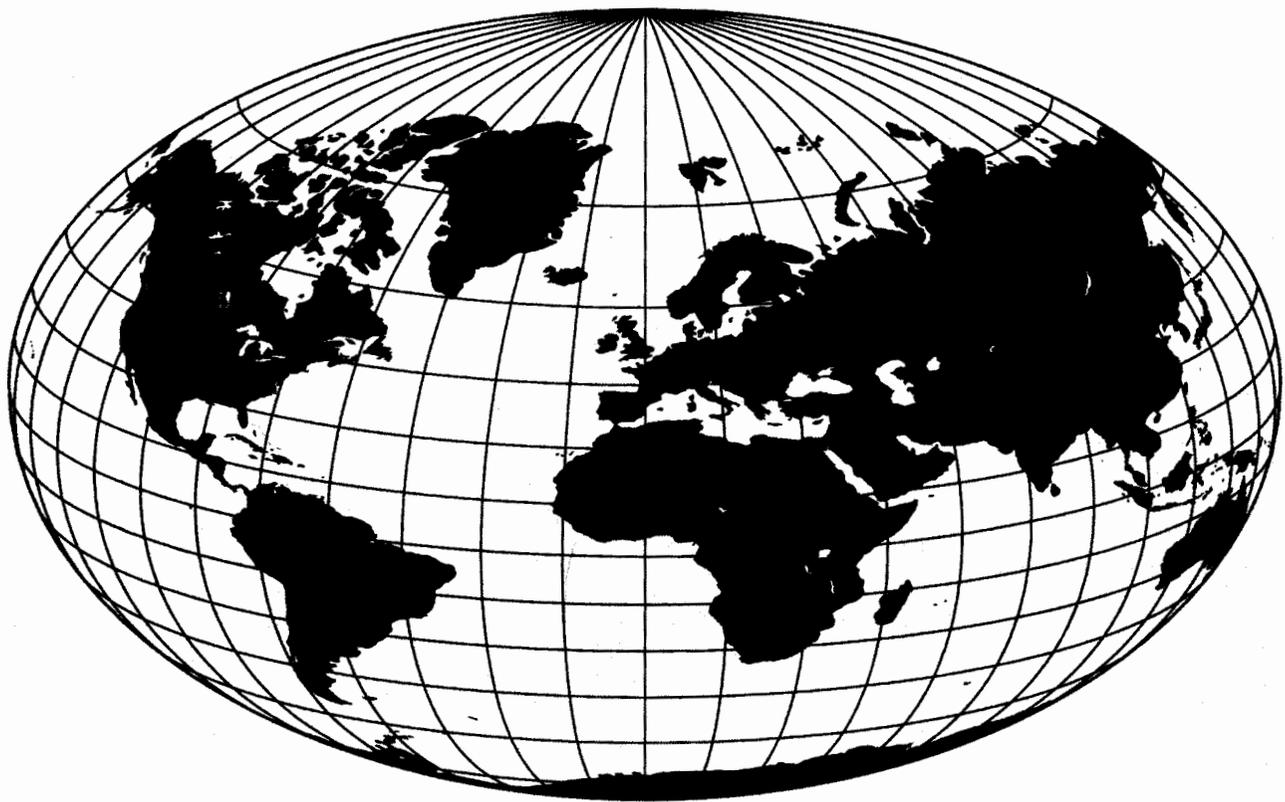


2005 TRADE POLICY AGENDA AND 2004 ANNUAL REPORT

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



UNITED STATES TRADE REPRESENTATIVE



**2005 Trade Policy Agenda
and
2004 Annual Report**
of the President of the United States
on the Trade Agreements Program

Foreword

The 2005 Trade Policy Agenda and 2004 Annual Report of the President of the United States on the Trade Agreements Program are submitted to the Congress pursuant to Section 163 of the Trade Act of 1974, as amended (19 U.S.C. 2213). Chapter II and Annex II of this document meet the requirements on the World Trade Organization in accordance with Sections 122, 124, and 125 of the Uruguay Round Agreements Act. In addition, the report also includes an annex listing trade agreements entered into by the United States since 1984.

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

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LIST OF FREQUENTLY USED ACRONYMS

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

| | |
|------------------------|--|
| MEFTA..... | Middle East Free Trade Area |
| MERCOSUL/MERCOSUR..... | Southern Common Market |
| MFA..... | Multifiber Arrangement |
| MFN..... | Most Favored Nation |
| MOSS..... | Market-Oriented, Sector-Selective |
| MOU..... | Memorandum of Understanding |
| MRA..... | Mutual Recognition Agreement |
| NAFTA..... | North American Free Trade Agreement |
| NEC..... | National Economic Council |
| NIS..... | Newly Independent States |
| NSC..... | National Security Council |
| NTR..... | Normal Trade Relations |
| OAS..... | Organization of American States |
| OECD..... | Organization for Economic Cooperation and Development |
| OPIC..... | Overseas Private Investment Corporation |
| PNTR..... | Permanent Normal Trade Relations |
| ROU..... | Record of Understanding |
| SACU..... | Southern African Customs Union |
| SADC..... | Southern African Development Community |
| SPS..... | Sanitary and Phytosanitary Measures |
| SRM..... | Specified Risk Material |
| TAA..... | Trade Adjustment Assistance |
| TABD..... | Trans-Atlantic Business Dialogue |
| TACD..... | Trans-Atlantic Consumer Dialogue |
| TAEVD..... | Trans-Atlantic Environment Dialogue |
| TALD..... | Trans-Atlantic Labor Dialogue |
| TBT..... | Technical Barriers to Trade |
| TEP..... | Transatlantic Economic Partnership |
| TIFA..... | Trade & Investment Framework Agreement |
| TPRG..... | Trade Policy Review Group |
| TPSC..... | Trade Policy Staff Committee |
| TRIMS..... | Trade Related Investment Measures |
| TRIPS..... | Trade Related Intellectual Property Rights |
| UAE..... | United Arab Emirates |
| UNCTAD..... | United Nations Conference on Trade & Development |
| 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 |

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I. 2005 Trade Policy Agenda

Overview

Introduction

Four years ago, the Bush Administration initiated a new trade strategy: to pursue reinforcing trade initiatives globally, regionally, and bilaterally. In the President's first term, the Administration has operationalized that strategy by launching and concluding major trade agreements that opened markets throughout the world to level the playing field for American farmers, ranchers, workers, and businesses and expanded choices for American consumers and industry. By pursuing multiple free trade initiatives, the United States has created a "competition for liberalization," launching new global trade negotiations, providing leverage to spur new negotiations and solve problems, and establishing models of success in areas such as intellectual property, e-commerce, environment and labor, and anti-corruption.

As the offensive gains ground, each new bilateral and multilateral agreement provides new rights and leverage for the United States to assure its workers, farmers, and businesses an equal chance to compete. During this Administration, legal resources devoted to enforcement have increased significantly. Enforcement is a critical part of every aspect of USTR's operations. From aggressive monitoring to summit-level meetings, the Bush Administration is focusing on ensuring that agreements made are agreements kept.

This year's annual report highlights the results of the Administration's ongoing efforts to open new overseas markets, level the playing field for American exporters, and vigorously enforce the trade commitments other countries make to the United States. In addition, on the tenth anniversary of the World Trade Organization (WTO), the report takes a special look at the benefits of U.S. membership in the multilateral

trading system. When Congress approved the Agreement establishing the World Trade Organization in 1994, the Congress required a review of U.S. participation in the WTO at five-year intervals. The second five-year review occurs this year.

The record of U.S. participation in the WTO clearly demonstrates that continued engagement in the global trading system is vital for America. Through the WTO, the United States has lowered trade barriers in 147 economies around the world -- delivering expanded access to the 95 percent of global consumers who live outside our borders and helping to drive a 63 percent increase in U.S. exports of goods and services between 1994 and 2004. U.S. efforts in the WTO have extended a system of trade rules globally that protect innovation, provide for certainty and predictability, and form the vital legal infrastructure for enforcement. Without the WTO, other countries could impose higher duties on American exports. And without the WTO, the United States would not have the leverage it needs to address trade barriers that disadvantage American farmers, ranchers, workers, and businesses, including discriminatory tax policies and customs procedures, subsidies, unjustified antidumping actions and weak intellectual property protections. With unwavering U.S. leadership, ongoing negotiations through the WTO Doha Agenda can provide even greater economic benefits. The Administration will work with Congress and all stakeholders to achieve that goal.

The Administration's overall record of accomplishment through its global, regional, and bilateral trade agenda has produced significant tangible gains:

- More than 99 percent of U.S. exports of manufactured goods to Australia became duty-free immediately on January 1, 2005, when the United States – Australia Free Trade Agreement (FTA) went into effect. Manufactured goods currently account for 90 percent of total U.S. goods exports to Australia. This provision of the FTA is the most significant immediate reduction of industrial tariffs ever achieved in a U.S. FTA and will provide immediate benefits for America's manufacturing workers and companies. U.S. manufacturers estimate that the elimination of tariffs could result in \$2 billion per year in increased U.S. exports of manufactured goods.
- Since implementation of the United States-Chile FTA on January 1, 2004, U.S. exports to Chile have increased 32 percent as compared to the same period the previous year -- over double the rate of growth in U.S. exports to other countries in Latin America. Among the benefits of tariff reductions negotiated in the FTA, U.S. exports of certain construction machinery have grown by 415 percent; tractors by 371 percent; shelled almonds by 329 percent; and motor vehicles used to transport goods by 60 percent.
- The United States-Singapore FTA went into effect on January 1, 2004. As a result, U.S. exports of furniture products to Singapore are up nearly 100 percent, U.S. workers producing information technology equipment have increased their sales by 62 percent, and overall U.S. exports have grown by more than 19 percent. Other significant export growth sectors include plastics, cosmetics, and pharmaceuticals; fish; construction equipment; building products, paper products; and scientific and medical equipment. Encouraged by new opportunities offered through the FTA, U.S. small and medium-sized enterprises also see Singapore as an excellent gateway to access the greater Association of Southeast Asian Nations (ASEAN) region and will benefit from the recently signed cooperative agreement between U.S. and Singaporean manufacturing associations.
- In the five nations of Central America and the Dominican Republic that are part of the United States - Central America - Dominican Republic Free Trade Agreement (CAFTA-DR), innovative provisions in the FTA and an institutional framework for technical cooperation provide assurance to workers that their rights will be protected more effectively.
- Under the President's leadership, the United States played a leading role in launching the Doha Development Agenda (DDA) of the World Trade Organization in November 2001, and in advancing ambitious U.S. proposals in agriculture, goods, and services. After the breakdown of the negotiations in September 2003 at the Cancun Meeting of Ministers, U.S. Trade Representative Robert B. Zoellick worked to get the talks back on track in 2004. The United States worked with 147 other economies to narrow differences, establish frameworks for detailed negotiations on key topics, and solve problems so as to open the way for greater economic growth, development and opportunity. We sharpened the focus of the Doha negotiations, concentrating on the key market access areas of agriculture, industrial goods, and services. We also narrowed the focus on the "Singapore" issues to trade facilitation, which complements market access by easing the movement of goods across borders. On July 31, 2004, in Geneva, the DDA negotiations reached a significant milestone with a framework that provides direction for moving forward to the Hong Kong WTO Ministerial in late 2005.

- Strong enforcement at all levels is critical to ensure that American exporters reap the full benefits of global, regional, and bilateral agreements, and the Administration is using all available tools to promote compliance. Through bilateral engagement, the United States has resolved trade disputes with China, Japan, Mexico, Russia, Korea and many other countries. In October, the Administration announced the most comprehensive initiative ever advanced to protect American ideas and innovations by combating the multi-billion dollar global trade in pirated and counterfeit goods around the world. The Strategy Targeting Organized Piracy (STOP!) is a government-wide effort to empower American businesses to secure and enforce their intellectual property rights in overseas markets, stop fakes at our borders, expose international pirates and counterfeiters, keep global supply chains free of infringing goods, dismantle criminal enterprises that steal America's intellectual property, and reach out to like-minded trading partners to build an international coalition to stop piracy and counterfeiting worldwide.
- When necessary to enforce our rights, the Administration has initiated dispute settlement proceedings in the WTO. Last year, for example, the United States filed the first WTO dispute settlement case against China to address discriminatory tax policies that disadvantaged U.S. semiconductor exports worth more than \$2 billion annually. We successfully resolved that case in less than four months to the benefit of American manufacturers and workers. Through recent WTO proceedings, the United States is also addressing unfair customs procedures and protecting American intellectual property rights abroad. We are also securing enhanced market access for dairy and apple farmers, telecommunications service providers, and manufacturers of apparel, automobiles, and biotechnology products.
- As a result of continuing enforcement efforts, persistent negotiating, and timely action by the United States in the WTO,

China is now the fifth largest market for U.S. exports and our fastest-growing major export market (with exports up 86 percent since China's accession to the WTO). On the docks in Shanghai and other port cities in China, U.S. exports are arriving at record levels. These include high-value manufactured goods, such as integrated circuits and heavy machinery, and agricultural commodities, including soybeans and cotton. Business is also brisk for banks, insurance companies, and other U.S. service providers.

- USTR has also led the Administration's effort to combine trade with effective aid by building the capacity of developing countries to negotiate and implement trade agreements. Trade Capacity Building (TCB) work has included establishment of TCB Working Groups in the Andean and Thailand FTA negotiations that operate in parallel to the negotiating groups. The interagency TCB process has also sensitized agencies to the importance of conducting more TCB activities, according to a U.S. government survey. Thanks to Congressional support in 2004, the United States conducted \$903 million in TCB assistance, an increase of 19 percent increase over 2003.

Building Momentum for Trade

The Administration's competitive liberalization strategy is producing tangible results. Only five years ago, efforts to launch new global trade talks collapsed in Seattle because countries could not agree on the way forward.

The United States played a key role in defining and launching a new round of global trade talks at the WTO at Doha in late 2001. At the same time we brought China and Taiwan into the WTO, establishing a legal framework for expanding U.S. exports and integrating China into a system of global rules. Also in 2001, the Administration worked with Congress to approve an FTA with Jordan and a trade and investment accord with Vietnam.

Previously, the United States had been stymied in its trade liberalization initiatives because authority for their negotiation and implementation had lapsed in 1994, and Congress was unable to agree on renewal. In this challenging environment, the President secured Congressional approval of the Trade Act of 2002 with bipartisan support, giving the Administration the tools it needed to move America forward in the global marketplace.

A critical component of the Trade Act of 2002 was the renewal of the President's negotiating authority through the Trade Promotion Act. In 2003, the Administration promptly put that authority to good use, promoting global negotiations in the World Trade Organization (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 negotiations on FTAs with twelve more nations, announcing the intention to begin 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 and Drug Eradication Act (ATPDA), the African Growth and Opportunity Act (AGOA), 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 (TAA) available to U.S. workers to over five billion dollars over a five-year period, which will help train American workers to compete for the jobs of the future. TAA is part of the overall total of federal resources that will support job training and employment services in 2005, which is estimated at over \$20 billion.

In 2004, the United States continued building the free-trade foundation for a generation of prosperity and opportunity. After momentum in

the Doha Development Round (DDA) at the WTO foundered at the Cancun Ministerial in September 2003, Ambassador Zoellick wrote to all WTO Ministers urging that 2004 not be a lost year for Doha negotiations. The letter also outlined ways to put the negotiations back on track; several of these ideas were subsequently taken up by other participants. In February 2004, Ambassador Zoellick traveled 32,000 miles and met with over 40 counterparts to hear their views and discuss how best to get the negotiations back on track. In May, Ambassador Zoellick hosted a small gathering of colleagues in London to facilitate a discussion on specific negotiating frameworks. He joined Ministers from the EU, India, and Australia at a gathering hosted by Brazil in Sao Paulo in early June to advance this work and traveled to Mauritius in July to meet Ministers from developing nations in the G-90, a group of ACP (African, Caribbean and Pacific), African Union, and Least Developed Countries. These discussions focused on the need to concentrate work on an agenda covering agriculture, goods, services, and trade facilitation.

Drawing on this extensive preparatory work, Ministers from diverse countries met in Geneva in late July to negotiate a WTO framework advancing the DDA, including an international commitment to eliminate agricultural export subsidies.

Also in 2004, the Bush Administration concluded and Congress approved FTAs with Australia and Morocco. The United States completed negotiations on FTAs with Bahrain and five countries of Central America (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic; the Administration looks forward to Congressional approval of these FTAs so they can be implemented promptly. The United States continued FTA negotiations with the five nations of the Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa, and Swaziland) and launched new FTA negotiations with Thailand, Panama, and three Andean nations. The President also announced to Congress his intention to begin FTA

negotiations with the United Arab Emirates and Oman.

Congress acted decisively to bolster sub-Saharan African economies by expanding and extending the African Growth and Opportunity Act. The United States, along with its partners in the Asia Pacific Economic Cooperation (APEC) forum, is also paving the way to advance free and open trade and to realize lower transaction costs and reduce barriers in the Asia Pacific region.

The Administration values its close relationship with the U.S. Congress and appreciates the assistance and support that Members and staff provided on trade matters in 2004. USTR worked with the 108th Congress to initiate and pass legislation on free trade agreements and WTO compliance measures, move forward on regional and multilateral trade negotiations, and maintain an ongoing dialogue on the overall U.S. trade agenda. The Administration looks forward to working with the Congress in 2005 on future trade initiatives.

Leading Multilateral Efforts to Expand Trade: The WTO

This year marks the tenth anniversary of the creation of the WTO, the agreed international framework that governs trade relations among nations. While much has changed since the WTO was created in 1994 at the conclusion of the Uruguay Round of Multilateral Trade Negotiations, U.S. leadership in strengthening an open, rules-based trading system has remained constant. Over the past ten years, membership in the WTO has grown from 128 to 148 economies, with another 29 negotiating terms of accession. Most notable over the past ten years has been the addition of China, Taiwan, and a number of transition economies to the WTO system. The United States has taken the lead in working multilaterally with trading partners to further expand the system.

Since establishment of the GATT in 1947, the expansion of trade has been historic: while the world's total GDP expanded seven-fold between 1950 and 2003, during the same time period the world's exports increased 25-fold. Since 1994 and the creation of the WTO, the world's

exports have increased by 61 percent. For the United States alone, in 2004 the value of trade in goods and services (imports and exports), including earnings and payments on investment, was 31.5 percent of the value of U.S. GDP, an increase from 13 percent in 1970 and 27 percent in 1994. In the 1990s, one-quarter of U.S. economic growth was spurred by exports. Jobs supported by goods exports pay about one-sixth more than the national average. Today, one in three acres planted in the United States produce crops intended for export.

The WTO, and the GATT before it, has made possible an expanded role for trade in fostering U.S. economic growth. But growing exports are just part of the story. Through the global trading system, the United States has negotiated predictable, transparent and binding rules that eliminate trade barriers and help ensure that U.S. goods and services are treated fairly in overseas markets. These enforceable rules commit the United States and its trading partners in the WTO to a level playing field and a single set of rules – whether it is the treatment of goods and services, the enforcement of intellectual property rights, or ensuring that decisions are taken on the basis of sound science and that non-tariff barriers in areas like standards and customs procedures do not impede market access opportunities.

Without the WTO, U.S. goods and services could face barriers and discrimination around the world in the form of unpredictable tariffs and non-tariff barriers. The WTO obligates its Members to provide a transparent, predictable trade regime based on the rule of law – including high levels of intellectual property protection, and disciplines to counter unfair trade practices like dumping and subsidies. Without the WTO, these obligations that work to America's advantage would not exist.

In his first term, President Bush made multilateral trade negotiations a priority in expanding the global economy, particularly in opening new markets for America's manufactured goods, farm products, and service providers. At the same time, strengthening the rules remains essential, including safeguarding

the environment, for example, by disciplining subsidies to avoid over fishing. In the President's second term, concluding the Doha agenda of multilateral trade negotiations will be a top priority for the Administration.

The benefits of a successful negotiation have the potential to give new momentum to the global economy and further the development prospects of the poorer countries around the globe. A University of Michigan study estimates that a one-third cut in global barriers to goods and services would mean \$2,500 a year in increased purchasing power for the average American family of four. The Center for Global Development found that a successful conclusion to the DDA negotiations could lift more than 500 million out of poverty and add \$200 billion annually to developing country economies. The sharpened focus of the agenda is on the core areas for growth and development: agricultural reform and liberalization, along with the potential to expand market access for trade in manufactures and services and new rules on trade facilitation. These "market access" issues form the basis of a negotiation that can achieve significant gains for American interests and the global economy.

Looking ahead, WTO Ministers are scheduled to meet in Hong Kong, China, in December 2005, to chart the final stage of negotiations in order to bring them to a successful conclusion before the end of 2006. Advancing the WTO's DDA agenda will be a top priority for 2005, along with renewal of Trade Promotion Authority, so that the United States will be able to achieve our objectives for a comprehensive multilateral outcome that will promote prosperity and competitiveness for U.S. business, workers, ranchers, farmers, and their families.

Chapter II provides further details about the WTO in its first ten years and the central role it plays in U.S. trade policy. WTO rules provide a foundation on which the Bush Administration has built new Free Trade Area agreements. One need only look to areas like trade facilitation to see synergies that have been created between the customs chapters of our bilateral FTAs and the new negotiations in the DDA.

Beyond the DDA negotiations and the on-going work of the WTO in enforcing trade agreements, work will continue to expand the WTO's Membership through the accession of trading partners who presently remain outside the system. Twenty-nine governments are in the midst of negotiating the terms of their accession to the WTO and making the needed changes to their trade regime. The United States remains committed to advancing negotiations, particularly with partners such as Russia, Ukraine, Vietnam, and Saudi Arabia, which are making great strides to conform to WTO rules.

Advancing Bilateral and Regional Agreements

The United States' bilateral trade agenda is a vibrant and integral part of its trade strategy of competitive liberalization. Tariff reduction commitments in completed FTAs or those in negotiation could save approximately \$4.13 billion in import duties for American firms whose products are sold abroad. These comprehensive, state-of-the-art agreements also set modern rules for 21st century commerce. They break new ground in areas such as services, e-commerce, intellectual property protection, transparency, and in the effective enforcement of environmental and labor laws. Further, FTAs strengthen opportunities for progress in regional and WTO negotiations -- an important goal for 2005.

The Middle East

To create hope and opportunity in a region beset by violence and despair, the President announced his vision to establish a Middle East Free Trade Area (MEFTA) by 2013 to build on the foundation established by our FTAs with Jordan and Israel. The purpose of the initiative also is to deepen U.S. trade relationships with all countries of the region, through steps tailored to individual countries' level of development. The Administration worked hard to advance this important goal in 2004, linking Middle Eastern countries committed to economic reform from the Mahgreb to the Persian Gulf -- such as Morocco, Bahrain, the United Arab Emirates (UAE), and Oman -- and reinvigorating the

region's rich history as an important area for trade. FTAs with these countries expand opportunities for American financial services, machinery, aircraft, vehicles, and a range of agricultural goods. For example, the UAE is America's third largest export market in the Middle East, with an estimated \$3.7 billion in exports in 2004 and approximately 500 U.S. firms with operations in the country. The UAE's Jebel Ali port is world's fifth busiest harbor and the country is a regional shipping and business hub. The country is also a strong security partner, supporting U.S. efforts in Afghanistan, Iraq, and in the War on Terror, and working with the Administration on container security.

In 2004, the United States signed trade and investment framework agreements (TIFAs) with several Middle Eastern countries to encourage economic reform and explore ways to deepen our bilateral trade relationships. We are employing customized arrangements to resolve trade and investment issues, improve performance in areas such as intellectual property rights and customs enforcement, and lay the groundwork for possible FTAs. The United States now has TIFAs with Algeria, Egypt, Kuwait, Oman, Qatar, Saudi Arabia, Tunisia, United Arab Emirates, and Yemen. Recent signs of economic reform in Egypt encourage a potential deepening of its economic relationship with the United States.

In addition, the United States made progress with the WTO accessions of Saudi Arabia, Algeria, Lebanon, and Yemen. The United States recently extended GSP benefits to Algeria and Iraq as well. In December, the United States advanced economic relations between Israel and Egypt through an historic agreement that allows certain goods with Israeli inputs to be shipped duty-free from designated areas in Egypt's Qualified Industrial Zones (QIZs) to the United States. This is the most significant economic agreement between Egypt and Israel in the last 20 years, and supports the MEFTA by promoting regional economic cooperation, reform, and development that will lead to stronger overall ties between countries and help to achieve a stable, prosperous Middle East.

The President's vision of a Middle East that trades in freedom and, ultimately, in peace has received special attention. The 9/11 Commission unanimously recommended that the United States expand trade with the Middle East as a way to "encourage development, more open societies, and opportunities for people to improve the lives of their families." When the terrorism panel made this recommendation, the United States was already aggressively building the foundation for President Bush's vision of a MEFTA. Free trade agreements with Jordan and Israel had already been put in place. Congress was days away from voting to approve -- by a large bipartisan margin -- an FTA with Morocco, and U.S. negotiators were preparing for a final round of meetings that completed an FTA with Bahrain. In 2005, the Administration will continue to work to advance these historic goals.

Europe

The United States and the EU are actively exploring ways to enhance our vast transatlantic economic relationship. At the June 2004 U.S.-EU Summit in Ireland, President Bush, Commission President Prodi, and Irish Prime Minister Ahern agreed to the Joint Declaration on Strengthening Our Economic Partnership, which is aimed at promoting a fresh look at transatlantic trade and investment ties. The United States and EU have initiated a government discourse with business, labor, consumer and other elements of civil society on concrete ways for governments to improve U.S.-EU economic interaction. The results of these consultations with stakeholders on both sides of the Atlantic will be factored into renewed government-to-government discussions in the lead up to the 2005 U.S.-EU Summit.

USTR continued efforts in 2004 to enhance U.S.-EU regulatory cooperation and reduce unnecessary technical barriers to transatlantic trade. At the June 2004 US-EU Summit, President Bush and his EU counterparts welcomed the Roadmap for U.S.-EU Regulatory Cooperation. The Regulatory Cooperation Roadmap provides a framework for U.S. and EU officials to cooperate on a broad range of

important product sectors and topics. In February 2004, the United States and the EU signed a new, precedent-setting mutual recognition agreement (MRA) on marine equipment.

During 2004, USTR continued its constructive engagement with the European Free Trade Association (EFTA) States. In November 2004, the United States concluded negotiation of an MRA with the EEA EFTA states (i.e., Norway, Iceland, and Liechtenstein) that covers telecommunications equipment, electromagnetic compatibility (EMC), and recreational craft.

South and Southwest Asia

USTR continued to work closely with the countries of South and Southwest Asia to open their markets and to encourage cooperative work with the WTO. Ambassador Zoellick traveled to India and Pakistan in 2004 to consult on how to revive the Doha round of multilateral trade negotiations. The U.S. Trade Representative and Indian Commerce Minister worked closely together in the summer 2004 to find an acceptable formula for agricultural negotiations in the Doha Round. Officials from USTR met frequently with Indian officials to encourage greater access for American products and to bring India's intellectual property regime into compliance with the TRIPS agreement.

The United States held a successful TIFA Council meeting with Pakistan in 2004. In the summer, the United States and Pakistan also announced their intention to negotiate a Bilateral Investment Treaty. That negotiation will commence early in 2005. The United States continues to work closely with Pakistan on ways to improve its protection of intellectual property. The two countries also consulted continuously on matters relating to market access.

The United States and Sri Lanka held a successful TIFA Council meeting in the fall of 2004. That meeting focused on expanding trade through greater market access and improving transparency in procurement.

In 2004, the United States worked very closely with Iraq and Afghanistan on establishing their trade regimes. Trade issues were discussed formally twice with Iraq at Joint Economic Council meetings in Washington and Baghdad. The United States offered extensive training to officials from Iraq on customs, SPS, tariff and other trade issues. The United States and Afghanistan signed a TIFA in the fall of 2004 and will hold their first TIFA Council meeting in early 2005. The United States was pleased to assist both Iraq and Afghanistan in pursuing approval of their applications to accede to the WTO. Those applications were approved in December 2004 by the WTO's General Council. As their negotiations with the WTO proceed, the United States will offer appropriate training and assistance to speed their formal accession.

Southeast Asia and the Pacific Region

President Bush announced the Enterprise for ASEAN Initiative (EAI) in October 2002. Similar to the MEFTA, this regional initiative seeks to offer countries in Southeast Asia a step-by-step pathway to deeper trade and economic relationships. In 2004, the United States worked to fulfill the EAI by implementing the United States-Singapore FTA, launching FTA negotiations with Thailand, and signing a TIFA with Malaysia. An FTA with Thailand will offer additional opportunities for American businesses and farmers beyond an estimated \$24 billion in total trade in 2004. A United States-Thailand FTA would be particularly beneficial to American farmers, who are one of the largest suppliers of agricultural products to the Thai market. In 2005, the Administration will continue its progress on this important FTA.

In addition to the TIFA with Malaysia, the United States will continue to use existing TIFAs with the Philippines, Indonesia, and Brunei, to solve practical trade problems and build closer bilateral trade ties. To help assist in post-tsunami reconstruction efforts, we will continue to make progress in our FTA negotiations with Thailand and intensify our discussions on ways to deepen trade ties with Indonesia, Sri Lanka, and other countries affected by this disaster.

In 2004, the Administration worked to bring Cambodia into the WTO, and it became a WTO Member in October. We also began negotiating a TIFA with Cambodia, which is expected to be concluded shortly. We continue to work with Vietnam on its accession to the WTO, which would bring the country's economy into the global system of rules-based trade.

The United States-Australia FTA, now in effect, will increase American manufacturing exports by an estimated \$2 billion a year. The FTA eliminated tariffs on 99 percent of manufactured goods immediately when the FTA went into effect on January 1, 2005.

In East Asia, the United States is deepening its economic and trade ties with Japan and South Korea. We continue to update our bilateral engagement with Japan on key issues such as the privatization of government entities and to increase our joint cooperation on regional issues, including protection of intellectual property rights. In our work with South Korea, we are expanding our focus on the cross-cutting issues of regulatory reform and transparency and are exploring other means to strengthen our bilateral economic relationship.

Sub-Saharan Africa

In sub-Saharan Africa, the African Growth and Opportunity Act (AGOA) -- enacted in 2000 and expanded in 2002 and 2004 -- has created tangible incentives for commercial development and economic reform by providing enhanced access to the U.S. market for products from 37 eligible sub-Saharan African nations. Enhancements made to the AGOA in 2004 substantially improved access for imports from beneficiary sub-Saharan countries and address trade capacity-building needs. To build on AGOA's success and, as called for in the legislation, the United States is working with the five countries of the Southern African Customs Union (SACU) -- Botswana, Lesotho, Namibia, South Africa, and Swaziland -- toward establishment of a regional free trade agreement. Such an agreement would enhance U.S. ties with the region as it also would help to strengthen regional integration among the SACU nations.

The Americas

The Administration has made significant progress in its bilateral and subregional work with Latin America. U.S.-Latin America trade started off strongly in 2004 when the Chile FTA took effect on January 1. In August, the United States signed an FTA with a group of countries that constitute our second largest export market in Latin America -- Central America and the Dominican Republic -- and this year intends to send that agreement to Congress for approval. Also in 2004, the United States launched new FTA negotiations with Panama and three Andean countries (Colombia, Peru, and Ecuador). Moreover, the United States signed a Bilateral Investment Treaty (BIT) with Uruguay on October 25, 2004. When ratified by both countries, the BIT will strengthen their investment ties.

In the Caribbean, we continue to promote trade and economic opportunities, under the Caribbean Basin Initiative (CBI). During 2004, the Administration consulted with the private sector and Congress to ensure that the CBI benefits available to the beneficiaries in the Caribbean would not be diminished by implementation of the FTA with Central America and the Dominican Republic. We intend to work closely with the Congress in considering proposals so that the CBI program continues to provide significant economic benefits to the Caribbean Basin.

2004 also marked the ten year anniversary of the North American Free Trade Agreement (NAFTA). Since January 1, 1994, when the NAFTA entered into force, three-way trade among the United States, Mexico and Canada has reached over \$623 billion, more than double the pre-NAFTA level. From 1994 to 2003, cumulative foreign direct investment in the three countries increased by over \$1.7 trillion. These increased investment flows have brought more and better-paying jobs to all three countries, as well as lower costs and more choices for consumers and producers. During the 2004 NAFTA Ministerial, NAFTA partners reached agreement to liberalize the rules of origin for a

broad range of foods, consumer and industrial products. Together, these changes will affect over \$20 billion in trilateral trade. This work will continue in 2005, as the three countries seek to improve the region's trade competitiveness and attractiveness to investors, both domestic and foreign.

Free Trade Area of the Americas (FTAA)

The United States continues its efforts to move the hemispheric trade liberalization process, the Free Trade Area of the Americas, toward a successful conclusion. In Miami, in November 2003, the 34 trade ministers agreed on a revised framework for the FTAA negotiations involving two tracks: a "common and balanced set of rights and obligations applicable to all countries" and a mechanism for countries that so choose to pursue negotiations within the framework of the FTAA on additional rights, benefits, and obligations beyond those core commitments.

The United States supports this new framework because it promises to be a constructive way to accommodate different points of view and move the FTAA toward realization. We will continue our efforts to reach consensus among the 34 countries on this new framework during 2005. Progress in the FTAA talks will advance the goals of job creation and economic growth that will form the core of the agenda for the November 2005 Summit of the Americas meeting in Argentina among the 34 Presidents and Prime Ministers in the hemisphere. Trade liberalization through the FTAA can be a key tool for promoting investment, generating employment, promoting economic reform, speeding economic growth, and enhancing hemispheric integration -- all of which will help our countries to build futures for our peoples and to compete successfully in the global economy of the 21st century.

USTR's bilateral and subregional FTA work complements the FTAA. As the United States works to press forward on the FTAA that will economically integrate a region of 800 million people with a combined GDP of \$13 trillion, we are also advancing a second track to promote

free trade in the Americas: high-quality bilateral and subregional FTAs. As a result of this second track alone, the United States stands to gain the benefits of free trade with more than two-thirds of the non-U.S. GDP of the Western Hemisphere. Not only is this economic value significant but competitive liberalization, as embodied by these agreements, has also served to motivate our partners to resolve several long-standing labor, investment, and market access disputes.

Encouraging Economic Reform and the Rule of Law

USTR's process of negotiating bilateral and regional free trade agreements, followed by continuous monitoring and enforcement, provides the means to trigger and then lock-in broad economic reforms that address a spectrum of issues. America's efforts require new levels of environmental and labor law enforcement, government transparency, anti-corruption efforts, market-based reforms, and the rule of law.

At its core, the transformational power of trade comes from expanding and strengthening the core constituencies for these reforms, particularly by expanding the middle class and increasing the importance of independent business relative to the government.

The Chile, Singapore, Australia, Bahrain, and Morocco FTAs use innovative new mechanisms to meet environmental and labor objectives set out by Congress in the Trade Act of 2002. All the agreements envision cooperative projects to support environmental protection at the same time they require that parties effectively enforce their own domestic environmental laws -- an obligation enforceable through dispute settlement procedures. The CAFTA-DR FTA goes further with an innovative plan for involving civil society in the implementation of the environment chapter's obligations. Subsequent FTAs will continue to include this core idea while each will be tailored to the particular circumstances of each new FTA partner.

We have used our FTA negotiations to promote respect for international core labor standards among our trading partners. For example, reform of the labor code languished in the Moroccan Parliament for 20 years before United States-Morocco FTA negotiations helped provide the momentum for Morocco to update its labor code. In the CAFTA-DR countries, the United States also worked diligently during the negotiations to improve the application and enforcement of labor laws and to provide an institutional framework for technical cooperation on labor issues in the future.

Another feature of U.S. FTAs is the requirement that any monetary assessments for labor and environment violations be spent on programs to fix the problems that gave rise to the assessments, putting the emphasis on correcting shortcomings.

The dispute settlement procedures of the new FTAs also set high standards for openness and transparency, such as holding 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.

Trade Capacity Building

TCB is a critical part of the U.S. Government's strategy to enable developing countries to negotiate and implement market-opening and reform-oriented FTAs. In FY04, the U.S. conducted \$903 million in TCB activities, up nearly 20 percent (\$761 million) from FY03.

The United States also recognizes that coordination of technical assistance activities among the Inter-American Bank, the WTO, the World Bank, the International Monetary Fund, and other donors is very important. The U.S. Government's efforts include contributions to the WTO's Annual Trade-related Technical Assistance program and the Integrated Framework, assistance to countries acceding to the WTO, targeted support for developing countries participating in U.S. preference

programs including African Growth and Opportunity Act and the Andean Trade Promotion and Drug Eradication Act, and the TCB working groups that are integral elements of the FTAA Hemispheric Cooperation Program and the Andean and Thailand FTA negotiations. TCB assistance is helping countries work with the private sector and non-governmental organizations to transition to a more open economy, prepare for FTA and WTO negotiations, and implementing their trade obligations.

The U.S. Trade Representative is a member of the Millennium Challenge Corporation's (MCC) Board of Directors. The purpose of the MCC is to ensure that the President's vision of a new "global development compact" is implemented in a manner in which "greater contributions from developed countries [are] linked to greater responsibility from developing nations." In 2004 and continuing in 2005, USTR is working to improve integration of trade into the development plans of eligible and threshold countries so that each country's MCC agreement taps into the potential for trade to spur economic growth and reduce poverty.

Enforcing U.S. Rights

The Administration's high-quality FTAs establish a critical legal infrastructure for enforcement. The bulk of the work done day-in and day-out is to use every opportunity and every point of leverage in these and other agreements to ensure that countries live up to their current commitments and to solve problems for American businesses, farmers, and workers.

The scope of enforcement extends well beyond the number of cases brought before WTO or NAFTA tribunals. On any given day, many U.S. companies meet with USTR, Commerce, and other agencies to decide how best to press foreign governments to live up to their commitments to open up their markets to U.S. goods and services and to protect U.S. investment and intellectual property rights.

The vast majority of enforcement efforts are brought to successful resolution without the need to resort to formal litigation. Most U.S. companies urge us to do everything that we can to resolve a problem quickly without bringing a WTO or FTA case.

Many problems are resolved in the context of FTA talks. Before our trading partners can hope to begin negotiations for an upgraded trading arrangement like an FTA, they must fix existing problems. Before completed trade agreements can be taken to Congress, our trading partners must show additional progress and prevent new problems from occurring. Strict enforcement mechanisms are at the core of all agreements and are in effect from the first day when an FTA enters into force. The United States uses every tool and every opportunity to press our trading partners to address our concerns.

Informal means of resolving trade issues have created these results:

- U.S. biotech farm exports and key financial services have expanded their access to China's market;
 - Japan has strengthened intellectual property protections and lowered certain customs processing fees by 50 percent;
 - Mexico has implemented rules for pharmaceuticals that respect U.S. patents and has also worked with the United States to resolve outstanding apple, hog, poultry, dry bean, and beef market access issues;
 - Russia has made commitments for market access opportunities for U.S. poultry, pork, and beef exports based on historical trade levels that provide room for growth;
 - Taiwan has addressed rice and motorcycle export problems and is working to improve IPR protection;
 - Korea reopened its market to California oranges; and
- Hong Kong has forced the closure of companies that were illegally producing optical discs.

Sometimes, however, enforcement can only be achieved through litigation, and we stand prepared to bring cases under the WTO, NAFTA, and other FTAs to secure compliance. USTR is currently pursuing 10 cases with 6 countries in the WTO, and we are defending in another 23 actions.

USTR is working to resolve a number of high-profile WTO disputes with the European Union and exploring opportunities to enhance the already enormous transatlantic trade and investment relationship.

We continue to focus more of our enforcement resources on China. Although China has undertaken significant efforts to move away from its centrally-planned economy and to bring its laws and regulations into line with WTO rules, China must do more to meet its obligations:

- USTR is monitoring and aggressively enforcing China's trade commitments undertaken by China as part of its WTO accession, which includes completion of the annual report on China's compliance with its WTO commitments.
- Since April 2004, USTR, in conjunction with the Department of Commerce, convened meetings of the Working Groups created at the April 2004 meeting of the U.S.-China Joint Commission on Commerce and Trade (JCCT), and planned additional meetings in the spring of 2005. These Working Group meetings have addressed and will continue to be utilized to address U.S. trade policy goals in intellectual property rights, agriculture market access, China's economic structure, textiles, statistics, and trade remedies; evaluate previous JCCT accomplishments; and develop an ongoing and focused problem-solving agenda for cabinet-level meetings of the JCCT.

- With counterfeiting and piracy of American ideas and innovations at epidemic levels in China, improving China's IPR protection is a top priority for the United States. The Administration has pressed the Chinese at every opportunity on this issue. During the 2004 JCCT meeting, co-chaired on the U.S. side by Secretary Evans and Ambassador Zoellick, Chinese Vice Premier Wu Yi presented an action plan to address U.S. concerns with piracy and counterfeiting. The Administration is monitoring implementation of this action plan closely and is conducting an out-of-cycle review to assess China's implementation of its commitments to substantially reduce IPR infringement levels. The Administration has also called on U.S. companies to submit the necessary information to enhance our monitoring of China's IPR enforcement efforts. The United States will continue to place the highest priority on this issue throughout 2005.
- We are seeking changes in Chinese industrial policies that limit market access for non-Chinese-origin goods or seek to extract technology and intellectual property from foreign rights-holders.
- USTR is also working to ensure that China adheres fully to its commitments to open service sectors and does not maintain or erect new entry barriers.
- We are striving to minimize adverse impact to U.S. industry caused by the transition to quota-free textiles and apparel trade.
- Helping and empowering American businesses, inventors and innovators, particularly small businesses, to secure and enforce their rights in overseas markets;
- Ensuring consumer safety by securing America's borders and marketplace from fakes;
- Raising the stakes and making life more onerous for intellectual property thieves through new customs methods that increase costs to violators far beyond seizing shipments and by naming and shaming global pirates and counterfeiters who are producing and trafficking in fakes;
- Developing a "No Trade in Fakes" program in cooperation with the private sector to ensure that global supply chains are free of infringing goods;
- Working to dismantle criminal enterprises that steal intellectual property, using all appropriate criminal laws, and overhauling, updating and modernizing U.S. intellectual property statutes; and
- Joining forces with like-minded trading partners concerned about the growing global IPR piracy problem, such as the European Commission, Japan, the United Kingdom, and France, which have all recently launched initiatives.

Complementing STOP! is USTR's Special 301 report on the adequacy and effectiveness of IPR protection in trading partners around the world, published annually at the end of April. The 2004 report found that although several countries have taken positive steps to improve their IPR regimes, the lack of IPR protection and enforcement continues to be a global problem. It called for special out-of-cycle reviews for Israel, Malaysia, Poland, Taiwan, and China to evaluate steps those countries have taken to improve IPR laws and enforcement. The reviews for Poland, Malaysia, and Taiwan were completed in January 2005. As a result of the findings, Taiwan was moved from the Priority

Protecting Intellectual Property

The Administration announced in October 2004 a major new government-wide initiative, the Strategy Targeting Organized Piracy (STOP!), to fight billions of dollars in global trade in pirated and counterfeit goods that cheat American innovators and manufacturers, hurt the U.S. economy and endanger consumers worldwide. Key elements of the STOP! initiative include:

Watch List to the Watch List due to the progress it achieved in strengthening enforcement and copyright protection. No change was made to the Watch List status for Poland and Malaysia. The 2005 Special 301 report will be published on April 29, 2005.

The Administration is utilizing various tools to strengthen IPR protection in other countries with significant infringement problems. For example, in response to an industry petition, we extended a review of Brazil's trade preferences under the Generalized System of Preferences Program to improve Brazil's IPR enforcement. Brazil has taken some positive steps, but needs to take further measures to adequately address serious piracy concerns. The United States will continue to press Brazil on its IPR issues in 2005.

Copyright piracy continues to run rampant in Russia as well, and Russia's current IPR regime remains deficient. As with Brazil, the United States is implementing the IPR provisions of our GSP statute (including possible removal of one-way trade preferences) to bring about an improvement in Russian IPR protection. In 2004, the Administration engaged with the Russian government at all levels to solicit change, and in June of last year, the Russians released an action plan to address deficiencies. Russia has passed several important pieces of IPR-related legislation and has raided plants that produce pirated goods. More actions need to be taken, however, and the United States will continue to work with the Russians to better protect IPR in 2005.

Pharmaceutical Trade Policy:

The Administration has worked to support continued gains in health and longevity globally by fostering continued pharmaceutical research and development and promoting fair sharing of the costs of development of innovative drugs. The Australia FTA is the first FTA negotiated by the United States to include non-market access provisions on pharmaceuticals such as specific commitments on transparency, accountability, and due process. The FTA also establishes a Medicines Working Group to

provide for a continued dialogue between the United States and Australia on emerging health care policy issues. In addition, the Administration has initiated discussions with other developed country trading partners on their pharmaceutical regulatory systems and the need to encourage continued innovation in health care.

The United States has also vigorously pursued policies to protect intellectual property rights in a way that is consistent with promoting public access to medicines. Strong intellectual property protection is a powerful force supporting public health objectives. It provides incentives for the development and launch of the latest cutting-edge products as rapidly as possible.

At the same time, the United States has sought to ensure that intellectual property rules provide sufficient flexibility for countries to deal appropriately with public health emergencies. The United States was instrumental in reaching an agreement [the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS)/health solution] in the WTO in August 2003 to allow countries to use compulsory licensing to produce and export drugs to developing countries that cannot produce the drugs for themselves. The United States is fully committed to working with other WTO Members to transform the TRIPS/health solution into an amendment to the TRIPS Agreement.

In 2004, the Administration worked closely with Canada to suspend certain provisions of NAFTA to ensure that Canada could implement this arrangement without running afoul of NAFTA obligations. The United States has also negotiated special side letters to its FTAs with Morocco, Central America, and Bahrain that state that the FTAs' intellectual property rules would not limit a country's ability to take measures necessary to protect public health and would allow effective utilization of the TRIPS/health solution.

Looking Back; Looking Forward

At the beginning of the Bush Administration, the United States had FTAs with three countries, one of which dated back to 1985. Thanks to Congressional approval of Trade Promotion Authority in 2002, the United States now has completed negotiations with 12 countries, and is currently negotiating with 12 more. Taken together, these 24 current and future trading partners constitute America's third largest export market, with \$78 billion in U.S. exports in 2004, and the world's sixth largest economy.

These FTAs have advanced America's interests by opening new markets for U.S. products and services, increasing protection of intellectual property, streamlining customs procedures, and strengthening labor and environmental laws and their enforcement. Bilateral negotiations also serve as a vehicle to resolve important disputes that might otherwise never have been resolved without such leverage. All of these achievements translate into free and fair trade, leveling the playing field for American workers and farmers who export their goods abroad, and lowering costs for goods American consumers buy everyday.

In 2005, the United States is seeking to expand on this record of accomplishment, with an active and comprehensive trade liberalizing agenda. While working to further open markets, the Administration will 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.

In 2005, the Bush Administration will also continue moving quickly to bolster reform-oriented countries across the Middle East by negotiating free trade agreements with Oman and the UAE while helping other nations reform their economic and legal systems as a way to build the path to FTAs with the United States. The United States is encouraged by recent signs of economic reform in Egypt, and the QIZ agreement is one tangible result.

As USTR intensifies efforts in the Middle East, the United States will not lose focus on other important trade and foreign policy interests. In the 1990s, the end of bitter civil wars and communist-funded insurgencies allowed hope and democracy to blossom anew in Latin America. The United States is moving to protect these fragile democracies as they move along the path to reform. Congress can act quickly to pass the CAFTA-DR while the Bush Administration works aggressively to finish on-going negotiations with Colombia, Ecuador, Peru, and Panama. Once these FTAs are in place, the United States will have united countries representing two-thirds of the Americas' non-U.S. GDP in free trade with the United States. To further integrate the region and to reinforce effective economic strategies and democratic development, the United States will continue its engagement toward conclusion of the Free Trade Area of the Americas.

In the Asia-Pacific, the United States will work to expand opportunity in the region through further integration of these economies, playing a strong leadership role in economic issues, and ensuring that growing trade powers, such as China, uphold their commitments to key WTO principles of market access, non-discrimination, national treatment, and transparency.

USTR is seeking new ways to work together with the European Union to further the Doha negotiations. We are also working to resolve ongoing trade disputes and to explore further opportunities to enhance our important transatlantic trade and investment relationship.

Before April 1, 2005, the President must notify Congress of his intent to extend trade promotion authority until July 1, 2007. Such authority would be extended if neither House of Congress adopts a resolution disapproving the President's request. The United States has an active trade agenda, including ongoing multilateral trade negotiations at the WTO, FTA negotiations under way with twelve countries, and regional free trade initiatives in Latin America, Southeast Asia, and the Middle East. The Bush administration has actively employed trade promotion authority for the benefit of the

American people and plans to continue its active efforts to open markets globally, regionally and bilaterally.

Robert B. Zoellick
United States Trade Representative
February 18, 2005

II. The World Trade Organization

A. Introduction¹

Ten years ago, the World Trade Organization (WTO) was created, as part of the results of the Uruguay Round of multilateral negotiations. Completed in 1994, the Uruguay Round was the eighth multilateral round of trade negotiations that had taken place during the 50 years after World War II, when the United States undertook to lead the world away from the economic isolationism and protectionist policies that had worsened the Great Depression in the 1930s. The establishment of the WTO represented a culmination of a decades-long bipartisan U.S. commitment to the imperative of an open, rules-based global trading system. The 119 Members that made up the WTO in 1995 included the United States and more than 20 other founders of the General Agreement on Tariffs and Trade (GATT).

Under an accession process that carries far more stringent requirements than what was used in the GATT, WTO membership now stands at 148 economies and has become almost universal. Key entries during the past decade include China, a number of former Soviet Republics, and an array of other countries that each carry their own strategic importance, such as Jordan, Georgia and Cambodia. Negotiations toward entry into the WTO are ongoing at various stages for more than 25 countries, ranging from Russia and Vietnam to Iraq and Afghanistan with the latter two countries' requests to begin the accession process approved in December 2004. Each effort underscores the importance attached to membership in the WTO and its member-driven, rules-based approach to the global trading system.

The GATT was created in 1947, drawn up in an unsteady post-war world that collectively was determined to strengthen global security and peace through economic opportunity and growth in living standards. The past 10 years have also brought events outside the economic realm which have served to underscore the important U.S. strategic interest in an open, global-trading system governed by the rule of law. Such an interest is no less vital today than it was in those first decades after a catastrophic world war. The participation and leadership of the United States in the global trading system remains a critical element for ensuring America's continued prosperity, and for meeting the new challenges in working for a more stable and secure world.

The WTO and the global rules based trading system that underpins it is very important for the U.S. economy. To ensure equal opportunities for U.S. businesses, farmers, ranchers, and other exporters, the Administration has pursued enforcement actions in the WTO when negotiations and other avenues have not produced acceptable results. In fact, the United States has brought more WTO cases than any other Member, including the European Union. The United States represents 16 percent of world trade, yet has brought nearly 22 percent of the WTO disputes between January 1, 1995, and December 31, 2004.

The Administration's record of WTO cases involving the United States is 14 wins and 13 losses in 4 years, a 52 percent success rate. From 1995 to 2000, the U.S. record was 18 wins and 15 losses, a 54% success rate. Examples include cases focusing on: dairy, apples and other agricultural products; biotechnology; telecommunications; automobiles; apparel; changing unfair customs procedures; and protecting intellectual property rights and other proprietary information. In addition to these actions, the United States continues to aggressively pursue its interests in the individual WTO committees established to monitor implementation of the various agreements.

¹ This Chapter and Annex II to this report are provided pursuant to the reporting requirements contained in sections 122, 124, and 125 of the Uruguay Round Agreements Act.

The WTO is also important for ensuring sustainable global economic development. In promoting expanded economic freedom, the WTO helps the developing world gain access to markets, contributes to a stable and peaceful world, and helps alleviate poverty.

The Uruguay Round, which created the WTO, was a broad achievement – bringing predictable, transparent and binding rules in new areas such as services, intellectual property rights (IPR), and agriculture fully into the global trading system. These rules commit the United States and its trading partners in the WTO to a level playing field and form the vital legal infrastructure for enforcement. Implementation of the Uruguay Round results was the main feature of the work of WTO Members over the last 10 years, and 2005 marks the full implementation of many key agreements, such as completion of the 10-year phased-implementation of global tariff cuts on industrial and agricultural goods and reductions in trade-distorting agricultural domestic support and export subsidies, elimination of quotas and full integration of textile trade into the multilateral trading system, and improvements in patent protection in key markets such as India. The Uruguay Round was also highlighted by the negotiating results being adopted in a “single undertaking” by all Members, who together rejected any notion of a two or three-tier trading system.

In its first 10 years, the WTO showed itself to be a dynamic organization, one where U.S. interests were advanced toward achievements with concrete, positive effect. Organizationally, the WTO stands out within the world of international organizations by continuing to maintain a ‘lean’ approach to secretariat staffing, avoiding the growth of any bloated bureaucracy. With the United States leading the way at various points in the last ten years, the WTO has taken steps to increase the transparency of its operation across the board, from document availability to public outreach. Work continues on new and creative ways to bring further improvements in openness. WTO Members continue to set the course for the organization,

and the Members themselves remain responsible for compliance with rules.

Since its creation, the WTO’s substantive agenda has remained dynamic, providing the path for significant market-opening results over the past decade, such as concluding the Information Technology Agreement (ITA) to eliminate tariffs worldwide on IT products, and bringing the Basic Telecommunications Agreement into effect, which opened up 95 percent of the world’s telecommunications markets. Both are achievements that continue to contribute to the ability of citizens around the globe to take advantage of the Information Age. The 1997 Agreement on Trade in Financial Services has achieved fair, open, and transparent practices across the global financial services industry, fostering a climate of greater global economic security. This agreement ensures that U.S. banking, securities, insurance and other financial services firms can compete and invest in overseas markets on clear and fair terms.

On a smaller yet no less important scale, the WTO provides opportunities on a day-to-day basis for U.S. interests to be advanced through the more than 20 standing Committees (not including numerous additional Working Groups, Working Parties, and Negotiating Bodies). They meet regularly to provide robust fora for Members to exchange views, work to resolve questions of Members’ compliance with commitments, and develop initiatives aimed at systemic improvements.

Two months after the events of September 11th, 2001, U.S. leadership played a critical role in the launch of a new round of multilateral trade negotiations, the first to be conducted under the WTO. The negotiations under the Doha Development Agenda (DDA) reflect the dynamic complexities of today’s economic world, and present new opportunities to make historic advancements by further opening markets and enhancing respect for the rule of law. Further in this chapter there is a full description of the ongoing progress in advancing the DDA toward ambitious results that would meet U.S. objectives.

The United States was the world's largest exporter in 2003. From 1994 to 2004² U.S. exports of goods and services rose 63 percent, from \$703 billion to \$1.1 trillion. The WTO exists as the most important vehicle to advance U.S. trade interests, critical to America's workers, businesses, farmers, and ranchers. Many are dependent and all are affected by a global trading system that must operate with certainty and transparency, without discrimination against American products, and an opportunity under the rules to address unfair trade practices. In a world where 95 percent of consumers live beyond our borders, the WTO is essential for U.S. interests.

The first 10 years of the WTO have demonstrated why the United States needs to continue its active participation and leadership role. A turn away from the work of the past six decades to bring about a rules-based, liberalized, global trading system would bring certain closure of markets to those American workers and farmers dependent on continued trade liberalization and would ignite unfettered trade practices that would distort the global economy beyond anything imaginable today. A world where the United States steps away from a rules-based, global trading system would be a world where trade no longer would be a positive contribution toward solving broader international tensions; instead, trade issues would add another dimension exacerbating larger strategic conflicts.

The work of U.S. trade policy remains perpetually a work in progress, reflecting the dynamic changes in today's fast-moving world economy. During the past 10 years, there has been increasing participation of small- and medium-sized businesses in international trade. In the 10 years between 1992 and 2002, U.S. exports from small- and medium-sized enterprises rose 54 percent, from \$102.8 billion to \$158.5 billion - a faster pace than the rate of growth for total U.S. exports during the same time.

An examination of the first decade after creation of the WTO shows not only exponential growth in global trade, but also an unprecedented global economic integration that is hallmarked, if not led, by continuing advances in technology, communication, manufacturing, and logistics. From ubiquitous cell phones that capture and transmit photos to the routine at-home use of the Internet to order overnight delivery of a product from thousands of miles away, the citizens of the United States and the rest of the world are being presented with new products, new services and, most important, new economic opportunities that did not exist in 1995. At the same time, globalization also undoubtedly presents new issues, new competitive challenges and new economic pressures. Through American leadership within the WTO, the core U.S. trade agenda of promoting open markets and the rule of law remains the core agenda of the global trading system.

B. Economic Assessment

1994-2004: Performance of the U.S. Economy During the First 10 Years of the WTO

Trade is not a zero sum game. The simple metric of a country's trade balance is not an appropriate scale against which to measure the benefits of trade liberalization or an enhanced rules-based trading system. The complexities and dynamism of today's global economy cannot be overstated, yet the process of opening markets and freeing trade is widely recognized as contributing significantly to enhanced economic performance. This can be seen when analyzing the economic performance of the United States in the 10 years since the completion of the Uruguay Round and inception of the WTO. From 1994 to 2004, real gross domestic product (GDP) of the United States rose a strong 38 percent, and the average per capita income increased by a quarter. Even the downturn in U.S. overall production in 2001 was notably shallow and the recession mild by post-World War II standards. Taken as a whole, the performance of the economy in the last 10 years- and the benefits that American families drew from it- has been strong.

² Annualized from 1st eleven months.

Notably, there has been a sharp improvement since 1994 in U.S. industrial production -- the bulk of which is manufacturing (78 percent). Industrial production in the United States rose by 35 percent between 1994 and 2004, considerably faster than the 27 percent increase in output between 1984 and 1994. In addition, U.S. industrial production rose faster than in most of our high-income major trade partners. Compared to the 35 percent U.S. increase, industrial production rose by roughly 18 percent in France, 17 percent in Germany, 9 percent in Japan and 5 percent in the United Kingdom over the last decade. The United States achieved this result despite a period of extended decline in U.S. industrial production (second half of 2000 to first half of 2003) associated with domestic and foreign recessions.

Productive investment is central to healthy growth and rising living standards. Total gross private domestic investment grew impressively, by over 67 percent in real terms, between 1994 and 2004, rising from 15.5 percent of U.S. nominal GDP in the earlier year to 16.4 percent in the latter. Even excluding housing, U.S. non-residential fixed, or business, investment has risen by 78 percent since 1994, compared to a 34 percent rise between 1984 and 1994. Such business investment accounted for nearly two-thirds of all fixed investment in the United States last year.

With regard to employment, the United States added 17.2 million net new jobs between full year 1994 and 2004. This resulted in an average unemployment rate of 5.1 percent in the ten years ending in 2004, compared to an average unemployment rate of 6.4 percent during the prior decade (1984-1994). Along with lower rates of unemployment, a higher percentage of Americans participated in labor markets in the ten years to 2004 (66.7 percent of U.S. civilian non-institutional population, 16 years and older) than did in the ten years up to 1994 (66.0 percent).

Despite the overall positive tone of the U.S. employment picture, there have been significant concerns about the reduction in U.S. manufacturing jobs. In 2004, fewer than 1-in-9

U.S. workers held a manufacturing job, compared to more than 1-in-7 in 1994 and nearly 1-in-5 in 1984.

The U.S. manufacturing job loss, in the face of expanded output, is hardly unique among countries. A 2003 study by Alliance Capital Management looked at manufacturing payrolls in the world's 20 largest economies for the period 1995 to 2002. According to this study, 22 million manufacturing jobs were lost over this period, of which 2 million, or less than 10 percent, were lost in the United States. The study further finds that while manufacturing employment fell by 11 percent in the 20 countries, industrial production increased by more than 30 percent, implying large productivity gains in global manufacturing.

The shift in the job composition of U.S. employment away from manufacturing has occurred, even as U.S. manufacturing output has experienced long-term growth. Real output of U.S. manufacturing industries grew by over 50 percent between 1987 (earliest year available) and 2004 – a period encompassing two U.S. recessions.

Trends in productivity – output per hour worked – are among the most important factors influencing how rapidly real incomes grow and living standards rise. WTO rules and the certainty and predictability they provide along with liberalization of tariffs played their part in this positive development. One of the benefits of trade liberalization is a shift in economic resources toward more productive uses, thereby helping raise productivity growth rates in the medium term and enhance living standards. The growth of output-per-hour worked in the United States has in fact improved strongly: from an annual average of 1.8 percent in 1984-1994 to 2.9 percent in 1994-2004 for all business. During the 1994-2004 period, productivity growth strengthened, averaging 2.1 percent a year for the first 5 years and 3.6 percent a year in the most recent 5 years. These statistics are important from the standpoint of a constantly improving standard of living in the United States.

The productivity record for manufacturing workers is even stronger than for the average of all private sector workers. The growth in output-per-hour worked by U.S. manufacturing workers rose from 2.6 percent a year in 1987-1994 (1987 is the earliest year available) to 4.4 percent in 1994-2004. As with the whole business sector, productivity growth in manufacturing improved during the course of 1994-2004: rising 3.8 percent annually in the first 5 years and 4.9 percent annually in the most recent 5 years. These U.S. productivity trends have significantly helped improve U.S. economic growth potential since 1994. The combination of increased domestic and international competition, business sector investment, technological advance and other factors have all resulted in enhanced U.S. productivity growth. This has enabled U.S. manufacturers to rapidly increase manufacturing output without increases in manufacturing employment.

The evidence that enhanced productivity growth benefited workers and families is found in real compensation trends for U.S. workers. Workers in the U. S. business sector saw the growth rate of real hourly compensation double: from an average of 0.9 percent in 1984-1994 to 1.8 percent in 1994-2004. The improvement is even more striking for U.S. manufacturing. Real compensation of manufacturing workers rose at an average annual rate of 2.2 percent during the period 1994-2004, up from just 0.5 percent a year in 1987-1994 (1987 is earliest year available).

Multilateral trade liberalization works to increase global efficiency and income, making it possible for all countries to benefit. The United States, with its competitive domestic economy, is particularly well placed to benefit from more open markets abroad and at home.

More open global markets are part of a set of factors that accelerated U.S. growth rates relative to many other countries over the last decade. Available World Bank data suggest the relative economic success of the United States since the inception of the WTO, showing that the U.S. share of global income rose from 20.8

percent to 21.5 percent between 1996 and 2002. This increase is especially noteworthy in a world in which it is widely believed that national per capita incomes tend to converge over time and that the highest income countries must usually grow at less than the average rate for all countries. Moreover, the U.S. income advantage over other high-income countries – collectively accounting for just 16 percent of global population – also rose over the same period according to World Bank data. In 1996, U.S. per capita real income exceeded the average for other high income countries by 39.3 percent. This advantage had risen to 43.1 percent by 2002.

Falling trade barriers, many of which reflect the 10 year implementation of the results of the Uruguay Round, have helped rapidly increase the value of trade relative to the U.S. economy. U.S. goods and service trade (exports plus imports) reached the levels of 18 percent of the value of U.S. GDP in 1984, 22 percent in 1994 and 25 percent in 2004. One reflection, however, of faster growth in the United States in the last 10 years and its economic success has been a growing trade deficit. As the United States has grown faster, imports have increased more rapidly than exports. As foreign investors have wished to participate in the economic success of the United States, inflows of foreign capital have provided the foreign exchange necessary for Americans to increase the purchase of imports more rapidly than the growth of U.S. exports. As foreign capital inflows soared, America's own saving rate has declined.

The significance of the U.S. trade imbalance is widely debated. Yet its existence has far less to do with trade policy than with broader macroeconomic factors. One has to take into account relative economic growth rates' levels of national saving and investment and, in particular, the need for economic structural reform and faster economic growth among U.S. trade partners.

Market opening trade policy in general, and the Uruguay Round and WTO in particular, should be judged in areas where they do have effect: in

expanding opportunities for trade, contributing to higher productivity and earnings, lowering prices and increasing choice of household consumers and business purchasers alike, encouraging beneficial investment, helping to enhance domestic living standards and rates of economic growth. Against these measures, U.S. economic performance in 1994-2004 is consistent with that of a country poised to maximize the advantages of more open markets, freer trade, and a more predictable international trading system.

1994 to 2004: Changes in Trade Flows

In undertaking any analysis, it is worth noting that there are few backward-projecting “what if” statistics on trade flows. This is notable because the past decade was marked by a severe financial crisis in Asia, along with some key markets experiencing recessions and other significant economic problems. Despite their economic hardship, our trading partners honored their Uruguay Round tariff reduction commitments, and goods exports from the United States rose by approximately 60 percent in nominal value from 1994 through 2004. U.S. goods exports grew in 7 of the past 10 years, with double digit growth in 4 of these years. The 3 years of negative growth were due to complications from the Asian financial crisis, and weak economic growth in many of the U.S. trading partners. The contractual nature of obligations created in the WTO helped cushion what would have been a very difficult situation. As a result, the United States was able to be the engine for global growth during this period.

One of the achievements of the Uruguay Round was to increase the number of tariff lines that are “bound” by Members, guaranteeing market access opportunities (according to the UNCTAD report *Post-Uruguay Round Market Access Barriers for Industrial Products* (2001)). The share of industrial tariff lines with bound rates for developing countries grew from 21 percent to 73 percent, while for developed countries it grew from 78 percent to 99 percent. At the same time, developed countries' average bound tariff rates on industrial goods declined 40 percent, while bound tariff rates for developing countries

were cut 25 percent on imports from developed countries and 21 percent from developing countries.

Both U.S. manufacturing exports and U.S. agricultural exports grew strongly between 1994 and 2004, up 64 percent and 39 percent, respectively (see Annex 1, Table 1). Manufacturing exports accounted for 87 percent of the \$817 billion in U.S. goods exports in 2004 (under Census definitions), while agricultural exports accounted for 8 percent and mineral fuels and mining products accounted for 5 percent. U.S. exports of high technology products grew by 67 percent during the past 10 years and accounted for one-quarter of total goods exports. Non-automotive capital goods, the largest U.S. end-use export category accounting for 40 percent of total goods exports in 2004, grew by 61 percent between 1994 and 2004. Industrial supplies, the 2nd largest U.S. end-use export category accounting for 25 percent of U.S. goods exports in 2004, grew by 66 percent during the past 10 years.

Regionally, U.S. exports to middle- and low-income countries grew by 76 percent between 1994 and 2004, significantly higher than the 48 percent growth to high income countries. Despite this rapid growth in exports to middle- and low-income countries, the majority of U.S. exports (55 percent) are still to high-income countries. Among major countries and regions, exports to China exhibited the fastest growth, nearly quadrupling over the past 10 years to a record high of an estimated \$36 billion. China's entry into the WTO in December 2001 locked in improved market access opportunities. China committed to reduce its tariffs on industrial products, which averaged 24.6 percent, to a level that averages 9.4 percent. During this period, U.S. exports to Mexico more than doubled, while exports to Canada and the EU grew by 64 percent and 56 percent, respectively. However, weak economic conditions in Japan were a factor toward limiting the growth in U.S. exports to that country to a mere 2 percent between 1994 and 2004.

The United States continued to be the catalyst for global growth, reflecting the strong growth

of the U.S. economy over the past decade, goods imports more than doubled (see Annex I, Table 3). Both manufacturing and agriculture imports grew by approximately 110 percent, while high technology imports increased by roughly 145 percent. U.S. imports increased substantially in all of the major end-use categories, with the strongest growth exhibited in consumer goods (up 154 percent) and industrial supplies (up 153 percent). Each of these two sectors account for roughly one quarter of the total level of U.S. imports. Within U.S. industrial supplies, petroleum imports rose 252 percent, from 7.7 percent of total goods imports in 1994 to 12.3 percent in 2004.

The Impact of China's WTO Accession on U.S. Exports

Prior to its accession to the WTO in 2001, China's average applied tariff on industrial products was 24.6 percent. Upon full implementation of its tariff commitments in 2010, China's average tariff rate on non-agricultural products will be 8.9 percent.

In addition, China committed to join the Information Technology Agreement (ITA) and to participate in the sectoral "zero for zero agreements" which eliminated duties on toys and furniture. Exporters benefited from major tariff reductions in construction and petroleum equipment, food processing equipment, agricultural equipment, scientific and measuring instruments, civil aircraft and parts, pumps and compressors, metal-working machinery, power generation equipment, engines and household appliances.

U.S. exports to China in 2004 were 86 percent greater than the total for 2001 (the year China joined the WTO, at approximately \$35.6 billion for 2004 annualized). U.S. exports of ITA goods increased 45 percent from January to September 2004, and were projected to exceed \$6 billion by the end of 2004. The United States enjoyed a \$2 billion surplus in services trade with China, and a \$3.7 billion surplus in agricultural trade in 2003 (the latest full year data available).

In connection with its accession, China took steps to repeal, revise, or enact more than 1,000 laws, regulations and other measures to bring China into conformity with WTO commitments. China agreed to eliminate government-mandated technology transfer and local content, and eliminated its requirement that goods be traded only through state-owned enterprises, thereby for the first time allowing U.S. businesses to export their goods directly to China without using government middlemen.

Regionally, U.S. import growth in 1994-2004 was more than twice as strong from middle- and low-income countries, as from high-income countries (176 percent to 83 percent) (see Annex 1, Table 4). Due to this growth, the total level of U.S. imports from middle- and low-income countries surpassed that from high-income countries in 2004, reversing the situation in 1994. As with exports, the strongest import growth was from China, up over 400 percent, and from Mexico, up 215 percent. U.S. imports from Japan were, however, comparatively stagnant, up less than 10 percent between 1994 and 2004.

The growth in services exports between 1994 and 2004 (70 percent) slightly exceeded that of goods (60 percent), while growth of services imports (119 percent), were approximately the same as the growth of goods imports. In 2004, services exports, at \$344 billion, were just over 40 percent of the value of goods exports, while services imports, at \$219 billion, were 20 percent of the value of goods imports (see Annex I, Tables 5 and 6).

Nearly all of the major services export categories have grown between 1994 and 2004. Export growth has been led by the statistical "private services" category consisting of: education services; financial services; insurance; telecommunications; business, professional and technical services; and other unaffiliated services: up 134 percent, and the royalties and licensing fees category, up 91 percent. Of the \$139 billion increase in U.S. services exports between 1994 and 2004, the other private services category accounted for 59 percent of the increase and the royalties and licensing fees category accounted for 18 percent.

The growth in services imports, up \$159 billion between 1994 and 2004, was driven by the other private services category (accounting for 40 percent of the increase) and the "other transportation category" consisting of transactions arising from the transportation of goods by ocean, air, land (truck and rail), pipeline, and inland waterway carriers to and from the United States and between two foreign points, 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 nearly quadrupled, while imports of other private services and direct defense expenditures have increased 201 percent and 179 percent, respectively.

Agriculture: Reliance on Foreign Markets

The Uruguay Round brought agriculture fully into the world trade rules. This is significant because U.S. agriculture looks overseas to expand sales and boost incomes. The United States is the largest exporter of agricultural products in the world and is a highly competitive producer of many products.

The promises of greater reform in the new Doha negotiations, which have agriculture at the core, only enhance our opportunities:

- Exports of U.S. agricultural products also generate additional economic activity that ripples through the domestic economy. According to USDA's Economic Research Service, every farm export dollar earned stimulated another \$1.54 in business activity in calendar year 2003. The \$59.6 billion of agricultural exports in 2003 produced an additional \$92.0 billion in economic activity. Farmers' purchases of fuel, fertilizer, and other inputs to produce commodities for export spurred economic activity in the manufacturing, trade, and transportation sectors.
- Exports also mean jobs: jobs that pay higher than average wages and are distributed across many communities and professions, both on the farm and off, in urban and rural communities. Agricultural exports generated 912,000 full-time civilian jobs, which include 461,000 jobs in the nonfarm sector.
- Dollar for dollar, the United States exports more corn than cosmetics, more wheat than coal, more bakery products than motorboats, and more fruits and vegetables than household appliances.

- Twenty-five percent of all cash receipts for agriculture come from export markets. Nearly half of our wheat and rice crops are exported; about one-third of soybean and meat production is shipped overseas; and 20 percent of the corn crop is exported.

- Since the mid-1980s, suppliers of high-value products have seen export sales outpace domestic sales by a wide margin. Today, for example, nearly 60 percent of U.S. cattle hides are exported, with a total export sales value of \$1.6 billion.

- The export dependency of the almond industry is even higher, with about 65 percent of the crop shipped overseas. One-third or more of fresh table grapes, dried plums, raisins, canned sweet corn, walnuts and animal fats is exported.

Industrial Goods: The Importance of Implementation of WTO Sectoral Initiatives Since Completion of the Uruguay Round

Sectoral Liberalization and Global Trade: On average, total global exports in the industrial sectors subject to tariff elimination or harmonization in the Uruguay Round have increased at a faster rate than overall global exports. These products account for many of our leading export sectors. Specifically, average cumulative global exports in the industrial sectoral initiatives (agricultural equipment, chemicals, construction equipment, furniture, medical equipment, paper, pharmaceuticals, steel, textiles and apparel, and toys) have increased more than 100 percent between 1994, when the Uruguay Round was completed, and 2003 (as compared to a cumulative increase of 75 percent in all global exports). On an annualized basis, average global exports in all of the sectors listed below have increased more than 8 percent each year.

| Uruguay Round Sector | Growth in Global Exports 1994-2003 | Average U.S. Tariff Rate Pre-Uruguay Round | Average U.S. Tariff Rate Post-Uruguay Round |
|--------------------------|------------------------------------|--|---|
| Agricultural Equipment | 68.0% | 0.2 | 0.0 |
| Chemical Harmonization | 94.8% | 5.4 | 3.7 |
| Construction Equipment | 83.0% | 2.2 | 0.0 |
| Furniture | 140.4% | 3.6 | 0.0 |
| Medical Equipment | 164.5% | 5.1 | 0.0 |
| Paper and Paper Products | 60.3% | 2.1 | 0.0 |
| Pharmaceuticals | 307.7% | 4.1 | 0.0 |
| Steel | 65.9% | 5.3 | 0.0 |
| Textiles and Apparel | 47.7% | 17.5 | 15.5 |
| Toys | 81.5% | 5.3 | 0.0 |

Sectoral Liberalization and U.S. Exports: The same pattern emerges when examining U.S. total exports in these sectors. Total U.S. exports to the world grew 35.2 percent between 1994 and 2003, while average total U.S. exports to the world in the industrial sectors subject to sectoral liberalization grew more than 55 percent during the same period. Certain key sectors experienced even faster growth. U.S. participation in the chemical harmonization sectoral agreement facilitated export growth of 77 percent between 1994 and 2003 and U.S. global exports of medical equipment and pharmaceuticals grew 89 percent and 183 percent respectively.

| Uruguay Round Sector | Growth in U.S. Exports 1994-2003 |
|------------------------|----------------------------------|
| Pharmaceuticals | 183.2% |
| Medical Equipment | 89.2% |
| Chemical Harmonization | 77.0% |

Information Technology Agreement: Although WTO Members were not able to complete a sectoral initiative on electronic products during the Uruguay Round, major exporters of information technology products agreed at the first post-Uruguay Round Singapore Ministerial in 1996 to eliminate tariffs on a set list of products. The result was the Information Technology Agreement (ITA), which entered into force in 1997 with 29 signatories, covering 90 percent of global trade in these products. Today, 63 Members participate in the ITA, which covers 95 percent of global trade in information technology products. The Agreement reflects the increasingly global supply chain that has emerged in this sector and

has sparked tremendous growth in both U.S. and global exports of these products.

| Sector | Growth in Global Exports 1994-2003 | Cumulative Growth in U.S. Exports 1994-2003 |
|----------------------------------|------------------------------------|---|
| Information Technology Agreement | 102.8% | 22.6% |

An Example of the ITA's Effect with 3 Products and 3 Key Markets: Before India joined the ITA, U.S. exporters faced tariffs as high as 110 percent on integrated circuit parts. Now U.S. exporters enjoy duty free access. U.S. exports of this product to India were \$9.7 million in 2003, up nearly 35 percent since 1996 (HTS 854290). Before the Republic of Korea joined the ITA, U.S. exporters faced tariffs as high as 23.6 percent on electronic dictionaries. Now U.S. exporters enjoy duty free access. U.S. exports of this product to the Republic of Korea were \$294 million in 2003, up over 225 percent since 1996. (HTS 854389) Before Malaysia joined the ITA, U.S. exporters faced tariffs as high as 30 percent on fixed electrical capacitors. Now U.S. exporters enjoy duty free access. U.S. exports of this product to Malaysia were \$1.775 million in 2003, up over 120 percent since 1996. (HTS 853210)

The Role of Services in the U.S. Economy and its Importance to the Global Trading System

Services, such as accounting, financial, insurance, education, medicine, engineering, travel, tourism, construction, express delivery, advertising, retailing, telecommunications, computer services, environmental services - account for approximately 64 percent of total economic output in the United States.

Services are essential inputs to production of goods and to enabling access to low cost, reliable financial, telecommunications, distribution, and transportation infrastructure – all of which also enhance a country's ability to engage in international trade. Consumers (i.e., clients, patients, students) also benefit from services liberalization.

- For poor countries, services trade offers innovative opportunities to jump-start growth and development, and to tackle endemic poverty. Services promise poorer countries a chance to leap over the industrial revolution and to directly enter the information revolution.
- The World Bank has reported that services typically account for around 54 percent of GDP in developing countries, and that services are the fastest growing sector in many of the least-developed economies.

Throughout the latter half of the twentieth century, the service sector has been both the largest and the fastest growing component of the U.S. economy. Fifty years ago, the service sector accounted for about sixty percent of U.S. output.³ By 2000, the service industry share of U.S. private-sector gross domestic product (GDP) had grown to 79.2 percent.⁴

Services firms provide more jobs, and more new jobs, than all other sectors of the U.S. economy

³ USDOC, ITA, *The Role of Services in the Modern Economy*, Jan. 1999.

⁴ USITC, *Recent Trends in U.S. Services Trade*, May 2002, p. 1-3; and BEA *Survey of Current Business*, Oct. 2002, p. D-31.

combined.⁵ In 2001, service industries accounted for 81.1 percent of total private-sector employment in the United States.⁶ Service sector payrolls have risen 65 percent over the past twenty years, with almost 40 million more employees today than there were in 1978. These new service sector jobs accounted for the entire net gain in non-farm employment since the 1970s, a trend that is forecast to continue into the next decade.⁷

Developing Countries:

In many developing regions, services industries account for a large and increasing share of total economic output. During 1980-1995, the share of GDP accounted for by services industries increased from 48 percent to 56 percent in Latin America, and from 43 percent to 48 percent in East Asia. Services typically account for a larger share of total output in small, open markets, such as the Caribbean island countries.⁸

According to data published by the World Bank, service sector GDP is the fastest-growing component of total GDP in both low- and middle-income countries. Moreover, service sector GDP in such countries is growing faster than the world average. During 1990-2000, service sector GDP in low-income countries increased at an average annual rate of 5.1 percent, faster than the average annual growth rates experienced by world service sector GDP (2.9 percent) and total GDP in low-income countries (3.2 percent). Likewise, in middle-income countries, average annual growth in service sector GDP (3.9 percent) exceeded that of total world service sector GDP (2.9 percent)

⁵ USDOC, ITA, *The Role of Services in the Modern Economy*, Jan. 1999.

⁶ USITC, *Recent Trends in U.S. Services Trade*, May 2002, p. 1-3; and BEA *Survey of Current Business*, Aug. 2002, p. 80.

⁷ USDOC, ITA, *The Role of Services in the Modern Economy*, Jan. 1999.

⁸ Sherry M. Stephenson, "Approaches to Services Liberalization by Developing Countries," *Organization of American States, Trade Unit*, Feb. 1999.

and total GDP in middle-income countries (3.6 percent).⁹

Access to intermediate services, such as financial services and transport, and producer services contributes to economic development by improving competitiveness in the goods sector and enabling firms to track consumer demand. Domestic social services in developing countries also benefit from the availability of foreign-provided information technology services.¹⁰

Service sector output makes an important contribution to other market sectors. For example, a recent World Bank study indicates that in Bangladesh, every unit increase in infrastructure services output (including output in the energy, health, public administration, and transport industries) led to a 30- to 43-percent increase in demand in other sectors. Unit increases in banking and insurance, construction, and housing sector output creates 15- to 20-percent increases in the demand for output produced by other sectors.¹¹

Researchers at the University of Michigan estimate that the elimination of barriers to trade in services would yield a \$1.4 trillion income gain for the world, \$450 billion of which would accrue to the United States. Removing barriers to services trade around the world will strengthen the prospects of economic growth in the developing world, creating jobs and developing human capital in knowledge-based industries. In the WTO's Council for Trade in Services (the GATS Council) and the DDA negotiations a growing number of developing countries have begun to acknowledge this and have highlighted that trade in services has the potential to ultimately bring more gain for them than goods trade.

⁹ World Bank, *World Development Indicators 2002*, May 2002, table 4.1, pp. 204-206.

¹⁰ Sherry M. Stephenson, "Approaches to Services Liberalization by Developing Countries," Organization of American States, Trade Unit, Feb. 1999.

¹¹ OECD, *GATS: The Case for Open Services Markets*, 2002, p. 37.

- Cross-border trade in services, as defined by the U.S. Department of Commerce¹², increased 57.5 percent between 1994 (pre-GATS) and 2003.

- In 1994, U.S. cross-border services exports totaled \$186.7 billion and in 2003 the figure reached 294.1 billion.

- In 2003, the U.S. cross-border trade surplus in services was \$65.9 billion (i.e., the U.S. exported \$294.1b in services and imported \$228.2b).

- U.S. sales by foreign affiliates of U.S. companies (exports – mode 3) also increased during this period. Between 1994 and 2002 (last year for which data is available), U.S. exports increased 152 percent from \$159.1 billion to \$401.1 billion.¹³ Between 1994 and 1998, U.S. exports increased 50 percent from \$190.1 billion to \$286.1 billion. Between 1999 and 2002 (last year for which data is available), U.S. exports increased 13.6 percent from \$353.2 billion to \$401.1 billion.

- The United States continued to maintain a services surplus in 2002, as exports outpaced imports \$401.1 billion to \$386.7 billion. However, it should be noted that in 2002 sales of services by foreign affiliates of U.S. companies decreased 5 percent, the first decrease since these sales were first estimated in 1986. The

¹² The Bureau of Economic Analysis incorporates travel and passenger fares into its definition of cross-border supply for statistical gathering purposes. This should not be confused with the General Agreement on Trade in Services (GATS) definition of cross-border supply, which is only defined as the supply of a service from the territory of one Member into the territory of another Member (such as delivery via electronic means).

¹³ Beginning in 1999, sales by foreign affiliates were classified as goods or services based on industry codes derived from the North American Industry Classification System; the estimates for prior years were based on codes derived from the 1987 Standard Industrial Classification System. The change resulted in a redefinition of sales of services by affiliates, which resulted in a net shift of sales from goods to services and a significant spike in the 1999 figures.

decrease reflects the large drop of sales of services by foreign affiliates in utilities; this industry was hard hit by the collapse of overseas energy trading operations and by the business failures of some U.S. parent companies.

Quantification of Benefits

Measuring the Effects of Uruguay Round

Both before and at the time of the WTO's creation, a number of studies estimated its expected future effects on the U.S. and world economy. A common approach widely used in estimating the impact of trade agreements like the Uruguay Round (UR) is comparative static analysis, which holds constant all factors other than UR changes. These studies considered how trade and the economy would have been different in a recent historical year, if the Uruguay Round had been in place, fully implemented, with all long term economic adjustments made instantaneously. The effect of the UR is measured as the difference between the year as it was, in fact, and as it is estimated it would have been with a fully implemented UR. When scale economies and other dynamic factors are taken into account such as induced larger capital stock, technology transfer, and learning effects from the trade liberalization, the estimated economic gains can become several times larger.

In general, these studies capture only some of the effects of certain quantifiable features of the UR (for example reducing tariffs, subsidies or quotas). They do not capture gains such as from provisions of services liberalization, dispute settlement, intellectual property rights protection or other rules changes. They do not capture the enhanced commercial predictability of binding previously unbound tariffs in the agricultural and industrial sectors – an extremely important gain from the UR with respect to the trade policy regimes of low and middle-income countries. These studies capture only some of the possible dynamic or growth effects of the Uruguay Round trade liberalization. Finally, because the studies generally deal with the highly aggregated product categories and cannot measure economic gains from the reduction of barriers among products within categories, a so-called “product aggregation bias” is likely to result in yet another source of benefit under estimation in such modeling efforts.

Quantification of Economic Effects

The Council of Economic Advisors (CEA) reported on these academic studies – some incorporating dynamic effects, others not -- that evaluate gains from the UR (CEA 1999). Those studies estimate that annual global income could rise between 0.2 percent to 0.9 percent of GDP or \$40 billion and \$214 billion (1992 dollars) upon full implementation. For the United States alone, the increase could amount to \$27 billion to \$37 billion (1992 dollars) each year with good prospects for even further gains. Post-Uruguay Round negotiations yielded additional market access commitments in financial services, basic telecommunication services and information technology, areas of undoubted and substantial benefit.

International Trade Benefits the American Consumer

The American approach to an open economy brings the benefits of competition and consumer choice. Increased trade and competition have resulted in large gains for American citizens. International trade enriches the marketplace and results in a wider variety of consumer goods and services than would be available in the absence of trade. Trade and competition help keep a lid on prices, and over the past decade, U.S. prices have fallen for a wide range of supermarket products and other consumer goods that are prevalent in U.S. trade, such as automobiles, household appliances, televisions, camcorders, and cellular phones. These tables depict consumer benefits in the way of savings on products that are prevalent in U.S. trade today. A 12-item basket of supermarket goods that cost \$29.14 in 1994 can be purchased for \$23.14 today. The number of hours an American must work in order to purchase a new car, home appliance, or bag of groceries has significantly decreased from a decade ago. The work time required to buy a new car is 16 percent less than just seven years ago, and nearly 50 percent less for a color TV. Consumers are able to enjoy more goods and services per hour worked, and international trade has played a considerable role in attaining these benefits for the American consumer.

Table 1: U.S. Basket of Supermarket Goods in 1994 & 2003

| Product | U.S. Average Price in 1994 (in 2003 dollars) | U.S. Average Price in 2003 (in 2003 dollars) | Real Work-Hour Prices in 1994* | Real Work-Hour Prices in 2003* |
|------------------------|--|--|--------------------------------|--------------------------------|
| Red Delicious Apples | \$0.99 | \$0.98 | 0.07 | 0.06 |
| Bananas | \$0.57 | \$0.51 | 0.04 | 0.03 |
| Orange Juice | \$2.00 | \$1.85 | 0.13 | 0.12 |
| Coffee | \$4.22 | \$2.92 | 0.28 | 0.19 |
| White Rice | \$0.68 | \$0.45 | 0.05 | 0.03 |
| Potato Chips | \$3.69 | \$3.50 | 0.25 | 0.22 |
| Peanut Butter | \$3.28 | \$1.92 | 0.15 | 0.12 |
| Chocolate Chip Cookies | \$3.15 | \$2.81 | 0.21 | 0.18 |
| Boneless Ham | \$3.24 | \$2.89 | 0.22 | 0.19 |
| Bologna | \$3.56 | \$2.39 | 0.24 | 0.15 |
| Turkey | \$1.24 | \$1.08 | 0.08 | 0.07 |
| Tuna | \$2.52 | \$1.84 | 0.17 | 0.12 |
| Total | \$29.14 | \$23.14 | 1.89 | 1.48 |

Source: U.S. Bureau of Labor Statistics and Dallas Federal Reserve Bank

*Real work hour prices represent the number of hours an individual must work in order to purchase the good. Unit prices are listed.

Table 2: U.S. Basket of Consumer Goods in 1997 and 2004

| Product | U.S. Price in 1997 (in 2004 dollars) | U.S. Price in 2004 (in 2004 dollars) | Real Work-Hour Prices in 1997* | Real Work-Hour Prices in 2004* |
|-------------------------------------|--------------------------------------|--------------------------------------|--------------------------------|--------------------------------|
| New Car (Ford 4-door midsize sedan) | \$21,430 | \$18,480 | 1,368 | 1,144 |
| Electric Range | \$343 | \$277 | 22 | 17 |
| Refrigerator | \$1,070 | \$807 | 68 | 50 |
| Clothes Washer | \$402 | \$277 | 26 | 17 |
| Clothes Dryer | \$405 | \$247 | 26 | 15 |
| Dish Washer | \$440 | \$290 | 28 | 18 |
| Microwave | \$237 | \$40 | 15 | 2 |
| Color TV | \$356 | \$178 | 23 | 11 |
| VCR | \$237 | \$59 | 15 | 4 |
| DVD Player | \$584 | \$89 | 37 | 5 |
| Camcorder | \$653 | \$247 | 42 | 15 |
| Soft Contact Lenses | \$60 | \$15 | 4 | 1 |
| Cellular Phone | \$143 | \$70 | 9 | 4 |
| Total | \$26,359 | \$21,076 | 1,682 | 1,305 |

Source: Dallas Federal Reserve Bank

*Real work hour prices represent the number of hours an individual must work in order to purchase the good.

Global Development

The WTO Promotes U.S and Global Economic Growth and Development

The United States has been an engine of economic growth for much of the world economy. Strong growth of the U.S. economy and openness to trade assisted the recovering countries involved in the Asian financial crisis of the late 1990s and further helped pull the global economy back from the brink of severe recession in the early part of the current decade. U.S. trade policies, with the completion of the Uruguay Round and creation of the WTO figuring prominently, have helped the nation to sustain not only its own domestic economic strength but also its leadership role within the global economy.

The United States continues to be second to none in actively working with developing countries to encourage trade liberalization that will boost economic growth and development. Trading partners with strong economies make good allies and provide important outlets for US goods and services. Over 95 percent of the world's consumers live beyond U.S. borders. The WTO provides numerous important avenues for the United States to work with developing countries, ranging from a broad-based U.S. leadership role in the enhancement of the WTO approach to technical assistance, to U.S. efforts within individual negotiations to establish individual alliances with developing countries on particular issues of mutual interest.

Studies by the World Bank (2002, 2004, 2005), IMF (2003) and OECD (2001) show that the WTO's rules-based system promotes openness and predictability leading to increased trade and improved prospects for economic growth in member countries. By promoting the rule of law, the WTO fosters a better business climate in developing country members, which helps them attract more foreign direct investment. Studies show that the developing countries that have increased their share of world trade the most also attract the most investment. Thus the WTO is helping the United States reach its long-term goals of assisting developing countries

raise their living standards, increasing economic growth around the globe, and lifting the least developed countries out of poverty.

Trade promotes growth and economic opportunity in a number of ways. It increases productivity through specialization, leading to increased investment and job creation. It also helps to spread the best production methods and technologies around the world, again boosting productivity and creating jobs. Studies show that countries that have more open economies engage in increased international trade and have higher growth rates than more closed economies.¹⁴ Recent studies also find that trade and integration into the world economy lead to faster growth and poverty reduction in poor countries.¹⁵ The developing countries that were most open to trade over the past two decades also had the fastest growing wages.¹⁶

¹⁴ See: World Bank, 2001, *Trade, Growth and Poverty*; Jeffrey Frankel and David Romer, 1999, "Does Trade Cause Growth?"; and Francisco Alcala and Antonio Ciccone, 2001, *Trade and Productivity*.

¹⁵ See: William R. Cline, 2004, *Trade Policy and Global Poverty*; and World Bank, 2004, *Global Economic Prospects 2004*.

¹⁶ World Bank, *World Development Report*, 1995, p. 55.

The WTO Has Helped Developing Countries Become More Active in Trade

Over the past decade, developing countries have opened their economies to more trade and the WTO has played an important role in encouraging this positive trend. Through sustained trade liberalization for manufactured products brought about by successive multilateral trade rounds, developing countries have increased their competitiveness and share of global trade. Developing countries nearly doubled their exports of goods and services between 1990 and 2000, from \$860 billion to \$1.7 trillion.¹⁷ Over the past two decades, developing countries' share of world trade has increased from about one-quarter to one-third.¹⁸ Even least-developed countries (LDCs) have benefited from WTO membership to increase their trade activities and improve their growth prospects. LDC exports grew 8 percent in 2002 and 13 percent in 2003, which includes LDC trade with other developing countries. 17 LDCs from different regions of the world export more than half of their products to developing countries. The top ten markets for LDCs include Thailand, India and Chinese Taipei. Additionally, China is the third most important market for LDC exports.

Many developing countries also have successfully diversified their exports to cover a broad range of manufactured goods, thus improving their chances for faster economic growth and for creating jobs that pay higher wages. The share of manufactured goods exports in total developing countries' exports increased from 20 percent in 1980 to over 70 percent in 2001.¹⁹

¹⁷ See: World Bank, 1998, *World Development Indicators*; and William R. Cline, 2004, *Trade Policy and Global Poverty*, p. 20.

¹⁸ World Bank, 2002, *Global Economic Prospects 2002*.

¹⁹ World Bank, 2004, *Global Economic Prospects 2004*.

Developing Countries Represent a Growing Market for U.S. Firms

U.S. trade with developing countries is at an all-time high. Developing countries are growing faster now than they were on average during the 1980s and 1990s, and 2004 was a record year for economic growth, currently estimated at 6.1 percent. Developing countries account for an increasing share of global demand and represent growing export markets for U.S. firms. In 2003, exports to developing countries increased to 45 percent of total U.S. exports, compared with 43 percent in 1994. While rapidly rising trade volumes played an important role in developing countries' economic growth, U.S. firms also benefited substantially by gaining freer access to these rapidly growing markets, but for many, further opening of these markets remains a key objective for achieving future growth.

Further Trade Liberalization Key to Alleviating Poverty

The Uruguay Round made important progress in reducing global trade protection, in particular because several key developing countries "bound" the highest level that could be applied in the case of all or nearly all of their tariffs. Such a binding provides more predictable market access for exports from the United States and, equally important, from other developing countries.

However, from both the perspective of U.S. economic aims and the perspective of development gains, there is little doubt that more remains to be done. Further trade liberalization could have a substantial impact on reducing global poverty, by as much as 25 percent according to some estimates. Reflecting the need to turn away from closed markets and diminished respect for rule of law, trade liberalization has been estimated as having the potential to help lift 500 million people out of poverty, and inject \$200 billion annually into the economies of developing countries.²⁰ The

²⁰ William R. Cline, 2004, *Trade Policy and Global Poverty*.

World Bank estimates that complete trade liberalization could increase unskilled wages in developing countries by 7 percent.²¹

Further liberalization of trade between developing countries, so-called South-South trade, will bring particular development dividends to developing countries. Data show that developing countries pay about 70 percent of their import duties to other developing countries. The average level of applied industrial tariffs in developing countries is three times the level of those in developed countries, and for bound tariffs the level is more than six times higher. Additionally, the incidence of tariff peaks (well in excess of average rates) on products of export interest to LDCs is much higher in developing countries than in developed countries. For example, on non-agricultural products, LDCs face 163 peaks in the United States, but, for example, face 1,924 in Thailand, and 1,323 in Malaysia.²²

Thus tariffs are a larger cost of doing business for developing countries than they are for developed countries. The reduction or elimination of tariffs by developing countries would stimulate increased South-South trade, which has tremendous growth potential. This increased trade would create significant welfare gains by promoting healthy competition, more efficient methods of production and best practices. All of these conditions lower costs of production for developing countries, allowing manufacturers to procure inputs at world prices, and lower prices for developing country consumers.

Some of the WTO's least developed members lack the necessary institutions and infrastructure to enable them to reap the full benefits of trade. In those cases, capacity building and technical assistance, coupled with market opening, could improve their chances for making the most of the opportunities presented by trade

liberalization. The United States will continue to play a prominent role in the WTO to ensure that the maximum gains from trade liberalization are enjoyed by developing countries and other WTO members.

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²¹ World Bank, 2002, *Global Economic Prospects 2002*.

²² WTO Secretariat, "Market Access Issues Relating to Products of Export Interest Originating from Leads-Developed Countries," Geneva, 2004.

Trade Facilitation: Cutting Red Tape

As part of an overall Decision that set the course for the final phase of the negotiations under the DDA, WTO Members agreed on August 1, 2004 to launch negotiations on Trade Facilitation, aimed at clarifying GATT Articles V, VIII and X, “with a view to further expediting the movement, release and clearance of goods, including goods in transit.” The launch was an achievement and results of the negotiations will yet again prove that the WTO is a dynamic forum responsive to rapid changes in the 21st century economy.

In 1947, when the GATT was created and the relevant GATT Articles originally were written, customs procedures for many countries had changed very little since the 19th century. Problems associated with how goods cross the border were generally perceived as “technical irritants,” and were largely addressed on a case-by-case basis rather than as systemic trade matters that today are seen as closely linked to achieving market access. Uncertainty about import procedural requirements, hidden fees, and slow border release times are some of the non-tariff barriers most frequently cited by U.S. exporters; according to various studies such practices can be the equivalent of an extra 5 to 15 percent tariff. Small enterprises are particularly harmed by opaque border processes or, for example, an unwarranted delay in obtaining release from customs authorities of a critical spare part.

One of the most frequently-cited impediments to the growth of South-South trade is the absence of a rules-based approach to goods crossing the border. Where customs-related corruption exists, it is no longer readily dismissed as something petty, but is now recognized as a drain on economic development that has its genesis in nontransparent discretionary practices allowing goods to be held by customs officials for unduly long periods of time. The gains from negotiations, embodied in new and strengthened WTO commitments pertaining to how goods cross borders, will yield an immediate “on the ground” positive effect and offer a true “win-win” opportunity for all Members. Enhancing the trade facilitation environment through a WTO rules-based approach will also greatly improve the ability of the United States and other Members to achieve important objectives related to ensuring compliance with customs-related requirements concerning health, safety, the environment, and security. The United States will work to ensure these WTO negotiations move forward in a manner where every Member—as both an importer and an exporter—will have a real stake in robust results and in their implementation.

The WTO Promotes Sustainable Development

The broad economic achievements of the Uruguay Round have been accompanied by unprecedented social progress throughout the world, from increases in life expectancy, decreases in infant mortality, reductions in famine, and the spread of democracy, to greater respect for labor standards and environmental protection. In the case of environmental protection, as incomes rise, part of the additional income is often used by governments to address environmental problems and achieve a cleaner environment. Better-off societies typically have both the desire and means to pay for necessary abatement and prevention costs.

From the beginning, the WTO has recognized the importance of sustainable development. The Preamble of the Agreement establishing the WTO calls “for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with [Members’] respective needs and concerns at different levels of economic development.”

Contrary to criticisms that have been made, WTO rules accommodate Members’ pursuit of environmental protection at levels they deem appropriate. Panel findings in WTO disputes have borne this out over the years. For example, in the Shrimp-Turtle dispute (1998), the WTO Appellate Body recognized that the U.S. Shrimp-Turtle law itself was consistent with the GATT’s rules for conservation measures, finding fault only with certain aspects of U.S. implementation of this law. Similarly, the Reformulated Gasoline dispute (1996) concerning EPA regulations implementing the Clean Air Act, did not put U.S. environmental objectives in question. Rather, the WTO Appellate Body found that one aspect of EPA’s regulations arbitrarily discriminated against foreign refiners. In that case, the United States adjusted our practices to comply with our WTO

obligations without undercutting the efficacy of our environmental laws.

Ministers decided at their meeting in Marrakech in April 1994, to establish a WTO Committee on Trade and Environment (CTE). The CTE has played a critical role in bringing trade and environment experts together, and as a result has improved communication and cooperation on trade and environment issues both domestically and internationally. In addition to the CTE's regular meetings, the WTO secretariat has hosted briefings, discussions, high-level workshops, and other outreach and education activities in Geneva and in developing countries for government officials and NGOs, many of which focus on the environmental aspects of trade liberalization. The CTE has become the preeminent global forum for identifying and analyzing trade and environmental issues and has served as an incubator for key issues that have been taken up by other WTO bodies, including the Technical Barriers to Trade (TBT) Committee, and most notably by Ministers for negotiation in the Doha mandate (e.g., fisheries subsidies and market access for environmental goods and services).

The Doha Agenda is ground-breaking in its inclusion of specific negotiating mandates aimed at enhancing the mutual supportiveness of trade and environmental policies. These specific trade initiatives – such as those aimed at eliminating market-distorting subsidies that also cause damage to the environment, e.g., fishing and agricultural export subsidies – can contribute to environmental protection efforts and simultaneously eliminate trade distortions. The

mandate to eliminate or reduce tariff and non-tariff barriers to trade in environmental goods and services will facilitate access to and encourage the use of cleaner technologies, which can reduce and prevent environmental pollution.

The WTO Addresses Harmful Fisheries Subsidies—a “Win-Win-Win” for Trade, the Environment and Sustainable Development

Early on, WTO Members identified work on fisheries subsidies as a key area in which trade liberalization could contribute to environmental conservation and sustainable development. Excessive subsidies to the world's fishing fleets lead to over fishing and threaten the economic and environmental health and sustainability of the world's fisheries, including in some cases the collapse of important fisheries stocks. These effects can be particularly harmful to developing countries, many of whose people depend on fishing for their livelihood. Following extensive discussion in the Committee on Trade and the Environment, WTO Members agreed on a specific negotiating mandate at Doha to strengthen global trading rules regarding fisheries subsidies. Negotiations are now underway in the Negotiating Group on Rules. The United States is a leader in pressing for stronger disciplines on fisheries subsidies, including the prohibition of the most harmful subsidies. The fisheries negotiations offer the United States and other WTO Members an historic opportunity not only to improve the state of the world's fisheries but also to demonstrate in concrete, real world terms that trade liberalization, environmental protection and sustainable development can and should be complementary goals.

C. The Doha Development Agenda (DDA)

The DDA was launched in Doha, Qatar in November 2001. The DDA agenda provides a mandate for negotiations on a range of subjects and work in on-going WTO Committees. The main focus of the negotiations is in the following areas: agriculture; industrial market access; services; trade facilitation; WTO rules (i.e., trade remedies, regional agreements and fish subsidies); and development. In addition, the mandate gives further direction on the WTO's existing work program and implementation of the WTO Agreements. The goal of the DDA is to reduce trade barriers so as to expand global economic growth, development and opportunity.

DDA Negotiations

- Special Session of the Committee on Agriculture
- Negotiations for Non-Agricultural Market Access (NAMA)
- Special Session of the Council on the General Agreement on Trade in Services (GATS)
- Negotiating Group on Trade Facilitation
- Negotiating Group on WTO Rules
- Special Session of the Dispute Settlement Body
- Special Session of the Council on Trade in Intellectual Property Rights (TRIPS)
- Special Session of the Committee on Trade and Environment
- Special Session of the Committee on Trade and Development

Progress in the DDA negotiations in 2004 surpassed expectations. As the new year opened, some pundits were suggesting that the U.S. Presidential elections, the change in leadership in the EU Commission and lack of progress for the EU in reform of its Common Agricultural Policy would ensure that the negotiations would go into a holding pattern until 2005. In fact, fears about the breakdown of the multilateral system, as evidenced at the Cancun Ministerial Meeting in September 2003, jarred trading partners into a new reality that the world could not afford to let the WTO languish, because the world needs a strong and open multilateral trading system to oversee trade relations between partners.

