VI. Trade Enforcement Activities

A. Enforcing U.S Trade Agreements

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 enhances the ability of the United States to reap the benefits of trade agreements USTR negotiates, ensures that we can continue to open markets, and builds confidence in the trading system.

USTR devotes substantial attention and resources to ensuring 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 USTR'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 to 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. In enforcing the WTO agreements, we have focused in particular on foreign practices that could pose serious problems to the international trading system if they proliferated in many markets. Therefore, USTR aims not only at challenging existing barriers but also at preventing the future adoption of similar barriers around the world. The United States has further demonstrated its commitment to enforce WTO agreements by imposing retaliatory trade measures against the European Union for its failure to comply with WTO rulings on bananas and on beef from cattle treated with hormones.

Since the establishment of the WTO, the United States has filed 56 complaints at the WTO, thus far concluding 28 of them by settling favorably 13 cases and prevailing on 15 others through WTO panels and the Appellate Body. USTR 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 13 of the 30 cases concluded so far, involving: Australia's ban on salmon imports; Brazil's auto investment measures; the EU's market access for grains; 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; Portugal's protection of patents; 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 15 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 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; Indonesia's measures that discriminated against imports of US 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.

The cases involving EU measures on bananas and beef are unique among our 28 successfully concluded cases. The EU has failed to implement WTO dispute settlement rulings; specifically, it has failed to lift its unscientific ban on imports of U.S. beef produced with hormones and has adopted a new banana import regime that perpetuates WTO violations previously found by a WTO panel and the Appellate Body. In response, the Administration used Section 301 of the Trade Act of 1974 to increase tariffs, consistent with our WTO rights, on products totaling $308 million worth of EU exports to the United States. We continue to work toward a positive resolution of these cases.

In 2000, the United States filed seven new complaints under WTO dispute settlement procedures, involving: (1) Philippines - measures affecting trade and investment in the motor vehicles sector; (2) Brazil - customs valuation;

(3) Romania - minimum import prices; (4) Brazil - patent protection; (5) Mexico - measures affecting trade in live swine; (6) Mexico - measures affecting telecommunications services; and (7) Belgium - rice imports. See Chapter II for a description of each of these cases.

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.

To carry out this enforcement work as effectively as possible, USTR has added new personnel to handle its expanded enforcement workload, to complement USTR's efforts to negotiate further market access improvements in key markets.

1. WTO Dispute Settlement

2000 Activities

The United States filed seven new complaints under WTO dispute settlement procedures in 2000. These disputes involve: (1) the Philippines' measures affecting trade and investment in the motor vehicles sector; (2) Brazil's customs valuation methods; (3) Romania's customs valuation methods; (4) Mexico's measures affecting trade in live swine; (5) Mexico's telecommunications trade barriers; and (6) Belgium's measures affecting rice imports. The United States also received favorable WTO panel and Appellate Body rulings in 2000 in cases involving Canada's patent law and Korea's measures affecting imports of beef. These cases, which are described in Chapter II, further demonstrate the utility 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 at www.ustr.gov/enforcement.

2. 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 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. Moreover, the SEO's electronic subsidies database was fully installed in 2000, which fulfills 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 completion of the database is the culmination of three years of intensive efforts by SEO staff reviewing hundreds of countervailing duty cases, summarizing government practices investigated, and linking these summaries directly into the *Federal Register* notices of specific countervailing duty determinations, where the practices are discussed in greater detail. The redesigned website, which can be found at http://ia.ita.doc.gov/esel/eselframes.html, now 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. It will be updated at least quarterly, or more often as resources permit, to reflect programs investigated or reviewed in on-going cases in order to keep the site current.

The SEO was also engaged in certain focused areas of work in 2000, having led or been involved in the preparation of several studies and reports on subsidy practices affecting specific industries in various countries, *e.g.*, the steel and film production industries. These reports – like the SEO's forthcoming report on subsidies received by the Brazilian iron ore and slab steel industries and its ongoing research of foreign government aid to cattle and beef industries abroad – provide in-depth analysis of the trade issues confronting certain industries, including whether foreign governments have been providing assistance to support their industries.

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 at http://ia.ita.doc.gov/foradcvd/index.html.

Over the past year, U.S. officials have met on several occasions with South Africa regarding its antidumping investigation of U.S. exports of poultry parts and with Canada and Chile on their respective countervailing duty investigations against U.S. exports of grain corn and powdered and fluid ultra heat-treated milk. In the two countervailing duty investigations, the U.S. Government also actively participates as a separate respondent. Other antidumping investigations of U.S. goods being closely monitored include the EU's investigation of acetaminophen and China's investigation of dichloralmethane.

