V. Trade Enforcement Activities

A. Enforcing U.S. Trade Agreements

1. Overview

USTR coordinates the Administration's active monitoring of foreign government compliance with trade agreements and pursues enforcement actions, using dispute settlement procedures and applying the full range of U.S. trade laws when necessary. Vigorous investigation efforts by relevant agencies, including the Departments of Agriculture, Commerce, and State, help ensure that these agreements yield the maximum benefits in terms of ensuring market access for Americans, advancing the rule of law internationally, and creating a fair, open, and predictable trading environment. Ensuring full implementation of U.S. trade agreements is one of the Administration's strategic priorities. We seek to achieve this goal through a variety of means, including:

Asserting U.S. rights through the World Trade Organization (WTO), including the stronger dispute settlement mechanism created in the Uruguay Round, and the WTO bodies and committees charged with monitoring implementation and with surveillance of agreements and disciplines;

Vigorously monitoring and enforcing bilateral agreements;

Invoking U.S. trade laws in conjunction with bilateral and WTO mechanisms to promote compliance;

Providing technical assistance to trading partners, especially in developing countries, to ensure that key agreements 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 work programs, accelerated tariff reductions, and use, or threat of use, of dispute settlement mechanisms, including labor and environment.

Through the vigorous application of U.S. trade laws and active use of WTO dispute settlement procedures, the United States has effectively opened foreign markets to U.S. goods and services. The United States also has used the incentive of preferential access to the U.S. market to encourage improvements in workers' rights and reform of intellectual property laws and practices in other countries. These enforcement efforts have resulted in major benefits for U.S. firms, farmers, and workers.

To ensure the enforcement of WTO agreements, the United States has been one of the world's most frequent users of WTO dispute settlement procedures. Since the establishment of the WTO in 1994, the United States has filed 70 complaints at the WTO, thus far successfully concluding 43 of them by settling 23 cases favorably and prevailing on 20 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 (and fairer trade for both countries) rather than to engage in prolonged litigation. Therefore, whenever possible we have

sought to reach favorable settlements that eliminate the foreign breach without having to resort to panel proceedings.
We have been able to achieve this preferred result in 23 of the 47 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; Denmark's civil procedures for intellectual property enforcement; Egypt's apparel tariffs; the EU's market access for grains; an EU import surcharge on corn gluten feed; Greece's protection of copyrighted motion pictures and television programs; Hungary's agricultural export subsidies; Ireland's protection of copyrights; Japan's protection of sound recordings; Korea's shelf-life standards for beef and pork; Mexico's restrictions on hog imports; Pakistan's protection of patents; the Philippines' market access for pork and poultry; the Philippines' auto regime; Portugal's protection of patents; Romania's customs valuation regime; Sweden's enforcement of intellectual property rights; and Turkey's box-office taxes on motion pictures.

Litigation successes. When our trading partners have not been willing to negotiate settlements, we have pursued our cases to conclusion, prevailing in 20 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; the EU's regime for protecting geographical indications; India's import bans and other restrictions on 2,700 items; India's protection of patents on pharmaceuticals and agricultural chemicals; India's and Indonesia's 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; Mexico's telecommunications barriers and Mexico's antidumping duties on rice.

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, Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 for telecommunications trade problems, and Title VII of the 1988 Act to address problems in foreign government procurement. The application of these trade law tools is described further below.

2. WTO Dispute Settlement

2005 Activities

Enforcement successes in 2005 include rulings against Japan's restrictions on imports of apples, Mexico's antidumping measure on rice and the EU's discriminatory regime on geographical indications. The United States also favorably resolved several disputes after completing or initiating WTO dispute settlement procedures. For example, China removed its discriminatory tax on semiconductors, Canada removed several restrictions on wheat, Egypt removed discriminatory textile tariffs and Mexico removed anti-competitive rules which drove up the cost of international calls. Recently, the United States obtained a favorable dispute ruling against Mexico on its discriminatory soft drink tax. Ongoing enforcement actions involve the EU's moratorium on biotechnology products, the EU's aircraft subsidies, the EU's customs regime and Turkey's restrictions on rice. The United States also filed a complaint under WTO dispute settlement procedures involving Turkey's import restrictions on rice.

The cases described in Chapter II further demonstrate the importance of the dispute settlement process in opening foreign markets and securing other countries' compliance with their WTO obligations. Further information on WTO disputes to which the United States is a party is available on the USTR website (http://www.ustr.gov/enforcement/index.shtml).

3. Other Monitoring and Enforcement Activities

a. Subsidies Enforcement

The WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) establishes multilateral disciplines on subsidies. Among its various disciplines, the Subsidies Agreement provides remedies for subsidies that have adverse effects not only in the importing country's market, but also in the subsidizing government's market and in third country markets. Prior to the Subsidies Agreement coming into effect in 1995, the U.S. countervailing duty law was the only practical mechanism for U.S. companies to address subsidized foreign competition. However, the countervailing duty law focuses exclusively on the effects of foreign subsidized competition in the United States. Although the procedures and remedies are different, the multilateral remedies made available under the Subsidies Agreement provide an alternative tool to address foreign subsidies that affect U.S. businesses in an increasingly global market place.