The initiative taken in early January 2004 by U.S. Trade Representative Zoellick set the tone for the year ahead in putting the Doha negotiations back on track. In an open letter to his WTO counterparts, Ambassador Zoellick argued against allowing 2004 to be a lost year for the DDA, and shared ideas about a practical way to move the negotiations forward, focusing on the core "market access" areas of agriculture, goods and services, with work to develop frameworks that could be approved by the WTO's membership before the end of 2004. Agriculture, the key to the breakdown in Cancun, was one of the issues mentioned in the letter. Importantly, it suggested that WTO Members agree to eliminate agricultural export subsidies by a date certain. The letter reassured partners of U.S. commitment to the DDA Agenda in its entirety and the need to move expeditiously to eliminate obstacles to progress. Reactions were favorable.

The USTR's letter was complemented by globe-spanning diplomacy – with visits to key capitals and meetings with Members at various levels of development. The commitment to move forward with the negotiations was evident as Members shared their concerns about the agenda, from agriculture to the Singapore issues (where lack of consensus on whether to begin negotiations on competition, investment, transparency in government procurement and trade facilitation had led to a stalemate at

Cancun). By the spring, it was evident that with hard work, consensus could be achieved to commence negotiations on trade facilitation, but the other Singapore issues appeared intractable.

In May 2004, EU Commissioners Lamy and Fischler responded with their own letter to WTO Members, and agreed that export subsidies would be eliminated by a date certain and renewed the European Union's commitment to pursuing the WTO's agenda. Most heartening, however, was the commitment displayed by other trading partners – starting with APEC in Thailand at the end of 2003, and the African Union in Kigali in June 2004 – realizing that without the WTO they would not be able to effectively participate in world trade. President Bush, as host of the G-8 in Sea Island, Georgia noted that the world faced a moment of strategic economic opportunity to combine the recent upturn in economic growth with a global reduction to barriers to trade to ensure wider participation in a more durable economic expansion.

Through the course of the spring and summer, negotiators worked to refine and narrow differences in order to devise frameworks that would take the DDA to the next phase, setting up negotiations on the details of the tariff and subsidy cutting formulae in agriculture and industrial goods. All the work and consultation, including substantial work at the ministerial-level, concluded in agreement in the early hours of August 1 to detailed plans to open markets and expand trade. The United States was a central player in the work to forge a consensus and will continue to give its leadership to completing the DDA. The next phase is all about negotiating the speed limits for how far and how fast we will lower trade barriers.

Since the launch of the Doha Development Round in 2001, the United States has tabled 95 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 that 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.

Given the emphasis on development in the DDA, the United States had led the effort to provide unprecedented contributions to strengthen technical assistance and capacity building to ensure the participation of all Members in the negotiations. U.S. technical assistance contributions on trade-related issues to developing countries - both bilaterally and multilaterally - were valued at \$903 million in 2004. As the DDA negotiations proceed, the United States intends to work with others to maximize the opportunities for collaboration with other institutions, such as the World Bank and IMF, to ensure that the broader technical assistance, adjustment and infrastructure, and supply-side issues – areas outside of the WTO's mandate – are addressed.

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.

D. The General Council and the Trade Negotiations Committee Pursue the Doha Development Agenda: July Framework Revive Negotiations

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 intensified its work in the second half of 2004 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 Shotaro Oshima of Japan. The Chairman of the General Council, along with Director-General Supachai, played a central role in helping forge the consensus needed to put the round back on track.

Progress in 2004

The impasse at Cancun in September 2003, led most to believe that the negotiations would not make much progress in 2004, given leadership changes in the EU and the U.S. elections. The United States led the effort to ensure that negotiations moved ahead. At the same time, trading partners, particularly developing countries in Africa and those with agricultural interests, saw that the failure of Cancun did not work to their advantage. A series of meetings were held at ministerial level - in Costa Rica, Kenya, Mauritius, and Chile - to put the negotiations back on track. In addition, President Bush made certain that the WTO negotiations were an important part of the discussion at the Sea Island G-8 Economic Summit.

In July, the Roadmap for Historic Reforms culminated in a detailed plan to open markets and expand trade, setting the course to achieve:

- Historic reform of global agricultural trade;
- Elimination of all agricultural export subsidies;
- Substantial improvement in market access for farm goods through tariff cuts and quota expansion;
- Substantial reductions in trade-distorting agricultural support programs;
- Ambitious opening of global services markets;

- Significant new market access for manufactured goods through broad tariff cuts, tariff elimination or harmonization in key industry sectors, and work to reduce non-tariff barriers; and

- Less red tape and more efficiency in the movement of goods across borders.

Agriculture

- In a key accomplishment for U.S. farmers and ranchers, the framework calls for an ambitious and balanced result through reform of trade-distorting agricultural subsidies, elimination of agricultural export subsidies, and a substantial improvement in market access for all farm products;

- In cutting farm tariffs, all countries other than the least-developed will make a contribution, and there will be deeper cuts in higher tariffs;

- Tariffs will be cut using a tiered (“banded”) formula that will lead to greater harmonization in tariff levels across countries. In addition, a tariff cap will be evaluated as part of the negotiations;

- Substantial improvement in market access will apply to all agricultural products, even “sensitive” products. Countries may designate a specific number of sensitive products that will be handled through a combination of tariff quota expansion and tariff reductions to expand market access;

- Developing countries, while part of the reform process, will be subject to lesser tariff reduction commitments in each band of the tiered approach. The vulnerability of poor subsistence farmers is recognized in the text for further discussion;

- In a historic achievement that has been a goal of the U.S. and others for decades, the framework calls for the elimination of agricultural export subsidies. These are the most trade-distorting type of agricultural subsidies;

- The framework also disciplines export credits and export guarantee programs, eliminating over time their trade-distorting elements;

- Another key U.S. objective reflected in the framework is the elimination of trade-distorting practices in the sales of State Trading Enterprises (STEs). The framework calls, for the first time, for specific disciplines and greater transparency on STEs, and offers the possibility to negotiate the elimination of the monopoly powers of such entities;

- Those countries with higher allowed levels of domestic support will be subject to deeper cuts. This harmonization of domestic support levels has long been a key U.S. objective;

- Trade-distorting forms of domestic support for agriculture will be cut substantially, with caps on support levels for specific commodities and cuts in the overall level of trade-distorting support;

- In the first year of implementation, each Member’s total trade-distorting support will be cut by 20 percent from currently allowed levels, an amount equal to the cut of these subsidies during the entire Uruguay Round;

- The framework text also maintains the viability of food aid programs for humanitarian and development needs; and

- Cotton: countries have agreed that cotton is a vital issue that will be addressed within the agriculture negotiations. As the G-8 Leaders recently affirmed, cotton is a matter of primary concern to African countries. Work on cotton will include all trade-distorting policies in the sector, including market access, domestic support, and export competition.

Manufactured Products – Broad Cuts in Tariffs and Other Barriers

Current WTO-Allowed Industrial Tariffs



- The text lays the groundwork for significant reductions or elimination of tariffs on industrial goods, which account for over \$6 trillion in global trade or nearly 60 percent of overall global trade in goods and services. U.S. exports of industrial goods are more than \$670 billion per year.

- Members agreed to negotiate a tariff-cutting formula for industrial products under which higher tariffs will be cut more than low tariffs. This will help U.S. manufacturers, because foreign tariffs on industrial goods currently average 40 percent, while U.S. tariffs average 4 percent. The formula cuts will be complemented by sectoral initiatives to fully eliminate or harmonize tariffs in particular industry areas. This may include “zero-for-zero” (elimination of tariffs) as well as “harmonization” (tariffs equalized at lower levels) sectoral initiatives.

- In cutting tariffs, developing countries will have longer implementation periods and flexibility on a certain percentage of their tariff lines.

- Least developed countries are expected to increase the certainty and predictability of their tariff regimes by binding (capping) more of their industrial tariffs.

- Non-tariff barriers will be reduced through negotiations that are equally important as tariff-cutting work. Countries will identify and work to reduce non-tariff barriers in the next phase of negotiations.

***Key Opportunities
For U.S. Workers and Manufacturers***

- *Expanded market access for U.S. manufactured goods, from cars to computers to consumer goods.*
- *Broad cuts in tariffs through a “tariff-equalizing” formula that would cut high foreign tariffs faster.*
- *Elimination of tariffs in key U.S. export sectors through “zero-for-zero” initiatives.*
- *Work to address foreign non-tariff barriers.*

Services – Intensified Negotiations to Open Markets

- Members reaffirmed that Services is one of three core elements of an ambitious market access result.
- Members agreed to intensify negotiations to open global services markets, which are the increasingly critical infrastructure of economic growth and competitiveness in both developed and developing countries.
- In the United States, services account for 65 percent of GDP and 80 percent of domestic employment. The U.S. services market is one of the most open in the world; the U.S. objective in the Doha negotiations is to open foreign service markets to world-class services of U.S. providers. Developing countries, too, will benefit from services liberalization. On average, services account for more than half the GDP of most developing countries.
- Countries agreed that more – and better – market-opening offers need to be put on the table as soon as possible, and that they should aim for progressively higher levels of liberalization.

Trade Facilitation – Cutting Red Tape, Helping Small Business

- Countries have agreed to launch negotiations to clarify and improve the WTO rules governing customs procedures. This will

cut red tape, improve the transparency and efficiency of how goods cross borders, and advance reforms that will contribute to anti-corruption efforts in many countries.

***Key Opportunities
For U.S. Exporters and Small Businesses***

- *Cut red tape and reduce the cost of selling into some countries by 5% to 15%.*
- *Expedited customs treatment for express deliveries.*
- *Facilitate “just-in-time” manufacturing programs.*
- *Use the Internet to improve information about foreign customs requirements and fees.*
- *Improve opaque foreign customs procedures that cause shipment delays and frustration for small U.S. exporters.*

- These negotiations will update and modernize current WTO rules on border procedures, which date back to 1947.

- Red tape and unnecessary formalities at the border can wipe away market access gains achieved through lower tariffs. Some studies have suggested that an antiquated approach to customs procedures in some countries can be the equivalent of an extra 5 to 15 percent tariff.

- Uncertainty about import requirements, hidden fees, and slow border release times are among the non-tariff barriers most frequently cited by U.S. exporters.

- Small and medium-sized exporters are particularly affected by opaque customs procedures and unexpected problems in getting clearance of critical shipments into important markets.

Development – Ensuring That the Poorest Are Not Left Behind

- The framework encourages expanded trade between developed and developing countries, as well as expanded “South-South” trade. Open markets and domestic reform go hand in hand, offering the best means for further integrating developing countries into the global economy.
- This reflects the recent commitment of G-8 Leaders to ensure that the poorest are not left behind, but that they too develop the capacity to participate in the global trading system. The framework recognizes that different countries will need to move at different speeds toward open trade.
- The Doha Development Agenda is part of President Bush’s strategy to open markets, reduce poverty and expand freedom through increased trade among all countries in the global trading system, developed and developing. The strategy is being implemented through global, regional and bilateral trade initiatives, as well as preference programs like the African Growth and Opportunity Act.

Prospects for 2005

The WTO will convene for its 6th Ministerial Meeting in Hong Kong, China, December 13-18, 2005. Accordingly, work over the next year will concentrate on advancing the negotiations and ideally enable the final negotiations to begin post-Hong Kong, with the aim of concluding the DDA in 2006. The detailed plans agreed before the 2004 summer break in Geneva have enabled governments to return to the key technical issues needed to advance negotiations. Key issues in 2005 on the Doha Development Agenda will include:

- Agriculture: Building on the framework agreed, the United States will continue to focus on establishing the parameters for reform and liberalization in each of the three pillars of the negotiations: market access, export subsidies and domestic support. Progress in all three areas, reducing and harmonizing the level of trade domestic support, agreeing on the details of the commitment to eliminate export subsidies and creating new market access opportunities in the markets of developed and developing countries, will be the focus of attention. With these parameters set, negotiations will then turn to the development of specific schedules which must be submitted by each WTO Member and will start the final phase of the round.

The framework encourages expanded trade between developed and developing countries, as well as expanded “South-South” trade.

- Non-Agricultural Market Access: The United States, along with key trading partners will continue to press for an ambitious outcome in this critical area of the negotiation. Work on developing a non-linear formula that reduces individual tariffs, agreements to sectoral liberalization, addressing non-tariff measures, and defining appropriate flexibility will all be critical to the work done in 2005. Like agriculture, agreement on the parameters of liberalization should be completed before the next ministerial meeting, so that governments can begin to table their schedules and enter the final phase of bargaining early in 2006.
- Services: A successful conclusion to the DDA requires far-reaching liberalization and commitments in the area of services. United States interests are broad in negotiations – from audiovisual services to telecommunications, financial services, express delivery and energy-related services. The United States has an aggressive agenda for market opening in

services. 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. For developing countries, services are a great economic multiplier and essential to their respective development strategies.

- **Dispute Settlement:** The United States has led efforts to strengthen the rules governing the settlement of disputes. 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 in 2004.

- **WTO Rules:** The United States remains focused on ensuring that the negotiations strengthen the system of trade rules and address 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 admittedly a difficult topic, constructive engagement in the negotiations in this area have focused on the substantive issues of concern. This identification process will continue into 2005, with the aim of building consensus for any changes that may be required. 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):** At long last, negotiations are underway in this critical area. These negotiations will update and modernize current WTO rules on border procedures. Cutting the red tape may reduce the cost of selling into some countries by 5 percent to 15 percent. Work in 2005 will focus on the practical issues that need to be addressed in forging an agreement.

- **Environment:** The United States will continue to 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. The U.S. agenda is aimed at promoting growth, trade and the environment.

- **Trade and Development:** The July frameworks establish further work on development – a critical issue that can best be addressed in the negotiating areas. The United States intends to work with others in promoting better cooperation in the field of technical assistance and capacity building to integrate developing countries into the trading system. With respect to the negotiations, proper, debates will continue regarding the need to ensure that the poorest, less advanced countries are helped to participate, while the more advanced, trade-oriented, developing countries make a greater contribution to the system.

- **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. These are difficult issues, which the Director-General and his team will take up with Members as part of the preparations for the Hong Kong, China ministerial.

1. Committee on Agriculture, Special Session

Status

The WTO provides multilateral disciplines and rules 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 establish 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 the EU's subsidization practices or firm commitments for access to the Japanese market. Negotiations in the WTO provide the best means to open global markets for U.S. farm products and reduce subsidized competition.

Agriculture negotiations are conducted under the ambitious mandate agreed at the Fourth WTO Ministerial Conference in Doha, Qatar which calls for "substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support." This mandate was augmented with specific provisions for agriculture in the framework agreed by the General Council on August 1, 2004.

Major Issues in 2004

Following disagreement at the Cancun Ministerial meeting in September 2003 over the scope and speed of agriculture reform, the United States initiated a series of informal consultations with WTO members to assess their commitment to multilateral agricultural reform consistent with the Doha mandate. The United States has long advocated fundamental reform of all trade-distorting measures by all WTO members and in 2002 made specific proposals to phase-out all tariffs, trade-distorting domestic support, and export subsidies in the Doha negotiations. Subsidizing, uncompetitive countries hesitant to introduce their producers to market forces resisted these proposals. In addition, a number of developing countries proposed substantial reforms in developed country agricultural policies before committing to their own reforms. The fundamental challenge after Cancun was to determine if other countries were prepared to undertake reform and, if so, how to negotiate specific commitments to reduce protection and trade-distorting support. Building on this U.S. initiative, WTO members engaged in intensive discussions in the first half of 2004. The discussions focused on the core issues in the three pillars of market access, export competition, and domestic support with a view

toward identifying agreed approaches to achieve reform.

U.S. negotiators met bilaterally with interested participants, with small groups of like-minded countries, in informal groups of countries with varied interests in the negotiations, and in large informal and formal meetings organized by the Chairman of the WTO agriculture negotiations, Ambassador Tim Groser of New Zealand. Through this process, and in particular, the work of a group of five interested parties (the United States, the European Union, Australia, Brasil, and India) common ground was developed on some of the fundamental issues in the negotiations. These ideas were provided to Chairman Groser who presented a draft agricultural framework to WTO Members on July 16, 2004.

After further revisions, developed through intensive round-the-clock negotiations at the ministerial-level at the end of July, WTO Members agreed to an agriculture framework to guide further progress in the negotiations. In the fall, technical discussions continued in Geneva to prepare the way for specific negotiations over the depth of tariff and subsidy cuts, time frames for implementing reforms, and other issues.

Key elements of the framework in each of the three pillars are described below.

Export Subsidies: On export subsidies, the framework specifies, for the first time, that all export subsidies will be eliminated by a date certain. Export credit and credit guarantee programs with repayment terms over 180 days will also be eliminated in a parallel manner with direct export subsidies. Disciplines will be developed on export credit and credit guarantee with repayment terms under 180 days. The framework prohibits all trade-distorting elements of export state trading enterprises. Disciplines will also be established on food aid programs to ensure that food aid does not displace commercial sales. Further discussions will be held on export restrictions, including export taxes.

Market Access: The framework on market access specifies the use of a tiered formula that ensures higher tariffs receive deeper cuts. For a certain number of sensitive products, less than formula reductions will be permitted with access to be provided through tariff-rate quotas. In addition, WTO members will negotiate whether to establish a tariff cap, new rules for administering tariff-rate quotas, and disposition of the special agricultural safeguard. Provisions are also established for special and differential treatment for developing countries, including the development of a new safeguard mechanism and recognition of special treatment for special products related to development and food security needs of these countries.

Domestic Support: On domestic support, the framework specifies the use of a tiered-formula that ensures countries with higher levels of allowed trade-distorting domestic support (the Aggregate Measurement of Support) make larger reductions to deliver greater harmonization in subsidy levels across countries. Payments partially decoupled from production decisions or linked to production-limiting programs will be capped for the first time, and rules for disciplining these programs will be subject to further discussions. Allowances for de minimis support will be subject to reductions as well. The total level of all these forms of trade-distorting support will be subject to a maximum level and reductions, with higher levels of allowed support subject to greater cuts. Members agreed to a 20 percent cut in the overall level of trade distorting domestic support in the first year of implementation of the agreement. Product-specific caps, but not reductions, for the Aggregate Measurement of Support will be established. Criteria for “green box” programs that have minimal or no trade-distorting effects will be reviewed. Special and differential treatment will be established to address the particular needs of developing countries.

Intensive discussions were conducted on proposals for a sectoral initiative on cotton. WTO members established a sub-committee within the agriculture negotiations to monitor work on all elements related to trade in cotton,

and reaffirmed the importance of an ambitious outcome in the agriculture negotiations and for the cotton sector.

Prospects for 2005

In 2005, negotiations will focus on establishing specific modalities in each of the three pillars. In addition to negotiating the specific parameters of the reduction formulas for tariffs and the elements of trade-distorting domestic support, a time period for phasing-in the reductions as well as the elimination of export subsidies will need to be agreed. In parallel, negotiations will focus on the rules and criteria for allowed subsidy measures, administration of tariff-rate quotas and safeguard measures. In addition, bilateral discussions and sectoral negotiations for reductions beyond those called for in the basic modalities will occur when progress is achieved on the core modalities. As talks move forward, the United States will work to achieve the high level of ambition that all countries bring to all three pillars. U.S. objectives for agriculture reform will continue to focus on the principles of greater harmonization across countries, substantial overall reforms, and specific commitments of interest in key developed and developing country markets.

2. Council for Trade in Services, Special Session

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. As of December 31, 2004, 51 WTO Members had submitted initial offers as part of this

process. While offers are submitted to the Council for Trade in Services in Special Session (CTS-SS) for all Members to review, the negotiations occur primarily through bilateral negotiations. The Special Session met four times during 2004 in March, June, September and December.

Cumulative Assessment Since the WTO Was Established

The Special Session of the Council for Trade in Services (CTS-SS) was formed in 2000, pursuant to the Uruguay Round mandate to undertake new multi-sectoral services negotiations. Specific issues pertaining to the trade negotiations, including the overall framework for the services negotiations, classification and scheduling issues raised by Members, developing country participation in the negotiations, market access and assessment of the value of services liberalization are discussed in this body. Since 2000, the United States has made 16 submissions pertaining to the negotiations and U.S. market access priorities. The U.S. submitted 12 sector-specific proposals including accounting services, advertising services, audio-visual services, distribution services, education services (higher and tertiary education), energy services, environmental services, express delivery services, financial services, legal services, telecommunication and complementary services, and tourism and hotel services. In addition, the U.S. submitted proposals on small- and medium-sized enterprises, movement of persons, transparency in domestic regulation and an assessment of services trade and liberalization in the United States and developing economies.

Major Issues in 2004

In 2004, the United States worked to secure Members' commitment to progress in the negotiations in line with the Doha mandate. While negotiations proceeded slowly following the Cancun Ministerial there was agreement in July 2004 to intensify negotiations and further establish benchmarks for progress (Annex C of the August 1, 2004 General Council Decision). The United States and India also led a number of

delegations in efforts to improve the treatment of services market access negotiations as part of the July agreement. It instructed Members that have not yet submitted their initial offers to do so as soon as possible and established May 2005 as an indicative date for revised offers. In November 2004, the United States, Switzerland, Singapore and Japan led a group of 15 other WTO Members in a joint statement that highlighted the importance of services market access negotiations and set the stage for more intensive work on offers in 2005.

Eleven WTO Members submitted initial offers in 2004, bringing the total number of submissions to 50. As of December 2004, in addition to the United States, the following 49 WTO members had submitted initial offers: Argentina; Australia; Bahrain; Bolivia; Brazil; Bulgaria; Canada; Chile; China; Chinese Taipei; Colombia; Costa Rica; Czech Republic; Dominican Republic; EC; Egypt; El Salvador; Fiji; Gabon; Guatemala; Hong Kong, China; Iceland; India; Israel; Japan; Jordan; Kenya; Korea; Liechtenstein; Macao, China; Mauritius; Mexico; New Zealand; Norway; Panama; Paraguay; Peru; Poland; Senegal; Singapore; Slovak Republic; Slovenia; Sri Lanka; St. Christopher & Nevis; Suriname; Switzerland; Thailand; Turkey; and Uruguay.

In an effort to promote U.S. objectives in all possible forums, in addition to the Special Session and bilateral negotiations, the United States has been working with like-minded countries in the context of "Friends Groups." These groups, which share common market access priorities in sectors such as financial services, telecommunication services, computer and related services, logistics services, express delivery services, energy services, audiovisual services, legal services, and environmental services, work together to develop common priorities and understandings in the negotiations.

As part of the mandate of the CTS-SS, WTO members continued discussions on the assessment of trade in services and considered the benefits of greater liberalization. In 2004, a number of WTO Members and observers,

including the OECD and UNCTAD, made written and oral presentations on the topic.

Several other issues were discussed at Special Session meetings during 2004, including Mode 4 (temporary entry of persons), based primarily on submissions from developing countries and new submissions from Switzerland and Australia, a submission highlighting the importance of mode 3 commitments (commercial presence) by Canada, and a proposal for a symposium on the cross-border supply of services by India. In September, Brazil, Colombia, the Dominican Republic, El Salvador, India, Indonesia, Nicaragua, the Philippines and Thailand submitted a communication on Tourism Services. The United States is pleased that Members are actively participating in the discussions and submitting proposals of interest to them. The United States has submitted or joined proposals over the course of the negotiations, including one in December 2004 with 15 other countries to put emphasis on moving market access negotiations in light of the May 2005 requirement for tabling of offers.

Pertaining to developing and least-developed countries, the United States, along with Canada and the European Union supported a pilot project by the International Trade Centre in Geneva to help developing and least developed country Members to increase their participation in the request-offer process.

Prospects for 2005

Sessions in Geneva, known as “clusters,” will continue to follow the pattern of a general meeting of the Special Session, followed by bilateral meetings. This allows Members the opportunity to present and discuss their initial and revised negotiating offers, requests, and other topics of concern. Discussions in the general meeting of the Special Session and in the bilateral negotiating sessions are expected to continue on the topics noted above. Specifically, we expect that a number of “Friends Groups” will introduce statements identifying areas of priority and consensus within the groups. The United States will prepare its revised offer. During the February

2005 cluster, Members will participate in a symposium coordinated with industry on financial services and the WTO will also hold a symposium on Mode 1 (cross-border supply) bringing a number of capital based experts to Geneva, which provide further opportunities for bilateral negotiations in computer and related and telecommunication services in particular. A few other sectoral friends groups are organizing special one week clusters to foster additional negotiations and exchanges in preparation for May, 2005.

3. Negotiating Group on Non-Agricultural Market Access

Status

After three years of negotiations, WTO Members have agreed to the broad outlines of an approach to liberalizing non-agricultural goods in a manner consistent with the Doha mandate, but the precise details of each element still need significant clarification. These elements include a formula, the extent to which there should be sectoral liberalization as in the Uruguay Round, the work on non-tariff barriers and developing country participation. The mandate, established at the fourth WTO Ministerial Conference held in Doha in 2001, launched non-agricultural market access (NAMA) negotiations with a goal to reduce or eliminate non-tariff barriers and tariffs, including 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 include all industrial products without a priori exclusions. Finalizing the details of (1) the tariff-cutting formula; (2) a robust sectoral component; (3) the treatment of non-tariff barriers (NTBs); and (4) provisions related to flexibility for developing countries will be the central focus of negotiations in 2005.

The outcome of these negotiations is crucial for trade in manufactured goods, which accounts for over 75 percent of total global trade in goods and more than 90 percent of total U.S. goods exports. U.S. manufactured goods exports

increased nearly 13.5 percent in the first 10 months of 2004 and are set to reach an annual level of \$711 billion. The Doha Round provides an opportunity to lower tariffs in key markets of the WTO's 148 Members, including India and Egypt, which still retain ceiling rates as high as 150 percent. Likewise, gains from tariff rate reductions made as a result of the Round will accrue to developing countries, which currently pay 74 percent of duties collected to other developing countries.

Tariff reduction or elimination through sectoral initiatives also provides an important opportunity for U.S. exporters of industrial products. On average, total global exports in the industrial sectors subject to tariff elimination or harmonization in the Uruguay Round have increased at a faster rate than overall global exports. Specifically, cumulative global exports in the industrial sectoral initiatives from the Uruguay Round (agricultural equipment, chemicals, construction equipment, furniture, medical equipment, paper, pharmaceuticals, steel, textiles and apparel, and toys) have increased, on average, more than 100 percent between 1994, when the Uruguay Round was completed, and 2003 (as compared to a cumulative increase of 75 percent in all global exports). Please refer to the Tables in Section B, "Sectoral Liberalization and Global Trade" and "Sectoral Liberalization and U.S. Exports".

Major Issues in 2004

In the first half of the year, many Members refused to advance substantive work on NAMA until the outlines of the agriculture negotiations became more clear. In July, Members decided that the NAMA text presented by the Chairman at the 2003 Cancun Ministerial at Cancun contained all the elements necessary to move forward. These elements include: (1) a non-linear formula applied line-by-line; (2) a sectoral component; (3) the possibility for employing additional approaches, such as request-offer negotiations; (4) broad outlines of an approach to addressing non-tariff barriers; and (5) a variety of flexibilities to be provided for least-developed countries, poor and revenue-strapped countries just above the LDC level, and other

developing countries. Members agreed that further work would be necessary to determine the specific details of these and other elements.

At this stage, we are working under a mandate that calls for: (1) the use of a formula as a core element of tariff-cutting modalities; and (2) a non-linear formula applied line-by-line, which would reduce higher tariffs more than lower tariffs. A number of developing countries continue to support use of a non-linear formula that would require developed countries to reduce tariffs substantially, while permitting developing countries to retain relatively high levels of protection. Other developing countries have begun to realize that tariff cuts in developing country markets are critical for their own growth and export interests and thus have been more supportive of formulae that provide flexibility to developing countries, but also ensure significant new market access in these markets.

In addition, several countries have joined the United States in supporting an ambitious sectoral component that would eliminate and or harmonize tariffs on highly-traded sectors. At Cancun, there was a debate as to whether participation should be mandatory. Similar to the approach adopted in the Uruguay Round, these sectoral initiatives are critical element of the U.S. non-agricultural market access strategy. Accordingly, over the past year, the United States has discussed with Members the benefits of approaching sectoral liberalization using the "critical mass" concept. This means that there is some flexibility in participation, with the exact level to be negotiated to reflect key and potential export/import interests of Members.

Flexibility for developing countries, or "less-than-full-reciprocity," continues to be an important area of discussion, with a number of approaches under consideration. Decisions on this element will be closely linked to the outcome of negotiations on the formula and sectors. Several developing country Members continue to note their concerns with the potential erosion of preferences or loss of government revenue due to tariff cuts. Similarly, on non-tariff barriers, 32 Members have submitted indicative lists of non-tariff barriers they are

interested in pursuing through the Doha negotiations, and several proposals have been tabled on how best to address them.

Prospects for 2005

In 2005, work will focus on negotiating the final details of the non-linear formula, identifying specific sectors and country participation in the various sectoral initiatives, determining the final balance of flexibilities for developing countries, and advancing negotiations on identified NTBs. The United States continues to seek an ambitious approach that will deliver real market access in key developed and developing country markets, while supporting 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.

Several developing country Members will likely continue to press for further discussion on the perceived implications of tariff reduction or elimination on preference programs. Recent studies by the IMF show that reduction or elimination of tariffs in developed country markets will have a limited effect on a very small number of countries that receive preferences. The United States, along with the World Bank and IMF, is working with these countries to isolate the specific products where they have concerns and will work with them to develop solutions in these areas. The United States continues to emphasize that the original intent of preferences is to integrate developing countries into the global trading system and should not impede global liberalization. Likewise, for developing countries with concerns about the implications for government revenue caused by tariff reduction or elimination, there are a number of World Bank and IMF programs that can help these Members reform their revenue collection structures and reduce dependence on import tariffs.

Work on the formula, sectors, NTBs, and flexibilities will all need to move roughly in parallel, as all of these elements are inter-related. Work on NTBs, which also constrain market access on individual products and sectors, will be critical. Flexibilities for developing countries will need to be discussed as they relate to the formula, sectors, and non-tariff barrier components.

4. Negotiating Group on Rules

Status

In paragraph 28 of the Doha Declaration, 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. WTO Members have submitted almost 170 formal papers to the Rules Group thus far, the majority of them identifying issues for discussion rather than making specific proposals. In order to deepen the understanding of the Group of the very technical issues raised by these papers, in 2004, the Group began a process of in-depth discussion of elaborated proposals in informal session. There were 28

elaborated proposals on antidumping and/or subsidies issues submitted by Members and discussed in the Group in 2004.

Major Issues in 2004

The Rules Group held seven meetings in 2004, at first under the Chairmanship of Ambassador Eduardo Pérez Motta from Mexico, and subsequently under the Chairmanship of Ambassador Guillermo Valles Galmés of Uruguay. 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 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 to guide U.S. proposals for the Rules Negotiating Group. The United States' work in the Rules Group in 2004 continued to be guided by these principles:

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 enhanced as part of these negotiations;

Third, disciplines must be enhanced to address more effectively underlying trade-distorting practices; 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 has continued to be very active in the discussions in the Rules Group, identifying specific issues for consideration, following up with elaborated proposals, and raising detailed questions with respect to the issues raised by other Members.

Pursuant to the first principle, the United States has continued to emphasize 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 has raised a number of questions to evaluate whether issues raised by other Members are consistent with that mandate. The United States has also raised particular issues relevant to ensuring that these trade remedies remain effective, such as addressing the problem of circumvention of antidumping and countervailing duty orders, as well as the related problem of abuse of provisions for "new shipper" reviews. The United States has also highlighted 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, the United States has 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 frequently subject to 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, the United States has stressed the need to address trade-distorting practices that are often the root causes of unfair trade, and has made a number of submissions to the Rules Group with respect to the strengthening of subsidies disciplines.

Pursuant to the fourth principle, the United States has emphasized in its submissions the importance of ensuring that the 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 Remedies: The United States has in its submissions to the Rules Group identified over 30 issues for discussion related to antidumping and countervailing duty remedies, in accordance with the principles listed above, and followed up with elaborated proposals on nine issues in 2004. A group calling itself the “Friends of Antidumping Negotiations” has also presented a series of papers identifying over 30 antidumping issues for discussion by the Rules Group, following up with elaborated proposals on twelve of these issues in 2004. The “Friends” group consists of Brazil, Chile, Colombia, Costa Rica, Hong Kong, China, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Chinese Taipei, Thailand, and Turkey, although not all of its members have joined in each paper by the Friends. In addition to the proposals submitted by the United States and the Friends group, in 2004 Canada submitted six elaborated proposals and Australia submitted one such proposal.

The United States has been a leading contributor to the recent technical discussions aimed at deepening the understanding of all Members of the issues raised in the Rules Group, drawing upon extensive U.S. experience and expertise as both a user of trade remedies and as a country whose exporters are often subject to other Members’ use of trade remedies. In addition to presenting its own submissions, the United States has been actively engaged in addressing the submissions from other Members, carefully scrutinizing and vigorously questioning the technical merits of the issues they have raised, as well as seeking to ensure that the Doha mandate for the Rules Group is fulfilled.

Subsidies: In 2004, the United States, Canada and Australia submitted elaborated proposals in

the subsidies area. Following up on its general subsidy paper submitted in March 2003, the United States submitted three papers that proposed more detailed rules with respect to the calculation of subsidy benefits. These papers were generally well received in that they address issues recognized by most, if not all, WTO Members that have conducted countervailing duty investigations. In its most notable paper, Canada proposed bringing back the “dark amber” category of subsidies. As originally reflected in the now-lapsed provisions of Article 6.1 of the Subsidies Agreement, Members that provided dark amber subsidies (e.g., subsidies to cover operating losses) had the burden of demonstrating that the subsidies provided did not result in adverse effects. Australia’s paper, inter alia, proposed the clarification of the definition of a de facto export subsidy.

Fisheries Subsidies: The United States continued to play a major role in advancing the discussion of fisheries subsidies reform in the Rules Group in 2004, working closely with a broad coalition of developed and developing countries, including Argentina, Australia, Chile, Ecuador, Iceland, New Zealand, Peru and the Philippines. 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.

In 2002 and much of 2003, Japan and Korea questioned whether the Doha mandate allowed for stronger WTO disciplines over fisheries subsidies. In 2004, the discussion generally moved beyond a debate over interpretation of the mandate toward consideration of possible frameworks for improved disciplines. The United States and other proponents of stronger disciplines advocated a framework that would center on a prohibition, combined with appropriate exceptions. In December 2004, the United States submitted a paper building on a previous submission by six Members (Argentina, Chile, Ecuador, New Zealand, Peru and the Philippines) and offering additional ideas on how such an approach could work. Specifically, the United States advocated a

prohibition focused on subsidies that contributed to overcapacity and overfishing, and consideration of carefully targeted exceptions to allow appropriate flexibility. The United States also stressed that to increase transparency the negotiation of exceptions should be grounded in the consideration of Members' particular current programs. In contrast, Japan and Korea, joined by Chinese Taipei, advocated a framework premised on a potentially large number of permitted subsidies and a small number of prohibited subsidies. Japan and Korea both presented papers explaining this approach. A number of other countries, including Brazil, China, Malaysia, India, Pakistan and Sri Lanka, became more active in the discussions. While these countries generally did not take a position on the appropriate framework, they stressed the need for special and differential treatment of 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 2004, discussions continued on both transparency and systemic issues related to RTAs. The Group's work on transparency focuses on the need to improve the effectiveness of the current WTO system for reviewing and analyzing trade agreements. On substantive or systemic issues, work has included discussion of 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.

In 2004, papers on RTA issues submitted to the Rules Group by Chile, Japan and Botswana (on behalf of the African, Caribbean and Pacific States) have also contributed to the discussions. The United States has been an active participant in the RTA discussions in the Group.

Prospects for 2005

It is expected that the process of technical discussion of elaborated proposals on antidumping, countervailing duty, and subsidies issues will continue in the Rules Group in 2005, as well as identification of additional issues for discussion. 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 thus far with respect to, inter alia, strengthening the existing subsidies rules and improving WTO disciplines on harmful fisheries subsidies. Concerning fisheries subsidies, the United States will seek to move the discussions forward through more detailed consideration of the types of subsidies that should be prohibited and the scope of possible exceptions. On RTAs, a more focused discussion of possible procedural improvements within the WTO to enhance transparency is likely in 2005.

5. Negotiating Group on Trade Facilitation

Status

An important U.S. objective was met when WTO negotiations on Trade Facilitation were launched as one of the results included in the General Council Decision of 1 August 2004. This achievement was the result of U.S. leadership and perseverance through seven years of exploratory work under the auspices of the Council for Trade in Goods. Commencing negotiations on Trade Facilitation greatly enhances the market access aspect of the Doha negotiating agenda. U.S. exporters facing opaque procedures and unwarranted delays at the border in key export markets can face what has been shown to be the equivalent of an extra five to fifteen percent tariff. The agreed-upon negotiating mandate includes the specific objective of "further expediting the movement, release and clearance of goods, including goods in transit," while also providing a path toward ambitious results in the form of modernized and strengthened WTO commitments governing how border transactions are conducted.

On October 12, 2004, the Trade Negotiations Committee formally established the Negotiating Group on Trade Facilitation. Ambassador Muhamad Noor Yacob of Malaysia was elected chair of the Negotiating Group. In November 2004 the negotiating group held an initial brief meeting to establish its work program, and also conducted a session devoted to ‘stock-taking’ and providing developing country Members an educational overview on issues that would likely be addressed as the negotiations proceeded.

Major Issues in 2004

Despite the overall impasse at the 2003 Cancun Ministerial Conference, Members entered 2004 with new enthusiasm and broad-based support for commencing negotiations on Trade Facilitation, in particular by an increasing number of developing countries. As the year progressed toward the July General Council meeting, resistance from the remaining developing countries gradually shifted away from outright objection to a more constructive focus on specific concerns to be articulated in the context of establishing modalities for conducting negotiations.

Continuing a trend from previous years, the issue of Trade Facilitation was not a matter of a simplistic ‘north-south’ split, but something that was increasingly seen as offering a “win-win” opportunity. Leadership toward advancing the Trade Facilitation agenda continued to be provided by the cooperative efforts of Members from varying developing levels known as the “Colorado Group”: 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.

An added boost to the momentum to a decision to launch WTO negotiations was provided by the U.S. work in the free trade agreements that had recently been negotiated. With partners as diverse as Chile, Singapore, Australia and Morocco, each FTA negotiated by the United States has included a separate, stand-alone chapter on Customs Administration. Within the context of the 2004 Geneva work on Trade

Facilitation, these achievements not only showed the commitment of the United States and its FTA partners to a rules-based approach to this area, the texts themselves provided some shape to Members that were uncertain about the types of commitments likely to be sought by the United States and others. It also served as a real-life demonstration of how creative approaches through transition periods and targeted technical assistance could be used to address the challenges of implementing the results of the negotiations.

Under the modalities agreed to as part of the August 2004 decision:

Negotiations shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit. Negotiations shall also aim at enhancing technical assistance and support for capacity building in this area. The negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues.

The modalities also include references that serve to underscore the importance assigned to the negotiations addressing implementation issues such as costs, potential implications with regard to infrastructure, capacity building, the status of least developed country Members, and the work of other international organizations.

Work Program: The work plan agreed by Members in November 2004 provides for work “to proceed on the basis of Members’ contributions and other input that the Negotiating Group may request,” with approval of the following work agenda:

- Clarification and improvement of relevant aspects of Articles V, VIII and X of the GATT 1994; enhancement of technical assistance and support for capacity building; effective cooperation between customs or

any other appropriate authorities on trade facilitation and customs compliance issues;

- Special and differential treatment for developing and least-developed countries;
- Least-developed country members;
- Identification of trade facilitation needs and priorities; concerns related to cost implications of proposed measures;
- Technical assistance and support for capacity building;
- Working with and work of relevant international organizations

Prospects for 2005

With the first two substantive meetings of the Negotiating Group scheduled for February and March, it is likely that work will quickly intensify. Examples of areas where the United States and other Members have already signaled their interest in achieving strengthened WTO commitments include Internet publication of importation procedures, expedited procedures for express shipments, issuance of binding rulings to traders, increased certainty for rapid release of shipments, and enhanced measures providing procedural fairness. Historically, the non-tariff barriers most frequently cited by U.S. exporters have been related to uncertainty about import procedural requirements, hidden fees, and slow border release times.

There is a great potential for new and strengthened WTO commitments that could provide short-term if not immediate “on the ground” positive effects and offer a true “win-win” opportunity for all Members. One of the most frequently-cited impediments to the growth of South-South trade is the absence of a rules-based approach to goods crossing the border. While negotiations toward new and strengthened disciplines move forward, it will be important that negotiations also proceed in a workman-like manner on the issue of how all Members can meet the challenge of implementing the results of the negotiations. In particular, the

negotiations represent an opportunity to address longstanding issues in this area about redundancy in assistance efforts, lack of coordination, and frequent failure to specifically target technical assistance toward concrete results. The aim of the United States in 2005 will be to ensure a negotiating dynamic that makes clear that every Member, as both an importer and an exporter, has a real stake in robust results and in their implementation.

6. Committee on Trade and Environment, Special Session

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 2004

The CTE in Special Session (CTESS) met three times in 2004. At each of these meetings, the CTSS 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 (STOs) set out in Multilateral Environmental Agreements (MEAs) (with specific reference to the applicability of existing WTO rules among parties to such MEAs and without prejudice to the WTO rights of Members that are not parties to the MEAs in question);
- (ii) procedures for regular information exchange between MEA secretariats and relevant WTO committees, and the criteria for granting observer status; and

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

In addition to the three CTESS meetings, the CTE also met in Regular Session (CTERS) three times during 2004, 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 (See Section on Other General Council Bodies/Activities, Committee on Trade and the Environment).

MEA Specific Trade Obligations and WTO Rules: During 2004, discussions under this mandate have progressed beyond the initial focus on the specific parameters of the mandate and analysis of provisions in MEAs that are covered by it. Members began to provide information on their experiences with respect to negotiation and implementation of specific trade obligations set out in MEAs. The United States submitted a paper highlighting its experiences related to particular STOs set out in three MEAs: the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); the Stockholm Convention on Persistent Organic Pollutants (POPs); and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC). Drawing on U.S. experience, the paper also identified features of these STOs that have contributed to the effective achievement of each MEA's objectives and furthered the mutually supportive relationship between these MEAs and the WTO Agreement. A large majority of delegations have noted their interest in continuing experience-based discussions and have resisted any premature consideration of potential results in the negotiations.

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 parallel WTO events at meetings of the conferences of the parties of MEAs; organizing joint WTO, United Nations Environment Program (UNEP) and MEA technical assistance and capacity building projects; promoting regular exchange of documents between secretariats; and 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 CTESS meetings. With respect to a more permanent status, a number of delegations expressed the view that the issue of criteria for observership is dependent on an outcome in more general ongoing General Council and TNC deliberations.

Environmental Goods and Services: Members continue to engage in detailed discussions in the CTESS 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. For example, a proposal from Chinese Taipei identifies 78 products in the category of pollution control. There was also continued interest in a paper tabled by the United States in July 2003, which suggested that there could be a flexible approach to the definition involving a core list of goods for which all Members would make tariff and non-tariff concessions and a complementary list that would not require full participation. 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 Council on Trade in Services in Special Session. In addition to its formal discussions on environmental goods, the WTO Secretariat hosted an informal workshop on environmental goods, which provided useful

information particularly with regard to developing country interests and concerns in this sector.

Prospects for 2005

The CTESS is expected to increase the intensity of its discussions leading up to the Ministerial meeting scheduled for December 2005 in Hong Kong, China, particularly in the area of environmental goods. WTO members have been encouraged to come forward with lists of environmental goods for consideration by the CTESS. In addition to discussion of lists of goods and criteria for defining environmental goods, the CTESS is likely to engage in further discussions of ideas put forward by the United States regarding flexible yet ambitious modalities for environmental goods.

Under sub-paragraph 31(i), discussions are expected to continue to focus on an exchange of national experiences in negotiation and implementation of STOs set out in MEAs. The United States continues to view this experience-based exchange as the best way to explore the relationship between WTO rules and STOs contained in MEAs. It is quite possible that negotiations under sub-paragraph 31(ii) could gain momentum, particularly if it becomes clear that the outcome under sub-paragraph 31(i) is likely to be limited in scope. Finally, the CTESS will remain the forum for discussing the importance of liberalization in both environmental goods and services in order to secure concrete benefits associated with access to state-of-the-art environmental technologies that promote sustainable development.

7. Dispute Settlement Body, Special Session

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.” In July 2003, the General Council decided (i) that the timeframe for conclusion of the negotiations on clarifications and improvements of the DSU be extended by one year, i.e., to aim to conclude the work by May 2004 at the latest; (ii) that this continued work build on the work done to date, and take into account proposals put forward by Members as well as the text put forward by the Chairman of the Special Session of the DSB; and (iii) that the first meeting of the Special Session of the DSB when it resumed its work be devoted to a discussion of conceptual ideas. In August 2004, the General Council decided that Members should continue work towards clarification and improvement of the DSU, without establishing a deadline. Due to complexities in negotiations, deadlines were not met.

Major Issues in 2004

The Special Session of the DSB met several times during 2004 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. Members then reviewed 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. Notwithstanding these efforts, Members were unable to conclude discussions.

The United States has advocated two proposals. One would expand transparency and public access to dispute settlement proceedings. The proposal would open WTO dispute settlement proceedings to the public for the first time and give greater public access to submissions and panel reports. In addition to open hearings,

public submissions, and early public release of panel reports, the U.S. proposal calls on WTO Members to consider rules for "amicus curiae" submissions -- submissions by non-parties to a dispute. WTO rules currently allow such submissions, but do not provide guidelines on how they are to be considered. Guidelines would provide a clearer roadmap for handling such submissions.

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

Prospects for 2005

In 2005, Members will continue to work to complete the review of the DSU. Members will be meeting several times over the course of 2005 in an effort to complete their work.

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

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. Further, in the August 1, 2004 decision on the Doha Work Programme, the WTO General Council reaffirmed Members' commitment to progress in this area of negotiation in line with the Doha Mandate. This is the only issue before the Special Session of the Council.

Major Issues in 2004

During 2004, 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, Chinese Taipei, 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 and several Joint Proposal co-sponsors submitted a "Question and Answer" document to the Special Session to further explain the advantages of the proposal. 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 Communities 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 EC proposal.

There was no shift in currently-held positions among the members, nor any movement towards bridging the sharp differences between the Joint Proposal and the EC proposal.

Prospects for 2005

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 it was agreed that the Secretariat will update a background note on the WTO Central Registry of Notifications (CRN) and that a Secretariat CRN administrator would be invited to attend the next session to respond to questions, in order to facilitate understanding of other notification systems in the WTO. He also noted that a range of issues require further work, including, but not limited to, resolving the key issues of legal effects of registrations and participation in the system.

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

9. Committee on Trade and Development, Special Session

Status

The Special Session of the Committee on Trade and Development (CTD) was established in

February 2002 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." Under existing 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 on a number of proposals for consideration at the Cancun Ministerial, but no decisions were taken. Discussions on other proposals have continued in the CTD/SS and, in some cases, in negotiating groups or Committees that address the respective subject matter of the proposals. In recent months, informal discussions have focused on better ways to address the mandate, reflecting a desire to find a more productive approach than that associated with the specific proposals tabled by individual Members or groups. Developed countries have emphasized willingness to provide greater S&D treatment to the least-developed countries than to those Members that are now more advanced. However, while there is some recognition that any additional S&D provisions will likely focus on the needs of the least-developed and more vulnerable Members, developing countries want to ensure there is no diminution of their existing rights.

Major Issues in 2004

Work on the CTD Special Session's mandate proceeded slowly in 2004, following the failure at the Cancun Ministerial to adopt 28 proposals that had been negotiated prior to Cancun. A number of African and LDC Members resisted adoption on the grounds that the proposals were not sufficient to address the entire mandate and that the 28 proposals were not, in their view, sufficiently commercially meaningful. Efforts thus focused on finding a more productive

approach to the S&D issue. Proponents acknowledged that many of the proposals they had initially submitted needed further clarification. It was also acknowledged by many developed and developing Members that efforts by some proponents to be exempted from many WTO provisions would have negative effects on other developing countries and that the rules remained important for both developing and developed countries.

In July 2004, the General Council decision emphasized the need to expeditiously review all outstanding proposals and to report to the General Council with clear recommendations by July 2005. It further instructed the CTD Special Session to resume its work on cross cutting issues, the monitoring mechanism and the incorporation of S&D into the architecture of WTO rules and report, as appropriate, to the General Council.

Discussions at the end of 2004 focused on a way to address the individual proposals by reviewing the underlying problems they represent. Consideration was also given to finding ways to make the core related provisions more precise, effective and operational. In some cases this may require redrafting, combining or withdrawing current proposals. In other cases, problems may be addressed through examination of the broad underlying concerns in a more holistic manner, for example through addressing crosscutting issues, a monitoring mechanism or S&D architecture.

Prospects for 2005

With a July 2005 deadline ahead, work is likely to intensify early in 2005. It is expected that a number of revised proposals will be submitted to the Special Session early in the new year. It also is anticipated that work on how proposals may be combined or addressed through a broader approach. Discussions are expected on a mechanism to monitor implementation of S&D provisions, including how to monitor the effectiveness of various approaches, as well as monitoring the commitments of Members, primarily developed countries. Recent references to the possible need for a new

framework or “architecture” for S&D suggest there may also be discussion of this issue in the coming months. Both the July 2005 deadline contained in the General Council decision of 1 August 2004 and the Hong Kong Ministerial are target dates for work on special and differential treatment, with the former deadline focused on management of the individual proposals in some manner and the latter focused more on the longer term aspects of S&D. Nevertheless, all work will proceed throughout the year in parallel.

E. Work Programs Established in the Doha Development Agenda

1. Working Group on Trade, Debt and Finance

Status

Ministers at the Fourth Ministerial Conference held in Doha established the mandate for the Working Group on Trade, Debt and Finance (TDF). 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 2004

The Working Group held three formal meetings in 2004. The first meeting addressed the topic of trade finance. The IMF, World Bank, and the WTO Secretariat gave presentations followed by an exchange of views amongst Members. At the second meeting, the Working Group addressed the topic of trade and financial markets. The Secretary-General of the Financial Stability Forum and the IMF gave presentations followed

by a question and answer period and exchange of Member views. The third meeting addressed the theme of better coherence in the design and implementation of trade-related reform and monitoring. At this meeting, UNCTAD and the World Bank made presentations. At these meetings, the United States and other delegations continued to stress the importance that the Working Group avoid venturing into discussion and work already covered by the mandates of the IMF and World Bank as well as other relevant bodies of the WTO.

Prospects for 2005

In 2005, the Working Group will continue to discuss the remaining themes identified by Members in 2003. The list of agreed upon 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.

2. Working Group on Trade and Transfer of Technology

Status

During 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.” In fulfillment of that mandate, the Trade Negotiations Committee established the Working Group on Trade and Transfer of Technology (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 met three times in 2004, continuing its Doha Ministerial mandate to examine the relationship between

trade and the transfer of technology. Members have not reached consensus on any recommendations.

Major Issues in 2004

In the period since the Doha Ministerial, the WGTTT considered submissions from the Secretariat, WTO members, other WTO bodies, and other inter-governmental organizations. Members discussed two documents prepared by the Secretariat, a general background paper and “A Taxonomy of Country Experiences on International Technology Transfers.” The latter paper suggested a framework for classifying the policies that governments have adopted to promote technology transfer and included a series of country case studies. The WGTTT also considered several papers circulated for discussion by members. One submission by the EU argued for the development of a common understanding of the definition of technology transfer and identified various channels for the transfer of technology. Another EU submission highlighted the importance to technology transfer of commercial trade and investment, effective intellectual property rights protection, and the absorptive capacities of host countries. Several developing countries submitted a paper that identified provisions relating to the transfer of technology in WTO agreements.

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

During discussions on this and other inputs into the working group’s deliberations, the United

States and other countries argued that market-based trade and investment are the most efficient means of promoting technology transfer and that governments should generally not require the transfer of technology. The United States also argued that the contribution of commerce to technology transfer reinforces the case for continued trade and investment liberalization. The United States and other countries suggested that developing countries take steps to enhance their ability to absorb foreign technologies, and described how technical assistance could promote technology transfer and absorption.

Discussions on the India/Pakistan paper were the focus of two of the three WGTTT meetings held in 2004, which ended without any consensus on possible recommendations for ministers.

Prospects for 2005

As of this writing, no WGTTT meetings have been scheduled in 2005. The chairman is expected to recommend that the group continue its examination of issues raised in the India/Pakistan paper.

3. Work Program on Electronic Commerce

Status

According to the Decision adopted by the General Council on August 1, 2004, the General Council reaffirmed the high priority that Ministers at Doha gave to elements of the Work Programme on Electronic Commerce that do not involve negotiations. The moratorium on imposing customs duties on electronic transmission has been extended up to the 6th Ministerial Conference.

Since 2001, the Work Program on Electronic Commerce held several dedicated discussions under the auspices of the General Council. These informal discussion examined issues identified by the various sub-bodies as cross-cutting ones, i.e., those that impacted two or more of the various WTO legal instruments. The most controversial cross-cutting issue is whether to classify electronically delivered

products as a good or a service. The fiscal implications of classification was also part of those discussions, as were development related aspects of electronic commerce. No agreement has been reached on how to classify these products and the work program made no recommendations or reports to the Members. The Work Program remains a standing item in the Doha Development Agenda, yet has been inactive over the past year. Members have, however, continued to abide by the existing practice of not imposing customs duties on electronic transmissions.

Major Issues in 2004

While the Work Program on Electronic Commerce is still an item in the Doha mandate, not much activity occurred in 2004. The dedicated discussions that occurred in 2003 failed to yield any meaningful results with respect to the most prevalent outstanding issue, classification of electronically transmitted products. There was some discussion and debate in services. As a result, no new dedicated discussions were held in 2004.

Prospects for 2005

As in the past, the United States is committed to advancing meaningful trade policies that promote the growth of electronic commerce. Indeed, the focus of work in all negotiating groups has been to advance market openings in key information technology product and services sectors. Market access for these products and services will help continue to spur the expansion of electronic commerce. Similarly, the United States continues to support extending the current practice of not imposing customs duties on electronic transmissions, and is in the process of examining ways to achieve the objective of making it permanent and binding in the future.

4. Working Group on Trade and Competition Policy

Status

In August 2004, the WTO General Council decided that no work towards negotiations on

Trade and Competition will take place during the Doha Round. There were no meetings of the WTO Working Group on the Interaction between Trade and Competition Policy (the “Working Group”) in 2004, and absent a further agreement by Members as to future work for the Working Group, there will be no such meetings in 2005.

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, which served as the basis of the Working Group’s work until the Doha Ministerial Conference in 2001.

The Doha Ministerial Declaration provided 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. In accordance with the Doha Declaration, the Working Group focused its work up through the 2003 Cancun Ministerial Conference on the clarification of: core principles, including transparency, non-discrimination and procedural fairness; provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building. 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.

Informal consultations in 2004 revealed significant differences among Members as to how to proceed on this issue. For example, the European Communities advocated a multilateral WTO agreement on trade and 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. Given these differences, the decision was reached, as part of the overall General Council Decision of 1 August 2004, that no work toward negotiations would take place during the Doha Round.

Major Issues in 2004

At the start of 2004 there was still a debate as to whether any of the so-called Singapore issues should be the subject of negotiation. As it was clear that no further work on competition would be acceptable to Members, there was no activity on this topic in 2004.

The General Council made a decision in August 2004 that trade and competition policy will not form part of the negotiations set out in the Doha Ministerial Declaration.

Prospects for 2005

Given the General Council decision in mid-2004 there is little expectation that work will proceed in this area in 2005.

5. Working Group on Transparency in Government Procurement

Status

The WTO General Council Decision of August 1, 2004, included a mandate that there would be no work towards negotiations on transparency in government procurement during the Doha Round. The Working Group on Transparency in Government Procurement (Working Group) has not met since the Cancun Ministerial in September 2003. At the close of 2004, it remained unclear as to whether, and if so how, work will continue in the WTO on this important topic beyond the work on the

plurilateral Agreement on Government Procurement (GPA) and in the General Agreement on Trade in Services (GATS).

The Working Group was established by WTO Trade Ministers at their first Ministerial Conference in Singapore in December 1996. The Working Group's extensive examination of the benefits of transparency in government procurement raised the profile and underscored the benefits of transparency in government procurement. The Working Group's discussions also confirmed that many WTO Members consider the elements of a transparent government procurement system to be fundamental to ensuring efficient and accountable procurement systems and have already incorporated these elements in their existing procurement laws, regulations, and practices.

Major Issues in 2004

In July 2004, it was clear that there was no consensus among WTO Members to initiate negotiations of an agreement on transparency in government procurement. Despite the reaffirmation in the draft ministerial text presented to Ministers at the Cancun Ministerial that negotiations of a multilateral agreement on transparency in government procurement would be limited to the transparency aspects of procurement and would not restrict the ability of Members to give preferences to domestic supplies and suppliers, a number of WTO Members remained concerned that a transparency agreement could lead to market access commitments. In addition, some Members were also concerned that under a transparency agreement, individual contract awards could be subject to the WTO dispute settlement system, even though the United States and other WTO Members provided assurances to the contrary in submissions to the Working Group. As part of his efforts to consult on the DDA, in February 2004, Ambassador Zoellick consulted with trading partners on the disposition of the issue. Developing countries, particularly African partners, expressed great concern with the prospect of negotiations.

Prospects for 2005

Even though a mandate for the negotiation of an agreement on transparency in government procurement was not included in the DDA Work Programme, 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 free trade agreements and to advance government procurement principles within APEC. In addition, the United States will continue to work to enhance the transparency provisions of the plurilateral GPA and to encourage other Members to join the GPA.

6. Working Group on Trade and Investment

Status

WTO ministers established the Working Group on Trade and Investment (WGTI) during the Singapore Ministerial in 1996. At the conclusion of the Fourth Ministerial in Doha, 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, the United States sought in the WGTI to promote understanding of the benefits of open investment policies and of the contribution of investment to economic development. WTO Members did not agree in Cancun on a negotiating mandate for investment. The WGTI did not meet during 2004.

For several years following the Singapore Ministerial, the WGTI served as the WTO's principal venue for discussions on the

relationship between trade and investment flows and on the influence of trade and investment policies on investment, but Members did not reach consensus on whether to launch multilateral investment negotiations. During the Doha Ministerial, ministers decided to give the WGTI a narrower work program, focused on seven substantive issues bearing on the scope and content of possible WTO investment negotiations: 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.

During 2002 and 2003, in preparation for the Fifth Ministerial Conference in Cancun, WTO Members addressed the Doha Declaration issues in six formal meetings and several informal sessions. The Working Group also discussed investment-related WTO technical assistance initiatives. The EU and Japan, the leading advocates for WTO investment negotiations, argued that multilateral investment disciplines would stimulate increased flows of investment as well as trade, which increasingly follows investment. Most developing country WTO Members consistently opposed all but the most limited proposals for WTO investment negotiations tabled either formally or informally after the Singapore Ministerial. Developing countries argued that multilateral disciplines would restrict their ability to regulate foreign investment in ways designed to promote economic development and that investment rules were beyond the mandate and the competence of the WTO. As a result of this disagreement, no consensus was reached during the Cancun Ministerial on the proposed investment negotiations.

During the months following the Cancun Ministerial, in the context of a broader set of consultations on the fate of the four Singapore issues, developing countries continued to oppose various proposals for the launch of WTO investment negotiations. In early 2004, the EU, Japan, and other advocates dropped their proposals to launch investment negotiations. Members took no action on the WGTI or its mandate during these consultations, and the group did not meet in 2004.

WTO discussions on the relationship between trade and investment have nonetheless been valuable. Members have clarified many important points of difference on the Doha Ministerial issues, and they have improved their understanding of each other's positions and concerns. The WGTI has also given the United States a sustained opportunity to highlight the economic benefits of strong investment disciplines and to make the case that high standards of investor protection can be effectively balanced with the regulatory prerogatives of national governments.

Major Issues in 2004

The WGTI did not meet during 2004.

Prospects for 2005

As of this writing, no WGTI meetings have been scheduled in 2005.

F. General Council Activities

Status

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

Four major bodies report directly to the General Council: the Council for Trade in Goods, the Council for Trade in Services, the Council for Trade-Related Aspects of Intellectual Property Rights, and the Trade Negotiations Committee. In addition, the Committee on Trade and Environment, the Committee on Trade and Development, the Committee on Balance of Payments Restrictions, the Committee on Budget, Finance and Administration, and the Committee on Regional Trading Arrangements report directly to the General Council. The Working Groups established at the First Ministerial Conference in Singapore in 1996 to examine investment, trade and competition policy, and transparency in government procurement also report directly to the General Council, although these groups have been inactive since the Cancun Ministerial Conference. A number of subsidiary bodies report to the General Council through the Council for Trade in Goods or the Council for Trade in Services. The Doha Ministerial Declaration approved a number of new work programs and working groups which have been given mandates to report to the General Council such as the Working Group on Trade, Debt, and Finance and the Working Group on Trade and Transfer of Technology. The mandates are part of DDA and their work is reviewed elsewhere 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, play an important role in consensus-building. Through the first half of 2004, 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. These consultations were convened with a view to finding consensus on both the substance and process of that culminated in the 1 August 2004 General Council decision containing frameworks on the core issues in the Doha Work Program discussed earlier in this chapter.

Cumulative Assessment Since the WTO Was Established

Over the past ten years, the General Council has operated successfully in the role envisioned at the creation of the WTO in 1995 as a forum both for management of the WTO Agreement and for decision-making and negotiations. Indeed, the General Council has proven its effectiveness in simultaneously supervising the substantive work of the WTO, monitoring compliance with WTO obligations and managing the WTO as an institution. In addition, the work of the General Council has accurately reflected the interests and concerns of its Members, enabling the WTO to remain squarely a Member-driven organization. As a decision-making and deliberative body, it has shown itself responsive and flexible when called to do extra-ordinary work, such as approving the text of the “July package” just after midnight on 1 August 2004. Lastly, the General Council has continuously worked on improving the openness and responsiveness of the WTO to the public.

Since its creation, the General Council’s record on substantive work has been considerable. The General Council supervised the launch of the most historically ambitious agenda for trade liberalization in Doha in 2001. This launch was made possible by years of work in developing and building the negotiating agenda. The General Council has managed the progress since, including the agreement on frameworks in its 1 August 2004 decision that gave the negotiations a new boost. Despite the expected ups and downs in the process – including some considerable setbacks along the way – the General Council continues to chart the path forward in the negotiations, using both large formal and small informal meetings to move ahead.

In addition to launching and managing a new Round of trade liberalization, the General Council has presided over an active calendar of expansion in WTO membership. Since 1996, twenty countries have acceded to the WTO, and twenty-eight additional applicants have negotiations in various stages of development. On these, the General Council provides a forum for review and for monitoring progress in the accessions. Working through the General Council, the WTO responded to the historic changes that occurred in the early 1990's with the breakup of the Soviet Union and Yugoslavia. Accession to the WTO has played a significant role in integrating a number of the new countries created into the rules-based multilateral trading system. The accessions of China in December 2001 and Chinese Taipei in January 2002 also represented important developments; while the General Council's special yearly reviews of China's implementation of its WTO commitments have fostered improved transparency. In 2001, the General Council also approved streamlined and simplified procedures for accessions of least-developed countries (LDCs). The first LDC members to complete an accession process were Nepal and Cambodia at the Cancun Ministerial in 2003. Continuing to adapt to a quickly changing world, in December 2004, the General Council approved requests to begin the accession process for Iraq and Afghanistan.

In ten years, the General Council transformed the ad-hoc structure of the Interim Committee for the International Trade Organization into the high-functioning and efficient international agency that is the current WTO Secretariat. It has done so at a relatively small cost to the United States – in the 2004 WTO budget, for example, the U.S. contribution was roughly \$22 million. In the move to a permanent structure, however, the General Council has actively worked to keep the WTO Secretariat responsive to the interests and concerns of Members. On issues as diverse as the decision on TRIPS and Health to the waiver on trade restrictions on conflict diamonds, the General Council has acted on the concerns of its Members. Through actions such as increasing timely public access to WTO documents, the General Council has

also made the workings of the WTO more transparent to the public over the years.

In the increasingly integrated global economy, the General Council has continuously worked to collaborate closely with other international institutions. Its special sessions on “coherence” in global economic policy with the heads of the World Bank and International Monetary Fund have resulted in innovative programs to spur global economic growth for all of its Members. In addition, the General Council monitors closely the donor collaboration on trade-related technical and capacity building assistance for developing countries provided through the Integrated Framework.

Major Issues in 2004

Ambassador Shotaro Oshima of Japan served as Chairman of the General Council in 2004. The major task for Chairman Oshima and the General Council was the effort to overcome the obstacles that prevented progress at the WTO Ministerial in Cancun and produce an agreement on frameworks for the core negotiating issues of the Doha Development Agenda. This agreement – the 1 August 2004 General Council decision – is described at length earlier in this Chapter. In addition to work on the DDA, activities of the General Council in 2004 included:

Coherence in Global Economic Policy-Making: 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 2004 session of the General Council, First Deputy Managing Director of the IMF, Anne Krueger, presented the IMF's new lending facility, the Trade Integration Mechanism (TIM), developed in support of the WTO's trade liberalization agenda. The IMF designed the TIM to respond to developing country concerns that trade liberalization undertaken by WTO Members on the DDA could adversely affect their balance-of-payments position.

In a meeting of the General Council in October, both the IMF Managing Director Rodrigo de

Rato and World Bank President James Wolfensohn participated in an exchange of views with WTO Members. The discussion centered on the importance of market access, agricultural reforms and improved trade facilitation outcomes in achieving the development goals of the DDA, with compelling arguments advanced in favor of an ambitious outcome, including the importance of developing country commitments. Continued strengthening of the cooperative work among the organizations, particularly technical and financial support for the Doha Work Program and its implementation, was considered essential to make an ambitious outcome possible.

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) activities. In May 2004, USTR Robert B. Zoellick announced the United States would contribute approximately \$1 million dollars for trade-related technical assistance (TRTA) to the World Trade Organization. This contribution brought total U.S. TRTA for the DDA to almost \$4 million since the launch of negotiations in November 2001.

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 the request from the European Communities to extend the deadline for withdrawal of concessions for Members seeking compensation for adverse trade impact of the May 2004 enlargement of the European Union. In the review of waivers for

preferential arrangements, several banana-producing Latin American countries registered complaints regarding impact of enlargement and tariffication of quotas under the EU banana regime. Annex II contains a detailed list of Article IX waivers currently in force.

Development Aspects of Cotton: At the December 2004 session, WTO Director-General Supachai reported on the response of the international community to the concerns raised at the Cancun Ministerial by several cotton-producing African countries. Director-General Supachai said he was encouraged by rapid actions taken by donors, including the United States, the EU, and Japan, but he also underscored the importance of mutually supportive actions by proponents. Benin, Senegal, Burkina Faso, and Mali spoke positively about recent initiatives.

Accessions: In 2004, the General Council approved requests from Libya, Iraq and Afghanistan to initiate accession negotiations and directed that working parties be established with standard terms of reference to develop their protocols for accession.

China Transitional Review Mechanism: The General Council conducted its transitional review of China's implementation of WTO commitments in December. In an exchange of views with other WTO Members, the United States both credited China for the steps it has taken to meet its WTO commitments and emphasized areas where more needed to be done.

Prospects for 2005

The General Council is expected to be extremely active in 2005. In addition to its management of the WTO and its oversight of implementation of the WTO Agreements, the General Council will select a new Director-General in 2005, direct the DDA negotiations in the critical phase of developing modalities, and prepare for the WTO Sixth Ministerial Conference scheduled for December 13-18, 2005 in Hong Kong, China. In addition, the Council will consider the recommendations contained in the report

released in January 2005, “The Future of the WTO: Addressing Institutional Challenges in the New Millennium”, a report produced by a board of distinguished experts led by former Director-General Peter Sutherland.

The current WTO Director-General is Dr. Supachai Panitchpakdi, whose term of office expires at the end of August 2005. The following candidates have been nominated by their respective governments to succeed Dr. Supachai: Carlos Pérez del Castillo of Uruguay, Luiz Felipe de Seixas Corrêa of Brazil, Jaya Krishna Cuttaree of Mauritius, and Pascal Lamy of France. In 2002, the General Council adopted new procedures that will govern this selection process.

In June 2003, Director-General Supachai requested the help of eight eminent persons (the “Consultative Board”) to participate in a process of reflection on the institutional challenges facing the WTO. The findings of the Consultative Board contained in this report will be the basis for discussions on improving the effectiveness and operation of the WTO, including efforts towards greater transparency, outreach, and ministerial involvement. The report also raises important issues for discussion regarding the functioning of the multilateral trading system, including the importance of continued liberalization and the proliferation of preferential arrangements. The findings and conclusions of the report will need careful consideration by WTO Members. Our expectation is that the work will be pursued separately from the DDA, but may give added impetus to important issues, such as transparency in the day-to-day operations of the WTO, particularly in the dispute settlement area.

In 2003, the General Council selected Hong Kong, China, as the venue for the Sixth Ministerial Conference and preparations are now underway. 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. Previous Ministerial Conferences were

convened in Singapore (1996), Geneva (1998), Seattle (1999), Doha (2001) and Cancun (2003).

G. 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.

Cumulative Assessment Since the WTO was Established

At the conclusion of the Uruguay Round, the Council for Trade in Goods was established. It has proven to be a useful forum for discussing issues and making decisions which may ultimately require the attention of the General Council for resolution or a higher-level discussion, and putting the issue in the broader context of the rules and disciplines that apply to trade in goods. The CTG serves as a place to lay the groundwork and to resolve issues on many matters that will ultimately require General Council approval. The use of the Article 9 waiver provisions, for example, is initiated in the Goods Council. European Union and United States grants of trade preferences to African, Caribbean and Pacific (ACP) and Caribbean Basin Initiative (CBI) countries respectively required waivers initiated in the CTG.

Under a mandate from the 1996 Singapore Ministerial conference, the Council for Trade in Goods was the forum for exploratory and analytical work which ultimately led to the 2004 launch of WTO negotiations on Trade Facilitation. The work on Trade Facilitation by the Council was conducted through informal sessions, until 2002 and 2003, when Members agreed to conduct the continuing work on Trade

Facilitation through formal sessions. During the seven year preparatory phase leading up to the launch of negotiations, the Council also held several symposium or workshop type events.

Major Issues in 2004

In 2004, the CTG held seven 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 2004:

Waivers: The CTG approved several requests for waivers, including those related to the implementation of the Harmonized Tariff System and renegotiation of tariff schedules. 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. Consultations continue concerning a proposal by developing countries to have the Secretariat do a study of developing countries experiences with various TRIMS.

China Transitional Review: On November 25, 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).

Textiles: The CTG conducted the 3rd stage review of the operation of the Agreement on Textiles and Clothing (ATC) as mandated by the ATC. Developing Members criticized the major importing Members for not instituting greater liberalization in the 3rd stage. In particular, they complained that importing Members had failed to eliminate quotas on more than a token number of products. This back loading meant that all liberalization was put off until the end of ATC and thus did not allow adjustment to occur in a more orderly fashion. Importing Members responded that they had implemented all their obligations under the ATC. They stated that liberalization was intended to occur through the accelerated growth of quotas over the life of the ATC. In the case of the U.S., imports had grown by 150 percent over the life of the ATC. This had allowed U.S. producers to adjust to increased competition in an orderly manner. As a result, the process of adjustment had been substantially completed by the end of the ATC. The CTG also met several times formally and informally to review a proposal by small exporting Members to find ways to assist them with post-ATC adjustment problems. These countries argued that the elimination of quotas will result in a disastrous loss of market share from small suppliers to the large exporters such as China and India. They asked that the CTG study this adjustment issue with a view to adopting proposals to ease the transition. These proposals were blocked by the large exporting Members such as China and India. They argued that 40 years of textile restraints were long enough. It was necessary for this sector to return to normal trade rules. Any attempt to ease the transition to a quota-free environment would perpetuate the distortions suffered by this sector for so long.

EC Enlargement: At its meeting on October 1, the CTG agreed on a six month extension of the deadline for compensation negotiations and referred the matter to the General Council for adoption. Enlargement involves expansion of the European Union from 15 countries to 25, and necessary adjustments to the EC's trade regime.

Prospects for 2005

The CTG will continue to be the focal point for discussing agreements in the WTO dealing with trade in goods. Post-ATC adjustment, TRIMS Article 9 review and EU enlargement will be prominent issues on the agenda. The United States will be seeking the CTG to approve waivers for trade preferences provided to the African Growth and Opportunity Act (AGOA), CBI and the Andean Pact countries, in 2005.

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 on implementation, thus permitting Members to avoid invoking lengthy dispute settlement procedures. The Committee also has responsibility for monitoring the possible negative effects of agricultural reform on least-developed and net food-importing developing countries.

Cumulative Assessment Since the WTO Was Established

The Agreement on Agriculture represents a major step forward in bringing agriculture more fully under WTO disciplines. The Uruguay Round's creation of new trade rules and specific market-opening commitments has transformed the world trading environment in agriculture from one where trade was heavily distorted and basically outside effective GATT disciplines to a rules-based system that quantifies, caps and reduces trade-distorting protection and support. Prior to the establishment of the Agreement, Members were able to block imports of agricultural products, provide essentially unlimited production subsidies to farmers, and dump surplus production on world markets with the aid of export subsidies. As a consequence, U.S. farmers and ranchers were denied access to other countries' markets and were undercut by subsidized competition in world markets.

The WTO Agreement on Agriculture established disciplines in three critical areas affecting trade in agriculture.

- First, the Agreement places limits on the use of export subsidies. Products that had not benefited from export subsidies in the past are banned from receiving them in the future. Where Members had provided export subsidies in the past, the future use of export subsidies was capped and reduced.

- Second, the Agreement set agricultural trade on a more predictable basis by requiring the conversion of non-tariff barriers, such as quotas and import bans, into simple tariffs. Currently, trade in agricultural products can only be restricted by tariffs. Quotas, discriminatory licensing, and other non-tariff measures are now prohibited. Also, all agricultural tariffs were "bound" in the WTO and made subject to reduction commitments. Creating a "tariff-only" system for agricultural products has been an important advance, yet too many high tariffs and administrative difficulties with tariff-rate quota systems that replaced the non-tariff barriers continue to impede international trade of food and fiber products.

- Third, the Agreement calls for reduction commitments on trade-distorting domestic supports, while preserving criteria-based "green box" policies that can provide support to agriculture in a manner that minimizes distortions to trade. Governments have the right to support farmers if they so choose. However, it is important that this support be provided in a manner that causes minimal distortions to production and trade.

As a result, farmers all over the world benefit from access to new markets and improved access to existing markets, face less subsidized competition, and now have a solid framework for addressing agricultural trade disputes. Yet it is clear that full agricultural reform is a long-term endeavor. Hence, the Agreement reached in the Uruguay Round also called for new negotiations on agriculture beginning in 1999, as

part of the “built-in” agenda of the WTO. Agriculture is an important element of the DDA.

The Committee on Agriculture has proven since its inception to be a vital instrument for the United States in monitoring and enforcing agricultural trade commitments that were undertaken by other countries in the Uruguay Round. Members agreed to provide annual notifications of progress in meeting their commitments in agriculture, and the Committee has met frequently to review the notifications and monitor activities of Members to ensure that trading partners honor their commitments.

Under the watchful eye of the Committee, Members have, for the most part, complied with the agricultural commitments that they undertook in the WTO. However, there have been important exceptions where the U.S. agricultural trade interests have been adversely affected. In these situations, the Committee on Agriculture has frequently served as an indispensable tool for resolving conflicts before they become formal WTO disputes. The following are some examples:

- Resolution of issues related to the use of export subsidies in Hungary, benefiting U.S. exports of grains, fruits and vegetables by nearly \$10 million.
- Elimination of restrictions on beef imports by Switzerland that affected approximately \$15 million in U.S. exports.
- Resolution of issues related to access for pork and poultry in the Philippines. In the case of pork, resolution of this issue meant additional U.S. exports of up to \$70 million, and in the case of poultry, of up to \$20 million.
- Resolving issues associated with Turkey’s imposition of a tax on imported cotton, important to U.S. exports of more than \$150 million.

- Resolution of issues related to the implementation of a tariff-rate quota on poultry in Costa Rica helped to triple U.S. exports to that country in 1998.

- Questioning Canada concerning a milk pricing scheme that appeared to be in violation of Canada’s export subsidy commitments. Building on a process that began with the Committee’s discussion, the United States eventually won a WTO dispute settlement case on this issue, benefiting U.S. exporters by reining in unfairly subsidized dairy exports from Canada.

- Elimination of Mexico's ban on dried beans from the United States, leading to continued U.S. sales of \$42 million per year into the Mexican market.

- Improved mechanisms by which China manages its tariff rate quota system for bulk agricultural commodities, with results including record U.S. cotton exports to China of \$475 million.

- Discouraging the EU from increasing tariffs on U.S. wheat exports, preserving a \$220 million-market (EU-15).

- Ensuring the issuance of required import permits to enable rice exports to Costa Rica (\$10 million).

- Partially mitigating the effect of a Venezuela import ban affecting what had been a \$100 million corn market for the United States.

- Discouraging India from effectively raising tariffs on imports of soybean oil (\$44 million).

Major Issues in 2004

The Committee held four formal meetings in March, June, September, and November 2004, 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, 170 notifications were subject to review during 2004. The United States actively participated in the notification process and raised specific issues concerning the operation of Members' agricultural policies. The Committee proved to be an effective forum for raising issues relevant to the implementation of Members' commitments. For example, the United States used the review mechanism to enhance the transparency of China's tariff-rate quota (TRQ) system and to help address low quota-fill of the European Union's pork TRQ. The United States was successful in removing a significant trade barrier to U.S. poultry exports to Moldova and made progress in addressing problems with Panama's import licensing regime for french fries.

The United States also raised questions concerning elements of domestic support programs used by the European Union, Chile, Tunisia, and Japan; identified restrictive import licensing and tariff-rate quota administration practices by the European Union, China, Japan, Panama, Thailand, Turkey, Iceland, Poland, Venezuela, and Moldova; questioned Japan's use of the special agricultural safeguard; and raised concerns with the Slovak Republic's use of export subsidies. The United States also inquired about the European Union's food aid programs.

During 2004, the Committee addressed a number of other agricultural implementation-related issues: (1) development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees, or insurance programs pursuant to

Article 10.2 of the Agreement on Agriculture, taking into account the effect of such disciplines on net food-importing countries; (2) examination of possible ways to improve the effectiveness of the implementation of the Net Food-Importing Developing Countries (NFIDC) Decision; and (3) the review process of Members' notifications on TRQs in accordance with the General Council's decision regarding the administration of TRQ regimes in a transparent, equitable, and non-discriminatory manner.

At each of its meetings, the Committee considered a pending proposal by the WTO Africa Group regarding the NFIDC Decision that was referred to the Committee by the Chairman of the General Council in the context of the review of all Special and Differential treatment provisions by the Committee on Trade and Development in Special Session. In accordance with the General Council Decision of August 1, 2004, the Committee pursued this matter on the basis of its recommendation to the General Council from July 2003:

“... that, building on the work already undertaken, including the WTO roundtable of 19 May 2003, the Committee will continue to explore, as a matter of priority and on the basis of proposals submitted by Members, options and solutions within the framework of the Marrakesh NFIDC Decision to address short-term difficulties of LDCs and WTO NFIDCs in financing commercial imports of basic foodstuffs.”

At its March meeting, the Committee accepted the application by Gabon to be included in the WTO list of net food-importing developing countries. This list comprises the following developing country Members of the WTO: Barbados, Botswana, Côte d'Ivoire, Cuba, Dominica, Dominican Republic, Egypt, Gabon, 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.

At the meeting in September, the Committee held its annual Transitional Review under paragraph 18 of the Protocol of Accession of the People's Republic of China. The United States, with support from other Members, raised questions and concerns regarding China's implementation of its WTO commitments in the areas of tariff-rate quota administration and import licensing.

The annual monitoring exercise on the follow-up to the NFIDC Decision 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 observer organizations.

Prospects for 2005

The United States will continue to make full use of the Committee to ensure transparency through timely notification by Members and to enhance enforcement of Uruguay Round commitments as they relate to export subsidies, market access, domestic support or 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 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.

Cumulative Assessment Since the WTO Was Established

Since 1995, WTO Members have negotiated and implemented new tariff initiatives on pharmaceuticals (1997 and 1999), distilled spirits (1997), and information technology products (1997) under the Committee's auspices.²³ In addition, in 1998 and 1999, the Committee was the venue for introducing the Asia-Pacific Economic Cooperation (APEC) Accelerated Tariff Liberalization initiatives on environmental goods and services, medical equipment and instruments, fish and fish products, toys, gems and jewelry, chemicals, energy sector goods and services, and forest products.

The Committee also has focused on developing the tools needed to monitor goods market access commitments and establish the technical foundation for any new market access negotiations, including the Doha Development Agenda. Specific achievements include:

- Revitalizing the Integrated Data Base (IDB) by restructuring the framework from a mainframe environment to a personal computer-based system and developing technical assistance projects to facilitate participation by developing countries. With the new system in place, on the Committee's recommendation, the WTO required all Members to supply tariff and trade information on an annual basis. As of December 2004, 105 Members and three acceding countries had provided IDB submissions; in contrast, only three Members (including the United States) supplied IDB information in 1994 under the old mainframe system.

²³ A new WTO Committee of Participants on the Expansion of Trade in Information Technology Products was established to monitor implementation of the Information Technology Agreement.

- Ensuring implementation of the 1996 and 2002 updates to the Harmonized Tariff System nomenclature (HTS) did not adversely affect existing tariff bindings of WTO Members. Most WTO Members were unable to carry out the procedural requirements related to the introduction of HTS96 changes in WTO schedules prior to implementation of those changes. To deal with this, the Committee put in place a system of granting waivers until countries finalized their procedures. The Committee also examined issues related to the transposition and renegotiation of the schedules of certain Members who had adopted the HTS in the years following its introduction on January 1, 1988.

- Establishing the Consolidated Tariff System database to ensure the development of an up-to-date schedule in standardized format for each WTO Member that reflects Uruguay Round tariff concessions, HTS96 updates to tariff nomenclature and bindings, and any other modifications to the WTO schedule. The Secretariat began work in 2002 to link the IDB and the Consolidated Tariff System to facilitate trade policy analysis and enable Members to evaluate the impact of future reductions of bound duties on MFN applied and preferential duties. Given Members' technical difficulties and the delay in completing the HTS96 process, in 2004 the Committee adopted the Chairman's proposal that the Secretariat prepare HTS2002 schedules for all Members. Completion of this exercise will be a significant technical contribution to the Doha Round market access negotiations.

Major Issues in 2004

During 2004, WTO Members continued implementing the tariff reductions agreed to in the Uruguay Round; the Committee is responsible for verifying that implementation proceeds on schedule. The Committee held four formal meetings and one informal meeting in 2004 to discuss the following topics: (1) the ongoing review of WTO tariff schedules to accommodate updates to the Harmonized Tariff System (HTS) tariff nomenclature; (2) the WTO Integrated Data Base; (3) finalizing consolidated

schedules of WTO tariff concessions in current HTS 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 third annual transitional review of China's implementation of its WTO accession commitments.

Updates to the HTS nomenclature: In 1993, the Customs Cooperation Council -- now known as the World Customs Organization (WCO) -- agreed to approximately 400 sets of amendments to the HTS, which entered into effect January 1, 1996. Further modifications entered into effect January 1, 2002. These amendments resulted in changes to the WTO schedules of tariff bindings. The Committee also examined issues related to the transposition and renegotiation of the schedules of certain Members that adopted the HTS in the years following its introduction on January 1, 1988.

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. Members may pursue unresolved objections under GATT 1994 Article XXVIII. The majority of WTO Members have completed the process of implementing HTS 1996 changes, but five Members continue to require waivers.

Using the same procedures, the Committee also began to review Members' WTO amendments that took effect on January 1, 2002 (HTS2002). The review process includes converting all WTO Members' schedules into the HTS2002 nomenclature and reviewing and approving the 373 amendments incorporated under HTS2002. Conversion to HTS2002 is essential to laying the technical groundwork for analyzing tariff implications of the Doha Round. As a result, at the July 2004 meeting, the Committee reviewed the Chairman's proposal that the Secretariat take on a majority of the work in preparing Members' HTS2002 schedules, which would

then be subject to verification. At that same meeting the Committee further agreed that the Secretariat should begin laying the groundwork for the technical aspects of the transposition. Funding for this project will be provided from the global trust fund and work will be carried out in 2005. The United States submitted its proposed HTS2002 changes to the Secretariat in December 2001.

Integrated Data Base (IDB): The Committee addressed issues concerning the IDB, which is updated annually with information on the tariffs, trade data, and non-tariff measures maintained by WTO Members. Members are required to provide this information as a result of a General Council Decision adopted in July 1997. 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. As a result, participation has continued to improve. As of December 2004, 105 Members and three acceding countries had provided IDB submissions. In September 2004, the Secretariat agreed to organize a hands-on workshop on the IDB internet analysis facility.

Consolidated Schedule of Tariff Concessions (CTS): The Committee continued work on implementing an electronic structure for tariff and trade data. The CTS includes: tariff bindings for each WTO Member that reflect Uruguay Round tariff concessions; HTS96 and 2002 updates to tariff nomenclature and bindings; and any other modifications to the WTO schedule (e.g., participation in the Information Technology Agreement). The database also includes agricultural support tables. The CTS 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 September 2004, the Committee conducted the third 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.

Prospects for 2005

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. The Committee will continue to review Members' amended schedules based on the HTS2002 revision, including following through on the Chairman's proposal to have the Secretariat generate HTS2002 schedules for all Members. The successful completion of conversion to HTS2002 will be a tremendous step forward in technical preparation for the Round.

3. Committee on the Application of Sanitary and Phytosanitary Measures

Status

The WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures establishes rules and procedures that ensure that Members' SPS 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 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 and feedstuffs. Fundamentally, the Agreement requires that such measures be based on science, developed using systematic risk assessment procedures and are notified to the WTO SPS Secretariat for distribution to other Members in sufficient time for Members to comment before final decisions are made. At the same time, the Agreement recognizes each Member's right to choose the level of protection it considers appropriate with respect to SPS risks.

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The Committee is a forum for consultation on Members' existing and 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 recognized in the Agreement. There are: for food, the Codex Alimentarius Commission; for animal health, the World Organization for Animal Health (OIE); for plant health, the International Plant Protection Convention (IPPC). The Committee also discusses specific provisions of the Agreement including transparency in Members' development and application of SPS measures (Article 7), equivalence (Article 4), regionalization (Article 6), technical assistance (Article 9) and special and differential treatment (Article 10).

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 from a number of international intergovernmental organizations are invited to attend Committee meetings as observers on an ad hoc basis. These include: the Food and Agriculture Organization (FAO), the World Health Organization (WHO), the FAO/WHO Codex Alimentarius Commission, the FAO IPPC, the OIE, the International Trade Center, the World Bank, and others.

Cumulative Assessment Since the WTO Was Established

Based on discussions in the SPS Committee and bilateral discussions, there is a virtual consensus

that SPS issues and concerns are the result of not fully implementing the existing obligations in the SPS Agreement and that the current text of the SPS Agreement does not need to be changed. With this principle in mind, the Committee has undertaken focused discussions on various articles of the Agreement. These discussions provide the opportunity for Members to share experiences on their SPS implementation activities and to elaborate procedures to assist Members in meeting specific SPS obligations. For example, the Committee has elaborated procedures or guidelines regarding: notifications, the "consistency" provisions under Article 5.5, equivalence and transparency regarding the provision of special and differential treatment.

The Fourth Session of the Ministerial Conference held in Doha in November 2001 directed that the Committee review the operation and implementation of the Agreement at least once every four years. During 2005, the Committee will complete a review to meet this mandate. The United States considers the review to be an important opportunity to assess implementation and to develop a work plan for the Committee in response to issues identified by Members. Thus far, Members have focused the discussions for the review on implementation issues.

Since 1995, over 5,000 SPS notifications have been submitted to the Secretariat by Members. As of January 6, 2005, the United States had submitted 1,026 notifications of proposed SPS measures. The effort we have taken to notify these proposals is a clear statement of the importance the United States attaches to the transparency provisions of the Agreement. The SPS Secretariat reported to the Committee in November 2004 that many Members, mainly developing country Members, had not submitted any notifications. Members increasingly recognize the value and importance of notifying proposed SPS measures but that additional efforts will be needed to fully implement this obligation.

The Committee has a standing agenda item, "Specific Trade Concerns", which provides an

opportunity for Members to express concerns about proposed or existing SPS measures of other Members. Two primary indicators demonstrate the increasing sophistication of Members' understanding and use of the rights and obligations in the Agreement.

First, over the ten year period, the number and diversity of Members raising concerns have increased. Initially, most of the issues were raised by developed country Members regarding both developed and developing country Members' SPS measures. Since 2003 in particular, more developing country Members are raising issues under this agenda item in Committee meetings. The nature of the concerns being raised is becoming more sophisticated. Concerns expressed include more than the straightforward failure to notify. Increasingly the concerns inquire about the scientific basis for the proposed measure and why the relevant international standard was not used. The numbers of Members participating in these discussions and increasing complexity of both the issues raised and the responses demonstrate that Members are using the Committee meetings to address and resolve concerns with trading partners. Members' use of the Committee to raise SPS-related trade issues increases the visibility of SPS obligations in capitals and in Geneva missions. These discussions are no longer limited to developed country Members; they are, in many cases, discussions among developing country Members.

The second indicator is the broad-based participation among Members in Committee discussions on various provisions of the Agreement. Since 2001, there has been a marked increase in the number of Members' oral comments and written submissions on the equivalence, transparency, regionalization, and technical assistance provisions of the Agreement. The discussions reveal increased understanding of these provisions and improved efforts to meet SPS obligations. From these discussions several Members have recognized their need to improve SPS implementation activities and also that any modifications to the Agreement should not be considered until more

Members more fully implement the obligations in the existing text.

Major Issues in 2004

In 2004, the Committee met three times. The Committee 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 transparency, regionalization and equivalence. Members are also providing information to the Committee on efforts to achieve freedom from specified pests and diseases. The United States views this as a positive development as it demonstrates growing familiarity with the provisions of the 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, most of the 34 countries participating in the Free Trade Area of the Americas negotiations attended each Committee meeting in 2003 and 2004. This has significantly expanded capital-based and Geneva-based participation in Committee meetings. Immediately prior to each Committee meeting, representatives from the FTAA countries have met to exchange views on issues on the agenda.

- **BSE - TSE²⁴:** The Committee devoted considerable time discussing Members' measures restricting trade in beef and bovine products resulting from concerns with BSE. U.S. beef and other bovine-related exports were severely restricted by many Members after the diagnosis of a single imported cow in Washington state with the disease. Several other Members also had concerns that many Members' restrictions were not based on the international standard established by the OIE and no scientific justification was provided for denying imports of U.S. beef and beef products. The United States reported the single case and the steps taken to control the disease, and encouraged Members to conform to the OIE standard. Several other Members supported the U.S. views. Other Members expressed concerns with the interim final regulations of the United States to address BSE. The United States expects that BSE will continue to be an issue in the Committee.

- **Avian Influenza:** During the 2004 meetings, several Members reported on their activities to control and eradicate avian influenza (AI) and the resulting restriction on trade in poultry. Other Members, including the United States, expressed concerns with the restrictions some Members implemented on trade in poultry that were inconsistent with the international standards of the OIE or that did not employ the regionalization provisions of the Agreement to reduce trade restrictions. The United States encouraged Members to base all AI restrictions on science and, for those Members with country-wide prohibitions, to make use of the regionalization provisions of the Agreement with regard to U.S. poultry exports.

- **Notifications:** The SPS notification process is taking on increasing importance for trade and also a means to report on determinations of equivalence and special and differential treatment. In 2004, the United States and other Members expressed concern about the failure of some Members to notify SPS measures

which could have significant trade impacts. In 2003, the Committee agreed to a modification of the notification format to include information of equivalence agreements. In 2004, another modification was agreed to so that Members could use the notification form to provide information on special and differential treatment. In 2004, the WTO SPS Secretariat reported receiving over 5,000 notifications since 1995 of which over 1,000 were from the United States.

- **Regionalization:** The Committee held informal meetings on regionalization in advance of each formal Committee meeting in 2004. Regionalization can be an effective means to reduce restrictions on trade due to animal and/or plant health concerns. In many cases, country-wide import prohibitions can be reduced to state- or county-wide prohibitions depending on the characteristics of the pest or disease and other factors. The IPPC and OIE have significant contributions to offer and participated in both the informal and formal Committee meetings on regionalization. Some Members expressed concerns with the time Members require to make regionalization decisions and to publish the appropriate regulations and are seeking to establish timeframes for decision-making. Due to the unique circumstances of the pest or disease in question, environmental factors, the SPS infrastructure and other significant issues, the United States does not believe that the Committee should develop timeframes for Members' action. Rather, the OIE and IPPC should consider the need for and utility of timelines given the unique characteristics of individual disease or pest. The Committee will continue to discuss this issue.

- **Review of the Agreement:** Paragraph 3.4 of the Decision on Implementation-Related Issues and Concerns adopted at the Fourth Session of the Ministerial Conference directs the Committee to review the operation and implementation of the Agreement at least once every four years. The first review under this mandate is to be completed during 2005. In 2004, the Members agreed to a timeline for the review and to submit documents for the Committee's consideration. The Committee

²⁴ Bovine Spongiform Encephalopathy and Transmissible Spongiform Encephalopathy.

held informal meetings on the review in advance of the formal Committee meetings in June and November. The United States and several other Members submitted proposals which were discussed at the November 2004 meeting. The Committee has agreed that the review should be completed in June so that it can be submitted to Ministers at the Sixth Ministerial in late 2005.

• **China's Transitional Review Mechanism:** The United States participated in the Committee's third review of China's implementation of its WTO obligations as provided for in paragraph 18 of the Protocol on the Accession of the People's Republic of China. The United States submitted questions (G/SPS/W/153) regarding China's notification and transparency procedures, the scientific basis for some SPS measures, risk assessment procedures, and control, inspection and approval procedures. Other Members also provided written comments and questions and others offered comments during the review. China responded orally during the review and restated its commitment to implement fully the provisions of the Agreement.

Prospects for 2005

The Committee will hold three meetings in 2005; informal sessions are anticipated in advance of each formal meeting. The Committee has a standing agenda for meetings that can be altered to accommodate new or special issues. The United States anticipates that the Committee will continue to monitor Members' implementation activities. Discussion of specific trade concerns will continue to be an important part of the Committee's activities. The Committee also will continue to serve as an important venue to exchange information among Members' on SPS related issues including BSE, AI, food safety measures and technical assistance. The activities of the Codex, OIE and IPPC will be of increasing importance to Members as BSE, AI and other SPS issues affect trade.

In preparation for the Sixth Ministerial, the Committee will complete the review of the operation and implementation of the Agreement.

The United States anticipates that as part of the review the Committee will develop a multi-year work plan to promote the full implementation of the Agreement which may apply to the Committee and to Members.

The United States anticipates that the Committee will continue discussions on transparency and notifications, technical assistance, special and differential treatment, and regionalization. The Committee will also monitor the use and development of international standards, guidelines and recommendations by Codex, OIE and IPPC. Representatives from the organizations will provide technical expertise to the Committee on a range of issues within their competence. The Committee will also prepare for and conduct the fourth review of China's implementation of the Agreement.

4. Committee on Trade-Related Investment Measures

Status

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

Cumulative Assessment Since the WTO Was Established

Developments relating to the TRIMS Agreement are monitored and discussed both in the Council on Trade in Goods (“CTG”) and in the TRIMS Committee. Since its establishment in 1995, the TRIMS Committee has been a forum for the United States and other Members to address concerns, gather information, and raise questions about the maintenance, introduction, or modification of TRIMS by WTO Members. Much of the discussion has related to TRIMS in the context of the automotive sector.

Twenty-six WTO Members submitted notifications of inconsistent measures to the TRIMS Committee, as required by the terms of the Agreement, in order to benefit from grace periods for eliminating notified TRIMS. 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, and only Pakistan has requested an additional extension, as discussed below.

Major Issues in 2004

The TRIMS Committee held three formal meetings during 2004. TRIMS issues were also discussed during several meetings of the CTG.

During meetings in late 2003 and in 2004, the TRIMS Committee and the CTG considered Pakistan’s request that its deadline for eliminating certain measures in the automotive sector be extended again, from the end of 2003 to the end of 2006. The United States posed a series of questions about the TRIMS and Pakistan’s rationale for delaying their elimination. Pakistan replied in April 2004, arguing that certain enterprises depended upon the TRIMS and that elimination of the TRIMS would cause jobs to be lost in the automotive

sector. No decision was reached on Pakistan’s request for an extension.

As part of the review of special and differential treatment provisions, the TRIMS Committee considered in October 2004, several TRIMS-related proposals submitted in 2003 by a group of African countries. One proposal argued 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. A second proposal argued that least-developed or other low-income WTO Members experiencing balance-of-payments difficulties should be permitted to maintain measures inconsistent with the TRIMS Agreement for periods of not less than six years. The final African proposal would require 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.

In response to these proposals, the United States argued that any TRIMS imposed for balance-of-payments purposes must follow existing WTO rules on balance-of-payments safeguards. The United States also argued that it would not be appropriate to adopt fixed time periods for maintaining TRIMS in response to balance-of-payments crises given the varying nature of such crises and that, given the lack of requests for TRIMS extensions from least-developed countries to date, it was not clear that a policy of automatically granting requests for longer TRIMS transition periods was warranted. The TRIMS Committee is expected to continue to discuss this issue in 2005.

In July 2004, Brazil and India submitted a proposal to the CTG for a study of the impact on trade and development of TRIMS and of the elimination of TRIMS under the TRIMS Agreement since 1995. The proposal suggests focusing on the agri-processing and automotive industries. The Chairman of the TRIMS Committee undertook consultations with Members on the study proposal.

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 third annual review in 2004 of China's implementation of the TRIMS Agreement and related provisions of the Protocol. The United States' main 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 in particular 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 2005

In early 2005, the United States will work to address Pakistan's request for an extension through the end of 2006 of the deadline for eliminating its remaining TRIMS. The United States will also engage other WTO Members in efforts to promote compliance with the TRIMS Agreement.

5. Committee on Subsidies and Countervailing Measures²⁵

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:

²⁵ 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 2005.

prohibited (red light) subsidies; permitted yet actionable (yellow light) subsidies; and permitted, non-actionable (green light) subsidies.²⁶ Export subsidies and import substitution subsidies are prohibited. All other subsidies are permitted, but are 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 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.

Cumulative Assessment Since the WTO Was Established

Rules and disciplines covering industrial subsidies have strengthened over time in the multilateral trading system to ensure that the artificial competitive advantages that they can confer do not disrupt the market signals that guarantee the most efficient allocation of resources and generally lead to the generation of wealth for producers, consumers, and workers. The WTO's disciplines on subsidies prevent the erosion of comparative advantage and the

²⁶ 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. In addition, Article 6.1 of the Agreement provided that certain other subsidies (*e.g.*, subsidies to cover a firm's operating losses), referred to as dark amber subsidies, could be presumed to cause serious prejudice. 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, these provisions 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.

undermining of market access expectations conferred through reciprocal concessions to reduce tariffs and other barriers at the border. In short, subsidy rules help to level the playing field, so private actors need not worry about having to compete with government treasuries. At the same time, however, WTO subsidy rules recognize that all governments intervene in their economies in some fashion to pursue legitimate objectives for the society at large. The WTO rules prohibit or discourage the most distortive kinds of subsidies while concurrently allowing governments to use less distortive subsidies to achieve broader social or economic objectives.

This historical balance has generally served U.S. interests well. The orientation of multilateral subsidy rules has tended to reflect the balances struck within the United States on the same issues: a low toleration for the more distortive types of government intervention, along with a flexibility which permits a variety of approaches to address the different social, economic and developmental needs of a Member. It is also a balance that has served the multilateral system well, providing a model which discourages the kind of targeted industrial policies and non-commercial government support that exacerbate fundamental economic problems but permits broadly-available industry and worker assistance. Finally, it is a framework which holds promise for creating greater complementarities between the goals of trade policy and environmental policy, as the United States identifies sectors in which the reduction or elimination of subsidy practices can alleviate both adverse trade and environmental effects.

In the development context, the provisions of the Agreement have been commended as a rational approach to the issue of special and differential treatment for developing and least-developed countries in the rules-based trading system of the WTO. In particular, the criteria for inclusion in Annex VII of the Subsidies Agreement, specifically the per-capita income threshold, have been referenced as a sensible and objective basis for identification of those poorer developing countries in need of particular assistance and as an appropriate mechanism to provide a temporary respite from fulfilling the

normal rules. Particularly noteworthy in this regard is that the Agreement further recognizes that once a developing or least-developed country becomes export competitive in a product area, it may no longer need certain special and differential treatment.

Importantly, the Agreement established the Committee on Subsidies and Countervailing Measures (the Committee), which is charged with implementing specific provisions of the Agreement and which operates as a forum for the discussion of subsidy-related issues. The Agreement and the work of the Committee increase the transparency of the application of countervailing duties and the operation of subsidy programs maintained by Members. Under the Agreement, Members must notify to the Committee their countervailing duty laws and actions as well as their subsidies programs. Although additional work is needed to strengthen these transparency obligations and augment the productivity of the review process, the Agreement's transparency provisions are valuable tools in assessing other Members' adherence to the Agreement, as well as their approach to subsidy policy in their own domestic economies.

The Committee has also proven to be a vital forum for the discussion of subsidy issues more generally. For example, in the lead-up to the Doha Ministerial Conference, developing countries raised numerous "implementation" issues regarding the Agreement. All of these issues were extensively discussed in the Committee in both formal and informal meetings. For several of these issues the Committee's work established the bases for decisions made at the Fourth Ministerial Conference that significantly contributed to the consensus to launch the Doha Development Agenda. The Committee's work in this regard is also illustrative of how specific practical problems faced by WTO developing country Members can be pragmatically addressed without undermining the integrity and strength of the underlying rules of the relevant WTO agreement.

The Uruguay Round Subsidies Agreement brought important new disciplines to address the more egregious subsidy practices, and for the first time extended the coverage of disciplines from a small number of signatories of the Tokyo Round Subsidies Code to all 148 Members of the WTO. The Agreement's methodological concepts reflect, in most instances, the very concepts and standards which the United States developed over the course of decades in administering its own unfair trade statutes. The Committee established by the Agreement fosters greater transparency and facilitates cooperative problem-solving. In sum, the Agreement continues to offer a strong yet balanced tool to address issues of subsidies in international trade.

Major Issues in 2004

The Committee held two meetings in 2004. 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, and the United States, 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. During the fall meeting, the Committee undertook its third 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 updating of the methodology for Annex VII(b) of the Agreement and an appointment 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 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 37 Members have not, as yet, made a notification. Among the notifications of CVD laws and regulations reviewed in 2004 were those of: Argentina, Canada, China, the European Communities, Japan, Jordan, Mexico, Peru and South Africa.²⁷

As for CVD measures, eleven WTO Members notified CVD actions taken during the latter half of 2003, and eight Members notified actions taken in the first half of 2004. Specifically, the Committee reviewed actions taken by Argentina, Australia, Brazil, Canada, Costa Rica, the European Union, Latvia, Mexico, New Zealand, the United States and Venezuela. In 2004, 54 subsidy notifications for 2003 were reviewed. The Committee also continued its examination of new and full notifications and updating notifications for earlier time periods. Unfortunately, many Members have never made a subsidy notification to the WTO, although many are least developed countries.

