III. Bilateral and Regional Negotiations

A. Free Trade Agreements

1. Australia

Negotiations on the United States-Australia Free Trade Agreement (FTA) began in March 2003, and President George W. Bush and Prime Minister John Howard made it a priority to conclude the agreement as quickly as possible. The negotiations were completed on February 8, 2004, and U.S. Trade Representative Robert B. Zoellick and Australia's Trade Minister Mark Vaile signed the agreement on May 18, 2004. With strong bipartisan support, the U.S. House of Representatives passed the United States-Australia Free Trade Agreement Implementation Act (H.R. 4759) on July 14, 2004, and the U.S. Senate approved the legislation on July 15, 2004. President Bush signed the measure into law on August 3, 2004 (P.L. 108-286). Australia's Parliament approved implementing legislation in August 2004, and the Australian government took further action to implement the intellectual property chapter in December 2004. The FTA entered into force on January 1, 2005.

The United States-Australia FTA is the first FTA between the United States and a developed country since the United States-Canada Free Trade Agreement in 1988. Australia is a large and growing trade and investment partner of the United States. Two-way annual goods and services trade is nearly $29 billion, a 53 percent increase since 1994. Australia purchases more goods from the United States than from any other country. In 2003, the United States enjoyed a bilateral goods and services trade surplus of $9 billion.

The FTA chapters cover industrial and agricultural goods, services, financial services, textiles, rules of origin, customs administration, sanitary and phytosanitary (SPS) measures, technical barriers to trade, investment, telecommunications, competition policy, government procurement, electronic commerce, intellectual property rights, labor, environment, transparency obligations, and dispute settlement.

Manufactured goods currently account for 93 percent of the total value of U.S. goods exports to Australia. When the FTA entered into force, duties on more than 99 percent of tariff lines covering industrial and consumer goods were eliminated. Duties on remaining manufactured goods will be phased out over periods of up to 10 years. The FTA will bring immediate benefits to key U.S. manufacturing sectors, including autos and autos parts; chemicals, plastics, and soda ash; construction equipment; electrical equipment and appliances; fabricated metal products; furniture and fixtures; information technology products; medical and scientific equipment; non-electrical machinery; and paper and wood products. For duties on textiles and apparel to be eliminated, the goods must meet the FTA's yarn-forward rule of origin. The agreement also requires the elimination of a variety of non-tariff barriers that restrict or distort trade flows.

The FTA achieves a balanced approach for agriculture, providing expanded export opportunities for a range of U.S. agricultural goods, while responding to U.S. import sensitivities. Duties on all U.S. agricultural exports to Australia, which totaled nearly $700 million in 2003, were eliminated immediately upon entry into force of the Agreement. U.S. duties will be maintained on Australian sugar and certain dairy products. In addition, for certain products imported from Australia, including beef, dairy, cotton, peanuts and certain horticultural products, the Agreement includes other mechanisms, such as preferential tariff-rate quotas and safeguards. The Agreement also establishes a new forum for scientific cooperation between U.S. and Australian authorities to resolve specific bilateral animal and plant health matters based on science and with a view to facilitating trade.

Services suppliers will enjoy the benefits of expanded Australian commitments for access to its market, including in the advertising, asset management, audio visual, computer and related services, education and training, energy, express delivery, financial services, professional services, telecommunications, and tourism sectors. U.S. financial service suppliers already enjoy a significant presence in the Australian market through subsidiaries, joint ventures and branches, and Australia agreed to provide new rights for life insurance branching. In addition, Australia and the United States agreed to high standards for regulatory transparency, including procedures applying to licensing systems.

The FTA also establishes a secure, predictable legal framework for U.S. investors operating in Australia. Moreover, all U.S. investment in new businesses is exempted from screening under Australia's Foreign Investment Review Board. Thresholds for acquisitions by U.S. investors in nearly all sectors are raised significantly, from A$50 million to A$800 million, exempting the vast majority of transactions from screening. Australia also will lock-in existing good practice regarding review of acquisitions in the banking and insurance sectors. In recognition of the unique circumstances of this Agreement – including, for example, the longstanding economic ties between the United States and Australia, their shared legal traditions, and the confidence of their investors in operating in each others markets – the two countries agreed not to adopt procedures in the Agreement that would allow investors to access international arbitration for disputes with governments. Government-to-government dispute settlement procedures remain available to resolve investment-related disputes.

The FTA has other significant features. On electronic commerce, this is the first Agreement to include provisions on facilitating authentication of electronic signatures, encouraging paperless trade and establishing a program for cooperation on other electronic commerce issues. Regarding intellectual property rights, the FTA complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law. In addition, under the FTA's government procurement provisions, U.S. suppliers are granted non-discriminatory rights to bid on contracts to supply Australian Government entities, including all major procuring entities and administrative and public bodies, and tendering procedures must be conducted in a transparent, predictable, and fair manner. The Agreement also proscribes anticompetitive business conduct, and sets out basic procedural safeguards and rules against harmful conduct by government-designated monopolies and establishes special rules covering state enterprises to deter abuse that may harm the interests of U.S. companies or discriminate in the sale of goods and services.

Under the labor provisions of the FTA, Australia and the United States reaffirmed their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO Declaration on Fundamental Principles and Rights at Work, and agreed to strive to ensure that their laws protect the fundamental labor principles embodied in the ILO Declaration and listed in the Agreement. The FTA's environmental provisions commit Australia and the United States to ensure that their domestic environmental laws provide for high levels of environmental protection and strive to continue to improve such laws.

The FTA contains innovative provisions relating to public health and pharmaceuticals, whereby the United States and Australia affirmed their commitment to several basic principles related to their shared objectives of facilitating high quality health care and improvements in public health. The FTA also requires that federal health care programs apply transparent procedures in listing new pharmaceuticals for reimbursement. In addition, the two countries will establish a Medicines Working Group to promote discussion and understanding of pharmaceutical issues. Government procurement of pharmaceuticals is covered by the Government Procurement chapter rather than by the pharmaceutical-specific provisions of the Agreement. Australia will also establish and maintain procedures enhancing transparency and

accountability in the listing and pricing of pharmaceuticals under its Pharmaceutical Benefits Scheme, including establishment of an independent review process for listing decisions.

Increased access to Australia's market under the FTA will greatly boost trade in both goods and services, enhancing employment opportunities in both countries. The FTA also will encourage additional foreign investment flows between the United States and Australia, and streamline mutual access in intellectual property, services, government procurement, and electronic commerce. All 50 U.S. states export to Australia, and Australia is among the top 25 export destinations for 48 of the 50 states.

2. Morocco

In April 2002, President Bush and King Mohammed VI agreed to pursue a Free Trade Agreement (FTA) between the United States and Morocco. On June 15, 2004, U.S. Trade Representative Robert B. Zoellick and Minister Taib Fassi Fihri signed the completed Agreement. The U.S. Congress subsequently enacted legislation approving and implementing the Agreement and in August 2004 the President signed this legislation. The Moroccan Parliament ratified the Agreement in January 2005 and the Agreement is expected to enter into force in 2005. The FTA with Morocco is comprehensive and is part of the Administration's effort to promote more open and prosperous Middle Eastern societies. The FTA will support the significant economic and political reforms underway in Morocco, and create improved commercial and market opportunities for U.S. exports to Morocco by reducing and eliminating trade barriers. It is the first FTA to be approved under the President's Middle East Free Trade Area (MEFTA) initiative, and is an important step towards forming the MEFTA by 2013.

In support of the economic and political reforms undertaken by Morocco, the United States has funded $2.95 million in technical assistance projects carried out by the International Labor Organization (ILO) to strengthen industrial relations and labor administration practices. Additionally, the United States has funded a $3 million project aimed to combat child labor through education and a $2 million project focused on combating exploitative child labor in rural areas.

3. Chile

Chile has been a recognized leader of economic reform and trade liberalization in Latin America and currently is the only South American country with an investment grade credit rating. Real GDP growth averaged 8 percent for the decade prior to Chile's economic slowdown in 1998-99. Chile's growth in real GDP estimated for 2004 is 5.2 percent,[45] up from 3.3 percent in 2003 and 2.2 percent in 2002.

Two-way trade in goods (exports plus imports) between the United States and Chile totaled an estimated $8.1 billion in 2004,[46] with the United States in deficit by $1.0 billion. Two-way trade in services in 2003 (latest year available) amounted to $1.7 billion, with the United States in surplus by $0.4 billion. Since 1994, U.S. goods trade with Chile has expanded by 77 percent (to 2004) and services trade by 7 percent (to 2003).

U.S. Trade Representative Robert B. Zoellick and Chilean Foreign Minister Soledad Alvear signed the United States.-Chile Free Trade Agreement (FTA) on June 6, 2003. It was the first comprehensive FTA between the United States and a South American country. The United States-Chile FTA entered into force on January 1, 2004.

The United States-Chile FTA eliminates tariffs and opens markets, reduces barriers for services, provides cutting-edge protection for intellectual property, keeps pace with new technologies, ensures regulatory transparency, provides explicit guarantees for electronic commerce and digital products, commits the Parties to maintain competition laws that prohibit anti-competitive

[45] Source: Global Insight.
[46] Annualized based on 10 months' data.

business conduct, and provides effective labor and environmental enforcement. Under the FTA, American workers, consumers, investors, manufacturers, and farmers enjoy access to one of the region's most stable and fastest growing economies, enabling products and services to flow between the two economies with no tariffs and streamlined customs procedures.

Under the agreement, more than 85 percent of bilateral trade in consumer and industrial goods became tariff-free immediately. In less than four years, 75 percent of farm production will also be duty free. After just ten years, all trade in non-agricultural goods will take place without tariffs or quotas; for agriculture, the phase out will take just 12 years. Key U.S. export sectors benefit, including agricultural and construction equipment, autos and auto parts, computers and other information technology products, medical equipment, and paper products. Farmers will gain duty-free treatment within four years for important U.S. products such as pork and pork products, beef and beef products, soybeans and soybean meal, durum wheat, feed grains, potatoes, and processed food products such as french fries, pasta, distilled spirits and breakfast cereals. The agreement provides immediate duty-free treatment for U.S. apples, pears, peaches, cherries, grapes, lettuce, broccoli, almonds, pistachios, walnuts, oranges, and grapefruit. U.S. exports to Chile have increased 32 percent from January 2004 through October 2004 and Chilean exports to the United States have increased almost 23 percent in that same period.

This agreement offers new access to a fast-growing Chilean services market for U.S. banks, insurance companies, telecommunications companies, security firms, express delivery companies, and professionals. U.S. firms may offer financial services to participants in Chile's highly successful privatized pension system. The agreement offers state of the art and non-discriminatory protections for digital products such as U.S. software, music, text, and videos. Protection for U.S. patents, trademarks, and trade secrets exceeds that provided for in past agreements in the region.

The agreement establishes a secure, predictable legal framework for U.S. investors, and provides for anti-corruption measures in government contracting. U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of Chilean government entities, including airports and seaports.

U.S. Trade Representative Robert B. Zoellick and Foreign Minister Alvear held the first meeting of the United States-Chile Free Trade Commission on June 3, 2004. They reviewed various aspects of the implementation of the FTA. The Agreement provides for the creation of a number of specialized committees to resolve problems, exchange information, and promote trade. The Ministers concluded that good progress was being made in establishing those groups and in other technical aspects of implementation.

During 2004, the United States and Chile held a series of meetings on implementation of Chile's FTA obligations in the area of intellectual property, specifically data protection. The United States will continue to work with the Chilean government to ensure full implementation.

The FTA also requires that both governments effectively enforce their own domestic environmental laws, and this obligation is enforceable through the FTA's dispute settlement procedures. It establishes a framework for cooperative environmental projects that will help protect wildlife, reduce hazards, and promote internationally recognized labor laws. The United States and Chile are working to implement the eight environmental cooperation projects outlined in the FTA. In January 2004, the governments sponsored a workshop on corporate environmental stewardship in Santiago, Chile. In September, the U.S. Department of Justice and the Chilean Consejo de Defensa del Estado, in cooperation with the Environmental Law Institute, held a workshop on environmental law enforcement focusing on judicial actions to restore and recover compensation for damage to the environment and natural resources. Both events

included opportunities for civil society participation.

The FTA requires that both governments effectively enforce their own domestic labor laws, and this obligation is enforceable through the FTA's dispute settlement procedures. The FTA establishes a cooperative mechanism to promote respect for the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work, and compliance with ILO Convention 182 on the Worst Forms of Child Labor. The first Labor Affairs Council meeting under the FTA was held in Santiago on December 15-16, 2004. The meeting provided a forum for governments to discuss the implementation of the FTA labor provisions and the current status of the existing technical assistance project to promote compliance with labor laws and standards. The governments discussed new areas of cooperation and approved an activities plan under the Labor Cooperation Mechanism. The Council also held an open session providing an opportunity to explain the FTA implementation process to the general public and the press. After the Council meeting, a Seminar on Industrial Relations in Chile and the United States was held on December 17, 2004. The seminar provided an opportunity for government officials, business, labor, and the general public to increase their knowledge of the countries' systems and practices. Both delegations included government, worker, and business representatives.

4. Singapore

The United States-Singapore Free Trade Agreement, the first comprehensive U.S. FTA with an Asian nation, entered into force on January 1, 2004. President Bush and then Prime Minister Goh had previously signed the agreement on May 6, 2003. The United States-Singapore FTA Implementation Act was passed with strong bipartisan support by the U.S. Congress and was signed by President Bush on September 3, 2003.

Singapore is our 12th largest trading partner, with two-way trade of goods and services exceeding $40 billion. The provisions of the United States-Singapore FTA build on the WTO and NAFTA and make important advances in many key areas. Most tariffs were eliminated immediately upon entry into force of the Agreement, with the remaining tariffs phased out over a 3-to-10-year period. More than 97 percent of U.S.-Singapore trade in goods is now free of duty. The FTA chapters cover trade in goods, rules of origin, customs administration, technical barriers to trade, services, telecommunications, financial services, temporary entry, competition policy, government procurement, investment, intellectual property, electronic commerce, customs cooperation, transparency, labor and environment, and dispute settlement.

Trade grew during the first year of the FTA. On an annualized basis, U.S. exports to Singapore grew by more than 16 percent, while U.S. imports from Singapore grew by more than 3 percent. There have been significant increases in U.S. exports of chemicals, including plastics, cosmetics, and pharmaceuticals; fish; construction equipment; building products; accessories; paper and other forest products; consumer goods; travel goods; scientific equipment; infrastructure machinery; and medical equipment. Three sectors in particular have had very significant increases in exports from the United States, including a 62 percent increase (valued at $1.7 billion) in exports of information technology equipment, an 86 percent increase (valued at $265 million) in exports of minerals and fuel, and a 99 percent increase (valued at $7.3 million) in exports of furniture.

The FTA provides strong disciplines in the most competitive U.S. services sectors. U.S. firms now enjoy improved market access, a more transparent regulatory environment and non-discriminatory treatment across a wide range of services, including financial services (banking, insurance, securities and related services), computer and related services, direct selling, telecommunications services, audiovisual services, construction and engineering, tourism,

advertising, express delivery, professional services (architects, engineers, accountants, etc.), distribution services (such as wholesaling, retailing and franchising), adult education and training services, environmental services, and energy services.

The FTA has other important features. It provides a secure legal environment for U.S. investors operating in Singapore, explicit guarantees on the treatment of electronic commerce and digital products, enhanced protection for intellectual property, specific commitments regarding the conduct of Singapore's government enterprises, and commitments to strong and transparent disciplines on government procurement procedures. The Agreement also includes strong and transparent rules of origin, firm commitments to combat illegal transshipments of all traded goods and prevent circumvention for textiles and apparel, and requirements to ensure effective enforcement of domestic labor and environmental laws. An innovative enforcement mechanism includes monetary assessments to enforce commercial, labor, and environmental obligations of the FTA.

Implementation of the provisions of the agreement has proceeded during 2004 according to the time frames contemplated in the FTA. Singapore has made changes to a wide variety of laws to implement its commitments. Singapore also sought public comment on its draft legislation. U.S. industries were particularly interested in Singapore's intellectual property and competition legislation and provided comments to the Singapore Government on its drafts. Extensive government-to-government discussions were held in 2004 and will continue in 2005 on these issues.

The FTA with Singapore will foster economic growth and create higher paying jobs in the United States by reducing and eliminating barriers to trade and investment. The FTA will not only improve market opportunities for U.S. goods and services exports, but it will also encourage trade liberalization, regulatory reform, and transparency in the region, including under the Enterprise for ASEAN Initiative.

5. Jordan

The United States and Jordan continued their efforts in 2004 to help their business communities take advantage of the opportunities afforded by the United States-Jordan Free Trade Agreement (FTA), which went into effect in December 2001. These efforts included a meeting in July 2004 of the United States-Jordan FTA Joint Committee. The FTA established the Joint Committee to bring together senior U.S. and Jordanian officials to discuss and act on ways to further boost bilateral trade and investment.

While the FTA is a key part of the United States-Jordan economic relationship, it is just one component of an extensive United States-Jordanian collaboration in economic relations. Close economic cooperation between the two countries began in earnest with joint efforts on Jordan's accession to the World Trade Organization (WTO) in 2000. The United States and Jordan continue to work together closely in the WTO, particularly on issues of special concern to developing nations. U.S. efforts to support Jordan's rapid and successful WTO accession were followed on the bilateral front by the conclusion of the United States-Jordan Trade and Investment Framework Agreement and a Bilateral Investment Treaty. Qualifying Industrial Zones (QIZs) are another important example of successful United States-Jordanian efforts to boost Jordan's economic growth and promote peace in the Middle East.

These measures have played a significant role in boosting United States-Jordanian economic ties. In 1998, U.S. imports of goods from Jordan totaled only $16 million. By 2003, U.S. goods imports had increased to $673 million, and are expected to top $1 billion in 2004. In 2003, U.S. goods exports to Jordan were $492 million, up 22 percent from 2002.

6. Israel

In 2004, the United States and Israel concluded negotiations on a new bilateral agreement on trade in agricultural products. This new

agreement supercedes the 1996 Agriculture Agreement. As a result of the gains under the agreement, an estimated 90 percent of U.S. agricultural exports to Israel will be duty-free. The balance of U.S. exports will enter Israel under preferential tariff-rate quotas or preferential tariff rates. The United States and Israel undertook negotiations on agricultural trade to address problems arising from the two sides' disagreement as to whether or not the 1985 United States-Israel Free Trade Agreement permits either party to apply restrictions on bilateral trade in this area.

In July 2004 in Washington, the two countries held a meeting of the United States-Israel FTA Joint Committee. The FTA established the Joint Committee to bring together senior U.S. and Israeli officials to discuss and act on ways to further boost bilateral trade and investment. Issues addressed by the Joint Committee are covered in Chapter III, Middle East Overview.

7. Central America and the Dominican Republic

Free trade agreement negotiations with Central America and the Dominican Republic were concluded in 2004. In December 2003, the United States concluded negotiations with El Salvador, Guatemala, Honduras and Nicaragua. Talks with Costa Rica continued into 2004, and concluded at the end of January, 2004. Subsequently, the United States and the Dominican Republic held three rounds of market access negotiations between January and March 2004 to integrate the Dominican Republic into the free trade agreement.

The resulting free trade agreement (FTA) with Central America and the Dominican Republic (CAFTA-DR) is the first FTA between the United States and a group of smaller developing economies that are important trading partners with the United States. The CAFTA-DR is a regional trade agreement among all seven signatories, and will contribute to the transformation of a region that was consumed by internal strife and border disputes just a decade ago but is now a successful regional economy with flourishing democracies. This historic agreement will create new economic opportunities by eliminating tariffs, opening markets, promoting transparency, and establishing state-of-the-art rules for 21st century commerce. It will facilitate trade and investment among the countries and further regional integration. The CAFTA-DR will not ease U.S. immigration laws and regulations.

The region covered by this agreement buys more than $15 billion in U.S. exports annually. In 2003, combined total two-way trade between the United States and the countries of Central America and the Dominican Republic was $32 billion.

Throughout the negotiations, U.S. officials consulted closely with Congress, industry representatives, and labor and environmental groups to ensure the FTA advanced U.S. interests and reflected the goals contained in the Trade Act of 2002. President Bush notified Congress of his intent to enter into an FTA with Central America on February 20, 2004. On March 25, 2004, President Bush formally notified Congress of his intent to enter into an FTA with the Dominican Republic.

On August 5, 2004, U.S. Trade Representative Robert B. Zoellick signed the CAFTA-DR, which integrated the five Central American countries and the Dominican Republic into a single agreement. The Administration plans to submit the CAFTA-DR for congressional approval in 2005. El Salvador was the first CAFTA-DR partner to ratify the agreement, in December 2004.

Under the CAFTA-DR, more than 80 percent of U.S. consumer and industrial goods will enjoy tariff-free access to Central America and the Dominican Republic immediately upon entry into force, with remaining tariffs phased out over 10 years. Key U.S. exports, such as information technology products, agricultural and construction equipment, paper products, chemicals, and medical and scientific equipment, will gain immediate duty-free access to Central America and the Dominican Republic. Virtually all Central American and Dominican

nonagricultural goods will receive immediate duty-free access to the U.S. market.

More than half of current U.S. farm exports to Central America and the Dominican Republic will become duty-free immediately, including high quality cuts of beef, cotton, wheat, soybeans, key fruits and vegetables, processed food products, and wine. Tariffs on most U.S. farm products will be phased out within 15 years. U.S. farm products that will benefit from improved market access include pork, beef, poultry, rice, fruits and vegetables, corn, processed products and dairy products. Under existing law, the United States provides duty-free treatment to over 99 percent of Central American and Dominican Republic agricultural exports into the U.S. market. This treatment will be maintained under the agreement. Duty-free access for other products will be phased in over time, with the exception of sugar, where liberalization is handled through a slowly expanding tariff-rate quota. Approval of the CAFTA-DR would not have a destabilizing effect on the U.S. sugar program.

Under the agreement, the Central American countries and the Dominican Republic will accord substantial market access across their entire services regime, subject to very few exceptions, including for telecommunications, express delivery, and computer and related services. The agreement disciplines the use of dealer protection regimes, reducing significant barriers to distribution in the region. It maintains market openness and prohibits cross-subsidies for express delivery services. U.S. financial service suppliers will have non-discriminatory rights to establish subsidiaries, joint ventures or branches for banks and insurance companies. The agreement offers state of the art protections for digital products such as software, music, text and video. Protection for patents and trade secrets meets or exceeds obligations under WTO TRIPS.

The Agreement establishes a secure, predictable legal framework for U.S. investors, sets strong anti-corruption rules in government contracting, and guarantees U.S. firms transparent procurement procedures to sell goods and services to Central American and Dominican Republic government entities.

With respect to labor and the environment, all Parties commit to not fail to effectively enforce their domestic labor and environment laws. An innovative enforcement mechanism provides for monetary assessments to enforce this obligation where a dispute settlement panel finds a Party to be in breach and the Party fails to come into compliance in a reasonable period of time. Under this mechanism, such assessments would be expended in the territory of the Party in question to help bring it into compliance with its labor or environment obligation. The commission that oversees implementation of the Agreement would decide collectively on the projects on which to spend the proceeds of an eventual assessment.

In addition, the agreement establishes a framework for cooperative environmental projects, and a labor cooperation mechanism, and it promotes internationally recognized labor standards. CAFTA-DR includes unprecedented provisions that improve access to procedures that provide for fair, equitable and transparent proceedings in the administration of labor laws, protecting the rights of workers and employers -- including American investors. The language in the labor chapter of the CAFTA-DR is stronger and more comprehensive than earlier FTAs negotiated by the United States, such as Jordan and Chile. The CAFTA-DR takes a more pro-active approach than the Chile and Singapore FTAs obligating the Parties to not fail to effectively enforce existing labor laws, working to improve practices affecting key labor rights, and building local capacity to improve protections for workers. As part of the capacity-building effort, the U.S. Department of Labor is funding a 3-year, $7.75 million project to increase public awareness of labor laws, improve inspection systems, and promote the use of alternative dispute resolution mechanisms in the CAFTA-DR countries.

8. Bahrain

On May 21, 2003, the United States and Bahrain announced their intention to negotiate a Free Trade Agreement (FTA). On September 14, 2004, after four months of negotiations, U.S. Trade Representative Robert B. Zoellick signed a completed FTA. The FTA will generate export opportunities for the United States, creating jobs for U.S. farmers and workers, while supporting Bahrain's economic and political reforms and enhancing commercial relations with an economic leader in the Arabian Gulf. The FTA with Bahrain will also promote the President's initiative to advance economic reforms and openness in the Middle East and the Gulf and to establish a Middle East Free Trade Area (MEFTA) by 2013. The U.S. Congress and Bahraini Parliament must approve the agreement in 2005. The U.S.-Bahrain Bilateral Investment Treaty (BIT), which took effect in May 2001, covers investment issues between the two countries.

9. Panama

On November 18, 2003, after consulting with relevant congressional committees and the Congressional Oversight Group, the Office of the United States Trade Representative notified the Congress of the President's intent to initiate free trade agreement negotiations with Panama and identified specific objectives for these negotiations. On April 26, 2004, the United States and Panama launched negotiations in Panama City to conclude a United States-Panama Free Trade Agreement. A total of six rounds of negotiations were held during 2004. Throughout the process, negotiators have consulted closely with Congress, industry representatives, and labor and environmental groups to ensure the FTA advances U.S. interests and, that in its final provisions, it will reflect the goals contained in Bipartisan Trade Promotion Authority Act of 2002.

10. Andean Countries

On November 18, 2003, after consulting with relevant congressional committees and the Congressional Oversight Group, the Office of the United States Trade Representative notified the Congress of the President's intent to initiate free trade agreement negotiations with Colombia, Peru, Ecuador, and Bolivia and identified specific objectives. Negotiations on the United States-Andean Free Trade Agreement were launched on May 18, 2004 in Cartagena, Colombia. Through 2004 there were five additional negotiating rounds. Currently, the United States is negotiating with the governments of Colombia, Peru, and Ecuador, with Bolivia observing the negotiations. The Administration's intent is to include Bolivia in the agreement at an appropriate stage.

The Andean region is important to the United States for a variety of reasons. One is simply its size and economic scale. The four countries have a combined population of about 93 million people, which is about a third of that of the United States, and a combined gross domestic product, on a purchasing power parity basis, of about $453 billion.

The United States already has significant economic ties to the region. Our exports to the Andean negotiating partners totaled an estimated $9.8 billion in 2004, and our imports $15.3 billion. Colombia is the largest market for U.S. agricultural exports in South America. Energy supplies from the Andean region help reduce our dependence on Middle East oil. The United States has over $7.2 billion (2003 latest data available) of foreign direct investment in the region.

The United States has a significant stake in the success of the region and stands to gain substantially from a lowering of barriers in the markets of the Andean countries, as there is much unrealized potential for U.S. exports to the region. The Administration is addressing these issues in the FTA negotiation, to the benefit of U.S. companies, workers and farmers. An FTA also holds the potential to help the region meet

its own needs, helping solidify stable democracies as allies in facing our many common challenges. Throughout the process, negotiators have consulted closely with Congress, industry representatives, and labor and environmental groups to ensure the FTA advanced U.S. interests and, that in its final provisions, it will reflect the goals contained in Bipartisan Trade Promotion Authority Act of 2002.

11. United Arab Emirates

After consulting with Congress in September 2004, U.S. Trade Representative Robert B. Zoellick announced on November 15, 2004, that the United States intends to negotiate a Free Trade Agreement (FTA) with the United Arab Emirates (UAE). The negotiations are expected to begin in early 2005. An FTA with the UAE will build on existing FTAs to promote the President's Middle East Free Trade Area (MEFTA) initiative to advance economic reforms and openness in the Middle East and the Persian Gulf, and to establish a regional free trade area by 2013. The successful conclusion of a comprehensive FTA will generate export opportunities for the United States, creating jobs for U.S. farmers and workers, while solidifying the UAE's trade and investment liberalization. The United States plans to pursue an aggressive negotiation timetable, building on the high-quality FTA reached with Bahrain.

12. Southern Africa

On November 4, 2002, U.S. Trade Representative Robert B. Zoellick notified Congress of President Bush's decision to negotiate a free trade agreement (FTA) with the five member countries of the Southern African Customs Union (SACU). These nations—Botswana, Lesotho, Namibia, Swaziland (BLNS), and South Africa—comprise the largest U.S. export market in sub-Saharan Africa, with $2.9 billion in U.S. exports in 2003. The negotiations began in Pretoria, South Africa in June 2003, and five subsequent rounds have been held since then. The last full negotiating round was held in June 2004. Since the last full round, there have been several high-level discussions and meetings on the FTA, including a December 2004 Ministerial meeting in Walvis Bay, Namibia, that U.S. Trade Representative Robert B. Zoellick attended. This FTA – which would be the first with any sub-Saharan African country – offers an opportunity to craft a groundbreaking agreement that will serve as a model for similar efforts in the developing world. Trade capacity building efforts are being undertaken to help these countries participate in the negotiations more effectively and will be key in helping them implement their commitments under the agreement and benefit from free trade. By building on the success of AGOA, the SACU countries would secure the kind of guaranteed access to the U.S. market that supports long-term investment and economic prosperity. The FTA would also reinforce ongoing regional economic reforms and integration among the SACU countries.

13. Oman

After consulting with Congress in September 2004, U.S. Trade Representative Robert B. Zoellick formally notified Congress on November 15, 2004 that the United States intends to negotiate a Free Trade Agreement (FTA) with Oman. The negotiations are scheduled to begin in early 2005. An FTA with Oman will build on existing FTAs to promote the President's initiative to advance economic reforms and openness in the Middle East and the Persian Gulf and to establish a Middle East Free Trade Area (MEFTA) by 2013. The successful conclusion of a comprehensive FTA will generate export opportunities for the United States, creating jobs for U.S. farmers and workers, while supporting Oman's economic and political reforms. The United States plans to pursue an aggressive negotiation timetable, building on the high-quality FTA reached with Bahrain.

14. Thailand

In October 2003, President Bush announced his intent to enter into FTA negotiations with

Thailand, reaffirming his commitment under the Enterprise for ASEAN Initiative (EAI) to strengthen trade ties with countries in the ASEAN region that are actively pursuing economic reforms. The United States and Thailand held two rounds of FTA negotiations in 2004, beginning discussions on all chapters of the FTA and making initial progress. FTA negotiations will continue in 2005. An agreement with Thailand, which is currently the United States' 19th largest trading partner, will significantly increase trade in goods and services, create more commercial opportunities for U.S. exporters, particularly agricultural product exporters, and reduce or eliminate barriers in many sectors. A United States-Thailand FTA also will enhance investment flows by ensuring a stable and predictable environment for investors. Significantly, an FTA will strengthen longstanding economic and security ties between our countries.

B. Regional Initiatives

1. Free Trade Area of the Americas (FTAA)

The year 2004 was the second year of the U.S. and Brazil Co-Chairmanship of the FTAA negotiating process. At a November 2003 Trade Ministerial meeting in Miami, Ministers agreed to a new framework intended to give negotiators more flexibility in handling differences in the economic and political situations across the hemisphere. Countries participating in the FTAA process were subsequently to develop guidance for the negotiation of core common rights and obligations applicable to all 34 countries, as well as procedures for negotiating additional provisions among interested countries beyond that core.

The United States, Brazil and others participated in several formal and informal meetings during 2004 to achieve consensus on elaborating the Miami framework. These included a meeting of the vice-ministerial level Trade Negotiations Committee (TNC) in February, which recessed after several days to allow for further reflection and work among groups of key countries; two informal group meetings in March and April; and U.S.-Brazilian Co-Chair consultations in May. While there was some progress, discussions on the guidance for the "common set" negotiations were marked by disagreement about scope and ambition. In these discussions, the United States argued for balanced and sufficiently robust core rights and obligations to ensure the FTAA achieves its economic growth and integration objectives, and we have joined others in suggesting ways to bridge the gaps and accommodate different points of view, consistent with the Miami framework.

