V. Trade Enforcement Activities

A. Enforcing U.S. Trade Agreements

1. Overview

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

- Asserting U.S. rights through the mechanisms in the World Trade Organization (WTO), including the stronger dispute settlement mechanism created in the Uruguay Round, and the WTO Bodies and Committees charged with monitoring implementation and with surveillance of agreements and disciplines;
- Vigorously monitoring and enforcing bilateral agreements;
- Invoking U.S. trade laws in conjunction with bilateral and WTO mechanisms to promote compliance;
- Providing technical assistance to trading partners, especially in developing countries, to ensure that key agreements like the Agreement on Basic Telecommunications and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) are implemented on schedule; and
- Promoting U.S. interests under the NAFTA through NAFTA's trilateral work program, tariff acceleration, and use, or threat of use, of NAFTA's dispute settlement mechanism, including using its labor and environmental side agreements to promote fairness for workers and effective enviromental protection.

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

To ensure the enforcement of WTO agreements, the United States has been one of the world's most frequent users of WTO dispute settlement procedures. Since the establishment of the WTO, the United States has filed 64 complaints at the WTO, thus far successfully concluding 37 of them by settling 20 cases favorably and prevailing on 17 others through litigation in WTO panels and the Appellate Body. The United States has obtained favorable settlements and favorable panel rulings in virtually all sectors, including manufacturing, intellectual property, agriculture, and services. These cases cover a number of WTO agreements—involving rules on trade in goods, trade in services, and intellectual property protection—and affect a wide range of sectors of the U.S. economy.

Satisfactory settlements. Our hope in filing cases, of course, is to secure U.S. benefits rather than to engage in prolonged litigation. Therefore, whenever possible we have sought to reach favorable settlements that eliminate the foreign violation without having to resort to panel proceedings. We have been able to achieve this preferred result in 20 of the 37 cases concluded so far, involving: Australia's ban on salmon imports; Belgium's duties on rice imports; Brazil's auto investment measures; Brazil's patent law; Denmark's civil procedures for intellectual property enforcement; the EU's market access for grains; an EU import surcharge on corn gluten feed; Greece's protection of copyrighted motion pictures and television programs; Hungary's agricultural export subsidies; Ireland's protection of copyrights; Japan's protection of sound recordings; Korea's shelf-life standards for beef and pork; Mexico's restrictions on hog imports; Pakistan's protection of patents; the Philippines' market access for pork and poultry; the Philippines' auto regime; Portugal's protection of patents; Romania's customs valuation regime; Sweden's enforcement of intellectual property rights; and Turkey's box-office taxes on motion pictures.

Litigation successes. When our trading partners have not been willing to negotiate settlements, we have pursued our cases to conclusion, prevailing in 17 cases so far, involving: Argentina's tax and duties on textiles, apparel, and footwear; Australia's export subsidies on automotive leather; Canada's barriers to the sale and distribution of magazines; Canada's export subsidies and an import barrier on dairy products; Canada's law protecting patents; the EU's import barriers on bananas; the EU's ban on imports of beef; India's import bans and other restrictions on 2,700 items; India's protection of patents on pharmaceuticals and agricultural chemicals; India's and Indonesia's measures that discriminated against imports of U.S. automobiles; Japan's restrictions affecting imports of apples, cherries, and other fruits; Japan's barriers to apple imports; Japan's and Korea's discriminatory taxes on distilled spirits; Korea's beef imports; and Mexico's antidumping duties on high-fructose corn syrup.

USTR also works to ensure the most effective use of U.S. trade laws to complement its litigation strategy and to address problems that are outside the scope of the WTO and NAFTA. USTR has effectively applied Section 301 of the Trade Act of 1974 to address unfair foreign government measures, "Special 301" for intellectual property rights enforcement, Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 for telecommunications trade problems, and Title VII of the 1988 Act to address problems in foreign government procurement. The application of these trade law tools is described further below.

2. WTO Dispute Settlement

2003 Activities

In 2003, the United States filed four new complaints under WTO dispute settlement procedures involving Egypt's tariffs on textile and apparel products, the European Community's protection of trademarks and geographical indications, the European Community's restrictions on biotechnology products, and Mexico's antidumping duties on rice and beef. The United States also initiated panel proceedings on a case begun earlier involving Canada's unfair practices with respect to wheat.

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

3. Other Monitoring and Enforcement Activities

a. Subsidies Enforcement

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

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

The primary mandate of the SEO is to examine subsidy complaints and concerns raised by U.S. exporting companies and to monitor foreign subsidy practices to determine whether they are impeding U.S. exports to foreign markets and are inconsistent with the Subsidies Agreement. Once sufficient information about a subsidy practice has been gathered to permit the matter to be reliably evaluated, USTR and Commerce will confer with an interagency team to determine the most effective way to proceed. It is frequently advantageous to pursue resolution of these problems through a combination of informal and formal contacts, including, where warranted, dispute settlement action in the WTO. Remedies for violations of the Subsidies Agreement may, under certain circumstances, involve the withdrawal of a subsidy program or the elimination of the adverse effects of the program.

During this past year, SEO staff have handled numerous inquiries and met with representatives of U.S. industries concerned about the subsidization of foreign competitors. They have also deepened their interaction and coordination with Import Administration's Trade Remedy Compliance Staff (TRCS) to identify, track and, where appropriate, address various foreign government policies, business practices and trade trends that may contribute to the development of subsidy and other unfair trade problems. These efforts have been facilitated by stationing TRCS officers overseas (currently in China and Korea), who help gather and verify the accuracy of information concerning foreign subsidy practices, and can play a pivotal role in clarifying or resolving problems that otherwise might lead to harm to U.S. commercial interests and unnecessary frictions with our trading partners.

Meanwhile, the SEO's electronic subsidies database continues to fulfill the goal of providing the U.S. trading community a centralized location to obtain information about the remedies available under the Subsidies Agreement and much of the information that is needed to develop a countervailing duty case or a WTO subsidies complaint. The website (http://ia.ita.doc.gov/esel/index.html) includes information on all the foreign subsidy programs that have been investigated in U.S. countervailing duty cases since 1980, covering more than 50 countries and over 2,000 government practices. This database is updated monthly, making information on subsidy programs investigated or reviewed quickly available to the public.

b. Monitoring Foreign Antidumping and Countervailing Duty Actions

The WTO Agreement on Implementation of Article VI (Antidumping Agreement) and the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) permit WTO Members to impose antidumping or countervailing duties to offset injurious dumping or subsidization of products exported from one

Member country to another. The United States carefully monitors antidumping and countervailing duty proceedings initiated against U.S. exporters to ensure that foreign antidumping and countervailing duty actions are administered fairly and in full compliance with the WTO Agreements.

