VI. Trade Enforcement Activities

A. Enforcing U.S. Trade Agreements

1. Overview

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

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

- Vigorously monitoring and enforcing bilateral agreements;

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

- Providing technical assistance to trading partners, especially in developing countries, to ensure that key agreements like the Agreement on Basic Telecommunications and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) are implemented on schedule; and

- Promoting U.S. interests under the NAFTA through NAFTA's trilateral work program, tariff acceleration, and use, or threat of use, of NAFTA's dispute settlement mechanism, including using its labor and environmental side agreements to promote fairness for workers and effective environmental protection.

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

To ensure the enforcement of WTO agreements, the United States has been one of the world's most frequent users of WTO dispute settlement procedures. Since the establishment of the WTO, the United States has filed 610 complaints at the WTO, thus far successfully concluding 35 of them by settling 19 cases favorably and prevailing on 16 others through litigation in WTO panels and the Appellate Body.

The United States has obtained favorable settlements and favorable panel rulings in virtually all sectors, including manufacturing, intellectual property, agriculture, and services. These cases cover a number of WTO agreements – involving rules on trade in goods, trade in services, and intellectual property protection – and affect a wide range of sectors of the U.S. economy.

Satisfactory settlements. Our hope in filing cases, of course, is to secure U.S. benefits rather than to engage in prolonged litigation. Therefore, whenever possible we have sought to reach favorable settlements that eliminate the foreign violation without having to resort to panel proceedings. We have been able to achieve this preferred result in 19 of the 38 cases concluded so far, involving: Australia's ban on salmon imports; Belgium's duties on rice imports; Brazil's auto investment measures; Brazil's patent law; Denmark's civil procedures for intellectual property enforcement; the EU's market access for grains; an EU import surcharge on corn gluten feed; Greece's protection of copyrighted motion pictures and television programs; Hungary's agricultural export subsidies; Ireland's protection of copyrights; Japan's protection of sound recordings; Korea's shelf-life standards for beef and pork; Pakistan's protection of patents; the Philippines' market access for pork and poultry; the Philippines' auto regime; Portugal's protection of patents; Romania's customs valuation regime; Sweden's enforcement of intellectual property rights; and Turkey's box-office taxes on motion pictures.

Litigation successes. When our trading partners have not been willing to negotiate settlements, we have pursued our cases to conclusion, prevailing in 16 cases so far, involving: Argentina's tax and duties on textiles, apparel, and footwear; Australia's export subsidies on automotive leather; Canada's barriers to the sale and distribution of magazines; Canada's export subsidies and an import barrier on dairy products; Canada's law protecting patents; the EU's import barriers on bananas; the EU's ban on imports of beef; India's import bans and other restrictions on 2,700 items; India's protection of patents on pharmaceuticals and agricultural chemicals; India's and Indonesia's measures that discriminated against imports of U.S. automobiles; Japan's restrictions affecting imports of apples, cherries, and other fruits; Japan's and Korea's discriminatory taxes on distilled spirits; Korea's beef imports; and Mexico's antidumping duties on high-fructose corn syrup.

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

2. WTO Dispute Settlement

2002 Activities

In 2002, the United States filed four new complaints under WTO dispute settlement procedures involving Japan's phytosanitary restrictions on imports of apples, the European Communities' provisional safeguard on steel, Venezuela's import licensing practices and Canada's Wheat Board. The United States also initiated panel proceedings on a case begun earlier involving Mexico's telecommunications regime.

The United States also received favorable WTO dispute panel rulings in 2002 in cases involving U.S. exports of dairy products to Canada and U.S. exports of auto assemblies to India, and also reached an agreement with Argentina resolving many of the issues raised in our dispute over aspects of its

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

3. Other Monitoring and Enforcement Activities

a. Subsidies Enforcement

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

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

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

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

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

b. Monitoring Foreign Antidumping and Countervailing Duty Actions

The WTO Agreement on Implementation of Article VI (Antidumping Agreement) and the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) permit WTO Members to impose antidumping or countervailing duties to offset injurious dumping or subsidization of products exported from one Member country to another. The United States carefully monitors antidumping and countervailing duty proceedings initiated against U.S. exporters to ensure that foreign antidumping and countervailing duty actions are administered fairly and in full compliance with the WTO Agreements.

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

Based in part on this monitoring activity, senior U.S. officials have met and raised concerns on several occasions with Mexican officials over the past year concerning certain aspects of Mexico's antidumping measures affecting U.S. exports of beef, rice and apples. We continue to monitor the status of those proceedings closely, and are considering whether further steps to clarify or resolve our concerns in those cases may be appropriate. Among other antidumping investigations of U.S. goods that were closely monitored in the past year are Canada's investigation of tomatoes (suspended in June 2002 on the basis of an undertaking reached with the U.S. exporters), the European Union's investigation of acetate yarn (terminated in December 2002 on the basis of a no injury finding), and China's ongoing investigations of art paper and toluene diisocyanate.

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

B. U.S. Trade Laws

1. Section 301

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

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

a. Operation of the Statute

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

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

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

After a Section 301 investigation is concluded, the USTR is required to monitor a foreign country's implementation of any agreements entered into, or measures undertaken, to resolve a matter that was the subject of the investigation. If the foreign country fails to comply with an agreement or the USTR

considers that the country fails to implement a WTO dispute panel recommendation, the USTR must determine what further action to take under Section 301.