In the late Fall of 2004, U.S. Trade Representative Robert B. Zoellick again took the initiative to suggest to his Brazilian counterpart the resumption of discussions on how best to achieve consensus among the 34 governments. The Brazilian Foreign Minister agreed to meetings between the TNC Co-Chairs aimed at restarting the FTAA negotiations.

At their 2003 meeting, Ministers had instructed negotiators to continue at a pace that would lead to conclusion of market access negotiations by September 30, 2004, reaffirmed that negotiations should be completed by January 2005, and agreed that their next meeting would be hosted by Brazil in 2004. Because the negotiations were suspended during much of 2004, these timelines for the FTAA were likewise suspended. When Ministers next meet, they will have to review the status of the negotiations and consider time lines for the FTAA negotiations.

In 2004, fourteen countries seeking assistance prepared and submitted their national or subregional trade capacity building (TCB) strategies as part of the implementation of the Hemispheric Cooperation Program (HCP). Recognizing the role trade plays in promoting economic development and reducing poverty and that smaller and less developed economies require financial support to assist in adjusting to hemispheric integration, the HCP was designed to assist countries to participate in the negotiations, prepare to implement the FTAA obligations, and adjust to hemispheric integration. The TCB strategies are critical to

identifying effective programs and appropriate funding sources. They are the first steps in enhancing the capacity of requesting countries to achieve these objectives.

At their November 2003 meeting in Miami, Ministers recognized the efforts of the FTAA Committee of Government Representatives on the Participation of Civil Society (SOC) to improve two-way communication with civil society by holding two open meetings in 2003 that focused on agriculture and services respectively - issues under discussion in the negotiations. Two more issue meetings were scheduled for 2004: one in the Dominican Republic on intellectual property rights, the other in the U.S. on market access, with special focus on small businesses. The meeting on intellectual property rights was held in the Dominican Republic in January 2004. The meeting on market access, with special focus on small business -- was planned to be held in the United States concurrently with the next meeting of the SOC, which has not yet been scheduled. Ministers also received the Fourth Report of the SOC that describes SOC activities as well as the contributions received in response to the Open and On-Going Invitation for comment on all aspects of the FTAA negotiations. Ministers instructed the SOC to continue to forward such contributions to the relevant FTAA entities. Even while the negotiations were in hiatus, comments received from civil society were forwarded on an ongoing basis to the technical negotiators throughout the year.

Ministers at their 2003 meeting requested that the Candidate Cities for the permanent FTAA Secretariat provide information responsive to elements identified to assist the Ministers in their evaluation of sites for the Secretariat. Information from candidate cities was received by the deadline of March 1, 2004, and circulated to the 34 governments. The current U.S. candidate cities are: Atlanta, Chicago, Galveston, Houston, Miami, and San Juan.

Countries also continued during 2004 to update their information responding to the Ministerial mandates for transparency in procedures and regulations and with regard to government contacts for the negotiations, and some inventories available on the public website (www.ftaa-alca.org) were updated as well.

2. Enterprise for ASEAN Initiative

President Bush announced in October 2002 a major new initiative, the Enterprise for ASEAN Initiative (EAI). The EAI is intended to strengthen U.S. trade and investment ties with ASEAN both as a region and bilaterally. With over $127 billion in two-way trade in 2003, the 10-member ASEAN group already is the United States' sixth largest trading partner collectively. The EAI will further enhance our already close relationship with this strategic and commercially important region. With continued economic growth in the ASEAN countries and a regional population of around 500 million, the United States anticipates significant opportunities for U.S. companies, particularly agricultural exporters. For ASEAN, this initiative will help boost trade and redirect investment back to the ASEAN region.

Under the EAI, the United States offers the prospect of bilateral free trade agreements (FTAs) with ASEAN countries that are committed to the economic reforms and openness inherent in an FTA with the United States. Any potential FTA partner must be a WTO member and have a trade and investment framework agreement (TIFA) with the United States. Since the launch of the EAI, the United States concluded an FTA with Singapore in 2003 and began FTA negotiations with Thailand in 2004. In addition, the United States and Malaysia signed a TIFA in May 2004, and announced in the fall of 2004 initiation of negotiations on a TIFA with Cambodia. The United States also has TIFAs in effect with Indonesia, the Philippines, Thailand, and Brunei Darussalam. The Administration sees progress in addressing bilateral issues under these TIFAs as important to laying the groundwork for entering into FTA negotiations with the confidence that such negotiations can be concluded successfully. In carrying out the EAI,

the key U.S. objective is to create a network of bilateral FTAs with ASEAN countries.

Under the EAI, the United States also actively supports the efforts of ASEAN members that do not yet belong to the WTO to complete their accessions successfully and take other key steps to open their economies. With United States support, Cambodia became a WTO Member in September 2003. In 2004, we continued work with Vietnam on its accession to the WTO. We also maintained support for Laos' efforts to accede to the WTO. Based on authority provided in the Miscellaneous Trade and Technical Corrections Act of 2004 we expect to extend normal trade relations (NTR) tariff treatment to products of Laos in 2005.

U.S. and ASEAN officials met in August 2003 and 2004 to discuss progress under the EAI. The United States will continue to work with ASEAN to advance the U.S.-ASEAN work program established in 2002, including efforts on intellectual property rights, customs and trade facilitation, biotechnology issues, standards (TBT) issues, agriculture, human resource development and capacity building, small and medium enterprises, and information and communications technology.

3. North American Free Trade Agreement

Overview

On January 1, 1994, the North American Free Trade Agreement between the United States, Canada and Mexico (NAFTA) entered into force. NAFTA created the world's largest free trade area, which now links 431 million people producing $12.9 trillion worth of goods and services. The dismantling of trade barriers and the opening of markets has led to economic growth and rising prosperity in all three countries. The closer economic relationship promoted by NAFTA also includes labor and environmental cooperation agreements, which are among the most significant that the United States has negotiated as part of a trade agreement. The NAFTA has dramatically improved our trade and economic relations with our neighbors. The net result of these efforts is more economic opportunity and growth, greater fairness in our trade relations, and a coordinated effort to better protect worker rights and the environment in North America.

The magnitude of our trade relations in North America is impressive: U.S. two-way trade with Canada and Mexico exceeds U.S. trade with the European Union and Japan combined. U.S. goods exports to NAFTA partners nearly doubled between 1993 and 2003, from $142 billion to $267 billion, significantly higher than export growth of 43 percent for the rest of the world over the same period.

By dismantling barriers, NAFTA has led to increased trade and investment, growth in employment, and enhanced competitiveness. From 1994 to 2003, cumulative Foreign Direct Investment in the NAFTA countries has increased by over $1.7 trillion. Increased investment has brought more and better-paying jobs, as well as lower costs and more choices for consumers and producers.

Elements of NAFTA

A. Operation of the Agreement

The NAFTA's central oversight body is the NAFTA Free Trade Commission (FTC), chaired jointly by the U.S. Trade Representative, the Canadian Minister for International Trade, and the Mexican Secretary of Economy. The FTC is responsible for overseeing implementation and elaboration of the NAFTA and for dispute settlement.

The FTC held its most recent annual meeting in July 2004, in San Antonio, Texas, and marked the tenth anniversary of the entry into force of the agreement. At the meeting, the FTC reconfirmed its commitment to deepening economic integration in North America by building on the NAFTA. With virtually all tariffs and quotas on North American trade eliminated, the FTC considered additional ways to enhance trade and investment by lowering transaction costs and other administrative

burdens. Some of these initiatives are outlined below. The FTC will explore ways to further integrate the NAFTA Parties by considering initiatives in certain sectors, including manufacturing, services, business facilitation, compatibility of standards, and the further elimination of non-tariff barriers to trade.

B. Rules of Origin

In October 2003, the FTC agreed to pursue further liberalization of the NAFTA rules of origin. Since nearly all tariffs between the NAFTA Parties have been eliminated, reducing the costs associated with trade, such as those associated with compliance with rules of origin, will generate additional benefits for traders. The FTC approved a package of changes in July 2004 covering approximately $20 billion in trilateral trade, and asked their officials to work towards implementing those changes on January 1, 2005. In addition, the FTC asked the Working Group on Rules of Origin to continue considering new requests for changes to the rules of origin from consumers and producers; and to examine the rules of origin in the free trade agreements that each country has negotiated subsequent to the NAFTA, to determine whether those rules should be applied to the NAFTA.

Officials from the NAFTA Parties are also considering changes to the NAFTA textile rules of origin that would amend the short supply provisions. If made, these would be the first changes to the textile rules of origin since the NAFTA was implemented.

C. Transparency

In October 2003, the FTC produced two statements to enhance the transparency and efficiency of investor-State arbitration under Chapter 11 of the NAFTA:

- an affirmation of the authority of investor-state tribunals to accept written submissions (amicus curiae briefs) by non-disputing parties, coupled with recommended procedures for tribunals on the handling of such submissions; and
- endorsement of a standard form for the Notices of Intent to initiate arbitration that disputing investors are required to submit under Article 1119 of the NAFTA.

Separately, the United States and Canada affirmed that they will consent to opening to the public hearings in Chapter 11 disputes to which either is a Party, and that they will request the consent of disputing investors to such open hearings. In 2004, a tribunal accepted written submissions from a non-disputing party for the first time and adopted the procedures that were recommended by the FTC in 2003. (The submissions were accepted in Methanex Corporation v. United States of America.) In addition, at the July 2004 FTC meeting, Mexico agreed to join the United States and Canada in supporting open hearings for investor-state disputes. The FTC also agreed that the same degree of openness should apply to proceedings under the Dispute Settlement provisions of Chapter 20 of the NAFTA, and asked officials of the Parties to develop rules governing open hearings for such proceedings.

Further, the FTC released the negotiating texts of Chapter 11 (i.e., the successive drafts that culminated in what is now Chapter 11), and agreed to compile the negotiating texts of other NAFTA chapters, bearing in mind that this is likely to be a time consuming project. The negotiating texts of Chapter 11 are now available on the USTR website.

D. Textiles and Apparel

At its July 2004 meeting, the FTC addressed the impending liberalization of international textile and apparel trade at the end of 2004 and asked officials to continue to consider actions, such as cumulation among countries with whom each of the three NAFTA Parties have free trade agreements, in order to enhance competitiveness. The FTC reiterated its commitment to strengthening efforts to combat illegal transshipment and will continue to explore mechanisms to increase trilateral

cooperation in this area. It encouraged the textile and apparel industries of North America to work together on identifying areas of common interest where private sector cooperation could contribute to the development of these sectors. Finally, the FTC asked officials of the Parties to report back on the prospects and opportunities for the North American textile and apparel industries.

E. NAFTA and Labor

The North American Agreement on Labor Cooperation (NAALC), a supplemental agreement to the NAFTA, promotes effective enforcement of domestic labor laws and fosters transparency in their administration. Each NAFTA Party also has established a National Administrative Office (NAO) within its Labor Ministry to serve as a contact point for information, to examine labor concerns, and to coordinate cooperative work programs. In addition, the Agreement created a trinational Commission for Labor Cooperation, comprised of a Ministerial Council and an administrative Secretariat.

The NAALC also provides for the review of public submissions related to labor laws in the NAFTA Parties. In April 2004, the U.S. NAO held public hearings on submission 2003-01, related to the enforcement of labor laws by Mexico. The issues raised in the submission include freedom of association and the right to organize, collective bargaining, occupational safety and health, minimum employment standards (i.e., minimum wage and overtime pay), and access to fair and transparent labor tribunal proceedings at two garment manufacturing plants located in the state of Puebla. In September 2004, the U.S. NAO issued a report on the submission, and recommended ministerial consultations between the United States and Mexico. The United States requested such consultations in October, and Mexico agreed in November.

In April 2004, the United States, Mexico, and Canada formally launched a web site as part of the Trinational Occupational Safety and Health Working Group. The Web site (www.naalcosh.org), which can be navigated in English, Spanish or French, contains links to each government's occupational safety and health programs and practices; promotes education and public involvement; and facilitates the dissemination of information about the occupational safety and health activities of the three governments.

As part of their ongoing program of trilateral cooperation under the NAALC, the United States, Mexico, and Canada presented a conference on Trafficking in Persons in North America, hosted by the U.S. Department of Labor in Washington, D.C. The goals of the conference were to focus attention on, and raise awareness of, trafficking as a growing phenomenon in North America, exchange information on approaches by governments and nongovernmental organizations to combat trafficking, and explore opportunities for enhanced trilateral cooperation on this important issue.

F. NAFTA and the Environment

A further supplemental accord, the North American Agreement on Environmental Cooperation (NAAEC), ensures that trade liberalization and efforts to protect the environment are mutually supportive. The NAAEC created the Commission for Environmental Cooperation (CEC), which is comprised of: (a) the Council, made up of the Environmental Ministers from the United States, Canada, and Mexico; (b) the Joint Public Advisory Committee, made up of five private citizens from each of the NAFTA Parties; and (c) the Secretariat, made up of professional staff, located in Montreal, Canada. At the 2004 Council Session in Puebla, Mexico, the Council pledged to develop a strategic plan to address issues related to trade and environment, and to continue its cooperation with the NAFTA Free Trade Commission. Specific information on the CEC's activities can be found in Chapter V.

In November 1993, Mexico and the United States agreed on arrangements to help border communities with environmental infrastructure projects, in furtherance of the goals of the

NAFTA and the NAAEC. The Border Environment Cooperation Commission (BECC) and the North American Development Bank (NADB) are working with more than 100 communities throughout the United States-Mexico border region to address their environmental infrastructure needs. As of September 30, 2004, the NADB had authorized $689.2 million in loans and/or grant resources to partially finance 83 infrastructure projects certified by the BECC with an estimated cost of $2.3 billion.

4. Middle East Free Trade Area (MEFTA)

The United States Middle East Free Trade Area (MEFTA) initiative, announced by President Bush in May 2003, seeks to promote trade expansion and economic reforms in North Africa and the Middle East leading to a Middle East Free Trade Area within a decade. To reignite economic growth and expand opportunity in the Middle East, the United States will take a series of graduated steps with countries in the region tailored to the level of development of each country and building on the current FTAs with Israel and Jordan, the FTAs concluded with Morocco and Bahrain, and the upcoming FTA negotiations with the United Arab Emirates and Oman. These steps include helping countries that are undertaking reforms with their accession to the World Trade Organization (WTO), enhancing access to the Generalized System of Preferences (GSP) program for eligible countries, negotiating Trade and Investment Framework Agreements (TIFAs), negotiating Bilateral Investment Treaties (BITs), negotiating comprehensive FTAs, and offering technical assistance to improve trade practices.

5. Asia Pacific Economic Cooperation

Overview

The Asia Pacific Economic Cooperation (APEC) forum has been instrumental in advancing regional and global trade and investment liberalization, since it was founded in 1989. It has provided a forum for Leaders to meet annually since 1993, when APEC Leaders met at Blake Island in the United States.

The United States worked closely with Chile, the APEC Chair in 2004, to lead APEC economies in pursing an ambitious trade agenda. APEC helped solidify support for the WTO's July Package to advance the WTO's Doha Development Agenda (DDA), set high standards for free trade and regional trade agreements (FTAs, RTAs) and other preferential arrangements in the Asia-Pacific region, and committed to strengthen intellectual property protection and enforcement. The United States will work with Korea, the APEC Chair in 2005, to ensure that APEC takes concrete actions in each of these areas.

The twenty-one APEC economies collectively account for 47 percent of world trade and over 60 percent of global GDP. The growth in U.S. good exports to APEC clearly demonstrates the benefits of open markets and trade liberalization. Since 1994, U.S. exports to APEC increased nearly 62 percent. In 2004, two-way trade with APEC members totaled nearly $1.5 trillion, an increase of 15 percent from 2003.

2004 Activities

Leadership in the WTO

APEC's contribution to advancing the DDA was key in 2004. APEC Trade Ministers' unambiguous support for WTO trade facilitation negotiations in June created momentum for the breakthrough achieved in Geneva in July, 2004 to accelerate work on the DDA. APEC also set priorities in the core DDA areas in order to immediately begin building support for a successful Sixth WTO Ministerial Conference in Hong Kong in December 2005.

Leaders and Ministers supported a WTO trade facilitation agreement that includes transparency, efficiency, simplification, non-

discrimination, procedural fairness, cooperation, and capacity building. They also stressed the need for substantially greater market access for both agricultural and non-agricultural goods, and supported the early abolition of agricultural export subsidies and export prohibitions and restrictions, and the substantial reduction of trade-distorting domestic support. They recognized the growing importance of services trade, and agreed that economies should submit improved revised WTO services offers by May 2005, and that any economies not yet having done so should table their initial services offers expeditiously.

The APEC Geneva Caucus emerged in 2004 as an important link between APEC and the WTO. The Caucus, comprised of ambassadors to the WTO from APEC economies, met several times in 2004, and became a valuable forum for sharing information on APEC's work and drawing Geneva's attention to specific APEC actions. The Caucus, for example, met with other WTO Members to explain APEC's support for WTO trade facilitation negotiations and the economic benefits that APEC economies have experienced from cutting red tape.

Recognizing that capacity building is a key element in advancing the DDA negotiations, Leaders and Ministers agreed to increase APEC's capacity building efforts, particularly in those areas where APEC can best add value. Several capacity building programs were conducted in 2004, including: a two-day workshop on Best Practices in capacity building for addressing WTO issues; a program examining environmental assessments of trade negotiations; and an APEC capacity building seminar on WTO Trade Facilitation. APEC is now developing a plan to evaluate the effectiveness of its WTO capacity building work.

Advancing Trade Liberalization in the APEC Region

The Santiago Initiative for Expanded Trade in APEC

In the Santiago Initiative for Expanded Trade in APEC, proposed by the United States, Leaders underscored the importance of improving regional trade liberalization and trade facilitation, and working closely with the business community in these areas. On trade liberalization, Leaders recognized that 2005 will be an important year in light of the DDA negotiations, the range of FTA negotiations in the region, and a mid-term review of economies' progress in achieving the Bogor Goals of free and open trade and investment in the region. Leaders will consider taking further actions based on developments in each of these areas. On trade facilitation, Leaders agreed to take an aggressive approach to cutting red tape by embracing customs automation, pursuing harmonized standards, and eliminating unnecessary barriers to trade. APEC will continue advancing trade facilitation negotiations in the WTO, and will seek agreement on trade facilitation best practices that economies can follow in their FTAs and Regional Trade Agreements. Leaders also agreed to better integrate trade security into APEC's work on trade facilitation to ensure objectives in both areas remain mutually supportive.

Free Trade Agreements, Regional Trade Agreements and Other Preferential Arrangements

An important issue in APEC in 2004 was the growing number of FTAs, RTAs and other preferential arrangements in the Asia-Pacific region, and the need to ensure that economies' agreements are trade-promoting and reflect high-standards. To set a high level of ambition, Leaders welcomed a set of "APEC Best Practices for RTAs and FTAs" that encourage economies to negotiate comprehensive agreements that are consistent with APEC principles and WTO disciplines. The Best Practices provide that economies' agreements

should go beyond WTO commitments and explore areas not covered by the WTO, so that APEC can provide future multilateral leadership. They also encourage developing economies' agreements to be consistent with GATT Article XXIV and GATS Article V. They foresee use by an economy of consistent rules of origin across all of its agreements wherever possible, and for economies to keep tariff and quota phase-outs for sensitive sectors to a minimum time frame.

To enhance transparency, APEC developed a new reporting format for economies to share information annually on their FTAs and RTAs. These reports will be included in the reviews of APEC members' trade and investment regimes. APEC will also study the feasibility of developing an online FTA/RTA database for the benefit of businesses, policy makers and other stakeholders.

APEC's Work on Trade and Investment Liberalization and Facilitation

APEC Leaders and Ministers took additional steps to advance trade and investment liberalization and facilitation, and made progress implementing past commitments, including those agreed to under the 2001 APEC Leaders' Shanghai Accord, a U.S.-led blueprint for APEC's trade agenda. Significant accomplishments in 2004 included:

- recognition of the importance of having strong intellectual property regimes in the Asia-Pacific region and an agreement to prioritize intellectual property protection and enforcement by taking concrete actions in 2005 to reduce piracy, trade in counterfeit goods and online piracy, and increase cooperation and capacity building;

- an agreement on a list of three IT products (multi-chip integrated circuits, digital multifunctional machines, and modems totaling upwards of $2 billion in trade annually) to forward to the WTO for tariff elimination, and an agreement by Australia, Canada and China to join the Leaders' Pathfinder Statement to Implement APEC Policies on Trade and the Digital Economy, making Russia the only economy remaining a non-participant in this Pathfinder;

- a government/private sector review of progress to achieve a 5 percent reduction in business transaction costs by 2006 that concluded that economies are making needed improvements, and an agreement on a plan to move to a paperless trading environment;

- an agreement on Transparency Standards on Government Procurement, for incorporation into the Leaders' 2003 Transparency Standards covering Services, Investment, Competition Law and Policy and Regulatory Reform, Standards and Conformance, Intellectual Property, Customs Procedures, Market Access, and Business Mobility, and an agreement by each economy to provide annual, detailed reports on steps they take to implement the Transparency Standards into their domestic legal regimes;

- a commitment to Fight Corruption and Ensure Transparency and to a Course of Action comprised of specific actions to implement this commitment.

APEC members prepare Individual Action Plans (IAPs) annually to report on their actions to achieve the Bogor Goals of free trade and investment by 2010 among developed APEC economies, and by 2020 among all economies. The Shanghai Accord called for more strenuous reviews of all economies IAPs, culminating in a mid-term assessment in 2005 of APEC's progress to achieve the Bogor Goals. Since 2002, APEC has conducted reviews of the trade and investment regimes of most economies. Reviews of all economies will be completed by early 2005, and Korea, as APEC host economy in 2005, has already shown impressive leadership in preparing to conduct the mid-term stocktaking. Reports of the IAP Peer Reviews

can be found on the APEC website (www.apec.org).

Private Sector Involvement

The APEC Business Advisory Council

An important development in 2004 was a strengthened partnership between the public and private sectors. The APEC Business Advisory Council (ABAC) was extremely active in 2004, offering recommendations and participating in government-business dialogues to advance several key APEC priorities, including the DDA negotiations, customs and trade facilitation, cargo security, standards and conformance, and transparency and anti-corruption. ABAC also made broad trade liberalization and facilitation proposals that contributed to the development of the Santiago Initiative for Expanded Trade in APEC.

Life Sciences Innovation Forum

In 2004, APEC Leaders advanced regional health and economic priorities by endorsing the Strategic Plan to Promote Life Sciences Innovation. The Strategic Plan encourages investment and innovation in key areas of the life sciences industry, including research, development, manufacturing and marketing, and health services. Under the Strategic Plan, best practices will be established for the harmonization of regulatory practices and policies with international best practices, transparency in policies and regulatory procedures and intellectual property protection for innovations.

Automotive and Chemical Dialogues

The Automotive Dialogue and Chemical Dialogue are public-private sector dialogues in which government officials and senior industry representatives work together to map out strategies for increasing integration and liberalizing trade in the automotive and chemical sectors in the region.

In 2004, the Automotive Dialogue contributed to the WTO non-agricultural market access negotiations by identifying a number of non-tariff measures affecting trade in automotive products. The Automotive Dialogue also developed a package of work programs to better integrate the automotive industry in the Asia Pacific region, and approved a Model Port Project which will develop best practices which, if member economies implement them, would eliminate customs barriers. The Dialogue further approved an automotive standstill commitment to refrain from using measures that would have the effect of increasing levels of protection. It additionally formed a new Intellectual Property Rights (IPR) Working Group that is currently developing an IPR Best Practices paper.

The Chemical Dialogue examined the potential negative impact of the EU's proposed chemical regulations (REACH), with Dialogue Co-Chairs sending a letter in June 2004 to the EU Competitiveness Council expressing APEC economies' concerns about the proposed REACH system. New work programs were established to address priority non-tariff measures on smuggling/counterfeiting more effectively, rules of origin, product registration procedures, and treatment of confidential business data for chemicals. To facilitate trade in the chemical sector, attention was placed on implementing the UN Globally Harmonized System of Classification and Labeling (GHS), and identifying ways to address priority customs-related issues for the chemical industry.

The APEC Privacy Framework

By endorsing the APEC Privacy Framework, Ministers and Leaders brought to fruition key work in 2004 important to U.S. industry. The Privacy Framework, developed by the E-Commerce Steering Group, makes a significant contribution to increasing cross-border trade in the region by promoting a consistent approach in all economies to information privacy protection that avoids the creation of unnecessary barriers to information flows. Ministers also endorsed the Future Work Agenda on International Implementation of the Privacy Framework, to continue efforts to develop a regional approach

to privacy, including discussion in 2005 of establishing regional privacy codes.

C. The Americas

1. Canada

Canada is the largest trading partner of the United States with over $1 billion of two-way trade crossing our border daily. At the same time, the United States and Canada share one of the world's largest bilateral direct investment relationships. The stock of U.S. foreign direct investment (FDI) in Canada in 2003 was $192.4 billion, up from $170.2 billion in 2002. U.S. FDI in Canada is concentrated largely in the manufacturing, finance, and mining sectors.

a. Softwood Lumber

The 1996 U.S.-Canada Softwood Lumber Agreement expired on March 31, 2001. The bilateral agreement was put in place to mitigate the harmful effects on the U.S. lumber industry of subsidies provided by the Canadian federal and provincial governments to Canadian lumber producers. Upon expiration of the 1996 Agreement, U.S. industry filed antidumping and countervailing duty petitions regarding imports of Canadian softwood lumber. The U.S. International Trade Commission (ITC) subsequently found that the U.S. industry was threatened with material injury by reason of dumped and subsidized imports of Canadian lumber, and the U.S. Department of Commerce (Commerce) found company-specific antidumping rates ranging from 2.18 percent to 12.44 percent and imposed a countrywide (except for the Maritime provinces) countervailing duty rate of 18.79 percent. On December 14, 2004, Commerce announced the results of the first administrative review of the antidumping and countervailing duty orders, in which it assessed antidumping duties ranging from 0.92 percent to 10.59 percent, and a countervailing duty rate of 17.18 percent.

To date, Canada has challenged, or has announced its intent to challenge, the underlying Commerce and ITC findings in the original investigation in ten separate proceedings under the WTO and NAFTA, and litigation is ongoing. The WTO and NAFTA dispute settlement processes have confirmed the existence of Canada's subsidization of its softwood lumber industry and the dumping of lumber products into the U.S. market. On November 24, 2004, USTR requested the formation of an Extraordinary Challenge Committee (ECC) to address possible deficiencies in the decisions of the NAFTA panel regarding the ITC's threat determination.

The United States continues to believe that it is in the interest of both the United States and Canada to reach a negotiated solution to their longstanding differences over softwood lumber, a view shared by many stakeholders on both sides of the border.

The United States is committed to seeking such a resolution and remains hopeful that we will be able to resume negotiations with Canada in the near future. In the meantime, the litigation will continue, and the United States will vigorously enforce its trade remedy laws.

b. Agriculture

Canada is the largest market for U.S. food and agricultural exports. For fiscal year 2004 (October 2003 - September 2004), U.S. agricultural exports to Canada grew by 4 percent, to a record-breaking $9.54 billion.

As a result of the 1998 U.S.-Canada Record of Understanding on Agricultural Matters (ROU), the United States-Canada Consultative Committee (CCA) and the Province/State Advisory Group (PSAG) were formed to strengthen bilateral agricultural trade relations and to facilitate discussion and cooperation on matters related to agriculture. In 2004, the CCA met twice on issues covering livestock, fruits and vegetables, grain, seed, processed food, and plant trade, as well as pesticide and animal drug regulations.

The United States continues to have concerns about the monopolistic marketing practices of the Canadian Wheat Board. USTR's four prong approach announced in 2002 to level the playing field for American farmers is producing important results. Most notably, in WTO dispute settlement proceedings against the Canadian Wheat Board and the Government of Canada, a WTO panel found in favor of the United States on claims related to Canada's grain handling and transportation systems. Canada now must comply with those findings. Canada and the United States have agreed on a reasonable time period for compliance, giving Canada until August 1, 2005 to make all necessary legislative and regulatory changes to its grain handling and rail transportation regimes. This time frame is consistent with the period of time for compliance in comparable disputes.

In addition, the United States is seeking reforms to state trading enterprises (STE) as part of the WTO agricultural negotiations. The U.S. proposal calls for the end of exclusive STE export rights to ensure private sector competition in markets currently controlled by single desk exporters; the establishment of WTO requirements to notify acquisition costs, export pricing, and other sales information for single desk exporters; and the elimination of the use of government funds or guarantees to support or ensure the financial viability of single desk exporters. The United States has succeeded in gaining support in the WTO for the elimination of trade-distorting practices of agricultural STEs. Finally, in October 2003 the Commerce Department imposed 8.87 percent antidumping and 5.29 percent countervailing duties on Canadian hard red spring wheat.

Canada has long maintained regulations that prohibit the entry of bulk shipments of fruits and vegetables. Based on a request of the National Potato Council, the United States, in December 2003, requested negotiations with Canada to discuss removing its trade distortive regulation for U.S. potatoes and other produce. In 2004, the United States and Canada held several meetings regarding bulk restrictions and will continue discussions in 2005.

c. Intellectual Property Rights

In March 2004, Canada's Federal Court of Appeal ruled that downloading music from the Internet using peer-to-peer (P2P) software does not constitute copyright infringement. The court denied a motion to compel internet service providers (ISPs) to disclose the identities of clients who were alleged to be sharing copyrighted music files. The recording industry is appealing this decision. Canadian ratification of the WIPO Copyright Treaty, now under consideration by the Parliament, would remedy this problem.

Progress remains stalled on resolving the outstanding issue of national treatment for U.S. artists in the distribution of proceeds from Canada's private copying levy and its “neighboring rights” regime. The United States regards Canada's reciprocity requirement for both the neighboring rights royalty and the blank tape levy as denying national treatment to U.S. copyright holders. Under this regime, Canada may grant some or all of the benefits of the regime to other countries, if it considers that such countries grant or have undertaken to grant equivalent rights to Canadians. Canada has yet to grant these benefits with regard to the United States. A growing coalition of technology and retail companies advocating the elimination of the private copy levy has successfully added the levy to the list of copyright issues that will be examined as a part of the ongoing Parliamentary review of the Copyright Act.

The United States is also concerned about Canada's lax border measures that appear to be non-compliant with TRIPS requirements. Canada's border enforcement measures have been the target of criticism by U.S. intellectual property owners who express concern with the low rate of prosecution arising from counterfeit goods seizures. Deficiencies in border enforcement are compounded by the failure of law enforcement authorities to conduct follow-up investigations of many illegal import cases.

2. Mexico

Mexico is our second largest single-country trading partner and has been among the fastest-growing major export markets for goods since 1993, with U.S. exports up 167 percent since then. The NAFTA has fostered this enormous relationship by virtue of the Agreement's comprehensive, market-opening rules. It is also creating a more equitable set of trade rules as Mexico's high trade barriers are being reduced or eliminated.

a. Agriculture

North American agricultural trade has grown significantly since the NAFTA was implemented. Mexico is currently the United States' third-largest agricultural export market. For 2004, U.S. agricultural exports to Mexico increased 9 percent from 2003, to $8.6 billion (based on annualized 11 month data).

On May 20, 2002, after the United States prevailed in dispute settlement proceedings before the WTO and NAFTA, Mexico removed the definitive antidumping duties it had imposed on imports of high-fructose corn syrup (HFCS) from the United States since 1998. By that time, however, the Mexican Congress had imposed a 20 percent tax on soft drinks made with any sweetener other than cane sugar, including HFCS, effective January 1, 2002. Although the order was temporarily suspended by the Fox Administration, the Mexican Supreme Court reimposed the tax in July 2002. The tax was renewed for 2003 and 2004. In November 2004, the Mexican Congress renewed the tax for 2005. The tax has eliminated the use of HFCS in the Mexican soft drink industry, reduced sales of HFCS by U.S. firms, and lowered U.S. exports of soft drinks as well as U.S. exports of corn used to produce HFCS. In June 2004, the United States requested the formation of a WTO dispute settlement panel regarding Mexico's tax. The panel is expected to issue a decision in 2005.

