II. The World Trade Organization

A. Introduction[1]

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

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

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

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

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

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

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

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

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

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

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

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

The United States was the world's largest exporter in 2003. From 1994 to 2004[2] U.S. exports of goods and services rose 63 percent, from $703 billion to $1.1 trillion. The WTO exists as the most important vehicle to advance U.S. trade interests, critical to America's workers, businesses, farmers, and ranchers. Many are dependent and all are affected by a global trading system that must operate with certainty and transparency, without discrimination against American products, and an opportunity under the rules to address unfair trade practices. In a world where 95 percent of consumers live beyond our borders, the WTO is essential for U.S. interests.

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

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

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

B. Economic Assessment

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

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

[2] Annualized from 1st eleven months.

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

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

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

Despite the overall positive tone of the U.S. employment picture, there have been significant concerns about the reduction in U.S. manufacturing jobs. In 2004, fewer than 1-in-9 U.S. workers held a manufacturing job, compared to more than 1-in-7 in 1994 and nearly 1-in-5 in 1984.

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

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

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

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

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

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

More open global markets are part of a set of factors that accelerated U.S. growth rates relative to many other countries over the last decade. Available World Bank data suggest the relative economic success of the United States since the inception of the WTO, showing that the U.S. share of global income rose from 20.8 percent to 21.5 percent between 1996 and 2002. This increase is especially noteworthy in a world in which it is widely believed that national per capita incomes tend to converge over time and that the highest income countries must usually grow at less than the average rate for all countries. Moreover, the U.S. income advantage over other high-income countries – collectively accounting for just 16 percent of global population – also rose over the same period according to World Bank data. In 1996, U.S. per capita real income exceeded the average for other high income countries by 39.3 percent. This advantage had risen to 43.1 percent by 2002.

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

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

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

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

1994 to 2004: Changes in Trade Flows

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

One of the achievements of the Uruguay Round was to increase the number of tariff lines that are "bound" by Members, guaranteeing market access opportunities (according to the UNCTAD report Post-Uruguay Round Market Access Barriers for Industrial Products (2001)). The share of industrial tariff lines with bound rates for developing countries grew from 21 percent to 73 percent, while for developed countries it grew from 78 percent to 99 percent. At the same time, developed countries' average bound tariff rates on industrial goods declined 40 percent, while bound tariff rates for developing countries were cut 25 percent on imports from developed countries and 21 percent from developing countries.

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

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

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

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

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

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

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

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

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

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

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

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

The growth in services imports, up $159 billion between 1994 and 2004, was driven by the other private services category (accounting for 40 percent of the increase) and the "other transportation category" consisting of transactions arising from the transportation of goods by ocean, air, land (truck and rail), pipeline, and inland waterway carriers to and from the United States and between two foreign points, accounting for 17 percent of the increase.

All of the major service categories grew since 1994. U.S. imports of royalties and licensing fees have nearly quadrupled, while imports of other private services and direct defense expenditures have increased 201 percent and 179 percent, respectively.

Agriculture: Reliance on Foreign Markets

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

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

- Exports of U.S. agricultural products also generate additional economic activity that ripples through the domestic economy. According to USDA's Economic Research Service, every farm export dollar earned stimulated another $1.54 in business activity in calendar year 2003. The $59.6 billion of agricultural exports in 2003 produced an additional $92.0 billion in economic activity. Farmers' purchases of fuel, fertilizer, and other inputs to produce commodities for export spurred economic activity in the manufacturing, trade, and transportation sectors.

- Exports also mean jobs: jobs that pay higher than average wages and are distributed across many communities and professions, both on the farm and off, in urban and rural communities. Agricultural exports generated 912,000 full-time civilian jobs, which include 461,000 jobs in the nonfarm sector.

- Dollar for dollar, the United States exports more corn than cosmetics, more wheat than coal, more bakery products than motorboats, and more fruits and vegetables than household appliances.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- For poor countries, services trade offers innovative opportunities to jump-start growth and development, and to tackle endemic poverty. Services promise poorer countries a chance to leap over the industrial revolution and to directly enter the information revolution.

- The World Bank has reported that services typically account for around 54 percent of GDP in developing countries, and that services are the fastest growing sector in many of the least-developed economies.

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

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

Developing Countries:

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

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

[3] USDOC, ITA, *The Role of Services in the Modern Economy*, Jan. 1999.
[4] USITC, Recent Trends in U.S. Services Trade, May 2002, p. 1-3; and BEA Survey of Current Business, Oct. 2002, p. D-31.

[5] USDOC, ITA, *The Role of Services in the Modern Economy*, Jan. 1999.
[6] USITC, Recent Trends in U.S. Services Trade, May 2002, p. 1-3; and BEA Survey of Current Business, Aug. 2002, p. 80.
[7] USDOC, ITA, *The Role of Services in the Modern Economy*, Jan. 1999.
[8] Sherry M. Stephenson, "Approaches to Services Liberalization by Developing Countries," Organization of American States, Trade Unit, Feb. 1999.

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

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

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

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

- Cross-border trade in services, as defined by the U.S. Department of Commerce[12], increased 57.5 percent between 1994 (pre-GATS) and 2003.

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

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

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

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

[9] World Bank, *World Development Indicators 2002*, May 2002, table 4.1, pp. 204-206.
[10] Sherry M. Stephenson, "Approaches to Services Liberalization by Developing Countries," Organization of American States, Trade Unit, Feb. 1999.
[11] OECD, *GATS: The Case for Open Services Markets*, 2002, p. 37.

[12] The Bureau of Economic Analysis incorporates travel and passenger fares into its definition of cross-border supply for statistical gathering purposes. This should not be confused with the General Agreement on Trade in Services (GATS) definition of cross-border supply, which is only defined as the supply of a service from the territory of one Member into the territory of another Member (such as delivery via electronic means).
[13] Beginning in 1999, sales by foreign affiliates were classified as goods or services based on industry codes derived from the North American Industry Classification System; the estimates for prior years were based on codes derived from the 1987 Standard Industrial Classification System. The change resulted in a redefinition of sales of services by affiliates, which resulted in a net shift of sales from goods to services and a significant spike in the 1999 figures.

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

Quantification of Benefits

Measuring the Effects of Uruguay Round

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

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

Quantification of Economic Effects

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

International Trade Benefits the American Consumer

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

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

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

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

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

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

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

Source: Dallas Federal Reserve Bank

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

Global Development

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

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

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

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

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

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

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

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

The WTO Has Helped Developing Countries Become More Active in Trade

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

Many developing countries also have successfully diversified their exports to cover a broad range of manufactured goods, thus improving their chances for faster economic growth and for creating jobs that pay higher wages. The share of manufactured goods exports in total developing countries' exports increased from 20 percent in 1980 to over 70 percent in 2001.[19]

[17] *See:* World Bank, 1998, *World Development Indicators*; and William R. Cline, 2004, *Trade Policy and Global Poverty*, p. 20.
[18] World Bank, 2002, *Global Economic Prospects 2002.*
[19] World Bank, 2004, *Global Economic Prospects 2004.*

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

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

Further Trade Liberalization Key to Alleviating Poverty

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

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

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

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

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

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

Some of the WTO's least developed members lack the necessary institutions and infrastructure to enable them to reap the full benefits of trade. In those cases, capacity building and technical assistance, coupled with market opening, could improve their chances for making the most of the opportunities presented by trade liberalization. The United States will continue to play a prominent role in the WTO to ensure that the maximum gains from trade liberalization are enjoyed by developing countries and other WTO members.

References

Alcala, Francisco and Antonio Ciccone, 2001. Trade and Productivity. Center for Economic Policy Research Discussion Paper 3095. London: Center for Economic Policy Research.

Cline, William R., Trade Policy and Global Poverty, Center for Global Development and Institute for International Economics, Washington, DC, June 2004.

Frankel, Jeffrey and David Romer, 1999. "Does Trade Cause Growth?", American Economic Review 89, no. 3: 379-99.

World Bank, 1995. World Development Report, 1995, World Bank, Washington, DC.

World Bank, 1998. World Development Indicators, World Bank, Washington, DC.

World Bank, 2001. Trade, Growth and Poverty, World Bank Policy Research Working Paper No. 2615.

World Bank, 2002. Global Economic Prospects 2002: Making Trade Work for the World's Poor, Washington, DC.

World Bank, 2004. Global Economic Prospects 2004: Realizing the Development Promise of the Doha Agenda, World Bank, Washington, DC.

World Bank, 2005. Global Economic Prospects 2005: Trade Regionalism and Development, World Bank, Washington, DC.

World Trade Organization, 2004. International Trade Statistics 2004, Geneva.

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

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

Trade Facilitation: Cutting Red Tape

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

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

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

The WTO Promotes Sustainable Development

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

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

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

obligations without undercutting the efficacy of our environmental laws.

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

The Doha Agenda is ground-breaking in its inclusion of specific negotiating mandates aimed at enhancing the mutual supportiveness of trade and environmental policies. These specific trade initiatives – such as those aimed at eliminating market-distorting subsidies that also cause damage to the environment, e.g., fishing and agricultural export subsidies – can contribute to environmental protection efforts and simultaneously eliminate trade distortions. The mandate to eliminate or reduce tariff and non-tariff barriers to trade in environmental goods and services will facilitate access to and encourage the use of cleaner technologies, which can reduce and prevent environmental pollution.

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

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

C. The Doha Development Agenda (DDA)

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

DDA Negotiations

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

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

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

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

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

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

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

Since the launch of the Doha Development Round in 2001, the United States has tabled 95 submissions to dramatically reduce barriers to trade in services, agricultural products and industrial goods, and to strengthen the rules and disciplines of the WTO system. The market access related negotiations of the DDA offer the greatest potential to create jobs, advance economic reform and development, and reduce poverty worldwide. The United States recognizes that there are many important issues in the national economic strategies of our developing country WTO partners, yet believes the focus of the WTO must remain concentrated on its mandate of reducing trade barriers and providing a stable, predictable, rules-based environment for world trade.

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

After detailing the DDA's progress to date, this chapter follows with a review of the implementation of existing Agreements, including the critical negotiations to expand the WTO's membership to include new members seeking to reform their economies and join the rules-based system of the WTO.

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

The Trade Negotiations Committee (TNC), established at the WTO's Fourth Ministerial Conference in Doha, Qatar, oversees the agenda and negotiations in cooperation with the WTO General Council. The TNC intensified its work in the second half of 2004 to supervise negotiations and to work with the General Council. Annex II identifies the various negotiating groups and special bodies responsible for the negotiations, some of which are the responsibility of the WTO General

Council. The WTO Director-General serves as Chair of the TNC, and worked closely with the Chairman of the General Council, Ambassador Shotaro Oshima of Japan. The Chairman of the General Council, along with Director-General Supachai, played a central role in helping forge the consensus needed to put the round back on track.

Progress in 2004

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

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

- Historic reform of global agricultural trade;
- Elimination of all agricultural export subsidies;
- Substantial improvement in market access for farm goods through tariff cuts and quota expansion;
- Substantial reductions in trade-distorting agricultural support programs;
- Ambitious opening of global services markets;
- Significant new market access for manufactured goods through broad tariff cuts, tariff elimination or harmonization in key industry sectors, and work to reduce non-tariff barriers; and
- Less red tape and more efficiency in the movement of goods across borders.

Agriculture

- In a key accomplishment for U.S. farmers and ranchers, the framework calls for an ambitious and balanced result through reform of trade-distorting agricultural subsidies, elimination of agricultural export subsidies, and a substantial improvement in market access for all farm products;
- In cutting farm tariffs, all countries other than the least-developed will make a contribution, and there will be deeper cuts in higher tariffs;
- Tariffs will be cut using a tiered ("banded") formula that will lead to greater harmonization in tariff levels across countries. In addition, a tariff cap will be evaluated as part of the negotiations;
- Substantial improvement in market access will apply to all agricultural products, even "sensitive" products. Countries may designate a specific number of sensitive products that will be handled through a combination of tariff quota expansion and tariff reductions to expand market access;
- Developing countries, while part of the reform process, will be subject to lesser tariff reduction commitments in each band of the tiered approach. The vulnerability of poor subsistence farmers is recognized in the text for further discussion;
- In a historic achievement that has been a goal of the U.S. and others for decades, the framework calls for the elimination of agricultural export subsidies. These are the most trade-distorting type of agricultural subsidies;

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

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

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

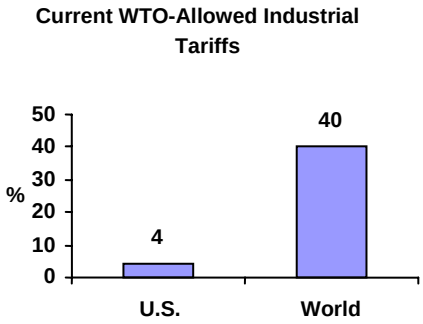
- Trade-distorting forms of domestic support for agriculture will be cut substantially, with caps on support levels for specific commodities and cuts in the overall level of trade-distorting support;

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

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

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

Manufactured Products – Broad Cuts in Tariffs and Other Barriers



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

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

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

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

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

Key Opportunities
For U.S. Workers and Manufacturers

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

Services – Intensified Negotiations to Open Markets

- Members reaffirmed that Services is one of three core elements of an ambitious market access result.

- Members agreed to intensify negotiations to open global services markets, which are the increasingly critical infrastructure of economic growth and competitiveness in both developed and developing countries.

- In the United States, services account for 65 percent of GDP and 80 percent of domestic employment. The U.S. services market is one of the most open in the world; the U.S. objective in the Doha negotiations is to open foreign service markets to world-class services of U.S. providers. Developing countries, too, will benefit from services liberalization. On average, services account for more than half the GDP of most developing countries.

- Countries agreed that more – and better – market-opening offers need to be put on the table as soon as possible, and that they should aim for progressively higher levels of liberalization.

Trade Facilitation – Cutting Red Tape, Helping Small Business

- Countries have agreed to launch negotiations to clarify and improve the WTO rules governing customs procedures. This will cut red tape, improve the transparency and efficiency of how goods cross borders, and advance reforms that will contribute to anti-corruption efforts in many countries.

Key Opportunities
For U.S. Exporters and Small Businesses

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

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

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

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

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

Development – Ensuring That the Poorest Are Not Left Behind

- The framework encourages expanded trade between developed and developing countries, as well as expanded "South-South" trade. Open markets and domestic reform go hand in hand, offering the best means for further integrating developing countries into the global economy.

- This reflects the recent commitment of G-8 Leaders to ensure that the poorest are not left behind, but that they too develop the capacity to participate in the global trading system. The framework recognizes that different countries will need to move at different speeds toward open trade.

- The Doha Development Agenda is part of President Bush's strategy to open markets, reduce poverty and expand freedom through increased trade among all countries in the global trading system, developed and developing. The strategy is being implemented through global, regional and bilateral trade initiatives, as well as preference programs like the African Growth and Opportunity Act.

Prospects for 2005

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

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

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

- Non-Agricultural Market Access: The United States, along with key trading partners will continue to press for an ambitious outcome in this critical area of the negotiation. Work on developing a non-linear formula that reduces individual tariffs, agreements to sectoral liberalization, addressing non-tariff measures, and defining appropriate flexibility will all be critical to the work done in 2005. Like agriculture, agreement on the parameters of liberalization should be completed before the next ministerial meeting, so that governments can begin to table their schedules and enter the final phase of bargaining early in 2006.

- Services: A successful conclusion to the DDA requires far-reaching liberalization and commitments in the area of services. United States interests are broad in negotiations – from audiovisual services to telecommunications, financial services, express delivery and energy-related services. The United States has an aggressive agenda for market opening in

services. Since the United States is the world's leader in services for the 21st century economy, and services account for 80 percent of U.S. employment, our efforts in this area continue to be significant. Market opening in services is essential to the long-term growth of the U.S. economy. For developing countries, services are a great economic multiplier and essential to their respective development strategies.

- Dispute Settlement: The United States has led efforts to strengthen the rules governing the settlement of disputes. The system of WTO rules is only as strong as our ability to enforce our rights under these Agreements. For this reason, the United States has led the efforts to promote transparency in the operation of dispute settlement. This will continue to be an issue as Members pursue the review of the Dispute Settlement Understanding (DSU), which was extended in 2004.

- WTO Rules: The United States remains focused on ensuring that the negotiations strengthen the system of trade rules and address the underlying causes of unfair trade practices. American workers need strong and effective trade rules to combat unfair trade practices, particularly as tariffs decline. While admittedly a difficult topic, constructive engagement in the negotiations in this area have focused on the substantive issues of concern. This identification process will continue into 2005, with the aim of building consensus for any changes that may be required. The process envisioned in the WTO should result in strengthened trade rules in antidumping and subsidies, as well as new disciplines on harmful fisheries subsidies that contribute to over-fishing.

- Trade Facilitation (Customs Procedures): At long last, negotiations are underway in this critical area. These negotiations will update and modernize current WTO rules on border procedures. Cutting the red tape may reduce the cost of selling into some countries by 5 percent to 15 percent. Work in 2005 will focus on the practical issues that need to be addressed in forging an agreement.

- **Environment**: The United States will continue to pursue a practical approach to the negotiations, working to enhance the process of communication and cooperation between the Secretariats of Multilateral Environmental Agreements (MEAs) and the WTO. The U.S. agenda is aimed at promoting growth, trade and the environment.

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

- Implementation: The majority of so-called implementation issues have been resolved through consultations. Nonetheless, outstanding issues remain, including the treatment of rules issues, particularly trade-related investment measures and whether to expand the negotiations in the TRIPS agreement regarding geographical indications beyond wines and spirits. These are difficult issues, which the Director-General and his team will take up with Members as part of the preparations for the Hong Kong, China ministerial.

1. Committee on Agriculture, Special Session

Status

The WTO provides multilateral disciplines and rules on agricultural trade policies and serves as a forum for further negotiations on agricultural trade reform. The WTO is uniquely situated to advance the interests of U.S. farmers and ranchers, because only the WTO can establish disciplines on the entire broad range of agricultural producing and consuming Members. For example, absent a WTO Agreement on

Agriculture, there would be no limits on the EU's subsidization practices or firm commitments for access to the Japanese market. Negotiations in the WTO provide the best means to open global markets for U.S. farm products and reduce subsidized competition.

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

Major Issues in 2004

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

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

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

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

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

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

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

Intensive discussions were conducted on proposals for a sectoral initiative on cotton. WTO members established a sub-committee within the agriculture negotiations to monitor work on all elements related to trade in cotton, and reaffirmed the importance of an ambitious outcome in the agriculture negotiations and for the cotton sector.

Prospects for 2005

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

2. Council for Trade in Services, Special Session

Status

In 2000, pursuant to the mandate provided in the Uruguay Round, Members embarked upon new, multi-sectoral services negotiations under Article XIX of the General Agreement on Trade in Services (GATS). The Doha Declaration recognized the work already undertaken in the services negotiations and reaffirmed the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services (CTS) in March 2001. The Doha mandate directed Members to conduct negotiations with a view to promoting the economic growth of all trading partners. The Doha mandate also set deadlines for initial services requests and offers. As of December 31, 2004, 51 WTO Members had submitted initial offers as part of this

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

Cumulative Assessment Since the WTO Was Established

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

Major Issues in 2004

In 2004, the United States worked to secure Members' commitment to progress in the negotiations in line with the Doha mandate. While negotiations proceeded slowly following the Cancun Ministerial there was agreement in July 2004 to intensify negotiations and further establish benchmarks for progress (Annex C of the August 1, 2004 General Council Decision). The United States and India also led a number of delegations in efforts to improve the treatment of services market access negotiations as part of the July agreement. It instructed Members that have not yet submitted their initial offers to do so as soon as possible and established May 2005 as an indicative date for revised offers. In November 2004, the United States, Switzerland, Singapore and Japan led a group of 15 other WTO Members in a joint statement that highlighted the importance of services market access negotiations and set the stage for more intensive work on offers in 2005.

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

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

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

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

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

Prospects for 2005

Sessions in Geneva, known as "clusters," will continue to follow the pattern of a general meeting of the Special Session, followed by bilateral meetings. This allows Members the opportunity to present and discuss their initial and revised negotiating offers, requests, and other topics of concern. Discussions in the general meeting of the Special Session and in the bilateral negotiating sessions are expected to continue on the topics noted above. Specifically, we expect that a number of "Friends Groups" will introduce statements identifying areas of priority and consensus within the groups. The United States will prepare its revised offer. During the February 2005 cluster, Members will participate in a symposium coordinated with industry on financial services and the WTO will also hold a symposium on Mode 1 (cross-border supply) bringing a number of capital based experts to Geneva, which provide further opportunities for bilateral negotiations in computer and related and telecommunication services in particular. A few other sectoral friends groups are organizing special one week clusters to foster additional negotiations and exchanges in preparation for May, 2005.

3. Negotiating Group on Non-Agricultural Market Access

Status

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

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

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

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

Major Issues in 2004

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

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

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

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

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

Prospects for 2005

In 2005, work will focus on negotiating the final details of the non-linear formula, identifying specific sectors and country participation in the various sectoral initiatives, determining the final balance of flexibilities for developing countries, and advancing negotiations on identified NTBs. The United States continues to seek an ambitious approach that will deliver real market access in key developed and developing country markets, while supporting elements of additional flexibility for the least-developed and most financially-constrained Members and those developing country Members that have already contributed significantly to liberalization through the maintenance of low tariff levels and high levels of tariff bindings.

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

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

4. Negotiating Group on Rules

Status

In paragraph 28 of the Doha Declaration, Ministers agreed to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement) and on Subsidies and Countervailing Measures (the Subsidies Agreement), while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives. Ministers also directed that the negotiations take into account the needs of developing and least developed participants. The Doha mandate specifically calls for the development of disciplines on trade-distorting practices, which are often the underlying causes of unfair trade, and also calls for clarified and improved WTO disciplines on fisheries subsidies. In addition, paragraph 29 of the Doha Declaration provides for negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements.

Paragraph 28 provides for a two-phase process for the negotiations, in which participants would identify in the initial phase of negotiations the provisions in the Agreements that they would seek to clarify and improve in the subsequent phase. WTO Members have submitted almost 170 formal papers to the Rules Group thus far, the majority of them identifying issues for discussion rather than making specific proposals. In order to deepen the understanding of the Group of the very technical issues raised by these papers, in 2004, the Group began a process of in-depth discussion of elaborated proposals in informal session. There were 28

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

Major Issues in 2004

The Rules Group held seven meetings in 2004, at first under the Chairmanship of Ambassador Eduardo Pérez Motta from Mexico, and subsequently under the Chairmanship of Ambassador Guillermo Valles Galmés of Uruguay. The Group based its work primarily on the written submissions from Members, organizing its work in the following categories: (1) antidumping (often including similar issues relating to countervailing duty remedies); (2) subsidies, including fisheries subsidies; and (3) regional trade agreements.

Given the Doha mandate that the basic concepts and principles underlying the Antidumping and Subsidies Agreements must be preserved, the United States outlined in a 2002 submission the basic concepts and principles of the trade remedy rules, and identified four core principles to guide U.S. proposals for the Rules Negotiating Group. The United States' work in the Rules Group in 2004 continued to be guided by these principles:

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

Second, trade remedy laws must operate in an open and transparent manner. This principle is fundamental to the rules-based system as a whole, and the transparency and due process obligations should be further enhanced as part of these negotiations;

Third, disciplines must be enhanced to address more effectively underlying trade-distorting practices; and

Fourth, it is essential that dispute settlement panels and the Appellate Body, in interpreting obligations related to trade remedy laws, follow the appropriate standard of review and not impose on Members obligations that are not contained in the Agreements.

In accordance with these principles, the United States has continued to be very active in the discussions in the Rules Group, identifying specific issues for consideration, following up with elaborated proposals, and raising detailed questions with respect to the issues raised by other Members.

Pursuant to the first principle, the United States has continued to emphasize that the Doha mandate to preserve the effectiveness of the trade remedy rules must be strictly adhered to in evaluating proposals for changes to the Antidumping or Subsidies Agreements, and has raised a number of questions to evaluate whether issues raised by other Members are consistent with that mandate. The United States has also raised particular issues relevant to ensuring that these trade remedies remain effective, such as addressing the problem of circumvention of antidumping and countervailing duty orders, as well as the related problem of abuse of provisions for "new shipper" reviews. The United States has also highlighted the need for the unique characteristics of perishable and seasonal agricultural products to be reflected in the trade remedy rules.

Pursuant to the second principle, the United States has identified a number of respects in which investigatory procedures in antidumping and countervailing duty investigations could be improved, highlighting areas in which interested parties and the public could benefit from greater openness and transparency, as well as some areas where improved procedures could reduce costs. Since U.S. exporters are frequently subject to foreign trade remedy proceedings, it is essential to improve transparency and due process so that U.S. exporters are treated fairly.

Pursuant to the third principle, the United States has stressed the need to address trade-distorting practices that are often the root causes of unfair trade, and has made a number of submissions to the Rules Group with respect to the strengthening of subsidies disciplines.

Pursuant to the fourth principle, the United States has emphasized in its submissions the importance of ensuring that the WTO panels and the Appellate Body adhere to the special standard of review in the Antidumping Agreement, and the need to address several issues raised by certain past findings of the WTO Appellate Body in trade remedy cases.

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

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

Subsidies: In 2004, the United States, Canada and Australia submitted elaborated proposals in the subsidies area. Following up on its general subsidy paper submitted in March 2003, the United States submitted three papers that proposed more detailed rules with respect to the calculation of subsidy benefits. These papers were generally well received in that they address issues recognized by most, if not all, WTO Members that have conducted countervailing duty investigations. In its most notable paper, Canada proposed bringing back the "dark amber" category of subsidies. As originally reflected in the now-lapsed provisions of Article 6.1 of the Subsidies Agreement, Members that provided dark amber subsidies (e.g., subsidies to cover operating losses) had the burden of demonstrating that the subsidies provided did not result in adverse effects. Australia's paper, inter alia, proposed the clarification of the definition of a de facto export subsidy.

Fisheries Subsidies: The United States continued to play a major role in advancing the discussion of fisheries subsidies reform in the Rules Group in 2004, working closely with a broad coalition of developed and developing countries, including Argentina, Australia, Chile, Ecuador, Iceland, New Zealand, Peru and the Philippines. The United States views improving WTO disciplines on harmful fisheries subsidies as an important objective that will provide a concrete, real world demonstration that trade liberalization benefits the environment and contributes to sustainable development.

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

prohibition focused on subsidies that contributed to overcapacity and overfishing, and consideration of carefully targeted exceptions to allow appropriate flexibility. The United States also stressed that to increase transparency the negotiation of exceptions should be grounded in the consideration of Members' particular current programs. In contrast, Japan and Korea, joined by Chinese Taipei, advocated a framework premised on a potentially large number of permitted subsidies and a small number of prohibited subsidies. Japan and Korea both presented papers explaining this approach. A number of other countries, including Brazil, China, Malaysia, India, Pakistan and Sri Lanka, became more active in the discussions. While these countries generally did not take a position on the appropriate framework, they stressed the need for special and differential treatment of developing country Members.

Regional Trade Agreements: The discussion in the Rules Group on regional trade agreements (RTAs) has focused on ways in which WTO rules governing customs unions and free trade agreements, and economic integration agreements for services, might be clarified and improved. During 2004, discussions continued on both transparency and systemic issues related to RTAs. The Group's work on transparency focuses on the need to improve the effectiveness of the current WTO system for reviewing and analyzing trade agreements. On substantive or systemic issues, work has included discussion of such issues as the requirements of GATT Article XXIV that RTAs eliminate tariffs and "other restrictive regulations of commerce" on "substantially all the trade" between parties (and the analogous provisions for the GATS), the effects of particular rules of origin applied in RTAs, and the relationship between RTA rules and the application of trade remedies.

