<b>SWEDEN</b>	ANDERSSON, Mr. T.M.	Trade in Goods
	ANELL, Mr. L.	Trade in Goods; TRIPS
	FALLENIOUS, Mr. C.H.	Trade in Goods
	HÅKANSSON, Mr. G.P.-O.	Trade in Services
	HOLGERSSON, Mr. J.	Trade in Goods and Services
	KLEEN, Mr. P.	Trade in Goods
	LINDSTRÖM, Mr. J.M.	Trade in Goods
	MANHUSEN, Mr. C.	Trade in Goods and Services
	RISINGGÅRD, Mr. A.B.	Trade in Goods
	RODIN, Mr. A.	Trade in Goods; TRIPS
	STÅLBERG, Mr. L.A.	Trade in Goods
<b>UNITED KINGDOM</b>	ARKELL, Mr. J.	Trade in Services
	CROFT, Mr. R.H.F.	Trade in Services
	HINDLEY, Mr. B.V.	Trade in Goods and Services
	JOHNSON, Mr. M.D.C.	Trade in Goods
	MUIR, Mr. T.	Trade in Goods and Services; TRIPS
	PLENDER, Mr. R.	Trade in Goods
<b>EUROPEAN</b>		
<b>COMMUNITIES (cont'd)</b>		
<b>UNITED KINGDOM (cont'd)</b>	ROBERTS, Mr. C.W.	Trade in Goods and Services
	TOULMIN, Mr. J.K.	Trade in Services
<b>HONG KONG, CHINA</b>	CARTLAND, Mr. M.D.	Trade in Goods and Services
	FOOTMAN, Mr. R.	Trade in Goods and Services
	LO, Mr. P.Y.F.	Trade in Goods
	MILLER, Mr. J.A.	Trade in Goods and Services
	SZE, Mr. M.C.C.	Trade in Goods
<b>HUNGARY</b>	FURULYÁS, Mr. F.	Trade in Goods
	LAKATOS, Mr. A.	Trade in Goods and Services
<b>ICELAND</b>	BJÖRGVINSSON, Mr. D.T.	Trade in Goods and Services

	JÓHANSSON, Mr. E.M.	Trade in Goods
	SANDHOLT, Mr. B.	Trade in Goods
<b>INDIA</b>	AGARWAL, Mr. V.K.	Trade in Goods; TRIPS
	BHATTACHARYA, Mr. G.C.	Trade in Goods
	CHANDRASEKHAR, Mr. K.M	Trade in Goods and Services; TRIPS
	DAS, Mr. B.L.	Trade in Goods
	DASGUPTA, Mr. J.	Trade in Goods
	GANESAN, Mr. A.V.	Trade in Goods, Services; TRIPS
	GOYAL, Mr. A.	Trade in Services
	KUMAR, Mr. M.	Trade in Goods and Services
	MOHANTY, Mr. P.K.	Trade in Goods
	MUKERJI, Mr. A.	Trade in Goods and Services; TRIPS
	PRASAD, Ms. A.	Trade in Goods and Services; TRIPS
	RAI, Mr. P.	TRIPS
	RAMAKRISHNAN, Mr. N.	Trade in Goods
	RAO, Mr. P.S.	Trade in Goods
	REGE, Mr. N.V.	Trade in Goods
	SAJJANHAR, Mr. A.	Trade in Goods
	SHARMA, Mr. L.	Trade in Goods and Services; TRIPS
<b>INDIA (cont'd)</b>	VENUGOPAL, Mr. K.	Trade in Goods; TRIPS
	WATAL, Mrs. J.	TRIPS
	ZUTSHI, Mr. B.K.	Trade in Goods and Services; TRIPS
<b>ISRAEL</b>	ALTUVIA, Mr. M.	Trade in Goods
	GABAY, Mr. M.	TRIPS
	HARAN, Mr. E.F.	Trade in Services
	SEMADAR, Mr. M.	Trade in Goods
	SHATON, Mr. M.	Trade in Goods and Services
	TALBAR, Mr. M.A.	Trade in Goods
	WEILER, Mr. J.	Trade in Goods
<b>JAPAN</b>	ARAKI, Mr. I	Trade in Goods and Services; TRIPS
	ASAKURA, Mr. H.	Trade in Goods
	ISHIGURO, Mr. K.	Trade in Goods and Services; TRIPS
	IWASAWA, Mr. Y.	Trade in Goods
	KANDA, Mr. H.	Trade in Services
	KEMMOCHI, Mr. N.	Trade in Goods and Services
	KOTERA, Mr. A.	Trade in Goods and Services
	OHARA, Mr. Y.	Trade in Goods; TRIPS
	SHIMIZU, Mr. A.	Trade in Goods
	TAKASE, Mr. T.	Trade in Goods and Services
	TSURUOKA, Mr. K.	Trade in Services