To this end, the Department of Commerce, via the TRCS, tracks foreign antidumping and countervailing duty actions involving U.S. exporters and gathers information collected from U.S. embassies worldwide, enabling U.S. companies and U.S. government agencies to watch other Members' administration of antidumping and countervailing duty actions involving U.S. companies. Information about foreign antidumping and countervailing duty actions affecting U.S. exports is accessible to the public via the Department of Commerce's Import Administration website at http://ia.ita.doc.gov/foradcvd/index.html, and at the TRCS website, http://ia.ita.doc.gov/trcs/index.html. The deployment of IA officers to certain overseas locations, as noted above, has contributed importantly to the Administration's efforts to monitor the application of foreign trade remedy laws with respect to U.S. exports.

Based in part on this monitoring activity, the United States has filed a WTO case against Mexico's anti-dumping measures on U.S. exports of rice, as well as certain changes to Mexico's foreign trade laws. Among other antidumping investigations of U.S. goods that were closely monitored in the past year are the European Union's investigation of certain cold-rolled stainless steel, Mexico's antidumping measures on live swine (rescinded in May 2003 as a result of WTO consultations and following a changed circumstances review) and China's investigations of art paper, optical fiber, and several chemical products.

Members must notify on an ongoing basis without delay their preliminary and final determinations to the WTO. Twice a year, WTO Members must also notify the WTO of all antidumping and countervailing duty actions they have taken during the preceding six-month period. The actions are identified in semi-annual reports submitted for discussion in meetings of the relevant WTO committees. Finally, Members are required to notify the WTO of changes in their antidumping and countervailing duty laws and regulations. These notifications are accessible through the USTR and Import Administration website "links" to the WTO's website.

B. U.S. Trade Laws

1. Section 301

Section 301 of the Trade Act of 1974, as amended (the Trade Act), is the principal U.S. statute for addressing foreign unfair practices affecting U.S. exports of goods or services. Section 301 may be used to enforce U.S. rights under bilateral and multilateral trade agreements and also may be used to respond to unreasonable, unjustifiable, or discriminatory foreign government practices that burden or restrict U.S. commerce. For example, Section 301 may be used to obtain increased market access for U.S. goods and services, to provide more equitable conditions for U.S. investment abroad, and to obtain more effective protection worldwide for U.S. intellectual property.

The USTR has initiated 121 investigations pursuant to Section 301 since the statute was first enacted in 1974.

a. Operation of the Statute

The Section 301 provisions of the Trade Act provide a domestic procedure whereby interested persons may petition the USTR to investigate a foreign government policy or practice and take appropriate action. The USTR also may self-initiate an investigation. In each investigation the USTR must seek consultations with the foreign government whose acts, policies, or practices are under investigation. If the consultations do not result in a settlement and the investigation involves a trade agreement, Section 303 of the Trade Act requires the USTR to use the dispute settlement procedures that are available under that agreement.

If the matter is not resolved by the conclusion of the investigation, Section 304 of the Trade Act requires the USTR to determine whether the practices in question deny U.S. rights under a trade agreement or whether they are unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce. If the practices are determined to violate a trade agreement or to be unjustifiable, the USTR must take action. If the practices are determined to be unreasonable or discriminatory and to burden or restrict U.S. commerce, the USTR must determine whether action is appropriate and, if so, what action to take. The time period for making these determinations varies according to the type of practices alleged. Investigations of alleged violations of trade agreements with dispute settlement procedures must be concluded within the earlier of 18 months after initiation or 30 days after the conclusion of dispute settlement proceedings, whereas investigations of alleged unreasonable, discriminatory, or unjustifiable practices (other than the failure to provide adequate and effective protection of intellectual property rights) must be decided within 12 months.

The range of actions that may be taken under Section 301 is broad and encompasses any action that is within the power of the President with respect to trade in goods or services or with respect to any other area of pertinent relations with a foreign country. Specifically, the USTR may: (1) suspend trade agreement concessions; (2) impose duties or other import restrictions; (3) impose fees or restrictions on services; (4) enter into agreements with the subject country to eliminate the offending practice or to provide compensatory benefits for the United States; and/or (5) restrict service sector authorizations.

After a Section 301 investigation is concluded, the USTR is required to monitor a foreign country's implementation of any agreements entered into, or measures undertaken, to resolve a matter that was the subject of the investigation. If the foreign country fails to comply with an agreement or the USTR considers that the country fails to implement a WTO dispute panel recommendation, the USTR must determine what further action to take under Section 301.

During 2003, there were new or ongoing actions or other major developments in the following Section 301 investigations. (For a description of WTO dispute settlement procedures related to Section 301 investigations, see Chapter II).

b. Intellectual Property Laws and Practices of the Government of Ukraine (301-121)

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

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

Ukrainian products, and the office of the USTR sought public comment on a preliminary product list. On December 11, 2001, the USTR determined that appropriate additional action included the imposition of 100 percent duties on a list of 23 Ukrainian products with an annual trade value of approximately $75 million. The increased duties went into effect on January 23, 2002.

Consultations with the Government of Ukraine continued, but Ukraine failed to take all of the steps needed to stop high levels of optical media piracy. Accordingly, the suspension of GSP benefits and increased duties on certain Ukrainian products remained in effect throughout 2003.

c. EC—Measures Concerning Meat and Meat Products (Hormones) (301-62a)

An EC directive prohibits the import of animals, and meat from animals, to which certain hormones had been administered (the "hormone ban"). This measure has the effect of banning nearly all imports of beef and beef products from the United States. A WTO panel and the Appellate Body found that the hormone ban was inconsistent with the EC's WTO obligations because the ban was not based on scientific evidence, a risk assessment, or relevant international standards. Under WTO procedures, the EC was to have come into compliance with its obligations by May 13, 1999, but failed to do so. Accordingly, in May 1999 the United States requested authorization from the DSB to suspend the application to the EC, and Member States thereof, of tariff concessions and related obligations under the GATT. The EC did not contest that it had failed to comply with its WTO obligations but objected to the level of suspension proposed by the United States.

On July 12, 1999, WTO arbitrators determined that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent hormone ban was $116.8 million per year. Accordingly, on July 26, 1999, the DSB authorized the United States to suspend the application to the European Community's and its Member States of tariff concessions and related obligations under the GATT covering trade up to $116.8 million per year. In a notice published in July 1999, the USTR announced that the United States was exercising this authorization by imposing 100 percent *ad valorem* duties on certain products of certain EC Member States.