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

Prospects for 2005

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

5. Negotiating Group on Trade Facilitation

Status

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

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

Major Issues in 2004

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

Continuing a trend from previous years, the issue of Trade Facilitation was not a matter of a simplistic 'north-south' split, but something that was increasingly seen as offering a "win-win" opportunity. Leadership toward advancing the Trade Facilitation agenda continued to be provided by the cooperative efforts of Members from varying developing levels known as the "Colorado Group": the United States, Australia, Canada, Chile, Colombia, Costa Rica, European Union, Hong Kong, China, Hungary, Japan, Korea, Morocco, New Zealand, Norway, Paraguay, Singapore, and Switzerland.

An added boost to the momentum to a decision to launch WTO negotiations was provided by the U.S. work in the free trade agreements that had recently been negotiated. With partners as diverse as Chile, Singapore, Australia and Morocco, each FTA negotiated by the United States has included a separate, stand-alone chapter on Customs Administration. Within the context of the 2004 Geneva work on Trade Facilitation, these achievements not only showed the commitment of the United States and its FTA partners to a rules-based approach to this area, the texts themselves provided some shape to Members that were uncertain about the types of commitments likely to be sought by the United States and others. It also served as a real-life demonstration of how creative approaches through transition periods and targeted technical assistance could be used to address the challenges of implementing the results of the negotiations.

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

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

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

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

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

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

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

Prospects for 2005

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

There is a great potential for new and strengthened WTO commitments that could provide short-term if not immediate "on the ground" positive effects and offer a true "win-win" opportunity for all Members. One of the most frequently-cited impediments to the growth of South-South trade is the absence of a rules-based approach to goods crossing the border. While negotiations toward new and strengthened disciplines move forward, it will be important that negotiations also proceed in a workman-like manner on the issue of how all Members can meet the challenge of implementing the results of the negotiations. In particular, the negotiations represent an opportunity to address longstanding issues in this area about redundancy in assistance efforts, lack of coordination, and frequent failure to specifically target technical assistance toward concrete results. The aim of the United States in 2005 will be to ensure a negotiating dynamic that makes clear that every Member, as both an importer and an exporter, has a real stake in robust results and in their implementation.

6. Committee on Trade and Environment, Special Session

Status

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

Major Issues in 2004

The CTE in Special Session (CTESS) met three times in 2004. At each of these meetings, the CTESS addressed each of the negotiating mandates set forth in the three sub-paragraphs under paragraph 31 of the Doha Declaration:

(i) the relationship between existing WTO rules and specific trade obligations (STOs) set out in Multilateral Environmental Agreements (MEAs) (with specific reference to the applicability of existing WTO rules among parties to such MEAs and without prejudice to the WTO rights of Members that are not parties to the MEAs in question);

(ii) procedures for regular information exchange between MEA secretariats and relevant WTO committees, and the criteria for granting observer status; and

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

In addition to the three CTESS meetings, the CTE also met in Regular Session (CTERS) three times during 2004, debating important trade liberalization issues including, market access under Doha Sub-paragraph 32(i), TRIPS and environment under Doha Sub-paragraph 32(ii), labeling for environmental purposes under Doha sub-paragraph 32(iii), capacity building and environmental reviews under Doha paragraph 33 and the environmental effects of negotiations under Doha paragraph 51 (See Section on Other General Council Bodies/Activities, Committee on Trade and the Environment).

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

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

Environmental Goods and Services: Members continue to engage in detailed discussions in the CTESS on the scope of products that could be included in a definition of environmental goods. While much of the focus continued to be on existing lists developed by the OECD and APEC, additional ideas were tabled. For example, a proposal from Chinese Taipei identifies 78 products in the category of pollution control. There was also continued interest in a paper tabled by the United States in July 2003, which suggested that there could be a flexible approach to the definition involving a core list of goods for which all Members would make tariff and non-tariff concessions and a complementary list that would not require full participation. Delegations continued to acknowledge that market access negotiations on environmental goods and services should take place in the Non-Agriculture Market Access Negotiating Group and the Council on Trade in Services in Special Session. In addition to its formal discussions on environmental goods, the WTO Secretariat hosted an informal workshop on environmental goods, which provided useful

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

Prospects for 2005

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

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

7. Dispute Settlement Body, Special Session

Status

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

Major Issues in 2004

The Special Session of the DSB met several times during 2004 in an effort to implement the Doha mandate. In previous phases of the review of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Members had engaged in a general discussion of the issues. Following that general discussion, Members tabled proposals to clarify or improve the DSU. Members then reviewed each proposal submitted and requested explanations and posed questions of the Member(s) making the proposal. Members also had an opportunity to discuss each issue raised by the various proposals. Notwithstanding these efforts, Members were unable to conclude discussions.

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

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

In addition, the United States, joined by Chile, submitted a proposal to help improve the effectiveness of the WTO dispute settlement system in resolving trade disputes among WTO Members. The joint proposal contains specifications aimed at giving parties to a dispute more control over the process and greater flexibility to settle disputes. Under the present dispute settlement system, parties are encouraged to resolve their disputes, but do not always have all the tools with which to do so.

Prospects for 2005

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

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

Status

With a view to completing the work started in the TRIPS Council on the implementation of Article 23.4, Ministers agreed at Doha to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. Further, in the August 1, 2004 decision on the Doha Work Programme, the WTO General Council reaffirmed Members' commitment to progress in this area of negotiation in line with the Doha Mandate. This is the only issue before the Special Session of the Council.

Major Issues in 2004

During 2004, the TRIPS Council continued its negotiations under Article 23.4, which is intended to facilitate protection of geographic indications. Argentina, Australia, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Namibia, New Zealand, the Philippines, Chinese Taipei, and the United States continued to support the "Joint Proposal" under which Members would notify their geographical indications for wines and spirits for incorporation into a register on the WTO website and several Joint Proposal co-sponsors submitted a "Question and Answer" document to the Special Session to further explain the advantages of the proposal. Members choosing to use the system would agree to consult the website when making any decisions under their domestic laws related to geographical indications or, in some cases, trademarks. Implementation of this proposal would not impose any additional obligations with regard to geographical indications on Members that chose not to participate nor would it place undue burdens on the WTO Secretariat. The European Communities together with a number of other countries continued to support their alternative proposal for a system under which Members would notify the WTO of their geographical indications for wines and spirits. Other Members would then have eighteen months in which to object to the registration of particular notified geographical indications that they believed were not entitled to protection within their own territory. If no objection were made, each notified geographical indication would be registered and all WTO Members would be required to provide protection as required under Article 23. If an objection were made, the notifying Member and the Member objecting would negotiate a solution, but the geographical indication would have to be protected by all Members that had not objected.

At the April 2003 meeting, Hong Kong, China, introduced a proposal under which a registration should be accepted by participating Members' domestic courts, tribunals or administrative bodies as prima facie evidence of: (a)

ownership; (b) that the indication is within the definition of "geographical indications" under Article 22.1 of the TRIPS Agreement; and (c) that it is protected in the country of origin. The intention is that the issues will be deemed to have been proved unless evidence to the contrary is produced by the other party to the proceedings before domestic courts, tribunals or administrative bodies when dealing with matters related to geographical indications. In effect, a rebuttable presumption is created in favour of owners of geographical indications in relation to the three relevant issues. Although this proposal was discussed, it has not been endorsed by either supporters of the Joint Proposal or the EC proposal.

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

Prospects for 2005

In his report to the TNC, the Chair of the Special Session of the Council for Trade-Related Aspects of Intellectual Property Rights noted that it was agreed that the Secretariat will update a background note on the WTO Central Registry of Notifications (CRN) and that a Secretariat CRN administrator would be invited to attend the next session to respond to questions, in order to facilitate understanding of other notification systems in the WTO. He also noted that a range of issues require further work, including, but not limited to, resolving the key issues of legal effects of registrations and participation in the system.

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

9. Committee on Trade and Development, Special Session

Status

The Special Session of the Committee on Trade and Development (CTD) was established in February 2002 to fulfill the Doha mandate to review all special and differential treatment (S&D) provisions "with a view to strengthening them and making them more precise, effective and operational." Under existing S&D provisions, the WTO provides developing country Members with technical assistance and transitional arrangements toward implementation of WTO agreements, and, ultimately, full integration into the multilateral trading system. WTO S&D provisions also enable Members to provide better-than-MFN access to markets for developing country Members.

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

Major Issues in 2004

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

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

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

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

Prospects for 2005

With a July 2005 deadline ahead, work is likely to intensify early in 2005. It is expected that a number of revised proposals will be submitted to the Special Session early in the new year. It also is anticipated that work on how proposals may be combined or addressed through a broader approach. Discussions are expected on a mechanism to monitor implementation of S&D provisions, including how to monitor the effectiveness of various approaches, as well as monitoring the commitments of Members, primarily developed countries. Recent references to the possible need for a new framework or "architecture" for S&D suggest there may also be discussion of this issue in the coming months. Both the July 2005 deadline contained in the General Council decision of 1 August 2004 and the Hong Kong Ministerial are target dates for work on special and differential treatment, with the former deadline focused on management of the individual proposals in some manner and the latter focused more on the longer term aspects of S&D. Nevertheless, all work will proceed throughout the year in parallel.

E. Work Programs Established in the Doha Development Agenda

1. Working Group on Trade, Debt and Finance

Status

Ministers at the Fourth Ministerial Conference held in Doha established the mandate for the Working Group on Trade, Debt and Finance (TDF). Ministers instructed the Working Group to examine the relationship between trade, debt and finance, and to examine recommendations on possible steps, within the mandate and competence of the WTO, to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and least developed countries. The Group was also instructed to consider possible steps to strengthen the coherence of international trade and financial policies, with a view to safeguarding the multilateral trading system from the effects of financial and monetary instability.

Ma**jor Issues in 2004**

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

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

Prospects for 2005

In 2005, the Working Group will continue to discuss the remaining themes identified by Members in 2003. The list of agreed upon themes included trade liberalization as a source of growth; WTO rules and financial stability; the importance of market access and the reduction of other trade barriers in the Doha Development Agenda negotiations; trade and financial markets; trade-financing; better coherence in the design and implementation of trade-related reforms and monitoring; the inter-linkages between external liberalization and internal reform; and external financing, commodity markets and export diversifications.

2. Working Group on Trade and Transfer of Technology

Status

During the Fourth Ministerial Conference in Doha, WTO ministers agreed to an "examination…of the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries." In fulfillment of that mandate, the Trade Negotiations Committee established the Working Group on Trade and Transfer of Technology (WGTTT), under the auspices of the General Council, asking it to report on its progress to the Fifth Session of the Ministerial Conference (Cancun). The WGTTT met three times in 2004, continuing its Doha Ministerial mandate to examine the relationship between trade and the transfer of technology. Members have not reached consensus on any recommendations.

Major Issues in 2004

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

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

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

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

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

Prospects for 2005

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

3. Work Program on Electronic Commerce

Status

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

Since 2001, the Work Program on Electronic Commerce held several dedicated discussions under the auspices of the General Council. These informal discussion examined issues identified by the various sub-bodies as cross-cutting ones, i.e., those that impacted two or more of the various WTO legal instruments. The most controversial cross-cutting issue is whether to classify electronically delivered products as a good or a service. The fiscal implications of classification was also part of those discussions, as were development related aspects of electronic commerce. No agreement has been reached on how to classify these products and the work program made no recommendations or reports to the Members. The Work Program remains a standing item in the Doha Development Agenda, yet has been inactive over the past year. Members have, however, continued to abide by the existing practice of not imposing customs duties on electronic transmissions.

Major Issues in 2004

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

Prospects for 2005

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

4. Working Group on Trade and Competition Policy

Status

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

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

The Working Group was established by WTO Trade Ministers at their first Ministerial Conference in Singapore in December 1996. Its mandate was to "study issues raised by Members relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit further consideration in the WTO framework." In December 1998, the General Council authorized the Working Group to continue its work on the basis of a more focused framework of issues, which served as the basis of the Working Group's work until the Doha Ministerial Conference in 2001.

The Doha Ministerial Declaration provided that a decision was to be taken at the Fifth Session of the Ministerial Conference, by explicit consensus, as to the modalities of negotiations on trade and competition policy. In accordance with the Doha Declaration, the Working Group focused its work up through the 2003 Cancun Ministerial Conference on the clarification of: core principles, including transparency, non-discrimination and procedural fairness; provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building. The Working Group also addressed the nature and scope of compliance mechanisms that might be included under a multilateral framework on competition policy, and possible elements of progressivity and flexibility that might be included in such a multilateral framework.

Informal consultations in 2004 revealed significant differences among Members as to how to proceed on this issue. For example, the European Communities advocated a multilateral WTO agreement on trade and competition policy with substantive disciplines subject to WTO dispute settlement. Several other Members, including Japan and Korea, likewise advocated a multilateral framework. However, a number of developing country Members responded that they were not ready to proceed to negotiation of a multilateral agreement, stating that they did not want to be required to have a competition law and authority until they were ready. Given these differences, the decision was reached, as part of the overall General Council Decision of 1 August 2004, that no work toward negotiations would take place during the Doha Round.

Major Issues in 2004

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

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

Prospects for 2005

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

5. Working Group on Transparency in Government Procurement

Status

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

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

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

Major Issues in 2004

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

Prospects for 2005

Even though a mandate for the negotiation of an agreement on transparency in government procurement was not included in the DDA Work Programme, ensuring transparency in government procurement remains a priority for the United States in its pursuit of broader initiatives aimed at promoting the international rule of law, combating international bribery and corruption, and supporting the good governance practices that many countries have adopted as part of their overall structural reform programs. The United States will continue to incorporate transparency in government procurement provisions in its negotiations of free trade agreements and to advance government procurement principles within APEC. In addition, the United States will continue to work to enhance the transparency provisions of the plurilateral GPA and to encourage other Members to join the GPA.

6. Working Group on Trade and Investment

Status

WTO ministers established the Working Group on Trade and Investment (WGTI) during the Singapore Ministerial in 1996. At the conclusion of the Fourth Ministerial in Doha, ministers extended the WGTI's mandate and agreed that investment negotiations "will take place after the next Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on the modalities of negotiations." During the period between the Doha and Cancun Ministerials, the United States sought in the WGTI to promote understanding of the benefits of open investment policies and of the contribution of investment to economic development. WTO Members did not agree in Cancun on a negotiating mandate for investment. The WGTI did not meet during 2004.

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

relationship between trade and investment flows and on the influence of trade and investment policies on investment, but Members did not reach consensus on whether to launch multilateral investment negotiations. During the Doha Ministerial, ministers decided to give the WGTI a narrower work program, focused on seven substantive issues bearing on the scope and content of possible WTO investment negotiations: the scope and definition of investment; transparency; non-discrimination; approaches to the treatment of investment prior to establishment, based on a GATS-type, positive list; development provisions; exceptions and balance-of-payments safeguards; and consultation and the settlement of disputes between Members.

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

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

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

Major Issues in 2004

The WGTI did not meet during 2004.

Prospects for 2005

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

F. General Council Activities

Status

The WTO General Council is the highest-level decision-making body in the WTO that meets on a regular basis during the year. It exercises all of the authority of the Ministerial Conference, which is required to meet no less than once every two years. The General Council and Ministerial Conference consist of representatives of all WTO Members. Only the Ministerial Conference and the General Council have the authority to adopt authoritative interpretations of the WTO Agreements, submit amendments to

the Agreements for consideration by Members, and grant waivers of obligations. All accessions to the WTO must be approved by the General Council or the Ministerial Conference. Technically, meetings of both the Dispute Settlement Body (DSB) and the Trade Policy Review Body (TPRB) are meetings of the General Council convened for the purpose of discharging the responsibilities of the DSB and TPRB respectively.

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

The General Council uses both formal and informal processes to conduct the business of the WTO. Informal groupings, which generally include the United States, play an important role in consensus-building. Through the first half of 2004, the Chairman of the General Council conducted extensive informal consultations, with both the Heads of Delegation of the entire WTO Membership and a wide variety of smaller groupings. These consultations were convened with a view to finding consensus on both the substance and process of that culminated in the 1 August 2004 General Council decision containing frameworks on the core issues in the Doha Work Program discussed earlier in this chapter.

Cumulative Assessment Since the WTO Was Established

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

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

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

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

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

Major Issues in 2004

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

Coherence in Global Economic Policy-Making: Article III(5) of the Marrakesh Agreement Establishing the WTO provides for coherence in global economic-policy making through WTO cooperation with the International Monetary Fund (IMF) and the World Bank. At the May 2004 session of the General Council, First Deputy Managing Director of the IMF, Anne Krueger, presented the IMF's new lending facility, the Trade Integration Mechanism (TIM), developed in support of the WTO's trade liberalization agenda. The IMF designed the TIM to respond to developing country concerns that trade liberalization undertaken by WTO Members on the DDA could adversely affect their balance-of-payments position.

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

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

Capacity Building through Technical Cooperation: The General Council continued its supervision of technical assistance for the purpose of capacity building in developing countries (i.e., modernizing their government operations to facilitate effective participation in the negotiation and implementation of WTO Agreements). For its part, the United States directly supports the WTO's trade-related technical assistance (TRTA) activities. In May 2004, USTR Robert B. Zoellick announced the United States would contribute approximately $1 million dollars for trade-related technical assistance (TRTA) to the World Trade Organization. This contribution brought total U.S. TRTA for the DDA to almost $4 million since the launch of negotiations in November 2001.

Waivers of Obligations: As part of the annual review required by Article IX of the WTO Agreement, the General Council considered reports on the operation of a number of previously agreed waivers, including those applicable to the United States for the Caribbean Basin Economic Recovery Act, and preferences for the Former Trust Territories of the Pacific Islands.

The General Council also approved the request from the European Communities to extend the deadline for withdrawal of concessions for Members seeking compensation for adverse trade impact of the May 2004 enlargement of the European Union. In the review of waivers for preferential arrangements, several banana-producing Latin American countries registered complaints regarding impact of enlargement and tariffication of quotas under the EU banana regime. Annex II contains a detailed list of Article IX waivers currently in force.

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

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

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

Prospects for 2005

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

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

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

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

In 2003, the General Council selected Hong Kong, China, as the venue for the Sixth Ministerial Conference and preparations are now underway. The requirement for ministerial meetings was established in the Uruguay Round to assure regular, political level review by ministers of the operation of the WTO, similar to the practice of other international organizations. Previous Ministerial Conferences were convened in Singapore (1996), Geneva (1998), Seattle (1999), Doha (2001) and Cancun (2003).

G. Council for Trade in Goods

Status

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

Cumulative Assessment Since the WTO was Established

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

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

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

Major Issues in 2004

In 2004, the CTG held seven formal meetings. As the central oversight body in the WTO for all agreements related to trade in goods, the CTG primarily devoted its attention to providing formal approval of decisions and recommendations proposed by its subsidiary bodies. The CTG also served as a forum for airing initial complaints regarding actions taken by individual Members with respect to the operation of agreements. Many of these complaints were resolved through consultation. In addition, four major issues were extensively debated in the CTG in 2004:

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

TRIMS Article 9 Review: The Council met several times, formally and informally, to consider proposals by India and Brazil to lower the level of obligations for developing countries under the TRIMS Agreement. Developed countries expressed their opposition to rewriting the Agreement. Consultations continue concerning a proposal by developing countries to have the Secretariat do a study of developing countries experiences with various TRIMS.

China Transitional Review: On November 25, the CTG conducted China's Transitional Review (TRM) as mandated by the Protocol on the Accession of the People's Republic of China to the WTO. China supplied the CTG with information, answered questions posed by Members and reviewed the TRM reports of CTG subsidiary bodies. (See Chapter IV Section F on China for more detailed discussion of its implementation of WTO commitments).

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

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

Prospects for 2005

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

1. Committee on Agriculture

Status

In 1995, the WTO formed the Committee on Agriculture to oversee the implementation of the Agreement on Agriculture and to provide a forum for Members to consult on matters related to provisions of the Agreement. In many cases, the Committee resolves problems on implementation, thus permitting Members to avoid invoking lengthy dispute settlement procedures. The Committee also has responsibility for monitoring the possible negative effects of agricultural reform on least-developed and net food-importing developing countries.

Cumulative Assessment Since the WTO Was Established

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

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

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

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

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

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

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

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

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

- Resolution of issues related to the use of export subsidies in Hungary, benefiting U.S. exports of grains, fruits and vegetables by nearly $10 million.

- Elimination of restrictions on beef imports by Switzerland that affected approximately $15 million in U.S. exports.

- Resolution of issues related to access for pork and poultry in the Philippines. In the case of pork, resolution of this issue meant additional U.S. exports of up to $70 million, and in the case of poultry, of up to $20 million.

- Resolving issues associated with Turkey's imposition of a tax on imported cotton, important to U.S. exports of more than $150 million.

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

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

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

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

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

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

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

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

Major Issues in 2004

The Committee held four formal meetings in March, June, September, and November 2004, to review progress on the implementation of commitments negotiated in the Uruguay Round. This review was undertaken on the basis of notifications by Members in the areas of market access, domestic support, export subsidies, export prohibitions and restrictions, and general matters relevant to the implementation of commitments.

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

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

During 2004, the Committee addressed a number of other agricultural implementation-related issues: (1) development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees, or insurance programs pursuant to Article 10.2 of the Agreement on Agriculture, taking into account the effect of such disciplines on net food-importing countries; (2) examination of possible ways to improve the effectiveness of the implementation of the Net Food-Importing Developing Countries (NFIDC) Decision; and (3) the review process of Members' notifications on TRQs in accordance with the General Council's decision regarding the administration of TRQ regimes in a transparent, equitable, and non-discriminatory manner.

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

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

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

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

The annual monitoring exercise on the follow-up to the NFIDC Decision was undertaken at the November meeting of the Committee, on the basis inter alia, of Table NF:1 notifications by donor Members as well as contributions by observer organizations.

Prospects for 2005

The United States will continue to make full use of the Committee to ensure transparency through timely notification by Members and to enhance enforcement of Uruguay Round commitments as they relate to export subsidies, market access, domestic support or any other trade-distorting practices by WTO Members. In addition, the Committee will continue to monitor and analyze the impact of the possible negative effects of the reform process on least-developed and net food-importing developing countries in accordance with the Agreement on Agriculture.

2. Committee on Market Access

Status

In January 1995, WTO Members established the Committee on Market Access, consolidating the work under the GATT system of the Committee on Tariff Concessions and the Technical Group on Quantitative Restrictions and other Non-Tariff Measures. The Committee on Market Access supervises the implementation of concessions on tariffs and non-tariff measures where not explicitly covered by another WTO body (e.g., the Textiles Monitoring Body). The Committee also is responsible for verification of new concessions on market access in the goods area. The Committee reports to the Council on Trade in Goods.

Cumulative Assessment Since the WTO Was Established

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

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

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

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

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

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

Major Issues in 2004

During 2004, WTO Members continued implementing the tariff reductions agreed to in the Uruguay Round; the Committee is responsible for verifying that implementation proceeds on schedule. The Committee held four formal meetings and one informal meeting in 2004 to discuss the following topics: (1) the ongoing review of WTO tariff schedules to accommodate updates to the Harmonized Tariff System (HTS) tariff nomenclature; (2) the WTO Integrated Data Base; (3) finalizing consolidated schedules of WTO tariff concessions in current HTS nomenclature; (4) reviewing the status of notifications on quantitative restrictions and reverse notifications of non-tariff measures; and (5) implementation issues related to "substantial interest." The Committee also conducted its third annual transitional review of China's implementation of its WTO accession commitments.

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

Using agreed examination procedures, Members have the right to object to any proposed nomenclature change affecting bound tariff items on grounds that the new nomenclature (as well as any increase in tariff levels for an item above existing bindings) represents a modification of the tariff concession. Members may pursue unresolved objections under GATT 1994 Article XXVIII. The majority of WTO Members have completed the process of implementing HTS 1996 changes, but five Members continue to require waivers.

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

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

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

Consolidated Schedule of Tariff Concessions (CTS): The Committee continued work on implementing an electronic structure for tariff and trade data. The CTS includes: tariff bindings for each WTO Member that reflect Uruguay Round tariff concessions; HTS96 and 2002 updates to tariff nomenclature and bindings; and any other modifications to the WTO schedule (e.g., participation in the Information Technology Agreement). The database also includes agricultural support tables. The CTS will be linked to the IAB and will serve as the vehicle for conducting Doha negotiations in agriculture and non-agricultural market access.

China Transitional Review: In September 2004, the Committee conducted the third annual review of China's implementation of its WTO commitments on market access. The review touched upon issues such as implementation of China's schedule of tariff commitments, tariff-rate quota administration, management of industrial quotas, and China's application of value added and consumption taxes.

Prospects for 2005

The ongoing work program of the Committee, while highly technical, will ensure that all WTO Members' schedules are up-to-date and available in electronic spreadsheet format. The Committee will likely explore technical assistance needs related to data submissions. The Committee will continue to review Members' amended schedules based on the HTS2002 revision, including following through on the Chairman's proposal to have the Secretariat generate HTS2002 schedules for all Members. The successful completion of conversion to HTS2002 will be a tremendous step forward in technical preparation for the Round.

3. Committee on the Application of Sanitary and Phytosanitary Measures

Status

The WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures establishes rules and procedures that ensure that Members' SPS measures address legitimate human, animal and plant health concerns, do not arbitrarily or unjustifiably discriminate between Members' agricultural and food products and are not disguised restrictions on trade. SPS measures protect against risks associated with plant or animal borne pests and diseases; additives, contaminants, toxins and disease-causing organisms in foods, beverages and feedstuffs. Fundamentally, the Agreement requires that such measures be based on science, developed using systematic risk assessment procedures and are notified to the WTO SPS Secretariat for distribution to other Members in sufficient time for Members to comment before final decisions are made. At the same time, the Agreement recognizes each Member's right to choose the level of protection it considers appropriate with respect to SPS risks.

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

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

Cumulative Assessment Since the WTO Was Established

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

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

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

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

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

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

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

Major Issues in 2004

In 2004, the Committee met three times. The Committee meetings are used increasingly by Members to raise concerns regarding the new and existing SPS measures of other Members. In addition, Members are using the Committee meetings to exchange views and experiences in implementing various provisions of the Agreement such as transparency, regionalization and equivalence. Members are also providing information to the Committee on efforts to achieve freedom from specified pests and diseases. The United States views this as a positive development as it demonstrates growing familiarity with the provisions of the Agreement and increasing recognition of the value of the Committee as a venue to discuss SPS-related trade issues among Members.

With assistance from the United States and other donors, most of the 34 countries participating in the Free Trade Area of the Americas negotiations attended each Committee meeting in 2003 and 2004. This has significantly expanded capital-based and Geneva-based participation in Committee meetings. Immediately prior to each Committee meeting, representatives from the FTAA countries have met to exchange views on issues on the agenda.

- **BSE - TSE**[24]: The Committee devoted considerable time discussing Members' measures restricting trade in beef and bovine products resulting from concerns with BSE. U.S. beef and other bovine-related exports were severely restricted by many Members after the diagnosis of a single imported cow in Washington state with the disease. Several other Members also had concerns that many Members' restrictions were not based on the international standard established by the OIE and no scientific justification was provided for denying imports of U.S. beef and beef products. The United States reported the single case and the steps taken to control the disease, and encouraged Members to conform to the OIE standard. Several other Members supported the U.S. views. Other Members expressed concerns with the interim final regulations of the United States to address BSE. The United States expects that BSE will continue to be an issue in the Committee.

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

- **Notifications:** The SPS notification process is taking on increasing importance for trade and also a means to report on determinations of equivalence and special and differential treatment. In 2004, the United States and other Members expressed concern about the failure of some Members to notify SPS measures which could have significant trade impacts. In 2003, the Committee agreed to a modification of the notification format to include information of equivalence agreements. In 2004, another modification was agreed to so that Members could use the notification form to provide information on special and differential treatment. In 2004, the WTO SPS Secretariat reported receiving over 5,000 notifications since 1995 of which over 1,000 were from the United States.

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

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

[24] Bovine Spongiform Encephalopathy and Transmissible Spongiform Encephalopathy.

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

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

Prospects for 2005

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

In preparation for the Sixth Ministerial, the Committee will complete the review of the operation and implementation of the Agreement. The United States anticipates that as part of the review the Committee will develop a multi-year work plan to promote the full implementation of the Agreement which may apply to the Committee and to Members.