<b>KOREA</b>	CHANG, Mr. S.W.	Trade in Goods
	CHO, Mr. D.Y.	Trade in Goods and Services
	CHO, Mr. T-U	Trade in Goods
	CHOI, Mr. B.I.	Trade in Services
	KIM, Mr. J.B.	Trade in Goods
	LEE, Mr. J.	Trade in Goods
	PARK, Mr. N.	Trade in Goods
<b>MADAGASCAR</b>	YUN, Mr. Y. G.	Trade in Goods
	ANDRIANARIVONY, Mr. M.	Trade in Goods and Services; TRIPS
<b>MAURITIUS</b>	BHUGLAH, Mr. A.	Trade in Goods and Services
<b>NEW ZEALAND</b>	ARMSTRONG, Mr. W.M.V.	Trade in Goods; TRIPS
	CARSON, Mr. C.B.	Trade in Goods
	FALCONER, Mr. C.D.	Trade in Goods
	FALCONER, Mr. W.J.	Trade in Goods and Services; TRIPS
	GROSER, Mr. T.	Trade in Goods
	HAMILTON, Mr. P.W	Trade in Goods
	HARVEY, Mr. M.W.	Trade in Goods
	HIGGIE, Ms. D.C.	Trade in Goods
	KENNEDY, Mr. P.D.	Trade in Goods
	MACEY, Mr. A.	Trade in Goods; TRIPS
	MCPHAIL, Mr. A.H.	Trade in Goods
	NOTTAGE, Mr. M.J.	Trade in Goods
	SLADE, Ms. M.	Trade in Goods and Services; TRIPS
	TRAINOR, Mr. M.J.	Trade in Goods; TRIPS
	WALKER, Mr. D.J.	Trade in Goods and Services
	WOODFIELD, Mr. E.A.	Trade in Goods
<b>NORWAY</b>	LILLERUD, Mr. K.	Trade in Goods
	LUNDBY, Mr. O.	Trade in Goods and Services; TRIPS
	SELAND, Mr. H.A.	Trade in Goods and Services; TRIPS
	TØNSETH, Mr. D.	Trade in Goods and Services; TRIPS
<b>PANAMA</b>	GONZALEZ, Mr. C.E.	Trade in Goods and Services
<b>POLAND</b>	PIETRAS, Mr. J.	Trade in Services
<b>QATAR</b>	MAKKI, Mr. F.	Trade in Goods and Services
<b>SRI LANKA</b>	JAYASEKERA, Mr. D.	Trade in Goods; TRIPS
<b>SWITZERLAND</b>	BALDI, Mr. M.	Trade in Services

<b>SWITZERLAND (cont'd)</b>	BLATTNER, Mr. N.	Trade in Services
	CHAMBOVEY, Mr. D.	Trade in Goods
	COTTIER, Mr. Th.	Trade in Goods and Services; TRIPS
	GETAZ, Mr. H.A.	Trade in Services
	HÄBERLI, Mr. C	Trade in Goods
	INEICHEN-FLEISCH, Ms. M.-G.	Trade in Goods and Services
	KRAFFT, Mr. —C.	Trade in Goods
	TRAN, Ms. T.T.-L.	TRIPS
	WASESCHA, Mr. L.	Trade in Goods and Services; TRIPS
<b>UNITED STATES</b>	WEBER, Mr. R.	Trade in Services
	BIRENBAUM, Mr. D.E.	Trade in Goods
	GORDON, Mr. M.W.	Trade in Goods
	GREENWALD, Mr. J.A.	Trade in Goods; TRIPS
	HUDEEC, Mr. R.E.	Trade in Goods and Services
	KASSINGER, Mr. T.W.	Trade in Goods and Services
	KIRK, Mr. M.K.	TRIPS
	LICHTENSTEIN, Ms. C.C.	Trade in Services
	PARTAN, Mr. D.G.	Trade in Goods
<b>URUGUAY</b>	REYNA, Mr. J.V.	Trade in Goods and Services
	VERRILL, Jr. Mr. C.O.	Trade in Goods
	AMORÍN, Mr. C.	Trade in Goods; TRIPS
	ROSSELLI, Mr. A.O.	Trade in Goods
	VANERIO, Mr. G.	Trade in Goods and Services
<b>VENEZUELA</b>	ESCOBAR, Mr. J.B.	Trade in Services
	MARQUEZ, Mr. G.	Trade in Services

## ANNEX

### Administration of the Indicative List

4. 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)



## INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS

### Addendum

5. At its meetings on 18 May, 26 September, 23 October, 12 December 2000 and 1 February, 16 May and 20 June 2001, the Dispute Settlement Body approved the following names for inclusion on the Indicative List of Governmental and Non-Governmental Panelists.<sup>1</sup>

COUNTRY	NAME	SECTORAL EXPERIENCE
CÔTE D'IVOIRE	GOSSET, Mme. M.	Trade in Goods; TRIPS
EGYPT	RIAD, Mr. T.F.	Trade in Goods and Services; TRIPS
EUROPEAN COMMUNITIES		
AUSTRIA	WAAS, Mr. G.	Trade in Goods and Services; TRIPS
BELGIUM	VAN DER BORGHT, Mr. K.	Trade in Goods
FRANCE	PHAN VAN PHI, Mr. R.	Trade in Goods
NETHERLANDS	BRONCKERS, Mr. M. ENGERING, Mr. F.A.	Trade in Goods and Services; TRIPS Trade in Goods and Services
INDIA	CHAUDHURI, Mr. S. KAUSHIK, Mr. A. PRABHU, Mr. P.P.	Trade in Goods and Services Trade in Goods; TRIPS Trade in Goods; TRIPS
MAURITIUS	BEEKARRY, Mr. N.	Trade in Goods and Services
PERU	DIEZ LIZARDO, Mr. J.	Trade in Goods

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<sup>1</sup> WT/DSB/19.

<b>COUNTRY</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>TURKEY</b>	KAÇAR, Mr. B.	Trade in Goods

# WORLD TRADE ORGANIZATION

**WT/DSB/19/Add.2**

21 January 2002

(02-0280)

## INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS

### Addendum

1. At its meetings on 15 October, 5 November and 18 December 2001, the Dispute Settlement Body approved the following names for inclusion on the Indicative List of Governmental and Non-Governmental Panelists.<sup>2</sup>

COUNTRY	NAME	SECTORAL EXPERIENCE
AUSTRALIA	KENYON, Mr. D.	Trade in Goods and Services
ARGENTINA	MAKUC, Mr. A.	Trade in Goods and Services
	PÉREZ GABILONDO, Mr. J.L.	Trade in Goods; TRIPS
	RUIZ, Mr. J.A.	Trade in Goods and Services
E U R O P E A N COMMUNITIES		
FRANCE	STERN, Mme. B.	Trade in Goods and Services
INDIA	NARAYANAN, Mr. S.	Trade in Goods; TRIPS
ISRAEL	HOROVITZ, Mr. D.	Trade in Goods and Services

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<sup>2</sup> WT/DSB/19 and Add.1.