Pursuant to Section 307 of the Trade Act, in May 2003 USTR notified representatives of the domestic beef industry that the increased duties would terminate unless USTR received a written request prior to July 29, 2003 for a continuation of the increased duties. Beef industry representatives responded prior to July 29, 2003 by requesting in writing that the increased duties remain in place until the United States and the EC reach a satisfactory solution to the dispute. Accordingly, the increased duties were continued under Section 307 of the Trade Act.

The increased duties remained in place throughout 2003. While talks have continued with the aim of reaching a mutually satisfactory solution to the dispute, no resolution has been reached.

2. Special 301

During the past year, the United States continued to implement vigorously the Special 301 program, resulting in continued improvement in the global intellectual property environment. Publication of the Special 301 lists indicates those trading partners whose intellectual property protection regimes most concern the United States, and alerts those considering trade or investment relationships with such countries that their intellectual property rights (IPR) may not be adequately protected.

Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act of 1974, under Special 301 provisions, USTR must identify those countries that deny adequate and effective protection for IPR or deny fair and equitable market access for persons that rely on intellectual property protection. Countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on the relevant U.S. products must be designated as "Priority Foreign Countries."

Priority Foreign Countries are potentially subject to an investigation under the Section 301 provisions of the Trade Act of 1974. USTR may not designate a country as a Priority Foreign Country if it is entering into good faith negotiations or making significant progress in bilateral or 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 their bilateral intellectual property agreements. USTR may apply sanctions if a country fails to comply.

a. 2003 Special 301 Review Announcements

On May 1, 2003, United States Trade Representative Robert B. Zoellick announced the results of the 2003 "Special 301" annual review, which examined in detail the adequacy and effectiveness of intellectual property protection in approximately 74 countries. Under the Special 301 provisions of the Trade Act of 1974, as amended, USTR identified 49 trading partners that deny adequate and effective protection of intellectual property and/or equitable market access to U.S. artists and industries that rely upon intellectual property protection.

In the report, USTR noted the continued designation of Ukraine as a Priority Foreign Country due to its persistent failure to take effective action against significant levels of optical media piracy and to implement intellectual property laws that provide adequate and effective protection. As a result, the $75 million in sanctions imposed on Ukrainian products on January 23, 2002, remain in place. This continued failure to adequately protect intellectual property rights could also jeopardize Ukraine's efforts to join the World Trade Organization (WTO) and seriously undermine its efforts to attract trade and investment. The U.S. Government continues to remain actively engaged with Ukraine in encouraging the nation to combat piracy and enact the necessary intellectual property rights legislation and regulations.

Paraguay and China continued to be designated for "Section 306 monitoring" to ensure both countries comply with the commitments to the United States under bilateral intellectual property agreements. Paraguay's agreement is also in the process of being renegotiated in 2003-04.

Furthermore, 11 trading partners were placed on the "Priority Watch List": Argentina, Bahamas, Brazil, the EU, India, Indonesia, Lebanon, the Philippines, Poland, Russia, and Taiwan. An additional 36 trading partners were placed on the "Watch List." USTR also announced an "out-of-cycle" (OCR) review for the Republic of Korea.

b. Ongoing Initiatives

i. Global Scourge of Counterfeiting and Piracy

One area of particular concern for the 2003 Special 301 report was counterfeiting and digital piracy, which has increased dramatically in recent years. Unfortunately, in the area of counterfeiting, what was once a localized industry concentrated on the copying of high-end designer goods has now become a massive, sophisticated global business involving the manufacturing and sale of counterfeit versions of everything from soaps, shampoos, razors, and batteries to cigarettes, alcoholic beverages, and automobile parts, as well as medicines and health care products.

Counterfeiting of such a broad range of products on a global scale affects more than just the companies that produce legitimate products. While it has a direct impact on the sales and profits of those companies, counterfeits also hurt the consumers who waste their money and sometimes put themselves at risk by purchasing fake goods. It also hurts the countries concerned by decreasing tax revenues and deterring investments. In addition, counterfeiters pay no taxes or duties and do not comply with basic manufacturing standards for the health and safety of workers or product quality and performance.

Piracy and counterfeiting of copyrighted products in digital format, as well as counterfeiting of all types of trademarked products, have grown to such a scale because they offers enormous profits and little risk for the criminal element of society. Criminals can get into the counterfeiting business with little capital investment, and even if caught and charged with a crime, the penalties in many countries are so low that they offer no deterrent. This is why USTR seeks, through our free trade agreements and our bilateral consultations, to ensure that criminal penalties are high enough to have a deterrent effect, as well as to ensure that pirated and counterfeit products, and the equipment used to make them are seized and destroyed. These products can be produced and sold at prices much lower than legitimate products, but still deliver attractive profit margins for the infringer because the counterfeit and pirated products are usually made with substandard materials, and undergo little or no quality control or even basic health and safety testing. The economic damage caused by counterfeiting to the legitimate companies whose products are counterfeited is enormous. Losses to U.S. industries alone are estimated at $200 to $250 billion per year.

ii. Controlling Optical Media Production

Over the past year, some of our trading partners, such as Malaysia and Taiwan, have taken important steps toward implementing, or have committed to adopt, much needed controls on optical media production. However, others that are in urgent need of such controls, including Ukraine, Thailand, Indonesia, Pakistan, the Philippines, and Russia, have not made sufficient progress in this regard.

Governments such as those of China, Hong Kong, and Macau that implemented optical media controls in previous years have clearly demonstrated their commitment to continue to enforce these measures, although continued effort is necessary. The effectiveness of such measures is underscored by the direct experience of these governments in successfully reducing pirated production of optical media. We continue to urge our trading partners facing the threat of pirate optical media production within their borders to adopt similar controls or aggressively enforce existing regulations in the coming year. USTR is concerned, moreover, about recent reports of increased piracy and counterfeiting in Bulgaria, which had been a model in its region for taking the necessary steps to tackle optical media piracy by, for example, enacting optical media controls. Particularly troubling are reports that the CD plant licensing laws may be revised in a manner that would undermine, not improve, their effectiveness. We will be closely monitoring the situation and look to the Government of Bulgaria to maintain strong optical disc regulations.

iii. Implementation of the WTO TRIPS Agreement

One of the most significant achievements of the Uruguay Round was the negotiation of the TRIPS Agreement, which requires all WTO Members to provide certain minimum standards of protection for patents, copyrights, trademarks, trade secrets, geographical indications, and other forms of intellectual property. The Agreement also requires countries to provide effective enforcement of these rights. The TRIPS Agreement is the first broadly subscribed multilateral intellectual property agreement that is enforceable between governments, allowing them to resolve disputes through the WTO's dispute settlement mechanism.