Twice a year, WTO Members 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. Members also notify their preliminary and final determinations to the WTO on a semi-annual basis. 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 120 investigations pursuant to Section 301 since the statute was first enacted in 1974. From 1993 through 2000, the USTR initiated 30 Section 301 investigations.

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 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 (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.

There were major developments in the following Section 301 investigations during 2000. (For those investigations involving WTO dispute settlement procedures, see Chapter II.)

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 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 asserts 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.

In response to a notice of initiation published in the *Federal Register*, USTR received several comments from the public on the investigation. USTR is reviewing these comments and proceeding with the investigation.

EC - Importation, Sale, and Distribution of Bananas (301-100a)

Chapter II includes a report on WTO dispute settlement proceedings involving the EC's regime for the importation, sale, and distribution of bananas. On April 6, 1999, WTO arbitrators confirmed that the EC had failed to implement the recommendation and rulings of the WTO Dispute Settlement Body (DSB) with respect to its banana regime, and the arbitrators determined that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent banana regime was $191.4 million per year. Pursuant to the arbitrators' determination, on April 19, 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 $191.4 million per year. In a notice published in April 1999, the USTR announced that the United States was exercising this authorization by imposing 100 percent *ad valorem* duties on certain products of certain EC Member States pursuant to Section 301. These increased duties remained in place throughout the year 2000 while talks continued with the aim of reaching a mutually satisfactory solution to this longstanding dispute.

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

Chapter II includes a report on WTO dispute settlement proceedings regarding an EC directive prohibiting 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. These increased duties remained in place throughout 2000. While talks have continued with the aim of reaching a mutually satisfactory solution to the dispute, no resolution has been reached. On November 3, 2000, the EU notified the WTO of its proposal to make permanent its ban on oestradiol.

Other Investigations Involving WTO Dispute Settlement

Chapter II includes information on the following Section 301 investigations that involve measures that are the subject of WTO dispute settlement proceedings filed by the United States: India - Patent Protection for Pharmaceuticals and Agricultural Chemicals (301-106); Australia - Subsidies on Leather (301-107); Indonesia - Promotion of the Motor Vehicle Sector (301-109); Japan - Market Access Barriers to Agricultural Products (301-112); and Canada - Export Subsidies and Market Access for Dairy Products (301-113).

2. Super 301

Super 301 – now embodied in Executive Order 13116 – provides a mechanism for the USTR annually to review U.S. trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase U.S. exports, either directly or through the establishment of a beneficial precedent. Under the Executive Order, an annual Super 301 report is to be issued on April 30 of each year through 2001.

The 2000 Super 301 Report identified five top trade expansion priorities: (1) completing China's accession to the WTO; (2) securing enactment of legislation promoting trade with certain regions; (3) advancing negotiations for the Free Trade Area of the Americas; (4) pursuing multilateral negotiations to open world markets to U.S. exports; and (5) enhancing U.S. monitoring and enforcement efforts.

The report did not identify any "priority foreign country practices" within the meaning of the Executive Order but found that a number of practices warranted the initiation of WTO dispute settlement proceedings. In particular, the report announced WTO dispute settlement proceedings covering auto investment measures in India and the Philippines and customs valuation practices in Brazil and Romania.

The report also identified country practices of significant concern, including EU Member State subsidies for Airbus, market access barriers in Japan's flat glass sector, and Mexico's customs valuation practices. Finally, the report highlighted U.S. efforts through trade laws (such as Special 301 and Section 1377), WTO oversight bodies (such as the Committee on Agriculture), and WTO dispute settlement procedures to ensure that U.S. trading partners comply with their WTO commitments.

3. Special 301

During the past year, the United States continued to implement vigorously the Special 301 program, resulting in substantial improvement in the global intellectual property environment. Publication of the Special 301 lists indicates the countries whose intellectual property protection regimes most concern the United States, and warns 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. 2000 Special 301 Review Announcements

On May 1, the United States Trade Representative announced the results of the 2000 "Special 301" annual review which examined in detail the adequacy and effectiveness of intellectual property protection in more than 70 countries. The USTR also announced that, as a result of the 2000 Special 301 review, the U.S would initiate World Trade Organization (WTO) dispute settlement consultations with Argentina and Brazil, and take the next step in the dispute with Denmark, requesting the establishment of a WTO panel unless immediate progress was made. That brought to 14 the number of intellectual property-related WTO complaints filed by the United States since 1996. Consultations about implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) also may be initiated with other countries in the near future. Moreover, the Special 301 report addressed significant concerns in such countries or areas as Ukraine, Italy, Israel, Malaysia, India, Korea, Poland, and the West Bank and Gaza, as well as progress in economies such as Macau, Mexico, and Sweden, and the United Arab Emirates.