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

4. Committee on Trade-Related Investment Measures

Status

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

Cumulative Assessment Since the WTO Was Established

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

Twenty-six WTO Members submitted notifications of inconsistent measures to the TRIMS Committee, as required by the terms of the Agreement, in order to benefit from grace periods for eliminating notified TRIMS. Developed countries were required to eliminate notified TRIMS by the beginning of 1997, developing countries by the beginning of 2000, and least-developed countries by the beginning of 2002. In 2001, eight developing countries were granted up to four additional years (retroactive to the beginning of 2000) to eliminate notified TRIMS. These extensions expired at the end of 2003, and only Pakistan has requested an additional extension, as discussed below.

Major Issues in 2004

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

During meetings in late 2003 and in 2004, the TRIMS Committee and the CTG considered Pakistan's request that its deadline for eliminating certain measures in the automotive sector be extended again, from the end of 2003 to the end of 2006. The United States posed a series of questions about the TRIMS and Pakistan's rationale for delaying their elimination. Pakistan replied in April 2004, arguing that certain enterprises depended upon the TRIMS and that elimination of the TRIMS would cause jobs to be lost in the automotive sector. No decision was reached on Pakistan's request for an extension.

As part of the review of special and differential treatment provisions, the TRIMS Committee considered in October 2004, several TRIMS-related proposals submitted in 2003 by a group of African countries. One proposal argued that WTO Members should interpret and apply the TRIMS Agreement in a manner that supports WTO-consistent measures taken by developing and least-developed countries to safeguard their balance of payments. A second proposal argued that least-developed or other low-income WTO Members experiencing balance-of-payments difficulties should be permitted to maintain measures inconsistent with the TRIMS Agreement for periods of not less than six years. The final African proposal would require the CTG to grant new requests from least-developed countries and certain other developing countries for the extension of transition periods or for fresh transition periods for the notification and elimination of TRIMS.

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

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

Pursuant to paragraph 18 of the Protocol on the Accession of the People's Republic of China to the WTO, the TRIMS Committee conducted its third annual review in 2004 of China's implementation of the TRIMS Agreement and related provisions of the Protocol. The United States' main objectives were to obtain information and clarification regarding China's WTO compliance efforts and to convey to China, in a multilateral setting, the concerns that it has regarding Chinese practices and/or regulatory measures that may not be in accordance with China's WTO commitments. During the October meeting of the TRIMS Committee, U.S. questions focused in particular on China's regulation of the auto sector. U.S. agencies are analyzing China's policies and its responses to U.S. questions in an effort to decide whether and how to pursue these issues during future meetings of the CTG or the TRIMS Committee.

Prospects for 2005

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

5. Committee on Subsidies and Countervailing Measures[25]

Status

The Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) provides rules and disciplines for the use of government subsidies and the application of remedies – through either WTO dispute settlement or countervailing duty (CVD) action – to address subsidized trade that causes harmful commercial effects. The Agreement nominally divides subsidy practices among three classes: prohibited (red light) subsidies; permitted yet actionable (yellow light) subsidies; and permitted, non-actionable (green light) subsidies.[26] Export subsidies and import substitution subsidies are prohibited. All other subsidies are permitted, but are actionable (through CVD or dispute settlement action) if they are (i) "specific", i.e., limited to a firm, industry or group thereof within the territory of a WTO Member and (ii) found to cause adverse trade effects, such as material injury to a domestic industry or serious prejudice to the trade interests of another WTO Member. With the expiration of the Agreement's provisions on green light subsidies, at present, the only non-actionable subsidies are those which are not specific, as defined above.

Cumulative Assessment Since the WTO Was Established

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

[25] For further information, see also the Joint Report of the United States Trade Representative and the U.S. Department of Commerce, *Subsidies Enforcement Annual Report to the Congress*, February 2005.

[26] Prior to 2000, Article 8 of the Agreement provided that certain limited kinds of government assistance granted for industrial research and development (R&D), regional development, or environmental compliance purposes would be treated as non-actionable subsidies. In addition, Article 6.1 of the Agreement provided that certain other subsidies (*e.g.,* subsidies to cover a firm's operating losses), referred to as dark amber subsidies, could be presumed to cause serious prejudice. If such subsidies were challenged on the basis of these dark amber provisions in a WTO dispute settlement proceeding, the subsidizing government would have the burden of showing that serious prejudice had *not* resulted from the subsidy. However, as explained in our 1999 report, these provisions expired on January 1, 2000 because a consensus could not be reached among WTO Members on whether to extend or the terms by which these provisions might be extended beyond their five-year period of provisional application.

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

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

In the development context, the provisions of the Agreement have been commended as a rational approach to the issue of special and differential treatment for developing and least-developed countries in the rules-based trading system of the WTO. In particular, the criteria for inclusion in Annex VII of the Subsidies Agreement, specifically the per-capita income threshold, have been referenced as a sensible and objective basis for identification of those poorer developing countries in need of particular assistance and as an appropriate mechanism to provide a temporary respite from fulfilling the normal rules. Particularly noteworthy in this regard is that the Agreement further recognizes that once a developing or least-developed country becomes export competitive in a product area, it may no longer need certain special and differential treatment.

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

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

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

Major Issues in 2004

The Committee held two meetings in 2004. In addition to its routine activities concerned with reviewing and clarifying the consistency of WTO Members' domestic laws, regulations and actions with Agreement requirements, the Committee, and the United States, continued to accord special attention to the general matter of subsidy notifications and the process by which such notifications are made to and considered by the Subsidies Committee. During the fall meeting, the Committee undertook its third transitional review with respect to China's implementation of the Agreement. Other issues addressed in the course of the year included: the examination of the export subsidy program extension requests of certain developing countries, the updating of the methodology for Annex VII(b) of the Agreement and an appointment to the Permanent Group of Experts. Further information on these various activities is provided below.

- **Review and Discussion of Notifications:** Throughout the year, Members submitted notifications of: (i) new or amended CVD legislation and regulations; (ii) CVD investigations initiated and decisions taken; and (iii) measures which meet the definition of a subsidy and which are specific to certain recipients within the territory of the notifying Member. Notifications of CVD legislation and actions, as well as subsidy notifications, were reviewed and discussed by the Committee at both of its meetings. In reviewing notified CVD legislation and subsidies, Committee procedures provide for the exchange in advance of written questions and answers in order to clarify the operation of the notified measures and their relationship to the obligations of the Agreement. To date, 97 Members of the WTO (counting the European Union as one) have notified that they currently have CVD legislation in place, while 37 Members have not, as yet, made a notification. Among the notifications of CVD laws and regulations reviewed in 2004 were those of: Argentina, Canada, China, the European Communities, Japan, Jordan, Mexico, Peru and South Africa.[27]

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

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

[27] In keeping with WTO practice, the review of legislative provisions which pertain or apply to both antidumping and CVD actions by a Member generally took place in the Antidumping Committee.

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

- **China Transitional Review:** At the fall meeting, the Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, the third annual transitional review with respect to China's implementation of its WTO obligations in the areas of subsidies, countervailing measures and pricing policies. Taking a leading role, the United States, along with other Members, presented written and oral questions and concerns to China in these areas. China provided substantial information with respect to its countervailing duty laws and regulations, as well as some information regarding its pricing policies. China orally described a limited number of its subsidy programs in response to Members' inquiries during the meeting. As noted above, however, it has not submitted a subsidies notification since becoming a WTO Member, citing numerous practical difficulties in assembling and submitting the appropriate information. Reciting detailed, publicly-available information for several of China's programs, the United States questioned the comprehensiveness of China's answers and urged it to provide a subsidy notification as required by Article 25.1 of the Agreement and its Protocol of Accession. Later in the year, at the Council for Trade in Goods meeting, China did commit to provide a subsidies notification within the year.

- **Extension of the transition period for the phase out of export subsidies:** Under the Agreement, most developing countries were obligated to eliminate their export subsidies by December 31, 2002. Article 27.4 of the Agreement allows for an extension of this deadline provided consultations were entered into with the Committee by the end of 2001. If the Committee grants an extension, annual consultations with the Committee must be held to determine the necessity of maintaining the subsidies.[28] If the Committee does not affirmatively sanction a continuation, the export subsidies must be phased out within two years.

To try and address the concerns of certain small developing countries, a special procedure within the context of Article 27.4 of the Agreement was adopted at the Fourth Ministerial Conference under which countries whose share of world exports was not more than 0.10 percent and whose Gross National Income was not greater than $20 billion could be granted a limited extension for particular types of export subsidy programs subject to rigorous transparency and standstill provisions. Members meeting all the qualifications for the agreed upon special procedures were eligible for a five-year extension of the transition period, in addition to the two years referred to under Article 27.4.[29] At the end of 2001, Antigua and Barbuda, Barbados, Belize, Bolivia, Costa Rica, Dominica, Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Honduras, Jamaica, Jordan, Kenya, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, Sri Lanka, and Suriname made requests under the special procedures adopted at the Fourth Ministerial Conference for small exporter developing countries.[30] Uruguay requested an extension for

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

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

[30] Bolivia, Honduras, Kenya and Sri Lanka are all listed in Annex VII of the Subsidies Agreement and thus, may continue to provide export subsidies until their "graduation". Therefore, these countries have only reserved their rights under the special procedures in the event they graduate during the five-

one program under both the normal and special procedures. Additionally, Colombia sought an extension for two of its export subsidies programs under a procedure agreed to at the Fourth Ministerial Conference analogous to that provided for small exporter developing countries. These requests were approved by the Committee in 2002 and again in 2003.

In 2004, requests were made by all the countries which had received extensions under the special procedures adopted at the Fourth Ministerial Conference for small exporter developing countries.[31] All these requests required, inter alia, a detailed examination of whether the applicable standstill and transparency requirements had been met. In total, the Committee conducted a detailed review of more than 40 export subsidy programs. At the end of the process, all of the requests under the special procedures were granted. Throughout the review and approval process, the United States took a leadership role in ensuring close adherence to all of the preconditions necessary for continuation of the extensions.

- **The Methodology for Annex VII(b) of the Agreement:** Annex VII of the Agreement identifies certain least developed countries that are eligible for particular special and differential treatment. Specifically, the export subsidies of these countries are not prohibited and, therefore, are not actionable as prohibited subsidies under the dispute settlement process. The countries identified in Annex VII include those WTO Members designated by the United Nations as "least developed countries" (Annex VII(a)) as well as countries that had, at the time of the negotiation of the Agreement, a per capita GNP under $1,000 per annum and are specifically listed in Annex VII(b).[32] A country automatically "graduates" from Annex VII(b) status when its per capita GNP rises above the $1,000 threshold. When a Member crosses this threshold it becomes subject to the subsidy disciplines of other developing country Members.

Since the adoption of the Agreement in 1995, the de facto interpretation by the Committee of the $1,000 threshold was that it reflected current (i.e., nominal or inflated) dollars. The concern with this interpretation, however, was that a Member could graduate from Annex VII on the basis of inflation alone, rather than on the basis of real economic growth.
In 2001, the Chairman of the Committee, in conjunction with the WTO Secretariat, developed an alternative approach to calculate the $1,000 threshold in constant 1990 dollars. At the Fourth Ministerial Conference, decisions were made which led to the adoption of this methodology. The WTO Secretariat updated these calculations in 2004.[33]

- **Permanent Group of Experts:** Article 24 of the Agreement directs the Committee to establish a Permanent Group of Experts (PGE), "composed of five independent persons, highly qualified in the fields of subsidies and trade relations." The Agreement articulates three possible roles for the PGE: (i) to provide, at the request of a dispute settlement panel, a binding ruling on whether a particular practice brought before that panel constitutes a prohibited

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

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

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

[33] *See:* G/SCM/110/Add. 1.

subsidy, within the meaning of Article 3 of the Agreement; (ii) to provide, at the request of the Committee, an advisory opinion on the existence and nature of any subsidy; and (iii) to provide, at the request of a WTO Member, a "confidential" advisory opinion on the nature of any subsidy proposed to be introduced or currently maintained by that Member. To date, the PGE has not yet been called upon to perform any of the aforementioned duties. Article 24 further provides for the Committee to elect the experts to the PGE, with one of the five experts being replaced every year. As of the beginning of 2004, the members of the Permanent Group of Experts were: Professor Okan Aktan (Turkey); Dr. Marco Bronckers (Netherlands); Mr. Yuji Iwasawa (Japan); Mr. Hyung-Jin Kim (Korea); and Mr. Terence P. Stewart (United States). Dr. Bronckers' term expired in the spring of 2004. Mr. Asger Petersen (Denmark) was elected to replace Dr. Bronckers, assuming the term until the spring of 2009.

Prospects for 2005

In 2005, the United States will continue to work with others to encourage Members' to meet their subsidy notification obligations, and to provide technical assistance with their notifications when available and where appropriate. (The United States is scheduled to provide its new and full subsidy notification in 2005.) Second, the United States will particularly focus on China's Transitional Review Mechanism, continuing the effort to ensure that China meets its obligations under its Protocol of Accession and the Agreement. Thirdly, the United States will continue to ensure the close adherence to the provisions of the agreed upon export subsidy extension procedures for small exporter developing countries. Finally, the United States is prepared to take a leadership role in addressing any technical questions or developing country issues that the Subsidies Committee may be asked to consider in the context of issues that may arise within the Rules Negotiating Group.

6. Committee on Customs Valuation

Status

The purpose of the WTO Agreement on the Implementation of GATT Article VII (known as the WTO Agreement on Customs Valuation) is to ensure that determinations of the customs value for the application of duty rates to imported goods are conducted in a neutral and uniform manner, precluding the use of arbitrary or fictitious customs values. Adherence to the Agreement is important for U.S. exporters, particularly to ensure that market access opportunities provided through market access gains achieved through tariff reductions are not negated by unwarranted and unreasonable "uplifts" in the customs value of goods to which tariffs are applied.

Cumulative Assessment Since the WTO Was Established

Achieving universal adherence to the Agreement on Customs Valuation in the Uruguay Round was an important objective of the United States dating back more than twenty years. The Agreement was initially negotiated in the Tokyo Round, but its acceptance was voluntary until mandated as part of membership in the WTO. A proper valuation methodology under the WTO Agreement on Customs Valuation, avoiding arbitrary determinations or officially-established minimum import prices, can be the foundation to the realization of market access commitments. Just as important, the implementation of the Customs Valuation Agreement also often represents the first concrete and meaningful steps taken by developing countries toward reforming their customs administrations and diminishing corruption, and ultimately moving to a rules-based trade facilitation environment. Because the Agreement precludes the use of arbitrary customs valuation methodologies, an additional positive result is to diminish one of the incentives for corruption by customs officials. For all of these reasons, as part of an overall strategic approach to advancing trade facilitation within the WTO, the United States has taken an aggressive role on matters related to customs valuation during the past decade.

U.S. exporters to many developing countries have had market access gains undermined through the application of arbitrarily-established minimum import prices, often used as a crude, broad-brush type of trade remedy - one that provides no measure of administrative transparency or procedural fairness. A notable development of the past 10 years has been a broad number of developing country Members moving toward implementing rules-based trade remedy procedures as a direct result of their implementation of the Valuation Agreement and moving away from the use of minimum import prices.

Under the Uruguay Round Agreement, special transitional measures were provided for developing country Members, allowing for delayed implementation of the Agreement on Customs Valuation and resulting in individual implementation deadlines for such Members beginning in 2000. An achievement of the past 10 years has been the positive experience within the Customs Valuation Committee in successfully addressing individual implementation needs of developing country Members. Starting in 1998 and continuing through 2004 the Committee operated through U.S.-led informal consultations leading to more than 30 decisions granting further flexible transitional measures specifically tailored to address particular situations, ultimately leading to full implementation through benchmarked work programs. The Committee has also been very active in exploring ways to ensure targeted and effective technical assistance is available to developing countries.

Major Issues in 2004

The Agreement is administered by the WTO Committee on Customs Valuation, which held two formal meetings in 2004. The Agreement established a Technical Committee on Customs Valuation under the auspices of the World Customs Organization (WCO). In accordance with a 1999 recommendation of the WTO Working Party on Preshipment Inspection that was adopted by the General Council, the Committee on Customs Valuation continued to provide a forum for reviewing the operation of various Members' preshipment inspection regimes and the implementation of the WTO Agreement on Preshipment Inspection.

The use of minimum import prices, a practice inconsistent with the operation of the Agreement on Customs Valuation, continues to diminish as more developing countries undertake full implementation of the Agreement. The United States has used the WTO Committee as an important forum for addressing concerns on behalf of U.S. exporters across all sectors - including agriculture, automotive, textile, steel, and information technology products - that have experienced difficulties related to the conduct of customs valuation regimes outside of the disciplines set forth under the WTO Agreement on Customs Valuation. The use of arbitrary and inappropriate "uplifts" in the valuation of goods by importing countries when applying tariffs can result in an unwarranted doubling or tripling of duties.

While many developing country Members undertook timely implementation of the Agreement, the Committee continued throughout 2004 to address various individual Member requests for either a transitional reservation for implementation methodology, or for a further extension of time for overall implementation. Each decision has included an individualized benchmarked work program toward full implementation, along with requirements to report on progress and specific commitments on other implementation issues important to U.S. export interests. The United Arab Emirates maintains an extension of the delay period in accordance with the provisions of paragraph 1, Annex III. El Salvador, Guatemala, Senegal, and Sri Lanka maintain reservations that have been granted under paragraph 2, Annex III for minimum values, or under the Article IX waiver provisions.

In 2004, in accord with the Doha Ministerial mandate on "Implementation-Related Issues and Concerns," the Committee continued to examine five proposals from India pertaining to the operation of several provisions of the Agreement. Support for these proposals from other WTO Members has been limited, and

Members did not come to consensus on these issues in 2004. The Committee also actively worked to meet another Doha implementation-related mandate to "identify and assess practical means" for addressing concerns by several Members on the accuracy of declared values of imported goods. The Technical Committee was requested to provide this input, and in May 2003 it submitted its report along with a draft "Guide to the Exchange of Customs Valuation Information." In 2004, the Committee continued to evaluate the Technical Committee's report.

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

The Committee's work throughout 2004 continued to reflect a cooperative focus among all Members toward practical methods to address the specific problems of individual Members. As part of its problem-solving approach, the Committee continued to take an active role in exploring how best to ensure effective technical assistance, including with regard to meeting post-implementation needs of developing country Members.

Prospects for 2005

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

7. Committee on Rules of Origin

Status

The objective of the WTO Agreement on Rules of Origin is to increase transparency, predictability, and consistency in both the preparation and application of rules of origin. The Agreement on Rules of Origin provides important disciplines for conducting preferential and non-preferential origin regimes, such as the obligation to provide binding origin rulings upon request to traders within 150 days of request. In addition to setting forth disciplines related to the administration of rules of origin, the Agreement provides for a work program leading to the multilateral harmonization of rules of origin used for non-preferential trade. The Harmonization Work Programme (HWP) is more complex than initially envisioned under the Agreement, which originally set for the work to be completed within three years after its commencement in July 1995. This work program continued throughout 2004 and will continue into 2005.

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

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

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

Cumulative Assessment Since the WTO Was Established

Virtually all issues and problems cited by U.S. exporters as arising under the origin regimes of U.S. trading partners arise from administrative practices that result in non-transparency, discrimination, and a lack of predictability. Substantial attention has been given to the implementation of the Agreement's important disciplines related to transparency, which constitute internationally recognized "best customs practices." Many of the Agreement's commitments, such as issuing binding rulings upon request of traders in advance of trade, have frequently been cited as a model for more broad-based commitments that could emerge from future WTO work on Trade Facilitation.

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

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

Major Issues in 2004

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

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

policy issues arising under the HWP that would require attention of the General Council.

The Committee continued to make progress in reducing the number of issues that remained outstanding under the HWP, and proceeding on a track toward achieving consensus on product-specific rules of origin for more than 5000 tariff lines. In 2004, the Committee focused on 94 unresolved issues identified as "core policy issues." Many of these issues are particularly significant due to their broad application across important product sectors, including fish, beef products, dairy products, sugar, industrial and automotive goods, semiconductors and electronics, and steel. Specific origin questions among these "core policy issues" include, for example, how to determine the origin of fish caught in an Exclusive Economic Zone, or whether the refinement, fractionation, and hydrogenation substantially transform oil and fat products to a degree appropriate to confer country of origin. A cross-cutting unresolved "core policy issue" continues to arise from the absence of common understanding among Members concerning the scope of the Agreement's prospective obligation, upon completion of the harmonization and implementation of the results, for Members to "apply rules of origin equally for all purposes." As a result, positions have sometimes been divided between a strictly neutral analysis under the criterion of 'substantial transformation' and an advocacy of restrictiveness for certain product-specific rules that would be unwarranted for application to the normal course of trade but is perceived as necessary for the operation of certain regimes or measures covered by other Agreements.

Prospects for 2005

Further progress in the HWP will remain contingent on achieving appropriate resolution of the "core policy issues" and to reaching a consensus on the scope of the prospective obligation to equally apply for all purposes the harmonized non-preferential rules of origin for all purposes. In accordance with a decision taken by the General Council in July 2004, work will continue on addressing these issues. The General Council, at its meeting in July 2004, extended the deadline for completion of the 94 core policy issues to July 2005. The General Council also agreed that following resolution of these core policy issues, the CRO would complete its remaining technical work by December 31, 2005.

U.S. Inquiry Point

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National Institute of Standards and Technology (NIST)
100 Bureau Drive
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Telephone:	(301) 975-4040
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NIST offers a free web-based service, Export Alert!, that provides U.S. customers with the opportunity to review and comment on proposed foreign technical regulations that can affect them. By registering for the Export Alert! Service, U.S. customers receive, via e-mail, notifications of drafts or changes to foreign regulations for a specific industry sector and/or country. To register on-line contact: http://ts.nist.gov/ncsci.

8. Committee on Technical Barriers to Trade

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

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

The TBT Committee[34] serves as a forum for consultation on issues associated with the implementation and administration of the Agreement. This includes discussions and/or presentations concerning specific standards, technical regulations and conformity assessment procedures proposed or maintained by a Member that are creating adverse trade consequences and/or are perceived to be violations of the Agreement. It also includes an exchange of information on Member government practices related to implementation of the Agreement and relevant international developments.

Transparency and Availability of WTO/TBT Documents: A key benefit to the public resulting from the TBT Agreement is the ability to obtain information on proposed standards, technical regulations and conformity assessment procedures, and to provide written comments for consideration on those proposals before they are finalized. Members are also required to establish a central contact point, known as an inquiry point, that is responsible for responding to requests for information on technical requirements or making the appropriate referral.

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

A number of documents relating to the work of the TBT Committee are available to the public directly from the WTO website: www.wto.org. TBT Committee documents are indicated by the symbols, "G/TBT/...." Notifications by Members of proposed technical regulations and conformity assessment procedures which are available for comment are issued as: G/TBT/N (the "N" stands for "notification")/USA (which in this case stands for the United States of America; three letter symbols will be used to designate the WTO Member originating the notification)/X (where "x" will indicate the numerical sequence for that country or

[34] Participation in the Committee is open to all WTO Members. Certain non-WTO Member governments also participate, in accordance with guidance agreed on by the General Council. Representatives of a number of international intergovernmental organizations were invited to attend meetings of the Committee as observers: the International Monetary Fund (IMF), the United Nations Conference on Trade and Development (UNCTAD); the International Trade Center (ITC); the International Organization for Standardization (ISO); the International Electrotechnical Commission (IEC); the Food and Agriculture Organization (FAO); the World Health Organization (WHO); the FAO/WHO Codex Alimentarius Commission; the International Office of Epizootics (OIE); the Organization for Economic Cooperation and Development (OECD); the UN Economic Commission for Europe (UN/ECE); and the World Bank. The International Organization of Legal Metrology (OIML), the United Nations Industrial Development Organization (UNIDO), the Latin American Integration Association (ALADI), the European Free Trade Association (EFTA) and the African, Caribbean and Pacific Group of States (ACP) have been granted observer status on an *ad hoc* basis, pending final agreement by the General Council on the application of the guidelines for observer status for international intergovernmental organizations in the WTO.

Member).[35] Parties in the United States interested in submitting comments to foreign governments on their proposals should send them through the U.S. inquiry point at the address above. Minutes of the Committee meetings are issued as "G/TBT/M/..." (followed by a number). Submissions by Members (e.g., statements, informational documents, proposals, etc.) and other working documents of the Committee are issued as "G/TBT/W/..." (followed by a number). As a general rule, written information provided by the United States to the Committee is provided on an "unrestricted" basis and is available to the public on the WTO website.

Cumulative Assessment Since the WTO Was Established

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

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

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

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

Major Issues in 2004

The TBT Committee met three times in 2004. and addressed implementation of the Agreement, including an exchange of information on actions taken by Members domestically to ensure implementation and ongoing compliance. A number of Members used the Committee meetings to raise concerns about specific technical regulations that affected, or had the potential to affect, trade adversely and were perceived to create unnecessary barriers to trade. U.S. interventions were primarily targeted at a variety of proposals from the EU that could seriously disrupt trade (e.g., the EU's proposed regulation on the Registration, Evaluation and Authorization of Chemicals ("REACH"), wine labeling regulations, and regulations on the traceability and labeling of biotech food and feed products). The minutes of the meetings are contained in G/TBT/M/32, 33 and 34.

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

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

The Committee also conducted its Ninth Annual Review of the Agreement based on information contained in G/TBT/14, and its Ninth Annual Review of the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the Agreement) based on information contained in G/TBT/CS/1/Add.8 and G/TBT/CS/2/Rev.10.

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

Prospects for 2005

The Committee will continue to monitor implementation of the Agreement by WTO Members. The number of specific trade concerns raised in the Committee appears to be increasing. The Committee has been a useful forum for Members to raise concerns and facilitate bilateral resolution of such concerns. In March 2005, the Committee will host a workshop on supplier's declaration of conformity. Follow-up on issues raised in past reviews, or discussion of new issues in preparation for the Fourth Review, are driven by Member statements and submissions. The U.S. priorities are likely to continue to focus on good regulatory practice, transparency and technical assistance. At its last meeting in 2004, the Committee agreed upon a work program for the

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

9. Committee on Antidumping Practices

Status

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

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

At Marrakesh in 1994, Ministers adopted a Decision on Anticircumvention directing the Antidumping Committee to develop rules to address the problem of circumvention of antidumping measures. In 1997, the Antidumping Committee agreed upon a framework for discussing this important topic and established the Informal Group on Anticircumvention. Under this framework, the Informal Group held meetings in April and October 2004 to discuss the topics of: (1) what constitutes circumvention; (2) what is being done by Members confronted with what they consider to be circumvention; and (3) to what extent circumvention can be dealt with under existing WTO rules and what other options may be deemed necessary.

Cumulative Assessment Since the WTO Was Established

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

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

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

The Antidumping Agreement requires Members to submit reports on all preliminary or final antidumping actions taken, and, on a semi-annual basis, reports of antidumping actions taken within the preceding six months. The semi-annual reports provide valuable reference tools summarizing Members' antidumping use, and are increasingly important given the increase in the number of Members using antidumping measures. The United States carefully scrutinizes those reports, often raises questions about them at Committee meetings, and refers to them when specific questions arise as to antidumping actions by other Members. The semi-annual reports are accessible to the general public, in keeping with the objectives of the Uruguay Round Agreements Act. (Information on accessing WTO notifications is included in Annex II). This promotes improved public knowledge and appreciation of the trends in and focus of all WTO Members' antidumping actions.

The Working Group on Implementation continues to serve as an active venue for work regarding the practical implementation of WTO antidumping provisions. It offers important opportunities for Members to examine issues and candidly exchange views and information across a broad range of topics. It has drawn a high level of participation by Members and, in particular, by experts from capitals and officials of antidumping administering authorities, many of whom are eager to obtain insight and information from their peers. Since the inception of the Working Group, the United States has submitted papers on most topics, and has been an active participant at all meetings. The Working Group addresses implementation concerns and questions stemming both from one's own administrative experience and from observing the practices of others. While not a negotiating forum in either a technical or formal sense, the Working Group serves an important role in promoting improved understanding of the Agreement's provisions and exploring options for improving practices among antidumping administrators.