During 2002, there were new or ongoing actions or other major developments in the following Section 301 investigations. (For a description of WTO dispute settlement procedures related to Section 301 investigations, see Chapter II).

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

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

The United States consulted repeatedly with the Government of Ukraine regarding the matters under investigation. However, the Government of Ukraine made very little progress in addressing two key issues: its failure to use existing law enforcement tools to stop optical media piracy, and its failure to adopt an optical media licensing regime. On August 2, 2001, the USTR determined that the acts, policies and practices of Ukraine with respect to the protection of intellectual property rights were unreasonable and burdened or restricted U.S. commerce, and were thus actionable under Section 301(b). The USTR determined that appropriate and feasible action in response included the suspension of duty-free treatment accorded to the products of Ukraine under the GSP program, effective with respect to goods entered on or after August 24, 2001. The USTR also announced that further action could include the imposition of prohibitive duties on certain Ukrainian products, and the office of the USTR sought public comment on a preliminary product list. On December 11, 2001, the USTR determined that appropriate additional action included the imposition of 100 percent duties on a list of 23 Ukrainian products with an annual trade value of approximately $75 million. The increased duties went into effect on January 23, 2002.

Consultations with the Government of Ukraine continued, but Ukraine failed to take the steps needed to stop high levels of optical media piracy. Accordingly, the suspension of GSP benefits and increased duties on certain Ukrainian products remained in effect throughout 2002.

c. Wheat Trading Practices of the Canadian Wheat Board (301-120)

On October 23, 2000, the USTR initiated an investigation in response to a petition filed by the North Dakota Wheat Commission (NDWC) to determine whether certain acts, policies, or practices of the Government of Canada and the Canadian Wheat Board (CWB) with respect to wheat trading are unreasonable and burden or restrict U.S. commerce. The CWB is a state-trading enterprise with sole control over the purchase and export of western Canadian wheat for human consumption. According to the petition, certain elements of the wheat trading system established by the Government of Canada provide the CWB with pricing flexibility not available to private wheat traders, and the CWB exploits this flexibility by engaging in certain allegedly unreasonable wheat trading practices. The petition asserted that such practices have harmed U.S. wheat farmers by causing U.S. wheat to lose market share in the

United States and particular third-country markets by reducing the sales prices obtained by U.S. wheat farmers, and by causing unsold wheat stocks in the United States to increase.

On March 30, 2001, the USTR requested that the International Trade Commission (ITC) conduct an investigation, pursuant to section 332 of the Tariff Act of 1930, in order to obtain information and analysis pertinent to the Section 301 investigation of the CWB. On September 24, 2001, the petitioner requested that the USTR delay a decision on the actionability of CWB practices until January 22, 2002. The USTR granted the request.

The ITC issued a confidential version of its Section 332 report on November 1, 2001, and a public version on December 21, 2001. On December 21, 2001, the Office of the USTR issued a notice in the Federal Register inviting public comment on Canadian wheat marketing practices, as well as on any other issues raised in the petition, the ITC report, or in other submissions to USTR. The USTR extended the investigation until February 15, 2002 to allow adequate time to review and consider the additional comments received in response to the notice.

On February 15, 2002, the USTR announced his findings that the acts, policies and practices of the Government of Canada and the CWB with regard to wheat trading are unreasonable and burden or restrict U.S. commerce. The USTR further announced that the Administration would pursue multiple avenues to seek relief for U.S. wheat farmers from the wheat trading practices of the Government of Canada and the CWB: (1) USTR would examine taking a possible WTO dispute settlement case against Canada with regard to the wheat trading practices of the Government of Canada and the CWB; (2) the Administration would work with the North Dakota Wheat Commission and the U.S. wheat industry to examine the possibility of filing U.S. countervailing duty and antidumping petitions; (3) USTR would work with U.S. farmers to identify specific impediments to U.S. wheat entering Canada and would present these to the Canadians so as to ensure the possibility of fair, two-way trade; and (4) the Administration would vigorously pursue comprehensive and meaningful reform of monopoly state trading enterprises in the WTO agriculture negotiations.

The Administration actively pursued these initiatives throughout the remainder of 2002. In WTO negotiations, the United States continued to place a priority on the reform of agricultural state-trading enterprises. For example, the United States succeeded in making this issue the first agenda item in the June 2002 meeting of the WTO agricultural talks, and has obtained the support of other important delegations. On market access, the United States held bilateral consultations with Canadian officials on reducing the Canadian trade barriers that restrict exports of U.S. wheat to Canada, and has identified specific Canadian transportation and distribution policies that serve as market access barriers. With respect to potential countervailing duty and antidumping duty investigations, wheat industry representatives consulted with Department of Commerce officials, and on September 13, 2002, industry representatives filed antidumping and countervailing duty petitions. Finally, with respect to the possible WTO challenge, USTR developed a legal challenge to Canadian marketing practices and market access barriers, and filed a consultation request in the WTO on December 17, 2002.

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

An EC directive prohibits the import of animals, and meat from animals, to which certain hormones had been administered (the “hormone ban”). This measure has the effect of banning nearly all imports of beef and beef products from the United States. A WTO panel and the Appellate Body found that the hormone ban was inconsistent with the EC’s WTO obligations because the ban was not based on scientific evidence, a risk assessment, or relevant international standards. Under WTO procedures, the EC was to

have come into compliance with its obligations by May 13, 1999, but failed to do so. Accordingly, in May 1999 the United States requested authorization from the DSB to suspend the application to the EC, and Member States thereof, of tariff concessions and related obligations under the GATT. The EC did not contest that it had failed to comply with its WTO obligations but objected to the level of suspension proposed by the United States.