Separate from, but supporting the goals of formal dispute settlement, the United States and Mexico, as well as private sector interests, have held negotiations concerning the bilateral sweeteners trade.

The United States-Mexico Consultative Committee on Agriculture, co-chaired on the U.S. side by USTR and USDA, met in April 2004 to discuss a range of agricultural trade issues, including antidumping orders affecting U.S. agricultural product exports, and sanitary and phytosanitary measures.

The Administration has worked to address problems associated with Mexico's antidumping regime. The U.S. is concerned about the procedures applied in the investigation of U.S. exports of beef, rice, pork, and apples. Mexico imposed antidumping duties on U.S. exports of long grain white rice in June 2002. In December 2002, Mexico passed amendments to its antidumping and countervailing duty laws. The United States and Mexico held consultations in July 2003 on Mexico's antidumping orders on U.S. beef and rice. In November 2003, at the request of the United States, the WTO established a dispute settlement panel with regard to Mexico's antidumping order on long grain white rice. A panel report is expected in 2005. The United States has also initiated separate dispute settlement proceedings against the Mexican beef antidumping order under NAFTA. Mexico initiated an antidumping investigation against U.S. hams and shoulders on May 31, 2004, shortly after Mexico terminated its investigation on U.S. pork. This action presents serious questions regarding its consistency with the requirements of the WTO Antidumping Agreement.

On December 29, 2004, Mexico published an agreement suspending its antidumping order on Northwest apples. Although negotiated with Northwest Fruit Exporters (NFE), an association of Northwest apple exporters, the published agreement contains provisions not agreed to by NFE, which could adversely affect exports of Northwest golden and red delicious apples. At the time of this report, the United States is still reviewing the agreement to determine how to respond.

Mexico maintains a number of sanitary and phytosanitary measures affecting exports of U.S. agricultural products, including avocados, cherries, Florida citrus, and stone fruit. Notably, in 2004, Mexico removed most restrictions on imports of U.S. beef as a result of bovine spongiform encephalopathy (BSE) and avian influenza restrictions on imports of U.S. poultry. Resolving a longstanding concern of Mexico's, the U.S. Department of Agriculture issued regulations in November 2004 allowing distribution of Mexican avocados to all U.S. states after over a two year phase-in period.

b. Telecommunications

In April 2004, a WTO panel agreed with the United States that Mexico's international telecommunications rules were inconsistent with Mexico's WTO obligations. Mexico's rules had required U.S. carriers to connect with Mexican telecommunications providers in order to complete calls from the United States to Mexico and granted Mexico's dominant carrier, Telmex, the exclusive authority to negotiate the rate for connecting calls into Mexico. The elimination of all competition within Mexico for international interconnection resulted in rates significantly above cost and significantly above the rates charged in countries with a competitive telecommunications market.

In June 2004, the United States and Mexico reached an agreement to implement the recommendations included in the WTO panel report. Under the terms of the agreement, Mexico will remove the provisions of its law relating to the proportional return and uniform tariff systems, and allow the competitive negotiation of settlement rates by all Mexican carriers. Mexico will also allow the introduction of resale-based international telecommunication services in Mexico by July 2005, in a manner consistent with its law.

Comisión Federal de Telecomunicaciones (COFETEL) recently proposed a rule that would switch mobile phone payment systems to a "calling party pays" system, thereby requiring those placing international and domestic long-distance calls to mobile phones in Mexico to pay for the interconnection and termination of those calls. Although the proposed rule encourages long-distance and local companies to negotiate prices, industry sources expect that COFETEL will ultimately establish the new rates. The proposed rule could result in significant additional costs for U.S. companies and consumers.

c. Tequila

In August 2003, the Mexican Secretariat of Economy, citing the need to ensure the quality of Mexican tequila, announced that the official standard for tequila would be amended to require that tequila be "bottled at the source" in order to be labeled as tequila. Currently, the Mexican standard requires that only "100 percent agave" tequila be bottled at the source. Tequila other than 100 percent agave tequila can be sold and exported in bulk form under the current official standard. Following consultations with the United States, Mexico agreed to withdraw the bottling at source requirement. The revised draft standard, published for public comment on November 15, 2004, would require all tequila bottlers to register with the Mexican government, and be subject to inspections. U.S. and Canadian officials have been meeting with their Mexican counterparts in order to negotiate an agreement that would ensure that any action taken by Mexico pursuant to the standard is not inconsistent with its international obligations.

3. Brazil and the Southern Cone

a. Mercosur (Argentina, Brazil, Paraguay, and Uruguay)

The Common Market of the South, referred to as "Mercosur" from its Spanish acronym, is the largest trade bloc in Latin America. As a customs union, Mercosur is a free trade area that applies a common external tariff (CET) to products of nonmembers. Its members (Argentina, Brazil, Paraguay, and Uruguay) make up over one-half of Latin America's gross domestic product. Bolivia, Chile, Colombia, Ecuador, Peru, and Venezuela are associate

members. They benefit from certain preferential access to MERCOSUR markets, but maintain their own external tariff policies. MERCOSUR became operative on January 1, 1995, and covers some 85 percent of intra-Mercosur trade, with each member allowed to maintain a list of sensitive products which remain outside the duty-free arrangement. Members aim to converge their individual tariff schedules to the CET by January 1, 2006. The four Mercosur countries generally act as a group in the context of the negotiations for a Free Trade Area of the Americas.

b. Argentina

U.S. goods exports to Argentina were an estimated $3.5 billion in 2004,[47] up 45 percent from 2003, continuing their recovery after a substantial decline in recent years. The overall bilateral trade was an estimated $7.0 billion, and the U.S. deficit was estimated to be $170 million in 2004, down from a deficit of $730 million in 2003. A key factor in the Argentine economy is its trade with Brazil, Argentina's number one trading partner.

Intellectual Property Rights (IPR): Argentina's intellectual property rights regime fails to fulfill long-standing commitments to the United States and concerns remain as to whether their IPR regime meets certain TRIPS standards. Failure to provide adequate protection for copyright and patents has led to Argentina's placement on the Special 301 Priority Watch List through 2004. In 1997, the United States withdrew 50 percent of Argentina's benefits under the U.S. GSP program primarily due to patent protection concerns, and benefits will not be restored unless the concerns of the United States are addressed adequately. In May 1999, the United States initiated a WTO case against Argentina because of its failure to protect patents and test data. The United States substituted additional claims to this case in May 2000, due to the fact that the TRIPS Agreement became fully applicable for Argentina in the year 2000. The establishment of the Bilateral Committee on Trade and Investment (BCTI) gave the two countries a vehicle to address various bilateral trade issues.

As a result of the April 24, 2002 meeting of the BCTI, the United States and Argentina finalized the elements of a joint notification to the WTO regarding the dispute on intellectual property matters. In the joint notification, Argentina clarified how certain aspects of its intellectual property system operate so as to conform to the TRIPS Agreement. In addition, Argentina amended its patent law to provide for process patent protection and to ensure that preliminary injunctions are available in intellectual property court proceedings, among other amendments. Finally, on the remaining issues, including that of data protection, the United States retains its right to seek resolution under the WTO dispute settlement mechanism, and consultations continue with respect to these issues.

c. Brazil

The United States exported goods valued at an estimated $14.2 billion to Brazil in 2004.[48] Brazil's market accounts for 23 percent of U.S. annual exports to Latin America and the Caribbean excluding Mexico, and 63 percent of U.S. goods exports to Mercosur.[49] In September 2004, the United States and Brazil met under the auspices of the Bilateral Consultative Mechanism to discuss intellectual property rights (see below), WTO negotiations, SPS issues, and complaints by U.S. industry regarding the ICMS (a value added tax collected by individual Brazilian states).

Intellectual Property Rights (IPR): The United States shares concerns, voiced by U.S. industry, about the high levels of piracy and counterfeiting in Brazil, the lack of effective enforcement of copyright protection (especially for sound recordings and movies), and the lack of significant progress processing the backlog of pending patent applications. On June 30, 2004, the Administration announced that it would

[47] Annualized based on 10 months' data.

[48] Annualized based on 10 months' data.

[49] Defined as Merc 6—Argentina, Brazil, Paraguay, Uruguay, Bolivia, and Chile.

continue to review Brazil's eligibility for GSP for a ninety-day period, which concluded on September 30, in response to a petition filed by the International Intellectual Property Alliance (IIPA) to remove Brazil's GSP benefits due to its failure to offer adequate protection to copyrighted materials, in particular sound recordings. In a series of meetings during that period, the United States and Brazil examined both steps taken and future plans to strengthen and improve copyright enforcement. As a result of these discussions, a number of key priorities and actions to combat copyright piracy through enforcement of existing laws have been identified. Accordingly, the United States and Brazil expect to maintain a dialogue on developments in this critical area. In the meantime, the review of the petition has been formally extended through March 31, 2005 in order to assess Brazil's progress.

d. Paraguay

With a population of just over six million, Paraguay is one of the smaller markets in Latin America. In 2004, the United States exported an estimated $603 million worth of goods to Paraguay.[50] Paraguay is a major exporter of, and a transshipment point for, pirated and counterfeit products in the region, particularly to Brazil.

Intellectual Property Rights (IPR): In January 1998, the USTR identified Paraguay as a "Priority Foreign Country" (PFC) under the "Special 301" provisions of the Trade Act of 1974. The USTR initiated an investigation of Paraguay in February 1998.

During investigations under Special 301, Paraguay indicated that it had undertaken a number of actions to improve IPR protection. In November 1998, in light of commitments made by Paraguay in a bilateral Memorandum of Understanding (MOU), USTR concluded its Special 301 investigation. In December 2003, the two governments revised and extended the term of the MOU. Paraguay has made a significant effort to implement the MOU, signed in March 2004, and met regularly with the United States under the auspices of the Bilateral Council on Trade and Investment (see below) to discuss MOU implementation.

U.S.-Paraguay Bilateral Council on Trade and Investment: In 2004, the Bilateral Council on Trade and Investment met four times to discuss a wide range of issues including efforts to increase transparency in government-business relationships, implementation of the IPR MOU, and ongoing cooperation toward a strategic plan for Paraguay to develop non-traditional exports.

e. Uruguay

With the smallest population of Mercosur (3.4 million), Uruguay nonetheless imported an estimated $325 million of goods from the United States in 2004.[51] The United States has been meeting with Uruguay under the auspices of the United States-Uruguay Joint Commission on Trade and Investment (JCTI) since April 2002. The JCTI has been a forum to discuss deepening trade relations as well as to work toward resolution of bilateral irritants. During JCTI meetings in May 2004, the two countries discussed sanitary and phytosanitary issues and the United States made presentations on the Container Security Initiative and U.S. textiles trade policy. The decision to negotiate a Bilateral Investment Treaty (BIT) sprang from the work of the JCTI. The United States-Uruguay BIT, which was signed on October 25, 2004, was the first BIT concluded by the United States on the basis of its 2004 model BIT text. Like the investment chapters of recent FTAs, the United States-Uruguay BIT includes several key provisions that respond to the investment negotiating objectives set forth by Congress in the Trade Promotion Act of 2002. The core provisions of the United States-Uruguay BIT will give U.S. investors a number of critical protections when they establish businesses in Uruguay, including non-discriminatory treatment, the ability to transfer funds relating to

[50] Annualized based on 10 months' data.

[51] Annualized based on 10 months' data.

their investments, and access to binding international arbitration of investment disputes.

f. Chile

United States -Chile bilateral trade relations in 2004 were dominated by the implementation of an FTA as discussed at the beginning of this Chapter.

4. The Andean Community

a. The Andean Region

The U.S. goods trade deficit with the Andean region (comprising Bolivia, Colombia, Ecuador, Peru and Venezuela) increased from $13.6 billion in 2002 to an estimated $18.5 billion in 2003 (2003 based on annualized 11 month data). U.S. goods exports to the region were an estimated $9.6 billion in 2003, a decline of 15.8 percent from 2002.

i. U.S.-Andean Free Trade Agreement Negotiations

See Chapter III, Section A for discussion of these negotiations.

ii. Andean Trade Preference Act

The U.S. trade relationship with the Andean countries is currently conducted in the framework of the unilateral trade preferences of the Andean Trade Preference Act (ATPA), as amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA). Congress enacted the ATPA in 1991 in recognition of the fact that regional economic development is necessary in order for Bolivia, Colombia, Ecuador and Peru to provide economic alternatives for the illegal drug trade, promote domestic development, and thereby solidify democratic institutions. The ATPDEA was signed into law on August 6, 2002 as part of the Trade Act of 2002. The program provides enhanced trade benefits for the four ATPA beneficiary countries.

The original ATPA expired in 2001. The ATPDEA retroactively restored the benefits of the ATPA, providing for retroactive reimbursement of duties paid during the lapse. In addition, the original ATPA included prohibitions on the extension of duty-free treatment in several sectors: textiles, apparel, footwear, leather, tuna in airtight containers, and certain other items. The ATPDEA expanded the list of items eligible for duty-free treatment by about 700 products.

The most significant expansion of benefits in the ATPA, as amended by the ATPDEA, is in the apparel sector. Apparel assembled in the region from U.S. fabric or fabric components or components knit-to-shape in the United States may enter the United States duty-free in unlimited quantities. Apparel assembled from Andean regional fabric or components knit-to-shape in the region may enter duty-free subject to a cap. The cap is set at 2 percent of total U.S. apparel imports, increasing annually in equal increments to 5 percent. Apparel imports under ATPA accounted for nearly 13 percent of U.S. imports under ATPA in January-August 2003 and for 67 percent of all apparel imports from the region during the 2003 period. New products benefiting from the program include: tuna in pouches, leather products, footwear, petroleum and petroleum products, and watches and watch parts.

iii. ATPDEA Eligibility

The ATPA established a number of criteria that countries must meet in order to be designated as eligible for the program. The ATPDEA added further eligibility criteria and provided for an annual review of the countries' eligibility. The new criteria relate to issues such as intellectual property rights, worker rights, government procurement procedures, and cooperation on countering narcotics and combating terrorism.

USTR initiated the 2004 ATPA Annual Review through a notice in the Federal Register dated August 17, 2004. USTR received petitions to review certain practices in certain beneficiary developing countries to determine whether such countries were in compliance with the ATPA

eligibility criteria. Petitions were filed to address issues in Ecuador and Peru such as contract nullification and failure to follow WTO rules. In addition, USTR kept under review certain of the petitions that had been filed in the 2003 ATPA Annual Review, as they concerned matters for which a resolution was still pending. In 2004, the ATPA process helped resolve certain investor disputes with Colombia and Ecuador worth about $100 million, and fostered improved enforcement of laws against child labor in Ecuador.

5. Central America and the Caribbean

a. Free Trade Agreement with Central America and the Dominican Republic

See Chapter III, Section A for a discussion of this topic

b. Central America

CACM: The United States is Central America's principal trading partner. U.S. exports to these countries totaled $10.8 billion in 2003. The Central American Common Market (CACM) consists of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, and provides duty-free trade for most products traded among the five countries. Panama, which has observer status, and Belize participate in CACM summits, but not in regional trade integration efforts. The Central American countries focused largely on CAFTA-DR negotiations during 2004, but continued less actively to pursue a range of bilateral and regional trade agreements. Canada has an FTA with Costa Rica, and negotiations with El Salvador, Guatemala, Honduras and Nicaragua made some progress after the completion of the CAFTA. Negotiations for a Panama-CACM free trade agreement have resulted in agreement on common disciplines. All of the countries are participants in the FTAA negotiations.

Panama: The United States and Panama have strong, long-standing commercial and economic ties. Bilateral trade between the United States and Panama totaled $2.1 billion in 2003, of which U.S. exports accounted for $1.8 billion. January-October 2004 figures showed an increase in U.S. exports to Panama over the same period in 2003, with projected 2004 exports totaling $1.9 billion. Panama receives about fifty percent of its imports from the United States. In addition, the United States holds approximately $6.5 billion in foreign direct investment in Panama, in sectors such as finance, maritime and energy.

As evidence of their mutual commitment to deeper trade relations, the United States and Panama launched negotiations on a bilateral United Sates-Panama Free Trade Agreement in April 2004. Six rounds of negotiations were held during 2004.

Throughout 2003, the United States continued to meet with Panama under the existing Trade and Investment Council (TIC) mechanism, advancing the ongoing work program, including investment issues. These meetings served to prepare the bilateral relationship for the launch of FTA negotiations by helping to resolve a range of outstanding bilateral issues.

Panama is a participant in the FTAA and during 2004 served as chair for the Negotiating Group on Investment.

c. Caribbean Basin Initiative

During 2004, the trade programs collectively known as the Caribbean Basin Initiative (CBI) remained a vital element in the U.S. economic relations with its neighbors in Central America and the Caribbean. CBI was initially launched in 1983 through the Caribbean Basin Economic Recovery Act (CBERA), and was substantially expanded in 2000 through the United States - Caribbean Basin Trade Partnership Act (CBTPA). The Trade Act of 2002 increased the type and quantity of textile and apparel articles eligible for the preferential tariff treatment accorded to designated beneficiary CBTPA countries. Among other actions, the Trade Act of 2002 extended duty-free treatment for clothing made in beneficiary countries from both U.S. and regional inputs, and increased the quantity

of clothing made from regional inputs that regional producers can ship duty-free to the United States annually.

In 2004, the Administration continued to work with Congress, the private sector, CBI beneficiary countries, and other interested parties to ensure a faithful and effective implementation of this important expansion of trade benefits. The United States concluded negotiations and signed a free trade agreement with several CBI beneficiaries, as called for in the legislation, notably El Salvador, Guatemala, Honduras, Nicaragua, Costa Rica, and the Dominican Republic. The agreement maintains the level of access that the Central American countries and the Dominican Republic enjoy under the CBI program, while simultaneously opening their markets to U.S. products. In the second quarter of 2004, USTR launched FTA negotiations with Panama.

Since its inception, the CBERA program has helped beneficiaries diversify their exports. On a region-wide basis, this export diversification has led to a more balanced production and export base and has reduced the region's vulnerability to fluctuations in markets for traditional products. Since 1983, the year prior to the implementation of the CBI, total CBI country non-petroleum exports to the United States have more than tripled. Light manufactures, principally printed circuit assemblies and apparel, but also medical instruments and chemicals, account for an increasing share of U.S. imports from the region and constitute the fastest growing sectors for new investment in CBERA countries and territories.

Apparel remains one of the fastest growing categories of imports from the CBI countries and territories - growing from just 5.5 percent of total U.S. imports from the region in 1984, to nearly 40 percent in 2003, valued at over $9.7 billion. The CAFTA-DR provisions for textiles and apparel were specifically crafted to encourage integration of the North and Central American industries to prepare for an increasingly competitive global market.

The CBI program currently provides 24 beneficiary countries and territories with duty-free access to the U.S. market. They are: Antigua and Barbuda, Aruba, The Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago. When the CAFTA-DR enters into force, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua will graduate from the CBI program, although the CAFTA-DR will provide market access that is the same or better than the access provided under the CBI program. On implementation of the CAFTA-DR, the Central American countries and the Dominican Republic will move to a trading relationship with the United States that is more comprehensive, liberalizing, and built on mutual benefits.

d. The Caribbean

The Dominican Republic: The Dominican Republic is the largest single U.S. trading partner in the CBI region, with bilateral trade of $8.7 billion in 2003. Reflecting the importance of this trade relationship, the United States undertook negotiations with the Dominican Republic, between January and March 2004, to integrate that country into the free trade agreement already negotiated with Central America. On August 5, 2004, the United States, the Dominican Republic and the five Central American countries together signed the CAFTA-DR. The United States and the Dominican Republic had revitalized the Trade and Investment Council (TIC) mechanism and held productive meetings under the TIC during 2002 and 2003, covering both bilateral issues and cooperation in the FTAA and WTO negotiations, which helped prepare both sides to begin FTA negotiations in January 2004.

The Dominican Republic continues to lead all countries in taking advantage of CBI, as they have done in virtually every year since the program became effective, accounting for 25

percent of U.S. imports under CBI provisions. The Dominican Republic does not belong to any regional trade association, but has negotiated trade agreements with its partners in Central America and CARICOM.

Unilateral liberalization and fiscal reform efforts have made the Dominican Republic one of the fastest growing economies over the last decade and an economic engine in the Caribbean Basin. The Dominican Republic's strong trade relations within the Caribbean, (including with neighboring Puerto Rico) and with Central America, establish it as an economic bridge within the region. The CAFTA-DR reflects the Dominican Republic's central role and firm commitment to further liberalization of its already relatively open trade and investment regime. The Dominican Republic has also worked with the United States to advance common objectives in the FTAA negotiations and was chair of the FTAA Negotiating Group on Intellectual Property.

CARICOM: Members of the Caribbean Community and Common Market (CARICOM) are: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. In theory, CARICOM is a customs union rather than a common market. However, progress towards a customs union, which would involve the elimination of all internal tariffs, remains limited.

CARICOM countries participate in the FTAA negotiations and the United States works with them on the Doha Development Agenda. In addition, the United States works with CARICOM countries on trade capacity building initiatives.

D. Europe

Overview

The U.S. economic relationship (measured as trade plus investment) with Europe is the largest and most complex in the world. Due to the size and the highly integrated nature of the transatlantic economic relationship, serious trade issues inevitably arise. Even when small in dollar terms, especially compared with the overall value of transatlantic commerce, these issues can nonetheless take on significance for their precedent-setting impact on U.S. trade policies.

U.S. trade relations with Europe are dominated by its relations with the European Union (EU). From its origins in the 1950s, the EU has grown from 6 to 25 Member States, with Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia becoming the newest members on May 1, 2004. The addition of these 10 members has brought the EU considerably closer to a single market encompassing the entire European continent, although important EU institutional questions associated with enlargement still need to be resolved. The EU currently constitutes a market of some 450 million consumers with a total gross domestic product of more than $11 trillion. U.S. goods exports in 2004 were $167 billion and U.S. exports of private commercial services (i.e., excluding military and government) to the European Union were $101 billion in 2003 (latest data available).

The EU has declared its intention to work toward the accession of additional European countries as long as they meet various political and economic criteria for EU membership. In this regard, the EU has nearly finished accession negotiations with Romania and Bulgaria (scheduled to join the Union in 2007), and is preparing to launch such negotiations with Croatia and Turkey in March and October 2005, respectively.

The other major trade group within Europe is the European Free Trade Association (EFTA), which now includes Switzerland, Norway, Iceland, and Liechtenstein. Formed in 1960,

EFTA provides for the elimination of tariffs on manufactured goods and selected agricultural products that originate in, and are traded among, the member countries. The EFTA countries are linked to the EU through a free trade agreement. Norway, Iceland, and Liechtenstein have further structured their economic relations with the EU through the Agreement on the European Economic Area (EEA), which permits the three countries to participate in the EU Single Market. In practice, the EEA involves the adoption by non-EU signatories of approximately 70 percent of EU legislation.

The United States has developed strong trade and investment links and actively supported political and economic reforms in countries of Southeast Europe (Romania, Bulgaria, Croatia, Albania, Bosnia-Herzegovina, Macedonia, and Serbia and Montenegro). With a strong trade framework in place, USTR and its interagency colleagues worked during 2004 to ensure that Southeast European countries satisfy their bilateral and multilateral trade obligations and meet the requirements of U.S. trade laws, such as those governing eligibility for participation in the GSP program.

As a result of its 1996 Customs Union Agreement with the EU, Turkey imposes no duty on non-agricultural imports from EU and EFTA countries, but applies the EU's common external customs tariff to third country (including U.S.) imports.

1. European Union

In 2004, USTR continued to devote considerable resources to addressing issues of trade concern with the EU and its individual Member States, as well as to promoting efforts to enhance the transatlantic economic relationship. Key issues included:

a. Subsidies for Large Commercial Aircraft

The United States has long expressed its concerns with European government subsidization of large commercial aircraft (LCA) development by Airbus Industries. The issue has acquired new urgency in recent years as Airbus sought and received substantial new official assistance (so-called "launch aid") for the Airbus A380 super jumbo and has publicly stated an interest in further launch aid for its proposed A350 passenger jet. At a time when Airbus has begun delivering more aircraft than its U.S. rival, The Boeing Company, and in a difficult global business environment for producers of LCA, the United States believes that, if ever they were, subsidies to Airbus are no longer justified. Through 2004, USTR attempted to work with the European Commission to establish new trade rules aimed at eliminating LCA subsidies. The Commission's initial reluctance to pursue such a goal led the United States to request initiation of dispute settlement procedures in the WTO (as the United States believes Airbus subsidies violate the WTO Agreement on Subsidies and Countervailing Measures). The EU requested its own WTO dispute settlement proceeding in relation to alleged U.S. federal and state government subsidies to Boeing. Against this backdrop, the two sides continued their discussions through the end of the year with the aim of exploring possibilities for a negotiated resolution.

b. Geographical Indications

In a report issued on December 21, 2004, a WTO panel agreed with the United States that the EU's regulation on food-related geographical indications (GIs) is inconsistent with the EU's obligations under the TRIPS Agreement and the GATT 1994. This report results from the United States' long-standing complaint that the EU GI system discriminates against foreign products and persons – notably by requiring that EU trading partners adopt an "EU-style" system of GI protection -- and provides insufficient protections to trademark owners. In its report, the WTO panel agreed that the EC's GI regulation impermissibly discriminates against non-EC products and persons. The panle also agreed with the United States that Europe could not, consistent with WTO rules, deny U.S. trademark owners their rights; it found that, under the regulation, any exceptions to trademark rights for the use of registered GIs

were narrow, and limited to the actual GI name as registered. The panel recommended that the EU amend its GI regulation to come into compliance with its WTO obligations. The United States requested WTO dispute consultations on this regulation in June 1999. On August 18, 2003, the United States requested the establishment of a panel, and panelists were appointed on February 23, 2004. The United States anticipates that the panel's report will be circulated to WTO Members and the public in mid-March 2005.

Separately, the United States continues to have concerns about the EU's regime concerning geographical indications for wine and spirits -- including Council Regulation 1493/99.

c. Agricultural Biotechnology

Product Approval Moratorium: In May 2003, the United States initiated a WTO dispute settlement process related to the EU's de facto moratorium on approvals of agricultural biotechnology products and the existence of individual Member State marketing prohibitions on agricultural biotechnology products previously approved at the EU level. Since that time, an initial round of consultations has been held, followed by the formation of a panel to consider the case. The first panel meeting was in June 2004. A second panel meeting is expected in February 2005, with a final report expected in the spring or summer of 2005.

The EC took action on some pending agricultural biotechnology crop petitions in 2004 for products imported for the purposes of processing, animal feed, and food use. These were the first approvals made by the Commission since 1998. The approval process, however, is not yet grounded on scientific principles. It has not proved possible to assemble in the Council of Ministers a qualified majority of EU Member States to support product approvals, despite the lack of any science-based health or safety reason to reject them. The Council of Ministers has not acted on product applications, which have been approved by the relevant scientific committees on the Commission. Therefore, after two lengthy periods of consideration by the Council, petitions have been sent back to the Commission for final adjudication (the Commission approved both petitions). No approval for cultivation has yet made it through the process.

Several EU Member States, including Austria, Luxembourg, and Italy, continue to maintain their national marketing bans on some biotechnology products despite existing EU approvals. After more than five years in some cases, the Commission has begun to take steps to overturn these bans. Despite the lack of scientific justification for the bans, the Council regulatory committee refused to lift them in December 2004. The bans will be considered by the Council of Ministers in early 2005.

Traceability and Labeling Requirements: In April 2004, EC Regulations 1829/2003 and 1830/2003 governing the traceability and labeling of biotechnology food and feed entered into force. The regulations include mandatory traceability and labeling requirements for all agricultural biotechnology and downstream products. In some cases, these directives have already severely restricted market access for U.S. food suppliers, because food producers have reformulated their products to exclude agricultural biotechnology products inputs. The regulations are expected to have a negative impact on a wide range of U.S. processed food exports.

d. Customs Administration Procedures

While the customs law of the EU is set forth in the Community Customs Code, the EU does not in fact currently operate as a single customs administration. Administration of the Community Customs Code is the responsibility of EU Member State customs administrations, which do not have identical working practices and are not obliged to follow each other's decisions.

The difficulties presented by non-uniform administration are exacerbated by the absence of any forum for prompt EU-wide review and correction of customs decisions. Review by the European Court of Justice of national decisions

regarding customs administrative matters may be available in some cases, but generally only after an affected party proceeds through multiple layers of member state domestic court review. Obtaining corrections with EU-wide effect for administrative actions relating to customs matters may take years.

U.S. concern with these issues has been heightened by the May 2004 enlargement of the EU from 15 Members to 25 Members. In light of this heightened concern, the United States in September 2004 asked for consultations under the WTO's dispute settlement rules in an effort to address the systemic problems surrounding EU customs administration. Consultations were held on November 16, 2004, but failed to resolve the dispute. On January 13, 2005, the United States asked the WTO to form a dispute settlement panel.

e. Enhancing Transatlantic Economic Relations

The huge size, advanced integration, and generally robust health of the transatlantic trade and investment relationship have provided an anchor of prosperity for both sides of the Atlantic, even as economic conditions in other parts of the world fluctuate. Recognizing the benefits of preserving and enhancing these productive ties, the United States and the EU for some time have been interested in exploring ways to create new opportunities for transatlantic economic activity. The 1995 New Transatlantic Agenda, 1998 Transatlantic Economic Partnership and 2002 Positive Economic Agenda initiatives, all launched at various U.S.-EU Summits, had as their common goal the deepening and systematizing of bilateral cooperation in the economic field.

At the June 2004 U.S.-EU Summit at Dromoland Castle, Ireland, President Bush, Commission President Prodi and Irish Prime Minister Ahearn agreed to the Joint Declaration on Strengthening Our Economic Partnership, which is aimed at promoting a fresh look at transatlantic trade and investment ties. The immediate objective of the Declaration was to initiate a government discourse with business, labor, consumer and other elements of civil society on concrete ways for governments to improve U.S.-EU economic interaction. The results of these consultations with stakeholders on both sides of the Atlantic will be factored into renewed government-to-government discussions in advance of the 2005 U.S.-EU Summit.

Meanwhile, work continues on individual components of earlier Summit initiatives; this work will provide a foundation on which to base additional efforts in the coming months and years. (See sections on Regulatory Cooperation and Poultry Meat below.)

f. Regulatory Cooperation

As traditional trade and investment barriers have declined in recent years, specific trade obstacles arising from divergences in U.S. and EU regulations and the lack of transparency in the EU rulemaking and standardization processes have grown relatively greater in importance. USTR continued efforts in 2004 to enhance U.S.-EU regulatory cooperation and reduce unnecessary "technical" barriers to transatlantic trade.

At the June 2004 US-EU Summit, President Bush and his EU counterparts welcomed the Roadmap for U.S.-EU Regulatory Cooperation. This Roadmap builds on the 2002 U.S.-EU Guidelines for Regulatory Cooperation and Transparency that outlined specific cooperative steps for enhanced bilateral dialogues, including early and regular consultations, extensive data and information exchanges, and sharing of contemplated regulatory approaches. The Regulatory Cooperation Roadmap provides a framework for U.S. and EU officials to cooperate on a broad range of important areas such as pharmaceuticals, automotive safety, information and communications technology, cosmetics, consumer product safety, chemicals, nutritional labeling, and eco-design of electrical/electronic products. Through targeted U.S.-EU regulatory consultations, we aim to promote better quality regulation, minimize regulatory divergences, and facilitate transatlantic commerce.