Where possible, the Working Group endeavors to develop draft recommendations on the topics it discusses, which it forwards to the Antidumping Committee for formal consideration. To date, the Committee has adopted Working Group recommendations on: (1) pre-initiation notifications under Article 5.5 of the Agreement; (2) the periods used for data collection in investigations of dumped imports and of injury caused or threatened to be caused by such imports; (3) extensions of time to supply information; (4) the timeframe to be used in calculating the volume of dumped imports for making the determination under Article 5.8 of the Agreement as to whether the volume of such imports is negligible; and (5) guidelines for the improvement of annual reviews under Article 18.6 of the Agreement.

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

Discussions in the Working Group on Implementation will continue to play an important role as more and more Members enact antidumping laws and begin to apply them. There has been a sharp and widespread interest in clarifying understanding of the many complex provisions of the Antidumping Agreement. Tackling these issues will require the involvement of the Working Group, which is the forum best suited to provide the necessary technical and administrative expertise. The United States will continue to rely upon the Working Group to learn in greater detail about other Members' administration of their antidumping laws, especially as that forum provides opportunities to discuss not only the laws, as written, but also the operational practices which Members employ to implement them.

The Antidumping Committee's establishment of the Informal Group on Anticircumvention in 1997 marked an important step towards fulfilling the Decision of Ministers at Marrakesh to refer this matter to the Committee. Many Members, including the United States, recognize the importance of using the Informal Group to pursue the 1994 decision of Ministers at Marrakesh, who expressed the desirability of achieving uniform rules in this area as soon as possible. Members have submitted papers and made presentations outlining scenarios based on factual situations faced by their investigating authorities, and exchanged views on how their respective authorities might respond to such situations. Moreover, those Members, such as the United States, that have legislation intended to address circumvention, have responded to inquiries from other Members as to how such legislation operates and the manner in which certain issues may be treated. However, other Members have taken the position that any action to counter circumvention is prohibited by the Agreement, other than a new investigation of dumping and material injury by the allegedly circumventing imports. This basic conceptual disagreement has arisen repeatedly in the discussions of the Informal Group.

Major Issues in 2004

In 2004, the Antidumping Committee held two meetings, in April and October. At its meetings, the Committee focused on implementation of the Antidumping Agreement, in particular, by continuing its review of Members' antidumping legislation. The Committee also reviewed reports required of Members that provide information as to preliminary and final antidumping measures and actions taken in each case over the preceding six months.

Among the more significant activities undertaken in 2004 by the Antidumping Committee, the Working Group on Implementation and the Informal Group on Anticircumvention are the following:

- Notification and Review of Antidumping Legislation: To date, 76 Members of the WTO have notified that they currently have antidumping legislation in place, while 29 Members have notified that they maintain no such legislation. In 2004, the Antidumping Committee reviewed notifications of new or amended antidumping legislation submitted by Argentina, Australia, Canada, China, the European Communities, Japan, Jordan, Mexico, Peru and South Africa. Members, including the United States, were active in formulating written questions and in making follow-up inquiries at Committee meetings.

- Notification and Review of Antidumping Actions: In 2004, 26 WTO Members notified that they had taken antidumping actions during the latter half of 2003, whereas 27 Members did so with respect to the first half of 2004. (By comparison, 39 Members notified that they had not taken any antidumping actions during the latter half of 2003, and 33 Members notified that they had taken no actions in the first half of 2004). These actions, in addition to outstanding antidumping measures currently maintained by WTO Members, were identified in semi-annual reports submitted for the Antidumping Committee's review and discussion.

- China Transitional Review: At the October 2004 meeting, the Committee undertook,

pursuant to the Protocol on the Accession of the People's Republic of China, its third annual transitional review with respect to China's implementation of the Agreement. Several Members, including the United States, presented written and oral questions to China with respect to China's antidumping laws and practices, particularly emphasizing concerns about a lack of transparency in some of China's practices, with China orally providing information in response to these questions at the October 2004 meeting.

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

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

- Informal Group on Anticircumvention: At its two meetings in 2004, the Informal Group on Anticircumvention continued its useful discussions on the first three items of the agreed framework of (1) what constitutes circumvention; (2) what is being done by Members confronted with what they consider to be circumvention; and (3) to what extent can circumvention be dealt with under the relevant WTO rules; to what extent can it not; and what other options may be deemed necessary. At the April 2004 meeting, the Group continued its discussion of a paper submitted by the United States in 2003 summarizing its experience in two recent circumvention investigations. At the October 2004 meeting, the Group discussed a new paper by New Zealand, which discussed a specific circumvention-related problem that it had faced, and proposed a possible approach to deal with the situation where unassembled and disassembled goods are imported in order to circumvent an antidumping duty. The Group also discussed an issue raised with respect to notification of exporters and their governments by Members that initiate anti-circumvention inquiries.

Prospects for 2005

Work will proceed in 2005 on the areas that the Antidumping Committee, the Working Group on Implementation and the Informal Group on Anticircumvention addressed this past year. The Antidumping Committee will pursue its review of Members' notifications of antidumping legislation, and Members will continue to have the opportunity to submit additional questions concerning previously reviewed notifications. Members' preparation and Committee review of semi-annual reports and reports of preliminary and final antidumping actions will also continue in 2005.

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

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

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

10. Committee on Import Licensing

Status

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

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

Cumulative Assessment Since the WTO Was Established

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

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

Major Issues in 2004

At its meetings in May and September 2004, the Committee reviewed 49 submissions from 48 Members,[36] including initial or revised notifications, completed questionnaires on procedures, and questions and replies to questions. This represented a decline in the number of notifications submitted, but included submissions from countries that had not before provided notifications to the Committee, e.g. Armenia, Dominican Republic, El Salvador, Ghana, and Suriname. The Chairman reported that at the end of 2004, only 25[37] of 123 Committee Members had never submitted a notification to the Committee, bringing the percentage of Members with at least an initial notification to over three-quarters of the total. Concern remained, however, that Members are not submitting notifications with the frequency required by the Agreement. The Chairman of the Committee reminded Members that notifications were required even if only to report that no import licensing system existed and that the WTO Secretariat further was prepared to assist Members in developing their submissions.

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

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

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

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

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

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

Prospects for 2005

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

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

11. Committee on Safeguards

Status

The Committee on Safeguards was established to administer the WTO Agreement on Safeguards. The Agreement establishes rules for the application of safeguard measures as provided in Article XIX of GATT 1994.

Cumulative Assessment Since the WTO Was Established

Effective safeguards rules are important to the viability and integrity of the multilateral trading system. The availability of a safeguards mechanism gives WTO Members the assurance that they can act quickly to help industries adjust to import surges, thus providing them with flexibility they would not otherwise have to open their markets to international competition. At the same time, WTO safeguards rules ensure that such actions are of limited duration and are gradually less restrictive over time.

The Agreement on Safeguards incorporates into WTO rules many of the concepts embodied in U.S. safeguards law (section 201 of the Trade Act of 1974, as amended). The Agreement requires all WTO Members to use transparent and objective procedures when taking safeguard

actions to prevent or remedy serious injury to a domestic industry caused by increased imports.

Among its key provisions, the Agreement:

- requires a transparent, public process for making injury determinations;
- sets out clearer definitions than GATT Article XIX of the criteria for injury determinations;
- requires safeguard measures to be steadily liberalized over their duration;
- establishes an eight-year maximum duration for safeguard actions, and requires a review no later than the mid-term of any measure with a duration exceeding three years; allows safeguard actions to be taken for three years, without the requirement of compensation or the possibility of retaliation; and
- prohibits so-called "grey area" measures, such as voluntary restraint agreements and orderly marketing agreements, which had been utilized by countries to avoid GATT disciplines and which adversely affected third-country markets.

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

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

Major Issues in 2004

During its two meetings in April and October 2004, the Committee continued its review of Members' laws, regulations, and administrative procedures, based on notifications required by Article 12.6 of the Agreement. The Committee reviewed new or amended legislative texts from Armenia, China, Jamaica, Jordan, Mexico, Pakistan, Peru, Chinese Taipei, and Turkey.

The Committee reviewed Article 12.1(a) notifications, regarding the initiation of a safeguard investigatory process relating to serious injury or threat thereof and the reasons for it, from the following Members: Argentina on color television sets; Colombia on electric smoothing irons; Ecuador on paper and paperboard, and on pneumatic tyres of rubber; the European Communities on salmon; India on starch; Jamaica on cement; Moldova on cosmetic and perfumery products; Peru on

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

The Committee reviewed Article 12.1(b) notifications, regarding a finding of serious injury or threat thereof caused by increased imports, from the following Members: Ecuador on smooth ceramics; the European Communities on mandarins; Hungary on white sugar; India on bisphenol; Jamaica on cement; Poland on matches.

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

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

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

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

China Transitional Review: At the October 2004 meeting, the Committee undertook, pursuant to the Protocol on the Accession of the People's Republic of China, its third transitional review with respect to China's implementation of the Agreement. Several Members, including the United States, addressed questions and comments to China, with a particular emphasis on transparency concerns, relating to China's notification of its safeguard regulations and rules, and to China's 2002-2003 safeguard measure with respect to certain steel products. China's representatives provided oral responses at the October meeting.

Implementation: At both the April and October 2004 meetings, the Committee discussed various issues pertaining to Article 9.1 of the Agreement, concerning the exclusion of developing country Members from the application of safeguard measures when certain criteria are met.

Prospects for 2005

The Committee's work in 2005 will continue to focus on the review of safeguard actions that have been notified to the Committee and on the review of notifications of any new or amended safeguards laws. Among the new notifications of actions under the Agreement on Safeguards that the Committee will be reviewing in 2005 are notifications by Chile with respect to its investigation on wheat flour, and by the European Communities with respect to its investigation on salmon.

12. Textiles Monitoring Body

Status

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

The ATC succeeded the Multifiber Arrangement (MFA) as an interim arrangement establishing

special rules for trade in textile and apparel products on January 1, 1995. All Members of the WTO were subject to the disciplines of the ATC, whether or not they were signatories to the MFA, and only Members of the WTO were entitled to the benefits of the ATC. The ATC was a ten-year arrangement which provided for the gradual integration of the textile and clothing sector into the WTO and provided for improved market access and the gradual and orderly phase-out of the special quantitative arrangements that have regulated trade in the sector among the major exporting and importing nations.

Cumulative Assessment Since the WTO Was Established

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

Major Issues in 2004

A considerable portion of the TMB's time in 2004 was spent drafting its contribution to the CTG's review of the operation of the ATC in its third stage. This report was forwarded to the CTG in July. As expected, in the last year of the operation of the ATC, there were no disputes among Members involving the application of the safeguard mechanism or other actions by restraining Members. TMB documents are available on the WTO's web site: http://www.wto.org. Documents are filed in the Document Distribution Facility under the document symbol "G/TMB."

Prospects for 2005

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

13. Working Party on State Trading

Status

Article XVII of the GATT 1994 requires Members to ensure that state trading enterprises and private enterprises to which Members accord special or exclusive privileges act in a manner consistent with the general principle of non-discriminatory treatment, make purchases or sales solely in accordance with commercial considerations, and abide by other GATT disciplines. The Understanding on the Interpretation of Article XVII of the GATT 1994 ("Article XVII Understanding") defines a state trading enterprise and instructs Members to notify the Working Party of all enterprises in their territory that fall within the agreed definition, whether or not such enterprises have imported or exported goods.

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

Cumulative Assessment Since the WTO Was Established

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

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

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

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

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

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

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

Major Issues in 2004

The Working Party held one formal meeting in November 2004, where it reviewed Member notifications. New and full notifications for 2004 have been received from 17 members. In October 2003 and again in November 2004, the United States submitted a request for information from Egypt regarding the operations of the Alexandria Cotton Exporters' Association (ALCOTEXCA) and its members, pursuant to Article XVII:4(c) of the GATT 1994. The United States believes that its interests are being adversely affected by the operations of the ALCOTEXCA and its members. Article XVII:4(c) provides that a Member that has reason to believe its interests are being adversely affected by the operations of a state trading enterprise may request that the Member establishing, maintaining or authorizing such enterprise supply information about its operations related to carrying out the provisions of the GATT 1994.

Prospects for 2005

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

In 2005, the Working Party will contribute to the ongoing discussion of these and other state trading issues through its review of new notifications and its examination of what further information could be submitted as part of the notification process to enhance transparency of state trading enterprises.

H. Council on Trade Related Aspects of Intellectual Property Rights

Status

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

The TRIPS Agreement entered into force on January 1, 1995, and its obligations to provide "most favored nation" and national treatment became effective on January 1, 1996 for all Members. Most substantive obligations are phased in based on a Member's level of development. Developed country Members were required to implement the obligations of the Agreement fully by January 1, 1996; developing country Members generally had to implement fully by January 1, 2000; and least-developed country Members must implement by January 1, 2006. Based on a proposal made by the United States at the Doha WTO Ministerial Conference, however, the transition period for least developed countries to implement or apply Sections 5 and 7 of Part II of the TRIPS Agreement with respect to pharmaceutical products, or to enforce rights with respect to such products, was extended by the TRIPS Council until January 1, 2016. The WTO General Council, on the recommendation of the TRIPS Council, similarly waived until 2016 the obligation for least developed country Members to provide exclusive marketing rights for certain pharmaceutical products if those Members did not provide product patent protection for pharmaceutical inventions.

The WTO TRIPS Council monitors implementation of the TRIPS Agreement, provides a forum in which WTO Members can consult on intellectual property matters, and carries out the specific responsibilities assigned to the Council in the TRIPS Agreement. The TRIPS Agreement is important to U.S. interests and has yielded significant benefits for U.S. industries and individuals, from those engaged in the pharmaceutical, agricultural, chemical, and biotechnology industries to those producing motion pictures, sound recordings, software, books, magazines, and consumer goods.

Cumulative Assessment Since the WTO Was Established

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

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

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

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

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

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

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

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

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

At the Doha Ministerial Conference in 2001, Ministers acknowledged the serious public health problems afflicting Africa and other developing and least-developed countries, especially those resulting from HIV/AIDS, malaria, tuberculosis, and other epidemics. In doing so, WTO Ministers adopted the Declaration on the TRIPS Agreement and Public Health, clarifying the flexibilities available in the TRIPS Agreement that may be used by WTO Members to address public health crises. The declaration sends a strong message of support for the TRIPS Agreement, confirming that it is an essential part of the wider national and international response to the public health crises that afflict many developing and least developed Members of the WTO, in particular those resulting from HIV/AIDS, tuberculosis and malaria and other epidemics. Ministers worked in a cooperative and constructive fashion to produce a political statement that answers the questions identified by certain Members regarding the flexibility inherent in the TRIPS Agreement. This strong political statement demonstrates that TRIPS is part of the solution to these crises. The statement does so, without altering the rights and obligations of WTO Members under the TRIPS Agreement, by reaffirming that Members are maintaining their commitments under the Agreement while at the same time highlighting the flexibilities in the Agreement.

The Declaration reflects and confirms the profound conviction of the United States that the exclusive rights provided by Members as required under the TRIPS Agreement are a powerful force supporting public health

objectives. As a consequence of Ministers' efforts, we believe those Members suffering under the effects of the pandemics of HIV/AIDS, tuberculosis and malaria, particularly those in sub-Saharan Africa, should have greater confidence in meeting their responsibilities to address these crises. The United States will continue working with the international community to ensure that additional funding and resources are made available through President Bush's Emergency Plan for AIDS Relief (PEPFAR) to the least developed and developing country Members to assist them in addressing these public health care problems.

One major part of the Doha Declaration was the agreement that least-developed country Members will not be obliged, with respect to pharmaceutical products, to implement or apply sections 5 and 7 of Part II of the TRIPS Agreement (patents and protection of undisclosed information, respectively) or to enforce rights provided for under these Sections until January 1, 2016, which was first proposed by the United States. The agreement was implemented by decision of the TRIPS Council in July 2002, and was made without prejudice to the right of least-developed country Members to seek other extensions of the period provided for in paragraph 1 of Article 66 of the TRIPS Agreement.

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

Intensive consultations continued into 2003. As a result of these consultations the TRIPS Council, at its meeting of 28 August 2003, approved the draft Decision on "Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health", along with the text of a statement to be read by the General Council Chairman at its adoption by the WTO General Council. On 30 August 2003, the General Council adopted the Decision in the light of the statement read out by its Chairman (the "August 30 solution"). The statement describes Members' "shared understanding" on how the decision is to be interpreted and implemented. It says the decision should be used in good faith to protect public health and not for industrial or commercial policy objectives and that all reasonable measures should be taken to prevent medicines from being diverted away from those countries for which they are intended to be provided. The solution establishes procedures for utilizing a waiver of Article 31(f), which allows countries producing generic copies of patented products under compulsory licences to export the products to eligible importing countries where certain procedures are followed. The August 30 solution was widely viewed as a major achievement and should give affected countries further confidence in meeting such crises as they arise.

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

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

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

Major Issues in 2004

In 2004, the TRIPS Council held four formal meetings, including "special negotiation sessions" on the establishment of a multilateral system for notification and registration of geographical indications for wines and spirits called for in Article 23.4 of the Agreement (See separate discussion of this topic under section D, "Council for Trade-Related Intellectual Property Rights, Special Session", and below). In addition to continuing its work reviewing the implementation of the Agreement by developing countries and newly-acceding Members, the Council's work in 2004 focused on TRIPS issues addressed in the Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health.

- **Review of Developing Country Members' TRIPS Implementation:** As a result of the Agreement's staggered implementation provisions, the TRIPS Council during 2004 continued to devote considerable time to reviewing the Agreement's implementation by developing country Members and newly acceding Members as well as to providing assistance to developing country Members so they can fully implement the Agreement. In particular, the TRIPS Council continued to urge developing country Members to respond to the questionnaires already answered by developed country Members regarding their protection of geographical indications and implementation of the Agreement's enforcement provisions, and to provide detailed information on their implementation of Article 27.3(b) of the Agreement. During the TRIPS Council meetings, the United States continued to press for full implementation of the TRIPS Agreement by developing country Members and participated actively during the reviews of legislation by highlighting specific concerns regarding individual Members' implementation, particularly with regard to China, of its obligations.

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

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

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

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

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

- **Geographical Indications:** The Doha Declaration directed the TRIPS Council to discuss "issues related to extension" of Article 23-level protection to geographical indications for products other than wines and spirits and to report to the Trade Negotiations Committee by the end of 2002 for appropriate action. Because no consensus could be reached in the TRIPS Council on how the Chair should report to the TNC on the issues related to extension of Article 23-level protection to geographical indications for products other than wines and spirits, and, in light of the strong divergence of positions on the way forward on geographical indications and other implementation issues, the TNC Chair closed the discussion by saying he would consult further with Members. In a decision on August 1, 2004 to move the Doha Development Agenda forward, the Ministers mandated the Director-General to continue his consultative process on all outstanding implementation issues, including on extension of the protection of geographical indications. Consistent with this mandate, the Director-General appointed the Deputy Director-General to hold such consultations with Members on the issue of extension. The first consultation took place in December 2004 and discussed procedural-related issues on how future consultations should be structured. The next consultations are scheduled for February 2005 and then likely again in conjunction with regularly scheduled TRIPS Council meetings in March, June and September 2005.

Throughout 2004, the United States and many like-minded Members maintained the position that demandeurs had not established that the protection provided geographical indications for products other than wines and spirits was inadequate and thus proposals for expanding GI protection were unwarranted. The United States and other Members noted that the administrative costs and burdens of proposals to expand protection would be considerable for those Members that did not have a longstanding statutory regime for the protection of geographical indications, and that the benefits accruing to those few Members that had

longstanding statutory regimes for the protection of geographical indications would represent a windfall, while other Members with few or no geographical indications would receive no counterbalancing benefits. While willing to continue the dialog in the TRIPS Council, the United States believes that discussion of the issues has been exhaustive and that no consensus has emerged with regard to extension of Article 23-level protection to products other than wines and spirits.

The United States and other Members have also steadfastly resisted efforts by some Members to obtain new GI protections in the WTO agriculture negotiations. The United States views such initiatives as efforts to take back the names of many famous products, such as feta and parmesan, from U.S. producers who have invested considerable time and resources to make these names famous and who are currently using such terms in a manner fully consistent with international intellectual property agreements.

No further progress has been made on the Article 24.2 review of the application by Members of TRIPS provisions on geographical indications in spite of the review continuing to be on the TRIPS Council's agenda. In 2004 TRIPS Council meetings, the United States continued to urge developing country Members that have not yet provided information on their regimes for the protection of geographical indications, and most of them have not, to do so. The United States also maintained its support for the proposal by New Zealand in 2000, and by Australia in 2001, that the Council conduct the review by addressing each article of the TRIPS Agreement covering geographical indications in light of the experience of Members as reflected in the responses to the "checklist." The TRIPS Council Chairman intends to consult with Members on how to proceed with the review in 2005. The TRIPS Council, in 2004, also took note of responses to the checklist of questions relating to the review under TRIPS Article 24.2 from Moldova and Chinese Taipei.

- **Review of Current Exceptions to Patentability for Plants and Animals:** As called for in the Agreement, the TRIPS Council initiated a review of TRIPS Article 27.3(b) (permitting Members to except from patentability plants and animals and biological processes for the production of plants and animals) and, because of the interest expressed by some Members, the discussion continued through 2000 and 2001. In 2001, the United States again called for developing country Members to provide this same information so that the Council would have a more complete picture on which to base its discussion. Regrettably, most developing country Members have chosen not to provide such information and have raised topics that fall outside the scope of Article 27.3(b). However, in 2004, the Council did note information provided by Moldova on how these matters are addressed in their national law.

The Doha Declaration directs the Council for TRIPS, in pursuing its work program under the review of Article 27.3(b) to examine, inter alia, the relationship between the TRIPS Agreement and the CBD, and the protection of traditional knowledge and folklore. In 2004, several developing countries, led by India and Brazil have submitted a series of papers based on an unsuccessful proposal for a "checklist" approach to structuring the discussions on the relationship between TRIPS and CBD, the protection of genetic resources and traditional knowledge. This "checklist" approach was not acceptable to the United States and certain other Members as it presupposes the position of the demandeurs that the patent provisions of the TRIPS Agreement should be amended to require disclosure of the source of the genetic resource or traditional knowledge, as well as evidence of prior informed consent to obtain the genetic resource and adequate benefit sharing with the custodian community or country of the genetic resource in order to obtain a patent. In response to this proposal the United States submitted a new paper in November 2004 which provides counter-arguments to mandatory disclosure requirements for patent applications as well as a number of alternative proposals for better achieving certain objectives. In addition, the

U.S. paper proposes a structure for future discussions that will not prejudice the position of any Members by focusing on shared objectives related to the protection of genetic resources and traditional knowledge, and sharing national experiences that may provide effective alternative models outside intellectual property right regimes to achieve the shared objectives. The United States has suggested that any Member that has a question about whether a particular CBD implementation proposal would run afoul of TRIPS obligations raise the issue with the Council so that it might obtain the views of other Members.

- **Non-violation:** The Doha Declaration on Implementation directs the TRIPS Council to continue its examination of the scope and modalities for non-violation nullification and impairment complaints related to the TRIPS Agreement, to make recommendations to the Fifth Ministerial Conference, and, during the intervening period, not to make use of such complaints. No consensus on a recommendation to establish scope and modalities or to extend the moratorium emerged by the time of the 5th Ministerial meeting. However, the General Council agreed, in its decision of August 1, 2004, on the Doha Work Program, to extend the moratorium until the Sixth Ministerial Conference, currently scheduled to take place in Hong Kong, China, in December 2005.

Responsive to the General Council decision, the TRIPS Council took up the issue of non-violation nullification and impairment complaints in the context of the TRIPS Agreement in September and December 2004. As in past years, the United States continued to support the automatic expiration of the moratorium at the 6th Ministerial meeting, arguing that TRIPS is no different than other agreements where non-violation nullification and impairment claims are permitted, and that Article 26 of the Dispute Settlement Understanding and GATT decisions on non-violation provide sufficient guidance to enable a panel or the Appellate Body to make appropriate determinations in such cases.

Further Reviews of the TRIPS Agreement: Article 71.1 calls for a review of the Agreement in light of experience gained in implementation, beginning in 2002. The Council continues to consider how the review should best be conducted in light of the Council's other work. The Doha Ministerial Declaration directs that, in its work under this Article, the Council is also to consider the relationship between intellectual property and the CBD, traditional knowledge, folklore, and other relevant new developments raised by Members pursuant to Article 71.1.

- **Technical Cooperation and Capacity Building:** As in each past year, the United States and other Members provided reports on their activities in connection with technical cooperation and capacity building.

- **Implementation of Article 66.2:** Article 66.2 requires developed countries to provide incentives for enterprises and institutions in their territories to promote and encourage technology transfer to least developed Members in order to enable them to create a sound and viable technological base. This provision was reaffirmed in the Doha Decision on Implementation-related Issues and Concerns and the TRIPS Council was directed to put in place a mechanism for ensuring monitoring and full implementation of the obligation. During 2003, the TRIPS Council adopted a Decision calling on developed countries to provide detailed reports every third year, with annual updates, on these incentives. The reports are to be reviewed in the TRIPS Council at its last meeting each year. The United States had provided detailed reports on specific U.S. Government institutions (e.g. the African Development Foundation and Agency for International Development) and incentives as required.

Prospects for 2005

In 2005, the TRIPS Council will continue to focus on transforming the August 30 solution for access to medicines into an amendment of the TRIPS Agreement, its built-in agenda and the additional mandates established in Doha, including issues related to the extension of Article 23-level protection for geographical indications for products other than wines and

spirits, on the relationship between the TRIPS Agreement and the CBD, and on traditional knowledge and folklore, as well as other relevant new developments.

U.S. objectives for 2005 continue to be:

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

I. Council for Trade in Services

Status

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

The Council for Trade in Services in Regular Session (CTS) oversees implementation of the GATS and reports to the General Council. In addition, the CTS is responsible for a technical review of GATS Article XX.2 provisions; waivers from specific commitments pursuant to paragraphs 3 and 4 of Article IX of the Marrakesh Agreement establishing the WTO; the transitional review under Section 18 of the Protocol on the Accession of the People's Republic of China; implementation of GATS Article VII; the MFN review; and notifications made to the Council Pursuant to GATS Article III.3, V.5, V.7, and VII.4.

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

Cumulative Assessment Since the WTO Was Established

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

Major Issues in 2004

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

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

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

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

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

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

Prospects for 2005

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

1. Committee on Trade in Financial Services

Status

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

Cumulative Assessment Since the WTO Was Established

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

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

Major Issues in 2004

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

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

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

Prospects for 2005

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

2. Working Party on Domestic Regulation Status

GATS Article VI:4, on Domestic Regulation, directs the CTS to develop any necessary disciplines relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures. A 1994 Ministerial Decision assigned priority to the professional services sector, for which the Working Party on Professional Services (WPPS) was established following the conclusion of the Uruguay Round. The WPPS developed Guidelines for the Negotiation of Mutual Recognition Agreements in the Accountancy Sector that Members adopted in May 1997. The WPPS completed Disciplines on Domestic Regulation in the Accountancy Sector in December 1998 (The texts are available at www.wto.org).

After the completion of the Accountancy Disciplines, in May 1999, the CTS established a new Working Party on Domestic Regulation (WPDR), which also took on the work of the predecessor WPPS and its existing mandate. The WPDR is now charged with determining whether the disciplines adopted in connection with accountancy or similar disciplines may be more generally applicable to other sectors. The Working Party shall report its recommendations to the CTS no later than the conclusion of the services negotiations.

Cumulative Assessment since its Establishment in 1999

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

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

Major Issues in 2004

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

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

The United States continued to support focusing the Working Party's discussion on examples of problems or restrictions for which new disciplines would be appropriate, before defining the disciplines themselves. In this context, the Working Party considered whether procedures for obtaining visas or entry permits, fall within the purview of GATS Article VI:4. Some members, expressed the view that visa administrative procedures do not fall under Article VI:4 because visas and entry permits provide a supplier the right to enter a country and/or maintain a legal immigration status, while a license provides the right to supply the service.