Section 281 of the Uruguay Round Agreements Act of 1994 (URAA) sets out the responsibilities of USTR and the Department of Commerce (Commerce) in enforcing the United States' rights under the Subsidies Agreement. USTR coordinates the development and implementation of overall U.S. trade policy with respect to subsidy matters, represents the United States in the WTO, including the WTO Committee on Subsidies and Countervailing Measures, and leads the interagency team on matters of policy. The role of Commerce's Import Administration (IA) is to enforce the countervailing duty law and, in accordance with responsibilities assigned by the Congress in the URAA, to spearhead the subsidies enforcement activities of the United States with respect to the disciplines embodied in the Subsidies Agreement. The Import Administration's Subsidies Enforcement Office (SEO) is the specific office charged with carrying out these responsibilities.

The primary mandate of the SEO is to examine subsidy complaints and concerns raised by U.S. exporting companies and to monitor foreign subsidy practices to determine whether there is reason to believe they are impeding U.S. exports to foreign markets and are inconsistent with the Subsidies Agreement. Once sufficient information about a subsidy practice has been gathered to permit it to be reliably evaluated, USTR and Commerce 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 greatly enhanced by IA officers stationed overseas (in China and Korea), who help gather, clarify and confirm the accuracy of information concerning foreign subsidy practices. State Department officials at posts where IA staff are not present have also handled such inquiries.

The SEO's electronic subsidies database continues to fulfill the goal of providing the U.S. trading community with a centralized location to obtain information about the remedies available under the Subsidies Agreement and much of the information that is needed to develop a countervailing duty case or a WTO subsidies complaint. The website (http://ia.ita.doc.gov/esel/index.html) includes information on all the foreign subsidy programs that have been investigated in U.S. countervailing duty cases since 1980, covering more than 50 countries and over 2,000 government practices. This database is frequently updated, 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 Subsidies Agreement permit WTO Members to impose antidumping or countervailing duties to offset injurious dumping or subsidization of products exported from one Member to another. The United States closely monitors antidumping and countervailing duty proceedings initiated against U.S. exporters to ensure that foreign antidumping and countervailing duty actions are administered fairly and in full compliance with the WTO Agreements.

To this end, IA tracks foreign antidumping and countervailing duty actions involving U.S. exporters and analyzes information collected by U.S. embassies worldwide, enabling U.S. companies and U.S. Government agencies to monitor 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 mounted a successful WTO challenge of Mexico's antidumping measure on U.S. exports of rice, as well as certain changes to Mexico's foreign trade laws. Among other antidumping investigations of U.S. goods that were closely monitored in the past year are Canada's AD/CVD investigations of grain corn, Mexico's *ex officio* investigation of pork legs and shoulders/hams and its "reinvestigation" of apples**,** and China's investigations of kraft linerboard, dimethyl cyclosiloxane and several other products. Import Administration personnel have also participated in technical exchanges with the administering authorities of Egypt, Australia and Indonesia to obtain a better understanding of these countries' administration of trade remedy laws and compliance with their 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 2005, there were ongoing actions in the following Section 301 investigations, and USTR received one petition seeking the initiation of a new investigation.

b. Intellectual Property Laws and Practices of the Government of Ukraine

On March 12, 2001, the Trade Representative identified Ukraine as a priority foreign country (PFC) under section 182 of the Trade Act (known as Special 301 – see below), and simultaneously initiated a Section 301 investigation of the intellectual property laws and practices of the Government of Ukraine. The priority foreign country identification was based on: (1) deficiencies in Ukraine's acts, policies and practices regarding the protection of intellectual property rights, including the lack of effective action enforcing intellectual property rights, as evidenced by high levels of compact disc piracy; and (2) the failure of the Government of Ukraine to enact adequate and effective intellectual property legislation addressing optical media piracy.

The United States consulted repeatedly with the Government of Ukraine regarding the matters under investigation. However, the Government of Ukraine made very little progress in addressing two key issues: its failure to use existing law enforcement tools to stop optical media piracy, and its failure to adopt an optical media licensing regime. On August 2, 2001, the USTR determined that the acts, policies and practices of Ukraine with respect to the protection of intellectual property rights were unreasonable and burdened or restricted U.S. commerce, and were thus actionable under Section 301(b). The USTR determined that appropriate and feasible action in response included the suspension of duty-free treatment accorded to the products of Ukraine under the GSP program, effective with respect to goods entered on or after August 24, 2001. The USTR also announced that further action could include the imposition of prohibitive duties on certain Ukrainian products, and the office of the USTR sought public comment on a preliminary product list. On December 11, 2001, the USTR determined that appropriate additional action included the imposition of 100 percent *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.

Since 2001, the Government of the United States has been working with the Government of Ukraine to address the IPR protection issues that are the subject of the investigation. In particular, the United States has been encouraging Ukraine to improve its IPR legislation and to enhance enforcement of existing IPR laws.

In July 2005, USTR notified in writing representatives of U.S. copyright industries that, pursuant to Section 307(c) of the Trade Act, the suspension of Ukraine's GSP benefits would terminate unless USTR received a written request for a continuation from one or more representatives of U.S. copyright industries prior to the four-year anniversary of the GSP suspension (i.e., prior to August 24, 2005). U.S. copyright industry representatives responded in writing prior to August 24, 2005 by requesting that the GSP suspension remain in place until USTR determines that Ukraine has adequately improved IPR enforcement. Accordingly, the suspension of GSP benefits continued under Section 307(c) of the Trade Act.

In August 2005, the Government of Ukraine adopted a package of important amendments to its Laser Readable Disc Law that strengthen Ukraine's licensing regime and enforcement capabilities to stem the illegal production and trade of optical media products. In response to the adoption of these amendments, the USTR terminated the 100 percent *ad valorem* duties on the list of Ukrainian products, effective August 30, 2005.