	POLINER, Mr. H.Z.	TRIPS
<b>MEXICO</b>	AGUILAR ÁLVAREZ, Mr. G.	Trade in Goods and Services; TRIPS
	AMIGO CASTAÑEDA, Mr. J.	TRIPS
	DE MATEO VENTURINI, Mr. F.	Trade in Services
	JASSO TORRES, Mr. H.	Trade in Goods
<b>MEXICO (cont'd)</b>	ORTEGA GÓMEZ, Mr. A.	Trade in Goods and Services; TRIPS
	PEREZCANO DÍAZ, Mr. H.	Trade in Goods and Services; TRIPS
	RAMÍREZ HERNÁNDEZ, Mr. R.	Trade in Goods and Services
	REYES, Ms. L.H.	Trade in Goods
	TRASLOSHEROS HERNÁNDEZ, Mr. J.G.	Trade in Goods and Services; TRIPS
	ZABLUDOVSKY KUPER, Mr. J.	Trade in Goods and Services; TRIPS
<b>NIGER</b>	TANKOANO, Mr. A.	Trade in Goods and Services; TRIPS

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# WORLD TRADE ORGANIZATION

**WT/DSB/19/Add.3**

3 April 2002

(02-1654)

## INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS

### Addendum

At its meeting on 8 March 2002, the Dispute Settlement Body approved the following names for inclusion on the Indicative List of Governmental and Non-Governmental Panelists.<sup>3</sup>

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COUNTRY	NAME	SECTORAL EXPERIENCE
BRAZIL	ABREU, Mr. M.	Trade in Goods and Services
	ARAÚJO, Mr. J.T.	Trade in Goods
	BARRAL, Mr. W.O.	Trade in Goods
	BASSO, Ms. M.	Trade in Goods; TRIPS
	LEMME, Ms. M.C.	Trade in Goods
	MAGALHÃES, Mr. J.C.	Trade in Goods
	MARCONINI, Mr. M.	Trade in Services
	MOTTA VEIGA, Mr. P.L.C.	Trade in Goods and Services
	MOURA ROCHA, Mr. B.	Trade in Services
	NAIDIN, Ms. L.C.	Trade in Goods
	OLIVEIRA FILHO, Mr. G.J.	Trade in Goods
	RIOS, Ms. S.M.	Trade in Goods
	SOARES, Mr. G.F.	TRIPS
	THORSTENSEN, Ms. V.H.	Trade in Goods

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<sup>3</sup> WT/DSB/19 and Add.1 and Add.2.

**EUROPEAN  
COMMUNITIES**

**SPAIN**

DÍAZ MIER, Mr. M.Á.

Trade in Services

LÓPEZ DE SILANES MARTÍNEZ Mr. J.P.

Trade in Goods and Services

**INDIA**

AGRAWAL, Mr. R.P.

Trade in Goods and Services; TRIPS

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# WORLD TRADE ORGANIZATION

**WT/DSB/19/Add.4**  
3 July 2002  
(02-3726)

## INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS

### Addendum

At its meetings on 22 May and 24 June 2002, the Dispute Settlement Body approved the following names for inclusion on the Indicative List of Governmental and Non-Governmental Panelists.<sup>4</sup>

COUNTRY	NAME	SECTORAL EXPERIENCE
ARGENTINA	NISCOVOLOS, Mr. L.P.	Trade in Services
CUBA	HERNÁNDEZ, Mr. A.	Trade in Goods and Services
	MARZIOTA DELGADO, Mr. E.A	Trade in Goods and Services
PAKISTAN	NAYYAR, Mr. S.I.M.	Trade in Goods; TRIPS
PANAMA	FRANCIS LANUZA, Ms. Y.	Trade in Goods and Services
	HARRIS ROTKIN, Mr. N.	Trade in Goods and Services
	SALAZAR FONG, Ms. D.	Trade in Goods
UNITED STATES	BROWN-WEISS, Ms. E.	Trade in Goods and Services
	GANTZ, Mr. D.	Trade in Goods
	HELPER, Ms. R.T.	Trade in Services

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<sup>4</sup> WT/DSB/19 and Add.1, Add.2 and Add.3.

LAYTON, Mr. D.

Trade in Goods

McGINNIS, Mr. J.

Trade in Goods; TRIPS

SHERMAN, Mr. S.

Trade in Goods

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# WORLD TRADE ORGANIZATION

**WT/DSB/19/Add.5**  
2 December 2002  
(02-6614)

## **INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS**

### Addendum

At its meetings on 11 and 28 November 2002, the Dispute Settlement Body approved the following names for inclusion on the Indicative List of Governmental and Non-Governmental Panelists.<sup>5</sup>

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<b>COUNTRY</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>CROATIA</b>	ŠARČEVIĆ, Mr. P	Trade in Goods and Services
<b>EUROPEAN COMMUNITIES</b>		
<b>BELGIUM</b>	ZONNEKEYN, Mr. G.A.	Trade in Goods
<b>UNITED KINGDOM</b>	QURESHI, Mr. A.H.	Trade in Goods
<b>HONG KONG, CHINA</b>	CHEUNG, Mr. P.K.F.	TRIPS
	LEUNG, Ms. A.K.L.	TRIPS
	LITTLE, Mr. D.	Trade in Goods and Services
	SELBY, Mr. S.R.	TRIPS
<b>URUGUAY</b>	WHITELAW, Mr. J.A.	Trade in Goods

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<sup>5</sup>WT/DSB/19 and Add.1, Add.2, Add.3 and Add.4.

# **WORLD TRADE ORGANIZATION**

**WT/DSB/W/215**  
9 December 2002  
(02-6789)

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**Dispute Settlement Body**  
**19 December 2002**

## **PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS**

The following additional names have been proposed for inclusion on the Indicative List of Governmental and Non-Governmental Panelists in accordance with Article 8.4 of the DSU.<sup>6</sup>

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<b>COUNTRY</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>COLOMBIA</b>	OROZCO, Ms. A.M. BARBERI, Mr. F.	Trade in Goods Trade in Goods
<b>ECUADOR</b>	CEVALLOS, Mr. A.P.	Trade in Goods
<b>NEW ZEALAND</b>	FARRELL, Mr. R.	Trade in Goods

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<sup>6</sup>Curricula Vitae containing more detailed information are available on request from the WTO Secretariat (Council and Trade Negotiations Division – Room 3105).