Developed countries were required to fully implement TRIPS as of January 1, 1996, while developing countries were given a transition period until January 1, 2000. Ensuring that developing countries are in full compliance with the Agreement now that this transition period has come to an end is one of this Administration's highest priorities with respect to intellectual property rights. With respect to least developed countries, and with respect to the protection of pharmaceuticals and agriculture chemicals in certain developing countries, even longer transitions are provided.

Progress continues to be made by developing countries toward full implementation of their TRIPS obligations. Nevertheless, certain countries are still in the process of finalizing implementing legislation and establishing adequate enforcement mechanisms. Every year the U.S. Government provides extensive technical assistance and training on the implementation of the TRIPS Agreement, as well as other international intellectual property agreements, to a large number of U.S. trading partners. Such assistance is provided by a number of U.S. Government agencies, including the U.S. Patent and Trademark Office, the U.S. Copyright Office, the State Department, the U.S. Customs Service, and the Justice Department, on a country-by-country basis, as well as in group seminars, including those co-sponsored with the World Intellectual Property Organization (WIPO) and the WTO. Technical assistance involves review of, and drafting assistance on, laws concerning intellectual property and enforcement. Training programs usually cover the substantive provisions of the TRIPS Agreement, as well as enforcement. The United States will continue to work with WTO Members and expects further progress in the near term to complete the TRIPS implementation process. However, in those instances where additional progress is not achieved in the near term, the United States will pursue our rights through WTO dispute settlement proceedings.

One key implementation priority that we have focused on in this review is the implementation of Article 39.3, which requires WTO Members to protect test data submitted by drug companies to health authorities against disclosure of that data and against unfair commercial use of that data.

Most countries, including the United States, impose stringent regulatory testing requirements on companies seeking to market a new drug or agricultural chemical product. Many countries have recognized, however, the value of allowing abbreviated approval procedures for second-comers seeking to market an identical product to one that has already been approved. Generally, these second applicants may be required to demonstrate only the bioequivalence of their products with the product of the first company, and will not be required to repeat all of the expensive and laborious clinical tests conducted by the first company to prove the safety of the product.

However, because of the expense involved in producing the safety and efficacy data needed to obtain marketing approval, the TRIPS Agreement recognizes that the original applicant should be entitled to a period of exclusivity during which second-comers may not rely on the data that the innovative company has created to obtain approval for their copies of the product. During this period of exclusive use, the data cannot be relied upon by regulatory officials to approve similar products. This period of exclusivity is generally five years in the United States and six to 10 years in the EC Member States. Other countries that provide a period of exclusivity against reliance on data include Australia, Canada, China, Czech Republic, Estonia, Japan, Jordan, Korea, Mexico, New Zealand, Slovenia, and Switzerland. We commend Hungary and Colombia on their recently implemented decrees that provide data protection. We urge all WTO members to swiftly complete their implementation of Article 39.3, including the rest of the countries in the Andean Community, as well as Israel.

iv. Internet Piracy and the WIPO Copyright Treaties

Throughout the world, countries have begun to recognize the importance of the Internet as a vehicle for economic expansion. However, despite the promise that the Internet holds for innovative and creative industries, it also creates significant challenges, as it serves as an extremely efficient global distribution network for pirated products. We are currently working with other governments, and consulting with U.S. industry, to develop the best strategy to address Internet piracy.

An important first step in the fight against Internet piracy was achieved at the World Intellectual Property Organization (WIPO) when it concluded two copyright treaties in 1996: the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), referred to as the WIPO Internet Treaties. These treaties help raise the minimum standards of intellectual property protection around the world, particularly with respect to Internet-based delivery of copyrighted works. They clarify exclusive rights in the on-line environment and specifically prohibit the devices and services intended to circumvent technological protection measures for copyrighted works. Both treaties entered into force in 2002.

These treaties represent the consensus view of the world community that the vital framework of protection under existing agreements, including the TRIPS Agreement, should be supplemented to eliminate any remaining gaps in copyright protection on the Internet that could impede the development of electronic commerce.

In order to realize the enormous potential of the Internet, a growing number of countries are implementing the WIPO Internet Treaties and creating a legal environment conducive to investment and growth in Internet-related businesses and technologies. In the competition for foreign direct investment, these countries now hold a decided advantage. We urge other governments to ratify and implement the two WIPO Internet Treaties.

v. Other Initiatives Regarding Internet Piracy

We are seeking to incorporate the highest standards of protection for intellectual property into appropriate bilateral and regional trade agreements that we negotiate. We had our first success in this effort by incorporating the standards of the WIPO Internet Treaties as substantive obligations in our FTAs with Jordan, Chile, and Singapore. Moreover, our proposals in these negotiations will further update copyright and enforcement obligations to reflect the technological challenges we face today as well as those that may exist at the time negotiations are concluded.

vi. Government Use of Software

In October 1998, the United States announced a new Executive Order directing U.S. Government agencies to maintain appropriate and effective procedures to ensure legitimate use of software. In addition, USTR was directed to undertake an initiative to work with other governments, particularly those in need of modernizing their software management systems or about which concerns have been expressed, regarding inappropriate government use of illegal software.

The United States has achieved considerable progress under this initiative. Countries that have issued decrees mandating the use of only authorized software by government ministries include Bolivia, China, Chile, Colombia, Costa Rica, the Czech Republic, France, Ireland, Israel, Jordan, Paraguay, Thailand, the United Kingdom, Spain, Peru, Greece, Turkey, Hungary, Korea, Hong Kong, Macau, Lebanon, Taiwan, and the Philippines. Ambassador Zoellick was pleased that these governments have recognized the importance of setting an example in this area and expects that these decrees will be fully implemented. The United States looks forward to the adoption of similar decrees, with effective and transparent procedures that ensure legitimate use of software, by additional governments in the coming year.

3. Section 1377 Review of Telecommunications Agreements

Section 1337 of the Omnibus Trade and Competitiveness Act of 1988 requires USTR to review , by March 31 of each year, the operation and effectiveness of U.S. telecommunications trade agreements. The purpose of the review is to determine whether any act, policy, or practice of a foreign country that has entered into a telecommunications-related agreement with the United States (1) is not in compliance with the terms of the agreement or (2) otherwise denies, within the context of the agreement, mutually advantageous market opportunities to telecommunications products and services of U.S. firms in that country.

The 2003 Section 1377 review focused on the following issues: (1) unjustifiably high prices for the service of connecting U.S. networks with both fixed and mobile networks in countries as diverse as Argentina, the Dominican Republic, Germany, Mexico and Switzerland; (2) lack of reasonable access to leased lines, particularly in Australia, France, Germany, Mexico and Singapore; and (3) willingness of foreign authorities to tolerate breaches of domestic telecom rules by favored companies.