In February 2004, the United States and the EU signed a new, precedent-setting mutual recognition agreement (MRA) on marine equipment, under which designated U.S. equipment which meets all U.S. requirements can be marketed in the EU without additional testing. This agreement entered into force on July 1, 2004. The United States also continues to pursue implementation of the 1998 U.S.-EU Mutual Recognition Agreement (MRA). The annexes on telecommunications equipment, electromagnetic compatibility (EMC), and recreational craft are fully operational. We continue to work with the European Commission on bringing the medical device annex into operation.

g. Foreign Sales Corporation Tax Rules

On October 14, 2004, Congress passed the American Jobs Creation Act (AJCA), designed in part to repeal the Foreign Sales Corporation/Extraterritorial Income Exclusion Act (FSC/ETI) tax rules that the WTO had found to constitute an illegal export subsidy. Unfortunately, the European Commission in November 2004 asked the WTO once again to review the United States' steps to comply with the January 29, 2002 WTO ruling. The Commission based its request on its dissatisfaction with transition provisions built into the ACJA, including a two year phase-out of the FSC/ETI rules and the grandfathering of certain pre-existing private contracts. These transition provisions are standard tools utilized in U.S. tax law and are of limited commercial value. The General Affairs and External Relations Council adopted, without debate, a Regulation outlining that additional duties on U.S. products will be lifted and as of January 1, 2005, and will only take effect again on January 1, 2006 or 60 days after (whichever date is later) the DSB rules that the American Jobs Creation Act of 2004 is incompatible with WTO law. The Regulation entered into force on February 1 (Council Regulation (EC) No 171 / 2005). The Commission's proposal provides for an automatic re-imposition of the sanctions if the WTO does find non-compliance. The United States believes the AJCA, providing as it does for a major reform of U.S. tax rules in order to meet WTO requirements, should satisfactorily address EU concerns and that EU retaliatory sanctions should now be lifted in their entirety. (For more information on this dispute, see Chapter II.)

h. Chemicals

The EU is developing a comprehensive new regulatory regime for all chemicals (known as REACH) that would impose extensive additional testing and reporting requirements on producers and downstream users of chemicals. The expansive EU proposal could impact virtually all industrial sectors, including the majority of U.S. manufactured goods exported to the EU.

While supportive of the EU's objectives of protecting human health and the environment, during 2004 the United States continued to stress with the EU that this draft regulation adopts a particularly complex approach, which appears to be neither workable nor cost-effective in its implementation, and could adversely impact innovation and disrupt global trade. Many of the EU's trading partners have expressed similar concerns. The proposal also appears to depart from ongoing international regulatory cooperation efforts. We will continue to monitor closely revisions to this draft regulation, and remain engaged constructively with the EU to ensure that U.S. interests are protected.

i. Ban on Growth Promoting Hormones in Meat Production

The EU continues to ban the import of U.S. beef obtained from cattle treated with growth-promoting hormones. In 1996 the United States challenged this ban in the WTO and in June 1997, a WTO panel ruled in favor of the United States on the basis that the EU's ban was inconsistent with the EU's obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) because the EU failed to provide an adequate scientific risk assessment. This finding was upheld by a WTO Appellate Body in 1998, and in 1999, the WTO authorized U.S. trade retaliation because the EU failed to comply with the WTO rulings.

In September 2003, the EU announced the entry into force of an amendment to its original hormone directive, which recodified the ban on the use of estradiol for growth promotion purposes and extended the provisional bans on the five other growth hormones included in the original EU legislation. With enforcement of this new Directive, the EU argued that it was now in compliance with the earlier WTO ruling.

At present, the United States continues to apply 100 percent duties on $116.8 million of U.S. imports from the EU. The United States maintains its WTO-authorized sanctions on EU products because the United States fails to see how the revised EC measure could be considered to implement the recommendations and rulings of the DSB in this matter.

On December 16, 2004, the EU held consultations with the United States on this issue in Geneva. On January 13, 2005, the EC requested establishment of a panel to consider its complaint against the United States for maintaining its sanctions on EU exports.

j. Poultry Meat

U.S. poultry meat exports to the EU have been banned since April 1, 1997, because U.S. poultry producers currently use washes of low-concentration chlorine as an anti-microbial treatment (AMT) to reduce the level of pathogens in poultry meat production, a practice not permitted by the EU sanitary regime. U.S. concerns with respect to poultry intensified in 2004 as a result of EU enlargement and the application of EU restrictions in new Member States that had previously allowed entry of U.S. meat. In 2004, the United States made significant progress in its work with the EU to address differences between U.S. and EU food safety rules for poultry meat. The Commission audited a number of U.S. poultry plants which demonstrated the use of AMTs and the United States developed an action plan to demonstrate the equivalency of U.S. and EU on-farm manufacturing practices. The two sides are discussing the final details of a series of steps aimed at reopening the EU market to U.S. poultry meat products.

k. Wine

Since the mid-1980s, U.S. wines have been permitted entry to the EU market through temporary exemptions from certain EU wine regulations. One such regulation requires wines imported into the EU to be produced using only certain wine-making practices. Other regulations require extensive certification procedures for imported wines and prohibit the use of wine names and grape varieties as regulated in the United States. Without derogations from these regulations, many U.S. wines would be immediately barred from entering the EU. U.S. wines that are produced with practices for which there are no EU derogations are already barred. EU derogations for U.S. wines were set to expire in December 2003, but the EU has agreed to further extend the current arrangement until December 2005, pending conclusion of U.S.-EU wine negotiations for an agreement addressing these issues.

Negotiations on a bilateral wine agreement continued throughout 2004. The United States is pressing the EU to provide U.S. wine makers equitable access to the EU wine market, particularly in light of Europe's considerable surplus in wine trade with the United States. A key U.S. objective is EU acceptance of U.S. wine-making practices, to obviate the need for future short-term derogations. The United States also continues to press for: 1) approval of future U.S. wine-making practices; 2) minimizing EU wine import certification requirements; and 3) allowing the use on U.S. wine labels of certain wine terms and names in the EU.

In 2002, the EU adopted a new wine labeling regulation (Commission Regulation No. 753/2002). The regulation appears to be more trade restrictive than necessary to meet any legitimate objective, as it would prohibit the presentation on imported wine of information important for the marketing of wine unless certain conditions are met. In addition, the EU imposes restrictions on the use of traditional terms listed in the regulation, in some instances granting exclusive use of a term to an EU wine

in a manner akin to treating it like intellectual property. The United States does not recognize the concept of traditional terms as a form of intellectual property, nor is this a form of intellectual property recognized by the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS). EU authorities began fully enforcing the new regulation in March 2004.

l. Rice -- Margin of Preference

In mid-2003, the EC notified the United States and other WTO Members of its intention to withdraw a key market access concession on rice made during the Uruguay Round. This concession, known as the Margin of Preference (MOP), replaced the EU's pre-1995 variable levy system for rice to provide market access opportunities for rice imports into the EU. On September 1, 2004, the EU withdrew the MOP concession and replaced it with a bound tariff rate of 65 euros/metric ton for brown rice and 175 euros/metric ton for milled rice.

The United States is one of the leading suppliers of rice to the EU market, with exports averaging $90 million a year. While the EU has the right to modify its schedule of commitments under GATT Article XXVIII, the EU owes the United States compensation for removing the MOP concession. The United States entered into negotiations with the EC in September 2004 to find a resolution to this issue. If a resolution cannot be found, the United States may withdraw substantially equivalent concessions by March 1, 2005.

m. EU Directive on Wood Packaging Material (WPM)

In March 2005, the European Union (EU) plans to implement a new Directive on wood packaging material (WPM) that could affect up to $80 billion worth of U.S. agricultural and commercial exports to the EU that are shipped on wooden pallets or in wood packaging materials. The Directive, published by the European Commission on October 5, 2004, would place a debarking requirement in addition to heat treatment fumigation on WPM from the United States and other countries. The EU Directive is more restrictive than the international standard established by the International Plant Protection Convention (IPPC), Guidelines for Regulating Wood Packaging Material in International Trade (IPSM-15).

At the October 2004 meeting of the WTO Committee on the Application of Sanitary and Phytosanitary Measures, the United States raised concerns with the EU's new directive on solid wood packaging material. Several other members added their concerns to those expressed by the United States. The EU representative indicated that they would take these concerns to Brussels for consideration. The EU has not provided the United States with any scientific basis for its more restrictive standard. WTO Members are obliged under the WTO Sanitary and Phytosanitary Agreement to have a scientific basis when they impose standards that are more restrictive than international standards. IPPC members, including the EU, approved ISPM-15 to harmonize and safeguard WPM requirements in world trade. IPPC members approved specific treatments and the marking of WPM, but did not support a debarking requirement in the absence of a scientific justification. USG agencies continue to work with the EC and with EU Member States to suspend the debarking provision and refer the issue to IPPC.

n. EU Enlargement

Ten new Member States joined the EU on May 1, 2004. U.S. concerns related to this enlargement include the Member States taking action to: (1) increase tariff rates as they apply the EU common external tariff; (2) withdraw or modify GATS services market access commitments and seek changes to various GATS MFN exemptions to align them with the EU's existing GATS commitments; and (3) begin applying certain EU non-tariff barriers (such as sanitary and phytosanitary measures or other technical barriers). Further, there is continuing uncertainty surrounding how the EU will adjust tariff-rate quotas (TRQs) applied to EU imports of agricultural and fish products to

account for the expansion of the EU market as a result of enlargement. In 2004, the United States entered into negotiations with the EC about enlargement-related concerns, including within the framework of GATT provisions relating to the expansion of customs unions. While desiring a rapid and successful conclusion of negotiations to provide appropriate trade compensation, the U.S. retains its rights under GATT Article XXVIII to withdraw concessions on a substantially equivalent amount of EU products if an agreement cannot be reached.

2. EFTA

During 2004, USTR continued its constructive engagement with the EFTA States. In November 2004, the United States concluded negotiation of a mutual recognition agreement (MRA) with the EEA EFTA states (i.e., Norway, Iceland, and Liechtenstein) that covers telecommunications equipment, electro-magnetic compatibility (EMC), and recreational craft. We expect to sign this agreement in early 2005. We continue to negotiate a separate MRA on marine equipment with the EEA EFTA states that we aim to conclude by mid-2005. We are also looking to broaden U.S. engagement with the EFTA countries and explore ways to foster closer U.S.-EFTA trade and economic relations.

3. Turkey

a. General

Although Turkey's harmonization of its trade and customs regulations with those of the EU generally benefits third country exporters, Turkey maintains high tariff rates on many agricultural and food products to protect domestic producers. Turkey also levies high duties, as well as excise taxes and other domestic charges, on imported alcoholic beverages that increase wholesale prices by more than 200 percent. Turkey does not permit any meat or poultry imports.

b. Investment

While Turkey's legal regime for foreign investment is liberal, private sector investment is often hindered, regardless of nationality, by: excessive bureaucracy; political and macroeconomic uncertainty; weaknesses in the judicial system; high tax rates; a weak framework for corporate governance; and frequent, sometimes unclear changes in the legal and regulatory environment.

b. Intellectual Property

While maintaining that it is in full compliance with its obligations under the WTO TRIPS agreement, Turkey does not have a patent linkage system in place to prevent generic drugs that infringe the Turkish patents of U.S. pharmaceutical companies from receiving marketing approval in Turkey. Turkey recently instituted a Registration Regulation for protecting confidential test data, but it is not retroactive to January 2000, when Turkey's TRIPS obligations came into effect and has other provisions that may not be consistent with TRIPS requirements. Turkey issued a revised regulation on January 19, 2005 providing a six-year term of data exclusivity protection for confidential pharmaceuticals test data effective January 1, 2005. The regulation contains major loopholes, which the United States is addressing with Turkey. Improving enforcement against copyright piracy and trademark infringement in Turkey also remains an issue.

4. Southeast Europe

a. EU Accession

The United States has been strongly supportive of the integration of Bulgaria and Romania into the EU. As with previous accessions, USTR and other U.S. agencies have been working with Bulgaria and Romania to ensure that the accession process does not adversely affect U.S. commercial interests in the region.

These countries, as well as Croatia, have concluded Europe Agreements with the EU, which set the stage for their EU membership. The Europe Agreements provide for the

reduction to zero of virtually all tariff rates on industrial goods and preferential rates and quotas for many agricultural goods traded between the EU and these countries. Subsequent agricultural agreements (the Zero - Zero Agreements) have further reduced tariffs on the majority of agriculture goods. U.S. goods continue to face generally higher MFN tariff rates in these countries, creating a tariff differential vis a vis EU goods.
Upon their entry into the European Union, these countries will adopt the EUs common external tariff rate (CXT), which will reduce some of these differentials, but raise tariffs in other areas. The United States has been consulting with Romania and Bulgaria to minimize the tariff differential problem in the interim period prior to accession.

b. Generalized System of Preferences

Most of the countries in this region participate in the U.S. Generalized System of Preferences (GSP) program, except Serbia and Montenegro which applied for eligibility in 2004. As required by the GSP statute, once a country has joined the EU, it loses its GSP eligibility.

The GSP statute provides that a country may not receive GSP benefits if it affords preferential treatment to the products of a developed country, other than the United States, that has a significant adverse effect on U.S. commerce. As noted above, the United States has consulted with several countries concerning their granting preferential tariffs to EU exporters compared with U.S. exporters, pursuant to their Europe Agreements with the EU. USTR and the interagency GSP subcommittee are considering several petitions filed by U.S. industry groups requesting that Bulgaria and Romania be removed from the program because of the impact of tariff differentials on U.S. commerce.

c. Intellectual Property Rights

USTR closely monitors WTO Members' compliance with the TRIPS Agreement, working to have countries improve enforcement of their IPR legislation, and counter trends such as increasing copyright piracy and trademark counterfeiting. The United States has provided technical assistance to help improve the level of IPR protection. For example, piracy and counterfeiting are growing problems in Bulgaria, which was placed on the Special 301 Watch List in 2004. USTR is working to encourage Bulgaria to reestablish the strong IP protection, including against optical disc piracy, that was in place several years ago. A top USTR priority in 2004 remained protecting the confidential data submitted by pharmaceutical firms to government health authorities to obtain marketing approval. USTR and other agencies pressed Croatia to provide adequate protection for confidential test data, a commitment it made through a bilateral agreement concluded in 1998 Memorandum of Understanding Concerning Intellectual Property Rights. Copyright piracy is a continuing problem in Romania.

d. Bilateral Investment Treaties

The United States has Bilateral Investment Treaties (BITs) in force with Albania, Bulgaria, Romania, and Croatia.

E. Russia and the Newly Independent States

The United States continues to actively support political and economic reforms in the Newly Independent States (NIS) (the Russian Federation, Ukraine, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan).

The United States has been striving to construct a framework for the development of strong trade and investment links with this region. This approach has been pursued both bilaterally and multilaterally. Bilaterally, the United States has negotiated trade agreements to extend Normal Trade Relations (formerly referred to as "most-favored nation" or "MFN") tariff treatment to these countries and to enhance intellectual property rights (IPR) protection. The United States also has extended GSP benefits to eligible developing countries and has negotiated bilateral

investment treaties (BITs) to guarantee compensation for expropriation, transfers in convertible currency, and the use of appropriate dispute settlement procedures. Multilaterally, the United States has encouraged accession to the WTO as an important method of supporting economic reform. Now that much of this framework is in place, USTR and its interagency colleagues are working to ensure that the NIS satisfy their bilateral and multilateral trade obligations.

1. Normal Trade Relations Status

Russia, Ukraine, and seven of the other NIS republics within the region receive conditional NTR tariff treatment pursuant to the provisions of Title IV of the Trade Act of 1974, also known as the Jackson-Vanik amendment. Under the Jackson-Vanik amendment, the President is required to deny NTR tariff treatment to any non-market economy that was not eligible for such treatment in 1974 and that fails to meet the statute's freedom of emigration requirements contained in the legislation. This provision is subject to waiver, if the President determines that such a waiver will substantially promote the legislation's objectives. Alternatively, through semi-annual reports, the President can determine that an affected country is in full compliance with the legislation's emigration requirements. Affected countries must also have a trade agreement with the United States, including certain specified elements, in order to obtain conditional NTR status.

The President has determined that Russia, Ukraine and all of the other NIS republics, with the exception of Belarus and Turkmenistan, are in full compliance with Title IV's freedom of emigration requirements. Belarus and Turkmenistan receive NTR tariff treatment under an annual Presidential waiver. Turkmenistan became subject to an annual waiver in 2003, following the reimposition of an exit visa requirement.

In 2000, pursuant to specific legislation, the President terminated application of Title IV to Kyrgyzstan, Albania and Georgia. These countries now receive permanent normal trade relations (PNTR) treatment. In 2004, Congress passed the Miscellaneous Trade and Technical Corrections Act of 2004 which authorized the President to terminate application of Jackson-Vanik to Armenia. On January 7, 2005, the President signed a proclamation terminating application of Jackson-Vanik to Armenia and granting PNTR tariff treatment to products of Armenia. The Administration continues to consult with the Congress and interested stakeholders with a view to removing Russia and the other NIS republics that comply fully with Jackson-Vanik ammendment's freedom of emigration provisions from the coverage of Title IV's provisions.

If a country is still subject to Jackson-Vanik at the time of its accession to the WTO, the United States has invoked the "non-application" provisions of the WTO. In such cases, the United States and the other country in effect have no "WTO relations." This situation, among other things, prevents the United States from bringing a WTO dispute based on a country's violation of the WTO or of commitments the country undertook as part of its WTO accession package. (See Chapter II for further information.) Based on the President's proclamation granting products from Armenia PNTR treatment, the United States and Armenia can apply the WTO between them and have recourse to WTO dispute settlement procedures. Among NIS countries still subject to Jackson-Vanik, Moldova is currently the only WTO Member for which the United States has invoked the WTO non-application provisions.

2. Intellectual Property Rights

Since the United States has concluded bilateral agreements covering IPR protection throughout the NIS, USTR works to ensure compliance by these countries with their IPR obligations. In 2000, the transitional period granted developing countries and formerly centrally planned economies for compliance with the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) expired. Accordingly, USTR has conducted a close examination of compliance of WTO Members in the region with the TRIPS

Agreement. The United States has cooperated with, and provided technical assistance to, the countries in the region to help improve the level of IPR protection. Copyright and trademark piracy has been a widespread and serious problem throughout much of the NIS. Customs and law enforcement authorities in the region are making slow progress in upgrading these countries' enforcement efforts, but continued close monitoring and technical assistance are still warranted.

Two countries in the region have IPR issues that merit special mention:

a. The Russian Federation – Widespread Optical Media Piracy and Other Issues

Piracy of U.S. copyrighted material, including films, videos, sound recordings, and computer software, is a growing problem in Russia, estimated by U.S. industry to exceed $1 billion annually. In April 2004, Russia was again placed on the Special 301 "Priority Watch List" because of deficiencies in both the protection and enforcement of IPR. Although Russia has revised a number of IPR laws, including those on the protection of copyrights, trademarks, patents, integrated circuits and plant varieties, Russia has not issued regulations on protection against unfair commercial use of undisclosed test data submitted to obtain marketing approval of pharmaceuticals and agricultural chemicals, a key requirement of the TRIPS Agreement. In addition, Russia needs to change its reciprocity-based system for registration and protection of geographic indications.

Enforcement of IPR remains a pervasive problem. The prosecution and adjudication of intellectual property cases remains sporadic and inadequate; there is a lack of transparency and a failure to impose deterrent penalties. Russia's customs administration also needs to significantly strengthen its enforcement efforts.

In October 2002, as a result of U.S. efforts to work with Russia to address the growing optical media piracy problem, Russia established an inter-ministerial task force chaired by the Russian Prime Minister. Since the creation of this inter-ministerial commission, re-established after the March 2004 election, the Russian government has taken some steps to remedy the optical media piracy problem, including raids on several of the illegal plants in operation, but piracy remains rampant and the number of plants illegally producing optical media continues to grow. Immediate adoption of effective enforcement measures to address optical media piracy is necessary, including vigorous action against illegal optical media plants and the adoption of a comprehensive regulatory framework dealing with the production and distribution of optical media.

b. Ukraine – Optical Media Piracy

In 1999, U.S. industry estimated that Ukrainian pirates exported over 35 million pirated compact discs (CDs) to Europe and elsewhere. This represented over $200 million in lost revenues to the industry. In June 2000, Ukrainian President Kuchma committed to a plan of action to stop the unauthorized production of CDs and to enact legislation to outlaw such piracy by November 1, 2000. However, due to Ukraine's failure to pass an adequate optical disc licensing law, USTR designated Ukraine a Priority Foreign Country in March 2000 and initiated a Special 301 investigation. In August 2001, USTR withdrew GSP beneficiary status from Ukraine. On December 11, 2001, USTR announced that the U.S. Government would impose 100 percent duties on a list of 23 Ukrainian products with an annual trade value of approximately $75 million contingent upon the outcome of a vote on an optical media licensing law in the Ukrainian Parliament scheduled for December 13, 2001. When Ukraine failed to adopt the optical media licensing law, USTR announced on December 20, 2001 that the sanctions would take effect January 23, 2002. Ukraine has subsequently adopted an optical media licensing law, but due to flaws in the legislation, the sanctions currently remain in effect pending amendment to the optical medial licensing law to make it effective and further enforcement efforts on the part of the Ukrainian Government.

3. Generalized System of Preferences (GSP)

Most of the NIS (Armenia, Georgia, Moldova, Kazakhstan, Kyrgyzstan, Russia and Uzbekistan) participate in the GSP program. In 2004, Azerbaijan submitted an application for designation as a beneficiary country under the GSP program which is currently under consideration. Tajikistan and Turkmenistan have not yet applied to be designated as eligible to receive the benefits of the GSP program. Belarus' GSP benefits were suspended in 2000 due to worker rights violations.

During annual GSP product reviews, the United States received several petitions requesting changes in the products imported from the NIS that are eligible for GSP benefits. In 2004, the United States reviewed the continued GSP eligibility of wrought titanium, which has been included in the GSP program since 1997. GSP benefits for wrought titanium were withdrawn effective November 8, 2004.

USTR has also conducted annual reviews of country practices, in response to petitions from the U.S. copyright industry, to determine several countries' eligibility to receive GSP benefits. In late 2000, based on significant improvement in Moldova's IPR regime, the U.S. copyright industry withdrew its GSP petition with respect to Moldova. In August 2001, USTR withdrew GSP beneficiary status from Ukraine (see subsection on Ukraine - Optical Media Piracy above). In 2003, due to improvements made to Armenia's IPR regime, the U.S. Government terminated review of the industry's petition with respect to Armenia. The reviews of Kazakhstan, Russia and Uzbekistan remain ongoing (see subsection on the Russian Federation - Widespread Optical Media Piracy above).

4. WTO Accession

Prior to the end of 2003, four NIS countries (Kyrgyzstan, Georgia, Moldova and Armenia) had become members of the WTO. WTO accession working parties have been established for an additional seven NIS countries (the Russian Federation, Ukraine, Azerbaijan, Belarus, Kazakhstan, Tajikistan and Uzbekistan). Turkmenistan has not yet applied for observer status or membership in the WTO.

The United States supports accession to the WTO on commercial terms and on the basis of an acceding country's implementation of WTO provisions immediately upon accession. The United States has provided technical assistance, in the form of short- and long-term advisors, to many of the countries in the region in support of their bids for WTO accession. (See Chapter II for further information on accessions.)

Since Russia applied for membership, the United States has strongly supported Russia's efforts to join the GATT 1947 and then the WTO, through active participation in the WTO Working Party established to conduct the negotiations and through technical assistance to move Russia's trade regime towards conformity with WTO rules. Negotiations on Russia's accession to the WTO were particularly active in 2004. Although Russia enacted and amended laws and regulations to bring its trade regime into conformity with WTO provisions, considerable work remains to be done in this area. In a series of Working Party meetings through November 2004, Russia continued to describe changes to its trade regime, with WTO delegations noting specific concerns and areas that require further work. The United States and Russia also continued bilateral discussions on Russia's offers on goods and services market access throughout 2004.

Reforms undertaken for WTO accession will help Russia achieve a market-oriented economy, strengthen its trade regime and integrate better into the global economy. Adopting WTO provisions will give Russia a world-class framework for IPR protection, application of customs duties and procedures, and other requirements to imports that will encourage increased investment and economic growth. Completion of the accession negotiations will depend on how rapidly Russia implements WTO rules and concludes negotiations on goods and services with current WTO Members.

5. Bilateral Trade Agreements and Bilateral Investment Treaties (BITs)

The United States has some form of bilateral trade agreement with each of the NIS countries. The United States currently has BITs in force with seven NIS countries (Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, and Ukraine) and has signed BITs with three others (Russia, Belarus, and Uzbekistan). Entry into force for these three BITs is pending ratification by one or both parties and the final exchange of instruments of ratification.

6. Country Specific Issues

The United States continued to encounter a number of additional country specific trade issues in the region. The major items are discussed below:

a. Russia – Market Access for Poultry, Pork and Beef

The United States was actively engaged with the Russian government throughout 2004 to ensure that U.S. producers of poultry, pork and beef continue to have access to the Russian market. In September 2003, the United States reached an agreement in principle with the Russian government that establishes market access parameters for U.S. exports of poultry, pork and beef. USTR continued to work with the Russian Government in 2004 to finalize this agreement. Technical discussions also continue to resolve issues concerning poultry plant inspection and certification.

b. Russia – Product Standards, Testing, Labeling and Certification

U.S. companies still cite product certification requirements as a principal obstacle to U.S. trade and investment in Russia. In the context of Russia's WTO accession negotiations, we continue to urge Russia to bring its product regulations and certification requirements into compliance with international practice. The Russian government is now attempting to put in place the necessary legal and administrative framework to establish transparent procedures for developing and applying standards, technical regulations and conformity assessment procedures in Russia in order to better comply with WTO rules.

There has been some movement to eliminate duplication among regulatory agencies and to clarify categories of products subject to certification. However, businesses are still experiencing difficulties in getting product approvals in key sectors. Certification is a particularly costly and prolonged procedure in the case of pharmaceuticals, alcoholic beverages, and telecommunications equipment. In many sectors, type certification or self-certification by manufacturers is currently not possible. Veterinary certification is often arbitrary and needs to be more transparent and based on science. Russian phytosanitary import requirements for certain planting seeds (notably corn, soybeans and sunflowers) appear to lack scientific basis and have blocked imports from the United States. Discussions to ease or eliminate burdensome Russian requirements are ongoing.

c. Russia – Aircraft Market Access

Despite continued bilateral assurances that the Russian Government would join the Agreement on Trade in Civil Aircraft, Russia has expressed an unwillingness to join the Agreement in the context of WTO accession. We continue to seek Russia's commitment to join the Agreement, including a commitment to eliminate tariffs on aircraft and parts.

F. Mediterranean/Middle East

Overview

U.S. trade relations with the countries of Northern Africa and the Middle East have considerable value for both U.S. commercial and foreign policy interests. The events of September 11, 2001 highlighted the importance of supporting peace and stability in the region by fostering economic development. The U.S. Free Trade Agreements (FTAs) in force with Israel

and Jordan, the FTAs negotiated with Morocco, and Bahrain and the U.S. commitment to negotiate FTAs with the United Arab Emirates and Oman, together with the Trade and Investment Framework Agreements (TIFAs) established with most countries in the region, provide the context for our bilateral trade policy discussions with these countries, which are aimed at increasing U.S. exports to the region and assisting in the development of intra-regional trade.

Egypt

In 2004, there was growing momentum in several areas of the United States-Egypt trade relationship. A new ministerial economic team appointed to the Egyptian cabinet in July, 2004 took significant steps towards implementing economic reforms long urged by the United States, including in such areas as customs administration, tariff rate reductions, and banking and tax reform. These measures included action to address longstanding issues affecting U.S. firms in Egypt. Following a United States request for WTO dispute settlement consultations, Egypt replaced its specific import duties on apparel products with *ad valorem* duties that appear to be consistent with Egypt's WTO commitments. (The United States continues to closely monitor Egypt's compliance with agreed rules on apparel imports.) As part of its economic reform efforts, Egypt committed to reducing high taxes that have negatively impacted U.S. soft drink companies' operations and investments in Egypt. The United States and Egypt also continued to seek improved cooperation in the multilateral sphere on issues related to the DDA.

2004 marked a setback in Egypt's efforts to strengthen intellectual property rights (IPR) protection. Due to Egyptian marketing approvals for locally produced copies of patented U.S. pharmaceutical products, as well as deficiencies in Egypt's copyright enforcement regime, judicial system and trademark enforcement, Egypt was raised to the Special 301 Priority Watch List. IPR protection is a critical component of U.S. Free Trade Agreements and improvements in Egypt's IPR regime will be an important part of Egyptian efforts to lay the basis for an agreement with the United States.

Israel

2004 was a period of intense engagement between the United States and Israel during which the two countries worked to expand their bilateral trade relationship. These efforts included a series of meetings in Washington and Israel between U.S. Trade Representative Robert B. Zoellick and Israeli Vice Prime Minister Ehud Olmert, as well as a meeting in July of the United States-Israel FTA Joint Committee.

Progress was made in several areas. A longstanding IPR issue was resolved, with Israel confirming that it will continue to provide national treatment for U.S. rights holders of sound recordings. As noted in the Free Trade Agreements section, the United States and Israel concluded a new bilateral agreement on trade in agricultural products following nearly three years of negotiations. And, as noted below, the United States approved Israel's and Egypt's request to establish Qualifying Industrial Zones.

While these were constructive developments in the bilateral relationship, the United States remains concerned by its trade deficit with Israel and longstanding market access issues. In 2004, the United States worked with Israel, including during the July meeting of the FTA Joint Committee, to address market access issues in areas such as Israeli standards and government procurement. Lack of adequate intellectual property rights protection in Israel was also a U.S. concern. In a series of meetings undertaken during a Special 301 Out of Cycle Review of Israel, the United States urged Israel to implement an effective data protection regime for confidential data submitted by innovative firms to the Israeli Government for marketing approval. Despite extensive efforts by the United States, significant differences remained at year's end between the two sides regarding the steps that Israel needs to take to provide adequate and effective data protection.

Free Trade Agreements

The FTAs with Morocco and Bahrain, which are discussed earlier in this chapter (Section A), will support the significant economic and political reforms underway in both countries, and create improved commercial and market opportunities for U.S. exports. The United States also announced the intention to negotiate FTAs with the United Arab Emirates and Oman. U.S. negotiations with Israel on a new bilateral agreement on trade in agricultural products are discussed earlier in this chapter in the Free Trade Agreements section.

Trade and Investment Framework Agreements

In 2004, the United States concluded Trade and Investment Framework Agreements (TIFAs) with Kuwait, Yemen, the United Arab Emirates, Qatar, and Oman. USTR has previously negotiated TIFAs with Tunisia, Algeria, Morocco, Bahrain, Egypt, Jordan, and Turkey. Each TIFA establishes a bilateral Trade and Investment Council that enables representatives to meet directly with their counterparts regularly to discuss specific trade and investment matters and to negotiate the removal of impediments and barriers to trade and investment.

WTO Accession

Negotiations on the accession to the WTO of Saudi Arabia, Algeria, Lebanon, and Yemen continued in 2004. The United States supports accession to the WTO based on a new Member's implementation of WTO provisions immediately upon accession and of a new Member's commercially meaningful market access commitments for U.S. goods, services, and agricultural products.

Qualifying Industrial Zones

a. Egypt

Qualifying Industrial Zones (QIZs) are established pursuant to legislation passed by the Congress in October 1996, authorizing the President to proclaim elimination of duties on articles produced in the West Bank, Gaza Strip, and qualifying industrial zones in Jordan and Egypt. The President delegated the authority to designate QIZs to the USTR. Until December 2004, all QIZs had been established in Jordan. 2004 saw the fulfillment of the potential for the QIZ initiative to include Egypt.

In December, 2004, U.S. Trade Representative Robert B. Zoellick designated three QIZs in Egypt: the Greater Cairo QIZ, the Alexandria QIZ and the Suez Canal Zone QIZ. In approving Egypt's request for QIZ designations, the United States helped bring to successful conclusion months of prolonged efforts by Egypt and Israel to reach a QIZ agreement, the most significant economic agreement between the two countries in twenty years.