On July 12, 1999, WTO arbitrators determined that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent hormone ban was $116.8 million per year. Accordingly, on July 26, 1999, the DSB authorized the United States to suspend the application to the European Communities and its Member States of tariff concessions and related obligations under the GATT covering trade up to $116.8 million per year. In a notice published in July 1999, the USTR announced that the United States was exercising this authorization by imposing 100 percent *ad valorem* duties on certain products of certain EC Member States. The increased duties remained in place throughout 2002. While talks have continued with the aim of reaching a mutually satisfactory solution to the dispute, no resolution has been reached.

2. Special 301

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

Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act of 1994, under Special 301 provisions, USTR must identify those countries that deny adequate and effective protection for intellectual property rights (IPR) or deny fair and equitable market access for persons that rely on intellectual property protection. Countries that have the most onerous or egregious acts, policies or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on the relevant U.S. products must be designated as "Priority Foreign Countries."

Priority Foreign Countries are potentially subject to an investigation under the Section 301 provisions of the Trade Act of 1974. USTR may not designate a country as a Priority Foreign Country if it is entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of IPR.

USTR must decide whether to identify countries each year within 30 days after issuance of the National Trade Estimate Report. In addition, USTR may identify a trading partner as a Priority Foreign Country or remove such identification whenever warranted.

USTR has created a "Priority Watch List" and "Watch List" under Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement or market access for persons relying on intellectual property. Countries placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

a. 2002 Special 301 Review Announcements

On April 30, 2002, the United States Trade Representative announced the results of the 2002 "Special 301" annual review which examined in detail the adequacy and effectiveness of intellectual property protection in more than 70 countries. Under the Special 301 provisions of the Trade Act of 1974, as amended, USTR identified 51 trading partners that deny adequate and effective protection of intellectual property or deny fair and equitable market access to United States artists and industries that rely upon intellectual property protection.

Because of its persistent failure to take effective action against significant levels of optical media piracy and its failure to implement intellectual property laws that provide adequate and effective protection to right holders, on January 23, 2002, the United States imposed $75 million in sanctions on Ukrainian products. Ukraine's continuing status as a Priority Foreign Country could jeopardize Ukraine's efforts to join the WTO and seriously undermine its efforts to attract trade and investment. The United States continues to encourage Ukraine to combat piracy and to enact the necessary intellectual property rights legislation and regulations.

Paraguay and China were designated for "Section 306 monitoring" to ensure both countries comply with the commitments made to the United States under bilateral intellectual property agreements. Special concern was expressed that Paraguay's efforts have not been sufficient in recent months, and further consultations will be scheduled.

In 2002, USTR placed 15 trading partners on the "Priority Watch List": Argentina, Brazil, Colombia, the Dominican Republic, Egypt, the European Union, Hungary, India, Indonesia, Israel, Lebanon, the Philippines, Russia, Taiwan and Uruguay. Thirty-three trading partners were placed on the "Watch List." At the same time, USTR announced "out-of-cycle" reviews (OCR) for "Priority Watch List" countries Indonesia, Israel, and the Philippines, and for "Watch List" countries the Bahamas, Costa Rica, Poland, and Thailand. An OCR was also scheduled for Mexico.

b. Intellectual Property and Health Policy

In announcing the results of the 2002 Special 301 review, Ambassador Zoellick reiterated that USTR would not change the present approach to health-related intellectual property issues. That is to say, consistent with the United States' protection of intellectual property, we remain committed to working with countries to develop workable programs to prevent and treat HIV/AIDS, malaria, tuberculosis and other epidemics.

We have informed countries that, as they take steps to address a major health crisis, like the HIV/AIDS crisis in sub-Saharan Africa, they should be able to avail themselves of the flexibilities afforded by the TRIPS Agreement, provided that any steps they take comply with the provisions of the Agreement. The Declaration on the TRIPS Agreement and Public Health agreed upon at the WTO Doha Ministerial in November 2001 and the Administration's December 20, 2002 announcement of a moratorium on dispute settlement are a reflection of this commitment. A more detailed discussion of the moratorium is in Section G of Chapter II relating to the Council on Trade-Related Aspects of Intellectual Property Rights.

The U. S. Government also remains committed to a policy of promoting intellectual property protection, including for pharmaceutical patents, because of intellectual property rights' critical role in the rapid innovation, development, and commercialization of effective and safe drug therapies. Financial incentives are needed to develop new medications. No one benefits if research on such products is discouraged.

c. Implementation of Special 301

While piracy and counterfeiting problems persist in many countries, progress has occurred in other countries. Significant positive developments are highlighted below:

- On January 1, 2002, Taiwan became a member of the WTO and obligated itself to comply fully with the TRIPS Agreement on that date, and amended its patent law to provide the TRIPS Agreement term of protection for patents granted before January 21, 1994;

- In January 2002, the Philippine Supreme Court issued new rules giving courts the authority to order the seizure of pirated material without notice to the suspected infringer, as required by TRIPS Article 50;