The United States concluded a Special 301 Out-of-Cycle Review (OCR) of Ukraine in January 2006. In recognition of the Government of Ukraine's efforts to improve the enforcement and protection of intellectual property rights, the United States reinstated GSP benefits for Ukraine effective January 23, 2006, and lowered Ukraine's designation under Special 301 from Priority Foreign Country to Priority Watch List. Ukraine agreed to work with the U.S. Government and with the U.S. copyright industry to monitor the progress of future enforcement efforts through an Enforcement Cooperation Group. The United States will continue to monitor developments in the protection of intellectual property rights in Ukraine pursuant to Section 306 of the Trade Act of 1974.

c. EC - Measures Concerning Meat and Meat Products (Hormones)

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 Dispute Settlement Body (DSB) to suspend the application to the EC, and Member States thereof, of tariff concessions and related obligations under the GATT. The EC did not contest that it had failed to comply with its WTO obligations but objected to the level of suspension proposed by the United States.

On July 12, 1999, WTO arbitrators determined that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent hormone ban was $116.8 million per year. Accordingly, on July 26, 1999, the DSB authorized the United States to suspend the application to the European Community 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 using authority under Section 301 to impose 100 percent *ad valorem* duties on certain products of certain EC Member States. The increased duties remained in place throughout 2005.

Talks were held during 2005 with the aim of reaching a mutually satisfactory solution to the dispute, but no resolution was reached. In February 2005, a WTO panel was established to consider the EC's claims that it had brought its hormone ban into compliance with the EC's WTO obligations and that the increased duties imposed by the United States were no longer covered by the DSB authorization. (The section of this report addressed to WTO dispute settlement contains further information on this matter.)

d. Petitions Filed in 2005

During 2005, USTR received one petition seeking the initiation of a new investigation under section 301. The petition alleged that the policies and practices of the Government of China with respect to the valuation of China's 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 an investigation with respect to the petition because the Government of the United States is involved in ongoing efforts to address with the Government of China the currency valuation 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.

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), 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 are designated as "Priority Foreign Countries" unless they are entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of IPR. USTR may identify a trading partner as a Priority Foreign Country or remove such identification whenever warranted. Priority Foreign Countries are subject to an investigation under the Section 301 provisions of the Trade Act of 1974, unless USTR determines that the investigation would be detrimental to U.S. economic interests.

In addition, USTR has created a Special 301 "Priority Watch List" and "Watch List." Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property. Countries placed on the Priority Watch List 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. 2005 Special 301 Review Announcements

On April 29, 2005, Acting U.S. Trade Representative Peter Allgeier announced the results of the 2005 Special 301 annual review, which examined in detail the adequacy and effectiveness of intellectual property protection in approximately 90 countries. USTR identified 52 trading partners that deny adequate and effective protection of intellectual property or equitable market access to U.S. artists and industries that rely upon intellectual property protection.

Ukraine was the only country named a Priority Foreign Country in the 2002 to 2005 Special 301 reviews conducted by USTR based on widespread piracy of copyrighted goods such as CDs and DVDs. The United States withdrew Ukraine's benefits under the Generalized System of Preferences (GSP) program in August 2001 and imposed $75 million worth of sanctions on Ukrainian imports on January 23, 2002.

These sanctions, which affected a number of Ukrainian products, including metal, footwear, and chemicals, were lifted on August 30, 2005 after the Ukrainian Government secured passage of important amendments to the Laser-Readable Disk Law and other laws, which went into effect on August 2, 2005. The United States concluded a Special 301 Out-of-Cycle Review (OCR) of Ukraine in January 2006.

In recognition of the Government of Ukraine's efforts to improve the enforcement and protection of intellectual property rights, the United States reinstated GSP benefits for Ukraine effective January 23, 2006, and lowered Ukraine's designation under Special 301 from Priority Foreign Country to Priority Watch List.

Ukraine agreed to work with the U.S. government and with the U.S. copyright industry to monitor the progress of future enforcement efforts through an Enforcement Cooperation Group. The United States will continue to monitor developments in the protection of intellectual property rights in Ukraine pursuant to Section 306 of the Trade Act of 1974.

IPR protection and enforcement in China remained a top priority of the Administration's trade policy in 2005. USTR carried out an OCR in 2005 to evaluate China's implementation of various IPR commitments, including those made at the 15th annual Joint Commission on Commerce and Trade (JCCT) meeting held April 2004. The OCR revealed that China had not resolved critical deficiencies in IPR protection and enforcement and, as a result, infringements remain at unacceptably high levels. Based on information collected in the OCR, the United States concluded that China had not achieved its key commitment at the April 2004 JCCT meeting to significantly reduce IPR infringements throughout China. As a consequence, the United States intensified efforts to address IPR concerns through a comprehensive strategy encompassing the following actions: 1) work with U.S. industry and other stakeholders with an eye toward utilizing WTO procedures to bring China into compliance with its WTO TRIPS obligations, particularly those requiring transparency and a criminal IPR enforcement system with deterrent effect; 2) invoke the transparency provisions of the WTO TRIPS Agreement to request detailed documentation on certain aspects of IPR enforcement in China that affect U.S. rights under the TRIPS Agreement; 3) elevate China onto the Priority Watch List on the basis of serious concerns about China's compliance with its WTO TRIPS obligations and failure to significantly reduce IPR infringement levels throughout China, as committed at the April 2004 JCCT, 4) maintain Section 306 monitoring of China's implementation of its 1992 and 1995 bilateral agreements with the United States governing the protection of IPR (including additional commitments made in 1996); and 5) use the JCCT, including the IPR Working Group, to secure new, specific commitments concerning additional actions that China will take to significantly improve IPR protection and enforcement.