The USTR's decision to approve Egypt's and Israel's request to establish QIZs reflects continuing U.S. support for expanded economic and political ties between the two countries. In addition, the QIZs are expected to further Egypt's efforts to liberalize its economy and integrate economically with its regional neighbors and in the global market.

b. Jordan

Qualifying Industrial Zones (QIZs) continue to be a bright spot in Jordanian economic performance. Thirteen QIZs have been established in Jordan since 1998. The duty free benefits provided by QIZs remain particularly important for Jordanian products for which duty free treatment has not yet been phased in under the United States-Jordan FTA. QIZs played an important role in helping to boost Jordan's exports to the United States from $16 million in 1998 to $673 million in 2003. Jordanian exports to the United States totaled $875 million as of October 2004, and will likely top $1 billion for the year. Jordan estimates that QIZs have created up to 35,000 jobs. Peak QIZ employment is forecast at 40,000 to 45,000. Investment in the establishment of QIZs is approximately $85 million to $100 million, which is expected to grow to $180 million to $200 million when all projects are completed.

In 2004, USTR designated two QIZs in Jordan, the Resources Company for Development and Investment Zone (RCDI) and Al Hallabat Industrial Park. The Zarqa Industrial Zone was designated in 2001, and five QIZs were designated in 2000: The Investors and Eastern Arab for Industrial and Real Estate Investments Company Ltd. (Mushatta International Complex), El Zay Ready Wear Manufacturing Company Duty-Free Area, Al Qastal Industrial Zone, Aqaba Industrial Estate, and the Industry and Information Technology Park Company (Jordan CyberCity Company). Four QIZs were designated in 1999, Al-Tajamouat Industrial City, Ad-Dulayl Industrial Park, Al-Kerak Industrial Estate, and Gateway Projects Industrial Zone. The first QIZ in Jordan, Irbid, opened in 1998.

The steady growth of QIZs illustrates the economic potential of regional economic integration. In addition to the competitive benefit of duty-free status for QIZ exports to the United States, QIZs increasingly offer participating companies the advantages of modern infrastructure and strong export expertise and linkages. This evolution should serve to increase the economic benefits of QIZs. (For a discussion of the United States-Jordan Free Trade Agreement, see Section A on Free Trade Agreements earlier in this chapter.)

Intellectual Property Rights

Protection of intellectual property rights remains a priority in the Middle East region. Egypt, Kuwait, Lebanon and Turkey are on the Special 301 Priority Watch List, while Israel and Saudi Arabia are on the Watch List.

G. Southeast Asia and the Pacific

Overview

The Southeast Asia and Pacific region continues to enjoy significant trade and economic growth. This growth is largely the result of a strong commitment by many of the regional governments to economic reform and liberalization. While additional work is needed to open markets in Southeast Asia and the Pacific, considerable progress has been made. The commitment of regional leaders in the Asia Pacific Economic Cooperation (APEC) forum to make further progress in expanding regional trade and investment has been an important factor in spurring this regional trend (see Chapter III, section B.5 for information on APEC). In addition, the Administration remains committed to using the Enterprise for ASEAN Initiative (EAI) to further open markets of interest to American farmers, ranchers, manufacturers, and services providers (see Chapter III, section B.2 for information on the EAI). It also will maintain efforts to ensure implementation of bilateral and multilateral agreements, including those protecting intellectual property, which is critical to U.S. exporters in high-technology, entertainment and other key sectors.

Highlights of the achievements in this region during 2004:

- Implementation of the United States-Singapore Free Trade Agreement. On January 1, 2004, the United States-Singapore Free Trade Agreement entered into force. The FTA's provisions cover not only goods and services, but customs procedures and cooperation, investment, competition policy, intellectual property rights, electronic commerce, transparency, labor and environment. This agreement with the United States' 12th largest trading partner will eliminate trade barriers between the two countries and is already spurring bilateral trade and investment.

- Conclusion of the United States-Australia Free Trade Agreement. The United States concluded negotiations on an FTA with Australia on February 8, 2004, and the agreement entered into force on January 1, 2005. The FTA with Australia will boost two-way trade in goods and services, create employment opportunities in both countries, and reduce barriers that U.S. exporters face. In addition to goods and services, the FTA covers a range of issues, including investment, intellectual

property rights, customs procedures, competition policy, government procurement, pharmaceuticals, labor, and the environment. The United States also sees the FTA as deepening the already close cooperation between the United States and Australia in the WTO.

- Progress in Free Trade Agreement Negotiations with Thailand. In October 2003, President Bush announced his intent to enter into FTA negotiations with Thailand, reaffirming his commitment under the EAI to strengthen trade ties with countries in the ASEAN region that are actively pursuing economic reforms. The United States and Thailand held two rounds of FTA negotiations in 2004, making initial progress. An FTA with Thailand, currently the United States' 19th largest trading partner, will significantly increase goods and services trade and reduce barriers in many sectors. A United States-Thailand FTA also will lead to more bilateral investment opportunities and strengthen longstanding economic and security ties between our countries.

Country Specific Activities in the Region

The United States advanced regional and bilateral trade initiatives in the Southeast Asia and Pacific region in 2004 to expand opportunities for U.S. industry, farmers, and ranchers. The United States pursued FTAs and undertook other bilateral work to strengthen trade ties with the Southeast Asia and Pacific region and eliminate barriers faced by U.S. exporters in this region. Regionally, the United States continued to work with ASEAN countries to make progress on the EAI and with APEC members to reaffirm their commitment to regional and global trade liberalization and the successful conclusion of the DDA.

1. Australia

In parallel with the FTA negotiations, which are discussed earlier in this chapter in Section A, the United States continued the extensive and detailed discussions with Australia on sanitary and phytosanitary (SPS) issues begun in 2002. The two sides continued to make progress on specific issues. Notably, Australia issued final regulations in 2004 allowing the entry of processed pork. Nonetheless, the United States remains concerned about the stringency of Australia's SPS regime, particularly for poultry, Florida citrus, stone fruit, apples and grapes.

2. New Zealand

United States and New Zealand officials met several times in 2004 to discuss outstanding bilateral trade issues. With respect to improving protection of intellectual property rights, the New Zealand government in 2003 passed legislation banning parallel imports of new films. While this legislation was a positive step, in 2004 the United States indicated that additional action was needed to address longstanding concerns related to parallel imports of other copyrighted material, such as software and sound recordings on optical media. In addition, the United States remains concerned about pharmaceutical patent protection and a government proposal to allow format shifting of sound recordings. U.S. manufacturers' representatives have continued to assert that a planned joint New Zealand effort with Australia to regulate therapeutic products could adversely affect the price competitiveness of many U.S. medical devices and complementary goods in the New Zealand market.

In 2004, the United States continued to raise concerns over New Zealand's biotechnology food labeling requirements. U.S. officials continued to discuss with the New Zealand government how it might administer its sanitary and phytosanitary standards to permit the import of additional U.S. agricultural products. U.S. officials have also urged the New Zealand government to take steps to increase competition in its telecommunications market. The United

States will continue working with New Zealand under our TIFA to address these and other bilateral trade issues. We will also work with the New Zealand government in APEC and the WTO to advance our common trade interests.

3. The Association of Southeast Asian Nations (ASEAN)

a. Indonesia

i. General

The United States has worked to bolster its trade and investment relationship with Indonesia, seeking to help strengthen Indonesia's economy and encourage liberalization and other economic reforms that would generate additional trade and foreign investment. The United States watched with interest as the Administration of newly elected President Susilo Bambang Yudhoyono in 2004 announced its intention to conduct a review of Indonesia's trade policy regime and implement reforms to improve the nation's trade and investment climate, and we will closely monitor these efforts. Senior U.S. and Indonesian trade officials, including at the ministerial level, met several times in 2004 to discuss the range of outstanding issues affecting the U.S.-Indonesian economic relationship and other issues covered under our bilateral TIFA. They discussed the need to address unresolved issues under the TIFA, to resolve bilateral issues, and other steps to help lay the groundwork for a free trade agreement, as envisioned by the EAI. The United States and Indonesia also supported in 2003 the launch of a private study on the impact of an FTA on the two economies. We expect to review its results in 2005. Indonesia is the United States' 28th largest goods trading partner, with $12 billion in two-way trade in 2003.

ii. Intellectual Property Rights

The United States has continued to urge Indonesia to take steps to strengthen its IPR regime. USTR placed Indonesia on the Special 301 Priority Watch List in 2004 due to concerns over continued optical media piracy and weaknesses in Indonesia's IPR enforcement. Indonesia took some noteworthy steps to strengthen its IPR regime over the past year, but significant problems remain. In November 2003, the Indonesian government submitted new draft regulations governing optical media production for Presidential approval. In October 2004, these "Optical Disc Regulations" were signed into law by then President Megawati Sukarnoputri. The United States is encouraging Indonesia to begin enforcing these Optical Disc Regulations promptly.

Overall, protection of intellectual property rights remains relatively weak and U.S. industries continue to report the presence of illegal optical media production lines. U.S. industries also have raised serious concerns about counterfeiting and trademark violations of a wide range of products in Indonesia. While a limited number of raids against retail outlets for pirated optical media products have occurred, long delays remain in prosecuting intellectual property cases. Sentences continue to be light and insufficient to deter intellectual property piracy, further undermining the criminal penalties laid out in Indonesia's copyright law. The United States worked with Indonesia under our TIFA on an IPR action plan, which the United States first provided to Indonesia in May 2002. The United States continued to encourage Indonesia to implement the specific recommendations in the IPR action plan, including taking steps to improve the legal framework and enforcement mechanisms to protect IPR.

iii. Poultry Imports

Appropriate officials in the United States and Indonesia have worked together to ensure that U.S. poultry exports meet Indonesian requirements for Halal certification, but Indonesia is maintaining its ban on imports of U.S. poultry parts. The U.S. Government continued to raise this issue with the Indonesian government in 2005 and will work with Indonesia to eliminate the ban.

iv. Textiles

In 2004, the United States raised recurring concerns about the Indonesian government's 2002 Textiles Decree, which effectively precludes textile imports into Indonesia other than for use as inputs into other products. The U.S. government will continue to press the Indonesian government to address our concerns on this issue. The United States also urged Indonesia to prepare its domestic textile producers to compete under a post textile quota regime, as the WTO Agreement on Textiles and Clothing expired on December 31, 2004.

b. Malaysia

i. Overview

The strong United States-Malaysia trade relationship was bolstered when U.S. Trade Representative Robert B. Zoellick and Malaysian Minister of International Trade and Industry Rafidah signed a Trade and Investment Framework Agreement on May 10, 2004. The two partners also committed to greater cooperation in regional and multilateral fora. The United States will continue to encourage Malaysia to further open and liberalize its economy, which is heavily trade-dependent. Malaysia is the United States' 10th largest trading partner, with $38 billion in two-way goods and services trade in 2003.

ii. Intellectual Property Rights

Malaysia has a strong public commitment to IPR enforcement, and has taken steps to strengthen its IPR regime over the past several years, including determined efforts to eliminate optical media piracy. Although Malaysia has made steady progress, the United States has continuing concerns about production overcapacity, much of which appears to make its way to export markets illicitly, and over Malaysia's unwillingness to deter piracy and counterfeiting by prosecuting IPR offenders and imposing sufficiently deterrent penalties. In the summer of 2003, Malaysia announced plans to implement price controls on optical discs, a proposal about which the United States has voiced significant concern. In the second half of 2004, U.S. industry and the United States Government raised concerns about Malaysia's plan to require hologram labeling of pharmaceutical products in an effort to combat counterfeiting. Implementation of this plan has been delayed to allow further consultation between the Malaysian government and stakeholders. The U.S. Government will work with Malaysia to encourage it to adopt best international practices to combat IPR violations and to further strengthen its ability to prosecute IPR crimes.

iii. Agriculture

The United States has been addressing several agricultural issues with Malaysia, primarily related to U.S. exports of almonds and chicken. Malaysia detained several shipments of U.S. exports of raw and processed almonds after Malaysian testing revealed contamination with Salmonella enteritidis. Working with U.S. industry and Malaysian officials, the United States convinced Malaysia in October to eliminate the intensified inspection program introduced in the summer of 2004 while working to discover and eliminate the source of contamination. With respect to chicken meat, Malaysia operates its import license system to control the supply available on the market, and is known to deny licenses for imports or limit quantities available to importers. The United States will continue to work with Malaysia to ensure market access for U.S. chicken meat.

c. Philippines

i. Overview

The United States sought to further enhance its trade and investment dialogue with the Philippines in 2004, holding several rounds of consultations under the bilateral TIFA. The two sides have used these meetings to make progress in addressing outstanding concerns. In addition, the United States used these meetings to urge the Philippines to resist taking any steps that might run counter to continued progress toward liberalizing its trade and investment regime. The United States also asked the Philippines to

reaffirm its support for global trade liberalization as outlined in the WTO DDA. President Arroyo announced in June 2004 a "10 Point Agenda" to revitalize the Philippine economy. That agenda sets ambitious goals, such as the creation of six million jobs in six years, balancing the budget, and large investments in infrastructure. The United States will continue to consult with the Philippines on its plans to prioritize and meet the targets in the Agenda. The Philippines is the United States' 24th largest goods trading partner, with $18.1 billion in two-way trade in 2003.

ii. Intellectual Property Rights

The Philippines made some progress in its efforts to strengthen IPR protection in 2004. To support the Philippines' efforts to strengthen its IPR regime, the United States in August 2002 provided recommendations to the government of the Philippines on an IPR Action Plan that included specific steps on judicial, legislative, and enforcement issues.

In 2004, the Philippines passed the Optical Media Act, which was a top U.S. priority. This law creates a regulatory regime for optical media manufacturing equipment in order to curb rampant pirate production of optical media. The law also provides a legal basis for enforcement activities against IP-infringing optical media, such as pirated music, software and film CDs. However, we continue to encourage the Philippines to issue implementing regulations, which must occur in order for the law to be fully enforced.

The Optical Media Board (OMB), the successor agency to the Videogram Regulatory Board, has significantly increased the number of raids against IP pirates. The OMB has specifically targeted vendors in shopping malls and worked to encourage landlords to agree to include a clause in their leases that makes sale of IP-infringing goods the basis for eviction.

In addition, the Philippines' Bureau of Customs (BOC) passed regulations aimed at improved enforcement against trade in pirated products and, in 2003, BOC established an IP enforcement unit. Unfortunately, the IP enforcement unit appears not to be fully staffed, perhaps due to the fact that it is not funded by its own BOC budget line item.

Other concerns remain. The Philippines has yet to pass copyright amendments that would update its domestic law to address electronic commerce piracy. In addition, while the increased number of raids carried out by the OMB are indeed commendable, the Philippines has been slow to prosecute IPR offenders and reluctant to impose either criminal or civil penalties as permitted under its domestic law that would act as a deterrent. Consequently, the lack of effective IPR enforcement in the Philippines results in tens of millions of dollars in losses for U.S. industry every year.

iii. Telecommunications

The U.S. and Philippine governments successfully worked together to begin reopening U.S. access to the Philippines telecommunications networks. In February 2003, Philippines telecommunications companies blocked access to their networks to incoming call traffic from certain U.S. and other foreign telecommunications companies that were unwilling to agree to tariff increases the Philippines companies wanted to impose. Senior U.S. Government officials, including from USTR and the FCC, raised concerns over this action with appropriate Philippine officials. In November 2003, some telecommunications connections between the two countries were restored and ongoing negotiations resulted in a complete restoration of telecommunications links in 2004.

iv. Customs

The Philippines has made progress over the last several years toward bringing its customs regime into compliance with its WTO obligations, but the United States has continued to have concerns about inconsistent application of customs rules and procedures, undue and costly processing delays, and the role of the Philippine private sector in the valuation process. The Philippines has outlined steps it has taken and plans to take to strengthen the enforcement and consistency of its customs rules and improve enforcement of IPR

piracy at the border. The United States will continue to closely monitor this issue.

v. Sanitary and Phytosanitary (SPS) Issues

Throughout 2004, the United States requested that the Philippines reform the manner in which it administers its Veterinary Quarantine Clearance (VQC) certificate program. Currently, VQCs are issued in fixed tonnage amounts that do not necessarily match the tonnage of a given shipment of U.S. meat and poultry exports to the Philippines. VQCs issued with fixed tonnage assigned to them force importers to waste VQC allotments, because excess VQC tonnage cannot be reclaimed in any way. This practice impedes the flow of U.S. meat and poultry exports that otherwise meet Philippine VQC standards. We will continue to press the Philippines to permit VQCs to be issued to match the tonnage of incoming shipments or for importers to be able to "carry over" any unused tonnage to subsequent shipments of U.S. meat and poultry.

d. Singapore

The United States and Singapore negotiated a bilateral Free Trade Agreement (FTA), which was signed in May 2003 and entered into force on January 1, 2004. United States-Singapore trade issues, including FTA implementation issues, are discussed in the section on bilateral and regional negotiations (see Chapter III, section A.4).

The FTA significantly liberalizes trade in goods and services, and provides strong protection for intellectual property and for U.S. investors. Trade grew substantially during the first year of the FTA. On an annualized basis, U.S. exports to Singapore grew by more than 19 percent, while U.S. imports from Singapore grew by more than 3 percent.

e. Thailand

i. Overview

The United States continued to strengthen its trade ties with Thailand in 2004, making progress during the initial two rounds of FTA negotiations. This followed President Bush's announcement in October 2003 of his intent to enter into FTA negotiations with Thailand, in accordance with TPA procedures and guidance. Thailand was the United States' 19th largest trading partner, with $21 billion in two-way trade in 2003.

ii. Intellectual Property Rights

The United States has continued to urge Thailand to strengthen its IPR regime. To support Thai efforts, the United States in 2003 recommended implementation of an IPR Action Plan that included specific steps on judicial, legislative, regulatory, and enforcement issues. Thailand made some progress in 2004 to implement these recommendations, but significant and sustained progress is still needed.

In 2004, the Thailand passed the Optical Disk Plant Control Act, which is intended to enhance the authority and capabilities of Thai enforcement officials to take action against pirate optical disc producers. However, the United States has significant concerns with the law. Thai authorities are drafting implementing regulations to accompany the law, and the United States is continuing to strongly urge Thailand to remedy the law itself as well as ensure that the regulations address some of the weaknesses in the current law. In addition, the United States is continuing to urge the Thai government to amend its copyright law to provide more effective copyright protection and be consistent with the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty.

Thailand intensified enforcement efforts in 2004. However, street-level piracy still appears to be widely prevalent. The United States has strongly urged Thailand to take additional steps to ensure a high level of enforcement on a

sustained basis, which is critical to any serious effort to address intellectual property piracy. U.S. industry estimates losses due to piracy at over $188 million in 2004.

iii. Customs

Thailand continued to take steps to improve its customs practices in 2004, building on U.S. recommendations proposed in the 2003 Customs Action Plan and discussions held during the FTA negotiations. While some positive customs policy changes are slow in filtering down through the bureaucracy, there has been some progress to date and the Thai government seems committed to improving its customs procedures and facilitating trade.

Thai Customs is taking steps to implement fully the transaction value methodology required by the WTO Customs Valuation Agreement through compliance with related WTO requirements, proposed legislation and improved procedures and training. Thailand also has expanded customs clearance working hours, increased the use of electronic and paperless customs procedures, and created an English-language version of the Customs Department website.

Despite this initial progress, the Thai government needs to make additional progress to enhance the transparency and efficiency of its customs regime. Thailand also must continue to implement its customs valuation obligations to ensure full compliance with WTO rules. The United States will continue to monitor Thailand's implementation of its customs valuation law and urge it to make further improvements this year.

iv. Market Access

Although Thailand continues to reduce selected duties in line with its WTO and ASEAN FTA commitments, its average tariffs remain relatively high. The United States will seek to address in the FTA negotiations the issues relating to Thailand's relatively high tariffs and complicated tariff regime, in particular in the agricultural, automotive, alcoholic beverage, textile, and electronics sectors. Thailand also has implemented non-transparent price controls on some products and has significant quantitative restrictions, which impede market access. In this regard, the United States is concerned that access to tariff-rate quotas for agricultural products are managed in an arbitrary and non-transparent manner and that for some products Thailand requires that importers purchase a certain amount of domestically produced product before being granted licenses for imported product.

Arbitrarily-applied sanitary and phytosanitary standards also serve as constraints to the import of certain processed foods and agricultural products. The United States is concerned that testing, certification, and licensing requirements and procedures for processed foods and agricultural biotechnology products are more trade restrictive than necessary and do not have a scientific basis. In particular, Thailand published new health certification requirements on September 20, 2004, as "Decree 11," which were to come into force on December 30, 2004. Decree 11 was notified to the WTO/SPS Committee on October 21, 2004. At the request of a number of countries, including the United States, Thailand postponed implementation of Decree 11 until April 1, 2005, due to concerns that the roughly 90 days between initial publication and the entry into force was not sufficient time for consideration of other countries' comments. The United States has concerns that the provisions of Decree 11 are not consistent with international standards and require certification by U.S. exporters of the absence of certain chemicals that are not approved for use in the United States. These certifications appear to be more trade restrictive then necessary and do not appear to be based on scientific information. The United States is seeking to address these issues within the context of the FTA, as well as bilateral and multilateral meetings.

f. Cambodia

In September 2003, at the Cancun Ministerial Meeting, WTO Members voted to approve Cambodia's accession to the WTO. After

completing its domestic ratification procedures, Cambodia became a WTO Member on October 13, 2004.

The United States and Cambodia began negotiation of a TIFA agreement shortly after Cambodia joined the WTO. These negotiations should be completed early in 2005. Cambodia has embarked on a process of reform, both to support its domestic economy and to implement its WTO obligations. The TIFA will provide a formal mechanism for the United States and Cambodia to engage on economic and trade issues of mutual interest, including Cambodia's reform program and WTO implementation.

The Bilateral Textile Agreement the United States and Cambodia concluded in 1998 and renewed in 2001, expired on December 31, 2004. When Cambodia became a WTO member, the United States notified the agreement to the WTO under the Agreement on Textiles and Clothing.

g. Normalization of Trade Relations with Vietnam and Laos

i. Vietnam

On July 13, 2000, the United States and Vietnam signed an historic bilateral trade agreement (BTA), concluding a four-year negotiation to normalize trade relations. Upon its entry into force on December 10, 2001, the United States extended NTR treatment to products of Vietnam. Under the BTA, Vietnam committed to make sweeping economic reforms, which created trade and investment opportunities for both U.S. and Vietnamese companies, and has been the foundation of United States – Vietnam trade and economic relations. Vietnam remains subject to the Jackson-Vanik provisions of the Trade Act of 1974, however, which link continued eligibility for NTR treatment to sufficient progress on the issue of free emigration. Each year since 1998, the President has granted a waiver under Jackson-Vanik for Vietnam, thus clearing the way for Vietnam to receive annually renewed (as opposed to permanent) NTR treatment from the United States.

The Joint Committee established by the BTA has met annually in formal session since implementation of the agreement, most recently in May 2004. The primary purpose of the Joint Committee is to review implementation of the provisions of the BTA. While applauding Vietnam's commitment to economic reform, the United States underscored the importance of Vietnam moving quickly to meet the timetables for implementation contained in the BTA. The two countries also discussed Vietnam's pursuit of WTO membership and operation of the Unites States-Vietnam textile agreement. The next meeting of the Joint Committee will be held in the first half of 2005, at which we will review the first three years of implementation of the BTA.

ii. Laos

On September 21, 2003, the United States and Laos signed a comprehensive bilateral trade agreement (BTA), which was originally negotiated and initialed in 1997 and aimed at normalizing trade relations. Laos, unlike Vietnam, is not covered by the "Jackson-Vanik" provisions of U.S. trade law. As with the Vietnam agreement, however, the Laos agreement requires separate legislation authorizing the President to grant normal trade relations (NTR) status to Laos in order to bring into effect the bilateral trade agreement.

On December 3, 2004, the President signed H.R. 1047, the Miscellaneous Trade and Tariff Act of 2004, which included authority for the President to extend NTR treatment to products of Laos. Laos ratified the BTA on December 23, 2004. The United States will work with Laos to implement the provisions of the BTA and in its efforts to become a WTO Member. NTR for Laos became effective on February 4, 2005.

While Laos' small economy does not yet support a large retail market in pirated or counterfeit goods, small outlets are spreading. While enforcement is weak, some elements of the government of Laos are interested in creating strong domestic IPR legislation, particularly given Laos' desire to protect the intellectual

property created through Lao handicrafts and native music.

4. Republic of Korea

a. Economic and Trade Overview

The Republic of Korea is the United States' 7th largest export market, and 7th largest trading partner in terms of two-way goods trade. Economic growth and trade liberalization in Korea have created many opportunities for U.S. exporters and investors. However, protection of sensitive sectors and a legacy of government-led industrial policies have meant that in many areas, U.S. exporters continue to face barriers in the Korean market. Since 2002, the Administration of President Roh Moo-hyun has emphasized liberalization and structural reform as a way to boost Korea's flagging economic growth rate, attract foreign investment, and turn Korea into a "hub of Northeast Asia." The United States has worked closely with the Roh Administration to ensure that Korea's efforts at domestic regulatory reform address the priority concerns of U.S. exporters and investors, including enhancing regulatory transparency. In addition, the Unites States has strongly endorsed Korea's initiative to create an interagency Task Force coordinated by the Prime Minister's Office to update and strengthen Korea's intellectual property laws and enforcement efforts.

The United States and Korea meet regularly to consult on bilateral trade issues. Meetings held on a quarterly basis serve as the primary forum for discussing bilateral trade issues; those meetings are augmented by a broad range of senior-level policy discussions. Throughout 2004, the United States identified the following areas as the highest U.S. trade priorities: automotive, telecommunications, intellectual property, agriculture, pharmaceuticals, and subsidies, as well as the resolution of the screen quota issue. In addition, the U.S. and Korea have expanded discussions on the cross-cutting issue of regulatory reform and transparency. With bilateral and other trade agreements playing a growing role in both U.S. and Korean trade policy, both countries have noted that should meaningful progress be made in resolving bilateral trade irritants, the United States and Korea will want to review what further steps are warranted to deepen trade relations between our two countries.

The United States also coordinates with Korea in multilateral and regional fora where possible, and has encouraged Korea to play a leadership role commensurate with its economic and commercial strength. Despite differences on the issue of liberalization of the agricultural sector, the United States sought Korean cooperation in other areas of the Doha Development Agenda, and has valued Korea's contributions to WTO discussions on non-agricultural market access (NAMA) and trade facilitation. In the Asia Pacific Economic Cooperation (APEC) forum, the U.S. is working closely with Korea to ensure that Korea's APEC Chairmanship in 2005 is successful in promoting trade and investment liberalization in the Asia Pacific region; we have urged Korea to seize this opportunity to cement its reputation as one of the leading proponents of economic reform in Asia.

b. Regulatory Reform

U.S. exporters and investors seeking to do business in Korea have long cited problems with the lack of transparency in Korea's regulatory system. Although Korea's Administrative Procedures Act stipulates that the public comment period for draft laws and regulations shall be no less than 20 days, ministries do not provide more than the 20-day time frame, thus making public comment periods unreasonably short. In many instances the final version does not reflect the comments provided. Regulations are applied inconsistently or are reinterpreted and applied retroactively, resulting in penalties for those companies that sought to follow Korean government guidance.

As more U.S. companies increase their presence in Korea's economy, these administrative practices, which frequently involve regulatory measures rather than traditional trade measures like tariffs or quotas, will have greater impact on U.S. firms' access to the Korean market, and are

likely to become a greater focus of U.S. trade policy with Korea. During bilateral trade consultations in 2004, the United States outlined for Korean officials how Korea's administrative practices have adversely affected U.S. firms in the automotive, pharmaceutical, and agricultural sectors, as well as intellectual property right holders. The United States pressed for improvements, particularly for expanded notice-and-comment procedures, the publication of administrative actions, and comment, review and appeal procedures for subordinate statutes.

These bilateral efforts on regulatory transparency coincide with a Korean government focus on regulatory reform. In Korea, the Roh Government has charged the Deregulation Taskforce Team, the Corporate Difficulties Resolution Center, and the standing Regulatory Reform Committee to focus on different aspects of regulatory reform, both systemic and sector-specific. During trade consultations in 2004, the United States was briefed on the activities of these three bodies, and how they might address regulatory issues of concern to the United States. The United States expressed interest in working with the U.S. business community to submit U.S. recommendations to these three bodies on which Korean regulations might usefully be eliminated or amended.

c. Telecommunications

Korean government intervention in commercial aspects of the telecommunications sector, including in the selection and mandating of technologies, licensing procedures, and procurement continued to be of significant concern to the United States in 2004. Korea influences the sector both directly and indirectly through industry associations and quasi-governmental commissions or other entities. As a result, U.S. firms with leading-edge technologies have encountered resistance to their efforts to introduce new software and technologies to the market, and firms with an established presence have lost market share to Korean firms in the past few years. By limiting technology competition in the Korean telecommunications market, Korea is hampering the ability of Korean firms to develop globally competitive products and best serve Korean consumer needs. In addition, such actions run counter to the stated economic goals and objectives of the Roh Administration.

A priority issue for the United States and U.S. industry in 2004 was the negative effects of Korea's pursuit of mandatory, domestically created telecommunications standards ("domestic standards") that would effectively exclude the technology of all foreign firms. Through concerted effort, the United States was able to limit the adoption of two restrictive mandatory domestic standards by Korea, thereby improving competitive opportunities for U.S. technology suppliers.

In cellular phone services, the United States objected to Korea's stated plans to mandate the domestically created Wireless Internet Platform for Interoperability (WIPI) standard. The United States was concerned that Korea was exercising inappropriate influence over the creation, standardization, and deployment of WIPI; was discouraging Korean telecommunications service providers from subscribing to competing foreign standards; and was attempting to force competing foreign standards out of the market by designating WIPI as the sole mandatory standard. In April 2004, after a series of bilateral government discussions, some of which included industry representatives, the United States and Korea resolved this issue by agreeing that other platforms would be allowed to coexist with WIPI in the Korean market.

In 2003, Korea announced that it would reallocate the 2.3 gigahertz spectrum band (which had been largely unutilized) to a new wireless broadband Internet service and would allow only one technology to be deployed in this portion of the spectrum. Again, Korea was poised to designate a domestic mandatory standard even though viable foreign products had already been tested in the Korean market. In July 2004, after numerous discussions with the United States and U.S. industry, Korea agreed to drop plans to make a domestic standard the single standard and instead decided to select a draft international standard (IEEE

802.16). While this was a step in the right direction, the United States sees no justification for a government mandated standard. Furthermore, the IEEE 802.16 standard is not finalized and will not be commercialized until 2006, at the earliest. The United States will continue to urge Korea to allow other technologies to be deployed as soon as the spectrum is allocated.

The United States will continue to work with Korea to ensure that Korea sets standards and licensing requirements consistent with its bilateral and multilateral trade obligations, and that any such measures do not subject foreign firms to discriminatory treatment.

d. Motor Vehicles

Access to the Korean market for U.S. automobiles remains a major concern. The United States continues to work with Korea to ensure fair market access for foreign motor vehicles, consistent with the letter and spirit of the United States-Korea Memorandum of Understanding (MOU) on automobiles of October 1998. During the June and November 2004 reviews of the MOU, the United States and Korea reviewed progress on implementing the MOU commitments, and sought to address new issues that arose during the year, particularly in the area of standards. While ad hoc standard experts meetings continued as the main avenue to resolve standards issues, the United States emphasized that adequate notice to all stakeholders on any standards or regulatory changes was essential to full implementation of the MOU.

Some progress was made in areas of concern to the United States. In 2004, Korea consulted with the United States on a new Korean fuel economy standard that will be implemented on December 31, 2009, and agreed to further consultations if this date proves problematic to foreign automobile manufacturers. In addition, in 2004, Korea revised a discriminatory environmental testing requirement; and announced that it would extend a temporary reduction of the special consumption tax on motor vehicles into the first half of 2005.