USTR has urged national regulators to fulfill their responsibility to address such problems, and initial signs were promising. For example, some foreign regulators (e.g., the United Kingdom) have addressed the issue of high charges for access to mobile networks, and some governments are developing tools for regulators to combat anti-competitive practices. USTR remains concerned, however, with the lack of clear regulatory independence in many countries and will continue to monitor developments in this area.

Mexico

A WTO dispute settlement panel held further hearings on the case against Mexico requested by the United States. The focus of the panel request was: (1) Mexico's failure to ensure that Telmex (Mexico's major supplier of telecommunications) provides U.S. telecom companies interconnection at "cost-oriented" rates and reasonable terms and conditions; and (2) Mexico's refusal to allow U.S. companies to send their calls into and out of Mexico over leased lines. A panel decision is expected in early 2004.

4. Antidumping Actions

Under the antidumping law, duties are imposed on imported merchandise when the Department of Commerce determines that the merchandise is being dumped (sold at "less than fair value" (LTFV)) and the U.S. International Trade Commission (USITC) determines that there is material injury or threat of material injury to the domestic industry, or material retardation of the establishment of an industry, "by reason of" those imports. The antidumping law's provisions are incorporated in Title VII of the Tariff Act of 1930 and have been substantially amended by the 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 minimum requirements for filing, Commerce initiates an antidumping investigation. Commerce also may initiate an investigation on its own motion.

After initiation, the USITC decides, generally within 45 days of the filing of the petition, whether there is a "reasonable indication" of material injury or threat of material injury to a domestic industry, or material retardation of an industry's establishment, "by reason of" the LTFV imports. If this preliminary determination by the USITC is negative, the investigation is terminated; if it is affirmative, the case shifts back to Commerce for preliminary and final inquiries into the alleged LTFV sales into the U.S. market. If Commerce's preliminary determination is affirmative, Commerce will direct U.S. Customs to suspend liquidation of entries and require importers to post a bond equal to the estimated weighted average dumping margin.

If Commerce's final determination of LTFV sales is negative, the investigation is terminated. If affirmative, the USITC makes a final injury determination. If the USITC determines that there is material injury or threat of material injury, or material retardation of an industry's establishment, by reason of the LTFV imports, an antidumping order is issued. If the USITC's final injury determination is negative, the investigation is terminated and the Customs bonds released.

Upon request of an interested party, Commerce conducts annual reviews of dumping margins pursuant to Section 751 of the Tariff Act of 1930. Section 751 also provides for Commerce and USITC review in cases of changed circumstances and periodic review in conformity with the five-year "sunset" provisions of the U.S. antidumping law and the WTO antidumping agreement.

Most antidumping determinations may be appealed to the U.S. Court of International Trade, with further judicial review possible in the U.S. Court of Appeals for the Federal Circuit. For certain investigations involving Canadian or Mexican merchandise, appeals may be made to a binational panel established under the NAFTA.

The numbers of antidumping investigations initiated in and since 1986 are as follows: 83 in 1986; 16 in 1987; 42 in 1988; 24 in 1989; 35 in 1990; 66 in 1991; 84 in 1992; 37 in 1993; 51 in 1994; 14 in 1995; 21 in 1996; 15 in 1997; 36 in 1998; 46 in 1999; 45 in 2000; 77 in 2001; 35 in 2002, and 37 in 2003. The numbers of antidumping orders (not including suspension agreements) imposed in and since 1986 are: 26 in 1986; 53 in 1987; 12 in 1988; 24 in 1989; 14 in 1990; 19 in 1991; 16 in 1992; 42 in 1993; 16 in 1994; 24 in 1995; 9 in 1996; 7 in 1997; 9 in 1998; 19 in 1999; 20 in 2000; 30 in 2001; 27 in 2002, and 15 in 2003. Under its sunset review procedures, Commerce revoked 57 antidumping duty orders and continued 72 orders in 2000; revoked 12 antidumping duty orders and continued 22 orders in 2001; revoked 9 antidumping duty orders and continued 2 orders in 2002; and revoked 2 antidumping duty orders and continued 5 orders in 2003.

5. Countervailing Duty Actions

The U.S. countervailing duty (CVD) law dates back to late 19th century legislation authorizing the imposition of CVDs on subsidized sugar imports. The current CVD provisions are contained in Title VII of the Tariff Act of 1930. As with the antidumping law, the USITC and the Department of Commerce jointly administer the CVD law.

The CVD law's purpose is to offset certain foreign government subsidies benefiting imports into the United States. CVD procedures under Title VII are very similar to antidumping procedures, and CVD determinations by Commerce and the USITC are subject to the same system of judicial review as are antidumping determinations. Commerce normally initiates investigations based upon a petition submitted by a representative of the interested party(ies). The USITC is responsible for investigating material injury issues. The USITC must make a preliminary finding of a reasonable indication of material injury or threat of material injury, or material retardation of an industry's establishment, by reason of the imports subject to investigation. If the USITC's preliminary determination is negative, the investigation terminates; otherwise, Commerce issues preliminary and final determinations on subsidization. If Commerce's final determination of subsidization is affirmative, the USITC proceeds with its final injury determination.

The numbers of CVD investigations initiated in and since 1986 are as follows: 28 in 1986; 8 in 1987; 17 in 1988; 7 in 1989; 7 in 1990; 11 in 1991; 22 in 1992; 5 in 1993; 7 in 1994; 2 in 1995; 1 in 1996; 6 in 1997; 11 in 1998; 10 in 1999; 7 in 2000; 18 in 2001, 3 in 2002, and 5 in 2003. The numbers of CVD orders imposed in and since 1986 are: 13 in 1986; 14 in 1987; 7 in 1988; 6 in 1989; 2 in 1990; 2 in 1991; 4 in 1992; 16 in 1993; 1 in 1994; 2 in 1995; 2 in 1996; 0 in 1997; 1 in 1998; 6 in 1999; 6 in 2000, 6 in 2001, none in 2002, and 2 in 2003. Under its sunset review procedures, Commerce revoked 8 countervailing duty orders and continued 22 orders in 2000; revoked 1 countervailing duty order and continued 5 orders in 2001; revoked no countervailing duty orders and continued no orders in 2002; and revoked no countervailing duty orders and continued no orders in 2003.