- The Czech government adopted a comprehensive new regulation, effective January 1, 2002, on the use of software in government offices;

- In January 2002, amendments to Moldova's Customs Code came into force, providing *ex officio* authority for customs officials to seize material at the border as required by the TRIPS Agreement;

- The Government of Paraguay impounded 12.6 million blank CDs in early February 2002 and charged the importers with tax evasion;

- On February 7, 2002, Costa Rica's Public Ministry appointed 12 specialized "Link Prosecutors" to provide priority handling of intellectual property cases in Costa Rica;

- The Costa Rican government signed a government software decree on February 21, 2002, which requires all ministries to conduct inventories and audits by December 15, 2002, and to come into full compliance no later than July 15, 2003;

- Jamaica formed a new Intellectual Property Office (JIPO) in February 2002, consolidating the administration of Jamaican copyright, trademark and patent laws;
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- Peru signed and published the WIPO Performances and Phonograms Treaty on March 2, 2002;

- On March 27, 2002, the UAE made written commitments to provide comprehensive protection for U.S. pharmaceuticals including extending data exclusivity protection, providing joint review by Heath-Finance Ministry officials, and allowing USG review of a draft patent law for TRIPS compliance;

- In March 2002, Japan announced that it will interpret temporary copying as violating copyright laws;

- Poland and Slovenia reinstated data exclusivity protection in April 2002;

- In May 2002, India enacted a second set of amendments to its 1970 Patent Act to address a number of TRIPS issues;

- The United States and Argentina notified the partial settlement of WTO dispute settlement procedure on May 31, 2002;

- In June 2002, Egypt passed an intellectual property law to implement its TRIPS obligations in a number of areas;

- During the summer, Thailand passed a trade secrets act, and in November 2002 the Thai Senate passed a geographical indications bill;

- In September 2002, Colombia issued a decree concerning data exclusivity protection;

- By October 2002, Qatar had passed copyright, trademark, and industrial design laws to implement its TRIPs obligations;

- On November 19, 2002, the United States and Singapore reached agreement in substance on a Free Trade Agreement that requires enhanced intellectual property rights protection in Singapore; and

- On December 11, 2002, the United States and Chile announced that they had reached agreement on the substance of a Free Trade Agreement that includes stronger provisions on the protection and enforcement of intellectual property rights than any previous Free Trade Agreement.

d. Ongoing Initiatives

i. Internet Piracy and the WIPO Copyright Treaties

Despite the promise that the Internet holds for innovative and creative industries, it is also creates significant challenges, as it serves as an extremely efficient global distribution network for pirated products. An important first step in the fight against Internet piracy was achieved at the World Intellectual Property Organization (WIPO), when it concluded two copyright treaties in 1996: the WIPO Copyright Treaty (WCT), and the WIPO Performances and Phonograms Treaty (WPPT), referred to as the WIPO Internet Treaties. These Treaties represent the consensus view of the world community that the vital framework of protection under existing treaties, including the TRIPS Agreement, should be supplemented to eliminate any remaining gaps in copyright protection on the Internet that could impede the development of electronic commerce. These treaties clarify exclusive rights in the on-line environment and specifically prohibit devices and services intended to circumvent technological protection measures for copyrighted works. As such, they represent the current state of international copyright law and provide the critical foundation needed to enable electronic commerce to flourish and to combat Internet piracy.

Because of their importance, the United States has been encouraging countries to ratify and implement the WIPO Internet Treaties, both in informal consultations and in the context of the negotiation of free trade agreements. Both Treaties came into effect in early 2002, the WCT on March 6 and the WPPT on May 20, when the required number of ratifications were deposited in Geneva with WIPO. We continue to work internationally to promote ratification of these Treaties by other trading partners.

The United States notes improvements in Japan's protection of copyright and related rights through its recognition of the need to protect temporary copies of works and phonograms. Unfortunately, Japan has also enacted an Internet service provider liability law that fails to provide the necessary protections to rights holders. The United States has urged Japan to improve this situation by adopting implementing

regulations that provide the necessary incentives for service providers to work with rights holders to remove infringing material expeditiously, and to provide rights holders the ability to learn the identity of accused online infringers.

ii. Other Initiatives Regarding Internet Piracy

The United States is seeking to incorporate the highest standards of protection for intellectual property into appropriate bilateral and regional trade agreements that are negotiated. The United States has already had its first success in this effort by incorporating the standards of the WIPO Internet Treaties as substantive obligations in our FTA with Jordan. The Jordan FTA laid the foundation for pursuing this goal in the free trade agreements with Chile and Singapore as well as the Free Trade Area of the Americas (FTAA), and other FTAs in which negotiations have just begun. Moreover, U.S. proposals in these negotiations will further update copyright and enforcement obligations to reflect the technological challenges faced today as well as those that may exist at the time negotiations are concluded several years from now.

iii. Implementation of the WTO TRIPS Agreement

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

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

Progress continues to be made by developing countries toward full implementation of their TRIPS obligations. Nevertheless, certain countries are still in the process of finalizing implementing legislation and establishing adequate enforcement mechanisms. Every year the U.S. Government provides extensive technical assistance and training on the implementation of the TRIPS Agreement, as well as other international intellectual property agreements, to a large number of U.S. trading partners. Technical assistance involves review of, and drafting assistance on, laws concerning intellectual property and enforcement. Training programs usually cover the substantive provisions of the TRIPS Agreement, as well as enforcement. The United States will continue to work with these countries and expects further progress in the near term to complete the TRIPS implementation process. Absent such progress, the United States will consider other options to ensure implementation, including through WTO dispute settlement proceedings.

iv. Controlling Optical Media Production

To address existing and prevent future piratical activity, over the past year some U.S. trading partners, such as Malaysia and Taiwan, have taken important steps toward implementing, or have committed to adopt, much needed controls on optical media production. The United States awaits news of aggressive enforcement of these laws. Other trading partners that are in urgent need of such controls, however, including Ukraine, Thailand, Indonesia, Pakistan, the Philippines, and Russia, have not made sufficient progress in this regard.