In the 2000 review, USTR devoted special attention to proper and timely implementation of the TRIPS Agreement by developing country WTO Members, which was required as of January 1, 2000. In addition, USTR continued to focus on two other critically important issues: preventing the production of unauthorized copies of "optical media" such as CDs, VCDs, DVDs, and CD-ROMs, and ensuring that government ministries use only authorized software. Considerable progress has been made over the past year by many developing countries in implementing their TRIPS obligations. USTR also achieved success again during 2000 in encouraging U.S. trading partners to implement optical media controls and appropriate software management programs. While progress also was made on improving enforcement in many countries, the unacceptably high rates of piracy and counterfeiting of U.S. intellectual property around the world require ongoing vigilance.

Under the Special 301 provisions of the Trade Act of 1974, as amended, USTR identified 59 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.

In the 2000 report, Ukraine was identified for potential Priority Foreign Country designation. The United States has worked with Ukrainian officials over the past several years in an effort to reduce alarming levels of copyright piracy and to improve Ukraine’s overall intellectual property regime. According to estimates from our copyright industry, Ukraine is the single largest source of pirate CDs in the Central and East European region. In June, the U.S.-Ukraine Joint Action Plan to Combat Optical Media Piracy in the Ukraine was signed. Regrettably, the Ukraine has failed to live up to the terms of the Plan; at year’s end the U.S. Government was engaged with the Government of Ukraine in an intense effort to resolve this problem.

Copyright piracy in Ukraine is extensive and enforcement is severely lacking, resulting in increasing unauthorized production and export of CDs and CD-ROMs. U.S. industry estimates that losses to the music industry alone are $210 million. The United States urges the Government of Ukraine to take stronger measures on an urgent basis to address this problem through the implementation of effective optical media production controls and other available means. In addition, a number of Ukraine’s intellectual property laws, especially trademark, patent and copyright, fall short of compliance with the minimum standards set out in the TRIPS Agreement and the 1992 U.S.-Ukraine bilateral trade agreement. It is unclear whether Ukraine protects pre-1973 copyrighted works; it does not provide retroactive protection for sound recordings.

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 2000, USTR placed 16 trading partners on the "Priority Watch List:" Argentina, the Dominican Republic, Egypt, the European Union, Greece, Guatemala, India, Israel, Italy, Korea, Malaysia, Peru, Poland, Russia, Turkey, and Ukraine. Thirty-nine trading partners were placed on the "Watch List." Countries that were not mentioned in the report last year but are on the Watch List this year include: Armenia, Azerbaijan, Kazakhstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

On November 8, 2000, the USTR announced the results of out-of-cycle reviews of Italy and El Salvador. USTR also announced resolution of TRIPS implementation concerns in Poland and Ireland. Italy was moved from the Priority Watch List to the Watch List as a result of its passage of a new anti-piracy law. USTR decided not to place El Salvador on the Watch List in recognition of its stepped-up IPR enforcement efforts. Poland was moved from the Priority Watch List to the Watch List because of amendments to its copyright law, which brought that country into compliance with its TRIPS obligations regarding sound recordings. Ireland was removed from the Watch List after it adopted new copyright legislation.

b. Intellectual Property and Health Policy

On December 1, 1999, the President announced that the United States is committed to helping developing countries gain access to essential medicines, including those for HIV/AIDS. Also on December 1, the USTR and the Secretary of Health and Human Services announced their intention to develop a cooperative approach on health-related intellectual property matters to ensure that the application of U.S. trade law related to intellectual property remains sufficiently flexible to respond to public health crises.

Specifically, the announcement stated that USTR and HHS will work together to establish a process for analyzing and evaluating health issues that are relevant to the application of U.S. trade-related intellectual property laws and policy. When a foreign government expresses concern that U.S. trade law related to intellectual property protection significantly impedes its ability to address a health crisis in that country, USTR will seek and give full weight to the advice of HHS regarding the health considerations involved. This process will permit the application of U.S. trade-related intellectual property law to remain sufficiently flexible to react to public health crises brought to the attention of USTR. It will also ensure that the minimum standards of the TRIPS Agreement are respected.

USTR and HHS have established a regular consultative mechanism on health-related intellectual property matters consistent with their goal of helping poor countries gain access to essential medicines. The agencies are also working closely with interested NGOs and industry to ensure that this policy is implemented effectively.

In May 2000, the President issued Executive Order 13155. The order is intended to give sub-Saharan African governments flexibility to bring lifesaving drugs and medical technologies to those infected with HIV. The order provides this flexibility by declaring that the United States will not seek any revision of intellectual property policy in sub-Saharan African countries if that policy promotes access to HIV/AIDS medications and remains consistent with the TRIPS Agreement.