6. Other Import Practices

a. Section 337

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

The USITC conducts Section 337 investigations through adjudicatory proceedings under the Administrative Procedure Act. The proceedings normally involve an evidentiary hearing before a USITC administrative law judge who issues an Initial Determination that is subject to review by the Commission. If the USITC finds a violation, it can order that imported infringing goods be excluded from the United States and/or issue cease and desist orders requiring firms to stop unlawful conduct in the United States, such as the sale or other distribution of imported goods in the United States. Many Section 337 investigations are terminated after the parties reach settlement agreements or agree to the entry of consent orders.

In cases in which the USITC finds a violation of Section 337, it must decide whether certain public interest factors nevertheless preclude the issuance of a remedial order. Such public interest considerations include an order's effect on the public health and welfare, U.S. consumers, and the production of similar U.S. products.

If the USITC issues a remedial order, it transmits the order, determination, and supporting documentation to the President for policy review. Importation of the subject goods may continue during this review process, if the importer pays a bond set by the USITC. If the President does not disapprove the USITC's action within 60 days, the USITC's order becomes final. Section 337 determinations are subject to judicial review in the U.S. Court of Appeals for the Federal Circuit with possible appeal to the U.S. Supreme Court.

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

In 2003, the USITC instituted 18 new Section 337 investigations and one ancillary advisory opinion proceeding relating to a previously issued USITC remedial order. During the year, the USITC issued three limited exclusion orders and four cease and desist orders covering imports from foreign firms, as follows: Inv. No. 337-TA-486, *Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof* (limited exclusion order); Inv. No. 337-TA-482, *Certain Compact Disc and DVD Holders* (limited exclusion order); Inv. No. 337-TA-460, *Certain Sortation Systems, Parts Thereof, and Products Containing Same* (limited exclusion order); Inv. No. 337-TA-406, *Certain Lens Fitted Film Packages* (four cease and desist orders). A limited exclusion order covers only certain imports from particular named sources (as contrasted with a general exclusion order, which covers certain products from all sources). The President permitted all the limited exclusion orders and cease and desist orders to go into effect during 2003.

b. Section 201

Section 201 of the Trade Act of 1974 provides a procedure whereby the President may grant temporary import relief if increased imports are a substantial cause of serious injury or the threat of serious injury. Relief may be granted for an initial period of up to four years, with the possibility of extending the relief to a maximum of eight years. Import relief is designed to redress the injury and to facilitate positive adjustment by the domestic industry and may consist of increased tariffs, quantitative restrictions, or other forms of relief. Section 201 also authorizes the President to grant provisional relief in cases involving "critical circumstances" or certain perishable agricultural products.

For an industry to obtain relief under Section 201, the United States International Trade Commission (USITC) must first determine that a product is being imported into the United States in such increased quantities as to be a substantial cause (a cause which is important and not less than any other cause) of serious injury, or the threat thereof, to the U.S. industry producing a like or directly competitive product. If the USITC makes an affirmative injury determination (or is equally divided on injury) and recommends a remedy to the President, the President may provide relief either in the amount recommended by the USITC or in such other amount as he finds appropriate. The criteria for import relief in Section 201 are based on Article XIX of the GATT 1994—the so-called "escape clause"—and the WTO Agreement on Safeguards.

As of January 1, 2003, the United States had safeguard measures in place on the following imported steel products: (1) certain carbon flat-rolled steel, including carbon and alloy steel slabs (slabs), plate (including cut-to-length plate and clad plate), hot-rolled steel (including plate in coils), cold-rolled steel (other than grain-oriented electrical steel), corrosion-resistant and other coated steel (collectively, certain flat steel); (2) carbon and alloy hot-rolled bar and light shapes (hot-rolled bar); (3) carbon and alloy cold-finished bar (cold-finished bar); (4) carbon and alloy rebar (rebar); (5) carbon and alloy welded tubular products (other than oil country tubular goods) (certain tubular products); (6) carbon and alloy flanges, fittings, and tool joints (carbon and alloy fittings); (7) stainless steel bar and light shapes (stainless steel bar); (8) stainless steel rod; (9) carbon and alloy tin mill products (tin mill products); and (10) stainless steel wire; (11) certain carbon steel wire rod; and (12) circular welded carbon quality line pipe

The measures on certain steel wire rod and circular welded carbon quality line pipe were imposed on March 1, 2000. They expired on March 1, 2003.

Effective March 20, 2002, the President imposed a safeguard measure on certain flat steel in the form of a TRQ on slabs and a tariff on other certain flat steel. At the same time, the President imposed tariffs on hot-rolled bar, cold-finished bar, rebar, certain tubular products, carbon and alloy fittings, stainless steel bar, stainless steel rod, tin mill products, and stainless steel wire (collectively, the "steel safeguard measures"). Subsequent to the effective date of the measure, USTR granted requests made by U.S. consumers, U.S. importers, and foreign producers that certain products that were not sufficiently available from domestic producers be excluded from these safeguard measures.

In July, 2002, the WTO formed a dispute settlement panel to consider claims brought by the European Communities, Japan, Korea, China, Switzerland, Norway, New Zealand, and Brazil that the steel safeguard measures taken on March 20, 2002 were inconsistent with WTO rules. On November 10, 2003, the WTO Appellate Body issued a report finding that the safeguard measures on steel products were inconsistent with the Safeguards Agreement and GATT 1994 in that they were based on a findings that did not comply with the Safeguards Agreement prohibition on attributing to imports injury caused by other factors, did not demonstrate the existence of unforeseen developments, and did not justify the exclusion of U.S. FTA partners from application of the measures.

On September 19, 2003, the USITC issued its midterm report on the steel safeguard measures. In view of the information provided in the USITC's report, and after seeking advice from the Secretary of Commerce and the Secretary of Labor, the President, taking into account that the measures had achieved their purpose, determined that the effectiveness of the steel safeguard measures had been impaired by changed economic circumstances, and that termination of the measures was warranted. Accordingly, the steel safeguard measures terminated on December 5, 2003.

c. Section 421

The terms of China's accession to the WTO include a unique, China-specific safeguard mechanism. The mechanism allows a WTO member to limit increasing imports from China that disrupt or threaten to disrupt its market, if China does not agree to take action to remedy or prevent the disruption. The mechanism applies to all industrial and agricultural goods and will be available until December 11, 2013.

Section 421 of the Trade Act of 1974, as amended by the U.S.-China Relations Act of 2000, implements this safeguard mechanism in U.S. law. For an industry to obtain relief under Section 421, the United States International Trade Commission (ITC) must first make a determination that products of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. The statute directs that if the ITC makes an affirmative determination, the President shall provide import relief, unless the President determines that provision of relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action would cause serious harm to the national security of the United States.

China's terms of accession also permit a WTO Member to limit imports where a China-specific safeguard measure imposed by another Member causes or threatens to cause significant diversions of trade into its market. The trade diversion provision is implemented in U.S. law by Section 422 of the Trade Act of 1974, as amended.