**Dispute Settlement Body**  
**19 December 2002**

**PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF  
GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS**

Corrigendum

In the proposed nominations for the Indicative List of Governmental and Non-Governmental Panelists (WT/DSB/W/215), the name under Ecuador should read as follows:

<b>COUNTRY</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>ECUADOR</b>	PINOARGOTE CEVALLOS, Mr. A.	Trade in Goods

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**Organe de règlement des différends**  
**19 décembre 2002**

**LISTE INDICATIVE DE PERSONNES AYANT OU NON DES ATTACHES  
AVEC DES ADMINISTRATIONS NATIONALES APPELÉES À FAIRE  
PARTIE DE GROUPES SPÉCIAUX - DÉSIGNATIONS PROPOSÉES**

Corrigendum

Dans les désignations proposées pour la liste indicative de personnes ayant ou non des attaches avec des administrations nationales appelées à faire partie de groupes spéciaux (WT/DSB/W/215), le nom indiqué pour l'Équateur doit se lire comme suit:

<b>PAYS</b>	<b>NOM</b>	<b>EXPÉRIENCE SECTORIELLE</b>
<b>ÉQUATEUR</b>	M. A. PINOARGOTE CEVALLOS	Commerce des marchandises

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**Órgano de Solución de Diferencias**  
**19 de diciembre de 2002**

**CANDIDATURAS PROPUESTAS PARA SU INCLUSIÓN EN LA LISTA INDICATIVA  
DE EXPERTOS GUBERNAMENTALES Y NO GUBERNAMENTALES  
QUE PUEDEN SER INTEGRANTES DE GRUPOS ESPECIALES**

Corrigendum

En las candidaturas propuestas para su inclusión en la lista indicativa de expertos gubernamentales y no gubernamentales que pueden ser integrantes de grupos especiales (WT/DSB/W/215), el nombre correspondiente al epígrafe "Ecuador" debe ser el siguiente:

**PAÍS**  
**ECUADOR**

**NOMBRE**  
PINOARGOTE CEVALLOS, Sr. A.

**EXPERIENCIA SECTORIAL**  
Comercio de Mercancías

# **WORLD TRADE ORGANIZATION**

**WT/DSB/W/220**  
7 February 2003  
(03-0833)

**Dispute Settlement Body**  
**19 February 2003**

## **PROPOSED NOMINATIONS FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS**

The following additional names have been proposed for inclusion on the Indicative List of Governmental and Non-Governmental Panelists in accordance with Article 8.4 of the DSU.<sup>7</sup>

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<b>COUNTRY</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>SWITZERLAND</b>	ADDOR, Mr. F. BREINING, Ms. Ch. TSCHÄNI, Mr. H.	TRIPS Trade in Services Trade in Goods

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<sup>7</sup>Curricula Vitae containing more detailed information are available on request from the WTO Secretariat (Council and Trade Negotiations Committee Division – Room 3105).

# WORLD TRADE ORGANIZATION

**WT/DSB/W/223**

7 March 2003

(03-1330)

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**Dispute Settlement Body**

**18 March 2003**

## **PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS**

The following name has been proposed for inclusion on the Indicative List of Governmental and Non-Governmental Panelists in accordance with Article 8.4 of the DSU.<sup>8</sup>

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<b>COUNTRY</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>BRAZIL</b>	BARTHEL-ROSA, Mr. P.	Trade in Goods

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<sup>8</sup>Curriculum Vitae containing more detailed information is available on request from the WTO Secretariat (Council and Trade Negotiations Division – Room 3105).

# WORLD TRADE ORGANIZATION

**WT/DSB/W/226**  
4 April 2003  
(03-1877)

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**Dispute Settlement Body**  
**15 April 2003**

## **PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS**

The following name has been proposed for inclusion on the Indicative List of Governmental and Non-Governmental Panelists in accordance with Article 8.4 of the DSU.<sup>9</sup>

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<b>COUNTRY</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>BOLIVIA</b>	ZELADA CASTEDO, Mr. A.	Trade in Goods

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<sup>9</sup>Curriculum Vitae containing more detailed information is available on request from the WTO Secretariat (Council and Trade Negotiations Committee Division – Room 3105).

# WORLD TRADE ORGANIZATION

**WT/DSB/W/231**

13 June 2003

(03-3087)

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**Dispute Settlement Body**

**24 June 2003**

## **PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS**

The following name has been proposed for inclusion on the Indicative List of Governmental and Non-Governmental Panelists in accordance with Article 8.4 of the DSU.<sup>10</sup>

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<b>COUNTRY</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>E U R O P E A N COMMUNITIES</b>		
<b>UNITED KINGDOM</b>	ROBERTS, Mr. D.F.	Trade in Goods

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<sup>10</sup>Curriculum Vitae containing more detailed information is available on request from the WTO Secretariat (Council and Trade Negotiations Committee Division – Room 3105).

# WORLD TRADE ORGANIZATION

**WT/DSB/W/235**

11 July 2003  
(03-3729)

**Dispute Settlement Body**  
**21 July 2003**

## **PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS**

The following name has been proposed for inclusion on the Indicative List of Governmental and Non-Governmental Panelists in accordance with Article 8.4 of the DSU.<sup>11</sup>

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<b>COUNTRY</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>PERU</b>	Belaúnde G., Mr. V.A.	TRIPS

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<sup>11</sup>Curriculum Vitae containing more detailed information is available on request from the WTO Secretariat (Council and Trade Negotiations Committee Division – Room 3105).



# WORLD TRADE ORGANIZATION

**WT/DSB/W/235**

11 July 2003

(03-3729)

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**Dispute Settlement Body**

**21 July 2003**

## **PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS**

The following name has been proposed for inclusion on the Indicative List of Governmental and Non-Governmental Panelists in accordance with Article 8.4 of the DSU.<sup>12</sup>

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<b>COUNTRY</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>PERU</b>	Belaúnde G., Mr. V.A.	TRIPS

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<sup>12</sup>Curriculum Vitae containing more detailed information is available on request from the WTO Secretariat (Council and Trade Negotiations Committee Division – Room 3105).