Members continued to solicit views on the accountancy disciplines from their relevant domestic professional bodies, exploring whether the accountancy disciplines might serve as a model for those professions. The United States noted that architecture and engineering are two specific sectors which may be able to apply disciplines similar to the accountancy disciplines. To this end, the United States proposed dedicating a part of the September 2005 meeting to reviewing how the accountancy disciplines may apply to architectural services. A Workshop on the subject could be held, to which association representatives and relevant regulators would be invited.

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

Prospects for 2005

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

3. Working Party on GATS Rules

Status

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

Cumulative Assessment Since the WTO Was Established

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

Major Issues in 2004

Regarding emergency safeguard measures, the negotiating mandate is to consider "the question of emergency safeguard measures," which entails determining whether such measures are an appropriate objective. The major issue in the early part of the year was whether to extend the deadline. After an extension was agreed, the WPGR continued to discuss hypothetical scenarios demonstrating the need for safeguard mechanisms put forward by a group of delegations from ASEAN. The WPGR also discussed whether existing mechanisms contained within the GATS could mitigate the need for safeguard measures, and whether developing a credible safeguard mechanism is feasible. The United States continues to raise concerns with respect to feasibility, pointing out that a determination of trade-related injury would be difficult given weaknesses in services trade data; and implementing remedial measures could be problematic, particularly for services supplied through locally-established enterprises.

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

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

Prospects for 2005

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

4. Committee on Specific Commitments

Status

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

Cumulative Assessment Since the WTO Was Established

Prior to the launch of the GATS negotiations in 2000, the CSC had undertaken and addressed a number of technically complicated, resource intensive tasks and produced results that improve prospects for clear, commercially-valuable commitments in the continuing negotiations (in the case of work on nomenclature and on scheduling guidelines), usefully elaborated on GATS provisions in the case of Article XXI procedures, and promoted accessibility and clarity in GATS schedules in the case of the electronic schedule. Since 2000, the CSC has examined technical issues such as new scheduling guidelines and sector specific nomenclature for sectors such as energy services and legal services.

Major Issues in 2004

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

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

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

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

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

Prospects for 2005

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

J. Dispute Settlement Understanding

Status

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

The DSU is administered by the Dispute Settlement Body (DSB), which is empowered to establish dispute settlement panels, adopt panel and Appellate Body reports, oversee the implementation of panel recommendations adopted by the DSB and authorize retaliation. The DSB makes all its decisions by "consensus." Annex II provides more background information on the WTO dispute settlement process.

Cumulative Assessment Since the WTO Was Established

In its first ten years of operation, the DSB has addressed the ambitious agenda set for it by the negotiators in the Uruguay Round, and has put in place the rules and institutions required for a functioning dispute settlement system. It has established rules of conduct designed to keep the system free from conflicts of interest. It has elected the members of an Appellate Body that has been active and productive, and has filled vacancies on the Body as openings occurred and terms expired. Yet while the DSB has made some procedural decisions when required, the agenda of dispute settlement in the WTO remains Member-driven. Members have, in the context of individual disputes, agreed on procedures for determining compliance and levels of suspension of concessions, as well as innovative approaches to taking decisions by negative consensus beyond the time frames provided for in the DSU. The review of WTO dispute settlement rules and procedures conducted over the past several years was run as a member-driven process in which all proposals were generated by Members and must be agreed to by consensus.

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

Major Issues in 2004

The DSB met 19 times in 2004 to oversee disputes and to address responsibilities such as consulting on proposed amendments to the Appellate Body working procedures and approving additions to the roster of governmental and non-governmental panelists.

Roster of Governmental and Non-Governmental Panelists: Article 8 of the DSU makes it clear

that panelists may be drawn from either the public or private sector and must be "well-qualified," such as persons who have served on or presented a case to a panel, represented a government in the WTO or the GATT, served with the Secretariat, taught or published in the international trade field, or served as a senior trade policy official. Since 1985, the Secretariat has maintained a roster of non-governmental experts for GATT 1947 dispute settlement, which has been available for use by parties in selecting panelists. In 1995, the DSB agreed on procedures for renewing and maintaining the roster, and expanding it to include governmental experts. In response to a U.S. proposal, the DSB also adopted standards increasing and systematizing the information submitted by roster candidates. These modifications aid in evaluating candidates' qualifications and encouraging the appointment of well-qualified candidates who have expertise in the subject matters of the Uruguay Round Agreements. In 2004, the DSB approved by consensus a number of additional names for the roster. The United States scrutinized the credentials of these candidates to assure the quality of the roster.

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

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

The Rules of Conduct elaborate on the ethical standards built into the DSU, and to maintain the integrity, impartiality and confidentiality of proceedings conducted under the DSU. The Rules of Conduct require all individuals called upon to participate in dispute settlement proceedings to disclose direct or indirect conflicts of interest prior to their involvement in the proceedings, and to conduct themselves during their involvement in the proceedings so as to avoid such conflicts. The Rules of Conduct also provide parties to a dispute an opportunity to address potential material violations of these ethical standards. The coverage of the Rules of Conduct exceeds the goals established by Congress in section 123(c) of the Uruguay Round Agreements Act (URAA), which directed the USTR to seek conflict of interest rules applicable to persons serving on panels and members of the Appellate Body. The Rules of Conduct cover not only panelists and Appellate Body members, but also: (1) arbitrators; (2) experts participating in the dispute settlement mechanism (e.g., the Permanent Group of Experts under the Subsidies Agreement); (3) members of the WTO Secretariat assisting a panel or assisting in a formal arbitration proceeding; (4) the Chairman of the Textile Monitoring Body ("TMB") and other members of the TMB Secretariat assisting the TMB in formulating recommendations, findings or observations under the Agreement on Textiles and Clothing; and (5) support staff of the Appellate Body.

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

Appellate Body: The DSU requires the DSB to appoint seven persons to serve on an Appellate Body, which is to be a standing body, with members serving four-year terms, except for three initial appointees determined by lot whose terms expired at the end of two years. At its first meeting on February 10, 1995, the DSB formally established the Appellate Body, and agreed to arrangements for selecting its members and staff. They also agreed that

Appellate Body members would serve on a part-time basis, and sit periodically in Geneva. The original seven Appellate Body members, who took their oath on December 11, 1995, were: Mr. James Bacchus of the United States, Mr. Christopher Beeby of New Zealand, Professor Claus-Dieter Ehlermann of Germany, Dr. Said El-Naggar of Egypt, Justice Florentino Feliciano of the Philippines, Mr. Julio Lacarte-Muró of Uruguay, and Professor Mitsuo Matsushita of Japan. On June 25, 1997, it was determined by lot that the terms of Messrs. Ehlermann, Feliciano and Lacarte-Muró would expire in December 1997. The DSB agreed on the same date to reappoint them for a final term of four years commencing on 11 December 1997. On October 27, 1999 and November 3, 1999, the DSB agreed to renew the terms of Messrs. Bacchus and Beeby for a final term of four years, commencing on December 11, 1999, and to extend the terms of Dr. El-Naggar and Professor Matsushita until the end of March 2000. On April 7, 2000, the DSB agreed to appoint Mr. Georges Michel Abi-Saab of Egypt and Mr. A.V. Ganesan of India to a term of four years commencing on June 1, 2000. On May 25, 2000, the DSB agreed to the appointment of Professor Yasuhei Taniguchi of Japan to serve through December 10, 2003, the remainder of the term of Mr. Beeby, who passed away on March 19, 2000. On September 25, 2001, the DSB agreed to appoint Mr. Luiz Olavo Baptista of Brazil, Mr. John S. Lockhart of Australia and Mr. Giorgio Sacerdoti of Italy to a term of four years commencing on December 19, 2001. On November 7, 2003, the DSB agreed to appoint Professor Merit Janow of the United States to a term of four years commencing on December 11, 2003, to reappoint Professor Taniguchi for a final term of four years commencing on December 11, 2003, and to reappoint Mr. Abi-Saab and Mr. Ganesan for a final term of four years commencing on June 1, 2004. The names and biographical data for the Appellate Body members are included in Annex II of this report.

The Appellate Body has also adopted Working Procedures for Appellate Review. On February 28, 1997, the Appellate Body issued a revision of the Working Procedures, providing for a two-year term for the first Chairperson, and one-year terms for subsequent Chairpersons. In 2001 the Appellate Body amended its working procedures to provide for no more than two consecutive terms for Chairperson. Mr. Lacarte-Muró, the first Chairperson, served until February 7, 1998; Mr. Beeby served as Chairperson from February 7, 1998 to February 6, 1999; Mr. El-Naggar served as Chairperson from February 7, 1999 to February 6, 2000; Mr. Feliciano served as Chairperson from February 7, 2000 to February 6, 2001; Mr. Ehlermann served as Chairperson from February 7, 2001 to December 10, 2001; Mr. Bacchus served as Chairperson from December 15, 2001 to December 10, 2003; Mr. Abi-Saab served as Chairperson from December 13, 2003 to December 12, 2004; Mr. Taniguchi's term as Chairperson runs from December 17, 2004 to December 16, 2005.

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

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

Prospects for 2005

While there were improvements to the DSU as a result of the Uruguay Round, there is still room for improvement. Accordingly, the United States has used the opportunity of the ongoing review to seek improvements in its operation, including greater transparency. In 2005, we expect that the DSB will continue to focus on the administration of the dispute settlement process in the context of individual disputes. Experience gained with the DSU will be incorporated into the U.S. litigation and negotiation strategy for enforcing U.S. WTO rights, as well as the U.S. position on DSU reform. DSB Members will continue to consider reform proposals in 2005.

a. Disputes Brought by the United States

In 2004, the United States continued to be one of the most active participants in the WTO dispute settlement process. This section includes brief summaries of dispute settlement activity in 2004 where the United States was a complainant. As demonstrated by these summaries, the WTO dispute settlement process has proven to be an effective tool in combating barriers to U.S. exports. Indeed, in a number of cases the United States has been able to achieve satisfactory outcomes invoking the consultation provisions of the dispute settlement procedures, without recourse to formal panel proceedings.

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

On May 6, 1999, the United States filed a consultation request challenging Argentina's failure to provide a system of exclusive marketing rights for pharmaceutical products, and to ensure that changes in its laws and regulations during its transition period do not result in a lesser degree of consistency with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"). Consultations were held on June 15, 1999, and again on July 27, 1999. On May 30, 2000, the United States expanded its claims in this dispute to include new concerns that arose as a result of Argentina's failure to fully implement its remaining TRIPS obligations as required on January 1, 2000. These concerns include Argentina's failure to protect confidential test data submitted to government regulatory authorities for pharmaceuticals and agricultural chemicals; its denial of certain exclusive rights for patents; its failure to provide such provisional measures as preliminary injunctions to prevent infringements of patent rights; and its exclusion of certain subject matter from patentability. Consultations began July 17, 2000. On May 31, 2002, the United States and Argentina notified the DSB that a partial settlement of this dispute had been reached. Of the ten claims raised by the United States, eight were settled. The United States reserved its rights with respect to two remaining issues: protection of test data against unfair commercial use and the application of enhanced TRIPS Agreement rights to patent applications pending as of the entry into force of the TRIPS Agreement for Argentina (January 1, 2000). The dispute remains in the consultation phase with respect to these issues.

Brazil—Customs valuation (DS197)

The United States requested consultations on May 31, 2000 with Brazil regarding its customs valuation regime. U.S. exporters of textile products reported that Brazil uses officially-established minimum reference prices both as a requirement to obtain import licenses and/or as a base requirement for import. In practice, this system works to prohibit the import of products with declared values below the established minimum prices. This practice appears inconsistent with Brazil's WTO obligations, including those under the Agreement on Customs Valuation. The United States participated as an interested third party in a dispute initiated by the European Union regarding the same matter, and decided to pursue its own case as well. The United States held consultations with Brazil on July 18, 2000, and continues to monitor the situation.

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

On December 17, 2002, the United States requested consultations with Canada regarding trade in wheat. The United States challenged the wheat trading practices of the Canadian Wheat Board (CWB) as inconsistent with WTO disciplines governing the conduct of state-trading enterprises. The United States also challenged as unfair and burdensome Canada's requirements to treat imported grain differently than Canadian grain in the Canadian grain handling system, along with Canada's discriminatory policy that affects U.S. grain access to Canada's rail transportation system. Consultations were held January 31, 2003. The United States requested the establishment of a panel on March 6, 2003. The DSB established a panel on March 31, 2003. The Director-General composed the panel as follows: Ms. Claudia Orozco, Chair, and Mr. Alan Matthews and Mr. Hanspeter Tschaeni, Members. Following a preliminary procedural ruling, the DSB established a second panel on July 11, 2003, with the same panelists and the same schedule. In its report circulated on April 6, 2004, the panel found that Canada's grain handling system and rail transportation system discriminate against imported grain in violation of national treatment principles. However, the panel found that the United States failed to establish a claim that Canada violates WTO disciplines governing the conduct of state trading enterprises. The United States appealed the panel's findings related to state trading enterprises. On August 30, 2004, the Appellate Body upheld the panel's findings on state trading enterprises. Canada did not appeal the panel's findings that Canada's grain handling and transportation systems discriminate against U.S. grain. The DSB adopted the panel and Appellate Body reports on September 27, 2004. Canada and the United States subsequently agreed that the reasonable period of time for implementation of the DSB's recommendations and rulings will expire on August 1, 2005.

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

On March 18, 2004, the United States requested consultations with China regarding its value-added tax ("VAT") on integrated circuits ("ICs"). While China provides for a 17 percent VAT on ICs, enterprises in China are entitled to a partial refund of the VAT on ICs that they have produced. Moreover, China allows for a partial refund of the VAT for domestically-designed ICs that, because of technological limitations, are manufactured outside of China. As a result of the rebates, China appears to be according less favorable treatment to imported ICs than it accords to domestic ICs. China also appears to be providing for less favorable treatment of imports from one WTO Member than another and discriminating against services and service suppliers of other Members. The United States considers these measures to be inconsistent with China's obligations under Articles I and III of the GATT 1994, the Protocol on the Accession of the People's Republic of China, and Article XVII of the GATS. Consultations were held on April 27, 2004 in Geneva, and additional bilateral meetings were held in Washington and Beijing. On July 14, 2004, the United States and China notified the WTO of their agreement to resolve the dispute. Effective immediately, China will not certify any new IC products or manufacturers for eligibility for VAT refunds, China will no longer offer VAT refunds that favor ICs designed in China, and, by April 1, 2005, China will stop providing VAT refunds on Chinese-produced ICs to current beneficiaries.

Egypt–Apparel Tariffs (WT/DS305)

On December 23, 2003, the United States requested consultations with Egypt regarding the duties that Egypt applies to certain apparel and textile imports. During the Uruguay Round, Egypt agreed to bind its duties on these imports (classified under HTS Chapters 61, 62 and 63) at rates of less than 50 percent (ad valorem) in 2003 and thereafter. The United States believes the duties that Egypt actually applied, on a "per article" basis, greatly exceeded Egypt's bound rates of duty. In January 2004, Egypt informed the United States that it had issued a decree applying ad valorem rates to these imports and setting the duty rates within Egypt's tariff bindings. The United States is reviewing these changes.

European Union—Measures concerning meat and meat products (hormones) (WT/DS26, 48)

The United States and Canada challenged the EU ban on imports of meat from animals to which any of six hormones for growth promotional purposes had been administered. On July 2, 1996, the following panelists were selected, with the consent of the parties, to review the U.S. claims: Mr. Thomas Cottier, Chairman; Mr. Jun Yokota and Mr. Peter Palecka, Members. The panel found that the EU ban is inconsistent with the EU's obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"), and that the ban is not based on science, a risk assessment, or relevant international standards. Upon appeal, the Appellate Body affirmed the panel's findings that the EU ban fails to satisfy the requirements of the SPS Agreement. The Appellate Body also found that while a country has broad discretion in electing what level of protection it wishes to implement, in doing so it must fulfill the requirements of the SPS Agreement. In this case the ban imposed is not rationally related to the conclusions of the risk assessments the EU had performed.

Because the EU did not comply with the recommendations and rulings of the DSB by May 13, 1999, the final date of its compliance period as set by arbitration, the United States sought WTO authorization to suspend concessions with respect to certain products of the EU, the value of which represents an estimate of the annual harm to U.S. exports resulting from the EU's failure to lift its ban on imports of U.S. meat. The EU exercised its right to request arbitration concerning the amount of the suspension. On July 12, 1999, the arbitrators determined the level of suspension to be $116.8 million. On July 26, 1999, the DSB authorized the United States to suspend such concessions and the United States proceeded to impose 100 percent ad valorem duties on a list of EU products with an annual trade value of $116.8 million. On May 26, 2000, USTR announced that it was considering changes to that list of EU products. While discussions with the EU to resolve this matter are continuing, no resolution has been achieved yet. On November 3, 2003, the EU notified the WTO of its plans to make permanent the ban on one hormone, oestradiol. As discussed below (DS320), on November 8, 2004, the European Communities requested consultations with respect to "the United States' continued suspension of concessions and other obligations under the covered agreements" in the EC – Hormones dispute.

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

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

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

On May 30, 2002, the United States requested consultations with the European Union concerning the consistency of the European Union's provisional safeguard measures on certain steel products with the General Agreement on Tariffs and Trade (1994) and with

the WTO Agreement on Safeguards. Consultations were held on June 27 and July 24, 2002, but did not resolve the dispute. Therefore, on August 19, 2002, the United States requested that a WTO panel examine these measures. The panel was established on September 16, 2002.

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

On May 13, 2003, the United States filed a consultation request with respect to the EU's moratorium on all new biotech approvals, and bans of six member states (Austria, France, Germany, Greece, Italy and Luxembourg) on imports of certain biotech products previously approved by the EU. The moratorium is not supported by scientific evidence, and the EU's refusal even to consider any biotech applications for final approval constitutes "undue delay." The national import bans of previously EU-approved products appear not to be based on sufficient scientific evidence. Consultations were held June 19, 2003. The United States requested the establishment of a panel on August 7, 2003, and the DSB established a panel on August 29, 2003. On March 4, 2003, the Director-General composed the panel as follows: Mr. Christian Häberli, Chairman, and Mr. Mohan Kumar and Mr. Akio Shimizu, Members.

Japan - Measures Affecting the Importation of Apples (DS245)

On March 1, 2002, the United States requested consultations with Japan regarding Japan's measures restricting the importation of U.S. apples in connection with fire blight or the fire blight disease-causing organism, Erwinia amylovora. These restrictions include: the prohibition of imported apples from U.S. states other than Washington or Oregon; the prohibition of imported apples from orchards in which any fire blight is detected; the prohibition of imported apples from any orchard (whether or not it is free of fire blight) should fire blight be detected within a 500 meter buffer zone surrounding such orchard; the requirement that export orchards be inspected three times yearly (at blossom, fruitlet, and harvest stages) for the presence of fire blight for purposes of applying the above-mentioned prohibitions; a post-harvest surface treatment of exported apples with chlorine; production requirements, such as chlorine treatment of containers for harvesting and chlorine treatment of the packing line; and the post-harvest separation of apples for export to Japan from those apples for other destinations. Consultations were held on April 18, 2002, and a panel was established on June 3, 2002. The Director-General selected as panelists Mr. Michael Cartland, Chair, and Ms. Kathy-Ann Brown and Mr. Christian Haeberli, Members.

In its report issued on July 15, 2003, the panel agreed with the United States that Japan's fire blight measures on U.S. apples are inconsistent with Japan's WTO obligations. In particular, the panel found that: (1) Japan's measures are maintained without sufficient scientific evidence, inconsistent with Article 2.2 of the SPS Agreement; (2) Japan's measures cannot be provisionally maintained under Article 5.7 of the SPS Agreement (an exception to the obligation under Article 2.2); and (3) Japan's measures are not based on a risk assessment and so are inconsistent with Article 5.1 of the SPS Agreement. Japan appealed the panel's report on August 28, 2003. The Appellate Body issued its report on November 26, 2003, upholding panel findings that Japan's phytosanitary measures on U.S. apples, allegedly to protect against introduction of the plant disease fire blight, are inconsistent with Japan's WTO obligations. In particular, the Appellate Body upheld the three panel findings, detailed above, that Japan had appealed. The DSB adopted the panel and Appellate Body reports on December 10, 2003. Japan notified its intention to implement the recommendations and rulings of the DSB on January 9, 2004. Japan and the United States agreed that the reasonable period of time for implementation will expire on June 30, 2004.

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

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

Mexico—Measures affecting telecommunications services (DS204)

On August 17, 2000, the United States requested consultations with Mexico regarding its commitments and obligations under the General Agreement on Trade in Services (``GATS'') with respect to basic and value-added telecommunications services. The U.S. consultation request covered a number of key issues, including the Government of Mexico's failure to: (1) maintain effective disciplines over the former monopoly, Telmex, which is able to use its dominant position in the market to thwart competition; (2) ensure timely, cost-oriented interconnection that would permit competing carriers to connect to Telmex customers to provide local, long-distance, and international service; and (3) permit alternatives to an outmoded system of charging U.S. carriers above-cost rates for completing international calls into Mexico. Prior to such consultations, which were held on October 10, 2000, the Government of Mexico issued rules to regulate the anti-competitive practices of Telmex (Mexico's major telecommunications supplier) and announced significant reductions in long-distance interconnection rates for 2001. Nevertheless, given that Mexico still had not fully addressed U.S. concerns, particularly with respect to international telecommunications services, on November 10, 2000, the United States filed a request for establishment of a panel as well as an additional request for consultations on Mexico's newly issued measures. Those consultations were held on January 16, 2001. The United States requested the establishment of a panel on March 8, 2002. The panel was established on April 17, 2002. On August 26, 2002, the Director-General appointed as chairperson Mr. Ulrich Petersmann (Germany), and Mr. Raymond Tam (Hong Kong, China) and Mr. Björn Wellenius (Chile) as panelists.

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

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

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

On June 16, 2003, the United States requested consultations on Mexico's antidumping measures on rice and beef, as well as certain provisions of Mexico's Foreign Trade Act and its Federal Code of Civil Procedure. The specific U.S. concerns include: (1) Mexico's injury investigations in the two antidumping determinations; (2) Mexico's failure to terminate

the rice investigation after a negative preliminary injury determination and its decision to include firms that were not dumping in the coverage of the antidumping measures; (3) Mexico's improper application of the "facts available"; (4) Mexico's improper calculation of the antidumping rate applied to non-investigated exporters; (5) Mexico's improper limitation of the antidumping rates it calculated in the beef investigation; (6) Mexico's refusal to conduct reviews of exporters' antidumping rates; and (7) Mexico's insufficient public determinations. The United States also challenged five provisions of Mexico's Foreign Trade Act. The United States alleges violations of various provisions of the Antidumping Agreement, the Agreement on Subsidies and Countervailing Measures, and the GATT 1994. Consultations were held the summer of 2003. The United States requested the establishment of a panel on the measure on rice and the five measures of the Foreign Trade Act on September 19, 2003, and the DSB established a panel on November 7, 2003. The United States is continuing to monitor developments surrounding the beef antidumping measures.

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

On March 16, 2004, the United States requested consultations with Mexico regarding its tax measures on soft drinks and other beverages that use any sweetener other than cane sugar. These measures apply a 20 percent tax on soft drinks and other beverages that use any sweetener other than cane sugar. Soft drinks and other beverages sweetened with cane sugar are exempt from the tax. Mexico's tax measures also include a 20 percent tax on the commissioning, mediation, agency, representation, brokerage, consignment, and distribution of soft drinks and other beverages that use any sweetener other than cane sugar. Mexico's tax measures work inter alia to restrict U.S. exports to Mexico of high fructose corn syrup, a corn-based sweetener that is directly competitive and substitutable with cane sugar. The United States considers these measures to be inconsistent with Mexico's national treatment obligations under Article III of the GATT 1994. Consultations were held on May 13, 2004, but they failed to resolve the dispute.

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

Venezuela – Import Licensing Measures on Certain Agricultural Products (DS275)

On November 7, 2002, the United States requested consultations with Venezuela concerning its import licensing systems and practices that restrict agricultural imports from the United States. The United States considers that Venezuela's system creates a discretionary import licensing regime that appears to be inconsistent with the Agreement on Agriculture, the TRIMS Agreement, and the Import Licensing Agreement. The United States held consultations with Venezuela on November 26, 2002.

European Communities–-Selected customs matters (WT/DS315)

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

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

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

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

b. Disputes Brought Against the United States

Section 124 of the URAA requires, inter alia, that the Annual Report on the WTO describe, for the preceding fiscal year of the WTO, each proceeding before a panel or the Appellate Body that was initiated during that fiscal year regarding Federal or State law, the status of the proceeding, and the matter at issue; and each report issued by a panel or the Appellate Body in a dispute settlement proceeding regarding Federal or State law. This section includes summaries of dispute settlement activity in 2004 when the United States was a defendant.

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

The European Union challenged the FSC provisions of the U.S. tax law, claiming that the provisions constitute prohibited export subsidies and import substitution subsidies under the Subsidies Agreement, and that they violate the export subsidy provisions of the Agreement on Agriculture. A panel was established on September 22, 1998. On November 9, 1998, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Crawford Falconer, Chairman; Mr. Didier Chambovey and Mr. Seung Wha Chang, Members. The panel found that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, and also violates U.S. obligations under the Agreement on Agriculture. The panel did not make findings regarding the FSC administrative pricing rules or the EU's import substitution subsidy claims. The panel recommended that the United States withdraw the subsidy by October 1, 2000. The panel report was circulated on October 8, 1999 and the United States filed its notice of appeal on November 26, 1999. The Appellate Body circulated its report on February 24, 2000. The Appellate Body upheld the panel's finding that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, but, like the panel, declined to address the FSC administrative pricing rules or the EU's import substitution subsidy claims. While the Appellate Body reversed the panel's findings regarding the Agreement on Agriculture, it found that the FSC tax exemption violated provisions of that Agreement other than the ones cited by the panel. The panel and Appellate Body reports were adopted on March 20, 2000, and on April 7, 2000, the United States announced its intention to respect its WTO obligations. On November 15, 2000, the President signed the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 ("the ETI Act"), legislation that repealed and replaced the FSC provisions. However, the European Union claimed that the new legislation failed to bring the US into compliance with its WTO obligations.

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

In November 2000, the European Union had sought authority to impose countermeasures in the amount of $4.043 billion as a result of the alleged U.S. non-compliance, and the United States had challenged this amount by requesting arbitration. Under a September 2000 procedural agreement between the United States and the European Union, the arbitration was suspended pending the outcome of the EU's challenge to the WTO-consistency of the ETI Act. With the adoption of the panel and Appellate Body reports, the arbitration automatically resumed. On August 30, 2002, the arbitrator circulated its decision. The arbitrator found that the

countermeasures sought by the European Union were "appropriate" within the meaning of Article 4.10 of the Subsidies Agreement because, according to the arbitrator, they were not "disproportionate to the initial wrongful act to which they are intended to respond."

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

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

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

United States—1916 Revenue Act (DS136/162)

Title VII of the Revenue Act of 1916 (15 U.S.C. §§ 71-74, entitled "Unfair Competition"), often referred to as the Antidumping Act of 1916, allows for private claims against, and criminal prosecutions of, parties that import or assist in importing goods into the United States at a price substantially less than the actual market value or wholesale price. On April 1, 1999, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Johann Human, Chairman; Mr. Dimitrij Grcar and Mr. Eugeniusz Piontek, Members. On January 29, 1999, the panel found that the 1916 Act is inconsistent with WTO rules because the specific intent requirement of the Act does not satisfy the material injury test required by the Antidumping Agreement. The panel also found that civil and criminal penalties in the 1916 Act go beyond the provisions of the Antidumping Agreement. The panel report was circulated on March 31, 2000. Separately, Japan sought its own rulings on the same matter from the same panelists; that report was circulated on May 29, 2000. On the same day, the United States filed notices of appeal for both cases, which were consolidated into one Appellate Body proceeding. The Appellate Body report, issued August 28, 2000, affirmed the panel reports. This ruling, however, has no effect on the U.S. antidumping law, as codified in the Tariff Act of 1930, as amended. The panel and Appellate Body reports were adopted by the DSB on September 26, 2000. On November 17, 2000, the European Union and Japan requested arbitration to determine the period of time to be given the United States to implement the panel's recommendation. By mutual agreement of the parties, Mr. A.V. Ganesan was appointed to serve as arbitrator. On February 28, 2001, he determined that the deadline for implementation was July 26, 2001. On July 24, the DSB approved a U.S. proposal to extend the deadline until the earlier of the end of the then-current session of the U.S. Congress or December 31, 2001. Legislation to repeal the Act and terminate cases pending under the Act was introduced in the House on December 20, 2001 and in the Senate on April 23, 2002, but legislative action was not completed. Legislation repealing the Act and terminating pending cases was again introduced in the Senate on May 19, 2003, and repeal legislation that would not terminate pending cases was introduced in the House on March 4, 2003 and in the Senate on May 23, 2003.