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:

< The Commonwealth of the Bahamas provided assurances that it would amend its copyright law to eliminate provisions that create a compulsory license for unauthorized re-transmissions by cable television systems of any copyrighted work transmitted over its territory, including encrypted transmissions. Such provisions violate the Bahamas' obligations under the Berne Convention. The Bahamas also agreed to revise its copyright law so that internet transmissions are likewise not subject to compulsory licenses.

< Italy passed a new anti-piracy law that significantly strengthens the penalties for theft of intellectual property rights.

< The Government of El Salvador took steps to improve its protection of intellectual property, including increased raids against software pirates and invigorated efforts to bring its intellectual property laws into compliance with the TRIPS agreement.

< Poland brought into effect important new amendments to its copyright law to protect recordings produced before 1974. Failure to provide such protection had left Poland in violation of the TRIPS Agreement.

< Ireland recently adopted new copyright legislation that brings that country into compliance with the TRIPS Agreement by making penalties for copyright infringement stiff enough to deter pirates.

< Malaysia brought into force in September a new optical media law to rein in compact disc pirates.

< Guatemala passed two strong IPR laws: a new industrial property law, and an amended copyright law.

< In June, Hong Kong adopted legislation criminalizing corporate use of unlicensed software.

< In October, Argentina began issuing patents for pharmaceutical products.

d. Ongoing Initiatives

Implementation of the TRIPS Agreement

Substantial progress has been made over the past year by developing countries toward full implementation of their TRIPS Agreement obligations. The United States has worked diligently to assist countries in meeting this goal through consultations and bilateral technical assistance.

In 1999, the WTO TRIPS Council completed its review of developing country intellectual property legislation. During 2000, the Council reviewed intellectual property legislation in 19 developing countries, as well as that of Hong Kong and Macau. The Council will review legislation in more than 50 other developing countries during 2001. The United States uses this exercise to pose detailed questions to developing countries about their implementation of TRIPS Agreement obligations.

Nevertheless, this review has revealed that a number of countries are still in the process of finalizing implementing legislation. The United States will continue to work with such countries and expects further progress in the very near future to complete this process. However, in those instances where additional progress is not likely in the near term, or where the United States has been unable to resolve concerns through bilateral consultation, we will be pursuing our rights through WTO dispute settlement proceedings. This is the case with Argentina and Brazil.

Controlling Optical Media Production

To prevent piratical activity, several of our trading partners have adopted new measures, have taken important steps toward adopting, or have committed to adopt much needed controls on optical media production. Malaysia brought into effect a strong optical media law on September 15. However, others that are in urgent need of such controls, including Taiwan, Israel, Ukraine and the West Bank and Gaza, have made insufficient progress.

Governments such as those of Bulgaria, China, and Hong Kong 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. We urge our trading partners facing the challenge of pirate optical media production within their borders, or the threat of such production developing, to adopt similar controls in the coming year.

Government Use of Software

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

USTR has achieved considerable progress under this initiative since October of 1998. To date, nineteen countries or territories have issued decrees mandating that government offices use only licensed software. USTR looks forward to the establishment of effective and transparent procedures to implement these decisions, and calls on other governments to take this very important step prior to the conclusion of the Special 301 review in April 2001.

4. Telecommunications

a. 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. An affirmative determination under Section 1377 must be treated as an affirmative determination of a violation of a trade agreement under Section 304(a)(1)(A) of the Trade Act of 1974.

Due in large part to the 1997 WTO Agreement on Basic Telecommunications ("Basic Telecom Agreement"), which went into effect on February 5, 1998, mutually advantageous market opportunities for U.S. telecommunications equipment and service suppliers expanded greatly in 2000: U.S. firms are establishing facilities-based affiliates in countries in Africa, the Americas, Asia-Pacific, and Europe that are newly opened to competition; exports of U.S.

telecommunications and information technology equipment advanced at double-digit rates in many areas; and retail prices for international calls made from the United States dropped virtually across the board, reaching the 10 to 20 cent per minute range for a number of highly competitive routes.

The Basic Telecom Agreement also has been instrumental in opening markets to satellite services around the world. With many countries liberalizing their satellite regulations, revenue of the commercial satellite industry is projected to enjoy double-digit growth over the next decade. These trends are expected to continue as more countries open their markets to full international competition.

Interventions by U.S. officials in support of the U.S. telecommunications industry abroad, in instances where trading partners' WTO obligations are implicated, have increased and led in several instances to rapid resolution of complaints without resort to investigations under Section 1377. Notwithstanding this favorable trend, monitoring and enforcement activities under Section 1377 have increased substantially since, as a result of the Basic Telecom Agreement, the number of trading partners subject to the annual review under Section 1377 includes the entire WTO membership.