These steps helped to increase the sales of foreign vehicles in Korea in 2004. In an extremely depressed domestic market, with overall auto sales down 17 percent for the year, import sales were up 20 percent, reaching a record. However, while sales trends are headed in the right direction, imported vehicle sales continue to represent an unreasonably small share of the Korean market – roughly 2 percent – and the U.S. automotive trade deficit with Korea continues to spiral upward, reaching record levels in 2004 ($9.2 billion for the first ten months, up 28 percent over 2003). The United States will continue to press for more proactive measures by Korea to address the concerns of U.S. automakers.

A particular focus for the United States over the past year has been Korea's fulfillment of the MOU commitment to "steadily reduce the tax burden on motor vehicle owners in the ROK in a way that advances the objectives of this MOU." Both the United States and U.S. industry have made specific suggestions as to how this commitment should be met. To date, Korea has announced no comprehensive tax reform plans. Given the strong negative impact that Korea's taxation system has on import vehicle sales, this will continue to be a key focus in the coming year. The United States has recognized that this is a long-term process, but stressed the importance of developing a comprehensive and transparent plan to meet this critical objective. The United States will also continue to work with Korea in the areas of tariff reduction, standards, and improving consumer perception of imported vehicles.

e. Steel

Steel issues are detailed in Chapter V, "Other Multilateral Issues."

f. Pharmaceuticals

The United States and Korea have worked extensively, from 1999 to the present, to address a number of import market access issues in the pharmaceutical sector. Over the past year, bilateral consultations have focused on transparency, pricing and regulatory issues in the

pharmaceutical sector. In addition to governmental consultations, the government-industry pharmaceutical working group continued to meet in 2004 in an effort to secure a larger role for stakeholders in Korea's pharmaceutical regulatory process.

Transparency: A key focus of United States-Korea pharmaceuticals' consultations during 2004 was the lack of transparency in Korea's procedures for pricing and reimbursing innovative medicines under its national health insurance system. While progress has been made in some areas, there continue to be signs that Korea may introduce new health care cost-cutting measures without adequate consultations with stakeholders, and may focus excessively on cutting-costs for new patented medicines, a policy that would de facto affect only foreign research-based pharmaceutical companies. The United States has put forward suggestions on how Korea's Health Insurance Review Agency's (HIRA) reimbursement guideline-setting process could be improved; these suggestions are still under discussion. In addition, the United States is carefully watching developments related to a Korean government-commissioned health insurance reform study released in September 2004 to ensure that policy changes are made in consultation with all domestic and foreign stakeholders, including foreign industry and governments.

Pricing: In 1999, the United States and Korea reached agreement on how new innovative drugs were to be priced (based on A-7 pricing or the average ex-factory price of A-7 countries, i.e., United States, United Kingdom, Germany, France, Italy, Switzerland, and Japan) and reimbursed (based on Actual Transaction Price [ATP]). Since its implementation, anomalies have surfaced. A June 2004 industry survey revealed that A-7 prices have only been granted to 33 percent of new products since April 2000. Because of Korea's restrictive application of the A-7 pricing methodology, U.S. drug companies have decided not to introduce at least nine new products in Korea from 2000 to the present. In December 2004, the United States proposed that Korea issue a one-page justification for when it decides not to provide A-7 pricing for new medicines. The proposal is currently under discussion.

In addition, lack of appropriate enforcement of the ATP system has led to market distortion, artificially high-priced generic products, and incentives for doctors to prescribe medications for profit. ATP reimbursement prices are based on a weighted average of sales prices from the previous quarter. ATP was designed to end hospitals' fraudulent practice of demanding discounts from drug makers when buying drugs and then pocketing the difference between the discounted price and the larger reimbursement price provided by the government-operated health insurance system. However, ineffective enforcement of ATP has allowed such practices to continue. In 2005, the United States will continue to press Korea to offer A-7 pricing to all new innovative medicines produced by U.S. companies and to better enforce the ATP system.

Regulatory: In October 2004, a new high priority issue of concern to U.S. industry emerged in the area of intellectual property protection for pharmaceutical firms when the Korean Food and Drug Administration (KFDA) proposed eliminating Korea's current system of post-marketing surveillance (PMS). This was of major concern because PMS provides a de facto period of data protection as required by Article 39.3 of the WTO TRIPS Agreement. During November consultations, Korea stated that the PMS would not be eliminated and that, even if changes were made to the system, they would be fully compliant with Korea's TRIPS obligations. The United States will continue to closely monitor developments in this area.

g. Intellectual Property Rights

The United States has serious concerns regarding the adequacy of Korea's protection of intellectual property rights (IPR), particularly for copyrighted material over high-speed data networks. Korea's rapid technological development in recent years has led to Korea having one of the most sophisticated digital infrastructures in the world, but Korea's legal protection of copyrighted material has not kept

pace with technological developments, leading to a high piracy rate for U.S. (and Korean) content. Due to Korea's inadequate protection of sound recording transmissions and unauthorized distribution of U.S. films, Korea was elevated to the Special 301 Priority Watch List in January 2004. Since then, Korea has proceeded with plans to update its intellectual property regime through a "Master Plan" under the leadership of the Prime Minister's Office. In addition, progress has been made on U.S. intellectual property concerns, including granting the Standing Inspection Team (SIT) police powers to conduct raids on sites suspected of intellectual property crimes and establishing an improved registration system designed to stop film piracy through the Korea Media Review Board (KMRB). However, further work will be required to ensure that Korea's intellectual property regime provides the necessary tools to address the emerging challenges of the digital era.

Perhaps the most striking instance of copyright piracy in recent years has involved the digital transmission of sound recordings. While the United States urged Korea to introduce legislation that would create a comprehensive right of transmission for sound recordings, the legislation passed by the Korean National Assembly in September 2004 introduced only a limited right of "making available" and not the full "right of communication to the public." With sales of legally copyrighted sound recordings dropping by over half in recent years, the viability of U.S. and Korean sound recording businesses in Korea will depend, in part, on establishing comprehensive legal rights to authorize digital transmissions.

The United States has also expressed concerns as to whether the sentences issued by Korea's courts in cases of intellectual property piracy are of sufficient magnitude to constitute a meaningful deterrent to criminal behavior and has urged Korea to institute some form of sentencing guidelines. Other U.S. intellectual property priorities with Korea include: explicitly recognizing that temporary copies (e.g., of software) are a part of the reproduction right and constitute a reproduction; combating high levels of book piracy, especially in university communities; and, for computer software, ensuring the full respect for the fundamental principle enshrined in international law and practice that rights holders have the exclusive right to determine the manner in which they wish to license their works. The United States has also urged Korea to proceed with the prompt ratification and implementation of the WIPO Performances and Phonograms Treaty (WPPT), to which Korea has already committed; strengthen and harmonize its laws on technological protection measures (for copyrighted works) and Internet service provider liability (for infringement by users on their networks); and to extend the copyright term by 20 years.

h. Government Support for Korean Industry

Semiconductor Production and Export: During the past few years, the United States has expressed strong concerns about instances of possible Korean subsidization of semiconductor production and exports that could adversely affect U.S. trade interests. In particular, the United States sought redress by Korea for its support of Hynix Semiconductor, Inc., the world's second largest semiconductor manufacturer. Korea did not address the concerns expressed by the United States and continued to provide financial assistance to Hynix; as a result, U.S. industry initiated a countervailing duty (CVD) investigation, and a formal CVD investigation was conducted and completed by the U.S. Commerce Department and International Trade Commission during 2003. As a result of this CVD investigation, countervailing duties of 44.29 percent, equal to the subsidies provided to Hynix by Korea, have been put in place with respect to certain U.S. imports of semiconductors from Hynix. Korea requested WTO consultations on Hynix in June 2003, and a dispute settlement panel was established in January 2004. (For more on this case, see the WTO Dispute Settlement section of this report.)

Paper Subsidies: The U.S. paper industry in 2004 continued to raise its concerns regarding

Korean government subsidization of the Korean coated paper sector. These concerns include government subsidies that have been provided in the form of directed credit, low-cost facility investment loans, tax benefits for facility expansion, and direct government financial support for industrial expansion. These programs have been alleged to keep troubled companies afloat and distort international competition. The United States sought to address these concerns in numerous bilateral and multilateral fora in 2004. Included in these fora was a special bilateral experts meeting held in Seoul in February 2004 to engage Korea in an effort to resolve this matter. Korea's response to date has been inadequate, and the United States will continue to pursue this issue with Korea in 2005.

i. Bilateral Investment Treaty/Screen Quota

In 1998, former Korean President Kim Dae Jung proposed the negotiation of a bilateral investment treaty (BIT) with the United States. The United States' objective in pursing a BIT with Korea, as with other countries, was to conclude a comprehensive agreement that established a balanced and open investment regime and provided protections for U.S. investors. While progress was made in early negotiations related to the liberalization of investment restrictions in a number of sectors, the United States and Korea were unable to reach agreement on several key issues, led by liberalization of Korea's restrictive screen quota system. Under the screen quota system, domestic films must be shown in each cinema for a minimum of 146 days of the year, with a potential discretionary reduction to 106 days. Given statements by Korean government officials at the highest levels that a reduction to the screen quota was desirable, the United States was hopeful that this issue would be resolved in 2004, thereby paving the way for the United States and Korea to deepen bilateral economic ties through a BIT or some other mechanism. While the domestic market share for Korean films has, for the last several years, far surpassed the 40 percent market share that the Korean National Assembly targeted as the prerequisite for reduction of the quota, however, Korean filmmakers and lawmakers have continued to resist modifications to the system. In addition to the screen quota, the issue of Korean limits on foreign ownership in the telecommunications sector remains unresolved.

j. Agriculture

Oranges: In April 2004, Korea suspended navel orange imports from California's Tulare and Fresno counties (which together account for 80 percent of U.S. navel orange shipments to Korea). Korea alleged to have detected the presence of the fungal infection *septoria citri* in shipments of navel oranges from those two counties. The United States performed its own tests on the shipments of oranges rejected by Korea and did not detect the fungus, neither in California orchards nor in laboratory tests of samples taken from infected shipments identified by Korea officials. This made the identification of appropriate mitigation measures difficult. However, the United States worked extensively with the California citrus industry to develop proposed mitigation measures for *septoria citri* to present to Korean officials. The United States submitted this new protocol to Korea in August 2004 to serve as the basis for Korea's resumption of navel orange imports, and the U.S. officials then participated in a series of bilateral technical discussions that followed to ensure the new protocol reflected only necessary and operationally feasible measures. In November 2004 the United States and Korea agreed to the new protocol, and California navel orange exports resumed in December 2004. The agreement is to remain in place for two years with a provision that refinement of mitigation measures may take place after the first year.

Rice: In the Uruguay Round, Korea received a ten-year exception to tariffication of rice imports, and instead negotiated a Minimum Market Access (MMA) quota, under which rice imports grew from zero to four percent of domestic consumption. That MMA arrangement was set to expire at the end of 2004, but under

WTO rules, Korea exercised its right to negotiate with WTO rice exporting countries, including the United States and eight other interested parties, to seek an additional ten-year extension. Korea's stated goal was to extend the MMA arrangement to coincide with a new ten-year agricultural adjustment program introduced in 2004 by the Roh Administration. The United States made clear that it would only agree to extension of the MMA program if the program were amended to significantly expand commercial opportunities for U.S. rice exporters and offer them a genuine opportunity to develop meaningful relationships with Korean rice retailers.

Agreement on a ten-year MMA extension was reached in December 2004. For U.S. rice exporters, there are three major benefits to this agreement: Korea will double its total rice imports over the next ten years (from roughly four percent to roughly eight percent of domestic consumption); Korea has guaranteed at the WTO that it will purchase at least 50,076 metric tons of rice from the United States in each of the next ten years; and for the first time, imported rice will be made available to Korean consumers at the retail level. This new MMA arrangement was notified to the WTO in late December 2004; it will be implemented in 2005 once it is approved by a consensus of WTO members.

Beef: Reopening the Korean beef market, the second largest after Japan, to U.S. beef exports has been a top priority of the Administration on the bilateral trade front in 2004. Korea imposed a ban on U.S. beef and beef products immediately after the December 2003 discovery of a single imported cow with Bovine Spongiform Encephalopathy (BSE) in Washington State. Currently, exports of products worth nearly $823 million in 2003 are banned. During 2004, the United States engaged Korea at all levels, including a visit by Korean government technical experts, which occurred in May 2004. The United States continued to stress the importance of resuming beef and beef by-product trade in appropriate bilateral meetings in 2004. Despite substantial progress and expressed satisfaction by Korea with the technical information provided by the United States demonstrating the safety of the U.S. beef supply, Korea continues to delay actual resumption of imports of U.S. beef.

Avian Influenza: In 2004, in response to detection in February 2004 of low pathogenic avian influenza (LPAI) in Delaware and a subsequent case, also in February 2004 of high pathogenic avian influenza (HPAI) in Texas, Korea banned – and continues to ban – all imports of raw poultry meat from the United States. With the United States' other poultry markets now all having lifted any trade restrictions imposed in response to the U.S. LPAI and HPAI outbreaks, the United States has made clear that re-opening the Korean market to U.S. poultry exports is a high priority. In 2003, U.S. exports of poultry meat to Korea totaled $53 million. Due to United States efforts at multiple levels, Korea did nominally lift its avian influenza ban on U.S. poultry in September 2004, but Korea continues to prohibit imports of U.S. poultry meat because of new animal health and food safety-related certification requirements. Despite repeated high-level meetings between U.S. and Korean officials, Korea insists that the ban on U.S. poultry imports will remain until the United States agrees to the new requirements. The United States will take all appropriate steps to ensure the re-opening of this important market.

Food Standards: On June 28, 2003, KFDA announced new "Proposed Standards and Specifications for Health Functional Foods" (the so called "Functional Food Code"). The United States expressed concern that the proposed Functional Food Code limited categories of functional foods (i.e., health foods and nutritional supplements, and nonscience-based upper limits on vitamin and mineral content) and would restrict entry of U.S. health foods and supplements into the Korean market. KFDA finalized the Functional Food Code on January 31, 2004 and addressed U.S. concerns regarding KFDA's proposed upper limits on vitamins and minerals. However, KFDA has not addressed U.S. concerns regarding the limited number of functional food categories, which limits imports of functional foods that are widely accepted by consumers in other countries. Regarding

inspection of imported functional food, Korea required mandatory laboratory testing for every shipment of functional food weighing under 100 kilograms with no rationale. On December 27, 2004, in response to United States concerns, Korea revised testing requirements and eliminated mandatory laboratory testing of subsequent shipments of the same functional food weighing less than 100 kilograms if the first shipment passes the laboratory test. However, KFDA still maintains restrictions on the use of stickers for labeling of functional foods unlike pharmaceutical and food products in general.

5. India

a. General

In 2004, the United States and India continued their efforts to develop a constructive long-term trade relationship. The United States continued to try to identify areas for cooperation and focused on WTO matters as well as bilateral trade issues, including India's tariff and tax regime, intellectual property rights, and subsidies. India continues to limit market access in various areas, including through high taxes and tariffs, non-transparent procedures, differential treatment of imports, and reference prices. The United States advised the government of India that U.S. concerns regarding outsourcing to India were exacerbated by India's closed markets.

In May 2004, India - the largest democracy in the world - elected a new government. Important members of the new government (including Prime Minister Dr. Manmohan Singh) were responsible for India's economic reforms begun in the early 1990's. We look forward to working with the new government to encourage India to assume its rightful place as an open and constructive member of the global trade community.

b. Trade Dialogue

U.S. Trade Representative Robert B. Zoellick effectively engaged in dialogue with his Indian government counterparts, especially Commerce Minister Kamal Nath. Working closely together in Geneva during July 2004, U.S. Trade Representative Robert B. Zoellick and Minister Nath found ways to move the Doha Development Agenda forward. U.S. Trade Representative Zoellick also found common ground with India's private sector. Under the auspices of the United States-India Trade Policy Working Group (TPWG), led by USTR and India's Ministry of Commerce, our officials met continuously at all levels to find ways to build confidence between our two governments and achieve open markets.

c. Intellectual Property Rights

Pursuant to the WTO TRIPS Agreement, India committed to enact a comprehensive patent system for pharmaceuticals and agricultural chemicals by January 1, 2005 and protection for undisclosed test and other data for these products by January 1, 2000. On December 26, 2004, India's President A.P.J. Abdul Kalam signed the Patents (Amendment) Ordinance, 2004, which includes provisions on product patent protection for pharmaceuticals and agricultural chemicals. Parliament must enact or pass substitute legislation within six months (i.e., by June 2005), or the Ordinance will lapse.

In seeking to ensure that India complies with its TRIPS commitments, the United States continued to voice concerns about other aspects of India's intellectual property regime, including copyrights, trademarks, failure to protect clinical trial data or undisclosed data and needed improvements in enforcement against piracy, counterfeiting and other types of intellectual property infringement.

d. Diammonium Phosphate (DAP)

India's fertilizer price control and subsidy regime have driven U.S. and other foreign phosphate fertilizer exports out of India's market. The United States continues to press the

Indian government to end distorting policies that impede U.S. producers of DAP from competing in the India's market.

e. Agricultural Trade - Sanitary and Phytosanitary Issues

The United States has raised concerns with India regarding its failure to notify certain SPS measures. India's lack of transparency in promulgating new import requirements has led to disruptions in U.S. agricultural trade, particularly in exports of U.S. almonds, the United States' second largest agricultural export to India. Ongoing bilateral technical level discussions have resulted in a one-year agreement allowing the entry of U.S. almonds into India under previous import requirements. The United States continues to impress upon India the need to base its SPS measures, on science, including those measures affecting apples, dairy products, pulses, poultry, pet food, and forest products. The United States will continue to seek a long-term solution regarding almonds and other outstanding SPS issues.

6. Pakistan

In September 2004, the United States and Pakistan held the first Trade and Investment Council (TIC) meeting under the auspices of the Trade and Investment Framework Agreement (TIFA) signed the previous year. The TIC discussed measures to improve the protection of intellectual property rights in Pakistan and Pakistan's desire for better access to the U.S. market for its goods, including requesting FTA negotiations and inclusion in the Container Security Initiative (CSI). The main focus of the meeting was to promote private investment and identify impediments to expanding bilateral trade and investment. The TIC also discussed Pakistan's access to GSP benefits, visas for businessmen, and the travel advisory.

Following the TIFA meeting, U.S. Trade Representative Robert B. Zoellick and Pakistani Minister of Commerce Humayum Akhtar Khan agreed to initiate the negotiation of a Bilateral Investment Treaty (BIT). A BIT with the United States could help Pakistan attract much-needed private investment. The United States and Pakistan continued to work closely on promoting progress in the Doha Development Agenda.

USTR officials had wide-ranging discussions on bilateral and multilateral trade issues; other officials, including the Secretary of State also addressed economic and trade issues with Pakistan on numerous occasions. Intellectual property issues remain a priority focus for the United States given that Pakistan is reported to be one of the world's largest producers and exporters of pirated sound recordings. A special 301 Priority Watch Listing (PWL) and a Generalized System of Preferences (GSP) petition on inadequate copyright protection in Pakistan have focused United States efforts to encourage progress on IP protection, including action against Pakistani plants that are producing and exporting large volumes of pirated optical media.

7. Afghanistan

Afghanistan and the United States negotiated and signed a Trade and Investment Framework Agreement (TIFA) in September 2004. USTR and the Afghan Ministry of Commerce lead the meetings of the Trade and Investment Council (TIC) established by the TIFA. This new mechanism will facilitate a high-level, regular discussion of bilateral and multilateral trade issues, and is designed to promote problem solving in the trade and investment areas.

A Working Party on Afghanistan's accession to the WTO was established. The United States is considering means of providing technical assistance to Afghanistan as it pursues accession [see section on WTO accessions].

The United States continued to offer trade capacity assistance to Afghanistan. In July 2004, USTR sponsored, and USAID funded and organized, a two-day seminar in Nepal for the least-developed countries of South Asia, including Afghanistan. The seminar was designed to provide practical advice and strategies to increase and diversify exports. Approximately 20 Afghans participated in the seminar.

8. People's Republic of China

It has been more than three years since China's accession to the WTO on December 11, 2001. That event was in many ways the culmination of two decades of economic reform that saw China move from a strict command economy to one in which market forces have played an increasing role. Through an accession agreement founded on the key WTO principles of market access, non-discrimination, national treatment and transparency, China committed to overhaul its trade regime and, more fundamentally, to open its market to greater competition.

The United States and other WTO members negotiated with China for 15 years over the specific terms pursuant to which China would enter the WTO. As a result of those negotiations, China agreed at all levels of government to extensive, far-reaching and often complex commitments to change its trade regime. China committed to implement a set of sweeping reforms that requires it to lower trade barriers in virtually every sector of the economy, provide national treatment and improved market access to goods and services imported from the United States and other WTO members, and protect intellectual property rights (IPR). China also agreed to special rules regarding subsidies and the operation of state-owned enterprises, in light of the state's large role in China's economy. In accepting China as a fellow WTO member, the United States also secured a number of significant concessions from China that protect U.S. interests during China's WTO implementation stage. Implementation should be substantially completed – if China fully adheres to the agreed schedule – by December 11, 2007. In contrast, the United States did not make any specific new concessions to China, other than simply to agree to accord China the same treatment it accords other members of the WTO.

China deserves due recognition for the tremendous efforts made to reform its economy to comply with the requirements of the WTO. Nevertheless, while China's efforts to fulfill its WTO commitments are impressive, they are far from complete and have not always been satisfactory, and China at times has had difficulty in adhering to WTO rules.

The first year of China's WTO Membership saw significant progress, as China took steps to repeal, revise or enact more than one thousand laws, regulations and other measures to bring its trading system into compliance with WTO standards. However, that year also saw uneven implementation of many of China's WTO commitments.

During the next year, 2003, China's WTO implementation efforts lost a significant amount of momentum, and the United States identified numerous specific WTO-related problems. As those problems mounted in 2003, the Administration responded by stepping up its efforts to engage China's senior leaders. The Administration's efforts culminated in December 2003, when President George W. Bush and Chinese Premier Wen Jiabao committed to upgrade the level of economic interaction and to undertake an intensive program of bilateral contacts with a view to resolving problems in the United States-China trade relationship. Premier Wen also committed separately to facilitate the increase of U.S. exports to China.

This new approach was exemplified by the highly constructive Joint Commission on Commerce and Trade (JCCT) meeting in April 2004, with Vice Premier Wu Yi chairing the Chinese side and Secretary of Commerce Donald Evans and U.S. Trade Representative Robert B. Zoellick chairing the U.S. side, with leadership from Secretary of Agriculture Ann Veneman on agricultural issues. At that

meeting, which followed a series of frank exchanges covering a wide range of issues in late 2003 and early 2004, the two sides achieved the resolution of no fewer than seven potential disputes over China's WTO compliance.

In July 2004, the United States successfully was able to resolve the first-ever dispute settlement case brought against China at the WTO. In that case, the United States, with support from four other WTO members, challenged discriminatory value-added tax (VAT) policies that favored Chinese-produced semiconductors over imported semiconductors. The United States also effectively used other mechanisms at the WTO throughout the year, including the transitional review process for China, to draw attention to a variety of areas where China needed to make progress.

U.S. stakeholders were significantly more satisfied with China's WTO performance in 2004 than in the previous two years. Many of them reported that 2004 was a good year for American companies in China, and that China demonstrated marked improvement in its efforts to comply with its WTO commitments.

At the same time, U.S. exports to China continued to increase dramatically in 2004, as they have done in every year since China joined the WTO. U.S. exports to China totaled $35 billion for the most recent twelve-month period, more than double the total for 2001. In fact, from 1999 to 2004, U.S. exports to China increased nearly ten times faster than U.S. exports to the rest of the world. As a result, China has risen from our 11th largest export market five years ago to our fifth largest export market today.

The reports from the private sector and improved export statistics are heartening. Nevertheless, serious problems remain, and new problems regularly emerge. Most seriously, China's implementation of its WTO commitments has lagged in many areas of U.S. competitive advantage, particularly where innovation or technology play a key role.

Separately from the WTO issues, the Administration, with the Treasury Department as the lead, remains committed to working closely with China to help them to move to a more flexible market-based exchange rate. The Treasury Department is raising the issue bilaterally and engaging our trading partners in multilateral fora such as the G-7, IMF, and APEC, and has established a Technical Cooperation Program to assist China in addressing what it perceives as regulatory and market infrastructure obstacles to greater exchange rate flexibility. Treasury's technical dialogue included three sessions in 2004 focused on such issues as supervising banks' management of exchange rate risks and regulation of foreign currency derivatives markets. The Administration will continue this approach in 2005. Further, it should be noted that China is considered a non-market economy (NME) for purposes of U.S. antidumping law; to be designated a "market economy", China must meet the six statutory criteria set forth in Section 771(18) of the Tariff Act of 1930: the extent of a country's currency convertibility; wage determination; foreign investment; government ownership or control of production; government control over the allocation of resources; and other appropriate factors.

A summary of the WTO compliance issues of the most concern to the United States follows. For a more detailed discussion, see *USTR's 2004 Report to Congress on China's WTO Compliance*, dated December 11, 2004.

Intellectual Property Rights

Upon joining the WTO, China agreed to overhaul its legal regime to ensure the protection of intellectual property rights in accordance with the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement). China has undertaken substantial efforts in this regard, as it has revised or adopted a wide range of laws, regulations and other measures. While some problems remain, China did a relatively good job of overhauling its legal regime.

However, China has been much less successful in ensuring effective IPR protection, as IPR enforcement remains problematic. Indeed, counterfeiting and piracy in China are at epidemic levels and cause serious economic harm to U.S. businesses in virtually every sector of the economy. One U.S. trade association reports that counterfeiting and piracy rates in China remain among the highest in the world, exceeding 90 percent for virtually every form of intellectual property.

The Administration places the highest priority on improving the protection of IPR in China. At the April 2004 JCCT meeting, in response to concerns raised by the United States, Vice Premier Wu presented an "action plan" to address the IPR problem in China. Intended to "substantially reduce IPR infringement," this action plan calls for improved legal measures to facilitate increased criminal prosecution of IPR violations, increased enforcement activities and a national education campaign. The Administration is monitoring implementation of this action plan closely and began conducting an out-of-cycle review in December 2004 under the Special 301 provisions of U.S. trade law to assess China's implementation of its IPR commitments. The Administration called on U.S. companies to submit a range of information to enhance its monitoring of China's enforcement efforts in every industry and in all regions of China. In addition, the Administration has taken comprehensive action – under the Strategy Targeting Organized Piracy (STOP!) – to block trade in counterfeit and pirated goods, regardless of their origin. The Administration will take whatever action is necessary at the conclusion of the out-of-cycle review to ensure that China develops and implements an effective system for IPR enforcement, as required by the TRIPS Agreement.

Trading Rights and Distribution Services

Of key importance during 2004 was China's implementation of its commitments to full liberalization of trading rights and distribution services, including wholesaling services, commission agents' services, retail services and franchising services, as well as related services. As agreed at the JCCT meeting in April 2004, China implemented its trading rights commitments nearly six months ahead of schedule, permitting companies and individuals to import and export goods directly without having to use a middleman. While China issued regulations that call for timely implementation of its distribution services commitments by December 11, 2004, China has not made clear the precise means by which foreign enterprises will actually be able to apply for approval to provide these services. In addition, China has not yet fulfilled its commitment to open its market for sales away from a fixed location, or direct selling, by December 11, 2004, as none of the measures necessary to allow foreign participants have been issued. The Administration will pay particular attention to these areas over the coming months to ensure that China fully meets these important WTO commitments.

Services

The United States enjoys a substantial surplus in trade in services with China, and the market for U.S. service providers in China is increasingly promising. However, the expectations of the United States and other WTO members when agreeing to China's commitments to open China's service sectors have not been fully realized in all sectors. Indeed, through an opaque regulatory process, overly burdensome licensing and operating requirements, and other means, Chinese regulatory authorities continue to frustrate efforts of U.S. providers of insurance, express delivery, telecommunications and other services to achieve their full market potential in China. At the April 2004 JCCT meeting, China committed to abandon problematic proposed express delivery restrictions and to resume a dialogue on insurance issues, although it has been slow to follow through on these commitments.

Agriculture

With U.S. agricultural exports totaling $5.4 billion in 2003, China has become one of the fastest growing overseas markets for U.S.

farmers. U.S. soybeans, cotton and other agricultural commodities have found ready customers in China, largely fulfilling the potential recognized by U.S. negotiators during the years leading up to China's WTO accession.

Despite the impressive export figures, China's WTO implementation in the agricultural sector is beset by uncertainty. Capricious practices by Chinese customs and quarantine officials can delay or halt shipments of agricultural products into China, while sanitary and phytosanitary standards with questionable scientific bases and a generally opaque regulatory regime frequently bedevil traders in agricultural commodities. Like all commodity markets, agricultural trade requires as much predictability and transparency as possible in order to reduce the already substantial risks involved and preserve margins. Agricultural trade with China, however, remains among the least transparent and predictable of the world's major markets.

In 2004, the United States was able to make substantial headway on a number of key issues in agricultural trade, particularly in the area of biotechnology approvals and the removal of problematic sanitary and phytosanitary measures that had been curtailing trade. Given past experiences, however, maintaining and improving China's adherence to WTO rules in the area of agriculture will require continued high-level attention in the months and years to come.

Industrial Policies

Since acceding to the WTO, China has increasingly resorted to policies that limit market access by non-Chinese origin goods and that aim to extract technology and intellectual property from foreign rights-holders. The objective of these policies seems to be to support the development of Chinese industries that are higher up the economic value chain than the industries that make up China's current labor-intensive base, or simply to protect less-competitive domestic industries.

Prime examples of these industrial policies in 2004 included China's discriminatory semiconductor VAT policies, China's efforts to promote unique Chinese standards for wireless encryption and third generation (3G) wireless telephony and, more recently, a government procurement policy that mandates purchases of Chinese-produced software. These are among an array of steps that China has taken to encourage or coerce technology transfer or the use of domestic content across many sectors. Some of these policies stray dangerously close to conflict with China's WTO commitments in the areas of market access, national treatment and technology transfer.

In 2004, the United States and China made important progress toward resolving conflicts over a number of these and other industrial policies, such as China's export restrictions on coke, a key steel input. However, more work needs to be done, and the advent of new or similar policies in the future will require continued vigilance by the United States and other WTO members.

Transparency

The foundation of WTO compliance is transparency, which permits markets to function effectively and reduces opportunities for officials to engage in trade-distorting practices behind closed doors. China has not traditionally operated according to the WTO's transparency principles, and thus its commitments in this area in many ways represent a profound historical shift. By that scale, China has come a great distance toward achieving transparency in its official decision-making and regulatory regimes. Indeed, in the last several years, China has made important strides to improve transparency across a wide range of national and provincial authorities. China's Ministry of Commerce is most notable for its impressive moves toward adopting WTO transparency norms. However, many other ministries and agencies have made less than impressive efforts to improve their transparency. As a result, China's regulatory regimes continue to suffer from systemic opacity, frustrating efforts of foreign – and domestic – businesses to achieve the potential benefits of China's WTO accession.

Conclusion

Most of China's key commitments – including trading rights and distribution services – were scheduled to be phased in fully by December 11, 2004. This year – 2005 – will therefore provide a critical glimpse at what to expect of China as a WTO member once its full range of commitments are in place.

In 2005, the Administration will continue to be relentless in its efforts to ensure China's full compliance with its WTO commitments, with particular emphasis on ensuring effective protection of U.S. patents, trademarks and copyrights in China. This work will be facilitated by additional funding from the Congress in 2004 that has allowed USTR and other agencies to increase their level of engagement and enforcement vis-a-vis China. With this additional funding, USTR established a separate office focused solely on China trade issues and doubled the resources devoted to those issues, while other agencies increased staffing levels in Washington and Beijing.