On January 17, 2002, the United States objected to proposals by the EU and Japan to suspend concessions, thereby referring the matter to arbitration. On February 20, 2002, the following individuals were selected by mutual agreement of the parties to serve as Arbitrator: Mr. Dimitrij Grcar, Chair; Mr. Brendan McGivern and Mr. Eugeniusz Piontek, Members. At the request of

the United States, the Arbitrator suspended its work on March 4, 2002, in light of on-going efforts to resolve the dispute. On September 19, 2003, the EU requested that its arbitration resume.

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

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

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

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

On July 23, 2001, the United States and the European Union requested arbitration to determine the level of nullification or impairment of benefits to the European Union as a result of section 110(5)(B). In a decision circulated to WTO Members on November 9, 2001, the arbitrators determined that the value of the benefits lost to the European Union in this case is $1.1 million per year. On January 7, 2002, the European Union sought authorization from the DSB to suspend obligations vis-à-vis the United States. The United States objected to the details of the EU request, thereby causing the matter to be referred to arbitration. However, because the United States and the European Union have been engaged in discussions to find a mutually acceptable resolution of the dispute, the arbitrators suspended the proceeding pursuant to a joint request by the parties filed on February 26, 2002.

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

United States—Section 211 Omnibus Appropriations Act (DS176)

Section 211 addresses the ability to register or enforce, without the consent of previous owners, trademarks or trade names associated with businesses confiscated without compensation by the Cuban government. The EU questioned the

consistency of Section 211 with the TRIPS Agreement, and it requested consultations on July 7, 1999. Consultations were held September 13 and December 13, 1999. On June 30, 2000, the European Union requested a panel. A panel was established on September 26, 2000, and at the request of the European Union the WTO Director-General composed the panel on October 26, 2000, as follows: Mr. Wade Armstrong, Chairman; Mr. François Dessemontet and Mr. Armand de Mestral, Members. The panel report was circulated on August 6, 2001, rejecting 13 of the EU's 14 claims and finding that, in most respects, section 211 is not inconsistent with the obligations of the United States under the TRIPS Agreement. The European Union appealed the decision on October 4, 2001. The Appellate Body issued its report on January 2, 2002. The Appellate Body reversed the panel's one finding against the United States, and upheld the panel's favorable findings that WTO Members are entitled to determine trademark and trade name ownership criteria. The Appellate Body found certain instances, however, in which section 211 might breach the national treatment and most favored nation obligations of the TRIPS Agreement. The panel and Appellate Body reports were adopted on February 1, 2002. On March 28, 2002, the United States and the European Union notified the DSB that they had agreed that the reasonable period of time for the United States to implement the DSB's recommendations and rulings would expire on December 31, 2002, or on the date on which the current session of the U.S. Congress adjourns, whichever is later, and in no event later than January 3, 2003. On December 19, 2003, the EU and the United States agreed to extend the reasonable period of time for implementation until December 31, 2004. The RPT was later extended until June 30, 2005.

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

Japan alleged that the preliminary and final determinations of the Department of Commerce and the USITC in their antidumping investigations of certain hot-rolled steel products from Japan, issued on November 25 and 30, 1998, February 12, 1999, April 28, 1999, and June 23, 1999, were erroneous and based on deficient procedures under the U.S. Tariff Act of 1930 and related regulations. Japan claimed that these procedures and regulations violate the GATT 1994, as well as the Antidumping Agreement and the Agreement Establishing the WTO. Consultations were held on January 13, 2000, and a panel was established on March 20, 2000. In May 1999, the Director-General composed the panel as follows: Mr. Harsha V. Singh, Chairman; Mr. Yanyong Phuangrach and Ms. Lidia di Vico, Members. On February 28, 2001, the panel circulated its report, in which it rejected most of Japan's claims, but found that, inter alia, particular aspects of the antidumping duty calculation, as well as one aspect of the U.S. antidumping duty law, were inconsistent with the WTO Antidumping Agreement. On April 25, 2001, the United States filed a notice of appeal on certain issues in the panel report. The Appellate Body report was issued on July 24, 2001, reversing in part and affirming in part. The reports were adopted on August 23, 2001. Pursuant to a February 19, 2002, arbitral award, the United States was given 15 months, or until November 23, 2002, to implement the DSB's recommendations and rulings. On November 22, 2002, the Department of Commerce issued a new final determination in the hot-rolled steel antidumping duty investigation, which implemented the recommendations and rulings of the DSB with respect to the calculation of antidumping margins in that investigation. In view of other DSB recommendations and rulings, after consultations with Japan, the United States requested that the "reasonable period of time" in this dispute be extended until December 31, 2003, or until the end of the first session of the next Congress, whichever is earlier. That request was approved by the DSB at its meeting of December 5, 2002. On December 10, 2003, the DSB agreed to extend the reasonable period of time for implementation until July 31, 2004, and on August 31, 2004, this period was further extended to July 31, 2005.

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

On November 13, 2000, the European Union requested WTO dispute settlement consultations in 14 separate U.S. countervailing duty proceedings covering imports of steel and certain other products from member states of the European Union, all with respect to the Department of Commerce's "change in ownership" (or "privatization") methodology that was challenged successfully by the European Union in a WTO dispute concerning leaded steel products from the UK. Consultations were held December 7, 2000. Further consultations were requested on February 1, 2001, and held on April 3. A panel was established at the EU's request on September 10, 2001. In its panel request, the European Union challenged 12 separate US CVD proceedings, as well as Section 771(5)(F) of the Tariff Act of 1930. At the request of the European Union, the WTO Director-General composed the panel on November 5, 2001, as follows: Mr. Gilles Gauthier, Chairman; Ms. Marie-Gabrielle Ineichen-Fleisch and Mr. Michael Mulgrew, Members.

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

On January 27, 2003, the United States informed the DSB of its intention to implement the DSB's recommendations and rulings in a manner that respects U.S. WTO obligations. U.S. implementation proceeded in two stages. First, Commerce modified its methodology for analyzing a privatization in the context of the CVD law. Commerce published a notice announcing its new, WTO-consistent methodology on June 23, 2003. See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 Fed. Reg. 37,125. Second, Commerce applied its new methodology to the twelve determinations that had been found to be WTO-inconsistent. On October 24, 2003, Commerce issued revised determinations under section 129 of the Uruguay Round Agreements Act. As a result of this action, Commerce: (1) revoked two CVD orders in whole; (2) revoked one CVD order in part; and (3) in the case of five CVD orders, revised the cash deposit rates for certain companies. See Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Measures Concerning Certain Steel Products from the European Communities, 68 Fed. Reg. 64,858 (Nov. 17, 2003).

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

On March 17, 2004, the EU requested consultations regarding the Department of Commerce's new change of ownership methodology. The EU contends that the Department countervails the entire amount of unamortized subsidies even if the price paid for the acquired firm was only $1 less than the fair market value. With respect to the Department of Commerce's revised determinations, the EU complains about the three sunset reviews in which the Department declined to address the privatization transactions in question on what essentially were "judicial economy" grounds. With respect to a fourth sunset review, the EU challenges the Department's analysis of the sale of shares to employees of the company in question. Consultations took place on May 24, 2004. A panel was established on September 27, 2004. The original three panelists agreed to serve on the compliance panel.

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

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

In its final report, which was circulated on July 3, 2002, the panel made the following findings in favor of the United States: (1) the EU claims regarding "expedited sunset reviews" and "ample opportunity" for parties to submit evidence were not identified in the panel request, and were therefore outside the panel's terms of reference; (2) because Article 21.3 of the Subsidies Agreement contains no evidentiary standard for the self-initiation of sunset reviews, the automatic self-initiation of sunset reviews by Commerce was not a violation; and (3) the U.S. CVD law "as such" is not inconsistent with Article 21.3 with respect to the obligation that authorities "determine" the likelihood of continuation or recurrence of subsidization in a sunset review. Disagreeing with the United States, however, a majority of the panel found that the Subsidies Agreement's one percent de minimis standard for the investigation phase of a CVD proceeding applies to sunset reviews. Because U.S. law applies a 0.5 percent de minimis standard in reviews, the majority found a violation with respect to U.S. law "as such" and as applied in the German steel sunset review. In a rare step, one panelist dissented from this finding. The panel also found that Commerce's determination of likelihood of continuation or recurrence of subsidization in the German steel sunset review lacked "sufficient factual basis," and therefore was inconsistent with the obligation to "determine" under Article 21.3.

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

On April 20, 2004, the United States informed the DSB that it had revoked the countervailing duty order at issue, thereby implementing the DSB's recommendations and rulings.

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

On December 21, 2000, Australia, Brazil, Chile, the European Union, India, Indonesia, Japan, Korea, and Thailand requested consultations with the United States regarding the Continued Dumping and Subsidy Offset Act of 2000 (19 USC 754), which amended Title VII of the Tariff Act of 1930 to transfer import duties collected under U.S. antidumping and countervailing duty orders from the U.S. Treasury to the companies that filed the antidumping and countervailing duty petitions. Consultations were held on February 6, 2001. On May 21, 2001, Canada and Mexico also

requested consultations on the same matter, which were held on June 29, 2001. On July 12, 2001, the original nine complaining parties requested the establishment of a panel, which was established on August 23. On September 10, 2001, a panel was established at the request of Canada and Mexico, and all complaints were consolidated into one panel. The panel was composed of: Mr. Luzius Wasescha, Chair (selected by mutual agreement of the parties); and Mr. Maamoun Abdel-Fattah and Mr. William Falconer, Members (selected by the Director-General).

The panel issued its report on September 2, 2002, finding against the United States on three of the five principal claims brought by the complaining parties. Specifically, the panel found that the CDSOA constitutes a specific action against dumping and subsidies and therefore is inconsistent with the WTO Antidumping and SCM Agreements as well as GATT Article VI. The panel also found that the CDSOA distorts the standing determination conducted by the Commerce Department and therefore is inconsistent with the standing provisions in the Antidumping and SCM Agreements. The United States prevailed against the complainants' claims under the Antidumping and SCM Agreements that the CDSOA distorts the Commerce Department's consideration of price undertakings (agreements to settle AD/CVD investigations). The panel also rejected Mexico's actionable subsidy claim brought under the SCM Agreement. Finally, the panel rejected the complainants' claims under Article X:3 of the GATT, Article 15 of the Anti-dumping Agreement, and Articles 4.10 and 7.9 of the SCM Agreement. The United States appealed the panel's adverse findings on October 1, 2002. The Appellate Body issued its report on January 16, 2003, upholding the panel's finding that the CDSOA is an impermissible action against dumping and subsidies, but reversing the panel's finding on standing. The DSB adopted the panel and Appellate Body reports on January 27, 2003. At the meeting, the United States stated its intention to implement the DSB recommendations and rulings. On March 14, 2003, the complaining parties requested arbitration to determine a reasonable period of time for U.S. implementation. On June 13, 2003, the arbitrator determined that this period would end on December 27, 2003. On June 19, 2003, legislation to bring the Continued Dumping and Subsidy Offset Act into conformity with U.S. obligations under the AD Agreement, the SCM Agreement and the GATT of 1994 was introduced in the U.S. Senate (S. 1299).

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

Based on requests from Brazil, the EU, India, Japan, Korea, Canada, and Mexico, on November 26, 2004, the DSB granted these Members authorization to suspend concessions or other obligations, as provided in DSU Article 22.7 and in the Decisions of the Arbitrators. The DSB granted Chile authorization to suspend concessions or other obligations on December 17, 2004.

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

On December 21, 2000, Brazil requested consultations with the United States regarding

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

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

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

United States—Calculation of dumping margins (DS239)

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

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

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

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

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

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

On March 20, 2002, Brazil requested consultations with the United States regarding the "Equalizing Excise Tax" imposed by the State of Florida on processed orange and

grapefruit products produced from citrus fruit grown outside the United States – Section 601.155 Florida Statutes. Consultations were held with Brazil on May 2, 2002, and June 27, 2002, and a panel was established on October 1, 2002. Following amendment of the Florida tax legislation on April 30, 2004, the United States and Brazil notified the DSB on May 28, 2004 that they had reached a mutually satisfactory solution.

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

On May 3, 2002, Canada requested consultations with the United States regarding the U.S. Department of Commerce's final countervailing duty determination concerning certain softwood lumber from Canada. Among other things, Canada challenged the evidence upon which the investigation was initiated, claimed that the Commerce Department imposed countervailing duties against programs and policies that are not subsides and are not "specific" within the meaning of the Agreement on Subsidies and Countervailing Measures, and that the Commerce Department failed to conduct its investigation properly. Consultations were held on June 18, 2002, and a panel was established at Canada's request on October 1, 2002. The panel was composed of Mr. Elbio Rosselli, Chair, and Mr. Weislaw Karsz and Mr. Remo Moretta, Members. In its report, circulated on August 29, 2003, the panel found that the United States acted consistently with the SCM Agreement and GATT 1994 in determining that the programs at issue provided a financial contribution and that those programs were "specific" within the meaning of the SCM Agreement. It also found, however, that the United States had calculated the benefit incorrectly and had improperly failed to conduct a "pass-through" analysis to determine whether subsidies granted to one producer were passed through to other producers. The United States appealed these issues to the WTO Appellate Body on October 21, 2003, and Canada appealed the "financial contribution" issue on November 5.

On January 19, 2004, the WTO Appellate Body issued a report finding in favor of the United States in all key respects. The Appellate Body reversed the panel's unfavorable finding with respect to the rejection of Canadian prices as a benchmark; upheld the panel's favorable finding that the provincial governments' provision of low-cost timber to lumber producers constituted a "financial contribution" under the SCM Agreement; and reversed the panel's unfavorable finding that the Commerce Department should have conducted a "pass-through" analysis to determine whether subsidies granted to one lumber company were passed through to other lumber companies through the sale of subsidized lumber. The Appellate Body's only finding against the United States was that the Commerce Department should have conducted such a pass-through analysis with respect to the sale of logs from harvester/sawmills to unrelated sawmills.

The DSB adopted the panel and Appellate Body reports on February 17, 2004. The United States stated its intention to implement the DSB recommendations and rulings on March 5, 2004. On December 17, 2004, the United States informed the DSB that Commerce had revised its CVD order, thereby implementing the DSB's recommendations and rulings.

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

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

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

On September 13, 2002, Canada requested WTO dispute settlement consultations concerning the amended final determination by the U.S. Department of Commerce of sales at less than fair value with respect to certain softwood lumber from Canada, as published in the May 22, 2002 Federal Register, along with the antidumping duty order with respect to imports of the subject products. Canada alleged that Commerce's initiation of its investigation concerning the subject products, as well as aspects of its methodology in reaching its final determination, violated the GATT 1994 and the Agreement on Implementation of Article VI of GATT 1994. Consultations were held on October 11, 2002. On December 6, 2002, Canada requested establishment of a panel, and the DSB established the panel on January 8, 2003. On February 25, 2003, the parties agreed on the panelists, as follows: Mr. Harsha V. Singh, Chairman, and Mr. Gerhard Hannes Welge and Mr. Adrian Makuc, Members. In its report, the panel rejected Canada's arguments: (1) that Commerce's investigation was improperly initiated; (2) that Commerce had defined the scope of the investigation (i.e., the "product under investigation") too broadly; and (3) that Commerce improperly declined to make certain adjustment based on difference in dimension of products involved in particular transactions compared. The panel also rejected Canada's claims on company-specific calculation issues. The one claim that the panel upheld was Canada's argument that Commerce's use of "zeroing" in comparing U.S. price to normal value was inconsistent with Article 2.4.2 of the Antidumping Agreement.

On May 13, 2004, the United States filed a notice of appeal regarding the "zeroing" issue. Canada cross-appealed with respect to two company-specific issues (one regarding the allocation of costs to Abitibi, and the other regarding the valuation of an offset to cost of production for Tembec). The Appellate Body issued its report on August 11, 2004. The report upheld the panel's findings on "zeroing" and the Tembec issue. It reversed a panel finding regarding the Abitibi issue concerning interpretation of the term "consider all available evidence" in Article 2.2.1.1 of the AD Agreement; however, it declined to complete the panel's legal analysis. The panel and Appellate Body reports were adopted at the August 31, 2004 DSB meeting. The United States and Canada agreed that the reasonable period of time for implementation in this dispute will expire on April 15, 2005.

United States – Subsidies on upland cotton (DS267)

On September 27, 2002, Brazil requested WTO consultations pursuant to Articles 4.1, 7.1 and 30 of the Agreement on Subsidies and Countervailing Measures, Article 19 of the Agreement on Agriculture, Article XXII of the General Agreement on Tariffs and Trade 1994, and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes. The Brazilian consultation request on U.S. support measures that benefit upland cotton claims that these alleged subsidies and measures are inconsistent with U.S. commitments and obligations under the Agreement on Subsidies and Countervailing Measures, the Agreement on Agriculture, and the General Agreement on Tariffs and Trade 1994. Consultations were held on December 3, 4 and 19 of 2002, and January 17, 2003.

On February 6, 2003, Brazil requested the establishment of a panel. Brazil's panel request pertains to "prohibited and actionable subsidies provided to US producers, users and/or exporters of upland cotton, as well as legislation, regulations and statutory instruments and amendments thereto providing such subsidies (including export credit guarantees), grants, and any other assistance to the US producers, users and exporters of upland cotton" [footnote omitted]. The Dispute Settlement Body established the panel on March 18, 2003. On May 19, 2003, the Director-General appointed as panelists Dariusz Rosati of Poland, Chair; Daniel Moulis of Australia and Mario Matus of Chile, Members.

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

- The panel found that the "Peace Clause" in the WTO Agreement on Agriculture did not apply to a number of U.S. measures, including (1) domestic support measures and (2) export credit guarantees for "unscheduled commodities" and rice (a "scheduled commodity"). Therefore, Brazil could proceed with certain of its challenges.

- The panel found that export credit guarantees for "unscheduled commodities" (such as cotton and soybeans) and for rice are prohibited export subsidies. However, the panel also found that Brazil had not demonstrated that the guarantees for other "scheduled commodities" exceeded U.S. WTO reduction commitments and therefore breached the Peace Clause. Further, Brazil had not demonstrated that the programs threaten to lead to circumvention of U.S. WTO reduction commitments for other "scheduled commodities" and for "unscheduled commodities" not currently receiving guarantees.

- Some U.S. domestic support programs (i.e., marketing loan, counter-cyclical, market loss assistance, and Step 2 payments) were found to cause significant suppression of cotton prices in the world market in marketing years 1999-2002 causing serious prejudice to Brazil's interests. However, the panel found that other U.S. domestic support programs (i.e., production flexibility contract payments, direct payments, and crop insurance payments) did not cause serious prejudice to Brazil's interests because Brazil failed to show that these programs caused significant price suppression. The panel also found that Brazil failed to show that any U.S. program caused an increase in U.S. world market share for upland cotton constituting serious prejudice.

- The panel did not reach Brazil's claim that U.S. domestic support programs threatened to cause serious prejudice to Brazil's interests in marketing years 2003-2007. The panel also did not reach Brazil's claim that U.S. domestic support programs per se cause serious prejudice in those years.

- The panel also found that Brazil had failed to establish that FSC/ETI tax benefits for cotton exporters were prohibited export subsidies.

- Finally, the panel found that Step 2 payments to exporters of cotton are prohibited export subsidies, not protected by the Peace Clause, and Step 2 payments to domestic users are prohibited import substitution subsidies because they were only made for U.S. cotton.

On October 18, 2004, the United States filed a notice of appeal. The oral hearing was held on December 13-15, 2004.

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

On October 7, 2002, Argentina requested consultations with the United States regarding the final determinations of the United States Department of Commerce (USDOC) and the United States International Trade Commission in the sunset reviews of the antidumping duty order on oil country tubular goods (OCTG) from Argentina, issued on November 7, 2000, and June 2001, respectively, and the USDOC's determination to continue the antidumping duty order on OCTG from Argentina, issued on July 25, 2001. Consultations were held on November 14, 2002, and December 17, 2002. Argentina requested the establishment of a panel on April 3, 2003. The DSB established a panel on May 19, 2003. On September 4, 2003, the Director-General composed the panel as follows: Mr. Paul O'Connor, Chairman, and Mr. Bruce Cullen and Mr. Faizullah Khilji, Members. In its report circulated July 16, 2004, the panel agreed with Argentina that the waiver provisions prevent the DOC from making a determination

as required by Article 11.3 and that the DOC's Sunset Policy Bulletin is inconsistent with Article 11.3. The panel rejected Argentina's claims that the ITC did not correctly apply the "likely" standard and did not conduct an objective examination. Further, the panel concluded that statutes providing for cumulation and the time-frame for continuation or recurrence of injury were not inconsistent with Article 11.3. On August 31, 2004, the United States filed a notice of appeal. The Appellate Body issued its report on November 29, 2004. The Appellate Body reversed the panel's finding against the Sunset Policy Bulletin and upheld the other findings described above. The DSB adopted the panel and Appellate Body reports on December 17, 2004.

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

On December 20, 2002, Canada requested consultations concerning the May 16, 2002 determination of the U.S. International Trade Commission (notice of which was published in the May 22, 2002 Federal Register) that imports of softwood lumber from Canada, which the U.S. Department of Commerce found to be subsidized and sold at less than fair value, threatened an industry in the United States with material injury. Canada alleged that flaws in the U.S. International Trade Commission's determination caused the United States to violate various aspects of the GATT 1994, the Agreement on Implementation of Article VI of GATT 1994, and the Agreement on Subsidies and Countervailing Measures. Consultations were held January 22, 2003. Canada requested the establishment of a panel on April 3, 2003, and the DSB established a panel on May 7, 2003. On June 19, 2003, the Director-General composed the panel as follows: Mr. Hardeep Singh Puri, Chairman, and Mr. Paul O'Connor and Ms. Luz Elena Reyes De La Torre, Members. In its report circulated on March 22, 2004, the panel agreed with Canada's principal argument was that the ITC's threat of injury determination was not supported by a reasoned and adequate explanation, and agreed with Canada that the ITC had failed to establish that imports threaten to cause injury. However, the panel: declined Canada's request to find violations of certain overarching obligations under the Antidumping and Subsidies Agreements; rejected Canada's argument that a requirement that an investigating authority take "special care" is a stand-alone obligation; rejected Canada's argument that the ITC was obligated to identify an abrupt change in circumstances; agreed with the United States that, where the Antidumping and Subsidies Agreements required the ITC to "consider" certain factors, the ITC was not required to make explicit findings with respect to those factors; and rejected Canada's argument that the United States violated certain provisions of the applicable agreements that pertain to present material injury. The DSB adopted the panel report on April 26, 2004.

At the May 19, 2004 meeting of the DSB, the United States stated its intention to implement the rulings and recommendations of the DSB. On November 24, 2004, the ITC issued a new threat-of-injury determination, finding that the U.S. lumber industry was threatened with material injury by reason of dumped and subsidized lumber from Canada. On December 13, Commerce amended the antidumping and countervailing duty orders to reflect the issuance and implementation of the new ITC determination.

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

On January 21, 2003, Mexico requested consultations on an administrative review of a countervailing duty order on carbon steel plate in sheets from Mexico. Mexico alleges that the Department of Commerce used a WTO-inconsistent methodology – the "change-in-ownership" methodology – to determine the existence of countervailable benefits bestowed on a Mexican steel producer. Mexico alleges inconsistency with various articles of the WTO Agreement on Subsidies and Countervailing Measures. Consultations were held April 2-4, 2003. Mexico requested the establishment of a panel on August 4, 2003, and the DSB established a panel on August 29, 2003.

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

On January 31, 2003, Mexico requested consultations regarding a variety of administrative determinations made in connection with the antidumping duty order on gray portland cement and cement clinker from Mexico, including seven administrative review determinations by Commerce, the sunset determinations of Commerce and the ITC, and the ITC's refusal to conduct a changed circumstances review. Mexico also referred to certain provisions and procedures contained in the Tariff Act of 1930, the regulations of Commerce and the ITC, and Commerce's Sunset Policy Bulletin, as well as the URAA Statement of Administrative Action. Mexico cited a host of concerns, including case-specific dumping calculation issues; Commerce's practice of zeroing; the analytical standards used by Commerce and the ITC in sunset reviews; the U.S. retrospective system of duty assessment, including the assessment of interest; and the assessment of duties in regional industry cases. Consultations were held April 2-4, 2003. Mexico requested the establishment of a panel on July 29, 2003, and the DSB established a panel on August 29, 2003. On September 3, 2004, the Director-General composed the panel as follows: Mr. Peter Palecka, Chair, and Mr. Martin Garcia and Mr. David Unterhalter, Members.

United States—Anti-dumping measures on oil country tubular goods (OCTG) from Mexico (WT/DS282)

On February 18, 2003, Mexico requested consultations regarding several administrative determinations made in connection with the antidumping duty order on oil country tubular goods from Mexico, including the sunset review determinations of Commerce and the ITC. Mexico also challenges certain provisions and procedures contained in the Tariff Act of 1930, the regulations of Commerce and the ITC, and Commerce's Sunset Policy Bulletin, as well as the URAA Statement of Administrative Action. The focus of this case appears to be on the analytical standards used by Commerce and the ITC in sunset reviews, although Mexico also challenges certain aspects of Commerce's antidumping methodology. Consultations were held April 2-4, 2003. Mexico requested the establishment of a panel on July 29, 2003, and the DSB established a panel on August 29, 2003. On February 11, 2003, the following panelists were selected, with the consent of the parties, to review Mexico's claims: Mr. Christer Manhusen, Chairman; Mr. Alistair James Stewart and Ms. Stephanie Sin Far Man, Members.

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

On March 13, 2003, Antigua & Barbuda requested consultations regarding its claim that U.S. federal, state and territorial laws on gambling violate U.S. specific commitments under the General Agreement on Trade in Services ("GATS"), as well as Articles VI, XI, XVI, and XVII of the GATS, to the extent that such laws prevent or can prevent operators from Antigua & Barbuda from lawfully offering gambling and betting services in the United States. Consultations were held on April 30, 2003. Antigua & Barbuda requested the establishment of a panel on June 12, 2003. The DSB established a panel on July 21, 2003. At the request of the Antigua & Barbuda, the WTO Director-General composed the panel on August 25, 2003, as follows: Mr. B. K. Zutshi, Chairman, and Mr. Virachai Plasai and Mr. Richard Plender, Members. The panel's final report, circulated on November 10, 2004, found that the United States breached Article XVI (Market Access) of the GATS by maintaining three U.S. federal laws (18 U.S.C. §§ 1084, 1952, and1955) and certain statutes of Louisiana, Massachusetts, South Dakota, and Utah. It also found that these measures were not justified under exceptions in Article XIV of the GATS.

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

On June 12, 2003, the European Union requested consultations regarding the use of "zeroing" in the calculation of dumping margins. Consultations were held July 17, 2003. The EU requested further consultations on September 8, 2003. Consultations were held October 6, 2003. The EC requested the establishment of a panel on February 5, 2004, and the DSB established a panel on March 19, 2004. On October 27, 2004, the panel was composed as follows: Mr. Crawford Falconer, Chair, and Mr. Hans-Friedrich Beseler and Mr. William Davey, Members.