Governments such as those of China, Hong Kong and Macau that implemented optical media controls in previous years have clearly demonstrated their commitment to continue to enforce these measures. The effectiveness of such measures is underscored by the direct experience of these governments in successfully reducing pirate production of optical media. The United States continues to urge its trading partners facing the challenge of pirate optical media production within their borders, or the threat of such production developing, to adopt similar controls, or aggressively enforce existing regulations, in the coming year. USTR is concerned, however, about recent reports of increased piracy and counterfeiting in Bulgaria, which had been a model in its region for taking the necessary steps to tackle optical media piracy, including the enactment of optical media controls. Particularly troubling are reports that the CD plant licensing laws might be revised in such a manner so as to undermine, not improve, their effectiveness. USTR will closely monitor the situation and look to the Government of Bulgaria to maintain strong optical disk (OD) regulations.

v. Government Use of Software

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

The United States has achieved considerable progress under this initiative. Countries that have issued decrees mandating the use of only authorized software by government ministries include Bolivia, China, Chile, Colombia, Costa Rica, the Czech Republic, Ireland, Israel, Jordan, Paraguay, Thailand, France, the U.K., Spain, Greece, Turkey, Hungary, Korea, Hong Kong, Macau, Lebanon, Taiwan and the Philippines. USTR has noted its pleasure that these governments have recognized the importance of setting an example in this area and its expectation that these decrees will be fully implemented. The United States looks forward to the adoption of similar decrees, with effective and transparent procedures that ensure legitimate use of software, by additional governments prior to the conclusion of the Special 301 review in April 2003.

3. Telecommunications - Section 1377 Reviews

Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 requires USTR to review, by March 31 of each year, the operation and effectiveness of U.S. telecommunications trade agreements. The purpose of the Section 1377 review is to determine whether any act, policy, or practice of a foreign country that has entered into a telecommunications-related agreement with the United States (1) is not in compliance with the terms of the agreement or (2) otherwise denies, within the context of the agreement, mutually advantageous market opportunities to telecommunications products and services of U.S. firms in that country.

The 2002 Section 1377 review focused on the following practices as a matter of priority: (1) mobile wireless interconnection rates in the European Union (EU) Member States and Japan; (2) provisioning and pricing of leased telecom lines in EU Member States and Switzerland; and (3) interconnection and other competitive concerns in Mexico. USTR also announced that it would monitor other telecommunications trade practices in Australia, Brazil, China, Colombia, India, Japan, Peru, and South Africa. While these represented broad market access concerns that were vigorously addressed, Mexico was the only case where a record of violating trade commitments was considered strong enough to initiate a formal trade complaint.

On mobile wireless interconnection, USTR identified growing evidence that wireless operators in the EU and Japan were charging wireline telecommunications carriers wholesale rates to "interconnect" their calls at rates that were significantly above cost. Reductions of such rates in Japan in 2002 and recent efforts by some European regulators to investigate these rates is encouraging, and USTR will continue to monitor these actions.

On the provisioning and pricing of leased lines, USTR noted that U.S. companies face serious difficulties throughout the EU in obtaining leased lines from former monopolies on a timely basis and at reasonable and non-discriminatory rates. The EU and Switzerland have commitments in the WTO to ensure basic telecom providers have access to and use of leased lines on reasonable and non-discriminatory terms and conditions. In Germany, the regulator instituted provisioning guidelines that have helped alleviate this problem. However, the regulator's action was stayed by the German courts pending judicial review. On the whole, this issue continues to plague a number of EU Member States and Switzerland, and USTR will continue to monitor regulatory actions that these countries may take to remedy allegedly anticompetitive practices by the incumbent.

Other issues identified this year include: complaints that Australia's regulator has not acted impartially toward competitors to Telstra, Australia's 50.1 percent government-owned telecom operator; China's lagging efforts to establish an independent regulator; Colombia's failure to permit licensing of additional international operators; India's weak enforcement powers granted to the telecom regulator, and the conflicts of interest arising out of the Government of India's ownership interest in India's telecom operators; Japan's unjustified hike of key wireline interconnection rates and its continued failure to ensure the independence of the regulator; and transparency of regulatory processes and independence of the regulator in Peru. Finally, South Africa continues to be plagued by an uncertain regulatory environment, and one that appears to favor the state-owned monopoly supplier of basic telecommunications services.