The lack of a subsidy notification by China has been of particular concern to the United States, as well as numerous other WTO Members (see China Transitional Review below). Although China became a WTO Member in 2001, it has yet to provide a subsidy notification as required under Article 25.1 of the Agreement and China's Protocol of Accession. While recognizing the problems inherent in compiling the first subsidy notification for a large country, the United States took the lead in the Committee in urging China to file its subsidy notification as soon as possible. In addition, to obtain specific

²⁷ 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.

information regarding known assistance programs that potentially should be notified the United States exercised its rights under Article 25.8 of the Agreement and submitted detailed written questions to China requesting information on the nature and extent of the programs in question. Under Article 25.9 of the Agreement, China is obligated to provide a written, comprehensive response.

- **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 third annual transitional review with respect to China's implementation of its WTO obligations in the areas of subsidies, countervailing measures and pricing policies. Taking a leading role, the United States, along with other Members, 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. China orally described a limited number of its subsidy programs in response to Members' inquiries during the meeting. As noted above, however, it has not submitted a subsidies notification since becoming a WTO Member, citing numerous practical difficulties in assembling and submitting the appropriate information. Reciting detailed, publicly-available information for several of China's programs, the United States questioned the comprehensiveness of China's answers and urged it to provide a subsidy notification as required by Article 25.1 of the Agreement and its Protocol of Accession. Later in the year, at the Council for Trade in Goods meeting, China did commit to provide a subsidies notification within the year.

- **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, 2002. Article 27.4 of the Agreement allows for an extension of this deadline provided consultations were entered into with the Committee by the end of 2001. If the Committee grants an extension, annual consultations with the Committee must be held

to determine the necessity of maintaining the subsidies.²⁸ If the Committee does not affirmatively sanction a continuation, the export subsidies must be phased out within two years.

To try and address the concerns of certain small 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 were eligible for a five-year extension of the transition period, in addition to the two years referred to under Article 27.4.²⁹

At the end of 2001, Antigua and Barbuda, Barbados, Belize, Bolivia, Costa Rica, Dominica, Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Honduras, 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.³⁰ Uruguay requested an extension for

²⁸ 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.

²⁹ 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 was added at the request of Colombia.

³⁰ Bolivia, 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-

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. These requests were approved by the Committee in 2002 and again in 2003.

In 2004, requests were made by all the countries which had received extensions under the special procedures adopted at the Fourth Ministerial Conference for small exporter developing countries.³¹ 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 40 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 least 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 as prohibited subsidies under the dispute settlement process. The countries identified in Annex VII include those WTO

year extension period contemplated by the special procedures. Because these countries are only reserving their rights at this time, the Committee did not need to make any decisions as to whether their particular programs qualify under the special procedures.

³¹ Colombia did not request an extension for two of its export subsidies programs for which extensions were granted under the procedure agreed to at the Fourth Ministerial Conference. Consequently, the two export subsidy programs of Colombia which had been granted extensions under a procedure agreed to at the Fourth Ministerial Conference analogous to that provided for small exporter developing countries, must be phased out within two years (*i.e.*, the end of 2006).

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).³² 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 that it reflected 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 alternative approach to calculate the \$1,000 threshold in constant 1990 dollars. At the Fourth Ministerial Conference, decisions were made which led to the adoption of this methodology. The WTO Secretariat updated these calculations in 2004.³³

- **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

³² Members identified in Annex VII(b) are Bolivia, Cameroon, Congo, Cote d’Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka, and Zimbabwe. In recognition of the technical error made in the final compilation of this list and pursuant to a General Council decision, Honduras was formally added to Annex VII(b) on January 20, 2001.

³³ *See:* G/SCM/110/Add. 1.

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. As of the beginning of 2004, the members of the Permanent Group of Experts were: Professor Okan Aktan (Turkey); Dr. Marco Bronckers (Netherlands); Mr. Yuji Iwasawa (Japan); Mr. Hyung-Jin Kim (Korea); and Mr. Terence P. Stewart (United States). Dr. Bronckers’ term expired in the spring of 2004. Mr. Asger Petersen (Denmark) was elected to replace Dr. Bronckers, assuming the term until the spring of 2009.

Prospects for 2005

In 2005, the United States will continue to work with others to encourage Members’ to meet their subsidy notification obligations, and to provide technical assistance with their notifications when available and where appropriate. (The United States is scheduled to provide its new and full subsidy notification in 2005.) Second, the United States will particularly focus on China’s Transitional Review Mechanism, continuing the effort to ensure that China meets its obligations under its Protocol of Accession and the Agreement. 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 or developing country issues that the Subsidies Committee may be asked to consider in the context of issues that may arise within the Rules Negotiating Group.

6. 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 market access gains achieved through tariff reductions are not negated by unwarranted and unreasonable “uplifts” in the customs value of goods to which tariffs are applied.

Cumulative Assessment Since the WTO Was Established

Achieving universal adherence to the Agreement on Customs Valuation in the Uruguay Round was an 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 until mandated as part of membership in the WTO. A proper valuation methodology under the WTO Agreement on Customs Valuation, avoiding arbitrary determinations or officially-established minimum import prices, can be the foundation to the realization of market access commitments. Just as important, the implementation of the Customs Valuation Agreement also often represents the first concrete and meaningful steps taken by developing countries toward reforming their customs administrations and diminishing corruption, and ultimately moving to a rules-based trade facilitation environment. 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 advancing trade facilitation within the WTO, the United States has taken an aggressive role on matters related to customs valuation during the past decade.

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. A notable development of the past 10 years has been a broad number of developing country Members moving toward implementing rules-based trade remedy procedures as a direct result of their implementation of the Valuation Agreement and moving away from the use of minimum import prices.

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. An achievement of the past 10 years has been the positive experience within the Customs Valuation Committee in successfully addressing individual implementation needs of developing country Members. Starting in 1998 and continuing through 2004 the Committee operated through U.S.-led informal consultations leading to more than 30 decisions granting further flexible transitional measures specifically tailored to address particular situations, ultimately leading to full implementation through benchmarked work programs. The Committee has also been very active in exploring ways to ensure targeted and effective technical assistance is available to developing countries.

Major Issues in 2004

The Agreement is administered by the WTO Committee on Customs Valuation, which held two formal meetings in 2004. 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.

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. The United States has used the WTO Committee as an important forum for addressing concerns on behalf of U.S. exporters across all sectors - including agriculture, automotive, textile, steel, and information technology products - that have experienced difficulties related to the conduct of customs valuation regimes outside of the disciplines set forth under the WTO Agreement on Customs Valuation. 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.

While many developing country Members undertook timely implementation of the Agreement, the Committee continued throughout 2004 to address various individual Member requests for either a transitional reservation for implementation methodology, or for a further extension of time for overall implementation. 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, Senegal, 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 2004, 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 2004. 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.” In 2004, the Committee continued to evaluate the Technical Committee’s report.

An important part of the Committee’s work is the examination of implementing legislation. As of November 2004, 68 Members had notified their national legislation on customs valuation. During 2003, the Committee concluded the examinations of the legislations of Chile, Paraguay, the Philippines and Tanzania. The Committee also agreed to revert to the examination of the customs legislations of Armenia, Burkina Faso, China, India, Mexico, Peru and Thailand. Working with information provided by U.S. exporters, the United States played a leadership role in these examinations, submitting in some cases a series of comprehensive questions as well as suggestions toward improved implementation, particularly with regard to China, India, and Mexico. These examinations will continue into 2005. In October 2004, the Committee also conducted a Transitional Review in accordance with Paragraph 18 of the Protocol of China’s accession to the WTO, with the United States submitting comprehensive questions which drew a verbal response from China. Most of the questions remain an element of the ongoing review of China’s legislation.

The Committee’s work throughout 2004 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 2005

The Committee’s work in 2005 will include reviewing the relevant implementing legislation and regulations notified by Members, along with addressing any further requests by other Members concerning implementation deadlines. The Committee will monitor progress by Members with regard to their respective work programs that were included in the decisions granting transitional reservations or extensions of time for implementation. In this regard, the Committee will continue to provide a forum for sustained focus on issues arising from practices of all Members that have implemented the Agreement, to ensure that such Members’ customs valuation regimes do not utilize arbitrary or fictitious values such as through the use of minimum import prices. Finally, the Committee will continue to address technical assistance issues as a matter of high priority.

7. Committee on Rules of Origin

Status

The objective of the 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. The Harmonization Work Programme (HWP) 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 2004 and will continue into 2005.

The Agreement is administered by the WTO Committee on Rules of Origin, which met formally and informally throughout 2004. The

Committee also serves as a forum to exchange views on notifications by Members concerning their national rules of origin, along with those relevant judicial decisions and administrative rulings of general application. The Agreement also established a Technical Committee on Rules of Origin in the World Customs Organization to assist in the HWP.

As of the end of 2004, 77 WTO Members notified the WTO concerning non-preferential rules of origin, of which 37 Members notified that they had non-preferential rules of origin and 40 Members notified that they did not have a non-preferential rules of origin regime. 83 Members notified the WTO concerning preferential rules of origin, of which 79 notified about their preferential rules of origin and four notified that they did not have preferential rules of origin.

Cumulative Assessment Since the WTO Was Established

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. Substantial attention has been given to the implementation of the Agreement's important disciplines related to transparency, which constitute internationally recognized "best customs practices." Many of the Agreement's commitments, such as issuing binding rulings upon request of traders in advance of trade, have frequently been cited as a model for more broad-based commitments that could emerge from future WTO work on Trade Facilitation.

For the past ten years, the Agreement has provided a means for addressing and resolving many problems facing U.S. exporters pertaining to origin regimes, and the Committee has been active in its review of the Agreement's implementation. The ongoing HWP leading to the multilateral harmonization of non-preferential product-specific rules of origin has attracted a great deal of attention and resources. Significant progress has been made toward completion of this effort, despite the large

volume and magnitude of complex issues which must be addressed for hundreds of specific products.

While the Committee has made significant progress towards fulfilling the mandate of the Agreement to establish harmonized non-preferential rules of origin, the Committee is still grappling with a number of fundamental issues, including the scope of the prospective obligation to equally apply for all purposes the harmonized non-preferential rules of origin. This issue and the remaining "core policy issues" are among the most difficult and sensitive matters for the Members and continued commitment and flexibility from all Members will be required to conclude the work program and implement the non-preferential rules of origin.

Major Issues in 2004

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 HWP 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 HWP, 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 2004 formal meeting, the Committee conducted numerous informal consultations and working party sessions related to the HWP negotiations. The Committee proceeded in accordance with a December 2001 mandate from the General Council, which extended the HWP while specifically requesting that the Committee on Rules of Origin focus during the first half of 2004 on identifying core

policy issues arising under the HWP 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 HWP, and proceeding on a track toward achieving consensus on product-specific rules of origin for more than 5000 tariff lines. In 2004, the Committee focused on 94 unresolved issues identified as “core policy issues.” Many of these issues are particularly significant due to their broad application across important product sectors, including fish, beef products, dairy products, sugar, industrial and automotive goods, semiconductors and electronics, and steel. 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 absence of common understanding among Members concerning the scope of 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 2005

Further progress in the HWP will remain contingent on achieving appropriate resolution of the “core policy issues” and to reaching a consensus on the scope of the prospective obligation to equally apply for all purposes the harmonized non-preferential rules of origin for all purposes. In accordance with a decision taken by the General Council in July 2004, work will continue on addressing these issues. The

General Council, at its meeting in July 2004, extended the deadline for completion of the 94 core policy issues to July 2005. The General Council also agreed that following resolution of these core policy issues, the CRO would complete its remaining technical work by December 31, 2005.

U.S. Inquiry Point

National Center for Standards and Certification
Information
National Institute of Standards and Technology (NIST)
100 Bureau Drive
Gaithersburg, MD 20899-2160

Telephone: (301) 975-4040
Fax: (301) 926-1559
email: ncsci@nist.gov
website: <http://ts.nist.gov/ncsci>

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: <http://ts.nist.gov/ncsci>.

8. Committee on Technical Barriers to Trade

The Agreement on Technical Barriers to Trade (the TBT Agreement) establishes rules and procedures regarding the development, adoption, and application of voluntary product standards, mandatory technical regulations, and the procedures (such as testing or certification) used to determine whether a particular product meets such standards or regulations. The Agreement’s aim is to prevent the use of technical requirements as unnecessary barriers to trade. Although the TBT Agreement applies to a broad range of industrial and agricultural products, sanitary and phytosanitary (SPS) measures and specifications for government procurement are covered under separate agreements. TBT Agreement rules help to distinguish legitimate standards and technical regulations from protectionist measures. Standards, technical regulations and conformity assessment procedures are to be developed and applied on a

nondiscriminatory basis, developed and applied transparently, and should be based on relevant international standards and guidelines, when appropriate.

The TBT Committee³⁴ 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 proposed or 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 benefit to the public resulting from the TBT Agreement is the ability

³⁴ 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.

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, that is responsible for responding to requests for information on technical requirements or making the appropriate referral.

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

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. 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).³⁵ 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 website.

Cumulative Assessment Since the WTO Was Established

With the implementation of the Agreement Establishing the World Trade Organization, all Members assumed responsibility for compliance with the TBT Agreement. Although a form of the Agreement had existed as a result of the Tokyo Round, the expansion of its applicability to all Members was significant and resulted in new obligations for many Members. The Agreement has secured the right for interested parties in the United States to have information on proposed standards, technical regulations and conformity assessment procedures being developed by other Members. It provides an opportunity for interested parties to influence the development of such measures by taking advantage of the opportunity to provide written comments on drafts. Among other things, this helps to prevent the establishment of technical barriers to trade. The Agreement has functioned well in this regard, though discussions on how to improve the operation of the provisions on transparency are ongoing. Other disciplines and obligations, such as the prohibition of discrimination and the call for measures not to be more trade restrictive than necessary to fulfill legitimate regulatory objectives, have been

³⁵ Before 2000, the numbering of notifications of proposed technical regulations and conformity assessment procedures read: “G/TBT/Notif./...” (followed by a number).

useful in evaluating potential trade barriers and in seeking ways to address them.

Committee monitoring and oversight has served an important role. The Committee has served as a constructive forum for discussing and resolving issues, and this has perhaps alleviated the need for more dispute settlement undertakings. Over the past ten years, an increasing number of Members have used the Committee to highlight trade problems, including a number of developing country members. To date, there has been only one WTO dispute concerning the rights and obligations under the TBT Agreement (Peru’s challenge of the European Communities’ trade description of sardines).

The Agreement obliges the Committee to review every three years the operation and implementation of the Agreement. Three such reviews have now been completed (G/TBT/5, G/TBT/9, and G/TBT/13). From the U.S. perspective, a key benefit of these reviews is that it prompts WTO Members to review and discuss all of the provisions of the Agreement, which facilitates a common understanding of Members’ rights and obligations. The review also identifies some practical problems associated with implementation and ways to address them. For example, in response to questions about how to define “international standard” for purposes of implementing the Agreement, the Committee adopted a decision containing a set of principles it considered important for international standards development (i.e., openness, transparency, impartiality; consensus; relevance and effectiveness; and coherence and development). Members were encouraged to promote adherence to these principles by their standardizing bodies and participants in the international bodies and thereby advance the objectives of the Agreement. (Decisions and recommendations adopted by the Committee are contained in G/TBT/1/Rev.8.) The reviews have also stimulated the Committee to host workshops on various topics of interest, including technical assistance, conformity assessment, labeling and good regulatory practice.

Major Issues in 2004

The TBT Committee met three times in 2004, and 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 that 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 EU that could seriously disrupt trade (e.g., the EU's proposed regulation on the Registration, Evaluation and Authorization of Chemicals ("REACH"), wine labeling regulations, and regulations on the traceability and labeling of biotech food and feed products). The minutes of the meetings are contained in G/TBT/M/32, 33 and 34.

On November 2-3, 2004, the Committee held its Fourth Special Meeting on Procedures for Information Exchange to discuss in-depth practical issues associated with making notifications, handling comments received on them, disseminating information on proposals at the national level, and promoting awareness of Members' rights under the Agreement as well as other elements associated with transparency.

The Committee also carried out its third annual transitional review of China's progress in implementing its WTO commitments which is mandated by China's protocol of accession. The United States (G/TBT/W/245), the EU (G/TBT/W/242), and Japan (G/TBT/W/243) submitted written questions to China which raised concerns relating to notifications, standards setting, scrap recycling regulations, chemical regulations and conformity assessment procedures, among other matters. China provided written information in G/TBT/W/246 and responded to Member's questions orally at the committee's November 4, 2004 meeting.

The Committee also conducted its Ninth Annual Review of the Agreement based on information contained in G/TBT/14, and its Ninth Annual Review of the Code of Good Practice for the

Preparation, Adoption and Application of Standards (Annex 3 of the Agreement) based on information contained in G/TBT/CS/1/Add.8 and G/TBT/CS/2/Rev.10.

Follow-up to the Third Triennial Review of the Agreement: In November 2003, the Committee concluded its Third Triennial Review (G/TBT/13). In follow-up to that review, the committee gave priority attention to an exchange of information on good regulatory practice, conformity assessment procedures, transparency and technical assistance, and the implementation needs of developing countries. The Committee discussed preparations for one workshop (March 2005) on implementation of supplier's declaration of conformity and another workshop on other approaches to facilitate the acceptance of conformity assessment results (March 2006). It has also explored ways to facilitate coordination, both within the WTO and with other bodies, of technical assistance in response to identified needs. The Triennial Review document includes a listing of all the submissions made by Members in the context of the review and that are available at www.wto.org. It also includes information, by Member, on whether individual Members have established an enquiry point and provided a statement regarding domestic steps that have been taken to implement the Agreement.

Prospects for 2005

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 such concerns. In March 2005, the Committee will host a workshop on supplier's declaration of conformity. Follow-up on issues raised in past reviews, or discussion of new issues in preparation for the Fourth Review, are driven by Member statements and submissions. The U.S. priorities are likely to continue to focus on good regulatory practice, transparency and technical assistance. At its last meeting in 2004, the Committee agreed upon a work program for the

Fourth Triennial Review which it expects to conclude at its third meeting in 2006. An initial list of topics and organization of the discussion will be discussed at the Committee's March 2005 meeting.

9. Committee on Antidumping Practices

Status

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Antidumping Agreement) sets forth detailed rules and disciplines prescribing the manner and basis on which Members may take action to offset the injurious dumping of products imported from another Member. Implementation of the Agreement is overseen by the Committee on Antidumping Practices (the Antidumping Committee), which operates in conjunction with two subsidiary bodies, the Working Group on Implementation (formerly the Ad Hoc Group on Implementation) and the Informal Group on Anticircumvention.

The Working Group on Implementation is an active body which focuses on practical issues and concerns relating to implementation. Based on papers submitted by Members on agreed topics for discussion, the activities of the Working Group permit Members to develop a better understanding of each others' antidumping policies and practices.

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 2004 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.

Cumulative Assessment Since the WTO Was Established

Antidumping rules provide a remedial mechanism that WTO Members have agreed is necessary to the maintenance of the multilateral trading system. Without this and other trade remedies, there could have been no agreement on broader GATT and later WTO packages of market-opening agreements, especially given the imperfections that remain in the multilateral trading system. WTO rules ensure that antidumping actions are governed by objective and transparent standards and procedures, and are founded on the principles set forth in Article VI of the GATT 1994 for addressing injurious dumping. The Antidumping Agreement, therefore, sets out rules and procedures that ensure that legitimate actions taken against injurious dumping are grounded in the rule of law and due process, building upon the standards that have been ingrained in U.S. antidumping law for decades.

Antidumping rules are necessarily complex. Yet they have come to be used by a growing circle of Members, especially in the developing world. Accordingly, the work of the Antidumping Committee and its subsidiary bodies has been important 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. The Committee's work has helped ensure that Members understand their commitments under the Agreement and develop the tools to implement them properly. By providing opportunities to discuss Members' legislation, policies and practices, the Committee's work assists Members in conducting antidumping investigations and adopting antidumping measures in conformity with the detailed provisions of the Agreement, as well as in providing advice to exporters when they are subject to other Members' antidumping investigations.

This ongoing review process in the Committee helps ensure that antidumping laws around the world are properly drafted and implemented, thereby contributing to a well-functioning, open and rules-based trading system. U.S. exporters have access to information submitted to the Committee about the antidumping laws of other Members that should assist exporters in better understanding the operation of such laws and in taking them into account in commercial planning.

The Antidumping Agreement requires Members to submit reports on all preliminary or final antidumping actions taken, and, on a semi-annual basis, reports of antidumping actions taken within the preceding six months. The semi-annual reports provide valuable reference tools summarizing Members' antidumping use, and are increasingly important given the increase in the number of Members using antidumping measures. The United States carefully scrutinizes those reports, often raises questions about them at Committee meetings, and refers to them when specific questions arise as to antidumping actions by other Members. The semi-annual reports are 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.

The Working Group on Implementation 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 participation by Members and, in particular, by experts from capitals 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. The Working Group addresses implementation

concerns and questions stemming both from one's own administrative experience and from observing the practices of others. 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.

Where possible, the Working Group endeavors to develop draft recommendations on the topics it discusses, which it forwards to the Antidumping Committee for formal 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 Doha Ministerial Decision on Implementation-Related Issues and Concerns. With respect to the implementation of these two recommendations, many Members, including the United States, have 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. In addition, pursuant to the Committee's recommendation under Article 18.6 designed to improve transparency in the Committee's annual reviews, a number of Members, including the United States, have provided additional information in their semi-annual reports to the Committee, and the Committee's annual reports have reflected this additional information.

Discussions in the Working Group on Implementation will continue to play an important role as more and more Members enact antidumping 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 will require the involvement of the Working Group, which is the forum best suited to provide the necessary technical and administrative expertise. 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.

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. 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. Members have 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, have responded to inquiries from other Members as to how such legislation operates and the manner in which certain issues may be treated. However, other Members have taken the position that any action to counter circumvention is prohibited by the Agreement, other than a new investigation of dumping and material injury by the allegedly circumventing imports. This basic conceptual disagreement has arisen repeatedly in the discussions of the Informal Group.

Major Issues in 2004

In 2004, the Antidumping Committee held two meetings, in April 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 2004 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, 76 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 2004, the Antidumping Committee reviewed notifications of new or amended antidumping legislation submitted by Argentina, Australia, Canada, China, the European Communities, Japan, Jordan, Mexico, Peru and South Africa. 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 2004, 26 WTO Members notified that they had taken antidumping actions during the latter half of 2003, whereas 27 Members did so with respect to the first half of 2004. (By comparison, 39 Members notified that they had not taken any antidumping actions during the latter half of 2003, and 33 Members notified that they had taken no actions in the first half of 2004). 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 2004 meeting, the Committee undertook,

pursuant to the Protocol on the Accession of the People's Republic of China, its third 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 2004 meeting.

- **European Union Expansion:** At its April 2004 meeting, the Committee discussed issues pertaining to the status of outstanding antidumping measures of the European Union in light of the expansion of the EU as of May 1, 2004 from 15 members to 25 members. Following up on issues discussed in the Committee in 2003, several Members, including the United States, raised questions about the consistency with the Antidumping Agreement of the EU's announced intention to extend automatically, upon expansion, its antidumping measures previously covering imports into the territory of the 15 member-states of the EU before expansion to cover imports into the territory of its 25 member-states after expansion, in the absence of an additional determination of injury covering the territory of the 25 member-states.

- **Working Group on Implementation:** The Working Group held two meetings, in April and October 2004. The Working Group's principal focus in 2004 was the discussion of four topics the Committee had referred to the Working Group in 2003: (1) export prices to third countries vs. constructed value under Article 2.2 of the Antidumping Agreement; (2) foreign exchange fluctuations under Article 2.4.1; (3) conduct of verifications under Article 6.7; and (4) judicial, arbitral or administrative reviews under Article 13. The United States submitted papers on the topics of foreign exchange fluctuations, conduct of verifications, and judicial, arbitral or administrative review in 2003, and submitted a paper on the topic of Article 2.2 in late 2004. Other Members that have submitted papers on one or more of these

topics include Argentina, Australia, Canada, the European Union, New Zealand, South Africa, Turkey and Venezuela.

- **Informal Group on Anticircumvention:** At its two meetings in 2004, 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. At the April 2004 meeting, the Group continued its discussion of a paper submitted by the United States in 2003 summarizing its experience in two recent circumvention investigations. At the October 2004 meeting, the Group discussed a new paper by New Zealand, which discussed a specific circumvention-related problem that it had faced, and proposed a possible approach to deal with the situation where unassembled and disassembled goods are imported in order to circumvent an antidumping duty. The Group also discussed an issue raised with respect to notification of exporters and their governments by Members that initiate anti-circumvention inquiries.

Prospects for 2005

Work will proceed in 2005 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. Members' preparation and Committee review of semi-annual reports and reports of preliminary and final antidumping actions will also continue in 2005.

In 2005, the Working Group will also consider whether additional topics should be added for discussion, as well as how to advance the discussions of the existing topics. To facilitate

this consideration, Members will be reviewing an updated list to be prepared by the WTO Secretariat listing all topics that the Working Group has considered since its inception, as well as the papers that have been submitted by Members for each topic.

The work of the Informal Group on Anticircumvention will also continue in 2005 according to the framework for discussion on which Members agreed.

10. Committee on Import Licensing

Status

The Committee on Import Licensing was established to administer the Agreement on Import Licensing Procedures (“Import Licensing Agreement”) and to monitor compliance with the mutually agreed rules for the application of these widely used measures set out in the Agreement. The 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. These reviews are not intended to substitute for dispute settlement procedures. Rather, they offer Members an opportunity to receive information on specific issues and to clarify problems and possibly to resolve them before they become disputes. Every other year, the Committee conducts an overall review of its activities. 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 (TRM) provided for in China’s Protocol of Accession.

The Import Licensing Agreement establishes rules for all WTO Members that use import licensing systems to regulate their trade, and sets guidelines for what constitutes a fair and non-discriminatory application of such procedures.

Its provisions establish disciplines to protect Members from unreasonable requirements or delays associated with a licensing regime. These obligations are intended to ensure that the use of such procedures does not create additional barriers to trade beyond the policy measures implemented through licensing (the Agreement’s provisions discipline licensing procedures, and do not directly address the WTO consistency of the underlying measures). The notification requirements and the system of regular Committee reviews seek to increase the transparency and predictability of Members’ licensing regimes. The Agreement covers both “automatic” licensing systems, which are intended only to monitor imports, not regulate them, and “non-automatic” licensing systems, under which certain conditions must be met before a license is issued. Governments often use non-automatic licensing to administer import restrictions such as quotas and tariff-rate quotas (TRQs), or to administer safety or other requirements (e.g., for hazardous goods, armaments, antiquities, etc.). Requirements for permission to import that act like import licenses, such as certification of standards and sanitary and technical regulations, are also subject to the rules of the Agreement.

Cumulative Assessment Since the WTO Was Established

Implementation of the Agreement, which had been voluntary for the Contracting Parties to the GATT 1947, became mandatory for all WTO Members in 1995, and has resulted in a much broader acceptance of the principles of transparency, certainty, and predictability in the operation of licensing regimes in the international trading system. As tariffs have declined in relative importance as a means of trade regulation, licensing to monitor trade and to apply safety, quality, and other requirements to imports has increased. As a result, the Agreement’s provisions have taken on added significance, and will continue to do so as the volume of world trade and number of Members in the WTO grows. The impact of licensing requirements on agricultural trade has also increased as Members implement the minimum market access requirements established during

the Uruguay Round using TRQs. The users of import licensing systems include Members that account for the bulk of international trade. In addition, many new Members are either transforming economies with broad mandatory licensing requirements or developing economies that have long relied on discretionary licensing to regulate trade flows. Members have scrutinized these countries' regimes during the accession process and in subsequent reviews in the Committee and other WTO bodies. Committee reviews of these countries' notifications have allowed Members to identify specific procedures and measures that have the potential of blocking trade, and to focus multilateral attention on problems at an early stage.

Major Issues in 2004

At its meetings in May and September 2004, the Committee reviewed 49 submissions from 48 Members,³⁶ including initial or revised notifications, completed questionnaires on procedures, and questions and replies to questions. This represented a decline in the number of notifications submitted, but included submissions from countries that had not before provided notifications to the Committee, e.g. Armenia, Dominican Republic, El Salvador, Ghana, and Suriname. The Chairman reported that at the end of 2004, only 25³⁷ of 123 Committee Members had never submitted a notification to the Committee, bringing the percentage of Members with at least an initial notification to over three-quarters of the total. Concern remained, however, that Members are not submitting notifications with the frequency required by the Agreement. The Chairman of the Committee reminded Members that

notifications were required even if only to report that no import licensing system existed and that the WTO Secretariat further was prepared to assist Members in developing their submissions.

The United States was very active in using the Committee to discuss import licensing measures applied to its trade by other Members. For example, in additional written questions to Brazil on its quotas on and non-automatic licensing system for imports of certain lithium compounds, i.e., lithium carbonate and lithium hydroxide, the United States pointed out that these measures appear to be part of a system of restrictions that had not been notified to the Committee, and requested further information on the operation of this licensing system, as well as on: (i) the basis for granting licences; (ii) the administration of the restrictions; (iii) the import licences granted over a recent period; (iv) the distribution of such licences among supplying countries; (v) where practicable, import statistics (i.e., value and/or volume) with respect to the products subject to import licensing; and (vi) the time period allowed for processing applications.

The United States also flagged licensing and quantitative restrictions applied by the European Union as areas of concern. The United States noted that the EU has maintained strict quantitative restrictions on imports of natural and enriched uranium to protect its domestic producers since 1992, and that only about 25 per cent of the European market is open to imports of enriched uranium. The United States observed that the EU has not notified these restrictions, and should provide more information on them and on any future EU agreements negotiated to the Committee. The United States stressed that any such agreements should comply with WTO rules on import quotas and transparency. Another area of concern was the EU's administration of the TRQs on pigmeat imports. The EU limited to 10 percent the portion of the TRQ quota that could be allocated to any one exporter. As there were few exporters eligible, much of the quota was not filled.

³⁶ The EU and its member states are considered a single Member for the purposes of submissions to the Committee.

³⁷ Angola, Belize, Botswana, Central African Republic, Cambodia, Congo, Democratic Republic of the Congo, Djibouti, Egypt, Guinea, Guinea Bissau, Israel, Kuwait, Lesotho, Macedonia, Mauritania, Mozambique, Myanmar, Nepal, Rwanda, St. Vincent & Grenadines, Sierra Leone, Solomon Islands, Tanzania, and Thailand.

The United States also submitted further written questions on Indonesia's non-automatic licensing system for selected textile products, first notified during 2002, drawing particular attention to Indonesia's practice of granting import licences only to textile producers with a local production capacity and barring the transfer of imported textiles to other private parties. The United States is concerned that these measures restrict and distort trade in a manner contrary to the Agreement. The United States submitted other questions to Argentina, India and Jamaica, and written replies to these and previous questions were received from Argentina, Brazil, India, Indonesia, and Turkey. Bahrain and the United Arab Emirates responded bilaterally to U.S. questions from 2003, but did not submit these for circulation to other delegations.

At its October meeting, the Committee carried out its third review of China's implementation of its WTO accession commitments in the area of import licensing procedures as part of the TRM included in the terms of China's accession. The United States and other WTO Members returned to concerns with China's implementation of its commitments expressed at the last two TRMs and previous Committee meetings: in particular the use of import licensing to administer import quotas on automobiles; tariff-rate quota administration for agricultural commodities and fertilizer; and inspection-related requirements for agricultural imports and trading rights.

Prospects for 2005

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) so too will utilization of the Committee as a forum for discussion and review. 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 notifications and questionnaires, and timely 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.

11. 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.

Cumulative Assessment Since the WTO Was Established

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 safeguards 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.

The Agreement on Safeguards requires Members to notify to the Committee their laws, regulations and administrative procedures relating to safeguard measures. It also requires Members to notify to the Committee various safeguards actions, such as (1) initiation of an investigatory process; (2) a finding by a Member’s investigating authority of serious injury or threat thereof caused by increased imports; (3) the taking of a decision to apply or extend a safeguard measure; and (4) the proposed application of a provisional safeguard measure. The work of the Committee has been important for reviewing Members’ compliance with the provisions in the Safeguard Agreement, improving mutual understanding of those provisions, and providing opportunities to

exchange views and experience with respect to Members’ application of safeguards remedies.

The Committee’s work has helped ensure that Members understand their commitments under the Agreement and develop the tools to implement them properly. By providing opportunities to discuss Members’ legislation, policies and practices, the Committee’s work assists Members in conducting safeguard investigations and adopting safeguard measures in conformity with the provisions of the Agreement, as well as in providing advice to exporters when they are subject to other Members’ safeguard investigations. The United States carefully scrutinizes both the notifications of legislation, and the notifications of actions, often raising questions or concerns about them at Committee meetings. U.S. exporters have access to information submitted to the Committee about the safeguard laws of other Members, as well as the notifications of safeguards actions by other Members. This assists exporters in better understanding the operation of such laws and in taking them into account in commercial planning, as well as in defending their interests when other Members initiate safeguards investigations.

Major Issues in 2004

During its two meetings in April and October 2004, 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 Armenia, China, Jamaica, Jordan, Mexico, Pakistan, Peru, Chinese Taipei, and Turkey.

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: Argentina on color television sets; Colombia on electric smoothing irons; Ecuador on paper and paperboard, and on pneumatic tyres of rubber; the European Communities on salmon; India on starch; Jamaica on cement; Moldova on cosmetic and perfumery products; Peru on

certain textiles; and Turkey on thermometers. on active earth and clays, on certain glassware, on unframed glass mirrors, and on certain voltmeters and ammeters.

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: Ecuador on smooth ceramics; the European Communities on mandarins; Hungary on white sugar; India on bisphenol; Jamaica on cement; Poland on matches.

The Committee reviewed Article 12.1(c) notifications, regarding a decision to apply a safeguard measure, from the following Members: Ecuador on smooth ceramics; the European Communities on mandarins; Hungary on white sugar; Jamaica on cement; the Philippines on cement, on glass mirrors, on figured glass, on float glass; and Poland on matches.

The Committee received notifications from the following Members of the termination of a safeguard investigation with no safeguard measure imposed: Bulgaria on certain steel products; Canada on certain steel products; and Ecuador on paper and paperboard, and on pneumatic tyres of rubber.

The Committee reviewed Article 12.4 notifications, regarding the application of a provisional safeguard measure, from the following Members: the European Communities on mandarins, and on salmon; and Jamaica on cement.

The Committee reviewed notifications from Brazil regarding a review of, and a proposed extension of, its safeguard measures on toys.

China Transitional Review: At the October 2004 meeting, the Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its third 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 2002-2003 safeguard measure with respect to certain steel products. China's representatives provided oral responses at the October meeting.

Implementation: At both the April and October 2004 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.

Prospects for 2005

The Committee's work in 2005 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 new notifications of actions under the Agreement on Safeguards that the Committee will be reviewing in 2005 are notifications by Chile with respect to its investigation on wheat flour, and by the European Communities with respect to its investigation on salmon.

12. Textiles Monitoring Body

Status

The Textiles Monitoring Body (TMB), established in the Agreement on Textiles and Clothing (ATC), supervised the implementation of all aspects of the Agreement. Pursuant to the provisions of the ATC, the 10-year period for phasing out textile restraints ended on December 31, 2004. After that date, all remaining textile restraints maintained under the provisions of the ATC were eliminated and the TMB ceased to exist. In 2004, 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 served 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 were subject to the disciplines of the ATC, whether or not they were signatories to the MFA, and only Members of the WTO were entitled to the benefits of the ATC. The ATC was a ten-year arrangement which provided for the gradual integration of the textile and clothing sector into the WTO and provided 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.

Cumulative Assessment Since the WTO Was Established

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

Major Issues in 2004

A considerable portion of the TMB's time in 2004 was spent drafting its contribution to the CTG's review of the operation of the ATC in its third stage. This report was forwarded to the CTG in July. As expected, in the last year of the operation of the ATC, there were no disputes among Members involving the application of the safeguard mechanism or other actions by restraining Members. 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."

Prospects for 2005

The ATC expired on 1 January 2005 and the TMB ceased to function on the same date.

13. Working Party on State Trading

Status

Article XVII of the GATT 1994 requires Members to ensure that state trading enterprises and private enterprises to which Members accord special or exclusive privileges act in a manner consistent with the general principle of non-discriminatory treatment, make purchases or sales solely in accordance with commercial considerations, and abide by other GATT disciplines. The Understanding on the Interpretation of Article XVII of the GATT 1994 ("Article XVII 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 on State Trading was established in 1995 to review, inter alia, Member 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 their state trading enterprises and the kinds of activities engaged in by these enterprises. All Members are required under Article XVII of the GATT 1994 and paragraph 1 of the Article XVII Understanding to submit annual notifications of their state trading activities.

Cumulative Assessment Since the WTO Was Established

The working definition of state trading entities agreed to in the Uruguay Round along with the establishment of a Working Party on State Trading significantly increased the scrutiny of these entities in the WTO. While notification requirements for state trading entities have existed since 1960, no body was established specifically to review the notifications until the Uruguay Round. Before 1995, little, if any,

attention was given in the GATT General Council to compliance with the notification requirement or the content of the notifications, and differences existed among countries as to what type of entities actually fell under Article XVII's obligations.

New and full notifications were first required in 1995 and subsequently must be provided every third year thereafter. Members are required to update notifications in the intervening years indicating any changes since the full notification. This practice changed in November 2003, when the Working Party adopted a recommendation that modified the periodicity of state trading notifications so that new and full notifications on state trading are due every two years instead of every three years and the requirement of updating notifications in the intervening years is eliminated. The Council for Trade in Goods approved this change on November 26, 2003.

Under the WTO, Members have provided new and full notifications of state trading enterprises as follows: 58 Members for 1995, 52 Members for 1998, and 52 Members for 2001. Members submitted updating notifications as follows: 33 Members for 1996, 35 Members for 1997, 49 Members for 1999, 42 Members for 2000, 37 Members for 2002 and 26 Members for 2003. The European Communities and its then 15 Member States were counted as one Member for both the new and full notifications and the updating notifications of state trading enterprises. The United States has submitted new and full notifications of its state trading enterprises for 1998 and 2001 and updated its notification in 1999, 2000, 2002 and 2003.

The Working Party has met between one and four times a year to review these notifications, including the formal submission of questions and answers on the operation of specific entities reported in the notifications. This improved scrutiny and transparency set the stage for in-depth examination of certain activities of agricultural state trading entities in the DDA negotiations.

The Working Party also completed two other tasks mandated in the Article XVII Understanding: review of the 1960 notification questionnaire and development of the illustrative list.

In July 1998, the Council for Trade in Goods adopted the revised notification format which is now the basis for all new and full notifications. In 1999, the Working Party completed its work on an illustrative list of relationships between governments and state trading enterprises and the kinds of activities in which these enterprises are engaged. The illustrative list assists Members in preparing notifications. As a result of the improved notification system, agriculture negotiators have benefited from the improved information on activities of and measures used by agricultural state trading entities.

Major Issues in 2004

The Working Party held one formal meeting in November 2004, where it reviewed Member notifications. New and full notifications for 2004 have been received from 17 members. In October 2003 and again in November 2004, 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 the GATT 1994. The United States believes that its interests are being adversely affected by the operations of the ALCOTEXCA and its members. 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 the GATT 1994.

Prospects for 2005

As part of the agricultural negotiations in the WTO, the United States proposed specific disciplines on export agricultural state trading enterprises that would increase transparency, improve competition and tighten disciplines for these entities.

In 2005, the Working Party 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.

H. 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 patent 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.

Cumulative Assessment Since the WTO Was Established

The TRIPS Agreement has yielded enormous benefits for a broad range of U.S. industries, including producers of motion pictures, sound recordings, software, books, magazines, pharmaceuticals, agricultural chemicals, and consumer goods; and individuals, including authors, artists, composers, performers, and inventors and other innovators. The Agreement establishes minimum standards for protection

and enforcement of intellectual property rights of all kinds and provides for dispute settlement in the event that a WTO Member fails to fulfill its obligations fully and in a timely fashion. Much of the credit for ensuring that the benefits of the TRIPS Agreement are realized by U.S. industries should be given to the operation of the TRIPS Council.

During 1997 - 1999, the TRIPS Council conducted reviews of the implementation of obligations by developed country Members and other Members acceding at that time. Since January 1, 2000, reviews have focused on developing country Members, other than least-developed countries, whose TRIPS obligations entered into force on that date. The reviews in the TRIPS Council provide an opportunity for WTO Members to ask detailed questions about the way in which other WTO Members have implemented their obligations. All questions are asked and answered in writing, creating a useful record that can be used to educate domestic industries about acquiring and exercising rights in other countries and that also can alert Members in instances in which obligations have not been adequately implemented. Perhaps most important, the reviews have helped to establish certain expectations about the interpretation of the TRIPS Agreement by demonstrating that there is considerable similarity in implementation by those WTO Members that have met their obligations. The examples of implementation regimes and the rationales given for such implementation provide useful guidance for Members, in particular least developed country Members as they work to implement their obligations by January 1, 2006.

Of particular importance more recently has been the review mechanism for China, especially the transitional review mechanism under Section 18 of the Protocol on the Accession of the People's Republic of China. The first of these reviews occurred in 2002. This process has been instrumental in helping to understand the levels of protection of intellectual property rights in China, and provides a forum for addressing the concerns of U.S. interests in this process. The United States has been active in seeking answers to questions on a wide breadth of intellectual

property matters and in raising concerns about protection of intellectual property in China, especially regarding enforcement of intellectual property rights.

Now that the vast majority of reviews has been completed for developed and developing country Members, it should be recognized that the TRIPS Agreement continues to be instrumental, in conjunction with the WTO accession process, in ensuring that newly acceding Members of the WTO are fully compliant with TRIPS obligations upon their date of accession. In this manner, the TRIPS review process and the WTO accession processes are complementary in ensuring that the TRIPS Agreement can continue to provide its expected benefits.

The TRIPS Council also undertook a review of the enforcement obligations of the Agreement. During this review, the United States drew special attention to obligations such as that contained in Article 41.1 which requires Members to ensure that enforcement procedures sufficient to permit effective action against acts of infringement were available. Such procedures must include expeditious remedies which constitute a deterrent to further infringement. The United States stressed it was impossible to get a complete picture of the situation in a Member country without understanding how its enforcement remedies were applied in practice. If the procedures provided in legislative texts were not available in practice, they could not be effective or have the deterrent effect required by the Agreement. Since January 1, 2000, the focus has been on responses from developing countries and newly acceding countries. While much of this review has taken place, newly acceding countries continue to supply responses to the checklist of questions on enforcement issues that facilitate review of these issues.

The review of the provisions of Article 27.3(b) (permitting Members to exclude from patentability plants, animals, and essential biological processes for producing plants and animals) of the TRIPS Agreement, begun in 1999, provided an opportunity for the developed country Members and, after January 1, 2000,

developing country Members, to compile information on the ways in which they have implemented any exceptions to patentability authorized by that section. The synoptic table compiled by the WTO Secretariat from the information provided by Members demonstrated that there is considerable uniformity in the protection afforded plants and animals among those Members that have implemented their obligations, even though the manner in which that protection is provided varies. The description of various regimes for protecting plants and animals also could assist other Members that were considering the best method to implement their obligations. In addition, the review provided an opportunity for the United States, along with other WTO Members, to submit papers that form the basis of discussion during Council meetings, helping to clarify issues related to the protection of plants and animals. However, the 2001 Doha Ministerial Conference Declaration provided that this review would also include an examination, inter alia, of the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), the protection of traditional knowledge and folklore, and other relevant new developments raised by Members. While this has raised many controversial issues, this process has provided the United States with an opportunity to clarify its views on the mutually supportive nature of the TRIPS Agreement and the CBD as well as to de-mystify the relationship between the patent system, in particular, and certain CBD objectives. The United States has introduced five separate papers discussing various aspects of the subjects under discussion, including an in-depth paper on 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.

During 1998 and 1999, the TRIPS Council considered the articles of the Agreement, in particular those related to copyright and neighboring rights, for which emerging electronic commerce would likely have the greatest implications. The Council submitted a report to the General Council, identifying those articles and noting that the subject might be pursued further. The United States submitted a paper, as part of the review, giving its views on the implications of electronic commerce for the TRIPS Agreement.

At the Doha Ministerial Conference in 2001, 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.

The Declaration reflects and confirms the profound conviction of the United States 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 through President Bush's Emergency Plan for AIDS Relief (PEPFAR) to the least developed and developing country Members to assist them in addressing these public health care problems.

One major part of the Doha Declaration was the agreement 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 (patents and protection of undisclosed information, respectively) or to enforce rights provided for under these Sections until January 1, 2016, which was first proposed by the United States. The agreement was implemented by decision of the TRIPS Council in July 2002, and was 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.

Pursuant to paragraph 6 of the Declaration, 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.

Intensive consultations continued into 2003. As a result of these consultations 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 "August 30 solution"). 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 solution establishes procedures for utilizing a waiver of Article 31(f), which allows countries producing generic copies of patented products under compulsory licences to export the products to eligible importing countries where certain procedures are followed. The August 30 solution was widely viewed as a major achievement and should give affected countries further confidence in meeting such crises as they arise.

In the TRIPS Council, the United States has also continued to urge Members to respond to the checklist of questions pursuant to the review of the provisions related to protection of Geographical Indications. This has helped in understanding the various systems, including certification marks, used by Members in implementing their obligations for this important protection.

Over the last ten years, the TRIPS Agreement has yielded enormous benefits for a broad range of U.S. interests and the TRIPS Council has

served as a valuable forum for discussion of issues related to intellectual property as well as ensuring adequate levels of intellectual property protection throughout all WTO Members. The United States has used the opportunities provided by the built-in agenda and other agenda items, including the Doha Development Agenda, to explain its interpretation of the Agreement's provisions and to support its interpretation with appropriate examples of the benefits that flow from strong protection of intellectual property rights. It has worked to provide support for these views and will continue to do so in the future.

Major Issues in 2004

In 2004, 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 under section D, "Council for Trade-Related Intellectual Property Rights, Special Session", 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 2004 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 2004 continued to devote 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 continued to urge 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. 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, particularly with regard to China, of its obligations.

During 2004, the TRIPS Council took up the review of legislation of Armenia and the Former Yugoslav Republic of Macedonia, completed reviews of the implementing legislation of China (as part of China's transitional review mechanism), Moldova, Nigeria, and Pakistan, and noted both the new responses received from and the outstanding material required to complete the reviews of 14 other Members.

- **Intellectual Property and Access to Medicines:** The August 30 solution (the General Council Decision on "Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health", in light of the statement read out by the General Council Chairman), will apply to each Member until an amendment to the TRIPS Agreement replacing its provisions takes effect for each Member. At its meeting in June 2004, the TRIPS Council agreed to extend the original deadline for transforming the August 30 solution into an amendment until the end of March 2005. A series of discussions took place in March, June and September of 2004 evidencing differing viewpoints, on the form and content of such an amendment. The first proposal for an amendment was submitted by the African Group during the December 2004 meeting of the TRIPS Council. This proposal is under review by the United States and other members but upon initial review, it appears to be flawed because it does not refer to the shared understandings of the Chairman's Statement and includes only selective elements of the General Council Decision. The United States remains fully committed to the March 31, 2005 deadline and to transforming the August 30 solution into an amendment of the TRIPS Agreement.

However, the United States maintains the position that any amendment must accurately capture all elements of the General Council Chairman's statement and the General Council Decision, and will continue to work in the TRIPS Council in 2005 to ensure that any amendment incorporates both parts of the August 30 solution.

- **TRIPS-related WTO Dispute Settlement Cases:** In a report issued on December 21, 2004, a WTO panel agreed with the United States that the EC's regulation on food-related geographical indications (GIs) is inconsistent with the EC's obligations under the TRIPS Agreement and the GATT 1994. This report results from the United States' long-standing complaint that the EC GI system discriminates against foreign products and persons – notably by requiring that EC trading partners adopt an “EC-style” system of GI protection -- and provides insufficient protections to trademark owners. In its report, the panel agreed that the EC's GI regulation impermissibly discriminates against non-EC products and persons and agreed with the United States that the regulation could not create broad exceptions to trademark rights guaranteed by the TRIPS Agreement. The panel recommended that the EC amend its GI regulation to come into compliance with its WTO obligations. The United States requested WTO dispute consultations on this regulation in June 1999. On August 18, 2003, the United States requested the establishment of a panel, and panelists were appointed on February 23, 2004. The United States anticipates that the panel's report will be circulated to WTO Members and the public in mid-March 2005.

There are a number of other WTO Members that 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. In a decision on August 1, 2004 to move the Doha Development Agenda forward, the Ministers mandated the Director-General to continue his consultative process on all outstanding implementation issues, including on extension of the protection of geographical indications. Consistent with this mandate, the Director-General appointed the Deputy Director-General to hold such consultations with Members on the issue of extension. The first consultation took place in December 2004 and discussed procedural-related issues on how future consultations should be structured. The next consultations are scheduled for February 2005 and then likely again in conjunction with regularly scheduled TRIPS Council meetings in March, June and September 2005.

Throughout 2004, the United States and many like-minded Members maintained the position 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. While willing to continue the dialog in the TRIPS Council, the United States believes that discussion of the issues has been exhaustive and that no consensus has emerged with regard to extension of Article 23-level protection to products other than wines and spirits.

The United States and other Members have also steadfastly resisted efforts by some Members to obtain new GI protections in the WTO agriculture negotiations. The United States views 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. In 2004 TRIPS Council meetings, the United States continued to urge 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 maintained its support for the 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 2005. The TRIPS Council, in 2004, also took note of responses to the checklist of questions relating to the review under TRIPS Article 24.2 from Moldova and Chinese Taipei.

• **Review of Current Exceptions to Patentability for Plants and Animals:** As called for in the Agreement, the TRIPS Council initiated a review of TRIPS Article 27.3(b) (permitting Members to except from patentability plants and animals and biological processes for the production of plants and animals) and, because of the interest expressed by some Members, the discussion continued through 2000 and 2001. 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). However, in 2004, the Council did note information provided by Moldova on how these matters are addressed in their national law.

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. In 2004, several developing countries, led by India and Brazil have submitted a series of papers based on an unsuccessful proposal for a "checklist" approach to structuring the discussions on the relationship between TRIPS and CBD, the protection of genetic resources and traditional knowledge. This "checklist" approach was not acceptable to the United States and certain other Members as it presupposes the position of the demandeurs that the patent provisions of the TRIPS Agreement should be amended to require disclosure of the source of the genetic resource or traditional knowledge, as well as evidence of prior informed consent to obtain the genetic resource and adequate benefit sharing with the custodian community or country of the genetic resource in order to obtain a patent. In response to this proposal the United States submitted a new paper in November 2004 which provides counter-arguments to mandatory disclosure requirements for patent applications as well as a number of alternative proposals for better achieving certain objectives. In addition, the

U.S. paper proposes a structure for future discussions that will not prejudice the position of any Members by focusing on shared objectives related to the protection of genetic resources and traditional knowledge, and sharing national experiences that may provide effective alternative models outside intellectual property right regimes to achieve the shared objectives. 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.

- **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. No consensus on a recommendation to establish scope and modalities or to extend the moratorium emerged by the time of the 5th Ministerial meeting. However, the General Council agreed, in its decision of August 1, 2004, on the Doha Work Program, to extend the moratorium until the Sixth Ministerial Conference, currently scheduled to take place in Hong Kong, China, in December 2005.

Responsive to the General Council decision, the TRIPS Council took up the issue of non-violation nullification and impairment complaints in the context of the TRIPS Agreement in September and December 2004. As in past years, the United States continued to support the automatic expiration of the moratorium at the 6th Ministerial meeting, arguing that TRIPS is no different than other agreements where non-violation nullification and impairment claims are permitted, 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.

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 provided detailed reports on specific U.S. Government institutions (e.g. the African Development Foundation and Agency for International Development) and incentives as required.

Prospects for 2005

In 2005, the TRIPS Council will continue to focus on transforming the August 30 solution for access to medicines into an amendment of the TRIPS Agreement, its built-in agenda and the additional mandates established in Doha, including 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 2005 continue to be:

- to transform the Chairman's Statement and the General Council Decision on access to medicines 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.

I. Council for Trade in Services

Status

The General Agreement for Trade in Services (GATS) is the first multilateral, legally enforceable agreement covering trade in services and investment in the services sector. It is designed to reduce or eliminate governmental measures that prevent services from being freely 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 in Regular Session (CTS) oversees implementation of the GATS and reports to the General Council. In addition, the CTS is responsible for a technical

review of GATS Article XX.2 provisions; waivers from specific commitments pursuant to paragraphs 3 and 4 of Article IX of the Marrakesh Agreement establishing the WTO; the transitional review under Section 18 of the Protocol on the Accession of the People's Republic of China; implementation of GATS Article VII; the MFN review; and notifications made to the Council Pursuant to GATS Article III.3, V.5, V.7, and VII.4.

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

Cumulative Assessment Since the WTO Was Established

The Council for Trade in Services was established following the conclusion of the Uruguay Round. As part of its mandate, following the Uruguay Round, the CTS concluded negotiations on telecommunication services and financial services and undertook new market access negotiations in 2000 as part of the Uruguay Round's built-in agenda. The CTS is the companion to the WTO's Council in Trade in Goods. These negotiations are ongoing. Information on the assessment of the CTS' other bodies (CSC, CTFS, WPDR, and WPGR) can be found under the appropriate heading.

Major Issues in 2004

The discussion of the relationship between market access and national treatment commitments, particularly the interpretation of a Member's schedule in the context of GATS Article XX.2 where one column reads "none" and the other reads "unbound", continued in 2004. In 2003 the issue was referred to the Committee on Specific Commitments and the Chairman issued his report to the CTS in March

2004. The CTS agreed at its June meeting to revert to this item upon specific request.

Pursuant to paragraphs 3 and 4 of Article IX of the Marrakesh Agreements, the CTS examined and approved a request by Albania to postpone the implementation of its GATS commitments in international public voice services. The draft decision was forwarded to the General Council for approval and was adopted on May 17, 2004. The United States, with support of other WTO Members, raised questions and concerns regarding China's implementation of its services commitments in the distribution, express delivery, transport, telecommunications and construction services sectors during the annual transitional review of China's implementation of its WTO commitments before the CTS in November 2004.

Members continued to discuss a 2003 paper tabled by India concerning implementation of GATS Article VII, regarding mutual recognition. The CTS agreed to continue these discussions in 2005.

In accordance with the decision adopted by the CTS at the conclusion of the previous review of MFN exemptions, Members began a second review in 2004. The Council reviewed horizontal exemptions and sector specific exemptions in business services, communication services, construction services, and distribution services. The remaining sectors will be reviewed in 2005.

There were a number of notifications pursuant to GATS Article III.3 (transparency), GATS Article V (economic integration) and GATS Article VII.4 (recognition). The notification of greatest concern to the United States was submitted by the European Union under GATS Article V, regarding its intent to withdraw commitments as a result of the accession of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, and Slovenia into the European Union.

Eighteen countries filed claims of interest during the CTS regular session in connection with the GATS Article V notification by the European

Union (EU) pursuant to the procedures outlined in GATS Article XXI. In 2003, the EU had belatedly notified the 1995 enlargement of the EU to include Austria, Finland and Sweden. In 2004, the EU withdrew that notification and submitted a new one to cover the 1995 enlargement as well as the ten newest Member States who joined the EU on May 1, 2004. To allow more time for consultations and examination, the EU and those WTO Members who are claiming an interest pursuant to Article XXI mutually agreed to extend the period of negotiations until April 26, 2005. Under Article XXI, which is being applied for the first time by WTO Members in the context of EU enlargement, Members who believe their access to EU services markets will be adversely affected by the EU's changes to its schedule of commitments are entitled to seek compensation through negotiations from the EU to make up for lost market access.

Prospects for 2005

The CTS will continue discussions on these issues. In addition, the CTS will formally commence a second review of the Air Transport Annex in 2005, without prejudice to Members' views on the interpretation of the Annex.

1. Committee on Trade in Financial Services

Status

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

Cumulative Assessment Since the WTO Was Established

The Committee on Financial Services has been useful in advancing many U.S. interests related to financial services. For example, the Committee was instrumental in overseeing post-Uruguay Round negotiations on financial services that culminated in the 1997 Agreement on Financial Services and has monitored WTO

Members' ratification of those commitments, their binding under the GATS (acceptance of the GATS "Fifth Protocol") and implementation. In addition, the Committee enabled Members to share information on market access and regulatory changes that have taken place, providing useful context for the Doha services negotiations underway. Finally, as part of China's transitional review mechanism, since 2002, the Committee has conducted an annual review of China's implementation of its WTO accession commitments on financial services. Members have been active in using the Committee to get answers from China on key issues affecting the insurance, banking and securities sectors.

Major Issues in 2004

The CTFS met four times in 2004. Brazil, Jamaica and the Philippines are the only remaining participants from the 1997 Financial Services Agreement that have not yet ratified their commitments from those negotiations and accepted the Fifth Protocol. WTO Members urged these Members to accept the Fifth Protocol as quickly as possible. At the request of Members, the three countries provided some information on the status of their domestic ratification efforts.

Several WTO Members, including Norway, Mexico, Malaysia, Turkey and Chinese Taipei reported on developments under their financial services regimes, including issues such as financial services regulatory modernization and the cross-border supply of insurance. Members also provided reactions to an OECD background document on the request-offer negotiating approach for insurance.

In November, 2004, as part of China's transitional review mechanism, the CTFS carried out its third annual review of China's implementation of its WTO financial services commitments. The United States and other WTO members took that opportunity to express concerns with China's implementation of certain commitments in the insurance, banking and securities sectors.

Prospects for 2005

The Members of the Committee will continue to use the broad and flexible mandate of the CTFS to explore various issues, including topics such as market access and regulatory transparency, in particular as they relate to the Doha services negotiations.

2. Working Party on Domestic Regulation Status

GATS Article VI:4, 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 following the conclusion of the Uruguay Round. The WPPS developed Guidelines for the Negotiation of Mutual Recognition Agreements in the Accountancy Sector that Members adopted 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).

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 the disciplines adopted in connection with accountancy or similar disciplines may be more generally applicable to other sectors. The Working Party shall report its recommendations to the CTS no later than the conclusion of the services negotiations.

Cumulative Assessment since its Establishment in 1999

The WPDR has made some progress in defining the scope of its work in developing any necessary disciplines on domestic regulation. In the past year alone, the WPDR has received four formal papers and several informal papers. The

WPDR has also organized a widely attended seminar, which many delegations found extremely helpful in clarifying the benefits of transparency to regulators, negotiators, and industry. However, there is some disagreement among Members as how best to proceed. While some Members prefer an approach that focuses on specific sectors, the United States and others believe that a dual approach that combines horizontal principles and sector specific disciplines is preferable.

Major Issues in 2004

With respect to the development of generally applicable regulatory disciplines, Members discussed several submissions tabled in response to a number of Members who believed that some elements for regulatory disciplines on licensing procedures and requirements, technical standards, qualification procedures and requirements and transparency require further attention. Such disciplines would be aimed at ensuring that regulations are not in themselves a restriction on the supply of services.

The United States announced its intent to table a paper in support of negotiating horizontal transparency disciplines, signaling at the same time, its interest in pursuing a sector specific approach, where appropriate. The United States considers proposals on transparency to be appropriate for horizontal disciplines because they involve universal principles that promote governmental accountability, rule of law and good governance. They benefit not only service exporters but domestic producers, consumers, and the public at large. The U.S. submission was warmly received by both developed and developing countries.

The United States continued to support focusing the Working Party's discussion on examples of problems or restrictions for which new disciplines would be appropriate, before defining the disciplines themselves. In this context, the Working Party considered whether procedures for obtaining visas or entry permits, fall within the purview of GATS Article VI:4. Some members, expressed the view that visa administrative procedures do not fall under

Article VI:4 because visas and entry permits provide a supplier the right to enter a country and/or maintain a legal immigration status, while a license provides the right to supply the service.

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 United States noted that architecture and engineering are two specific sectors which may be able to apply disciplines similar to the accountancy disciplines. To this end, the United States proposed dedicating a part of the September 2005 meeting to reviewing how the accountancy disciplines may apply to architectural services. A Workshop on the subject could be held, to which association representatives and relevant regulators would be invited.

Members also reviewed a submission from Mexico regarding its experience with disciplines on technical standards and regulations in services which described a uniform procedure for drafting and amending technical standards or regulations applicable to both services and goods. Some Members noted that Mexico's regime incorporates many principles that create an environment conducive to economic growth, specifically representativeness or participation from all interested parties, transparency, and non-discrimination; and policies that benefit both foreign and domestic service suppliers.

Prospects for 2005

The Working Party will continue discussion of possible regulatory disciplines, both horizontal and sector-specific, to promote the GATS objective of effective market access. Regarding the next stage of negotiations, however, there are some differences of view on when the Working Party would be ready to proceed. There was, however, general agreement that further progress would depend on receiving new submissions, the discussion of those submissions, and the consensus that will need to emerge on next steps.

3. Working Party on GATS Rules

Status

The Working Party on GATS Rules (WPGR) continues to discuss whether the GATS should include new disciplines on emergency safeguard measures, government procurement, or subsidies. The WPGR held five formal meetings in 2004. Of the three issues, only the question of emergency safeguard measures was subject to a deadline. When this deadline expired on March 15, 2004, the Council for Trade in Services agreed to a WPGR recommendation to an extension with no firm deadline and a less direct linkage to the conclusion of the Doha Round. During 2005, these three issues will continue to be discussed in parallel.

Cumulative Assessment Since the WTO Was Established

The WPGR was established in 1995 to carry out the negotiating mandates contained in the GATS on emergency safeguard measures, government procurement in services, and services subsidies. Although consensus has yet to be reached on whether to pursue negotiations in these areas, the WPGR has served a useful function by enabling Members to explore issues of importance in an organized and constructive fashion.

Major Issues in 2004

Regarding emergency safeguard measures, the negotiating mandate is to consider “the question of emergency safeguard measures,” which entails determining whether such measures are an appropriate objective. The major issue in the early part of the year was whether to extend the deadline. After an extension was agreed, the WPGR continued to discuss hypothetical scenarios demonstrating the need for safeguard mechanisms put forward by a group of delegations from ASEAN. The WPGR also discussed whether existing mechanisms contained within the GATS could mitigate the need for safeguard measures, and whether developing a credible safeguard mechanism is

feasible. The United States continues to raise concerns with respect to feasibility, pointing out that a determination of trade-related injury would be difficult given weaknesses in services trade data; and implementing remedial measures could be problematic, particularly for services supplied through locally-established enterprises.

On government procurement, discussions continued on the basis of two communications from the European Communities (EC) and informal communications from Singapore and Hong Kong, China. Many questions and issues were raised, including the relationship of possible services disciplines to those already contained in the Government Procurement Agreement, development implications, and whether the negotiating mandate under Article XIII entails market access issues. At the request of Members, the Secretariat prepared a background paper that described government procurement-related provisions in economic integration agreements.

With respect to subsidies, delegations considered examples of subsidies put forward by Chile that might distort trade in services, with a particular focus on issues relating to export subsidies. Members also discussed an informal communication from the delegation of Chinese Taipei on the definition of subsidies in services, as well as an informal communication from the delegation of Hong Kong, China, that put forward thoughts on how to proceed with an information exchange, other sources of information about subsidies, the definition of subsidy, and trade distortion. Some delegations argued for setting a target date for the exchange of information on subsidies provided to domestic suppliers, but the United States and others pointed out that such an exchange would be premature and unproductive without having an agreed definition of what actually would constitute a subsidy. The United States continues to work constructively to foster a productive exchange of information to develop a better understanding of services subsidies and their relationship to trade.

Prospects for 2005

Discussion on all three issues will continue in 2005. We expect that some developing countries will continue to tie progress on further services liberalization commitments to an acceptable resolution on emergency safeguard measures. Members will continue to gather further information on government procurement and consider the relationship between possible services disciplines and the existing plurilateral Government Procurement Agreement (GPA). Subsidies discussions likely will focus on how to develop an appropriate definition of a services subsidy as well as on how to assess the extent to which such subsidies could have a distortive effect on trade.

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 the application of the procedures for the modification of schedules under Article XXI of the GATS. The Committee also oversees implementation of commitments in Members' schedules in sectors for which there is no sectoral body, currently the case for all sectors except financial services. The Committee works to improve the classification of services, so that scheduled commitments reflect the services activities, in particular to ensure coverage of evolving services. The CSC met four times in 2004, in March, June, September, and December.

Cumulative Assessment Since the WTO Was Established

Prior to the launch of the GATS negotiations in 2000, the CSC had undertaken and addressed a number of technically complicated, resource intensive tasks and produced results that improve prospects for clear, commercially-valuable commitments in the continuing negotiations (in the case of work on

nomenclature and on scheduling guidelines), usefully elaborated on GATS provisions in the case of Article XXI procedures, and promoted accessibility and clarity in GATS schedules in the case of the electronic schedule. Since 2000, the CSC has examined technical issues such as new scheduling guidelines and sector specific nomenclature for sectors such as energy services and legal services.

Major Issues in 2004

The CSC addressed three items in 2004: issues relating to GATS Article XX.2; classification issues; and scheduling issues.

During the March 2004 meeting, the CSC continued discussion of the relationship between market access and national treatment commitments, particularly the interpretation of a Member's schedule in the context of GATS Article XX.2 where one column reads "None" and the other reads "Unbound". Following these discussions, the Committee Chairman submitted a factual report to the Council for Trade in Services.

The Committee also discussed classification issues. In particular, the Committee's discussions focused on energy services and legal services. The energy services discussions focused on submissions from various Members, in particular a recent submission by Indonesia. Discussions on legal services included a submission by the International Bar Association, which was requested by Australia, and a submission and presentation by the Organization for Economic Cooperation and Development (OECD).

As a scheduling issue, before it had tabled its initial offer, Brazil attempted to "multilateralize" the bilateral request-offer process by using the forum of the CSC to pose questions to specific Members about their initial offers that would have been more appropriately raised in the request-offer negotiations. The United States expressed its concern that Brazil's approach in the CSC could undermine the bilateral request/offering process and chose to answer all of

Brazil's questions regarding the U.S. initial offer during bilateral meetings with Brazil.

Prospects for 2005

Work will continue on technical issues and other issues that Members raise. The CSC will likely examine classification issues pertaining to other service sectors.

J. 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.

Cumulative Assessment Since the WTO Was Established

In its first ten years of operation, the DSB has addressed the ambitious agenda set for it by the negotiators in the Uruguay Round, and has put in place the rules and institutions required for a functioning dispute settlement system. It has established rules of conduct designed to keep the system free from conflicts of interest. It has elected the members of an Appellate Body that has been active and productive, and has filled vacancies on the Body as openings occurred and terms expired. Yet while the DSB has made some procedural decisions when required, the agenda of dispute settlement in the WTO remains Member-driven. Members have, in the context of individual disputes, agreed on

procedures for determining compliance and levels of suspension of concessions, as well as innovative approaches to taking decisions by negative consensus beyond the time frames provided for in the DSU. The review of WTO dispute settlement rules and procedures conducted over the past several years was run as a member-driven process in which all proposals were generated by Members and must be agreed to by consensus.

The DSB has on several occasions authorized measures in response to non-compliance by a WTO Member with panel and Appellate Body rulings. In January 1999, the United States was the first WTO Member to invoke its WTO and DSU rights by proposing to suspend concessions in an amount equivalent to the trade damage caused to the United States by the EU's illegal banana import regime. Resisting repeated attempts at blockage by the EU, the DSB authorized the United States to proceed. This ultimately led to agreement on changes to the EU's regime in April 2001. Other examples of DSB-authorized suspensions of concessions (retaliation) include the hormones case, involving U.S. and Canadian claims against the EU, and the foreign sales corporation case, involving EU claims against the United States. The United States requested authorization to suspend concessions in 2001 in the dairy dispute against Canada, but further action was rendered unnecessary when Canada changed its measures in a satisfactory manner. The United States currently has a request to suspend concessions pending against Japan in a dispute over apples. A WTO compliance panel is now considering whether Japan has implemented the DSB recommendations and rulings in that dispute.

Major Issues in 2004

The DSB met 19 times in 2004 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 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 2004, the DSB approved by consensus a number of additional names for the roster. The United States scrutinized the credentials of these candidates to assure the quality of the roster.

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

Rules of Conduct for the DSU: The DSB completed work on a code of ethical conduct for WTO dispute settlement and on December 3, 1996, adopted the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes. A copy of the Rules of Conduct was printed in the Annual Report for 1996 and is available on the WTO and USTR websites. There were no changes in these Rules in 2004.

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 served as Chairperson from December 13, 2003 to December 12, 2004; Mr. Taniguchi's term as Chairperson runs from December 17, 2004 to December 16, 2005.

In 2004, the Appellate Body issued five reports, of which four involved the United States as a party and are discussed in detail below. The remaining report concerned India's challenge to certain tariff preferences granted by the European Union to developing countries. The United States participated in this proceeding as an interested third party.

Dispute Settlement Activity in 2004: During its first ten years in operation, WTO Members filed 324 requests for consultations (22 in 1995, 42 in 1996, 46 in 1997, 44 in 1998, 31 in 1999, 30 in 2000, 27 in 2001, 37 in 2002, 26 in 2003, and 19 in 2004). During that period, the United States filed 69 complaints against other Members' measures and received 96 complaints on U.S. measures. Several of these complaints involved the same issues (4 U.S. complaints against others and 22 complaints against the United States). A number of disputes commenced in earlier years remained active in 2004. What follows is 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 2005

While there were improvements to the DSU as a result of the Uruguay Round, there is still room for improvement. Accordingly, the United States has used the opportunity of the ongoing review to seek improvements in its operation, including greater transparency. In 2005, 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 2005.

a. Disputes Brought by the United States

In 2004, 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 2004 where the United States was a complainant. As demonstrated by these summaries, the WTO dispute settlement process has proven to be an effective tool in combating barriers to U.S. exports. Indeed, in a number of cases the United States has been able to achieve satisfactory outcomes 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 continues to monitor the situation.

Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain (DS276)

On December 17, 2002, the United States requested consultations with Canada regarding trade in wheat. The United States challenged the wheat trading practices of the Canadian Wheat Board (CWB) as inconsistent with WTO disciplines governing the conduct of state-trading enterprises. The United States also challenged as unfair and burdensome Canada's requirements to treat imported grain differently than Canadian grain in the Canadian grain handling system, along with Canada's discriminatory policy that affects U.S. grain access to Canada's rail transportation system. 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. In its report circulated on April 6, 2004, the panel found that Canada's grain handling system and rail transportation system discriminate against imported grain in violation of national treatment principles. However, the panel found that the United States failed to establish a claim that Canada violates WTO disciplines governing the conduct of state trading enterprises. The United States appealed the panel's findings related to state trading enterprises. On August 30, 2004, the Appellate Body upheld the panel's findings on state trading enterprises. Canada did not appeal the panel's findings that Canada's grain handling and transportation systems discriminate against U.S. grain. The DSB adopted the panel and Appellate Body reports on September 27, 2004. Canada and the United States subsequently agreed that the reasonable period of time for implementation of the DSB's recommendations and rulings will expire on August 1, 2005.

China–Value-added tax on integrated circuits (WT/DS309)

On March 18, 2004, the United States requested consultations with China regarding its value-added tax (“VAT”) on integrated circuits

(“ICs”). While China provides for a 17 percent VAT on ICs, enterprises in China are entitled to a partial refund of the VAT on ICs that they have produced. Moreover, China allows for a partial refund of the VAT for domestically-designed ICs that, because of technological limitations, are manufactured outside of China. As a result of the rebates, China appears to be according less favorable treatment to imported ICs than it accords to domestic ICs. China also appears to be providing for less favorable treatment of imports from one WTO Member than another and discriminating against services and service suppliers of other Members. The United States considers these measures to be inconsistent with China's obligations under Articles I and III of the GATT 1994, the Protocol on the Accession of the People's Republic of China, and Article XVII of the GATS. Consultations were held on April 27, 2004 in Geneva, and additional bilateral meetings were held in Washington and Beijing. On July 14, 2004, the United States and China notified the WTO of their agreement to resolve the dispute. Effective immediately, China will not certify any new IC products or manufacturers for eligibility for VAT refunds, China will no longer offer VAT refunds that favor ICs designed in China, and, by April 1, 2005, China will stop providing VAT refunds on Chinese-produced ICs to current beneficiaries.

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 HTS 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 applied, on a “per article” basis, greatly exceeded Egypt's bound rates of duty. In January 2004, Egypt informed the United States that it had issued a decree applying ad valorem rates to these imports and setting the duty rates within Egypt's tariff bindings. The United States is reviewing these changes.

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. As discussed below (DS320), on November 8, 2004, the European Communities requested consultations with respect to "the United States' continued suspension of concessions and other obligations under the covered agreements" in the EC – Hormones dispute.

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

EU Regulation 2081/92, inter alia, discriminates against non-EC products and nationals with respect to the registration and protection of geographical indications for agricultural products and foodstuffs; it also protects geographical indications to the detriment of TRIPS-guaranteed trademark rights. The United States therefore considers this measure inconsistent with the EU's obligations under the TRIPS Agreement and the GATT 1994. The United States requested consultations regarding this matter on June 1, 1999, and, on April 4, 2003, requested consultations on the additional issue of the EU's national treatment obligations under the GATT 1994. Australia also requested consultations with respect to this measure. When consultations failed to resolve the dispute, the United States requested the establishment of a panel on August 18, 2003. A panel was established on October 2, 2003, to consider the complaints of the United States and Australia. On February 23, 2004, the Director-General composed the panel as follows: Mr. Miguel Rodriguez Mendoza, Chair, and Mr. Seung Wha Chang and Mr. Peter Kam-fai Cheung, Members.

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. On March 4, 2003, the Director-General composed the panel as follows: Mr. Christian Häberli, Chairman, and Mr. Mohan Kumar and Mr. Akio Shimizu, Members.

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 Häberli, 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. Japan notified its intention to implement the recommendations and rulings of the DSB on January 9, 2004. Japan and the United States agreed that the reasonable period of time for implementation will expire on June 30, 2004.

On expiration of the reasonable period of time, Japan proposed revised measures which made limited changes to its existing measures, and which continued to include an orchard inspection and a buffer zone. On July 19, 2004, the United States requested the establishment of

a DSU Article 21.5 compliance panel to evaluate Japan's revised measures. Simultaneously, the United States requested authorization to suspend concessions or other obligations under DSU Article 22.2 in an amount equal to \$143.4 million. Japan objected to this amount on July 29, 2004, referring the matter to arbitration. The parties suspended the arbitration pending completion of the compliance proceeding. The compliance panel was established on July 30, 2004. The original three panelists agreed to serve on the compliance panel.

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.

On April 2, 2004, the panel released its final report, siding with the United States on most of the major claims in this dispute. Specifically, the panel found that: (1) Mexico breached its commitment to ensure that U.S. carriers can connect their international calls to Mexico's major supplier, Telmex, at cost-based rates; (2) Mexico breached its obligation to maintain appropriate measures to prevent its dominant carrier from engaging in anti-competitive practices, by granting Telmex the exclusive authority to negotiate the rate that all Mexican carriers charge U.S. companies to complete calls originating in the United States; and (3) Mexico breached its obligations to ensure that U.S. carriers operating within Mexico can lease lines from Mexican carriers (and thereby provide services on a resale basis). The panel concluded, however, that Mexico may prohibit U.S. carriers from using leased lines in Mexico to complete calls originating in the United States.

Mexico did not appeal the panel report, which the DSB adopted on June 1, 2004. At that DSB meeting, Mexico and the United States informed the DSB that they had reached agreement on the steps required to implement the panel report. Mexico and the United States subsequently agreed that the reasonable period of time for implementation of the DSB's recommendations and rulings will expire on July 1, 2005.

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 the summer of 2003. The United States requested the establishment of a panel on the measure on rice and the five measures of the Foreign Trade Act on September 19, 2003, and the DSB established a panel on November 7, 2003. The United States is continuing to monitor developments surrounding the beef antidumping measures.

Mexico—Tax measures on soft drinks and other beverages (WT/DS308)

On March 16, 2004, the United States requested consultations with Mexico regarding its tax measures on soft drinks and other beverages that use any sweetener other than cane sugar. These measures apply a 20 percent tax on soft drinks and other beverages that use any sweetener other than cane sugar. Soft drinks and other beverages sweetened with cane sugar are exempt from the tax. Mexico's tax measures also include a 20 percent tax on the commissioning, mediation, agency, representation, brokerage, consignment, and distribution of soft drinks and other beverages that use any sweetener other than cane sugar. Mexico's tax measures work inter alia to restrict U.S. exports to Mexico of high fructose corn syrup, a corn-based sweetener that is directly competitive and substitutable with cane sugar. The United States considers these measures to be inconsistent with Mexico's national treatment obligations under Article III of the GATT 1994. Consultations were held on

May 13, 2004, but they failed to resolve the dispute.

The United States requested the establishment of a panel on June 10, 2004, and the DSB established a panel on July 6, 2004. On August 18, 2004, the parties agreed to the composition of the panel as follows: Mr. Ronald Saborio Soto, Chair, and Mr. Edmond McGovern and Mr. David Walker, Members.

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.

European Communities—Selected customs matters (WT/DS315)

On September 21, 2004, the United States requested consultations with the EC with respect to (1) lack of uniformity in the administration by EC member States of EC customs laws and regulations and (2) lack of an EC forum for prompt review and correction of member State customs determinations. On September 29, 2004, the EC accepted the U.S. request for consultations, and consultations were subsequently held on November 16, 2004.

European Communities—Subsidies on large civil aircraft (WT/DS316)

On October 6, 2004, the United States requested consultations with the EC, as well as with Germany, France, the United Kingdom, and Spain, with respect to subsidies provided to Airbus, a manufacturer of large civil aircraft. The United States alleged that such subsidies violated various provisions of the SCM

Agreement, as well as Article XVI:1 of the GATT. Consultations were held on November 4, 2004.

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 2004 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 sanctions. These sanctions took effect on March 1, 2004.

On October 22, 2004, the President signed the American Jobs Creation Act of 2004 (AJCA). The AJCA repealed the FSC/ETI regime and, consistent with standard legislative practice regarding major tax legislation, contained a transition provision and a “grandfather” provision for pre-existing binding contracts. On November 5, 2004, the EU requested consultations regarding the transition and grandfather provisions.

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 Grcar 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.

On February 24, 2003, the Arbitrator issued its award in the arbitration. The Arbitrator stated that the EU has no current right to retaliate against the United States. While it refused to approve or disapprove of the regulation proposed by the EU (which would resemble the 1916 Act in some respects), it found that the EU had to limit any retaliation to the amount of quantifiable final judgments or settlements under the 1916 Act. There were no such judgments or settlements against EU companies.

On December 3, 2004, the President signed the Miscellaneous Trade and Technical Corrections Act of 2004, which repealed the 1916 Act.

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

As amended in 1998 by the Fairness in Music Licensing Act, section 110(5) of the U.S. Copyright Act exempts certain retail and restaurant establishments that play radio or television music from paying royalties to songwriters and music publishers. The European Union claimed that, as a result of this exception, the United States 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 by 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 covered a three-year period, which ended on December 21, 2004.

United States—Section 211 Omnibus Appropriations Act (DS176)

Section 211 addresses the ability to register or enforce, without the consent of previous owners, trademarks or trade names associated with businesses confiscated without compensation by the Cuban government. The EU questioned the

consistency of Section 211 with the TRIPS Agreement, and 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. The RPT was later extended until June 30, 2005.

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 Phuangrath and Ms. Lidia di Vico, Members. On February 28, 2001, the panel circulated its report, in which it rejected most of Japan's claims, but found that, inter alia, particular aspects of the antidumping duty calculation, as well as one aspect of the U.S. antidumping duty law, were inconsistent with the WTO Antidumping Agreement. On April 25, 2001, the United States filed a notice of appeal on certain issues in the panel report. The Appellate Body report was issued on July 24, 2001, reversing in part and affirming in part. The reports were adopted on August 23, 2001. Pursuant to a February 19, 2002, arbitral award, the United States was given 15 months, or until November 23, 2002, to implement the DSB's recommendations and rulings. On November 22, 2002, the 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, and on August 31, 2004, this period was further extended to July 31, 2005.

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.

On March 17, 2004, the EU requested consultations regarding the Department of Commerce's new change of ownership methodology. The EU contends that the Department countervails the entire amount of unamortized subsidies even if the price paid for the acquired firm was only \$1 less than the fair market value. With respect to the Department of Commerce's revised determinations, the EU complains about the three sunset reviews in which the Department declined to address the privatization transactions in question on what essentially were "judicial economy" grounds. With respect to a fourth sunset review, the EU challenges the Department's analysis of the sale of shares to employees of the company in question. Consultations took place on May 24, 2004. A panel was established on September 27, 2004. The original three panelists agreed to serve on the compliance panel.

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.

On April 20, 2004, the United States informed the DSB that it had revoked the countervailing duty order at issue, thereby implementing the DSB’s recommendations and rulings.

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).

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

Based on requests from Brazil, the EU, India, Japan, Korea, Canada, and Mexico, on November 26, 2004, the DSB granted these Members authorization to suspend concessions or other obligations, as provided in DSU Article 22.7 and in the Decisions of the Arbitrators. The DSB granted Chile authorization to suspend concessions or other obligations on December 17, 2004.

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. The dispute remains in the consultation phase.

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. The dispute remains in the consultation phase.

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. The dispute remains in the consultation phase.

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. Following amendment of the Florida tax legislation on April 30, 2004, the United States and Brazil notified the DSB on May 28, 2004 that they had reached a mutually satisfactory solution.

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.

On January 19, 2004, the WTO Appellate Body issued a report finding in favor of the United States in all key respects. The Appellate Body reversed the panel’s unfavorable finding with respect to the rejection of Canadian prices as a benchmark; upheld the panel’s favorable finding that the provincial governments’ provision of low-cost timber to lumber producers constituted a “financial contribution” under the SCM Agreement; and reversed the panel’s unfavorable finding that the Commerce Department should have conducted a “pass-through” analysis to determine whether subsidies granted to one lumber company were passed through to other lumber companies through the sale of subsidized lumber. The Appellate Body’s only finding against the United States was that the Commerce Department should have conducted such a pass-through analysis with respect to the sale of logs from harvester/sawmills to unrelated sawmills.

The DSB adopted the panel and Appellate Body reports on February 17, 2004. The United States stated its intention to implement the DSB recommendations and rulings on March 5, 2004. On December 17, 2004, the United States informed the DSB that Commerce had revised its CVD order, thereby implementing the DSB’s recommendations and rulings.

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. In its report, the panel rejected Canada's arguments: (1) that Commerce's investigation was improperly initiated; (2) that Commerce had defined the scope of the investigation (i.e., the "product under investigation") too broadly; and (3) that Commerce improperly declined to make certain adjustment based on difference in dimension of products involved in particular transactions compared. The panel also rejected Canada's claims on company-specific calculation issues. The one claim that the panel upheld was Canada's argument that Commerce's use of "zeroing" in comparing U.S. price to normal value was inconsistent with Article 2.4.2 of the Antidumping Agreement.

On May 13, 2004, the United States filed a notice of appeal regarding the "zeroing" issue. Canada cross-appealed with respect to two company-specific issues (one regarding the allocation of costs to Abitibi, and the other regarding the valuation of an offset to cost of production for Tembec). The Appellate Body issued its report on August 11, 2004. The report upheld the panel's findings on "zeroing" and the Tembec issue. It reversed a panel finding

regarding the Abitibi issue concerning interpretation of the term "consider all available evidence" in Article 2.2.1.1 of the AD Agreement; however, it declined to complete the panel's legal analysis. The panel and Appellate Body reports were adopted at the August 31, 2004 DSB meeting. The United States and Canada agreed that the reasonable period of time for implementation in this dispute will expire on April 15, 2005.

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.

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

- The panel found that the “Peace Clause” in the WTO Agreement on Agriculture did not apply to a number of U.S. measures, including (1) domestic support measures and (2) export credit guarantees for “unscheduled commodities” and rice (a “scheduled commodity”). Therefore, Brazil could proceed with certain of its challenges.
- The panel found that export credit guarantees for “unscheduled commodities” (such as cotton and soybeans) and for rice are prohibited export subsidies. However, the panel also found that Brazil had not demonstrated that the guarantees for other “scheduled commodities” exceeded U.S. WTO reduction commitments and therefore breached the Peace Clause. Further, Brazil had not demonstrated that the programs threaten to lead to circumvention of U.S. WTO reduction commitments for other “scheduled commodities” and for “unscheduled commodities” not currently receiving guarantees.
- Some U.S. domestic support programs (i.e., marketing loan, counter-cyclical, market loss assistance, and Step 2 payments) were found to cause significant suppression of cotton prices in the world market in marketing years 1999-2002 causing serious prejudice to Brazil’s interests. However, the panel found that other U.S. domestic support programs (i.e., production flexibility contract payments, direct payments, and crop insurance payments) did not cause serious prejudice to Brazil’s interests because Brazil failed to show that these programs caused significant price suppression. The panel also found that Brazil failed to show that any U.S. program caused an increase in U.S. world market share for upland cotton constituting serious prejudice.

- The panel did not reach Brazil’s claim that U.S. domestic support programs threatened to cause serious prejudice to Brazil’s interests in marketing years 2003-2007. The panel also did not reach Brazil’s claim that U.S. domestic support programs per se cause serious prejudice in those years.
- The panel also found that Brazil had failed to establish that FSC/ETI tax benefits for cotton exporters were prohibited export subsidies.
- Finally, the panel found that Step 2 payments to exporters of cotton are prohibited export subsidies, not protected by the Peace Clause, and Step 2 payments to domestic users are prohibited import substitution subsidies because they were only made for U.S. cotton.

On October 18, 2004, the United States filed a notice of appeal. The oral hearing was held on December 13-15, 2004.

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. In its report circulated July 16, 2004, the panel agreed with Argentina that the waiver provisions prevent the DOC from making a determination

as required by Article 11.3 and that the DOC's Sunset Policy Bulletin is inconsistent with Article 11.3. The panel rejected Argentina's claims that the ITC did not correctly apply the "likely" standard and did not conduct an objective examination. Further, the panel concluded that statutes providing for cumulation and the time-frame for continuation or recurrence of injury were not inconsistent with Article 11.3. On August 31, 2004, the United States filed a notice of appeal. The Appellate Body issued its report on November 29, 2004. The Appellate Body reversed the panel's finding against the Sunset Policy Bulletin and upheld the other findings described above. The DSB adopted the panel and Appellate Body reports on December 17, 2004.

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. In its report circulated on March 22, 2004, the panel agreed with Canada's principal argument was that the ITC's threat of injury determination was not supported by a reasoned and adequate explanation, and agreed with Canada that the ITC had failed to establish that

imports threaten to cause injury. However, the panel: declined Canada's request to find violations of certain overarching obligations under the Antidumping and Subsidies Agreements; rejected Canada's argument that a requirement that an investigating authority take "special care" is a stand-alone obligation; rejected Canada's argument that the ITC was obligated to identify an abrupt change in circumstances; agreed with the United States that, where the Antidumping and Subsidies Agreements required the ITC to "consider" certain factors, the ITC was not required to make explicit findings with respect to those factors; and rejected Canada's argument that the United States violated certain provisions of the applicable agreements that pertain to present material injury. The DSB adopted the panel report on April 26, 2004.

At the May 19, 2004 meeting of the DSB, the United States stated its intention to implement the rulings and recommendations of the DSB. On November 24, 2004, the ITC issued a new threat-of-injury determination, finding that the U.S. lumber industry was threatened with material injury by reason of dumped and subsidized lumber from Canada. On December 13, Commerce amended the antidumping and countervailing duty orders to reflect the issuance and implementation of the new ITC determination.

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. On September 3, 2004, the Director-General composed the panel as follows: Mr. Peter Palecka, Chair, and Mr. Martin Garcia and Mr. David Unterhalter, Members.

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. On February 11, 2003, the following panelists were selected, with the consent of the parties, to review Mexico's claims: Mr. Christer Manhusen, Chairman; Mr. Alistair James Stewart and Ms. Stephanie Sin Far Man, Members.

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. The panel's final report, circulated on November 10, 2004, found that the United States breached Article XVI (Market Access) of the GATS by maintaining three U.S. federal laws (18 U.S.C. §§ 1084, 1952, and 1955) and certain statutes of Louisiana, Massachusetts, South Dakota, and Utah. It also found that these measures were not justified under exceptions in Article XIV of the GATS.

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. The EC requested the establishment of a panel on February 5, 2004, and the DSB established a panel on March 19, 2004. On October 27, 2004, the panel was composed as follows: Mr. Crawford Falconer, Chair, and Mr. Hans-Friedrich Beseler and Mr. William Davey, Members.

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. The DSB established a panel on January 23, 2004. On March 5, 2004, the Director-General composed the panel as follows: H. E. Mr. Hardeep Puri, Chair, and Mr. John Adank and Mr. Michael Mulgrew, Members.

United States—Determination of the International Trade Commission in hard red spring wheat from Canada (WT/DS310)

On April 8, 2004, Canada requested consultations regarding the U.S. International Trade Commission's determination on hard red spring wheat. In its request, Canada alleged that the United States has violated Article VI:6(a) of the GATT 1994 and various articles of the Anti-dumping Agreement and the SCM Agreement. Canada alleged that these violations stemmed from certain errors in the ITC's determination. In particular, Canada claims that the ITC: (1) failed "to properly examine the effect of the

dumped and subsidized imports on prices in the domestic market for like products;" (2) failed "to properly examine the impact of the dumped and subsidized imports on domestic producers of like products;" (3) failed "to properly demonstrate a causal relationship between the dumped and subsidized imports and material injury to the domestic industry;" (4) failed "to properly examine known factors other than dumping and subsidizing that were injuring the domestic industry;" and (5) attributed to the dumped and subsidized imports the injuries caused by other factors. Consultations were held on May 6, 2004. On June 11, 2004, Canada requested the establishment of a panel, the United States objected, and Canada made but withdrew a second panel request.

United States—Reviews of countervailing duty on softwood lumber from Canada (WT/DS311)

On April 14, 2004, Canada requested consultations concerning what it termed "the failure of the United States Department of Commerce (Commerce) to complete expedited reviews of the countervailing duty order concerning certain softwood lumber products from Canada" and "the refusal and failure of Commerce to conduct company-specific administrative reviews of the same countervailing duty order." Canada alleged that the United States had acted inconsistently with several provisions of the SCM Agreement and with Article VI:3 of the GATT 1994. Consultations were held on June 8, 2004. The dispute remains in the consultation phase.

United States—Subsidies on large civil aircraft (WT/DS317)

On October 6, 2004, the European Communities requested consultations with respect to "prohibited and actionable subsidies provided to U.S. producers of large civil aircraft." The EC alleged that such subsidies violated several provisions of the SCM Agreement, as well as Article III:4 of the GATT. Consultations were held on November 5, 2004.

United States - Section 776 of the Tariff Act of 1930 (WT/DS319)

On November 5, 2004, the European Communities requested consultations with the United States with respect to the “facts available” provision of the U.S. dumping statute and the Department of Commerce’s dumping order on Stainless Steel Bar from the United Kingdom. The EC claims that both the statutory provision on adverse facts available and Commerce’s determination and order are inconsistent with various provisions of the Antidumping Agreement and the GATT 1994.

United States - Continued suspension of obligations in the EC - Hormones dispute (WT/DS320)

On November 8, 2004, the European Communities requested consultations with respect to “the United States’ continued suspension of concessions and other obligations under the covered agreements” in the EC – Hormones dispute. Consultations were held on December 16, 2004.

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

On November 24, 2004, Japan requested consultations with respect to: (1) the Department of Commerce’s alleged practice of “zeroing” in antidumping investigations, administrative reviews, sunset reviews, and in assessing the final antidumping duty liability on entries upon liquidation; (2) in sunset reviews of antidumping duty orders, Commerce’s alleged irrefutable presumption of the likelihood of continuation or recurrence of dumping in certain factual situations; and (3) in sunset reviews, the waiver provisions of U.S. law. Japan claims that these alleged measures breach various provisions of the AD Agreement and Article VI of the GATT 1994. Consultations were held on December 20, 2004.

United States – Provisional antidumping measures on shrimp from Thailand (WT/DS324)
On December 9, 2004, Thailand requested consultations with respect to the Department of Commerce’s imposition of provisional antidumping duties on certain frozen and canned warmwater shrimp from Thailand. Specifically,

Thailand has alleged that Commerce’s use of a “zeroing” methodology is inconsistent with Article 2.4 of the AD Agreement. Thailand also has alleged that Commerce’s resort to “adverse facts available” in calculating normal value for one Thai producer violates provisions of Article 6 and Annex II of the AD Agreement; and that Commerce’s alleged failure to make due allowances for certain factors in its calculations for the Thai exporters violates Article 2.4 of the AD Agreement.

United States – Anti-Dumping Determinations Regarding Stainless Steel from Mexico (WT/DS325)

On January 5, 2005, Mexico requested consultations with respect to the Department of Commerce’s alleged use of “zeroing” in an antidumping investigation and three administrative reviews involving certain stainless steel products from Mexico. Mexico claims these alleged measures breach several provisions of the AD Agreement, the GATT 1994 and the WTO Agreement.

K. 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. Documents are filed on the site's Document Distribution Facility under the document symbol "WT/TPR."

Cumulative Assessment Since the WTO Was Established

The TPRM has served as a valuable resource for improving transparency in WTO Members' trade and investment regimes and ensuring commitment to WTO rules. Since the WTO was established, the TPRB has conducted 141 reviews. Prior to establishment of the WTO, the TPRM had conducted 56 reviews under the auspices of the GATT. The reports produced for each review are made available to the public after the review is completed. For many 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. Some Members have used the Secretariat's Report as a national trade and investment promotion document, while others have indicated that the report has served as basis for internal analysis of inefficiencies and overlaps in domestic laws and government agencies. For other trading partners and U.S. businesses, the reports are a dependable resource for assessing the commercial environment of the majority of WTO Members.

The United States has participated in every Trade Policy Review and developed for each Member under review a detailed list of questions and comments designed to urge, where necessary, compliance with certain WTO/GATT obligations or to obtain better information on issues that are of particular concern to interested parties in the United States. The biennial Reviews of the European Union, Canada, and Japan have provided a regular forum for updates and analysis of policies and measures undertaken by the United States' largest trading partners. During the four reviews of the United States since 1995 (the most recent in 2004), the U.S. team has emphasized the openness of the U.S. market and the important role the U.S. economy plays in the global trading system. The U.S. Trade Policy Reviews also have afforded the opportunity to defend WTO consistent trade practices and reduce misunderstandings about certain U.S. trade policies and laws. Thus, the TPRM has met the expectations of the United States to provide greater transparency, understanding and consistency in the trade policies of WTO Members, and to better ensure compliance with the rules-based system.

Major Issues in 2004

During 2004, the TPRB reviewed the trade regimes of Belize, Benin, Brazil, Burkina Faso, the European Union, Gambia, Korea, Mali, Norway, Rwanda, Singapore, Sri Lanka, Suriname, the United States, and the Customs Territory of Switzerland and Liechtenstein. This group included five least-developed (LDC) Members and four Members reviewed for the first time. As of the end of 2004, the TPRM had conducted 197 reviews, covering 114 out of 148 Members (counting the European Union as fifteen) and representing approximately 88 percent of world merchandise trade.

Reviews 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 2004, 22 of the WTO's 32 least-developed 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 enhance 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 2004 for the review process of Gambia and Rwanda. 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 2005

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 2005 program schedules 18 Members for review, including Bolivia, Djibouti, Ecuador, Egypt, Guinea, Jamaica, Japan, Malaysia, Mongolia, Nigeria, Paraguay, The Philippines, Qatar, Romania, Sierra Leone, Togo, Trinidad and Tobago, and Tunisia. Djibouti, Ecuador, Mongolia, Qatar, Sierra Leone, and Tunisia will undergo their first Reviews. Four Members – Djibouti, Guinea, Sierra Leone, and Togo – are LDCs.

K. Other General Council Bodies/Activities

1. Committee on Trade and the 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 2001, the CTE in Regular Session continued discussion of many important issues with a focus on those identified in the Doha Declaration, including market access 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 identified in the Doha Declaration are separate from those that are subject to specific negotiating mandates

and that are being taken up by the CTE in Special Session.

Cumulative Assessment Since the WTO Was Established

The CTE has played an important role in promoting mutually supportive trade and environmental policies and has become the preeminent global forum for identifying and analyzing trade and environmental issues. The CTE has brought together trade and environment officials from Member governments over the last ten years to build a better understanding of the complex links between trade and environmental policies. Among other things, this has helped to address the serious problem of lack of coordination between trade and environment officials in many governments.

Together, these experts have studied important issues and produced useful recommendations, including those contained in the CTE's report to the first WTO Ministerial Conference held in Singapore in 1996. The CTE also launched the creation of a data base of all environmental measures that have been notified by Members under WTO transparency rules. In addition, the CTE established an ongoing relationship with the Secretariats of several relevant Multilateral Environmental Agreements (MEAs) and has held seven information sessions where trade and environment officials had the opportunity to exchange information and learn more about MEA activities relevant to trade. The CTE's commitment to these types of events continues.

The CTE's analytical work has contributed to the identification of "win-win" opportunities that can contribute to both trade and environmental policy objectives, and Ministers agreed to pursue several of these in the Doha Declaration (e.g., market access for environmental goods and services, disciplines on fisheries subsidies that contribute to over fishing). The CTE has also worked to promote greater transparency related to environmental measures and policies, including eco-labeling.

Major Issues in 2004

In 2004, the CTE met in Regular Session (CTERS) three times. The United States continued its active role in discussions, as discussed below.

- **Market Access under Doha Sub-Paragraph 32(i):** Discussions under this agenda item continued to demonstrate a lower level of interest than in past years. However, discussions began to pick up in late 2004, spurred by a paper from the European Commission, which highlighted its recent efforts to improve the transparency and accountability of its regulatory process and to address developing countries' concerns. In addition, discussions returned to a paper from India, first tabled in May 2002, which outlines several suggestions for moving the discussions forward.

- **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. The CTERS received a report on the seventh meeting of the CBD Parties and the first meeting of the Parties to the Biosafety Protocol. Several suggestions for further structuring discussions under this agenda item include studying the impacts, if any, of trade and intellectual property rights regimes on biodiversity and exploring funding for biodiversity protection and technology transfer.

- **Labeling for Environmental Purposes under Doha Sub-Paragraph 32(iii):**

Discussions under this agenda item demonstrated a considerably lower level of interest in 2004. However, the European Community continued to note its interest in 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.

- **Capacity Building and Environmental Reviews under Doha Paragraph 33:**

Many developing country Members stressed the importance of benefitting from technical assistance related to negotiations in the WTO on trade and environment, particularly given the complexity of some of these issues. The Secretariat briefed Members on its technical assistance activities in 2004, including three regional workshops on WTO rules and MEAs and three regular trade policy courses. 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 environmental 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:**

Discussions under this agenda item continued to highlight developments in other areas of negotiations, including agriculture, non-agricultural market access, services and rules (including discussions on disciplining fisheries subsidies). The CTERS also agreed to hold an informal event in 2005 to discuss the sustainable development aspects of the negotiations and invite international governmental organizations, such as the United Nations Environment Program (UNEP), to participate.

Prospects for 2005

It is expected that the CTE will devote increasing attention to the substance of the mandate in paragraph 51 of the Doha Declaration. Regarding other environmental issues identified in the Doha Declaration that do not have a negotiating mandate, discussions are less likely to become more focused or increase in intensity in the next year.

2. Committee on Trade and Development

Status

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

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

Cumulative Assessment Since the WTO Was Established

Over the past decade, the CTD has been the primary forum for discussion of broad issues related to the nexus between trade and development, rather than implementation or operation of a specific agreement. Since Doha and the establishment of the DDA, the CTD has intensified its work on issues related to trade and development. The CTD has focused on issues such as expanding trade in products of interest to developing countries, reliance on a narrow export base, coherence in the work of the World Bank, the IMF and the WTO, the WTO's technical assistance and capacity building activities, and sustainable development goals. Work in the Sub-Committee on LDCs and the Dedicated Session on Small Economies has been useful in identifying unique challenges faced by LDCs in their WTO accession processes and the special characteristics of small, vulnerable economies, including island and landlocked states.

Since the launch of the DDA, there has been a clear recognition of the need for intensified technical assistance, training and capacity building for developing countries to actively participate in the negotiations and to implement the results of the negotiations. The CTD has played an important role in managing the growth and direction of the WTO's technical assistance program. WTO Technical Assistance funding through the WTO's Global Trust Fund has grown from approximately \$650,000 in the pre-Doha period to \$15 million in 2005. Combined with significant growth in funding from other donors, the scope and nature of the training has expanded, with regional and national training programs supplementing the traditional Geneva-based trade policy courses. In 2004, the WTO introduced a new approach to technical assistance designed to ensure a "sustainable footprint" of capacity in developing countries, so their participation in the negotiations and implementation would be more effective.

Developing country participation has progressively increased throughout the DDA negotiations, with both individual developing

countries and groups of developing countries playing an increasingly more active role in the negotiations. Developing country groupings active in the negotiations include: the Latin America Group (Grupo Latino or GRULAC); the Africa Group; the Africa, Caribbean and Pacific Group (ACP); and the LDC Group. Despite progress in participation in the negotiation, challenges remain. A number of developing countries have little depth in their trade policy due largely to the high attrition among the few expert trade policy officials in capitals.

Special efforts over the last decade have been undertaken to increase LDC participation in the WTO. The CTD was actively involved in two successful high-level meetings – the 1997 High Level Meeting on the Least Developed Countries and the 1999 Symposium on Trade and Development. Both meetings demonstrated the CTD's constructive contribution to the WTO's work by increasing understanding of the concerns of the poorest and most vulnerable WTO Members. In addition, special efforts included the DDA-mandated LDC work program. This program, implemented by the CTD's Sub-Committee on LDCs, has included identification of market access barriers for entry of LDC products into markets of interest to them, an annual assessment of improvements in market access undertaken by Members, and examination of possible additional measures for progressive improvements.

Recent assessments of LDC trade patterns in the CTD suggest that over the past few years, LDC exports have grown strongly, for example, growing 8 percent in 2002 and 13 percent in 2003. The leading exports of these countries vary substantially. In terms of export destinations, China has recently become the third most important market for LDC products, after the United States and European Union, with Thailand, India, Korea and Chinese Taipei also of growing market importance. This growth reflects, in part, substantial changes in preferential programs by developed countries, but also additional preferences granted to LDCs by other developing countries.

Another special effort to increase LDC participation was the General Council adoption of guidelines for LDC WTO Accessions, based on a recommendation developed by the LDC Subcommittee in December 2002. In these guidelines, developed countries committed to facilitating and accelerating LDC accessions. Since adoption of the guidelines, two least developed countries, Cambodia and Nepal, have joined, and nine LDCs are currently in the process of accession (Afghanistan, Bhutan, Cape Verde, Ethiopia, Lao PDR, Samoa, Sudan, Vanuatu, and Yemen).

Work on Small Economies has focused on defining the unique circumstances faced by those economies, including vulnerability to frequent weather challenges, additional transportation or trading costs caused by geographical access to markets, or heightened vulnerabilities to natural and trade-related shocks. Mindful of the requirement not to create a new subcategory of WTO Members, the work has focused on practical problems and solutions. This work also has direct implications for work being undertaken on special and differential treatment more broadly. For example, other developing countries that are not considered small, vulnerable or landlocked have registered concerns that these efforts not undermine their existing rights to special treatment in the WTO.