The 2000 Section 1377 review, which was completed on March 30, 2000, focused on implementation of bilateral and WTO telecom commitments by Canada, Germany, Israel, Japan, Mexico, Peru, South Africa, and the United Kingdom. In each case, substantial progress was made in meeting the concerns of U.S. industry. In each case, out-of-cycle investigations or intensive monitoring and other activities continued throughout the year.

Canada: USTR initiated a 1377 investigation after the Canadian telecom regulator (CRTC) denied a petition filed by competitive carriers to reform Canada's universal service system (known as the "contribution system"). This system, which collected funds on a per-minute basis from long-distance traffic, has the potential to overcompensate the main beneficiaries, incumbent local suppliers, which also compete in the long-distance sector. USTR has been concerned regarding the compatibility of Canada's contribution mechanism with Canada's commitments under the Basic Telecom Agreement. However, the CRTC has completed a rulemaking process to devise a more competitively-neutral collection system as of January 1, 2001.

Germany: USTR's Section 1377 review of Germany focused on: (1) continued excessive delays by Deutsche Telekom (DT) in providing interconnection to competing carriers and continuing efforts by DT to impose onerous conditions on competitive carriers for interconnection; (2) excessive fees (ranging from $1.4 to $6.0 million) that the German government imposes to obtain a telecom license; (3) non-transparent cost data that DT files with the German telecom regulator to support DT's position on interconnection fees and other matters; and (4) DT's refusal to perform billing and collection services for new entrants absent a regulatory mandate to do so. Germany has taken positive steps to address the persistent problem of DT's backlog in processing interconnection requests. Germany is also expected to take action to reduce excessive licensing fees, which the European Commission has recognized as an impediment to competitive market entry. Germany also will continue to require DT to perform billing and collection services for its competitors' customers for call-by-call long distance services.

Israel: The 1377 investigation of Israel's telecom policies focused on that country's alleged discrimination against service suppliers of international calls to and from the United States and Canada. In particular, Israel imposes a higher access fee on such calls than on calls to or from all other countries, without any cost justifications. This access fee appears to run counter to Israel's obligations under the General Agreement on Trade in Services (GATS), particularly the obligation to treat services and service suppliers of one WTO country no less favorably than services and service suppliers of another WTO country. During the review, Israel committed to remove by December 31, 2001 its discriminatory access fee on calls to and from the United States and Canada.

Japan: Japan came under close scrutiny during 2000 for over-priced interconnection rates that inhibited competition in Japan's local market, as well as for prohibiting the routing of both domestic and international calls through combinations of owned and leased network facilities. USTR was concerned that Japan's practices were inconsistent with its WTO obligations, particularly the obligation to ensure cost-oriented interconnection.

In July 2000, the United States and Japan concluded an agreement as part of the Enhanced Initiative on Deregulation and Competition Policy under which Japan committed to lower its rates for regional interconnection by 50 percent over two years and local access by 20 percent over two years. The majority of these cuts will occur in the first year and will be made retroactive to April 1, 2000, and there will likely be further substantial cuts in the third year (2002). Japan also committed to open new points of access ("unbundling") to the network of its dominant carrier (NTT) and enact rules to ensure fair usage rates and conditions in order to allow new entrants to compete in providing high-speed internet services. The agreement will save telecommunications carriers around the world more than $2 billion over the next two years and will enhance new entrants' ability to build new networks by eliminating restrictions on their competitors' ability to construct networks in the most efficient way.

Mexico: On August 17, 2000, the United States initiated WTO consultations with Mexico regarding its compliance with WTO rules applicable to Mexico's regulation of its $12 billion telecommunications services sector. Consultations held in Mexico on October 10, 2000 failed to resolve the dispute. Accordingly, on November 10, 2000, the United States requested the WTO to establish a dispute settlement panel on the grounds that Mexico had failed to ensure:(1) timely, non-discriminatory interconnection for local competitors, which were unable to interconnect with Telmex at the local level; (2) cost-oriented interconnection for all calls into and within Mexico, including for calls to remote regions where competitive suppliers lack facilities; and (3) competitive alternatives for terminating international calls into Mexico, currently set at a rate of 19 cents per minute, or up to 15 cents per minute higher than cost.

The United States requested a second set of WTO consultations with Mexico on measures that the Mexican government adopted after the initial U.S. consultation request. These consultations concern Mexico's newly issued dominant carrier regulations as well as Mexico's proposed interconnection rates, terms, and conditions for 2001. The United States expressed concerns regarding the consistency of these measures with Mexico's WTO commitments to maintain appropriate measures to prevent anti-competitive practices and to ensure interconnection at cost-oriented rates.