The 2005 Special 301 Report noted that Russia remained on the Priority Watch List due to serious and continuing concerns with Russia's IPR regime, including weak IPR enforcement, rampant production of pirated optical media products, and an increasing problem with Internet piracy of copyrighted works. USTR announced in April 2005 that it would conduct an OCR to monitor Russia's progress on IPR issues and to evaluate whether actions taken by Russia have resulted in substantial reductions in the levels of piracy and counterfeiting. Although Russia began in late 2005 to make some progress in combating IPR enforcement issues, numerous problems still remain and USTR will continue its evaluation of Russia under the OCR into 2006.

Paraguay continued to be designated for Section 306 monitoring to ensure that it complies with its commitments to the United States under bilateral intellectual property agreements.

Fourteen trading partners were placed on the "Priority Watch List": Argentina, Brazil, China, Egypt, India, Indonesia, Israel, Kuwait, Lebanon, Pakistan, the Philippines, Russia, Turkey, and Venezuela. An additional 36 trading partners were placed on the "Watch List," meriting bilateral attention to address underlying IPR problems: Azerbaijan, Bahamas, Belarus, Belize, Bolivia, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Dominican Republic, Ecuador, European Union, Guatemala, Hungary,

Italy, Jamaica, Kazakhstan, Korea, Latvia, Lithuania, Malaysia, Mexico, Peru, Poland, Romania, Saudi Arabia, Slovakia, Taiwan, Tajikistan, Thailand, Turkmenistan, Uruguay, Uzbekistan, and Vietnam.

USTR also announced "out-of-cycle" (OCR) reviews for Russia, Ukraine, Canada, Indonesia, the Philippines, and the European Union.

b. New Initiatives

i. Transshipment and In Transit Goods

"Transshipment" and "in transit goods" are expanding problems that USTR highlighted in the 2005 Special 301 Report. Transshipped and in transit goods pose a high risk for counterfeiting and piracy because customs procedures may be used to disguise the true country of origin of the goods or to enter goods into customs territories where border enforcement for transshipped or in transit goods is known to be weak with the intention of passing the goods through those customs territories to their destination. The 2005 Special 301 Report noted that transshipment or in transit goods are growing problems in Ukraine, Belize, Canada, Latvia, Lithuania, Taiwan, and Thailand. In the Report, USTR urged these countries to provide stronger intellectual property border enforcement protections, and stated that the United States would work together with these countries to improve their IPR border enforcement systems.

ii. Free Trade Zones

The 2005 Special 301 Report also addressed concerns with the growing problem of pirated and counterfeit goods moving through "free trade zones," which are geographic areas considered to be outside of a nation's customs territory for the purposes of collecting import duties and taxes. Free trade zones present a considerable risk of serving as a conduit for counterfeit and pirated goods, and as sites of manufacturing of IPR infringing goods. The United States has received complaints from U.S. industry regarding the Colon Free Zone in Panama, the Jebel Ali Free Zone in the United Arab Emirates, the Corozal Commercial Free Trade Zone in Belize, and the Manaus Free Trade Zone in Brazil, among others. In the Report, the United States urged all countries having free trade zones located within their territories to bring the operation of the free trade zones under the rule of law and ensure its consistent application.

iii. Sustainable Innovation

The 2005 Special 301 Report noted that the ability of innovative industries to continue to develop new products depends largely upon two factors: (1) a strong and effective intellectual property system; and (2) the capacity to market new products effectively during the period of time when the exclusive intellectual property rights exist.

Although intellectual property protection is a necessary condition for encouraging innovation in all sectors, it is the ability to market products effectively that provides the incentive for continued innovation and generates the returns on investment necessary to fund new research and development and production of new products. This cycle of innovation produces significant economic and social benefits by accelerating economic growth and raising standards of living.

c. Ongoing Initiatives

i. Global Scope of Counterfeiting and Piracy

Global IPR theft and trade in fakes have grown to unprecedented levels, threatening innovative and creative economies around the world. Counterfeiting and digital piracy remained areas of particular concern in the 2005 Special 301 report.

ii. Continuing to advance the STOP! Initiative

The 2005 Special 301 Report emphasized that USTR is actively engaged in implementing the Administration's Strategy Targeting Organized Piracy (STOP!) initiative. Announced in October 2004, STOP! Brings together all the major players – the federal government, private sector and trade partners – to take concerted action in cracking down on piracy and counterfeiting. The initiative has united nine federal agencies, enhanced public-private sector cooperation, brought new forms of federal assistance to American companies across the country, increased law enforcement resources to stop pirates and counterfeiters, and developed an international law enforcement network to increase criminal enforcement abroad.