Major Issues in 2004

The CTD's work in 2004 focused primarily on technical assistance, assessing the progress of developing and least-developed countries in market access and trade, and DDA-consistent consideration of commodity issues. The Committee also has monitored work related to trade and development being undertaken in the respective DDA negotiating groups to ensure issues of concern to developing countries, including, for example, special and differential treatment, "less-than-full-reciprocity", erosion of preference and revenue concerns are being addressed effectively. Reviews of the work of most negotiating groups in 2004 suggest that most negotiating groups have actively addressed concerns of developing countries in their discussions thus far.

Outlook for 2005

The Committee is expected to continue to monitor developments in the negotiations as they relate to issues of concern to developing countries, as well as to deepen its work on commodities, small economies and landlocked states, and assistance to LDCs. Interest in market access in the developed countries is expected to continue. However, with South-South trade growing at 10 percent a year -- double the growth of world trade -- the CTD's work should increasingly focus on expanding South-South trade. On commodities, the CTD will examine positive experiences of those countries that have been able to successfully diversify their export bases beyond one or two commodities.

3. Committee on Balance-of-Payments Restrictions

Status

The Uruguay Round Understanding on Balance of Payments (BOP) substantially strengthened GATT disciplines on BOP measures. Under the WTO, any Member imposing restrictions for 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.

Cumulative Assessment Since the WTO Was Established

The Uruguay Round strengthening of disciplines has ensured that the BOP provisions of the GATT 1994 are used as originally intended: to enable countries undergoing a BOP crisis to impose temporary import measures while

undertaking needed policy adjustments to bring their external account back into balance. Looking back to 1995, it is clear that the Committee's surveillance of these measures has dramatically reduced the incidence of imposition of unwarranted import restrictions. In 1995, the Committee on BOP held consultations with eleven Members on imposition of new import restrictions, six in 1996, eight in 1997, three in 1998, three in 1999, four in 2000, one in 2001, one in 2002, zero in 2003 and zero in 2004. Discussions in recent years have focused on Members' plans for removing previously approved import restrictions.

Major Issues in 2004

During 2004, no Member imposed new balance-of-payments restrictions. The BOP Committee held one meeting during the year, in November, to conduct the third 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. The Committee also reviewed Bangladesh's plans for removing its existing BOP restrictions on a limited number of items by 2009.

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 2004, but the discussions have narrowed differences.

Prospects for 2005

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

The Budget Committee is responsible for establishing and presenting the budget for the WTO Secretariat to the General Council for approval. The Committee meets throughout the year to address the financial requirements of the organization. In 2003, the WTO moved to a biennial budget process. Under this new approach, Members agreed in December 2003 on the WTO's first biennial budget, covering 2004 and 2005. As envisaged in the decision establishing biennial budgeting, in 2004 the Secretariat presented proposed adjustments to the 2005 budget to take into account unforeseen and uncontrollable developments. As is the practice in the WTO, decisions on budgetary issues are taken by consensus of the Members.

The United States is an active participant in the Budget Committee. The total assessments of WTO Members are based on the share of WTO Members' trade in goods, services, and intellectual property, and the United States, as the Member with the largest share of such trade, also makes the largest contribution to the WTO budget. For the 2004 budget, the U.S. contribution is 15.735 percent of the total budget assessment, or Swiss Francs (CHF) 25,259,391 (about \$22 million). Details on the WTO's budget required by Section 124 of the Uruguay Round Agreements Act are provided in Annex II. Reflecting the move to a biennial budget process, Annex II contains consolidated budget data for both 2004 and 2005.

Cumulative Assessment Since the WTO Was Established

Over the past ten years, the Budget Committee successfully performed the core activities central to the establishment and functioning of the WTO Secretariat as an organization. It formulates recommendations to the General Council on the WTO's budget, monitors on a regular basis the financial and budgetary situation of the WTO including the receipt of contributions, and examines the yearly budgetary and financial

reports from the Director-General and the external auditors. In addition, the Budget Committee formulated recommendations to the General Council on many issues including Member assessment plans, personnel management improvements, the WTO pension plan, the selection of external auditors, guidelines governing the process of acceptance of voluntary contributions, budget arrangements for the UNCTAD/WTO International Trade Centre, the trust fund for the participation of least developed countries at Doha, and WTO building facilities, including the headquarters agreement signed with the Swiss authorities. Of particular note, the Budget Committee strengthened the management of the WTO by developing performance-based pay and biennial budgeting for adoption by the General Council.

Major Issues in 2004

- **Security Enhancement Program:** In December 2004, the General Council agreed to fund the Secretariat's proposed Security Enhancement Program. This multi-year plan is designed to meet the new realities of the post-9/11 world by, among other things, improving controls on the entrance of goods, vehicles and people to the WTO as well as by improving the technology available to monitor the WTO's facilities and grounds.

- **Policy on the Use of Temporary Assistance:** In December 2004, the Budget Committee endorsed a new policy on the use of temporary assistance. The new policy is designed to enhance the control of long term costs to the WTO by ensuring that temporary assistance is used for truly temporary needs and does not lead to uncontrolled long term obligations.

- **Appellate Body Remuneration:** In December 2004, the Budget Committee proposed and the General Council agreed to increase the remuneration of Appellate Body Members by 11.1 percent. Their remuneration had not been adjusted since the establishment of the Appellate Body in 1995. The increase will be funded entirely through savings elsewhere in the budget.

- **Agreed Budget for 2005:** In December 2004, the Budget Committee proposed and the General Council agreed to increase the 2005 budget from CHF 166,804,200 to CHF 168,703,400 to take into account unforeseen and uncontrollable developments. Almost all of the increase was necessitated by the Security Enhancement Program. The remainder was needed to meet statutory commitments with regard to salary, contribution to the pension fund and other staff costs.

Prospects for 2005

In 2005, the Budget Committee is expected to intensify its work on the Security Enhancement Program of the WTO. It will also perform its ongoing responsibilities of formulating the 2006-2007 biennial budget and monitoring the financial and budgetary situation of the WTO.

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 and Vbis of the General Agreement on Trade in Services (GATS), which governs services and labor markets 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.

Cumulative Assessment Since the WTO Was Established

Prior to the establishment of the CRTA in 1996, the GATT Contracting Parties created a working party to review each separate agreement, and each was reviewed in isolation. The CRTA was created to centralize “expertise” on RTAs and to enable Members to focus on the varying quality and consistency of agreements with respect to

WTO obligations. The Committee provides an important oversight and transparency function. Although the Committee does not have the power to nullify agreements, a key issue debated in the late 1990’s was the Committee’s inability to conclude its reports on individual RTAs due to lack of consensus on the content of each report with respect to assessment of WTO consistency.

Major Issues in 2004

During 2004, the Committee held three sessions. As of October 31, 2004, 300 RTAs had been notified to the GATT/WTO. Of the notified agreements, 150 are currently in force. Of these, 105 agreements were notified under GATT Article XXIV; 19 under the Enabling Clause; and 26 under GATS Article V. The Committee currently has 110 agreements under examination, of which 38 are currently undergoing factual examination and 32 are yet to be examined. For the remaining 40 agreements, the factual examination has been concluded, but no reports have been completed as Members do not agree on the nature of appropriate conclusions.

In November, the CRTA met to respond to a request from the Rules Negotiating Group (NG) on RTAs that the Secretariat prepare reports on “volunteered” RTAs for review in the CRTA. The Rules NG on RTAs has been working on developing new reporting and review procedures to improve the transparency of RTAs and to make the CRTA process more efficient. The Rules NG on RTAs was of the view that it would be useful to “test-drive” some proposed procedures in 2005 to see how they would work in practice. The CRTA considered and approved a revision in its terms of reference (TOR) to allow the Secretariat, on its own responsibility, to prepare a factual presentation of an RTA for use by the Committee in its review of that agreement.

The CRTA also met informally in 2004 to discuss several issues that were contributing to a backlog in work. First, the Committee’s work in some cases was being hampered by a lack of information. Second, the Committee was also

unable to make progress on certain services agreements, because they lacked specific commitments. Lastly, the CRTA considered how to deal with agreements where one of the Parties is not a WTO Member. The CRTA agreed to adjustments to deal with the lack of information and commitments, but did not reach consensus on how to move forward in the case of an RTA involving a non-Member.

The enlargement of the EU in May 2004 to include ten additional countries (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia) resulted in the termination of 65 RTAs previously in force. CRTA review of these agreements was terminated – thereby reducing considerably its backlog.

In March 2004, the CRTA reviewed the U.S.-Jordan FTA. Japan, Australia, the EU, Chile, Switzerland and Chinese Taipei were among the delegations that sought additional information in the review. Questions addressed included the extent of liberalization through TRQs in the Agreement; its rules of origin on citrus products; its provisions on global safeguard measures; its provisions on geographical indications and other intellectual property issues; and, its schedule of commitments in relation to the Parties' commitments under the GATS. In December 2004, the United States and Australia notified the WTO of the U.S.-Australia FTA, which entered-into-force on January 1, 2005.

Prospects for 2005

During 2005, the Committee will continue to review regional trade agreements notified to the WTO and referred to the Committee. The CRTA reviews of the U.S.-Chile FTA and the U.S. Singapore FTA are scheduled for its meeting in February 2005. CRTA review of the U.S.-Australia FTA is possible as well. The second round of the CRTA review of the U.S.-Jordan FTA is likely in 2005.

As reflected in paragraph 29 of the Doha Declaration, WTO Members agreed to negotiations to clarify and improve disciplines on regional trade agreements, a mandate that is

being undertaken by the Rules NG. Accordingly, the discussion of systemic issues and improving the examination process in the CRTA is expected to occur largely in the Rules NG. Over the course of 2005, and under the guidance from the Rules NG on RTAs, the CRTA may experiment with new procedures to improve the efficiency and transparency of RTA review in the WTO.

6. Accessions to the World Trade Organization

Status

By the end of 2004, there were twenty-eight accession applicants with established Working Parties, many of them least-developed countries (LDCs). Nepal and Cambodia, both LDCs, became the 147th and 148th WTO Members on April 10 and October 13 respectively, based on accession packages approved at the Fifth Minister Conference at Cancun, Mexico in 2003. They are the first LDCs to become WTO Members through the accession process, rather than as original signatories by virtue of their GATT 1947 contracting party status.³⁸

Intensive work on negotiations with Russia, Saudi Arabia, Vietnam, Ukraine, and Tonga during 2004 resulted in significant progress. These negotiations are the most advanced and most likely to be the focus of work in 2005. Substantial work was also recorded on the accession packages of Kazakhstan, Algeria, and Cape Verde. The General Council approved the application of Libya to begin accession negotiations in July, and of Afghanistan and Iraq in December. First working parties convened for the accessions of Bhutan, Laos, Tajikistan, and Yemen, and conducted an initial review of the information submitted by these countries on their foreign trade regimes. Azerbaijan, Bosnia

³⁸ There are nine other LDCs pursuing WTO accession at this time. Negotiations are ongoing with Bhutan, Cape Verde, Laos, Samoa, Sudan, and Yemen. Afghanistan and Ethiopia have not yet activated their accessions, and Vanuatu has not finalized the package approved by its Working Party in 2001.

and Herzegovina, Cape Verde, Sudan and Uzbekistan had second Working Parties and moved closer to initiating market access negotiations. The Working Parties of Belarus and Lebanon continued to review their respective trade regimes, but noted slow progress in market access negotiations and legislative implementation of WTO rules. Neither the Bahamas nor Ethiopia have yet submitted initial descriptions of their trade regimes, and the Working Parties of Andorra, Samoa, and Seychelles passed another year without activity. Serbia and Montenegro withdrew its accession request, and the two republics have filed to negotiate the terms of WTO Membership as separate customs territories. Accession applicants are welcome in all WTO formal meetings as observers. Equatorial Guinea and Sao Tome and Principe are observers to the WTO not yet seeking accession. 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 trade and investment and promote growth and development. The accession process strengthens the international trading system by ensuring that new Members understand and implement WTO rules from the outset. The process also offers current Members the opportunity to secure 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 bilateral negotiations for import market access. Applicants are expected to make necessary 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. Most accession applicants take these actions prior to accession.

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 or customs territory. A number of the WTO Members that have acceded since 1995 received technical assistance in their accession process from the United States, e.g., Armenia, Bulgaria, Estonia, Georgia, Jordan, Kyrgyz

Republic, Latvia, Lithuania, Macedonia, Moldova and Nepal. 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, Ethiopia, Iraq, 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. The United States also offers other forms of technical and expert support on WTO accession issues to Afghanistan, Algeria, Bosnia and Herzegovina, Lebanon, Russia, and Vietnam.

Cumulative Assessment Since the WTO Was Established

Since the establishment of the World Trade Organization in 1995, twenty countries have acceded to the WTO³⁹, and twenty-eight additional applicants are in accession negotiations in various stages.⁴⁰ There are few trading economies of significant size that are not Members or in the process of negotiating terms for accession. During the period since the establishment of the WTO, there have been complaints that the accession process is too difficult and complex. However, by providing the mechanism to require that WTO Membership be based on actual adoption of WTO provisions and establishment of market access schedules comparable or better than existing members, the achievements of the accession process for the international trading system, and for U.S. interests in that system, fully justify the time taken to complete the

³⁹ In order of date of accession, Ecuador, Bulgaria, Mongolia, Panama, Kyrgyz Republic, Latvia, Estonia, Jordan Georgia, Albania, Oman, Croatia, Lithuania, Moldova, China, Chinese Taipei, Armenia, Former Yugoslav Republic of Macedonia, Nepal, and Cambodia.

⁴⁰ This total includes Vanuatu, whose completed accession package has not yet been approved by the General Council, and the state union of Serbia and Montenegro as a single applicant, since the applications for separate Working Parties by the two republics have not yet been reviewed by the General Council.

accession process. The WTO accession process has responded constructively and flexibly to changing political and economic realities, without undermining its basic objective of ensuring that accession applicants are ready to assume the responsibilities as well as the rights of WTO Membership. The United States takes a leadership role in all accessions, to ensure a high standard of implementation of WTO provisions by new Members and to encourage trade liberalization in developing and transforming economies, as well as to use the opportunities provided in these negotiations to expand market access for U.S. exports.

Accession procedures and requirements have strongly supported the key concepts of transparency, compliance with the rules, and the balance of rights and obligations upon which the WTO is based, thereby supporting existing rules and institutions. Accessions also have been a critical part of the international community's response to the historic changes that occurred in the early 1990's with the breakup of the Soviet Union and Yugoslavia and the abandonment by Eastern Europe of Communist economic policies. The accessions of Bulgaria, Mongolia, the Kyrgyz Republic, Latvia, Estonia, Georgia, Albania, Croatia, Lithuania, Macedonia, Armenia and Moldova were a significant factor in the integration of these new countries into the rules-based, market based international economic and trading system. The approval of the accessions of Jordan and Oman expanded WTO membership in the Middle East on the basis of full observance of the rules and trade liberalizing market access commitments. These principles can be expected to be applied in the accessions of other countries in the Middle East, including those of Afghanistan, Iraq and Libya, initiated in 2004.

The accession of China in 2001 alongside that of Chinese Taipei was also a major development, extending WTO rules to two of the preeminent participants in global trade. China agreed to extensive, far-reaching and often complex commitments to change its trade regime, at all levels of government. China committed to implement a set of sweeping reforms that required it to lower trade barriers in virtually

every sector of the economy, provide national treatment and improved market access to goods and services imported from the United States and other WTO members, and protect intellectual property rights. China also agreed to special rules regarding subsidies and the operation of state-owned enterprises, in light of the state's large role in China's economy. In accepting China as a fellow WTO member, the United States also secured a number of significant concessions from China that protect U.S. interests during China's WTO implementation stage. Chinese Taipei joined WTO as a developed Member fully compliant with WTO rules from the date of accession and with broad market access commitments.

In 2003, the General Council presided over the first accessions of least-developed countries, Nepal and Cambodia, based on simplified and streamlined procedures intended to use the accession process as a tool for economic development. The protocols of accession developed under these guidelines reflect both the goal of full implementation of WTO rules and the need to address realistically the difficulties faced by LDCs in achieving that objective.

Major Issues in 2004

Intensified efforts on the accessions of Russia, Saudi Arabia, Ukraine, and Vietnam established a fast and crowded pace for WTO accession activities in 2004, both in the eleven scheduled WP sessions that worked on these countries' draft WP reports, and in many more bilateral meetings in Geneva and in capitals. A key focus of these countries' work centered on reaching agreement bilaterally with as many Members as possible on market access commitments. Efforts to enact legislation to implement the WTO in domestic law were accelerated, to keep pace with progress in the Working Party on development of the draft report and Protocol of Accession. For these countries, the accession process cannot be finalized until the legislation that actually implements WTO provisions has been identified and reviewed by WP Members.

The Federal Republic of Yugoslavia formally changed its name to Serbia and Montenegro in

its accession documents, reflecting its change in status following the promulgation of the Constitutional Charter of Serbia and Montenegro in 2003. Documentation for a first Working Party was circulated, but in December, the state union of Serbia and Montenegro withdrew its accession application. The constituent republics, Serbia and Montenegro, have applied for accession as separate customs territories.

Tonga, a small island economy that shares many of the characteristics of LDCs, completed its market access negotiations and tabled most of the outstanding legislation, either enacted or in draft for WP review, setting the stage for its likely completion of the accession process in 2005.

Efforts to make WTO accession more accessible to LDCs continued in 2004 as WP meetings were convened for a record number of LDC applicants (e.g., for Sudan, Cape Verde, Bhutan, Laos, and Yemen). Discussions continued in various WTO fora, e.g., the CTD, its Subcommittee on LDCs, and the Work Program on Small Economies of the DDA, on how the WTO guidelines on LDC accessions, approved by the General Council in December 2002, were being implemented. Using the guidelines, WTO Members exercise restraint in seeking market access concessions, and are pledged to agree to transitional arrangements for implementation of WTO Agreements. The United States and other developed WTO Members have sought to support the transitional goals established in the accession process with technical assistance to help achieve them, using the framework of commitments established in the accession as a development tool--an opportunity to mainstream trade in the development programs of the LDC applicants, to build trade capacity, and to provide a better economic environment for investment and growth.

In November, Congress authorized the President to remove Armenia from the coverage of the provisions of the "Jackson-Vanik" clause and the other requirements of Title IV of the Trade

Act of 1974.⁴¹ This allowed the United States to dis-invoke the non-application provisions of the WTO Agreement contained in Article XIII with respect to that country, and to establish full WTO relations with Armenia.⁴²

Prospects for 2005

While significant work remains on the accessions of Russia, Saudi Arabia, Ukraine, and Vietnam in all aspects of the negotiations, these countries have clearly signaled the hope that they can conclude accession negotiations in 2005, or at least make definitive progress towards that goal. The quickening pace of work on Doha issues and preparations for the Sixth Ministerial Conference in Hong Kong, China in

⁴¹ Prior to General Council approval of Armenia's accession package in December 2002, the United States invoked the non-application provisions of the WTO Agreement contained in Article XIII with respect to that country. This was necessary because the United States must retain the right to withdraw "normal trade relations (NTR)" (called "most-favored-nation" treatment in the WTO) for WTO Members that receive NTR with the United States subject to the provisions of the "Jackson-Vanik" clause and the other requirements of Title IV of the Trade Act of 1974. In such cases, the United States and the other country do not have "WTO relations" which, among other things, prevents the United States from bringing a WTO dispute based on a violation of the WTO or the country's commitments in its accession package.

⁴² In addition to Armenia, seven of the remaining 28 WTO accession applicants with active Working Parties are covered by Title IV. They are: Azerbaijan, Belarus, Kazakhstan, Russia, Ukraine, Uzbekistan, and Vietnam. For further information on this issue, please consult the sections of the report that deal with bilateral trade relations with these countries. The United States has invoked non-application of the WTO five other times, when Romania became an original WTO Member in 1995, and when the accession packages of Mongolia, the Kyrgyz Republic, Georgia and Moldova were approved by the WTO General Council in 1996, 1998, 1999, and 2001, respectively. Congress subsequently authorized the President to grant Romania, Mongolia, the Kyrgyz Republic, and Georgia permanent NTR, and the United States withdrew its invocation of non-application in the WTO for these countries.

December 2005 will engage an increasing share of WTO Members' time and resources during the year requiring applicants to maximize opportunities for progress given the competition for meeting times. Efforts to advance the accessions of LDCs will also continue.

M. Plurilateral Agreements

1. Committee on Trade in Civil Aircraft

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 WTO Members that 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 nondiscriminatory basis to other Members covered by the Aircraft Agreement. The Signatories have also provisionally agreed to duty-free treatment for ground maintenance simulators, although this is not a covered item under the current agreement. The Aircraft Agreement also establishes various obligations aimed at fostering free market forces. For example, signatory governments pledge that they will base their purchasing decisions strictly on technical and commercial factors.

As of January 1, 2005, there were 30 signatories to the Aircraft Agreement. Members include: Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Egypt, Estonia, the European Communities⁴³, Denmark, France, Georgia, Germany, Greece, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Macau, China, Malta, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

Cumulative Assessment Since the WTO Was Established

While the 1979 GATT Agreement on Trade in Civil Aircraft was not strengthened through renegotiation during the Uruguay Round, civil aircraft were brought under the stronger disciplines of the WTO Agreement on Subsidies and Countervailing Measures. This was the major objective of the U.S. aerospace industry, whose competitors have in the past benefited from huge government subsidies.

Since the conclusion of the Uruguay Round, there have been some additional negotiating efforts in Geneva to substantively revise the Aircraft Agreement. The United States proposed revisions to limit government support and clarify provisions of the GATT Aircraft Agreement that apply to government intervention in aircraft marketing. There has been little progress in those negotiations.

The Aircraft Agreement has been incorporated without revision into the WTO. Therefore there have been efforts by the Signatories to update or

rectify the Agreement to correctly reference WTO instruments. The United States supports those efforts, so long as the current balance of rights and obligations are preserved, and the relationship between the Aircraft Agreement and other WTO agreements is maintained.

The United States has used the Committee as a forum to seek clarity about allegations of financial supports offered by other Signatories to competitors, as well as governmental inducements to obtain purchase contracts. In 2003, the United States proposed improvements to Article 4 of the Aircraft Agreement to bring greater clarity to the term “inducements,” and to improve communication between parties by creating effective mechanisms to exchange information and address concerns.

Major Issues in 2004

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 2004, the Aircraft Committee met twice.

The Aircraft Committee continued to consider proposals to revise terminology in the Aircraft Agreement to conform with the Uruguay Round agreements and a Canadian proposal to redefine civil vs. military aircraft. The Committee also considered a U.S. proposal to consider factors that could facilitate the effectiveness of Article 4 with regard to inducements.

Prospects for 2005

The United States will continue to encourage observers and other WTO Members to become Signatories to the Aircraft Agreement, including Oman, Albania and Croatia, which committed to become Signatories pursuant to their protocols of WTO accession.

⁴³ At the June 2004 meeting of the Committee on Trade in Civil Aircraft, the representative from the European Communities announced that the ten countries that had become members of the European Union on 1 May 2004 were automatically linked by the Agreement on Trade in Civil Aircraft Agreement by means of the extension of the territory of the European Union. However, six of the ten countries (Poland, Hungary, Czech Republic, Slovenia, Cyprus, and Slovak Republic) have not deposited an instrument of accession to the Agreement. The United States submitted written questions seeking a clarification of this item.

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. Thirty-eight WTO Members are covered by the Agreement: the United States; the European Union and its 25 Member States (Austria, Belgium, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom); the Netherlands with respect to Aruba; Canada; Hong Kong, China; Iceland; Israel; Japan; Liechtenstein; Norway; the Republic of Korea; Singapore; and Switzerland.

Nine WTO Members are in the process of acceding to the GPA: Albania, Bulgaria, Chinese Taipei, Georgia, Jordan, the Kyrgyz Republic, Moldova, Oman, and Panama. Five additional WTO Members have provisions in their respective Protocols of Accession to the WTO regarding accession to the GPA: Armenia, China, Croatia, the Republic of Macedonia, and Mongolia.

Twenty WTO Members, including those in the process of acceding to the GPA, have observer status in the Committee on Government Procurement: Albania, Argentina, Armenia, Australia, Bulgaria, Cameroon, Chile, China, Colombia, Croatia, Georgia, Jordan, the Kyrgyz Republic, Moldova, Mongolia, Oman, Panama, Sri Lanka, Chinese Taipei, and Turkey.

Cumulative Assessment Since the WTO Was Established

Since the WTO’s establishment, the number of participants to the GPA has increased to cover 38 WTO Members, with the accessions of Iceland and the Netherlands with respect to Aruba, and the enlargement of the European Union to include 10 new member states: Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, and Slovenia.

The Committee devoted significant time and resources in carrying out the directive in GPA Article XXIV:7(b) for the Parties to undertake further negotiations with a view to improving the text of the Agreement. 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 a result, 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 the Agreement. The United States has played a principal role in advocating significant streamlining and clarification of the GPA’s procedural requirements, while continuing to ensure full transparency and predictable market access. The United States’ proposal for a major restructuring and streamlining of the GPA has served as the framework for the Committee’s subsequent work on the revision of the text. The Committee has made significant progress in preparing a revision of the GPA.

With the significant advancement of its work on improving the GPA text, the Committee has developed an ambitious work plan for expanding market access under the GPA, which it launched at the end of 2004.

Major Issues in 2004

The Committee held four formal meetings in 2004 (in April, July, November, and December) and five informal meetings (in February, April, June, October, and November). The Parties focused primarily on the simplification and

improvement of the GPA, with the overall objective of promoting increased membership in the GPA by making it more accessible to non-Parties. During 2004, 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.

Coverage of the GPA was extended on May 1, 2004, to 10 additional WTO Members as a result of the enlargement of the European Union to include the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, and Slovenia.

GPA Article XXIV:7(c) calls for the Parties to undertake further negotiations with a view to achieving the greatest possible extension of its coverage among all Parties and eliminating remaining discriminatory measures and practices. In July 2004, the Committee adopted Modalities for the Negotiations on Extension of Coverage and Elimination of Discriminatory Measures and Practices. It provides that each Party will submit requests to the other Parties for improvement in coverage by November 30, 2004, and its initial offer by May 1, 2005. Following bilateral negotiations, revised and improved offers are to be submitted by the end of October 2005.

Jordan's accession to the GPA was advanced with its submission of a revised entity offer in September 2004 and two rounds of informal plurilateral consultations between Parties and Jordan in April and October 2004.

The Committee granted Israel an additional year to reduce the level of its offsets from 30 percent to 20 percent. Israel is now required to reduce the level of its offsets to 20 percent by January 1, 2006.

As provided for in the GPA, the Committee monitors participants' implementing legislation. In 2004, the Committee continued its review of the national implementing legislation of the Netherlands with respect to Aruba.

Prospects for 2005

In 2005, the Committee will hold four informal meetings, which will focus on two major activities: completion of the major portion of the revision of the text of the GPA and the initiation of market access negotiations to expand the coverage of the GPA.

The Committee plans to hold informal plurilateral consultations with Jordan and Georgia as part of efforts to advance their respective accessions to the GPA. In 2005, the Committee will also continue its review of the legislation of the Netherlands with respect to Aruba.

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

Status

The Information Technology Agreement (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 64 participants representing more than 95 percent of world trade in information technology products.⁴⁴ The Agreement covers computers and computer equipment, electronic components including semiconductors, computer software products, telecommunications equipment,

⁴⁴ ITA participants are: Albania; Australia; Austria; Bahrain; Belgium; Bulgaria; Canada; China; Costa Rica; Croatia; Cyprus; Czech Republic; Denmark; Egypt; El Salvador; Estonia; European Communities (on behalf of 25 Member States); Finland; France; Georgia; Germany; Greece; Hong Kong, China; Hungary; Iceland; India; Indonesia; Ireland; Israel; Italy; Japan; Jordan; Republic of Korea; Krygyz Republic; Latvia; Liechtenstein; Lithuania; Luxembourg; Macau, China; Malaysia; Malta; Mauritius; Moldova; Morocco; Netherlands; New Zealand; Norway; Oman; Panama; Philippines; Poland; Portugal; Romania; Singapore; Slovak Republic; Slovenia; Spain; Sweden; Switzerland; Chinese Taipei; Thailand; Turkey; United Kingdom; and the United States.

semiconductor manufacturing equipment and computer-based analytical instruments.

Cumulative Assessment Since the WTO Was Established

Since its conclusion in 1996, the Information Technology Agreement has grown from 29 to 63 participants. At its inception, 29 countries or separate customs territories signed the declaration creating the ITA. At the time, the 29 signatories to the declaration accounted for only 83 percent of world trade in information technology products, but in the following months, a number of other Members agreed to participate, bringing the total world trade covered by participants to 90 percent. Today, the volume of global trade covered by participating Members has grown to more than 95 percent. The creation of the ITA in 1996 signaled the growing importance of this highly-traded sector and has created a forum for Members with an interest in information technology to discuss market access issues among a group of interested parties. Since its first meeting in 1997, the Committee on the Expansion of Trade in Information Technology Products has undertaken work on non-tariff barriers, tariff classification, and discussed expansion of the agreement to include new technologies.

Major Issues in 2004

The WTO Committee of ITA Participants held four formal meetings in 2004, 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.

Morocco completed its application for participation in the ITA in 2004 and as a result of EU Enlargement, Hungary and Malta became ITA participants upon joining the European Union.

At its meeting in June, the Committee agreed to hold an IT Symposium in order to update ITA

participants and other WTO Members on developments in information technology, to elicit updated information on the nature of non-tariff barriers to trade in IT products, and to assess the role of IT trade in supporting development in those markets where liberalization has occurred. The Symposium was held October 18-19, 2004. The Symposium was widely attended by both industry and government representatives and focused on new technologies developed since the agreement was established and how to narrow the digital divide between developed and developing countries.

The Committee continued work on the Non-Tariff Measures (NTMs) Work Programme and adopted guidelines on best practices for EMC/EMI (electro-magnetic compatibility/electro-magnetic immunity) conformity assessment procedures.

The Committee also continued its work to reconcile classifications by ITA participants of certain information technology products where Members have applied divergent Harmonized System (HTS) classification. The Secretariat updated and categorized its compilation of the list of divergences and Committee participants were able to significantly narrow the list of unresolved products. Customs experts will continue to discuss the treatment of each category of products through 2005.

Prospects for 2005

The Committee's work program on non-tariff measures will continue to be an important focus of work in 2005, potentially with more work to continue in the EMC/EMI area in the year to come. Committee participants will continue to determine whether there are other issues that should be pursued and how work on non-tariff measures in the ITA context can be coordinated with the Doha negotiations. Building on the success of the October 2004 Symposium, participants will continue to discuss how to address some of the issues discussed in that forum, specifically (1) how to pursue tariff liberalization for new technologies in the context of the ITA and the Doha Development Agenda and (2) how to broaden developing country

participation in the ITA. Participants will also continue to work on reconciling divergent tariff classifications for ITA products with an aim to narrow the list of products under discussion. Throughout 2005, the Committee will continue to undertake its mandated work, including reviewing new applicants' tariff schedules for ITA participation and addressing further technical classification issues. The next formal meeting of the Committee will be in February 2005. A number of additional WTO Members are actively working on proposals to join the ITA in 2005.

III. Bilateral and Regional Negotiations

A. Free Trade Agreements

1. Australia

Negotiations on the United States-Australia Free Trade Agreement (FTA) began in March 2003, and President George W. Bush and Prime Minister John Howard made it a priority to conclude the agreement as quickly as possible. The negotiations were completed on February 8, 2004, and U.S. Trade Representative Robert B. Zoellick and Australia's Trade Minister Mark Vaile signed the agreement on May 18, 2004. With strong bipartisan support, the U.S. House of Representatives passed the United States-Australia Free Trade Agreement Implementation Act (H.R. 4759) on July 14, 2004, and the U.S. Senate approved the legislation on July 15, 2004. President Bush signed the measure into law on August 3, 2004 (P.L. 108-286). Australia's Parliament approved implementing legislation in August 2004, and the Australian government took further action to implement the intellectual property chapter in December 2004. The FTA entered into force on January 1, 2005.

The United States-Australia FTA is the first FTA between the United States and a developed country since the United States-Canada Free Trade Agreement in 1988. Australia is a large and growing trade and investment partner of the United States. Two-way annual goods and services trade is nearly \$29 billion, a 53 percent increase since 1994. Australia purchases more goods from the United States than from any other country. In 2003, the United States enjoyed a bilateral goods and services trade surplus of \$9 billion.

The FTA chapters cover industrial and agricultural goods, services, financial services, textiles, rules of origin, customs administration, sanitary and phytosanitary (SPS) measures, technical barriers to trade, investment, telecommunications, competition policy, government procurement, electronic commerce,

intellectual property rights, labor, environment, transparency obligations, and dispute settlement.

Manufactured goods currently account for 93 percent of the total value of U.S. goods exports to Australia. When the FTA entered into force, duties on more than 99 percent of tariff lines covering industrial and consumer goods were eliminated. Duties on remaining manufactured goods will be phased out over periods of up to 10 years. The FTA will bring immediate benefits to key U.S. manufacturing sectors, including autos and autos parts; chemicals, plastics, and soda ash; construction equipment; electrical equipment and appliances; fabricated metal products; furniture and fixtures; information technology products; medical and scientific equipment; non-electrical machinery; and paper and wood products. For duties on textiles and apparel to be eliminated, the goods must meet the FTA's yarn-forward rule of origin. The agreement also requires the elimination of a variety of non-tariff barriers that restrict or distort trade flows.

The FTA achieves a balanced approach for agriculture, providing expanded export opportunities for a range of U.S. agricultural goods, while responding to U.S. import sensitivities. Duties on all U.S. agricultural exports to Australia, which totaled nearly \$700 million in 2003, were eliminated immediately upon entry into force of the Agreement. U.S. duties will be maintained on Australian sugar and certain dairy products. In addition, for certain products imported from Australia, including beef, dairy, cotton, peanuts and certain horticultural products, the Agreement includes other mechanisms, such as preferential tariff-rate quotas and safeguards. The Agreement also establishes a new forum for scientific cooperation between U.S. and Australian authorities to resolve specific bilateral animal and plant health matters based on science and with a view to facilitating trade.

Services suppliers will enjoy the benefits of expanded Australian commitments for access to its market, including in the advertising, asset management, audio visual, computer and related services, education and training, energy, express delivery, financial services, professional services, telecommunications, and tourism sectors. U.S. financial service suppliers already enjoy a significant presence in the Australian market through subsidiaries, joint ventures and branches, and Australia agreed to provide new rights for life insurance branching. In addition, Australia and the United States agreed to high standards for regulatory transparency, including procedures applying to licensing systems.

The FTA also establishes a secure, predictable legal framework for U.S. investors operating in Australia. Moreover, all U.S. investment in new businesses is exempted from screening under Australia's Foreign Investment Review Board. Thresholds for acquisitions by U.S. investors in nearly all sectors are raised significantly, from A\$50 million to A\$800 million, exempting the vast majority of transactions from screening. Australia also will lock-in existing good practice regarding review of acquisitions in the banking and insurance sectors. In recognition of the unique circumstances of this Agreement – including, for example, the longstanding economic ties between the United States and Australia, their shared legal traditions, and the confidence of their investors in operating in each others markets – the two countries agreed not to adopt procedures in the Agreement that would allow investors to access international arbitration for disputes with governments. Government-to-government dispute settlement procedures remain available to resolve investment-related disputes.

The FTA has other significant features. On electronic commerce, this is the first Agreement to include provisions on facilitating authentication of electronic signatures, encouraging paperless trade and establishing a program for cooperation on other electronic commerce issues. Regarding intellectual property rights, the FTA complements and enhances existing international standards for the protection of intellectual property and the

enforcement of intellectual property rights, consistent with U.S. law. In addition, under the FTA's government procurement provisions, U.S. suppliers are granted non-discriminatory rights to bid on contracts to supply Australian Government entities, including all major procuring entities and administrative and public bodies, and tendering procedures must be conducted in a transparent, predictable, and fair manner. The Agreement also proscribes anticompetitive business conduct, and sets out basic procedural safeguards and rules against harmful conduct by government-designated monopolies and establishes special rules covering state enterprises to deter abuse that may harm the interests of U.S. companies or discriminate in the sale of goods and services.

Under the labor provisions of the FTA, Australia and the United States reaffirmed their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO Declaration on Fundamental Principles and Rights at Work, and agreed to strive to ensure that their laws protect the fundamental labor principles embodied in the ILO Declaration and listed in the Agreement. The FTA's environmental provisions commit Australia and the United States to ensure that their domestic environmental laws provide for high levels of environmental protection and strive to continue to improve such laws.

The FTA contains innovative provisions relating to public health and pharmaceuticals, whereby the United States and Australia affirmed their commitment to several basic principles related to their shared objectives of facilitating high quality health care and improvements in public health. The FTA also requires that federal health care programs apply transparent procedures in listing new pharmaceuticals for reimbursement. In addition, the two countries will establish a Medicines Working Group to promote discussion and understanding of pharmaceutical issues. Government procurement of pharmaceuticals is covered by the Government Procurement chapter rather than by the pharmaceutical-specific provisions of the Agreement. Australia will also establish and maintain procedures enhancing transparency and

accountability in the listing and pricing of pharmaceuticals under its Pharmaceutical Benefits Scheme, including establishment of an independent review process for listing decisions.

Increased access to Australia's market under the FTA will greatly boost trade in both goods and services, enhancing employment opportunities in both countries. The FTA also will encourage additional foreign investment flows between the United States and Australia, and streamline mutual access in intellectual property, services, government procurement, and electronic commerce. All 50 U.S. states export to Australia, and Australia is among the top 25 export destinations for 48 of the 50 states.

2. Morocco

In April 2002, President Bush and King Mohammed VI agreed to pursue a Free Trade Agreement (FTA) between the United States and Morocco. On June 15, 2004, U.S. Trade Representative Robert B. Zoellick and Minister Taib Fassi Fihri signed the completed Agreement. The U.S. Congress subsequently enacted legislation approving and implementing the Agreement and in August 2004 the President signed this legislation. The Moroccan Parliament ratified the Agreement in January 2005 and the Agreement is expected to enter into force in 2005. The FTA with Morocco is 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. It is the first FTA to be approved under the President's Middle East Free Trade Area (MEFTA) initiative, and is an important step towards forming the MEFTA by 2013.

In support of the economic and political reforms undertaken by Morocco, the United States has funded \$2.95 million in technical assistance projects carried out by the International Labor Organization (ILO) to strengthen industrial

relations and labor administration practices. Additionally, the United States has funded a \$3 million project aimed to combat child labor through education and a \$2 million project focused on combating exploitative child labor in rural areas.

3. 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 growth in real GDP estimated for 2004 is 5.2 percent,⁴⁵ up from 3.3 percent in 2003 and 2.2 percent in 2002.

Two-way trade in goods (exports plus imports) between the United States and Chile totaled an estimated \$8.1 billion in 2004,⁴⁶ with the United States in deficit by \$1.0 billion. Two-way trade in services in 2003 (latest year available) amounted to \$1.7 billion, with the United States in surplus by \$0.4 billion. Since 1994, U.S. goods trade with Chile has expanded by 77 percent (to 2004) and services trade by 7 percent (to 2003).

U.S. Trade Representative Robert B. Zoellick and Chilean Foreign Minister Soledad Alvear signed the United States.-Chile Free Trade Agreement (FTA) on June 6, 2003. It was the first comprehensive FTA between the United States and a South American country. The United States-Chile FTA entered into force on January 1, 2004.

The United States-Chile FTA eliminates tariffs and opens markets, reduces barriers for services, provides cutting-edge protection for intellectual property, keeps pace with new technologies, ensures regulatory transparency, provides explicit guarantees for electronic commerce and digital products, commits the Parties to maintain competition laws that prohibit anti-competitive

⁴⁵ Source: Global Insight.

⁴⁶ Annualized based on 10 months' data.

business conduct, and provides effective labor and environmental enforcement. Under the FTA, American workers, consumers, investors, manufacturers, and farmers 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 duty free. 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, including agricultural and construction equipment, autos and auto parts, computers and other information technology products, medical equipment, and paper products. 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. The agreement provides immediate duty-free treatment for U.S. apples, pears, peaches, cherries, grapes, lettuce, broccoli, almonds, pistachios, walnuts, oranges, and grapefruit. U.S. exports to Chile have increased 32 percent from January 2004 through October 2004 and Chilean exports to the United States have increased almost 23 percent in that same period.

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 that provided for in past agreements in the region.

The agreement establishes a secure, predictable legal framework for U.S. investors, and provides for 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.

U.S. Trade Representative Robert B. Zoellick and Foreign Minister Alvear held the first meeting of the United States-Chile Free Trade Commission on June 3, 2004. They reviewed various aspects of the implementation of the FTA. The Agreement provides for the creation of a number of specialized committees to resolve problems, exchange information, and promote trade. The Ministers concluded that good progress was being made in establishing those groups and in other technical aspects of implementation.

During 2004, the United States and Chile held a series of meetings on implementation of Chile's FTA obligations in the area of intellectual property, specifically data protection. The United States will continue to work with the Chilean government to ensure full implementation.

The FTA also requires that both governments effectively enforce their own domestic environmental laws, and this obligation is enforceable through the FTA's dispute settlement procedures. It establishes a framework for cooperative environmental projects that will help protect wildlife, reduce hazards, and promote internationally recognized labor laws. The United States and Chile are working to implement the eight environmental cooperation projects outlined in the FTA. In January 2004, the governments sponsored a workshop on corporate environmental stewardship in Santiago, Chile. In September, the U.S. Department of Justice and the Chilean Consejo de Defensa del Estado, in cooperation with the Environmental Law Institute, held a workshop on environmental law enforcement focusing on judicial actions to restore and recover compensation for damage to the environment and natural resources. Both events

included opportunities for civil society participation.

The FTA requires that both governments effectively enforce their own domestic labor laws, and this obligation is enforceable through the FTA's dispute settlement procedures. The FTA establishes a cooperative mechanism to promote respect for the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work, and compliance with ILO Convention 182 on the Worst Forms of Child Labor. The first Labor Affairs Council meeting under the FTA was held in Santiago on December 15-16, 2004. The meeting provided a forum for governments to discuss the implementation of the FTA labor provisions and the current status of the existing technical assistance project to promote compliance with labor laws and standards. The governments discussed new areas of cooperation and approved an activities plan under the Labor Cooperation Mechanism. The Council also held an open session providing an opportunity to explain the FTA implementation process to the general public and the press. After the Council meeting, a Seminar on Industrial Relations in Chile and the United States was held on December 17, 2004. The seminar provided an opportunity for government officials, business, labor, and the general public to increase their knowledge of the countries' systems and practices. Both delegations included government, worker, and business representatives.

4. Singapore

The United States-Singapore Free Trade Agreement, the first comprehensive U.S. FTA with an Asian nation, entered into force on January 1, 2004. President Bush and then Prime Minister Goh had previously signed the agreement on May 6, 2003. The United States-Singapore FTA Implementation Act was passed with strong bipartisan support by the U.S. Congress and was signed by President Bush on September 3, 2003.

Singapore is our 12th largest trading partner, with two-way trade of goods and services exceeding \$40 billion. The provisions of the United States-Singapore FTA build on the WTO and NAFTA and make important advances in many key areas. Most tariffs were eliminated immediately upon entry into force of the Agreement, with the remaining tariffs phased out over a 3-to-10-year period. More than 97 percent of U.S.-Singapore trade in goods is now free of duty. The FTA chapters cover trade in 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.

Trade grew during the first year of the FTA. On an annualized basis, U.S. exports to Singapore grew by more than 16 percent, while U.S. imports from Singapore grew by more than 3 percent. There have been significant increases in U.S. exports of chemicals, including plastics, cosmetics, and pharmaceuticals; fish; construction equipment; building products; accessories; paper and other forest products; consumer goods; travel goods; scientific equipment; infrastructure machinery; and medical equipment. Three sectors in particular have had very significant increases in exports from the United States, including a 62 percent increase (valued at \$1.7 billion) in exports of information technology equipment, an 86 percent increase (valued at \$265 million) in exports of minerals and fuel, and a 99 percent increase (valued at \$7.3 million) in exports of furniture.

The FTA provides strong disciplines in the most competitive U.S. services sectors. U.S. firms now enjoy improved market access, a more 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. It provides a secure legal environment for U.S. investors operating in Singapore, explicit guarantees on the treatment of electronic commerce and digital products, enhanced protection for intellectual property, specific commitments regarding the conduct of Singapore's government enterprises, and commitments to strong and transparent disciplines on government procurement procedures. The Agreement also includes strong and transparent rules of origin, firm commitments to combat illegal transshipments of all traded goods and prevent circumvention for textiles and apparel, 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 FTA.

Implementation of the provisions of the agreement has proceeded during 2004 according to the time frames contemplated in the FTA. Singapore has made changes to a wide variety of laws to implement its commitments. Singapore also sought public comment on its draft legislation. U.S. industries were particularly interested in Singapore's intellectual property and competition legislation and provided comments to the Singapore Government on its drafts. Extensive government-to-government discussions were held in 2004 and will continue in 2005 on these issues.

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 FTA will not only improve market opportunities for U.S. goods and services exports, but it will also encourage trade liberalization, regulatory reform, and transparency in the region, including under the Enterprise for ASEAN Initiative.

5. Jordan

The United States and Jordan continued their efforts in 2004 to help their business communities take advantage of the opportunities afforded by the United States-Jordan Free Trade Agreement (FTA), which went into effect in December 2001. These efforts included a meeting in July 2004 of the United States-Jordan FTA Joint Committee. 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.

While the FTA is a key part of the United States-Jordan economic relationship, it is just one component of an extensive United States-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. U.S. efforts to support Jordan's rapid and successful WTO accession were followed on the bilateral front by the conclusion of the United States-Jordan Trade and Investment Framework Agreement and a Bilateral Investment Treaty. Qualifying Industrial Zones (QIZs) are another important example of successful United States-Jordanian efforts to boost Jordan's economic growth and promote peace in the Middle East.

These measures have played a significant role in boosting United States-Jordanian economic ties. In 1998, U.S. imports of goods from Jordan totaled only \$16 million. By 2003, U.S. goods imports had increased to \$673 million, and are expected to top \$1 billion in 2004. In 2003, U.S. goods exports to Jordan were \$492 million, up 22 percent from 2002.

6. Israel

In 2004, the United States and Israel concluded negotiations on a new bilateral agreement on trade in agricultural products. This new

agreement supercedes the 1996 Agriculture Agreement. As a result of the gains under the agreement, an estimated 90 percent of U.S. agricultural exports to Israel will be duty-free. The balance of U.S. exports will enter Israel under preferential tariff-rate quotas or preferential tariff rates. The United States and Israel undertook negotiations on agricultural trade to address problems arising from the two sides' disagreement as to whether or not the 1985 United States-Israel Free Trade Agreement permits either party to apply restrictions on bilateral trade in this area.

In July 2004 in Washington, the two countries held a meeting of the United States-Israel FTA Joint Committee. The FTA established the Joint Committee to bring together senior U.S. and Israeli officials to discuss and act on ways to further boost bilateral trade and investment. Issues addressed by the Joint Committee are covered in Chapter III, Middle East Overview.

7. Central America and the Dominican Republic

Free trade agreement negotiations with Central America and the Dominican Republic were concluded in 2004. In December 2003, the United States concluded negotiations with El Salvador, Guatemala, Honduras and Nicaragua. Talks with Costa Rica continued into 2004, and concluded at the end of January, 2004. Subsequently, the United States and the Dominican Republic held three rounds of market access negotiations between January and March 2004 to integrate the Dominican Republic into the free trade agreement.

The resulting free trade agreement (FTA) with Central America and the Dominican Republic (CAFTA-DR) is the first FTA between the United States and a group of smaller developing economies that are important trading partners with the United States. The CAFTA-DR is a regional trade agreement among all seven signatories, and will contribute to the transformation of a region that was consumed by internal strife and border disputes just a decade ago but is now a successful regional economy

with flourishing democracies. This historic agreement will create new economic opportunities by eliminating tariffs, opening markets, promoting transparency, and establishing state-of-the-art rules for 21st century commerce. It will facilitate trade and investment among the countries and further regional integration. The CAFTA-DR will not ease U.S. immigration laws and regulations.

The region covered by this agreement buys more than \$15 billion in U.S. exports annually. In 2003, combined total two-way trade between the United States and the countries of Central America and the Dominican Republic was \$32 billion.

Throughout the negotiations, U.S. officials consulted closely with Congress, industry representatives, and labor and environmental groups to ensure the FTA advanced U.S. interests and reflected the goals contained in the Trade Act of 2002. President Bush notified Congress of his intent to enter into an FTA with Central America on February 20, 2004. On March 25, 2004, President Bush formally notified Congress of his intent to enter into an FTA with the Dominican Republic.

On August 5, 2004, U.S. Trade Representative Robert B. Zoellick signed the CAFTA-DR, which integrated the five Central American countries and the Dominican Republic into a single agreement. The Administration plans to submit the CAFTA-DR for congressional approval in 2005. El Salvador was the first CAFTA-DR partner to ratify the agreement, in December 2004.

Under the CAFTA-DR, more than 80 percent of U.S. consumer and industrial goods will enjoy tariff-free access to Central America and the Dominican Republic immediately upon entry into force, with remaining tariffs phased out over 10 years. 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 and the Dominican Republic. Virtually all Central American and Dominican

nonagricultural goods will receive immediate duty-free access to the U.S. market.

More than half of current U.S. farm exports to Central America and the Dominican Republic will become duty-free immediately, including high quality cuts of beef, cotton, wheat, soybeans, key fruits and vegetables, processed food products, and wine. 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 existing law, the United States provides duty-free treatment to over 99 percent of Central American and Dominican Republic agricultural exports into the U.S. market. This treatment will be maintained under the agreement. Duty-free access for other products will be phased in over time, with the exception of sugar, where liberalization is handled through a slowly expanding tariff-rate quota. Approval of the CAFTA-DR would not have a destabilizing effect on the U.S. sugar program.

Under the agreement, the Central American countries and the Dominican Republic will accord substantial market access across their entire services regime, subject to very few exceptions, including for telecommunications, express delivery, and computer and related services. The agreement disciplines the use of dealer protection regimes, reducing significant barriers to distribution in the region. It maintains market openness and prohibits cross-subsidies for express delivery services. U.S. financial service suppliers will have non-discriminatory 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 obligations under WTO TRIPS.

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 and Dominican Republic government entities.

With respect to labor and the environment, all Parties commit to not fail to effectively enforce their domestic labor and environment laws. An innovative enforcement mechanism provides for monetary assessments to enforce this obligation where a dispute settlement panel finds a Party to be in breach and the Party fails to come into compliance in a reasonable period of time. Under this mechanism, such assessments would be expended in the territory of the Party in question to help bring it into compliance with its labor or environment obligation. The commission that oversees implementation of the Agreement would decide collectively on the projects on which to spend the proceeds of an eventual assessment.

In addition, the agreement establishes a framework for cooperative environmental projects, and a labor cooperation mechanism, and it promotes internationally recognized labor standards. CAFTA-DR includes unprecedented provisions that improve access to procedures that provide for fair, equitable and transparent proceedings in the administration of labor laws, protecting the rights of workers and employers -- including American investors. The language in the labor chapter of the CAFTA-DR is stronger and more comprehensive than earlier FTAs negotiated by the United States, such as Jordan and Chile. The CAFTA-DR takes a more proactive approach than the Chile and Singapore FTAs obligating the Parties to not fail to effectively enforce existing labor laws, working to improve practices affecting key labor rights, and building local capacity to improve protections for workers. As part of the capacity-building effort, the U.S. Department of Labor is funding a 3-year, \$7.75 million project to increase public awareness of labor laws, improve inspection systems, and promote the use of alternative dispute resolution mechanisms in the CAFTA-DR countries.

8. Bahrain

On May 21, 2003, the United States and Bahrain announced their intention to negotiate a Free Trade Agreement (FTA). On September 14, 2004, after four months of negotiations, U.S. Trade Representative Robert B. Zoellick signed a completed FTA. The 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 Arabian Gulf. The FTA with Bahrain will also promote the President's initiative to advance economic reforms and openness in the Middle East and the Gulf and to establish a Middle East Free Trade Area (MEFTA) by 2013. The U.S. Congress and Bahraini Parliament must approve the agreement in 2005. The U.S.-Bahrain Bilateral Investment Treaty (BIT), which took effect in May 2001, covers investment issues between the two countries.

9. Panama

On November 18, 2003, after consulting with relevant congressional committees and the Congressional Oversight Group, the Office of the United States Trade Representative notified the Congress of the President's intent to initiate free trade agreement negotiations with Panama and identified specific objectives for these negotiations. On April 26, 2004, the United States and Panama launched negotiations in Panama City to conclude a United States-Panama Free Trade Agreement. A total of six rounds of negotiations were held during 2004. Throughout the process, negotiators have consulted closely with Congress, industry representatives, and labor and environmental groups to ensure the FTA advances U.S. interests and, that in its final provisions, it will reflect the goals contained in Bipartisan Trade Promotion Authority Act of 2002.

10. Andean Countries

On November 18, 2003, after consulting with relevant congressional committees and the Congressional Oversight Group, the Office of the United States Trade Representative notified the Congress of the President's intent to initiate free trade agreement negotiations with Colombia, Peru, Ecuador, and Bolivia and identified specific objectives. Negotiations on the United States-Andean Free Trade Agreement were launched on May 18, 2004 in Cartagena, Colombia. Through 2004 there were five additional negotiating rounds. Currently, the United States is negotiating with the governments of Colombia, Peru, and Ecuador, with Bolivia observing the negotiations. The Administration's intent is to include Bolivia in the agreement at an appropriate stage.

The Andean region is important to the United States for a variety of reasons. One is simply its size and economic scale. The four countries have a combined population of about 93 million people, which is about a third of that of the United States, and a combined gross domestic product, on a purchasing power parity basis, of about \$453 billion.

The United States already has significant economic ties to the region. Our exports to the Andean negotiating partners totaled an estimated \$9.8 billion in 2004, and our imports \$15.3 billion. Colombia is the largest market for U.S. agricultural exports in South America. Energy supplies from the Andean region help reduce our dependence on Middle East oil. The United States has over \$7.2 billion (2003 latest data available) of foreign direct investment in the region.

The United States has a significant stake in the success of the region and stands to gain substantially from a lowering of barriers in the markets of the Andean countries, as there is much unrealized potential for U.S. exports to the region. The Administration is addressing these issues in the FTA negotiation, to the benefit of U.S. companies, workers and farmers. An FTA also holds the potential to help the region meet

its own needs, helping solidify stable democracies as allies in facing our many common challenges. Throughout the process, negotiators have consulted closely with Congress, industry representatives, and labor and environmental groups to ensure the FTA advanced U.S. interests and, that in its final provisions, it will reflect the goals contained in Bipartisan Trade Promotion Authority Act of 2002.

11. United Arab Emirates

After consulting with Congress in September 2004, U.S. Trade Representative Robert B. Zoellick announced on November 15, 2004, that the United States intends to negotiate a Free Trade Agreement (FTA) with the United Arab Emirates (UAE). The negotiations are expected to begin in early 2005. An FTA with the UAE will build on existing FTAs to promote the President's Middle East Free Trade Area (MEFTA) initiative to advance economic reforms and openness in the Middle East and the Persian Gulf, and to establish a regional free trade area 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 solidifying the UAE's trade and investment liberalization. The United States plans to pursue an aggressive negotiation timetable, building on the high-quality FTA reached with Bahrain.

12. Southern Africa

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, Swaziland (BLNS), and South Africa—comprise the largest U.S. export market in sub-Saharan Africa, with \$2.9 billion in U.S. exports in 2003. The negotiations began in Pretoria, South Africa in June 2003, and five subsequent rounds have been held since then. The last full negotiating

round was held in June 2004. Since the last full round, there have been several high-level discussions and meetings on the FTA, including a December 2004 Ministerial meeting in Walvis Bay, Namibia, that U.S. Trade Representative Robert B. Zoellick attended. This FTA – which would be the first 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. Trade capacity building efforts are being undertaken to help these countries participate in the negotiations more effectively and will be key in helping them implement their commitments under the agreement and benefit from free trade. By building on the success of AGOA, the SACU countries would secure the kind of guaranteed access to the U.S. market that supports long-term investment and economic prosperity. The FTA would also reinforce ongoing regional economic reforms and integration among the SACU countries.

13. Oman

After consulting with Congress in September 2004, U.S. Trade Representative Robert B. Zoellick formally notified Congress on November 15, 2004 that the United States intends to negotiate a Free Trade Agreement (FTA) with Oman. The negotiations are scheduled to begin in early 2005. An FTA with Oman will build on existing FTAs to 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 Oman's economic and political reforms. The United States plans to pursue an aggressive negotiation timetable, building on the high-quality FTA reached with Bahrain.

14. Thailand

In October 2003, President Bush announced his intent to enter into FTA negotiations with

Thailand, reaffirming his commitment under the Enterprise for ASEAN Initiative (EAI) to strengthen trade ties with countries in the ASEAN region that are actively pursuing economic reforms. The United States and Thailand held two rounds of FTA negotiations in 2004, beginning discussions on all chapters of the FTA and making initial progress. FTA negotiations will continue in 2005. An agreement with Thailand, which is currently the United States' 19th largest trading partner, will significantly increase trade in goods and services, create more commercial opportunities for U.S. exporters, particularly agricultural product exporters, and reduce or eliminate barriers in many sectors. A United States-Thailand FTA also will enhance investment flows by ensuring a stable and predictable environment for investors. Significantly, an FTA will strengthen longstanding economic and security ties between our countries.

B. Regional Initiatives

1. Free Trade Area of the Americas (FTAA)

The year 2004 was the second year of the U.S. and Brazil Co-Chairmanship of the FTAA negotiating process. At a November 2003 Trade Ministerial meeting in Miami, Ministers agreed to a new framework intended to give negotiators more flexibility in handling differences in the economic and political situations across the hemisphere. Countries participating in the FTAA process were subsequently to develop guidance for the negotiation of core common rights and obligations applicable to all 34 countries, as well as procedures for negotiating additional provisions among interested countries beyond that core.

The United States, Brazil and others participated in several formal and informal meetings during 2004 to achieve consensus on elaborating the Miami framework. These included a meeting of the vice-ministerial level Trade Negotiations Committee (TNC) in February, which recessed after several days to allow for further reflection

and work among groups of key countries; two informal group meetings in March and April; and U.S.-Brazilian Co-Chair consultations in May. While there was some progress, discussions on the guidance for the "common set" negotiations were marked by disagreement about scope and ambition. In these discussions, the United States argued for balanced and sufficiently robust core rights and obligations to ensure the FTAA achieves its economic growth and integration objectives, and we have joined others in suggesting ways to bridge the gaps and accommodate different points of view, consistent with the Miami framework.

In the late Fall of 2004, U.S. Trade Representative Robert B. Zoellick again took the initiative to suggest to his Brazilian counterpart the resumption of discussions on how best to achieve consensus among the 34 governments. The Brazilian Foreign Minister agreed to meetings between the TNC Co-Chairs aimed at restarting the FTAA negotiations.

At their 2003 meeting, Ministers had instructed negotiators to continue at a pace that would lead to conclusion of market access negotiations by September 30, 2004, reaffirmed that negotiations should be completed by January 2005, and agreed that their next meeting would be hosted by Brazil in 2004. Because the negotiations were suspended during much of 2004, these timelines for the FTAA were likewise suspended. When Ministers next meet, they will have to review the status of the negotiations and consider time lines for the FTAA negotiations.

In 2004, fourteen countries seeking assistance prepared and submitted their national or subregional trade capacity building (TCB) strategies as part of the implementation of the Hemispheric Cooperation Program (HCP). Recognizing the role trade plays in promoting economic development and reducing poverty and that smaller and less developed economies require financial support to assist in adjusting to hemispheric integration, the HCP was designed to assist countries to participate in the negotiations, prepare to implement the FTAA obligations, and adjust to hemispheric integration. The TCB strategies are critical to

identifying effective programs and appropriate funding sources. They are the first steps in enhancing the capacity of requesting countries to achieve these objectives.

At their November 2003 meeting in Miami, Ministers 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 two open meetings in 2003 that focused on agriculture and services respectively - issues under discussion in the negotiations. Two more issue meetings were 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. The meeting on intellectual property rights was held in the Dominican Republic in January 2004. The meeting on market access, with special focus on small business -- was planned to be held in the United States concurrently with the next meeting of the SOC, which has not yet been scheduled. Ministers also received 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. Even while the negotiations were in hiatus, comments received from civil society were forwarded on an ongoing basis to the technical negotiators throughout the year.

Ministers at their 2003 meeting requested that the Candidate Cities for the permanent FTAA Secretariat provide information responsive to elements identified to assist the Ministers in their evaluation of sites for the Secretariat. Information from candidate cities was received by the deadline of March 1, 2004, and circulated to the 34 governments. The current U.S. candidate cities are: Atlanta, Chicago, Galveston, Houston, Miami, and San Juan.

Countries also continued during 2004 to update their information responding to the Ministerial mandates for transparency in procedures and regulations and with regard to government

contacts for the negotiations, and some inventories available on the public website (www.ftaa-alca.org) were updated as well.

2. Enterprise for ASEAN Initiative

President Bush announced in October 2002 a major new initiative, the Enterprise for ASEAN Initiative (EAI). The EAI is intended to strengthen U.S. trade and investment ties with ASEAN both as a region and bilaterally. With over \$127 billion in two-way trade in 2003, the 10-member ASEAN group already is the United States' sixth largest trading partner collectively. The EAI will further enhance our already close relationship with this strategic and commercially important region. With continued economic growth in the ASEAN countries and a regional population of around 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 offers the prospect of bilateral free trade agreements (FTAs) 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 trade and investment framework agreement (TIFA) with the United States. Since the launch of the EAI, the United States concluded an FTA with Singapore in 2003 and began FTA negotiations with Thailand in 2004. In addition, the United States and Malaysia signed a TIFA in May 2004, and announced in the fall of 2004 initiation of negotiations on a TIFA with Cambodia. The United States also has TIFAs in effect with Indonesia, the Philippines, Thailand, and Brunei Darussalam. The Administration sees progress in addressing bilateral issues under these TIFAs as important to laying the groundwork for entering into FTA negotiations with the confidence that such negotiations can be concluded successfully. In carrying out the EAI,

the key U.S. objective is to create a network of bilateral FTAs with ASEAN countries.

Under the EAI, the United States also actively supports the efforts of ASEAN members that do not yet belong to the WTO to complete their accessions successfully and take other key steps to open their economies. With United States support, Cambodia became a WTO Member in September 2003. In 2004, we continued work with Vietnam on its accession to the WTO. We also maintained support for Laos' efforts to accede to the WTO. Based on authority provided in the Miscellaneous Trade and Technical Corrections Act of 2004 we expect to extend normal trade relations (NTR) tariff treatment to products of Laos in 2005.

U.S. and ASEAN officials met in August 2003 and 2004 to discuss progress under the EAI. The United States will continue to work with ASEAN to advance the U.S.-ASEAN work program established in 2002, including efforts on intellectual property rights, customs and trade facilitation, biotechnology issues, standards (TBT) issues, agriculture, human resource development and capacity building, small and medium enterprises, and information and communications technology.

3. North American Free Trade Agreement

Overview

On January 1, 1994, the North American Free Trade Agreement between the United States, Canada and Mexico (NAFTA) entered into force. NAFTA created the world's largest free trade area, which now links 431 million people producing \$12.9 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. The closer economic relationship promoted by NAFTA also includes labor and environmental cooperation agreements, which are among the most significant that the United States has negotiated as part of a trade agreement. 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 2003, from \$142 billion to \$267 billion, significantly higher than export growth of 43 percent for the rest of the world over the same period.

By dismantling barriers, NAFTA has led to increased trade and investment, growth in employment, and enhanced competitiveness. From 1994 to 2003, cumulative Foreign Direct Investment in the NAFTA countries has increased by over \$1.7 trillion. Increased investment has brought more and better-paying jobs, as well as lower costs and more choices for consumers and producers.

Elements of NAFTA

A. Operation of the Agreement

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

The FTC held its most recent annual meeting in July 2004, in San Antonio, Texas, and marked the tenth anniversary of the entry into force of the agreement. At the meeting, the FTC reconfirmed its commitment to deepening economic integration in North America by building on the NAFTA. With virtually all tariffs and quotas on North American trade eliminated, the FTC considered additional ways to enhance trade and investment by lowering transaction costs and other administrative

burdens. Some of these initiatives are outlined below. The FTC will explore ways to further integrate the NAFTA Parties by considering initiatives in certain sectors, including manufacturing, services, business facilitation, compatibility of standards, and the further elimination of non-tariff barriers to trade.

B. Rules of Origin

In October 2003, the FTC agreed to pursue further liberalization of the NAFTA rules of origin. Since nearly all tariffs between the NAFTA Parties have been eliminated, reducing the costs associated with trade, such as those associated with compliance with rules of origin, will generate additional benefits for traders. The FTC approved a package of changes in July 2004 covering approximately \$20 billion in trilateral trade, and asked their officials to work towards implementing those changes on January 1, 2005. In addition, the FTC asked the Working Group on Rules of Origin to continue considering new requests for changes to the rules of origin from consumers and producers; and to examine the rules of origin in the free trade agreements that each country has negotiated subsequent to the NAFTA, to determine whether those rules should be applied to the NAFTA.

Officials from the NAFTA Parties are also considering changes to the NAFTA textile rules of origin that would amend the short supply provisions. If made, these would be the first changes to the textile rules of origin since the NAFTA was implemented.

C. Transparency

In October 2003, the FTC produced two statements to enhance the transparency and efficiency of investor-State arbitration under Chapter 11 of the NAFTA:

- 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.

Separately, the United States and Canada affirmed that they will consent to opening to the public hearings in Chapter 11 disputes to which either is a Party, and that they will request the consent of disputing investors to such open hearings. In 2004, a tribunal accepted written submissions from a non-disputing party for the first time and adopted the procedures that were recommended by the FTC in 2003. (The submissions were accepted in *Methanex Corporation v. United States of America*.) In addition, at the July 2004 FTC meeting, Mexico agreed to join the United States and Canada in supporting open hearings for investor-state disputes. The FTC also agreed that the same degree of openness should apply to proceedings under the Dispute Settlement provisions of Chapter 20 of the NAFTA, and asked officials of the Parties to develop rules governing open hearings for such proceedings.

Further, the FTC released the negotiating texts of Chapter 11 (i.e., the successive drafts that culminated in what is now Chapter 11), and agreed to compile the negotiating texts of other NAFTA chapters, bearing in mind that this is likely to be a time consuming project. The negotiating texts of Chapter 11 are now available on the USTR website.

D. Textiles and Apparel

At its July 2004 meeting, the FTC addressed the impending liberalization of international textile and apparel trade at the end of 2004 and asked officials to continue to consider actions, such as cumulation among countries with whom each of the three NAFTA Parties have free trade agreements, in order to enhance competitiveness. The FTC reiterated its commitment to strengthening efforts to combat illegal transshipment and will continue to explore mechanisms to increase trilateral

cooperation in this area. It encouraged the textile and apparel industries of North America to work together on identifying areas of common interest where private sector cooperation could contribute to the development of these sectors. Finally, the FTC asked officials of the Parties to report back on the prospects and opportunities for the North American textile and apparel industries.

E. 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 cooperative work programs. In addition, the Agreement created a trinational Commission for Labor Cooperation, comprised of a Ministerial Council and an administrative Secretariat.

The NAALC also provides for the review of public submissions related to labor laws in the NAFTA Parties. In April 2004, the U.S. NAO held public hearings on submission 2003-01, related to the enforcement of labor laws by Mexico. The issues raised in the submission include freedom of association and the right to organize, collective bargaining, occupational safety and health, minimum employment standards (i.e., minimum wage and overtime pay), and access to fair and transparent labor tribunal proceedings at two garment manufacturing plants located in the state of Puebla. In September 2004, the U.S. NAO issued a report on the submission, and recommended ministerial consultations between the United States and Mexico. The United States requested such consultations in October, and Mexico agreed in November.

In April 2004, the United States, Mexico, and Canada formally launched a web site as part of the Trinational Occupational Safety and Health Working Group. The Web site

(www.naalcosh.org), which can be navigated in English, Spanish or French, contains links to each government's occupational safety and health programs and practices; promotes education and public involvement; and facilitates the dissemination of information about the occupational safety and health activities of the three governments.

As part of their ongoing program of trilateral cooperation under the NAALC, the United States, Mexico, and Canada presented a conference on Trafficking in Persons in North America, hosted by the U.S. Department of Labor in Washington, D.C. The goals of the conference were to focus attention on, and raise awareness of, trafficking as a growing phenomenon in North America, exchange information on approaches by governments and nongovernmental organizations to combat trafficking, and explore opportunities for enhanced trilateral cooperation on this important issue.

F. NAFTA and the Environment

A further supplemental accord, the North American Agreement on Environmental Cooperation (NAAEC), ensures that trade liberalization 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 Parties; and (c) the Secretariat, made up of professional staff, located in Montreal, Canada. At the 2004 Council Session in Puebla, Mexico, the Council pledged to develop a strategic plan to address issues related to trade and environment, and to continue its cooperation with the NAFTA Free Trade Commission. Specific information on the CEC's activities can be found in Chapter 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 more than 100 communities throughout the United States-Mexico border region to address their environmental infrastructure needs. As of September 30, 2004, the NADB had authorized \$689.2 million in loans and/or grant resources to partially finance 83 infrastructure projects certified by the BECC with an estimated cost of \$2.3 billion.

4. Middle East Free Trade Area (MEFTA)

The United States Middle East Free Trade Area (MEFTA) initiative, 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 reignite economic growth and expand opportunity in the Middle East, the United States will take a series of graduated steps with countries in the region tailored to the level of development of each country and building on the current FTAs with Israel and Jordan, the FTAs concluded with Morocco and Bahrain, and the upcoming FTA negotiations with the United Arab Emirates and Oman. These steps include helping countries that are undertaking reforms with their accession to the World Trade Organization (WTO), enhancing access to the Generalized System of Preferences (GSP) program for eligible countries, negotiating Trade and Investment Framework Agreements (TIFAs), negotiating Bilateral Investment Treaties (BITs), negotiating comprehensive FTAs, and offering technical assistance to improve trade practices.

5. Asia Pacific Economic Cooperation

Overview

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

The United States worked closely with Chile, the APEC Chair in 2004, to lead APEC economies in pursuing an ambitious trade agenda. APEC helped solidify support for the WTO's July Package to advance the WTO's Doha Development Agenda (DDA), set high standards for free trade and regional trade agreements (FTAs, RTAs) and other preferential arrangements in the Asia-Pacific region, and committed to strengthen intellectual property protection and enforcement. The United States will work with Korea, the APEC Chair in 2005, to ensure that APEC takes concrete actions in each of these areas.

The twenty-one APEC economies collectively account for 47 percent of world trade and over 60 percent of global GDP. 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 62 percent. In 2004, two-way trade with APEC members totaled nearly \$1.5 trillion, an increase of 15 percent from 2003.

2004 Activities

Leadership in the WTO

APEC's contribution to advancing the DDA was key in 2004. APEC Trade Ministers' unambiguous support for WTO trade facilitation negotiations in June created momentum for the breakthrough achieved in Geneva in July, 2004 to accelerate work on the DDA. APEC also set priorities in the core DDA areas in order to immediately begin building support for a successful Sixth WTO Ministerial Conference in Hong Kong in December 2005.

Leaders and Ministers supported a WTO trade facilitation agreement that includes transparency, efficiency, simplification, non-

discrimination, procedural fairness, cooperation, and capacity building. They also stressed the need for substantially greater market access for both agricultural and non-agricultural goods, and supported the early abolition of agricultural export subsidies and export prohibitions and restrictions, and the substantial reduction of trade-distorting domestic support. They recognized the growing importance of services trade, and agreed that economies should submit improved revised WTO services offers by May 2005, and that any economies not yet having done so should table their initial services offers expeditiously.

The APEC Geneva Caucus emerged in 2004 as an important link between APEC and the WTO. The Caucus, comprised of ambassadors to the WTO from APEC economies, met several times in 2004, and became a valuable forum for sharing information on APEC's work and drawing Geneva's attention to specific APEC actions. The Caucus, for example, met with other WTO Members to explain APEC's support for WTO trade facilitation negotiations and the economic benefits that APEC economies have experienced from cutting red tape.

Recognizing that capacity building is a key element in advancing the DDA negotiations, Leaders and Ministers agreed to increase APEC's capacity building efforts, particularly in those areas where APEC can best add value. Several capacity building programs were conducted in 2004, including: a two-day workshop on Best Practices in capacity building for addressing WTO issues; a program examining environmental assessments of trade negotiations; and an APEC capacity building seminar on WTO Trade Facilitation. APEC is now developing a plan to evaluate the effectiveness of its WTO capacity building work.

Advancing Trade Liberalization in the APEC Region

The Santiago Initiative for Expanded Trade in APEC

In the Santiago Initiative for Expanded Trade in APEC, proposed by the United States, Leaders underscored the importance of improving regional trade liberalization and trade facilitation, and working closely with the business community in these areas. On trade liberalization, Leaders recognized that 2005 will be an important year in light of the DDA negotiations, the range of FTA negotiations in the region, and a mid-term review of economies' progress in achieving the Bogor Goals of free and open trade and investment in the region. Leaders will consider taking further actions based on developments in each of these areas. On trade facilitation, Leaders agreed to take an aggressive approach to cutting red tape by embracing customs automation, pursuing harmonized standards, and eliminating unnecessary barriers to trade. APEC will continue advancing trade facilitation negotiations in the WTO, and will seek agreement on trade facilitation best practices that economies can follow in their FTAs and Regional Trade Agreements. Leaders also agreed to better integrate trade security into APEC's work on trade facilitation to ensure objectives in both areas remain mutually supportive.

Free Trade Agreements, Regional Trade Agreements and Other Preferential Arrangements

An important issue in APEC in 2004 was the growing number of FTAs, RTAs and other preferential arrangements in the Asia-Pacific region, and the need to ensure that economies' agreements are trade-promoting and reflect high-standards. To set a high level of ambition, Leaders welcomed a set of "APEC Best Practices for RTAs and FTAs" that encourage economies to negotiate comprehensive agreements that are consistent with APEC principles and WTO disciplines. The Best Practices provide that economies' agreements

should go beyond WTO commitments and explore areas not covered by the WTO, so that APEC can provide future multilateral leadership. They also encourage developing economies' agreements to be consistent with GATT Article XXIV and GATS Article V. They foresee use by an economy of consistent rules of origin across all of its agreements wherever possible, and for economies to keep tariff and quota phase-outs for sensitive sectors to a minimum time frame.

To enhance transparency, APEC developed a new reporting format for economies to share information annually on their FTAs and RTAs. These reports will be included in the reviews of APEC members' trade and investment regimes. APEC will also study the feasibility of developing an online FTA/RTA database for the benefit of businesses, policy makers and other stakeholders.

APEC's Work on Trade and Investment Liberalization and Facilitation

APEC Leaders and Ministers took additional steps to advance trade and investment liberalization and facilitation, and made progress implementing past commitments, including those agreed to under the 2001 APEC Leaders' Shanghai Accord, a U.S.-led blueprint for APEC's trade agenda. Significant accomplishments in 2004 included:

- recognition of the importance of having strong intellectual property regimes in the Asia-Pacific region and an agreement to prioritize intellectual property protection and enforcement by taking concrete actions in 2005 to reduce piracy, trade in counterfeit goods and online piracy, and increase cooperation and capacity building;
- an agreement on a list of three IT products (multi-chip integrated circuits, digital multifunctional machines, and modems totaling upwards of \$2 billion in trade annually) to forward to the WTO for tariff elimination, and an agreement by Australia, Canada and

China to join the Leaders' Pathfinder Statement to Implement APEC Policies on Trade and the Digital Economy, making Russia the only economy remaining a non-participant in this Pathfinder;

- a government/private sector review of progress to achieve a 5 percent reduction in business transaction costs by 2006 that concluded that economies are making needed improvements, and an agreement on a plan to move to a paperless trading environment;
- an agreement on Transparency Standards on Government Procurement, for incorporation into the Leaders' 2003 Transparency Standards covering Services, Investment, Competition Law and Policy and Regulatory Reform, Standards and Conformance, Intellectual Property, Customs Procedures, Market Access, and Business Mobility, and an agreement by each economy to provide annual, detailed reports on steps they take to implement the Transparency Standards into their domestic legal regimes;
- a commitment to Fight Corruption and Ensure Transparency and to a Course of Action comprised of specific actions to implement this commitment.

APEC members prepare Individual Action Plans (IAPs) annually to report on their actions to achieve the Bogor Goals of free trade and investment by 2010 among developed APEC economies, and by 2020 among all economies. The Shanghai Accord called for more strenuous reviews of all economies IAPs, culminating in a mid-term assessment in 2005 of APEC's progress to achieve the Bogor Goals. Since 2002, APEC has conducted reviews of the trade and investment regimes of most economies. Reviews of all economies will be completed by early 2005, and Korea, as APEC host economy in 2005, has already shown impressive leadership in preparing to conduct the mid-term stocktaking. Reports of the IAP Peer Reviews

can be found on the APEC website (www.apec.org).

Private Sector Involvement

The APEC Business Advisory Council

An important development in 2004 was a strengthened partnership between the public and private sectors. The APEC Business Advisory Council (ABAC) was extremely active in 2004, offering recommendations and participating in government-business dialogues to advance several key APEC priorities, including the DDA negotiations, customs and trade facilitation, cargo security, standards and conformance, and transparency and anti-corruption. ABAC also made broad trade liberalization and facilitation proposals that contributed to the development of the Santiago Initiative for Expanded Trade in APEC.

Life Sciences Innovation Forum

In 2004, APEC Leaders advanced regional health and economic priorities by endorsing the Strategic Plan to Promote Life Sciences Innovation. The Strategic Plan encourages investment and innovation in key areas of the life sciences industry, including research, development, manufacturing and marketing, and health services. Under the Strategic Plan, best practices will be established for the harmonization of regulatory practices and policies with international best practices, transparency in policies and regulatory procedures and intellectual property protection for innovations.

Automotive and Chemical Dialogues

The Automotive Dialogue and Chemical Dialogue are public-private sector dialogues in which government officials and senior industry representatives work together to map out strategies for increasing integration and liberalizing trade in the automotive and chemical sectors in the region.

In 2004, the Automotive Dialogue contributed to the WTO non-agricultural market access

negotiations by identifying a number of non-tariff measures affecting trade in automotive products. The Automotive Dialogue also developed a package of work programs to better integrate the automotive industry in the Asia Pacific region, and approved a Model Port Project which will develop best practices which, if member economies implement them, would eliminate customs barriers. The Dialogue further approved an automotive standstill commitment to refrain from using measures that would have the effect of increasing levels of protection. It additionally formed a new Intellectual Property Rights (IPR) Working Group that is currently developing an IPR Best Practices paper.

The Chemical Dialogue examined the potential negative impact of the EU's proposed chemical regulations (REACH), with Dialogue Co-Chairs sending a letter in June 2004 to the EU Competitiveness Council expressing APEC economies' concerns about the proposed REACH system. New work programs were established to address priority non-tariff measures on smuggling/counterfeiting more effectively, rules of origin, product registration procedures, and treatment of confidential business data for chemicals. To facilitate trade in the chemical sector, attention was placed on implementing the UN Globally Harmonized System of Classification and Labeling (GHS), and identifying ways to address priority customs-related issues for the chemical industry.

The APEC Privacy Framework

By endorsing the APEC Privacy Framework, Ministers and Leaders brought to fruition key work in 2004 important to U.S. industry. The Privacy Framework, developed by the E-Commerce Steering Group, makes a significant contribution to increasing cross-border trade in the region by promoting a consistent approach in all economies to information privacy protection that avoids the creation of unnecessary barriers to information flows. Ministers also endorsed the Future Work Agenda on International Implementation of the Privacy Framework, to continue efforts to develop a regional approach

to privacy, including discussion in 2005 of establishing regional privacy codes.

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. At the same time, the United States and Canada share one of the world's largest bilateral direct investment relationships. The stock of U.S. foreign direct investment (FDI) in Canada in 2003 was \$192.4 billion, up from \$170.2 billion in 2002. U.S. FDI in Canada is concentrated largely in the manufacturing, finance, and mining sectors.

a. Softwood Lumber

The 1996 U.S.-Canada Softwood Lumber Agreement expired on March 31, 2001. The bilateral agreement was put in place to mitigate the harmful effects on the U.S. lumber industry of subsidies provided by the Canadian federal and provincial governments to Canadian lumber producers. Upon expiration of the 1996 Agreement, U.S. industry filed antidumping and countervailing duty petitions regarding imports of Canadian softwood lumber. The U.S. International Trade Commission (ITC) subsequently found that the U.S. industry was threatened with material injury by reason of dumped and subsidized imports of Canadian lumber, and the U.S. Department of Commerce (Commerce) found company-specific antidumping rates ranging from 2.18 percent to 12.44 percent and imposed a countrywide (except for the Maritime provinces) countervailing duty rate of 18.79 percent. On December 14, 2004, Commerce announced the results of the first administrative review of the antidumping and countervailing duty orders, in which it assessed antidumping duties ranging from 0.92 percent to 10.59 percent, and a countervailing duty rate of 17.18 percent.

To date, Canada has challenged, or has announced its intent to challenge, the underlying

Commerce and ITC findings in the original investigation in ten separate proceedings under the WTO and NAFTA, and litigation is ongoing. The WTO and NAFTA dispute settlement processes have confirmed the existence of Canada's subsidization of its softwood lumber industry and the dumping of lumber products into the U.S. market. On November 24, 2004, USTR requested the formation of an Extraordinary Challenge Committee (ECC) to address possible deficiencies in the decisions of the NAFTA panel regarding the ITC's threat determination.

The United States continues to believe that it is in the interest of both the United States and Canada to reach a negotiated solution to their longstanding differences over softwood lumber, a view shared by many stakeholders on both sides of the border.

The United States is committed to seeking such a resolution and remains hopeful that we will be able to resume negotiations with Canada in the near future. In the meantime, the litigation will continue, and the United States will vigorously enforce its trade remedy laws.

b. Agriculture

Canada is the largest market for U.S. food and agricultural exports. For fiscal year 2004 (October 2003 - September 2004), U.S. agricultural exports to Canada grew by 4 percent, to a record-breaking \$9.54 billion.

As a result of the 1998 U.S.-Canada Record of Understanding on Agricultural Matters (ROU), the United States-Canada Consultative Committee (CCA) and the Province/State Advisory Group (PSAG) were formed to strengthen bilateral agricultural trade relations and to facilitate discussion and cooperation on matters related to agriculture. In 2004, the CCA met twice on issues covering livestock, fruits and vegetables, grain, seed, processed food, and plant trade, as well as pesticide and animal drug regulations.

The United States continues to have concerns about the monopolistic marketing practices of the Canadian Wheat Board. USTR's four prong approach announced in 2002 to level the playing field for American farmers is producing important results. Most notably, in WTO dispute settlement proceedings against the Canadian Wheat Board and the Government of Canada, a WTO panel found in favor of the United States on claims related to Canada's grain handling and transportation systems. Canada now must comply with those findings. Canada and the United States have agreed on a reasonable time period for compliance, giving Canada until August 1, 2005 to make all necessary legislative and regulatory changes to its grain handling and rail transportation regimes. This time frame is consistent with the period of time for compliance in comparable disputes.

In addition, the United States is seeking reforms to state trading enterprises (STE) as part of the WTO agricultural negotiations. The U.S. proposal calls for the end of exclusive STE export rights to ensure private sector competition in markets currently controlled by single desk exporters; the establishment of WTO requirements to notify acquisition costs, export pricing, and other sales information for single desk exporters; and the elimination of the use of government funds or guarantees to support or ensure the financial viability of single desk exporters. The United States has succeeded in gaining support in the WTO for the elimination of trade-distorting practices of agricultural STEs. Finally, in October 2003 the Commerce Department imposed 8.87 percent antidumping and 5.29 percent countervailing duties on Canadian hard red spring wheat.

Canada has long maintained regulations that prohibit the entry of bulk shipments of fruits and vegetables. Based on a request of the National Potato Council, the United States, in December 2003, requested negotiations with Canada to discuss removing its trade distortive regulation for U.S. potatoes and other produce. In 2004, the United States and Canada held several meetings regarding bulk restrictions and will continue discussions in 2005.

c. Intellectual Property Rights

In March 2004, Canada's Federal Court of Appeal ruled that downloading music from the Internet using peer-to-peer (P2P) software does not constitute copyright infringement. The court denied a motion to compel internet service providers (ISPs) to disclose the identities of clients who were alleged to be sharing copyrighted music files. The recording industry is appealing this decision. Canadian ratification of the WIPO Copyright Treaty, now under consideration by the Parliament, would remedy this problem.

Progress remains stalled on resolving the outstanding issue of national treatment for U.S. artists in the distribution of proceeds from Canada's private copying levy and its "neighboring rights" regime. The United States regards Canada's reciprocity requirement for both the neighboring rights royalty and the blank tape levy as denying national treatment to U.S. copyright holders. Under this regime, Canada may grant some or all of the benefits of the regime to other countries, if it considers that such countries grant or have undertaken to grant equivalent rights to Canadians. Canada has yet to grant these benefits with regard to the United States. A growing coalition of technology and retail companies advocating the elimination of the private copy levy has successfully added the levy to the list of copyright issues that will be examined as a part of the ongoing Parliamentary review of the Copyright Act.

The United States is also concerned about Canada's lax border measures that appear to be non-compliant with TRIPS requirements. Canada's border enforcement measures have been the target of criticism by U.S. intellectual property owners who express concern with the low rate of prosecution arising from counterfeit goods seizures. Deficiencies in border enforcement are compounded by the failure of law enforcement authorities to conduct follow-up investigations of many illegal import cases.

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 167 percent since then. 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 high 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 2004, U.S. agricultural exports to Mexico increased 9 percent from 2003, to \$8.6 billion (based on annualized 11 month data).

On May 20, 2002, after the United States prevailed in dispute settlement proceedings before the WTO and NAFTA, Mexico removed the definitive antidumping duties it had imposed on imports of high-fructose corn syrup (HFCS) from the United States since 1998. By that time, however, the Mexican Congress had imposed a 20 percent tax on soft drinks made with any sweetener other than cane sugar, including HFCS, effective January 1, 2002. Although the order was temporarily suspended by the Fox Administration, the Mexican Supreme Court reimposed the tax in July 2002. The tax was renewed for 2003 and 2004. In November 2004, the Mexican Congress renewed the tax for 2005. The tax has eliminated the use of HFCS in the Mexican soft drink industry, reduced sales of HFCS by U.S. firms, and lowered U.S. exports of soft drinks as well as U.S. exports of corn used to produce HFCS. In June 2004, the United States requested the formation of a WTO dispute settlement panel regarding Mexico's tax. The panel is expected to issue a decision in 2005.

Separate from, but supporting the goals of formal dispute settlement, the United States and

Mexico, as well as private sector interests, have held negotiations concerning the bilateral sweeteners trade.

The United States-Mexico Consultative Committee on Agriculture, co-chaired on the U.S. side by USTR and USDA, met in April 2004 to discuss a range of agricultural trade issues, including antidumping orders affecting U.S. agricultural product exports, and sanitary and phytosanitary measures.

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 duty laws. The United States and Mexico held consultations in July 2003 on Mexico's antidumping orders on U.S. beef and rice. In November 2003, at the request of the United States, the WTO established a dispute settlement panel with regard to Mexico's antidumping order on long grain white rice. A panel report is expected in 2005. The United States has also initiated separate dispute settlement proceedings against the Mexican beef antidumping order under NAFTA. Mexico initiated an antidumping investigation against U.S. hams and shoulders on May 31, 2004, shortly after Mexico terminated its investigation on U.S. pork. This action presents serious questions regarding its consistency with the requirements of the WTO Antidumping Agreement.

On December 29, 2004, Mexico published an agreement suspending its antidumping order on Northwest apples. Although negotiated with Northwest Fruit Exporters (NFE), an association of Northwest apple exporters, the published agreement contains provisions not agreed to by NFE, which could adversely affect exports of Northwest golden and red delicious apples. At the time of this report, the United States is still reviewing the agreement to determine how to respond.

Mexico maintains a number of sanitary and phytosanitary measures affecting exports of U.S. agricultural products, including avocados, cherries, Florida citrus, and stone fruit. Notably, in 2004, Mexico removed most restrictions on imports of U.S. beef as a result of bovine spongiform encephalopathy (BSE) and avian influenza restrictions on imports of U.S. poultry. Resolving a longstanding concern of Mexico's, the U.S. Department of Agriculture issued regulations in November 2004 allowing distribution of Mexican avocados to all U.S. states after over a two year phase-in period.

b. Telecommunications

In April 2004, a WTO panel agreed with the United States that Mexico's international telecommunications rules were inconsistent with Mexico's WTO obligations. Mexico's rules had required U.S. carriers to connect with Mexican telecommunications providers in order to complete calls from the United States to Mexico and granted Mexico's dominant carrier, Telmex, the exclusive authority to negotiate the rate for connecting calls into Mexico. The elimination of all competition within Mexico for international interconnection resulted in rates significantly above cost and significantly above the rates charged in countries with a competitive telecommunications market.

In June 2004, the United States and Mexico reached an agreement to implement the recommendations included in the WTO panel report. Under the terms of the agreement, Mexico will remove the provisions of its law relating to the proportional return and uniform tariff systems, and allow the competitive negotiation of settlement rates by all Mexican carriers. Mexico will also allow the introduction of resale-based international telecommunication services in Mexico by July 2005, in a manner consistent with its law.

Comisión Federal de Telecomunicaciones (COFETEL) recently proposed a rule that would switch mobile phone payment systems to a "calling party pays" system, thereby requiring those placing international and domestic long-distance calls to mobile phones in Mexico to pay

for the interconnection and termination of those calls. Although the proposed rule encourages long-distance and local companies to negotiate prices, industry sources expect that COFETEL will ultimately establish the new rates. The proposed rule could result in significant additional costs for U.S. companies and consumers.

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 would 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. Tequila other than 100 percent agave tequila can be sold and exported in bulk form under the current official standard. Following consultations with the United States, Mexico agreed to withdraw the bottling at source requirement. The revised draft standard, published for public comment on November 15, 2004, would require all tequila bottlers to register with the Mexican government, and be subject to inspections. U.S. and Canadian officials have been meeting with their Mexican counterparts in order to negotiate an agreement that would ensure that any action taken by Mexico pursuant to the standard is not inconsistent with its international obligations.

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 that applies a common external tariff (CET) to products of nonmembers. Its members (Argentina, Brazil, Paraguay, and Uruguay) make up over one-half of Latin America's gross domestic product. Bolivia, Chile, Colombia, Ecuador, Peru, and Venezuela are associate

members. They benefit from certain preferential access to MERCOSUR markets, but maintain their own external tariff policies. 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 which remain outside the duty-free arrangement. Members aim to converge their individual tariff schedules to the CET by January 1, 2006. The four Mercosur countries generally act as a group in the context of the negotiations for a Free Trade Area of the Americas.

b. Argentina

U.S. goods exports to Argentina were an estimated \$3.5 billion in 2004,⁴⁷ up 45 percent from 2003, continuing their recovery after a substantial decline in recent years. The overall bilateral trade was an estimated \$7.0 billion, and the U.S. deficit was estimated to be \$170 million in 2004, down from a deficit of \$730 million in 2003. A key factor in the Argentine economy is its trade with Brazil, Argentina's number one trading partner.

Intellectual Property Rights (IPR): Argentina's intellectual property rights regime fails to fulfill long-standing commitments to the United States and concerns remain as to whether their IPR regime meets certain TRIPS standards. Failure to provide adequate protection for copyright and patents has led to Argentina's placement on the Special 301 Priority Watch List through 2004. In 1997, the United States withdrew 50 percent of Argentina's benefits under the U.S. GSP program primarily due to patent protection concerns, 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 substituted 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 establishment of the Bilateral Committee on

⁴⁷ Annualized based on 10 months' data.

Trade and Investment (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 United States and Argentina finalized the elements of a joint notification to the WTO regarding the dispute on intellectual property matters. In the joint notification, Argentina clarified how certain aspects of its intellectual property system operate so as to conform to the TRIPS Agreement. In addition, Argentina amended its patent law to provide for process patent protection 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, and consultations continue with respect to these issues.

c. Brazil

The United States exported goods valued at an estimated \$14.2 billion to Brazil in 2004.⁴⁸ Brazil's market accounts for 23 percent of U.S. annual exports to Latin America and the Caribbean excluding Mexico, and 63 percent of U.S. goods exports to Mercosur.⁴⁹ In September 2004, the United States and Brazil met under the auspices of the Bilateral Consultative Mechanism to discuss intellectual property rights (see below), WTO negotiations, SPS issues, and complaints by U.S. industry regarding the ICMS (a value added tax collected by individual Brazilian states).

Intellectual Property Rights (IPR): The United States shares concerns, voiced by U.S. industry, about the high levels of piracy and counterfeiting in Brazil, the lack of effective enforcement of copyright protection (especially for sound recordings and movies), and the lack of significant progress processing the backlog of pending patent applications. On June 30, 2004, the Administration announced that it would

⁴⁸ Annualized based on 10 months' data.

⁴⁹ Defined as Merc 6—Argentina, Brazil, Paraguay, Uruguay, Bolivia, and Chile.

continue to review Brazil's eligibility for GSP for a ninety-day period, which concluded on September 30, in response to a petition filed by the International Intellectual Property Alliance (IIPA) to remove Brazil's GSP benefits due to its failure to offer adequate protection to copyrighted materials, in particular sound recordings. In a series of meetings during that period, the United States and Brazil examined both steps taken and future plans to strengthen and improve copyright enforcement. As a result of these discussions, a number of key priorities and actions to combat copyright piracy through enforcement of existing laws have been identified. Accordingly, the United States and Brazil expect to maintain a dialogue on developments in this critical area. In the meantime, the review of the petition has been formally extended through March 31, 2005 in order to assess Brazil's progress.

d. Paraguay

With a population of just over six million, Paraguay is one of the smaller markets in Latin America. In 2004, the United States exported an estimated \$603 million worth of goods to Paraguay.⁵⁰ 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. The USTR initiated an investigation of Paraguay in February 1998.

During investigations under Special 301, Paraguay indicated that it had undertaken a number of actions to improve IPR protection. In November 1998, in light of commitments made by 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. Paraguay has made a

significant effort to implement the MOU, signed in March 2004, and met regularly with the United States under the auspices of the Bilateral Council on Trade and Investment (see below) to discuss MOU implementation.

U.S.-Paraguay Bilateral Council on Trade and Investment: In 2004, the Bilateral Council on Trade and Investment met four times to discuss a wide range of issues including efforts to increase transparency in government-business relationships, implementation of the IPR MOU, and ongoing cooperation toward a strategic plan for Paraguay to develop non-traditional exports.

e. Uruguay

With the smallest population of Mercosur (3.4 million), Uruguay nonetheless imported an estimated \$325 million of goods from the United States in 2004.⁵¹ The United States has been meeting with Uruguay under the auspices of the United States-Uruguay Joint Commission on Trade and Investment (JCTI) since April 2002. The JCTI has been a forum to discuss deepening trade relations as well as to work toward resolution of bilateral irritants. During JCTI meetings in May 2004, the two countries discussed sanitary and phytosanitary issues and the United States made presentations on the Container Security Initiative and U.S. textiles trade policy. The decision to negotiate a Bilateral Investment Treaty (BIT) sprang from the work of the JCTI. The United States-Uruguay BIT, which was signed on October 25, 2004, was the first BIT concluded by the United States on the basis of its 2004 model BIT text. Like the investment chapters of recent FTAs, the United States-Uruguay BIT includes several key provisions that respond to the investment negotiating objectives set forth by Congress in the Trade Promotion Act of 2002. The core provisions of the United States-Uruguay BIT will give U.S. investors a number of critical protections when they establish businesses in Uruguay, including non-discriminatory treatment, the ability to transfer funds relating to

⁵⁰ Annualized based on 10 months' data.

⁵¹ Annualized based on 10 months' data.

their investments, and access to binding international arbitration of investment disputes.

f. Chile

United States -Chile bilateral trade relations in 2004 were dominated by the implementation 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

See Chapter III, Section A for discussion of these negotiations.

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: 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.

The most significant expansion of benefits in the ATPA, as amended by the ATPDEA, is in the apparel sector. Apparel assembled in the region from U.S. fabric or fabric components or components knit-to-shape in the United States may enter the United States duty-free in unlimited quantities. Apparel assembled from Andean regional fabric or components knit-to-shape in the region may enter duty-free subject to a cap. The cap is set at 2 percent of total U.S. apparel imports, increasing annually in equal increments to 5 percent. 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 benefiting 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. 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 2004 ATPA Annual Review through a notice in the Federal Register dated August 17, 2004. 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. Petitions were filed to address issues in Ecuador and Peru such as contract nullification and failure to follow WTO rules. In addition, USTR kept under review certain of the petitions that had been filed in the 2003 ATPA Annual Review, as they concerned matters for which a resolution was still pending. In 2004, the ATPA process helped resolve certain investor disputes with Colombia and Ecuador worth about \$100 million, and fostered improved enforcement of laws against child labor in Ecuador.

5. Central America and the Caribbean

a. Free Trade Agreement with Central America and the Dominican Republic

See Chapter III, Section A for a discussion of this topic

b. Central America

CACM: The United States is Central America's principal trading partner. U.S. exports to these countries totaled \$10.8 billion in 2003. 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 focused largely on CAFTA-DR negotiations during 2004, but continued less actively to pursue a range of bilateral and regional trade agreements. Canada has an FTA with Costa Rica, and negotiations with El Salvador, Guatemala, Honduras and Nicaragua made some progress after the completion of the CAFTA. Negotiations for a Panama-CACM free trade agreement have resulted in agreement on common disciplines. All of the countries are participants in the FTAA negotiations.

Panama: The United States and Panama have strong, long-standing commercial and economic ties. Bilateral trade between the United States

and Panama totaled \$2.1 billion in 2003, of which U.S. exports accounted for \$1.8 billion. January-October 2004 figures showed an increase in U.S. exports to Panama over the same period in 2003, with projected 2004 exports totaling \$1.9 billion. Panama receives about fifty percent of its imports from the United States. In addition, the United States holds approximately \$6.5 billion in foreign direct investment in Panama, in sectors such as finance, maritime and energy.

As evidence of their mutual commitment to deeper trade relations, the United States and Panama launched negotiations on a bilateral United States-Panama Free Trade Agreement in April 2004. Six rounds of negotiations were held during 2004.

Throughout 2003, the United States continued to meet with Panama under the existing Trade and Investment Council (TIC) mechanism, advancing the ongoing work program, including investment issues. These meetings served to prepare the bilateral relationship for the launch of FTA negotiations by helping to resolve a range of outstanding bilateral issues.

Panama is a participant in the FTAA and during 2004 served as chair for the Negotiating Group on Investment.

c. Caribbean Basin Initiative

During 2004, the trade programs collectively known as the Caribbean Basin Initiative (CBI) remained a vital element in the U.S. economic relations with its neighbors in Central America and the Caribbean. CBI was initially launched in 1983 through the Caribbean Basin Economic Recovery Act (CBERA), and was substantially expanded in 2000 through the United States - Caribbean Basin Trade Partnership Act (CBTPA). The Trade Act of 2002 increased the type and quantity of textile and apparel articles eligible for 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 2004, 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. The United States concluded negotiations and signed a free trade agreement with several CBI beneficiaries, as called for in the legislation, notably El Salvador, Guatemala, Honduras, Nicaragua, Costa Rica, and the Dominican Republic. The agreement maintains the level of access that the Central American countries and the Dominican Republic enjoy under the CBI program, while simultaneously opening their markets to U.S. products. In the second quarter of 2004, USTR launched 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 reduced 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 40 percent in 2003, valued at over \$9.7 billion. The CAFTA-DR 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.

The CBI program 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 the CAFTA-DR enters into force, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua will graduate from the CBI program, although the CAFTA-DR will provide market access that is the same or better than the access provided under the CBI program. On implementation of the CAFTA-DR, the Central American countries and the Dominican Republic will move to a trading relationship with the United States that is more comprehensive, liberalizing, and built on mutual benefits.

d. The Caribbean

The Dominican Republic: The Dominican Republic is the largest single U.S. trading partner in the CBI region, with bilateral trade of \$8.7 billion in 2003. Reflecting the importance of this trade relationship, the United States undertook negotiations with the Dominican Republic, between January and March 2004, to integrate that country into the free trade agreement already negotiated with Central America. On August 5, 2004, the United States, the Dominican Republic and the five Central American countries together signed the CAFTA-DR. 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 and 2003, covering both bilateral issues and cooperation in the FTAA and WTO negotiations, 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 25

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.

Unilateral liberalization and fiscal reform efforts have made the Dominican Republic one of the fastest growing economies over the last decade and an economic engine in the Caribbean Basin. The Dominican Republic's strong trade relations within the Caribbean, (including with neighboring Puerto Rico) and with Central America, establish it as an economic bridge within the region. The CAFTA-DR reflects the Dominican Republic's central role and firm commitment to further liberalization of its already relatively open trade and investment regime. The Dominican Republic has also worked with the United States to advance common objectives in the FTAA negotiations and was chair of the FTAA Negotiating Group on Intellectual Property.

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, which would involve the elimination of all internal tariffs, remains limited.

CARICOM countries participate in the FTAA negotiations and the United States works with them on the Doha Development Agenda. In addition, the United States works with CARICOM countries on trade capacity building initiatives.

D. Europe

Overview

The U.S. economic relationship (measured as trade plus investment) with Europe is the largest and most complex in the world. Due to the size and the highly integrated nature of the transatlantic economic relationship, serious trade issues inevitably arise. Even when small in dollar terms, especially compared with the overall value of transatlantic commerce, these issues can nonetheless take on significance for their precedent-setting impact on U.S. trade policies.

U.S. trade relations with Europe are dominated by its relations with the European Union (EU). From its origins in the 1950s, the EU has grown from 6 to 25 Member States, with Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia becoming the newest members on May 1, 2004. The addition of these 10 members has brought the EU considerably closer to a single market encompassing the entire European continent, although important EU institutional questions associated with enlargement still need to be resolved. The EU currently constitutes a market of some 450 million consumers with a total gross domestic product of more than \$11 trillion. U.S. goods exports in 2004 were \$167 billion and U.S. exports of private commercial services (i.e., excluding military and government) to the European Union were \$101 billion in 2003 (latest data available).

The EU has declared its intention to work toward the accession of additional European countries as long as they meet various political and economic criteria for EU membership. In this regard, the EU has nearly finished accession negotiations with Romania and Bulgaria (scheduled to join the Union in 2007), and is preparing to launch such negotiations with Croatia and Turkey in March and October 2005, respectively.

The other major trade group within Europe is the European Free Trade Association (EFTA), which now includes Switzerland, Norway, Iceland, and Liechtenstein. 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. In practice, the EEA involves the adoption by non-EU signatories of approximately 70 percent of EU legislation.