Peru: Peru came under scrutiny regarding whether its interconnection regime is consistent with Peru's WTO obligation to ensure cost-oriented interconnection rates. In August, Peru's telecom regulator (OSIPTEL) approved local interconnection rate of 1.68 cents per minute and provided for the rate to drop to .96 cents by 2002. While this action marks a significant step toward expanding telephone access and bringing advanced services to users, OSIPTEL initially delayed applying these rates to key market segments – long-distance and wireless interconnection. However, in December 2000, OSIPTEL took the important step of applying these interconnection rate reductions to these market segments as well.

South Africa: USTR's 1377 review of South Africa focused on its alleged failure to ensure that its monopoly telecommunications supplier (Telkom) provide private lines necessary for value-added network services. Although Telkom made lines available to one company during 2000, it has declared it will not honor that firm's orders for additional service. Telkom also did not provide access to any other firms and has consistently ignored rulings from South Africa's telecom regulator that Telkom must clear its backlog of interconnection orders.

United Kingdom: In its November 1999 policy statement, "Access to Bandwidth: Delivering Competition for the Information Age," the UK's telecom regulator (OFTEL) granted British Telecom (BT) an effective monopoly on the supply of high-speed internet service (known as "ADSL") until July 1, 2001. The European Union, however, approved a regulation in October 2000 requiring EU Member States to ensure that local providers open their networks to new points of access ("unbundle their local loops"), an important first step in allowing ADSL competition. In addition, on December 29, 2000, OFTEL announced final cost-base pricing for local loop unbundling. USTR has extended the 1377 review of the UK to ensure that it allows competing firms to co-locate at BT switches and provide ADSL service in a prompt and transparent manner.

b. Telecommunications Equipment

USTR also has undertaken an active telecommunications equipment trade agreement program to facilitate trade in these products. A key aspect of this program has been the WTO Information Technology Agreement, which was concluded in 1996 and provides for tariffs to be phased out over five years across a broad range of information technology equipment.

USTR also has also worked to reduce non-tariff barriers to trade in this heavily-regulated sector, by increasing harmonization of telephone equipment standards in North America, streamlining procedures for equipment testing, lowering barriers, and bolstering trade with our NAFTA partners. Similarly, the conclusion of mutual recognition agreements (MRA) governing telecommunications equipment trade with the European Union (1997), Asia-Pacific countries (1998), and the Americas (1999) will speed up necessary regulatory approvals and lower their costs. USTR and the European Commission are currently examining approaches for covering additional telecommunications equipment (i.e., marine radio equipment) under an MRA.

5. Government Procurement

Executive Order 13116 of March 31, 1999, reinstituted key elements of Title VII of the 1988 Omnibus Trade and Competitiveness Act, as amended. The Executive Order requires the USTR to identify countries that: (1) are not in compliance with their obligations under the WTO Government Procurement Agreement (GPA), Chapter 10 of the North American Free Trade Agreement, or other agreements relating to government procurement to which those countries and the United States are parties or (2) maintain, in government procurement, a significant pattern or practice of discrimination against U.S. products or services, which results in identifiable harm to U.S. businesses when those countries' products or services are acquired in significant amounts by the U.S. Government.

The Executive Order also mandates that the USTR submit a report on the identified countries and practices to the Congressional committees of jurisdiction by April 30 (for the years 1999, 2000, and 2001) and publish these reports in the *Federal Register*. Within 90 days of the submission of the report, the USTR must initiate under Section 301 of the Trade Act of 1974, as amended, an investigation with respect to any identified country unless the USTR determines that a satisfactory resolution of the matter has been achieved.

From 1991-1996, the USTR conducted six annual reviews under Title VII. One determination remains outstanding from that period: in 1993, Title VII sanctions were imposed against the EU and its Member States for discrimination against U.S. telecommunications products. Those sanctions remain in place today. In 1999, however, the EU advised the United States that it had limited the application of the disputed provisions of its procurement regulations and suggested that the two sides seek to resolve the issue in order to terminate the 1993 sanctions. Thus, during 2000, the United States initiated bilateral consultations with the EU for this purpose.

In 1999, under the re-instituted Title VII process, the Administration determined that no countries met the criteria for identification. Similarly, in 2000, based on public responses to a *Federal Register* notice, consultations with the private sector, and its own information, the USTR determined that no countries met the criteria for Title VII identification. Moreover, the USTR decided to terminate the 1996 Title VII identification of Germany for discrimination in the heavy electrical sector, based on new German legislation that appears to effectively address the concerns raised by the United States. The 2000 report, however, does take note of countries that, while not formally identified, are of ongoing concern because of their questionable government procurement practices. These concerns include Japanese procurement practices in its public works sector and price preferences applied by Canadian provincial governments. The report also describes U.S. efforts to eliminate discriminatory foreign procurement practices by building and strengthening the international rule of law in a wide range of multilateral, regional, and bilateral fora.