As part of STOP!, USTR has been advocating international adoption of best practices guidelines incorporating enhanced enforcement disciplines drawn from the IP chapters of recent FTAs. USTR has also been introducing in multilateral fora new initiatives to improve the global intellectual property environment and aid in disrupting the operations of pirates and counterfeiters. Key initiatives to address issues ranging from improved enforcement to public awareness to commercial supply chain integrity have gained endorsement in the G-8, Organization for Economic Cooperation and Development (OECD), and the Asia-Pacific Economic Cooperation (APEC) forum.

iii. Optical Media Piracy

The 2005 Special 301 Report noted that in 2004, some of our trading partners, such as the Philippines, Poland, and Indonesia, have taken important steps toward implementing much-needed controls on optical media production in order to address and prevent future piracy. We saw particular progress in 2004-2005 in the Philippines' enforcement of its optical media law. However, the 2005 Report noted that other countries urgently needed to implement controls or improve existing inadequate measures, including India, Pakistan, Russia, Ukraine, Thailand, and Bulgaria. Some governments, such as those of Hong Kong and Macau, which implemented optical media controls in previous years, have clearly demonstrated their commitment to continue to enforce these measures. The 2005 Report noted that Malaysia was steadily improving its enforcement efforts, and Taiwan continued to make significant progress in providing improved IPR enforcement. We continued 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.

iv. Ensuring Compliance with 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, undisclosed information, 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 subject to mandatory dispute settlement provisions. Compliance with the TRIPs agreement is an essential first step in providing the quality of IPR protection essential to promote growth and productivity and we work continually to monitor other WTO member's compliance with TRIPs obligations.

v. Cracking down on Internet Piracy

The 2005 Report noted that the Internet has undergone explosive growth and, coupled with the increased availability of broadband connections, serves as an extremely efficient global distribution network for pirated 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 (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the "WIPO Internet Treaties"). Subsequently, we encouraged countries to adopt the WIPO internet treaties. For example, as described below we have included comprehensive provisions within our FTAs to ensure our trade partners comply with the WIPO internet treaties. The WIPO Internet Treaties are now part of the international IPR legal regime and represent the emerging 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.

We are also seeking to heighten standards of protection for intellectual property by incorporating standards of the WIPO Internet Treaties as substantive obligations in the bilateral and regional trade agreements that we negotiate. Our proposals in the on-going our FTA negotiations will continue to include up-to-date 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. Ensuring Government Use of Authorized 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, and numerous other countries and territories have issued decrees mandating the use of only authorized software by government ministries.

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 2005 Section 1377 Review focused on the following issues: (1) excessively high fixed-to-mobile termination rates, a factor identified as negatively impacting U.S. companies in a large number of markets, and in particularly, Germany, Japan, Mexico, Peru, and Switzerland; (2) restrictions on access to, and use of, leased lines and submarine cable capacity in Germany, India, and Singapore, where the absence of clear rules supported by adequate enforcement powers has allowed incumbent operators to succeed in blocking long-term access solutions; (3) excessive regulatory requirements, including high licensing fees, high capitalization requirements, restrictions on resale, and limitations on the entities with whom a foreign licensee can partner, in India, Colombia, and China; (4) burdensome testing and certification requirements for telecommunications equipment in Korea and Mexico; and (5) governmental mandates of certain technical standards in relation to telecommunications services and equipment that limit companies' choice of technologies and serve as potential market access barriers for U.S. companies, particularly in Korea and China.

USTR has urged national regulators to fulfill their responsibility to address such problems, and initial signs are in some cases promising. On the issue of excessively high fixed-to-mobile termination rates, Peru's regulator – Osiptel – issued a resolution in December 2005 to establish a cap on mobile termination rates. This cap, which would be implemented over a four-year period, would reduce mobile termination rates by 50 percent. This resolution, however, is currently under review by regulators and could be repealed. In Germany, the regulator found in its analysis of the mobile termination market that DTAG's T-Mobile and Vodafone D2 has significant market power. However, the regulator has not yet imposed any remedies, instead arguing that the companies' decision to lower rates on their own is sufficient to address this problem. Both Singaporean and Indian regulators have also taken steps towards addressing the issues USTR raised with respect to access and use of leased lines and submarine cable capacity in their markets. In particular, the Indian regulator – TRAI – took action to lower the cost of international private leased circuits and has made recommendations to the Department of Communications to facilitate access to submarine cable capacity. India has also made progress with respect to its regulatory requirements, most notably, by significantly reducing the licensing fee for long distance services.

USTR remains concerned, however, with the excessive regulatory requirements for telecommunications services and burdensome testing requirements for telecommunications equipment in many countries. In some countries, such as Mexico, the burden may be partially alleviated by implementing Mutual Recognition Agreements, permitting testing to be done in the United States under more transparent procedures. The United States is actively pursuing such initiatives. In addition, USTR continues to have grave reservations about the potential market implications of government mandates of technical standards, which limit companies' choice of technologies in providing services. USTR will continue to monitor developments in these areas.

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 l979, 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; 26 in 2004; and 13 in 2005. The numbers of antidumping orders (not including suspension agreements) imposed in and since 1986 are: 26 in 1986; 53 in 1987; 12 in 1988; 24 in 1989; 14 in 1990; 19 in 1991; 16 in 1992; 42 in 1993; 16 in 1994; 23 in 1995; 9 in 1996; 11 in 1997; 9 in 1998; 19 in 1999; 20 in 2000; 31 in 2001; 27 in 2002; 16 in 2003; 14 in 2004; and 18 in 2005.

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; revoked 11 antidumping duty orders and continued 19 orders in 2004; and revoked 21 antidumping duty orders and continued 44 orders in 2005.

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; 3 in 2004; and 2 in 2005. 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; 3 in 2004; and none in 2005. Under its sunset review procedures, Commerce revoked 8 and continued 22 countervailing duty orders in 2000; revoked 1 countervailing duty order and continued 5 orders in 2001; revoked no countervailing duty orders and continued no orders in 2002; revoked no countervailing duty orders and continued no orders in 2003; revoked 1 countervailing duty order and continued no orders in 2004; and revoked 4 and continued 12 countervailing duty orders in 2005.