The United States has developed strong trade and investment links and actively supported political and economic reforms in countries of Southeast Europe (Romania, Bulgaria, Croatia, Albania, Bosnia-Herzegovina, Macedonia, and Serbia and Montenegro). With a strong trade framework in place, USTR and its interagency colleagues worked during 2004 to ensure that Southeast European countries satisfy their bilateral and multilateral trade obligations and meet the requirements of U.S. trade laws, such as those governing eligibility for participation in the GSP program.

As a result of its 1996 Customs Union Agreement with the EU, Turkey imposes no duty on non-agricultural imports from EU and EFTA countries, but applies the EU's common external customs tariff to third country (including U.S.) imports.

1. European Union

In 2004, 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. Key issues included:

a. Subsidies for Large Commercial Aircraft

The United States has long expressed its concerns with European government subsidization of large commercial aircraft (LCA)

development by Airbus Industries. The issue has acquired new urgency in recent years as Airbus sought and received substantial new official assistance (so-called "launch aid") for the Airbus A380 super jumbo and has publicly stated an interest in further launch aid for its proposed A350 passenger jet. At a time when Airbus has begun delivering more aircraft than its U.S. rival, The Boeing Company, and in a difficult global business environment for producers of LCA, the United States believes that, if ever they were, subsidies to Airbus are no longer justified. Through 2004, USTR attempted to work with the European Commission to establish new trade rules aimed at eliminating LCA subsidies. The Commission's initial reluctance to pursue such a goal led the United States to request initiation of dispute settlement procedures in the WTO (as the United States believes Airbus subsidies violate the WTO Agreement on Subsidies and Countervailing Measures). The EU requested its own WTO dispute settlement proceeding in relation to alleged U.S. federal and state government subsidies to Boeing. Against this backdrop, the two sides continued their discussions through the end of the year with the aim of exploring possibilities for a negotiated resolution.

b. Geographical Indications

In a report issued on December 21, 2004, a WTO panel agreed with the United States that the EU's regulation on food-related geographical indications (GIs) is inconsistent with the EU's obligations under the TRIPS Agreement and the GATT 1994. This report results from the United States' long-standing complaint that the EU GI system discriminates against foreign products and persons – notably by requiring that EU trading partners adopt an "EU-style" system of GI protection -- and provides insufficient protections to trademark owners. In its report, the WTO panel agreed that the EC's GI regulation impermissibly discriminates against non-EC products and persons. The panel also agreed with the United States that Europe could not, consistent with WTO rules, deny U.S. trademark owners their rights; it found that, under the regulation, any exceptions to trademark rights for the use of registered GIs

were narrow, and limited to the actual GI name as registered. The panel recommended that the EU amend its GI regulation to come into compliance with its WTO obligations. The United States requested WTO dispute consultations on this regulation in June 1999. On August 18, 2003, the United States requested the establishment of a panel, and panelists were appointed on February 23, 2004. The United States anticipates that the panel's report will be circulated to WTO Members and the public in mid-March 2005.

Separately, the United States continues to have concerns about the EU's regime concerning geographical indications for wine and spirits -- including Council Regulation 1493/99.

c. Agricultural Biotechnology

Product Approval Moratorium: In May 2003, the United States initiated a WTO dispute settlement process related to the EU's de facto moratorium on approvals of agricultural biotechnology products and the existence of individual Member State marketing prohibitions on agricultural biotechnology products previously approved at the EU level. Since that time, an initial round of consultations has been held, followed by the formation of a panel to consider the case. The first panel meeting was in June 2004. A second panel meeting is expected in February 2005, with a final report expected in the spring or summer of 2005.

The EC took action on some pending agricultural biotechnology crop petitions in 2004 for products imported for the purposes of processing, animal feed, and food use. These were the first approvals made by the Commission since 1998. The approval process, however, is not yet grounded on scientific principles. It has not proved possible to assemble in the Council of Ministers a qualified majority of EU Member States to support product approvals, despite the lack of any science-based health or safety reason to reject them. The Council of Ministers has not acted on product applications, which have been approved by the relevant scientific committees on the Commission. Therefore, after two lengthy

periods of consideration by the Council, petitions have been sent back to the Commission for final adjudication (the Commission approved both petitions). No approval for cultivation has yet made it through the process.

Several EU Member States, including Austria, Luxembourg, and Italy, continue to maintain their national marketing bans on some biotechnology products despite existing EU approvals. After more than five years in some cases, the Commission has begun to take steps to overturn these bans. Despite the lack of scientific justification for the bans, the Council regulatory committee refused to lift them in December 2004. The bans will be considered by the Council of Ministers in early 2005.

Traceability and Labeling Requirements: In April 2004, EC Regulations 1829/2003 and 1830/2003 governing the traceability and labeling of biotechnology food and feed entered into force. The regulations include mandatory traceability and labeling requirements for all agricultural biotechnology and downstream products. In some cases, these directives have already severely restricted market access for U.S. food suppliers, because food producers have reformulated their products to exclude agricultural biotechnology products inputs. The regulations are expected to have a negative impact on a wide range of U.S. processed food exports.

d. Customs Administration Procedures

While the customs law of the EU is set forth in the Community Customs Code, the EU does not in fact currently operate as a single customs administration. Administration of the Community Customs Code is the responsibility of EU Member State customs administrations, which do not have identical working practices and are not obliged to follow each other's decisions.

The difficulties presented by non-uniform administration are exacerbated by the absence of any forum for prompt EU-wide review and correction of customs decisions. Review by the European Court of Justice of national decisions

regarding customs administrative matters may be available in some cases, but generally only after an affected party proceeds through multiple layers of member state domestic court review. Obtaining corrections with EU-wide effect for administrative actions relating to customs matters may take years.

U.S. concern with these issues has been heightened by the May 2004 enlargement of the EU from 15 Members to 25 Members. In light of this heightened concern, the United States in September 2004 asked for consultations under the WTO's dispute settlement rules in an effort to address the systemic problems surrounding EU customs administration. Consultations were held on November 16, 2004, but failed to resolve the dispute. On January 13, 2005, the United States asked the WTO to form a dispute settlement panel.

e. Enhancing Transatlantic Economic Relations

The huge size, advanced integration, and generally robust health of the transatlantic trade and investment relationship have provided an anchor of prosperity for both sides of the Atlantic, even as economic conditions in other parts of the world fluctuate. Recognizing the benefits of preserving and enhancing these productive ties, the United States and the EU for some time have been interested in exploring ways to create new opportunities for transatlantic economic activity. The 1995 New Transatlantic Agenda, 1998 Transatlantic Economic Partnership and 2002 Positive Economic Agenda initiatives, all launched at various U.S.-EU Summits, had as their common goal the deepening and systematizing of bilateral cooperation in the economic field.

At the June 2004 U.S.-EU Summit at Dromoland Castle, Ireland, President Bush, Commission President Prodi and Irish Prime Minister Ahearn agreed to the Joint Declaration on Strengthening Our Economic Partnership, which is aimed at promoting a fresh look at transatlantic trade and investment ties. The immediate objective of the Declaration was to initiate a government discourse with business,

labor, consumer and other elements of civil society on concrete ways for governments to improve U.S.-EU economic interaction. The results of these consultations with stakeholders on both sides of the Atlantic will be factored into renewed government-to-government discussions in advance of the 2005 U.S.-EU Summit.

Meanwhile, work continues on individual components of earlier Summit initiatives; this work will provide a foundation on which to base additional efforts in the coming months and years. (See sections on Regulatory Cooperation and Poultry Meat below.)

f. Regulatory Cooperation

As traditional trade and investment barriers have declined in recent years, specific trade obstacles arising from divergences in U.S. and EU regulations and the lack of transparency in the EU rulemaking and standardization processes have grown relatively greater in importance. USTR continued efforts in 2004 to enhance U.S.-EU regulatory cooperation and reduce unnecessary "technical" barriers to transatlantic trade.

At the June 2004 US-EU Summit, President Bush and his EU counterparts welcomed the Roadmap for U.S.-EU Regulatory Cooperation. This Roadmap builds on the 2002 U.S.-EU Guidelines for Regulatory Cooperation and Transparency that outlined specific cooperative steps for enhanced bilateral dialogues, including early and regular consultations, extensive data and information exchanges, and sharing of contemplated regulatory approaches. The Regulatory Cooperation Roadmap provides a framework for U.S. and EU officials to cooperate on a broad range of important areas such as pharmaceuticals, automotive safety, information and communications technology, cosmetics, consumer product safety, chemicals, nutritional labeling, and eco-design of electrical/electronic products. Through targeted U.S.-EU regulatory consultations, we aim to promote better quality regulation, minimize regulatory divergences, and facilitate transatlantic commerce.

In February 2004, the United States and the EU signed 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 entered into force on July 1, 2004. The United States also continues to pursue implementation of the 1998 U.S.-EU Mutual Recognition Agreement (MRA). The annexes on telecommunications equipment, electromagnetic compatibility (EMC), and recreational craft are fully operational. We continue to work with the European Commission on bringing the medical device annex into operation.

g. Foreign Sales Corporation Tax Rules

On October 14, 2004, Congress passed the American Jobs Creation Act (AJCA), designed in part to repeal the Foreign Sales Corporation/Extraterritorial Income Exclusion Act (FSC/ETI) tax rules that the WTO had found to constitute an illegal export subsidy. Unfortunately, the European Commission in November 2004 asked the WTO once again to review the United States' steps to comply with the January 29, 2002 WTO ruling. The Commission based its request on its dissatisfaction with transition provisions built into the ACJA, including a two year phase-out of the FSC/ETI rules and the grandfathering of certain pre-existing private contracts. These transition provisions are standard tools utilized in U.S. tax law and are of limited commercial value. The General Affairs and External Relations Council adopted, without debate, a Regulation outlining that additional duties on U.S. products will be lifted and as of January 1, 2005, and will only take effect again on January 1, 2006 or 60 days after (whichever date is later) the DSB rules that the American Jobs Creation Act of 2004 is incompatible with WTO law. The Regulation entered into force on February 1 (Council Regulation (EC) No 171 / 2005). The Commission's proposal provides for an automatic re-imposition of the sanctions if the WTO does find non-compliance. The United States believes the AJCA, providing as it does for a major reform of U.S. tax rules in order to meet WTO requirements, should satisfactorily

address EU concerns and that EU retaliatory sanctions should now be lifted in their entirety. (For more information on this dispute, see Chapter II.)

h. Chemicals

The EU is developing a comprehensive new regulatory regime for all chemicals (known as REACH) that would impose extensive additional testing and reporting requirements on producers and downstream users of chemicals. The expansive EU proposal could impact virtually all industrial sectors, including the majority of U.S. manufactured goods exported to the EU.

While supportive of the EU's objectives of protecting human health and the environment, during 2004 the United States continued to stress with the EU that this draft regulation adopts a particularly complex approach, which appears to be neither workable nor cost-effective in its implementation, and could adversely impact innovation and disrupt global trade. Many of the EU's trading partners have expressed similar concerns. The proposal also appears to depart from ongoing international regulatory cooperation efforts. We will continue to monitor closely revisions to this draft regulation, and remain engaged constructively with the EU to ensure that U.S. interests are protected.

i. 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 this ban in the WTO and in June 1997, a WTO panel ruled 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. This finding was upheld by a WTO Appellate Body in 1998, and in 1999, the WTO authorized U.S. trade retaliation because the EU failed to comply with the WTO rulings.

In September 2003, the EU announced the entry into force of an amendment to its original hormone directive, which recodified the ban on the use of estradiol for growth promotion purposes and extended the provisional bans on the five other growth hormones included in the original EU legislation. With enforcement of this new Directive, the EU argued that it was now in compliance with the earlier WTO ruling.

At present, the United States continues to apply 100 percent duties on \$116.8 million of U.S. imports from the EU. The United States maintains its WTO-authorized sanctions on EU products because the United States fails to see how the revised EC measure could be considered to implement the recommendations and rulings of the DSB in this matter.

On December 16, 2004, the EU held consultations with the United States on this issue in Geneva. On January 13, 2005, the EC requested establishment of a panel to consider its complaint against the United States for maintaining its sanctions on EU exports.

j. Poultry Meat

U.S. poultry meat exports to the EU have been banned since April 1, 1997, because U.S. poultry producers currently use washes of low-concentration chlorine as an anti-microbial treatment (AMT) to reduce the level of pathogens in poultry meat production, a practice not permitted by the EU sanitary regime. U.S. concerns with respect to poultry intensified in 2004 as a result of EU enlargement and the application of EU restrictions in new Member States that had previously allowed entry of U.S. meat. In 2004, the United States made significant progress in its work with the EU to address differences between U.S. and EU food safety rules for poultry meat. The Commission audited a number of U.S. poultry plants which demonstrated the use of AMTs and the United States developed an action plan to demonstrate the equivalency of U.S. and EU on-farm manufacturing practices. The two sides are discussing the final details of a series of steps aimed at reopening the EU market to U.S. poultry meat products.

k. Wine

Since the mid-1980s, U.S. wines have been permitted entry to the EU market through temporary exemptions from certain EU wine regulations. One such regulation requires wines imported into the EU to be produced using only certain wine-making practices. Other regulations require extensive certification procedures for imported wines and prohibit the use of wine names and grape varieties as regulated in the United States. Without derogations from these regulations, many U.S. wines would be immediately barred from entering the EU. U.S. wines that are produced with practices for which there are no EU derogations are already barred. EU derogations for U.S. wines were set to expire in December 2003, but the EU has agreed to further extend the current arrangement until December 2005, pending conclusion of U.S.-EU wine negotiations for an agreement addressing these issues.

Negotiations on a bilateral wine agreement continued throughout 2004. The United States is pressing the EU to provide U.S. wine makers equitable access to the EU wine market, particularly in light of Europe's considerable surplus in wine trade with the United States. A key U.S. objective is EU acceptance of U.S. wine-making practices, to obviate the need for future short-term derogations. The United States also continues to press for: 1) approval of future U.S. wine-making practices; 2) minimizing EU wine import certification requirements; and 3) allowing the use on U.S. wine labels of certain wine terms and names in the EU.

In 2002, the EU adopted a new wine labeling regulation (Commission Regulation No. 753/2002). The regulation appears to be more trade restrictive than necessary to meet any legitimate objective, as it would prohibit the presentation on imported wine of information important for the marketing of wine unless certain conditions are met. In addition, the EU imposes restrictions on the use of traditional terms listed in the regulation, in some instances granting exclusive use of a term to an EU wine

in a manner akin to treating it like intellectual property. The United States does not recognize the concept of traditional terms as a form of intellectual property, nor is this a form of intellectual property recognized by the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS). EU authorities began fully enforcing the new regulation in March 2004.

l. Rice -- Margin of Preference

In mid-2003, the EC notified the United States and other WTO Members of its intention to withdraw a key market access concession on rice made during the Uruguay Round. This concession, known as the Margin of Preference (MOP), replaced the EU's pre-1995 variable levy system for rice to provide market access opportunities for rice imports into the EU. On September 1, 2004, the EU withdrew the MOP concession and replaced it with a bound tariff rate of 65 euros/metric ton for brown rice and 175 euros/metric ton for milled rice.

The United States is one of the leading suppliers of rice to the EU market, with exports averaging \$90 million a year. While the EU has the right to modify its schedule of commitments under GATT Article XXVIII, the EU owes the United States compensation for removing the MOP concession. The United States entered into negotiations with the EC in September 2004 to find a resolution to this issue. If a resolution cannot be found, the United States may withdraw substantially equivalent concessions by March 1, 2005.

m. EU Directive on Wood Packaging Material (WPM)

In March 2005, the European Union (EU) plans to implement a new Directive on wood packaging material (WPM) that could affect up to \$80 billion worth of U.S. agricultural and commercial exports to the EU that are shipped on wooden pallets or in wood packaging materials. The Directive, published by the European Commission on October 5, 2004, would place a debarking requirement in addition to heat treatment fumigation on WPM from the

United States and other countries. The EU Directive is more restrictive than the international standard established by the International Plant Protection Convention (IPPC), Guidelines for Regulating Wood Packaging Material in International Trade (IPSM-15).

At the October 2004 meeting of the WTO Committee on the Application of Sanitary and Phytosanitary Measures, the United States raised concerns with the EU's new directive on solid wood packaging material. Several other members added their concerns to those expressed by the United States. The EU representative indicated that they would take these concerns to Brussels for consideration. The EU has not provided the United States with any scientific basis for its more restrictive standard. WTO Members are obliged under the WTO Sanitary and Phytosanitary Agreement to have a scientific basis when they impose standards that are more restrictive than international standards. IPPC members, including the EU, approved ISPM-15 to harmonize and safeguard WPM requirements in world trade. IPPC members approved specific treatments and the marking of WPM, but did not support a debarking requirement in the absence of a scientific justification. USG agencies continue to work with the EC and with EU Member States to suspend the debarking provision and refer the issue to IPPC.

n. EU Enlargement

Ten new Member States joined the EU on May 1, 2004. U.S. concerns related to this enlargement include the Member States taking action to: (1) increase tariff rates as they apply the EU common external tariff; (2) withdraw or modify GATS services market access commitments and seek changes to various GATS MFN exemptions to align them with the EU's existing GATS commitments; and (3) begin applying certain EU non-tariff barriers (such as sanitary and phytosanitary measures or other technical barriers). Further, there is continuing uncertainty surrounding how the EU will adjust tariff-rate quotas (TRQs) applied to EU imports of agricultural and fish products to

account for the expansion of the EU market as a result of enlargement. In 2004, the United States entered into negotiations with the EC about enlargement-related concerns, including within the framework of GATT provisions relating to the expansion of customs unions. While desiring a rapid and successful conclusion of negotiations to provide appropriate trade compensation, the U.S. retains its rights under GATT Article XXVIII to withdraw concessions on a substantially equivalent amount of EU products if an agreement cannot be reached.

2. EFTA

During 2004, USTR continued its constructive engagement with the EFTA States. In November 2004, the United States concluded negotiation of a mutual recognition agreement (MRA) with the EEA EFTA states (i.e., Norway, Iceland, and Liechtenstein) that covers telecommunications equipment, electromagnetic compatibility (EMC), and recreational craft. We expect to sign this agreement in early 2005. We continue to negotiate a separate MRA on marine equipment with the EEA EFTA states that we aim to conclude by mid-2005. We are also looking to broaden U.S. engagement with the EFTA countries and explore ways to foster closer U.S.-EFTA trade and economic relations.

3. Turkey

a. General

Although Turkey's harmonization of its trade and customs regulations with those of the EU generally benefits third country exporters, Turkey maintains high tariff rates on many agricultural and food products to protect domestic producers. Turkey 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 or poultry imports.

b. 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.

b. Intellectual Property

While maintaining that it is in full compliance with its obligations under the WTO TRIPS agreement, Turkey does not have a patent linkage system in place to prevent generic drugs that infringe the Turkish patents of U.S. pharmaceutical companies from receiving marketing approval in Turkey. Turkey recently instituted a Registration Regulation for protecting confidential test data, but it is not retroactive to January 2000, when Turkey's TRIPS obligations came into effect and has other provisions that may not be consistent with TRIPS requirements. Turkey issued a revised regulation on January 19, 2005 providing a six-year term of data exclusivity protection for confidential pharmaceuticals test data effective January 1, 2005. The regulation contains major loopholes, which the United States is addressing with Turkey. Improving enforcement against copyright piracy and trademark infringement in Turkey also remains an issue.

4. Southeast Europe

a. EU Accession

The United States has been strongly supportive of the integration of Bulgaria and Romania into the EU. As with previous accessions, USTR and other U.S. agencies have been working with Bulgaria and Romania to ensure that the accession process does not adversely affect U.S. commercial interests in the region.

These countries, as well as Croatia, have concluded Europe Agreements with the EU, which set the stage for their EU membership. The Europe Agreements provide for the

reduction to zero of virtually all tariff rates on industrial goods and preferential rates and quotas for many agricultural goods traded between the EU and these countries. Subsequent agricultural agreements (the Zero - Zero Agreements) have further reduced tariffs on the majority of agriculture goods. U.S. goods continue to face generally higher MFN tariff 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 Romania and Bulgaria to minimize the tariff differential problem in the interim period prior to accession.

b. Generalized System of Preferences

Most of the countries in this region participate in the U.S. Generalized System of Preferences (GSP) program, except Serbia and Montenegro which applied for eligibility in 2004. As required by the GSP statute, once a country has joined the EU, it loses its GSP eligibility.

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 United States has consulted with several countries concerning their granting preferential tariffs to EU exporters compared with U.S. exporters, pursuant to their Europe Agreements with the EU. USTR and the interagency GSP subcommittee are considering several petitions filed by U.S. industry groups requesting that Bulgaria and Romania be removed from the program because of the impact of tariff differentials on U.S. commerce.

c. Intellectual Property Rights

USTR closely monitors WTO Members' compliance with the TRIPS Agreement, working to have countries improve enforcement of their IPR legislation, and counter trends such as increasing copyright piracy and trademark

counterfeiting. The United States has provided technical assistance to help improve the level of IPR protection. For example, piracy and counterfeiting are growing problems in Bulgaria, which was placed on the Special 301 Watch List in 2004. USTR is working to encourage Bulgaria to reestablish the strong IP protection, including against optical disc piracy, that was in place several years ago. A top USTR priority in 2004 remained protecting the confidential data submitted by pharmaceutical firms to government health authorities to obtain marketing approval. USTR and other agencies pressed Croatia to provide adequate protection for confidential test data, a commitment it made through a bilateral agreement concluded in 1998 Memorandum of Understanding Concerning Intellectual Property Rights. Copyright piracy is a continuing problem in Romania.

d. Bilateral Investment Treaties

The United States has Bilateral Investment Treaties (BITs) in force with Albania, Bulgaria, Romania, and Croatia.

E. Russia and the Newly Independent States

The United States continues to actively support political and economic reforms in the Newly Independent States (NIS) (the Russian Federation, Ukraine, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan).

The United States has been striving to construct a framework for the development of strong trade and investment links with this region. This approach has been pursued both bilaterally and multilaterally. 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 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.

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 fails to meet the statute's freedom of emigration requirements contained in the legislation. This provision is subject to waiver, if the President determines that such a waiver will substantially promote the legislation's objectives. Alternatively, through semi-annual reports, the President can determine that an affected country is in full compliance with the legislation's emigration requirements. 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 freedom of emigration requirements. Belarus and Turkmenistan receive NTR tariff treatment under an annual Presidential waiver. 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 permanent normal trade

relations (PNTR) treatment. In 2004, Congress passed the Miscellaneous Trade and Technical Corrections Act of 2004 which authorized the President to terminate application of Jackson-Vanik to Armenia. On January 7, 2005, the President signed a proclamation terminating application of Jackson-Vanik to Armenia and granting PNTR tariff treatment to products of Armenia. The Administration continues to consult with the Congress and interested stakeholders with a view to removing Russia and the other NIS republics that comply fully with Jackson-Vanik amendment's freedom of emigration provisions from the coverage of Title IV's 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.) Based on the President's proclamation granting products from Armenia PNTR treatment, the United States and Armenia can apply the WTO between them and have recourse to WTO dispute settlement procedures. Among NIS countries still subject to Jackson-Vanik, Moldova is currently the only WTO Member for which the United States has invoked the WTO non-application provisions.

2. Intellectual Property Rights

Since the United States has concluded bilateral agreements covering IPR protection throughout the NIS, USTR works to ensure 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 United States has cooperated with, and provided technical assistance to, the countries in the region to help improve the level of IPR protection. 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 countries in the region have IPR issues that merit special mention:

a. The Russian Federation – Widespread Optical Media Piracy and Other Issues

Piracy of U.S. copyrighted material, including films, videos, sound recordings, and computer software, is a growing problem in Russia, estimated by U.S. industry to exceed \$1 billion annually. In April 2004, Russia was again placed on the Special 301 “Priority Watch List” because of deficiencies in both the protection and enforcement of IPR. Although Russia has revised a number of IPR laws, including those on the protection of copyrights, trademarks, patents, integrated circuits and plant varieties, Russia has not issued regulations on protection against unfair commercial use of undisclosed test data submitted to obtain marketing approval of pharmaceuticals and agricultural chemicals, a key requirement of the TRIPS Agreement. In addition, Russia needs to change its reciprocity-based system for registration and protection of geographic indications.

Enforcement of IPR remains a pervasive problem. The prosecution and adjudication of intellectual property cases remains sporadic and inadequate; there is a lack of transparency and a failure to impose deterrent penalties. Russia's customs administration also needs to significantly strengthen its enforcement efforts.

In October 2002, as a result of U.S. efforts to work with Russia to address the growing optical media piracy problem, Russia established an inter-ministerial task force chaired by the

Russian Prime Minister. Since the creation of this inter-ministerial commission, re-established after the March 2004 election, 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 is necessary, including vigorous action against illegal optical media plants and the adoption of a comprehensive regulatory framework dealing with the production and distribution of optical media.

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. This represented over \$200 million in lost revenues to the industry. 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 (GSP)

Most of the NIS (Armenia, Georgia, Moldova, Kazakhstan, Kyrgyzstan, Russia and Uzbekistan) participate in the GSP program. In 2004, Azerbaijan submitted an application for designation as a beneficiary country under the GSP program which is currently under consideration. Tajikistan and Turkmenistan have not yet applied to be designated as eligible to receive the benefits of the GSP program. Belarus' GSP benefits were suspended in 2000 due to worker rights violations.

During annual GSP product reviews, the United States received several petitions requesting changes in the products imported from the NIS that are eligible for GSP benefits. In 2004, the United States reviewed the continued GSP eligibility of wrought titanium, which has been included in the GSP program since 1997. GSP benefits for wrought titanium were withdrawn effective November 8, 2004.

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 an acceding country'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 their bids for WTO accession. (See Chapter II for further information on accessions.)

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 to move Russia's trade regime towards conformity with WTO rules. Negotiations on Russia's accession to the WTO were particularly active in 2004. Although Russia enacted and amended laws and regulations to bring its trade regime into conformity with WTO provisions, considerable work remains to be done in this area. In a series of Working Party meetings through November 2004, Russia continued to describe changes to its trade regime, with WTO delegations noting specific concerns and areas that require further work. The United States and Russia also continued bilateral discussions on Russia's offers on goods and services market access throughout 2004.

Reforms undertaken for WTO accession will help Russia achieve a market-oriented economy, strengthen its trade regime and integrate better into the global economy. Adopting WTO provisions will give Russia a world-class framework for IPR protection, application of customs duties and procedures, and 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 concludes negotiations on goods and services with current WTO Members.

5. Bilateral Trade Agreements and Bilateral Investment Treaties (BITs)

The United States has some form of bilateral trade agreement with each of the NIS countries. 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). Entry into force for these three BITs is pending ratification by one or both parties and the final exchange of instruments of ratification.

6. Country Specific Issues

The United States continued to encounter a number of additional country specific trade issues in the region. 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 2004 to ensure that U.S. producers of poultry, pork and beef continue to have access to the Russian market. In September 2003, the United States reached an agreement in principle with the Russian government that establishes market access parameters for U.S. exports of poultry, pork and beef. USTR continued to work with the Russian Government in 2004 to finalize this agreement. Technical discussions also continue to resolve issues concerning poultry plant inspection and 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 comply 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

Despite continued bilateral assurances that the Russian Government would join the Agreement on Trade in Civil Aircraft, Russia has expressed an unwillingness to join the Agreement in the context of WTO accession. We continue to seek Russia's commitment to join the Agreement, including a commitment to eliminate tariffs on aircraft and parts.

F. Mediterranean/Middle East

Overview

U.S. trade relations with the countries of Northern Africa and the Middle East have considerable value for 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. Free Trade Agreements (FTAs) in force with Israel

and Jordan, the FTAs negotiated with Morocco, and Bahrain and the U.S. commitment to negotiate FTAs with the United Arab Emirates and Oman, together with the Trade and Investment Framework Agreements (TIFAs) established with most 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.

Egypt

In 2004, there was growing momentum in several areas of the United States-Egypt trade relationship. A new ministerial economic team appointed to the Egyptian cabinet in July, 2004 took significant steps towards implementing economic reforms long urged by the United States, including in such areas as customs administration, tariff rate reductions, and banking and tax reform. These measures included action to address longstanding issues affecting U.S. firms in Egypt. Following a United States request for WTO dispute settlement consultations, Egypt replaced its specific import duties on apparel products with *ad valorem* duties that appear to be consistent with Egypt's WTO commitments. (The United States continues to closely monitor Egypt's compliance with agreed rules on apparel imports.) As part of its economic reform efforts, Egypt committed to reducing high taxes that have negatively impacted U.S. soft drink companies' operations and investments in Egypt. The United States and Egypt also continued to seek improved cooperation in the multilateral sphere on issues related to the DDA.

2004 marked a setback in Egypt's efforts to strengthen intellectual property rights (IPR) protection. Due to Egyptian marketing approvals for locally produced copies of patented U.S. pharmaceutical products, as well as deficiencies in Egypt's copyright enforcement regime, judicial system and trademark enforcement, Egypt was raised to the Special 301 Priority Watch List. IPR protection is a critical component of U.S. Free Trade Agreements and improvements in Egypt's IPR

regime will be an important part of Egyptian efforts to lay the basis for an agreement with the United States.

Israel

2004 was a period of intense engagement between the United States and Israel during which the two countries worked to expand their bilateral trade relationship. These efforts included a series of meetings in Washington and Israel between U.S. Trade Representative Robert B. Zoellick and Israeli Vice Prime Minister Ehud Olmert, as well as a meeting in July of the United States-Israel FTA Joint Committee.

Progress was made in several areas. A longstanding IPR issue was resolved, with Israel confirming that it will continue to provide national treatment for U.S. rights holders of sound recordings. As noted in the Free Trade Agreements section, the United States and Israel concluded a new bilateral agreement on trade in agricultural products following nearly three years of negotiations. And, as noted below, the United States approved Israel's and Egypt's request to establish Qualifying Industrial Zones.

While these were constructive developments in the bilateral relationship, the United States remains concerned by its trade deficit with Israel and longstanding market access issues. In 2004, the United States worked with Israel, including during the July meeting of the FTA Joint Committee, to address market access issues in areas such as Israeli standards and government procurement. Lack of adequate intellectual property rights protection in Israel was also a U.S. concern. In a series of meetings undertaken during a Special 301 Out of Cycle Review of Israel, the United States urged Israel to implement an effective data protection regime for confidential data submitted by innovative firms to the Israeli Government for marketing approval. Despite extensive efforts by the United States, significant differences remained at year's end between the two sides regarding the steps that Israel needs to take to provide adequate and effective data protection.

Free Trade Agreements

The FTAs with Morocco and Bahrain, which are discussed earlier in this chapter (Section A), will support the significant economic and political reforms underway in both countries, and create improved commercial and market opportunities for U.S. exports. The United States also announced the intention to negotiate FTAs with the United Arab Emirates and Oman. U.S. negotiations with Israel on a new bilateral agreement on trade in agricultural products are discussed earlier in this chapter in the Free Trade Agreements section.

Trade and Investment Framework Agreements

In 2004, the United States concluded Trade and Investment Framework Agreements (TIFAs) with Kuwait, Yemen, the United Arab Emirates, Qatar, and Oman. USTR has previously negotiated TIFAs with Tunisia, Algeria, Morocco, Bahrain, Egypt, Jordan, and Turkey. Each TIFA establishes a bilateral Trade and Investment Council that enables 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.

WTO Accession

Negotiations on the accession to the WTO of Saudi Arabia, Algeria, Lebanon, and Yemen continued in 2004. The United States supports accession to the WTO based on 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.

Qualifying Industrial Zones

a. Egypt

Qualifying Industrial Zones (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. The President delegated the authority to designate QIZs to the USTR. Until December 2004, all QIZs had been established in Jordan. 2004 saw the fulfillment of the potential for the QIZ initiative to include Egypt.

In December, 2004, U.S. Trade Representative Robert B. Zoellick designated three QIZs in Egypt: the Greater Cairo QIZ, the Alexandria QIZ and the Suez Canal Zone QIZ. In approving Egypt's request for QIZ designations, the United States helped bring to successful conclusion months of prolonged efforts by Egypt and Israel to reach a QIZ agreement, the most significant economic agreement between the two countries in twenty years.

The USTR's decision to approve Egypt's and Israel's request to establish QIZs reflects continuing U.S. support for expanded economic and political ties between the two countries. In addition, the QIZs are expected to further Egypt's efforts to liberalize its economy and integrate economically with its regional neighbors and in the global market.

b. Jordan

Qualifying Industrial Zones (QIZs) continue to be a bright spot in Jordanian economic performance. Thirteen QIZs have been established in Jordan since 1998. The duty free benefits provided by QIZs remain particularly important for Jordanian products for which duty free treatment has not yet been phased in under the United States-Jordan FTA. QIZs played an important role in helping to boost Jordan's exports to the United States from \$16 million in 1998 to \$673 million in 2003. Jordanian exports to the United States totaled \$875 million as of October 2004, and will likely top \$1 billion for the year. Jordan estimates that QIZs have created up to 35,000 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 million to \$200 million when all projects are completed.

In 2004, USTR designated two QIZs in Jordan, the Resources Company for Development and Investment Zone (RCDI) and Al Hallabat Industrial Park. The Zarqa Industrial Zone was designated in 2001, and 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 the 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.

The steady growth of QIZs illustrates 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 United States-Jordan Free Trade Agreement, see Section A on Free Trade Agreements earlier in this chapter.)

Intellectual Property Rights

Protection of intellectual property rights remains a priority in the Middle East region. Egypt, Kuwait, Lebanon and Turkey are on the Special 301 Priority Watch List, while Israel and Saudi Arabia are on the Watch List.

G. Southeast Asia and the Pacific

Overview

The Southeast Asia and Pacific region continues to enjoy significant trade and economic growth. This growth is largely the result of a strong commitment by many of the regional

governments to economic reform and liberalization. While additional work is needed to open markets in Southeast Asia and the Pacific, considerable progress has been made. The commitment of regional leaders in the Asia Pacific Economic Cooperation (APEC) forum to make further progress in expanding regional trade and investment has been an important factor in spurring this regional trend (see Chapter III, section B.5 for information on APEC). In addition, the Administration remains committed to using the Enterprise for ASEAN Initiative (EAI) to further open markets of interest to American farmers, ranchers, manufacturers, and services providers (see Chapter III, section B.2 for information on the EAI). It also will maintain efforts 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 2004:

- Implementation of the United States-Singapore Free Trade Agreement. On January 1, 2004, the United States-Singapore Free Trade Agreement entered into force. 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. This agreement with the United States' 12th largest trading partner will eliminate trade barriers between the two countries and is already spurring bilateral trade and investment.
- Conclusion of the United States-Australia Free Trade Agreement. The United States concluded negotiations on an FTA with Australia on February 8, 2004, and the agreement entered into force on January 1, 2005. The FTA with Australia will boost two-way trade in goods and services, create employment opportunities in both countries, and reduce barriers that U.S. exporters face. In addition to goods and services, the FTA covers a range of issues, including investment, intellectual

property rights, customs procedures, competition policy, government procurement, pharmaceuticals, labor, and the environment. The United States also sees the FTA as deepening the already close cooperation between the United States and Australia in the WTO.

- Progress in Free Trade Agreement Negotiations with Thailand. In October 2003, President Bush announced his intent to enter into FTA negotiations with Thailand, reaffirming his commitment under the EAI to strengthen trade ties with countries in the ASEAN region that are actively pursuing economic reforms. The United States and Thailand held two rounds of FTA negotiations in 2004, making initial progress. An FTA with Thailand, currently the United States' 19th largest trading partner, will significantly increase goods and services trade and reduce barriers in many sectors. A United States-Thailand FTA also will lead to more bilateral investment opportunities and strengthen longstanding economic and security ties between our countries.

Country Specific Activities in the Region

The United States advanced regional and bilateral trade initiatives in the Southeast Asia and Pacific region in 2004 to expand opportunities for U.S. industry, farmers, and ranchers. The United States pursued 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 regional and global trade liberalization and the successful conclusion of the DDA.

1. Australia

In parallel with the FTA negotiations, which are discussed earlier in this chapter in Section A, 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. Notably, Australia issued final regulations in 2004 allowing the entry of processed pork. Nonetheless, the United States remains concerned about the stringency of Australia's SPS regime, particularly for poultry, Florida citrus, stone fruit, apples and grapes.

2. New Zealand

United States and New Zealand officials met several times in 2004 to discuss outstanding bilateral trade issues. With respect to improving protection of intellectual property rights, the New Zealand government in 2003 passed legislation banning parallel imports of new films. While this legislation was a positive step, in 2004 the United States indicated that additional action was needed to address longstanding concerns related to parallel imports of other copyrighted material, such as software and sound recordings on optical media. In addition, the United States remains concerned about pharmaceutical patent protection and a government proposal to allow format shifting of sound recordings. U.S. manufacturers' representatives have continued to assert that a planned joint New Zealand effort with Australia to regulate therapeutic products could adversely affect the price competitiveness of many U.S. medical devices and complementary goods in the New Zealand market.

In 2004, the United States continued to raise concerns over New Zealand's biotechnology food labeling requirements. U.S. officials continued to discuss with the New Zealand government how it might administer its sanitary and phytosanitary standards to permit the import of additional U.S. agricultural products. U.S. officials have also urged the New Zealand government to take steps to increase competition in its telecommunications market. The United

States will continue working with New Zealand under our TIFA to address these and other bilateral trade issues. We will also work with the New Zealand government in APEC and the WTO to advance our common trade interests.

3. The Association of Southeast Asian Nations (ASEAN)

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. The United States watched with interest as the Administration of newly elected President Susilo Bambang Yudhoyono in 2004 announced its intention to conduct a review of Indonesia's trade policy regime and implement reforms to improve the nation's trade and investment climate, and we will closely monitor these efforts. Senior U.S. and Indonesian trade officials, including at the ministerial level, met several times in 2004 to discuss the range of outstanding issues affecting the U.S.-Indonesian economic relationship and other issues covered under our bilateral TIFA. They discussed the need to address unresolved 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 in 2003 the launch of a private study on the impact of an FTA on the two economies. We expect to review its results in 2005. Indonesia is the United States' 28th largest goods trading partner, with \$12 billion in two-way trade in 2003.

ii. Intellectual Property Rights

The United States has continued to urge Indonesia to take steps to strengthen its IPR regime. USTR placed Indonesia on the Special 301 Priority Watch List in 2004 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. In November 2003, the Indonesian government submitted new draft regulations governing optical media production for Presidential approval. In October 2004, these "Optical Disc Regulations" were signed into law by then President Megawati Sukarnoputri. The United States is encouraging Indonesia to begin enforcing these Optical Disc Regulations promptly.

Overall, protection of intellectual property rights remains relatively weak and U.S. industries continue to report the presence of illegal optical media production lines. U.S. industries also have raised serious concerns about counterfeiting and trademark violations of a wide range of products in Indonesia. 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 laid out in Indonesia's 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 encourage Indonesia to implement the specific recommendations in the IPR action plan, including taking steps to improve the legal framework and enforcement mechanisms to protect IPR.

iii. Poultry Imports

Appropriate officials in the United States and Indonesia have worked together to ensure that U.S. poultry exports meet Indonesian requirements for Halal certification, but Indonesia is maintaining its ban on imports of U.S. poultry parts. The U.S. Government continued to raise this issue with the Indonesian government in 2005 and will work with Indonesia to eliminate the ban.

iv. Textiles

In 2004, the United States raised recurring concerns about the Indonesian government's 2002 Textiles Decree, which 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 our concerns on this issue. The United States also urged Indonesia to prepare its domestic textile producers to compete under a post textile quota regime, as the WTO Agreement on Textiles and Clothing expired on December 31, 2004.

b. Malaysia

i. Overview

The strong United States-Malaysia trade relationship was bolstered when U.S. Trade Representative Robert B. Zoellick and Malaysian Minister of International Trade and Industry Rafidah signed a Trade and Investment Framework Agreement on May 10, 2004. The two partners also committed to greater cooperation in regional and multilateral fora. The United States will continue to encourage Malaysia to further open and liberalize its economy, which is heavily trade-dependent. Malaysia is the United States' 10th largest trading partner, with \$38 billion in two-way goods and services trade in 2003.

ii. Intellectual Property Rights

Malaysia has a strong public commitment to IPR enforcement, and has taken steps to strengthen its IPR regime over the past several years, including determined efforts to eliminate optical media piracy. 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 unwillingness to deter piracy and counterfeiting by prosecuting IPR offenders and imposing sufficiently deterrent penalties. In the summer of 2003, Malaysia announced plans to implement price controls on optical discs, a proposal about which the United States has voiced significant concern. In the

second half of 2004, U.S. industry and the United States Government raised concerns about Malaysia's plan to require hologram labeling of pharmaceutical products in an effort to combat counterfeiting. Implementation of this plan has been delayed to allow further consultation between the Malaysian government and stakeholders. The U.S. Government will work with Malaysia to encourage it to adopt best international practices to combat IPR violations and to further strengthen its ability to prosecute IPR crimes.

iii. Agriculture

The United States has been addressing several agricultural issues with Malaysia, primarily related to U.S. exports of almonds and chicken. Malaysia detained several shipments of U.S. exports of raw and processed almonds after Malaysian testing revealed contamination with *Salmonella enteritidis*. Working with U.S. industry and Malaysian officials, the United States convinced Malaysia in October to eliminate the intensified inspection program introduced in the summer of 2004 while working to discover and eliminate the source of contamination. With respect to chicken meat, Malaysia operates its import license system to control the supply available on the market, and is known to deny licenses for imports or limit quantities available to importers. The United States will continue to work with Malaysia to ensure market access for U.S. chicken meat.

c. Philippines

i. Overview

The United States sought to further enhance its trade and investment dialogue with the Philippines in 2004, holding several rounds of consultations under the bilateral TIFA. The two sides have used these meetings to make progress in addressing outstanding concerns. In addition, the United States used these meetings to urge the Philippines to resist taking any steps that might run counter to continued progress toward liberalizing its trade and investment regime. The United States also asked the Philippines to

reaffirm its support for global trade liberalization as outlined in the WTO DDA. President Arroyo announced in June 2004 a “10 Point Agenda” to revitalize the Philippine economy. That agenda sets ambitious goals, such as the creation of six million jobs in six years, balancing the budget, and large investments in infrastructure. The United States will continue to consult with the Philippines on its plans to prioritize and meet the targets in the Agenda. The Philippines is the United States’ 24th largest goods trading partner, with \$18.1 billion in two-way trade in 2003.

ii. Intellectual Property Rights

The Philippines made some progress in its efforts to strengthen IPR protection in 2004. To support the Philippines’ efforts to strengthen its IPR regime, the United States in August 2002 provided recommendations to the government of the Philippines on an IPR Action Plan that included specific steps on judicial, legislative, and enforcement issues.

In 2004, the Philippines passed the Optical Media Act, which was a top U.S. priority. This law creates a regulatory regime for optical media manufacturing equipment in order to curb rampant pirate production of optical media. The law also provides a legal basis for enforcement activities against IP-infringing optical media, such as pirated music, software and film CDs. However, we continue to encourage the Philippines to issue implementing regulations, which must occur in order for the law to be fully enforced.

The Optical Media Board (OMB), the successor agency to the Videogram Regulatory Board, has significantly increased the number of raids against IP pirates. The OMB has specifically targeted vendors in shopping malls and worked to encourage landlords to agree to include a clause in their leases that makes sale of IP-infringing goods the basis for eviction.

In addition, the Philippines’ Bureau of Customs (BOC) passed regulations aimed at improved enforcement against trade in pirated products and, in 2003, BOC established an IP enforcement unit. Unfortunately, the IP enforcement unit appears

not to be fully staffed, perhaps due to the fact that it is not funded by its own BOC budget line item.

Other concerns remain. The Philippines has yet to pass copyright amendments that would update its domestic law to address electronic commerce piracy. In addition, while the increased number of raids carried out by the OMB are indeed commendable, the Philippines has been slow to prosecute IPR offenders and reluctant to impose either criminal or civil penalties as permitted under its domestic law that would act as a deterrent. Consequently, the lack of effective IPR enforcement in the Philippines results in tens of millions of dollars in losses for U.S. industry every year.

iii. Telecommunications

The U.S. and Philippine governments successfully worked together to begin reopening U.S. access to the Philippines telecommunications networks. In February 2003, Philippines 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 the Philippines companies wanted to impose. Senior U.S. Government officials, including from USTR and the FCC, raised concerns over this action with appropriate Philippine officials. In November 2003, some telecommunications connections between the two countries were restored and ongoing negotiations resulted in a complete restoration of telecommunications links in 2004.

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, undue and costly processing delays, and the role of the Philippine private sector in the valuation process. The Philippines has outlined steps it has taken and plans to take to strengthen the enforcement and consistency of its customs rules and improve enforcement of IPR

piracy at the border. The United States will continue to closely monitor this issue.

v. Sanitary and Phytosanitary (SPS) Issues

Throughout 2004, the United States requested that the Philippines reform the manner in which it administers its Veterinary Quarantine Clearance (VQC) certificate program. Currently, VQCs are issued in fixed tonnage amounts that do not necessarily match the tonnage of a given shipment of U.S. meat and poultry exports to the Philippines. VQCs issued with fixed tonnage assigned to them force importers to waste VQC allotments, because excess VQC tonnage cannot be reclaimed in any way. This practice impedes the flow of U.S. meat and poultry exports that otherwise meet Philippine VQC standards. We will continue to press the Philippines to permit VQCs to be issued to match the tonnage of incoming shipments or for importers to be able to “carry over” any unused tonnage to subsequent shipments of U.S. meat and poultry.

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. United States-Singapore trade issues, including FTA implementation issues, are discussed in the section on bilateral and regional negotiations (see Chapter III, section A.4).

The FTA significantly liberalizes trade in goods and services, and provides strong protection for intellectual property and for U.S. investors. Trade grew substantially during the first year of the FTA. On an annualized basis, U.S. exports to Singapore grew by more than 19 percent, while U.S. imports from Singapore grew by more than 3 percent.

e. Thailand

i. Overview

The United States continued to strengthen its trade ties with Thailand in 2004, making progress during the initial two rounds of FTA negotiations. This followed President Bush’s announcement in October 2003 of his intent to enter into FTA negotiations with Thailand, in accordance with TPA procedures and guidance. Thailand was the United States’ 19th largest trading partner, with \$21 billion in two-way trade in 2003.

ii. Intellectual Property Rights

The United States has continued to urge Thailand to strengthen its IPR regime. To support Thai efforts, the United States in 2003 recommended implementation of an IPR Action Plan that included specific steps on judicial, legislative, regulatory, and enforcement issues. Thailand made some progress in 2004 to implement these recommendations, but significant and sustained progress is still needed.

In 2004, the Thailand passed the Optical Disk Plant Control Act, which is intended to enhance the authority and capabilities of Thai enforcement officials to take action against pirate optical disc producers. However, the United States has significant concerns with the law. Thai authorities are drafting implementing regulations to accompany the law, and the United States is continuing to strongly urge Thailand to remedy the law itself as well as ensure that the regulations address some of the weaknesses in the current law. In addition, the United States is continuing to urge the Thai government to amend its copyright law to provide more effective copyright protection and be consistent with the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty.

Thailand intensified enforcement efforts in 2004. However, street-level piracy still 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 \$188 million in 2004.

iii. Customs

Thailand continued to take steps to improve its customs practices in 2004, building on U.S. recommendations proposed in the 2003 Customs Action Plan and discussions held during the FTA negotiations. While some positive customs policy changes are slow in filtering down through the bureaucracy, there has been some progress to date and the Thai government seems committed to improving its customs procedures and facilitating trade.

Thai Customs is taking steps to implement fully the transaction value methodology required by the WTO Customs Valuation Agreement through compliance with related WTO requirements, proposed legislation and improved procedures and training. Thailand also has expanded customs clearance working hours, increased the use of electronic and paperless customs procedures, and created an English-language version of the Customs Department website.

Despite this initial progress, the Thai government needs to make additional progress to enhance the transparency and efficiency of its customs regime. Thailand also must continue to implement its customs valuation obligations to ensure full compliance with WTO rules. The United States will continue to monitor Thailand's implementation of its customs valuation law and urge it to make further improvements this year.

iv. Market Access

Although Thailand continues to reduce selected duties in line with its WTO and ASEAN FTA commitments, its average tariffs remain relatively high. The United States will seek to address in the FTA negotiations the issues relating to Thailand's relatively high tariffs and complicated tariff regime, in particular in the agricultural, automotive, alcoholic beverage,

textile, and electronics sectors. Thailand also has implemented non-transparent price controls on some products and has significant quantitative restrictions, which impede market access. In this regard, the United States is concerned that access to tariff-rate quotas for agricultural products are managed in an arbitrary and non-transparent manner and that for some products Thailand requires that importers purchase a certain amount of domestically produced product before being granted licenses for imported product.

Arbitrarily-applied sanitary and phytosanitary standards also serve as constraints to the import of certain processed foods and agricultural products. The United States is concerned that testing, certification, and licensing requirements and procedures for processed foods and agricultural biotechnology products are more trade restrictive than necessary and do not have a scientific basis. In particular, Thailand published new health certification requirements on September 20, 2004, as "Decree 11," which were to come into force on December 30, 2004. Decree 11 was notified to the WTO/SPS Committee on October 21, 2004. At the request of a number of countries, including the United States, Thailand postponed implementation of Decree 11 until April 1, 2005, due to concerns that the roughly 90 days between initial publication and the entry into force was not sufficient time for consideration of other countries' comments. The United States has concerns that the provisions of Decree 11 are not consistent with international standards and require certification by U.S. exporters of the absence of certain chemicals that are not approved for use in the United States. These certifications appear to be more trade restrictive than necessary and do not appear to be based on scientific information. The United States is seeking to address these issues within the context of the FTA, as well as bilateral and multilateral meetings.

f. Cambodia

In September 2003, at the Cancun Ministerial Meeting, WTO Members voted to approve Cambodia's accession to the WTO. After

completing its domestic ratification procedures, Cambodia became a WTO Member on October 13, 2004.

The United States and Cambodia began negotiation of a TIFA agreement shortly after Cambodia joined the WTO. These negotiations should be completed early in 2005. Cambodia has embarked on a process of reform, both to support its domestic economy and to implement its WTO obligations. The TIFA will provide a formal mechanism for the United States and Cambodia to engage on economic and trade issues of mutual interest, including Cambodia's reform program and WTO implementation.

The Bilateral Textile Agreement the United States and Cambodia concluded in 1998 and renewed in 2001, expired on December 31, 2004. When Cambodia became a WTO member, the United States notified the agreement to the WTO under the Agreement on Textiles and Clothing.

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 its entry into force on December 10, 2001, the United States extended NTR treatment to products of Vietnam. Under the BTA, Vietnam committed to make sweeping economic reforms, which created trade and investment opportunities for both U.S. and Vietnamese companies, and has been the foundation of United States – Vietnam trade and economic relations. Vietnam remains subject to the Jackson-Vanik provisions of the Trade Act of 1974, however, which link continued eligibility for NTR treatment to sufficient progress on the issue of free emigration. Each year since 1998, the President has granted a waiver under Jackson-Vanik for Vietnam, thus clearing the way for Vietnam to receive annually renewed (as opposed to permanent) NTR treatment from the United States.

The Joint Committee established by the BTA has met annually in formal session since implementation of the agreement, most recently in May 2004. The primary purpose of the Joint Committee is to review implementation of the provisions 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 and operation of the United States-Vietnam textile agreement. The next meeting of the Joint Committee will be held in the first half of 2005, at which we will review the first three years of implementation of the BTA.

ii. Laos

On September 21, 2003, the United States and Laos signed a comprehensive bilateral trade agreement (BTA), which was originally negotiated and initialed in 1997 and 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 authorizing the President to grant normal trade relations (NTR) status to Laos in order to bring into effect the bilateral trade agreement.

On December 3, 2004, the President signed H.R. 1047, the Miscellaneous Trade and Tariff Act of 2004, which included authority for the President to extend NTR treatment to products of Laos. Laos ratified the BTA on December 23, 2004. The United States will work with Laos to implement the provisions of the BTA and in its efforts to become a WTO Member. NTR for Laos became effective on February 4, 2005.

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, particularly given Laos' desire to protect the intellectual

property created through Lao handicrafts and native music.

4. Republic of Korea

a. Economic and Trade Overview

The Republic of Korea is the United States' 7th largest export market, and 7th largest trading partner in terms of two-way goods trade. Economic growth and trade liberalization in Korea have created many opportunities for U.S. exporters and investors. However, protection of sensitive sectors and a legacy of government-led industrial policies have meant that in many areas, U.S. exporters continue to face barriers in the Korean market. Since 2002, the Administration of President Roh Moo-hyun has emphasized liberalization and structural reform as a way to boost Korea's flagging economic growth rate, attract foreign investment, and turn Korea into a "hub of Northeast Asia." The United States has worked closely with the Roh Administration to ensure that Korea's efforts at domestic regulatory reform address the priority concerns of U.S. exporters and investors, including enhancing regulatory transparency. In addition, the United States has strongly endorsed Korea's initiative to create an interagency Task Force coordinated by the Prime Minister's Office to update and strengthen Korea's intellectual property laws and enforcement efforts.

The United States and Korea meet regularly to consult on bilateral trade issues. Meetings held on a quarterly basis serve as the primary forum for discussing bilateral trade issues; those meetings are augmented by a broad range of senior-level policy discussions. Throughout 2004, the United States identified the following areas as the highest U.S. trade priorities: automotive, telecommunications, intellectual property, agriculture, pharmaceuticals, and subsidies, as well as the resolution of the screen quota issue. In addition, the U.S. and Korea have expanded discussions on the cross-cutting issue of regulatory reform and transparency. With bilateral and other trade agreements playing a growing role in both U.S. and Korean

trade policy, both countries have noted that should meaningful progress be made in resolving bilateral trade irritants, the United States and Korea will want to review what further steps are warranted to deepen trade relations between our two countries.

The United States also coordinates with Korea in multilateral and regional fora where possible, and has encouraged Korea to play a leadership role commensurate with its economic and commercial strength. Despite differences on the issue of liberalization of the agricultural sector, the United States sought Korean cooperation in other areas of the Doha Development Agenda, and has valued Korea's contributions to WTO discussions on non-agricultural market access (NAMA) and trade facilitation. In the Asia Pacific Economic Cooperation (APEC) forum, the U.S. is working closely with Korea to ensure that Korea's APEC Chairmanship in 2005 is successful in promoting trade and investment liberalization in the Asia Pacific region; we have urged Korea to seize this opportunity to cement its reputation as one of the leading proponents of economic reform in Asia.

b. Regulatory Reform

U.S. exporters and investors seeking to do business in Korea have long cited problems with the lack of transparency in Korea's regulatory system. Although Korea's Administrative Procedures Act stipulates that the public comment period for draft laws and regulations shall be no less than 20 days, ministries do not provide more than the 20-day time frame, thus making public comment periods unreasonably short. In many instances the final version does not reflect the comments provided. Regulations are applied inconsistently or are reinterpreted and applied retroactively, resulting in penalties for those companies that sought to follow Korean government guidance.

As more U.S. companies increase their presence in Korea's economy, these administrative practices, which frequently involve regulatory measures rather than traditional trade measures like tariffs or quotas, will have greater impact on U.S. firms' access to the Korean market, and are

likely to become a greater focus of U.S. trade policy with Korea. During bilateral trade consultations in 2004, the United States outlined for Korean officials how Korea's administrative practices have adversely affected U.S. firms in the automotive, pharmaceutical, and agricultural sectors, as well as intellectual property right holders. The United States pressed for improvements, particularly for expanded notice-and-comment procedures, the publication of administrative actions, and comment, review and appeal procedures for subordinate statutes.

These bilateral efforts on regulatory transparency coincide with a Korean government focus on regulatory reform. In Korea, the Roh Government has charged the Deregulation Taskforce Team, the Corporate Difficulties Resolution Center, and the standing Regulatory Reform Committee to focus on different aspects of regulatory reform, both systemic and sector-specific. During trade consultations in 2004, the United States was briefed on the activities of these three bodies, and how they might address regulatory issues of concern to the United States. The United States expressed interest in working with the U.S. business community to submit U.S. recommendations to these three bodies on which Korean regulations might usefully be eliminated or amended.

c. Telecommunications

Korean government intervention in commercial aspects of the telecommunications sector, including in the selection and mandating of technologies, licensing procedures, and procurement continued to be of significant concern to the United States in 2004. Korea influences the sector both directly and indirectly through industry associations and quasi-governmental commissions or other entities. As a result, U.S. firms with leading-edge technologies have encountered resistance to their efforts to introduce new software and technologies to the market, and firms with an established presence have lost market share to Korean firms in the past few years. By limiting technology competition in the Korean telecommunications market, Korea is hampering

the ability of Korean firms to develop globally competitive products and best serve Korean consumer needs. In addition, such actions run counter to the stated economic goals and objectives of the Roh Administration.

A priority issue for the United States and U.S. industry in 2004 was the negative effects of Korea's pursuit of mandatory, domestically created telecommunications standards ("domestic standards") that would effectively exclude the technology of all foreign firms. Through concerted effort, the United States was able to limit the adoption of two restrictive mandatory domestic standards by Korea, thereby improving competitive opportunities for U.S. technology suppliers.

In cellular phone services, the United States objected to Korea's stated plans to mandate the domestically created Wireless Internet Platform for Interoperability (WIPI) standard. The United States was concerned that Korea was exercising inappropriate influence over the creation, standardization, and deployment of WIPI; was discouraging Korean telecommunications service providers from subscribing to competing foreign standards; and was attempting to force competing foreign standards out of the market by designating WIPI as the sole mandatory standard. In April 2004, after a series of bilateral government discussions, some of which included industry representatives, the United States and Korea resolved this issue by agreeing that other platforms would be allowed to coexist with WIPI in the Korean market.

In 2003, Korea announced that it would reallocate the 2.3 gigahertz spectrum band (which had been largely unutilized) to a new wireless broadband Internet service and would allow only one technology to be deployed in this portion of the spectrum. Again, Korea was poised to designate a domestic mandatory standard even though viable foreign products had already been tested in the Korean market. In July 2004, after numerous discussions with the United States and U.S. industry, Korea agreed to drop plans to make a domestic standard the single standard and instead decided to select a draft international standard (IEEE

802.16). While this was a step in the right direction, the United States sees no justification for a government mandated standard. Furthermore, the IEEE 802.16 standard is not finalized and will not be commercialized until 2006, at the earliest. The United States will continue to urge Korea to allow other technologies to be deployed as soon as the spectrum is allocated.

The United States will continue to work with Korea to ensure that Korea sets standards and licensing requirements consistent with its bilateral and multilateral trade obligations, and that any such measures do not subject foreign firms to discriminatory treatment.

d. Motor Vehicles

Access to the Korean market for U.S. automobiles remains a major concern. The United States continues to work with Korea to ensure fair market access for foreign motor vehicles, consistent with the letter and spirit of the United States-Korea Memorandum of Understanding (MOU) on automobiles of October 1998. During the June and November 2004 reviews of the MOU, the United States and Korea reviewed progress on implementing the MOU commitments, and sought to address new issues that arose during the year, particularly in the area of standards. While ad hoc standard experts meetings continued as the main avenue to resolve standards issues, the United States emphasized that adequate notice to all stakeholders on any standards or regulatory changes was essential to full implementation of the MOU.

Some progress was made in areas of concern to the United States. In 2004, Korea consulted with the United States on a new Korean fuel economy standard that will be implemented on December 31, 2009, and agreed to further consultations if this date proves problematic to foreign automobile manufacturers. In addition, in 2004, Korea revised a discriminatory environmental testing requirement; and announced that it would extend a temporary reduction of the special consumption tax on motor vehicles into the first half of 2005.

These steps helped to increase the sales of foreign vehicles in Korea in 2004. In an extremely depressed domestic market, with overall auto sales down 17 percent for the year, import sales were up 20 percent, reaching a record. However, while sales trends are headed in the right direction, imported vehicle sales continue to represent an unreasonably small share of the Korean market – roughly 2 percent – and the U.S. automotive trade deficit with Korea continues to spiral upward, reaching record levels in 2004 (\$9.2 billion for the first ten months, up 28 percent over 2003). The United States will continue to press for more proactive measures by Korea to address the concerns of U.S. automakers.

A particular focus for the United States over the past year has been Korea's fulfillment of the MOU commitment to “steadily reduce the tax burden on motor vehicle owners in the ROK in a way that advances the objectives of this MOU.” Both the United States and U.S. industry have made specific suggestions as to how this commitment should be met. To date, Korea has announced no comprehensive tax reform plans. Given the strong negative impact that Korea's taxation system has on import vehicle sales, this will continue to be a key focus in the coming year. The United States has recognized that this is a long-term process, but stressed the importance of developing a comprehensive and transparent plan to meet this critical objective. The United States will also continue to work with Korea in the areas of tariff reduction, standards, and improving consumer perception of imported vehicles.

e. Steel

Steel issues are detailed in Chapter V, “Other Multilateral Issues.”

f. Pharmaceuticals

The United States and Korea have worked extensively, from 1999 to the present, to address a number of import market access issues in the pharmaceutical sector. Over the past year, bilateral consultations have focused on transparency, pricing and regulatory issues in the

pharmaceutical sector. In addition to governmental consultations, the government-industry pharmaceutical working group continued to meet in 2004 in an effort to secure a larger role for stakeholders in Korea's pharmaceutical regulatory process.

Transparency: A key focus of United States-Korea pharmaceuticals' consultations during 2004 was the lack of transparency in Korea's procedures for pricing and reimbursing innovative medicines under its national health insurance system. While progress has been made in some areas, there continue to be signs that Korea may introduce new health care cost-cutting measures without adequate consultations with stakeholders, and may focus excessively on cutting-costs for new patented medicines, a policy that would de facto affect only foreign research-based pharmaceutical companies. The United States has put forward suggestions on how Korea's Health Insurance Review Agency's (HIRA) reimbursement guideline-setting process could be improved; these suggestions are still under discussion. In addition, the United States is carefully watching developments related to a Korean government-commissioned health insurance reform study released in September 2004 to ensure that policy changes are made in consultation with all domestic and foreign stakeholders, including foreign industry and governments.

Pricing: In 1999, the United States and Korea reached agreement on how new innovative drugs were to be priced (based on A-7 pricing or the average ex-factory price of A-7 countries, i.e., United States, United Kingdom, Germany, France, Italy, Switzerland, and Japan) and reimbursed (based on Actual Transaction Price [ATP]). Since its implementation, anomalies have surfaced. A June 2004 industry survey revealed that A-7 prices have only been granted to 33 percent of new products since April 2000. Because of Korea's restrictive application of the A-7 pricing methodology, U.S. drug companies have decided not to introduce at least nine new products in Korea from 2000 to the present. In December 2004, the United States proposed that Korea issue a one-page justification for when it decides not to provide A-7 pricing for new

medicines. The proposal is currently under discussion.

In addition, lack of appropriate enforcement of the ATP system has led to market distortion, artificially high-priced generic products, and incentives for doctors to prescribe medications for profit. ATP reimbursement prices are based on a weighted average of sales prices from the previous quarter. ATP was designed to end hospitals' fraudulent practice of demanding discounts from drug makers when buying drugs and then pocketing the difference between the discounted price and the larger reimbursement price provided by the government-operated health insurance system. However, ineffective enforcement of ATP has allowed such practices to continue. In 2005, the United States will continue to press Korea to offer A-7 pricing to all new innovative medicines produced by U.S. companies and to better enforce the ATP system.

Regulatory: In October 2004, a new high priority issue of concern to U.S. industry emerged in the area of intellectual property protection for pharmaceutical firms when the Korean Food and Drug Administration (KFDA) proposed eliminating Korea's current system of post-marketing surveillance (PMS). This was of major concern because PMS provides a de facto period of data protection as required by Article 39.3 of the WTO TRIPS Agreement. During November consultations, Korea stated that the PMS would not be eliminated and that, even if changes were made to the system, they would be fully compliant with Korea's TRIPS obligations. The United States will continue to closely monitor developments in this area.

g. Intellectual Property Rights

The United States has serious concerns regarding the adequacy of Korea's protection of intellectual property rights (IPR), particularly for copyrighted material over high-speed data networks. Korea's rapid technological development in recent years has led to Korea having one of the most sophisticated digital infrastructures in the world, but Korea's legal protection of copyrighted material has not kept

pace with technological developments, leading to a high piracy rate for U.S. (and Korean) content. Due to Korea's inadequate protection of sound recording transmissions and unauthorized distribution of U.S. films, Korea was elevated to the Special 301 Priority Watch List in January 2004. Since then, Korea has proceeded with plans to update its intellectual property regime through a "Master Plan" under the leadership of the Prime Minister's Office. In addition, progress has been made on U.S. intellectual property concerns, including granting the Standing Inspection Team (SIT) police powers to conduct raids on sites suspected of intellectual property crimes and establishing an improved registration system designed to stop film piracy through the Korea Media Review Board (KM RB). However, further work will be required to ensure that Korea's intellectual property regime provides the necessary tools to address the emerging challenges of the digital era.

Perhaps the most striking instance of copyright piracy in recent years has involved the digital transmission of sound recordings. While the United States urged Korea to introduce legislation that would create a comprehensive right of transmission for sound recordings, the legislation passed by the Korean National Assembly in September 2004 introduced only a limited right of "making available" and not the full "right of communication to the public." With sales of legally copyrighted sound recordings dropping by over half in recent years, the viability of U.S. and Korean sound recording businesses in Korea will depend, in part, on establishing comprehensive legal rights to authorize digital transmissions.

The United States has also expressed concerns as to whether the sentences issued by Korea's courts in cases of intellectual property piracy are of sufficient magnitude to constitute a meaningful deterrent to criminal behavior and has urged Korea to institute some form of sentencing guidelines. Other U.S. intellectual property priorities with Korea include: explicitly recognizing that temporary copies (e.g., of software) are a part of the reproduction right and constitute a reproduction; combating

high levels of book piracy, especially in university communities; and, for computer software, ensuring the full respect for the fundamental principle enshrined in international law and practice that rights holders have the exclusive right to determine the manner in which they wish to license their works. The United States has also urged Korea to proceed with the prompt ratification and implementation of the WIPO Performances and Phonograms Treaty (WPPT), to which Korea has already committed; strengthen and harmonize its laws on technological protection measures (for copyrighted works) and Internet service provider liability (for infringement by users on their networks); and to extend the copyright term by 20 years.

h. Government Support for Korean Industry

Semiconductor Production and Export: During the past few years, the United States has expressed strong concerns about instances of possible Korean subsidization of semiconductor production and exports that could adversely affect U.S. trade interests. In particular, the United States sought redress by Korea for its support of Hynix Semiconductor, Inc., the world's second largest semiconductor manufacturer. Korea did not address the concerns expressed by the United States and continued to provide financial assistance to Hynix; as a result, 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 Korea, have been put in place with respect to certain U.S. imports of semiconductors from Hynix. Korea requested WTO consultations on Hynix in June 2003, and a dispute settlement panel was established in January 2004. (For more on this case, see the WTO Dispute Settlement section of this report.)

Paper Subsidies: The U.S. paper industry in 2004 continued to raise its concerns regarding

Korean government subsidization of the Korean coated paper sector. These concerns include government subsidies that 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 have been alleged to keep troubled companies afloat and distort international competition. The United States sought to address these concerns in numerous bilateral and multilateral fora in 2004. Included in these fora was a special bilateral experts meeting held in Seoul in February 2004 to engage Korea in an effort to resolve this matter. Korea's response to date has been inadequate, and the United States will continue to pursue this issue with Korea in 2005.

i. Bilateral Investment Treaty/Screen Quota

In 1998, former Korean President Kim Dae Jung proposed the negotiation of a bilateral investment treaty (BIT) with the United States. The United States' objective in pursuing a BIT with Korea, as with other countries, was to conclude a comprehensive agreement that established a balanced and open investment regime and provided protections for U.S. investors. While progress was made in early negotiations related to the liberalization of investment restrictions in a number of sectors, the United States and Korea were unable to reach agreement on several key issues, led by liberalization of Korea's restrictive screen quota system. Under the screen quota system, domestic films must be shown in each cinema for a minimum of 146 days of the year, with a potential discretionary reduction to 106 days. Given statements by Korean government officials at the highest levels that a reduction to the screen quota was desirable, the United States was hopeful that this issue would be resolved in 2004, thereby paving the way for the United States and Korea to deepen bilateral economic ties through a BIT or some other mechanism. While the domestic market share for Korean films has, for the last several years, far surpassed the 40 percent market share that the Korean National Assembly targeted as the prerequisite

for reduction of the quota, however, Korean filmmakers and lawmakers have continued to resist modifications to the system. In addition to the screen quota, the issue of Korean limits on foreign ownership in the telecommunications sector remains unresolved.

j. Agriculture

Oranges: In April 2004, Korea suspended navel orange imports from California's Tulare and Fresno counties (which together account for 80 percent of U.S. navel orange shipments to Korea). Korea alleged to have detected the presence of the fungal infection *septoria citri* in shipments of navel oranges from those two counties. The United States performed its own tests on the shipments of oranges rejected by Korea and did not detect the fungus, neither in California orchards nor in laboratory tests of samples taken from infected shipments identified by Korea officials. This made the identification of appropriate mitigation measures difficult. However, the United States worked extensively with the California citrus industry to develop proposed mitigation measures for *septoria citri* to present to Korean officials. The United States submitted this new protocol to Korea in August 2004 to serve as the basis for Korea's resumption of navel orange imports, and the U.S. officials then participated in a series of bilateral technical discussions that followed to ensure the new protocol reflected only necessary and operationally feasible measures. In November 2004 the United States and Korea agreed to the new protocol, and California navel orange exports resumed in December 2004. The agreement is to remain in place for two years with a provision that refinement of mitigation measures may take place after the first year.

Rice: In the Uruguay Round, Korea received a ten-year exception to tariffication of rice imports, and instead negotiated a Minimum Market Access (MMA) quota, under which rice imports grew from zero to four percent of domestic consumption. That MMA arrangement was set to expire at the end of 2004, but under

WTO rules, Korea exercised its right to negotiate with WTO rice exporting countries, including the United States and eight other interested parties, to seek an additional ten-year extension. Korea's stated goal was to extend the MMA arrangement to coincide with a new ten-year agricultural adjustment program introduced in 2004 by the Roh Administration. The United States made clear that it would only agree to extension of the MMA program if the program were amended to significantly expand commercial opportunities for U.S. rice exporters and offer them a genuine opportunity to develop meaningful relationships with Korean rice retailers.

Agreement on a ten-year MMA extension was reached in December 2004. For U.S. rice exporters, there are three major benefits to this agreement: Korea will double its total rice imports over the next ten years (from roughly four percent to roughly eight percent of domestic consumption); Korea has guaranteed at the WTO that it will purchase at least 50,076 metric tons of rice from the United States in each of the next ten years; and for the first time, imported rice will be made available to Korean consumers at the retail level. This new MMA arrangement was notified to the WTO in late December 2004; it will be implemented in 2005 once it is approved by a consensus of WTO members.

Beef: Reopening the Korean beef market, the second largest after Japan, to U.S. beef exports has been a top priority of the Administration on the bilateral trade front in 2004. Korea imposed a ban on U.S. beef and beef products immediately after the December 2003 discovery of a single imported cow with Bovine Spongiform Encephalopathy (BSE) in Washington State. Currently, exports of products worth nearly \$823 million in 2003 are banned. During 2004, the United States engaged Korea at all levels, including a visit by Korean government technical experts, which occurred in May 2004. The United States continued to stress the importance of resuming beef and beef by-product trade in appropriate bilateral meetings in 2004. Despite substantial progress and expressed satisfaction by Korea with the technical information provided by the United

States demonstrating the safety of the U.S. beef supply, Korea continues to delay actual resumption of imports of U.S. beef.

Avian Influenza: In 2004, in response to detection in February 2004 of low pathogenic avian influenza (LPAI) in Delaware and a subsequent case, also in February 2004 of high pathogenic avian influenza (HPAI) in Texas, Korea banned – and continues to ban – all imports of raw poultry meat from the United States. With the United States' other poultry markets now all having lifted any trade restrictions imposed in response to the U.S. LPAI and HPAI outbreaks, the United States has made clear that re-opening the Korean market to U.S. poultry exports is a high priority. In 2003, U.S. exports of poultry meat to Korea totaled \$53 million. Due to United States efforts at multiple levels, Korea did nominally lift its avian influenza ban on U.S. poultry in September 2004, but Korea continues to prohibit imports of U.S. poultry meat because of new animal health and food safety-related certification requirements. Despite repeated high-level meetings between U.S. and Korean officials, Korea insists that the ban on U.S. poultry imports will remain until the United States agrees to the new requirements. The United States will take all appropriate steps to ensure the re-opening of this important market.

Food Standards: On June 28, 2003, KFDA announced new "Proposed Standards and Specifications for Health Functional Foods" (the so called "Functional Food Code"). The United States expressed concern that the proposed Functional Food Code limited categories of functional foods (i.e., health foods and nutritional supplements, and non-science-based upper limits on vitamin and mineral content) and would restrict entry of U.S. health foods and supplements into the Korean market. KFDA finalized the Functional Food Code on January 31, 2004 and addressed U.S. concerns regarding KFDA's proposed upper limits on vitamins and minerals. However, KFDA has not addressed U.S. concerns regarding the limited number of functional food categories, which limits imports of functional foods that are widely accepted by consumers in other countries. Regarding

inspection of imported functional food, Korea required mandatory laboratory testing for every shipment of functional food weighing under 100 kilograms with no rationale. On December 27, 2004, in response to United States concerns, Korea revised testing requirements and eliminated mandatory laboratory testing of subsequent shipments of the same functional food weighing less than 100 kilograms if the first shipment passes the laboratory test. However, KFDA still maintains restrictions on the use of stickers for labeling of functional foods unlike pharmaceutical and food products in general.

5. India

a. General

In 2004, the United States and India continued their efforts to develop a constructive long-term trade relationship. The United States continued to try to identify areas for cooperation and focused on WTO matters as well as bilateral trade issues, including India's tariff and tax regime, intellectual property rights, and subsidies. India continues to limit market access in various areas, including through high taxes and tariffs, non-transparent procedures, differential treatment of imports, and reference prices. The United States advised the government of India that U.S. concerns regarding outsourcing to India were exacerbated by India's closed markets.

In May 2004, India - the largest democracy in the world - elected a new government. Important members of the new government (including Prime Minister Dr. Manmohan Singh) were responsible for India's economic reforms begun in the early 1990's. We look forward to working with the new government to encourage India to assume its rightful place as an open and constructive member of the global trade community.

b. Trade Dialogue

U.S. Trade Representative Robert B. Zoellick effectively engaged in dialogue with his Indian government counterparts, especially Commerce Minister Kamal Nath. Working closely together in Geneva during July 2004, U.S. Trade Representative Robert B. Zoellick and Minister Nath found ways to move the Doha Development Agenda forward. U.S. Trade Representative Zoellick also found common ground with India's private sector. Under the auspices of the United States-India Trade Policy Working Group (TPWG), led by USTR and India's Ministry of Commerce, our officials met continuously at all levels to find ways to build confidence between our two governments and achieve open markets.

c. Intellectual Property Rights

Pursuant to the WTO TRIPS Agreement, India committed to enact a comprehensive patent system for pharmaceuticals and agricultural chemicals by January 1, 2005 and protection for undisclosed test and other data for these products by January 1, 2000. On December 26, 2004, India's President A.P.J. Abdul Kalam signed the Patents (Amendment) Ordinance, 2004, which includes provisions on product patent protection for pharmaceuticals and agricultural chemicals. Parliament must enact or pass substitute legislation within six months (i.e., by June 2005), or the Ordinance will lapse.

In seeking to ensure that India complies with its TRIPS commitments, the United States continued to voice concerns about other aspects of India's intellectual property regime, including copyrights, trademarks, failure to protect clinical trial data or undisclosed data and needed improvements in enforcement against piracy, counterfeiting and other types of intellectual property infringement.

d. Diammonium Phosphate (DAP)

India's fertilizer price control and subsidy regime have driven U.S. and other foreign phosphate fertilizer exports out of India's market. The United States continues to press the

Indian government to end distorting policies that impede U.S. producers of DAP from competing in the India's market.

e. Agricultural Trade - Sanitary and Phytosanitary Issues

The United States has raised concerns with India regarding its failure to notify certain SPS measures. India's lack of transparency in promulgating new import requirements has led to disruptions in U.S. agricultural trade, particularly in exports of U.S. almonds, the United States' second largest agricultural export to India. Ongoing bilateral technical level discussions have resulted in a one-year agreement allowing the entry of U.S. almonds into India under previous import requirements. The United States continues to impress upon India the need to base its SPS measures, on science, including those measures affecting apples, dairy products, pulses, poultry, pet food, and forest products. The United States will continue to seek a long-term solution regarding almonds and other outstanding SPS issues.

6. Pakistan

In September 2004, the United States and Pakistan held the first Trade and Investment Council (TIC) meeting under the auspices of the Trade and Investment Framework Agreement (TIFA) signed the previous year. The TIC discussed measures to improve the protection of intellectual property rights in Pakistan and Pakistan's desire for better access to the U.S. market for its goods, including requesting FTA negotiations and inclusion in the Container Security Initiative (CSI). The main focus of the meeting was to promote private investment and identify impediments to expanding bilateral trade and investment. The TIC also discussed Pakistan's access to GSP benefits, visas for businessmen, and the travel advisory.

Following the TIFA meeting, U.S. Trade Representative Robert B. Zoellick and Pakistani Minister of Commerce Humayum Akhtar Khan agreed to initiate the negotiation of a Bilateral Investment Treaty (BIT). A BIT with the United

States could help Pakistan attract much-needed private investment. The United States and Pakistan continued to work closely on promoting progress in the Doha Development Agenda.

USTR officials had wide-ranging discussions on bilateral and multilateral trade issues; other officials, including the Secretary of State also addressed economic and trade issues with Pakistan on numerous occasions. Intellectual property issues remain a priority focus for the United States given that Pakistan is reported to be one of the world's largest producers and exporters of pirated sound recordings. A special 301 Priority Watch Listing (PWL) and a Generalized System of Preferences (GSP) petition on inadequate copyright protection in Pakistan have focused United States efforts to encourage progress on IP protection, including action against Pakistani plants that are producing and exporting large volumes of pirated optical media.

7. Afghanistan

Afghanistan and the United States negotiated and signed a Trade and Investment Framework Agreement (TIFA) in September 2004. USTR and the Afghan Ministry of Commerce lead the meetings of the Trade and Investment Council (TIC) established by the TIFA. This new mechanism will facilitate a high-level, regular discussion of bilateral and multilateral trade issues, and is designed to promote problem solving in the trade and investment areas.

A Working Party on Afghanistan's accession to the WTO was established. The United States is considering means of providing technical assistance to Afghanistan as it pursues accession [see section on WTO accessions].

The United States continued to offer trade capacity assistance to Afghanistan. In July 2004, USTR sponsored, and USAID funded and organized, a two-day seminar in Nepal for the least-developed countries of South Asia, including Afghanistan. The seminar was designed to provide practical advice and strategies to increase and diversify exports. Approximately 20 Afghans participated in the seminar.

8. People's Republic of China

It has been more than three years since China's accession to the WTO on December 11, 2001. That event was in many ways the culmination of two decades of economic reform that saw China move from a strict command economy to one in which market forces have played an increasing role. Through an accession agreement founded on the key WTO principles of market access, non-discrimination, national treatment and transparency, China committed to overhaul its trade regime and, more fundamentally, to open its market to greater competition.

The United States and other WTO members negotiated with China for 15 years over the specific terms pursuant to which China would enter the WTO. As a result of those negotiations, China agreed at all levels of government to extensive, far-reaching and often complex commitments to change its trade regime. China committed to implement a set of sweeping reforms that requires it to lower trade barriers in virtually every sector of the economy, provide national treatment and improved market access to goods and services imported from the United States and other WTO members, and protect intellectual property rights (IPR). China also agreed to special rules regarding subsidies and the operation of state-owned enterprises, in light of the state's large role in China's economy. In accepting China as a fellow WTO member, the United States also secured a number of significant concessions from China that protect U.S. interests during China's WTO implementation stage. Implementation should be substantially completed – if China fully adheres to the agreed schedule – by December

11, 2007. In contrast, the United States did not make any specific new concessions to China, other than simply to agree to accord China the same treatment it accords other members of the WTO.

China deserves due recognition for the tremendous efforts made to reform its economy to comply with the requirements of the WTO. Nevertheless, while China's efforts to fulfill its WTO commitments are impressive, they are far from complete and have not always been satisfactory, and China at times has had difficulty in adhering to WTO rules.

The first year of China's WTO Membership saw significant progress, as China took steps to repeal, revise or enact more than one thousand laws, regulations and other measures to bring its trading system into compliance with WTO standards. However, that year also saw uneven implementation of many of China's WTO commitments.

During the next year, 2003, China's WTO implementation efforts lost a significant amount of momentum, and the United States identified numerous specific WTO-related problems. As those problems mounted in 2003, the Administration responded by stepping up its efforts to engage China's senior leaders. The Administration's efforts culminated in December 2003, when President George W. Bush and Chinese Premier Wen Jiabao committed to upgrade the level of economic interaction and to undertake an intensive program of bilateral contacts with a view to resolving problems in the United States-China trade relationship. Premier Wen also committed separately to facilitate the increase of U.S. exports to China.

This new approach was exemplified by the highly constructive Joint Commission on Commerce and Trade (JCCT) meeting in April 2004, with Vice Premier Wu Yi chairing the Chinese side and Secretary of Commerce Donald Evans and U.S. Trade Representative Robert B. Zoellick chairing the U.S. side, with leadership from Secretary of Agriculture Ann Veneman on agricultural issues. At that

meeting, which followed a series of frank exchanges covering a wide range of issues in late 2003 and early 2004, the two sides achieved the resolution of no fewer than seven potential disputes over China's WTO compliance.

In July 2004, the United States successfully was able to resolve the first-ever dispute settlement case brought against China at the WTO. In that case, the United States, with support from four other WTO members, challenged discriminatory value-added tax (VAT) policies that favored Chinese-produced semiconductors over imported semiconductors. The United States also effectively used other mechanisms at the WTO throughout the year, including the transitional review process for China, to draw attention to a variety of areas where China needed to make progress.

U.S. stakeholders were significantly more satisfied with China's WTO performance in 2004 than in the previous two years. Many of them reported that 2004 was a good year for American companies in China, and that China demonstrated marked improvement in its efforts to comply with its WTO commitments.

At the same time, U.S. exports to China continued to increase dramatically in 2004, as they have done in every year since China joined the WTO. U.S. exports to China totaled \$35 billion for the most recent twelve-month period, more than double the total for 2001. In fact, from 1999 to 2004, U.S. exports to China increased nearly ten times faster than U.S. exports to the rest of the world. As a result, China has risen from our 11th largest export market five years ago to our fifth largest export market today.

The reports from the private sector and improved export statistics are heartening. Nevertheless, serious problems remain, and new problems regularly emerge. Most seriously, China's implementation of its WTO commitments has lagged in many areas of U.S. competitive advantage, particularly where innovation or technology play a key role.

Separately from the WTO issues, the Administration, with the Treasury Department as the lead, remains committed to working closely with China to help them to move to a more flexible market-based exchange rate. The Treasury Department is raising the issue bilaterally and engaging our trading partners in multilateral fora such as the G-7, IMF, and APEC, and has established a Technical Cooperation Program to assist China in addressing what it perceives as regulatory and market infrastructure obstacles to greater exchange rate flexibility. Treasury's technical dialogue included three sessions in 2004 focused on such issues as supervising banks' management of exchange rate risks and regulation of foreign currency derivatives markets. The Administration will continue this approach in 2005. Further, it should be noted that China is considered a non-market economy (NME) for purposes of U.S. antidumping law; to be designated a "market economy", China must meet the six statutory criteria set forth in Section 771(18) of the Tariff Act of 1930: the extent of a country's currency convertibility; wage determination; foreign investment; government ownership or control of production; government control over the allocation of resources; and other appropriate factors.

A summary of the WTO compliance issues of the most concern to the United States follows. For a more detailed discussion, see *USTR's 2004 Report to Congress on China's WTO Compliance*, dated December 11, 2004.

Intellectual Property Rights

Upon joining the WTO, China agreed to overhaul its legal regime to ensure the protection of intellectual property rights in accordance with the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement). China has undertaken substantial efforts in this regard, as it has revised or adopted a wide range of laws, regulations and other measures. While some problems remain, China did a relatively good job of overhauling its legal regime.

However, China has been much less successful in ensuring effective IPR protection, as IPR enforcement remains problematic. Indeed, counterfeiting and piracy in China are at epidemic levels and cause serious economic harm to U.S. businesses in virtually every sector of the economy. One U.S. trade association reports that counterfeiting and piracy rates in China remain among the highest in the world, exceeding 90 percent for virtually every form of intellectual property.

The Administration places the highest priority on improving the protection of IPR in China. At the April 2004 JCCT meeting, in response to concerns raised by the United States, Vice Premier Wu presented an “action plan” to address the IPR problem in China. Intended to “substantially reduce IPR infringement,” this action plan calls for improved legal measures to facilitate increased criminal prosecution of IPR violations, increased enforcement activities and a national education campaign. The Administration is monitoring implementation of this action plan closely and began conducting an out-of-cycle review in December 2004 under the Special 301 provisions of U.S. trade law to assess China’s implementation of its IPR commitments. The Administration called on U.S. companies to submit a range of information to enhance its monitoring of China’s enforcement efforts in every industry and in all regions of China. In addition, the Administration has taken comprehensive action – under the Strategy Targeting Organized Piracy (STOP!) – to block trade in counterfeit and pirated goods, regardless of their origin. The Administration will take whatever action is necessary at the conclusion of the out-of-cycle review to ensure that China develops and implements an effective system for IPR enforcement, as required by the TRIPS Agreement.

Trading Rights and Distribution Services

Of key importance during 2004 was China’s implementation of its commitments to full liberalization of trading rights and distribution services, including wholesaling services, commission agents’ services, retail services and

franchising services, as well as related services. As agreed at the JCCT meeting in April 2004, China implemented its trading rights commitments nearly six months ahead of schedule, permitting companies and individuals to import and export goods directly without having to use a middleman. While China issued regulations that call for timely implementation of its distribution services commitments by December 11, 2004, China has not made clear the precise means by which foreign enterprises will actually be able to apply for approval to provide these services. In addition, China has not yet fulfilled its commitment to open its market for sales away from a fixed location, or direct selling, by December 11, 2004, as none of the measures necessary to allow foreign participants have been issued. The Administration will pay particular attention to these areas over the coming months to ensure that China fully meets these important WTO commitments.

Services

The United States enjoys a substantial surplus in trade in services with China, and the market for U.S. service providers in China is increasingly promising. However, the expectations of the United States and other WTO members when agreeing to China’s commitments to open China’s service sectors have not been fully realized in all sectors. Indeed, through an opaque regulatory process, overly burdensome licensing and operating requirements, and other means, Chinese regulatory authorities continue to frustrate efforts of U.S. providers of insurance, express delivery, telecommunications and other services to achieve their full market potential in China. At the April 2004 JCCT meeting, China committed to abandon problematic proposed express delivery restrictions and to resume a dialogue on insurance issues, although it has been slow to follow through on these commitments.

Agriculture

With U.S. agricultural exports totaling \$5.4 billion in 2003, China has become one of the fastest growing overseas markets for U.S.

farmers. U.S. soybeans, cotton and other agricultural commodities have found ready customers in China, largely fulfilling the potential recognized by U.S. negotiators during the years leading up to China's WTO accession.

Despite the impressive export figures, China's WTO implementation in the agricultural sector is beset by uncertainty. Capricious practices by Chinese customs and quarantine officials can delay or halt shipments of agricultural products into China, while sanitary and phytosanitary standards with questionable scientific bases and a generally opaque regulatory regime frequently bedevil traders in agricultural commodities. Like all commodity markets, agricultural trade requires as much predictability and transparency as possible in order to reduce the already substantial risks involved and preserve margins. Agricultural trade with China, however, remains among the least transparent and predictable of the world's major markets.

In 2004, the United States was able to make substantial headway on a number of key issues in agricultural trade, particularly in the area of biotechnology approvals and the removal of problematic sanitary and phytosanitary measures that had been curtailing trade. Given past experiences, however, maintaining and improving China's adherence to WTO rules in the area of agriculture will require continued high-level attention in the months and years to come.

Industrial Policies

Since acceding to the WTO, China has increasingly resorted to policies that limit market access by non-Chinese origin goods and that aim to extract technology and intellectual property from foreign rights-holders. The objective of these policies seems to be to support the development of Chinese industries that are higher up the economic value chain than the industries that make up China's current labor-intensive base, or simply to protect less-competitive domestic industries.

Prime examples of these industrial policies in 2004 included China's discriminatory

semiconductor VAT policies, China's efforts to promote unique Chinese standards for wireless encryption and third generation (3G) wireless telephony and, more recently, a government procurement policy that mandates purchases of Chinese-produced software. These are among an array of steps that China has taken to encourage or coerce technology transfer or the use of domestic content across many sectors. Some of these policies stray dangerously close to conflict with China's WTO commitments in the areas of market access, national treatment and technology transfer.

In 2004, the United States and China made important progress toward resolving conflicts over a number of these and other industrial policies, such as China's export restrictions on coke, a key steel input. However, more work needs to be done, and the advent of new or similar policies in the future will require continued vigilance by the United States and other WTO members.

Transparency

The foundation of WTO compliance is transparency, which permits markets to function effectively and reduces opportunities for officials to engage in trade-distorting practices behind closed doors. China has not traditionally operated according to the WTO's transparency principles, and thus its commitments in this area in many ways represent a profound historical shift. By that scale, China has come a great distance toward achieving transparency in its official decision-making and regulatory regimes. Indeed, in the last several years, China has made important strides to improve transparency across a wide range of national and provincial authorities. China's Ministry of Commerce is most notable for its impressive moves toward adopting WTO transparency norms. However, many other ministries and agencies have made less than impressive efforts to improve their transparency. As a result, China's regulatory regimes continue to suffer from systemic opacity, frustrating efforts of foreign – and domestic – businesses to achieve the potential benefits of China's WTO accession.

Conclusion

Most of China's key commitments – including trading rights and distribution services – were scheduled to be phased in fully by December 11, 2004. This year – 2005 – will therefore provide a critical glimpse at what to expect of China as a WTO member once its full range of commitments are in place.

In 2005, the Administration will continue to be relentless in its efforts to ensure China's full compliance with its WTO commitments, with particular emphasis on ensuring effective protection of U.S. patents, trademarks and copyrights in China. This work will be facilitated by additional funding from the Congress in 2004 that has allowed USTR and other agencies to increase their level of engagement and enforcement vis-a-vis China. With this additional funding, USTR established a separate office focused solely on China trade issues and doubled the resources devoted to those issues, while other agencies increased staffing levels in Washington and Beijing.

As in 2004, the Administration is committed to working with China to ensure that all of the benefits of China's WTO Membership are fully realized by U.S. workers, businesses, farmers, service providers and consumers. The Administration is also committed to working with China to resolve problems in our trade relationship before they become broader bilateral irritants. When this process is not successful, however, the Administration will not hesitate to employ the full range of dispute settlement and other tools available through China's WTO accession agreement. At the same time, the Administration will continue to strictly enforce its trade laws to ensure that U.S. interests are not harmed by unfair trade practices.

9. Japan

The United States continues to place a high priority on promoting structural and regulatory reform in Japan, improving market access for U.S. goods and services, and supporting pro-

competitive policies throughout the Japanese economy. The United States welcomes Japan's improving economy as well as Prime Minister Junichiro Koizumi's continuing commitment to structural and regulatory reform. Indeed, Japan has made significant progress on the economic reform front, particularly in regard to dealing with non-performing loans and deflation. Nevertheless, persistent structural rigidities, excessive regulation, and market access barriers remain and should be addressed to help ensure the Japanese economy achieves long-term growth. The U.S. Government therefore worked with the Japanese government throughout 2004 to develop and implement concrete steps for Japan to take to promote sustainable growth and further open and deregulate markets. The United States also has been cooperating closely with Japan to address the growing challenges involved in regional trade and economic issues. The two governments have, for example, begun consultations on developing ways to promote greater protection of intellectual property rights in Asia.

In addition to bilateral approaches, the United States relied on a wide range of regional and multilateral fora in 2004, 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 are well coordinated with our bilateral agenda so that the various initiatives are complementary and mutually reinforcing.

Overview of Accomplishments in 2004

U.S.-Japan Economic Partnership for Growth

The U.S.-Japan Economic Partnership for Growth (the Partnership) is the primary mechanism for managing our bilateral trade and economic relations with Japan. Under 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. The various Partnership fora established to address these areas are the: Subcabinet Economic Dialogue, Regulatory Reform and Competition Policy Initiative, Investment Initiative, Private Sector/Government Commission, Financial Dialogue, and Trade Forum. Highlights of Partnership activities in 2004 include:

- In July 2004 the Subcabinet Economic Dialogue convened in Washington where deputy-level officials from both Governments addressed a variety of global, regional, and bilateral trade and economic issues, including the WTO Doha Development Agenda, protection of intellectual property, macroeconomic developments in both countries, bilateral beef trade, and plans for Japan Post privatization.
- Throughout the year, numerous Working Groups and a High-Level Officials Group met under the Regulatory Reform and Competition Policy Initiative (Regulatory Reform Initiative) to discuss reform proposals that culminated in the Third Report to the Leaders, which was conveyed to President Bush and Prime Minister Koizumi on June 8, 2004. That report detailed a myriad of regulatory reform measures that Japan implemented or would implement in key areas such as telecommunications, information technologies, medical devices and

pharmaceuticals, energy, competition policy, and the privatization of Japan Post.

- In April 2004, the United States and Japan convened a meeting of the Investment Initiative and raised a number of topics, including mergers and acquisitions, medical services, and education services. This 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.

a. Regulatory Reform

In the June 2004 Report to the Leaders under the Regulatory Reform Initiative, Japan agreed to undertake many important regulatory reforms. 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 three years of the Regulatory Reform Initiative, the United States presented Japan on October 14, 2004 with 63 pages of recommendations calling on Japan to adopt a wide range of additional regulatory reforms. Consistent with the overall objective of the Partnership, these recommendations include reform measures intended to help Japan continue to grow and open markets. Furthermore, the United States placed a special emphasis on issues that Japan has identified as priorities for reform, such as postal privatization and competition policy.

The October 2004 recommendations 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 a fourth annual report to the President and

Prime Minister in mid-2005 detailing the progress made under this Initiative, including specific measures to be taken by each Government.

Highlights of the Third 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 based on transparent regulation is the primary focus of the United States in pursuing regulatory reform for this sector. Despite significant progress, Japan's telecommunications regulator, the Ministry of Internal Affairs and Communications (MIC), 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. While the competitive provision of broadband services is encouraging, the inability of new entrants to make inroads into NTT's control of 98 percent of subscriber telephone 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 telecommunications market, one of the world's largest.

The June 2004 Report to the Leaders highlighted measures taken by Japan to promote further competition in this sector. These measures included the introduction of a new system under the Telecommunications Business Law (TBL) that eliminated obsolete licensing categories and filing requirements. Other significant accomplishments in the Report to the Leaders included measures to promote testing of Radio Frequency Identification (RFID) technology in the UHF band and modification of the 1990 Exchange of Letters on Network Channel Terminating Equipment (NCTE) to reflect changes in the marketplace and the increased use of international standards for new technology.

MIC continues to grapple with how to set wireline interconnection rates at efficient levels

in the face of NTT's loss of business to wireless and voice-over-the-Internet. MIC approved a plan in October 2004 to move to a more rational rate structure, which should lower competitors' costs. MIC is, however, allowing NTT a five-year transition period, which delays the much-needed reductions in interconnection rates for competitors. The mobile wireless sector also remains an area of concern. While NTT DoCoMo, designated since 2002 as a "dominant carrier," has reduced its interconnection rates by 22 percent over the past three years, rate reductions slowed dramatically last year to only 4 percent, and overall rate levels in Japan remain high. Potential new entrants, which have yet to be assigned spectrum, have announced their intention to lower such rates, as well as provide more consumer choice in this concentrated market.

In the October 2004 Regulatory Reform submission, the United States urged Japan to take bold steps to improve competition in this sector, including: strengthen regulatory independence, transparency, and accountability; reinforce dominant carrier safeguards; conduct an objective and transparent review of interconnection rates; investigate mobile termination rates to ensure reasonable rates and competitive neutrality; and ensure transparency, competition, and technological neutrality in Japan's spectrum management policies and practices (such as licensing, allocation, testing, and fees). In addition, the United States proposed establishment of an Agreement on Mutual Recognition of Conformity Assessment Procedures for Telecommunications Equipment with Japan that would facilitate more efficient trade in telecommunications products. These U.S. recommendations were discussed at a meeting of the Telecommunications Working Group, which took place in December 2004 in Tokyo.

Information Technologies: The primary objective of the Information Technologies (IT) Working Group under the Regulatory Reform Initiative is to work with Japan to establish vibrant and competitive IT and electronic commerce sectors that can benefit both the U.S. and Japanese economies, as well as provide

global leadership in this area. Japan has made important progress over the last few years in removing numerous regulatory barriers in the IT sector, a primary objective of the Japanese government's bold plan to promote IT called the e-Japan Strategy. This progress has helped transform the landscape in Japan into one where broadband utilization is widespread and can be enjoyed at some of the fastest speeds and lowest costs in the world. Japan has also increased the use of IT and online processes in the private and public sectors and is now one of the largest electronic commerce markets in the world. The June 2004 "e-Japan Priority Policy Program 2004" (2004 Priority Policies) prioritizes steps to achieve Japan's goals, such as ensuring secure and reliable networks, focusing on IT adoption, protecting intellectual property, encouraging development of content, increasing use of e-government, and acknowledging the private sector's leadership role in promoting IT usage and the global nature of electronic commerce.

At the same time, the Japanese government recognized in its 2004 Priority Policies that legal and other barriers persist that prevent faster growth of IT usage. 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 and technological neutrality, 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 Japan's IT-related businesses and massive electronic commerce market, and thus provide significant opportunities for U.S. firms and their leading technology products and services.

Throughout 2004, discussions in the IT Working Group focused on protecting intellectual property; removing regulatory and non-regulatory barriers to electronic commerce; promoting electronic commerce via private-sector self-regulatory mechanisms and technologically neutral, market-driven solutions; and expanding IT procurement opportunities. The specific measures Japan has taken in these areas to promote growth in the IT sector are

summarized in the June 2004 Third Report to the Leaders under the Regulatory Reform Initiative.

With regard to protecting intellectual property, Japan in early 2004 put into effect legislation to extend the term of copyright protection for cinematographic works from 50 years to 70 years. Japan is now examining extending the term of copyright protection for sound recordings and all other subject matter protected under the Copyright Law. In addition, Japan is considering whether to adopt a statutory damages system that would act as a deterrent against infringing activities, ensure that rights holders are fairly compensated for the losses suffered by infringement, and enhance judicial efficiency by eliminating the costly burden of having to establish and calculate actual damages and profits. Japan's Intellectual Property Strategy Headquarters also revised in 2004 its "IP Strategic Program," which is designed to meet the challenges of strengthening the protection and enforcement of intellectual property rights in the digital age. In addition, the United States and Japan have begun actively working to develop ways to promote greater protection of intellectual property rights worldwide, especially in Asia.

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. Indeed, the U.S. and Japanese Governments convened a public-private sector roundtable in May 2004 that provided U.S. and Japanese industry a timely opportunity to offer valuable input on Japan's forthcoming implementation of its Law for the Protection of Personal Information (Privacy Law). Since that meeting, various Japanese ministries released for public comment draft guidelines on how to comply with the Privacy Law, which goes into effect in April 2005.

In addition, recognizing that e-government also promotes growth in the IT sector, Japan reaffirmed that all ministries will implement reforms of procurement procedures for information systems in a consistent and timely

manner. The reforms are expected to improve market access by ensuring non-discriminatory, transparent, and fair procurement. Finally, Japan is developing network security guidelines and standards for local and central government entities, and affirmed the importance of involving the private sector in this process. Japan further affirmed that such guidelines and standards will, where appropriate, be open (non-proprietary) and consistent with standards developed by voluntary standardization bodies constituted upon consensus in industry, including the International Standards Organization (ISO).

Building on these accomplishments and the progress achieved over the past year, the United States made numerous recommendations in the Regulatory Reform submission of October 2004 designed to foster Japan's IT sector and create greater opportunities for U.S. interests. This year's recommendations focus on: (1) removing persistent legal and other barriers that hinder electronic commerce; (2) allowing maximum private-sector flexibility, innovation, self-regulation, and leadership; (3) expanding private-sector input into the development of IT-related policy, regulations, and procurement reforms; (4) creating a legal structure that enhances efficiency and security and facilitates online transactions in all areas of the economy; (5) developing coordinated policies compatible with international practice; and (6) protecting and promoting intellectual property. The United States discussed with Japan these recommendations in detail during a December 2004 meeting of the IT Working Group in Tokyo.

Energy: Japan continued this year to make progress in implementing energy liberalization reforms adopted by the Diet in 2003. These reforms should expand liberalization of the retail electricity sector from 26 percent to 63 percent of the market by 2005 and expand liberalization of the natural gas sector from 40 percent to 50 percent of the market by 2007. The reforms should also bring the government's regulation of utilities substantially closer to practices of other developed countries. Japan also took steps to

enhance confidence in the reform process by soliciting public comments on related draft implementing regulations and ordinances. In its Regulatory Reform submission of October 2004, the United States urged Japan to adopt additional measures that would help foster the development of truly competitive Japanese electricity and gas sectors. These steps should spur domestic economic growth and increase opportunities for U.S. firms to produce, sell, and trade energy products and services for Japan's market.

The June 2004 Report to the Leaders outlined areas of progress in the electricity sector, including Japan's preparations to launch in April 2005 a wholesale power exchange to facilitate electricity trading. Additional steps were taken by the government to designate and prepare to supervise a Neutral System Organization that, when operations are launched in April 2005, should help ensure smooth operation of transmission and distribution functions by companies in the market. Japan was also preparing guidelines and rules to govern the behavior of market participants in order to help safeguard the development of a competitive market and prevent abuses of market position. In its October 2004 Regulatory Reform submission, the United States made a number of additional recommendations aimed at helping to ensure adequate supervision, transparency, and fairness as Japan's electricity market evolves. These include the implementation of detailed ordinances and regulations to ensure transparent interconnection procedures and charges for transmission, regulations and guidelines to enforce rules against discrimination by market participants, and rules to enable the regulator to step in where needed to enforce fairness and transparency in the structure of the Neutral System Organization. The United States also urged Japan to expand competition in the market by creating a legal framework to allow new sources of electricity, such as from co-generation facilities, to sell excess electricity via the electricity grid.

Progress was also made in promoting greater competition in Japan's natural gas sector. As reflected in the June 2004 Report to the Leaders, Japan took steps to encourage third-party access

to pipelines, including setting out rules for accounting separation in companies that both own pipelines and distribute natural gas, revising competition guidelines to ensure fair trade, and establishing rules to help encourage the further development of a pipeline network in Japan. A key focus of the U.S. Government's Regulatory Reform submission of October 2004 recommendations on energy was to urge Japan to take additional steps to bolster third-party access to Japan's liquefied natural gas (LNG) terminals. Meaningful and reliable access to LNG import terminals by third parties is important for two reasons: LNG imports are the only source of natural gas for customers in Japan, and natural gas is an important fuel source for companies wishing to build new electricity generating facilities. Access to LNG terminals thus has important implications for continued liberalization and opportunities for new market entry in both the natural gas and electricity sectors.