Mexico

USTR requested the establishment of a WTO dispute settlement panel to examine claims that Mexico has failed to ensure that: (1) Telmex (Mexico's major supplier of telecommunications) provides U.S. telecom companies interconnection for international calls at "cost-oriented" rates and reasonable terms and conditions; and (2) U.S. companies can send their calls into and out of Mexico over leased lines. Failure to address these issues has kept rates for completing calls into Mexico at monopoly levels which are over double actual cost, restricting bilateral telecommunications traffic and imposing an undue burden on businesses and consumers in both the United States and Mexico. The WTO dispute settlement panel was established and held its first hearing in the case in December 2002, and is expected to rule on the U.S. complaint by mid-2003.

4. Government Procurement

As noted in Chapter IV, the United States is a signatory of the Agreement on Government Procurement. The NAFTA , as well as the recently negotiated Free Trade Agreements with Singapore and Chile also include provisions on government procurement. The United States monitors our trading partners' compliance with these agreements and can enforce its rights under these agreements through dispute settlement. We can also pursue issues related to government procurement in proceedings under section 301.

5. Antidumping Actions

Under the antidumping law, duties are imposed on imported merchandise when the Department of Commerce determines that the merchandise is being dumped (sold at "less than fair value" (LTFV)) and the U.S. International Trade Commission determines that there is material injury or threat of material injury to the domestic industry, or material retardation of the establishment of an industry, "by reason of" those imports. The antidumping law's provisions are incorporated in Title VII of the Tariff Act of 1930 and have been substantially amended by the l979, 1984, and 1988 trade acts as well as by the 1994 Uruguay Round Agreements Act.

An antidumping investigation starts when a U.S. industry, or an entity filing on its behalf, submits a petition alleging with respect to certain imports the dumping and injury elements described above. If the petition meets the minimum requirements for filing, Commerce initiates an antidumping investigation. Commerce also may initiate an investigation on its own motion.

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

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

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

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

The numbers of antidumping investigations initiated in and since 1986 are as follows: 83 in 1986; 16 in 1987; 42 in 1988; 24 in 1989; 35 in 1990; 66 in 1991; 84 in 1992; 37 in 1993; 51 in 1994; 14 in 1995; 21 in 1996; 15 in 1997; 36 in 1998; 46 in 1999; 45 in 2000; 57 in 2001; and 35 in 2002. The numbers of antidumping orders (not including suspension agreements) imposed in and since 1986 are: 26 in 1986; 53 in 1987; 12 in 1988; 24 in 1989; 14 in 1990; 19 in 1991; 16 in 1992; 42 in 1993; 16 in 1994; 24 in 1995; 9 in 1996; 7 in 1997; 9 in 1998; 19 in 1999; 20 in 2000; 30 in 2001; and 36 in 2002. Under its sunset review procedures, Commerce revoked 120 antidumping duty orders and continued 13 orders in 2000; revoked 4 antidumping duty orders and continued 3 orders in 2001; and revoked 6 antidumping duty orders and continued 2 orders in 2002.

6. Countervailing Duty Actions

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

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

The number of CVD investigations initiated in and since 1986 are: twenty-eight in 1986; eight in 1987; seventeen in 1988; seven in 1989; seven in 1990; eleven in 1991; twenty-two in 1992; five in 1993; seven in 1994; two in 1995; one in 1996; six in 1997; eleven in 1998; ten in 1999; seven in 2000; and eighteen in 2001. The number of CVD orders imposed in and since 1986 are: thirteen in 1986; fourteen in 1987; seven in 1988; six in 1989; two in 1990; two in 1991; four in 1992; sixteen in 1993; one in 1994; two in 1995; two in 1996; none in 1997; one in 1998; six in 1999; six in 2000, and six in 2001. In 2001, Commerce conducted sunset reviews of five of its outstanding countervailing measures, all five measures were continued as a result of the review. In the first six months of 2002, from January 1 to June 30, 1 CVD investigation was initiated and no sunset reviews were initiated.

7. Unfair Import Practices (Section 337)

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

The USITC conducts Section 337 investigations through adjudicatory proceedings under the Administrative Procedure Act. The proceedings normally involve an evidentiary hearing before a USITC administrative law judge who issues an Initial Determination that is subject to review by the Commission. If the USITC finds a violation, it can order that imported infringing goods be excluded from the United States and/or issue cease and desist orders requiring firms to stop unlawful conduct in the United States,

such as the sale or other distribution of imported goods in the United States. Many Section 337 investigations are terminated after the parties reach settlement agreements or agree to the entry of consent orders.

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

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

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

In 2002, the USITC instituted 17 new Section 337 investigations and two ancillary proceedings (one of which concerned the enforcement of a section 337 order and the other concerned a bond forfeiture). During the year, the USITC issued five limited exclusion orders and four cease and desist orders covering imports from foreign firms, as follows: Inv. No. 337-TA-473, *Certain Video Game Systems, Accessories, and Components Thereof* (limited exclusion order and cease and desist order); Inv. No. 337-TA-450, *Certain Integrated Circuits, Processes for Making Same and Products Containing Same* (limited exclusion order); Inv. No. 337-TA-449, *Abrasive Products Made Using a Process for Making Powder Preforms and Products Containing Same* (limited exclusion order and cease and desist order); Inv. No. 337-TA-448, *Certain Oscillating Sprinklers, Sprinkler Components, and Nozzles* (limited exclusion order); and Inv. No. 337-TA-446, *Certain Ink Jet Print Cartridges and Components Thereof* (limited exclusion order and two cease and desist orders). A limited exclusion order covers only certain imports from particular named sources (as contrasted with a general exclusion order, which covers certain products from all sources). The President permitted all but one limited exclusion order and one cease and desist order to go into effect during 2002; those two remaining orders were before the President for review as of December 31, 2002.

a. Section 201

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

For an industry to obtain relief under Section 201, the United States International Trade Commission (USITC) must first determine that a product is being imported into the United States in such increased quantities as to be a substantial cause (a cause which is important and not less than any other cause) of

serious injury, or the threat thereof, to the U.S. industry producing a like or directly competitive product. If the USITC makes an affirmative injury determination (or is equally divided on injury) and recommends a remedy to the President, the President may provide relief either in the amount recommended by the USITC or in such other amount as he finds appropriate. The criteria for import relief in Section 201 are based on Article XIX of the GATT 1994 – the so-called "escape clause" – and the WTO Agreement on Safeguards.