6. Other Import Practices

a. Section 337

Section 337 of the Tariff Act of 1930, as amended, makes it unlawful to engage in unfair acts or unfair methods of competition in the importation or sale of imported goods. Most Section 337 investigations concern alleged infringement of intellectual property rights, such as U.S. patents and trademarks.

The United States International Trade Commission (USITC or Comission) 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. In July 2005, the President assigned these policy review functions, which are set out in section 337(j)(1)(B), section 337(j)(2), and section 337(j)(4) of the Tariff Act of 1930, to the USTR. The USTR conducts these reviews in consultation with other agencies. Importation of the subject goods may continue during this review process if the importer pays a bond set by the USITC. If the President (or the USTR exercising the functions assigned by the President) does not disapprove the USITC's action within 60 days, the USITC's order becomes final. Section 337 determinations are subject to judicial review in the U.S. Court of Appeals for the Federal Circuit with possible appeal to the U.S. Supreme Court.

The USITC also is authorized to issue temporary exclusion or cease and desist orders before it completes an investigation if it determines that there is reason to believe a violation of Section 337 exists.

In 2005, the USITC instituted 29 new Section 337 investigations. It also instituted two enforcement and two advisory opinion proceedings that relate to two previously issued USITC remedial orders. During the year, the USITC issued three general exclusion orders, seven limited exclusion orders, and eleven cease and desist orders covering imports from foreign firms, as follows: *Certain Automotive Measuring Devices and Products Containing Same*, Inv. No. 337-TA-494 (limited exclusion order directed to five entities, one cease and desist order); *Certain Audio Digital-to-Analog Converters and Products Containing Same*, Inv. No. 337-TA-499 (limited exclusion order); *Certain Automated Mechanical Transmission Systems for Medium-Duty and Heavy-Duty Trucks, and Components Thereof*, Inv. No. 337-TA-503 (limited exclusion order and one cease and desist order); *Certain Gun Barrels Used in Firearms Training Systems*, 337-TA-505 (limited exclusion order and one cease and desist order);*Certain Optical Disk Controller Chips and Chipsets and Products Containing Same, Including DVD Players and PC Optical Storage Devices*, Inv. No. 337-TA-506 (limited exclusion order directed to eleven entities, seven cease and desist orders); *Certain Systems for Detecting and Removing Viruses or Worms, Components thereof, and Products Containing Same*, Inv. No. 337-TA-510 (limited exclusion order); *Certain Pet Food Treats*, Inv. No. 337-TA-511 (limited exclusion order); *Certain Plastic Food Containers*, Inv. No. 337-TA-514 (general exclusion order); *Certain Ink Markers*, Inv. No. 337-TA-522 (general exclusion order and one cease and desist order); *Certain Foam Tape*, Inv. No. 337-TA-528 (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, and, starting in July 2005, the USTR exercising the functions assigned by the President, permitted all the exclusion orders and cease and desist orders submitted by the USITC for review during 2005 to become final.

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, 2005, the United States had no safeguard measures in place. The United States did not impose any safeguard measures during 2005, and did not commence any safeguard investigations.

c. Section 421

The terms of China's accession to the WTO include a unique, China-specific safeguard mechanism. The mechanism allows a WTO member to limit increasing imports from China that disrupt or threaten to disrupt its market, if China does not agree to take action to remedy or prevent the disruption. 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 2005, six petitions have been filed under Section 421. During 2005, there was activity on one Section 421 petition. On December 30, 2005, the President issued his determination with respect to a petition filed in August 2005 concerning certain circular welded non-alloy steel pipe from China. The President determined that providing import relief was not in the national economic interest of the United States.

An appeal in a lawsuit brought by Motion Systems Corporation, the petitioner in the first Section 421 case, was argued before a three judge panel of the U.S. Federal Court of Appeals for the Federal Circuit ("Federal Circuit") on March 7, 2005. On July 15, 2005, the Federal Circuit ordered the case to be heard *en banc*. The *en banc* hearing was held on October 6. The court's decision is pending.

China Textile Safeguard

The terms for China's accession to the WTO also include a special textiles safeguard, which is available to WTO members until December 31, 2008. This safeguard covers all products that were subject to the WTO Agreement on Textiles and Clothing on January 1, 1995.

Paragraph 242 of the *Report on the Working Party for the Accession of China to the World Trade Organization* ("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 show the "existence or threat" of market disruption and the role of Chinese-origin products in that disruption. On receipt of a request for consultations, China 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 for up to one year, unless such limits are reapplied.

As noted in last year's Annual Report, in the fourth quarter of 2004, the interagency Committee for the Implementation of Textile Agreements ("CITA") accepted for consideration 12 industry requests for safeguard relief under Paragraph 242. These requests concerned: (1) knit fabric (Category 222); (2) cotton and man-made fiber brassieres and other body supporting garments (Category 349/649); (3) cotton and man-made fiber dressing gowns and robes (Category 350/650); (4) cotton trousers (Category 347/348); (5) man-made fiber trousers (Category 647/648); (6) man-made fiber knit shirts and blouses (Category 638/639); (7) men's and boys' cotton and man-made fiber shirts, not knit (category 340/640); (8) cotton knit shirts and blouses (Category 338/339); (9) cotton and man-made fiber underwear (Category 352/652); (10) combed cotton yarn (Category 301); (11) other synthetic filament fabric (Category 620); and (12) wool trousers (Category 447). The requests were premised on the argument that an anticipated increase in imports of these products threatened to disrupt the U.S. market for such products. The United States also requested consultations with China with respect to imports of Chinese-origin cotton, wool and man-made fiber socks (Category 332/432 and 632 part) on October 29, 2004.