# WORLD TRADE ORGANIZATION

**WT/DSB/W/239**  
19 August 2003  
(03-4318)

**Dispute Settlement Body**  
**29 August 2003**

## **PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS**

The following name has been proposed for inclusion on the Indicative List of Governmental and Non-Governmental Panelists in accordance with Article 8.4 of the DSU.<sup>13</sup>

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<b>COUNTRY</b>	<b>NAME</b>	<b>SECTORAL EXPERIENCE</b>
<b>LIECHTENSTEIN</b>	Ziegler., Mr. A.R.	Trade in Services; TRIPS

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<sup>13</sup>Curriculum Vitae containing more detailed information is available on request from the WTO Secretariat (Council and Trade Negotiations Committee Division – Room 3105).

## MEMBERSHIP OF THE WTO APPELLATE BODY

*The membership of the WTO Appellate Body is as follows:*

Mr. G M Abi-Saab (Egypt),  
Professor Luiz Olavo Baptista, (Brazil)  
Merit E. Janow , (United States)  
Mr. Yasuhei Taniguchi (Japan),

Mr. James Bacchus (United States),  
Mr. A V Ganesan (India),  
Mr. John S. Lockhart,(Australia)  
Professor Giorgio Sacerdoti, (EU)

### *BIOGRAPHICAL NOTES:*

#### **Georges Michel Abi-Saab**

Born in Egypt on 3 June 1933, Georges Michel Abi-Saab is Professor of International Law at the Graduate Institute of International Studies in Geneva, Honorary Professor at Cairo University's Faculty of Law, and a Member of the Institute of International Law.

Mr 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 has also served as a Judge on the Appeals Chamber of the International Criminal Tribunals for the former Yugoslavia and for Rwanda, and as a Member of the Administrative Tribunal of the International Monetary Fund and of various international arbitral tribunals.

Mr Abi-Saab is the author of two courses at the Hague Academy of International Law, and of several books and articles, including "International Crises and the Role of Law: The United Nations Operation in the Congo 1960-1964" (Oxford University Press 1978).

#### **James Bacchus**

James Bacchus of the United States, born 1949, is an attorney who has been closely involved with international trade matters in both his public and professional careers for more than twenty years.

During his tenure in the US Congress, where he served two terms of office in the House of Representatives from 1991-1994, he was appointed to the ad hoc Trade Policy Coordinating Committee. From 1979-1981, he had served as Special Assistant to the United States Trade Representative Reubin Askew. Since leaving Congress in January 1995, Mr. Bacchus has returned to the Florida-based private law firm of Greenberg Traurig where he began his legal career before he joined the USTR in 1979. He has practiced widely in the areas of corporate banking and international law.

Mr. Bacchus' educational distinctions include Bachelor of Arts with High Honours in History, Vanderbilt University, 1971; Master of Arts in History, Yale University, 1973 and Woodrow Wilson Fellow; and Juris Doctor, Florida State University College of Law, 1978. He has been the Thomas P. Johnson Distinguished Visiting Scholar at Rollins College in Florida, and remains an Adjunct Professor in the Department of Politics at Rollins, where he teaches political philosophy and public policy on a variety of issues including international trade.

#### **Luiz Olavo Baptista**

Born in Brazil on 24 July 1938, Luiz Olavo Baptista is Professor of Law at the Department of International Law, University of Sao Paulo Law School. He has been practising law for more than thirty

years as lawyer, counsel and arbitrator in Brazil and abroad, advising corporations, governments and individuals.

Professor Baptista obtained Full Professorship of International Law in Sao Paulo University Law School in 1993, and has written many books and articles concerning new and complex legal issues, particularly those related to international business, trade and foreign investments.

Professor Baptista was one of the pioneers in studying international arbitration in Brazil, and has a long experience in arbitration procedures in different jurisdictions. He participates as a member of the arbitral corps of several associations, and has acted as advisor for Brazilian and international organizations. He also has extensive experience in the issuance of legal opinions, structuring and preparation of merger and acquisition and joint ventures agreements.

#### **Arumugamangalam Venkatachalam Ganesan**

Born in India on 7 June 1935, Arumugamangalam Venkatachalam Ganesan served in the Government of India for 34 years until his retirement on 30 June 1993. During his long career, he held various positions in his Government and at the United Nations Headquarters in New York, including: Commerce Secretary (1991-1993) in charge of India's foreign trade policy and chief negotiator of India in the Uruguay Round; Civil Aviation Secretary (1990-1991); Additional Secretary at the Ministry of Industry (1986-1989) in charge of industrial policies, foreign investment in India, administration of India's laws on patents, designs and trade marks, closely associated with the TRIPS agenda in the Uruguay Round; and Inter-Regional Adviser (1980-1985) at the United Nations Centre on Transnational Corporations in New York.

Since his retirement from government service, Mr Ganesan has been active as a consultant for the UNDP and for the private and public sectors in India. He was, until recently, a member of the Permanent Group of Experts under the WTO Agreement on Subsidies and Countervailing Measures; a member of the Indian Government's Trade Advisory Committee on multilateral trade negotiations; and a member of a WTO dispute settlement panel examining the European Communities' complaint against Section 110(5) of the US Copyright Act.

Mr Ganesan has written numerous newspaper articles and monographs dealing with the Uruguay Round, the WTO and the Seattle Ministerial Conference. He is the author of several papers on trade and investment issues published by various UN agencies such as UNCTAD and UNIDO, and has contributed to many books published in India concerning the Uruguay Round and intellectual property rights.

#### **Merit E. Janow**

Born in the United States on 13 May 1958, Ms Merit E. Janow has been since 1994 Professor in the Practice of International Economic Law and International Affairs at the School of International and Public Affairs of Columbia University. She teaches advanced law courses in international trade and comparative antitrust law along with courses on international trade policy.

Before joining Columbia's faculty in 1994, Ms Janow was Deputy Assistant US Trade Representative for Japan and China (1990-93), and worked as a corporate lawyer specializing in mergers and acquisitions with the law firm Skadden, Arps, Slate, Meagher & Flom in New York (1988-90).