Through the end of 2003, four petitions have been filed under Section 421. On October 18, 2002, the ITC found that pedestal actuators from China were being imported in such increased quantities or under such conditions as to cause market disruption to domestic producers. On January 17, 2003, the President determined that providing import relief was not in the national economic interest of the United States. On April 9, 2003, the petitioner, Motion Systems Corporation, filed suit challenging this determination with the U.S. Court of International Trade.

On January 27, 2003, the ITC made a positive determination of market disruption in its investigation regarding imports of certain steel wire garment hangers from China. On April 25, 2003, the President determined that providing import relief was not in the national economic interest of the United States.

On June 4, 2003, the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers filed a petition regarding certain brake drums and rotors from China. On August 3, 2003, the ITC issued a negative determination regarding imports of those products.

On September 5, 2003, the ITC initiated an investigation concerning imports of certain ductile iron waterworks fittings from China, pursuant to a petition filed by a domestic producer and three of its subsidiaries. This petition was the first to allege "critical circumstances" and to request provisional relief. Section 421(i) requires that for such cases the ITC determine, on an expedited basis, whether delay in taking action would cause damage to the relevant domestic industry which would be difficult to repair and, if in the affirmative, whether imports of the product subject of the investigation have caused or threatened to cause market disruption. On October 16, 2003, the ITC made a negative critical circumstances finding. On December 4, 2003, the ITC made a positive market disruption determination. The President's determination regarding import relief is due by March 3, 2004.

d. China Textile Safeguard

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

On November 17, 2003, the interagency Committee for the Implementation of Textile Agreements (CITA) determined that imports of Chinese-origin knit fabric (Category 222), cotton and man-made fiber brassieres and other body supporting garments (Category 349/649), and cotton and man-made fiber dressing gowns and robes (Category 350/650) are, due to market disruption and the threat of market disruption, threatening to impede the orderly development of trade in these products, and that imports of these products from China play a significant role in the existence and threat of market disruption. As a result, on December 24, 2003, the United States requested consultations with China with a view to easing market disruption and avoiding the threat of market disruption.

Upon receipt of the request for consultations, China agreed to hold its shipments of these products to the United States in 2004 to a level no greater than 7.5 percent above the amount that entered the United States during the twelve-month period ending on September 30, 2003. The United States stands ready to consult with China, and to reach agreement on a mutually satisfactory solution within the 90-day consultations period prescribed in the Accession Agreement. If no such solution is reached, the United States will maintain the limits on Chinese shipments until December 23, 2004.

7. Trade Adjustment Assistance

a. Assistance for Workers

Assisting workers to obtain and maintain the skills needed to compete in the 21st century is a top priority of the Administration. The Trade Adjustment Assistance (TAA) program for workers, established under Title II, chapter 2, of the Trade Act of 1974, as amended, provides assistance for workers affected by foreign trade. Available assistance includes job retraining, trade readjustment allowances (TRA), job search assistance, relocation assistance, a health insurance tax credit, and other re-employment services. The program was most recently amended and expanded by the Trade Adjustment Assistance Reform Act (TAA Reform Act), which was part of the Trade Act of 2002, enacted on August 6, 2002.

The TAA Reform Act expanded the TAA program and repealed the North America Free Trade Agreement Transitional Adjustment Assistance (NAFTA-TAA) program. The TAA Reform Act also raised the statutory cap on funds that may be allocated to the States for training from $110 million to $220 million per year. Workers covered under certifications issued pursuant to NAFTA-TAA petitions filed on or before November 3, 2002, will continue to be covered under the provisions of the NAFTA-TAA program that were in effect on September 30, 2001. Amendments to the TAA program apply to petitions for adjustment assistance that are filed on or after November 4, 2002.

The TAA Reform Act expanded eligibility for the TAA program. For workers to be eligible to apply for TAA, the Secretary of Labor must certify that a significant number or proportion of the workers in a firm (or appropriate subdivision of the firm) have become totally or partially separated or threatened with such separation and: (1) increased imports of like or directly competitive articles contributed importantly to a decline in sales or production and to the separation or threatened separation of workers; or (2) there has been a shift in production by the workers' firm to a country that has a free trade agreement with the United States or is a beneficiary country under a U.S. trade preference program; or (3) there has been a shift in production to another country, and there has been or is likely to be an increase in imports of like or directly competitive articles; or (4) loss of business as a supplier or downstream producer for a TAA certified firm contributed importantly to worker layoffs. The fourth basis for certification is designed to cover certain secondarily-affected workers.

The U.S. Department of Labor administers the TAA program through the Employment and Training Administration (ETA). Workers certified as eligible to apply for adjustment assistance may apply for TAA benefits and services at the nearest state One Stop Career Center or office of the State Workforce Agency. In order to be eligible for TAA, workers must be enrolled in approved training within eight weeks of the issuance of the Department of Labor certification or within 16 weeks of the worker's most recent qualifying separation (whichever is later) or must have successfully completed approved training. A state may waive this requirement under six specific conditions.

The TAA Reform Act created a program of health coverage tax credits (HCTC) for certain trade-impacted workers and others. Covered individuals may be eligible to receive a tax credit equal to 65 percent of the amount they paid for qualifying coverage under qualified health insurance. The tax credit may be claimed at the end of the year, or, beginning in August 2003, a qualified individual may receive the credit in the form of monthly advance payments to the health insurance provider.

In addition, the TAA Reform Act of 2002 created an Alternative Trade Adjustment Assistance (ATAA) program for older workers who are not likely to find suitable reemployment in their local labor market. This program was implemented on August 6, 2003 and provides qualified trade-impacted workers who are over 50 years of age and find other work within 26 weeks of separation with a wage supplement of up to half the difference between their old and new salaries, in lieu of retraining. The maximum amount payable is $10,000 over a two year period, and workers must earn less than $50,000 per year in the new employment to qualify for the program.

Fact-finding investigations were instituted for 3,547 TAA petitions in fiscal year (FY) 2003. In FY 2003, 1,864 certifications were issued covering an estimated 195,870 workers, whereas 1,221 petitions covering an estimated 83,126 workers resulted in denials of eligibility to apply. Fact-finding investigations were instituted for 69 NAFTA-TAA petitions in FY 2003. In FY 2003, 180 NAFTA-TAA certifications were issued covering an estimated 17,641 workers whereas 339 NAFTA-TAA petitions covering an estimated 14,629 workers resulted in denials of eligibility to apply.