On December 1, 2004, the U.S. Association of Importers of Textiles and Apparel ("USA-ITA") filed a complaint and 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. On December 30, 2004, the CIT issued a preliminary injunction barring CITA from further accepting, considering, or otherwise proceeding to review safeguard requests based solely on a threat of market disruption. The Administration appealed this ruling to the Federal Circuit.

In April 2005, based on industry requests, CITA decided to consider whether imports of Chinese-origin cotton knit shirts and blouses (Category 338/339), men's and boys' cotton and man-made fiber shirts, not knit (Category 340/640), cotton and man-made fiber sweaters (Category 345/645/646), cotton trousers (Category 347/348), brassieres and other body supporting garments (Category 349/649), dressing gowns and robes (Category 350/650), cotton and man-made fiber underwear (Category 352/652), other synthetic filament fabric (Category 620), knit man-made fiber shirts and blouses (Category 638/639), and man-made fiber trousers (Category 647/648), are, due to market disruption, threatening to impede the orderly development of trade in these products. None of these requests was based solely on a "threat" of market disruption.

On May 9, 2005, the Federal Circuit granted the Administration's motion for a stay of the CIT's preliminary injunction, pending appeal, and CITA resumed its consideration of the 12 "threat-based" industry requests described above. Later that month, the United States requested consultations with China with respect to imports of Chinese-origin combed cotton yarn (Category 301), cotton knit shirts and blouses (Category 338/339), cotton trousers (Category 347/348), cotton and man-made fiber underwear (Category 352/652), men's and boys' cotton and man-made fiber shirts, not knit (Category

340/640), man-made fiber knit shirts and blouses (Category 638/639), and man-made fiber trousers (Category 647/648).

On June 28, 2005, the Federal Circuit reversed the CIT's decision to enjoin CITA from considering safeguard actions under Paragraph 242 based on threats of market disruption.

In July 2005, CITA decided to consider whether imports of Chinese-origin curtains and drapes (Category 369 part/666 part) are, due to market disruption, threatening to impede the orderly development of trade in these products. In August, CITA decided to consider whether imports of Chinese-origin women's and girls' cotton and man-made fiber woven shirts and blouses (Category 341/641), cotton and man-made fiber skirts (Category 342/642), cotton and man-made fiber nightwear (Category 351/651), and cotton and man-made fiber swimwear (Category 359-S/659-S) are, due to market disruption, threatening to impede the orderly development of trade in these products. CITA also decided to consider an industry request for a "reapplication" of the safeguard for Chinese-origin cotton, wool and man-made fiber socks (Category 332/432 and 632 part).

On August 31, 2005, the United States requested consultations under Paragraph 242 with China with respect to imports of Chinese-origin cotton and man-made fiber brassieres and other body supporting garments (Category 349/649) and other synthetic filament fabric (Category 620).

In October 2005, CITA accepted for consideration 13 industry requests for safeguard relief under Paragraph 242. Nine of these requests were for a "reapplication" of the safeguard in 2006, where the United States had requested consultations in 2005, as described above.
The remaining four requests related to imports of Chinese-origin cheesecloth, batistes, and lawns/voiles (Category 226); men's and boys' wool suits (Category 443); polyester filament fabric, light weight (Category 619); and other men's and boys' man-made fiber coats and women's and girls' man-made fiber coats (Category 634/635).

On November 1, 2005, the United States and China reached an agreement limiting imports of cotton, man-made fiber, and wool socks (Category 332/432 and 632 part) from November 1 to December 31, 2005. On that same date, CITA accepted for consideration an industry request for safeguard relief concerning cotton terry and other pile towels (Category 363).

On November 8, 2005, China and the United States signed a broad agreement that addresses imports of certain textile and apparel products from 2006 through 2008 (the "Memorandum of Understanding Between the Governments of the United States of America and the People's Republic of China Concerning Trade in Textile and Apparel Products"). The agreement also addresses the rights of the United States to seek relief under Paragraph 242. On November 18, 2005, USA-ITA, the plaintiff in the CIT litigation described above, withdrew its lawsuit in the CIT. On November 23, 2005, CITA decided to end its consideration of remaining requests for import relief under Paragraph 242.

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 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: September 22, 2004 report on progress since the TAA Reform Act of 2002, and a September 30, 2004 report 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 five-year study of the implementation and effectiveness of the TAA program, which it expects will provide more useful findings. The Labor Department continued its review in 2005 and expects the first of several interim reports will be issued by mid-2006, with the final report expected to be issued 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 between 2003 and 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 difference 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 Trade Adjustment Assistance for Firms Program (the "TAA Program") is authorized by Title II, Chapter 3 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*) (the "Trade Act"). The TAA Program provides technical assistance to help U.S. firms experiencing a decline in sales and employment, resulting in important part from the increase in imports of like or directly competitive articles, to become more competitive in the global marketplace. The Secretary of Commerce is responsible for administering the TAA Program and has delegated the statutory authority and responsibility under the Trade Act to the Department of Commerce's Economic Development Administration ("EDA"). EDA regulations implementing the TAA Program are codified at 13 C.F.R part 315 and may be accessed via EDA's Internet website at: http://www.eda.gov/InvestmentsGrants/Lawsreg.xml

In FY 2005, EDA awarded a total of $12,006,000 in TAA Program funds to its national network of 11 Trade Adjustment Assistance Centers ("TAACs"), each of which is assigned a different geographical region. TAACs are typically sponsored by universities or non-profit organizations and serve as the primary point of contact for firms as they proceed through the certification and adjustment proposal processes under the TAA Program. During FY 2005, EDA certified 171 petitions for eligibility and approved 132 adjustment proposals.