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

On June 30, 2003, Korea requested consultations regarding determinations made by Commerce and the ITC in the countervailing duty investigation on DRAMS from Korea, and related laws and regulations. Consultations were held August 20, 2003. Korea requested further consultations on August 18, 2003, which were held October 1, 2003. Korea requested the establishment of a panel on November 19, 2003. The panel request covered only the Commerce and ITC determinations made in the DRAMS investigation. The DSB established a panel on January 23, 2004. On March 5, 2004, the Director-General composed the panel as follows: H. E. Mr. Hardeep Puri, Chair, and Mr. John Adank and Mr. Michael Mulgrew, Members.

United States—Determination of the International Trade Commission in hard red spring wheat from Canada (WT/DS310)

On April 8, 2004, Canada requested consultations regarding the U.S. International Trade Commission's determination on hard red spring wheat. In its request, Canada alleged that the United States has violated Article VI:6(a) of the GATT 1994 and various articles of the Anti-dumping Agreement and the SCM Agreement. Canada alleged that these violations stemmed from certain errors in the ITC's determination. In particular, Canada claims that the ITC: (1) failed "to properly examine the effect of the dumped and subsidized imports on prices in the domestic market for like products;" (2) failed "to properly examine the impact of the dumped and subsidized imports on domestic producers of like products;" (3) failed "to properly demonstrate a causal relationship between the dumped and subsidized imports and material injury to the domestic industry;" (4) failed "to properly examine known factors other than dumping and subsidizing that were injuring the domestic industry;" and (5) attributed to the dumped and subsidized imports the injuries caused by other factors. Consultations were held on May 6, 2004. On June 11, 2004, Canada requested the establishment of a panel, the United States objected, and Canada made but withdrew a second panel request.

United States—Reviews of countervailing duty on softwood lumber from Canada (WT/DS311)

On April 14, 2004, Canada requested consultations concerning what it termed "the failure of the United States Department of Commerce (Commerce) to complete expedited reviews of the countervailing duty order concerning certain softwood lumber products from Canada" and "the refusal and failure of Commerce to conduct company-specific administrative reviews of the same countervailing duty order." Canada alleged that the United States had acted inconsistently with several provisions of the SCM Agreement and with Article VI:3 of the GATT 1994. Consultations were held on June 8, 2004. The dispute remains in the consultation phase.

United States–-Subsidies on large civil aircraft (WT/DS317)

On October 6, 2004, the European Communities requested consultations with respect to "prohibited and actionable subsidies provided to U.S. producers of large civil aircraft." The EC alleged that such subsidies violated several provisions of the SCM Agreement, as well as Article III:4 of the GATT. Consultations were held on November 5, 2004.

United States - Section 776 of the Tariff Act of 1930 (WT/DS319)

On November 5, 2004, the European Communities requested consultations with the United States with respect to the "facts available" provision of the U.S. dumping statute and the Department of Commerce's dumping order on Stainless Steel Bar from the United Kingdom. The EC claims that both the statutory provision on adverse facts available and Commerce's determination and order are inconsistent with various provisions of the Antidumping Agreement and the GATT 1994.

United States - Continued suspension of obligations in the EC - Hormones dispute (WT/DS320)

On November 8, 2004, the European Communities requested consultations with respect to "the United States' continued suspension of concessions and other obligations under the covered agreements" in the EC – Hormones dispute. Consultations were held on December 16, 2004.

United States – Measures relating to zeroing and sunset reviews (WT/DS322)

On November 24, 2004, Japan requested consultations with respect to: (1) the Department of Commerce's alleged practice of "zeroing" in antidumping investigations, administrative reviews, sunset reviews, and in assessing the final antidumping duty liability on entries upon liquidation; (2) in sunset reviews of antidumping duty orders, Commerce's alleged irrefutable presumption of the likelihood of continuation or recurrence of dumping in certain factual situations; and (3) in sunset reviews, the waiver provisions of U.S. law. Japan claims that these alleged measures breach various provisions of the AD Agreement and Article VI of the GATT 1994. Consultations were held on December 20, 2004.

United States – Provisional antidumping measures on shrimp from Thailand (WT/DS324)
On December 9, 2004, Thailand requested consultations with respect to the Department of Commerce's imposition of provisional antidumping duties on certain frozen and canned warmwater shrimp from Thailand. Specifically, Thailand has alleged that Commerce's use of a "zeroing" methodology is inconsistent with Article 2.4 of the AD Agreement. Thailand also has alleged that Commerce's resort to "adverse facts available" in calculating normal value for one Thai producer violates provisions of Article 6 and Annex II of the AD Agreement; and that Commerce's alleged failure to make due allowances for certain factors in its calculations for the Thai exporters violates Article 2.4 of the AD Agreement.

United States – Anti-Dumping Determinations Regarding Stainless Steel from Mexico (WT/DS325)

On January 5, 2005, Mexico requested consultations with respect to the Department of Commerce's alleged use of "zeroing" in an antidumping investigation and three administrative reviews involving certain stainless steel products from Mexico. Mexico claims these alleged measures breach several provisions of the AD Agreement, the GATT 1994 and the WTO Agreement.

K. Trade Policy Review Body

Status

The Trade Policy Review Body (TPRB), a subsidiary body of the General Council, was created by the Marrakesh Agreement Establishing the WTO to administer the Trade Policy Review Mechanism (TPRM). The TPRM is a valuable resource for improving the transparency of Members' trade and investment regimes and in ensuring adherence to WTO rules. The TPRM examines national trade policies of each Member on a schedule designed to cover the full WTO Membership on a frequency determined by trade volume.

The process starts with an independent report by the WTO Secretariat on the trade policies and practices of the Member under view. This Member works closely with the Secretariat to provide relevant information for the report. The Secretariat report is accompanied by another report prepared by the government undergoing the review. Together these reports are discussed

by the WTO Membership in a TPRB session. At this session, the Member under review will discuss the report and answer questions on its trade policies and practices. The express purpose of the review process is to strengthen Members observance of WTO provisions and contribute to the smoother functioning of the multilateral trading system.

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

Cumulative Assessment Since the WTO Was Established

The TPRM has served as a valuable resource for improving transparency in WTO Members' trade and investment regimes and ensuring commitment to WTO rules. Since the WTO was established, the TPRB has conducted 141 reviews. Prior to establishment of the WTO, the TPRM had conducted 56 reviews under the auspices of the GATT. The reports produced for each review are made available to the public after the review is completed. For many least developed countries, the reports represent the first comprehensive analysis of their commercial policies, laws, and regulations and have implications and uses beyond the meeting of the TPRB. Some Members have used the Secretariat's Report as a national trade and investment promotion document, while others have indicated that the report has served as basis for internal analysis of inefficiencies and overlaps in domestic laws and government agencies. For other trading partners and U.S. businesses, the reports are a dependable resource for assessing the commercial environment of the majority of WTO Members.

The United States has participated in every Trade Policy Review and developed for each Member under review a detailed list of questions and comments designed to urge, where necessary, compliance with certain WTO/GATT obligations or to obtain better information on issues that are of particular concern to interested parties in the United States. The biennial Reviews of the European Union, Canada, and Japan have provided a regular forum for updates and analysis of policies and measures undertaken by the United States' largest trading partners. During the four reviews of the United States since 1995 (the most recent in 2004), the U.S. team has emphasized the openness of the U.S. market and the important role the U.S. economy plays in the global trading system. The U.S. Trade Policy Reviews also have afforded the opportunity to defend WTO consistent trade practices and reduce misunderstandings about certain U.S. trade policies and laws. Thus, the TPRM has met the expectations of the United States to provide greater transparency, understanding and consistency in the trade policies of WTO Members, and to better ensure compliance with the rules-based system.

Major Issues in 2004

During 2004, the TPRB reviewed the trade regimes of Belize, Benin, Brazil, Burkina Faso, the European Union, Gambia, Korea, Mali, Norway, Rwanda, Singapore, Sri Lanka, Suriname, the United States, and the Customs Territory of Switzerland and Liechtenstein. This group included five least-developed (LDC) Members and four Members reviewed for the first time. As of the end of 2004, the TPRM had conducted 197 reviews, covering 114 out of 148 Members (counting the European Union as fifteen) and representing approximately 88 percent of world merchandise trade.

Reviews emphasized the macroeconomic and structural context for trade policies, including the effects of economic and trade reforms, transparency with respect to the formulation and implementation of trade policy, and the current economic performance of Members under review. Another important issue has been the

balance between multilateral, bilateral, regional and unilateral trade policy initiatives. Closer attention has been given to the link between Members' trade policies and the implementation of WTO Agreements, focusing on Members' participation in particular Agreements, the fulfillment of notification requirements, the implementation of TRIPS, the use of antidumping measures, government procurement, state-trading, the introduction by developing-countries of customs valuation methods, the adaptation of national legislation to WTO requirements and technical assistance.

As of the end 2004, 22 of the WTO's 32 least-developed Members have been reviewed. For least-developed countries, the reports represent the first comprehensive analysis of their commercial policies, laws and regulations and have implications and uses beyond the meeting of the TPRB. The TPRB's report to the Singapore Ministerial Conference recommended greater attention be paid to LDCs in the preparation of the TPRB timetable, and a 1999 appraisal of the operation of the TPRM also drew attention to this matter. Trade Policy Reviews of LDCs have increasingly performed a technical assistance function and have been useful in broadening the understanding of LDC's trade policy structure. These reviews tend to enhance understanding of WTO Agreements, enabling better compliance and integration in the multilateral trading system. In some cases, the TPR has facilitated better interaction between government agencies. The TPRM's comprehensive coverage of trade policies also enables Members to identify shortcomings in specific areas where further technical assistance may be required.

The seminars and the technical assistance involve close cooperation between LDCs and the WTO Secretariat. This cooperation continues to respond more systematically to technical assistance needs of LDCs. The review process for an LDC now includes a multi-day seminar for its officials on the WTO and, in particular, the trade policy review exercise and the role of trade in economic policy; such seminars were held in 2004 for the review process of Gambia and Rwanda. Similar exercises have been conducted in Benin, Burkina Faso, Mali. Belize and Suriname. The Secretariat Report for an LDC review includes a section on technical assistance needs and priorities with a view to feeding this into the Integrated Framework process.

Prospects for 2005

The TPRM will continue to be an important tool for monitoring Members' adherence to WTO commitments and an effective forum in which to encourage Members to meet their obligations and to adopt further trade liberalizing measures. The 2005 program schedules 18 Members for review, including Bolivia, Djibouti, Ecuador, Egypt, Guinea, Jamaica, Japan, Malaysia, Mongolia, Nigeria, Paraguay, The Philippines, Qatar, Romania, Sierra Leone, Togo, Trinidad and Tobago, and Tunisia. Djibouti, Ecuador, Mongolia, Qatar, Sierra Leone, and Tunisia will undergo their first Reviews. Four Members – Djibouti, Guinea, Sierra Leone, and Togo – are LDCs.

K. Other General Council Bodies/Activities

1. Committee on Trade and the Environment

Status

The Committee on Trade and Environment (CTE) was created by the WTO General Council on January 31, 1995, pursuant to the Marrakesh Ministerial Decision on Trade and Environment. Following the Doha Ministerial Conference concluded in November 2001, the CTE in Regular Session continued discussion of many important issues with a focus on those identified in the Doha Declaration, including market access associated with environmental measures, TRIPS and environment, and labeling for environmental purposes under paragraph 32; capacity-building and environmental reviews under paragraph 33; and discussion of the environmental aspects of Doha negotiations under paragraph 51. These issues identified in the Doha Declaration are separate from those that are subject to specific negotiating mandates

and that are being taken up by the CTE in Special Session.

Cumulative Assessment Since the WTO Was Established

The CTE has played an important role in promoting mutually supportive trade and environmental policies and has become the preeminent global forum for identifying and analyzing trade and environmental issues. The CTE has brought together trade and environment officials from Member governments over the last ten years to build a better understanding of the complex links between trade and environmental policies. Among other things, this has helped to address the serious problem of lack of coordination between trade and environment officials in many governments.

Together, these experts have studied important issues and produced useful recommendations, including those contained in the CTE's report to the first WTO Ministerial Conference held in Singapore in 1996. The CTE also launched the creation of a data base of all environmental measures that have been notified by Members under WTO transparency rules. In addition, the CTE established an ongoing relationship with the Secretariats of several relevant Multilateral Environmental Agreements (MEAs) and has held seven information sessions where trade and environment officials had the opportunity to exchange information and learn more about MEA activities relevant to trade. The CTE's commitment to these types of events continues.

The CTE's analytical work has contributed to the identification of "win-win" opportunities that can contribute to both trade and environmental policy objectives, and Ministers agreed to pursue several of these in the Doha Declaration (e.g., market access for environmental goods and services, disciplines on fisheries subsidies that contribute to over fishing). The CTE has also worked to promote greater transparency related to environmental measures and policies, including eco-labeling.

Major Issues in 2004

In 2004, the CTE met in Regular Session (CTERS) three times. The United States continued its active role in discussions, as discussed below.

- **Market Access under Doha Sub-Paragraph 32(i):** Discussions under this agenda item continued to demonstrate a lower level of interest than in past years. However, discussions began to pick up in late 2004, spurred by a paper from the European Commission, which highlighted its recent efforts to improve the transparency and accountability of its regulatory process and to address developing countries' concerns. In addition, discussions returned to a paper from India, first tabled in May 2002, which outlines several suggestions for moving the discussions forward.

- **TRIPS and Environment under Doha Sub-Paragraph 32(ii):** Discussions under this item continued to focus, as they had prior to the Doha Ministerial Conference, on whether there may be any inherent conflicts between the TRIPS Agreement and the Convention on Biological Diversity (CBD) with respect to genetic resources and traditional knowledge. The CTERS received a report on the seventh meeting of the CBD Parties and the first meeting of the Parties to the Biosafety Protocol. Several suggestions for further structuring discussions under this agenda item include studying the impacts, if any, of trade and intellectual property rights regimes on biodiversity and exploring funding for biodiversity protection and technology transfer.

- **Labeling for Environmental Purposes under Doha Sub-Paragraph 32(iii):** Discussions under this agenda item demonstrated a considerably lower level of interest in 2004. However, the European Community continued to note its interest in future work on environmental labeling. Most Members continued to question the rationale for singling out environmental labeling for special consideration separate from ongoing work in the Committee on Technical Barriers to Trade on labeling more generally.

- **Capacity Building and Environmental Reviews under Doha Paragraph 33:** Many developing country Members stressed the importance of benefitting from technical assistance related to negotiations in the WTO on trade and environment, particularly given the complexity of some of these issues. The Secretariat briefed Members on its technical assistance activities in 2004, including three regional workshops on WTO rules and MEAs and three regular trade policy courses. Most Members agreed that a key aspect of capacity building in this area involves increasing communication and coordination between trade and environment officials at national levels. Additionally, the United States and Canada continued to update the CTE in Regular Session on their respective environmental reviews of the WTO negotiations, while the European Union provided additional information on its sustainability impact assessments.

- **Discussion of Environmental Effects of Negotiations under Doha Paragraph 51:** Discussions under this agenda item continued to highlight developments in other areas of negotiations, including agriculture, non-agricultural market access, services and rules (including discussions on disciplining fisheries subsidies). The CTERS also agreed to hold an informal event in 2005 to discuss the sustainable development aspects of the negotiations and invite international governmental organizations, such as the United Nations Environment Program (UNEP), to participate.

Prospects for 2005

It is expected that the CTE will devote increasing attention to the substance of the mandate in paragraph 51 of the Doha Declaration. Regarding other environmental issues identified in the Doha Declaration that do not have a negotiating mandate, discussions are less likely to become more focused or increase in intensity in the next year.

2. Committee on Trade and Development

Status

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

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

Cumulative Assessment Since the WTO Was Established

Over the past decade, the CTD has been the primary forum for discussion of broad issues related to the nexus between trade and development, rather than implementation or operation of a specific agreement. Since Doha and the establishment of the DDA, the CTD has intensified its work on issues related to trade and development. The CTD has focused on issues such as expanding trade in products of interest to developing countries, reliance on a narrow export base, coherence in the work of the World Bank, the IMF and the WTO, the WTO's technical assistance and capacity building activities, and sustainable development goals. Work in the Sub-Committee on LDCs and the Dedicated Session on Small Economies has been useful in identifying unique challenges faced by LDCs in their WTO accession processes and the special characteristics of small, vulnerable economies, including island and landlocked states.

Since the launch of the DDA, there has been a clear recognition of the need for intensified technical assistance, training and capacity building for developing countries to actively participate in the negotiations and to implement the results of the negotiations. The CTD has played an important role in managing the growth and direction of the WTO's technical assistance program. WTO Technical Assistance funding through the WTO's Global Trust Fund has grown from approximately $650,000 in the pre-Doha period to $15 million in 2005. Combined with significant growth in funding from other donors, the scope and nature of the training has expanded, with regional and national training programs supplementing the traditional Geneva-based trade policy courses. In 2004, the WTO introduced a new approach to technical assistance designed to ensure a "sustainable footprint" of capacity in developing countries, so their participation in the negotiations and implementation would be more effective.

Developing country participation has progressively increased throughout the DDA negotiations, with both individual developing countries and groups of developing countries playing an increasingly more active role in the negotiations. Developing country groupings active in the negotiations include: the Latin America Group (Groupo Latino or GRULAC); the Africa Group; the Africa, Caribbean and Pacific Group (ACP); and the LDC Group. Despite progress in participation in the negotiation, challenges remain. A number of developing countries have little depth in their trade policy due largely to the high attrition among the few expert trade policy officials in capitals.

Special efforts over the last decade have been undertaken to increase LDC participation in the WTO. The CTD was actively involved in two successful high-level meetings – the 1997 High Level Meeting on the Least Developed Countries and the 1999 Symposium on Trade and Development. Both meetings demonstrated the CTD's constructive contribution to the WTO's work by increasing understanding of the concerns of the poorest and most vulnerable WTO Members. In addition, special efforts included the DDA-mandated LDC work program. This program, implemented by the CTD's Sub-Committee on LDCs, has included identification of market access barriers for entry of LDC products into markets of interest to them, an annual assessment of improvements in market access undertaken by Members, and examination of possible additional measures for progressive improvements.

Recent assessments of LDC trade patterns in the CTD suggest that over the past few years, LDC exports have grown strongly, for example, growing 8 percent in 2002 and 13 percent in 2003. The leading exports of these countries vary substantially. In terms of export destinations, China has recently become the third most important market for LDC products, after the United States and European Union, with Thailand, India, Korea and Chinese Taipei also of growing market importance. This growth reflects, in part, substantial changes in preferential programs by developed countries, but also additional preferences granted to LDCs by other developing countries.

Another special effort to increase LDC participation was the General Council adoption of guidelines for LDC WTO Accessions, based on a recommendation developed by the LDC Subcommittee in December 2002. In these guidelines, developed countries committed to facilitating and accelerating LDC accessions. Since adoption of the guidelines, two least developed countries, Cambodia and Nepal, have joined, and nine LDCs are currently in the process of accession (Afghanistan, Bhutan, Cape Verde, Ethiopia, Lao PDR, Samoa, Sudan, Vanuatu, and Yemen).

Work on Small Economies has focused on defining the unique circumstances faced by those economies, including vulnerability to frequent weather challenges, additional transportation or trading costs caused by geographical access to markets, or heightened vulnerabilities to natural and trade-related shocks. Mindful of the requirement not to create a new subcategory of WTO Members, the work has focused on practical problems and solutions. This work also has direct implications for work being undertaken on special and differential treatment more broadly. For example, other developing countries that are not considered small, vulnerable or landlocked have registered concerns that these efforts not undermine their existing rights to special treatment in the WTO.

Major Issues in 2004

The CTD's work in 2004 focused primarily on technical assistance, assessing the progress of developing and least-developed countries in market access and trade, and DDA-consistent consideration of commodity issues. The Committee also has monitored work related to trade and development being undertaken in the respective DDA negotiating groups to ensure issues of concern to developing countries, including, for example, special and differential treatment, "less-than-full-reciprocity", erosion of preference and revenue concerns are being addressed effectively. Reviews of the work of most negotiating groups in 2004 suggest that most negotiating groups have actively addressed concerns of developing countries in their discussions thus far.

Outlook for 2005

The Committee is expected to continue to monitor developments in the negotiations as they relate to issues of concern to developing countries, as well as to deepen its work on commodities, small economies and landlocked states, and assistance to LDCs. Interest in market access in the developed countries is expected to continue. However, with South-South trade growing at 10 percent a year -- double the growth of world trade -- the CTD's work should increasingly focus on expanding South-South trade. On commodities, the CTD will examine positive experiences of those countries that have been able to successfully diversify their export bases beyond one or two commodities.

3. Committee on Balance-of-Payments Restrictions

Status

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

Cumulative Assessment Since the WTO Was Established

The Uruguay Round strengthening of disciplines has ensured that the BOP provisions of the GATT 1994 are used as originally intended: to enable countries undergoing a BOP crisis to impose temporary import measures while

undertaking needed policy adjustments to bring their external account back into balance. Looking back to 1995, it is clear that the Committee's surveillance of these measures has dramatically reduced the incidence of imposition of unwarranted import restrictions. In 1995, the Committee on BOP held consultations with eleven Members on imposition of new import restrictions, six in 1996, eight in 1997, three in 1998, three in 1999, four in 2000, one in 2001, one in 2002, zero in 2003 and zero in 2004. Discussions in recent years have focused on Members' plans for removing previously approved import restrictions.

Major Issues in 2004

During 2004, no Member imposed new balance-of-payments restrictions. The BOP Committee held one meeting during the year, in November, to conduct the third review of China's accession commitments as part of the annual transitional review mechanism (TRM). To date, China has not notified the Committee of any BOP restrictions. The Committee also reviewed Bangladesh's plans for removing its existing BOP restrictions on a limited number of items by 2009.

As part of the work program agreed at Doha, Committee Members continued to consider proposals by delegations and certain suggestions provided by the Chair to clarify the respective roles of the IMF and BOP Committee in balance of payment proceedings. The BOP Committee did not arrive at a consensus on this issue in 2004, but the discussions have narrowed differences.

Prospects for 2005

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

4. Committee on Budget, Finance and Administration

Status

The Budget Committee is responsible for establishing and presenting the budget for the WTO Secretariat to the General Council for approval. The Committee meets throughout the year to address the financial requirements of the organization. In 2003, the WTO moved to a biennial budget process. Under this new approach, Members agreed in December 2003 on the WTO's first biennial budget, covering 2004 and 2005. As envisaged in the decision establishing biennial budgeting, in 2004 the Secretariat presented proposed adjustments to the 2005 budget to take into account unforeseen and uncontrollable developments. As is the practice in the WTO, decisions on budgetary issues are taken by consensus of the Members.

The United States is an active participant in the Budget Committee. The total assessments of WTO Members are based on the share of WTO Members' trade in goods, services, and intellectual property, and the United States, as the Member with the largest share of such trade, also makes the largest contribution to the WTO budget. For the 2004 budget, the U.S. contribution is 15.735 percent of the total budget assessment, or Swiss Francs (CHF) 25,259,391 (about $22 million). Details on the WTO's budget required by Section 124 of the Uruguay Round Agreements Act are provided in Annex II. Reflecting the move to a biennial budget process, Annex II contains consolidated budget data for both 2004 and 2005.

Cumulative Assessment Since the WTO Was Established

Over the past ten years, the Budget Committee successfully performed the core activities central to the establishment and functioning of the WTO Secretariat as an organization. It formulates recommendations to the General Council on the WTO's budget, monitors on a regular basis the financial and budgetary situation of the WTO including the receipt of contributions, and examines the yearly budgetary and financial

reports from the Director-General and the external auditors. In addition, the Budget Committee formulated recommendations to the General Council on many issues including Member assessment plans, personnel management improvements, the WTO pension plan, the selection of external auditors, guidelines governing the process of acceptance of voluntary contributions, budget arrangements for the UNCTAD/WTO International Trade Centre, the trust fund for the participation of least developed countries at Doha, and WTO building facilities, including the headquarters agreement signed with the Swiss authorities. Of particular note, the Budget Committee strengthened the management of the WTO by developing performance-based pay and biennial budgeting for adoption by the General Council.

Major Issues in 2004

- Security Enhancement Program: In December 2004, the General Council agreed to fund the Secretariat's proposed Security Enhancement Program. This multi-year plan is designed to meet the new realities of the post-9/11 world by, among other things, improving controls on the entrance of goods, vehicles and people to the WTO as well as by improving the technology available to monitor the WTO's facilities and grounds.

- **Policy on the Use of Temporary Assistance:** In December 2004, the Budget Committee endorsed a new policy on the use of temporary assistance. The new policy is designed to enhance the control of long term costs to the WTO by ensuring that temporary assistance is used for truly temporary needs and does not lead to uncontrolled long term obligations.

- **Appellate Body Remuneration:** In December 2004, the Budget Committee proposed and the General Council agreed to increase the remuneration of Appellate Body Members by 11.1 percent. Their remuneration had not been adjusted since the establishment of the Appellate Body in 1995. The increase will be funded entirely through savings elsewhere in the budget.

- **Agreed Budget for 2005:** In December 2004, the Budget Committee proposed and the General Council agreed to increase the 2005 budget from CHF 166,804,200 to CHF 168,703,400 to take into account unforeseen and uncontrollable developments. Almost all of the increase was necessitated by the Security Enhancement Program. The remainder was needed to meet statutory commitments with regard to salary, contribution to the pension fund and other staff costs.

Prospects for 2005

In 2005, the Budget Committee is expected to intensify its work on the Security Enhancement Program of the WTO. It will also perform its ongoing responsibilities of formulating the 2006-2007 biennial budget and monitoring the financial and budgetary situation of the WTO.

5. Committee on Regional Trade Agreements

Status

The Committee on Regional Trade Agreements (CRTA), a subsidiary body of the General Council, was established in early 1996 as a central body to oversee all regional agreements to which Members are party. The CRTA is charged with conducting reviews of individual agreements, seeking ways to facilitate and improve the review process, implementing the biennial reporting requirements established by the Uruguay Round Agreements, and considering the systemic implications of such agreements and regional initiatives on the multilateral trading system. Prior to 1996, these reviews were typically conducted by a "working party" formed to review a specific agreement.

The WTO addresses regional trade agreements in more than one agreement. In the GATT 1947, Article XXIV was the principal provision governing Free Trade Areas (FTAs), Customs Unions (CUs), and interim agreements leading to an FTA or CU. Additionally, the 1979 Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries, commonly known as the "Enabling Clause," provides a basis for certain agreements between or among developing countries. The Uruguay Round added two more provisions: the Understanding on the Interpretation of Article XXIV, which clarifies and enhances the requirements of GATT Article XXIV; and Article V and Vbis of the General Agreement on Trade in Services (GATS), which governs services and labor markets economic integration agreements.

FTAs and CUs are authorized departures from the principle of MFN treatment, if certain requirements are met. First, tariffs and other restrictions on trade must be eliminated on substantially all trade between the parties. Second, duties and other restrictions of commerce applied to third countries upon the formation of a CU must not, on the whole, be higher or more restrictive than was the case before the agreement. For an FTA, no duties or restrictions may be higher. Finally, while interim agreements leading to FTAs or CUs are permissible, transition periods to full FTAs or CUs can exceed ten years only in exceptional cases. With respect to the formation of a CU, the parties must notify Members to negotiate compensation to other Members for exceeding their WTO bindings with market access concessions. An analogous compensation requirement exists for services.

Cumulative Assessment Since the WTO Was Established

Prior to the establishment of the CRTA in 1996, the GATT Contracting Parties created a working party to review each separate agreement, and each was reviewed in isolation. The CRTA was created to centralize "expertise" on RTAs and to enable Members to focus on the varying quality and consistency of agreements with respect to WTO obligations. The Committee provides an important oversight and transparency function. Although the Committee does not have the power to nullify agreements, a key issue debated in the late 1990's was the Committee's inability to conclude its reports on individual RTAs due to lack of consensus on the content of each report with respect to assessment of WTO consistency.