6. Antidumping Actions

Under the antidumping law, remedial 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 a representative 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 and subsidy rates 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; and 35 in 2000. 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; 21 in 1999; and 19 in 2000. In 2000, Commerce initiated sunset reviews of 285 of its outstanding antidumping measures. A total of 123 measures were revoked pursuant to these sunset procedures while 132 measures remained in force, and 30 awaited final injury reviews by the USITC.

7. 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 an interested party. 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: 28 in 1986; 8 in 1987; 17 in 1988; 7 in 1989; 7 in 1990; 11 in 1991; 22 in 1992; 5 in 1993; 7 in 1994; 2 in 1995; 1 in 1996; 6 in 1997; 11 in 1998; 11 in 1999; and 7 in 2000. The number of CVD orders imposed in and since 1986 are: 13 in 1986; 14 in 1987; 7 in 1988; 6 in 1989; 2 in 1990; 2 in 1991; 4 in 1992; 16 in 1993; 1 in 1994; 2 in 1995; 2 in 1996; 0 in 1997; 1 in 1998; 7 in 1999; and 6 in 2000. In 2000, Commerce initiated sunset reviews of 53 of its outstanding countervailing measures. A total of 27 measures were revoked pursuant to these sunset procedures while 23 measures remained in force, and 3 awaited final injury reviews by the USITC.

8. 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 takes no negative 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 2000, the USITC instituted 17 Section 337 investigations. During the year, the USITC issued two general exclusion orders and one limited exclusion order covering imports from foreign firms, as well as one cease and desist order to a U.S. firm regarding its use or further sale of imported infringing products. The President permitted these exclusion and cease and desist orders to become final without presidential action.

9. Safeguard Actions (Section 201)

Section 201 of the Trade Act of 1974 provides a procedure whereby the President may grant temporary import relief to a domestic industry seriously injured by increased imports. 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 March 1, 2001, the United States had safeguard measures in place on four imported products: wheat gluten, lamb meat, certain steel wire rod (wire rod), and circular welded carbon quality line pipe (line pipe).

Effective June 1, 1998, the President imposed quantitative restrictions on imports of wheat gluten for a period of 3 years and 1 day. Absent an extension, the measure will expire June 1, 2001. The measure applies to imports from all countries except Canada, Mexico, Israel, and CBI and Andean Trade Preference beneficiaries. Effective July 22, 1999, the President imposed a tariff-rate quota on imports of lamb meat, also for a period of 3 years and 1 day. The measure likewise applies to imports from all countries except Canada, Mexico, Israel, and CBI and Andean Trade Preference beneficiaries. Unless extended, the measure will expire on July 22, 2002.

During 2000, the measures on wheat gluten and lamb were under consideration by WTO panels. On July 31, 2000, a panel issued a report finding that the wheat gluten safeguard measure was inconsistent with the WTO Agreement on Safeguards. The United States appealed that finding to the WTO Appellate Body, which issued a report on December 22, 2000, upholding the panel's findings in part and reversing the panel's findings in part, but still finding that the wheat gluten safeguard measure was inconsistent with the WTO Safeguards Agreement. The EU, which had challenged the measure, announced that if the United States did not comply with the WTO ruling within five days following adoption of the Appellate Body report, the EU would impose a surcharge of five euros per metric ton on the first 2.7 MMT of imports of U.S. corn gluten feed until such time as the wheat gluten safeguard measure is terminated. In response, the United States announced that it would request consultations with the EU under WTO dispute settlement procedures, claiming that the EU had not satisfied the requirements of the Safeguards Agreement for suspending concessions.

On December 21, 2000, a second panel issued a report finding that the lamb meat safeguard measure was inconsistent with the Agreement on Safeguards and Article XIX of GATT 1994; USTR announced its intention to appeal this decision to the Appellate Body.

Effective March 1, 2000, the President imposed a tariff-rate quota on imports of wire rod from all countries except Canada and Mexico. Absent an extension, the measure will expire on March 1, 2003. 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. On June 13, 2000, Korea requested WTO consultations regarding the safeguard measure on line pipe. The European Communities and Japan joined in these consultations, which were held on July 28, 2000. On September 14, 2000, Korea requested the establishment of a WTO panel to consider the matter, and the panel was established on October 23, 2000.

Two Section 201 petitions were filed with the USITC during 2000, one on imports of crab meat from swimming crabs and the other on imports of extruded rubber thread. The crab meat petition was filed on March 2, 2000, and the extruded rubber thread petition was filed on June 5, 2000. The Commission made negative injury determinations in both investigations, on July 11, 2000, and October 3, 2000, respectively.