In addition, the United States also urged in its 2004 Regulatory Reform recommendations that Japan strengthen its ability to monitor and assess the state of competition in the electricity and natural gas markets. Such steps will help ensure that Japan's regulators have timely information about market developments in order to make adjustments in regulations and guidelines, including taking additional structural and liberalization steps to further promote competition. The United States also recommended that Japan bolster resources for the government's relevant gas and electricity regulatory offices and take steps to ensure independence in decision making by regulators.

The United States commends Japan for its evolving efforts to further liberalize its electricity and gas sectors. Much still needs to be done, however, to bring domestic energy costs down to a range closer to the average among developed countries. 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. The United States therefore continues to discuss energy reform recommendations with Japan, including at a

meeting of our Energy Working Group held in December 2004.

Medical Devices and Pharmaceuticals: Japan's regulatory and reimbursement pricing systems slow the introduction of innovative U.S. medical devices and pharmaceuticals in Japan. The United States therefore continues to advocate regulatory and pricing reform to speed the introduction of new devices and drugs and create incentives for development of innovative products. The United States raised these issues with Japan throughout 2004 in the Medical Devices and Pharmaceuticals Working Group under the Regulatory Reform Initiative. That Working Group also meets under the 1986 Market-Oriented, Sector-Selective (MOSS) Agreement.

Japan is in the process of implementing significant reforms to the regulatory side of its healthcare system that will become fully effective in April 2005 and are expected to speed the introduction of innovative devices and drugs in the Japanese market. Japan, for example, established in April 2004 the Pharmaceuticals and Medical Devices Agency (PMDA), which is in part intended to speed approvals of drugs and devices and improve safety measures. The U.S. Government is urging Japan to ensure the increase in user fees paid by drug and device manufacturers (that took effect in April 2004) expands the PMDA's review staff and thereby facilitates faster approvals. In addition, the United States is carefully monitoring Japan's implementation measures specified in the Third Report to the Leaders to set targets for faster product approvals and to publish annual progress reports. Among Japan's targets is a goal (to be attained by 2009) to conclude approvals for 90 percent of new medical device applications and 80 percent of new drug applications within one year.

The United States presented new regulatory proposals to Japan through the Regulatory Reform Initiative in October 2004 and discussed them with Japan at a meeting of the Medical Devices and Pharmaceuticals Working Group in December 2004 in Tokyo. The U.S. proposals

also urge Japan to ensure that overseas audits or factory inspections not delay approvals of new products.

As for pricing reform, the Japanese government's plan for a comprehensive approach is outlined in Japan's "Industry Vision" proposals to improve the competitiveness of its medical device and pharmaceutical sectors by, among other steps, implementing pricing policies that recognize the value of innovation. In the Third Report to the Leaders, Japan committed to deciding more frequently whether to grant reimbursement prices to innovative medical devices and to introducing two important new premium pricing rules for particularly effective drugs.

In its October 2004 Regulatory Reform submission and the December 2004 Working Group meeting in Tokyo, the United States encouraged Japan to reform pricing rules to assess accurately the value of innovative products to Japan's healthcare system, and apply pricing premiums more appropriately to reward and stimulate advances in drug research and medical technology. The United States also urges Japan to consider the unique characteristics of the Japanese market that lead to a much higher cost structure than in other countries.

Financial Services: Japan has achieved many of the goals of making Tokyo's financial markets "free, fair and global", as introduced under the "Big Bang" financial deregulation initiative. More specifically, Japan has made significant progress in 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 2004. On April 1, 2004, the Diet's securities market reform package went into effect. The new law aims to diversify corporate stock and bond distribution channels

and increase the number of intermediaries. The legislation specifically reduces minimum capital requirements for securities companies, investment trust management companies, and investment advisory companies. Shareholder rule revisions, designed to prevent abuse by brokers, were also implemented. The new rules authorize the Financial Services Agency (FSA) to inspect major shareholders of brokerage houses, including non-financial corporations and individuals. Finally, a new sales agent system was established to permit Certified Public Accountants, licensed tax accountants, and financial planners to sell corporate stocks to investors as agents of security brokerage houses.

Also in 2004, Japan revised its Securities and Exchange Law to allow private financial institutions, such as banks and insurance companies, to engage in securities brokerage businesses. The amendments introduced a system of fines to combat unfair trading practices. In addition, the law governing paperless stock transactions was revised to permit companies to stop issuing physical stock certificates. In December 2004, the Diet passed legislation to allow foreign exchange trading on margin. That legislation, which will take effect in July 2005, is designed to protect investors by setting forth specific criteria for margin foreign exchange trading. Also in December 2004, Japan enacted legislation to remove a ban on sales of mutual funds at post offices. Japan Post will start selling mutual funds in October 2005 at 550 of its 24,700 post offices.

The United States welcomes Japan's progress in increasing the efficiency and competitiveness of its financial markets. In its October 2004 Regulatory Reform recommendations, 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 recommendations include: (1) taking the measures necessary to make the No-Action Letter process an effective means for promoting

regulatory transparency in the financial services sector; (2) putting foreign bank branches on equal footing with domestic banks by allowing them to engage in trust and banking businesses concurrently; (3) harmonizing the regulatory framework governing investment advisory and investment trust management activities and eliminating inconsistencies or duplication; (4) allowing mergers and reducing obstacles to the early termination of investment trusts; (5) increasing the defined contribution (DC) pension plan contribution limits; (6) revising the E-Notification Law to include lenders subject to the Money Lending Business Law; (7) working closely with the private financial services community to review current reporting and record-keeping requirements; and (8) subjecting all financial legislative action to full public notice and comment. These issues will be discussed in February 2005 at the fourth meeting of the U.S.-Japan Financial Services Working Group.

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 2004 aimed at strengthening its antitrust enforcement regime. Most importantly, it submitted legislation to the Diet to substantially strengthen the effectiveness of Antimonopoly Act (AMA) enforcement. Specifically, the legislation would increase the administrative fine (surcharge) for AMA violations by most companies to 10 percent of the sales involved in the conspiracy (up from the current rate of 6 percent), with a further increase of the fine to 15 percent for repeat offenders. The legislation would also

authorize the Japan Fair Trade Commission (JFTC) to adopt a corporate leniency program that would eliminate administrative fines and criminal penalties for the first company to report to the JFTC its participation in an unlawful cartel and cooperate in the JFTC's investigation, and would reduce the surcharges for the second and third companies to enter the JFTC's leniency program. In addition, the legislation would give the JFTC criminal investigation powers similar to those already enjoyed by the National Tax Agency, would strengthen criminal penalties for interference with JFTC investigations or for non-compliance with JFTC cease and desist orders, and would extend the statute of limitations for AMA violations to three years after the conduct stopped. It is expected this legislation will be enacted during the next Diet session in the spring of 2005.

With regard to measures to strengthen sanctions against bid rigging, in September 2003, the Ministry of Land, Infrastructure and Transport (MLIT) extended the maximum period of suspension of designation (debarment) for companies that engage in bid rigging to one year, and undertook to subject firms to nationwide debarment if the company's top executives or board members were complicit in bid-rigging activities. The new measures by MLIT specify that the period of debarment will be made more severe where the bid rigging involved "government-led bid-rigging" and the company tried to induce public officials to be complicit in the conspiracy or when the company denied the allegations of a whistleblower.

Transparency and Other Government Practices: The United States' work with Japan on transparency continues to focus on improving the Public Comment Procedure (PCP) in an effort to make it more effective and to encourage more widespread use of this potentially important mechanism. In the June 2004 Report to the Leaders, Japan took a useful step forward by affirming that it would work to improve the PCP by considering various reform measures that include putting in place measures to help ensure more PCP periods are at least 30 days, compelling Ministries and Agencies to make

public detailed explanations when they do not incorporate submitted comments, and improving reviews of PCP implementation and effectiveness. As 2004 concluded, Japan was considering several concrete measures to improve the PCP, but it remains unclear if those measures will prove meaningful.

The June 2004 Report to the Leaders also includes a section on Japan's initiative to encourage deregulation at the local level within Special Zones for Structural Reform. To date, Prime Minister Koizumi has approved nearly 400 of these zones since the first zones were established in early 2003. This new, innovative approach to deregulation and structural reform can provide important opportunities for Japan to ensure economic growth is sustained over the long-term. In the Third Report to the Leaders, Japan pledged to continue to take steps to ensure transparency in implementation of the zones initiative, to expand market-entry opportunities in the zones, and to apply successful regulatory exemptions in the zones on a national basis as expeditiously as possible.

The June 2004 Report to the Leaders includes a number of other steps taken in this area. Importantly, the Council for the Promotion of Regulatory Reform was established in 2004 with a strengthened mandate as a successor to the Council for Regulatory Reform, which over the years worked to effectively improve the regulatory environment in Japan. The Japanese government also broadened in March 2004 the scope of its No-Action Letter Procedures, which clarified that firms in all industries subject to government regulation may seek written clarification of those regulations, not merely firms in "new industries such as IT, finance, etc."

Building on these measures, the United States recommended in its October 2004 Regulatory Reform recommendations that Japan undertake additional improvements to its regulatory system to support its overall reform efforts. The United States is urging Japan to: (1) ensure the PCP is reformed in ways that make it a more meaningful process for the public to input into policymaking; (2) work jointly with the United

States to achieve full implementation of the APEC Transparency Standards in the domestic regimes of countries in the Asia-Pacific region; (3) apply successful regulatory exemptions in the Special Zones on a national basis as expeditiously as possible; (4) take additional steps to facilitate public input into draft legislation before it is submitted to the Diet; (5) ensure that the process to restructure and privatize public corporations is transparent and that the private sector has opportunities to provide sufficient input; and (6) implement measures and practices to strengthen the effectiveness of the No-Action Letter system. Based on these recommendations, discussions on transparency issues took place in December 2004 in the Cross-Sectoral Working Group.

Privatization: Also included in this year's Regulatory Reform recommendations is a new, separate section on privatization, which underscores the importance the United States attaches to this ongoing process in Japan, particularly in regard to the privatization of Japan Post. Over the years, the United States has continued to take interest in Prime Minister Koizumi's efforts to restructure and privatize Japan's public corporations. The United States also recognizes that, if implemented vigorously, this reform effort can have a major impact on the Japanese economy, stimulating competition and leading to a more productive use of resources. As reform of the public corporations advances, the United States has been urging Japan to: (1) conduct the restructuring and privatization in a transparent manner; and (2) ensure that domestic and foreign private sector entities that will or may be affected by the reform have meaningful opportunities to provide input in the privatization process, such as through use of the Public Comment Procedure.

In the Regulatory Reform recommendations in October 2004, the United States specifically recommends that privatization of Japan Post be ambitious and market-oriented to achieve maximum economic benefits for the Japanese economy. A truly market-oriented approach must include the establishment of undistorted competition in Japan's insurance, banking, and express delivery markets through, among other

measures, the elimination of all advantages accorded to Japan Post over its private sector competitors. These advantages have long been of concern to U.S. and Japanese companies alike. (For detailed discussion of Japan Post privatization, please see the Insurance section under Bilateral Consultations, as well as Financial Services under Regulatory Reform.)

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.

In the area of legal services, Japan announced that the 2003 amendments of the law regulating foreign lawyers that will allow them to enter into partnership arrangements with Japanese lawyers and to hire Japanese lawyers as associates will come into effect on April 1, 2005. The United States has been closely monitoring the adoption of implementing rules by the Japan Federation of Bar Associations from the perspective of ensuring that those rules are consistent with both the letter and liberalizing spirit of the 2003 amendments. Japan also has agreed to study whether foreign lawyers should be permitted to form professional corporations and to establish multiple branch offices in Japan as Japanese lawyers are currently permitted to do.

In the area of judicial system reform, the United States has been urging Japan to strengthen judicial oversight of administrative agency actions, including by modifying standing requirements to increase the number of persons eligible to seek judicial review of administrative actions. In 2004, Japan enacted legislation amending the Administrative Case Litigation Law that expands the standing of third parties to challenge administrative actions, facilitates and speeds up administrative litigation, and provides

relief pending review of a judicial decision on the merits of an appeal of administrative actions.

Japan also passed in late 2004 legislation to create a government certification system for Alternative Dispute Resolution (ADR) providers. While the United States generally supported Japan's recent efforts to strengthen and revitalize ADR, this certification system, although voluntary, will effectively discourage parties from choosing non-certified ADR providers. This in turn does not seem to support Japan's commitment to create a flexible and open legal environment that facilitates the development of ADR services in Japan.

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 also will benefit from additional measures to improve corporate governance, since good corporate governance systems 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 effective whistleblower protection measures.

Japan took some important steps in 2004 toward the introduction of modern merger techniques into Japanese law. The responsible subcommittee of the Legislative Council announced that it was recommending revising the Commercial Code to permit triangular mergers, cash mergers, and short form (squeeze out) mergers. Japan also said it was studying ways to facilitate corporate restructuring and investment including the appropriate tax treatment of such modern merger techniques. In the area of strengthening corporate governance, Japan enacted general whistleblower legislation in 2004 that protects whistleblowers who report crimes or violations of a broad range of laws, including violations of

the Securities and Exchange Law. Japan also indicated its support for the promotion of proxy voting by managers of public and private pension funds and by mutual fund and investment trust managers. The Ministry of Health, Labor and Welfare is studying whether to make public the proxy voting policies of its fund managers, and the Financial Services Agency will encourage the relevant trade association to require members to publicly disclose their actual proxy voting records.

Distribution: Japan's generally 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 urges Japan to continue modernizing its 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 under 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.

The Third Report to the Leaders included a number of steps intended to have a positive impact on this sector. Customs overtime charges, for example, were reduced nationwide by 50 percent on April 1, 2004. The Japanese government also specified that the mid-term management plan created by the Narita International Airport Corporation aims to reduce landing fees as soon as possible, which would in turn lower the cost of doing business in Japan. In addition, the Japanese government took note of the request by the U.S. Government to promote the use of credit and debit cards as means of payment for government services.

U.S. reform recommendations to the Japanese government in October 2004 again urged Japan to lower landing fees at its international airports, decrease government regulations on airline pricing and filing requirements, and continue to improve customs processes and procedures. In addition, the submission recommended that Japan further increase acceptance and security of credit and debit cards as payment for goods and services in order to foster tourism and increase economic efficiency. In December 2004, the Cross-Sectoral Working Group met to discuss these and other related issues.

b. Bilateral Consultations

i. Insurance

Japan took significant steps under the 1994 and 1996 bilateral insurance agreements to deregulate its insurance market. These steps included sweeping measures that brought 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. There remain, however, issues of serious concern to U.S. insurers that include competitive matters related to Japan Post's insurance arm (Kampo), the review and reform of the Life Insurance Policyholder Protection Corporation (PPC), the status of unregulated and regulated insurance cooperatives (kyosai), and liberalization of the sale of insurance products through banks. Bilateral consultations under the two insurance agreements were held in Tokyo in August 2004 where these and other issues were raised that have been highlighted by U.S. industry. The talks also included the participation of the National Association of Insurance Commissioners.

The United States expressed its continuing concern with the unequal competitive conditions that exist between Kampo and its private sector competitors, and continued to call for a standstill on new product offerings by Kampo until its advantages over the private sector are

eliminated. These concerns were also discussed in the context of preparations within the Japanese government to develop legislation to privatize Japan Post over a 10-year period beginning in 2007. The insurance talks were held just prior to the release and endorsement by the Cabinet of a blueprint to guide the drafting of legislation, providing a timely opportunity for detailed discussions on how privatization can achieve equal competitive conditions between Japan Post and its competitors. Subsequently, the Cabinet's blueprint included the following changes that had been recommended by the United States: (1) make Japan Post meet the same tax obligations as private companies; (2) terminate government guarantees on Japan Post's insurance products; (3) require full participation by Japan Post in Japan's insurance safety net system; and (4) require that Japan Post's insurance operations fall under the same legal and regulatory obligations as those applied to private companies. The United States called on Japan to take additional steps to ensure that the privatization process puts Japan Post on the same footing as other private companies. The United States also indicated its favorable view of the high degree of transparency achieved in the privatization process, including the willingness of relevant Japanese officials to exchange views with interested private sector parties. The United States urged Japan to maintain the high degree of transparency of this process.

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 that the Financial System Council 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. Through the reform process, the United States urged Japan to take steps to improve policyholder protection while minimizing reliance on the PPC and the burden borne by the contributors to the system. The United States stressed that the deliberations and subsequent drafting of legislation should be transparent and allow for opportunities for input by 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 yet are not required to meet the same tax, legal, supervisory, and regulatory obligations as private companies. This state of affairs has allowed *kyosai* to develop a significant share of the Japanese insurance market. The United States commended Japan for initiating a review of unregulated *kyosai* by a government advisory body as a first step, underscoring that appropriate steps be taken following the review to remedy this unequal competitive situation. The United States also expressed concern about product expansions by major regulated *kyosai* and called for measures to equalize competitive conditions as soon as possible.

In addition, the United States urged Japan to fully liberalize the sale of insurance products through banks within a three-year period identified by a government advisory panel. It called on Japan to ensure that the liberalization process is undertaken in a fair and balanced manner across insurance market sectors. The United States also asked Japan to revise privacy rules that hinder sales of insurance products through banks.

The United States raised the issue of draft reserve requirements for variable annuity products, asking Japan to ensure that the new regulations provide for reserves that are actuarially sound and not excessive, which otherwise would create an unnecessary barrier to companies. The United States also expressed concerns about Japan's case agent system.

In addition to the annual insurance consultations, the United States utilizes the U.S.-Japan Regulatory Reform Initiative to put forward numerous recommendations to promote further reform in Japan's insurance market. The United States included specific recommendations in its 2004 Regulatory Reform submission to Japan to address the concerns identified above related to postal insurance, the Life PPC, *kyosai*, and bank sales of insurance.

ii. Government Procurement

Construction/Public Works: U.S. firms remain largely excluded from Japan's massive (\$190 billion) public works market, obtaining far less than one percent of projects awarded. Problematic 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. These 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, and unreasonable restrictions on the formation of joint ventures.

During the Expert Level Meeting on Public Works in 2004, 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 welcomed Japan's confirmation that Action Plan procedures would be used for Urban Renewal and Private Finance Initiative projects that were commissioned by Action Plan entities and above the specified thresholds. The United States also urged Japan to increase the use of Construction Management, Project Management technology and design architect procurements for all public works projects. In addition, the United States urged the Japanese government to ensure that the procurement procedures set forth in the 1988 U.S.-Japan Major Projects Arrangement (MPA) are used for all outstanding MPA projects. In November 2004, Japanese private sector organizations hosted the sixth 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 Urban Renewal projects.

iii. Investment

Prime Minister Koizumi's January 2003 pledge to double Japan's cumulative foreign direct investment (FDI) in the next five years builds on Japan's earlier reforms to encourage FDI. Shifting Japanese attitudes toward inward 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 (M&A). Although FDI in Japan as a share of GDP remains the lowest among OECD countries, foreign investment has risen in recent years, especially in the banking/insurance, telecommunications, and machinery sectors.

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, and M&A. Amendments to the Commercial Law now allow 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. The Diet is considering revisions to the Commercial Code which would allow greater use of modern M&A tools by foreign investors effective in 2006. The Ministry of Finance is considering changes in the tax treatment of M&As involving foreign investors.

Despite the progress achieved over recent years, government and business observers from both countries recognize that much 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 Initiative meets regularly throughout the year and presents an annual report to the President and Prime Minister on the year's accomplishments. Businesses in both Japan and the United States agree that two new bilateral agreements – an income tax treaty which entered into force in 2004, and a social security totalization agreement which was signed in 2004 – will benefit investors in both countries.

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.

Beef: Reopening the Japanese market to U.S. beef continued to be a top priority of the Administration on the bilateral trade front in 2004. Japan imposed a ban on U.S. beef after the December 2003 discovery of a single imported cow with Bovine Spongiform Encephalopathy in Washington State. Before the ban, U.S. beef exports to Japan (the largest export market for U.S. beef) totaled roughly \$1.3 billion annually. Since April 2004, the U.S. Government has engaged the Japanese government in a high-level effort to reopen the Japanese market to U.S. beef. After prolonged negotiations to determine the conditions under which the trade would be resumed, the two Governments reached a framework agreement on October 23, 2004 designed to pave the way for resumption of beef trade between Japan and the United States. More specifically, that agreement was developed to enable U.S. beef trade to resume under a special marketing program. That program would then be reviewed, with a view toward returning trade to more normal patterns.

Despite the October agreement and official involvement at the highest levels, a continued lack of significant progress in reopening the Japanese market is causing serious harm to the U.S. beef industry. The United States has gone

to great lengths to demonstrate to Japan the ongoing safety of the U.S. beef supply, which includes an enhanced surveillance program of animals and changes to slaughter and feed processes to further ensure that potentially infected material cannot enter the food chain. At the highest levels of government, the Administration is pressing Japan to expeditiously reopen this critical market for U.S. beef. The United States will take all appropriate steps to ensure that this occurs.

Other Sanitary and Phytosanitary (SPS)

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 Japan applies certain SPS measures without scientific justification or documentation.

This was the clear 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 reports that these requirements (ostensibly to protect Japanese orchards against fire blight disease) were unjustified. The reports ruled that Japan's measures did not have a scientific basis and were not based on a valid risk assessment.

Another example is Japan's fumigation requirement on U.S. fruits and vegetables for cosmopolitan pests, which is imposed despite the fact that these pests 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 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 these and other SPS concerns in bilateral and multilateral fora. 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

international obligations and to ensure that policies and practices are supported by science.

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 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 occasionally 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 such imports are subject to a duty of 341 yen per kilogram, equivalent to about 1100 percent ad valorem at January 2005 prices and exchange rates.

ii. Steel

Steel Issues are detailed in Chapter IV.

10. Taiwan

In 2004, 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. As a result of these joint efforts, the United States and Taiwan resumed bilateral discussions in November 2004 under an existing Trade and Investment Framework Agreement.

a. Rice

The United States continued to consult with Taiwan throughout the year regarding concerns with its rice import system. By the end of 2004, Taiwan agreed to modify its rice import system based on consultations with the United States, but other interested rice suppliers to the Taiwan market did not approve some of the proposed modifications to Taiwan's WTO tariff-rate quota schedule. Taiwan is a leading Asian market for U.S. rice exports and, despite concerns associated with the rice tender process, U.S. suppliers won a majority of the tenders conducted in 2004. The United States will continue to work with Taiwan and other interested suppliers to the Taiwan market to achieve improvements to the rice import system.

b. Intellectual Property Rights (IPR)

The United States continued in 2004 to urge Taiwan to further improve its enforcement of IPR and legal framework for IPR protection. U.S. concerns with the level of IPR piracy in Taiwan were serious enough to warrant continued placement of Taiwan on the Special 301 Priority Watch List in April 2004. The United States subsequently determined that Taiwan should be moved to the Special 301 Watch List in an out-of-cycle review during the fall of 2004 as a result of sustained enforcement activities and improvements to Taiwan's legal infrastructure to protect IPR.

As a result of concerted efforts by the United States, industry, and the Taiwan executive branch, Taiwan's legislature in August 2004 passed additional amendments to its copyright law to address some U.S. concerns, including instituting technological protection measures, establishing heavier penalties for infringement, and providing Taiwan Customs the authority to take ex officio action. In addition, Taiwan continued to take measures to improve enforcement of IPR, including conducting raids against manufacturing and retail outlets and formalizing previously ad hoc task forces. The United States will continue to monitor Taiwan's progress in combating piracy, focusing in particular on whether Taiwan continues to

aggressively enforce its laws, take measures to improve the judicial systems ability to address intellectual property cases, and take other concrete actions to reduce all types of IPR violations, particularly in the area of internet piracy and illegal peer-to-peer downloading.

In January 2005, Taiwan's Legislative Yuan passed an amendment to the pharmaceutical law that will provide for protection of undisclosed test or other data related to pharmaceutical products. Data submitted to Taiwan for marketing approval is required by TRIPS to be protected against disclosure and "unfair commercial use." While implementing regulations remain to be drafted, the new law should allow Taiwan to fulfill this commitment.

c. Telecommunications

As 2004 came to a close, and nearly three years after WTO accession, Taiwan's legislature had approved one of two bills necessary to establish a new National Communications Commission, an independent telecommunications regulatory authority. With respect to market access, partially due to repeated U.S. requests, Taiwan's current telecommunications authority began in September 2004 to accept applications for carriers interested in providing fixed line services and shared plans in November 2004 to implement a new licensing regime to permit foreign carriers to apply for authorization to supply local, long-distance, and international services under less restrictive conditions by March 2005. The United States will continue to monitor Taiwan's progress toward the 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 developed countries. Taiwan's Department of Health implemented a 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 Taiwan in 2004 to identify

and resolve outstanding concerns with these requirements in order to help eliminate market access barriers for pharmaceutical products. The United States will continue to do so in 2005.

Another area of concern in this sector involves pricing, whereby hospitals and doctors in Taiwan buy domestically-manufactured generic drugs at discounted prices and are then disproportionately reimbursed by Taiwan at a fixed higher rate, contrary to regulations requiring that reimbursements be made at the purchase price. This practice favors local generic manufacturers over innovative, usually foreign, producers. The United States will continue to work with Taiwan officials and industry to develop ways in which this systemic problem can be addressed. Pharmaceutical pricing issues are exacerbated by the Taiwan health care system, which allows doctors to both prescribe and dispense pharmaceuticals. Research-based pharmaceutical companies see separating these functions as essential to resolving the long-term pricing problem.

11. Hong Kong (Special Administrative Region)

a. Intellectual Property Rights

In 2004, Hong Kong continued to maintain a robust intellectual property rights (IPR) protection regime, especially in the area of public education, sustained enforcement, and imposition of deterrent sentences, including incarceration. Hong Kong has sustained public education efforts to encourage respect for IPR and has re-launched its "no fakes" campaign with local retailers who pledge to sell no counterfeit or pirated goods. Hong Kong authorities also continue to conduct aggressive raids at the production and retail sales levels and to act against vendors who advertise illegal products over the Internet. In February 2004, Hong Kong enacted an amendment to its Copyright Ordinance that provided tougher measures against illicit copy shops. These provisions took effect on September 1, 2004. However, those who pirate printed works are not subject to criminal liability in Hong Kong.

In December 2004, Hong Kong initiated public consultation on another proposed amendment to the Copyright Ordinance that will deal with various aspects of end-use piracy. The United States continues to monitor the situation to ensure that Hong Kong's IPR protection efforts are sustained and that problem areas are addressed.

b. Telecommunications

Hong Kong completed its liberalization of local fixed telecommunications network services (FTNS) on January 1, 2003. There are no limits on the number of licenses issued and no time limit for submitting license applications. In July 2004, Hong Kong announced that it would withdraw its interconnection policy for local fixed-line telecommunications services by June 30, 2008. Interconnection charges will then be subject to commercial negotiation between the operators concerned. In October 2004, Hong Kong began a two-month public consultation on the regulation of Internet Protocol (IP) Telephony. The objectives of the consultation were to seek views on whether the existing regulatory requirements for traditional voice telephony service should be applied to the new services and whether Internet Service Providers should be allowed to operate IP Telephony services. In November 2004, the government decided to take back in 2008 a CDMA (code division multiple access) license and a TDMA (time division multiple access) license from two local operators. The United States will continue to closely monitor developments in this sector.

12. Sri Lanka

In October 2004, the United States and Sri Lanka held their fourth Trade and Investment Council (TIC) meeting pursuant to the United States-Sri Lanka Trade and Investment Framework Agreement (ITIFA). The Sri Lankan delegation was led by Trade Minister Jeyaraj Fernandopulle. The TIC meetings have become an essential element of our bilateral trade relations and have established a record for problem solving.

Minister Fernandopulle, as well as Sri Lanka's Finance and Foreign Ministers, met with U.S. Trade Representative Robert B. Zoellick during the year. Progress in advancing goals of mutual interest slowed somewhat, however, due to Sri Lanka's national elections. A new government took office at the start of the year.

Sri Lanka is focused on the challenge of adapting its apparel industry to the end of the international quota system. It is trying to improve the industry's competitiveness and diversify.

The United States has offered advice and facilitated linkages with our textile industry. U.S. exports to Sri Lanka remain insignificant, but Sri Lanka announced a liberalization of its wheat import regime, which may prove beneficial for U.S. wheat exporters. Sri Lanka also made efforts to make its government procurement system more transparent. The United States, however, is concerned that Sri Lanka's new government raised some tariffs and took other actions that reversed some of the trade and investment liberalization the former government had undertaken. In addition, Sri Lanka has made limited progress concerning the protection of intellectual property, including enforcement against piracy and counterfeiting. Legislation enacted in 2004 that is designed to meet WTO TRIPS commitments is a step in the right direction, however, remaining TRIPS deficiencies need to be addressed.

Sri Lanka continues to advocate the initiation of a Free Trade Agreement negotiation with the United States. The matter remains under consideration.

13. Iraq

USTR participated in the first two meetings of the new Joint Economic Council, with senior USTR officials traveling to Baghdad for the inaugural session. The Members of the WTO agreed to begin the process for Iraqi accession, establishing a Working Party to conduct negotiations. The United States will continue providing technical assistance to Iraq as it pursues accession. USTR contributed to a two-

week trade capacity building session in Washington, conducted by the Department of Commerce and funded by USAID, with experts speaking on subjects such as standards, intellectual property and the U.S. Generalized System of Preferences.

H. Africa

1. AGOA

The African Growth and Opportunity Act (AGOA), enacted 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, including duty-free access to the U.S. market for almost all products made in beneficiary sub-Saharan African countries. The Act also institutionalizes a process for strengthening U.S. trade relations with sub-Saharan African countries by establishing a regular ministerial-level forum with AGOA-eligible countries.

The AGOA Acceleration Act of 2004 (“the Act”), which President Bush signed into law on July 13, 2004, amended several key provisions of AGOA. It extended the authorization of the overall AGOA program from 2008 to 2015, as President Bush proposed to the second AGOA Forum in Mauritius in January 2003. The Act also extended AGOA’s special third-country fabric provision by three years, to September 30, 2007. Under this provision, less-developed beneficiary countries are permitted to use regional or third-country fabric in apparel imported into the United States under AGOA, subject to an overall cap. The cap will remain at the FY2004 level in years one and two of the extension and be reduced 50 percent in year three. The Act amended several technical aspects of AGOA’s apparel provisions to allow broader eligibility for products incorporating certain inputs. The Act also encouraged the Administration to develop policies that enhance

trade capacity, support infrastructure projects and the ecotourism industry and expressed the Sense of Congress that African countries should participate in and support multilateral trade liberalization under the auspices of the WTO.

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, non-governmental organizations, the private sector, and the prospective beneficiary governments. Following the eligibility review in the fall of 2004 and based on the recommendation of the U.S. Trade Representative, on December 21, 2004 the President signed a Proclamation listing the 37⁵² sub-Saharan African countries that meet the Act’s requirements for eligibility in 2005. Cote d’Ivoire was removed from eligibility for 2005 due to a failure to meet the AGOA eligibility criteria described above. In a separate Proclamation dated December 10, 2004, President Bush added Burkina Faso to the list of AGOA beneficiary countries.

As of December 2004, 24 AGOA-eligible countries had instituted acceptable customs measures to prevent illegal trans-shipment and,

⁵² 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>.

accordingly, had been certified for AGOA's textile and apparel benefits.

AGOA establishes a U.S.-Sub-Saharan Africa Trade and Economic Cooperation Forum -- informally known as "the 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. It is expected that the next AGOA Forum will be held in mid-2005.

AGOA continues to have a significant impact on growth and economic development in several beneficiary countries. Since 2000, AGOA has created tens of thousands of jobs and sparked hundreds of millions of dollars in new investment in Africa. In the first nine months of 2004, AGOA imports exceeded \$18.3 billion, up 77 percent over the same period in 2003, largely due to the addition of Angola to the AGOA program and an increase in the value of 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 NTR/MFN rates. While most U.S. imports from the region continue to be in the energy sector, AGOA has begun to result in diversification of United States-African trade. For example, in the first nine months of 2004, non-fuel AGOA imports exceeded \$2.5 billion, with apparel imports totaling \$1.2 billion, a 33 percent increase over the same period in 2001. AGOA minerals and metal imports were up 65 percent, to \$490 million, and AGOA agricultural imports increased 23 percent, to \$197 million.

AGOA 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 sub-Saharan Africa increased 30 percent in the first nine

months of 2004, with especially notable gains in agricultural goods, machinery, and transportation equipment. In an effort to help African countries and businesses meet U.S. sanitary and phytosanitary standards, the United States posted to sub-Saharan Africa three U.S. agricultural standards experts from the USDA's Animal and Plant Health Inspection Service -- one at each of the three USAID-administered regional competitiveness hubs in 2004.

See Chapter VI for information on trade capacity building activities related to AGOA.

2. South Africa

The United States and South Africa enjoy a broad and mutually beneficial trade and investment relationship. This relationship has been encouraged by a TIFA, signed in February 1999, and the start of free trade agreement negotiations with the Southern African Customs Union (SACU), of which South Africa is a member, in June 2003. Two-way trade increased 22.6 percent in the first ten months of 2004, to \$7.4 billion. During the same period, U.S. imports from South Africa under AGOA and related GSP provisions increased by 2.7 percent, with increased imports of minerals and metals, agricultural products, and chemicals offsetting decreases in transportation equipment, textiles, and apparel. South Africa is the largest U.S. supplier of non-fuel AGOA-eligible products (including GSP items), with sales worth more than \$1.4 billion in the first ten months of 2004. Leading imports include platinum group metals, diamonds, ferroalloys, and motor vehicles. Leading U.S. exports to South Africa include motor vehicles, aircraft, machinery, and medical equipment. Primary agricultural imports from South Africa are fresh citrus fruits and wines, increasing by 4 percent and 67 percent, respectively, in the first ten months of 2004. The primary U.S. agricultural export is wheat.

South Africa and the United States continue to consult closely on issues related to the WTO DDA, despite some differences in certain areas. South Africa was a founding member of the G-

20 coalition of countries formed prior to the September 2003 WTO Ministerial in Cancun.

The United States is the largest single-country source of new foreign investment in South Africa since South Africa'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. As with any trade and investment relationship as diverse and vibrant as this one, 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 also has some concerns about South Africa's Black Economic Empowerment (BEE) policies, which are intended to promote the economic empowerment of the historically disadvantaged majority population in South Africa. U.S. companies generally support the objectives of BEE, particularly its emphasis on development and on moving historically disadvantaged people into the mainstream of the national and global economy, but some have expressed concern about the evolution of BEE policies. For example, there are concerns about BEE policies requiring the transfer of equity to historically disadvantaged individuals, particularly among wholly-owned U.S. subsidiaries which have no equity to transfer. Further, many aspects of BEE implementation, interpretation, and policy are still unclear and unanswered. Indeed, foreign investors in South Africa have cited the uncertainty of South African policy as the number one risk of doing business in the country. The United States continued to discuss all of these issues with South Africa in 2004.

3. Nigeria

Nigeria is the United States' largest trading partner in sub-Saharan Africa, based mainly on the high level of U.S. petroleum imports from Nigeria. Total two-way trade was valued at \$14.6 billion in the first ten months of 2004, a 52 percent increase over the same period in 2003, due to an increase in both exports and imports. Nigeria was the United States' fifth largest supplier of petroleum and the fourth largest purchaser of U.S. wheat in 2003. Nigerian exports to the United States under AGOA, including its GSP provisions, were valued at \$10.7 billion during the first nine months of 2004, a 57 percent increase over the same period in 2003, due mainly to a surge in oil exports. However, Nigeria is seeking to utilize AGOA to diversify its export base, especially in the area of manufactured goods. Nigeria became eligible for AGOA's textile and apparel benefits in July 2004, though it has yet to export apparel items under AGOA. The United States is the largest foreign investor in Nigeria with an estimated \$2.1 billion in existing assets.

The United States is working closely with Nigeria, through the United States-Nigeria TIFA and other initiatives, to promote expanded trade and investment and a more diversified economy. At the last United States-Nigeria TIFA Council meeting in November 2004, the United States and Nigeria pledged to work together on critical issues such as market access, the WTO DDA, AGOA implementation, and trade capacity building. The United States is concerned about Nigeria's use of protective import bans on certain products, including sorghum, millet, wheat flour, bulk vegetable oil, and a range of textiles and apparel products. The United States is also concerned about high tariffs on various products, including rice and meats.

4. Ghana

Total two-way trade between Ghana and the United States was valued at \$367 million in the first ten months of 2004, a 46 percent increase over the same period in 2003. Ghana is the sixth largest sub-Saharan African market for U.S. goods. The leading U.S. exports to Ghana are machinery, wheat, and motor vehicles. U.S. imports from Ghana are primarily timber, oil, cocoa, and apparel. In the first three quarters of 2004, U.S. imports from Ghana under AGOA, including its GSP provisions, were valued at \$48.7 million, up 34 percent from the same period in 2003.

Ghana and the United States enjoy a long-standing commercial relationship despite occasional commercial disputes involving United States companies. A number of commercial issues have been resolved or addressed within the United States-Ghana TIFA. At the last United States-Ghana TIFA Council meeting, in July 2002, discussions focused on outstanding commercial disputes, WTO issues, AGOA implementation, and trade capacity building.

5. COMESA⁵³

The United States and the Common Market for Eastern and Southern Africa (COMESA) signed a TIFA in October 2001 and have subsequently held two United States-COMESA TIFA Council meetings, most recently in June 2003. COMESA is the largest regional economic organization in Africa, with nineteen member states and a population of over 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 eleven COMESA members participate. Thirteen COMESA members are AGOA-eligible and nine qualify for textile and apparel benefits. In 2004, Deputy U.S. Trade Representative Shiner and other USTR officials met with COMESA Secretary General Mwencha and representatives of the COMESA Secretariat on several occasions. Among the topics discussed were implementation of AGOA, measures to enhance agricultural trade, WTO issues, and trade capacity building activities. The AUSTR for Africa attended the COMESA Business Summit in Kampala, Uganda in June 2004.

6. UEMOA⁵⁴

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. As noted above in the AGOA section, UEMOA member

⁵³ COMESA members are Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe.

⁵⁴ UEMOA members are Benin, Burkina Faso, Cote d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo.

Burkina Faso became AGOA-eligible in 2004, while Cote d'Ivoire was removed from the list of AGOA-eligible countries as of January 1, 2005. Four UEMOA countries – Benin, Mali, Niger, and Senegal – are eligible to receive AGOA's textile and apparel benefits.

UEMOA entered into a TIFA with the United States in April 2002. At the most recent TIFA Council meeting in Washington in December 2003, Deputy U.S. Trade Representative Shiner and UEMOA Commission President Toure discussed AGOA implementation, means to increase trade and investment flows, issues related to the Doha Development Agenda, and trade capacity building. During a December 2004 visit to UEMOA member countries Senegal, Benin, and Mali, U.S. Trade Representative Robert B. Zoellick discussed issues related to AGOA, export diversification, and the ongoing DDA, including the handling of cotton in these negotiations.

7. Africa and the WTO

Supporting Africa's integration into the global economy is one of the key elements of the Administration's Africa trade policy. Increased and more effective participation, including undertaking greater commitments, of sub-Saharan African countries in multilateral trade discussions is an important step toward this end. Accordingly, the United States continues to consult closely with sub-Saharan African Members of the WTO and is providing technical assistance to help facilitate African participation in the WTO.

WTO issues were key agenda items during each of U.S. Trade Representative Robert B. Zoellick's three trips to sub-Saharan Africa in 2004 – to South Africa and Kenya in February, to Mauritius in July, and to Senegal, Benin, Mali, Namibia, and Lesotho in December. Extensive consultations on WTO topics were also held in Geneva, Washington, and in African capitals. The thirty-eight sub-Saharan African WTO members are the largest single bloc in the WTO, representing 26 percent of all WTO

membership. Seven other sub-Saharan African countries have observer status.

One of the most important WTO issues for the WTO Africa Group in 2004 was cotton, especially for the so-called "Cotton-4" countries of Benin, Burkina Faso, Mali, and Chad. These and other African countries sought special attention for cotton in the DDA as an issue separate from the agriculture negotiations, although cotton was not a specific agenda point on the WTO DDA. Following lengthy negotiations prior to and at the July 2004 WTO General Council meeting, the Cotton-4, the United States, and other WTO Members agreed on a framework to allow the agriculture negotiations to move forward, while at the same time establishing a special subcommittee on cotton to review progress in that sector. (See also Section II on the WTO.) Among other WTO topics that the United States and the Africa Group consulted closely on in 2004 were non-agricultural market access, trade facilitation, development issues, and TRIPS and public health.

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.” The United States, understanding that advancing trade and environmental objectives are mutually supportive, 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 2004, as part

of its ongoing review policy, USTR continued its work on the environmental reviews of FTAs under negotiation with Morocco, Bahrain, five Central American countries and the Dominican Republic, Australia, and the members of the Southern African Customs Union. Interim reviews of the Bahrain and Central American agreements have now been issued. USTR also completed a final review of the FTAs with Australia and Morocco. The review process for each of these agreements made important contributions to the negotiations and to the content of the final agreements. USTR also continued its 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) and commenced reviews for FTAs with the Andean countries, Thailand and Panama.

The United States continues to take an active role in the WTO Committee on Trade and Environment (CTE) to put into effect our commitment to the simultaneous promotion of expanded trade, environmental improvement, and economic growth and development.

The 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. Also during 2004, USTR consulted closely with Congress on the environmental provisions of each FTA throughout the negotiations.

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 a paper in the CTE in Special Session, which was well-received, highlighting its experiences related to specific trade obligations (STOs) set out in three Multilateral Environmental Agreements (MEAs): the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); the Stockholm Convention on Persistent Organic Pollutants (POPs); and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC). 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 continued to advance innovative ideas for developing modalities in negotiations on environmental goods. In the Rules Negotiating Group, the United States continued to be a leader in pressing for stronger disciplines on fisheries subsidies, including the prohibition of the most harmful subsidies. 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 United States participation in the OECD Joint Working Party on Trade and Environment (JWPTE), which met twice in 2004. Work has focused on trade, environment and development issues with an emphasis on the role of environmental goods and services liberalization in promoting “win-win-win” scenarios. 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. 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.

In August 2004, the CEC Secretariat released an Article 13 report, "Maize and Biodiversity: The Effects of Transgenic Maize in Mexico: Key Findings and Recommendations," that, unfortunately, ignored key science about biotechnology and failed to focus on efforts that will preserve maize genetic diversity. The three NAFTA governments are working with the Secretariat to improve procedures for implementing Article 13.

The CEC is also preparing for its third North American Symposium on Assessing the Environmental Effects of Trade, which will be held in the Fall of 2005. In August 2004, the CEC issued a public call for papers examining trade and environment issues related to investment and growth in North America. The final papers will be presented by the authors at the symposium.

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 advanced the policy of using the deepened economic

relationship that comes from new trade agreements to enhance environmental policy cooperation with our new FTA partners. To compliment negotiation of FTAs, the Department of State leads interagency efforts to negotiate parallel environmental cooperation mechanisms. For example, as a complement to the Morocco FTA negotiations, the United States and Morocco negotiated a Joint Statement on Environmental Cooperation that establishes a Working Group on Environmental Cooperation to set priorities for future environment-related projects. The United States completed a similar arrangement associated with the FTA with Bahrain, and has already begun to implement cooperative activities with both partners. An Environmental Cooperation Agreement (ECA) with the Dominican Republic and Central America will also be linked to the CAFTA-DR. This ECA identifies several areas, such as enactment and enforcement of environmental laws, for priority projects and is innovative in providing mechanisms to establish benchmarks for measuring progress in environmental protection and to monitor achievements in meeting benchmarks.

USTR has included in all of its recent FTAs environment chapters containing core obligations to promote high levels of environmental protection, ensure effective enforcement of environmental laws and restrict FTA partner governments from inappropriately derogating from these laws to encourage increased trade or investment. Additionally, all FTA environment chapters include provisions to advance public participation, remedial action for violations of environmental laws and measures to enhance environmental performance. CAFTA-DR, in particular, includes an innovative public submissions mechanism that allows members of the public to have independent review of their written submissions on enforcement matters and promote action by the Environmental Cooperation Commission under the ECA to build capacity to address enforcement problems. USTR is currently

negotiating FTA environment chapters with the five countries of SACU, the Andeans, Thailand, and Panama.

With respect to implementation of recently concluded FTAs, USTR is working with other agencies to ensure that environmental provisions have an immediate impact in advancing environmental protection. For example, the United States and Chile are working to implement the eight environmental cooperation projects outlined in their FTA. In January 2004, the governments sponsored a workshop on corporate environmental stewardship in Santiago. In September, the U.S. Department of Justice and the Chilean Consejo de Defensa del Estado, in cooperation with the Environmental Law Institute, held a workshop on environmental law enforcement focusing on judicial actions to restore and recover compensation for damage to the environment and natural resources. Both events included opportunities for civil society participation.

B. Trade and Labor

The trade policy agenda of the United States includes a strong commitment to protecting the rights of workers, both in American and in our trading partners, and ensuring that American workers remain the most competitive, best trained workforce in the world. 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. The Bush Administration has consistently supported workers through both trade negotiations and the use of safeguard trade laws to ensure a level international playing field. A concerted focus on worker training and education policies will continue to ensure that the American workforce can compete with anyone. In pursuing trade liberalization, we rely on the congressional guidance contained in the Bipartisan Trade Promotion Authority Act of 2002 (“TPA”) to

bring the benefits of trade and open markets to America and the rest of the world. During this past year, USTR continued to consult with Congress on the labor provisions of each agreement throughout the negotiations. USTR also continued to work cooperatively with other U.S. agencies in multilateral, regional and bilateral fora to promote respect for core labor standards, including the abolition of the worst forms of child labor, in pursuing labor provisions in numerous trade agreements consistent with the bipartisan guidance contained in the Trade Act of 2002.

1. Bipartisan Trade Promotion Authority Act of 2002 (TPA) Guidance on Trade and Labor

The importance of the linkage between trade and labor is underscored by the fact that the Bipartisan Trade Promotion Authority Act of 2002 (TPA) contains 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. The first objective is 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. The second objective is to strive to ensure that parties to trade agreements do not weaken or reduce the protections of domestic labor laws as an encouragement for trade. The third objective is to promote the universal ratification of and full compliance with ILO Convention 182 – which

the United States has ratified – concerning the elimination of the worst forms of child labor. The principal trade negotiating objectives in TPA 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.

In an effort to address the social dimensions of globalization, the ILO established the “World Commission on the Social Dimension of Globalization.” in February 2002. In February 2004, the Commission issued its report, “A Fair Globalization: Creating Opportunities for All.” The report made three major groups of suggestions on how all countries of the world could take advantage of the benefits of globalization: national measures that countries could implement to build and strengthen democracy and good government; international measures to reform the international economic system; and suggestions concerning specific issues, such as migration, gender and regional integration. Since the report was issued, the ILO has been engaged in a discussion about how it

might implement some of the labor-relevant conclusions. During 2004 USTR met with the Director-General of the ILO to discuss the implications of the work of the World Commission on United States trade policy.

The United States remains the largest donor to the work of the ILO. The United States has been particularly supportive of the ILO initiative--the International Program on the Elimination of Child Labor (IPEC). 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. ILO/IPEC activities continued in 2004 in many of our trading partners.

3. Regional Activities

The Thirteenth (XIII) 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 regarding the need for greater integration of economic and labor policies. The XIV meeting of the IAMCL will be hosted by Mexico in September 2005.

The Salvador Plan of Action provides for the continued examination of the impacts of trade and integration on labor within IACML 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 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.

The North American Agreement on Labor Cooperation (NAALC) Secretariat, along with the IACML and the OAS, sponsored a workshop in 2004 entitled Supporting Economic Growth through Effective Employment Services, to provide a forum for discussion on the fundamentals of employment service systems as a support to economic growth. The workshop marked the first North American contribution to the implementation of the Action Plan of the XIII IACML. Other NAALC activities are described in the NAFTA section of this report.

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.

During the January 2004 special Summit held in Monterrey, Mexico, in the Declaration of Nuevo Leon, governments reaffirmed their dedication to observe the ILO Declaration and recognized the importance of achieving poverty reduction and job creation while protecting the rights of workers:

"We are committed to the principles of decent work proclaimed by the International Labour Organization, and we will promote the implementation of the Declaration on the Fundamental Principles and Rights at Work in

the conviction that respect for workers' rights and dignity is an essential element to achieving poverty reduction and sustainable social and economic development for our peoples. Additionally, we agree to take measures to fight the worst forms of child labor. We recognize and support the important work of the Inter-American Conference of Ministers of Labor toward achieving these vital objectives.”

The Fourth Summit of the Americas, to be held in Argentina in 2005, will build upon the theme of job creation to fight poverty and strengthen democratic governance.

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

i. FTAs

The Administration continued to negotiate bilateral trade agreements that fully incorporated congressional guidance on trade and labor contained in TPA. During 2004, USTR signed and Congress approved FTAs with Morocco and Australia. The FTA with Australia entered into force on January 1, 2005 and we expect that the FTA with Morocco will enter into force in the spring of 2005. The United States has also negotiated TPA consistent labor chapters in FTA agreements with the Central American countries and the Dominican Republic (CAFTA-DR) and Bahrain which we expect to submit for congressional approval in 2005.

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 and ILO Convention 182 concerning elimination of the worst forms of child labor, are recognized and protected by domestic labor laws. Each Party is also obligated not to fail to effectively enforce

its labor laws, recognizing the discretion Parties have in matters such as allocation of resources.

Cooperation and consultations are the preferred means to resolve differences over a Party's compliance with obligations under an FTA's labor chapter. If cooperation and consultations fail to resolve such a disagreement, our FTAs permit a Party to ask a dispute settlement panel to determine whether the other Party has violated its obligation not to fail to effectively enforce its labor laws in a manner affecting trade. If a panel determines that the respondent Party has violated this obligation, and if the Parties are unable to agree on an action plan for bringing that Party into compliance, then the panel may establish a monetary assessment to be paid by that Party, based on criteria such as the trade effect and pervasiveness of the violation.

The proceeds of an assessment would go into a fund, established under the Agreement, and expended only upon the direction of a joint commission (consisting of representatives of both Parties to the Agreement). The intention is for the funds to be used to address the underlying labor problem. The assessment must be paid each year until the respondent Party comes into compliance with its obligations.

If a Party fails to pay an 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.

On December 17, 2004, the Bureau of International Labor Affairs of the U.S. Department of Labor renamed its National Administrative Office as the Office of Trade Agreement Implementation, and designated it as the Contact Point for Labor Provisions of Trade Agreements.

In approaching labor issues in the context of negotiations with Central America and the Dominican Republic, the United States carried out a three-pronged strategy. The first element is a labor chapter fully consistent with TPA as well as guidance received in consultations with House and Senate Committees. The language in the labor chapter - stronger and more comprehensive than in earlier FTAs such as Chile and Jordan - requires that in each country tribunals for the enforcement of labor laws be fair, equitable, transparent, and that proceedings before such tribunals not entail unwarranted delays. In addition, the Labor Cooperation and Capacity Building Mechanism in the CAFTA-DR 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 negotiations were ongoing, the five CAFTA countries and the Dominican Republic 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 six countries have laws giving effect to all of the ILO’s fundamental principles and rights at work, but the report also pointed out that enforcement of those laws needs additional attention and resources.

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 to better protect worker rights once the agreement takes effect. These initiatives include a regional project in Central America that was expanded to include the Dominican Republic. The program is funded through two grants from the U.S. Department of Labor for \$7.75 million to increase workers’ and employers’ knowledge of their national labor laws, strengthen labor inspections systems, and bolster alternative dispute resolution mechanisms. FY2005 appropriations by

Congress provide an additional \$20 million for labor and environmental capacity building activities related to the agreement in the Central American countries and the Dominican Republic. The United States is in the process of identifying activities at this time. Several programs are also being carried out in Morocco aiming to train workers on worker rights issues, enhance the Labor Ministry’s capacity to increase compliance with labor laws, and to help eradicate the worst forms of child labor.

As noted above, in 2005 we intend to seek congressional approval of legislation implementing the Bahrain FTA. This FTA further builds the foundation for the President’s Middle East Peace Initiative, which calls for a free trade area in the Middle East by 2013. The President has also notified Congress of his intent to negotiate FTAs in 2005 with Oman and the United Arab Emirates.

Trade negotiations will continue in 2005 with the South African Customs Union (SACU), Thailand, Panama, and the Andean countries and will follow the same approach to include TPA consistent labor provisions

ii. Other Bilateral Agreements and Programs

Our bilateral textile agreement with Cambodia, which terminated at the end of 2004, had a unique aspect in that import quotas could be increased dependent upon the efforts of the Cambodian government to effectively enforce its 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 monitored working conditions in Cambodian enterprises and reported on the results of that monitoring. Although the quota mechanism under the Agreement is no longer in effect, as that mechanism was linked to rights and obligations under the WTO Agreement on Textiles and Clothing, which expired at the end of 2004, Cambodia has pledged to financially contribute

to sustaining the ILO garment sector monitoring project after the U.S. Department of Labor funding expires at the end of 2005. The ILO has already secured commitments for funding beyond that date, including from the Government of Cambodia, the French Government, and USAID. Other donors such as the World Bank have also expressed an interest in helping fund the proposed three year transition from ILO monitoring to monitoring conducted by a Cambodian institution beginning in 2009 to ensure credible and transparent monitoring in the long run. The United States will continue to monitor how Cambodia follows through on its commitments, including funding for the ILO monitoring project, whether labor policies are applied to other industries, and capacity building of the Ministry of Labor and Vocational Training.

The U. S. bilateral textile agreement with Vietnam, which terminated at the end of 2004, also included a labor provision. Both Parties reaffirmed their commitments as members of the ILO, and also indicated their support for implementation of codes of corporate social responsibility as one way of improving working conditions in the textile sector. The agreement also called 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 annually to review the implementation of a Memorandum of Understanding between the two ministries signed in November 2000.

A final aspect of trade and labor bilateral activities relates to the worker rights provisions of U.S. trade preference programs, such as the African Growth and Opportunity Act (AGOA), the Andean Trade Promotion and Drug Eradication Act (ATPDEA), as amended, the Caribbean Basin Trade Preferences Act (CBTPA), and the Generalized System of Preferences (GSP). The 2004 Annual ATPA Review is the second such review to be

conducted pursuant to the ATPA regulations on the eligibility of countries for the benefits of the ATPA. The TPSC continued to review worker rights conditions in Ecuador. 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 2004, USTR continued its reviews of a number of petitions requesting that GSP trade benefits be withdrawn from countries for not taking steps to afford internationally recognized worker rights. The GSP review of Guatemala was terminated as a result of the progress Guatemala made during the CAFTA-DR negotiations to address worker rights. The GSP country practice review of Bangladesh, originally accepted in 1999, was also terminated in recognition of the passage of a new law providing for worker representation committees in Bangladesh's export processing zones. As the year ended, a review of Swaziland was still in progress. GSP country practice petitions were filed in 2004 against Costa Rica, El Salvador, Honduras, Guatemala, Panama, Oman, and a petition was filed to remove AGOA and GSP benefits from Uganda. Decisions on whether to accept these cases for review are pending.

C. Organization for Economic Cooperation and Development

Thirty democracies in Europe, North America, and the Pacific Rim comprise the Organization for Economic Cooperation and Development (OECD), established in 1961 and headquartered in Paris. 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, but also a policy forum covering a broad spectrum of economic, social, and scientific areas, from macroeconomic analysis to education to

biotechnology. The OECD helps countries - both OECD members and non-members - reap the benefits and confront the challenges of a global economy by promoting economic growth, free markets, and efficient use of resources. Each substantive area is covered by a committee of member government officials, supported by Secretariat staff. The emphasis is on discussion and peer review, rather than negotiation, though some OECD instruments are legally binding, such as the Anti-Bribery Convention. OECD decisions require consensus among member governments. In the past, analysis of issues in the OECD often has been instrumental in forging a consensus among OECD countries to pursue specific negotiating goals in other international fora, such as the WTO.

The OECD conducts wide-ranging outreach activities to non-member countries and to business and civil society, in particular through its series of workshops and "Global Forum" events held around the world each year. Non-members may also participate as observers of committees when members believe that participation will be mutually beneficial. The OECD carries out a number of regional and bilateral cooperation programs. The Russia program, for instance, supports Russia's efforts to establish a market economy and eventually join the OECD.

1. Trade Committee Work Program

In 2004, 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) contains up-to-date

information on published analytical work and other trade-related activities.

Major analytical pieces completed under the Trade Committee during 2004 included studies on "The Global Economic Impact of China's Accession to the WTO" and on "International Licensing and the Strengthening of Intellectual Property Rights in Developing Countries." The OECD published its study, "A New World Map in Textiles and Clothing: Adjusting to Change," examining the implications for developed and developing countries of the elimination at the end of 2004 of quantitative import restrictions in textiles and clothing. Reflecting the needs of WTO negotiators in Geneva, additional work completed in 2004 analyzed the costs of introducing and implementing trade facilitation measures, in order to address developing country concerns in this area; looked at the economic impact of barriers to trade in services; reviewed the use by WTO Members of import prohibitions and quotas; and examined the links between domestic regulatory reform and market openness, demonstrating that trade-related regulatory reform enables countries to take better advantage of trade liberalization and of open global markets. The Trade Committee reviewed an interim report on a major on-going project looking at trade and structural adjustment and discussed aspects of the work with representatives of civil society, including members of the OECD's Business and Industry Advisory Council and Trade Union Advisory Council. Work advanced on studies expected to be helpful in addressing some developing countries' concerns related to trade liberalization: one on the potential impacts of the erosion of trade preferences, a second on the impacts of tariff cuts on developing countries' government revenues.

The Committee also laid the groundwork for a meeting of OECD member country trade ministers in May 2004. Ministers from a number of key non-members also participated. Those discussions made a positive contribution

to the WTO negotiations leading to the August agreement on a framework for the DDA.

In accordance with the OECD's adoption of biennial output-based budgeting, the Trade Committee determined what should be its priority activities during 2005-06. The Committee agreed that analysis and dialogue to support and facilitate the ongoing WTO negotiations should remain a priority, as should work that focuses on the development dimension of trade and the benefits of trade liberalization.

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 and other fora. 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 in February and October 2004, and agreed to pursue a study on regional trade agreements with competition provisions. The JG also discussed a series of case studies of developing countries that had faced competition problems that also affected development and export competitiveness. The case studies included the privatization of Mexico's railroads, Telmex and the related U.S. WTO case, ocean shipping in Turkey, telecommunications in Romania, and cement in Zambia. The case studies will be assembled into a booklet for use in a Joint Global Forum on Trade and Competition scheduled for February 2006, to which many non-OECD countries will be invited.

3. The OECD Anti-Bribery Convention: Detering Bribery of Foreign Public Officials

The OECD Convention on Combating Bribery of Foreign Public Officials in International

Business Transactions entered into force in February 1999. The Convention was adopted by the then 29 members of the OECD and five non-members in 1997. The non-members were Argentina, Brazil, Chile, Bulgaria, and Slovakia (now an OECD member). In 2001, non-member Slovenia became a party to the Antibribery Convention, and in 2004, Estonia, also a non-member, acceded to the Convention.

The Convention requires the parties to criminalize the bribery of foreign public officials in executive, legislative, and judicial branches, impose dissuasive penalties on those who offer, promise or pay bribes, and implement adequate accounting procedures to make it harder to hide illegal payments. All 36 parties 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 with an estimated value of 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, consequences that can be particularly damaging in developing countries.

By the end of 2004, all parties except Slovenia, which will be reviewed in January 2005, and Estonia had undergone a review of their respective national legislation implementing the Convention (i.e., Phase 1 review). The parties to the Convention commenced the second phase (i.e., Phase 2) of peer monitoring – the evaluation of enforcement – in November 2001. By end of 2004, a review had been completed for fifteen countries. Information on these reviews is available on the internet at www.export.gov/tcc and www.oecd.org. The United States has successfully pressed for an accelerated Phase 2 monitoring schedule and ensured that there are sufficient OECD budget funds to support it. The Working Group on

Bribery will undertake seven more country reviews in 2005 with the goal of completing the first country review cycle in 2007. The United States is working to ensure continuation of a robust peer-review monitoring process beyond 2007. The OECD Antibribery Convention parties will also continue to study whether the coverage of the Convention should be expanded to include several related issues, such as explicitly covering 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 transition economies, such as the countries of Eastern Europe and Central Asia, leading developing economies in South America and Asia, and sub-Saharan African countries.

In July 2004 OECD members adopted a new, more pro-active strategy for outreach to non-members. The Trade Committee, like all committees, was instructed to decide which non-members could contribute most positively to its work and to consider inviting those economies to be observers, on a longer-term or an ad hoc basis. As a first step, the Trade Committee is undertaking a review of its mandate, which dates back to the Committee's creation some forty years ago, and has extended the observer status of Argentina, Brazil, Chile, Hong Kong, and Singapore through December 2005. These five observers, plus China, Guyana, India, Kenya, Russia, and South Africa, also accepted the OECD's invitation to participate in the trade ministers' meeting at the May 2004 Ministerial Council Meeting. That meeting focused on advancing the WTO DDA.

Russia, Estonia, Latvia, and Lithuania all participated as ad hoc observers in specific meetings of the Trade Committee's Working Party during 2004. Russia's attendance followed upon its participation in a peer review of its trade-related regulatory reform efforts. The Working Party has undertaken 20 such

reviews in the past few years, but this was the first involving a non-member. The Working Party discussed with the Baltic countries a study on the impact of their accession to the EU on their trade in services. Estonia, Latvia, and Lithuania, as well as the countries of South East Europe and Russia, also benefited from OECD work on the impact of barriers in their services regimes, the culmination of a multi-year project on services trade in the transition economies. Within the framework of that project, the OECD, both alone and in conjunction with other international organizations (the WTO, World Bank, and the International Trade Centre), held seminars in all the Southeast European countries in the first half of 2004 aimed at training government officials and the business community in the region to plan more effective national trade policies in the area of services.

The OECD organized several other events in 2004 connected to its ongoing trade policy dialogue with non-member economies. In June, the OECD held a regional workshop in Almaty, Kazakhstan, on the economic and trade implications of WTO accession. While the main audience was officials from Russia, China, Central Asia, and other Asian nations, representatives from business and international organizations also attended the meeting. The main objectives of the meeting were to share experiences with the implementation of multilateral and regional trade disciplines, exchange views on the relevance of different methods for analyzing changes in trade policy, and consider alternative approaches employed by governments to implement WTO commitments and maximize the benefits of integration into the international trading system.

In October, Lesotho hosted an OECD regional workshop on deeper integration of African countries into the global economy. The meeting focused on agriculture, services, and trade facilitation issues, and brought together representatives from African business, research institutions, civil society, and governments, as

well as from OECD member countries and international organizations.

The biggest trade-related outreach event in 2004 was the Global Forum held in Bangkok, Thailand, in November. The OECD organized this event in conjunction with the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), with support from the World Bank and the Government of Thailand. The meeting provided an opportunity for members and non-members to exchange views and share experiences on policies intended to promote competitiveness and facilitate domestic economic adjustment to trade-related changes. Participants focused particularly on the textiles/clothing and motor vehicles sectors. Attendees came from 28 economies, as well as from the European Commission and a dozen international organizations, non-governmental organizations, and private businesses.

5. Environment and Trade

The OECD Joint Working Party on Trade and Environment (JWPTE) met twice in 2004 to continue its analysis of the effects of environmental policies on trade and the effects of trade policies on the environment, as well as its efforts to promote mutually supportive trade and environmental policies. During the year, the JWPTE contributed important work on environmental goods and services to support the DDA. The JWPTE began work on a paper exploring the synergies between liberalization of environmental goods and environmental services, which is expected to be published in early 2005. The JWPTE also continued its examination of complementary measures that can ensure the maximum realization of benefits from the liberalization of environmental goods and services markets. The JWPTE also compiled studies on the environmental effectiveness and economic efficiency of national eco-labeling schemes. The United States provided information on its analysis of the

Energy Star program, and other OECD members provided similar information for the report, which should be published in early 2005. The JWPTE continued work to support the trade and environment-related elements of the September 2002 World Summit for Sustainable Development plan of implementation, focusing on successful transfer of environmentally-sound technologies. The JWPTE agreed to begin new work in 2005 on environmental aspects of regional trade agreements. The JWPTE hosted an outreach event for interested non-governmental organizations in December 2004, continuing its tradition of promoting dialogue with interested stakeholders.

6. Export Credits

The OECD Arrangement on Guidelines for Officially Supported Export Credits (the Arrangement) places limitations on the terms and conditions of government-supported export credit financing so that competition among exporters is based on the price 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 (Participants), a stand-alone policy-level body of the OECD, are responsible for implementing the 26-year-old Arrangement and for negotiating further disciplines to reduce subsidies in official export credit support.

The Administration estimates that the Arrangement saves U.S. taxpayers about \$800 million annually because 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 to compete with such practices by other governments. In addition, the "level playing field" created by the Arrangement's tied aid disciplines has created conditions for U.S. exporters to increase their exports by about \$1

billion a year. These exports could have cost taxpayers about \$300 million, if the United States had to create its own tied aid program.

In 2004, the Participants in the Arrangement agreed to a U.S. proposal to open the bidding process for projects in developing countries that are financed with untied aid credits. Untied aid credits are bilateral aid loans for which proceeds are supposed to be available to finance procurement from all countries. However, the U.S. Government and U.S. exporters have been concerned that this type of aid was used to promote exports from donor countries outside the tied aid rules, rather than provide financing to all exporters for aid projects.

Partly in response to a request from Congress, the Administration has been working to negotiate OECD rules governing these aid loans over the past two years. In November 2004, the Administration successfully concluded path-breaking requirements for participant governments to publicly announce the details of their untied aid projects 30 days before the bidding period begins, as well as report the outcome of each bidding competition. These requirements will help U.S. exporters identify and bid for these foreign contracts and ensure that the bids are administered fairly. The new two-year pilot agreement entered into force on January 1, 2005. The Treasury Department will carefully monitor the implementation of this agreement to insure proper compliance by untied aid donor governments. The values of untied aid credits covered by this agreement have averaged over \$7 billion annually since 1995, and were as high as \$14 billion in 1996.

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 \$2.6 billion in 2003 (compared to \$2.1 billion in 2002 -- its lowest level on record). Data for the first half of 2004 indicate that tied aid levels

may have increased to approximately \$4 billion for 2004; however, the types of projects being financed remain within the tied aid rules.

The Administration is addressing a number of other issues through the Arrangement Participants including a review of market window institutions. Market windows are quasi-governmental financial institutions that support national exports and yet are unbound by multilateral rules. Despite claims by government operators that market windows provide purely market-based financing, concerns have been raised that these institutions are providing export financing that is beyond what commercial banks or export credit agencies can provide due to a wide range of government subsidies. In response to a congressional request, Treasury submitted a report detailing the Arrangement Participants' work on market windows to Congress in June 2004. Lacking documented evidence of anticompetitive behavior by these institutions, little progress has been made to negotiate rules for market windows. Making market window operations more transparent is clearly necessary. The Administration continues to monitor market window activity, with Ex-Im Bank working to develop comprehensive data on market window financing.

Another important issue being worked on by the Arrangement Participants involves WTO activities related to export credits. After hearing complaints by developing countries that the Arrangement provides an unfair benefit to Arrangement Participants, Participants began a concerted effort to assure that the Arrangement rules equitably address the trade finance needs of both developing countries and Arrangement Participants. The major portion of this work was achieved in a redrafting of the Arrangement to address specific issues and principles 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 official export credit providers and not just the OECD countries), and to increase transparency vis-à-vis non-Participants. The new Arrangement text was implemented in January 2004.

The Arrangement Participants will continue to work with non-OECD members to improve and refine the Arrangement rules to ensure a level playing field for all governments providing official export credit support. Participants are currently focused on closing some loopholes to ensure coherence in the rules for all users.

The biggest challenge facing Arrangement Participants is on how to address developing country concerns that the Participants - viewed as rich countries making the rules - are not taking developing country concerns into account when setting the rules for the provision of export credits. For example, the recent Brazil-Canada WTO dispute and counter disputes over export credits for aircraft have highlighted the need for aircraft-manufacturing Arrangement Participants to consult with Brazil, which is not an OECD member, on aircraft trade. This has led to an agreement by Arrangement Participants to launch a formal review of the OECD agreement on aircraft, with Brazil participating as a full partner in the negotiations. The Administration is coordinating closely with U.S. exporters on these negotiations.

7. Investment

International investment issues are studied and discussed in several OECD bodies. These discussions help build international consensus on the importance of investment protection and on the meaning of particular standards of protection; 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 plays a major role in shaping investment-related work within the OECD.

In 2004, the Committee on International Investment and Multinational Enterprises merged with the Capital Movements and Invisible Transactions Committee to form the Investment Committee, which plays the leading role in the analysis of international investment issues within the OECD. The Investment Committee is also responsible for monitoring and implementing the OECD Codes of Liberalization and the OECD Declaration on International Investment and Multinational Enterprises.

The Investment Committee examined several investment issues in 2004. An ad hoc meeting of legal experts considered systemic issues concerning investment dispute resolution – including transparency, enforcement, and the possibility of an international appellate mechanism – and specific substantive provisions of international agreements. These provisions included “most-favored-nation treatment,” “fair and equitable treatment,” and “indirect expropriation.” Synergies between official development assistance and foreign direct investment were also examined, and the 2004 model U.S. bilateral investment treaty was presented to committee members.

In 2004 OECD continued to expand its outreach on investment issues to non-members. Member countries considered the establishment of a more detailed work plan for the Mideast and North Africa Initiative, which was launched in November 2004. The proposed new work plan would cover a three-year period, and include initiatives on governance and investment. Major outreach efforts for China and Russia also continued in 2004. The OECD published a second analysis of challenges facing Russia’s investment regime. It also examined the investment regime in Romania, which is seeking to become an adherent to the Declaration on

International Investment and Multinational Enterprises. The Investment Committee discussed ways to enhance the participation of non-members in its work through observerships, adherence to the Declaration, and *ad hoc* participation.

Finally, the Investment Committee continued to play an active role in promoting corporate social responsibility through its oversight of the voluntary OECD Guidelines for Multinational Enterprises. In June 2004, the Investment Committee hosted the fourth 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 fourth year of implementation activity under the revised guidelines. In addition, the 2004 OECD Roundtable on Corporate Responsibility, held in conjunction with the NCP annual meeting, focused on the environment and the contribution of private enterprises to its protection. The Investment Committee is also examining the role of private firms in countries characterized by weak governance.

8. Labor and Trade

The Trade Union Advisory Committee (TUAC) to the OECD, made up of over 56 national trade union centers from OECD member countries, has played a consultative role to the OECD and its various committees since 1962. In February 2004, the OECD Trade Committee had an informal consultation with TUAC members, discussing the state of the play of the WTO DDA, as well as exchanging views on the topic of structural adjustment and trade liberalization. TUAC submitted a statement to the May 2004 OECD Ministerial Council meeting, providing a number of recommendations for governments to help address the problems raised by globalization. In October 2004, the Trade Committee held its sixth informal consultation with civil society organizations. TUAC was one of the organizations participating in the

consultation, submitting a paper entitled “Trade, Offshoring of Jobs and Structural Adjustment: The Need for a Policy Response,” which advocated a “whole of government” strategy for responding to the employment consequences of offshoring. TUAC’s paper also noted the key role of the ongoing project in the OECD Trade Committee studying Trade and Structural Adjustment, and called for the OECD and the International Labour Organization to step up cooperation on these issues. As previously noted, in November 2004, the OECD convened a Global Forum on Trade in Bangkok, Thailand on this topic, focusing in particular on structural adjustment in the motor vehicle and textile/apparel sectors.

9. Regulatory Reform

Since 1998, the OECD Trade Committee has contributed to OECD work on domestic regulatory governance with country reviews of regulatory reform efforts. The United States has supported this work on the grounds that targeted regulatory reforms, e.g., those aimed at increasing transparency, can benefit domestic and foreign stakeholders alike by improving the quality of regulation and enhancing market openness.

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 its first review of a non-member – Russia – in 2004. It had previously reviewed twenty OECD Members, including all the G7 countries. The Committee

was also briefed on the monitoring exercise for Mexico and Japan, which is intended to review progress and challenges since the initial reviews of those countries in 1999. The OECD's Trade Directorate contributed to two papers: "Policy Recommendations for Better Regulations," which will be presented to the OECD Council in 2005 as a proposed revision of the Policy Recommendations on Regulatory Reform adopted in 1997, and "Taking Stock of Regulatory Reform: A Multi-disciplinary Synthesis," which serves as background information emerging from the regulatory reform country reviews undertaken to date. The Trade Directorate also prepared and released a study on "Regulatory Reform and Market Openness: Understanding the Links to Enhance Economic Performance," which summarizes what has been learned about trade-relevant "best regulatory practices" since the program began and extends it to some non-OECD countries. Finally, in May, in Chile, the APEC-OECD Cooperative Initiative on Regulatory Reform held its sixth and seventh annual workshops aimed at developing an integrated checklist to help countries assess their progress in implementing the common principles on regulatory reform. The May workshop, held in Chile, focused on "Enhancing Market Openness through Regulatory Reform." The November workshop, held in Thailand, discussed how to put the checklist into practice.

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.

In 2004, the Secretariat produced papers on: (1) identifying opportunities and gains with respect to service trade liberalization, focusing on developing countries; (2) managing request offer negotiations under the GATS, focusing on the case of legal services (a study done in

cooperation with UNCTAD); and (3) measuring services barriers and their economic impact, focusing on examples of banking and telecommunications services in selected transition economies. Preparations also advanced for the OECD's fifth "services experts" meeting, organized jointly with the World Bank, to be held in Paris in February 2005.

11. Steel

As noted in the "Steel Trade Policy" section of this report, the Administration continued its efforts to eliminate market-distorting steel subsidies, negotiating with the world's major steel-producing countries at the OECD. While significant progress towards a steel subsidies agreement was made, the talks reached an impasse in early 2004 due to the differences that exist among participants in key areas. Those differences include the nature and extent of any exceptions to the overall subsidies prohibition, preferential treatment for developing countries, and whether any excepted subsidies should continue to be countervailable under national trade laws. In June 2004, the OECD High Level Group on Steel reaffirmed its commitment to the ultimate goal of stronger subsidy disciplines in the global steel sector, and decided to shift the focus of the talks to informal bilateral and plurilateral consultations to explore possibilities for bridging differences on the key issues. The High Level Group also agreed to reconvene in 2005 to evaluate prospects for a steel subsidies agreement.

The participants in the OECD discussions noted that while global steel demand and consumption increased significantly in 2003 and 2004, interest in new steelmaking capacity was also increasing due to the current strong market. The Administration joined other OECD steelmaking countries in agreeing that despite the upturn in the steel market the cyclical nature of the steel market, continued subsidies in the steel sector, and a slower rate of growth in China, the

world's largest steel producer and consumer, warrant continued attention by policymakers. To that end, the Administration, along with industry, supported the efforts of the OECD to organize a Global Steel Conference in January 2005 to better understand the changing situation in the steel sector, including the raw materials markets. The conference was well attended by the world's major steel producers and participants agreed that it was a useful exercise. Following the conference, the permanent OECD Steel Committee met for the first time since the beginning of the High Level process and decided on a program of work for 2005-2006. The committee plans to meet again in early November. The ongoing work 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.

12. Developing Countries

The OECD Trade Committee gave special focus in 2004 to issues of particular concern to developing countries, mindful that addressing these issues is essential to making progress on DDA. The OECD issued a major publication in 2004 on adjusting to the changes resulting from the expiration at year-end 2004 of the WTO Agreement on Textiles and Clothing. It also issued a paper on "Trade Facilitation Reforms in the Service of Development," illustrating the costs and benefits of trade facilitation measures taken in a number of developing countries, and concluding that holistic customs reforms tend to yield better results than a piece-meal approach. The Trade Committee and its Working Party discussed on-going OECD analytical work on revenue losses associated with the lowering of tariffs, the impact of preference erosion, and non-tariff barriers of particular importance to developing countries. In October 2004, the Trade Committee held a joint session with the OECD Development Assistance Committee (DAC) to review on-going work and discuss how best to enhance coherence between trade

policy and development strategies, including through a possible future high-level meeting of trade officials and development officials.

The Trade Committee built on its previous work with the DAC to make available current OECD work helpful to trade negotiators, particularly to those from developing countries. In 2004, the OECD issued an updated version of the CD-ROM it had distributed free of charge to all WTO Member governments at the WTO Ministerial Conference in Cancun in 2003. This "Tool Kit III" includes the full texts of over 35 OECD analytical papers and publications on trade policy issues, selected on the basis of their relevance to the DDA. It also contains the analytical reports and presentations that were made available to participants in the three OECD Workshops held in Nairobi, Kenya in December 2003, Pucón, Chile in May 2004, and Almaty, Kazakhstan in June 2004. Other efforts to engage developing countries in the work of the OECD by holding outreach events in those regions and by inviting some countries to participate as observers at Trade meetings are described above in the section on Dialogue with Non-OECD Members.

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 Agreement's fifth party. The 1999 Joint Statement reflected 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). The 1999 Joint Statement also broadened discussions

beyond the Japanese market to cover a broad range of issues aimed at promoting the growth of the global semiconductor market through improved mutual understanding between industries and governments and cooperative efforts to respond to challenges facing the semiconductor industry.

In May 2004, industry CEOs representing all five 1999 Joint Statement parties held their fifth World Semiconductor Council (WSC) meeting. The WSC was created under the 1996 Joint Statement 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. National/regional industry associations may become members of the WSC only if their governments have eliminated semiconductor tariffs or committed to eliminate these tariffs expeditiously. Reflecting China's increasing importance as a producer and consumer of semiconductors, the WSC has invited China to become a party to the 1999 Joint Statement. China is expected to become the second-largest market for semiconductors, behind the United States, by 2010.

The 1999 Joint Statement also calls for the parties to hold a Government/Authorities Meeting on Semiconductors (GAMS) 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 fifth GAMS was held in September 2004, hosted by the European Commission. At that meeting, the WSC recommended that government authorities pursue the following policies: elimination of the duty on multichip integrated circuits (MCPs); strengthened protection of intellectual property rights; elimination of discrimination against foreign products; promotion of fair and effective

antidumping rules; discouragement of the use of copyright levies on digital equipment; expanded participation in the Information Technology Agreement (ITA); and adoption of product regulations that are based on sound and widely accepted scientific principles and do not impede the effective functioning of the market. In November 2004, GAMS members met again to discuss a proposed agreement to eliminate applied duties on MCPs. The GAMS mechanism was particularly useful in 2004 in building broad support among the major semiconductor producers for the prompt resolution of the WTO case filed by the United States on China's VAT rebate policy for semiconductors.

E. Steel Trade Policy

In 2004, the Administration continued to implement the President's comprehensive strategy to respond to the challenges facing the United States steel industry. The strategy yielded positive results as the steel industry achieved unprecedented restructuring and consolidation and returned to profitability.

The Administration's steel initiative, announced on June 5, 2001, contains three elements. First, the President directed the USTR to request that the USITC 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. Following the USITC's finding of serious injury, in March 2002, the President imposed temporary safeguards: tariffs on ten steel product groups and a tariff-rate quota (TRQ) on steel slab. Second, the President directed the USTR, in cooperation with the Secretaries of Commerce and Treasury, to work with our trading partners to eliminate inefficient excess capacity in the steel industry worldwide. Finally, the President directed the USTR, 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 oversupply conditions of the global steel industry in 2001.

After 21 months of the steel safeguards, President Bush concluded that the safeguard measures had achieved their purpose, and as a result of changed economic circumstances, maintaining the measures was no longer warranted. In his proclamation terminating the safeguards, the President continued the Administration's steel import monitoring and analysis (SIMA) program, established in 2002 concurrently with the steel safeguards. The SIMA program is not a trade restriction, but facilitates dissemination of information regarding the steel market. It is an easy-to-use, automatic, web-based licensing system for steel imports that provides timely, clear information on the steel market published on the Department of Commerce SIMA website. The program will remain in effect until March 2005 or until a replacement program is established. In August 2004, the Department of Commerce published a Federal Register notice requesting comments on whether the current program should be extended or expanded to include more products or whether it should be allowed to expire. The Administration is considering the more than 70 submissions received before deciding the future of the SIMA.

In the year following termination of the safeguards, U.S. steel market conditions continued to improve. Prices for many steel products were driven to historically high levels by increased demand both in the United States and globally. U.S. steel shipments and imports increased. The pace of restructuring of the U.S. steel industry continued, increasing the ability of U.S. steel producers and workers to compete in the global market. Despite increased costs for energy and raw materials, U.S. steel company profitability and stock prices in the steel sector increased significantly. The impact of higher steel prices upon U.S. steel-using manufacturers, however, became a significant concern.

Aware that foreign government restrictions on the export of raw material inputs to steelmaking may contribute to elevated prices for raw materials and steel in the United States, the Administration pressed foreign governments to eliminate these practices. The Administration pressed Russia and Ukraine, traditionally large exporters of steel scrap, to eliminate export duties each country maintains on this important steel input. In January 2004, Russia removed a customs order prohibiting scrap exports from many Russian ports. Russia's removal of these port restrictions contributed to a record level of scrap exports in 2004. Ukraine's scrap exports also increased significantly in 2004. The Administration is continuing its efforts to obtain removal of these export taxes in our negotiations on each country's accession to the WTO.

The Administration was also concerned about the impact of high prices for Chinese blast furnace coke as a result of China's reduced export quota level for 2004 and high export license fees. The seriousness of this situation increased in early 2004 as it became evident that last year's coke export levels to the United States were not sufficient to meet increased U.S. demand for imported coke in 2004. The Administration raised concerns about the export quotas with Chinese officials, and after a series of contacts, China increased the amount of coke to be exported in 2004. Further, China did not institute formal changes that would have guaranteed the EU a set portion of China's 2004 coke exports, and expanded its enforcement efforts to eliminate the practice of charging high fees for coke export licenses. As a result, export prices of coke from China have declined significantly since their peak in April 2004, and U.S. industry has been able to obtain a substantially larger quantity of China's coke in 2004.

The Administration continued its efforts to eliminate market-distorting steel subsidies, negotiating with the world's major steel-producing countries at the OECD. While significant progress towards a steel subsidies

agreement was made, the talks reached an impasse early in 2004 due to the differences that exist among participants in key areas, particularly the nature of any exceptions to the overall subsidies prohibition, special and differential treatment for developing countries, and whether any excepted subsidies should continue to be countervailable under national trade laws. In June 2004, the OECD High Level Group on Steel reaffirmed their commitment to the ultimate goal of stronger subsidy disciplines in the global steel sector, and decided to shift the focus of the talks to bilateral and plurilateral consultations to explore bridging the differences on the key issues. The High Level Group also agreed to reconvene in 2005 to evaluate prospects for a steel subsidies agreement.

The participants in the OECD discussions noted that while global steel demand and consumption increased significantly in 2003 and 2004, the current strong market was also increasing interest in new steelmaking capacity. The Administration joined other OECD steelmaking countries in agreeing that despite the upturn in the steel market, the cyclical nature of the steel market, continued subsidies in the steel sector, and a slower rate of growth in China, the world's largest steel producer and consumer, warrant continued attention by policymakers. To that end, the Administration worked with industry and the OECD to organize a Global Steel Conference in January 2005 to better understand the changing situation in the steel sector, including the raw materials markets. The ongoing work 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

USTR coordinates the Administration's active monitoring of foreign government compliance with trade agreements and pursues enforcement actions, using dispute settlement procedures and applying the full range of U.S. trade laws when necessary. Vigorous investigation efforts by relevant agencies, including the Departments of Agriculture, Commerce, and State, help ensure that these agreements yield the maximum advantage in terms of ensuring market access for Americans, advancing the rule of law internationally, and creating a fair, open, and predictable trading environment. In the broad sense, ensuring full implementation of U.S. trade agreements is one of the Administration's strategic priorities. We seek to achieve this goal through a variety of means, including:

- Asserting U.S. rights through the 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 FTAs, through FTA work programs, tariff acceleration, and use, or threat of use, of FTA dispute settlement mechanisms, 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 69 complaints at the WTO, thus far successfully concluding 40 of them by settling 22 cases favorably and prevailing on 18 others through litigation in WTO panels and the Appellate Body. The United States has obtained favorable settlements and favorable rulings in virtually all sectors, including manufacturing, intellectual property, agriculture, and services. These cases cover a number of WTO agreements – involving rules on trade in goods, trade in services, and

intellectual property protection – and affect a wide range of sectors of the U.S. economy.

Satisfactory settlements. Our hope in filing cases, of course, is to secure U.S. benefits rather than to engage in prolonged litigation. Therefore, whenever possible the United States has sought to reach favorable settlements that eliminate the foreign breach without having to resort to panel proceedings. The United States has been able to achieve this preferred result in 22 of the 44 cases concluded so far, involving: Argentina’s protection and enforcement of patents; Australia’s ban on salmon imports; Belgium’s duties on rice imports; Brazil’s auto investment measures; Brazil’s patent law; China’s value-added tax on integrated circuits; 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 the United States trading partners have not been willing to negotiate settlements, we have pursued our cases to conclusion, prevailing in 18 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; Mexico’s antidumping duties on high-fructose corn syrup; and Mexico’s telecommunications barriers.

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 U.S. free trade agreements. USTR has effectively applied Section 301 of the Trade Act of 1974 to address unfair foreign government measures, “Special 301” for intellectual property rights enforcement, and Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 for telecommunications trade problems. The application of these trade law tools is described further below.

2. WTO Dispute Settlement

2004 Activities

In 2004, the United States filed four new complaints under WTO dispute settlement procedures involving China’s value-added tax on integrated circuits, the European Union’s administration of its customs laws, the European Union’s aircraft subsidies, and Mexico’s tax measures on soft drinks and other beverages. The United States also initiated compliance panel proceedings on a case involving Japan’s restrictions on apple imports relating to fire blight.

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>).

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. 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, USTR and IA staff have handled numerous inquiries and met with representatives of U.S. industries concerned with the subsidization of foreign competitors. These efforts continue to be importantly enhanced by IA officers stationed overseas (in China and Korea), who help gather, clarify and check the accuracy of information concerning foreign subsidy practices.

The SEO's electronic subsidies database continues to fulfill the goal of providing the U.S. trading community with a centralized location to obtain information about the remedies available under the Subsidies Agreement and much of the information that is needed to develop a countervailing duty case or a WTO subsidies complaint. The website (<http://ia.ita.doc.gov/esel/index.html>) includes information on all the foreign subsidy programs that have been investigated in U.S. countervailing duty cases since 1980, 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 closely monitors antidumping and countervailing duty proceedings initiated against U.S. exporters to ensure that foreign antidumping and countervailing duty actions are administered fairly and in full compliance with the WTO Agreements.

To this end, IA tracks foreign antidumping and countervailing duty actions 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 IA's website at <http://ia.ita.doc.gov/trcs/index.html>. The stationing 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 dispute settlement case against Mexico's antidumping measure 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 Canada's continued measures on

potatoes, Mexico's antidumping investigations of pork products (rescinded in May 2004 due to a lack of evidence of injury) and its *ex officio* investigation of pork legs and shoulders/hams (initiated in May 2004) and China's investigations of optical fiber, kraft linerboard and several chemical products. Import Administration personnel have also participated in technical exchanges with the administering authorities of Canada, Egypt, and India to obtain a better understanding of these countries' administration of trade remedy laws and compliance with WTO obligations.

Members must notify on an ongoing basis without delay their preliminary and final determinations to the WTO. Twice a year, WTO Members must also notify the WTO of all antidumping and countervailing duty actions they have taken during the preceding six-month period. The actions are identified in semi-annual reports submitted for discussion in meetings of the relevant WTO committees. Finally, Members are required to notify the WTO of changes in their antidumping and countervailing duty laws and regulations. These notifications are accessible through the USTR and IA website "links" to the WTO's website

B. U.S. Trade Laws

1. Section 301

Section 301 of the Trade Act of 1974, as amended (the Trade Act), is designed to address foreign unfair practices affecting U.S. exports of goods or services. Section 301 may be used to enforce U.S. rights under bilateral and multilateral trade agreements and also may be used to respond to unreasonable, unjustifiable, or discriminatory foreign government practices that burden or restrict U.S. commerce. For example, Section 301 may be used to obtain increased market access for U.S. goods and services, to provide more equitable conditions for U.S. investment abroad, and to obtain more effective protection worldwide for U.S. intellectual property.

a. Operation of the Statute

The Section 301 provisions of the Trade Act provide a domestic procedure whereby interested persons may petition the USTR to investigate a foreign government 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 2004, there were ongoing actions in the following Section 301 investigations, and USTR received three petitions seeking the initiation of new investigations:

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 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 *ad valorem* 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 Ukraine have 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 2004.

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. The increased duties remained in place throughout 2004.

Talks were held during 2004 with the aim of reaching a mutually satisfactory solution to the dispute, but no resolution was reached. In November 2004, the EC sought consultations under the WTO DSU claiming that the EC had brought its hormone ban into compliance with the EC’s WTO obligations and that the increased duties imposed by the United States were no longer covered by the DSB authorization. (The section of this report addressed to WTO dispute settlement contains further information on this matter).

b. Petitions filed in 2004

During 2004, USTR received three petitions seeking the initiation of new investigations.

One petition alleged that certain labor policies and practices of the Government of China with respect to Chinese manufacturing workers are unreasonable, as defined in section 301(d) of the Trade Act, and burden or restrict U.S. commerce. The USTR determined not to initiate an investigation under section 302 of the Trade Act with respect to the petition because the Government of the United States is involved in ongoing efforts to address with China many of the labor issues raised in the petition, and because initiation of an investigation would not be effective in addressing the policies and practices covered in the petition.

Two substantially similar petitions alleged that the policies and practices of the Government of China with respect to the valuation of Chinese currency deny and violate international legal rights of the United States, are unjustifiable, and burden or restrict U.S. commerce. The USTR determined not to initiate investigations with respect to the petitions because the United States is involved in ongoing efforts to address with China the currency valuation issues raised in the petitions, and because initiation of investigations would not be effective in addressing the policies and practices covered in the petitions.

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 (enacted in 1994), 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 multilateral 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 bilateral intellectual property agreements that are the basis for resolving an investigation under Section 301. USTR may apply sanctions if a

country fails to satisfactorily implement an agreement.

a. 2004 Special 301 Review Announcements

On May 3, 2004, U.S. Trade Representative Robert B. Zoellick announced the results of the 2004 Special 301 annual review, which examined in detail the adequacy and effectiveness of intellectual property protection in approximately 85 countries. Under the Special 301 provisions of the Trade Act of 1974, as amended, USTR identified 52 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 seriously undermine its efforts to attract trade and investment. The U.S. Government remains actively engaged with Ukraine in encouraging the nation to combat piracy and enact the necessary intellectual property rights legislation and regulations.

China and Paraguay continued to be designated for Section 306 monitoring to ensure both countries comply with their commitments to the United States under bilateral intellectual property agreements.

Addressing weak IPR protection and enforcement in China is one of the Administration's top priorities. At the April 2004 meeting of the Joint Commission on Commerce and Trade (JCCT), the United States

secured a commitment from China's Vice Premier Wu Yi that China will undertake a series of actions to significantly reduce IPR infringements throughout the country. These actions, outlined in the China section of this report, are critical in light of the rampant counterfeiting and piracy problems that plague China's domestic market and the fact that China has become a leading exporter of counterfeit and pirated goods to the world. The United States will be monitoring implementation of these commitments closely through a Joint IPR Working Group formed through the JCCT, and USTR will assess China's progress on their commitments through an out-of-cycle review in early 2005. With regard to Paraguay, 2004 was the first year that a new agreement, which was renegotiated in late 2003, was under Section 306 monitoring.

Fifteen trading partners were placed on the "Priority Watch List": Argentina, Bahamas, Brazil, Egypt, the EU, India, Indonesia, Korea, Kuwait, Lebanon, Pakistan, the Philippines, Russia, Taiwan and Turkey. An additional 34 trading partners were placed on the "Watch List." USTR also announced "out-of-cycle" (OCR) reviews for China, Israel, Malaysia, Poland and Taiwan.

In addition to the primary focus on intellectual property protection, the 2004 Special 301 Report also noted the importance of understanding how certain types of regulatory barriers -- such as non-transparent and cumbersome administrative regimes and decision-making that lacks scientific basis -- impede R&D funding and innovation in IP-based industries such as the pharmaceutical industry.

b. New Initiatives

Recognizing the growing problem of trade in pirated and counterfeit goods in the global economy, USTR began working with agencies across the federal government and trading partners around the world to develop a new approach and solutions to this serious problem.

In October 2004, USTR together with the Departments of Commerce, Justice, and Homeland Security launched a major new government-wide initiative in partnership with U.S. companies and IPR owners, the Strategy Targeting Organized Piracy (STOP!), to fight billions of dollars in global trade in pirated and counterfeit goods that cheat American innovators and manufacturers, hurt the U.S. economy and endanger consumers worldwide. The STOP! Initiative is designed to help businesses enforce their rights, stop fakes at borders, dismantle criminal enterprises, build an international coalition against piracy and counterfeiting. The STOP! Initiative incorporates and builds on the Special 301 Review process to help achieve these objectives.

c. Ongoing Initiatives

i. Global Scourge of Counterfeiting and Piracy

Counterfeiting and digital piracy have increased dramatically in recent years and were areas of particular concern in the 2004 Special 301 Report. 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 of products in digital, print (e.g., books, journals and other printed materials) and other analog formats, as well as counterfeiting of all types of trademarked products, have grown to such a scale because these illegal activities offer 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 actually imposed in many countries are so low that they offer no deterrent. The most significant piracy and counterfeiting problems require measures that may go beyond the minimum standards of TRIPS to ensure effective enforcement at the national and local levels, including free trade zones in countries such as Belize, Panama and the United Arab Emirates. The global scourge of piracy and counterfeiting requires stronger and more effective border enforcement to stop the import, export, and transit of pirated and counterfeit goods.

This is why USTR continues to seek through our FTAs and our bilateral consultations to ensure that criminal penalties are high enough to have a deterrent effect, both in the law and as imposed by the courts and administrative bodies, 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 maybe 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.

ii. Controlling Optical Media Production

Over the past year some of our trading partners, such as the Philippines and Poland, have taken important steps toward implementing, or have committed to adopt, much-needed controls on optical media production. We await news of aggressive enforcement of these laws. However, others that are in urgent need of such controls, including India, Indonesia, Lithuania, Pakistan, Russia, Thailand and Ukraine, have not made sufficient progress in this regard.

Governments that implemented optical media controls in previous years, such as those of Hong Kong and Macau, have clearly demonstrated their commitment to continue to enforce these measures. Taiwan and Malaysia are steadily improving their enforcement as well. The effectiveness of such measures is underscored by the direct experience of these governments in successfully reducing pirate 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.

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 IPR enforcement. The TRIPS Agreement is the first broadly-subscribed multilateral intellectual property agreement that is enforceable between governments, allowing them to resolve disputes through the WTO dispute settlement mechanism.

Developed countries were required to implement fully 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 IPR priorities. 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. Developing countries continue to make progress 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 United States 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. Agency for International Development, U.S. Customs and Border Protection, the Justice Department, and the Commerce Department's Commercial Law Development Program 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 of the key implementation priorities that we have focused on in this year's review is the

implementation of Article 39.3 of the TRIPS Agreement, which requires WTO Members to protect test data submitted by drug companies to health authorities⁵⁵ 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 ten years in the EC Member States. Other countries that provide a period of exclusivity against reliance on data include Australia, China, Colombia, the Czech Republic, Estonia, Japan, Jordan, Korea, Mexico, New Zealand, Slovenia, and Switzerland. We urge all WTO members to swiftly complete their implementation of Article 39.3, including Israel and Turkey.

⁵⁵ Such data is typically required by authorities in order to establish the safety and efficacy of a drug, and obtain government approval to market the drug.

As more countries fulfill their implementation obligations, we will adjust our focus to determine whether our trading partners are providing adequate and effective enforcement as required by the TRIPS enforcement provisions.

iv. Internet Piracy and the WIPO Copyright Treaties

The Internet has undergone explosive growth and, coupled with increased availability of broadband connections, serves as an extremely efficient global distribution network for pirate products. The explosive growth of copyright piracy on the Internet is a serious problem. We are continuing to work with other governments, and consult 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 WIPO when it concluded two copyright treaties in 1996: the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, 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. The Administration urges other governments to ratify and implement the two WIPO Internet Treaties.

v. Other Initiatives Regarding Internet Piracy

The United States is seeking to incorporate the highest standards of protection for intellectual property into appropriate bilateral and regional trade agreements that we negotiate. The United States has been successful in this effort by incorporating the standards of the WIPO Internet Treaties as substantive obligations in all our FTAs to date, and continues to pursue this goal in other FTAs. Moreover, U.S. 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 an 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 government use of illegal software.

The United States has achieved considerable progress under this initiative. Countries and territories that have issued decrees mandating the use of only authorized software by government ministries include Bolivia, Chile, China, Colombia, Costa Rica, the Czech Republic, France, Greece, Hong Kong, Hungary, Ireland, Israel, Jordan, Korea, Lebanon, Macau, Paraguay, Peru, the Philippines, Spain, Taiwan, Thailand, Turkey, and the United Kingdom. U.S. Trade Representative Robert B. 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 1377 of the Omnibus Trade and Competitiveness Act of 1988 requires USTR to review by March 31 of each year the operation and effectiveness of U.S. telecommunications trade agreements. The purpose of the review is to determine whether any act, policy, or practice of a foreign country that has entered into a telecommunications-related agreement with the United States: (1) is not in compliance with the terms of the agreement; or (2) otherwise denies, within the context of the agreement, mutually advantageous market opportunities to telecommunications products and services of U.S. firms in that country.

The 2004 Section 1377 Review focused on the following issues: (1) the introduction of mandatory, discriminatory standards in relation to telecommunications services and equipment, notably in China, Korea, and Japan; (2) unreasonably high fixed-to-mobile termination rates, a factor identified as negatively impacting U.S. companies in a large number of markets, including Australia, Germany, Japan, New Zealand, and Switzerland; (3) a lack of reasonable access to leased lines and submarine cable capacity in Germany, India, Switzerland, and Singapore, where the absence of clear rules supported by the adequate enforcement powers of a regulator has allowed incumbent operators to succeed in blocking long-term access solutions; (4) efforts to undermine the effectiveness of independent regulators through political interference or legislative proposals in China, Japan, France, Mexico, and South Africa; and (5) slow implementation by South Africa

and Mexico of their WTO commitments to permit resale of basic telecommunications services.

USTR has urged national regulators to fulfill their responsibility to address such problems, and initial signs are promising: On the issue of mandatory, discriminatory standards, significant progress was made in China with the successful resolution of the Wireless LAN Authentication and Privacy Infrastructure (WAPI) issue, and in Korea with a reduction in restrictions on mobile wireless software standards (WIPI) and mobile wireless broadband transmission standards (WIBRO). In addition, Singapore's regulator introduced a transitional regime to ensure competitively-priced wholesale leased lines, which should greatly improve competitive access, if fully implemented. Both the French and Japanese regulators made improvements in their regulatory functions, by taking steps to liberalizing markets and addressing anti-competitive behavior. South Africa has announced its intention to open its telecommunications sector to competition by February 1, 2005. While this is a welcome plan, we remain concerned that there may be additional delays in the liberalization of that market. USTR also remains concerned with the lack of clear regulatory independence in many countries, and will continue to monitor developments in this area in the future. Finally, while efforts to address mobile termination rates were undertaken in some markets during 2004 (e.g., by the governments of Australia, New Zealand, and Israel), additional effort may be necessary in 2005 to address the concerns of certain U.S. companies.

Mexico

As a result of a dispute settlement proceeding brought by the United States in 2002, Mexico instituted much-needed reform to its international rules. Pursuant to an agreement reached with the United States regarding implementation of the recommendations included in the WTO panel report adopted on June 1, 2004, Mexico removed in June 2004 the

provisions of Mexican Law that created the uniform tariff and proportional return systems, and the requirement that the carrier with the greatest proportion of outgoing traffic to a country negotiate the settlement rate on behalf of all Mexican carriers. Mexico also committed to allowing the introduction of resale-based international telecommunications services in Mexico by July 2005. Mexico, however, continues to prevent foreign carriers from using leased lines to bring calls directly into the domestic network.

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 applicable requirements, 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, Commerce will make preliminary and final determinations concerning 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 or cash deposit 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 deposits released.

Upon request of an interested party, Commerce conducts annual reviews of dumping margins pursuant to Section 751 of the Tariff Act of 1930. Section 751 also provides for Commerce and USITC review in cases of changed circumstances and periodic review in conformity with the five-year "sunset" provisions of the U.S. antidumping law and the WTO antidumping agreement.

Most antidumping determinations may be appealed to the U.S. Court of International Trade, with further judicial review possible in the U.S. Court of Appeals for the Federal Circuit. For certain investigations involving Canadian or Mexican merchandise, appeals may be made to a binational panel established under the NAFTA.

The numbers of antidumping investigations initiated in and since 1986 are as follows: 83 in 1986; 16 in 1987; 42 in 1988; 24 in 1989; 35 in 1990; 66 in 1991; 84 in 1992; 37 in 1993; 51 in 1994; 14 in 1995; 21 in 1996; 15 in 1997; 36 in 1998; 46 in 1999; 45 in 2000; 77 in 2001; 35 in 2002; 37 in 2003; and 26 in 2004. The numbers of antidumping orders (not including suspension

agreements) imposed in and since 1986 are: 26 in 1986; 53 in 1987; 12 in 1988; 24 in 1989; 14 in 1990; 19 in 1991; 16 in 1992; 42 in 1993; 16 in 1994; 23 in 1995; 9 in 1996; 11 in 1997; 9 in 1998; 19 in 1999; 20 in 2000; 31 in 2001; 27 in 2002; 16 in 2003; and 14 in 2004. Under its sunset review procedures, Commerce revoked 57 antidumping duty orders and continued 72 orders in 2000; revoked 7 antidumping duty orders and continued 19 orders in 2001; revoked 9 antidumping duty orders and continued 2 orders in 2002; revoked 2 antidumping duty orders and continued 5 orders in 2003; and revoked 12 antidumping duty orders and continued 17 orders in 2004.

5. Countervailing Duty Actions

The U.S. countervailing duty (CVD) law dates back to late 19th century legislation authorizing the imposition of CVDs on subsidized sugar imports. The current CVD provisions are contained in Title VII of the Tariff Act of 1930, as amended effective January 1, 1995 by the Uruguay Round Agreements Act. As with the antidumping law, the USITC and the Department of Commerce jointly administer the CVD law.

The CVD law's purpose is to offset certain foreign government subsidies benefitting 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; 5 in 2003; and 3 in 2004. 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; 2 in 2003; and 3 in 2004. 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; revoked no countervailing duty orders and continued no orders in 2003; and revoked 1 countervailing duty order and continued none in 2004.

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, such as U.S. patents and trademarks.