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

Effective March 1, 2000, the President imposed a tariff-rate quota (TRQ) on imports of wire rod from all countries except Canada and Mexico. Absent an extension, the measure will expire on March 1, 2003. Effective November 24, 2001, the President revised the wire rod safeguard measure to allot the TRQ among four categories of supplier countries. The allotments were based on import shares for a representative historic period.

Also effective March 1, 2000, the President imposed a duty increase on imports of line pipe from all countries except Canada and Mexico. The first 9,000 short tons of line pipe imported into the United States annually from each country is exempted from this increase in duty. Absent an extension, the measure will expire on March 1, 2003. Pursuant to an agreement reached with Korea, the 9,000 ton exclusion applicable to Korea was replaced with a tariff-rate quota, effective September 1, 2002.

Effective March 20, 2002, the President imposed a safeguard measure on certain flat steel in the form of a TRQ on slabs and a tariff on other certain flat steel. At the same time, the President imposed tariffs on hot-rolled bar, cold-finished bar, rebar, certain tubular products, carbon and alloy fittings, stainless steel bar, stainless steel rod, tin mill products, and stainless steel wire (collectively, the “steel safeguard measures”). Absent an extension, the measures will expire on March 21, 2005. Subsequent to the effective date of the measure, USTR granted requests made by U.S. consumers, U.S. importers, and foreign producers that certain products be excluded from these safeguard measures.

On February 15, 2002, the WTO Appellate Body issued a report finding that the safeguard measure on line pipe was inconsistent with the Safeguards Agreement and GATT 1994 in that it was based on a finding of serious injury that did not comply with the Safeguards Agreement prohibition on attributing to imports injury caused by other factors. This report, and an earlier panel report finding that the line pipe safeguard measure was a TRQ inconsistent with Article XIII of GATT 1994, were adopted on March 8, 2002.

In July, 2002, the WTO formed a dispute settlement panel to consider claims brought by the European Communities, Japan, Korea, China, Switzerland, Norway, New Zealand, and Brazil that the steel safeguard measures taken on March 20, 2002 were inconsistent with WTO rules. The panel should issue its report sometime in the second quarter of 2003.

b. Section 421

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

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

China's terms of accession also permit a WTO Member to limit imports where a China-specific safeguard measure imposed by another Member causes or threatens to cause significant diversions of trade into its market. The trade diversion provision is implemented in U.S. law by Section 421a of the Trade Act of 1974.

On August 19, 2002, based on a Section 421 petition filed by Motion Systems Corporation, the ITC instituted an investigation to determine whether imports of pedestal actuators from China are causing or threatening to cause market disruption. The ITC made an affirmative determination on October 18, 2002, and transmitted a report on its determination, as well as its remedy proposals, to the President and USTR on November 7, 2002. Under the statute, the President effectively has 70 days from receipt of the ITC report to take action, if any.

On November 27, 2002, three U.S. companies filed a Section 421 petition and the ITC instituted an investigation to determine whether imports of certain steel wire garment hangers from China are causing or threatening to cause market disruption. The ITC is required to make a determination no later than 60 days after the date on which the petition was filed.

c. China Textile Safeguard

The terms for China's accession to the WTO also include a special textiles safeguard, which is available for WTO members to use until December 31, 2008. This safeguard covers all products subject to the WTO Agreement on Textiles and Clothing as of January 1, 1995. On August 30, 2002, the Chairman of the interagency Committee for the Implementation of Textile Agreements (CITA) received a letter from the American Textile Manufacturers Institute (ATMI) requesting that CITA invoke this special textile safeguard with respect to certain product categories. USTR, as a member of CITA, is monitoring import data related to these products, and is working to develop procedures consistent with U.S. safeguards laws to implement this special textiles safeguard.

8. Trade Adjustment Assistance

a. Assistance for Workers

The Trade Adjustment Assistance (TAA) program for workers, established under Title II, chapter 2, of the Trade Act of 1974, as amended, provides assistance for workers affected by foreign trade. Available assistance includes job retraining, trade readjustment allowances (TRA), job search, relocation, a health insurance tax credit, and other re-employment services. The program was most recently amended by the Trade Adjustment Assistance Reform Act of 2002 (TAA Reform Act) enacted on August 6, 2002.

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

The TAA Reform Act expanded eligibility for the TAA program. For workers to be eligible to apply for TAA, the Secretary of Labor must certify that: (1) increased imports contributed importantly to a decline in sales or production and to a layoff or threat of a layoff; or (2) there has been a shift in production to a country with a free or preferential trade agreement with the United States; or (3) there has been a shift in production outside the United States and there has been or is likely to be an increase in imports of like or directly competitive articles; or (4) loss of business as a supplier or downstream producer for a TAA certified firm contributed importantly to worker layoffs. The latter is to cover certain secondarily-affected workers.