Ms Janow is the author of several books and has contributed chapters to more than a dozen books. She grew up in Tokyo, Japan, and speaks Japanese. Ms Janow served as a WTO panellist from September 2001 to May 2002 in the dispute European Communities — Trade Description of Sardines (WT/DS231).

#### **John S. Lockhart**

Born in Australia on 2 October 1935, John S Lockhart has been Executive Director at the Asian Development Bank in the Philippines since July 1999, working closely with developing member countries on the development of programmes directed at poverty alleviation through the promotion of economic growth. His other duties at the ADB include the development of law reform programmes and provision of advice on legal questions, notably the interpretation of the ADB's Charter, international treaties and UN instruments.

Prior to joining the ADB, Mr Lockhart served as Judicial Reform Specialist at the World Bank focusing on strengthening legal and judicial institutions and working closely with developing countries and economies in transition in their projects of judicial and legal reform.

Since graduating in law from the University of Sydney in 1958, Mr Lockhart's professional experience has included: Judge, Federal Court of Australia (1978-1999); President of the Australian Competition Tribunal (1982-1999); Deputy President of the Australian Copyright Tribunal (1981-1997); and Queen's Counsel, Australia and the United Kingdom Privy Council (1973-1978).

### **Yasuhei Taniguchi**

Born in Japan on 26 December 1934, Yasuhei Taniguchi is Professor of Law at Tokyo Keizai University, and an Attorney at Law in Tokyo. He has been a Visiting Professor at several universities, including: University of Hong Kong; Georgetown University Law Center, Washington DC; Stanford Law School, University of California; Murdoch University, Perth; University of Melbourne; Harvard Law School; University of Paris XII; and New York University School of Law.

Mr Taniguchi is affiliated to several legal institutions including the Japan Commercial Arbitration Association; International Council for Commercial Arbitration; the American Law Institute; and the Chartered Institute of Arbitrators. He has handled many international arbitration cases and is listed in the arbitrators' panel of the Japan Commercial Arbitration Association; the American Arbitration Association; the Hong Kong International Arbitration Centre; the China International Economic and Trade Arbitration Commission; and the Cairo Regional Centre of Commercial Arbitration.

He has written numerous books and articles in the fields of civil procedure, arbitration, judicial system/legal profession, and comparative/international law. His publications have appeared in Japanese, Chinese, English, French, Italian and German.

### **Giorgio Sacerdoti**

Born in France on 2 March 1943, Giorgio Sacerdoti has been 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 OECD Working Group on Bribery in International Business Transactions (since 1999); Panellist at the International Centre for Settlement of Investment Disputes (since 1981); and Consultant to the Council of Europe (1996), UNCTAD (1998-2000), World Bank (1999-2000) in matters related to international investments, trade, bribery, development and good governance. In the private sector, he has often served as arbitrator and chairman of arbitration tribunals and in *ad hoc* arbitration proceedings for the settlement of international commercial disputes.

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.

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 Internet sites:

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 the Document Dissemination Facility (DDF), 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

Schedules of future WTO meetings

Press Releases on Appointments to WTO Bodies, Appellate Body Reports and Panel Reports, and others

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

On-line document database where one can find and download official documents

Working Procedures for Appellate Review

Legal Texts of the WTO agreements

Special Studies on key WTO issues

WTO Annual Reports

### Community/Forums, such as:

Media  
NGO's

General public news and chat rooms

### Trade Topics, such as:

Briefing Papers on WTO activities in individual sectors, including goods, services, intellectual property, and other topics

Disputes and Dispute Reports

WTO publications may be ordered directly from the following sources:

The World Trade Organization  
Publications Services  
Centre William Rappard  
Rue de Lausanne 154

Berman Associates  
4611-F Assembly Drive  
Lanham, Md. 20706-4391

CH - 1211 Geneva 21  
Switzerland

tel:  
(41 22) 739-5208  
fax:  
(41 22) 739-5792

tel:  
800/274-4888  
301/459-7666  
fax:  
301/459-0056

e-mail: [publications@wto.org](mailto:publications@wto.org)

<sup>0</sup> Interest earned in 2002 under the Early Payment Encouragement Scheme (L/6384) and to be deducted from the 2004 contribution.

## **ANNEX III**

## **U.S. TRADE-RELATED AGREEMENTS**

### **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 Agreements**

- ▶ Marrakesh Agreement Establishing the World Trade Organization (signed April 15, 1994) and the Ministerial Decisions and Declarations adopted by the Uruguay Round Trade Negotiations Committee on December 15, 1993
  - 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 Textiles and Clothing<sup>1</sup>
    - v. Agreement on Technical Barriers to Trade
    - vi. Agreement on Trade-Related Investment Measures
    - vii. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
    - viii. Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994
    - ix. Agreement on Preshipment Inspection
    - x. Agreement on Rules of Origin
    - xi. Agreement on Import Licensing Procedures
    - xii. Agreement on Subsidies and Countervailing Measures
    - xiii. Agreement on Safeguards
    - xiv. Information Technology Agreement (ITA) (March 26, 1997)
  - b. General Agreement on Trade in Services
    - i. Basic Telecommunications Services Agreement (February 15, 1997)
    - ii. Financial Services Agreement (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)

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<sup>1</sup> Members with whom the United States maintains bilateral quota arrangements under the provisions of the Agreement on Textiles and Clothing are: Bahrain, Bangladesh, Brazil, Bulgaria, Burma/Myanmar, Colombia, Costa Rica, Czech Republic, Dominican Republic, Egypt, El Salvador, Fiji, Guatemala, Hong Kong/China, Hungary, India, Indonesia, Jamaica, Kenya, Kuwait, Macau, Malaysia, Mauritius, Pakistan, Philippines, Poland, Qatar, Romania, Singapore, Slovak Republic, Sri Lanka, Thailand, Turkey, United Arab Emirates and Uruguay.