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 2004, the USITC instituted 25 new Section 337 investigations and one enforcement proceeding relating to a previously issued USITC remedial order. During the year, the USITC issued four general exclusion orders, four limited exclusion orders and 12 cease and desist orders covering imports from foreign firms, as follows: Inv. No. 337-TA-489, Certain Sildenafil or Any Pharmaceutically Acceptable

Salt Thereof, Such as Sildenafil Citrate, and Products Containing Same (general exclusion order); Inv. No. 337-TA-487, Certain Agricultural Vehicles and Components Thereof (general exclusion order, two limited exclusion orders, and 11 cease and desist orders); Inv. No. 337-TA-492, Certain Plastic Grocery and Retail Bags (general exclusion order); Consolidated Inv. Nos. 337-TA-481 and 337-TA-491, Certain Display Controllers with Upscaling Functionality and Products Containing Same and Certain Display Controllers and Products Containing Same (limited exclusion order); Inv. No. 337-TA-498, Certain Insect Traps (limited exclusion order and cease and desist order); and Inv. No. 337-TA-500, Certain Purple Protective Gloves (general exclusion order). A limited exclusion order covers only certain imports from particular named sources, while a general exclusion order covers certain products from all sources. The President permitted all the exclusion orders and cease and desist orders that reached him during 2004 to become final with the exception of the last two above-listed orders (Certain Insect Traps and Certain Purple Protective Gloves), both of which reached the President late in the year and remained under review at the time of preparation of this report.

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 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, 2004, the United States had no safeguard measures in place. The United States did not impose any safeguard measures during 2004, and did not commence any safeguard investigations. 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 measure 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 USITC must first make a determination that products of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. The statute directs that if the USITC makes an affirmative determination, the President shall provide import relief, unless the President determines that provision of relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action would cause serious harm to the national security of the United States.

China's terms of accession also permit a WTO Member to limit imports where a China-specific safeguard measure imposed by another Member causes or threatens to cause significant diversions of trade into 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 2004, five petitions have been filed under Section 421. During 2004, there was activity on two Section 421 petitions. On March 3, 2004, the President issued his determination with respect to a petition filed in September 2003 concerning certain ductile iron waterworks fittings from China. The President determined that providing import relief was not in the national economic interest of the United States. On January 6, 2004, the American Innerspring Manufacturers filed a petition regarding uncovered innerspring units from China. On March 8, 2004, the USITC issued a negative market disruption determination regarding those products and the investigation was terminated.

On June 3, 2004, the U.S. Court of International Trade rejected a challenge to the President's determination, in January 2003, to deny relief to

the U.S. pedestal actuators industry based on a national economic interest determination. The suit had been brought by Motion Systems Corporation, the petitioner in the first Section 421 investigation. Motion Systems Corporation appealed the ruling. The case is pending before the U.S. Federal Court of Appeals for the Federal Circuit.

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 until December 31, 2008. This safeguard covers all products subject to the WTO Agreement on Textiles and Clothing as of January 1, 1995.

Paragraph 242 of the Accession Agreement ("Paragraph 242") allows WTO members that believe imports of Chinese-origin textile or apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with China with a view to easing or avoiding such market disruption. Under Paragraph 242, the importing country must supply data which in its view shows the "existence or threat" of market disruption and the role of Chinese-origin products in that disruption. Upon receipt of a request for consultations, China must impose specified limits on its exports of such products to the member country. If the consultations fail to yield a solution to the threat or existence of market disruption, the WTO member may continue such limits on imports of Chinese-origin textile or apparel products.

In late 2003, after the consideration of requests made by representatives of the U.S. textile and apparel industry, 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) were, 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 played a significant role in the existence and threat of such market disruption. The United States requested consultations with China pursuant to Paragraph 242 on December 24, 2003.

The United States held consultations with China on two occasions, but no mutually satisfactory solution was reached. Limits on imports of these products went into effect on December 24, 2003 and remained in effect through December 23, 2004.

In November and December 2004, U.S. textile and apparel industry representatives applied to CITA for further application of Paragraph 242 safeguards on these three products. The requests were premised on the argument that an anticipated increase in imports of these products after the expiration of the one-year period of import restrictions threatened to disrupt the U.S. market for such products. CITA accepted the requests for consideration and commenced the periods of public comment and internal review, pursuant to its published procedures.

In addition, from October to December 2004, U.S. industry representatives submitted nine requests for the imposition of Paragraph 242 safeguards on the basis of a threat of market disruption from Chinese-origin textile or apparel imports. In particular, these requests concerned: (1) cotton trousers (Category 347/348); (2) man-made fiber trousers (Category 647/648); (3) man-made fiber knit shirts and blouses (Category 638/639); (4) men's and boys' cotton and man-made fiber shirts, not knit (category 340/640); (5) cotton knit shirts and blouses (Category 338/339); (6) cotton and man-made fiber underwear (Category 352/652); (7) combed cotton yarn (Category 301); (8) other synthetic filament fabric (Category 620); and (9) wool trousers (Category 447). Again pursuant to its

published procedures calling for public comment followed by internal review, CITA decided to consider each of those requests.

On December 1, 2004, the U.S. Association of Importers of Textiles and Apparel ("USA-ITA") filed a motion for preliminary injunction in the Court of International Trade ("CIT"), seeking to bar CITA from further accepting, considering, or otherwise proceeding to review requests based solely on a threat of market disruption. USA-ITA argued that CITA had acted outside of its legal authority by accepting and considering requests based on a threat of market disruption for products still under WTO-authorized quotas, and that its members would suffer irreparable harm if CITA were able to continue accepting and considering such requests. Among other things, the Administration responded that Paragraph 242 allows for safeguards based on a threat of market disruption, that CITA followed its valid published procedures in applying Paragraph 242, and in any event that USA-ITA's members could not have suffered irreparable harm as the result of CITA's actions. Furthermore, the Administration asserted, the Court's consideration of the substantive basis for CITA's actions would be an impermissible incursion into the President's exclusive authority to conduct foreign relations.

On December 30, 2004, the Court issued an order granting the motion for a preliminary injunction and enjoining CITA from further accepting, considering, or otherwise proceeding to review safeguard requests based on a threat of market disruption, or from self-initiating consideration of whether to impose safeguards under CITA procedures based on a threat of market disruption. The Administration has announced that it will appeal this ruling to the U.S. Court of Appeals for the Federal Circuit.

On June 28, 2004, U.S. textile and apparel industry representatives requested Paragraph 242 safeguard action on imports of Chinese-origin socks (Category 332/432/632 part), alleging that such imports were, due to market

disruption, threatening to impede the orderly development of trade in this product. CITA determined that the request provided the information necessary to be considered and solicited public comments on the request. Following the close of the public comment period, CITA determined that Chinese sock imports were, due to market disruption and the threat of market disruption, threatening to impede the orderly development of trade in socks, and that imports of socks from China play a significant role in the existence of and threat of such disruption. The United States requested consultations with China pursuant to Paragraph 242 on October 29, 2004.

The United States held consultations with China on November 23, 2004, but no mutually satisfactory solution was reached. Limits on imports of these products went into effect on October 29, 2004.

7. Trade Adjustment Assistance

a. Assistance for Workers

The Trade Adjustment Assistance (TAA) program for workers, established under Title II, chapter 2, of the Trade Act of 1974, as amended, provides assistance for workers affected by foreign trade. 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 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 superceded 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 were 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 contributed importantly to a decline in sales or production and to the separation or threatened separation of workers; or (2) there has been a shift in production to a country that has a free trade agreement with the United States or is a beneficiary country under 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.

The Government Accountability Office (GAO) recently issued two reports on TAA: a report of September 22, 2004, on progress since the TAA Reform Act of 2002, and a report of September 30, 2004 on the Health Care Tax Credit provision of TAA. The reports found that workers are interested in the new wage insurance provision created by ATAA and are enrolling in services more rapidly due to a new 40-day time limit the Department of Labor must meet when processing a request for TAA coverage and a new deadline requiring workers to be enrolled in training 8 weeks after TAA certification or 16 weeks after a worker's layoff. Of the 2,918 petitions for TAA eligibility received in FY2004, 1,734 certifications were issued, covering an estimated 147, 956 workers.

The Labor Department recently began a new 5-year study of the implementation and

effectiveness of the TAA program, which it expects will provide more useful findings. The Labor Department expects the first of several interim reports will be issued by mid- 2005 and expects to issue the final report in 2009.

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 (and is now codified at 7 C.F.R. § 1580). Primary requirements for a farmer to be eligible are that the price of the basic agricultural commodity produced by the farmer in the most recent year is less than 80 percent of the average price over the previous five years, and that imports contributed importantly to the price decline.

If a group of farmers 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.

b. Assistance for Firms and Industries

The Office of Strategic Initiatives of the Department of Commerce's Economic Development Administration (EDA) managed the TAA program for firms and industries during

FY 2004. (In FY 2005, EDA will transfer administration of this program to its six regional offices.) The 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 eleven Trade Adjustment Assistance Centers (TAACs). These TAACs are sponsored by nonprofit organizations, institutions of higher education, and a state agency. In FY 2004, EDA awarded \$11.874 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 2004, EDA certified 162 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 2004, the APRC approved 165 adjustment proposals from certified firms. (Some of these adjustment proposals were received in FY 2003, but were not approved until FY 2004.)

After the ARC approves an adjustment proposal, 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, the completion of a quality assurance program such as ISO 9000/2000, and the identification of appropriate management information systems.

EDA is authorized 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, 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 more than 140 designated developing countries and territories. The program began in 1976, when the United States joined 19 other industrialized in granting tariff preferences to promote the economic growth of developing countries through trade expansion. Currently, more than 4,000 products or product categories (defined at the eight-digit level in the Harmonized Tariff Schedule of the United States) are eligible for duty-free entry from countries designated as beneficiaries under GSP. In 1997, an additional 1,783 products were made duty-free under GSP for countries designated as least developed beneficiary developing countries (LDBDCs).

The premise of GSP 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 liberalization. In its current form, GSP is designed to integrate 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 to be “import-sensitive.” The value of duty-free imports in 2001 was approximately \$15.7 billion.

In addition, the GSP program works to encourage beneficiaries to eliminate or reduce significant barriers to trade in goods, services, and investment, to afford all workers internationally recognized worker rights, and to provide adequate and effective means for foreign nationals to secure, exercise, and enforce property rights, including intellectual property rights.

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. For those petitions that are accepted, public hearings are held, a U.S. International Trade Commission study of the “probable economic impact” of granting the petition is prepared, and all relevant materials are reviewed by the GSP interagency committee. Following completion of the review, the President announces his decision on which petitions are granted.

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 after a delay and

applied retroactively to the previous expiration date, thus maintaining the continuity of the program benefits. The program was most recently reauthorized on August 6, 2002; it will expire again on December 31, 2006.

On February 24, 2004, a notice was published in the Federal Register announcing the decision of the Trade Policy Staff Committee (TPSC) to initiate a full review of selected submitted product petitions but not to initiate a full review of submitted country practices.

On March 1, 2004, the president issued a proclamation making Algeria a GSP beneficiary country, effective 15 days after the date of the proclamation. The proclamation also terminated the designation of GSP beneficiary developing country for the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, and Slovakia; termination to be effective on or after the day on which a country becomes a European Union member state. Finally, the proclamation graduated from GSP eligibility Antigua, Barbuda, Bahrain, and Barbados, effective January 1, 2006. On May 18, 2004, a notice was published in the Federal Register, announcing the termination of GSP eligibility, for the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, and Slovakia, as a result of their accessions to the European Union on May, 1, 2004.

On June 30, 2004, the president issued a proclamation modifying the duty-free treatment of certain GSP-eligible products and certain beneficiary developing countries under the Generalized System of Preferences. On July 6, 2004, a Federal Register notice announced the disposition of product petitions accepted for review in the 2003 GSP Annual Product Review, the 2002 GSP Country Practices Review, the 2003 De Minimis Waiver and Redesignation Reviews, the 2003 Competitive Need Limitation removals, and certain previously-deferred product and country practice decisions.

On September 7, 2004, the president issued a proclamation designating (among other matters) Iraq a beneficiary developing country, effective September 15, 2004, and removed imported Russian titanium from receiving GSP-eligibility, effective 60 days after the date of the proclamation.

On September 10, 2004, a notice in the Federal Register announced the initiation of a review to consider the designation of Serbia and Montenegro as a beneficiary developing country under the GSP; while on November 5, 2004, a Federal Register notice announced initiation of a review to consider Azerbaijan as a beneficiary developing country under the GSP.

On November 15, 2004, a notice in the Federal Register announced the extension of the deadline for submitting petitions for the 2004 annual product and country practices review to December 13, 2004.

VI. Trade Policy Development

A. Trade Capacity Building (TCB)

Trade Capacity Building (TCB) is a critical part of the United States' strategy of enabling developing countries to negotiate and implement market-opening and reform-oriented trade agreements. It is important to improve the linkage between trade and development by providing developing countries with the tools to maximize trade opportunities. Many developing countries lack a framework for understanding how agreements to reciprocally lower trade barriers vitally serve their development interests. Furthermore, they may need assistance to implement their trade commitments in a full and timely manner, and to build the human and institutional capacity needed to take full advantage of the opportunities to spur economic growth and combat poverty that their participation in the global, rules-based trading system create.

Trade agreements can drive positive internal reforms that: (a) challenge the frequently protected and failed domestic status quo with a breath of competition from abroad; and (b) result in better use of current developing country resources and movement onto a path of more rapid economic growth.

The evidence for this proposition is clear. World Bank research shows, for example, that income per capita in globalizing developing countries grew more than three times faster than in other developing countries in the 1990s. Absolute poverty rates for globalizing countries also have fallen sharply over the last 20 years. The World Bank also finds that trade barrier elimination in conjunction with related development policies would accelerate the decline in the number of people in poverty in 2015 by an additional 300 million -- more than

the whole population of the United States. Developing countries that generate growth through trade will be less dependent on official aid over time.

Many developing countries, particularly the least-developed countries, still need help to take advantage of the opportunities offered in existing trade preference programs such as the African Growth and Opportunity Act, let alone the new opportunities that would arise from successful accomplishment of the DDA or a new bilateral trade agreement.

Total U. S. funding for TCB activities in FY2004 was \$903 million, up 19 percent from FY2003. Regionally, TCB was distributed as follows:

- Asia: \$132 million, up 41 percent from FY2003 (\$94 million).
- Central and Eastern Europe: \$72 million, up 9 percent from FY2003 (\$66 million).
- Former Soviet Republics: \$63 million, down 25 percent from FY2003 (\$85 million).
- Latin America and Caribbean: \$225 million, up 44 percent from FY2003 (\$156 million).
- Middle East and North Africa: \$187 million, up 5 percent from FY2003 (\$179 million).
- Sub-Saharan Africa: \$181 million, up 36 percent from FY2003 (\$133 million).

Coherence. The United States was the largest single-country contributor to the World Bank and other multilateral development banks. These institutions provide an increasingly broad range of TCB assistance related to the DDA, the Free Trade Area of the Americas Hemispheric Cooperation Program, and other technical assistance frameworks. The United States recognizes that coherence among the WTO,

World Bank and the International Monetary Fund not only involves consistent global economic policy making, but also coordination with regard to technical assistance activities. For this reason, the United States closely coordinates with these and other donors, whether on initiatives like the Development Aspects of Cotton or the Integrated Framework, to avoid duplication and to identify and take advantage of donor complementarities in programming. In the future, the United States will work with these organizations to explore new ways to increase coherence – such as complementary work on sector-wide initiatives – while maintaining flexibility to react to new obstacles arising during trade negotiations and taking full advantage of existing U.S. resources in the field.

WTO Trade-Related Technical Assistance. (TRTA) The United States directly supports the WTO's TRTA (see Chapter II). For example, in May of 2004, U.S. Trade Representative Robert B. Zoellick announced that the United States would contribute approximately \$1 million for trade-related technical assistance to the WTO. This latest contribution brought total U.S. TRTA for the DDA to almost \$4 million since the launch of negotiations in November 2001.

This money was in direct support of programs like the annual WTO Technical Assistance Plan. In 2004, the WTO introduced a new approach to technical assistance designed to ensure a “sustainable footprint” of capacity in developing countries, so their participation in the negotiations and implementation would be more effective. This involved having assistance go beyond introductory level instruction as well as increasing the number of advanced courses for recipients. The WTO's Institute for Training and Technical Cooperation (ITTC) spent much of 2004 meeting with donors and recipients to design the 2005 plan to be more oriented toward quality, product, process and program, development, impact and results while being more geographically balanced. The 2005 Plan would have broader and deeper coverage, be more simple and flexible, and designed to build and strengthen strategic partnerships and coherence. The result has been a much improved, streamlined plan that presents a good

framework for WTO assistance. The challenge now is to implement the programs in a way that meets these goals, particularly the goal of being as flexible as possible. The Plan takes into account the Decision adopted by the General Council on August 1, 2004 (the “July Framework Agreement”). As a result, there is an emphasis on issues like trade facilitation, which will be an area of particular importance in 2005.

The Integrated Framework (IF) is a multi-agency multi-donor program aimed to coordinate technical assistance to the least developed countries (LDC) to assist them in enhancing their trade opportunities. Its main objective is to assist LDCs to identify the main barriers to the expansion of trade and provide trade-related technical assistance in a coordinated way to remove these barriers. Of the 49 LDCs that are members of the WTO, 31¹ are in the program and another 5² are being actively considered, with more applicants expected.

The United States is a strong supporter of the IF, and currently joins Switzerland as one of the two bilateral donor coordinators in the Integrated Framework Working Group (IFWG). In addition, the USAID missions in Mali and Mozambique are currently serving as IF donor facilitators in the field, and several other

¹ Current IF countries are Angola, Benin, Burkino Faso, Burundi, Cambodia, Chad, Djibouti, Eritrea, Ethiopia, Guinea, Lao PDR, Lesotho, Malawi, Maldives, Mali, Madagascar, Mauritania, Mozambique, Nepal, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Yemen and Zambia. Tanzania, the Gambia, Haiti, and Uganda had gained entry under an old form of the IF and are now being transitioned into the current IF process. Bangladesh entered under the old IF and has not asked to participate under the current IF process.

² Central African Republic, Comoros, Equatorial Guinea, Liberia, and Sudan.

missions have offered to assume this role in other IF countries.

As bilateral donor coordinator in the IFWG, the United States is spearheading efforts to improve the IF process so that delivery of assistance flows even more smoothly. Priority issues that are being addressed include disbursement of Window II projects (transitional projects that bridge the time it takes donors to operationalize programs), fully engaging donors' field missions in both the diagnostic and follow up stages of the IF process, strengthening the IF Secretariat, and coordinating between the IF and other international initiatives. The United States has contributed funds for the past few years to the Integrated Framework Trust Fund to finance Diagnostic Trade Integration Studies (DTIS) and Window II projects. Further, USAID's bilateral assistance to LDC participants supports initiatives both to integrate trade into national economic and development strategies and to address high priority "behind the border" capacity building needs designed to accelerate integration into the global trading system. The total FY2004 bilateral TCB assistance to the 31 IF countries was \$79 million. These countries could also be benefiting from part of \$161 million in regional funding

Cotton. The United States fully mobilized its development agencies in 2004 to address the obstacles faced by West African countries -- particularly Benin, Burkina Faso, Chad, Mali and Senegal -- in this sector. The Millennium Challenge Corporation (MCC), USAID, the Agriculture Department, and the United States Trade and Development Agency (USTDA) all worked together to come up with a coherent long-term development program based on the priorities of the West Africans. The United States will continue to coordinate with the WTO, World Bank, the African Development Bank, and others to be a part of the multilateral effort to address the development aspects of cotton. This includes active participation in the WTO Secretariat's monthly meetings with donors and recipient countries to discuss the development aspects of cotton.

There were consistent activities on the development aspects of cotton throughout 2004:

- In March, representatives from USAID, USTR and USDA participated in the WTO African Regional Workshop on Cotton in Cotonou, Benin. At this meeting, the United States committed itself to supporting the efforts of African countries, in particular the West African countries, as they seek to address the development obstacles of their cotton sectors and their ability to participate profitably in world trade.
- In support of the momentum created at Cotonou, USDA and Burkina Faso sponsored a ministerial conference on science and technology in June of 2004, where heads of West African regional agricultural research centers, representatives from West African universities and intergovernmental organizations met with U.S. technical experts to discuss technology, water and soil management, and policy frameworks.
- In July of 2004, USDA sponsored the U.S. cotton industry orientation program for agriculture, commerce and environment ministers and ambassadors from Benin, Burkina Faso, Chad, Mali and Senegal. During this ten day tour, the ministers gained valuable exposure to the National Cotton Council, research universities engaged in world class cotton and agricultural research, and U.S. corporations doing business across the entire cotton value chain.
- From September 25 to October 15, 2004, an assessment team led by USAID and including the Agriculture Department, Tuskegee University, the National Cotton Council and Abt Associates visited Benin, Mali, and Chad to assess the qualities and constraints of cotton production, transformation, utilization and commercialization in these countries.

- In December, USTR Zoellick traveled to Senegal, Benin, and Mali as a follow-up to a commitment he made in Geneva in July to learn more about the factors affecting the cotton sector in West Africa.

- A high-level U.S. delegation comprised of officials from USDA, USAID, State and the National Cotton Council traveled to Bamako, Mali, January 11-13, 2005, to discuss a preliminary assessment of problems and issues with respect to the cotton sectors for the West African countries. Comments from the ministers will guide assistance that can be offered by USAID within the next three years.

Benin, Mali and Senegal were among seventeen countries selected by the Board of the Millennium Challenge Corporation to negotiate compacts for potential funding from FY2004 and FY2005 funds. The Millennium Challenge Corporation is a new Presidential initiative in which development assistance is provided to those countries that are committed to the rule of law, investing in their people, and encouraging economic freedom. These countries have the opportunity to identify their greatest barriers to growth and to develop proposals to address selected priorities through a consultative process involving the private sector, civil society and government. Countries may decide to use MCC to increase the productivity of their agricultural sector, including cotton. Burkina Faso was selected as an FY2005 “Threshold” Country, entitling it to submit a proposal to improve performance on the following indicators so that it might become eligible for the full program in the near future: Days to Start a Business, Trade Policy, Fiscal Policy and Girls’ Primary Education Completion.

Accession. 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 in 2003, and Cape Verde. In 2004, USAID responded to Ethiopia’s request for assistance in its accession process by initiating a major, three-year project there. In addition, Ukraine and a number of other countries in Eastern Europe and

the former Soviet Union have benefited from USAID support in this area. In 2004, the United States provided general accession support to Iraq and Afghanistan.

Services. One area of particular potential for developing countries is services. According to the World Bank, the services industry represented 54 percent of the GDP in low and middle income countries in 2000, up from 46 percent in 1990. To support requests for support in this area, the United States has reached an agreement with the International Trade Centre extending a grant which would, among other things, fund services capacity assessments in four countries: Bangladesh, Indonesia, Kenya, and Rwanda. In FY2004, the United States spent \$25 million on activities on services trade development, up from \$17 million in FY2003.

TCB Working Groups. Although the WTO and the Integrated Framework are priorities, they are only part of the U.S. TCB effort. In order to help our FTA partners participate in negotiations, implement the rules, and benefit over the long-term, USTR has created TCB working groups in free trade negotiations with developing countries. USAID, its field missions, and a number of other U.S. Government assistance providers actively participate in those working groups, so that the TCB needs identified can be quickly and efficiently incorporated into ongoing regional and country assistance programs. In the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), the Committee on TCB also invites non-government organizations, representatives from the private sector and international institutions such as the Inter-American Development Bank and the World Bank to join in building the trade capacity of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua. Trade capacity building is also a fundamental feature of bilateral cooperation in support of our planned free trade agreements with the SACU countries (for Botswana, Lesotho, Namibia, and Swaziland) and with the Andean FTA negotiating countries (Colombia, Ecuador and Peru; Bolivia is also a full member

of the TCB Working Group although it is still an observer in the FTA process).

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.

U.S. trade-related technical assistance in the hemisphere reached \$225 million in FY2004, up from \$156 million in FY2003.

2. Central America

The United States and other international institutions have continued to work with the Central American countries (CA-5) via the CAFTA-DR TCB Working Group in 2004 on mutual goals. USG assistance from the TCB Working Group for these countries has increased from \$66 million in 2003 to over \$80 million in 2004. The establishment and function of the TCB Committee has helped funding levels in 2004 despite other demanding pressures faced this year. The existence of the TCB Committee has also provided Congress a tangible mechanism to support. This resulted in Congress setting aside \$20 million for the Central American countries on labor and environment in 2005.

The TCB Working Group held two CAFTA Committee meetings in 2004, fulfilling the goal set during CAFTA negotiations. The second CAFTA Committee meeting was recently completed in December in Guatemala. During these Committee meetings, the TCB Working Group continued to work on CA-5 requests for assistance, such as rural diversification programs for agricultural products (e.g. coffee), market

linkages for goods and services, food industry development, strengthening of labor and customs systems, and combating exploitive child labor, to name a few. The United States also provided an in-depth summary to each Central American country reflecting detailed TCB assistance in 2004, including specific project summaries for the entire year -- a useful tool during the process leading up to approval of the agreement. Plans are already underway for the United States to host the next CAFTA-DR TCB Committee meeting in Washington, D.C. in Spring 2005.

3. Panama

In 2004, the TCB working group addressed Panama's request for assistance on civil society outreach and labor programs. The USG provided \$3 million in TCB assistance to Panama in FY2004. Panama and the United States envision the creation of a Committee on TCB upon completion of the negotiations to build on the work done during negotiations. The Committee on TCB would continue its work as Panama develops its National Action Plan. Plans are currently underway for a TCB Committee meeting in Spring 2005.

3. Andean Countries

The United States, international institutions, non-government organizations, and private sector participants are actively working with Colombia, Peru, Ecuador, and Bolivia on TCB efforts during the current United States-Andean FTA negotiations. The TCB Working Group continues to address the Andean's request for assistance on civil society outreach, small and medium enterprise development, transition to free trade and competitiveness, and technical assistance on trade topics (e.g. customs and services). The U.S. provided \$82 million in TCB assistance to the Andean countries in FY2004, up from \$30 million in FY2003.

The Andean partners and the United States envision the creation of a Committee on TCB upon completion of the negotiations to build on work done during negotiations. The Committee

on TCB would continue to work with the Andean partners on TCB assistance as the Andean partners work to further refine and implement their national TCB strategies. This committee will continue to foster critical assistance in promoting economic growth, reducing poverty, and adjusting to liberalized trade.

4. Africa

A. Southern African Customs Union (SACU)

The cooperative group supporting the U.S.-SACU FTA underscores the Administration's position that providing SACU with demand-driven assistance will ultimately result in an agreement that is beneficial for all involved. TCB in the SACU process has included:

- Buying computers for Botswana, Lesotho, Namibia, and Swaziland (BLNS) Trade Ministries to better facilitate intra-SACU coordination.
- Hiring and supporting a Trade Capacity Building Facilitator in each BLNS Trade Ministry to work with the negotiators, other ministries, the private sector, and civil society to identify needs and coordinate assistance.
- Using BLNS experts to support workshops and studies in areas such as general trade policy, services, tariff setting, rules of origin, and environmental negotiations.
- Supporting the BLNS to complete in depth TCB needs assessments for each individual country.

United States TCB funding for SACU and its members was divided as follows:

- Bilateral U.S. support for SACU countries in FY2004 was \$6.7 million, up from \$6.6 million in FY2003. Most TCB support for SACU comes out of \$34.3 million in regional funding.

- Bilateral U.S. funding for TCB activities in Botswana for FY2004 was \$594,000, down from FY2003 funding of \$618,000. Most TCB support for Botswana comes out of \$34.3 million in regional funding.

- Bilateral U.S. funding support for TCB activities Lesotho comes out of regional funding that cannot be broken down by country only -- there is no bilateral support. The regional funding is \$34.3 million.

- Bilateral U.S. funding for TCB activities in Namibia for FY2004 was \$556,000, down from FY2003 funding of \$1.2 million. Most TCB support for Namibia comes out of \$34.3 million in regional funding.

- Bilateral U.S. funding for TCB activities in South Africa for FY2004 was \$4.8 million, up from FY2003 funding of \$4.2 million. South Africa has access to regional funding of \$34.3 million.

- Bilateral U.S. funding for TCB activities in Swaziland comes out of regional funding that cannot be broken down by country. The regional funding is about \$34.3 million.

b. African Growth and Opportunity Act (AGOA)

Trade capacity building is an important element of AGOA implementation. Several U.S. agencies -- including USAID, Homeland Security's 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).

Animal Plant and Health Inspection Service (APHIS) experts are being posted to the three Hubs to assist government in complying with U.S. regulations relating to imports. The APHIS

expert posted to the Botswana Hub paid early dividends: by early 2004, the APHIS expert helped Southern African nations complete pest lists on products such as Namibian table grapes. In addition, APHIS completed pest mitigation recommendations for Zambian baby carrots and baby squash, to which the Zambian Ministry of Agriculture has agreed, paving the way for export of these products to the United States.

Other examples of TCB successes under AGOA include:

- The Hub in Botswana assisted the Zambian government in complying with AGOA's export visa regulations. As a result, Swarp Spinning Mills has exported nearly \$6 million worth of yarn to Botswana, Mauritius, and South Africa for producing garments for the AGOA market.
- Through USAID funded assistance, the Mozambican Customs and the Ministry of Trade passed critical regulations required by the United States for garment imports under AGOA. USAID support to the Mozambican Employers' Federation also helped in the establishment of the government's AGOA visa system. Within a year, two Mozambican factories were shipping a total of over 200,000 garments a month to the United States.
- USAID also assisted Uganda in complying with AGOA's visa requirements. In early 2003, Uganda sent its first ever shipment of apparel to the United States.

In FY2004, the United States provided \$97.9 million in trade-related technical assistance to AGOA-beneficiary countries, up 41 percent (\$69.3 million) from FY2003.

The United States and Thailand have recently created the "Group on SME and Other Cooperation" that coordinates cooperation between the two countries on small business issues as well as on general trade capacity building issues. Over the next year, the group will look to draw in private sector and other partners in cooperation efforts.

Other

For more details on TCB efforts for APEC, Middle Eastern countries and the WTO, please see corresponding sections.

B. Congressional Affairs

In 2004, USTR worked closely with the 108th Congress to move forward the President's bilateral, regional and multilateral trade agenda. Using guidance from the Bipartisan Trade Promotion Authority Act of 2002, USTR held meaningful consultations before and after each round of negotiations. These consultations provided the Administration with valuable advice on agreements that were launched, concluded, and approved by the Congress in 2004.

Consultations with the Congress enabled USTR to conclude free trade negotiations with Australia and the Kingdom of Morocco. Congress enacted legislation approving and implementing these agreements with strong bipartisan support.

USTR also worked closely with Congress on the successful conclusion of negotiations on agreements with Bahrain and Central America and the Dominican Republic, which await congressional consideration this year.

Congressional consultations also were important with respect to the initiation of talks with Panama, Thailand and the Andean nations of Colombia, Ecuador and Peru, as well as ongoing negotiations with the Southern African Customs Union (SACU) and the Free Trade Area of the Americas (FTAA). In November 2004, after meeting with the Congressional Oversight Group (COG), USTR also announced the President's intent to enter into negotiations with Oman and the United Arab Emirates (UAE).

In addition to free trade agreements, USTR maintained an ongoing dialogue with the Congress on multilateral initiatives in 2004. USTR consulted with the Congress on the WTO DDA and on legislation that brought the United States into compliance with WTO rulings with respect to the Foreign Sales Corporation and the 1916 Act.

USTR also worked with the Congress to successfully implement enhancements to the African Growth and Opportunity Act.

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.

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 27 advisory committees, with a total membership of more than 700 advisors. It is managed by IAPL, in cooperation with other agencies including the Departments of Agriculture, Commerce Labor, and the Environmental Protection Agency.

IAPL also has been designated as the NAFTA and WTO State Coordinator. As such, the office serves as the liaison to all state and local governments on the implementation of the NAFTA and the WTO, bilateral free trade agreements (FTAs), 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, speaking at conferences and meetings around the country, 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.

In 2004, the number of industry committees at the technical level was streamlined and consolidated to better reflect the composition of the U.S. economy, in response to recommendations by the U.S. Government Accountability Office (GAO).

The system currently consists of 27 advisory committees. Currently, there are approximately 700 advisors and membership can grow to a total of up to 1,000 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); four policy advisory committees; and 22 technical and sectoral advisory committees. Additional information on the advisory committee can be found on the USTR website (<http://www.ustr.gov/outreach/advise.shtml>).

Private sector advice is both a critical and integral part of the trade policy process. USTR

maintains an ongoing dialogue with interested private sector parties on trade agenda issues. The 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.

USTR in 2003 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 were posted throughout 2004 to the secure website on an ongoing basis to allow advisors to provide comments to U.S. officials in a timely fashion during the course of negotiations. This has enhanced the quality and quantity of input from cleared advisors, especially from those advisors who reside outside of Washington, DC and have had difficulty accessing documents.

In 2004, USTR introduced additional procedural innovations to improve the operation of the advisory committee system. This included a single monthly advisory committee Chairs teleconference call for all 27 committees. This keeps Chairs apprised of ongoing developments and important dates on the trade negotiations calendar and facilitates greater transparency. Additionally, USTR and the Department of Commerce instituted periodic plenary sessions of all 16 technical and sectoral committees, in order to make more efficient use of negotiators' time with the committees and allow the further exchange of ideas.

a. President's Advisory Committee on Trade Policy and Negotiations

The ACTPN consists of no more than 45 members who are broadly representative of the key economic sectors affected by trade. The President appoints ACTPN members for two-year renewable terms. 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 four policy advisory committees are appointed by the USTR alone or in conjunction with other Cabinet officers. The Intergovernmental Policy Advisory Committee (IGPAC) is appointed and managed solely by USTR. Those policy advisory committees managed jointly with the Departments of Agriculture, Labor, and the Environmental Protection Agency are, respectively, the Agricultural Policy Advisory Committee (APAC), Labor 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. Technical and Sectoral Committees

At the third tier, the 22 technical and sectoral advisory committees are organized into two areas: industry and agriculture. Representatives are appointed jointly by the USTR and the Secretaries of Commerce and Agriculture, respectively. Each sectoral or technical committee represents a specific sector or commodity group and provides specific technical advice concerning the effect that trade policy decisions may have on its sector or issue. There are six agricultural technical committees co-chaired by USTR and Agriculture.

In 2004, the industry trade advisory committee system was 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 original committees were put in place more than twenty-five years ago. The new structure reflects important changes in the U.S. economy since then. As of spring 2004, sixteen new Industry Trade Advisory Committees (ITACs) replaced the existing twenty-one committees. The restructuring is consistent with recommendations in a recent U.S. Government Accountability 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 were invited to continue their service within the new structure.

2. State and Local Government Relations

With the passage of the NAFTA Implementation Act in 1993, and the Uruguay Round Agreements Act in 1994, the United States created expanded consultative procedures between federal trade officials and state and local governments. Under both agreements, USTR's Office of IAPL is designated as the "Coordinator for State Matters." IAPL carries out the functions of informing the states, on an ongoing basis, of trade-related matters that directly relate to or that may have a direct effect on them. U.S. territories may also participate in this process. IAPL also serves as a liaison point in the Executive Branch for state and local government and federal agencies to transmit information to interested state and local governments, and relay advice and information from the states on trade-related matters. This is accomplished through a number of mechanisms:

a. State Point of Contact System

For day-to-day communications, pursuant to the NAFTA and Uruguay Round implementing legislation and Statements of Administrative Action, USTR created a State Single Point of Contact (SPOC) system. The Governor's office in each State designates a single contact point to disseminate information received from USTR to relevant state and local offices and assist in relaying specific information and advice from the states to USTR on trade-related matters. The SPOC network ensures that state governments are promptly informed of Administration trade initiatives so their companies and workers may take full advantage of increased foreign market access and reduced trade barriers. It also enables USTR to consult with states and localities directly on trade matters which 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 four 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 USTR and the Administration on trade policy matters. In 2004, USTR took important steps to improve and reenergize the IGPAC and USTR's partnership with states and localities. These include 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, including U.S. territories, 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 2004, IGPAC was briefed and consulted on trade priorities of interest to states and localities, including: voluntary government procurement commitments in FTAs (such as Australia, Central America, and Morocco), and services trade, 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 NGA, NCSL, CSG, NACo, U.S. Conference of Mayors, National League of Cities, National Association of State Procurement Officials and other associations.

d. Consultations Regarding Specific Trade Issues

USTR initiates consultations with particular states and localities on issues arising under the WTO and other U.S. trade agreements, and frequently responds to requests for information from state and local governments. Topics of interest included the WTO Government Procurement Agreement (GPA); WTO services issues; Free Trade Area of the Americas, bilateral FTA negotiations; NAFTA investment issues, and others.

On the issue of voluntary coverage of state government procurement under the GPA and FTAs, USTR consults extensively with governor's offices and other state officials. USTR also prepared a "Trade Facts" sheet to address various concerns and dispel misunderstandings. In particular, the factsheet emphasized the voluntary nature of commitments, and the ability of states to maintain practices such as environmentally-friendly procurement, preferences for minority- and small-businesses, and other state sensitivities.

USTR also consulted extensively with states on the WTO internet gaming services case brought by Antigua and Barbuda. USTR arranged frequent conference calls and email updates for interested State Points of Contact and a wide group of other state officials to seek their input, comments, and advice in the U.S. preparation of the case.

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. 2004 Outreach Efforts

The 2004 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 2004, USTR continued to solicit advice from cleared advisors, other domestic stakeholders, and the general public regarding U.S. objectives for the DDA in areas such as agriculture, non-agriculture market access, services, and trade facilitation. At the July General Council meeting in Geneva, advisors received frequent teleconference briefing updates, and advisors and the public received timely e-mail notifications and fact sheets regarding progress in the negotiations. In the fall of 2004, technical and sectoral advisory committees held plenary meetings focused on key aspects of the Doha agenda. During the year, USTR also held public briefings on the WTO and issued several notices in the Federal Register seeking public comments on WTO matters including dispute settlement, government procurement, and other issues.

ii. Free Trade Area of the Americas

In 2004, USTR briefed and facilitated consultations with advisory committees, other stakeholders, and the general public on the FTAA agenda following the November 2003 Trade Ministerial meeting in Miami.

The Ministers at Miami 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 public meetings on issues under discussion in the negotiations. The SOC held its third public issue meeting in January 2004 in the Dominican Republic focused on intellectual property rights, with active participation from U.S. private sector and NGO representatives.

In Miami, Ministers also received the Fourth Report of the SOC summarizing public comments on all aspects of the FTAA negotiations. Comments received from U.S. and hemispheric civil societies were forwarded on an ongoing basis to the FTAA technical negotiators throughout the year. Also, advisory committees and interested domestic stakeholders were briefed by USTR on the status of informal meetings and consultations among FTAA countries.

iii. Bilateral Trade Agreements

In 2004, USTR briefed and facilitated consultations with advisory committees and other stakeholders on the negotiations to conclude free trade agreements with Australia, Morocco, Bahrain, five Central American countries and the Dominican Republic. This included frequent teleconference briefings on the progress of negotiations, issuing public fact sheets, and making materials widely available on the USTR website. Advisory committee reports on the FTAs, as required under the Trade Act of 2002, were delivered to the President, USTR, and Congress, and made public on USTR's website well 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, including the SACU; Thailand; Panama; and the Andean countries.

iv. Monitoring and Compliance Activities

USTR briefed and facilitated consultations with advisors, state officials, and other stakeholders on disputes such as the WTO civil aircraft subsidies case, Continued Dumping and Subsidy Offset case (Byrd Amendment), China Value-Added Tax, Mexico beverage tax, Antigua and

Barbuda internet gaming services case, and other items. Other issues of interest to advisors and domestic groups included the Bush Administration's Strategy Targeting Organized Piracy (STOP!); the protection of U.S. intellectual property rights, and agriculture and biotechnology issues.

v. 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 2004, 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 also serves as a vehicle to communicate to the public. During 2004, IAPL assisted in efforts to revise the USTR website, including improving the organization of the website and adding a search engine, 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 issues. The TPSC regularly seeks advice from the public on its policy decisions and negotiations through Federal Register notices and public hearings. In 2004, the TPSC held five public hearings on the following proposals: United States-Andean Free Trade Agreement (March 17, 2004); United States-Panama Free Trade Agreement (March 23, 2004); United States-Thailand Free Trade Agreement (March 30 2004); China's Compliance with WTO Commitments (September 23, 2004); and EU Rice Tariffs (September 25, 2004) 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, 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 USITC is a non-voting member of the TPSC and an observer at TPRG meetings. Representatives of other agencies also may be invited to attend meetings depending on the specific issues discussed.

ANNEX I

Annex I. U.S. Trade in 2004

I. 2004 Overview

U.S. trade (exports and imports of goods and services, and the receipt and payment of earnings on foreign investment)¹ increased by 16 percent in 2004 to a value of approximately \$3.7 trillion.² This was the largest yearly increase in trade since 2000 (up 17 percent). The increase in trade in 2004 largely reflected a strong U.S. economy (real GDP up over 4 percent) as well as improved economic conditions in a number of U.S. trade partners. U.S. trade of goods and services increased by 14 percent, while U.S. trade of goods alone increased 15 percent and U.S. trade of services alone increased by 12 percent. Both exports of goods and services, and earnings on investment and imports of goods and services and payments on investment increased by 16 percent in 2004.

In 2003, the latest year in which data is available, the United States was the world's largest trading nation for both exports and imports of goods and services.³ The United States accounts for roughly 17 percent of world goods trade and for roughly 14 percent of world services trade.⁴ Through 2004, the value of U.S. trade has increased 28-fold since 1970, and 97 percent since 1994, the year before the start of the Uruguay Round implementation (*figure 1*).⁵ U.S. trade expansion was more rapid in the 1970-2004 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, 6.2 percent versus 3.2 percent.

The value of trade in goods and services, including earnings and payments on investment, was 31.5 percent of the value of U.S. GDP in 2004 (*figure 2*). This represented an increase from the corresponding figure in 2003 (29 percent), but down from its high point in 2000 (34 percent).⁶ For goods and services, excluding investment earnings and payments, U.S. trade represented 25.1 percent of the value of GDP in 2004, up from 23.5 percent in 2003, but down from its high of 26 percent in 2000.⁷

¹ 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.

² In this Chapter, 2004 is estimated based on partial year data (January-November).

³ However, Germany surpassed the United States as the largest goods exporter in 2003.

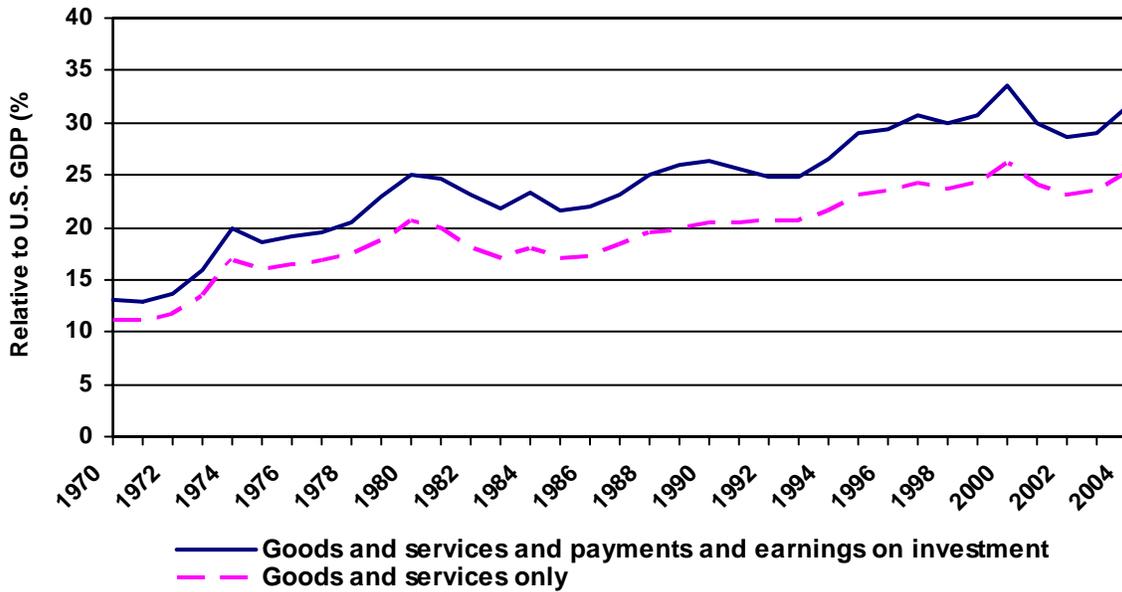
⁴ Goods trade excluding intra-EU trade.

⁵ Trade in goods and services alone has increased 26-fold since 1970 and 92 percent since 1994.

⁶ Thirteen percent of the value of GDP in 1970 and 27 percent in 1994.

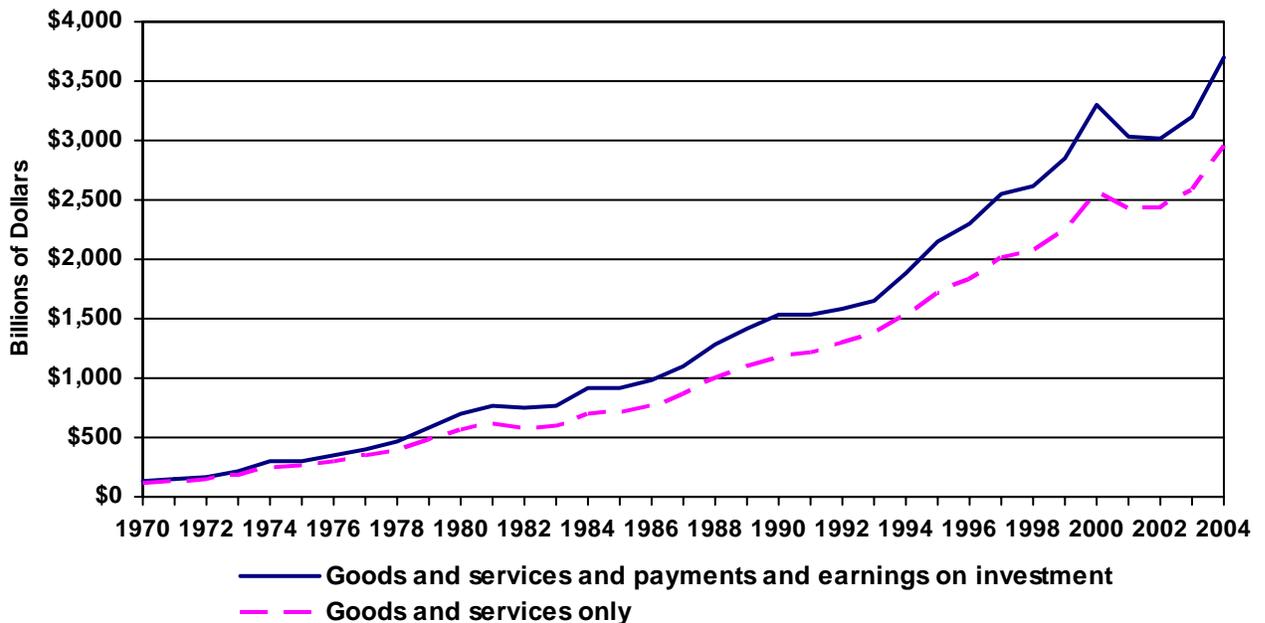
⁷ Eleven percent of the value of GDP in 1970 and 22 percent in 1994.

**Figure 2:
Growing Importance of Trade in the U.S. Economy**



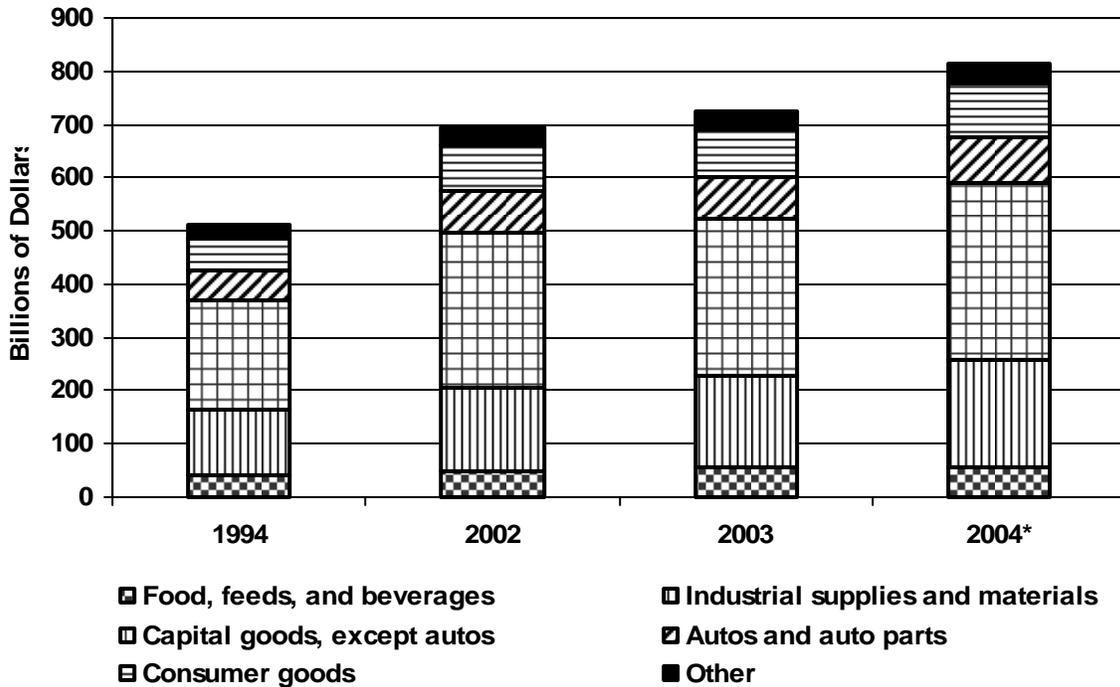
Total exports + imports as a percentage of the value of U.S. GDP
Source: U.S. Department of Commerce

**Figure 1:
U.S. Trade Growth**



Total exports + Imports
Source: U.S. Department of Commerce

**Figure 3:
U.S. Goods Exports**



* Annualized based on January-November 2004
Source: U.S. Department of Commerce, Census

This growth in trade has occurred in both U.S. exports and imports. U.S. exports of goods and services (including investment earnings) in 2004 are 22-fold greater than 1970 and 75 percent greater than 1994. U.S. imports of goods and services are 34-fold greater than 1970 and 117 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 \$119 billion from \$497 billion in 2003 (4.5 percent of GDP) to \$616 billion in 2004 (5.5 percent of GDP). The U.S. deficit in goods trade alone increased by \$98 billion from \$548 billion in 2003 (5.0 percent of GDP) to \$664 billion in 2004 (5.9 percent of GDP). The services trade surplus declined by \$3 billion from \$51 billion in 2003 (0.5 percent of GDP) to \$48 billion in 2004 (0.4 percent of GDP).

II. Goods Trade

A. Export Growth

U.S. goods exports increased by 13 percent in 2004, as compared to the 5 percent increase in the preceding year (*table 1*). Manufacturing exports, which account for 87 percent of total goods exports, were up 13 percent, while agriculture exports, which account for 8 percent of total goods exports, were up by 4 percent. High technology exports, a subset of manufacturing exports, accounted for 25 percent of total goods exports and were up 12 percent in 2004. U.S. goods exports increased for every major end-use category in 2004, with the largest increase in the industrial supplies and materials category, up 17 percent.

Since 1994, U.S. goods exports are up 60 percent. Manufacturing exports increased 64 percent, while high technology exports increased 67 percent, and agriculture exports increased 39 percent. Exports of consumer goods have risen by 70 percent, while industrial supplies and materials and capital goods have increased by more than 60 percent. Of the \$304 billion increase in goods exports since 1994, capital goods accounted for 42 percent of the increase, industrial supplies and materials accounted for 27 percent, and consumer goods accounted for 14 percent.

U.S. goods exports increased to all major markets in 2004 (*table 2*), led by a growth rate of 26 percent to China, and 18 percent to Latin America, excluding Mexico. U.S. exports increased 10 percent to high income countries and 17 percent to middle and low income countries. Since 1994, U.S. goods exports to low and middle income countries exhibited higher growth rates than that to high income countries, 75 percent compared to 48 percent. However, the United States still exports the majority of its goods to high income countries, roughly 55 percent in 2004.

Goods exports to China continued to increase in 2004, up 26 percent, the 5th straight year of double-digit growth. U.S. exports of industrial supplies and materials to China exhibited the largest growth, up 38 percent, while U.S. exports of agriculture products to China increased by 21 percent, rising to nearly \$6 billion. Exports of capital goods and industrial supplies accounted for 82 percent of U.S. exports to China in 2004, while agriculture exports accounted for 16 percent. U.S. exports to China have nearly quadrupled since 1994 (up 284 percent through 2004).

Table 1
U.S. Goods Exports

| Exports: | 1994 | 2002 | 2003 | 2004* | 03-04* | 94-04* |
|--|----------------------------|-------|-------|-------|-----------------------|--------|
| | <i>Billions of Dollars</i> | | | | <i>Percent Change</i> | |
| Total (BOP basis) | 502.9 | 681.8 | 713.1 | 804.2 | 12.8 | 59.9 |
| Food, feeds, and beverages | 42.0 | 49.6 | 55.0 | 56.0 | 1.7 | 33.4 |
| Industrial supplies and materials | 121.4 | 156.8 | 173.0 | 202.0 | 16.7 | 66.4 |
| Capital goods, except autos | 205.0 | 290.4 | 293.6 | 330.6 | 12.6 | 61.2 |
| Autos and auto parts | 57.8 | 78.9 | 80.7 | 87.8 | 8.9 | 52.1 |
| Consumer goods | 60.0 | 84.4 | 89.9 | 102.0 | 13.4 | 70.0 |
| Other | 26.5 | 32.9 | 32.5 | 37.1 | 14.1 | 39.9 |
| Addendum: Agriculture | 45.9 | 54.8 | 61.4 | 63.9 | 4.1 | 39.1 |
| Addendum: Manufacturing | 431.1 | 606.3 | 627.1 | 707.2 | 12.8 | 64.1 |
| Addendum: High technology | 120.7 | 178.6 | 180.2 | 202.0 | 12.1 | 67.3 |

* Annualized based on January-November 2004 data.

Source: U.S. Department of Commerce, Balance of Payments Basis for Total, Census Basis for Sectors.

Table 2:
U.S. Goods Exports to Selected Countries/Regions

| Exports to: | 1994 | 2002 | 2003 | 2004* | 03-04* | 94-04* |
|--|----------------------------|-------|-------|-------|-----------------------|--------|
| | <i>Billions of Dollars</i> | | | | <i>Percent Change</i> | |
| Canada | 114.4 | 160.9 | 169.9 | 188.1 | 10.7 | 64.4 |
| European Union (EU15) | 107.8 | 143.7 | 151.7 | 167.5 | 10.4 | 55.5 |
| Japan | 53.5 | 51.4 | 52.0 | 54.6 | 5.1 | 2.1 |
| Mexico | 50.8 | 97.5 | 97.4 | 111.0 | 14.0 | 118.4 |
| China | 9.3 | 22.1 | 28.4 | 35.6 | 25.6 | 283.7 |
| Asian Pacific Rim, except Japan and China | 85.0 | 105.0 | 108.1 | 121.0 | 12.0 | 42.3 |
| Latin America, except Mexico | 41.7 | 51.6 | 51.9 | 61.2 | 17.8 | 46.7 |
| Addendum: High Income Countries | 299.6 | 386.8 | 404.5 | 443.8 | 9.7 | 48.1 |
| Addendum: Low to Middle Income Countries | 212.8 | 306.1 | 319.3 | 372.1 | 16.5 | 74.9 |

* Annualized based on January-November 2004 data.

Source: U.S. Department of Commerce, Census Basis.

Exports to our NAFTA partners increased 12 percent in 2004, and have increased 111 percent since 1993, the year before the start of NAFTA's implementation. Approximately 37 percent of aggregate U.S. goods exports went to NAFTA countries in 2004 (nearly \$300 billion), up from nearly 33 percent in 1993 (\$142 billion).

U.S. exports to Canada, the largest U.S. export market, accounting for 23 percent of U.S. exports, increased by 11 percent in 2004. Growth areas of U.S. exports to Canada include industrial supplies (up 16 percent), and capital goods, except autos (up 11 percent). Overall, U.S. exports to Canada are up by 64 percent since 1994.

U.S. exports to Mexico, the second largest country export market, accounting for 14 percent of U.S. exports, increased by 14 percent in 2004. This marked the first increase in U.S. exports to Mexico since 2000. U.S. exports were up 19 percent in industrial supplies and materials and 16 percent in capital goods (excluding autos). However, U.S. exports of consumer goods were down 1 percent. Since 1994, U.S. exports to Mexico have increased nearly 120 percent.

U.S. exports to the European Union were up 10 percent in 2004. Exports increased in consumer goods (up 22 percent), industrial supplies (up 10 percent), and capital goods (up 9 percent). In 2004, the EU accounted for 21 percent of aggregate U.S. exports. Since 1994, U.S. exports to the EU have increased by 56 percent.

U.S. exports to Latin America (excluding Mexico) and the Asian Pacific Rim (excluding China and Japan) increased 18 percent and 12 percent, respectively, in 2004. Although U.S. exports to Japan increased only 5 percent in 2004, this growth was still nearly 5 times larger than the growth rate in 2003. U.S. exports to Japan have declined in 5 of the last 8 years, and are only up 2 percent since 1994. U.S. exports to Latin America (excluding Mexico) and the Asian Pacific Rim (excluding China and Japan) have increased 47 percent and 42 percent, respectively, since 1994.

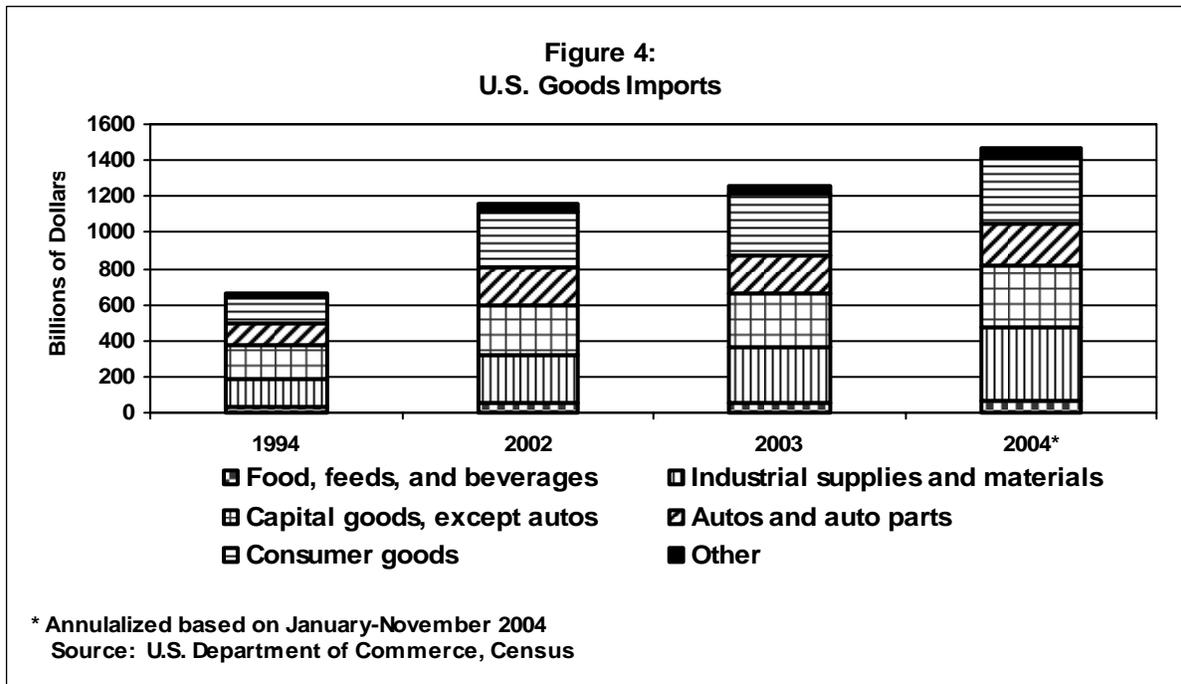
B. Import Growth

U.S. goods imports increased 17 percent in 2004 (*table 3 and figure 4*), doubling the 8 percent growth rate in 2003. Manufacturing imports, accounting for 80 percent of total goods imports, increased 15 percent in 2004. High technology imports, accounting for 16 percent of total goods imports, increased by 16 percent, while agriculture imports, accounting for 4 percent of total goods imports, increased by 15 percent in 2004. U.S. goods imports increased for every major end-use category in 2004, with the largest increases in industrial supplies (including petroleum) (up 31 percent), and capital goods (up 16 percent). The three largest end-use categories for U.S. imports together accounted for 76 percent of total U.S. imports (industrial supplies - 28 percent; consumer goods - 25 percent; and capital goods - 23 percent).

Since 1994, U.S. goods imports are up nearly 120 percent, nearly doubling the growth by U.S. exports. U.S. imports of manufactured products and agriculture products increased by 111 percent and 110 percent, respectively. U.S. imports of advanced technology products increased by 145 percent. For the major end-use categories, U.S. imports of consumer goods and industrial supplies each have grown by 153 percent since 1994. Of the \$807 billion increase in goods imports since 1994, industrial supplies and materials accounted for 31 percent of the increase, Consumer goods accounted for 28 percent, capital goods for 20 percent, and autos and auto parts for 14 percent.

**Table 3:
U.S. Goods Imports**

| Imports: | 1994 | 2002 | 2003 | 2004* | 03-04* | 94-04* |
|---|----------------------------|-------------|-------------|--------------|-----------------------|---------------|
| | <i>Billions of Dollars</i> | | | | <i>Percent Change</i> | |
| Total (BOP Basis) | 668.7 | 1,164. 7 | 1,260. 7 | 1,468. 3 | 16.5 | 119.6 |
| Food, feeds, and beverages | 31.0 | 49.7 | 55.8 | 62.0 | 11.1 | 100.3 |
| Industrial supplies and materials | 162.1 | 267.7 | 313.8 | 409.9 | 30.6 | 152.8 |
| Capital goods, except autos | 184.4 | 283.3 | 295.8 | 343.6 | 16.1 | 86.4 |
| Autos and auto parts | 118.3 | 203.7 | 210.2 | 228.7 | 8.8 | 93.4 |
| Consumer goods | 146.3 | 307.8 | 333.9 | 370.7 | 11.0 | 153.5 |
| Other | 21.3 | 49.1 | 47.6 | 50.4 | 5.9 | 136.9 |
| Addendum: Agriculture | 26.0 | 42.0 | 47.5 | 54.4 | 14.7 | 109.7 |
| Addendum: Manufacturing | 557.3 | 974.6 | 1,027. 4 | 1,176. 7 | 14.5 | 111.1 |
| Addendum: High technology | 98.1 | 195.2 | 207.0 | 240.0 | 15.9 | 144.6 |
| * Annualized based on January-November 2004 data. | | | | | | |
| Source: U.S. Department of Commerce, Balance of Payments Basis for Total, Census Basis for Sectors. | | | | | | |



| Imports from: | 1994 | 2002 | 2003 | 2004* | 03-04* | 94-04* |
|--|----------------------------|-------|-------|-------|-----------------------|--------|
| | <i>Billions of Dollars</i> | | | | <i>Percent Change</i> | |
| Canada | 128.4 | 209.1 | 221.6 | 256.3 | 15.7 | 99.6 |
| European Union (EU15) | 119.5 | 225.8 | 244.8 | 273.6 | 11.8 | 129.0 |
| Japan | 119.2 | 121.4 | 118.0 | 129.5 | 9.7 | 8.7 |
| Mexico | 49.5 | 134.6 | 138.1 | 156.1 | 13.1 | 215.5 |
| China | 38.8 | 125.2 | 152.4 | 196.2 | 28.7 | 405.7 |
| Asian Pacific Rim, except Japan and China | 103.2 | 146.9 | 148.5 | 166.7 | 12.3 | 61.6 |
| Latin America, except Mexico | 38.5 | 69.5 | 78.8 | 98.7 | 25.2 | 156.6 |
| Addendum: High Income Countries | 384.9 | 589.2 | 621.9 | 703.6 | 13.1 | 82.8 |
| Addendum: Low to Middle Income Countries | 278.3 | 572.1 | 637.8 | 769.3 | 20.6 | 176.4 |

* Annualized based on January-November 2004 data.
Source: U.S. Department of Commerce, Census Basis.

On a regional basis, U.S. goods imports increased from all the major markets from 2003 to 2004, led by a growth rate of 29 percent from China, and 25 percent from Latin America excluding Mexico. U.S. imports increased by 21 percent from low and middle income countries and by 13 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, 176 percent compared with 83 percent. Accordingly, the share of U.S. imports from low and middle income countries has increased from 42 percent in 1994 to 52 percent in 2004.

U.S. goods imports continued its strong growth from China in 2004, even surpassing the significant growth rate of 2003 (29 percent as compared to 22 percent). U.S. imports from China have increased by over 400 percent since 1994. As such, China has become the second largest single country supplier of goods to the United States. Thirteen percent of total U.S. imports were sourced from China in 2004, up from 6 percent in 1994. When imports from China, Japan, and the other Asian-Pacific Rim countries are considered together, however, the region's share of U.S. imports has actually declined from 39 percent in 1994 to 33 percent in 2004. Imports from China accounted for 20 percent of the overall increase in U.S. imports from the world since 1994 (second to NAFTA's 29 percent and just greater than the EU's 19 percent). Much of U.S. imports from China are low value-added consumer goods, such as toys, footwear, apparel and some areas of consumer electronics. Consumer goods made up 54 percent of U.S. imports from China in 2004. U.S. imports of capital goods, industrial supplies, and autos and parts, however, exhibited strong growth in 2004, each above 40 percent.

Imports from Latin America (excluding Mexico) increased by 25 percent in 2004, and have increased by 157 percent since 1994. Roughly 60 percent of the increase in imports from Latin America was in the mineral fuel category. U.S. import prices for crude oil through the first 11 months of 2004 were up 27 percent over the same period of 2003. U.S. imports from Latin America accounted for 7 percent of total U.S. imports in 2004.

U.S. goods imports from the EU, accounting for 19 percent of total U.S. imports, increased by 12 percent in 2004, surpassing the 8 percent growth rate in 2003. More than half of U.S. imports from the EU were consumer goods and capital goods, each accounting for 27 percent of total imports. Import categories that exhibited the largest growth in 2004 included industrial supplies (up 22 percent), capital goods (up 13 percent), and consumer goods (up 9 percent). U.S. imports from the EU have increased by 129 percent since 1994.

Imports from our NAFTA partners increased 15 percent in 2004 and are up 173 percent since NAFTA started implementation. NAFTA imports accounted for 28 percent of aggregate U.S. goods imports in 2004, down slightly from 29 percent in 2003, 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 16 percent in 2004. U.S. imports of industrial supplies from Canada were up 21 percent in 2004, while automotive vehicles and parts were up 13 percent. U.S. imports from Canada have nearly doubled since 1994.

U.S. imports from Mexico, the third largest single country supplier of goods to the United States, increased by 13 percent in 2004. U.S. imports of industrial supplies increased by 31 percent, while imports of agriculture products increased by 15 percent. U.S. imports from Mexico have grown 216 percent since 1994.

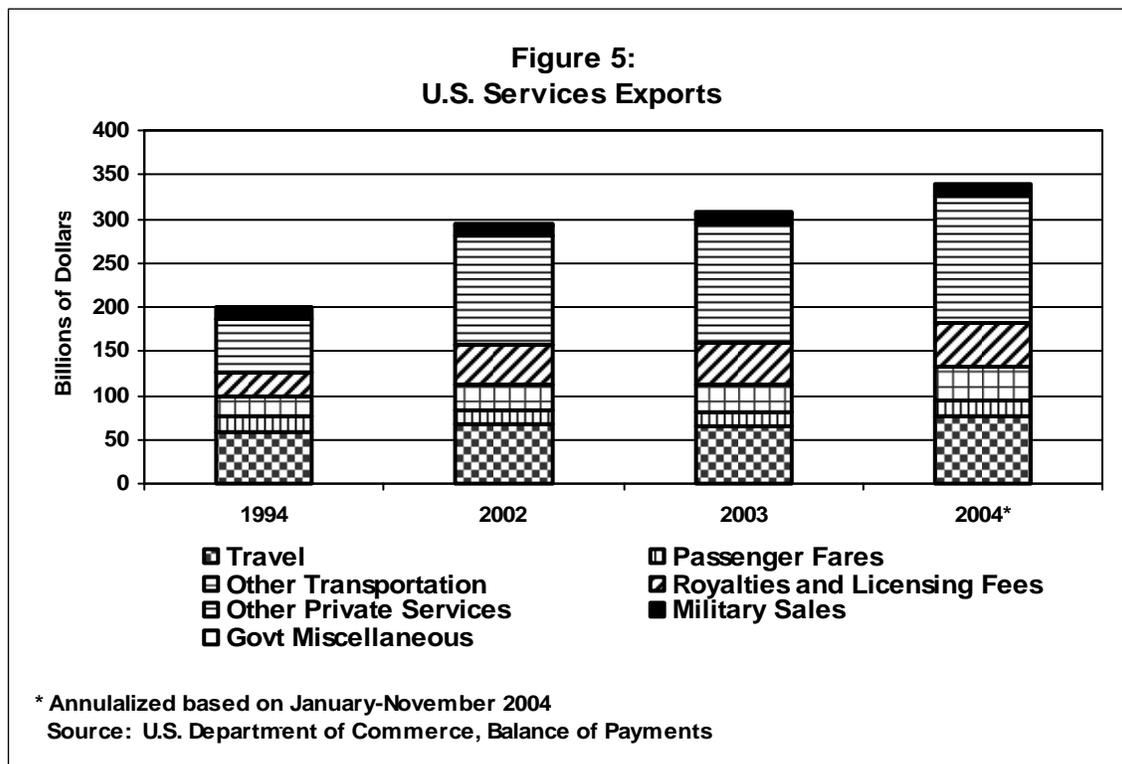
Imports from the Pacific Rim (excluding Japan and China) increased 12 percent in 2004, and were up 62 percent since 1994. Imports from Japan increased 10 percent in 2004, but were only up by 9 percent since 1994. Purchases from Japan in 2004 accounted for 9 percent of total U.S. imports, as compared to 18 percent in 1994.

III. Services Trade

A. Export Growth

U.S. exports of services grew roughly 11 percent in 2004 to \$340 billion, and since 1994, U.S. services exports have increased by approximately 70 percent. U.S. services exports accounted for 30 percent of the level of U.S. goods and services exports in 2004, compared to 29 percent in 1994.

| Table 5: U.S. Services Exports | | | | | | |
|--|----------------------------|-------------|-------------|--------------|-----------------------|---------------|
| Exports: | 1994 | 2002 | 2003 | 2004* | 03-04* | 94-04* |
| | <i>Billions of Dollars</i> | | | | <i>Percent Change</i> | |
| Total (BOP basis) | 200.4 | 294.1 | 307.4 | 339.9 | 10.6 | 69.6 |
| Travel | 58.4 | 66.7 | 64.5 | 75.4 | 16.8 | 29.0 |
| Passenger Fares | 17.0 | 17.0 | 15.7 | 18.9 | 20.7 | 11.5 |
| Other Transportation | 23.8 | 29.2 | 31.8 | 37.4 | 17.6 | 57.5 |
| Royalties and Licensing Fees | 26.7 | 44.2 | 48.2 | 51.1 | 6.0 | 91.4 |
| Other Private Services | 60.8 | 124.2 | 133.8 | 142.6 | 6.6 | 134.4 |
| Transfers under U.S. Military Sales Contracts | 12.8 | 11.9 | 12.5 | 13.7 | 9.9 | 7.3 |
| U.S. Government Miscellaneous Services | 0.9 | 0.8 | 0.8 | 0.7 | -8.1 | -16.1 |
| * Annualized based on January-November 2004 data. | | | | | | |
| Source: U.S. Department of Commerce, Balance of Payments Basis. | | | | | | |



The growth in U.S. services exports in 2004 was largely driven by travel and the other private services categories. Of the \$32 billion increase in U.S. services exports in 2004, the travel category accounted for 33 percent while the other private services category accounted for 27 percent. Categories exhibiting the largest export growth rates in 2004 were the passenger fares, other transportation, and travel categories (up 21 percent, 18 percent, and 17 percent respectively).

Since 1994, nearly all of the major services export categories have grown. Export growth has been led by the other private services category, up 134 percent, and the royalties and licensing fees category, up 91 percent. The other transportation and travel categories also were up 58 percent and 29 percent, respectively. Of the \$139 billion increase in U.S. services exports between 1994 and 2004, the other private services category accounted for 59 percent of the increase, the royalties and licensing fees category accounted for 18 percent, and the travel category accounted for 12 percent.

Detailed sectoral breakdowns for exports of the other private services category are available only through 2003. In 2003, other private services exports totaled \$134 billion. Of this, U.S. exports to business related parties (to a foreign parent or affiliate) accounted for \$48 billion, or 36 percent of total other private services exports. The largest categories for U.S. exports of other private services to related and unrelated parties, in 2003 were: business, professional and technical services, \$70 billion; financial services, \$23 billion; education, \$13 billion; film and television tape rentals, \$10 billion; telecommunications, \$5 billion; and insurance, \$5 billion. The business, professional and technical services category were led by the computer and information services (\$7.6 billion), research and development and testing services (\$6.8 billion), operational leasing (\$6.3 billion), installation, maintenance, and repair of equipment (\$5.0 billion); and management and consulting services (\$4.2 billion).⁸

⁸ Installation, maintenance, and repair of equipment services value for unaffiliated sales only.

The United Kingdom was the largest purchaser of U.S. private services exports in 2003, accounting for 12 percent of total U.S. private services exports (latest data available). The top 5 purchasers of U.S. private services exports in 2003 were: the United Kingdom (\$35 billion), Japan (\$30 billion), Canada (\$27 billion), Germany (\$18 billion), and Mexico (\$17 billion).

Regionally, in 2003, the United States exported \$101 billion to the EU, \$78 billion to the Asia/Pacific Region (\$42 billion excluding Japan and China), \$43 billion to NAFTA countries, and \$21 billion to Latin America (excluding Mexico).

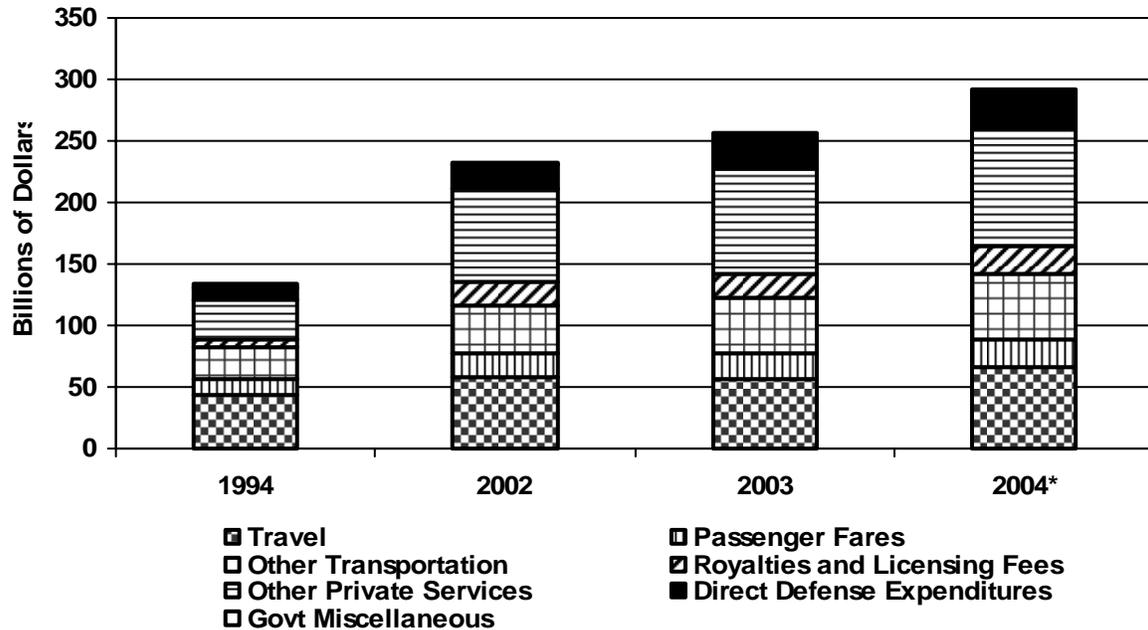
B. Import Growth

Services imports by the United States increased in 2004 by 14 percent to \$292 billion (*table 6, figure 6*). While import growth was greater than export growth in 2004 (14 percent compared to 12 percent) the United States remained a net exporter of services. Three services import categories each accounted for roughly 25 percent of the \$35 billion growth in U.S. imports of services between 2003 and 2004: other private services, other transportation, and travel.

| Table 6: U.S. Services Imports | | | | | | |
|---|----------------------------|-------------|-------------|--------------|-----------------------|---------------|
| Imports: | 1994 | 2002 | 2003 | 2004* | 03-04* | 94-04* |
| | <i>Billions of Dollars</i> | | | | <i>Percent Change</i> | |
| Total (BOP basis) | 132.9 | 232.9 | 256.3 | 291.6 | 13.8 | 119.4 |
| Travel | 43.8 | 58.0 | 56.6 | 65.6 | 15.8 | 49.7 |
| Passenger Fares | 13.1 | 20.0 | 21.0 | 23.2 | 10.8 | 77.8 |
| Other Transportation | 26.0 | 38.4 | 44.8 | 53.7 | 19.9 | 106.4 |
| Royalties and Licensing Fees | 5.9 | 19.2 | 20.0 | 22.8 | 13.8 | 289.9 |
| Other Private Services | 31.5 | 75.3 | 85.8 | 94.6 | 10.2 | 200.6 |
| Direct Defense Expenditures | 10.2 | 19.1 | 25.1 | 28.5 | 13.6 | 179.4 |
| U.S. Government Miscellaneous Services | 2.6 | 2.9 | 3.0 | 3.2 | 7.7 | 26.3 |

Source: U.S. Department of Commerce, Balance of Payments Basis.

**Figure 6:
U.S. Services Imports**



* Annualized based on January-November 2004

Source: U.S. Department of Commerce, Balance of Payments

Since 1994, services imports grew 119 percent or \$159 billion. This growth was driven by the other private services category (accounting for 40 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 nearly quadrupled, while imports of other private services and direct defense expenditures have increased 201 percent and 179 percent, respectively.

As with exports, detailed sectoral breakdowns for imports of other private services are available only through 2003. In 2003, other private services imports totaled \$86 billion. Of this, U.S. imports from business related parties (from a foreign parent or affiliate) accounted for \$35 billion or 41 percent of total other private service imports. The largest categories for U.S. imports of other private services from related and unrelated parties in 2003 were: business professional and technical services, \$41 billion; insurance services, \$27 billion; financial services, \$10 billion; and telecommunications, \$5 billion. The business, professional and technical services category were led by the computer and data processing services (\$5.2 billion), management, consulting, and public relations services (\$3.6 billion), research, development, and testing services (\$2.9 billion), and miscellaneous disbursements (\$1.7 billion).⁹

In the import sector, the United Kingdom remained our largest supplier of private services, providing \$31 billion to the United States in 2003. This accounted for 13 percent of total U.S. imports of private services in 2003. The United States imported \$19 billion from Canada, our second largest supplier, and

\$17 billion from Japan, our third largest supplier. Bermuda and Germany were our fourth and fifth largest import suppliers, both exporting \$16 billion worth of services to the U.S., respectively, in 2003.

Regionally, the U.S. imported \$87 billion of services from the EU, \$48 billion from the Asia/Pacific region (\$27 billion excluding Japan and China), \$31 billion from NAFTA, and \$11 billion from Latin America (excluding Mexico).

IV. The U.S. Trade Deficit

The U.S. goods and services deficit increased by \$119 billion in 2004 to a level of \$616 billion (*table 7*). The U.S. goods trade deficit alone increased by \$117 billion to \$664 billion in 2004. The services trade surplus declined by \$3 billion to \$48 billion in 2004.

As a share of U.S. GDP, the goods and services trade deficit was 5.5 percent of GDP in 2004, an increase of 1.0 percentage points from the level in 2003 (*table 8*). The goods trade deficit was 5.9 percent of GDP in 2004, up from 5.0 percent in 2003. The services trade surplus was 0.4 percent of GDP in 2004, down from 0.5 percent in 2003.

The regional distribution of the goods trade deficit for 1994 and the past 3 years is shown in table 9.

| Table 7 | | | | |
|--|----------------------------|-------------|-------------|--------------|
| U.S. Trade Balances with the World | | | | |
| Balance: | 1994 | 2002 | 2003 | 2004* |
| | <i>Billions of Dollars</i> | | | |
| Goods and Services (BOP Basis) | -97.2 | -421.7 | -496.5 | -615.9 |
| Goods (BOP Basis) | -165.8 | -482.9 | -547.6 | -664.2 |
| Services (BOP Basis) | 67.5 | 61.2 | 51.0 | 48.3 |
| * Annualized based on January-November 2004 data. | | | | |
| Source: U.S. Department of Commerce, Balance of Payments Basis for World. | | | | |

⁹ Miscellaneous disbursements include transactions such as outlays to fund news-gathering costs of broadcasters, disbursements to fund production costs of motion pictures companies, and fees to maintain government tourism and business promotion offices.

| Table 8 | | | | |
|--|----------------|-------------|-------------|--------------|
| U.S. Trade Balances as a share of GDP | | | | |
| Share of GDP: | 1994 | 2002 | 2003 | 2004* |
| | <i>Percent</i> | | | |
| Goods and Services (BOP Basis) | -1.4 | -4.0 | -4.5 | -5.5 |
| Goods (BOP Basis) | -2.3 | -4.6 | -5.0 | -5.9 |
| Services (BOP Basis) | 1.0 | 0.6 | 0.5 | 0.4 |
| * Annualized based on January-November 2004 data. | | | | |
| Source: U.S. Department of Commerce. | | | | |

| Table 9 | | | | |
|--|----------------------------|-------------|-------------|--------------|
| U.S. Goods Trade Balances with Selected Countries/Regions | | | | |
| Balance: | 1994 | 2002 | 2003 | 2004* |
| | <i>Billions of Dollars</i> | | | |
| Canada | -14.0 | -48.2 | -51.7 | -68.2 |
| European Union (EU15) | -11.7 | -82.1 | -93.1 | -106.1 |
| Japan | -65.7 | -70.0 | -66.0 | -74.9 |
| Mexico | 1.4 | -37.1 | -40.6 | -45.1 |
| China | -29.5 | -103.1 | -124.1 | -160.5 |
| Asian Pacific Rim, except Japan and China | -18.2 | -41.9 | -40.4 | -45.7 |
| Latin America, except Mexico | 3.2 | -18.0 | -26.9 | -37.5 |
| Addendum: High Income Countries | -85.4 | -202.4 | -217.4 | -259.8 |
| Addendum: Low to Middle Income Countries | -65.5 | -266.0 | -318.5 | -397.1 |
| * Annualized based on January-November 2004 data. | | | | |
| Source: U.S. Department of Commerce, Census Basis. | | | | |

ANNEX II

Background Information on the WTO

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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.

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:

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.

Each Member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted.

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.

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.

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")¹ should be generalised, non-reciprocal and non-discriminatory.

13. Outstanding Implementation Issues²

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.

¹ BISD 26S/203.

² A list of these issues is compiled in document Job(01)/152/Rev.1.

Doha Work Programme

Decision Adopted by the General Council on 1 August 2004

1. The General Council reaffirms the Ministerial Declarations and Decisions adopted at Doha and the full commitment of all Members to give effect to them. The Council emphasizes Members' resolve to complete the Doha Work Programme fully and to conclude successfully the negotiations launched at Doha. Taking into account the Ministerial Statement adopted at Cancún on 14 September 2003, and the statements by the Council Chairman and the Director-General at the Council meeting of 15-16 December 2003, the Council takes note of the report by the Chairman of the Trade Negotiations Committee (TNC) and agrees to take action as follows:

a. Agriculture: the General Council adopts the framework set out in Annex A to this document.

b. Cotton: the General Council reaffirms the importance of the Sectoral Initiative on Cotton and takes note of the parameters set out in Annex A within which the trade-related aspects of this issue will be pursued in the agriculture negotiations. The General Council also attaches importance to the development aspects of the Cotton Initiative and wishes to stress the complementarity between the trade and development aspects. The Council takes note of the recent Workshop on Cotton in Cotonou on 23-24 March 2004 organized by the WTO Secretariat, and other bilateral and multilateral efforts to make progress on the development assistance aspects and instructs the Secretariat to continue to work with the development community and to provide the Council with periodic reports on relevant developments.

Members should work on related issues of development multilaterally with the international financial institutions, continue their bilateral programmes, and all developed countries are urged to participate. In this regard, the General Council instructs the Director General to consult with the relevant international organizations, including the Bretton Woods Institutions, the Food and Agriculture Organization and the International Trade Centre to direct effectively existing programmes and any additional resources towards development of the economies where cotton has vital importance.

c. Non-agricultural Market Access: the General Council adopts the framework set out in Annex B to this document.

d. Development:

Principles: development concerns form an integral part of the Doha Ministerial Declaration. The General Council rededicates and recommits Members to fulfilling the development dimension of the Doha Development Agenda, which places the needs and interests of developing and least-developed countries at the heart of the Doha Work Programme. The Council reiterates the important role that enhanced market access, balanced rules, and well targeted, sustainably financed technical assistance and capacity building programmes can play in the economic development of these countries.

Special and Differential Treatment: the General Council reaffirms that provisions for special and differential (S&D) treatment are an integral part of the WTO Agreements. The Council recalls Ministers' decision in Doha to review all S&D treatment provisions with a view to strengthening them and making them more precise, effective and operational. The Council recognizes the progress that has been made so far. The Council instructs the Committee on Trade and Development in Special Session to expeditiously complete the review of all the outstanding Agreement-specific proposals and report to the General Council, with clear recommendations for a decision, by July 2005. The Council further instructs the Committee, within the parameters of the Doha mandate, to address all other outstanding work, including on the cross-cutting issues, the monitoring mechanism and the incorporation of S&D treatment into the architecture of WTO rules, as referred to in TN/CTD/7 and report, as appropriate, to the General Council.

The Council also instructs all WTO bodies to which proposals in Category II have been referred to expeditiously complete the consideration of these proposals and report to the General Council, with clear recommendations for a decision, as soon as possible and no later than July 2005. In doing so these bodies will ensure that, as far as possible, their meetings do not overlap so as to enable full and effective participation of developing countries in these discussions.

Technical Assistance: the General Council recognizes the progress that has been made since the Doha Ministerial Conference in expanding Trade-Related Technical Assistance (TRTA) to developing countries and low-income countries in transition. In furthering this effort the Council affirms that such countries, and in particular least-developed countries, should be provided with enhanced TRTA and capacity building, to increase their effective participation in the negotiations, to facilitate their implementation of WTO rules, and to enable them to adjust and diversify their economies. In this context the Council welcomes and further encourages the improved coordination with other agencies, including under the Integrated Framework for TRTA for the LDCs (IF) and the Joint Integrated Technical Assistance Programme (JITAP).

Implementation: concerning implementation-related issues, the General Council reaffirms the mandates Ministers gave in paragraph 12 of the Doha Ministerial Declaration and the Doha Decision on Implementation-Related Issues and Concerns, and renews Members' determination to find appropriate solutions to outstanding issues. The Council instructs the Trade Negotiations Committee, negotiating bodies and other WTO bodies concerned to redouble their efforts to find appropriate solutions as a priority. Without prejudice to the positions of Members, the Council requests the Director-General to continue with his consultative process on all outstanding implementation issues under paragraph 12(b) of the Doha Ministerial Declaration, including on issues related to the extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits, if need be by appointing Chairpersons of concerned WTO bodies as his Friends and/or by holding dedicated consultations. The Director-General shall report to the TNC and the General Council no later than May 2005. The Council shall review progress and take any appropriate action no later than July 2005.

Other Development Issues: in the ongoing market access negotiations, recognising the fundamental principles of the WTO and relevant provisions of GATT 1994, special attention shall be given to the specific trade and development related needs and concerns of developing countries, including capacity constraints. These particular concerns of developing countries, including relating to food security, rural development, livelihood, preferences, commodities and net food imports, as well as prior unilateral liberalisation, should be taken into consideration, as appropriate, in the course of the Agriculture and NAMA negotiations. The trade-related issues identified for the fuller integration of small, vulnerable economies into the multilateral trading system, should also be addressed, without creating a sub-category of Members, as part of a work programme, as mandated in paragraph 35 of the Doha Ministerial Declaration.

Least-Developed Countries: the General Council reaffirms the commitments made at Doha concerning least-developed countries and renews its determination to fulfil these commitments. Members will continue to take due account of the concerns of least-developed countries in the negotiations. The Council confirms that nothing in this Decision shall detract in any way from the special provisions agreed by Members in respect of these countries.

e. Services: the General Council takes note of the report to the TNC by the Special Session of the Council for Trade in Services¹ and reaffirms Members' commitment to progress in this area of the negotiations in line with the Doha mandate. The Council adopts the recommendations agreed by the Special Session, set out in Annex C to this document, on the basis of which further progress in the services negotiations will be pursued. Revised offers should be tabled by May 2005.

f. Other negotiating bodies:

Rules, Trade & Environment and TRIPS: the General Council takes note of the reports to the TNC by the Negotiating Group on Rules and by the Special Sessions of the Committee on Trade and Environment

¹ This report is contained in document TN/S/16.

and the TRIPS Council.² The Council reaffirms Members' commitment to progress in all of these areas of the negotiations in line with the Doha mandates.

Dispute Settlement: the General Council takes note of the report to the TNC by the Special Session of the Dispute Settlement Body³ and reaffirms Members' commitment to progress in this area of the negotiations in line with the Doha mandate. The Council adopts the TNC's recommendation that work in the Special Session should continue on the basis set out by the Chairman of that body in his report to the TNC.

g. Trade Facilitation: taking note of the work done on trade facilitation by the Council for Trade in Goods under the mandate in paragraph 27 of the Doha Ministerial Declaration and the work carried out under the auspices of the General Council both prior to the Fifth Ministerial Conference and after its conclusion, the General Council decides by explicit consensus to commence negotiations on the basis of the modalities set out in Annex D to this document.

Relationship between Trade and Investment, Interaction between Trade and Competition Policy and Transparency in Government Procurement: the Council agrees that these issues, mentioned in the Doha Ministerial Declaration in paragraphs 20-22, 23-25 and 26 respectively, will not form part of the Work Programme set out in that Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round.

h. Other elements of the Work Programme: the General Council reaffirms the high priority Ministers at Doha gave to those elements of the Work Programme which do not involve negotiations. Noting that a number of these issues are of particular interest to developing-country Members, the Council emphasizes its commitment to fulfil the mandates given by Ministers in all these areas. To this end, the General Council and other relevant bodies shall report in line with their Doha mandates to the Sixth Session of the Ministerial Conference. The moratoria covered by paragraph 11.1 of the Doha Ministerial Decision on Implementation-related Issues and Concerns and paragraph 34 of the Doha Ministerial Declaration are extended up to the Sixth Ministerial Conference.

2. The General Council agrees that this Decision and its Annexes shall not be used in any dispute settlement proceeding under the DSU and shall not be used for interpreting the existing WTO Agreements.

3. The General Council calls on all Members to redouble their efforts towards the conclusion of a balanced overall outcome of the Doha Development Agenda in fulfilment of the commitments Ministers took at Doha. The Council agrees to continue the negotiations launched at Doha beyond the timeframe set out in paragraph 45 of the Doha Declaration, leading to the Sixth Session of the Ministerial Conference. Recalling its decision of 21 October 2003 to accept the generous offer of the Government of Hong Kong, China to host the Sixth Session, the Council further agrees that this Session will be held in December 2005.

² The reports to the TNC referenced in this paragraph are contained in the following documents: Negotiating Group on Rules - TN/RL/9; Special Session of the Committee on Trade and Environment - TN/TE/9; Special Session of the Council for TRIPS - TN/IP/10.

³ This report is contained in document TN/DS/10.

Annex A

Framework for Establishing Modalities in Agriculture

1. The starting point for the current phase of the agriculture negotiations has been the mandate set out in Paragraph 13 of the Doha Ministerial Declaration. This in turn built on the long-term objective of the Agreement on Agriculture to establish a fair and market-oriented trading system through a programme of fundamental reform. The elements below offer the additional precision required at this stage of the negotiations and thus the basis for the negotiations of full modalities in the next phase. The level of ambition set by the Doha mandate will continue to be the basis for the negotiations on agriculture.
2. The final balance will be found only at the conclusion of these subsequent negotiations and within the Single Undertaking. To achieve this balance, the modalities to be developed will need to incorporate operationally effective and meaningful provisions for special and differential treatment for developing country Members. Agriculture is of critical importance to the economic development of developing country Members and they must be able to pursue agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns. Non-trade concerns, as referred to in Paragraph 13 of the Doha Declaration, will be taken into account.
3. The reforms in all three pillars form an interconnected whole and must be approached in a balanced and equitable manner.
4. The General Council recognizes the importance of cotton for a certain number of countries and its vital importance for developing countries, especially LDCs. It will be addressed ambitiously, expeditiously, and specifically, within the agriculture negotiations. The provisions of this framework provide a basis for this approach, as does the sectoral initiative on cotton. The Special Session of the Committee on Agriculture shall ensure appropriate prioritization of the cotton issue independently from other sectoral initiatives. A subcommittee on cotton will meet periodically and report to the Special Session of the Committee on Agriculture to review progress. Work shall encompass all trade-distorting policies affecting the sector in all three pillars of market access, domestic support, and export competition, as specified in the Doha text and this Framework text.
5. Coherence between trade and development aspects of the cotton issue will be pursued as set out in paragraph 1.b of the text to which this Framework is annexed.

DOMESTIC SUPPORT

6. The Doha Ministerial Declaration calls for "substantial reductions in trade-distorting domestic support". With a view to achieving these substantial reductions, the negotiations in this pillar will ensure the following:
 - Special and differential treatment remains an integral component of domestic support. Modalities to be developed will include longer implementation periods and lower reduction coefficients for all types of trade-distorting domestic support and continued access to the provisions under Article 6.2.
 - There will be a strong element of harmonisation in the reductions made by developed Members. Specifically, higher levels of permitted trade-distorting domestic support will be subject to deeper cuts.
 - Each such Member will make a substantial reduction in the overall level of its trade-distorting support from bound levels.
 - As well as this overall commitment, Final Bound Total AMS and permitted *de minimis* levels will be subject to substantial reductions and, in the case of the Blue Box, will be capped as specified in paragraph 15 in order to ensure results that are coherent with the long-term reform objective. Any clarification or development of rules and conditions to govern trade distorting support will take this into account.

Overall Reduction: A Tiered Formula

7. The overall base level of all trade-distorting domestic support, as measured by the Final Bound Total AMS plus permitted *de minimis* level and the level agreed in paragraph 8 below for Blue Box payments, will be reduced according to a tiered formula. Under this formula, Members having higher levels of trade-distorting domestic support will make greater overall reductions in order to achieve a harmonizing result. As the first instalment of the overall cut, in the first year and throughout the implementation period, the sum of all trade-distorting support will not exceed 80 per cent of the sum of Final Bound Total AMS plus permitted *de minimis* plus the Blue Box at the level determined in paragraph 15.

8. The following parameters will guide the further negotiation of this tiered formula:

- This commitment will apply as a minimum overall commitment. It will not be applied as a ceiling on reductions of overall trade-distorting domestic support, should the separate and complementary formulae to be developed for Total AMS, *de minimis* and Blue Box payments imply, when taken together, a deeper cut in overall trade-distorting domestic support for an individual Member.
- The base for measuring the Blue Box component will be the higher of existing Blue Box payments during a recent representative period to be agreed and the cap established in paragraph 15 below.

Final Bound Total AMS: A Tiered Formula

9. To achieve reductions with a harmonizing effect:

- Final Bound Total AMS will be reduced substantially, using a tiered approach.
- Members having higher Total AMS will make greater reductions.
- To prevent circumvention of the objective of the Agreement through transfers of unchanged domestic support between different support categories, product-specific AMSs will be capped at their respective average levels according to a methodology to be agreed.
- Substantial reductions in Final Bound Total AMS will result in reductions of some product-specific support.

10. Members may make greater than formula reductions in order to achieve the required level of cut in overall trade-distorting domestic support.

De Minimis

11. Reductions in *de minimis* will be negotiated taking into account the principle of special and differential treatment. Developing countries that allocate almost all *de minimis* support for subsistence and resource-poor farmers will be exempt.

12. Members may make greater than formula reductions in order to achieve the required level of cut in overall trade-distorting domestic support.

Blue Box

13. Members recognize the role of the Blue Box in promoting agricultural reforms. In this light, Article 6.5 will be reviewed so that Members may have recourse to the following measures:

- Direct payments under production-limiting programmes if:
 - such payments are based on fixed and unchanging areas and yields; or
 - such payments are made on 85% or less of a fixed and unchanging base level of production; or
 - livestock payments are made on a fixed and unchanging number of head.

Or

- Direct payments that do not require production if:
 - such payments are based on fixed and unchanging bases and yields; or
 - livestock payments made on a fixed and unchanging number of head; and
 - such payments are made on 85% or less of a fixed and unchanging base level of production.

14. The above criteria, along with additional criteria will be negotiated. Any such criteria will ensure that Blue Box payments are less trade-distorting than AMS measures, it being understood that:

- Any new criteria would need to take account of the balance of WTO rights and obligations.
- Any new criteria to be agreed will not have the perverse effect of undoing ongoing reforms.

15. Blue Box support will not exceed 5% of a Member's average total value of agricultural production during an historical period. The historical period will be established in the negotiations. This ceiling will apply to any actual or potential Blue Box user from the beginning of the implementation period. In cases where a Member has placed an exceptionally large percentage of its trade-distorting support in the Blue Box, some flexibility will be provided on a basis to be agreed to ensure that such a Member is not called upon to make a wholly disproportionate cut.

Green Box

16. Green Box criteria will be reviewed and clarified with a view to ensuring that Green Box measures have no, or at most minimal, trade-distorting effects or effects on production. Such a review and clarification will need to ensure that the basic concepts, principles and effectiveness of the Green Box remain and take due account of non-trade concerns. The improved obligations for monitoring and surveillance of all new disciplines foreshadowed in paragraph 48 below will be particularly important with respect to the Green Box.

EXPORT COMPETITION

17. The Doha Ministerial Declaration calls for "reduction of, with a view to phasing out, all forms of export subsidies". As an outcome of the negotiations, Members agree to establish detailed modalities ensuring the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect by a credible end date.

End Point

18. The following will be eliminated by the end date to be agreed:

- Export subsidies as scheduled.
- Export credits, export credit guarantees or insurance programmes with repayment periods beyond 180 days.

- Terms and conditions relating to export credits, export credit guarantees or insurance programmes with repayment periods of 180 days and below which are not in accordance with disciplines to be agreed. These disciplines will cover, *inter alia*, payment of interest, minimum interest rates, minimum premium requirements, and other elements which can constitute subsidies or otherwise distort trade.
- Trade distorting practices with respect to exporting STEs including eliminating export subsidies provided to or by them, government financing, and the underwriting of losses. The issue of the future use of monopoly powers will be subject to further negotiation.
- Provision of food aid that is not in conformity with operationally effective disciplines to be agreed. The objective of such disciplines will be to prevent commercial displacement. The role of international organizations as regards the provision of food aid by Members, including related humanitarian and developmental issues, will be addressed in the negotiations. The question of providing food aid exclusively in fully grant form will also be addressed in the negotiations.

19. Effective transparency provisions for paragraph 18 will be established. Such provisions, in accordance with standard WTO practice, will be consistent with commercial confidentiality considerations.

Implementation

20. Commitments and disciplines in paragraph 18 will be implemented according to a schedule and modalities to be agreed. Commitments will be implemented by annual instalments. Their phasing will take into account the need for some coherence with internal reform steps of Members.

21. The negotiation of the elements in paragraph 18 and their implementation will ensure equivalent and parallel commitments by Members.

Special and Differential Treatment

22. Developing country Members will benefit from longer implementation periods for the phasing out of all forms of export subsidies.

23. Developing countries will continue to benefit from special and differential treatment under the provisions of Article 9.4 of the Agreement on Agriculture for a reasonable period, to be negotiated, after the phasing out of all forms of export subsidies and implementation of all disciplines identified above are completed.

24. Members will ensure that the disciplines on export credits, export credit guarantees or insurance programs to be agreed will make appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries as provided for in paragraph 4 of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries. Improved obligations for monitoring and surveillance of all new disciplines as foreshadowed in paragraph 48 will be critically important in this regard. Provisions to be agreed in this respect must not undermine the commitments undertaken by Members under the obligations in paragraph 18 above.

25. STEs in developing country Members which enjoy special privileges to preserve domestic consumer price stability and to ensure food security will receive special consideration for maintaining monopoly status.

Special Circumstances

26. In exceptional circumstances, which cannot be adequately covered by food aid, commercial export credits or preferential international financing facilities, ad hoc temporary financing arrangements relating to exports to developing countries may be agreed by Members. Such agreements must not have the effect of undermining commitments undertaken by Members in paragraph 18 above, and will be based on criteria and consultation procedures to be established.

MARKET ACCESS

27. The Doha Ministerial Declaration calls for "substantial improvements in market access". Members also agreed that special and differential treatment for developing Members would be an integral part of all elements in the negotiations.

The Single Approach: a Tiered Formula

28. To ensure that a single approach for developed and developing country Members meets all the objectives of the Doha mandate, tariff reductions will be made through a tiered formula that takes into account their different tariff structures.

29. To ensure that such a formula will lead to substantial trade expansion, the following principles will guide its further negotiation:

- Tariff reductions will be made from bound rates. Substantial overall tariff reductions will be achieved as a final result from negotiations.
- Each Member (other than LDCs) will make a contribution. Operationally effective special and differential provisions for developing country Members will be an integral part of all elements.
- Progressivity in tariff reductions will be achieved through deeper cuts in higher tariffs with flexibilities for sensitive products. Substantial improvements in market access will be achieved for all products.

30. The number of bands, the thresholds for defining the bands and the type of tariff reduction in each band remain under negotiation. The role of a tariff cap in a tiered formula with distinct treatment for sensitive products will be further evaluated.

Sensitive Products

Selection

31. Without undermining the overall objective of the tiered approach, Members may designate an appropriate number, to be negotiated, of tariff lines to be treated as sensitive, taking account of existing commitments for these products.

Treatment

32. The principle of 'substantial improvement' will apply to each product.

33. 'Substantial improvement' will be achieved through combinations of tariff quota commitments and tariff reductions applying to each product. However, balance in this negotiation will be found only if the final negotiated result also reflects the sensitivity of the product concerned.

34. Some MFN-based tariff quota expansion will be required for all such products. A base for such an expansion will be established, taking account of coherent and equitable criteria to be developed in the negotiations. In order not to undermine the objective of the tiered approach, for all such products, MFN based tariff quota expansion will be provided under specific rules to be negotiated taking into account deviations from the tariff formula.

Other Elements

35. Other elements that will give the flexibility required to reach a final balanced result include reduction or elimination of in-quota tariff rates, and operationally effective improvements in tariff quota administration for existing tariff quotas so as to enable Members, and particularly developing country Members, to fully benefit from the market access opportunities under tariff rate quotas.

36. Tariff escalation will be addressed through a formula to be agreed.
37. The issue of tariff simplification remains under negotiation.
38. The question of the special agricultural safeguard (SSG) remains under negotiation.