Additional information on the TAA Program (including eligibility criteria and application process) is available at http://www.taacenters.org.

8. Generalized System of Preferences Generalized System of Preferences

I. Overview

The U.S. Generalized System of Preferences (GSP), a program designed to promote economic growth in the developing world, provides preferential duty-free treatment for 3,400 products from 136 designated beneficiary countries and territories. The GSP program was instituted on January 1, 1976, and authorized under the Trade Act of 1974 (19 U.S.C. 2461 et seq.) for a ten-year period. In 1996, an additional 1,400 articles were made eligible for duty-free treatment when supplied by least developed beneficiary developing countries (LDBDCs). The GSP Program has been renewed periodically since then, most recently in 2002, when President Bush signed legislation that reauthorized the GSP program through the end of 2006.

The combined lists of GSP eligible products include most dutiable manufactures and semi-manufactures, and selected agricultural, fishery, and primary industrial products not otherwise duty-free. LDBDCs are designated as such, pursuant to section 502(a) (2) of the Trade Act of 1974, as amended. In practice, they are typically GSP beneficiaries that are on the United Nations list of least developed countries. Some beneficiary developing countries (BDCs) and LDBDCs have been subsequently removed from GSP-beneficiary eligibility resulting from the acceptance of country practice petitions concerning worker rights or intellectual property concerns.

Purpose of the GSP Program

The underlying principle of the GSP program is that the creation of trade opportunities for developing countries is an effective, cost-efficient way of encouraging broad-based economic development and a key means of sustaining the momentum behind economic reform and liberalization. In its current form, the GSP program is designed to integrate developing countries into the international trading system in a manner commensurate with their development. The program achieves this objective 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 Aimport-sensitive@. The value of duty-free imports in 2005 was approximately $26.7 billion, an 18 percent increase over 2004.

In addition, the GSP program encourages beneficiaries; (1) to eliminate or reduce significant barriers to trade in goods, services, and investment; (2) afford all workers internationally recognized worker rights; and (3) provide adequate and effective means for foreign nationals to secure, exercise, and enforce property rights, including intellectual property rights.

Annual Reviews

An important attribute of the GSP program is its ability to adapt, product by product, to changing market conditions and to 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 publication of a *Federal Register* notice that requests 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 Aprobable economic impact@ of granting the petition is prepared, and all relevant materials are reviewed by the interagency Trade Policy Staff Committee (TPSC). Following completion of this interagency review, the President announces his decision on which petitions are granted.

Conclusion of the 2004 GSP Annual Review

On June 29, 2005, the President issued a proclamation that announced the results of the 2004 Annual Review. The Proclamation modified the duty-free treatment of certain GSP-eligible products and certain beneficiary developing countries under the Generalized System of Preferences; amended the nomenclature of certain subheadings of the Harmonized Tariff Schedules of the United States (HTSUS) to restore GSP eligibility for certain articles that had previously lost eligibility; restored GSP benefits for certain articles from India for which GSP eligibility had been removed by Proclamation 64225 of April 29, 1992; restored GSP benefits for certain articles from Pakistan for which GSP eligibility had been removed by Proclamation 6942 of October 17, 1996; designated Serbia and Montenegro as a beneficiary developing country for the purposes of the GSP; and determined that currently qualifying members of the South Asian Association for Regional Cooperation (SAARC) should be treated as a one country for purposes of the GSP. Several of these actions were taken to assist in the economic rejuvenation of countries impacted by the devastating December 2004 tsunami.

2005 GSP Annual Review

On May 9, 2005, a notice was published in the *Federal Register* announcing that USTR would receive petitions to modify the list of products eligible for duty-free treatment under the GSP program, and to modify the GSP status of certain beneficiary developing countries because of country practices. This notice initiated the 2005 Annual Review.

Federal Register notices were published in subsequent months that announced which product petitions were accepted for further review and the timetable for the hearing, solicitation of public comments, availability of the ITC Aprobable economic impacts@ study, and final decision. Notices were also published in 2005 in the *Federal Register* with the timetable for the hearing and public comments on the 2005 and ongoing Country Practice Reviews. A *Federal Register* notice was also published that informed the public of the availability of import statistics relating to competitive need limitations (CNLs) and inviting public comment regarding possible *de minimis* CNL waivers and redesignations.

Overall Review of the GSP Program

On October 6, 2005, a notice was published in the *Federal Register* requesting comments on whether the Administration=s operations of the GSP program should be changed so that benefits are not focused on trade from a few countries, and so that developing countries that traditionally have not been major traders under the program receive enhanced benefits. The notice also invited comments on the period for which Congress should reauthorize the GSP Program.

Designation of Eligible Beneficiary Countries

On December 29, 2005, a notice was published in the *Federal Register* announcing the review, including solicitation of public comments, to consider designation of Liberia as an LDBDC.