As in 2004, the Administration is committed to working with China to ensure that all of the benefits of China's WTO Membership are fully realized by U.S. workers, businesses, farmers, service providers and consumers. The Administration is also committed to working with China to resolve problems in our trade relationship before they become broader bilateral irritants. When this process is not successful, however, the Administration will not hesitate to employ the full range of dispute settlement and other tools available through China's WTO accession agreement. At the same time, the Administration will continue to strictly enforce its trade laws to ensure that U.S. interests are not harmed by unfair trade practices.

9. Japan

The United States continues to place a high priority on promoting structural and regulatory reform in Japan, improving market access for U.S. goods and services, and supporting pro-competitive policies throughout the Japanese economy. The United States welcomes Japan's improving economy as well as Prime Minister Junichiro Koizumi's continuing commitment to structural and regulatory reform. Indeed, Japan has made significant progress on the economic reform front, particularly in regard to dealing with non-performing loans and deflation. Nevertheless, persistent structural rigidities, excessive regulation, and market access barriers remain and should be addressed to help ensure the Japanese economy achieves long-term growth. The U.S. Government therefore worked with the Japanese government throughout 2004 to develop and implement concrete steps for Japan to take to promote sustainable growth and further open and deregulate markets. The United States also has been cooperating closely with Japan to address the growing challenges involved in regional trade and economic issues. The two governments have, for example, begun consultations on developing ways to promote greater protection of intellectual property rights in Asia.

In addition to bilateral approaches, the United States relied on a wide range of regional and multilateral fora in 2004, including the WTO and APEC, to advance its trade agenda with Japan. The United States is working to ensure that our trade priorities in these fora are well coordinated with our bilateral agenda so that the various initiatives are complementary and mutually reinforcing.

Overview of Accomplishments in 2004

U.S.-Japan Economic Partnership for Growth

The U.S.-Japan Economic Partnership for Growth (the Partnership) is the primary mechanism for managing our bilateral trade and economic relations with Japan. Under the Partnership, the United States has been working with Japan to promote sustainable growth in both countries by addressing such issues as sound macroeconomic policies, structural and regulatory reform, financial and corporate restructuring, foreign direct investment, and open markets. The various Partnership fora established to address these areas are the: Subcabinet Economic Dialogue, Regulatory Reform and Competition Policy Initiative, Investment Initiative, Private Sector/Government Commission, Financial Dialogue, and Trade Forum. Highlights of Partnership activities in 2004 include:

- In July 2004 the Subcabinet Economic Dialogue convened in Washington where deputy-level officials from both Governments addressed a variety of global, regional, and bilateral trade and economic issues, including the WTO Doha Development Agenda, protection of intellectual property, macroeconomic developments in both countries, bilateral beef trade, and plans for Japan Post privatization.

- Throughout the year, numerous Working Groups and a High-Level Officials Group met under the Regulatory Reform and Competition Policy Initiative (Regulatory Reform Initiative) to discuss reform proposals that culminated in the Third Report to the Leaders, which was conveyed to President Bush and Prime Minister Koizumi on June 8, 2004. That report detailed a myriad of regulatory reform measures that Japan implemented or would implement in key areas such as telecommunications, information technologies, medical devices and pharmaceuticals, energy, competition policy, and the privatization of Japan Post.

- In April 2004, the United States and Japan convened a meeting of the Investment Initiative and raised a number of topics, including mergers and acquisitions, medical services, and education services. This Initiative includes co-sponsored investment promotion seminars in both countries to bring about better understanding and support for FDI from regional government and business leaders.

a. Regulatory Reform

In the June 2004 Report to the Leaders under the Regulatory Reform Initiative, Japan agreed to undertake many important regulatory reforms. Significant achievements were made in various sectors, including telecommunications, information technologies, energy, medical devices and pharmaceuticals, and financial services. Other important progress was made in key areas such as competition policy, transparency and other government practices, legal system reform, revision of Japan's commercial law, and distribution.

Building on progress achieved in the first three years of the Regulatory Reform Initiative, the United States presented Japan on October 14, 2004 with 63 pages of recommendations calling on Japan to adopt a wide range of additional regulatory reforms. Consistent with the overall objective of the Partnership, these recommendations include reform measures intended to help Japan continue to grow and open markets. Furthermore, the United States placed a special emphasis on issues that Japan has identified as priorities for reform, such as postal privatization and competition policy.

The October 2004 recommendations act as the basis for bilateral discussions in a High-level Officials Group and the various Working Groups established under the Regulatory Reform Initiative. The Working Groups have already begun meeting to discuss the recommendations. These discussions will in turn serve as the basis for a fourth annual report to the President and

Prime Minister in mid-2005 detailing the progress made under this Initiative, including specific measures to be taken by each Government.

Highlights of the Third Report to the Leaders and key reform recommendations submitted in October are as follows:

i. Sectoral Regulatory Reform

Telecommunications: The establishment of a pro-competitive telecommunications services market in Japan based on transparent regulation is the primary focus of the United States in pursuing regulatory reform for this sector. Despite significant progress, Japan's telecommunications regulator, the Ministry of Internal Affairs and Communications (MIC), continues to defer to the interests of NTT at the expense of business and residential users and to the detriment of promoting competition in the telecommunications services market. While the competitive provision of broadband services is encouraging, the inability of new entrants to make inroads into NTT's control of 98 percent of subscriber telephone lines and 58 percent of mobile customers continues to impair the introduction of innovative, low-cost services to business and residential users in Japan's telecommunications market, one of the world's largest.

The June 2004 Report to the Leaders highlighted measures taken by Japan to promote further competition in this sector. These measures included the introduction of a new system under the Telecommunications Business Law (TBL) that eliminated obsolete licensing categories and filing requirements. Other significant accomplishments in the Report to the Leaders included measures to promote testing of Radio Frequency Identification (RFID) technology in the UHF band and modification of the 1990 Exchange of Letters on Network Channel Terminating Equipment (NCTE) to reflect changes in the marketplace and the increased use of international standards for new technology.

MIC continues to grapple with how to set wireline interconnection rates at efficient levels in the face of NTT's loss of business to wireless and voice-over-the-Internet. MIC approved a plan in October 2004 to move to a more rational rate structure, which should lower competitors' costs. MIC is, however, allowing NTT a five-year transition period, which delays the much-needed reductions in interconnection rates for competitors. The mobile wireless sector also remains an area of concern. While NTT DoCoMo, designated since 2002 as a "dominant carrier," has reduced its interconnection rates by 22 percent over the past three years, rate reductions slowed dramatically last year to only 4 percent, and overall rate levels in Japan remain high. Potential new entrants, which have yet to be assigned spectrum, have announced their intention to lower such rates, as well as provide more consumer choice in this concentrated market.

In the October 2004 Regulatory Reform submission, the United States urged Japan to take bold steps to improve competition in this sector, including: strengthen regulatory independence, transparency, and accountability; reinforce dominant carrier safeguards; conduct an objective and transparent review of interconnection rates; investigate mobile termination rates to ensure reasonable rates and competitive neutrality; and ensure transparency, competition, and technological neutrality in Japan's spectrum management policies and practices (such as licensing, allocation, testing, and fees). In addition, the United States proposed establishment of an Agreement on Mutual Recognition of Conformity Assessment Procedures for Telecommunications Equipment with Japan that would facilitate more efficient trade in telecommunications products. These U.S. recommendations were discussed at a meeting of the Telecommunications Working Group, which took place in December 2004 in Tokyo.

Information Technologies: The primary objective of the Information Technologies (IT) Working Group under the Regulatory Reform Initiative is to work with Japan to establish vibrant and competitive IT and electronic commerce sectors that can benefit both the U.S. and Japanese economies, as well as provide

global leadership in this area. Japan has made important progress over the last few years in removing numerous regulatory barriers in the IT sector, a primary objective of the Japanese government's bold plan to promote IT called the e-Japan Strategy. This progress has helped transform the landscape in Japan into one where broadband utilization is widespread and can be enjoyed at some of the fastest speeds and lowest costs in the world. Japan has also increased the use of IT and online processes in the private and public sectors and is now one of the largest electronic commerce markets in the world. The June 2004 "e-Japan Priority Policy Program 2004" (2004 Priority Policies) prioritizes steps to achieve Japan's goals, such as ensuring secure and reliable networks, focusing on IT adoption, protecting intellectual property, encouraging development of content, increasing use of e-government, and acknowledging the private sector's leadership role in promoting IT usage and the global nature of electronic commerce.

At the same time, the Japanese government recognized in its 2004 Priority Policies that legal and other barriers persist that prevent faster growth of IT usage. As Japan responds to the challenges that lie ahead in this pivotal sector, the U.S. Government is working with Japan to establish a regulatory framework that ensures competition and technological neutrality, promotes innovation, allows private sector-led regulation where appropriate, and protects intellectual property rights in the digital age. Establishing such a framework will promote the development of Japan's IT-related businesses and massive electronic commerce market, and thus provide significant opportunities for U.S. firms and their leading technology products and services.

Throughout 2004, discussions in the IT Working Group focused on protecting intellectual property; removing regulatory and non-regulatory barriers to electronic commerce; promoting electronic commerce via private-sector self-regulatory mechanisms and technologically neutral, market-driven solutions; and expanding IT procurement opportunities. The specific measures Japan has taken in these areas to promote growth in the IT sector are summarized in the June 2004 Third Report to the Leaders under the Regulatory Reform Initiative.

With regard to protecting intellectual property, Japan in early 2004 put into effect legislation to extend the term of copyright protection for cinematographic works from 50 years to 70 years. Japan is now examining extending the term of copyright protection for sound recordings and all other subject matter protected under the Copyright Law. In addition, Japan is considering whether to adopt a statutory damages system that would act as a deterrent against infringing activities, ensure that rights holders are fairly compensated for the losses suffered by infringement, and enhance judicial efficiency by eliminating the costly burden of having to establish and calculate actual damages and profits. Japan's Intellectual Property Strategy Headquarters also revised in 2004 its "IP Strategic Program," which is designed to meet the challenges of strengthening the protection and enforcement of intellectual property rights in the digital age. In addition, the United States and Japan have begun actively working to develop ways to promote greater protection of intellectual property rights worldwide, especially in Asia.

Japan reinforced the leadership role of the private sector by agreeing to support the development of private-sector self-regulatory mechanisms for online consumer protection and management of personal data. Indeed, the U.S. and Japanese Governments convened a public-private sector roundtable in May 2004 that provided U.S. and Japanese industry a timely opportunity to offer valuable input on Japan's forthcoming implementation of its Law for the Protection of Personal Information (Privacy Law). Since that meeting, various Japanese ministries released for public comment draft guidelines on how to comply with the Privacy Law, which goes into effect in April 2005.

In addition, recognizing that e-government also promotes growth in the IT sector, Japan reaffirmed that all ministries will implement reforms of procurement procedures for information systems in a consistent and timely

manner. The reforms are expected to improve market access by ensuring non-discriminatory, transparent, and fair procurement. Finally, Japan is developing network security guidelines and standards for local and central government entities, and affirmed the importance of involving the private sector in this process. Japan further affirmed that such guidelines and standards will, where appropriate, be open (non-proprietary) and consistent with standards developed by voluntary standardization bodies constituted upon consensus in industry, including the International Standards Organization (ISO).

Building on these accomplishments and the progress achieved over the past year, the United States made numerous recommendations in the Regulatory Reform submission of October 2004 designed to foster Japan's IT sector and create greater opportunities for U.S. interests. This year's recommendations focus on: (1) removing persistent legal and other barriers that hinder electronic commerce; (2) allowing maximum private-sector flexibility, innovation, self-regulation, and leadership; (3) expanding private-sector input into the development of IT-related policy, regulations, and procurement reforms; (4) creating a legal structure that enhances efficiency and security and facilitates online transactions in all areas of the economy; (5) developing coordinated policies compatible with international practice; and (6) protecting and promoting intellectual property. The United States discussed with Japan these recommendations in detail during a December 2004 meeting of the IT Working Group in Tokyo.

Energy: Japan continued this year to make progress in implementing energy liberalization reforms adopted by the Diet in 2003. These reforms should expand liberalization of the retail electricity sector from 26 percent to 63 percent of the market by 2005 and expand liberalization of the natural gas sector from 40 percent to 50 percent of the market by 2007. The reforms should also bring the government's regulation of utilities substantially closer to practices of other developed countries. Japan also took steps to enhance confidence in the reform process by soliciting public comments on related draft implementing regulations and ordinances. In its Regulatory Reform submission of October 2004, the United States urged Japan to adopt additional measures that would help foster the development of truly competitive Japanese electricity and gas sectors. These steps should spur domestic economic growth and increase opportunities for U.S. firms to produce, sell, and trade energy products and services for Japan's market.

The June 2004 Report to the Leaders outlined areas of progress in the electricity sector, including Japan's preparations to launch in April 2005 a wholesale power exchange to facilitate electricity trading. Additional steps were taken by the government to designate and prepare to supervise a Neutral System Organization that, when operations are launched in April 2005, should help ensure smooth operation of transmission and distribution functions by companies in the market. Japan was also preparing guidelines and rules to govern the behavior of market participants in order to help safeguard the development of a competitive market and prevent abuses of market position. In its October 2004 Regulatory Reform submission, the United States made a number of additional recommendations aimed at helping to ensure adequate supervision, transparency, and fairness as Japan's electricity market evolves. These include the implementation of detailed ordinances and regulations to ensure transparent interconnection procedures and charges for transmission, regulations and guidelines to enforce rules against discrimination by market participants, and rules to enable the regulator to step in where needed to enforce fairness and transparency in the structure of the Neutral System Organization. The United States also urged Japan to expand competition in the market by creating a legal framework to allow new sources of electricity, such as from co-generation facilities, to sell excess electricity via the electricity grid.

Progress was also made in promoting greater competition in Japan's natural gas sector. As reflected in the June 2004 Report to the Leaders, Japan took steps to encourage third-party access

to pipelines, including setting out rules for accounting separation in companies that both own pipelines and distribute natural gas, revising competition guidelines to ensure fair trade, and establishing rules to help encourage the further development of a pipeline network in Japan. A key focus of the U.S. Government's Regulatory Reform submission of October 2004 recommendations on energy was to urge Japan to take additional steps to bolster third-party access to Japan's liquefied natural gas (LNG) terminals. Meaningful and reliable access to LNG import terminals by third parties is important for two reasons: LNG imports are the only source of natural gas for customers in Japan, and natural gas is an important fuel source for companies wishing to build new electricity generating facilities. Access to LNG terminals thus has important implications for continued liberalization and opportunities for new market entry in both the natural gas and electricity sectors.

In addition, the United States also urged in its 2004 Regulatory Reform recommendations that Japan strengthen its ability to monitor and assess the state of competition in the electricity and natural gas markets. Such steps will help ensure that Japan's regulators have timely information about market developments in order to make adjustments in regulations and guidelines, including taking additional structural and liberalization steps to further promote competition. The United States also recommended that Japan bolster resources for the government's relevant gas and electricity regulatory offices and take steps to ensure independence in decision making by regulators.

The United States commends Japan for its evolving efforts to further liberalize its electricity and gas sectors. Much still needs to be done, however, to bring domestic energy costs down to a range closer to the average among developed countries. Moreover, greater liberalization does not always mean greater market access unless a regulatory regime is established that genuinely encourages new players to enter the market. The United States therefore continues to discuss energy reform recommendations with Japan, including at a meeting of our Energy Working Group held in December 2004.

Medical Devices and Pharmaceuticals: Japan's regulatory and reimbursement pricing systems slow the introduction of innovative U.S. medical devices and pharmaceuticals in Japan. The United States therefore continues to advocate regulatory and pricing reform to speed the introduction of new devices and drugs and create incentives for development of innovative products. The United States raised these issues with Japan throughout 2004 in the Medical Devices and Pharmaceuticals Working Group under the Regulatory Reform Initiative. That Working Group also meets under the 1986 Market-Oriented, Sector-Selective (MOSS) Agreement.

Japan is in the process of implementing significant reforms to the regulatory side of its healthcare system that will become fully effective in April 2005 and are expected to speed the introduction of innovative devices and drugs in the Japanese market. Japan, for example, established in April 2004 the Pharmaceuticals and Medical Devices Agency (PMDA), which is in part intended to speed approvals of drugs and devices and improve safety measures. The U.S. Government is urging Japan to ensure the increase in user fees paid by drug and device manufacturers (that took effect in April 2004) expands the PMDA's review staff and thereby facilitates faster approvals. In addition, the United States is carefully monitoring Japan's implementation measures specified in the Third Report to the Leaders to set targets for faster product approvals and to publish annual progress reports. Among Japan's targets is a goal (to be attained by 2009) to conclude approvals for 90 percent of new medical device applications and 80 percent of new drug applications within one year.

The United States presented new regulatory proposals to Japan through the Regulatory Reform Initiative in October 2004 and discussed them with Japan at a meeting of the Medical Devices and Pharmaceuticals Working Group in December 2004 in Tokyo. The U.S. proposals

also urge Japan to ensure that overseas audits or factory inspections not delay approvals of new products.

As for pricing reform, the Japanese government's plan for a comprehensive approach is outlined in Japan's "Industry Vision" proposals to improve the competitiveness of its medical device and pharmaceutical sectors by, among other steps, implementing pricing policies that recognize the value of innovation. In the Third Report to the Leaders, Japan committed to deciding more frequently whether to grant reimbursement prices to innovative medical devices and to introducing two important new premium pricing rules for particularly effective drugs.

In its October 2004 Regulatory Reform submission and the December 2004 Working Group meeting in Tokyo, the United States encouraged Japan to reform pricing rules to assess accurately the value of innovative products to Japan's healthcare system, and apply pricing premiums more appropriately to reward and stimulate advances in drug research and medical technology. The United States also urges Japan to consider the unique characteristics of the Japanese market that lead to a much higher cost structure than in other countries.

Financial Services: Japan has achieved many of the goals of making Tokyo's financial markets "free, fair and global", as introduced under the “Big Bang” financial deregulation initiative. More specifically, Japan has made significant progress in allowing new financial products, increasing competition within and between financial industry segments, and enhancing accounting and disclosure standards. “Big Bang” liberalization has substantially improved the ability of foreign financial service providers to reach customers in most segments of the Japanese financial system.

There was additional progress in financial sector deregulation in 2004. On April 1, 2004, the Diet's securities market reform package went into effect. The new law aims to diversify corporate stock and bond distribution channels and increase the number of intermediaries. The legislation specifically reduces minimum capital requirements for securities companies, investment trust management companies, and investment advisory companies. Shareholder rule revisions, designed to prevent abuse by brokers, were also implemented. The new rules authorize the Financial Services Agency (FSA) to inspect major shareholders of brokerage houses, including non-financial corporations and individuals. Finally, a new sales agent system was established to permit Certified Public Accountants, licensed tax accountants, and financial planners to sell corporate stocks to investors as agents of security brokerage houses.

Also in 2004, Japan revised its Securities and Exchange Law to allow private financial institutions, such as banks and insurance companies, to engage in securities brokerage businesses. The amendments introduced a system of fines to combat unfair trading practices. In addition, the law governing paperless stock transactions was revised to permit companies to stop issuing physical stock certificates. In December 2004, the Diet passed legislation to allow foreign exchange trading on margin. That legislation, which will take effect in July 2005, is designed to protect investors by setting forth specific criteria for margin foreign exchange trading. Also in December 2004, Japan enacted legislation to remove a ban on sales of mutual funds at post offices. Japan Post will start selling mutual funds in October 2005 at 550 of its 24,700 post offices.

The United States welcomes Japan's progress in increasing the efficiency and competitiveness of its financial markets. In its October 2004 Regulatory Reform recommendations, the United States put forward proposals to support further opening and development of the Japanese financial markets, which will allow Japan to take full advantage of international financial expertise and support future Japanese growth.

These recommendations include: (1) taking the measures necessary to make the No-Action Letter process an effective means for promoting

regulatory transparency in the financial services sector; (2) putting foreign bank branches on equal footing with domestic banks by allowing them to engage in trust and banking businesses concurrently; (3) harmonizing the regulatory framework governing investment advisory and investment trust management activities and eliminating inconsistencies or duplication; (4) allowing mergers and reducing obstacles to the early termination of investment trusts; (5) increasing the defined contribution (DC) pension plan contribution limits; (6) revising the E-Notification Law to include lenders subject to the Money Lending Business Law; (7) working closely with the private financial services community to review current reporting and record-keeping requirements; and (8) subjecting all financial legislative action to full public notice and comment. These issues will be discussed in February 2005 at the fourth meeting of the U.S.-Japan Financial Services Working Group.

ii. Structural Regulatory Reform

Competition Policy: A key goal of our regulatory reform efforts is to ensure that steps to deregulate and introduce competition into Japan's economy are not undone by anticompetitive actions by firms and trade associations resistant to such steps. An active and strong antitrust enforcement policy in Japan is needed to eliminate and deter anticompetitive behavior, including stronger measures to dismantle Japan's bid rigging (dango) system and active enforcement against anticompetitive exclusionary practices by dominant firms in deregulated industries.

Japan undertook some important steps in 2004 aimed at strengthening its antitrust enforcement regime. Most importantly, it submitted legislation to the Diet to substantially strengthen the effectiveness of Antimonopoly Act (AMA) enforcement. Specifically, the legislation would increase the administrative fine (surcharge) for AMA violations by most companies to 10 percent of the sales involved in the conspiracy (up from the current rate of 6 percent), with a further increase of the fine to 15 percent for repeat offenders. The legislation would also authorize the Japan Fair Trade Commission (JFTC) to adopt a corporate leniency program that would eliminate administrative fines and criminal penalties for the first company to report to the JFTC its participation in an unlawful cartel and cooperate in the JFTC's investigation, and would reduce the surcharges for the second and third companies to enter the JFTC's leniency program. In addition, the legislation would give the JFTC criminal investigation powers similar to those already enjoyed by the National Tax Agency, would strengthen criminal penalties for interference with JFTC investigations or for non-compliance with JFTC cease and desist orders, and would extend the statute of limitations for AMA violations to three years after the conduct stopped. It is expected this legislation will be enacted during the next Diet session in the spring of 2005.

With regard to measures to strengthen sanctions against bid rigging, in September 2003, the Ministry of Land, Infrastructure and Transport (MLIT) extended the maximum period of suspension of designation (debarment) for companies that engage in bid rigging to one year, and undertook to subject firms to nationwide debarment if the company's top executives or board members were complicit in bid-rigging activities. The new measures by MLIT specify that the period of debarment will be made more severe where the bid rigging involved "government-led bid-rigging" and the company tried to induce public officials to be complicit in the conspiracy or when the company denied the allegations of a whistleblower.

Transparency and Other Government Practices: The United States' work with Japan on transparency continues to focus on improving the Public Comment Procedure (PCP) in an effort to make it more effective and to encourage more widespread use of this potentially important mechanism. In the June 2004 Report to the Leaders, Japan took a useful step forward by affirming that it would work to improve the PCP by considering various reform measures that include putting in place measures to help ensure more PCP periods are at least 30 days, compelling Ministries and Agencies to make

public detailed explanations when they do not incorporate submitted comments, and improving reviews of PCP implementation and effectiveness. As 2004 concluded, Japan was considering several concrete measures to improve the PCP, but it remains unclear if those measures will prove meaningful.

The June 2004 Report to the Leaders also includes a section on Japan's initiative to encourage deregulation at the local level within Special Zones for Structural Reform. To date, Prime Minister Koizumi has approved nearly 400 of these zones since the first zones were established in early 2003. This new, innovative approach to deregulation and structural reform can provide important opportunities for Japan to ensure economic growth is sustained over the long-term. In the Third Report to the Leaders, Japan pledged to continue to take steps to ensure transparency in implementation of the zones initiative, to expand market-entry opportunities in the zones, and to apply successful regulatory exemptions in the zones on a national basis as expeditiously as possible.

The June 2004 Report to the Leaders includes a number of other steps taken in this area. Importantly, the Council for the Promotion of Regulatory Reform was established in 2004 with a strengthened mandate as a successor to the Council for Regulatory Reform, which over the years worked to effectively improve the regulatory environment in Japan. The Japanese government also broadened in March 2004 the scope of its No-Action Letter Procedures, which clarified that firms in all industries subject to government regulation may seek written clarification of those regulations, not merely firms in "new industries such as IT, finance, etc."

Building on these measures, the United States recommended in its October 2004 Regulatory Reform recommendations that Japan undertake additional improvements to its regulatory system to support its overall reform efforts. The United States is urging Japan to: (1) ensure the PCP is reformed in ways that make it a more meaningful process for the public to input into policymaking; (2) work jointly with the United States to achieve full implementation of the APEC Transparency Standards in the domestic regimes of countries in the Asia-Pacific region; (3) apply successful regulatory exemptions in the Special Zones on a national basis as expeditiously as possible; (4) take additional steps to facilitate public input into draft legislation before it is submitted to the Diet; (5) ensure that the process to restructure and privatize public corporations is transparent and that the private sector has opportunities to provide sufficient input; and (6) implement measures and practices to strengthen the effectiveness of the No-Action Letter system. Based on these recommendations, discussions on transparency issues took place in December 2004 in the Cross-Sectoral Working Group.

Privatization: Also included in this year's Regulatory Reform recommendations is a new, separate section on privatization, which underscores the importance the United States attaches to this ongoing process in Japan, particularly in regard to the privatization of Japan Post. Over the years, the United States has continued to take interest in Prime Minister Koizumi's efforts to restructure and privatize Japan's public corporations. The United States also recognizes that, if implemented vigorously, this reform effort can have a major impact on the Japanese economy, stimulating competition and leading to a more productive use of resources. As reform of the public corporations advances, the United States has been urging Japan to: (1) conduct the restructuring and privatization in a transparent manner; and (2) ensure that domestic and foreign private sector entities that will or may be affected by the reform have meaningful opportunities to provide input in the privatization process, such as through use of the Public Comment Procedure.

In the Regulatory Reform recommendations in October 2004, the United States specifically recommends that privatization of Japan Post be ambitious and market-oriented to achieve maximum economic benefits for the Japanese economy. A truly market-oriented approach must include the establishment of undistorted competition in Japan's insurance, banking, and express delivery markets through, among other

measures, the elimination of all advantages accorded to Japan Post over its private sector competitors. These advantages have long been of concern to U.S. and Japanese companies alike. (For detailed discussion of Japan Post privatization, please see the Insurance section under Bilateral Consultations, as well as Financial Services under Regulatory Reform.)

Legal Services and Judicial System Reform: The creation of a legal environment in Japan that supports regulatory and structural reform and meets the needs of international business is a critical element for Japan's economic recovery and restructuring. The Japanese legal system must be able to respond to the market's need for the efficient provision of international legal services, and provide a sound and effective foundation for the conduct of business transactions in an increasingly deregulated environment.

In the area of legal services, Japan announced that the 2003 amendments of the law regulating foreign lawyers that will allow them to enter into partnership arrangements with Japanese lawyers and to hire Japanese lawyers as associates will come into effect on April 1, 2005. The United States has been closely monitoring the adoption of implementing rules by the Japan Federation of Bar Associations from the perspective of ensuring that those rules are consistent with both the letter and liberalizing spirit of the 2003 amendments. Japan also has agreed to study whether foreign lawyers should be permitted to form professional corporations and to establish multiple branch offices in Japan as Japanese lawyers are currently permitted to do.

In the area of judicial system reform, the United States has been urging Japan to strengthen judicial oversight of administrative agency actions, including by modifying standing requirements to increase the number of persons eligible to seek judicial review of administrative actions. In 2004, Japan enacted legislation amending the Administrative Case Litigation Law that expands the standing of third parties to challenge administrative actions, facilitates and speeds up administrative litigation, and provides relief pending review of a judicial decision on the merits of an appeal of administrative actions.

Japan also passed in late 2004 legislation to create a government certification system for Alternative Dispute Resolution (ADR) providers. While the United States generally supported Japan’s recent efforts to strengthen and revitalize ADR, this certification system, although voluntary, will effectively discourage parties from choosing non-certified ADR providers. This in turn does not seem to support Japan’s commitment to create a flexible and open legal environment that facilitates the development of ADR services in Japan.

Commercial Law: Reform of Japan's commercial law to permit the use of modern merger techniques is necessary to facilitate merger and acquisition activities by both foreign and domestic firms in Japan. The Japanese economy also will benefit from additional measures to improve corporate governance, since good corporate governance systems encourage increased productivity and economically sound business decisions as management strives to maximize shareholder value. However, good corporate governance requires active shareholder participation, particularly by large institutional investors such as pension funds and mutual funds, and the encouragement of good information flows through effective whistleblower protection measures.

Japan took some important steps in 2004 toward the introduction of modern merger techniques into Japanese law. The responsible subcommittee of the Legislative Council announced that it was recommending revising the Commercial Code to permit triangular mergers, cash mergers, and short form (squeeze out) mergers. Japan also said it was studying ways to facilitate corporate restructuring and investment including the appropriate tax treatment of such modern merger techniques.

In the area of strengthening corporate governance, Japan enacted general whistleblower legislation in 2004 that protects whistleblowers who report crimes or violations of a broad range of laws, including violations of

the Securities and Exchange Law. Japan also indicated its support for the promotion of proxy voting by managers of public and private pension funds and by mutual fund and investment trust managers. The Ministry of Health, Labor and Welfare is studying whether to make public the proxy voting policies of its fund managers, and the Financial Services Agency will encourage the relevant trade association to require members to publicly disclose their actual proxy voting records.

Distribution: Japan's generally rigid and inefficient distribution and customs systems restrict market access for imported products and undermine the competitiveness of foreign-made products. With regard to customs, the United States urges Japan to continue modernizing its clearance procedures to fully open its market to imported goods. The demand for the rapid delivery of goods and information has produced a number of new industries, including the express carrier industry, that are now seen as vital for the smooth development of the global economy. It is important therefore, to minimize the regulations, procedures, and costs that could inhibit the free exchange of goods and information through the express carrier industry. While more remains to be done, the Japanese government has implemented several measures and provided a number of assurances under the Regulatory Reform Initiative that will enhance the ability of U.S. express carriers to provide an efficient, speedy exchange of goods and information to benefit the Japanese economy.

The Third Report to the Leaders included a number of steps intended to have a positive impact on this sector. Customs overtime charges, for example, were reduced nationwide by 50 percent on April 1, 2004. The Japanese government also specified that the mid-term management plan created by the Narita International Airport Corporation aims to reduce landing fees as soon as possible, which would in turn lower the cost of doing business in Japan. In addition, the Japanese government took note of the request by the U.S. Government to promote the use of credit and debit cards as means of payment for government services.

U.S. reform recommendations to the Japanese government in October 2004 again urged Japan to lower landing fees at its international airports, decrease government regulations on airline pricing and filing requirements, and continue to improve customs processes and procedures. In addition, the submission recommended that Japan further increase acceptance and security of credit and debit cards as payment for goods and services in order to foster tourism and increase economic efficiency. In December 2004, the Cross-Sectoral Working Group met to discuss these and other related issues.

b. Bilateral Consultations

i. Insurance

Japan took significant steps under the 1994 and 1996 bilateral insurance agreements to deregulate its insurance market. These steps included sweeping measures that brought meaningful improvements in the product approval process, greater use of direct sales of insurance products, and a diversification of allowable product offerings. As a result, U.S. insurance companies continue to visibly and substantially increase their presence in both the life and non-life insurance sectors in Japan. There remain, however, issues of serious concern to U.S. insurers that include competitive matters related to Japan Post's insurance arm (Kampo), the review and reform of the Life Insurance Policyholder Protection Corporation (PPC), the status of unregulated and regulated insurance cooperatives (kyosai), and liberalization of the sale of insurance products through banks. Bilateral consultations under the two insurance agreements were held in Tokyo in August 2004 where these and other issues were raised that have been highlighted by U.S. industry. The talks also included the participation of the National Association of Insurance Commissioners.