Special and differential treatment

39. Having regard to their rural development, food security and/or livelihood security needs, special and differential treatment for developing countries will be an integral part of all elements of the negotiation, including the tariff reduction formula, the number and treatment of sensitive products, expansion of tariff rate quotas, and implementation period.
40. Proportionality will be achieved by requiring lesser tariff reduction commitments or tariff quota expansion commitments from developing country Members.
41. Developing country Members will have the flexibility to designate an appropriate number of products as Special Products, based on criteria of food security, livelihood security and rural development needs. These products will be eligible for more flexible treatment. The criteria and treatment of these products will be further specified during the negotiation phase and will recognize the fundamental importance of Special Products to developing countries.
42. A Special Safeguard Mechanism (SSM) will be established for use by developing country Members.
43. Full implementation of the long-standing commitment to achieve the fullest liberalisation of trade in tropical agricultural products and for products of particular importance to the diversification of production from the growing of illicit narcotic crops is overdue and will be addressed effectively in the market access negotiations.
44. The importance of long-standing preferences is fully recognised. The issue of preference erosion will be addressed. For the further consideration in this regard, paragraph 16 and other relevant provisions of TN/AG/W/1/Rev.1 will be used as a reference.

LEAST- DEVELOPED COUNTRIES

45. Least-Developed Countries, which will have full access to all special and differential treatment provisions above, are not required to undertake reduction commitments. Developed Members, and developing country Members in a position to do so, should provide duty-free and quota-free market access for products originating from least-developed countries.
46. Work on cotton under all the pillars will reflect the vital importance of this sector to certain LDC Members and we will work to achieve ambitious results expeditiously.

RECENTLY ACCEDED MEMBERS

47. The particular concerns of recently acceded Members will be effectively addressed through specific flexibility provisions.

MONITORING AND SURVEILLANCE

48. Article 18 of the Agreement on Agriculture will be amended with a view to enhancing monitoring so as to effectively ensure full transparency, including through timely and complete notifications with respect to the commitments in market access, domestic support and export competition. The particular concerns of developing countries in this regard will be addressed.

OTHER ISSUES

49. Issues of interest but not agreed: sectoral initiatives, differential export taxes, GIs.
50. Disciplines on export prohibitions and restrictions in Article 12.1 of the Agreement on Agriculture will be strengthened.

Annex B

Framework for Establishing Modalities in Market Access for Non-Agricultural Products

1. This Framework contains the initial elements for future work on modalities by the Negotiating Group on Market Access. Additional negotiations are required to reach agreement on the specifics of some of these elements. These relate to the formula, the issues concerning the treatment of unbound tariffs in indent two of paragraph 5, the flexibilities for developing-country participants, the issue of participation in the sectorial tariff component and the preferences. In order to finalize the modalities, the Negotiating Group is instructed to address these issues expeditiously in a manner consistent with the mandate of paragraph 16 of the Doha Ministerial Declaration and the overall balance therein.
2. We reaffirm that negotiations on market access for non-agricultural products shall aim to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. We also reaffirm the importance of special and differential treatment and less than full reciprocity in reduction commitments as integral parts of the modalities.
3. We acknowledge the substantial work undertaken by the Negotiating Group on Market Access and the progress towards achieving an agreement on negotiating modalities. We take note of the constructive dialogue on the Chair's Draft Elements of Modalities (TN/MA/W/35/Rev.1) and confirm our intention to use this document as a reference for the future work of the Negotiating Group. We instruct the Negotiating Group to continue its work, as mandated by paragraph 16 of the Doha Ministerial Declaration with its corresponding references to the relevant provisions of Article XXVIII *bis* of GATT 1994 and to the provisions cited in paragraph 50 of the Doha Ministerial Declaration, on the basis set out below.
4. We recognize that a formula approach is key to reducing tariffs, and reducing or eliminating tariff peaks, high tariffs, and tariff escalation. We agree that the Negotiating Group should continue its work on a non-linear formula applied on a line-by-line basis which shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments.
5. We further agree on the following elements regarding the formula:
 - product coverage shall be comprehensive without *a priori* exclusions;
 - tariff reductions or elimination shall commence from the bound rates after full implementation of current concessions; however, for unbound tariff lines, the basis for commencing the tariff reductions shall be [two] times the MFN applied rate in the base year;
 - the base year for MFN applied tariff rates shall be 2001 (applicable rates on 14 November);
 - credit shall be given for autonomous liberalization by developing countries provided that the tariff lines were bound on an MFN basis in the WTO since the conclusion of the Uruguay Round;
 - all non-*ad valorem* duties shall be converted to *ad valorem* equivalents on the basis of a methodology to be determined and bound in *ad valorem* terms;
 - negotiations shall commence on the basis of the HS96 or HS2002 nomenclature, with the results of the negotiations to be finalized in HS2002 nomenclature;
 - the reference period for import data shall be 1999-2001.
6. We furthermore agree that, as an exception, participants with a binding coverage of non-agricultural tariff lines of less than [35] percent would be exempt from making tariff reductions through the formula. Instead, we expect them to bind [100] percent of non-agricultural tariff lines at an average level that does not exceed the overall average of bound tariffs for all developing countries after full implementation of current concessions.
7. We recognize that a sectorial tariff component, aiming at elimination or harmonization is another key element to achieving the objectives of paragraph 16 of the Doha Ministerial Declaration with regard to the reduction or elimination of tariffs, in particular on products of export interest to developing countries. We recognize that participation by all participants will be important to that effect. We therefore instruct the Negotiating Group to pursue its discussions on such a component, with a view to defining product coverage,

participation, and adequate provisions of flexibility for developing-country participants.

8. We agree that developing-country participants shall have longer implementation periods for tariff reductions. In addition, they shall be given the following flexibility:

a) applying less than formula cuts to up to [10] percent of the tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed [10] percent of the total value of a Member's imports; or

b) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [5] percent of tariff lines provided they do not exceed [5] percent of the total value of a Member's imports.

We furthermore agree that this flexibility could not be used to exclude entire HS Chapters.

9. We agree that least-developed country participants shall not be required to apply the formula nor participate in the sectorial approach, however, as part of their contribution to this round of negotiations, they are expected to substantially increase their level of binding commitments.

10. Furthermore, in recognition of the need to enhance the integration of least-developed countries into the multilateral trading system and support the diversification of their production and export base, we call upon developed-country participants and other participants who so decide, to grant on an autonomous basis duty-free and quota-free market access for non-agricultural products originating from least-developed countries by the year [...].

11. We recognize that newly acceded Members shall have recourse to special provisions for tariff reductions in order to take into account their extensive market access commitments undertaken as part of their accession and that staged tariff reductions are still being implemented in many cases. We instruct the Negotiating Group to further elaborate on such provisions.

12. We agree that pending agreement on core modalities for tariffs, the possibilities of supplementary modalities such as zero-for-zero sector elimination, sectorial harmonization, and request & offer, should be kept open.

13. In addition, we ask developed-country participants and other participants who so decide to consider the elimination of low duties.

14. We recognize that NTBs are an integral and equally important part of these negotiations and instruct participants to intensify their work on NTBs. In particular, we encourage all participants to make notifications on NTBs by 31 October 2004 and to proceed with identification, examination, categorization, and ultimately negotiations on NTBs. We take note that the modalities for addressing NTBs in these negotiations could include request/offer, horizontal, or vertical approaches; and should fully take into account the principle of special and differential treatment for developing and least-developed country participants.

15. We recognize that appropriate studies and capacity building measures shall be an integral part of the modalities to be agreed. We also recognize the work that has already been undertaken in these areas and ask participants to continue to identify such issues to improve participation in the negotiations.

16. We recognize the challenges that may be faced by non-reciprocal preference beneficiary Members and those Members that are at present highly dependent on tariff revenue as a result of these negotiations on non-agricultural products. We instruct the Negotiating Group to take into consideration, in the course of its work, the particular needs that may arise for the Members concerned.

17. We furthermore encourage the Negotiating Group to work closely with the Committee on Trade and Environment in Special Session with a view to addressing the issue of non-agricultural environmental goods covered in paragraph 31 (iii) of the Doha Ministerial Declaration.

Annex C

Recommendations of the Special Session of the Council for Trade in Services

- (a) Members who have not yet submitted their initial offers must do so as soon as possible.
- (b) A date for the submission of a round of revised offers should be established as soon as feasible.
- (c) With a view to providing effective market access to all Members and in order to ensure a substantive outcome, Members shall strive to ensure a high quality of offers, particularly in sectors and modes of supply of export interest to developing countries, with special attention to be given to least-developed countries.
- (d) Members shall aim to achieve progressively higher levels of liberalization with no a priori exclusion of any service sector or mode of supply and shall give special attention to sectors and modes of supply of export interest to developing countries. Members note the interest of developing countries, as well as other Members, in Mode 4.
- (e) Members must intensify their efforts to conclude the negotiations on rule-making under GATS Articles VI:4, X, XIII and XV in accordance with their respective mandates and deadlines.
- (f) Targeted technical assistance should be provided with a view to enabling developing countries to participate effectively in the negotiations.
- (g) For the purpose of the Sixth Ministerial meeting, the Special Session of the Council for Trade in Services shall review progress in these negotiations and provide a full report to the Trade Negotiations Committee, including possible recommendations.

Annex D

Modalities for Negotiations on Trade Facilitation

1. Negotiations shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit.¹ Negotiations shall also aim at enhancing technical assistance and support for capacity building in this area. The negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues.
2. The results of the negotiations shall take fully into account the principle of special and differential treatment for developing and least-developed countries. Members recognize that this principle should extend beyond the granting of traditional transition periods for implementing commitments. In particular, the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members. It is further agreed that those Members would not be obliged to undertake investments in infrastructure projects beyond their means.
3. Least-developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.
4. As an integral part of the negotiations, Members shall seek to identify their trade facilitation needs and priorities, particularly those of developing and least-developed countries, and shall also address the concerns of developing and least-developed countries related to cost implications of proposed measures.
5. It is recognized that the provision of technical assistance and support for capacity building is vital for developing and least-developed countries to enable them to fully participate in and benefit from the negotiations. Members, in particular developed countries, therefore commit themselves to adequately ensure such support and assistance during the negotiations.²
6. Support and assistance should also be provided to help developing and least-developed countries implement the commitments resulting from the negotiations, in accordance with their nature and scope. In this context, it is recognized that negotiations could lead to certain commitments whose implementation would require support for infrastructure development on the part of some Members. In these limited cases, developed-country Members will make every effort to ensure support and assistance directly related to the nature and scope of the commitments in order to allow implementation. It is understood, however, that in cases where required support and assistance for such infrastructure is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required. While every effort will be made to ensure the necessary support and assistance, it is understood that the commitments by developed countries to provide such support are not open-ended.
7. Members agree to review the effectiveness of the support and assistance provided and its ability to support the implementation of the results of the negotiations.
8. In order to make technical assistance and capacity building more effective and operational and to ensure better coherence, Members shall invite relevant international organizations, including the IMF, OECD, UNCTAD, WCO and the World Bank to undertake a collaborative effort in this regard.
9. Due account shall be taken of the relevant work of the WCO and other relevant international organizations in this area.
10. Paragraphs 45-51 of the Doha Ministerial Declaration shall apply to these negotiations. At its first meeting after the July session of the General Council, the Trade Negotiations Committee shall establish a Negotiating Group on Trade Facilitation and appoint its Chair. The first meeting of the Negotiating Group shall agree on a work plan and schedule of meetings.

¹ It is understood that this is without prejudice to the possible format of the final result of the negotiations and would allow consideration of various forms of outcomes.

² In connection with this paragraph, Members note that paragraph 38 of the Doha Ministerial Declaration addresses relevant technical assistance and capacity building concerns of Members.

**U.S. SUBMISSIONS TO THE WTO IN SUPPORT
OF THE DOHA DEVELOPMENT AGENDA**
(WTO Document Symbol in Parentheses)

Committee on Agriculture, Special Session

- Export Competition, Market Access and Domestic Support (JOB(02)/122)
- Joint EC-US Paper on Agriculture (JOB(03)/157)
- Proposal for Tariff Rate Quota Reform (G/AG/NG/W/58)
- Proposal for Comprehensive Long-Term Agricultural Trade Reform (G/AG/NG/W/15)
- Note on Domestic Support Reform (G/AG/NG/W/16)

Council on Trade in Services, Special Session

- Framework for Negotiation (S/CSS/W/4)
- Proposals for Negotiation (Job(00)/8376)
- Accounting Services (S/CSS/W/20)
- Audiovisual and Related Services (S/CSS/W/21)
- Distribution Services (S/CSS/W/22)
- Higher (Tertiary) Education, Adult Education and Training (S/CSS/W/23)
- Energy Services (S/CSS/W/24)
- Environmental Services (S/CSS/W/25)
- Express Delivery Services (S/CSS/W/26)
- Financial Services (S/CSS/W/27)
- Legal Services (S/CSS/W/28)
- Movement of Natural Persons (S/CSS/W/29)
- Market Access in Telecommunications and Complementary Services (S/CSS/W/30)
- Tourism and Hotels (S/CSS/W/31)
- Transparency in Domestic Regulation (S/CSS/W/102)
- Advertising and Related Services (S/CSS/W/100)
- Desirability of a Safeguard Mechanism for Services: Promoting Liberalization of Trade in Services (S/WPGR/W/37)
- Modalities for the Special Treatment For Least-Developed Country Members in the Negotiations on Trade In Services – JOB (03)/133
- 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)
- Joint Statement on Market Access in Services (JOB(04)/176)
- U.S. Proposal for Transparency Disciplines in Domestic Regulation: Building on Existing International Disciplines and Proposals (JOB(04)/128)

Negotiating Group on Market Access

- Tariffs & Trade Data Needs Assessment (TN/MA/W/2)
- Negotiations on Environmental Goods (TN/MA/W/3 and TN/TE/W/8)
- Modalities Proposal (TN/MA/W/18)
- Proposal on modalities for addressing Non-Tariff Barriers (NTBs) (TN/MA/W/18/Add.1)
- Revenue Implications of Trade Liberalization (TN/MA/W/18/Add.2)
- Vertical NTB Modality (TN/MA/W/18/Add.3)
- Contribution on an Environmental Goods Modality (TN/TE/W/38) & (TN/MA/W/18/Add.5)

- Liberalizing Environmental Goods In The WTO: Approaching The Definition Issue (TN/TE/W/34) & (TN/MA/W/18/Add.4)
- Non-Tariff Barrier Notifications (TN/MA/W/46/Add.8)
- Non-Tariff Barrier Notifications – Revision (TN/MA/W/46/Add.8/Rev.1)
- Non-Agricultural Market Access: Modalities (TN/MA/W/44)
- Contribution by Canada, European Communities and United States, Non-Agricultural Market Access: Modalities (JOB(03)/163)

Negotiating Group on Rules

- Fisheries Subsidies Joint communication from the United States, Australia, Chile, Ecuador, Iceland, New Zealand, Peru, and the Philippines (TN/RL/W/3)
- Fisheries Subsidies (TN/RL/W/21)
- OECD Steel Paper (TN/RL/W/24)
- Questions on Papers Submitted to Rules Negotiating Group (TN/RL/W/25)
- Basic Concepts of the Trade Remedies Rules (TN/RL/W/27)
- Special and Differential Treatment and the Subsidies Agreement (TN/RL/W/33)
- Second Set of Questions from the United States on Papers Submitted to the Rules Negotiating Group (TN/RL/W/34)
- Investigatory Procedures Under The Antidumping and Subsidies Agreements (TN/RL/W/35)
- Communication From The United States Attaching A Communiqué From The Organization For Economic Cooperation And Development (OECD) (TN/RL/W/49)
- Circumvention (TN/RL/W/50)
- Replies To Questions Presented To The United States On Submission TN/RI/W/27 (TN/RL/W/53)
- Third Set Of Questions From The United States On Papers Submitted To The Rules Negotiating Group (TN/RL/W/54)
- Responses By The United States To Questions From Australia On Investigatory Procedures Under The Anti-Dumping And Subsidies Agreements (TN/RL/W/71)
- Identification Of Certain Major Issues Under The Anti-Dumping And Subsidies Agreements (TN/RL/W/72)
- Possible Approaches To Improved Disciplines On Fisheries Subsidies (TN/RL/W/77)
- Subsidies Disciplines Requiring Clarification And Improvement (TN/RL/W/78)
- Elements Of A Steel Subsidies Agreement (TN/RL/W/95)
- Identification of Additional Issues under the Anti-dumping and Subsidies Agreements (TN/RL/W/98)
- Fourth Set Of Questions From The United States On Papers Submitted To The Rules Negotiating Group (TN/RL/W/103)
- Further Issues Identified Under The Anti-Dumping And Subsidies Agreements For Discussion By the Negotiating Group On Rules (TN/RL/W/130)
- Replies to the Questions from India on TN/RL/W/35 (TN/RL/W/147)
- Three Issues Identified by the United States (TN/RL/W/153)
- Accrual of Interest (TN/RL/W/168)
- Additional Views on the Structure of the Fisheries Subsidies Negotiations (TN/RL/W/169)
- Allocation of Subsidy Benefits Over Time (TN/RL/GEN/4)
- Exchange Rates (TN/RL/W/GEN/5)
- New Shipper Reviews (TN/RL/GEN/11)
- Allocation Periods for Subsidy Benefits (TN/RL/GEN/12)
- Prompt Access to Non-Confidential Information (TN/RL/GEN/13)
- Conduct of Verifications (TN/RL/GEN/15)
- All-Others Rate (TN/RL/GEN/16)
- Expensing Versus Allocating Subsidy Benefits (TN/RL/GEN/17/Rev.1)
- Preliminary Determinations (TN/RL/GEN/25)

Committee on Antidumping Practices

- Proposal for Operationalization of Art. 15 (G/ADP/AHG/W/138)
- Draft Recommendation on Operationalizing Art. 15 (G/ADP/AHG/W/143)
- Para. 7.4: Annual Reviews of the Antidumping Agreement (G/ADP/W/427)

Committee on Subsidies and Countervailing Measures

- Approval of Qualifying Requests under SCM Article. 27.4, Joint communication from the United States, Australia, Canada, the EU, Japan and Switzerland (G/SCM/W/521)

Dispute Settlement Body, Special Session

- Contribution of the United States to the Improvement of the Dispute Settlement Understanding of the WTO-Related to Transparency (TN/DS/W/13)
- Negotiations on Improvements And Clarifications of the Dispute Settlement Understanding on Improving Flexibility and Member Control in WTO Dispute Settlement (TN/DS/W/28)
- Further Contribution of The United States to The Improvement of The Dispute Settlement Understanding of the WTO Related to Transparency (TN/DS/W/46)
- Negotiations on Improvements and Clarifications of the Dispute Settlement Understanding on Improving Flexibility and Member Control in WTO Dispute Settlement, Joint communication from United States and Chile (TN/DS/W/52)

Trade Facilitation

- Article VIII - Fees and Formalities (G/C/W/384)
- Article X - Publication and Administration (G/C/W/400)
- Integrated and Comprehensive Approach to Special and Differential Treatment (G/C/W/451)
- Communication on Trade Facilitation (JOB(04)/103)

Committee on Trade and Environment, Regular and Special Session

- Sub-Paragraph (i) of the Doha Declaration (TN/TE/W/20 and TN/TE/W / 40)
- Contribution of the United States on Para. 31 (ii) of the Doha Ministerial Declaration(TN/TE/W/5)
- Paragraph 33 of the Doha Declaration (WT/CTE/W/227)
- Sub-Paragraph 31(i) of the Doha Declaration (TN/TE/W/70)

(Three dual submissions on Environmental Goods to the Committee on Trade and Environment (Regular and Special Session) and the Negotiating Group on Market Access are listed under the Negotiating Group on Market Access.)

Council on TRIPS, Regular & Special Session

- Questions and Answers: Comparison of Proposals (TN/IP/W/1)
- Issues for Discussion, Article 23.4 (TN/IP/W/2)
- Proposal for a Multilateral System of Registration and Protection of Geographic Indications for Wine & Spirits Based on Article 23.4 of the TRIPS Agreement (TN/IP/W/5)
- Multilateral System of Registration and Protection of Geographic Indications for Wine & Spirits (TN/IP/W/6)

- Paragraph 6 of the Doha Declaration on TRIPS and Public Health (IP/C/W/340)
- Second Submission on Paragraph 6 of the Doha Declaration on TRIPS and Public Health (IP/C/W/358)
- Implications of Article 23 Extension (IP/C/W/386)
- Moratorium to Address Needs of Developing and Least-Developed Members With No or Insufficient Manufacturing Capacities in the Pharmaceutical Sector (IP/C/W/396)
- Joint Proposal for a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits (TN/IP/W/9)
- Article 27.3(B), Relationship between the Trips Agreement and the CBD, and the Protection of Traditional Knowledge and Folklore (IP/C/W/434)
- Technology Transfer Practices of the U.S. National Cancer Institute's Departmental Therapeutics Program (IP/C/W/341)
- Access to Genetic Resources Regime of the United States' National Parks (IP/C/W/393)

Committee on Trade and Development, Special Session

- Remarks on the review of Special and Differential Treatment (TN/CTD/W/9)
- Monitoring Mechanism (TN/CTD/W/19)
- Approach to Agreement-Specific Proposals (TN/CTD/W/27)

Working Group on Transparency in Government Procurement

- Capacity Building Questions (WT/WGTGP/W/34)
- Workplan Proposal (WT/WGTGP/W/35)
- Considerations Related to Enforcement of an Agreement on Transparency in Government Procurement (WT/WGTGP/W/38)

Work Program on Electronic Commerce

- Work Program on Electronic Commerce (WT/GC/W/493/Rev.1)

Working Group on the Relationship between Trade and Investment

- Covering FDI & Portfolio Investment in an Agreement (WT/WGTI/W/142)

Working Group on the Interaction between Trade and Competition Policy

- Technical Assistance (WT/WGTCP/W/185)
- Hardcore Cartels (WT/WGTCP/W/203)
- Voluntary Cooperation (WT/WGTCP/W/204)
- Transparency & Non-discrimination (WT/WGTCP/W/218)
- Procedural Fairness (WT/WGTCP/W/219)
- The Benefits of Peer Review in the WTO Competition Context (WT/WGTCP/W/233)

MEMBERSHIP OF THE WORLD TRADE ORGANIZATION

as of January 1, 2005 (148 Members)

| <u>Government</u> | <u>Entry into Force/ Membership</u> | <u>Government</u> | <u>Entry into Force/ Membership</u> |
|---|--|------------------------------|--|
| <u>Albania</u> | <u>September 8, 2000</u> | <u>Dominican Republic</u> | <u>March 9, 1995</u> |
| <u>Angola</u> | <u>November 23, 1996</u> | <u>Ecuador</u> | <u>January 21, 1996</u> |
| <u>Antigua and Barbuda</u> | <u>January 1, 1995</u> | <u>Egypt</u> | <u>June 30, 1995</u> |
| <u>Argentina</u> | <u>January 1, 1995</u> | <u>El Salvador</u> | <u>May 7, 1995</u> |
| <u>Australia</u> | <u>January 1, 1995</u> | <u>Estonia</u> | <u>November 13, 1999</u> |
| <u>Austria</u> | <u>January 1, 1995</u> | <u>European Union</u> | <u>January 1, 1995</u> |
| <u>Bahrain</u> | <u>January 1, 1995</u> | <u>Fiji</u> | <u>January 14, 1996</u> |
| <u>Bangladesh</u> | <u>January 1, 1995</u> | <u>Finland</u> | <u>January 1, 1995</u> |
| <u>Barbados</u> | <u>January 1, 1995</u> | <u>France</u> | <u>January 1, 1995</u> |
| <u>Belgium</u> | <u>January 1, 1995</u> | <u>Gabon</u> | <u>January 1, 1995</u> |
| <u>Belize</u> | <u>January 1, 1995</u> | <u>Georgia</u> | <u>June 14, 2000</u> |
| <u>Benin</u> | <u>February 22, 1996</u> | <u>Germany</u> | <u>January 1, 1995</u> |
| <u>Bolivia</u> | <u>September 12, 1995</u> | <u>Ghana</u> | <u>January 1, 1995</u> |
| <u>Botswana</u> | <u>May 31, 1995</u> | <u>Greece</u> | <u>January 1, 1995</u> |
| <u>Brazil</u> | <u>January 1, 1995</u> | <u>Grenada</u> | <u>February 22, 1996</u> |
| <u>Brunei Darussalam</u> | <u>January 1, 1995</u> | <u>Guatemala</u> | <u>July 21, 1995</u> |
| <u>Bulgaria</u> | <u>December 1, 1996</u> | <u>Guinea</u> | <u>October 25, 1995</u> |
| <u>Burkina Faso</u> | <u>June 3, 1995</u> | <u>Guinea Bissau</u> | <u>May 31, 1995</u> |
| <u>Burundi</u> | <u>July 23, 1995</u> | <u>Guyana</u> | <u>January 1, 1995</u> |
| <u>Cameroon</u> | <u>December 13, 1995</u> | <u>Haiti</u> | <u>January 30, 1996</u> |
| <u>Canada</u> | <u>January 1, 1995</u> | <u>Honduras</u> | <u>January 1, 1995</u> |
| <u>Central African Republic</u> | <u>May 31, 1995</u> | <u>Hong Kong, China</u> | <u>January 1, 1995</u> |
| <u>Chad</u> | <u>October 19, 1996</u> | <u>Hungary</u> | <u>January 1, 1995</u> |
| <u>Chile</u> | <u>January 1, 1995</u> | <u>Iceland</u> | <u>January 1, 1995</u> |
| <u>China</u> | <u>December 11, 2001</u> | <u>India</u> | <u>January 1, 1995</u> |
| <u>Colombia</u> | <u>April 30, 1995</u> | <u>Indonesia</u> | <u>January 1, 1995</u> |
| <u>Congo</u> | <u>March 27, 1997</u> | <u>Ireland</u> | <u>January 1, 1995</u> |
| <u>Costa Rica</u> | <u>January 1, 1995</u> | <u>Israel</u> | <u>April 21, 1995</u> |
| <u>Côte d'Ivoire</u> | <u>January 1, 1995</u> | <u>Italy</u> | <u>January 1, 1995</u> |
| <u>Croatia</u> | <u>November 30, 2000</u> | <u>Jamaica</u> | <u>March 9, 1995</u> |
| <u>Cuba</u> | <u>April 20, 1995</u> | <u>Japan</u> | <u>January 1, 1995</u> |
| <u>Cyprus</u> | <u>July 30, 1995</u> | <u>Jordan</u> | <u>April 11, 2000</u> |
| <u>Czech Republic</u> | <u>January 1, 1995</u> | <u>Kenya</u> | <u>January 1, 1995</u> |
| <u>Democratic Republic of the Congo</u> | <u>January 1, 1997</u> | <u>Korea, Republic of</u> | <u>January 1, 1995</u> |
| <u>Denmark</u> | <u>January 1, 1995</u> | <u>Kuwait</u> | <u>January 1, 1995</u> |
| <u>Djibouti</u> | <u>May 31, 1995</u> | <u>Kyrgyz Republic</u> | <u>December 20, 1998</u> |
| <u>Dominica</u> | <u>January 1, 1995</u> | <u>Latvia</u> | <u>February 10, 1999</u> |
| <u>Government</u> | <u>Entry into Force/ Membership</u> | <u>Government</u> | <u>Entry into Force/ Membership</u> |
| <u>Lesotho</u> | <u>May 31, 1995</u> | <u>Rwanda</u> | <u>May 22, 1996</u> |
| <u>Liechtenstein</u> | <u>September 1, 1995</u> | <u>Saint Kitts and Nevis</u> | <u>February 21, 1996</u> |

| | | | |
|---|--------------------------|--|-------------------------|
| <u>Lithuania</u> | <u>May 31, 2001</u> | <u>Saint Lucia</u> | <u>January 1, 1995</u> |
| <u>Luxembourg</u> | <u>January 1, 1995</u> | <u>Saint Vincent and the Grenadines</u> | <u>January 1, 1995</u> |
| <u>Macao, China</u> | <u>January 1, 1995</u> | <u>Senegal</u> | <u>January 1, 1995</u> |
| <u>Madagascar</u> | <u>November 17, 1995</u> | <u>Sierra Leone</u> | <u>July 23, 1995</u> |
| <u>Malawi</u> | <u>May 31, 1995</u> | <u>Singapore</u> | <u>January 1, 1995</u> |
| <u>Malaysia</u> | <u>January 1, 1995</u> | <u>Slovak Republic</u> | <u>January 1, 1995</u> |
| <u>Maldives</u> | <u>May 31, 1995</u> | <u>Slovenia</u> | <u>July 30, 1995</u> |
| <u>Mali</u> | <u>May 31, 1995</u> | <u>Solomon Islands</u> | <u>July 26, 1996</u> |
| <u>Malta</u> | <u>January 1, 1995</u> | <u>South Africa</u> | <u>January 1, 1995</u> |
| <u>Mauritania</u> | <u>May 31, 1995</u> | <u>Spain</u> | <u>January 1, 1995</u> |
| <u>Mauritius</u> | <u>January 1, 1995</u> | <u>Sri Lanka</u> | <u>January 1, 1995</u> |
| <u>Moldova</u> | <u>July 26, 2001</u> | <u>Suriname</u> | <u>January 1, 1995</u> |
| <u>Mongolia</u> | <u>January 29, 1997</u> | <u>Swaziland</u> | <u>January 1, 1995</u> |
| <u>Morocco</u> | <u>January 1, 1995</u> | <u>Sweden</u> | <u>January 1, 1995</u> |
| <u>Mozambique</u> | <u>August 26, 1995</u> | <u>Switzerland</u> | <u>July 1, 1995</u> |
| <u>Myanmar</u> | <u>January 1, 1995</u> | <u>Taiwan (referred to in the WTO as Chinese Taipei)</u> | <u>January 1, 2002</u> |
| <u>Namibia</u> | <u>January 1, 1995</u> | <u>Tanzania</u> | <u>January 1, 1995</u> |
| <u>Netherlands - For the Kingdom in Europe and Netherlands Antilles</u> | <u>January 1, 1995</u> | <u>Thailand</u> | <u>January 1, 1995</u> |
| <u>New Zealand</u> | <u>January 1, 1995</u> | <u>The Gambia</u> | <u>October 23, 1996</u> |
| <u>Nicaragua</u> | <u>September 3, 1995</u> | <u>Togo</u> | <u>May 31, 1995</u> |
| <u>Niger</u> | <u>December 13, 1996</u> | <u>Trinidad and Tobago</u> | <u>March 1, 1995</u> |
| <u>Nigeria</u> | <u>January 1, 1995</u> | <u>Mexico</u> | <u>January 1, 1995</u> |
| <u>Norway</u> | <u>January 1, 1995</u> | <u>Tunisia</u> | <u>March 9, 1995</u> |
| <u>Oman</u> | <u>November 9, 2000</u> | <u>Turkey</u> | <u>March 26, 1995</u> |
| <u>Pakistan</u> | <u>January 1, 1995</u> | <u>Uganda</u> | <u>January 1, 1995</u> |
| <u>Panama</u> | <u>September 6, 1997</u> | <u>United Arab Emirates</u> | <u>April 10, 1996</u> |
| <u>Papua New Guinea</u> | <u>June 9, 1996</u> | <u>United Kingdom</u> | <u>January 1, 1995</u> |
| <u>Paraguay</u> | <u>January 1, 1995</u> | <u>United States</u> | <u>January 1, 1995</u> |
| <u>Peru</u> | <u>January 1, 1995</u> | <u>Uruguay</u> | <u>January 1, 1995</u> |
| <u>Philippines</u> | <u>January 1, 1995</u> | <u>Venezuela</u> | <u>January 1, 1995</u> |
| <u>Poland</u> | <u>July 1, 1995</u> | <u>Zambia</u> | <u>January 1, 1995</u> |
| <u>Portugal</u> | <u>January 1, 1995</u> | <u>Zimbabwe</u> | <u>March 5, 1995</u> |
| <u>Qatar</u> | <u>January 13, 1996</u> | | |
| <u>Romania</u> | <u>January 1, 1995</u> | | |

PROPOSED REVISED SCALE OF WTO CONTRIBUTIONS FOR 2005
(Minimum contribution of 0.015 per cent)

| MEMBERS | 2004 Contribution CHF | 2005 Contribution | | Interest Earned ³ CHF | 2005 net Contribution CHF |
|----------------------------------|-----------------------------|----------------------|-----------|--|---------------------------------|
| | | % | CHF | | |
| Albania | 24,084 | 0.015 | 25,110 | 20 | 25,090 |
| Angola | 128,448 | 0.077 | 128,898 | 122 | 128,776 |
| Antigua and Barbuda | 24,084 | 0.015 | 25,110 | | 25,110 |
| Argentina | 741,787 | 0.409 | 684,666 | | 684,666 |
| Armenia | 24,084 | 0.015 | 25,110 | | 25,110 |
| Australia | 1,852,862 | 1.126 | 1,884,924 | 2,374 | 1,882,550 |
| Austria | 2,209,306 | 1.377 | 2,305,098 | 2,793 | 2,302,305 |
| Bahrain | 117,209 | 0.075 | 125,550 | 71 | 125,479 |
| Bangladesh | 168,588 | 0.106 | 177,444 | 72 | 177,372 |
| Barbados | 30,506 | 0.019 | 31,806 | 29 | 31,777 |
| Belgium | 4,306,219 | 2.648 | 4,432,752 | 4,902 | 4,427,850 |
| Belize | 24,084 | 0.015 | 25,110 | | 25,110 |
| Benin | 24,084 | 0.015 | 25,110 | 6 | 25,104 |
| Bolivia | 40,140 | 0.024 | 40,176 | | 40,176 |
| Botswana | 56,196 | 0.035 | 58,590 | 51 | 58,539 |
| Brazil | 1,525,320 | 0.913 | 1,528,362 | | 1,528,362 |
| Brunei Darussalam | 65,830 | 0.039 | 65,286 | 60 | 65,226 |
| Bulgaria | 155,743 | 0.101 | 169,074 | 190 | 168,884 |
| Burkina Faso | 24,084 | 0.015 | 25,110 | 15 | 25,095 |
| Burundi | 24,084 | 0.015 | 25,110 | | 25,110 |
| Cambodia | | 0.027 | 45,198 | | 45,198 |
| Cameroon | 41,746 | 0.034 | 56,916 | 45 | 56,871 |
| Canada | 6,326,064 | 3.921 | 6,563,754 | 7,616 | 6,556,138 |
| Central African Republic | 24,084 | 0.015 | 25,110 | | 25,110 |
| Chad | 24,084 | 0.015 | 25,110 | | 25,110 |
| Chile | 499,342 | 0.300 | 502,200 | 224 | 501,976 |
| China, People's Republic of | 5,235,862 | 3.599 | 6,024,726 | 441 | 6,024,285 |
| Colombia | 351,626 | 0.207 | 346,518 | | 346,518 |
| Congo | 38,534 | 0.025 | 41,850 | | 41,850 |
| Costa Rica | 162,166 | 0.102 | 170,748 | 169 | 170,579 |
| Côte d'Ivoire | 101,153 | 0.062 | 103,788 | | 103,788 |
| Croatia | 221,573 | 0.139 | 232,686 | 125 | 232,561 |
| Cuba | 102,758 | 0.065 | 108,810 | 159 | 108,651 |
| Cyprus | 97,942 | 0.063 | 105,462 | 79 | 105,383 |
| Czech Republic | 818,856 | 0.536 | 897,264 | 999 | 896,265 |
| Democratic Republic of the Congo | 30,506 | 0.015 | 25,110 | | 25,110 |
| Denmark | 1,531,742 | 0.966 | 1,617,084 | 2,068 | 1,615,016 |
| Djibouti | 24,084 | 0.015 | 25,110 | | 25,110 |

³ Interest earned in 2003 under the Early Payment Encouragement Scheme (L/6384) and to be deducted from the 2005 contribution.

| MEMBERS | 2004 Contribution CHF | 2005 Contribution | | Interest Earned ³ CHF | 2005 net Contribution CHF |
|--|-----------------------------|----------------------|------------|--|---------------------------------|
| | | % | CHF | | |
| Dominica | 24,084 | 0.015 | 25,110 | | 25,110 |
| Dominican Republic | 200,700 | 0.126 | 210,924 | | 210,924 |
| Ecuador | 131,659 | 0.081 | 135,594 | 86 | 135,508 |
| Egypt | 414,245 | 0.250 | 418,500 | 197 | 418,303 |
| El Salvador | 96,336 | 0.061 | 102,114 | | 102,114 |
| Estonia | 102,758 | 0.067 | 112,158 | 145 | 112,013 |
| European Communities | 0 | 0.000 | 0 | | 0 |
| Fiji | 25,690 | 0.015 | 25,110 | 26 | 25,084 |
| Finland | 1,019,556 | 0.622 | 1,041,228 | 1,425 | 1,039,803 |
| Former Yugoslav Republic of Macedonia | 40,140 | 0.024 | 40,176 | | 40,176 |
| France | 8,368,387 | 5.152 | 8,624,448 | 10,097 | 8,614,351 |
| Gabon | 56,196 | 0.034 | 56,916 | | 56,916 |
| Gambia | 24,084 | 0.015 | 25,110 | | 25,110 |
| Georgia | 24,084 | 0.015 | 25,110 | | 25,110 |
| Germany | 14,265,756 | 8.872 | 14,851,728 | 8,783 | 14,842,945 |
| Ghana | 61,013 | 0.037 | 61,938 | | 61,938 |
| Greece | 656,690 | 0.438 | 733,212 | 448 | 732,764 |
| Grenada | 24,084 | 0.015 | 25,110 | 29 | 25,081 |
| Guatemala | 101,153 | 0.065 | 108,810 | 87 | 108,723 |
| Guinea | 24,084 | 0.015 | 25,110 | | 25,110 |
| Guinea-Bissau | 24,084 | 0.015 | 25,110 | | 25,110 |
| Guyana | 24,084 | 0.015 | 25,110 | | 25,110 |
| Haiti | 24,084 | 0.015 | 25,110 | | 25,110 |
| Honduras | 61,013 | 0.039 | 65,286 | 44 | 65,242 |
| Hong Kong, China | 5,131,498 | 3.122 | 5,226,228 | 7,171 | 5,219,057 |
| Hungary | 685,591 | 0.501 | 838,674 | 594 | 838,080 |
| Iceland | 69,041 | 0.044 | 73,656 | 98 | 73,558 |
| India | 1,282,874 | 0.922 | 1,543,428 | 578 | 1,542,850 |
| Indonesia | 1,302,142 | 0.773 | 1,294,002 | 610 | 1,293,392 |
| Ireland | 1,844,834 | 1.246 | 2,085,804 | 2,729 | 2,083,075 |
| Israel | 903,953 | 0.563 | 942,462 | 1,062 | 941,400 |
| Italy | 6,672,874 | 4.087 | 6,841,638 | 6,162 | 6,835,476 |
| Jamaica | 88,308 | 0.054 | 90,396 | 39 | 90,357 |
| Japan | 10,266,206 | 6.125 | 10,253,250 | 7,693 | 10,245,557 |
| Jordan | 102,758 | 0.064 | 107,136 | 65 | 107,071 |
| Kenya | 72,252 | 0.044 | 73,656 | 80 | 73,576 |
| Korea, Republic of | 3,877,524 | 2.387 | 3,995,838 | 4,818 | 3,991,020 |
| Kuwait | 314,698 | 0.193 | 323,082 | 56 | 323,026 |
| Kyrgyz Republic | 24,084 | 0.015 | 25,110 | 2 | 25,108 |
| Latvia | 80,280 | 0.051 | 85,374 | 100 | 85,274 |
| Lesotho | 24,084 | 0.015 | 25,110 | 31 | 25,079 |
| Liechtenstein | 40,140 | 0.025 | 41,850 | 56 | 41,794 |
| Lithuania | 130,054 | 0.084 | 140,616 | 133 | 140,483 |

| MEMBERS | 2004 Contribution CHF | 2005 Contribution | | Interest Earned ³ CHF | 2005 net Contribution CHF |
|-----------------------------|-----------------------------|----------------------|-----------|--|---------------------------------|
| | | % | CHF | | |
| Luxembourg | 550,721 | 0.355 | 594,270 | 712 | 593,558 |
| Macao, China | 102,758 | 0.065 | 108,810 | 128 | 108,682 |
| Madagascar | 24,084 | 0.015 | 25,110 | | 25,110 |
| Malawi | 24,084 | 0.015 | 25,110 | | 25,110 |
| Malaysia | 2,090,491 | 1.277 | 2,137,698 | 2,555 | 2,135,143 |
| Maldives | 24,084 | 0.015 | 25,110 | 12 | 25,098 |
| Mali | 24,084 | 0.015 | 25,110 | 16 | 25,094 |
| Malta | 75,463 | 0.047 | 78,678 | 62 | 78,616 |
| Mauritania | 24,084 | 0.015 | 25,110 | | 25,110 |
| Mauritius | 62,618 | 0.038 | 63,612 | 78 | 63,534 |
| Mexico | 3,582,094 | 2.317 | 3,878,658 | 2,204 | 3,876,454 |
| Moldova | 24,084 | 0.015 | 25,110 | 22 | 25,088 |
| Mongolia | 24,084 | 0.015 | 25,110 | 20 | 25,090 |
| Morocco | 248,868 | 0.157 | 262,818 | 154 | 262,664 |
| Mozambique | 24,084 | 0.015 | 25,110 | 3 | 25,107 |
| Myanmar, Union of | 52,985 | 0.032 | 53,568 | 32 | 53,536 |
| Namibia | 43,351 | 0.022 | 36,828 | 38 | 36,790 |
| Nepal | | 0.019 | 31,806 | | 31,806 |
| Netherlands, Kingdom of the | 5,494,363 | 3.388 | 5,671,512 | 6,543 | 5,664,969 |
| New Zealand | 401,400 | 0.244 | 408,456 | 490 | 407,966 |
| Nicaragua | 30,506 | 0.019 | 31,806 | 45 | 31,761 |
| Niger | 24,084 | 0.015 | 25,110 | | 25,110 |
| Nigeria | 306,670 | 0.187 | 313,038 | | 313,038 |
| Norway | 1,372,788 | 0.844 | 1,412,856 | 1,787 | 1,411,069 |
| Oman | 178,222 | 0.107 | 179,118 | 120 | 178,998 |
| Pakistan | 252,079 | 0.153 | 256,122 | 236 | 255,886 |
| Panama | 184,644 | 0.110 | 184,140 | 130 | 184,010 |
| Papua New Guinea | 48,168 | 0.029 | 48,546 | | 48,546 |
| Paraguay | 81,886 | 0.044 | 73,656 | | 73,656 |
| Peru | 208,728 | 0.125 | 209,250 | | 209,250 |
| Philippines | 902,347 | 0.532 | 890,568 | | 890,568 |
| Poland | 1,125,526 | 0.725 | 1,213,650 | 1,493 | 1,212,157 |
| Portugal | 910,375 | 0.558 | 934,092 | 965 | 933,127 |
| Qatar | 112,392 | 0.091 | 152,334 | 123 | 152,211 |
| Romania | 282,586 | 0.188 | 314,712 | 306 | 314,406 |
| Rwanda | 24,084 | 0.015 | 25,110 | | 25,110 |
| Saint Lucia | 24,084 | 0.015 | 25,110 | 7 | 25,103 |
| Senegal | 35,323 | 0.021 | 35,154 | 50 | 35,104 |
| Sierra Leone | 24,084 | 0.015 | 25,110 | | 25,110 |
| Singapore | 3,246,523 | 1.995 | 3,339,630 | 3,179 | 3,336,451 |
| Slovak Republic | 306,670 | 0.184 | 308,016 | 416 | 307,600 |
| Slovenia | 255,290 | 0.160 | 267,840 | 328 | 267,512 |
| Solomon Islands | 24,084 | 0.015 | 25,110 | | 25,110 |
| South Africa | 783,533 | 0.469 | 785,106 | 814 | 784,292 |

| MEMBERS | 2004 Contribution CHF | 2005 Contribution | | Interest Earned ³ CHF | 2005 net Contribution CHF |
|---|-----------------------------|----------------------|--------------------|--|---------------------------------|
| | | % | CHF | | |
| Spain | 3,871,102 | 2.460 | 4,118,040 | 3,705 | 4,114,335 |
| Sri Lanka | 149,321 | 0.091 | 152,334 | 55 | 152,279 |
| St. Kitts and Nevis | 24,084 | 0.015 | 25,110 | 29 | 25,081 |
| St. Vincent and the Grenadines | 24,084 | 0.015 | 25,110 | 17 | 25,093 |
| Suriname | 24,084 | 0.015 | 25,110 | | 25,110 |
| Swaziland | 25,690 | 0.016 | 26,784 | 30 | 26,754 |
| Sweden | 2,243,023 | 1.363 | 2,281,662 | 2,505 | 2,279,157 |
| Switzerland | 2,348,993 | 1.452 | 2,430,648 | 3,207 | 2,427,441 |
| Chinese Taipei | 3,211,200 | 1.947 | 3,259,278 | 1,201 | 3,258,077 |
| Tanzania | 38,534 | 0.024 | 40,176 | | 40,176 |
| Thailand | 1,591,150 | 0.972 | 1,627,128 | 1,903 | 1,625,225 |
| Togo | 24,084 | 0.015 | 25,110 | | 25,110 |
| Trinidad and Tobago | 64,224 | 0.050 | 83,700 | 80 | 83,620 |
| Tunisia | 207,122 | 0.129 | 215,946 | 231 | 215,715 |
| Turkey | 1,188,144 | 0.718 | 1,201,932 | 680 | 1,201,252 |
| Uganda | 27,295 | 0.016 | 26,784 | 12 | 26,772 |
| United Arab Emirates | 839,729 | 0.602 | 1,007,748 | 425 | 1,007,323 |
| United Kingdom of Great Britain and Northern Ireland | 9,134,258 | 5.704 | 9,548,496 | 12,260 | 9,536,236 |
| United States of America | 25,264,116 | 15.798 | 26,445,852 | 3,011 | 26,442,841 |
| Uruguay | 91,519 | 0.050 | 83,700 | | 83,700 |
| Venezuela | 523,426 | 0.325 | 544,050 | | 544,050 |
| Zambia | 25,690 | 0.016 | 26,784 | | 26,784 |
| Zimbabwe | 70,646 | 0.032 | 53,568 | | 53,568 |
| TOTAL | 160,560,000 | 100.000 | 167,400,000 | 128,493 | 167,271,507 |

2004 PROPOSED CONSOLIDATED REVISED BUDGET FOR THE WTO SECRETARIAT AND THE
APPELLATE BODY AND ITS SECRETARIAT
(in Swiss francs)

| 2004 Budget | | | | | |
|-----------------------------------|-----------------------------|------------------------------------|------------------------|--------------------|-----------------------|
| Part | Section | Item | Original Proposal 2004 | Reductions | Revised Proposal 2004 |
| A | Sect 1 Work Years | (a)Salary | 73,390,500 | (691,600) | 72,698,900 |
| | | (b)Pension | 14,771,500 | (154,200) | 14,617,300 |
| | | (c)Common Staff Costs | 14,175,800 | (455,300) | 13,720,500 |
| | Sect 2 Temporary Assistance | | 16,964,950 | (1,165,800) | 15,799,150 |
| B | Sect 3 Communications | (a) Telecommunications | 784,500 | (30,000) | 754,500 |
| | | (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 | 1,645,500 | (13,000) | 1,632,500 |
| | | (c) Maintenance and Insurance | 1,228,000 | (30,000) | 1,198,000 |
| | Sect 5 Permanent Equipt | | 3,617,350 | (374,500) | 3,242,850 |
| | Sect 6 Expendable | | 1,410,000 | (37,000) | 1,373,000 |
| | Sect 7 Contractual Serv. | (a) Reproduction | 1,445,000 | (50,000) | 1,395,000 |
| | | (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 | 545,000 | (30,000) | 515,000 |
| | | (b) Insurance | 1,906,000 | (35,300) | 1,870,700 |
| | | (c) Joint Services | 647,000 | (15,000) | 632,000 |
| | | (d) Miscellaneous | 118,500 | (30,000) | 88,500 |
| | Sect 9 Missions | (a)Missions Official | 1,191,100 | 0 | 1,191,100 |
| | | (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 | 284,000 | 0 | 284,000 |
| | | (b) Dispute Settlement Panels | 1,287,000 | (70,000) | 1,217,000 |
| | | (d) Appellate Body Members | 620,000 | 0 | 620,000 |
| | | (e) Library | 617,000 | (30,100) | 586,900 |
| | | (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 | |
| (l) Appellate Body Operating Fund | 1,696,800 | (100,000) | 1,596,800 | | |
| Sect 12 Unforeseen | | 100,000 | 0 | 100,000 | |
| D | Sect 13 ITC | | 16,125,250 | (235,850) | 15,889,400 |
| Grand Total | | | 165,645,150 | (3,868,650) | 161,776,500 |

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 | |
| D | 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 |
| D | Sect 13 ITC | | 16,125,250 | (235,850) | 15,889,400 |
| Grand Total | | | 160,829,350 | (3,768,650) | 157,060,700 |

2005 PROPOSED CONSOLIDATED REVISED BUDGET FOR THE WTO SECRETARIAT AND THE
APPELLATE BODY AND ITS SECRETARIAT
(in Swiss francs)

| Part | Section | Item | Original 2005 Budget (WT/BFA/70) | Proposed 2005 Revision | Reductions/ Adjustments | Revised proposal 2005 |
|--------------------------------------|-----------------------------|---------------------------------------|--|------------------------------|----------------------------|-----------------------------|
| A | Sect 1 Work Years | (a) Salary | 77,152,000 | 77,171,000 | (566,000) | 76,605,000 |
| | | (b) Pension | 15,570,700 | 15,407,800 | (143,400) | 15,264,400 |
| (c) Common Staff Costs | | 13,775,800 | 14,709,200 | 709,500* | 15,418,700 | |
| | Sect 2 Temporary Assistance | | 15,283,150 | 14,222,750 | 0 | 14,222,750 |
| B | Sect 3 Communications | (a) Telecommunications | 754,500 | 764,500 | 0 | 764,500 |
| | | (b) Postal Charges | 1,455,000 | 1,355,000 | (50,000) | 1,305,000 |
| | Sect 4 Building Facilities | (a) Rental | 302,400 | 362,400 | 0 | 362,400 |
| | | (b) Utilities | 1,632,500 | 1,632,500 | 0 | 1,632,500 |
| | | (c) Maintenance and Insurance | 1,198,000 | 1,171,000 | 0 | 1,171,000 |
| | Sect 5 Permanent Equipment | | 3,170,850 | 2,811,100 | (120,000) | 2,691,100 |
| | Sect 6 Expendable | | 1,373,000 | 1,379,000 | 0 | 1,379,000 |
| | Sect 7 Contractual Services | (a) Reproduction | 1,395,000 | 1,425,000 | (30,000) | 1,395,000 |
| | | (b) Office Automation | 2,184,800 | 2,227,200 | 0 | 2,227,200 |
| | | (c) Other | 267,000 | 332,000 | 0 | 332,000 |
| (d) Security Outsourcing Contract | | 0 | 2,125,100 | 0 | 2,125,100 | |
| Sect 8 Staff Overheads | | 515,000 | 1,020,000 | (505,000) | 515,000 | |
| | | (a) Training | 1,952,700 | 1,982,700 | 0 | 1,982,700 |
| | | (b) Insurance | 632,000 | 177,600 | 0 | 177,600 |
| | | (c) Joint Services | 48,500 | 48,500 | 0 | 48,500 |
| | | (d) Miscellaneous | 1,191,100 | 1,191,100 | 0 | 1,191,100 |
| Sect 9 Missions | (a) Missions Official | 1,383,200 | 1,383,200 | 0 | 1,383,200 | |
| | (b) Missions Technical | 3,881,000 | 3,671,000 | 0 | 3,671,000 | |
| Sect 10 TPTC | | 3,881,000 | 3,671,000 | 0 | 3,671,000 | |
| C | Sect 11 Various | (a) Representation and Hospitality | 284,000 | 284,000 | 0 | 284,000 |
| | | (b) Dispute Settlement Panels | 1,217,000 | 1,217,000 | 0 | 1,217,000 |
| | | (d) Appellate Body Members | 620,000 | 620,000 | 68,100 | 688,100 |
| | | (e) Library | 586,900 | 586,900 | 0 | 586,900 |
| | | (f) Publications | 275,000 | 425,000 | 0 | 425,000 |
| | | (g) Public Information Activities | 210,000 | 210,000 | 0 | 210,000 |
| | | (h) External Auditors | 40,000 | 40,000 | 0 | 40,000 |
| | | (i) Ministerial Operating Fund | 600,000 | 600,000 | 0 | 600,000 |
| | | (j) ISO | 57,000 | 57,000 | 0 | 57,000 |
| | | (k) Other | 90,000 | 90,000 | 0 | 90,000 |
| | | (l) Appellate Body Operating Fund | 1,596,800 | 1,509,500 | (368,100) | 1,141,400 |
| | | (m) Security Enhancement Programme | 0 | 1,805,300 | (686,300) | 1,119,000 |
| | | Sect 12 Unforeseen | Unforeseen | 100,000 | 100,000 | 0 |
| D | Sect 13 ITC | ITC | 16,009,300 | 16,977,850 | (697,600) | 16,280,250 |
| Grand Total | | | 166,804,200 | 171,092,200 | (2,388,800) | 168,703,400 |

* amount is strictly earmarked for separation costs related to the Security Enhancement Programme

2005 PROPOSED REVISED BUDGET FOR THE WTO SECRETARIAT
(in Swiss francs)

| Part | Section | Item | 2005 Budget (WT/BFA/70) | Proposed 2005 Revision | Reductions/ Adjustments | Revised Proposal 2005 |
|--------------------------------------|---------------------------------------|-------------------------------|----------------------------|------------------------------|----------------------------|-----------------------------|
| A | Sect 1 Work Years | (a)Salary | 75,426,800 | 75,315,500 | (566,000) | 74,749,500 |
| | | (b)Pension | 15,212,800 | 15,039,600 | (143,400) | 14,896,200 |
| | | (c)Common Staff Costs | 13,479,400 | 14,363,500 | 709,500* | 15,073,000 |
| | Sect 2 Temporary Assistance | | 15,247,150 | 14,186,750 | 0 | 14,186,750 |
| B | Sect 3 Communications | (a) Telecommunications | 748,000 | 758,000 | 0 | 758,000 |
| | | (b) Postal Charges | 1,455,000 | 1,355,000 | (50,000) | 1,305,000 |
| | Sect 4 Building Facilities | (a) Rental | 302,400 | 362,400 | 0 | 362,400 |
| | | (b) Utilities | 1,619,500 | 1,619,500 | 0 | 1,619,500 |
| | | (c) Maintenance and Insurance | 1,193,000 | 1,166,000 | 0 | 1,166,000 |
| | Sect 5 Permanent Equipment | | 3,147,850 | 2,788,100 | (120,000) | 2,668,100 |
| | Sect 6 Expendable | | 1,353,000 | 1,359,000 | 0 | 1,359,000 |
| | Sect 7 Contractual Services | (a) Reproduction | 1,380,000 | 1,410,000 | (30,000) | 1,380,000 |
| | | (b) Office Automation | 2,184,800 | 2,227,200 | 0 | 2,227,200 |
| | | (c) Other | 267,000 | 332,000 | 0 | 332,000 |
| (d) Security Outsourcing Contract | | 0 | 2,125,100 | 0 | 2,125,100 | |
| C | Sect 8 Staff Overheads | (a) Training | 490,000 | 995,000 | (505,000) | 490,000 |
| | | (b) Insurance | 1,943,700 | 1,973,700 | 0 | 1,973,700 |
| | | (c) Joint Services | 632,000 | 177,600 | 0 | 177,600 |
| | | (d) Miscellaneous | 46,500 | 46,500 | 0 | 46,500 |
| Sect 9 Missions | (a)Missions Official | 1,181,100 | 1,181,100 | 0 | 1,181,100 | |
| | (b)Missions Technical | 1,383,200 | 1,383,200 | 0 | 1,383,200 | |
| Sect 10 TPTC | | 3,881,000 | 3,671,000 | 0 | 3,671,000 | |
| Sect 11 Various | (a) Representation and Hospitality | 283,000 | 283,000 | 0 | 283,000 | |
| | (b) Dispute Settlement Panels | 1,217,000 | 1,217,000 | 0 | 1,217,000 | |
| | (e) Library | 578,900 | 578,900 | 0 | 578,900 | |
| | (f) Publications | 275,000 | 425,000 | 0 | 425,000 | |
| | (g) Public Information Activities | 210,000 | 210,000 | 0 | 210,000 | |
| | (h) External Auditors | 40,000 | 40,000 | 0 | 40,000 | |
| | (i) Ministerial Operating Fund | 600,000 | 600,000 | 0 | 600,000 | |
| | (j) ISO | 57,000 | 57,000 | 0 | 57,000 | |
| | (k) Other | 90,000 | 90,000 | 0 | 90,000 | |
| | (m) Security Enhancement Programme | 0 | 1,805,300 | (686,300) | 1,119,000 | |
| Sect 12 Unforeseen | Unforeseen | 100,000 | 100,000 | 0 | 100,000 | |
| D | Sect 13 ITC | ITC | 16,009,300 | 16,977,850 | (697,600) | 16,280,250 |
| Grand Total | | | 162,034,400 | 166,219,800 | (2,088,800) | 164,131,000 |

* amount is strictly earmarked for separation costs related to the Security Enhancement Programme

2005 PROPOSED REVISED BUDGET FOR THE APPELLATE BODY AND ITS SECRETARIAT
(in Swiss francs)

| P a r t | Section | Item | Original 2005 Budget (WT/BFA/70) | Proposed 2005 Revision | Reductions/ Adjustments | Revised Proposal 2005 |
|-----------------------------------|------------------------------|------------------------------------|--|------------------------------|----------------------------|-----------------------------|
| A | Sect 1 Work Years | (a)Salary | 1,725,200 | 1,855,500 | 0 | 1,855,500 |
| | | (b)Pension | 357,900 | 368,200 | 0 | 368,200 |
| | | (c)Common Staff Costs | 296,400 | 345,700 | 0 | 345,700 |
| | Sect 2 Temporary Assistance | | 36,000 | 36,000 | 0 | 36,000 |
| B | Sect 3 Communications | (a) Telecommunications | 6,500 | 6,500 | 0 | 6,500 |
| | Sect 4 Building Facilities | (b) Utilities | 13,000 | 13,000 | 0 | 13,000 |
| | | (c) Maintenance and Insurance | 5,000 | 5,000 | 0 | 5,000 |
| | Sect 5 Permanent Equipment | | 23,000 | 23,000 | 0 | 23,000 |
| | Sect 6 Expendable | | 20,000 | 20,000 | 0 | 20,000 |
| | Sect 7 Contractual Services. | (a) Reproduction | 15,000 | 15,000 | 0 | 15,000 |
| C | Sect 8 Staff Overheads | (a) Training | 25,000 | 25,000 | 0 | 25,000 |
| | | (b) Insurance | 9,000 | 9,000 | 0 | 9,000 |
| | | (d) Miscellaneous | 2,000 | 2,000 | 0 | 2,000 |
| | Sect 9 Missions | (a)Missions Official | 10,000 | 10,000 | 0 | 10,000 |
| | Sect 11 Various | (a) Representation and Hospitality | 1,000 | 1,000 | 0 | 1,000 |
| | | (d) Appellate Body Members | 620,000 | 620,000 | 68,100 | 688,100 |
| | | (e) Library | 8,000 | 8,000 | 0 | 8,000 |
| (l) Appellate Body Operating Fund | | 1,596,800 | 1,509,500 | (368,100) | 1,141,400 | |
| Grand Total | | | 4,769,800 | 4,872,400 | (300,000) | 4,572,400 |

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.

| WTO Member/Waiver | Valid Through | Date Granted |
|---|--|----------------------|
| <i>Kimberly Process: Brazil, Bulgaria, Canada, Croatia, Czech Republic, EU, Hungary, Israel, Japan, Korea, Malaysia, Mauritius, Mexico, Norway, Philippines, Romania, Sierra Leone, Slovenia, Switzerland, Thailand, United Arab Emirate, United States, Uruguay: allows for the implementation of the Kimberly Process Certification Scheme for Rough Diamonds.</i> | December 31 2006 | May 15 2003 |
| <i>El Salvador - Customs Valuation: Waiver was granted for the Agreement on the Implementation of Article VII of GATT 1994 for goods listed in Annex 1 and Annex 2.</i> | March 7, 2003 (Annex 1) March 7, 2005 (Annex 2) | July 7, 2002 |
| <i>Harmonized System (HS) 1996 changes: Malaysia and Panama were granted individual waivers for the introduction of HS 1996 changes to WTO Schedules of Tariff Concessions.</i> | April 30, 2003 | May 13, 2002 |
| <i>Senegal: Waiver on minimum values in regard to the Agreement on the implementation of Article VII of GATT 1994</i> | June 30, 2005 | May 17, 2004 |
| <i>Albania: Waiver of implementation of specific commitments in telecom services.</i> | December 31, 2004 | May 17, 2004 |
| <i>HS 2002 changes: A collective waiver was granted to Argentina, Australia, Brazil, Bulgaria, Canada, China, Chinese Taipei, Costa Rica, Croatia, El Salvador, European Communities, Hong Kong, Hungary, Iceland, India, Korea, Macau, Mexico, New Zealand, Nicaragua, Norway, Romania, Singapore, Switzerland, Thailand, United States, Uruguay for the introduction of HS 2002 changes to WTO Schedules of Tariff Concessions.</i> | December 31, 2005 | December 13, 2004 |
| <i>EC Transitional Regime: for the EC Autonomous Tariff Rate Quotas on Imports of Bananas.</i> | December 31, 2005 | November 14, 2001 |
| <i>US - Caribbean Basin Economic Recovery Act: To allow the United States to extend tariff preferences to eligible Caribbean countries under CBERA.</i> | December 31, 2005 | November 15, 1995 |
| <i>Canada - CARIBCAN: To allow Canada to extend tariff preferences to CARIBCAN nations.</i> | December 31, 2006 | October 14, 1996 |

| WTO Member / Waiver | Valid Through | Date Granted |
|---|----------------------|---------------------|
| <i>Cuba - Article XV:6: To allow Cuba not to have a special exchange arrangement, which is required for those WTO Members that are not IMF members.</i> | December 31, 2006 | December 20, 2001 |
| <i>European Community - Western Balkans: To allow the EC to extend tariff preferences to Albania, Bosnia-Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Republic of Macedonia.</i> | December 31, 2006 | December 8, 2000 |
| <i>Turkey -Bosnia: To allow Turkey to provide tariff preferences to Bosnia-Herzegovina.</i> | December 31, 2006 | December 8, 2000 |
| <i>US - Former Trust Territory of the Pacific Islands: To allow the United States to extend historical tariff preferences to the Mariana Islands, Palau, the Marshall Islands and Micronesia.</i> | December 31, 2006 | October 14, 1996 |
| <i>ACP-EC Partnership Agreement: To allow waivers to Article I for the maintenance of preferential trade between the EC and ACP countries.</i> | December 31, 2007 | November 14, 2001 |
| <i>Preferential Tariff Treatment for Least Developed Countries: To allow developing countries to extend unilateral tariff preferences to least developed countries.</i> | June 30, 2009 | June 15, 1999 |
| <i>LDC - Article 70.9 of the TRIPS Agreement with respect to pharmaceutical products.</i> | January 1, 2016 | July 8, 2002 |

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 | 1 | 5 |
| Bangladesh | | 1 | | 1 |
| Belgium | | 4 | 2 | 6 |
| Benin | | 1 | | 1 |
| Bolivia | | 2 | 1 | 3 |
| Brazil | 1 | 3 | 2 | 6 |
| Bulgaria | | 1 | | 1 |
| Canada | | 26 | 2 | 28 |
| Chile | | 2 | 4 | 6 |
| China | | 6 | 1 | 7 |
| Colombia | | 6 | 1 | 7 |
| Congo, The Democratic Republic of the | | 1 | | 1 |
| Costa Rica | | 2 | | 2 |
| Cote d'Ivoire | | | 1 | 1 |
| Cuba | | 1 | 1 | 2 |
| Denmark | | 1 | 1 | 2 |
| Ecuador | | 1 | | 1 |
| Egypt | | 5 | | 5 |
| Estonia | | 1 | | 1 |
| Fiji | | 1 | | 1 |
| Finland | | 2 | 2 | 4 |
| France | | 49 | 116 | 165 |
| Germany | | 15 | 2 | 17 |
| Ghana | | 3 | | 3 |
| Greece | | 4 | | 4 |
| Guatemala | | 1 | | 1 |
| Honduras | | | 1 | 1 |
| Hong Kong | | 1 | | 1 |
| Hungary | 1 | 1 | | 2 |
| India | | 9 | 3 | 12 |
| Ireland | | 4 | 8 | 12 |
| Italy | | 10 | 2 | 12 |
| Japan | | 4 | | 4 |
| Kenya | 1 | | | 1 |
| Korea, Republic of | | 2 | | 2 |
| Lao People's Democratic Republic | | 1 | | 1 |

| Number of Staff Members by Job Category | | | | |
|--|---------------|---------------------|----------------|--------------|
| Country | Senior | Professional | Support | Total |
| Lebanon | | 1 | | 1 |
| Malawi | | 1 | | 1 |
| Malaysia | | 1 | 1 | 2 |
| Mauritius | | 1 | 1 | 2 |
| Mexico | | 6 | | 6 |
| Morocco | | 2 | | 2 |
| Netherlands | | 6 | 1 | 7 |
| New Zealand | | 3 | 1 | 4 |
| Nigeria | | 1 | | 1 |
| Norway | | 1 | 1 | 2 |
| Paraguay | | | 1 | 1 |
| Peru | | 1 | 6 | 7 |
| Philippines | | 8 | | 8 |
| Poland | | 3 | 2 | 5 |
| Portugal | | 1 | 1 | 2 |
| Romania | | 1 | 1 | 2 |
| Rwanda | | | 1 | 1 |
| Senegal | | | 1 | 1 |
| Slovenia | | 1 | | 1 |
| South Africa | | 1 | | 1 |
| Spain | | 25 | 22 | 47 |
| Sri Lanka | | 2 | 2 | 4 |
| Sweden | | 3 | 2 | 5 |
| Switzerland | | 22 | 14 | 36 |
| Thailand | 1 | 4 | | 5 |
| Tunisia | | 3 | 2 | 5 |
| Turkey | | 3 | | 3 |
| United Kingdom | 1 | 27 | 54 | 82 |
| United States | 1 | 22 | 4 | 27 |
| Uruguay | | 6 | 3 | 9 |
| Venezuela | | 4 | | 4 |
| Zimbabwe | | | 1 | 1 |
| Total | 6 | 347 | 279 | 632 |

Notes: Senior Management includes the Director General and Deputies Director General

Annual Average Salary
Senior Management 249,354 CHF
Professional staff 138,203 CHF
Support 87,801 CHF

Source: WTO Secretariat as of January 1, 2004

WTO ACCESSION APPLICATIONS AND STATUS (as of 12-31-04)¹

| Applicant | Status of Multilateral and Bilateral Work |
|---------------------------|--|
| Afghanistan* (2004) | Application for accession to the WTO accepted at December 2004 General Council meeting; has not yet submitted initial documentation to activate the accession negotiations. |
| Algeria (1987) | Seventh Working Party (WP) meeting held June 25, 2004 to review draft WP report and status of market access negotiations. Next WP meeting expected in early 2005. |
| 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. |
| Azerbaijan (1997) | Second WP meeting held October 14, 2004 to review additional 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) | Sixth WP meeting held September 30, 2004, continued review of outstanding issues and status of bilateral negotiations on goods and services market access. Revised offers circulated August 2004. Factual Summary is under review. Next meeting possible in early 2005. |
| Bosnia Herzegovina (1999) | Second WP meeting held December 6, 2004 to review additional documentation and initiate work on market access commitments.. |
| Bhutan * (1999) | First WP meeting held November 8, 2004 to review initial documentation. No market access offers to date. |
| Cambodia * (1995) | Cambodia became the 148 th Member of the WTO on October 13, 2004. |
| Cape Verde * (2000) | Second WP meeting held December 8, 2004 to review factual summary, additional documentation, and initial market access offers. Additional work expected on the margins of Geneva Week meetings in April 2005. |
| Ethiopia* (2003) | Application accepted at February 2003 General Council meeting; has not yet submitted initial documentation to activate the accession negotiations. |
| Iraq (2004) | Application for accession to the WTO accepted at December 2004 General Council meeting; has not yet submitted initial documentation to activate the accession negotiations. |
| Iran | Application for accession to the WTO circulated in September 1996; under consideration in the General Council since July 2001. |
| Kazakhstan (1996) | Eighth WP meeting held November 3, 2004 to review legislative implementation and action plans for removal of WTO-inconsistent measures. Revised goods and services market access offers circulated September 2004. Next meeting likely in first quarter of 2005 to review draft WP report text. |
| Laos * (1998) | First WP meeting held October 28, 2004 to review initial documentation. No market access offers to date. |
| Lebanon (1999) | Third WP meeting held July 8, 2004 to review legislative implementation and plans for removal of WTO-inconsistent measures. Revised offers tabled in June 2004. |
| Libya (2004) | Application accepted at July 2004 General Council meeting. No documentation or market access offers circulated to date. |
| Nepal * (1989) | Nepal became the 147 th Member of the WTO on April 10, 2004. |
| Russia (1993) | Third revised draft WP report text issued October 15, 2004 and reviewed at November 14-17, 2004 WP. Next meeting likely in first quarter of 2005. Intensive bilateral and multilateral work on protocol, agriculture, and goods and services market access continues. Russia's legislative implementation ongoing. |
| Samoa * (1998) | Next informal WP meeting to review revised draft WP report and continue negotiations on market access offers on goods and services. Meetings likely during first half of 2005. |

* Designates "least developed country" applicant.

¹ "Applicant" column Includes date the Working Party was formed. Pre-1995 dates indicate that the original WP was formed under the GATT 1947, but was reformed as a WTO Working Party in 1995.

| Applicant | Status of Multilateral and Bilateral Work |
|------------------------------------|--|
| Saudi Arabia (1993) | Last WP meeting held in Geneva June 14, 2004, followed by comprehensive bilaterals in Washington in September 2004. Further revised draft WP report in development to be issued in early 2005. Work continues on Saudi legislative implementation. Significant progress achieved to date in bilateral goods and services market access negotiations. Next WP meeting expected during first half of 2005. |
| Serbia and Montenegro (2001) | Initial documentation submitted in June 2002. Responses to initial questions and other documentation circulated in 2004. First WP meeting delayed pending deliberations by Serbia and Montenegro on the extent to which customs and other trade measures were applied uniformly within the state union. In December 2004, Serbia and Montenegro applied individually for accession to the WTO as separate customs territories. |
| Seychelles (1995) | WP meeting held in March 1998. No recent activity recorded in WP, legislative implementation, or bilateral goods and services negotiations. |
| Sudan* (1995) | Second WP meeting held March 10, 2004. 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) | First WP meeting held March 18, 2004. Second meeting expected in early 2005. Initial market access offers under review. |
| Tonga (1995) | Informal WP meeting held November 2004 to further revise draft WP report and complete bilateral goods and services market access negotiations. Closeout meetings expected in April 2005, on the margins of Geneva Week meetings. |
| Ukraine (1993) | Last WP meeting held on September 21, 2004 to review draft WP report text and information on legislative implementation. Bilateral discussions in September and December on WP report. Goods and Services market access discussions well advanced, with focus on elimination of remaining nontariff barriers to trade in goods and outstanding sectoral issues in services. Next WP meeting likely early in first quarter of 2005. |
| Uzbekistan (1995) | Second WP meeting held June 29, 2004 to review additional 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. Request from Vanuatu to revise package awaiting response. |
| Vietnam (1995) | Last WP meeting held on December 17, 2004 to review status of action plans for legislative implementing of WTO provisions and additional information on measures in place. Goods and services market access negotiations underway. Bilateral meetings to be arranged when revised offers transmitted. Next WP meeting likely in early 2005. |
| Yemen * (2000) | First WP meeting held November 30, 2004 to review initial documentation. No market access offers to date. |

WORLD TRADE ORGANIZATION

WT/DSB/33
6 March 2003

(03-1283)

INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS

To assist in the selection of panelists, the DSU provides in Article 8.4 that the Secretariat shall maintain an indicative list of governmental and non-governmental individuals.

In accordance with the proposals for the administration of the indicative list of panelists approved by the DSB on 31 May 1995, the list should be completely updated every two years. For practical purposes, the proposals for the administration of the indicative list approved by the DSB on 31 May 1995 are reproduced as an Annex to this document.

The attached is an updated consolidated list of governmental and non-governmental panelists.⁴ The list contains the names included in the previous indicative list (WT/DSB/19 and Add.1 through Add.5) 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 19 December 2002 and 19 February 2003 are also included in the attached list.

⁴Curricula vitae containing more detailed information are available on request from the WTO Secretariat (Council and TNC Division – Room 3105). The curricula vitae which have been submitted on diskette are also available on the Document Dissemination Facility.

| COUNTRY | NAME | SECTORAL EXPERIENCE |
|------------------|---------------------------|-----------------------------|
| ARGENTINA | NISCOVOLOS, Mr. L.P. | Trade in Services |
| | 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 |
| AUSTRALIA | 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 |
| | KENYON, Mr. D. | Trade in Goods and Services |
| | 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 | |
| BRAZIL | ABREU, Mr. M. | Trade in Goods and Services |
| | ARAUJO, 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 |

| COUNTRY | NAME | SECTORAL EXPERIENCE |
|------------------------|-----------------------|------------------------------------|
| BRAZIL (cont'd) | THORSTENSEN, Ms. V.H. | Trade in Goods |
| CANADA | 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 |
| CHILE | 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 |
| COLOMBIA | BARBERI, Mr. F. | Trade in Goods |
| | 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 |

| COUNTRY | NAME | SECTORAL EXPERIENCE |
|-----------------------------|-----------------------------|------------------------------------|
| COLOMBIA (cont'd) | LEAL ANGARITA, Mr. M. | Trade in Goods and Services |
| | OROZCO, Ms. A.M. | Trade in Goods |
| | OROZCO JARAMILLO, Ms. C.Y. | Trade in Goods |
| CÔTE D'IVOIRE | GOSSET, Mme. M. | Trade in Goods; TRIPS |
| CROATIA | ŠARČEVIĆ, Mr. P. | Trade in Goods and Services |
| CUBA | CABALLERO RODRÍGUEZ, Mr. E. | Trade in Goods and Services |
| | HERNÁNDEZ, Mr. A. | Trade in Goods and Services |
| | MARZIOTA DELGADO, Mr. E.A | Trade in Goods and Services |
| CZECH REP. | 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 |
| ECUADOR | PINOARGOTE CEVALLOS, Mr. A. | Trade in Goods |
| EGYPT | ABOUL-ENEIN, Mr. M.I.M. | Trade in Goods and Services |
| | HATEM, Mr. S.A. | Trade in Goods and Services |
| | RIAD, Mr. T.F. | Trade in Goods and Services; TRIPS |
| | SHAHIN, Ms. M. | Trade in Goods and Services; TRIPS |
| | SHARAFELDIN, Mr. A. | Trade in Goods; TRIPS |
| | ZAHRAN, Mr. M.M. | Trade in Goods and Services; TRIPS |
| EUROPEAN COMMUNITIES | | |
| AUSTRIA | BENEDEK, Mr. W. | Trade in Goods |
| | MARTINS, Mr. R. | Trade in Goods |
| | REITERER, Mr. M.G.K. | Trade in Goods and Services; TRIPS |
| | WAAS, Mr. G. | Trade in Goods and Services; TRIPS |
| | WEISS, Mr. J.F. | Trade in Goods and Services; TRIPS |
| | ZEHETNER, Mr. F. | Trade in Goods |

| COUNTRY | NAME | SECTORAL EXPERIENCE |
|-----------------------------|-----------------------------|------------------------------------|
| EUROPEAN COMMUNITIES | | |
| (cont'd) | | |
| BELGIUM | DASSESE, Mr. M.P.A. | Trade in Goods and Services |
| | DIDIER, Mr. P. | Trade in Goods |
| | VAN DER BORGHT, Mr. K. | Trade in Goods |
| | VANDER SCHUEREN, Ms. P. | Trade in Goods and Services |
| | ZONNEKEYN, Mr. G.A. | Trade in Goods |
| DENMARK | BOESGAARD, Mr. H. | Trade in Goods |
| 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 |
| | PHAN VAN PHI, Mr. R. | Trade in Goods |
| STERN, Mme. B. | Trade in Goods and Services | |
| 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 |

| COUNTRY | NAME | SECTORAL EXPERIENCE |
|--|---------------------------------------|------------------------------------|
| EUROPEAN COMMUNITIES (cont'd) | | |
| GERMANY (cont'd) | 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 |
| 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 |
| | SCHIRATTI, Mr. G. | Trade in Goods |
| NETHERLANDS | BLOKKER, Mr. N.M. | Trade in Goods |
| | BRONCKERS, Mr. M. | Trade in Goods and Services; TRIPS |
| | ENGERING, Mr. F.A. | Trade in Goods and Services |
| | HOEKMAN, Mr. B.M. | Trade in Goods and Services; TRIPS |
| | van de LOCHT, Mr. P. | Trade in Goods and Services |
| SPAIN | CASTILLO URRUTIA, Mr. J.A. | Trade in Goods |
| | DÍAZ MIER, Mr. M.Á. | Trade in Services |
| | LÓPEZ DE SILANES MARTÍNEZ Mr. J.P. | Trade in Goods and Services |
| SWEDEN | 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 |

| COUNTRY | NAME | SECTORAL EXPERIENCE |
|-----------------------------|------------------------|------------------------------------|
| EUROPEAN COMMUNITIES | | |
| (cont'd) | | |
| SWEDEN (cont'd) | 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 |
| UNITED KINGDOM | 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 |
| | QURESHI, Mr. A.H. | Trade in Goods |
| | ROBERTS, Mr. C.W. | Trade in Goods and Services |
| | TOULMIN, Mr. J.K. | Trade in Services |
| HONG KONG, CHINA | CARTLAND, Mr. M.D. | Trade in Goods and Services |
| | CHEUNG, Mr. P.K.F. | TRIPS |
| | LEUNG, Ms. A.K.L. | TRIPS |
| | LITTLE, Mr. D. | Trade in Goods and Services |
| | MILLER, Mr. J.A. | Trade in Goods and Services |
| | SELBY, Mr. S.R. | TRIPS |
| HUNGARY | FURULYÁS, Mr. F. | Trade in Goods |
| | LAKATOS, Mr. A. | Trade in Goods and Services |
| ICELAND | BJÖRGVINSSON, Mr. D.T. | Trade in Goods and Services |
| | JÓHANNSSON, Mr. E.M. | Trade in Goods |
| | SANDHOLT, Mr. B. | Trade in Goods |
| INDIA | AGARWAL, Mr. V.K. | Trade in Goods; TRIPS |
| | AGRAWAL, Mr. R.P. | Trade in Goods and Services; TRIPS |
| | BHATTACHARYA, Mr. G.C. | Trade in Goods |

| COUNTRY | NAME | SECTORAL EXPERIENCE |
|-----------------------|------------------------------------|------------------------------------|
| INDIA (cont'd) | CHANDRASEKHAR, Mr. K.M | Trade in Goods and Services; TRIPS |
| | CHAUDHURI, Mr. S. | Trade in Goods and Services; TRIPS |
| | DAS, Mr. B.L. | Trade in Goods |
| | DASGUPTA, Mr. J. | Trade in Goods |
| | GOYAL, Mr. A. | Trade in Services |
| | KAUSHIK, Mr. A. | Trade in Goods; TRIPS |
| | KUMAR, Mr. M. | Trade in Goods and Services |
| | MOHANTY, Mr. P.K. | Trade in Goods |
| | MUKERJI, Mr. A. | Trade in Goods and Services; TRIPS |
| | NARAYANAN, Mr. S. | Trade in Goods; TRIPS |
| | PRABHU, Mr. P.P. | Trade in Goods; 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 |
| | VENUGOPAL, Mr. K. | Trade in Goods; TRIPS |
| | WATAL, Mrs. J. | TRIPS |
| ZUTSHI, Mr. B.K. | Trade in Goods and Services; TRIPS | |
| ISRAEL | ALTUVIA, Mr. M. | Trade in Goods |
| | GABAY, Mr. M. | TRIPS |
| | HARAN, Mr. E.F. | Trade in Services |
| | HOROVITZ, Mr. D. | Trade in Goods and Services |
| | POLINER, Mr. H.Z. | TRIPS |
| | 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 | |

| COUNTRY | NAME | SECTORAL EXPERIENCE |
|-------------------|----------------------------|------------------------------------|
| JAPAN | 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 | |
| KOREA | 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 |
| | YUN, Mr. Y. G. | Trade in Goods |
| MADAGASCAR | ANDRIANARIVONY, Mr. M. | Trade in Goods and Services; TRIPS |
| MAURITIUS | BEEKARRY, Mr. N. | Trade in Goods and Services |
| | BHUGLAH, Mr. A. | Trade in Goods and Services |
| MEXICO | 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 |
| | 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 |

| COUNTRY | NAME | SECTORAL EXPERIENCE |
|------------------------|-------------------------------------|------------------------------------|
| MEXICO (cont'd) | 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 |
| NEW ZEALAND | 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 |
| | FARRELL, Mr. R. | Trade in Goods |
| | 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 | |
| NIGER | TANKOANO, Mr. A. | Trade in Goods and Services; TRIPS |
| NORWAY | 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 |
| PAKISTAN | NAYYAR, Mr. S.I.M. | Trade in Goods; TRIPS |
| PANAMA | FRANCIS LANUZA, Ms. Y. | Trade in Goods and Services |
| | GONZALEZ, Mr. C.E. | Trade in Goods and Services |

| COUNTRY | NAME | SECTORAL EXPERIENCE |
|------------------------|-----------------------------|------------------------------------|
| PANAMA (cont'd) | HARRIS ROTKIN, Mr. N. | Trade in Goods and Services |
| | SALAZAR FONG, Ms. D. | Trade in Goods |
| PERU | DIEZ LIZARDO, Mr. J. | Trade in Goods |
| POLAND | PIETRAS, Mr. J. | Trade in Services |
| QATAR | MAKKI, Mr. F. | Trade in Goods and Services |
| SRI LANKA | JAYASEKERA, Mr. D. | Trade in Goods; TRIPS |
| SWITZERLAND | ADDOR, Mr. F. | TRIPS |
| | BREINING, Ms. Ch. | 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. M-C. | Trade in Goods |
| | TSCHÄNI, Mr. H. | Trade in Goods |
| | WASESCHA, Mr. L. | Trade in Goods and Services; TRIPS |
| WEBER, Mr. R. | Trade in Services | |
| TURKEY | KAÇAR, Mr. B. | Trade in Goods |
| UNITED STATES | BIRENBAUM, Mr. D.E. | Trade in Goods |
| | BROWN-WEISS, Ms. E. | Trade in Goods and Services |
| | GANTZ, Mr. D. | Trade in Goods |
| | GORDON, Mr. M.W. | Trade in Goods |
| | GREENWALD, Mr. J.A. | Trade in Goods; TRIPS |
| | HELFER, Ms. R.T. | Trade in Services |
| | HUDEC, Mr. R.E. | Trade in Goods and Services |
| | KASSINGER, Mr. T.W. | Trade in Goods and Services |

| COUNTRY | NAME | SECTORAL EXPERIENCE |
|-------------------------------|------------------------|-----------------------------|
| UNITED STATES (cont'd) | KIRK, Mr. M.K. | TRIPS |
| | LAYTON, Mr. D. | Trade in Goods |
| | LICHTENSTEIN, Ms. C.C. | Trade in Services |
| | McGINNIS, Mr. J. | Trade in Goods; TRIPS |
| | PARTAN, Mr. D.G. | Trade in Goods |
| | REYNA, Mr. J.V. | Trade in Goods and Services |
| | SHERMAN, Mr. S. | Trade in Goods |
| URUGUAY | 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 |
| | WHITELAW, Mr. J.A. | Trade in Goods |
| VENEZUELA | ESCOBAR, Mr. J.B. | Trade in Services |
| | MARQUEZ, Mr. G. | Trade in Services |

ANNEX

Administration of the Indicative List

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

At its meetings on 18 March, 15 April, 24 June, 21 July and 29 August 2003 as well as on 17 February, 20 April and 19 May 2004, the Dispute Settlement Body approved the following names for inclusion on the Indicative List of Governmental and Non-Governmental Panelists.¹

| MEMBER | NAME | SECTORAL EXPERIENCE |
|-----------------------------|------------------------|------------------------------------|
| BRAZIL | BARTHEL-ROSA, Mr. P. | Trade in Goods |
| BOLIVIA | ZELADA CASTEDO, Mr. A. | Trade in Goods |
| CHINA | ZENG, Mr. L. | Trade in Goods |
| | ZHANG, Mr. Y. | Trade in Goods; TRIPS |
| | ZHU, Ms. L. | Trade in Services; TRIPS |
| EUROPEAN COMMUNITIES | | |
| SWEDEN | AHNLID, Mr. A.G. | Trade in Goods and Services; TRIPS |
| | BÄVERBRANT, Mr. J.C. | Trade in Goods and Services; TRIPS |
| | BECKER, Ms G.M. | Trade in Goods and Services; TRIPS |
| | DAHLIN, Ms K.E. | Trade in Goods and Services; TRIPS |
| | OLOFSGÅRD, Ms E.-K. | Trade in Goods and Services; TRIPS |
| | RAHLEN, Ms Ch. | Trade in Goods and Services; TRIPS |
| | TAURIAINEN, Mr. T.M. | Trade in Goods and Services; TRIPS |
| UNITED KINGDOM | ROBERTS, Mr. D.F. | Trade in Goods |
| LIECHTENSTEIN | Ziegler, Mr. A.R. | Trade in Services; TRIPS |

¹ WT/DSB/33.

| MEMBER | NAME | SECTORAL EXPERIENCE |
|---|-----------------------|-----------------------------|
| PERU | Belaúnde G., Mr. V.A. | TRIPS |
| SWITZERLAND | PANNATIER, Mr. S.N. | Trade in Goods |
| THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU | LO, Mr. C.F. | Trade in Goods and Services |
| | YANG, Ms G.H. | Trade in Goods and Services |

WORLD TRADE ORGANIZATION

WT/DSB/W/264
20 August 2004

(04-3501)

Dispute Settlement Body
31 August 2004

PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS

The following additional 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.¹

| NOMINATING MEMBER | NAME | SECTORAL EXPERIENCE |
|----------------------|-----------------------------|---------------------|
| EUROPEAN COMMUNITIES | | |
| PORTUGAL | CALHERIOS DA GAMA, Mr. J.S. | TRIPS |

¹Curricula 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/266
17 September 2004

(04-3919)

Dispute Settlement Body
27 September 2004

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.¹

| NOMINATING MEMBER | NAME | SECTORAL EXPERIENCE |
|--------------------------|-----------------------|------------------------------------|
| NIGERIA | NNONA, Mr. G.C. | Trade in Goods and Services; TRIPS |
| VENEZUELA | ROJAS PENSO, Mr. J.F. | Trade in Goods and Services |

¹Curricula 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/270
11 November 2004

(04-4808)

Dispute Settlement Body
24 November 2004

PROPOSED NOMINATION FOR THE INDICATIVE LIST OF GOVERNMENTAL AND NON-GOVERNMENTAL PANELISTS

The following additional 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.¹

| NOMINATING MEMBER | NAME | SECTORAL EXPERIENCE |
|--------------------------|-----------------------|-----------------------------|
| URUGUAY | CAYRÚS MAURÍN, Mr. H. | Trade in Goods and Services |

¹Curriculum 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/272
7 December 2004

(04-5369)

Dispute Settlement Body
17 December 2004

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.¹⁴

| NOMINATING MEMBER | NAME | SECTORAL EXPERIENCE |
|-------------------|------------------|------------------------------------|
| NEPAL | SUBEDI, Mr. S.P. | Trade in Goods and Services; TRIPS |
| | PANDEY, Mr. P.R. | Trade in Goods and Services |

¹⁴Curricula Vitae containing more detailed information are 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),
Mr. A V Ganesan (India),
Professor Merit E. Janow (United States),
Mr. Yasuhei Taniguchi (Japan)

Professor Luiz Olavo Baptista (Brazil),
Mr. John S. Lockhart (Australia),
Professor Giorgio Sacerdoti (Italy),

BIOGRAPHICAL NOTES:

Georges Michel Abi-Saab

Born in Egypt on 9 June 1933, Georges Michel Abi-Saab is Honorary Professor of International Law at the Graduate Institute of International Studies in Geneva (having taught there from 1963 to 2000); Honorary Professor at Cairo University's Faculty of Law; and a Member of the Institute of International Law.

Professor Abi-Saab served as consultant to the Secretary-General of the United Nations for the preparation of two reports on "Respect of Human Rights in Armed Conflicts" (1969 and 1970), and for the report on "Progressive Development of Principles and Norms of International Law Relating to the New International Economic Order" (1984). He represented Egypt in the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law (1974 to 1977), and acted as advocate and Counsel for several governments in cases before the International Court of Justice (ICJ) as well as in international arbitrations. He has also served twice as judge ad hoc on the ICJ and as Judge on the Appeals Chamber of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda. He is a Commissioner of the United Nations Compensation Commission and a Member of the Administrative Tribunal of the International Monetary Fund and of various international arbitral tribunals.

Professor Abi-Saab is the author of numerous books and articles, including "Les exceptions préliminaires dans la procédure de la Cour internationale: Etude des notions fondamentales de procédure et des moyens de leur mise en oeuvre" (Paris, Pedone, 1967); "International Crises and the Role of Law: The United Nations Operation in Congo 1960-1964" (Oxford University Press, 1978); "The Concept of International Organization" (as editor) (Paris, UNESCO, 1981; French edition, 1980); and of two courses at the Hague Academy of International Law: "Wars of National Liberation in the Geneva Conventions and Protocols" (Recueil des cours, vol. 165 (1979-IV)) and the "General Course of Public International Law" (in French) (Recueil des cours, vol. 207 (1987-VII)).

Luiz Olavo Baptista

Born in Brazil in 1938, Luiz Olavo Baptista is currently Professor of International Trade Law at the University of São Paulo Law School.

He has been a Member of the Permanent Court of Arbitration at The Hague since 1996, and of the International Chamber of Commerce (ICC) Institute for International Trade Practices and of its Commission on Trade and Investment Policy, since 1999. In addition, he has been one of the arbitrators designated under Mercosur's Protocol of Brasilia since 1993.

Professor Baptista is also senior partner at the L.O. Baptista Law Firm, in São Paulo, Brazil, where he concentrates his practice on corporate law, arbitration and international litigation. He has been practicing law for almost 40 years advising governments, international organizations and large corporations in Brazil and in other jurisdictions. Professor Baptista has been an arbitrator at the United Nations Compensation Commission (E4A Panel) in several private commercial disputes and State-investor proceedings, as well as in disputes under Mercosur's Protocol of Brasilia. In addition, he has participated as a legal advisor in diverse projects sponsored by the World Bank, the United Nations Conference on Trade and Development (UNCTAD), the United Nations Center on Transnational Corporations (UNCTC), and the United Nations Development Programme (UNDP).

He obtained his law degree from the Catholic University of São Paulo, pursued post-graduate studies at Columbia

University Law School and The Hague Academy of International Law, and received a Ph.D in International Law from the University of Paris II. He was Visiting Professor at the University of Michigan (Ann Arbor) in 1978-1979, and at the University of Paris I and the University of Paris X between 1996 and 2000. Professor Baptista has published extensively on various issues in Brazil and abroad.

Arumugamangalam Venkatachalam Ganesan

Born in Tirunelveli, Tamil Nadu, India on 7 June 1935, Arumugamangalam Venkatachalam Ganesan was a distinguished civil servant of India. He was appointed to the Indian Administrative Service, a premier civil service of India in May 1959, and served in that service until June 1993. In a career spanning over 34 years, he has held a number of high level assignments, including Joint Secretary (Investment), Department of Economic Affairs, Government of India (1977-1980); Inter-Regional Adviser, United Nations Centre on Transnational Corporations (UNCTC), United Nations Headquarters, New York (1980-1985); Additional Secretary, Department of Industrial Development, Government of India (1986-1989); Chief Negotiator of India for the Uruguay Round of Multilateral Trade Negotiations and Special Secretary, Ministry of Commerce, Government of India (1989-1990); Civil Aviation Secretary of the Government of India (1990-1991); and Commerce Secretary of the Government of India (1991-1993). He represented India on numerous occasions in bilateral, regional and multilateral negotiations in the areas of international trade, investment and intellectual property rights. Between 1989 and 1993, he represented India at the various stages of the Uruguay Round of Multilateral Trade Negotiations.

After his retirement from civil service, Mr. Ganesan served as an expert and consultant to various agencies of the United Nations system, including the United Nations Conference on Trade and Development (UNCTAD), the United Nations Industrial Development Organization (UNIDO) and the United Nations Development Programme (UNDP), in the field of international trade, investment and intellectual property rights. He has also spoken extensively to the business, managerial, scientific and academic communities in India on the scope and substance of the Uruguay Round negotiations and Agreements and their implications. Until his appointment to the Appellate Body of the WTO in 2000, he was a Member of the Government of India's High Level Trade Advisory Committee on Multilateral Trade Negotiations. He was also a Member of the Permanent Group of Experts under the WTO Agreement on Subsidies and Countervailing Measures, and a Member of a Dispute Settlement Panel of the WTO in 1999-2000 in the United States — Section 110(5) of the US Copyright Act case.

Mr. Ganesan has written numerous newspaper articles and monographs dealing with various aspects of the Uruguay Round Agreements and their implications. He is also the author of many papers on trade, investment and intellectual property issues for UNCTAD and UNIDO, and has contributed to books published in India on matters concerning the Uruguay Round, including intellectual property right issues. Mr. Ganesan holds M.A and M.Sc degrees from the University of Madras, India.

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 was Executive Director at the Asian Development Bank in the Philippines (ADB) from July 1999 to 2002, working closely with developing member countries on the development of programmes directed to poverty alleviation through the promotion of economic growth. His other duties for the ADB included the development of law reform programmes and assisting in the provision of advice on legal questions, notably the interpretation of the ADB's Charter, international treaties and United Nations 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 arts and 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). He was appointed an Officer of the Order of Australia in 1994 for services to the law, education and the arts.

Giorgio Sacerdoti

Born on 2 March 1943, Giorgio Sacerdoti is Professor of International Law and European Law at Bocconi University, Milan, Italy, since 1986.

Professor Sacerdoti has held various posts in the public sector including Vice-Chairman of the Organisation for Economic Cooperation and Development (OECD) Working Group on Bribery in International Business Transactions until 2001 where he was one of the drafters of the "Anticorruption Convention of 1997". He has acted as consultant to the Council of Europe, the United Nations Conference on Trade and Development (UNCTAD) and the World Bank in matters related to foreign investments, trade, bribery, development and good governance. In the private sector, he has often served as arbitrator in international commercial disputes and at the International Centre for Settlement of Investment Disputes. Professor Sacerdoti has published extensively on international trade law, investments, international contracts and arbitration.

After graduating from the University of Milan with a law degree summa cum laude in 1965, Professor Sacerdoti gained a Master in Comparative Law from Columbia University Law School as a Fulbright Fellow in 1967. He was admitted to the Milan bar in 1969 and to the Supreme Court of Italy in 1979. He is a Member of the Committee on International Trade Law of the International Law Association.

Yasuhei Taniguchi

Born in Japan on 26 December 1934, Yasuhei Taniguchi is currently Professor of law at Tokyo Keizai University, and Attorney at Law in Tokyo. He obtained a law degree from Kyoto University in 1957 and was fully qualified as a jurist in 1959. His graduate degrees include LL.M., University of California at Berkeley (1963) and J.S.D., Cornell University (1964). He taught at Kyoto University for 39 years and has been Professor Emeritus since 1998. He also has taught as Visiting Professor of Law in the United States (University of Michigan, University of California at Berkeley, Duke University, Stanford University, Georgetown University, Harvard University, New York University, and University of Richmond), in Australia (Murdoch University and University of Melbourne), at the University of Hong Kong and at the University of Paris XII.

Professor Taniguchi is former president of the Japanese Association of Civil Procedure and currently vice-president of the International Association of Procedural Law. He is affiliated with various academic societies and arbitral organizations as arbitrator, including the International Council for Commercial Arbitration; the International Law Association; the American Law Institute; the Japan Commercial Arbitration Association; the Chartered Institute of Arbitrators; the American Arbitration Association; the Hong Kong International Arbitration Centre; the Chinese International Economic and Trade Arbitration Commission; the Korean Commercial Arbitration Board; and the Cairo Regional Centre of Commercial Arbitration. He has also been an active arbitrator in the International Chamber

of Commerce (ICC) Court of International Arbitration.

Professor Taniguchi has written numerous books and articles in the fields of civil procedure, arbitration, insolvency, the judicial system and legal profession, as well as comparative and international law related to these fields. His publications have been published in Japanese, Chinese, English, French, Italian, German, and Portuguese.

Source: WTO Secretariat

Where to Find More Information on the WTO

Information about the WTO and trends in international trade is available to the public at the following websites:

The USTR home page: <http://www.ustr.gov>

The WTO home page: <http://www.wto.org>

U.S. submissions are available electronically on the WTO website using Documents Online, which can retrieve an electronic copy by the "document symbol". Electronic copies of U.S. submissions are also available at the USTR website.

Examples of information available on the WTO home page include:

Descriptions of the Structure and Operations of the WTO, such as:

- WTO Organizational Chart
- Membership
- Biographic backgrounds
- General Council activities

WTO News, such as:

- Status of dispute settlement cases
- 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 and NGOs
- General public news and chat rooms

Trade Topics, such as:

- Briefing Papers on WTO activities in individual sectors, including goods, services, intellectual property, other topics
- Disputes and Dispute Reports

WTO publications may be ordered directly from the following sources:

| | |
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| <p>1. The World Trade Organization Publications Services Centre William Rappard Rue de Lausanne 154 CH - 1211 Geneva 21 Switzerland</p> <p>Tel: (41-22) 739 52 08 / 739 53 08 Fax: (41-22) 739 57 92 email: publications@wto.org</p> | <p>2. Berman Associates 4611-F Assembly Drive Lanham, MD 20706-4391</p> <p>Tel: 301/459-7666 Toll Free: 800/274-4888 fax: 301/459-0056 Toll Free: 800/865-3450 e-mail: query@bernan.com e-mail: order@bernan.com</p> |
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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 Clothing¹
 - 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

¹ 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.

- d. Plurilateral Trade Agreements
 - i. Agreement on Trade in Civil Aircraft (April 12, 1979; amended in 1986)
 - ii. Agreement on Government Procurement (April 15, 1994)
- ▶ 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)
 - iii. Agreement with Mexico and Canada to adjustments to the NAFTA Rules of Origin (November 27, 2002)
 - iv. Agreement with Mexico and Canada to adjustments to the NAFTA Rules of Origin (October 8, 2004)
 - ▶ 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)
- ▶ U.S. Australia Agreement on the Establishment of a Free Trade Area (signed May 18, 2004; entry into force January 1, 2005)

Azerbaijan

- ▶ Agreement on Bilateral Trade Relations (April 21, 1995)
- ▶ Bilateral Investment Treaty (August 2, 2001)

Bahrain

- ▶ Bilateral Investment Treaty (May 30, 2001)

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)
- ▶ Memorandum of Understanding Regarding the Implementation of the Decision of the WTO General Council of August 30, 2003, on "Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health" as Interpreted by the Accompanying Statement of the Chairman of the General Council of the Same Date (July 16, 2004)

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)
- ▶ 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)
- ▶ Agreement between the United States of America and the European Community on the Mutual Recognition of Certificates of Conformity for Marine Equipment (July 1, 2004)

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)

Mozambique

- ▶ Bilateral Investment Treaty (exchange of instruments took place February 2, 2005 and enters into force March 2, 2005)

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 (March 30, 2004)

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; renewed July 22, 2004)

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

Bahrain

- ▶ U.S. - Bahrain Agreement on the Establishment of a Free Trade Area (signed September 14, 2004)

Belarus

- ▶ Bilateral Investment Treaty (signed January 15, 1994; pending exchange of instruments)

Dominican Republic/Central America

- ▶ U.S. - Dominican Republic - Central America Agreement on the Establishment of a Free Trade Area (signed August 5, 2004)

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)

Morocco

- ▶ U.S.- Morocco Agreement on the Establishment of a Free Trade Area (agreement signed on May 18, 2004; entry into force pending)

Mozambique

- ▶ Bilateral Investment Treaty (exchange of instruments took place February 2, 2005 and enters into force March 2, 2005)

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
 - ▶ First Summit of the Americas, Declaration of Principles and Plan of Action, Miami, Florida (December 11, 1994)
 - ▶ Trade Ministerial Joint Declaration, Denver, USA (June 30, 1995)
 - ▶ Second Ministerial Trade Meeting Joint Declaration, Cartagena, Colombia (March 21, 1996)
 - ▶ Third Trade Ministerial Meeting Joint Declaration, Belo Horizonte, Brazil (May 16, 1997)
 - ▶ Fourth Trade Ministerial Joint Declaration, San Jose, Costa Rica (March 19, 1998)
 - ▶ Second Summit of the Americas Declaration of Principles and Plan of Action, Santiago, Chile (April 19, 1998)
 - ▶ Fifth Trade Ministerial Meeting, Declaration of Ministers, Toronto, Canada Joint Declaration (November 4, 1999)
 - ▶ Sixth Meeting of Ministers of Trade of the Hemisphere Ministerial Declaration, Buenos Aires, Argentina (April 7, 2001)
 - ▶ Third Summit of the Americas Declaration of Principles and Plan of Action, Quebec City, Canada (April 22, 2001)
 - ▶ Seventh Meeting of Ministers of Trade of the Hemisphere Ministerial Declaration, Quito, Ecuador (November 1, 2002)
 - ▶ Eighth Ministerial Meeting, Ministerial Declaration, Miami, USA (November 20, 2003)

- ▶ 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)

Central Asian Economies

- ▶ U.S.-Central Asian Trade and Investment Framework Agreement (June 1, 2004)

Chile

- ▶ U.S.-Chile Joint Commission on Trade and Investment (May 19, 1998)

China

- ▶ U.S.-China Joint Commission on Commerce and Trade Agreements (April 21, 2004)

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)

Kuwait

- ▶ U.S.-Kuwait Trade and Investment Framework Agreement (February 6, 2004)

Malaysia

- ▶ U.S.-Malaysia Trade and Investment Framework Agreement (May 10, 2004)

Mongolia

- ▶ U.S.-Mongolia Trade and Investment Framework Agreement (July 15, 2004)

Morocco

- ▶ U.S.-Morocco Trade and Investment Framework Agreement (March 16, 1995)

Nigeria

- ▶ U.S.-Nigeria Trade and Investment Framework Agreement (February 16, 2000)

Oman

- ▶ U.S.-Oman Trade and Investment Framework Agreement (July 7, 2004)

Philippines

- ▶ Trade and Investment Framework Agreement (1989)

Qatar

- ▶ U.S.-Qatar Trade and Investment Framework Agreement (March 19, 2004)

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)

United Arab Emirates (UAE)

- ▶ U.S.-UAE Trade and Investment Framework Agreement (March 15, 2004)

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)

Yemen

- ▶ U.S.-Yemen Trade and Investment Framework Agreement (February 6, 2004)