10. 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 imports. Available assistance includes job retraining, trade readjustment allowances (TRA), job search, relocation, and other reemployment services. The program is scheduled to expire on September 30, 2001.

Workers seeking TAA services and benefits must file a petition with the U.S. Department of Labor. For workers to be eligible to apply for TAA, the Secretary of Labor must certify that members of the workers group have become or are threatened to become totally or partially separated from their employment; that the sales and/or production at the workers' firm have declined; and that increased imports of articles like or directly competitive with those produced by the petitioning workers have contributed importantly to the actual or threatened separations and to the declines in sales and/or production at the workers' firm.

The NAFTA Implementation Act established the North American Free Trade Agreement Transitional Adjustment Assistance program (NAFTA-TAA). Workers seeking NAFTA-TAA services and benefits must file a petition with the Governor's designated representative in the State where the workers' firm is located. For workers to be eligible to apply for NAFTA-TAA, the Secretary of Labor must certify that members of the workers group have become or are threatened to become totally or partially separated from their employment; that the sales and/or production at the workers' firm have declined; and that either (1) increased imports from Canada and/or Mexico of articles like or directly competitive with those produced by the petitioning workers have contributed importantly to the actual or threatened separations and to the declines in sales and/or production at the workers' firm or (2) that there has been a shift of production from the petitioning workers' firm to Canada or Mexico. Certification under the NAFTA-TAA program does not in any way imply that the Agreement itself caused the separations.

The U.S. Department of Labor administers the TAA and NAFTA-TAA programs through the Employment and Training Administration (ETA). Workers certified as eligible to apply for adjustment assistance may apply for TAA and NAFTA-TAA benefits and services at the nearest office of the State Employment Security Agency. Under the TAA program, workers must be enrolled in approved training, or must have successfully completed approved training, in order to be eligible for TRA. A State may waive this requirement if training is not feasible or appropriate. Under the NAFTA-TAA program, in order to be eligible for TRA, workers must be enrolled in approved training within six 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. No waivers of these requirements are permitted under NAFTA-TAA.

Fact-finding investigations were instituted for 1,368 TAA petitions in fiscal year (FY) 2000. In FY 2000, 838 certifications were issued covering an estimated 101,000 workers, whereas 633 petitions covering an estimated 53,700 workers resulted in denials of eligibility to apply. Fact-finding investigations were instituted for 775 NAFTA-TAA petitions in FY 2000. In FY 2000, 401 NAFTA-TAA certifications were issued covering an estimated 47,200 workers, whereas 339 NAFTA-TAA petitions covering an estimated 31,900 workers resulted in denials of eligibility to apply.

Under the TAA program, the number of workers who entered training during FY 1999 was 28,383; during the same year, 36,108 began receiving TRA. Under the NAFTA-TAA program, the number of workers who entered training during FY 1999 was 4,462; during the same year, 1,728 began receiving TRA. Total funding for training, job search, relocation, and State administrative expenses under TAA was $94.3 million in FY 1999 and under NAFTA-TAA was $36.8 million in FY 1999.

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, through September 30, 2001. 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.

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 2000, EDA provided nearly $11.0 million in funding to the TAACs. That amount included nearly $0.5 million in defense adjustment funding, which is used to assist trade-impacted firms that also have been affected by defense downsizing or are located in areas that have been affected by defense downsizing.

TAACs assist firms in completing petitions for certification of eligibility. In FY 2000, EDA certified 201 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 2000, the APRC approved 139 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 adjustment 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.

EDA also may provide technical assistance for industry-wide projects. In FY 2000, EDA approved a $4.8 million technical assistance grant to help the Alaskan salmon fishing industry implement a strategic marketing plan that was developed under a FY 1999 grant. Funds for both grants were transferred to EDA from the U.S. Department of Agriculture.

The Emergency Steel Loan Guarantee Act of 1999 and the Emergency Oil and Gas Guaranteed Loan Program Act (also enacted in 1999) created the Emergency Steel Loan Guarantee Board and the Emergency Oil and Gas Guaranteed Loan Board. The boards are authorized to provide loan guarantees to steel companies and to qualified oil and gas companies in amounts for up to 85 percent of the loan principal. The programs have been structured to fulfill the two objectives of the legislation: to assist steel and oil and gas firms injured by the import crises and to protect government funds by guaranteeing only sound loans. In FY 2000, the Emergency Steel Loan Guarantee Board approved offers of guarantee for a total of $550.5 million in loans to qualified steel companies, and the Emergency Oil and Gas Guaranteed Loan Board approved offers of guarantee for a total of $14 million in loans to qualified oil and gas companies. These loans are expected to be completed early in FY 2001.