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

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

Fact-finding investigations were instituted for 2,375 TAA petitions in fiscal year (FY) 2002. In FY 2002, 1,614 certifications were issued covering an estimated 232,898 workers, whereas 993 petitions covering an estimated 96,197 workers resulted in denials of eligibility to apply. Fact-finding investigations were instituted for 2,339 NAFTA-TAA petitions in FY 2002. In FY 2002, 745 NAFTA-TAA certifications were issued covering an estimated 112,093 workers whereas 696 NAFTA-TAA petitions covering an estimated 76,231 workers resulted in denials of eligibility to apply.

b. Assistance for Firms and Industries

The Planning and Development Assistance Division of the Department of Commerce's Economic Development Administration (EDA) administers the TAA program for firms and industries. This program is authorized by Title II, Chapter 3, of the Trade Act of 1974, as amended, and was extended by the Trade Act of 2002 through September 30, 2007.

Under the firms and industries TAA program, EDA funds a network of 12 Trade Adjustment Assistance Centers (TAACs). These TAACs are sponsored by nonprofit organizations, institutions of higher education, and a state agency. In FY 2002, EDA provided $ 10.5 million in funding to the TAACs.

TAACs assist firms in completing petitions for certification of eligibility. To be certified as eligible to apply for TAA, a firm must show that increased imports of articles like or directly competitive with those produced by the firm contributed importantly to declines in its sales, production, or both, and to the separation or threat of separation of a significant portion of the firm's workers.

In FY 2002, EDA certified 170 firms under the TAA program. Once EDA has certified a firm, the TAAC assists the firm in assessing its competitive situation and in developing an adjustment proposal. The adjustment proposal must show that the firm is aware of its strengths and weaknesses and must present a clear and rational strategy for achieving economic recovery. EDA's Adjustment Proposal Review Committee (APRC) must approve the firm's adjustment proposal. During FY 2002, the APRC approved 141 adjustment proposals from certified firms.

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

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

The Emergency Steel Loan Guarantee Act of 1999 created the Emergency Steel Loan Guarantee Board. The board is authorized to provide loan guarantees to steel companies in amounts for up to 95 percent of the loan principal. The program has been structured to fulfill the two objectives of the legislation: to assist steel firms injured by the import crises and to protect government funds by guaranteeing only sound loans. In December 2001, the Emergency Steel Loan Guarantee Board approved a $42 million loan guarantee.

9. Generalized System of Preferences

The Generalized System of Preferences (GSP) is a program that grants duty-free treatment to specified products that are imported from more than 140 designated developing countries and territories. The program began in 1976, when the United States joined 19 other industrialized in granting tariff preferences to promote the economic growth of developing countries through trade expansion. Currently,

more than 4,000 products or product categories (defined at the eight-digit level in the Harmonized Tariff Schedule of the United States) are eligible for duty-free entry from countries designated as beneficiaries under GSP. In 1997, an additional 1,783 products were made duty-free under GSP for countries designated as least developed beneficiary developing countries (LDBDCs).

The premise of GSP is that the creation of trade opportunities for developing countries is an effective, cost-efficient way of encouraging broad-based economic development and a key means of sustaining the momentum behind economic reform and liberalization. In its current form, GSP is designed to integrate developing countries into the international trading system in a manner commensurate with their development. The program achieves these ends by making it easier for exporters from developing economies to compete in the U.S. market with exporters from industrialized nations while at the same time excluding from duty-free treatment under GSP those products determined by the President to be "import-sensitive." The value of duty-free imports in 2001 was approximately $15.7 billion.

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

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

The program was originally authorized for ten years and subsequently reauthorized for eight years. For several years thereafter, Congress renewed the program for only brief periods of one or two years. The GSP program has lapsed temporarily several times – September 30, 1994; July 31, 1995; May 31, 1997; June 30, 1998; July 1, 1999; and September 30, 2001. Each time it was reauthorized after a delay and applied retroactively to the previous expiration date, thus maintaining the continuity of the program benefits. The program was most recently reauthorized on August 6, 2002; it will expire again on December 31, 2006.

Due to the GSP program's expiration on September 30, 2001, the 2001 annual review was postponed, and the 2002 annual review was never initiated. To restart the annual review process, the President issued a proclamation in August, 2002, restoring GSP benefits to Argentina for certain products for which Argentina had lost eligibility in prior years because it exceeded the competitive need limitations; in 2001, trade fell below the competitive need limitations. Also in August 2002, a notice published in the Federal Register announced a special review of other product petitions filed by Argentina in 2001, as well as product petitions from the Philippines and Turkey that were filed in 2001. In November 2002, a second notice in the Federal Register announced a schedule of dates for conducting the 2002 annual review, and announced that the remaining petitions filed for the postponed 2001 annual review would be decided on the same schedule as the petitions filed for the 2002 annual review. Because the GSP benefits for beneficiaries of the African Growth and Opportunity Act (AGOA) did not expire, a review for two product petitions was held. On January 10, 2003, the President granted a petition to add a product to the

list of products eligible for duty-free treatment under the GSP when imported from AGOA beneficiary countries; a second petition is pending further review.