Major Issues in 2004

During 2004, the Committee held three sessions. As of October 31, 2004, 300 RTAs had been notified to the GATT/WTO. Of the notified agreements, 150 are currently in force. Of these, 105 agreements were notified under GATT Article XXIV; 19 under the Enabling Clause; and 26 under GATS Article V. The Committee currently has 110 agreements under examination, of which 38 are currently undergoing factual examination and 32 are yet to be examined. For the remaining 40 agreements, the factual examination has been concluded, but no reports have been completed as Members do not agree on the nature of appropriate conclusions.

In November, the CRTA met to respond to a request from the Rules Negotiating Group (NG) on RTAs that the Secretariat prepare reports on "volunteered" RTAs for review in the CRTA. The Rules NG on RTAs has been working on developing new reporting and review procedures to improve the transparency of RTAs and to make the CRTA process more efficient. The Rules NG on RTAs was of the view that it would be useful to "test-drive" some proposed procedures in 2005 to see how they would work in practice. The CRTA considered and approved a revision in its terms of reference (TOR) to allow the Secretariat, on its own responsibility, to prepare a factual presentation of an RTA for use by the Committee in its review of that agreement.

The CRTA also met informally in 2004 to discuss several issues that were contributing to a backlog in work. First, the Committee's work in some cases was being hampered by a lack of information. Second, the Committee was also

unable to make progress on certain services agreements, because they lacked specific commitments. Lastly, the CRTA considered how to deal with agreements where one of the Parties is not a WTO Member. The CRTA agreed to adjustments to deal with the lack of information and commitments, but did not reach consensus on how to move forward in the case of an RTA involving a non-Member.

The enlargement of the EU in May 2004 to include ten additional countries (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia) resulted in the termination of 65 RTAs previously in force. CRTA review of these agreements was terminated – thereby reducing considerably its backlog.

In March 2004, the CRTA reviewed the U.S.-Jordan FTA. Japan, Australia, the EU, Chile, Switzerland and Chinese Taipei were among the delegations that sought additional information in the review. Questions addressed included the extent of liberalization through TRQs in the Agreement; its rules of origin on citrus products; its provisions on global safeguard measures; its provisions on geographical indications and other intellectual property issues; and, its schedule of commitments in relation to the Parties' commitments under the GATS. In December 2004, the United States and Australia notified the WTO of the U.S.-Australia FTA, which entered-into-force on January 1, 2005.

Prospects for 2005

During 2005, the Committee will continue to review regional trade agreements notified to the WTO and referred to the Committee. The CRTA reviews of the U.S.-Chile FTA and the U.S. Singapore FTA are scheduled for its meeting in February 2005. CRTA review of the U.S.-Australia FTA is possible as well. The second round of the CRTA review of the U.S.-Jordan FTA is likely in 2005.

As reflected in paragraph 29 of the Doha Declaration, WTO Members agreed to negotiations to clarify and improve disciplines on regional trade agreements, a mandate that is being undertaken by the Rules NG. Accordingly, the discussion of systemic issues and improving the examination process in the CRTA is expected to occur largely in the Rules NG. Over the course of 2005, and under the guidance from the Rules NG on RTAs, the CRTA may experiment with new procedures to improve the efficiency and transparency of RTA review in the WTO.

6. Accessions to the World Trade Organization

Status

By the end of 2004, there were twenty-eight accession applicants with established Working Parties, many of them least-developed countries (LDCs). Nepal and Cambodia, both LDCs, became the 147th and 148th WTO Members on April 10 and October 13 respectively, based on accession packages approved at the Fifth Minister Conference at Cancun, Mexico in 2003. They are the first LDCs to become WTO Members through the accession process, rather than as original signatories by virtue of their GATT 1947 contracting party status.[38]

Intensive work on negotiations with Russia, Saudi Arabia, Vietnam, Ukraine, and Tonga during 2004 resulted in significant progress. These negotiations are the most advanced and most likely to be the focus of work in 2005. Substantial work was also recorded on the accession packages of Kazakhstan, Algeria, and Cape Verde. The General Council approved the application of Libya to begin accession negotiations in July, and of Afghanistan and Iraq in December. First working parties convened for the accessions of Bhutan, Laos, Tajikistan, and Yemen, and conducted an initial review of the information submitted by these countries on their foreign trade regimes. Azerbaijan, Bosnia

[38] There are nine other LDCs pursuing WTO accession at this time. Negotiations are ongoing with Bhutan, Cape Verde, Laos, Samoa, Sudan, and Yemen. Afghanistan and Ethiopia have not yet activated their accessions, and Vanuatu has not finalized the package approved by its Working Party in 2001.

and Herzegovina, Cape Verde, Sudan and Uzbekistan had second Working Parties and moved closer to initiating market access negotiations. The Working Parties of Belarus and Lebanon continued to review their respective trade regimes, but noted slow progress in market access negotiations and legislative implementation of WTO rules. Neither the Bahamas nor Ethiopia have yet submitted initial descriptions of their trade regimes, and the Working Parties of Andorra, Samoa, and Seychelles passed another year without activity. Serbia and Montenegro withdrew its accession request, and the two republics have filed to negotiate the terms of WTO Membership as separate customs territories. Accession applicants are welcome in all WTO formal meetings as observers. Equatorial Guinea and Sao Tome and Principe are observers to the WTO not yet seeking accession. The chart included in the Annex to this section reports the current status of each accession negotiation.

Countries and separate customs territories seeking to join the WTO must negotiate the terms of their accession with current Members, as provided for in Article XII of the WTO Agreement. It is widely recognized that the accession process, with its emphasis on implementation of WTO provisions and the establishment of stable and predictable market access for goods and services, provides a proven framework for adoption of policies and practices that encourage trade and investment and promote growth and development. The accession process strengthens the international trading system by ensuring that new Members understand and implement WTO rules from the outset. The process also offers current Members the opportunity to secure expanded market access opportunities and to address outstanding trade issues in a multilateral context.

In a typical accession negotiation, the applicant submits an application to the WTO General Council, which establishes a Working Party to review information on the applicant's trade regime and to conduct the negotiations. Accession negotiations can be time consuming and technically complex, involving a detailed review of the applicant's entire trade regime by the Working Party and bilateral negotiations for import market access. Applicants are expected to make necessary legislative changes to implement WTO institutional and regulatory requirements, to eliminate existing WTO-inconsistent measures, and to make trade liberalizing specific commitments on market access for goods, services, and agriculture. Most accession applicants take these actions prior to accession.

The terms of accession developed with Working Party members in these bilateral and multilateral negotiations are recorded in an accession "protocol package" consisting of a Working Party report and Protocol of Accession, consolidated schedules of specific commitments on market access for imported goods and foreign service suppliers, and agriculture schedules that include commitments on export subsidies and domestic supports. The Working Party adopts the completed protocol package containing the negotiated terms of accession and transmits it with its recommendation to the General Council or Ministerial Conference for approval. After General Council approval, accession applicants normally submit the package to their domestic authorities for ratification. Thirty days after the applicant's instrument of ratification is received in Geneva, WTO Membership becomes effective.

The United States provides a broad range of technical assistance to countries seeking accession to the WTO to help them meet the requirements and challenges presented, both by the negotiations and the process of implementing WTO provisions in their trade regimes. This assistance is provided through USAID and the Commercial Law Development Program (CLDP) of the U.S. Department of Commerce. The assistance can include short-term technical expertise focused on specific issues, e.g., Customs, IPR, or TBT, and/or a WTO expert in residence in the acceding country or customs territory. A number of the WTO Members that have acceded since 1995 received technical assistance in their accession process from the United States, e.g., Armenia, Bulgaria, Estonia, Georgia, Jordan, Kyrgyz

Republic, Latvia, Lithuania, Macedonia, Moldova and Nepal. Most had U.S.-provided resident experts for some portion of the process. Among current accession applicants, the United States provides a resident WTO expert for the accessions of Azerbaijan, Cape Verde, Ethiopia, Iraq, Ukraine, and Serbia and Montenegro, and a U.S.-funded WTO expert resident in the Kyrgyz Republic provides WTO accession assistance to Kazakhstan, Uzbekistan, and Tajikistan. The United States also offers other forms of technical and expert support on WTO accession issues to Afghanistan, Algeria, Bosnia and Herzegovia, Lebanon, Russia, and Vietnam.

Cumulative Assessment Since the WTO Was Established

Since the establishment of the World Trade Organization in 1995, twenty countries have acceded to the WTO[39], and twenty-eight additional applicants are in accession negotiations in various stages.[40] There are few trading economies of significant size that are not Members or in the process of negotiating terms for accession. During the period since the establishment of the WTO, there have been complaints that the accession process is too difficult and complex. However, by providing the mechanism to require that WTO Membership be based on actual adoption of WTO provisions and establishment of market access schedules comparable or better than existing members, the achievements of the accession process for the international trading system, and for U.S. interests in that system, fully justify the time taken to complete the accession process. The WTO accession process has responded constructively and flexibly to changing political and economic realities, without undermining its basic objective of ensuring that accession applicants are ready to assume the responsibilities as well as the rights of WTO Membership. The United States takes a leadership role in all accessions, to ensure a high standard of implementation of WTO provisions by new Members and to encourage trade liberalization in developing and transforming economies, as well as to use the opportunities provided in these negotiations to expand market access for U.S. exports.

Accession procedures and requirements have strongly supported the key concepts of transparency, compliance with the rules, and the balance of rights and obligations upon which the WTO is based, thereby supporting existing rules and institutions. Accessions also have been a critical part of the international community's response to the historic changes that occurred in the early 1990's with the breakup of the Soviet Union and Yugoslavia and the abandonment by Eastern Europe of Communist economic policies. The accessions of Bulgaria, Mongolia, the Kyrgyz Republic, Latvia, Estonia, Georgia, Albania, Croatia, Lithuania, Macedonia, Armenia and Moldova were a significant factor in the integration of these new countries into the rules-based, market based international economic and trading system. The approval of the accessions of Jordan and Oman expanded WTO membership in the Middle East on the basis of full observance of the rules and trade liberalizing market access commitments. These principles can be expected to be applied in the accessions of other countries in the Middle East, including those of Afghanistan, Iraq and Libya, initiated in 2004.

The accession of China in 2001 alongside that of Chinese Taipei was also a major development, extending WTO rules to two of the preeminent participants in global trade. China agreed to extensive, far-reaching and often complex commitments to change its trade regime, at all levels of government. China committed to implement a set of sweeping reforms that required it to lower trade barriers in virtually

[39] In order of date of accession, Ecuador, Bulgaria, Mongolia, Panama, Kyrgyz Republic, Latvia, Estonia, Jordan Georgia, Albania, Oman, Croatia, Lithuania, Moldova, China, Chinese Taipei, Armenia, Former Yugoslav Republic of Macedonia, Nepal, and Cambodia.

[40] This total includes Vanuatu, whose completed accession package has not yet been approved by the General Council, and the state union of Serbia and Montenegro as a single applicant, since the applications for separate Working Parties by the two republics have not yet been reviewed by the General Council.

every sector of the economy, provide national treatment and improved market access to goods and services imported from the United States and other WTO members, and protect intellectual property rights. China also agreed to special rules regarding subsidies and the operation of state-owned enterprises, in light of the state's large role in China's economy. In accepting China as a fellow WTO member, the United States also secured a number of significant concessions from China that protect U.S. interests during China's WTO implementation stage. Chinese Taipei joined WTO as a developed Member fully compliant with WTO rules from the date of accession and with broad market access commitments.

In 2003, the General Council presided over the first accessions of least-developed countries, Nepal and Cambodia, based on simplified and streamlined procedures intended to use the accession process as a tool for economic development. The protocols of accession developed under these guidelines reflect both the goal of full implementation of WTO rules and the need to address realistically the difficulties faced by LDCs in achieving that objective.

Major Issues in 2004

Intensified efforts on the accessions of Russia, Saudi Arabia, Ukraine, and Vietnam established a fast and crowded pace for WTO accession activities in 2004, both in the eleven scheduled WP sessions that worked on these countries' draft WP reports, and in many more bilateral meetings in Geneva and in capitals. A key focus of these countries' work centered on reaching agreement bilaterally with as many Members as possible on market access commitments. Efforts to enact legislation to implement the WTO in domestic law were accelerated, to keep pace with progress in the Working Party on development of the draft report and Protocol of Accession. For these countries, the accession process cannot be finalized until the legislation that actually implements WTO provisions has been identified and reviewed by WP Members.

The Federal Republic of Yugoslavia formally changed its name to Serbia and Montenegro in its accession documents, reflecting its change in status following the promulgation of the Constitutional Charter of Serbia and Montenegro in 2003. Documentation for a first Working Party was circulated, but in December, the state union of Serbia and Montenegro withdrew its accession application. The constituent republics, Serbia and Montenegro, have applied for accession as separate customs territories.

Tonga, a small island economy that shares many of the characteristics of LDCs, completed its market access negotiations and tabled most of the outstanding legislation, either enacted or in draft for WP review, setting the stage for its likely completion of the accession process in 2005.

Efforts to make WTO accession more accessible to LDCs continued in 2004 as WP meetings were convened for a record number of LDC applicants (e.g., for Sudan, Cape Verde, Bhutan, Laos, and Yemen). Discussions continued in various WTO fora, e.g., the CTD, its Subcommittee on LDCs, and the Work Program on Small Economies of the DDA, on how the WTO guidelines on LDC accessions, approved by the General Council in December 2002, were being implemented. Using the guidelines, WTO Members exercise restraint in seeking market access concessions, and are pledged to agree to transitional arrangements for implementation of WTO Agreements. The United States and other developed WTO Members have sought to support the transitional goals established in the accession process with technical assistance to help achieve them, using the framework of commitments established in the accession as a development tool--an opportunity to mainstream trade in the development programs of the LDC applicants, to build trade capacity, and to provide a better economic environment for investment and growth.

In November, Congress authorized the President to remove Armenia from the coverage of the provisions of the "Jackson-Vanik" clause and the other requirements of Title IV of the Trade

Act of 1974.[41] This allowed the United States to dis-invoke the non-application provisions of the WTO Agreement contained in Article XIII with respect to that country, and to establish full WTO relations with Armenia.[42]

Prospects for 2005

While significant work remains on the accessions of Russia, Saudi Arabia, Ukraine, and Vietnam in all aspects of the negotiations, these countries have clearly signaled the hope that they can conclude accession negotiations in 2005, or at least make definitive progress towards that goal. The quickening pace of work on Doha issues and preparations for the Sixth Ministerial Conference in Hong Kong, China in December 2005 will engage an increasing share of WTO Members' time and resources during the year requiring applicants to maximize opportunities for progress given the competition for meeting times. Efforts to advance the accessions of LDCs will also continue.

M. Plurilateral Agreements

1. Committee on Trade in Civil Aircraft

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

The Aircraft Agreement requires Signatories to eliminate tariffs on civil aircraft, their engines, subassemblies and parts, ground flight simulators and their components, and to provide these benefits on a nondiscriminatory basis to other Members covered by the Aircraft Agreement. The Signatories have also provisionally agreed to duty-free treatment for ground maintenance simulators, although this is not a covered item under the current agreement. The Aircraft Agreement also establishes various obligations aimed at fostering free market forces. For example, signatory governments pledge that they will base their purchasing decisions strictly on technical and commercial factors.

[41] Prior to General Council approval of Armenia's accession package in December 2002, the United States invoked the non-application provisions of the WTO Agreement contained in Article XIII with respect to that country. This was necessary because the United States must retain the right to withdraw "normal trade relations (NTR)" (called "most-favored-nation" treatment in the WTO) for WTO Members that receive NTR with the United States subject to the provisions of the "Jackson-Vanik" clause and the other requirements of Title IV of the Trade Act of 1974. In such cases, the United States and the other country do not have "WTO relations" which, among other things, prevents the United States from bringing a WTO dispute based on a violation of the WTO or the country's commitments in its accession package.

[42] In addition to Armenia, seven of the remaining 28 WTO accession applicants with active Working Parties are covered by Title IV. They are: Azerbaijan, Belarus, Kazakhstan, Russia, Ukraine, Uzbekistan, and Vietnam. For further information on this issue, please consult the sections of the report that deal with bilateral trade relations with these countries. The United States has invoked non-application of the WTO five other times, when Romania became an original WTO Member in 1995, and when the accession packages of Mongolia, the Kyrgyz Republic, Georgia and Moldova were approved by the WTO General Council in 1996, 1998, 1999, and 2001, respectively. Congress subsequently authorized the President to grant Romania, Mongolia, the Kyrgyz Republic, and Georgia permanent NTR, and the United States withdrew its invocation of non-application in the WTO for these countries.

As of January 1, 2005, there were 30 signatories to the Aircraft Agreement. Members include: Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Egypt, Estonia, the European Communities[43], Denmark, France, Georgia, Germany, Greece, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Macau, China, Malta, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

Cumulative Assessment Since the WTO Was Established

While the 1979 GATT Agreement on Trade in Civil Aircraft was not strengthened through renegotiation during the Uruguay Round, civil aircraft were brought under the stronger disciplines of the WTO Agreement on Subsidies and Countervailing Measures. This was the major objective of the U.S. aerospace industry, whose competitors have in the past benefited from huge government subsidies.

Since the conclusion of the Uruguay Round, there have been some additional negotiating efforts in Geneva to substantively revise the Aircraft Agreement. The United States proposed revisions to limit government support and clarify provisions of the GATT Aircraft Agreement that apply to government intervention in aircraft marketing. There has been little progress in those negotiations.

The Aircraft Agreement has been incorporated without revision into the WTO. Therefore there have been efforts by the Signatories to update or rectify the Agreement to correctly reference WTO instruments. The United States supports those efforts, so long as the current balance of rights and obligations are preserved, and the relationship between the Aircraft Agreement and other WTO agreements is maintained.

The United States has used the Committee as a forum to seek clarity about allegations of financial supports offered by other Signatories to competitors, as well as governmental inducements to obtain purchase contracts. In 2003, the United States proposed improvements to Article 4 of the Aircraft Agreement to bring greater clarity to the term "inducements," and to improve communication between parties by creating effective mechanisms to exchange information and address concerns.

Major Issues in 2004

The Committee on Trade in Civil Aircraft (Aircraft Committee), permanently established under the Aircraft Agreement, provides the Signatories an opportunity to consult on the operation of the Aircraft Agreement, to propose amendments to the Agreement and to resolve any disputes. During 2004, the Aircraft Committee met twice.

The Aircraft Committee continued to consider proposals to revise terminology in the Aircraft Agreement to conform with the Uruguay Round agreements and a Canadian proposal to redefine civil vs. military aircraft. The Committee also considered a U.S. proposal to consider factors that could facilitate the effectiveness of Article 4 with regard to inducements.

Prospects for 2005

The United States will continue to encourage observers and other WTO Members to become Signatories to the Aircraft Agreement, including Oman, Albania and Croatia, which committed to become Signatories pursuant to their protocols of WTO accession.

[43] At the June 2004 meeting of the Committee on Trade in Civil Aircraft, the representative from the European Communities announced that the ten countries that had become members of the European Union on 1 May 2004 were automatically linked by the Agreement on Trade in Civil Aircraft Agreement by means of the extension of the territory of the European Union. However, six of the ten countries (Poland, Hungary, Czech Republic, Slovenia, Cyprus, and Slovak Republic) have not deposited an instrument of accession to the Agreement. The United States submitted written questions seeking a clarification of this item.

2. Committee on Government Procurement

Status

The WTO Government Procurement Agreement (GPA) is a "plurilateral" agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO's single undertaking and its membership is limited to WTO Members that specifically signed the GPA in Marrakesh or that have subsequently acceded to it. WTO Members are not required to join the GPA, but the United States strongly encourages all WTO Members to participate in this important Agreement. Thirty-eight WTO Members are covered by the Agreement: the United States; the European Union and its 25 Member States (Austria, Belgium, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom); the Netherlands with respect to Aruba; Canada; Hong Kong, China; Iceland; Israel; Japan; Liechtenstein; Norway; the Republic of Korea; Singapore; and Switzerland.

Nine WTO Members are in the process of acceding to the GPA: Albania, Bulgaria, Chinese Taipei, Georgia, Jordan, the Kyrgyz Republic, Moldova, Oman, and Panama. Five additional WTO Members have provisions in their respective Protocols of Accession to the WTO regarding accession to the GPA: Armenia, China, Croatia, the Republic of Macedonia, and Mongolia.

Twenty WTO Members, including those in the process of acceding to the GPA, have observer status in the Committee on Government Procurement: Albania, Argentina, Armenia, Australia, Bulgaria, Cameroon, Chile, China, Colombia, Croatia, Georgia, Jordan, the Kyrgyz Republic, Moldova, Mongolia, Oman, Panama, Sri Lanka, Chinese Taipei, and Turkey.

Cumulative Assessment Since the WTO Was Established

Since the WTO's establishment, the number of participants to the GPA has increased to cover 38 WTO Members, with the accessions of Iceland and the Netherlands with respect to Aruba, and the enlargement of the European Union to include 10 new member states: Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, and Slovenia.

The Committee devoted significant time and resources in carrying out the directive in GPA Article XXIV:7(b) for the Parties to undertake further negotiations with a view to improving the text of the Agreement. Much of the existing text of the GPA was developed in the late 1970s during the negotiations on the original GATT Government Procurement Code. As a result, the Committee has recognized that the GPA text needs to be modified to reflect ongoing modernization of the Parties' procurement systems and technologies, and to encourage other Members to accede to the Agreement. The United States has played a principal role in advocating significant streamlining and clarification of the GPA's procedural requirements, while continuing to ensure full transparency and predictable market access. The United States' proposal for a major restructuring and streamlining of the GPA has served as the framework for the Committee's subsequent work on the revision of the text. The Committee has made significant progress in preparing a revision of the GPA.

With the significant advancement of its work on improving the GPA text, the Committee has developed an ambitious work plan for expanding market access under the GPA, which it launched at the end of 2004.

Major Issues in 2004

The Committee held four formal meetings in 2004 (in April, July, November, and December) and five informal meetings (in February, April, June, October, and November). The Parties focused primarily on the simplification and

improvement of the GPA, with the overall objective of promoting increased membership in the GPA by making it more accessible to non-Parties. During 2004, the Committee made significant progress in its revision of the text, and has reached provisional agreement on the basic structure and drafting style of the Agreement.

Coverage of the GPA was extended on May 1, 2004, to 10 additional WTO Members as a result of the enlargement of the European Union to include the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, and Slovenia.

GPA Article XXIV:7(c) calls for the Parties to undertake further negotiations with a view to achieving the greatest possible extension of its coverage among all Parties and eliminating remaining discriminatory measures and practices. In July 2004, the Committee adopted Modalities for the Negotiations on Extension of Coverage and Elimination of Discriminatory Measures and Practices. It provides that each Party will submit requests to the other Parties for improvement in coverage by November 30, 2004, and its initial offer by May 1, 2005. Following bilateral negotiations, revised and improved offers are to be submitted by the end of October 2005.

Jordan's accession to the GPA was advanced with its submission of a revised entity offer in September 2004 and two rounds of informal plurilateral consultations between Parties and Jordan in April and October 2004.

The Committee granted Israel an additional year to reduce the level of its offsets from 30 percent to 20 percent. Israel is now required to reduce the level of its offsets to 20 percent by January 1, 2006.

As provided for in the GPA, the Committee monitors participants' implementing legislation. In 2004, the Committee continued its review of the national implementing legislation of the Netherlands with respect to Aruba.

Prospects for 2005

In 2005, the Committee will hold four informal meetings, which will focus on two major activities: completion of the major portion of the revision of the text of the GPA and the initiation of market access negotiations to expand the coverage of the GPA.

The Committee plans to hold informal plurilateral consultations with Jordan and Georgia as part of efforts to advance their respective accessions to the GPA. In 2005, the Committee will also continue its review of the legislation of the Netherlands with respect to Aruba.

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

Status

The Information Technology Agreement (ITA) was concluded at the WTO's First Ministerial Conference at Singapore in December 1996. The Agreement eliminated tariffs as of January 1, 2000 on a wide range of information technology products. Currently, the ITA has 64 participants representing more than 95 percent of world trade in information technology products.[44] The Agreement covers computers and computer equipment, electronic components including semiconductors, computer software products, telecommunications equipment,

[44] ITA participants are: Albania; Australia; Austria; Bahrain; Belgium; Bulgaria; Canada; China; Costa Rica; Croatia; Cyprus; Czech Republic; Denmark; Egypt; El Salvador; Estonia; European Communities (on behalf of 25 Member States); Finland; France; Georgia; Germany; Greece; Hong Kong, China; Hungary; Iceland; India; Indonesia; Ireland; Israel; Italy; Japan; Jordan; Republic of Korea; Krygyz Republic; Latvia; Liechtenstein; Lithuania; Luxembourg; Macau, China; Malaysia; Malta; Mauritius; Moldova; Morocco; Netherlands; New Zealand; Norway; Oman; Panama; Philippines; Poland; Portugal; Romania; Singapore; Slovak Republic; Slovenia; Spain; Sweden; Switzerland; Chinese Taipei; Thailand; Turkey; United Kingdom; and the United States.

semiconductor manufacturing equipment and computer-based analytical instruments.

Cumulative Assessment Since the WTO Was Established

Since its conclusion in 1996, the Information Technology Agreement has grown from 29 to 63 participants. At its inception, 29 countries or separate customs territories signed the declaration creating the ITA. At the time, the 29 signatories to the declaration accounted for only 83 percent of world trade in information technology products, but in the following months, a number of other Members agreed to participate, bringing the total world trade covered by participants to 90 percent. Today, the volume of global trade covered by participating Members has grown to more than 95 percent. The creation of the ITA in 1996 signaled the growing importance of this highly-traded sector and has created a forum for Members with an interest in information technology to discuss market access issues among a group of interested parties. Since its first meeting in 1997, the Committee on the Expansion of Trade in Information Technology Products has undertaken work on non-tariff barriers, tariff classification, and discussed expansion of the agreement to include new technologies.

Major Issues in 2004

The WTO Committee of ITA Participants held four formal meetings in 2004, during which the Committee reviewed the implementation status of the Agreement. While most participants have fully implemented tariff commitments, a few countries are still awaiting the completion of domestic procedural requirements or have not yet submitted the necessary documentation.

Morocco completed its application for participation in the ITA in 2004 and as a result of EU Enlargement, Hungary and Malta became ITA participants upon joining the European Union.

At its meeting in June, the Committee agreed to hold an IT Symposium in order to update ITA participants and other WTO Members on developments in information technology, to elicit updated information on the nature of non-tariff barriers to trade in IT products, and to assess the role of IT trade in supporting development in those markets where liberalization has occurred. The Symposium was held October 18-19, 2004. The Symposium was widely attended by both industry and government representatives and focused on new technologies developed since the agreement was established and how to narrow the digital divide between developed and developing countries.

The Committee continued work on the Non-Tariff Measures (NTMs) Work Programme and adopted guidelines on best practices for EMC/EMI (electro-magnetic compatibility/electro-magneticimmunity) conformity assessment procedures.

The Committee also continued its work to reconcile classifications by ITA participants of certain information technology products where Members have applied divergent Harmonized System (HTS) classification. The Secretariat updated and categorized its compilation of the list of divergences and Committee participants were able to significantly narrow the list of unresolved products. Customs experts will continue to discuss the treatment of each category of products through 2005.

Prospects for 2005

The Committee's work program on non-tariff measures will continue to be an important focus of work in 2005, potentially with more work to continue in the EMC/EMI area in the year to come. Committee participants will continue to determine whether there are other issues that should be pursued and how work on non-tariff measures in the ITA context can be coordinated with the Doha negotiations. Building on the success of the October 2004 Symposium, participants will continue to discuss how to address some of the issues discussed in that forum, specifically (1) how to pursue tariff liberalization for new technologies in the context of the ITA and the Doha Development Agenda and (2) how to broaden developing country

participation in the ITA. Participants will also continue to work on reconciling divergent tariff classifications for ITA products with an aim to narrow the list of products under discussion. Throughout 2005, the Committee will continue to undertake its mandated work, including reviewing new applicants' tariff schedules for ITA participation and addressing further technical classification issues. The next formal meeting of the Committee will be in February 2005. A number of additional WTO Members are actively working on proposals to join the ITA in 2005.