The United States expressed its continuing concern with the unequal competitive conditions that exist between Kampo and its private sector competitors, and continued to call for a standstill on new product offerings by Kampo until its advantages over the private sector are

eliminated. These concerns were also discussed in the context of preparations within the Japanese government to develop legislation to privatize Japan Post over a 10-year period beginning in 2007. The insurance talks were held just prior to the release and endorsement by the Cabinet of a blueprint to guide the drafting of legislation, providing a timely opportunity for detailed discussions on how privatization can achieve equal competitive conditions between Japan Post and its competitors. Subsequently, the Cabinet's blueprint included the following changes that had been recommended by the United States: (1) make Japan Post meet the same tax obligations as private companies; (2) terminate government guarantees on Japan Post's insurance products; (3) require full participation by Japan Post in Japan's insurance safety net system; and (4) require that Japan Post's insurance operations fall under the same legal and regulatory obligations as those applied to private companies. The United States called on Japan to take additional steps to ensure that the privatization process puts Japan Post on the same footing as other private companies. The United States also indicated its favorable view of the high degree of transparency achieved in the privatization process, including the willingness of relevant Japanese officials to exchange views with interested private sector parties. The United States urged Japan to maintain the high degree of transparency of this process.

During the insurance talks, the United States also raised the issue of the future of the Life Insurance PPC. The United States urged Japan to carry out its commitment that the Financial System Council conduct a thorough review of the safety net system and ensure that subsequent legislation is enacted in time to establish a more efficient, sustainable safety net system before current stopgap measures expire in March 2006. Through the reform process, the United States urged Japan to take steps to improve policyholder protection while minimizing reliance on the PPC and the burden borne by the contributors to the system. The United States stressed that the deliberations and subsequent drafting of legislation should be transparent and allow for opportunities for input by interested parties, including foreign insurance companies.

The United States also raised its concerns about regulated and unregulated kyosai. These insurance cooperatives provide a range of insurance products that compete directly with the private sector yet are not required to meet the same tax, legal, supervisory, and regulatory obligations as private companies. This state of affairs has allowed kyosai to develop a significant share of the Japanese insurance market. The United States commended Japan for initiating a review of unregulated kyosai by a government advisory body as a first step, underscoring that appropriate steps be taken following the review to remedy this unequal competitive situation. The United States also expressed concern about product expansions by major regulated kyosai and called for measures to equalize competitive conditions as soon as possible.

In addition, the United States urged Japan to fully liberalize the sale of insurance products through banks within a three-year period identified by a government advisory panel. It called on Japan to ensure that the liberalization process is undertaken in a fair and balanced manner across insurance market sectors. The United States also asked Japan to revise privacy rules that hinder sales of insurance products through banks.

The United States raised the issue of draft reserve requirements for variable annuity products, asking Japan to ensure that the new regulations provide for reserves that are actuarially sound and not excessive, which otherwise would create an unnecessary barrier to companies. The United States also expressed concerns about Japan's case agent system.

In addition to the annual insurance consultations, the United States utilizes the U.S.-Japan Regulatory Reform Initiative to put forward numerous recommendations to promote further reform in Japan's insurance market. The United States included specific recommendations in its 2004 Regulatory Reform submission to Japan to address the concerns identified above related to postal insurance, the Life PPC, kyosai, and bank sales of insurance.

ii. Government Procurement

Construction/Public Works: U.S. firms remain largely excluded from Japan’s massive ($190 billion) public works market, obtaining far less than one percent of projects awarded. Problematic practices inhibit the full involvement of U.S. design and construction firms in this sector, which has become increasingly competitive due to decreases in public works spending. These practices continue despite the existence of the 1994 U.S.-Japan Public Works Agreement (Action Plan), under which Japan is obligated to use specified open and competitive procedures for public works procurements valued at or above specified thresholds. The requirements set by these procedures go above and beyond those called for under the WTO Agreement on Government Procurement (GPA). Problematic practices include failure to address rampant bid rigging, use of arbitrary qualification and evaluation criteria to exclude U.S. firms, and unreasonable restrictions on the formation of joint ventures.

During the Expert Level Meeting on Public Works in 2004, the United States urged Japan to eliminate the obstacles that prevent U.S. companies from full and fair participation in its public works sector. The United States welcomed Japan’s confirmation that Action Plan procedures would be used for Urban Renewal and Private Finance Initiative projects that were commissioned by Action Plan entities and above the specified thresholds. The United States also urged Japan to increase the use of Construction Management, Project Management technology and design architect procurements for all public works projects. In addition, the United States urged the Japanese government to ensure that the procurement procedures set forth in the 1988 U.S.-Japan Major Projects Arrangement (MPA) are used for all outstanding MPA projects. In November 2004, Japanese private sector organizations hosted the sixth U.S.-Japan Construction Cooperation Forum (CCF), which focused on facilitating the formation of joint ventures between U.S. and Japanese design/consulting and construction companies for Urban Renewal projects.

iii. Investment

Prime Minister Koizumi's January 2003 pledge to double Japan's cumulative foreign direct investment (FDI) in the next five years builds on Japan’s earlier reforms to encourage FDI. Shifting Japanese attitudes toward inward FDI, depressed asset values, and improvement in the regulatory environment enabled U.S. and other foreign firms to continue to gain significant new footholds in the Japanese economy, mostly through mergers and acquisitions (M&A). Although FDI in Japan as a share of GDP remains the lowest among OECD countries, foreign investment has risen in recent years, especially in the banking/insurance, telecommunications, and machinery sectors.

Japanese and foreign businesses continue to be significantly affected by the implementation of several recent legal changes. The Securities Exchange Law, for example, now mandates consolidated and market-value accounting for listed firms and a new bankruptcy law (Civil Reconstruction Law) encourages business reorganization, including spin-offs, rather than forced liquidation of assets. In addition, the concept of corporate governance, such as the role of boards of directors, is changing in ways that bode well for increased investments, and M&A. Amendments to the Commercial Law now allow large-scale corporations to choose either Japan's traditional statutory auditor system or executive committee system (i.e., U.S.-style corporate governance). Although the Diet in 2003 amended the Industrial Revitalization Law (IRL) to allow triangular mergers and cash mergers, using parent company stock as merger consideration, for those companies covered by the IRL, it did not address tax considerations for foreign companies involved in such mergers. The Diet is considering revisions to the Commercial Code which would allow greater use of modern M&A tools by foreign investors effective in 2006. The Ministry of Finance is considering changes in the tax treatment of M&As involving foreign investors.

Despite the progress achieved over recent years, government and business observers from both countries recognize that much remains to be done to increase FDI in Japan, and the U.S. and Japanese Governments have agreed to continue

to consult on investment issues. The Initiative meets regularly throughout the year and presents an annual report to the President and Prime Minister on the year's accomplishments. Businesses in both Japan and the United States agree that two new bilateral agreements – an income tax treaty which entered into force in 2004, and a social security totalization agreement which was signed in 2004 – will benefit investors in both countries.

c. Sectoral Issues

i. Agriculture

Japan remains the United States' second largest export market (behind Canada) for food and agriculture products. Despite this, Japan maintains many barriers to imports of these products.

Beef: Reopening the Japanese market to U.S. beef continued to be a top priority of the Administration on the bilateral trade front in 2004. Japan imposed a ban on U.S. beef after the December 2003 discovery of a single imported cow with Bovine Spongiform Encephalopathy in Washington State. Before the ban, U.S. beef exports to Japan (the largest export market for U.S. beef) totaled roughly $1.3 billion annually. Since April 2004, the U.S. Government has engaged the Japanese government in a high-level effort to reopen the Japanese market to U.S. beef. After prolonged negotiations to determine the conditions under which the trade would be resumed, the two Governments reached a framework agreement on October 23, 2004 designed to pave the way for resumption of beef trade between Japan and the United States. More specifically, that agreement was developed to enable U.S. beef trade to resume under a special marketing program. That program would then be reviewed, with a view toward returning trade to more normal patterns.

Despite the October agreement and official involvement at the highest levels, a continued lack of significant progress in reopening the Japanese market is causing serious harm to the U.S. beef industry. The United States has gone to great lengths to demonstrate to Japan the ongoing safety of the U.S. beef supply, which includes an enhanced surveillance program of animals and changes to slaughter and feed processes to further ensure that potentially infected material cannot enter the food chain. At the highest levels of government, the Administration is pressing Japan to expeditiously reopen this critical market for U.S. beef. The United States will take all appropriate steps to ensure that this occurs.

Other Sanitary and Phytosanitary (SPS) Measures: Japan's use of sanitary and phytosanitary measures continues to create many barriers to U.S. food and agricultural goods. The United States is increasingly concerned that Japan applies certain SPS measures without scientific justification or documentation.

This was the clear conclusion of a WTO dispute settlement panel and the WTO Appellate Body in a case involving Japan's requirements on U.S. apple exports, including orchard inspections. The panel and Appellate Body reports that these requirements (ostensibly to protect Japanese orchards against fire blight disease) were unjustified. The reports ruled that Japan's measures did not have a scientific basis and were not based on a valid risk assessment.

Another example is Japan's fumigation requirement on U.S. fruits and vegetables for cosmopolitan pests, which is imposed despite the fact that these pests are widely distributed in Japan and are not under official control. The fumigation requirement is particularly detrimental to the quality of these products, many of which do not survive fumigation and must be destroyed. The United States has raised this issue in the WTO Committee on the Sanitary and Phytosanitary Measures.

The United States continues to work with Japan to resolve these and other SPS concerns in bilateral and multilateral fora. In addition, the United States will monitor closely Japan's newly established Food Safety Agency and will take every opportunity to ensure that this agency operates in a manner consistent with Japan's

international obligations and to ensure that policies and practices are supported by science.

Rice: The United States continues to express ongoing concerns over U.S. access to Japan's rice market. Although the United States has supplied about half of Japan's rice import needs since 1995 when it opened its market under its WTO minimum market access agreement, only a minor share of U.S. rice imported under the tariff rate quota (TRQ) is allowed to be sold into the private sector immediately upon entry. In addition, very small quantities are occasionally released from government stocks and eventually permitted to enter the industrial food-processing sector. Since Japan tariffied rice imports in 1999, only a minuscule amount has been imported outside of the TRQ, because such imports are subject to a duty of 341 yen per kilogram, equivalent to about 1100 percent ad valorem at January 2005 prices and exchange rates.

ii. Steel

Steel Issues are detailed in Chapter IV.

10. Taiwan

In 2004, the United States and Taiwan continued to work together to address shortcomings in several areas related to Taiwan's WTO commitments, including ensuring market access for rice, improving intellectual property rights protection, and further opening Taiwan's telecommunications services market. In addition, the United States worked with Taiwan bilaterally to ensure market access for pharmaceutical products. As a result of these joint efforts, the United States and Taiwan resumed bilateral discussions in November 2004 under an existing Trade and Investment Framework Agreement.

a. Rice

The United States continued to consult with Taiwan throughout the year regarding concerns with its rice import system. By the end of 2004, Taiwan agreed to modify its rice import system based on consultations with the United States, but other interested rice suppliers to the Taiwan market did not approve some of the proposed modifications to Taiwan's WTO tariff-rate quota schedule. Taiwan is a leading Asian market for U.S. rice exports and, despite concerns associated with the rice tender process, U.S. suppliers won a majority of the tenders conducted in 2004. The United States will continue to work with Taiwan and other interested suppliers to the Taiwan market to achieve improvements to the rice import system.

b. Intellectual Property Rights (IPR)

The United States continued in 2004 to urge Taiwan to further improve its enforcement of IPR and legal framework for IPR protection. U.S. concerns with the level of IPR piracy in Taiwan were serious enough to warrant continued placement of Taiwan on the Special 301 Priority Watch List in April 2004. The United States subsequently determined that Taiwan should be moved to the Special 301 Watch List in an out-of-cycle review during the fall of 2004 as a result of sustained enforcement activities and improvements to Taiwan's legal infrastructure to protect IPR.

As a result of concerted efforts by the United States, industry, and the Taiwan executive branch, Taiwan's legislature in August 2004 passed additional amendments to its copyright law to address some U.S. concerns, including instituting technological protection measures, establishing heavier penalties for infringement, and providing Taiwan Customs the authority to take ex officio action. In addition, Taiwan continued to take measures to improve enforcement of IPR, including conducting raids against manufacturing and retail outlets and formalizing previously ad hoc task forces. The United States will continue to monitor Taiwan's progress in combating piracy, focusing in particular on whether Taiwan continues to

aggressively enforce its laws, take measures to improve the judicial systems ability to address intellectual property cases, and take other concrete actions to reduce all types of IPR violations, particularly in the area of internet piracy and illegal peer-to-peer downloading.

In January 2005, Taiwan's Legislative Yuan passed an amendment to the pharmaceutical law that will provide for protection of undisclosed test or other data related to pharmaceutical products. Data submitted to Taiwan for marketing approval is required by TRIPS to be protected against disclosure and "unfair commercial use." While implementing regulations remain to be drafted, the new law should allow Taiwan to fulfill this commitment.

c. Telecommunications

As 2004 came to a close, and nearly three years after WTO accession, Taiwan's legislature had approved one of two bills necessary to establish a new National Communications Commission, an independent telecommunications regulatory authority. With respect to market access, partially due to repeated U.S. requests, Taiwan's current telecommunications authority began in September 2004 to accept applications for carriers interested in providing fixed line services and shared plans in November 2004 to implement a new licensing regime to permit foreign carriers to apply for authorization to supply local, long-distance, and international services under less restrictive conditions by March 2005. The United States will continue to monitor Taiwan's progress toward the market opening of its telecommunications sector in a WTO-consistent manner.

d. Pharmaceuticals

Taiwan's pharmaceutical registration process continues to slow market entry for new drugs that have already been approved in developed countries. Taiwan's Department of Health implemented a requirement for firms to submit validation data as part of the registration and approval process for both new drugs and those already on the market. The United States worked closely with Taiwan in 2004 to identify and resolve outstanding concerns with these requirements in order to help eliminate market access barriers for pharmaceutical products. The United States will continue to do so in 2005.

Another area of concern in this sector involves pricing, whereby hospitals and doctors in Taiwan buy domestically-manufactured generic drugs at discounted prices and are then disproportionately reimbursed by Taiwan at a fixed higher rate, contrary to regulations requiring that reimbursements be made at the purchase price. This practice favors local generic manufacturers over innovative, usually foreign, producers. The United States will continue to work with Taiwan officials and industry to develop ways in which this systemic problem can be addressed. Pharmaceutical pricing issues are exacerbated by the Taiwan health care system, which allows doctors to both prescribe and dispense pharmaceuticals. Research-based pharmaceutical companies see separating these functions as essential to resolving the long-term pricing problem.

11. Hong Kong (Special Administrative Region)

a. Intellectual Property Rights

In 2004, Hong Kong continued to maintain a robust intellectual property rights (IPR) protection regime, especially in the area of public education, sustained enforcement, and imposition of deterrent sentences, including incarceration. Hong Kong has sustained public education efforts to encourage respect for IPR and has re-launched its "no fakes" campaign with local retailers who pledge to sell no counterfeit or pirated goods. Hong Kong authorities also continue to conduct aggressive raids at the production and retail sales levels and to act against vendors who advertise illegal products over the Internet. In February 2004, Hong Kong enacted an amendment to its Copyright Ordinance that provided tougher measures against illicit copy shops. These provisions took effect on September 1, 2004. However, those who pirate printed works are not subject to criminal liability in Hong Kong.

In December 2004, Hong Kong initiated public consultation on another proposed amendment to the Copyright Ordinance that will deal with various aspects of end-use piracy. The United States continues to monitor the situation to ensure that Hong Kong's IPR protection efforts are sustained and that problem areas are addressed.

b. Telecommunications

Hong Kong completed its liberalization of local fixed telecommunications network services (FTNS) on January 1, 2003. There are no limits on the number of licenses issued and no time limit for submitting license applications. In July 2004, Hong Kong announced that it would withdraw its interconnection policy for local fixed-line telecommunications services by June 30, 2008. Interconnection charges will then be subject to commercial negotiation between the operators concerned. In October 2004, Hong Kong began a two-month public consultation on the regulation of Internet Protocol (IP) Telephony. The objectives of the consultation were to seek views on whether the existing regulatory requirements for traditional voice telephony service should be applied to the new services and whether Internet Service Providers should be allowed to operate IP Telephony services. In November 2004, the government decided to take back in 2008 a CDMA (code division multiple access) license and a TDMA (time division multiple access) license from two local operators. The United States will continue to closely monitor developments in this sector.

12. Sri Lanka

In October 2004, the United States and Sri Lanka held their fourth Trade and Investment Council (TIC) meeting pursuant to the United States–Sri Lanka Trade and Investment Framework Agreement (ITIFA). The Sri Lankan delegation was led by Trade Minister Jeyaraj Fernandopulle. The TIC meetings have become an essential element of our bilateral trade relations and have established a record for problem solving.

Minister Fernandopulle, as well as Sri Lanka's Finance and Foreign Ministers, met with U.S. Trade Representative Robert B. Zoellick during the year. Progress in advancing goals of mutual interest slowed somewhat, however, due to Sri Lanka's national elections. A new government took office at the start of the year.

Sri Lanka is focused on the challenge of adapting its apparel industry to the end of the international quota system. It is trying to improve the industry's competitiveness and diversify.

The United States has offered advice and facilitated linkages with our textile industry. U.S. exports to Sri Lanka remain insignificant, but Sri Lanka announced a liberalization of its wheat import regime, which may prove beneficial for U.S. wheat exporters. Sri Lanka also made efforts to make its government procurement system more transparent. The United States, however, is concerned that Sri Lanka's new government raised some tariffs and took other actions that reversed some of the trade and investment liberalization the former government had undertaken. In addition, Sri Lanka has made limited progress concerning the protection of intellectual property, including enforcement against piracy and counterfeiting. Legislation enacted in 2004 that is designed to meet WTO TRIPS commitments is a step in the right direction, however, remaining TRIPS deficiencies need to be addressed.

Sri Lanka continues to advocate the initiation of a Free Trade Agreement negotiation with the United States. The matter remains under consideration.

13. Iraq

USTR participated in the first two meetings of the new Joint Economic Council, with senior USTR officials traveling to Baghdad for the inaugural session. The Members of the WTO agreed to begin the process for Iraqi accession, establishing a Working Party to conduct negotiations. The United States will continue providing technical assistance to Iraq as it pursues accession. USTR contributed to a two-

week trade capacity building session in Washington, conducted by the Department of Commerce and funded by USAID, with experts speaking on subjects such as standards, intellectual property and the U.S. Generalized System of Preferences.

H. Africa

1. AGOA

The African Growth and Opportunity Act (AGOA), enacted in May 2000 as part of the Trade and Development Act of 2000, is the centerpiece of U.S. trade policy for sub-Saharan Africa. AGOA provides a number of key economic benefits and incentives to promote economic reform and trade expansion in sub-Saharan Africa, including duty-free access to the U.S. market for almost all products made in beneficiary sub-Saharan African countries. The Act also institutionalizes a process for strengthening U.S. trade relations with sub-Saharan African countries by establishing a regular ministerial-level forum with AGOA-eligible countries.

The AGOA Acceleration Act of 2004 ("the Act"), which President Bush signed into law on July 13, 2004, amended several key provisions of AGOA. It extended the authorization of the overall AGOA program from 2008 to 2015, as President Bush proposed to the second AGOA Forum in Mauritius in January 2003. The Act also extended AGOA's special third-country fabric provision by three years, to September 30, 2007. Under this provision, less-developed beneficiary countries are permitted to use regional or third-country fabric in apparel imported into the United States under AGOA, subject to an overall cap. The cap will remain at the FY2004 level in years one and two of the extension and be reduced 50 percent in year three. The Act amended several technical aspects of AGOA's apparel provisions to allow broader eligibility for products incorporating certain inputs. The Act also encouraged the Administration to develop policies that enhance trade capacity, support infrastructure projects and the ecotourism industry and expressed the Sense of Congress that African countries should participate in and support multilateral trade liberalization under the auspices of the WTO.

AGOA requires the President to determine annually whether sub-Saharan African countries are, or remain, eligible for benefits based on their progress in meeting criteria set out in the Act. These criteria include establishment of a market-based economy and the rule of law, the elimination of barriers to U.S. trade and investment, implementation of economic policies to reduce poverty, the protection of internationally recognized worker rights, and establishment of a system to combat corruption. Additionally, countries cannot engage in: (1) violations of internationally recognized human rights; (2) support for acts of international terrorism; or (3) activities that undermine U.S. national security or foreign policy interests.

An interagency AGOA Implementation Subcommittee, chaired by USTR, conducts the annual eligibility review, drawing on information from the public, non-governmental organizations, the private sector, and the prospective beneficiary governments. Following the eligibility review in the fall of 2004 and based on the recommendation of the U.S. Trade Representative, on December 21, 2004 the President signed a Proclamation listing the 37[52] sub-Saharan African countries that meet the Act's requirements for eligibility in 2005. Cote d'Ivoire was removed from eligibility for 2005 due to a failure to meet the AGOA eligibility criteria described above. In a separate Proclamation dated December 10, 2004, President Bush added Burkina Faso to the list of AGOA beneficiary countries.

As of December 2004, 24 AGOA-eligible countries had instituted acceptable customs measures to prevent illegal trans-shipment and,

[52] The list of eligible countries for AGOA and of those that have met requirements for textiles and apparel benefits can be found at http://www.agoa.gov.

accordingly, had been certified for AGOA's textile and apparel benefits.

AGOA establishes a U.S.-Sub-Saharan Africa Trade and Economic Cooperation Forum -- informally known as "the AGOA Forum" -- to discuss expanding trade and investment relations between the United States and sub-Saharan African countries, and implementation of AGOA. The third meeting of the Forum was held in Washington, D.C. in December 2003 and included participation by the President, the United States Trade Representative, the Secretaries of State, Treasury, Commerce, and Agriculture, the Administrators of USAID and the U.S. Trade and Development Agency, and ministerial-level officials from almost all AGOA-eligible countries. It is expected that the next AGOA Forum will be held in mid-2005.

AGOA continues to have a significant impact on growth and economic development in several beneficiary countries. Since 2000, AGOA has created tens of thousands of jobs and sparked hundreds of millions of dollars in new investment in Africa. In the first nine months of 2004, AGOA imports exceeded $18.3 billion, up 77 percent over the same period in 2003, largely due to the addition of Angola to the AGOA program and an increase in the value of oil imports. Over 92 percent of U.S. imports from AGOA-eligible countries now enter the United States duty-free under AGOA, GSP, or zero-duty NTR/MFN rates. While most U.S. imports from the region continue to be in the energy sector, AGOA has begun to result in diversification of United States-African trade. For example, in the first nine months of 2004, non-fuel AGOA imports exceeded $2.5 billion, with apparel imports totaling $1.2 billion, a 33 percent increase over the same period in 2001. AGOA minerals and metal imports were up 65 percent, to $490 million, and AGOA agricultural imports increased 23 percent, to $197 million.

AGOA successes are also creating new commercial opportunities for U.S. exporters, as African exporters explore new input sources in the United States. U.S. exports to sub-Saharan Africa increased 30 percent in the first nine months of 2004, with especially notable gains in agricultural goods, machinery, and transportation equipment. In an effort to help African countries and businesses meet U.S. sanitary and phytosanitary standards, the United States posted to sub-Saharan Africa three U.S. agricultural standards experts from the USDA's Animal and Plant Health Inspection Service -- one at each of the three USAID-administered regional competitiveness hubs in 2004.

See Chapter VI for information on trade capacity building activities related to AGOA.

2. South Africa

The United States and South Africa enjoy a broad and mutually beneficial trade and investment relationship. This relationship has been encouraged by a TIFA, signed in February 1999, and the start of free trade agreement negotiations with the Southern African Customs Union (SACU), of which South Africa is a member, in June 2003. Two-way trade increased 22.6 percent in the first ten months of 2004, to $7.4 billion. During the same period, U.S. imports from South Africa under AGOA and related GSP provisions increased by 2.7 percent, with increased imports of minerals and metals, agricultural products, and chemicals offsetting decreases in transportation equipment, textiles, and apparel. South Africa is the largest U.S. supplier of non-fuel AGOA-eligible products (including GSP items), with sales worth more than $1.4 billion in the first ten months of 2004. Leading imports include platinum group metals, diamonds, ferroalloys, and motor vehicles. Leading U.S. exports to South Africa include motor vehicles, aircraft, machinery, and medical equipment. Primary agricultural imports from South Africa are fresh citrus fruits and wines, increasing by 4 percent and 67 percent, respectively, in the first ten months of 2004. The primary U.S. agricultural export is wheat.

South Africa and the United States continue to consult closely on issues related to the WTO DDA, despite some differences in certain areas. South Africa was a founding member of the G-

20 coalition of countries formed prior to the September 2003 WTO Ministerial in Cancun.

The United States is the largest single-country source of new foreign investment in South Africa since South Africa's 1994 transition to democracy. More than 900 U.S. companies and more than 400 U.S. subsidiaries and franchises are operating in South Africa. As with any trade and investment relationship as diverse and vibrant as this one, certain disputes have arisen between the United States and South Africa. These include concerns related to South Africa's December 2000 antidumping order against imports of certain U.S. poultry products, as well as ongoing problems related to South Africa's basic telecommunications monopoly, Telkom, and its failure to provide facilities necessary for U.S. value-added network services (VANS) providers to operate and expand.

The United States also has some concerns about South Africa's Black Economic Empowerment (BEE) policies, which are intended to promote the economic empowerment of the historically disadvantaged majority population in South Africa. U.S. companies generally support the objectives of BEE, particularly its emphasis on development and on moving historically disadvantaged people into the mainstream of the national and global economy, but some have expressed concern about the evolution of BEE policies. For example, there are concerns about BEE policies requiring the transfer of equity to historically disadvantaged individuals, particularly among wholly-owned U.S. subsidiaries which have no equity to transfer. Further, many aspects of BEE implementation, interpretation, and policy are still unclear and unanswered. Indeed, foreign investors in South Africa have cited the uncertainty of South African policy as the number one risk of doing business in the country. The United States continued to discuss all of these issues with South Africa in 2004.

3. Nigeria

Nigeria is the United States' largest trading partner in sub-Saharan Africa, based mainly on the high level of U.S. petroleum imports from Nigeria. Total two-way trade was valued at $14.6 billion in the first ten months of 2004, a 52 percent increase over the same period in 2003, due to an increase in both exports and imports. Nigeria was the United States' fifth largest supplier of petroleum and the fourth largest purchaser of U.S. wheat in 2003. Nigerian exports to the United States under AGOA, including its GSP provisions, were valued at $10.7 billion during the first nine months of 2004, a 57 percent increase over the same period in 2003, due mainly to a surge in oil exports. However, Nigeria is seeking to utilize AGOA to diversify its export base, especially in the area of manufactured goods. Nigeria became eligible for AGOA's textile and apparel benefits in July 2004, though it has yet to export apparel items under AGOA. The United States is the largest foreign investor in Nigeria with an estimated $2.1 billion in existing assets.

The United States is working closely with Nigeria, through the United States-Nigeria TIFA and other initiatives, to promote expanded trade and investment and a more diversified economy. At the last United States-Nigeria TIFA Council meeting in November 2004, the United States and Nigeria pledged to work together on critical issues such as market access, the WTO DDA, AGOA implementation, and trade capacity building. The United States is concerned about Nigeria's use of protective import bans on certain products, including sorghum, millet, wheat flour, bulk vegetable oil, and a range of textiles and apparel products. The United States is also concerned about high tariffs on various products, including rice and meats.

4. Ghana

Total two-way trade between Ghana and the United States was valued at $367 million in the first ten months of 2004, a 46 percent increase over the same period in 2003. Ghana is the sixth largest sub-Saharan African market for U.S. goods. The leading U.S. exports to Ghana are machinery, wheat, and motor vehicles. U.S. imports from Ghana are primarily timber, oil, cocoa, and apparel. In the first three quarters of 2004, U.S. imports from Ghana under AGOA, including its GSP provisions, were valued at $48.7 million, up 34 percent from the same period in 2003.

Ghana and the United States enjoy a long-standing commercial relationship despite occasional commercial disputes involving United States companies. A number of commercial issues have been resolved or addressed within the United States-Ghana TIFA. At the last United States-Ghana TIFA Council meeting, in July 2002, discussions focused on outstanding commercial disputes, WTO issues, AGOA implementation, and trade capacity building.

5. COMESA[53]

The United States and the Common Market for Eastern and Southern Africa (COMESA) signed a TIFA in October 2001 and have subsequently held two United States-COMESA TIFA Council meetings, most recently in June 2003. COMESA is the largest regional economic organization in Africa, with nineteen member states and a population of over 385 million. It is making great strides in advancing economic integration in the sub-region, including via implementation of the COMESA Free Trade Area, in which eleven COMESA members participate. Thirteen COMESA members are AGOA-eligible and nine qualify for textile and apparel benefits. In 2004, Deputy U.S. Trade Representative Shiner and other USTR officials met with COMESA Secretary General Mwencha and representatives of the COMESA Secretariat on several occasions. Among the topics discussed were implementation of AGOA, measures to enhance agricultural trade, WTO issues, and trade capacity building activities. The AUSTR for Africa attended the COMESA Business Summit in Kampala, Uganda in June 2004.

6. UEMOA[54]

The eight-member West African Economic and Monetary Union (known by its French acronym, UEMOA) represents one of the most successful efforts to date toward regional integration in Africa. UEMOA has established a customs union, eliminated internal duties, and is addressing key non-tariff barriers. There is a UEMOA central bank and a regional stock exchange. Six of the eight UEMOA member countries are eligible for AGOA. As noted above in the AGOA section, UEMOA member

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[53] COMESA members are Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe.

[54] UEMOA members are Benin, Burkina Faso, Cote d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo.

Burkina Faso became AGOA-eligible in 2004, while Cote d'Ivoire was removed from the list of AGOA-eligible countries as of January 1, 2005. Four UEMOA countries – Benin, Mali, Niger, and Senegal – are eligible to receive AGOA's textile and apparel benefits.

UEMOA entered into a TIFA with the United States in April 2002. At the most recent TIFA Council meeting in Washington in December 2003, Deputy U.S. Trade Representative Shiner and UEMOA Commission President Toure discussed AGOA implementation, means to increase trade and investment flows, issues related to the Doha Development Agenda, and trade capacity building. During a December 2004 visit to UEMOA member countries Senegal, Benin, and Mali, U.S. Trade Representative Robert B. Zoellick discussed issues related to AGOA, export diversification, and the ongoing DDA, including the handling of cotton in these negotiations.

7. Africa and the WTO

Supporting Africa's integration into the global economy is one of the key elements of the Administration's Africa trade policy. Increased and more effective participation, including undertaking greater commitments, of sub-Saharan African countries in multilateral trade discussions is an important step toward this end. Accordingly, the United States continues to consult closely with sub-Saharan African Members of the WTO and is providing technical assistance to help facilitate African participation in the WTO.

WTO issues were key agenda items during each of U.S. Trade Representative Robert B. Zoellick's three trips to sub-Saharan Africa in 2004 – to South Africa and Kenya in February, to Mauritius in July, and to Senegal, Benin, Mali, Namibia, and Lesotho in December. Extensive consultations on WTO topics were also held in Geneva, Washington, and in African capitals. The thirty-eight sub-Saharan African WTO members are the largest single bloc in the WTO, representing 26 percent of all WTO membership. Seven other sub-Saharan African countries have observer status.

One of the most important WTO issues for the WTO Africa Group in 2004 was cotton, especially for the so-called "Cotton-4" countries of Benin, Burkina Faso, Mali, and Chad. These and other African countries sought special attention for cotton in the DDA as an issue separate from the agriculture negotiations, although cotton was not a specific agenda point on the WTO DDA. Following lengthy negotiations prior to and at the July 2004 WTO General Council meeting, the Cotton-4, the United States, and other WTO Members agreed on a framework to allow the agriculture negotiations to move forward, while at the same time establishing a special subcommittee on cotton to review progress in that sector. (See also Section II on the WTO.) Among other WTO topics that the United States and the Africa Group consulted closely on in 2004 were non-agricultural market access, trade facilitation, development issues, and TRIPS and public health.