The Trade Act of 2002 also contains a provision for Trade Adjustment Assistance for Farmers, with an appropriation of not more than $90 million for each fiscal year 2003 through 2007 to be administered by the U.S. Department of Agriculture. The Secretary of Agriculture delegated authority for this program to the Administrator of the Foreign Agricultural Service.

The regulation to implement Trade Adjustment Assistance for Farmers was published in the Federal Register on August 20, 2003 (7 CFR 1580). Primary requirements for eligibility are that the price of the basic agricultural commodity in the most recent year is less than 80 percent of the average price of the previous five years, and the imports contributed importantly to the price decline.

If a group is certified as eligible for benefits, individual producers can then apply to the Farm Service Agency for technical assistance and/or cash benefits. A producer must receive technical assistance to become eligible for cash benefits. Cash benefits are subject to certain personal and farm income limits, and cannot exceed $10,000 per year to an individual producer. The cash benefit per unit is one-half of the gap between the most recent year's price and the previous five-year average price. If the funding authorized by Congress is insufficient to pay 100 percent of all claims during the fiscal year, payments will be prorated. No cash benefits were expended under this program in FY 2003.

b. Assistance for Firms and Industries

The Planning and Development Assistance Division of the Department of Commerce's Economic Development Administration (EDA) administers the TAA program for firms and industries. This program is authorized by Title II, Chapter 3, of the Trade Act of 1974, as amended, and was extended by the Trade Act of 2002 through September 30, 2007. Under the firms and industries TAA program, EDA funds a network of 12 Trade Adjustment Assistance Centers (TAACs). These TAACs are sponsored by nonprofit organizations, institutions of higher education, and a state agency. In FY 2003, EDA provided $10.4 million in funding to the TAACs. TAACs assist firms in completing petitions for certification of eligibility. To be certified as eligible to apply for TAA, a firm must show that increased imports of articles like or directly competitive with those produced by the firm contributed importantly to declines in its sales, production, or both, and to the separation or threat of separation of a significant portion of the firm's workers. In FY 2003, EDA certified 207 firms under the TAA program. Once EDA has certified a firm, the TAAC assists the firm in assessing its competitive situation and in developing an adjustment proposal. The adjustment proposal must show that the firm is aware of its strengths and weaknesses and must present a clear and rational strategy for achieving economic recovery. EDA's Adjustment Proposal Review Committee (APRC) must approve the firm's adjustment proposal. During FY 2003, the APRC approved 162 adjustment proposals from certified firms.

After the adjustment proposal is approved by the APRC, the firm may request technical assistance from the TAAC to implement its strategy. Using funds provided by the TAA program, the TAAC contracts with consultants to provide the technical assistance identified in the firm's proposal. The firm must typically pay 50 percent of the cost of each consultant contract, and the maximum amount of technical assistance available to a firm under the TAA program is $75,000. Common types of technical assistance that firms request include the development of marketing materials, the identification of new products for the firm to produce, and the identification of appropriate management information systems.

The legislation authorizes EDA to provide funding to trade associations and other organizations representing trade-injured industries to undertake technical assistance activities, which will generally benefit all firms in that industry. Since FY 1996, however, EDA has used the available program resources to support the TAAC network, which provides technical assistance to individual trade-injured firms.

8. Generalized System of Preferences

The Generalized System of Preferences (GSP) is a program that grants duty-free treatment to specified products that are imported from 147 designated developing countries, territories, and associations of countries. The program began in 1976, when the United States joined 19 other industrialized nations in granting tariff preferences to promote the economic growth of developing countries through trade expansion. The GSP program, reauthorized under the *Trade Act of 2002*, enables products within some 5,000 tariff categories (defined at the eight-digit level in the *Harmonized Tariff Schedule of the United States*) to be imported duty-free into the United States. Of this total figure, approximately 1500 tariff categories have been exclusively dedicated to the least-developed and African Growth and Opportunity Act (AGOA) countries. In 2003, GSP eligible countries were able to ship more than $20 billion to the United States duty-free under this program, not including imports under AGOA.

The premise of the GSP program is that the creation of trade opportunities for developing countries is an effective, cost-efficient way of encouraging broad-based economic development and a key means of sustaining the momentum behind economic reform and trade liberalization. In its current form, GSP is designed to assist in the integration of developing countries into the international trading system in a manner commensurate with their development. The program achieves these ends by making it easier for exporters from developing economies to compete in the U.S. market with exporters from industrialized nations while at the same time excluding from duty-free treatment under GSP those products determined by the President and the Congress to be "import-sensitive."

An important attribute of the GSP program is its ability to adapt, product by product, to changing market conditions and the changing needs of producers, workers, exporters, importers and consumers. Modifications can be made in the list of articles eligible for duty-free treatment by means of an annual review. The process begins with a *Federal Register* notice requesting the submission of petitions for modifications in the list of eligible articles. Petitions may also be submitted concerning the eligibility of countries for the GSP program. For those petitions that are accepted for full review, public hearings are held, a U.S. International Trade Commission study of the "probable economic impact" of granting product petitions is prepared, and all relevant materials are reviewed by the interagency GSP Subcommittee of the Trade Policy Staff Committee. Following completion of the review, the President announces his decision on changes to the GSP program.

The program was originally authorized for ten years and subsequently reauthorized for eight years. For several years thereafter, Congress renewed the program for only brief periods of one or two years. The GSP program has lapsed temporarily several times—September 30, 1994; July 31, 1995; May 31, 1997; June 30, 1998; July 1, 1999; and September 30, 2001. Each time it was reauthorized and duty-free treatment made retroactive to the previous expiration date, thus maintaining the continuity of the program's benefits. The program was most recently reauthorized on August 6, 2002, and is scheduled to expire on December 31, 2006.

On January 14, 2003, the President issued a proclamation making Afghanistan a GSP beneficiary country and some product eligibility changes. In March 2003, a notice published in the *Federal Register* announced the petitions accepted for review in the combined 2001/2002 annual product review and the schedule of remaining events in that review. On June 30, the President signed a Proclamation announcing changes to the Harmonized Tariff Schedule resulting from the 2001 Special Three Country Review for Argentina, the Philippines and Turkey and the 2001/2002 Annual Product Review. This action was followed by a notice announcing the outcome of each petition concerning products published in the *Federal Register* on July 3, 2003. In July 2003, notices were published in the *Federal Register* announcing initiation of a review to consider the designation of the People's Democratic Republic of Algeria as a GSP beneficiary country and extending the deadline for submissions of petitions for the 2003 Annual GSP Product and Country Eligibility Review until September. A *Federal Register* notice published in September 2003 announced the 2001, 2002, and ongoing country practice petitions that had been accepted for full review and the schedule of events remaining in that review.