- ii. Agreement on Government Procurement (April 15, 1994)
- ▶ International Tropical Timber Agreement (successor to the 1983 International Tropical Timber Agreement; signed January 26, 1994; entered into force January 1, 1997)
- ▶ North American Free Trade Agreement (signed December 17, 1992; implementing legislation signed December 8, 1993)
  - 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)
    - ▶ Agreement with Mexico to a third round of NAFTA Accelerated Tariff Elimination (November 29, 2000)
    - ▶ Agreement with Mexico to a fourth round of NAFTA Accelerated Tariff Elimination (December 5, 2001)
- ▶ Joint Statement Concerning Semiconductors by the European Commission and the Governments of the United States, Japan, and Korea. (June 10, 1999)
- ▶ Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunication Agreement (June 5, 1998)
- ▶ Agreement on Mutual Acceptance of Oenological Practices (December 18, 2001)

## **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)

**Azerbaijan**

- ▶ Agreement on Bilateral Trade Relations (April 21, 1995)
- ▶ Bilateral Investment Treaty (August 2, 2001)

**Bahrain**

- ▶ Bilateral Investment Treaty (May 30, 2001)

**Bangladesh**

- ▶ Bilateral Investment Treaty (July 25, 1989)

**Belarus**

- ▶ Agreement on Bilateral Trade Relations (February 16, 1993)
- ▶ Agreement regarding Imports of Certain Fiberglass Fabric (February 17, 2000)

**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)
- ▶ 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)
- ▶ Exchange of notes extending bilateral agreement on Trade in Textiles and Textile Products (December 31, 2001)

## **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)

## **Chile**

- ▶ U.S.-Chile Free Trade Agreement (January 1, 2004)

## **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 (signed July 7, 1979; entered into force February 1, 1980; renewed February 1, 2001)
- ▶ 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)
- ▶ Agreement to Strengthen Space Launch Trade Terms (October 27, 1997)
- ▶ Bilateral Agriculture Agreement (April 10, 1999)

#### **Colombia**

- ▶ Memorandum of Understanding on Trade in Bananas (January 9, 1996)

#### **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**

- ▶ Agreement on Bilateral Trade Relations (April 12, 1990)
- ▶ Bilateral Investment Treaty (December 19, 1992)

#### **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)

## **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 Concerning the Application of the GATT Agreement on Trade in Civil Aircraft (July 17, 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 (signed May 18, 1997; entered into force December 1, 1998)
- ▶ Agreement between the United States and the European Community on Sanitary Measure 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)

### **Georgia**

- ▶ Agreement on Bilateral Trade Relations (August 13, 1993)
- ▶ Bilateral Investment Treaty (August 17, 1997)

### **Grenada**

- ▶ Bilateral Investment Treaty (March 3, 1989)

### **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)
- ▶ Agreement on Comprehensive Trade Package on Tariff Reduction (April, 2002)

### **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 1992)

## **Israel**

- ▶ U.S.-Israel Free Trade Agreement (August 19, 1985)
- ▶ U.S.-Israel Agreement on Trade in Agriculture (December 4, 1996)
- ▶ U.S.-Israel Agreement on Almonds and Certain Other Agricultural Trade Issues (November 30, 1997)

## **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)
- ▶ Science and Technology Agreement (June 20, 1988; extended June 16, 1993)
- ▶ Measures Concerning Cellular Telephone and Third Party Radio System Telecommunications Issues (June 28, 1989)
- ▶ 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)
- ▶ U.S.-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)

- ▶ U.S.-Japan Framework for a New Economic Partnership (July 10, 1993)
- ▶ Exchange of Letters Regarding Apples (September 13, 1993)
- ▶ U.S.-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)
- ▶ Exchange of Letters Regarding Implementation of the Measures Regarding Cellular Telephone and Third-Party Radio Systems (March 12, 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)
- ▶ U.S.-Japan Insurance Agreement (December 24, 1996)
- ▶ Japan's Recognition of U.S.-Graded 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)



- ▶ U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy (June 19, 1997)
- ▶ U.S.-Japan Agreement on Distilled Spirits (December 17, 1997)
- ▶ First Joint Status Report on Deregulation and Competition Policy (May 29, 1998)
- ▶ U.S.-Japan Joint Report on Investment (April 28, 1999)
- ▶ Second Joint Status Report on Deregulation and Competition Policy (May 3, 1999)
- ▶ U.S.-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)
- ▶ U.S.-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)

#### **Jordan**

- ▶ Agreement Between U.S. 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)

### **Kyrgyzstan**

- ▶ Agreement on Bilateral Trade Relations (August 21, 1992)
- ▶ Bilateral Investment Treaty (January 12, 1994)

### **Laos**

- ▶ Exchange of notes extending bilateral agreement on Trade in Textiles and Textile Products (August 4, 2000)

### **Latvia**

- ▶ Agreement on Trade & Intellectual Property Rights Protection (January 20, 1995)
- ▶ Bilateral Investment Treaty (December 26, 1996)

### **Lithuania**

- ▶ Bilateral Investment Treaty (November 22, 2001)

### **Macedonia**

- ▶ Exchange of notes extending bilateral agreement on Trade in Textiles and Textile Products (June 2, 2000)
- ▶ Memorandum of Understanding Establishing Outward Processing Program (September 17, 1999)

### **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)
- ▶ U.S.-Mexico Exchange of Letters Regarding Mexico's NAFTA Safeguard on Certain Poultry Products (July 24-25, 2003)

### **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)

**Nepal**

- ▶ Exchange of notes extending bilateral agreement on Trade in Textiles and Textile Products (July 13, 2000)

**Nicaragua**

- ▶ Bilateral Intellectual Property Rights Agreement with Nicaragua (December 22, 1997)

**Norway**

- ▶ Agreement on Procurement of Toll Equipment (April 26, 1990)

**Panama**

- ▶ Bilateral Investment Treaty (May 30, 1991)
- ▶ Agreement on Bilateral Trade Relations (1994)

**Paraguay**

- ▶ Memorandum of Understanding on Intellectual Property Rights (November 17, 1998)

**Peru**

- ▶ Memorandum of Understanding on Intellectual Property Rights (May 23, 1997)

**Philippines**

- ▶ Protection and Enforcement of Intellectual Property Rights (April 6, 1993)
- ▶ Agreement regarding Pork and Poultry Meat (February 13, 1998)

**Poland**

- ▶ Business and Economic Treaty (August 6, 1994)
- ▶ Bilateral Investment Treaty (August 6, 1994)
- ▶ Agreement on Comprehensive Trade Package on Tariff Reduction (September, 2002)

## **Romania**

- ▶ Agreement on Bilateral Trade Relations (April 3, 1992)
- ▶ Bilateral Investment Treaty (January 15, 1994)
- ▶ Memorandum of Understanding Establishing Outward Processing Program (September 10, 1999)

## **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)
- ▶ 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 on Russian Firearms & Ammunition (April 3, 1996)
- ▶ Exchange of notes extending bilateral agreement on Trade in Textiles and Textile Products (February 26, 2001)

## **Senegal**

- ▶ Bilateral Investment Treaty (October 25, 1990)

## **Singapore**

- ▶ Agreement on Intellectual Property Rights Protection (April 27, 1987)
- ▶ U.S.-Singapore Free Trade Agreement (January 1, 2004)

## **Slovakia**

- ▶ Agreement on Bilateral Trade Relations (April 12, 1990)
- ▶ Bilateral Investment Treaty (December 19, 1992)

## **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)
- ▶ U.S.-Taiwan Medical Device Issue: List of Principles (September 30, 1996)
- ▶ Agreement on Market Access (February 20, 1998)
- ▶ 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 on Trade in Textiles and Textile Products (January 15, 2001)

#### **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)
- ▶ Agreement on Trade in Textiles and Textile Products (July 17, 2003)

## **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)
- ▶ Inter-American Mutual Recognition Agreement for Conformity Assessment of Telecommunications Equipment (October 29, 1999)

### **Bilateral Agreements**

#### **Belarus**

- ▶ Bilateral Investment Treaty (signed January 15, 1994; pending exchange of instruments)

#### **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)

#### **Laos**

- ▶ Bilateral Trade Agreement (initialed August 13, 1997)

#### **Lithuania**

- ▶ Trade and Intellectual Property Rights Agreement (April 26, 1994; requires approval by Lithuanian legislature)

#### **Mozambique**

- ▶ Bilateral Investment Treaty (signed December 1, 1998; pending ratification by Mozambique and exchange of instruments of ratification.)

#### **Nicaragua**

- ▶ Bilateral Investment Treaty (signed July 1, 1995; pending ratification by United States and exchange of instruments of ratification.)



**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 February 2002. 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
  - ▶ Summit of the Americas Declaration and Action Plan (December 11, 1994)
  - ▶ Joint Declaration of the Trade Ministers (June 30, 1995)
  - ▶ Joint Declaration of the Trade Ministers (March 21, 1996)
  - ▶ Joint Ministerial Declaration of Belo Horizonte (May 16, 1997)
  - ▶ Joint Ministerial Declaration of San Jose (March 19, 1998)
  - ▶ Summit of the Americas Declaration and Action Plan (April 19, 1998)
  - ▶ Joint Declaration of Toronto (November 4, 1999)
  - ▶ Joint Ministerial Declaration of Buenos Aires (April 7, 2001)
- ▶ 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)
  - ▶ 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)
- ▶ U.S.-Andean Community Trade and Investment Council Agreement (October 30, 1998)
- ▶ United States-Central American Regional Trade and Investment Framework Agreement (March 20, 1998)

### **Bilateral Agreements and Declarations**

#### **Algeria**

- ▶ U.S.-Algeria Trade and Investment Framework Agreement (July 13, 2001)

#### **Bahrain**

- ▶ Trade and Investment Framework Agreement (June 18, 2002)

#### **Brunei Darussalam**

- ▶ Trade and Investment Framework Agreement (December 16, 2002)

#### **Chile**

- ▶ U.S.-Chile Joint Commission on Trade and Investment (May 19, 1998)

#### **Common Market for Eastern and Southern Africa**

- ▶ Trade and Investment Framework Agreement (October, 2001)

#### **Egypt**

- ▶ U.S.-Egypt Trade and Investment Framework Agreement (July 1, 1999)

#### **European Union**

- ▶ U.S.-EU Transatlantic Economic Partnership (May 18, 1998)
- ▶ U.S.-EU Joint Action Plan for the Transatlantic Economic Partnership (November 9, 1998)

#### **Ghana**

- ▶ U.S.-Ghana Trade and Investment Framework Agreement (February 26, 1999)

**Indonesia**

- ▶ U.S.-Indonesia Understanding on a Trade and Investment Council (1996)

**Japan**

- ▶ U.S.-Japan Joint Statement on the Bilateral Steel Dialogue (September 24, 1999)

**Morocco**

- ▶ U.S.-Morocco Trade and Investment Framework Agreement (March 16, 1995)

**Nigeria**

- ▶ U.S.-Nigeria Trade and Investment Framework Agreement (February 16, 2000)

**Philippines**

- ▶ Trade and Investment Framework Agreement (1989)

**Saudi Arabia**

- ▶ Trade and Investment Framework Agreement (July 31, 2003)

**South Africa**

- ▶ U.S.-South Africa Trade and Investment Framework Agreement (February 18, 1999)

**Sri Lanka**

- ▶ Trade and Investment Framework Agreement (July 25, 2002)

**Taiwan**

- ▶ Trade and Investment Framework Agreement (September 19, 1994)

**Thailand**

- ▶ Trade and Investment Framework Agreement (October 23, 2002)

**Tunisia**

- ▶ U.S.-Tunisia Trade and Investment Framework Agreement (October 2, 2002)

**Turkey**

- ▶ U.S.-Turkey Trade and Investment Framework Agreement (September 29, 1999)

**Uruguay**

- ▶ U.S.-Uruguay Bilateral and Commercial Trade Review (May 20, 1999)

**West African Economic and Monetary Union**

- ▶ Trade and Investment Framework Agreement (April 24, 2002)